

Decision No: 45/ON672/2023

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an application pursuant to section 127 (2) of the Sale and Supply of Alcohol Act 2012 by Octopus Inc Limited for the renewal of an On Licence in respect of premises situated at 284 Rangiuuru Road, Otaki, and known as The Telegraph Hotel (The Tele)

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

Chair: Cr Nigel Wilson

Members: Ms Susie Mills

Mr Trevor Knowles

HEARING at Kapiti Coast District Council offices, Paraparaumu, on 28 September 2023.

APPEARANCES

Mr Duane Watt – the applicant (Octopus Inc Limited)

Reporting Agencies:

Antionette Bliss - Licensing Inspector

Simon Carter – Police Senior Constable

Julie Blythe – Appearing for the Medical Officer of Health

All those appearing were sworn in.

INTRODUCTION

1. This is a hearing for an application by Octopus Inc Limited under section 127 of the Sale and Supply of Alcohol Act 2012 (the Act) for the renewal of an on-licence in respect of premises situated at 284 Rangiuuru Road, Otaki and to be known as The Telegraph Hotel (The Tele).

2. At a previous Hearing (27 October, 2021) the applicant had the On Licence renewed for the truncated period of one year subject to conditions.
3. The Committee conducted a site visit on 26 September 2023.

THE APPLICATION

4. A copy of the application was forwarded to the reporting agencies and the Licensing Inspector. The Licensing Inspector, Police, and Public Health raised concerns in their reports regarding food, staff training, and staffing levels. The Police initially opposed the application, as did the Medical Officers of Health, and the Licensing Inspector.

4a. The applicant filed for renewal of the On Licence on 8 November 2022, however it did not come to the DLC for a decision until June 2023. The explanation for this is contained in the Inspector's Report dated 13 June 2023 which stated: *There has been a delay in processing this application due to initial opposition from all of the report agencies. The agencies have worked collaboratively with the applicant to address each of the concerns outlined in the report.*

4b. The opposition to the application was subsequently withdrawn, subject to undertakings by the applicant.

Premises/background

5. In August 2012, the property was purchased by Duane Watt (the applicant) in the name of his company Telegraph Hotel Limited and, following a major refurbishment, the premises re-opened in May 2013 under the new name of The Tele. Like the historical Telegraph Hotel, the premises have been operating as a tavern with accommodation since that date.

6. In 2016, Mr Watt purchased The Punters Corner, another tavern located across the road from The Tele, in the name of Octopus Inc Limited, with the intention of relocating the gaming machines from The Punters Corner to The Tele.

7. On 18 September 2017, Mr Watt transferred ownership of the business from Telegraph Hotel Limited to Octopus Inc Limited, of which he says he is the sole director/shareholder. Alcohol was sold under Temporary Authority until a new licence was issued on 19 December 2017, and renewed after 12 months.

8. The general nature of the business is that of a hotel/tavern. The applicant stated the intended principal purpose of the business is the sale and supply of alcohol, gaming, and TAB.
9. The applicant also holds an Off Licence for the premises.
10. The layout of the premises was altered in early 2018 to accommodate the gaming machines and TAB facility.

APPLICANT'S EVIDENCE

11. The applicant Duane Watt addressed three issues raised in contention – The suitability of food provided; Staff Training; and serving of single nip drinks in a tall glass as a low alcohol option.
12. Mr Watt said the food available at The Tele is substantial and meets the requirements of his licence. He states the menu of food is working well. The menu presented with the application listed the following items; Toasties, Pork Pie, Rice Cakes, Peri Peri Tuna, Beef Jerky, Chorizos, Chippies.
13. Mr Watt states the single nip in a tall glass is fine and is only being called unacceptable now. He says the single nip is low alcohol and his pouring method is based on science and facts.
14. Mr Watt says regarding Staff Training it was never clear what on-going training was. He told the Hearing he made up an Induction Booklet which he gave to the Inspector and had not heard back. He said he does site induction for new staff.
15. Mr Watt allows food to be brought in from other operators such as takeaways and noted these food options were in close proximity to the Tele and open until 9:30pm or 10pm.
16. Mr Watt explained that heating up a frozen pie or toastie can take between 10-15 minutes, and at busy times this places a lot of pressure on staff whereas the current range of food can be supplied quickly.
17. Mr Watt believes the current range of food (as listed in 12. above) meets the requirement of the act, being instantly available and enjoyed by the customers.

CROSS EXAMINATION OF THE APPLICANT BY THE INSPECTOR

18. In response to a question from Ms Bliss about the food most often sold Mr Watt said the most popular items were Beef Jerky, Toasties, and Tuna. He said there was very little demand for food and so it was reduced to longer shelf options.

