

Decision No. 45/ CL 801/2023

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

**AND**

**IN THE MATTER** of an application by Waikanae Boating Club Incorporated pursuant to section 120(2) of the Sale and Supply of Alcohol Act 2012 for a Club Licence Variation of conditions in respect of the premises situated at Waimea Road, Waikanae Beach.

**BEFORE THE KĀPITI COAST DISTRICT LICENSING COMMITTEE**

Chair: Nigel Wilson

Members: Trevor Knowles

Philip Parkinson

**HEARING** at Kāpiti Coast District Council Civic Building, Paraparaumu, on 3rd February 2023.

**APPEARANCES**

**Toby Bach** – for the applicant Waikanae Boating Club (WBC) (Committee member)

**Hannah Spicer** - (WBC) Secretary/Club Manager in support of the applicant

**Graham Oliver** (WBC) Vice-Commodore - in support of the applicant

**Katherine McLellan** - Chief Licensing Inspector

**Sue Smith** – Objector

**Chris Michell** – Objector

**Denise Gibson** – Objector

**Christine McGrath** – Objector

**Quentin Poole** – Assisting Ms Gibson

## **Introduction**

1. This is an application by Waikanae Boating Club for a Club Licence Variation of conditions to manage the sale and supply of alcohol in respect of the premises situated at Waimea Road, Waikanae Beach.

## **The Application**

2. Waikanae Boating Club Incorporated has made application to the Kāpiti Coast District Licensing Committee for the variation of conditions of a Club licence under section 120(2) of the Sale and Supply of Alcohol Act 2012 (the Act), to sell and supply alcohol for consumption on the premises, as per section 21 of the Act, situated at Waimea Road, Waikanae Beach, and known as Waikanae Boating Club.
3. The application was publicly advertised. A copy of the application was forwarded to the reporting agencies and the Licensing Inspector, as is required by section 225. The Inspector, NZ Police and the Medical Officer of Health have no matters in opposition to the application. Objections to the application were raised by Sue Smith, Chris Mitchell, Denise Gibson, Christine McGrath.
4. All those appearing were sworn in.

## **Applicant's Evidence**

5. The Waikanae Boating Club (WBC) application was for a variation of a condition of a Club licence for premises situated at Waimea Road, Waikanae Beach.
6. WBC is a club consisting of 888 families from predominantly the local Waikanae community.
7. WBC's stated aim is to provide a hub and base for all things water and water safety related as well as a social opportunity to mix. WBC has been at its present location for over 50 years.
8. The Club has a high membership and there is a waiting list. This is given as the reason for the Club's proposed renovations of the Clubrooms. The Club states renovations are not for 'any nefarious or commercial purpose'.
9. WBC has held a liquor licence since 2000. Since that time through to August 2022 the conditions of the licence were the same as those applied for under the application for variation.
10. Following the WBC application for renewal in July 2022, Kāpiti Coast District Council provided the club with the objections and the grounds for those objections. WBC Commodore Peter Dale, who was suffering and recovering from covid at the time, entered discussions with objectors. The Commodore received a list of conditions from objectors that would satisfy their objections.

11. WBC content the Commodore had intended to submit these to the WBC committee for ratification before submitting them to Council. WBC say in his 'covid brain' state the Commodore missed this step and did not get the committee's approval for the change. The Council was not aware of this and the new, more restrictive, licence was issued.
12. WBC decided to trial these new conditions but found they were unable to undertake some activities that could have been undertaken under the conditions of the previous licence.
13. WBC emphasised they are not a pub or a commercial restaurant and they do not seek to become one.
14. WBC provided several instances of events that could not be undertaken under the conditions of the current licence that could have taken place under the previous licence. The current application for variation would give the club the flexibility to hold these events.

