



DISTRICT LICENSING COMMITTEE

Application	018-0102
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u>	
<u>IN THE MATTER</u>	of an application by Otorohanga Club Incorporated for the renewal & variation of a club licence pursuant to section 127 of the Act

HEARING at the Otorohanga District Council Chamber on Friday 1 March 2019 and Thursday 5 September 2019

OTOROHANGA DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Dr M Cameron, Mr R Murphy

APPEARANCES

Hearing 1 March 2019

Mr A Lawn – Agent, Otorohanga Club Incorporated
Mr E Tait - President, Otorohanga Club Incorporated
Mrs P Tane – Club Manager, Otorohanga Club Incorporated
Mrs N Zeier - Medical Officer of Health
Mr K Tutty - Licensing Inspector
Sergeant J Kernohan - Police
Sergeant A Connors – Police

Hearing 5 September 2019

Mr A Sheriff, Counsel for Otorohanga Club Incorporated and Clubs New Zealand Incorporated
Mr E Tait - President, Otorohanga Club Incorporated
Mrs L Waterreus, Clubs New Zealand Incorporated
Mrs P Tane – Club Manager, Otorohanga Club Incorporated
Mrs N Zeier - Medical Officer of Health
Mr K Tutty - Licensing Inspector

DECISION OF THE OTOROHANGA DISTRICT LICENSING COMMITTEE

1. The club licence 018/CLUB/002/2015 in respect of the premises situated at 107 Maniapoto Street, Otorohanga and known as Otorohanga Club is renewed for a further period of 3 years. The licence may issue upon payment of the annual fee.
2. The present conditions of the licence are replaced as follows:
 - (a) Alcohol may be sold only on the following days and during the following hours:

Monday to Sunday, from 9.00am to 1.00 am the following day.
 - (b) The club must always have a secretary.
 - (c) The club must inform the District Licensing Committee of the name of a new secretary within 10 working days of their appointment.
 - (d) All proceeds from the sale of alcohol belong to the club.
 - (e) Alcohol may be sold or supplied to:
 - i) a member of the club,
 - ii) any member of any other club where this club has an arrangement for reciprocal visiting rights,
 - iii) a person who is invited and accompanied by the members listed in i) or ii) above.
 - (f) The area where alcohol is to be sold and consumed is described in the plan date stamped as received by the Otorohanga District Licensing Committee on 24 May 2019 and no alcohol is to be taken out of this area.
5/9/19
 - (g) The entire premises is undesignated (persons under 18 can be in the area).
 - (h) A holder of a manager's certificate or a properly notified manager must be on duty and on the premises at all times alcohol is sold. If a duty manager is not present then there must be no alcohol sales and a notice displayed advising the members of this fact.
 - (i) A manager's register (as required by s.232 of the Act) is to be maintained and available on site.
 - (j) The licensee must maintain and display a Host Responsibility Policy and ensure all bar staff and committee members receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012.
 - (k) Alcohol must not be sold or supplied to minors or intoxicated persons. The licensee must display appropriate signs at every point of sale detailing restrictions on the sale and supply of alcohol to such persons.

- (l) Drinking water must be freely available and this must be clear to customers while the premises is open for the sale and supply of alcohol.
- (m) A range of non-alcoholic and low-alcohol drinks must be available at all times when the premises is open for the sale of alcohol.
- (n) Food must be available for consumption on the premises at all times the premises is open for the sale of alcohol in accordance with the menu submitted with the application for this licence, or variations of a similar range and standard. Where catered finger foods, buffet or a la carte meals are not provided, there must be a minimum of four food choices available (excluding nuts and crisps and the like).
- (o) A telephone must be freely available for customers to call for transport and staff must assist if required. Telephone numbers for alternative forms of transport, including sober driver services and the availability of a courtesy vehicle, must be displayed and promoted.
- (p) No BYO alcohol is permitted on the premises while alcohol is available for sale.
- (q) The Licensee must ensure the following are displayed;
 - i) A copy of the original licence with all the conditions, displayed prominently in the premises.
 - iii) A sign in a prominent place identifying the duty manager.