19. Ms Bliss noted following the last Hearing Mr Watt had agreed to include Lasagne as an option. He was asked why this was not available. He said they bought some to trial but he hasn't as yet put it on the menu.

20. The applicant was questioned about training he provided to staff. He responded there was a twice-yearly fire drill.

CROSS EXAMINATION OF THE APPLICANT BY POLICE

21. Mr Watt was asked what he did to actively promote the sale of food. He responded there was generally a low demand for food and said Beef Jerky was popular. He said there were signs of the menu. Snr Constable Carter asked about the size and placement of the signs and was the menu easily recognisable among the signs. Mr Watt said there were a lot of signs and the size of the menu signs is A4 because that is the size printer he has.

22. Mr Carter asked the Applicant what he considered substantial food as required under the Act. Mr Watt responded that he considered substantial food was about how much chewing was involved. He said he used the pie as a baseline for substantial food but conceded it was probably not a full meal.

23. Mr Carter asked about the tall glass nip pourer as a low alcohol option noting there was nothing scientific about the process. He asked if there a precise measure of 2.5% alcohol or under and if so how is this measured. Mr Watt replied that as a publican he considered someone asking for this single nip is looking after themselves. Regarding the volume of alcohol Mr Watt said he didn't actually know but he thought it was well below.

24. Mr Carter asked how are staff trained to do the pouring of these low alcohol drinks properly. Mr Watt replied "staff training is what the customer wants, either way I think it is covered."

25. Mr Carter asked if The Tele had started serving low alcohol options. Mr Watt answered they were not measured and poured to the customer's taste. Mr Carter noted he could not see how he had trained his staff on how to pour these options as there is nothing in the training records. Mr Watt said it is in the glass size.

26. Mr Carter noted the Fire Evacuation Plan; First Aid training, and Food Safety Course are important but they are not recorded in The Tele's training

register. He asked if the staff had done this training as it is part of the host responsibility. Mr Watt said he thought the Fire Drill was in the register. He said staff do the Servewise and a staff induction happens after LCQ. He said he had no idea what ongoing training meant and he didn't think KCDC did either.

CROSS EXAMINATION OF THE APPLICANT BY THE COMMITTEE

27. Committee member Trevor Knowles asked the days and hours Mr Watt was on duty. Mr Watt replied he tried to designate himself as the spare. He said it was not a set time. He was away two weeks and the place ran well.

28. Mr Knowles noted existing conditions of the Licence required Five substantial food options to be available and which of the current menu did Mr Watt consider met that criteria. Mr Watt answered Toasties, Pork Pies, Tuna, Cherizos, and Beef Jerky.

29. Mr Knowles asked what volume of food stock is on hand. Mr Watt said there were one or two Pork Pies and a few in the freezer. There were 4-6 packets of Tuna and Cherizos and plenty of Beef Jerky.

30. Mr Knowles, citing Section 53 of the Act asked Mr Watt how many customers could he have and how would he feed them if required. Mr Watt replied they could supply 20 Beef Jerkys, 6 Tuna, 6 Cherizos, 10 Toasties, and 6 Pork Pies. He said he was not sure if it was written that he had to have enough food on hand.

31. Mr Knowles asked where on the premises could food be cooked and how was food actively promoted. Mr Watt answered that The Tele only has a Toastie machine so they can't cook on the premises. He said he had A4 sized menus but his customers did not like a hard sell.

32. Mr Knowles asked if there was information available in relation to food sales. Mr Watt said food sales were pretty light and most days there was one piece sold and on a busy day maybe 5 or 6.

33. Ms Mills asked Mr Watt why he thought the DLC have made food important in pubs. Mr Watt replied there was a huge emphasis on food. He had spoken with other publicans about this. He considered the regulations had reduced the road toll and people are drinking at home with alcohol from supermarkets.

34. Ms Mills observed food was not actively promoted at The Tele and there seemed to be very low demand. Mr Watt said he had a pie warmer in the past and each night he had to give away the surplus and it was not sustainable. Mr Watt said on average he sold one pie per week.

35. Ms Mills asked about the low alcohol options available. Mr Watt said it was a big exercise to have RTDs which take up lots of fridge space and he liked to have spirit mixers. The Chair, Mr Wilson, noted the contention around the nip pouring method and Mr Watt replied he had no intention to replace this.

36. The Chair questioned if Beef Jerky could be considered substantial food. Mr Watt replied it was high in protein and was the perfect food.

EVIDENCE IN CHIEF FROM POLICE

37. Snr Constable Carter spoke to the report from Police Constable Lance Moretto (4 January 2023) in which the Police had opposed the application. Since his report Mr Moretto has left this district and role and is working elsewhere with Police.

