

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 ('the Act')

AND

IN THE MATTER

of an application by **BLUE SPRING GOLF RESORT LIMITED** for the grant of an ON Licence pursuant to s.100 of the Act in respect of premises situated at 18 Sommerville Road, Tirau, known as "**Okoroire Hot Springs Hotel**"

BEFORE THE SOUTH WAIKATO DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Cr Arama Ngapo
Member: Cr Peter Schulte

HEARING at Tokoroa on 20 November 2020 & 15 January 2021 (then adjourned to 16 March 2021)

APPEARANCES

Mr. Robert Davies– for the applicant Blue Spring Golf Resort Limited
Mr. Jinhua (Peter) Chen- for the applicant
Mr. Yong (Tom) Kang- for the applicant
Ms. Jules Smale – South Waikato Alcohol Licensing Inspector – in opposition
Sergeant Chris Turnbull– Police Alcohol Harm Reduction Officer – in opposition
Sergeant Robert Foster- witness for the Police
Constable Ben Jackson- witness for Police
Lu (Louisa) Wang- witness for the Police (16 March 2021)
Katie Marguerite Lyttle- witness for the Police (16 March 2021)
Mrs. Nicole Zeier- for the Medical Officer of Health- in opposition
Constable Dan Thursby- witness for the MOoH

RESERVED DECISION OF THE COMMITTEE

Background

1. Okoroire Hot Springs Hotel is a local landmark with a long history. It was first referred to in the New Zealand Herald on 25 April 1889, when it hosted Lord William Onslow, who had recently been appointed as New Zealand's governor.
2. Over the years, the premises has offered a range of accommodation options, as well as a public bar and restaurant and conference facilities. To make the most of its surroundings, it also marketed different "experiences", including a hot spring spa, golf and fishing packages.
3. The applicant acquired an interest in the premises around December 2019 after the previous owner was required to sell its interest in the premises by the Overseas Investment Office. The applicant is not related to the directors and shareholders of Kingstown Blue Spring Resort Limited in any way and we are advised that the previous owners have now left New Zealand.
4. We are advised that prior to the COVID-19 lock down, this applicant operated the Hotel with the proceeds of alcohol going to the previous owner.
5. It was not until 28 July 2020 that Blue Spring Golf Resort Limited was granted a Temporary Authority.
6. In an application dated the 28th of September 2020, Blue Spring Golf Resort Limited applied for a substantive On Licence in respect of premises known as "Okoroire Hot Springs Hotel."
7. It was publicly notified in the South Waikato News on the 7th and 14th of October 2020, and no public objections was received within the allotted timeframe.
8. The applicant sought the licensed hours of **Monday to Sunday 11.00am to 2.00am the following day**. These hours are within the default national maximum trading hours for on licences. There is no Local Alcohol Policy in place for the South Waikato area.
9. In October 2020, an application for a second Temporary Authority was initially declined by the DLC due to a number of alleged incidents involving intoxication and a sale of alcohol to minors.
10. Following an urgent plea from counsel, an extremely limited Temporary Authority, was granted on the following conditions until this substantive hearing date.

11. The conditions are:
1. Alcohol may be sold and supplied for consumption on the premises only on the following days and hours: Monday to Sunday 11.00am to 10.00pm;
 2. In-house booked in over-night guests may be served in the restaurant as part of a meal and/or via room service;
 3. Casual diners in the restaurant may be sold and supplied alcohol for consumption in the restaurant as part of a meal;
 4. There are to be no functions, pool clubs, 21st birthdays, weddings hosted at the venue where the casual consumption of alcohol would take place;
 5. There must be no alcohol sold, supplied or consumed in the bar/pool room;
 6. An experienced certificated manager must be on duty at all times when the premises is open for the sale and supply of alcohol.
12. The applicant has been operating under this regime from 2 November 2020.
13. The application was set for resumption on 15 January 2021. On this date, the Police sought a further adjournment as they had very recently been provided with sworn statements from ex-staff members that required additional enquiries to be undertaken.
14. The Committee granted the adjournment and further tightened the conditions attached to the TA to make it abundantly clear that a bowl of chips with alcohol on the deck was not permitted.
15. The Temporary Authority stated:

This Temporary Authority will be effective as from the 20 January 2021

This temporary authority is subject to all terms and conditions of the current On-Licence and the following additions and modifications:

1. Alcohol may be sold and supplied for consumption on the premises only on the following days and hours: Monday to Sunday 11.00am to 10.00pm;

2. Alcohol can only be sold and supplied to hotel lodgers and walk-in guests/casual diners who are partaking in a sit-down meal in the restaurant.,

3. This does not include a bowl of chips in the garden bar or on the deck;

4. There are to be no functions, pool clubs, 21st birthdays, weddings hosted at the venue where the casual consumption of alcohol would take place;

5. There must be no alcohol sold, supplied or consumed in the bar/pool room;

6. An experienced certificated manager must be on duty at all times when the

premises is open for the sale and supply of alcohol.

16. The hearing was reconvened on the 16th of March 2021 and we heard from the new General Manager Derek Webb, the Police and two ex staff members, and the Inspector Julie Smale.

Applicant's Evidence 20 November 2020.

17. Mr. Davies provided the Committee with a helpful opening and called two witness for the applicant company.
18. First, we heard from Jinhua (Peter) Chen. He is a director of the applicant company along with Yong (Tom) Kang.
19. He outlined the convoluted takeover period, and that the applicant did not obtain their first TA until the 28th of July 2020. He said he had been in New Zealand since 2013 and had been operating a successful tourism business arranging about 20,000 tourist visits to NZ. He said they had bought the Okoroire business with the intention of bringing overseas tourists to the hotel complex as part of their holidays in NZ.
20. Both he, and 'Tom', spend much of their time at the venue and Tom acts as a Temporary Manager. He conceded that neither of them had any practical experience in the sale and supply of alcohol prior to acquiring this business.
21. He said it was always their intention to employ an experienced General Manager but due to the COVID lockdowns their plans and opportunities had been thwarted.
22. They have now employed a General Manager, Derek Webb, who will oversee the daily operation of the business. Mr Webb is an ex-Police Officer and has extensive recent experience as a hotel and resort manager both in NZ and overseas. He currently works in Christchurch and is due to start at Okoroire on the 30th of November 2020.
23. During the transition period they had taken over the existing staff but many of those had now left the business. They had struggled to get competent staff to replace them.
24. When questioned, he conceded that they had failed to maintain an accurate incident book and that they continued to have problems staffing the hotel and the kitchen.
25. We then heard from Derek Webb who told us he had more than 19 years' experience in the hospitality industry. He provided his CV and spoke to his inter-personal skills and his abilities to manage difficult situations.

26. He told us he enjoyed a challenge and believed he could sort out the problems that have developed at the hotel. As an example, he said quart bottles of beer would be gone and there would be an enforced dress standard.
27. He planned to hire his own staff and his wife would also be working at the premises. He had an open-ended 3-year contract with the owners and planned to stay on for at least 3 years. He did not currently hold a Manager's Certificate but planned to apply for one as soon as he is settled in. He would also be living on-site.
28. During questioning he said he intend to improve the range and quality of meals.
29. We then heard briefly from Yong (Tom) Kang, the second director/owner of the business. He struggled to communicate well with us in English and required the assistance of an interpreter to understand and answer some questions.
30. 'Peter' Chen was re-examined and confirmed that the incident register and training logs had only been recently written up.
31. Mr. Robert Davies has been recently engaged by the owners and has done his best to resurrect the documents and had also arranged for them to become members of Hospitality NZ.
32. On 16 March 2021 we heard from Mr. Webb again.
33. He responded to the new allegations presented by Sergeant Turnbull (detailed below). He believed that the Hotel had "come a long way in a short time" under his leadership.
34. He believed that the evidence of Louisa Wang was motivated "by ill will" due to her, and her partners, dismissal from the Hotel.
35. He presented examples of the fries and loaded wedges to the Committee and argued that in his view, and that of his legal advisor, they could be considered a meal.
36. He said that he had catered for existing function bookings and ensured that alcohol was only served as part of a meal. He apologised if he was wrong in assuming that the way he had been operating was within the terms of the TA.
37. Subject to closing submissions that was the case for the applicant.

