

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

IN THE MATTER of an application by **Southern X Lodge Limited**
in respect of s.100 of the Act for an On-licence
endorsed under s.37 of the Act for the
premises situated at **17 Racecourse Road,**
Ashburton, known as **Southern X Lodge.**

BEFORE THE DISTRICT LICENSING COMMITTEE AT ASHBURTON

Chairman: Mr A J Lawn

Members: Mrs R Kilworth
Mr G Lee

Hearing at the Ashburton District Council 24 July 2017

APPEARANCES

Mr G Taylor	for the applicant
Mrs H Faass	District Licensing Inspector- in opposition/to assist
Sergeant G Sutherland	New Zealand Police - in opposition
Mrs K Webster	Representing the Medical Officer of Health

MINUTE OF ORAL DECISION OF THE COMMITTEE

- [1] This is an application by Southern X Lodge Limited for an on-licence endorsed under section 37 of the Act. The premises trades as a lodge. It is not currently licensed.
- [2] The applicant in this matter was represented by Mr Geoffrey Taylor.
- [3] Mr Taylor gave evidence that he was employed at the premises as a manager and he had been authorised to represent the applicant at the hearing. In evidence Mr Taylor described the premises to the committee. He stated that it is a lodge which has conference facilities which take up half of the premises. It has a dining room, lounge bar area, a second lounge and games area, as well as an outdoor pool area. The lodge accommodates both short and longer-term residents. They currently have guests staying for anything from one night to three weeks, and also have someone there for seven weeks. Some of the guests are seasonal workers and others are school children, mainly from Australia. All groups are fed onsite as part of their deal.
- [4] In relation to the current situation Mr Taylor stated that with the exception of the school groups all other groups are entitled to consume alcohol in their rooms. He also stated that he is aware that people come back after work and drink on-site.
- [5] The applicant is adamant that they do not want a full on-licence but only a BYO on-licence. Mr Taylor went on to explain that at present they only serve food to guests staying at the lodge. He

commented that section 117 of the Act can grant any licence that meets the guidelines and conditions of the Act and the applicant would rather provide an environment that conforms to the Act but that need is too small to apply for a full on licence and it would not be cost effective.

- [6] Mr Taylor urged the Committee to take a pragmatic approach and use section 117 of the Act to authorise a BYO licence for the operation as it stands.
- [7] In cross examination by the Alcohol Licensing Inspector Mr Taylor confirmed that the lodge offered bed and breakfast or full catering plus there is an option to have room only if staying more than ten weeks, and they currently have Mt Hutt ski employees, a café worker, school staff and Japanese tourists staying for the season. In addition they have an Australian school group of 22 staying from today. Mr Taylor also stated that they will be catering for around 30 or 40 for dinner and that they will all fit into the dining room.
- [8] Mr Taylor confirmed to Mrs Faass that the applicant has the ability to meet the requirements of an on-licence but does not want this type of licence due to the number of school groups that stay with them. There are currently two staff members with manager's certificates and he has 6 years' experience running a similar type of establishment in Stratford.
- [9] In answers to further questioning Mr Taylor stated that the applicant did not intend to open up the dining area to the general public but that they may want to do so in the future.
- [10] It appeared from the evidence given by Mr Taylor that the applicant was seeking to licence the premises so paying guests could consume their own alcohol in any area on the premises. Alcohol would not be sold on the premises and the dining area of the premises was not a restaurant that would be open to the public.
- [11] The Alcohol Licensing Inspector gave evidence and confirmed her report. She stated that she did not think that the application fitted with the requirements for a BYO licence as set out at s.37(1)(b) of the Act in that it is not a restaurant that is open to the public and that the premise as it currently operates did not require a licence as the only people consuming alcohol were lodgers and were consuming their own alcohol.

Decision and reasons

- [12] The Committee is bound by the legislation it is authorised under: The Sale and Supply of Alcohol Act 2012. In regards to this application, for an on-licence endorsed under s.37 of the Act, before we look at the criteria for issuing a licence under s.105 and 106 of the Act we must look at whether the application fulfils the criteria in regards to the category of licence sought.
- [13] To be eligible for a BYO on-licence the applicant must show that they meet the criteria under s.37. The section states;
- On-licences for BYO restaurants***
- (1) The licensing authority or licensing committee concerned must, when directing that an on-licence should be issued, direct that it should be endorsed to indicate that this section applies to it if (and only if)—*
- (a) when applying for it, the holder asked for it to be endorsed under this section; and*
- (b) the authority or committee is satisfied that the holder carries on the business of a restaurateur on the premises for which it is to be issued (our emphasis).*

- [14] A restaurant is defined in s.5 of the Act.
Restaurant means premises that—
(a) are not a conveyance; and
(b) are used or intended to be used in the course of business principally for supplying meals to the public for eating on the premises
- [15] In describing what a BYO on-licence authorises the Act states at s.15
On-licences: BYO restaurants
On any premises an on-licence endorsed under s.37 is held for (the restaurant), the licensee—
(a) can—
(i) let any person who is in the restaurant to dine to consume any alcohol brought there by that person or by any other person who is there to dine with him or her; and
(ii) let the person who brought the alcohol there to remove any of it from the restaurant if the container it is in is sealed or resealed; and
(b) can sell and supply, for consumption in the restaurant by any person who is there to dine, any food or hot drink containing not more than 14.33% alcohol by volume; and
(c) can let people consume alcohol.
- [16] The applicant asked the Committee to be reasonable, which the Act clearly sets as a principle but the limiting factor of reasonableness is that we must first make decisions which are legal and not stray into an area which means our decisions are *ultra-vires*.
- [17] The evidence presented to us was that the applicant carries on the activity of a lodge. It has a dining room which is for the benefit of those who are staying on the premises. The dining room is not open to the general public and we do not believe it is a restaurant as described in s.5 of the Act.
- [18] The applicant sought to licence what takes place on the premises at present, those lodging at the premises buy their own alcohol and consume it in various parts of the premises.
- [19] We are of the clear opinion that we do not have the jurisdiction to grant a BYO on-licence on the facts that were presented to us. To do so, would be counter to the explicit criteria as set out in s.37 of the Act.
- [20] As a result of finding that the application did not meet the criteria of s.37 of the Act further evaluation of the application in the light of sections 105 and 106 of the Act is rendered nugatory.
- [21] The application was refused at the hearing.

Dated at Ashburton this 15th day of September 2017



A J Lawn
Chairman
Ashburton District Licensing Committee