

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **HONEY
LANE LIMITED TRADING AS
'MARGO'S'** pursuant to s.127 of
the Sale and Supply of Alcohol
Act 2012 for a renewal on-
licence.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr PM Jones
Members: Mr JM Mann
Mr CJ Cooney

HEARING at QUEENSTOWN on 10th December 2024

APPEARANCES

Mr BAJ Haines – Representing Margo's – applicant
Sergeant SJ Matheson – NZ Police – to assist
Ms AE Smyth – Medical Officer of Health – to assist
Ms RM Scoons – Queenstown Lakes District Council (QLDC) Licensing Inspector –
to assist

DECISION OF THE COMMITTEE

Introduction.

1. Before the Committee is an application by Honey Lane Limited trading as Margo's (the applicant) for a renewal of an on-licence in respect of premises situated at the First Floor of 26 Ballarat Street, Queenstown. The application was received by the Queenstown Lakes District Licensing Agency (the Agency) on the 9th May 2022. The premises are described on its website as a 'high-energy Mexican restaurant' and is operated pursuant to a 'Class 1 restaurant' style licence.
2. The applicant seeks a continuation of the existing hours for the on-licence of
Indoor Area: Monday to Sunday from 8:00am to 1:30am the following day
Outside Area (Balcony): Monday to Sunday from 8:00am to 10:00pm
Outside Area (The Mall): Monday to Sunday from 5:00pm to 10:00pm

3. The applicant company Honey Lane Limited is a private registered company with two directors:
 - James Leonard Ace
 - Berton Abel John Haines

Shares of the applicant company are held as follows:

- Future Bars Limited (80%)
- Matthew Tobin (20%)

Mr Ace and Mr Haines are also co-directors of Future Bars Limited and each individually hold a 1% share allocation of this entity. The remaining shareholdings are as follows:

- Alan Bertram Harper and James Leonard Ace (57%)
- Berton Abel John Haines & Natalie Anne Haines (41%)

4. The applicants Mr Ace and Mr Haines are experienced licensees operating a number of other licensed premises in the district.
5. The applicant Mr Haines was well reported on by the alcohol licensing inspector, but it was highlighted that a specific promotion undertaken by Margo's relating to their 'Bottomless Brunch' events held at the premises had caused concerns, particularly as to whether such promotions could align with the object of the Act, specifically in relation to Section 237 of the Act, relating to the irresponsible promotion of alcohol.
6. The alcohol licensing inspector did not oppose the application for renewal of the on-licence but sought guidance from the Committee on the promotion of the "Bottomless Brunch" events.
7. The application was sent to the agencies. On the 29 June 2022 Ms Stephanie Bekhuis-Pay, representing the Medical Officer of Health confirmed there was no opposition, and on the 26 May 2022 Police Station Support and Liquor Licensing Officer Alex Lawson reported that Police had no opposition to the application.
8. The application was publicly notified on the Queenstown Lakes District Council (QLDC) website from the 16th May till 7th June 2022. No public objections were received.

The Applicant

9. Mr Haines is the director of Honey Lane Limited, which is the parent company of Margo's. He outlined in his evidence a considerable history in the hospitality industry in Queenstown over the past 22 years.
10. He outlined the concept and operation of Margo's which specialises in Mexican inspired food and beverages provided in a 'casual up-tempo atmosphere'. The measures and controls he has in place to discourage any excessive alcohol consumption resulting from the Bottomless Brunch events were also outlined.
11. Mr Haines advised that Margo's had held 30 Bottomless Brunch events, averaging at about 8 such events per annum. They are a ticketed 2-hour event currently priced at \$69, and there are two seatings commencing at either at 12pm or 12:30pm. He contended that the early start minimised the opportunity for patrons to have consumed alcohol prior to attending the event. For the ticket price the patron receives a substantial main meal, unlimited chips and salsa

and 'bottomless' glasses of Prosecco, Mimosas, and/or Red Sangria. There are also non-alcoholic alternatives available. Water is provided on the tables. Patrons are required to eat as a condition of the promotion.

12. Mr Haines stated that limits on the service of alcohol include patrons only being served one alcoholic beverage at a time to control the pace of consumption, a ban on any types of drinking games and the refusal of service to any patron displaying signs of intoxication.
13. There are at least two duty managers on site during the Bottomless Brunch events and between eight and nine front of house staff which provides a ratio of nine patrons to each staff member to ensure active monitoring. Patrons are wrist-banded on arrival and any concerns will result in the wristband being cut off and alcohol service to that person discontinued.
14. The events have operated over the past 4 years and whilst there have been some situations where patrons were refused further service of alcohol there have been no alcohol related incidents. Mr Haines was proud of Margo's responsibility in managing the provision of alcohol and highlighted the training and self-initiated control purchase operations that he has implemented. He was confident that the processes currently in place ensure compliance with the Act, but also appreciated the desire of the agencies to seek guidance on the promotion of the 'Bottomless Brunch' events and was also focused on ensuring that Margo's were operating within legislative requirements.
15. In response to a question from the Committee Mr Haines was unable to provide details on the cases where service of alcohol had been refused, although he did state that in one case a patron had been refused further alcohol and it was discovered that he was continuing to drink another of the table's alcoholic drink in this case they required the entire table to leave the premises.
16. In response to a question from the Committee on whether he thought that the advertising for the 'Bottomless Brunch' may be in breach of Sections 4 and 237 of the Act in that it implied that a person could consume as much alcohol as they wished over the two hour period Mr Haines replied that the reason we were all attending the hearing, and that hopefully the Committee could provide guidance.