Reasons

The application, reports and pre-hearing matters

1. This is an application by Otorohanga Club Incorporated (Otorohanga Club) for the renewal and variation of a club licence in respect of the premises situated at 107 Maniapoto Street, Otorohanga.
2. The application was filed on 18 July 2018, 11 working days before the expiry of the licence, therefore the application was filed late. An application for the renewal of a licence must be made "no later than 20 working days before the expiry of the licence, or by such later date (not being later than the expiry of the licence) as the licensing committee may allow" (section 127(2)(b)). Otorohanga Club has requested that a waiver be granted from the requirement to file the application 20 working days before the expiry of the licence. Counsel for the application, Robert Davies, stated on 18 July 2018, that the club wanted to vary the existing licensed area to include a new outdoor area. This variation required new plans which took time.
3. Section 208 provides that where any person has neglected or omitted to do any act or thing in the precise manner or within the precise time prescribed by the Act, the licensing committee or chairperson, if satisfied that the neglect or omission was not wilful, may waive the same on such terms as they think equitable. Justice Heath in the High Court decision of *Sara v Johns* (HC) CIV-2008-404-7746 states that section 111 (the identical provision to s 208 under the Sale of Liquor Act 1989) cannot be used to "waive non-compliance with the need

to file before expiry of the on-licence or off-licence, based on the principle that a specific provision will be given precedence over a general one”.

4. Justice Heath distinguishes between a provision in the Act that provides an express jurisdiction to extend time to do a particular act such as section 111 and a provision with no express jurisdiction to extend time such as section 123 (renewal of manager’s certificates). Justice Heath states that strict time limits are placed on applications for renewal of an off-licence “to prevent licenced premises from being operated illegally”.
5. Firstly, the renewal application was filed before the expiry date of the licence therefore a waiver can be considered. Secondly, the licensing committee is satisfied that a genuine mistake was made, and the failure was not intentional. Thirdly, the impact of the failure was reasonably minor and did not have any impact on public participation in the process or the obligations of the reporting agencies. Therefore, a waiver is granted from the requirement to file the application more than 20 working days before the expiry of the licence and the renewal application is accepted as if it were filed on time.
6. The application states that the club wants to vary the conditions of the licence by including an outdoor area within the premises licensed area. On 4 October 2018, subsequent to the filing of the application, the club requested to change the designation from ‘the bar area being supervised’ to the whole premises being undesignated. As noted in the direction dated 28 September 2018, Otorohanga District Council did not have a site plan showing the extent of the existing supervised area and it was therefore necessary to clarify this issue.
7. On 15 October 2018, the variation request was sent to the Medical Officer of Health and Police, giving 15 working days to provide a supplementary report advising whether there is any opposition to the variation.
8. On 24 October 2018, Police advised that the change in designation from supervised to undesignated was opposed. In addition, Police raised a concern that the premises had applied for at least 26 special licenses in the past year and appeared to be operating as a function centre.
9. On 7 November 2018, the Medical Officer of Health advised that there was no opposition to the application. However, the Medical Officer of Health observed that the issue raised by Police that the club is running a significant number of events, suggests that the club is appearing to act more like an on-licence, and with the number of special licences may be in breach of section 41.
10. Given the opposition and concerns raised by Police, the application was set down to be heard at a public hearing pursuant to section 202(1) Sale and Supply of Alcohol Act 2012.

Hearings

11. The first hearing was held on 1 March 2019. As discussed at the hearing, the licensing committee considered there was a lack of evidence regarding staff, systems and training for the operation of such a large club. Otorohanga Club was given an opportunity to provide the following documents on or before Friday 10 May 2019:
 - a) A one-page training plan for committee members and bar staff and accompanying training materials and method of recording training conducted. This training should include information about: the conditions of the club licence; the club’s Host Responsibility Policy;

the licensed area; where the up-to-date membership list can be found; the SCAB Intoxication Assessment Tool; the need to maintain an up-to-date manager's register; minors; acceptable forms of ID; sign in procedures; clubs with an arrangement for reciprocal visiting rights; when a special licence should be applied for and how many visitors a member can sign in.

b) A list of the clubs with which Otorohanga Club Incorporated has an arrangement for reciprocal visiting rights in accordance with the club's constitution, and a photo showing that the list of affiliated clubs is attached to the inside front cover of the sign in folder.

c) A copy of the constitution (to provide evidence of the clubs with reciprocal visiting rights).

d) An amended scale site plan that includes all licensed areas including the proposed new outdoor area. It should include the location of CCTV cameras, the principle entrance and the internal layout.