Medical Officer of Health's Evidence 20 November 2020.

38. Mrs. Nicole Zeier is the delegated officer for the MOoH. She called Dan Thursby,

an off-duty Police Officer, who told us about his visit to the hotel on the 12th of September 2020.

39. He was staying overnight with a group of friends. He was in the bar waiting for his friends to arrive and heard bar staff telling other customers that the kitchen was closed as they were preparing for a function. They were offered crisps with their beers.
40. At about 7.00pm he was back in the bar with his friends for a drink and a meal. When they tried to order food, he too, was told the kitchen was closed as there was a private function being catered for.
41. He complained and eventually their order was taken, and the food arrived about 45 minutes later.
42. He said he noted that people were drinking in the car park and it appeared to be their own alcohol. When asked if he would have taken any formal action had he been on duty. He replied that he would have issued an infringement notice for not having food available within a reasonable time. (Section 53 & 259 of the Act)

Police Evidence 20 November 2020

43. Sergeant Chris Turnbull is the Alcohol Harm Reduction Officer and Liquor Licensing Co-Ordinator for the Taupo Area.
44. He told us that Okoroire Hot Springs Hotel first came to his notice after an incident on the 15th of February 2020. The business was being run by the current owners but under the existing base licence in the name of Kingstown Blue Springs Resort Limited.
45. Attending Police had to remain on-site for more than 90 minutes after a wedding reception had got out of hand with fighting and head injuries to a female attendee. Constable Ben Jackson was to be called to adduce evidence around this incident.
46. On 20 March 2020 Police conducted a controlled purchase operation (CPO) at the premises a certificated manager, Rowena Brown, sold alcohol to two 17-year-old volunteers. Sergeant Foster will be giving evidence relation to that sale which is still before ARLA as an enforcement proceeding. **(we were advised on 16 March 2021 that this application has been withdrawn by the Police and we put it to one side).**
47. On 27 July 2020 the applicants began operating under their own Temporary Authority.
48. On 24 September 2020 Police attended a brawl at a pool tournament on the

premises. There were a number of arrests and serious assault charges have been laid in the District Court and are yet to be determined.

49. On 12 October 2020 he meet with the owners and the Licensing Inspector Julie Smale. The meeting gave the Sergeant little confidence that the applicants were capable of operating a remotely located, tavern style, bar.
50. Although co-operative, the documents the owners produced were inadequate, inaccurate and appeared to have been downloaded from an overseas website.
51. A series of photos of the scenes of the incidents were produced as exhibits by consent. It could be seen in the photos that a number of the offenders and victims were wearing work boots and/or gumboots.

Police Evidence 16 March 2021

52. Sergeant Turnbull outlined his enquiries following the receipt of an affidavit from Lu Wang alleging numerous breaches of Temporary Authority conditions.
53. He presented a table of dated purchases that he had collated from till receipts given to him by Louisa Wang.
54. He called Lu Wang who confirmed and read her sworn statement. She told us that the Hotel was understaffed, and that Derek Webb sold alcohol to casual visitors with bowls of fries, or shared bowls of loaded wedges, on several occasions.
55. She agreed that she had primarily come forward because her partner had been fired by Derek Webb. She said "In the past I have just kept quiet. I haven't lied, but I haven't said anything."
56. Next, we heard from Katie Marguerite Lyttle who worked at Okoroire for about 6 weeks in November and December 2020. She told us that she received training about the terms of the TA and what could, and could not, be sold with alcohol.
57. She said that on Xmas Eve she refused service to a group of five people who wanted fries and beers. Derek intervened and said they were going to order food and to serve them alcohol. Katie did but they only ordered a shared bowl of wedges. She told Derek she was not comfortable serving alcohol to this group and Derek took over and served them more alcohol.
58. She confirmed that the till receipts accurately portrayed the sales of alcohol and snack foods.

Inspectors Evidence 20 November 2020.