**Objectors** - Pursuant to section 120(4) of the Act objections made relate to sections 105(1)(d) and (b) of the Act:

15. These objections centre on: The days on which and the hours during which the applicant proposes to sell alcohol; and; the suitability of the applicant.
16. **Chris Mitchell and Sue Smith in a joint statement:** Mr Mitchell and Ms Smith stated they have been neighbours of the club for over 25 years; stated that noise from boating activities had become steadily worse but night time noise has not been an issue.
17. Their primary concern related to possible noise increases from proposed increased activity from extended hours of operation from the club. Their further concern was the Club is asking for hours that would allow it to operate 'as a pub – 7 days a week from early until late.'
18. They did not believe the WBC had acted as a good neighbour, particularly in relation to proposed developments and communication with neighbours.
19. **Denise Gibson:** Ms Gibson is a neighbour [REDACTED] the WBC. Noise of patrons leaving the club was a concern, as was intended hours and the proposed expansion of the Club. Ms Gibson said cars parked at the Club had damaged her fence and new security lighting had shone directly to her house. She noted that on request the Club had adjusted the lights.
20. **Christine McGrath:** Ms McGrath has been an immediate neighbour of the WBC, since 1994. Ms McGrath's primary objections related to the Club's proposed restaurant and bar alterations with her view that this would attract 'more customers many of whom will have no interest or association with boating.' Ms McGrath was of the view increased hours would create more noise and antisocial behaviour.

21. Pursuant to Section 128 of the Act the application for Club Licence Renewal dated 26 April 2022 was objected to by Chris Mitchell and Sue Smith (██████████), Christine McGrath (██████████), and Denise Gibson (██████████). The objections related to section 131 (1)(a) of the Act relating to the days on which and the hours during which the applicant proposed to sell alcohol.
22. WBC Commodore Peter Dale, on behalf of the applicant, responded to the submission from objectors. An agreement to reduce the licensed days and hours was reached, and the objections were withdrawn.
23. The Objectors noted that just weeks later WBC had applied to the District Licensing Committee for a variation of the conditions previously agreed to by neighbours.
24. Fundamental to the current objections was the WBC, having applied for a licence in August 2022 following discussions between WBC Commodore Peter Dale and neighbours where agreement had been reached over proposed hours and on that basis, objections from Mitchell/Smith, Ms Gibson, and Ms McGrath were withdrawn, was now effectively applying to rescind that agreement.
25. While there was a prior good faith agreement between objectors and the WBC via Commodore Dale the Act allows for the variation being sought by WBC.
26. In its evidence WBC noted Club Commodore Dale had contracted Covid and this may have affected his approach to negotiations. WBC subsequently advised the DLC that Commodore Dale did not realise the implications of the reduction in licensed days and hours. The Club committee members wished to retain the previous permitted days and hours in order to maintain the flexibility of the Club operations.
27. Other issues raised by the objectors related to use of the public access way from Tutere St and the use of the car park at night.

**HOURS:**

28. At the time of the April 2022 application the hours during which the applicant could sell alcohol were:
  - Sunday to Thursday except public holiday – 12 noon to 11pm
  - Friday, Saturday & Public Holidays – 12noon to 12midnight
29. The varied days and hours were:
  - 15 December to 31 January: Monday to Sunday – 12noon to 10.30pm
  - 1 February to 14 December: Thursday to Sunday and public holiday – 12noon to 10.30pm
  - Five days per calendar year, with notice to neighbours provided two months in advance – 12noon to 12 midnight
30. In the report dated 2 August 2022 (File Ref: CL801) from inspector Katherine McLellan it was noted 'The premises have no history of any

noise issues in the previous licensing period, and no changes to the style of operation are proposed under the current application.'

31. In applying for variation of a condition of a Club licence WBC was looking to reinstate the hours and conditions previously consented prior to the Renewal application of 26 April 2022.