12. The Otorohanga Club Inc provided some of the requested documents including:

a) A one-page training plan for committee members and bar staff.

b) Staff and committee training materials and method of recording training conducted.

c) An amended scale site plan.

13. The reporting agencies were then given 15 working days to provide any feedback on the new information; however no feedback was received.

14. In the response provided by the club, the Club President, Mr Tait, stated that the club "recognises that the rules around authorised visitors and customers consuming alcohol and reciprocity could be improved and updated". Mr Tait gave an undertaking that the club intended to arrange for reciprocal visiting rights to be formalised with other relevant clubs that are not members of Clubs New Zealand Incorporated.

15. The licensing committee noted that a copy of the whole constitution had not been provided as requested. Only one page of the constitution was provided containing rule 24 – Visitors Rule, which states that liquor can be sold to a member of an affiliated club. However, the relevant clauses of the constitution stating the purpose of the club and the clubs with which the club has an arrangement for reciprocal visiting rights for members were not provided. Mr Tait explained that the club relied on the new rule 26 of the constitution of Clubs New Zealand Incorporated, of which the club is a member. This rule provides that on joining the Association, Clubs New Zealand will administer an arrangement for reciprocal visiting rights between all current member clubs of the association. As a consequence, Otorohanga Club considered that it had reciprocal visiting rights with all members of Clubs New Zealand Incorporated and had displayed a large list of member clubs above its sign-in book.

16. The licensing committee had some concerns about this approach and considered that it may be inconsistent with the conditions of the licence and section 60 of the Act. Therefore, the application was set down for a further hearing to consider whether all clubs affiliated to Clubs New Zealand Incorporated are 'clubs with reciprocal visiting rights' for Otorohanga Club Incorporated. The licensing committee asked to see submissions and evidence in regard to the following questions:

a) Does the constitution or rules of Otorohanga Club permit the club to have an arrangement for reciprocal visiting rights with all members of Clubs New Zealand Incorporated?

b) Does each organisation that is a member of Clubs New Zealand Incorporated hold a club

licence and meet the definition of a club (under sections 5 and 60 of the Sale and Supply of Alcohol Act 2012)?

c) Does the Sale and Supply of Alcohol Act 2012 permit another organisation to administer reciprocal visiting rights for the holder of a club licence?

17. As a result of this request, Clubs New Zealand Incorporated sought leave pursuant to section 204(2)(c) to appear and be heard by counsel at the second hearing. Alastair Sherriff, Buddle Finlay Barristers and Solicitors, advised that he had been engaged as counsel for both Clubs New Zealand Incorporated and Otorohanga Club.
18. The licensing committee granted leave for Clubs New Zealand to appear and be heard by counsel, on the grounds that it would be of assistance to the committee to hear from Clubs New Zealand and it is proper in the circumstances given the relationship between Clubs New Zealand Inc and Otorohanga Club.

The Sale and Supply of Alcohol Act 2012 and the issues to be decided

19. The purpose of the Act is to put in place a new system of control over the sale and supply of alcohol (s 3). The object of the Act is to ensure that the sale and supply of alcohol is undertaken safely and responsibly, and the harm caused by excessive or inappropriate consumption of alcohol is minimised (s 4).
20. In deciding whether to renew a club licence the licensing committee must have regard to sections 131 and 105 of the Act and must then stand back and consider whether granting the renewal of the club licence meets the object of the Act. Therefore, the issues to be decided are:
 - a) Is Otorohanga Club a suitable applicant to hold a club licence?
 - b) Are the days and hours during which the applicant proposes to sell alcohol reasonable? Does the application comply with the Otorohanga District Local Alcohol Policy?
 - c) Is the design and layout of the premises suitable? Should the licensed area be increased to include the new outdoor area?
 - d) Should condition (5) be amended to remove the supervised designation?
 - e) Does the applicant propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?
 - f) Does the applicant have appropriate systems, staff and training to comply with the law? Will the amenity and good order of the locality be increased by more than a minor extent by the effects of a refusal to renew the licence?
 - h) Has the applicant sold, displayed, advertised or promoted alcohol in a responsible manner?
 - i) Does the constitution or rules of Otorohanga Club permit the club to have an arrangement for reciprocal visiting rights with all members of Clubs New Zealand Incorporated?

j) Does each organisation that is a member of Clubs New Zealand Incorporated hold a club licence and meet the definition of a club (under sections 5 and 60 of the Sale and Supply of Alcohol Act 2012)?

k) Does the Sale and Supply of Alcohol Act 2012 permit another organisation to administer reciprocal visiting rights for the holder of a club licence?

l) Should a condition be added stating the fees payable for the licensing of the premises concerned (section 110(2)(b))?