59. The Inspector's report was taken as read and Ms. Smale responded to questions from the parties.
60. She had put considerable time and effort in to working with the new owners but firmly believed they were out of their depth in the current environment at Okoroire. She said the owners lack skills as hands on directors and had insufficient experienced certificated managers at their disposal to run a hotel.
61. Under cross-examination she agreed with counsel that the employment of Derek Webb was a positive move.

Inspector Evidence 16 March 2021

62. Inspector Smale outlined her additional enquiries into this application and also into an allegation that alcohol had been served to attendees of a funeral at the venue on 17 February 2021.
63. The allegations were denied by Derek Webb who told the Inspector that no alcohol was consumed during the service but that he did intervene when he saw some mourners in the carpark consuming their own BYO alcohol.
64. She had changed her stance from 'assisting' to 'opposed' following the breaches of the TA outlined by the Police and her own observations.
65. She agreed with counsel however, that Mr. Webb has tried hard to turn the business around and did inherit a difficult premises.

Closings

66. The MOoH said the provision of substantive food within a reasonable time was sadly lacking and must be available at all times and within 15-20 minutes of ordering.
67. While encouraged by Mr. Webb's appointment she said there is still much to be done to 'right the ship.'
68. On 16 March 2021 she added that it was disappointing to hear of the alleged TA breaches and changes appeared to be 'reactionary' rather than pre-emptive. She believed that the current regime could support a restaurant style operation but not a hotel/tavern.
69. The Inspector said the lack of direction and absence of skilled managers meant that the Object of the Act was not being met. She said the appointment of Mr. Webb could make a huge difference if he was given free rein to implement

improvements.

70. On 16 March Inspector Smale added that she too was disappointed at the alleged breaches of the TA conditions. She did not think the breaches were willful but were based on frustration and the difficulties of operating under the tight restrictions of the TA.
71. The Police submitted that the premises is 'high-risk' due to its isolation with inexperienced management and front of house managers. He said the serious incidents that had occurred were because patrons were allowed to become intoxicated, and no-one appeared to have the skills, or direction, to turn it around.
72. He cited two relevant cases, one of which we are very familiar with, in which firm action was taken where there is strong evidence of intoxication and disorder presented.
73. On 16 March 2021 he added that the applicant had breached the conditions of the TA and had pushed the boundaries of definitions rather than trying to operate within them.
74. The Police are still opposed to a Hotel/Tavern styled operation.
75. Mr. Davies summed up the case for his clients. He said his clients purchased a struggling business with a convoluted history of poor systems and staff. He said the employment of Derek Webb had turned the business around and they were on track to resurrect the Okoroire Hotel of old.
76. He was critical of the motives of the witnesses that had come forward and believed they were personal attacks designed to damage the business.
77. He said the applicant is suitable to hold an ON Licence and the Committee should exercise its discretions and apply a reasonable system to control to our thinking.
78. He confirmed an earlier offer that the hours now sought were reduced to Monday to Sunday 11.00am to 10.00pm.

Relevant legislation

Section 3 of the Act states the purpose of the Act as follows:

- (1) ***The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –***
 - (a) ***to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and***

- (b) *to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*
- (2) *The characteristics of the new system are that—*
 - (a) *It is reasonable; and*
 - (b) *Its administration helps to achieve the object of this Act.*

Section 4 states the object of the Act as follows:

- (1) *The object of this 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 minimised.*
- (2) *For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –*
 - (a) *Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
 - (b) *Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*

79. Section 5 Interpretation defines a hotel as:

hotel means premises used or intended to be used in the course of business principally for providing to the public—
(a)lodging; and
(b)alcohol, meals, and refreshments for consumption on the premises

80. Section 105 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to grant a licence as follows:

Criteria for issue of licences

(1)In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

- (a)the object of this Act:***
- (b)the suitability of the applicant:***
- (c)any relevant local alcohol policy:***
- (d)the days on which and the hours during which the applicant proposes to sell alcohol:***
- (e)the design and layout of any proposed premises:***
- (f)whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:***
- (g)whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which***

services:

- (h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
- (i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*
 - (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
 - (ii) it is nevertheless desirable not to issue any further licences:*
- (j) whether the applicant has appropriate systems, staff, and training to comply with the law:*
- (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).*

(2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

106 Considering effects of issue or renewal of licence on amenity and good order of locality

(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—

(a) the following matters (as they relate to the locality):

(i) current, and possible future, noise levels:

(ii) current, and possible future, levels of nuisance and vandalism:

(iii) the number of premises for which licences of the kind concerned are already held; and

(b) the extent to which the following purposes are compatible:

(i) the purposes for which land near the premises concerned is used:

(ii) the purposes for which those premises will be used if the licence is issued.