In the Moretto report it was stated: *“Police submit that for the object of the Act to be achieved the committee must have confidence in the application. There are significant weaknesses in the application, in particular around the food to be available, low alcohol options, and appropriate systems, staff, and training to comply with the law. These weaknesses raise particular concerns.”*

38. Mr Carter said on 9 February 2023 a meeting at the KCDC offices involving the Tri-agencies and the Applicant was held to discuss concerns relating to the application.

39. Mr Carter had subsequently responded to the Inspector (23 March 2023 and 13 April 2023) regarding agreed conditions. He said since then Police had inspected compliance at the premises [The Tele].

CROSS EXAMINATION OF POLICE

40. Committee member Trevor Knowles asked Mr Carter if he believed the current food offerings at The Tele met the requirements under Section 53 of the Act and if so why. Mr Carter said the Toasted Sandwiches and Pork Pies did but the rest of the menu items were bar snacks. He said only two of the options met the criteria and there needs to be a minimum of three.

41. Mr Knowles asked if Mr Carter had a view on the current list in meeting the necessary criteria. Mr Carter said his concern is that only two of the items are substantial food. He said there was a very low turnover of food and that was a concern for Police.

42. Mr Knowles asked what had changed from the Police opposition of the Application to now. Mr Carter replied the Police only withdrew opposition because of an undertaking to actively promote substantial food, to improve training systems and to uphold undertakings. He said until agreement on those conditions was met Police concerns remained the same.

43. Mr Knowles asked if compliance levels following the rulings of the previous Hearing are accounted for could Police confirm a Licence renewal period of three years would be ok, or a truncated period appropriate. Mr Carter said the applicant had worked alongside agencies. Mr Carter said he thought a truncated period of one year would give reassurance to the DLC and a follow-up check could then lead to a three year Licence.

44. Committee member Susie Mills asked about the suitability of the Applicant considering Constable Moretto's report (Page 48) in which he stated: *"The last renewal was granted for a one year period to allow the applicant to demonstrate he could improve the areas of concern at that time and follow the direction given. Police believe the applicant has failed to do this across the board and therefore is not suitable to hold a licence."* Mr Carter said the situation had changed since Constable Moretto's report and some progress has been made but there are still concerns such as the listed available food types was not compliant with the Act (Section 53).

EVIDENCE IN CHIEF FROM LICENSING INSPECTOR

45. Ms Bliss reiterated the main points of her report that showed concerns over Staff Training, Food Options, and Low Alcohol Options. It was noted that there had been a re-wording of conditions around food on 18 May 2023 but these conditions had not been met.

46. Ms Bliss noted that a training record is required. She further noted that with low alcohol options (as required under Section 52 of the Act) it was required that there be legally verified products available. Ms Bliss stated making your own can't be checked and said it was problematic when the bar concocts its own low alcohol options as there are lots of ways this can go wrong. She said proof is required and claims should not be made in relation to low alcohol unless they are provable and verifiable.

47. Ms Bliss said she did not oppose the application and had agreed to remove the request for a truncated period due to applicant agreements.

CROSS EXAMINATION OF THE INSPECTOR

48. Mr Knowles asked the Inspector about the re-wording of the condition around food on Pg 2 of her evidence (Pg 133 of Hearing File) which the applicant had agreed to but not adhered to and had the Inspector expected these to have been implemented by now. Ms Bliss said the agencies had worked with the applicant and would have expected they would be done. She said as a matter of good faith we (the agencies) expected them to be applied at the time they were agreed.

49. Mr Knowles asked if the Inspector still had concerns about food at the premises. Ms Bliss said she did and also had ongoing concerns about the low alcohol options and staff training.

50. Mr Knowles asked about the concerns relating to staff training. Ms Bliss said clear guidance about what staff training means had been given but the applicant chose to not go down that path.

51. Mr Knowles asked when an applicant gives an undertaking, what is the process for checking compliance. Ms Bliss said the Inspector checks three times a year as do Police, this would also apply for a truncated licence period.

52. Mr Knowles asked if the Inspector would want the DLC to consider the Conditions previously agreed, and why did the Inspector have a change of view regarding a truncated period. Ms Bliss said they met with the applicant and he agreed to the undertakings and this remains a high risk premise. She said the Act clearly states what is substantial food.

53. Mr Knowles asked if the Inspector was comfortable with a licence being granted but with conditions and compliance checks. Ms Bliss said she still had a number of concerns and while they had offered examples for the applicant these had not been taken on.

SUMMARIES

54. The Inspector said the applicant still had misunderstandings of what is required of him. She said a truncated licence period would benefit the applicant in this regard.