Is Otorohanga Club a suitable applicant to hold a club licence?

21. The Licensing Inspector does not report any concerns regarding the suitability of the club to hold a club licence and in particular notes that the club has been continually licensed and operating at its current site in excess of 40 years. The licensing committee is satisfied that Otorohanga Club is a suitable applicant to hold a club licence.

**Are the days and hours during which the applicant proposes to sell alcohol reasonable?
Does the application comply with the Otorohanga District Local Alcohol Policy?**

22. Otorohanga Club currently has licensed hours from 9am to 2am the following day, Monday to Sunday. These hours do not align with the Otorohanga District Local Alcohol Policy (LAP). However, Otorohanga Club has agreed to amend the licensed hours to 9am to 1am Monday to Sunday, and therefore the licence conditions would now comply with the LAP.

Is the design and layout of the premises suitable? Should the licensed area be increased to include the new outdoor area?

23. The Licensing Inspector reports that the premises has a number of bar and lounge areas, snooker/8-ball tables, meeting rooms, a gaming machine area, and a restaurant with kitchen and bar.
24. Otorohanga Club seeks to amend the licensed area by including a new outdoor dining area. This is fully fenced and can only be accessed from the clubrooms. The new area is on private property and therefore is not subject to Public Places/Outdoor dining restrictions. The Licensing Inspector considered whether the new outdoor area should have the same licensed hours as the rest of the premises. The Licensing Inspector considers that in winter the colder temperatures will be a limiting factor for the use of the area and at other times of the year, it is not likely that other persons will be affected by people using the area until 1.00am.
25. The licensing committee is satisfied that the design and layout of the new premises is suitable and that the licensed area should be increased to include the new outdoor area. The premises is well appointed, and able to be monitored effectively by the staff of the premises. The staff, systems and training in place will ensure that the new outdoor area is properly monitored to ensure compliance with the Act.

Should condition (5) be amended to remove the supervised designation?

26. Condition (5) of current licence states “The bar area of the premises is designated supervised”. As stated in paragraph (6), Otorohanga District Council did not have a site plan showing the extent of the existing supervised area. It is unclear when the supervised designation came into force.
27. Sergeant Kernohan opposed the change of designation on the basis that the club runs a large number of special licence functions and appears to be evolving away from being a club, to operating more like a function centre. In support of this submission, Sergeant Kernohan referred to the definition of a club in section 5 of the Act, as being a body corporate, or an organisation holding a permanent charter, that cannot trade for the purpose of making a profit. If a club has a strong focus on functions, it runs the risk of losing its identity as a club.
28. Pauline Tane, who has been the manager of the club since 2015, gave evidence that, as at March 2019, the club had a membership of 1,890 members, aged from 18 to 94 years. The club is open six days a week and has 14 sporting adjuncts. It hosts a number of events where alcohol is not served such as the Otorohanga College Ball, birthdays and Marae Trust Board meetings, and in these cases special licences are not required.
29. Mr Tait, Club President, explained that the club does the right thing by applying for special licenses for events where alcohol is served and where non-club members are present, rather than having club members signing in guests. Mr Tait explained that around 1994 the local council decided to demolish the then unusable Town Hall and not to rebuild it. This meant that events that would have previously been held in the Town Hall, were held at the Otorohanga Club. The club has three operational parts: the Main Bar and Sports Area; the Restaurant; and the Southern Lounge, which is used for functions. Club members regularly book the club facilities for organised functions and meetings. Members of the public book the Southern Lounge for weddings, birthdays, reunions and funerals.
30. Mr Tait gave evidence that the club does not profit greatly from the functions it hosts. Often the club provides the hall free of charge and provides subsidised food. The club’s purpose is to provide social intercourse for its members. It does this by providing activities and space for its members. The main income comes from a range of club activities. The club provides 13 club activities including: Men’s Golf, Ladies Golf, Snooker, Darts, Indoor Bowls, Outdoor Bowls, Cycling, Fishing, Clay Bird Shooting, Gulliver’s Travel, Eight-ball, Seniors and Quiz. In the period between August 2017 and July 2018, the club was granted 23 special licenses for a total of 29 events. The Southern Lounge is often the only area designated for a special licence event. Mr Tait estimates that about 5% of the club’s income comes from hiring the function room for special licence events. In summary, Mr Tait explained that the club is the hub of the community and hosting functions is part and parcel of the club’s operation, but the majority of the events hosted are private events for club members.
31. Mr Lawn represented the club at the first hearing and submitted that the club operates as a club and is quite entitled to host community events. Mr Lawn referred to the Invercargill Workingman’s Club Incorporated decision ([2002] NZLLA 50, where the club sought a licence for any time any day over a period of twelve months, in order to *cease the endless paper trail between our respective offices when the club requires the right to sell and supply liquor during functions and social occasions*. The Licensing Authority declined the request on the basis that a Club cannot be granted a special licence for unspecified occasions or events or