(2) In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):

(a) current, and possible future, noise levels:

(b) current, and possible future, levels of nuisance and vandalism.

The Committee's Deliberations and Findings

81. The Act requires that when deciding whether to grant a licence, or not, the licensing committee **must have regard** to the matters contained in section 105 and 106 of the Act.

Section 105(1)(a) The Object of the Act

82. As ARLA has said in **Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287**¹ we are required to “**step back and consider whether there is any evidence to suggest that granting the licence will be contrary to the object of the Act contained in s 4(1), namely**

¹ Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287

that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.”

83. From the evidence adduced by the agencies it was clear that prior to 2 November 2020 the Object of the Act was not being met.
84. From that date and until day one of the hearing, 20 November 2020 and now through to the 16th of March 2021, we are sufficiently satisfied that the sale, supply and consumption of alcohol has been undertaken safely and responsibly.
85. **However, this was only whilst operating effectively as a restaurant and under the tight TA conditions.**

Section 105(1)(b) Suitability of the Applicant

86. Section 105(1)(b) says that the applicant must be a suitable entity to hold an ON-licence.
87. We are satisfied that the applicant company and its directors are suitable to hold an alcohol licence **but only whilst the new General Manager Derek Webb is in control of the sale, supply and consumption of alcohol.**
88. We know that we set Mr. Webb and his team a difficult task with the conditions of the Temporary Authorities. Many of the casual drive-up clientele only would have wanted coffee and cake or a ‘cold beer’ after driving out to Okoroire.
89. We are disappointed that Mr. Webb succumbed to ‘pushing the boundaries’ and allowing alcohol sales with snacks and fries on more than one occasion.
90. While this was a technical breach of the TA, more importantly it did not lead on to the excessive or inappropriate consumption of alcohol. That is the concern of the DLC that the operation of the licence does not contribute to the high levels of alcohol related harm that plague our communities.
91. Indeed, there was significant alcohol related harm generated by the operation of these premises during the period February to September 2020.

Section 105(1)(c) Relevant Local Alcohol Policy

92. In respect of section 105(1)(c) of the Act there is no Local Alcohol Policy currently in the South Waikato District. There is nothing for us to consider.

Section 105(1)(d) The days and hours of operation of the licence

93. The proposed operating days and hours have been revised by the applicant from 11.00am to 2.00am to 11.00am to 12 midnight and finally to **Monday to Sunday 11.00am to 10.00pm**. These are reasonable and well within the default national maximum trading hours for ON licences.
94. We note that much of the intoxication and disorder offences of 2020 occurred later in the night. A 10.00pm finish is more akin to that of a hotel restaurant.

Section 105(1)(e) The design and layout of any proposed premises

95. The Okoroire Resort complex is old and tattered from the outside. The inside still has some of the original fitting and furnishings but is overdue for renovations. Mr. Chen told the Committee that they had spent about \$60,000 to date but still had a lot more to invest to bring the complex up to standard. Obviously COVID had been a spanner in the works for them to generate cash flow let alone provide confidence in the future.
96. The 'public bar' is still set up with pool tables and bar leaners and is still of concern to the Committee.
97. Otherwise, the layout is unremarkable. A newly prepared professionally drawn up plan has now been provided.

Section 105(1)(f) Whether the applicant is engaged in or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods

98. The applicant advised they intend to sell a large range of substantive food options and low and non-alcoholic beverages. No other goods are intended to be sold.
99. The sale of 750ml 'quart' bottles and jugs is reminiscent of the old days of public bar drinking. They do not fit in to the 'olde world charm' that the applicant tell us they are trying to recreate.