#### **HEARING:**

32. The issue of evidence raised out of time raised some concerns. This caused some delay as the Chair called a recess to allow all parties to consider any implications. After consideration by all parties it was considered this was not a significant concern.
33. Future developments at the WBC formed a significant part of the objections however the Committee is of the view that any future developments are outside the remit of the committee to consider.
34. There was also considerable likening of the WBC to a 'Pub'. The WBC were adamant this would not be the case and the facility is for members only.
35. Parking was another issue raised by objectors and again parking issues are outside the remit of the Committee to consider.
36. There was no objection raised by Police; There was no objection raised by Public Health; there was no objection raised by the Inspector Katherine McLellan who stated her concern was many of the objections related to what may happen in the future after the WBC refurbishes the interior of the Club, whereas this Application is based on current conditions.
37. The Committee notes statements made in the Hearing by the Applicant that they would make attempts to improve communications with Objectors including ensuring the objectors received the regular club Newsletter. The WBC also undertook to keep neighbours fully informed of refurbishment plans and progress.
38. The WBC also undertook to consider a more permanent structure to protect the neighbour's fence adjoining the club carpark.

#### **Licence Hours: The Committee in considering the hours referred to section 105 of the Act**

39. The Committee acknowledged the tabling of comparison of hours with other boating clubs and sports clubs. It was noted the Kāpiti Boating Club opened slightly later and had later closing. It was also noted the proximity of the WBC to neighbours however this was seen to be offset by the long time they had been near each other.

## Committee's Decision

40. The matters which a Committee must consider in regard to an application for a variation of conditions of a Club licence are contained in section 120 of the Act

### 120 Variation of conditions

- (1) The holder of a licence may at any time apply to the licensing committee to vary or cancel any condition of the licence (whether the condition was imposed by the licensing authority or the committee).
- (2) The application must be made in the prescribed form and manner and be accompanied by any prescribed fee.
- (3) The applicant must comply with the notification requirements in section 101.
- (4) A person may object to the grant of the application if he or she has a greater interest in the application than the public generally.
- (5) Every objection must comply with the requirements set out in section 102(2) to (5).
- (6) Sections 103 and 104, with any necessary modifications, apply to applications under this section.
- (7) In considering the application, the licensing authority or licensing committee concerned must have regard to any relevant matter that is specified in section 105.
- (8) In deciding whether or not, or to what extent, to vary any conditions imposed on a licence, the licensing authority or licensing committee concerned must have regard to any inconsistency between the conditions as proposed to be varied and any relevant local alcohol policy.

## Conclusion

41. Accordingly, the District Licensing Committee, having read the application and the submissions and reports filed by the parties and having listened to the capable submissions which were made by all parties, and having taken particular notice of the objects of the Act set out in Section 4 and having addressed the criteria for the variation of conditions of a Club licence approves the application by **Waikanae Boating Club** for a variation to conditions of the Club licence to sell and supply alcohol at manage the sale and supply of alcohol for consumption on the premises, as per section 21 of the Act, situated at Waimea Rd, Waikanae Beach, and known as Waikanae Boating Club – with the attached condition.

**42. HOURS GRANTED:**

Monday to Thursday 12noon to 11pm.

Friday and Saturday 12noon to 12midnight

It is noted these hours are consistent with those previously permitted and are consistent with other clubs.

**43. CONDITION:**

Sunday hours – The Application for Sunday Hours – 12noon to 11pm, is denied.

The Sunday hours approved by the DLC are 12noon to 10.30pm

44. The rationale for this change is based on the amenity and good order provisions that allow for neighbourhood concerns. The change also aligns with another nearby venue which closes as 10.30pm on Sunday. It is noted that New Years Eve in 2023 falls on a Sunday and WBC may wish to apply for a special licence for extend hours on that occasion.

45. Issues to which the Committee could not give direct consideration: A one way system for traffic was proposed; Lighting issues on the driveway from Tutere St; Security cameras for Driveway. Judder Bars or other traffic calming measures. These may be issues the Kāpiti Coast District Council might be able to address.

DATED at Paraparaumu on this 21st day of April 2023



Nigel Wilson  
Chairperson  
Kapiti Coast District Licensing Committee