series of occasions or events. At that time, the Invercargill Workingman's Club, had a membership of 2,600, approximately 8% of the total population of Invercargill. However, the Licensing Authority heard evidence that the club had hosted 415 events for which 47 special licences had been granted in a two year and 4 month period. The events hosted by the club included engagements or weddings, birthdays, dinner or lunch socials and meetings or seminars and had hosted an estimated 50,000 people. There was no comment from the Licensing Authority as to what constituted an unreasonable number of special licence events.

32. The licensing committee agrees with Mr Lawn that it is unusual for a club to have all or some of the premises designated as supervised. This is because most clubs have a family focus and are low risk. Sergeant Kernohan has provided insufficient evidence to persuade the licensing committee that the club is operating more in the nature of a function centre and that the number of special licences applied for are unreasonable. That fact that the club has hosted 29 events requiring a special licence over a 12-month period is not evidence in itself that the club is no longer functioning as a club. Having regard to the evidence provided by the club and the Police, we are satisfied that the club is providing a wide range of facilities for its large membership and for the community. We understand this is the only function venue in Otorohanga that is able to provide the space needed for large functions.
33. In conclusion, the licensing committee is satisfied that the club is being properly run as a club. It is a low risk operation that is suited to being undesignated. Therefore, condition (5) should be amended to remove the supervised designation.

Does the applicant propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?

34. The club does not propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food.

Does the applicant have appropriate systems, staff and training to comply with the law? Will the amenity and good order of the locality be increased by more than a minor extent by the effects of a refusal to renew the licence?

35. The licensing committee is satisfied that the club has an appropriate Host Responsibility Policy, sufficient certificated duty managers and a comprehensive staff training programme and method for recording staff training. Therefore, the licensing committee is confident that suitable measures will be undertaken in regard to responsible sale and supply of alcohol and that harm will be reduced. The club understands when a special licence should be applied for.
36. The licensing committee is satisfied that the amenity and good order of the locality will not be increased by more than a minor extent by the effects of a refusal to renew the licence.

Has the applicant sold, displayed, advertised or promoted alcohol in a responsible manner?

37. The licensing committee does not have any evidence to suggest that the club has sold, displayed, advertised or promoted alcohol in an irresponsible manner.

Does the Constitution/Rules of Otorohanga Club permit the club to have an arrangement for reciprocal visiting rights with all members of Clubs New Zealand Incorporated?

38. Rules 3(a) and (b) of the 1984 Otorohanga Clubs Rules provide that the objects for which the club is established are:

“To conduct, administer and maintain a Chartered Club for the members and for such persons as are authorised from time to time in accordance with any charter granted to the club” and “To provide amenities and cultural activities and promote sports and in general to provide an atmosphere where the members may meet and enjoy fellowship with one another, and for the promotion of social intercourse

39. Rule 24(b) and (c) of the 1984 Otorohanga Clubs Rules provides that alcohol can be sold to a member of an affiliated club and a member of Working Men’s Clubs in other towns or other approved clubs. The Otorohanga Club was initially incorporated as Otorohanga Working Men’s Club Inc, before it changed its name in 1985, presumably to encourage/allow women members, hence the reference to ‘Working Men’s Clubs’.

40. The licensing committee accepts the submission of Mr Sherriff that there is nothing in the Otorohanga Club’s constitution which prevents it from having arrangements for reciprocal visiting rights for members of unlicensed clubs. It can have arrangements with a licensed club, a holder of a permanent charter, or an unlicensed club which falls within the definition of club in section 5 of the Act.