The Police

17. Sergeant Matheson submitted that Police did not oppose the application for the renewal of the on-licence, however they were also seeking guidance from the Committee on the legality of the promotion of the Bottomless Brunch events. He confirmed that Mr Haines was a responsible operator. The sergeant stated that images of alcoholic drinks used by other venues to promote such events was of concern along with the use of the term 'bottomless' which suggested that alcohol consumption was a major focus of the event.
18. Whilst he accepted that the daytime start of the event has the potential to reduce the likelihood of patrons pre-loading, he believed there was no ability to control behaviour the previous night, citing that patrons may have been consuming alcohol till 4am or potentially later.

The Medical Officer of Health

19. Ms Smyth submitted the Medical Officer of Health did not oppose the application for the renewal of the on-licence but welcomed the opportunity for the consideration of the promotion regularly held at the venue known as a 'Bottomless Brunch'. She highlighted that the Inspector's report identified patrons in their late twenties to late thirties as the target customer base for Margo's. The New Zealand Health Survey 2023-24 on hazardous drinking rates has found that the prevalence of hazardous drinking amongst twenty-five- to thirty-four-year-old New Zealanders is estimated to be 26.8%, and the prevalence of heavy episodic drinking (consuming 6 or more drinks on one occasion) at least monthly is also reported to be 26.8% for this age group.
20. In response to the Committee Ms Smythe said that the term 'bottomless' concerned her, as it was potentially factually incorrect since the Act prohibits the unlimited service of alcohol. She felt that whether or not the supply of alcohol was actually unlimited was irrelevant as it was the promotion of such an activity which could impact upon patrons' behaviour. Ms Smythe also pointed out that the Act requires only intent that may encourage people to consume alcohol to an excessive extent.
21. The Medical Officer of Health also held concerns over how much alcohol could be consumed over the 2-hour event period, and the impact on the wider society when patrons departed the premises and went back into the community after partaking in the potentially excessive daytime drinking. It had the potential to act as a pre-loading event for other venues in the township.

The Inspector

22. Ms Scoons provided a submission outlining the history of the application and relevant case law. She stated that the applicant appears suitable, the hours appropriate, the design and layout enable staff to effectively oversee patrons, comprehensive training systems are in place and the renewal of the licence is unlikely to have more than a minor impact on the amenity and good order of the locality. She also reported that the agencies were not in opposition.
23. The inspector raised concerns over the 'Bottomless Brunch' promotion offered periodically by the premises. She sought guidance from the Committee of whether such promotions are permissible under Section 237 of the Act and whether they can be considered congruent with the object of the Act. She also sought an indication as to what restrictions or processes the Committee would expect to be put in place by licensees to mitigate the risks of excessive alcohol consumption and the resultant potential for alcohol related harm that such promotions may bring. Ms Scoons outlined several other promotions which had taken place in the district, and also provided relevant case law.
24. In response to the Committee she stated that the use of the term 'bottomless' caused her concern, in particular that it applied only to the alcohol but not the food, although she accepted that there was unlimited chips and salsa provided. Her concern centred on the potential that patrons may see the only scope to maximise the value of the deal is through the consumption of

alcohol.

The Committee's Decision and Reasons

25. The Committee considered all the evidence and submissions presented at the hearing, and also the relevant case law and grants the renewal of the on-licence.

The authorised trading hours will be -

Indoor Area: Monday to Sunday from 8:00am to 1:30am the following day

Outside Area (Balcony): Monday to Sunday from 8:00am to 10:00pm

Outside Area (The Mall): Monday to Sunday from 5:00pm to 10:00pm

26. The Committee also considered the issue of the promotion of “bottomless brunch” style events and the request from the agencies and the licensee for some guidance on the matter. The Committee noted that the following sections of the Act appeared relevant for consideration in this matter, namely:

4 Object

- (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.

237 Irresponsible promotion of alcohol

- (1) A person commits an offence if, in the course of carrying on a business, that person -
- (a) Does anything that encourages people, or is likely to encourage people, to consume alcohol to an excessive extent, whether on licensed premises or at any other place

27. The Committee is of the opinion that the current promotion of the ‘bottomless brunch’ event is possibly in breach of Section 4 (1)(a) of the Act in that it is in conflict with the stated objective of minimising the harm caused by the excessive or inappropriate consumption of alcohol.
28. It also believes that this promotion is a breach of Section 237 (1)(a) in that it is likely to encourage people to consume alcohol to an excessive extent. Terminology in event promotions such as ‘bottomless’ and ‘all you can drink’ has the potential to encourage people to believe they can consume alcohol to an excessive extent. While the Committee notes that systems and controls Mr Haines has in place to mitigate the risk of excessive or inappropriate consumption of alcohol during the event it is noted that the Act specifies that it is an offence simply to encourage people to consume alcohol to an excessive extent, and the Committee are of the opinion that the current promotion using terminology such as ‘bottomless brunch’ does have the effect of encouraging such behaviour.
29. The applicant and agencies sought guidance from the Committee upon the promotion of such activities. The Committee is of the view that it is not possible to be prescriptive or definitive as to specific terminology or images that may be inappropriate but believes that any promotion that leads any person to believe that alcohol is available to be consumed excessively or inappropriately is in breach of the Act. Terms such as ‘bottomless’ and ‘all you can drink’ are inappropriate and in breach of the Act in our view. Likewise, images of alcohol,

or the consumption of alcohol, used in the promotion of such events may also be found to be in breach of the Act.

30. The Committee notes that such breaches are considered serious, and this is reflected in the penalties prescribed in the Act, namely Section 237 which can result in a fine of up to \$10,000 and a suspension of the licence of not more than 7 days.

DATED at Queenstown this 13th day of December 2024.



P.M. Jones
Commissioner

Queenstown Lakes District Licensing Committee

