

**LICENSING COMMITTEE**

Direction

To: Claire King, for the Secretary of the Otorohanga District Licensing Committee

Application: Waiver - Special Licence Otorohanga Club Incorporated for event on 10 April 2021

Date: 17 March 2021

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1. This is an application by Otorohanga Club Inc for a waiver in respect of the requirement to lodge a special licence application 20 working days before the day on which the event concerned begins.
2. Section 137(1) of the Sale and Supply of Alcohol Act 2012 states that an application for a special licence must be filed at least 20 working days before the day on which the event concerned begins. Section 5 of the Act states that working days do not include a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, or Labour day, or a day in the period commencing on 20 December in one year and ending with 15 January in the next year.
3. Otorohanga Club Inc have filed an application on 12 March 2021 for a special licence for a Memorial Service for Wendy Flintoff to be held on Saturday 10 April, 19 working days before the event. Therefore, this application has been filed late.
4. Bronwyn Merrin, Secretary of Otorohanga Club Inc, has apologised for filing the application late and states that she only started in the role as Secretary/Manager of the Club on 8 March 2021 and was not aware that the 20 working days excluded public holidays.

**Should the waiver be granted?**

5. Section 137(2) states that the licensing committee may consider an application for a special licence filed less than 20 working days before the event begins if satisfied that the need for a special licence "could not reasonably have been foreseen earlier". This makes an exception for events such as funerals.
6. The 20 working day time frame is an absolute statutory minimum because the reporting agencies have 15 working days to enquire into the application and file a report. This only leaves five working days for the District Licensing Committee to consider the application and issue a decision and a licence. If there is opposition or an objection about a special licence application there may simply not be time to arrange an urgent hearing. If there is not time to hold a hearing, then the licence cannot be granted.
7. Section 208 provides that where any person has neglected or omitted to do any act or thing in the precise manner or within the precise time prescribed by the Act, the licensing committee or chairperson, if satisfied that the neglect or omission was not wilful, may waive the same on such terms as they think equitable.
8. Section 208 cannot be used to grant a waiver in circumstances that would not meet the test in section 137(2). This is because of the long-standing legal principle of statutory interpretation that a general provision cannot be given precedence over a specific provision (*Sara v Johns* (HC) CIV-2008-404-7746).
9. Unfortunately, this waiver request for the 10 April event cannot be granted because no evidence has been provided to show that the event was unforeseen. It appears that the application was late because the Manager of the Club did not receive appropriate training in the requirements of the Act. A lack of training in the requirements of the Act cannot be used as an exception to the rule that a special licence application must be filed at least 20 working days before the event. Therefore, the request for a waiver in respect of the requirement to lodge a special licence application 20 working days before the day on which the event begins is declined.



Sara Grayson  
Commissioner  
Otorohanga District Licensing Committee