41. Mr Sherriff explained to the licensing committee that the club’s Constitution/Rules were amended at the Club’s AGM on 23 June 2019. Since this time, Mr Sherriff has recommended some additional changes to ensure consistency with the Act. However, these amendments have not been registered with the Companies Office, because the club wants its lawyer to review the rules after the decision of the licensing committee has been received, in case any further amendments are suggested. The proposed amended rule 24 provides:

24. VISITORS RULE – AUTHORISED CUSTOMERS & AUTHORISED VISITORS AND GUESTS

- (a) (i) Any member of the Otorohanga Club Incorporated can invite and accompany a guest/visitor(s) (Authorised Customer) to the Club.
(ii) Any member introducing a guest/visitor(s) is responsible for the good conduct of the guest/visitor whilst on the club premises.
(iii) Any guest/visitor that wishes to be sold or supplied alcohol must first complete the appropriate authorised customer requirements.
(iv) Guest/visitor(s) may only be sold or supplied alcohol while accompanied by a member of the Club.
(v) Guest/visitor(s) will lose all rights or privileges if they remain in the Club if/when the sponsoring member vacates the Club premises.
(vi) An affiliated member (Authorised Visitor) wishing to be sold or supplied alcohol for consumption on the premises must be able to produce valid proof of membership to an affiliate club/association at point of service.
(vii) Any affiliated member introducing a guest/visitor(s) is responsible for the good conduct of the guest/visitor whilst on Club premises. The guest/visitor will lose all rights or privileges if they remain in the Club if/when the sponsoring member vacates the Club premises.

(b) Any guest/visitor of a member of either the Otorohanga Club Incorporated or affiliated clubs, that wishes to be sold or supplied alcohol must first complete the appropriate authorised customer and authorised visitor requirements.

(c) Authorised Customers and Authorised Visitors and their guests are bound by the rules of this Club.

(d) The Duty Manager shall have the power to refuse privileges for any intending guest/visitor or revoke privileges without any reason being supplied.

42. The amendments to rule 24 include confirmation that terms 'club', 'member', 'authorised customer' and 'authorised visitor' have the same meaning as those in the Act. Rule 24(e)(ii) states:

"affiliated member" means the same as "authorised visitor" and means a member of any other club which is a member of Clubs New Zealand Incorporated through whom the club has arrangements for reciprocal visiting rights for members, irrespective of whether the other club has an alcohol licence or a permanent charter or not."

43. In summary, Mr Sherriff submits that the new (2019) Rule 24 continues to allow Otorohanga Club to continue to have arrangements for reciprocal visiting rights with all members of Clubs New Zealand Inc. Mr Sherriff agrees that if a club is not a member of Clubs New Zealand Inc, then Otorohanga Club would need to have an individual arrangement with that club. To include this scenario in amended Rule 24(2)(e), Mr Sherriff's agrees with the licensing committee's suggestion that the word 'means' is changed to 'includes':

*"affiliated member" means the same as "authorised visitor" and **includes** a member of any other club ..."*

44. In general terms the amended rules provide useful clarity around the operation of the club within the framework of the 2012 Act. The only other minor point that the club may wish to consider is that rule 24(a)(iii) appears to be repeated in more detail at rule 24(b). Therefore, rule 24(a)(iii) appears to be redundant. The same applies to rule 24(a)(v) and 24(a)(vii).

45. In response to a question by the licensing committee, Mr Sherriff agreed that requiring authorised visitors to provide a membership card to identify membership of a club with an arrangement for reciprocal visiting rights is wise. This is because it helps the Otorohanga Club staff to properly identify authorised visitors and assists enforcement officers to establish who is on the premises. This is reinforced by the Clubs New Zealand Inc in the member information page on reciprocal visiting rights which states "you must be able provide proof of membership of your own club ... make sure you always have your club membership card handy...".

46. Mrs L Waterreus, Clubs New Zealand Incorporated representative, gave evidence that the membership of Club's New Zealand Inc is updated on their website on a monthly basis and clubs are expected to download it. Mrs Tane advised that the club has been downloading the membership list on a quarterly basis and agreed this should be done more frequently. It is the view of the licensing committee that in order to always have up-to-date information, the membership list should be updated at least monthly.