Section 105(1)(g) Whether the applicant is engaged in or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, and good, and if so, which services.

100. The complex also includes a range of accommodation rooms, detached chalets and a 9-hole golf course across the road. There are also natural hot pools on site and a rustic camping ground.

Section 105(1)(h) Whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence.

101. We are directed to the parameters of s.106(1) and to have regard to a series of matters (as they relate to the locality). Firstly, we consider current and possible future noise levels. There are no sustained noise complaints in the council records pertaining to these premises and we do not anticipate any due to the hotel's location in a rural setting.
102. However, as hosted recently, the applicant hopes to attract weekend dance and music events and festivals and town planning rules and restrictions will need to be carefully considered.
103. Regarding the current, and possible future, levels of nuisance and vandalism there was significant evidence adduced that, in the months February to September 2020, there was a number of incidents relating to intoxication, violence and disorderly behaviour.
104. Due to the tight TA conditions, there have been no further incidents of violence and intoxication since September 2020.
105. We are further obliged to consider the number of premises for which licences of the kind concerned are already held. There are no other licences operative in the immediate locality.
106. We are required to take into account "the purposes for which land near the premises concerned is used." No evidence was adduced of sensitive sites nearby that we should be concerned about, but there are residential properties across the river.

Section 105(1)(i) Whether (in its opinion) the amenity and good order of the locality are already badly affected by the effects of the issue of the existing licences that-(i)they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but (ii)it is nevertheless desirable not to issue any further licences.

107. There is no evidence before us that the provisions of this section are applicable to this application.

Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law

108. The applicant advised us that that there would be several additional staff with manager's certificates employed to provide coverage for the proposed opening hours. There had been problems with taking over the existing staff and the COVID-19 shutdowns.

109. We were concerned that the Police had detected that staff training polices and documents appeared to have been downloaded from the web and were not applicable to New Zealand conditions or laws.
110. There was clearly an attempt to quickly create a document set prior to the first day of hearing and it did not reflect well on the applicants.
111. Mr. Chen admitted during questioning that the 'training and incident logs' had been done up recently by one of the current certificated managers and not an accredited industry trainer.
112. The appointment of Mr. Webb is a positive feature of this application. However, it is clear to us that he is having difficulty recruiting competent experienced certificated managers. He countered by saying that there is insufficient work, at the moment due to COVID and the TA conditions and that he is confident that if they were able to upscale the business then the employment of suitable persons would be easier.
113. Similarly, consideration should have been given to obtain the services of an industry trainer to provide updated and on-going training to the team.

Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129

114. The Police have serious concerns about the skill set of the current directors of the business. They have raised breaches of the TA conditions as an aggravating feature. In regard to the evidence of Lu Wang we believe her evidence was truthful but as pointed out by counsel, motivated by revenge, and we adjust the weighting of that evidence accordingly.
115. The representative of the Medical Officer of Health has also raised matters relating to suitability and the variable availability of food.
116. The Inspector reported that the application appeared to meet the criteria for issue but believed the directors were out of their depth and needed competent support from industry experts. She too, expressed disappointment that the very clear directions of the TA were circumvented and that many of the changes appeared to be reactionary and not pre-emptive.

The Reasons for the Decision

117. Section 3 of the Act requires us to act reasonably in the exercise of our duties and to regulate with the aim of helping to achieve the Object of the Act.

118. It was not hard for us to see why this business had come to notice in an adverse way. Both directors were, as the Inspector stated, ‘out of their depth’ to manage the tavern side of the business, let alone the quality standards in the kitchen and their food offerings.
119. We also understand that the maintenance of the golf course and the hot pools had dropped under the new owners. ‘Tom’ Kang’s communication skills in English are below the standard required to manage a high-risk licensed environment.
120. As the proposed tourist business had been severely curtailed by COVID-19 they erroneously allowed the premises to become a basement level tavern for locals, many of whom disrespected the owners and drank to excess and caused violent incidents and disorder.
121. Patrons drinking from quart bottles wearing singlets and gumboots is not a recipe for a safe and responsible drinking environment. We expect to see a smart casual dress standard set and implemented for these premises.
122. In the High Court decision **E R BELLAS LIMITED CIV-2020-488-60 [2020] NZHC 2517**² Gault J said:

*[30] I accept that the overriding question is whether granting the application is consistent with the object of the Act. **But it does not follow that the issue of conditions is always irrelevant to that assessment and only to be considered at a second stage if the object of the Act can be met (effectively without conditions). It may be that in a particular case the object of the Act can be met by the imposition of conditions.** In that sense, there may be overlap between the two steps. For example, proposed hours of operation is a mandatory consideration in s 105(1)(d). If the only respect in which an application did not meet the object of the Act were its proposed hours of operating, and a condition limiting those hours would minimise the alcohol-related harm so that the application did meet the object of the Act, I consider it would be open to the decision-maker to grant the application subject to that condition.*

123. **The Committee does not believe the applicant is ready to enter the country pub environment. Conditions will be set for the first year that will require Okoroire to operate as a hotel with a small bar area. Only the private bar will be designated as a Supervised Area meaning the ‘public bar’ will be undesignated and the use of this area will need to be re-purposed and must**

² E R BELLAS LIMITED CIV-2020-488-60 [2020] NZHC 2517 paragraph [30]

NOT become principally or exclusively for the sale, supply and consumption of alcohol.

124. **Effectively the food and alcohol side of the business must operate as a Class 2 restaurant that is defined in the regulations as:**

class 2 restaurant means a restaurant that has or applies for an on- licence and—

- *(a)has, in the opinion of the territorial authority, a separate bar; and*
- *(b)in the opinion of the territorial authority, does not operate that bar area in the manner of a tavern at any time.*

125. The casual consumption of alcohol is permitted as long as the principal activity is the provision of food, entertainment and other services.

126. To make it crystal clear a few cold beers with a bowl of fries on the deck after a game of golf is perfectly acceptable as long as the principal purpose on the premises is **not the consumption of alcohol.**

127. The directors must retain the services of Derek Webb for at least the duration of the licence. If he leaves, for any reason, that fact must be relayed to the Inspector within 24 hours of that departure.

128. We expect to see competent, experienced, certificated managers on duty at the premises whenever it is open for the sale, supply and consumption of alcohol.

129. We are sure the hotel will be closely monitored by the Police and the other agencies in the coming months.

130. The onus will, of course, be on the applicant to turn words in to actions. It is often said that the first year is the 'probationary period' for licensees to prove themselves as competent operators. The ball is firmly in the hands of Mr. Webb, and his employees, to operate within the parameters of this decision and all the legislation that is applicable to this business.

The Decision

The District Licensing Committee, pursuant to the Sale and Supply of Alcohol Act 2012 grants an application by BLUE SPRING GOLF RESORT LIMITED for an ON in respect of premises situated at 18 Sommerville Road, Tirau, known as "Okoroire Hot Springs Hotel", subject to conditions.

The Licence will be granted for 12 months from the date of issue on the conditions stated below:

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours: **Monday to Sunday 11.00am to 10.00pm**;
2. No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is on the premises to dine or lodging on the premises;
3. The premises is designated as follows: **The Private Bar will be a Supervised Area at all times.** The restaurant/café, garden bar, deck, accommodation areas and function room/s are undesignated.
4. No 750ml bottles of beer are to be stocked or sold on these premises.
5. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
6. The Licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages,
7. Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted,
8. A properly appointed certificated or Acting or Temporary Manager must be on duty at all times when the premises are open for the sale and supply of alcohol, and their full name must be on a sign prominently displayed-in the premises,
9. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises,
10. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons.
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol.
 - c. A copy of the licence attached to the premises so as to be easily read by persons attending the premises.

DATED at TOKOROA this 25th day of March 2021

A handwritten signature in black ink, appearing to read 'Murray Clearwater', enclosed within a thin black rectangular border.

Murray Clearwater
Commissioner
For the South Waikato District Licensing Committee

NOTE

Sections 152, 154 and 155 of the Act relating to the right to appeal this decision are in effect. This decision has no effect for 10 working days after the date on which notice of this decision is given to the applicant and the objector.