

**Decision Number: 0028/2016 and
0029/2016**

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of applications by the following in respect of
the premises named below:

**Napier Returned and Services Association
Incorporated** pursuant to S120 of the Act for
the variation of a club licence in respect of
premises situated at 34 Vautier Street, Napier

**Taradale and District Returned and
Services Association Incorporated**
pursuant to S120 of the Act for the variation of
a club licence in respect of premises situated
at 156 Gloucester Street, Taradale, Napier

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman: Mr DE Fellows
Members: Cr K Price
Mr J Cocking

HEARING at Napier on Friday 25 November 2016

APPEARANCES

Ms D P M Paki	Assistant Manager Napier RSA Inc
Mr M J Wenley	Counsel for Napier RSA Inc
MR P Grant	President Taradale RSA Inc
Mr G Duley LLB	Committee Member, Taradale RSA Inc
Mr J Collins	Secretary Manager, Taradale RSA Inc

Sgt R Wylie	NZ Police – to assist
Mr D Waugh	Napier District Licensing Inspector - to assist.
Dr R Eyre	Medical Officer of Health - to assist.
Ms M Scott	for Medical Officer of Health - to assist
Mrs T Te Whaiti	for the Medical Officer of Health - to assist

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

INTRODUCTION

1. We have before us applications from the following for a variation of their club licences:-
 - a) Napier Returned and Services Association Incorporated
 - b) Taradale and District Returned and Services Association Incorporated.

Both clubs are seeking a variation pursuant to s60(1)(b) to have a condition on their licences allowing alcohol to be sold or supplied to a person who is on the premises at the invitation of an authorized visitor who is also on the premises.

Because common issues arose at the hearings of the two applications we have decided to issue one decision covering both applications.

2. The applications drew no public objections and neither the Police nor the Licensing Inspector raised any objections, however, the Medical Officer of Health (MOH), Dr Rachael Eyre, in reports dated 16th November opposed the application citing s.105(1)(a) Object of the Act and 105(1)(j) appropriate system staff and training to comply with the laws, resulting in the matters being set down for public hearing.

THE HEARING

3. At the commencement of the hearing, various letters, documents and briefs of evidence were presented by the parties prior to submissions. Dr. Eyre requested a half hour adjournment in order to study the material. This was denied as all matters could be raised following the presentation of evidence and during cross examination. Dr Eyre further stated that she would not be presenting sworn evidence.
4. The MOH vigorously questioned both parties in respect of the hundreds of clubs in New Zealand and overseas to which they were affiliated and extended reciprocal rights. Ms Paku the Assistant Manager for Napier RSA and Mr Grant the Taradale RSA President offered the same evidence. They were affiliated to Royal New Zealand Returned and Services Association Inc with reciprocal rights to all other RSA's in New Zealand as well as being founding members of the Royal Commonwealth Ex-Services League extending those rights to Legions and Leagues in Britain, South Africa, Canada and Australia.
5. They further stated that as members of Club New Zealand, affiliation extended to all other member clubs. Neither club were able to produce figures of the actual number of visiting members in any given year, but Napier RSA gave a detailed analysis over a 2 week period which indicated 76 guests were signed in between the 1st and 14th October during which time 5024 alcoholic beverages were sold.
6. Both parties stated the main reason for seeking the new condition was to prevent future embarrassment when refusing visitors guests the hospitality offered to others. Examples were presented citing actual club refusals and adverse comments on the social media sites.

7. The MOH placed emphasis on the recommendation of the Law Commission subsequent to the passing of the Act and expressing the view that the inclusion of s.60(1)(b) was there not as a right but to be considered dependent upon means of compliance. This was answered by Mr Graham Duley a Taradale RSA Committee member, who drew attention to the Interpretation Act 1999 in which statues give effect to Parliaments intention. He concluded in his opinion –

“It is clear from the test of s60 of the Sale and Supply of Alcohol Act 2012, as it has been enacted, that Parliament has not chosen to accept the limitations proposed by the Law Commission on the sale and supply of alcohol to ‘authorized visitors’ and that the views of the Law Commission may not be used as an aid to interpreting provisions within the Act relating to reciprocal visiting rights and authorized visitors. The intention of Parliament relating to authorized visitors and reciprocal visiting rights is evident from s.60(3)(c) of the Act which states:

Authorized visitor, in relation to premises a club licence is held for, means a member of some other club which the club concerned has made an arrangement for reciprocal visiting rights for members”.*[emphasis added].*

8. A further concern of Dr Eyre was that the information supplied around the processes and procedures was insufficient to be able to monitor the requested variation. Both clubs responded that they had sufficient certificated managers to cope for any occasion, Napier RSA numbered 6 and Taradale RSA 4. Ms Paku and Mr Collins stated they held regular management team meetings and both clubs had strict rules in relation to identification and monitoring, including –

Compulsory production of membership card

Use of card sign-in system

Guest wrist bands (optional)

When questioned regarding the identification of club affiliation both had either written lists, computer lists and were developing an app to readily identify clubs with reciprocal visiting rights.

Both Clubs had either a written policy or a flow chart in relation to procedures involving visiting guests.

9. Cross examination by Ms Marie Scott for the MOH evidenced the suspension of the licence for Napier RSA following failure in respect of sales to persons unlawfully, however, Ms Paku was not employed by the club at that time, and declined to comment.

DECISION AND REASONS

10. We are required to have regard to the provisions of s.105 of the Act when considering an application for the variation of a licence. However, as none of the reporting agencies have issues with these matters bar two, and as the clubs have a

very long and generally unblemished history, we shall concentrate on the two matters raised by the MOH –

s.105(1)(a) the object of the Act, and

s.105(1)(j) whether the applicant has appropriate systems staff and training to comply with the law.

11. We have taken the view that the MOH's concerns in relation to the object of the Act is that the sale supply and consumption of alcohol could not be undertaken safely or reasonably due to the excessive number of consumers the inclusion of the condition, allowed in s.60(1)(b), would create, and that this failure would not minimize the harm caused by excessive or inappropriate consumption of alcohol.
12. Whilst the list of Clubs to which the Napier RSA and Taradale RSA have affiliations is extraordinary large, the reciprocal rights visitations have always been available. Consequently, the additional number of persons subject to the varied condition sought relates only to guest of these visitors, which we consider would be a very small increase.
13. Furthermore, we are not persuaded that the role of this Committee could intervene in the selection of clubs to which reciprocal rights is offered, neither can we ascertain any legal authority to do so. Provided the clubs can show an affiliation with other clubs, in this case via International Services Association and to Clubs New Zealand, then the provision of s.247 unauthorized sale or supply, can be nullified. We therefore determine that the MOH's opposition in relation to the Clubs' failures to meet the object of the Act cannot be supported.
14. Turning to the matter whether the applicants' systems staff and training is appropriate to comply with the law, we are of the opinion that Napier RSA has taken seriously their responsibilities under the Act to clearly identify all visitors since their previous suspension and Taradale RSA's unblemished record in this matter, further satisfies us of their effective policy. Staff numbers appear to be more than adequate. Their systems are quite robust, there are frequent staff meetings where further training is undertaken and briefings on operational requirements are discussed. We are satisfied that affiliated club recognition is available and that documented procedures are both relevant and effective. However, as commented at the hearing, the Taradale RSA flow chart on the process for admittance of authorized visitors is flawed regarding the advice on the outcome of a visitor who does not fit any of the requirements allowing entry, and must be amended to clearly indicate the outcome.
15. We were impressed with the confident nature of the Club Officers in the presentation of their evidence and answers to cross examination questions. We are satisfied that the systems, staff and training undertaken by both clubs will ensure compliance with the law and we grant the variation.
16. In all other respects in regard to the two applications we are satisfied as to the matters to which we must have regard as set out in s.105 of the Act and authorise the issue of replacement licences, copies of which are attached to and form part of this decision.

17. The Licence may issue immediately.

DATED at NAPIER this 30th day of November 2016

A handwritten signature in blue ink, appearing to read 'DE Fellows', with a horizontal line underneath the name.

DE Fellows
Chairman
Napier District Licensing Committee