47. Having regard to the evidence and submissions presented, the licensing committee is satisfied that the Constitution/Rules of Otorohanga Club permit the club to have an arrangement for reciprocal visiting rights with all members of Clubs New Zealand Inc. We asked whether reciprocal visiting rights should be based on a 'common bond' or 'common purpose', such as a particular sport. Mr Sherriff responded that being a club is the common bond. He explained that if a member of a club wants to visit a premises with a convivial atmosphere for social interaction while away from home, they look for a kindred club. Membership of Clubs New Zealand Inc facilitates this interaction for its members. In his written submissions, Mr Sherriff reiterated that clubs are not-for-profit bodies that exist for mutual social intercourse of members with a common interest in club life per se, or in some sporting, cultural, recreational, or other not-for-gain pursuit. With the ease of transportation, club competitions, and other inter-club interactions have become more common. Hence, for club members, reciprocal visiting rights are an important and integral part of the social and societal club life, and a home away from home, that has been recognised by Parliament and was extended by Parliament in 2012.

Does each organisation that is a member of Clubs New Zealand Incorporated hold a club licence and meet the definition of a club (under sections 5 and 60 of the Sale and Supply of Alcohol Act 2012)?

48. A club is defined in section 5 of the Sale and Supply of Alcohol Act 2012 as a body that:

(a) is a body corporate having as its object (or as one of its objects) participating in or promoting a sport or other recreational activity, otherwise than for gain; or

(b) a body corporate whose object is not (or none of whose objects is) gain; or

(c) holds a permanent club charter.

49. Mr Sherriff provided evidence of the Clubs New Zealand Constitution, Standing Orders and By-laws to show that all members must meet the definition of a club as stated in section 5 of the Sale and Supply of Alcohol Act 2012. Specifically, clause 2.1 of the Bylaw provides that a member must be a club, formed either as an incorporated or friendly society or similar, and a "Not for Profit" organisation, and must not be operated for gain. In addition, the club may be authorised to sell or supply liquor to its members pursuant to the Sale of Liquor Act 1989 (this is clearly out of date and requires amendment) and must be able to offer reciprocal visiting rights to other members of the Association.

50. Mr Sherriff provided the licensing committee with an up-to-date list of the 315 Clubs New Zealand Inc members. Of the 315, 14 are the holders of permanent charters and 280 licensed clubs hold 'club licences'. Twenty one clubs do not hold either a club licence or a permanent charter, therefore 93% of the Clubs New Zealand Inc members are licensed.

51. Mr Sherriff suggests that a total of 1728 club licences are held nationally and there are 30 active charters. Therefore, the clubs belonging to Clubs New Zealand are a relatively small percentage of the total number of club licence holders.

52. The licensing committee accepts that each member of Clubs New Zealand meets the definition of a club under section 5 of the Act. In addition, the licensing committee accepts Mr Sherriff's submission that a club with reciprocal visiting rights does not need to hold a licence. This is because the definition of 'authorised visitor' in section 60 of the Act only refers to "a member of some other club with which the club concerned has an arrangement for reciprocal visiting rights for members". It does not refer to some other 'licensed club'.

Does the Sale and Supply of Alcohol Act 2012 permit another organisation to administer reciprocal visiting rights for the holder of a club licence?

53. Mr Sherriff provided a comprehensive detailed history of the development of clubs in New Zealand and of the Otorohanga Club. In summary, the earliest clubs in New Zealand were typically workingmen's clubs. Many early clubs maintained libraries and provided social support for members. In 1912, the Association of Clubs of New Zealand (ACNZ) was formed and was comprised of the then chartered clubs. The definition of a club at this time was:

"a voluntary association of persons combined for promoting the common object of private social intercourse, convenience and comfort, and providing its own liquors, and not for the purposes of gain." (Section 259 Licensing Act 1908)

54. The Otorohanga Club was formed in 1939 and was one of 7 clubs in the King Country at the time. Te Ara, The Encyclopedia of New Zealand, states that:

"In 1884 the government made the King Country a 'dry' area at the request of Ngāti Maniapoto leaders. This meant liquor could not be legally sold. The people were by no means teetotalers – sly grogging (illegal liquor manufacturing for sale) was widespread and drinkers pooled money to bring in liquor for personal use from outside the dry area (which was legal). Chartered clubs could obtain liquor licences from 1946 and prohibition was lifted altogether in 1954."

55. Between 1939 and 1954, the Otorohanga Club was not a holder of a permanent charter and instead operated a locker system for liquor. In effect it acted as an agent for members, buying liquor from breweries in Auckland in the name of members, collecting it from the weekly train, and storing it for them in their lockers.