55. Snr Constable Carter said Police support the grant of a licence but still have concerns. He said food provision is a cornerstone of host responsibility. Mr Carter said case law examples provided outlined substantial food types and they must be available at all times. He said this is relevant as the object of the Act is minimising harm. Mr Carter said there were too many variables

around the nip/tall glass low alcohol option and this did not meet the requirement of the Act.

56. Mr Carter reiterated concerns around training. He said training records were vital and they keep staff engaged. He said Induction is a good starting point but it is a high risk industry requiring ongoing training.

57. Mr Carter said Police would advocate for a one year truncated licence period with conditions that are set and adhered to.

58. The applicant Duane Watt (The Tele owner) said he would like to see clearer support from council. He said there were misunderstandings regarding the site induction and there were problems getting staff to sign on to training and he didn't think council were aware of this.

59. Mr Watt said he had complied with everything that has been set in front of him. He said he wants the current DLC licence to be for three years as there had been no issues. Mr Watt said he was proud of his staff and his business.

COMMITTEE'S CONCLUSION

60. The Committee gave consideration to all of the evidence presented on the papers and at the hearing with a particular focus on staff training, low alcohol options, and food quality and provision.

61. Staff training: The committee concurs with the views expressed by the agencies regarding staff training issues at The Tele. A training plan provides staff with clear roles and responsibilities and develops service that will ensure that all staff are successful in implementing host responsibility practices and meeting the applicant's obligations under the Sale and Supply of Alcohol Act. The requirements to satisfy the issue of a licence renewal are laid out in the Conditions below.

62. Low Alcohol Options: Considering the requirements of Section 52, the Committee agrees with the view of all three reporting agencies that the 'wine and juice' and 'single nip in a tall glass' are not acceptable to be offered as Low Alcohol options. Unless any item is able to be legally verified as to its alcohol content it may not be offered as a low alcohol option.

63. Substantial Food Options: The Committee agrees with the reporting agencies that The Tele is not meeting its obligations under Section 53 of the Act to provide substantial food options. The Committee noted that three similar establishments in Otaki offered substantial meals.

64. The committee is of the view that Beef Jerky does not count as 'substantial food' in the context of Section 53 of the Act. The Committee heard the view of Mr Watt who is a publican and not a trained nutritionist.

65. The committee found Mr Watt's characterisation of Beef Jerky as a superfood did not square with the nutritional information available and Mr Watt did not provide any evidence to support his claim. Similarly other items on the menu – Chippies, Cherizos, Rice Cakes and Peri Peri Tuna are not, in the view of the Committee, considered 'substantial food' in terms of Section 53. Mr Watt's evidence that he considered substantial food was about how much chewing was involved is not accepted by the Committee.

66. During the site visit the Committee inspected the kitchen facilities that would likely be required to meet the provision of substantial food requirements. It appeared to the Committee that these facilities were not adequate for the purpose required. (see Condition (d) IIII.)

67. Consideration of a truncated licence period. In light of a previous Hearing decision issued 14 March 2022 which covered many of the same issues raised in the current Hearing, the Committee felt their options were to decline the application or find a truncated licence period was again appropriate.

DECISION:

68. In the matter of an application pursuant to section 127 (2) of the Sale and Supply of Alcohol Act 2012 by Octopus Inc Limited for the renewal of an On Licence in respect of premises situated at 284 Rangiora Road, Otaki, and known as The Telegraph Hotel (The Tele) the Committee considered the application in reference to Sections 131, 135, 127 (2) 52, and 53 of the Act.

69. The District Licensing Committee hereby:

(a) Approves the application by Duane Watt on behalf of Octopus inc Limited for the renewal of an On Licence for the Telegraph Hotel (The Tele) for the truncated period of two years from the date of the current licence expiry date 19 December 2022 subject to the conditions which must be included on the licence.

CONDITIONS

Pursuant to Section 132 of the Act (Imposition of conditions on renewal)

(b) The Committee makes the following conditions regarding staff training;

I. All staff must receive ongoing training. Training plan and records must be kept in the On Licence Toolkit.

(c) The Committee makes the following conditions regarding Low Alcohol Options;

- I. A reasonable range of non-alcoholic and legally verified low alcohol beverages must be available at all times alcohol is being sold or supplied.

(d) The Committee makes the following conditions regarding Food;

- I. Menus must be clearly displayed and visible, and food must be actively promoted
- III. A range of at least three items of substantial food must be available on the premises at all times the premises are open for business; paninis, pizza, lasagna, pies, toasted or fresh sandwiches, wedges, French fries or filled rolls.

Dated at Paraparaumu this 28th day of May 2024.

A handwritten signature in black ink, appearing to read 'Nigel Wilson', written in a cursive style.

Nigel Wilson

Chairperson

Kapiti Coast District Licensing Committee