56. In 1954, Otorohanga Club was granted a renewable charter. For the period from 1963 to 1981, renewable chartered clubs could sell alcohol to members, and member's visitors so long as the visitor was in the company of the member (section 166(2)(h) Sale of Liquor Act 1962).

57. By 1962, ACNZ had become the Association of Chartered Clubs of NZ Inc and represented Commercial Travellers Clubs, Working Men's Clubs, Cosmopolitan Clubs, Returned Service Clubs and Masonic Clubs.

58. In 1980 an amendment to the Sale of Liquor Act 1962, introduced a new "club licence" (sections 117A to 117C) and added affiliated club members to the category of persons chartered clubs could sell to. At this time, an "affiliated Club" was defined as:

"in relation to any other club, means a club (being the holder of a charter under this Part of the Act) with which that other club has entered into an agreement providing for reciprocal visiting rights for the members of the 2 clubs."

59. Mr Sherriff highlighted the fact that this was a bilateral agreement. However, this changed when the 1989 Sale of Liquor Act replaced the 1962 Act from 1 April 1990. Chartered Clubs disappeared from legislative framework and existing chartered clubs, like Otorohanga Club, became club licence holders (section 238). Permanent club charters continued untouched, and with the exception of certain enforcement and management purposes, they were

treated the same as other clubs. A club was permitted to sell and supply liquor to *any member of any other club with which the holder of the licence has an arrangement for reciprocal visiting rights.*

60. Mr Sherriff contended that when Parliament changed the words to “an arrangement for” it was envisaged that an umbrella organisation could broker the arrangement on behalf of the club. Therefore, it was no longer necessary for a bilateral agreement. In addition, it was no longer a requirement that an affiliated club be the holder of a licence. This requirement was removed as a result of a recommendation of the Laking Report (page 132).
61. The 2012 Sale and Supply of Alcohol Act went further and added guests of authorised visitors to the permitted customer list for clubs. The current licence for Otorohanga Club does not reflect this legislative change in its conditions and the licensing committee agrees it should be added to the licence conditions.
62. In summary, Mr Sherriff provided very useful submissions summarising the background and history of the reciprocal visiting rights provisions. The licensing committee accepts that there is nothing in the wording of section 60(3) itself or in the definition of “authorised visitor” that requires bilateral agreements between two specific clubs. Therefore, there is nothing in that definition precluding the “arrangements” from being administered by Clubs New Zealand Inc, for its members. In addition, the proposed amendments to the rules will make this arrangement explicit and will still allow bilateral agreements to be made with individual clubs that are non-members of Clubs New Zealand. It is important that Otorohanga Club is clear about who its “authorised” visitors” are at all times and that staff receive training and regular updates about this.

Should a condition be added stating the fees payable for the licensing of the premises concerned (section 110(2)(b))?

63. At the hearing Mr Sherriff suggested that there is a new mandatory condition missing from the licence relating to section 110(2)(b) and that Auckland DLC is the only DLC regularly complying with this condition. Section 110(2)(b) states that:

*The licensing authority or licensing committee concerned must ensure that every on-licence and club licence it issues is issued subject to conditions -
(b) if there are in force regulations under this Act empowering the authority or committee to determine different levels of licensing fee prescribed by the regulations for premises of different kinds, stating the fees payable for the licensing of the premises concerned ...*

64. However, Mr Sherriff was not able to point to any regulations that empower the licensing committee to set fees and the committee is not aware of any such regulations. Therefore, the licensing committee is of the view that a condition stating the fees payable for this club is not necessary.

Conclusion

65. Therefore, the application for the renewal of the club licence is granted. The supervised designation at the bar is removed, the new outside area is added and the section 60(1)(b) condition is added. The conditions for this licence have been replaced to ensure that they are consistent with club licences issued in this district since the commencement of the Sale and Supply of Alcohol Act 2012. The new conditions include information about the statutory

obligations relating to clubs, the display of signage and the maintenance of a manager's register.

66. The licensing committee notes that Otorohanga Club has given an undertaking that a copy of the amended Rules will be provided to the Otorohanga DLC Secretary at the same time as they are submitted to the Companies Office.

Dated this 17th day of October 2019

A handwritten signature in black ink, appearing to be 'S Grayson', written in a cursive style.

Sara Grayson
Commissioner
Otorohanga District Licensing Committee