

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

AND

IN THE MATTER of an application by Malcolm Kevin
McKernan trading as the Rob Roy Hotel,
30 Seddon Street, WAIHI pursuant to
s.102 (4) of the Act.

BEFORE THE HAURAKI DISTRICT LICENSING COMMITTEE

Chairperson: Paul Milner
Members: Alan Sciascia
Rino Wilkinson

Hearing at Paeroa, Hauraki District Council on 01 December 2025

APPEARANCES

Malcolm McKernan	Applicant
Manuel Loffley	District Licencing Inspector – Reporting
Jane Beard	District Licencing Inspector – In Support
Ashleigh Mail	Representative for Medical Officer of Health
Sgt Nigel Sanderson	NZ Police

ALSO ATTENDING / IN SUPPORT

Peter Thom	Group Manager – Community Development
C. Black	Council Secretary

DECISION

Background

Application for ON and OFF Licence by Malcolm Kevin McKernan for the Rob Roy Hotel, Waihi.

Objection was received from the Licensing Inspector to this application regarding the following areas:

- The licensee has twice let his own managers certificate lapse
- incomplete renovations of the premises making them unfit for use
- a lack of suitably qualified staff to cover hours of operation

Applicant

Mr McKernan gave an outline of how he currently operates his business and what activities he plans to undertake in the future.

The premises currently only operates within the public bar area and gaming lounge. Several other areas included on the applicant's floor plan are not in use. These include the bottle store/off license, the corner room, private bar and lounge bar.

Currently OFF sales are all transacted over the bar. Mr McKernan stated that he is the only person to sell OFF sales over the bar and is interested in quality of customers rather than quantity.

The usual opening time is 9.00am daily with closing of 6.00pm for weekdays being typical. The hours are flexible depending on customer demand and staff comfort levels. The current sole staff member has discretion of when to close the bar. Longer hours are requested to accommodate functions that arise.

Mr McKernan admitted that he had let his managers certificate lapse in part due the stress related to a family bereavement.

The last time the function was used to host a function was in 2012.

Mr McKernan spoke about the footpath area in front of his premises on Seddon Street where supervised outdoor drinking was allowed. The issue had been canvased at a town meeting in 2012 in the old miner hall. There was a 'redefinition' signed by a court judge, however this document was not presented as evidence.

Inspector

Manuel Loffley raised issues of suitability of the applicant regarding twice failing to renew his managers certificate prior to expiry which led to the Rob Roy Hotel operating without a certificated manager for several months. The OFF license bottle store area shown on the floor plan has not operated for approximately 14 years.

Police

Sgt Nigel Sanderson was available to answer questions if required.

Ministry of Health

Ashleigh Mail for the Medical officer of Health tabled a suggestion that the floor plan be varied to license only the areas that are currently in use and in future that the floor plan be varied to include other areas once renovations have been completed.

General

Following the hearing council staff attempted to locate the floor plan from the last application showing the outdoor area. This was not able to be located by staff. The applicant did not provide to the hearing any previous floor plans but did refer to previous floor plans verbally.

Decision & Reasons

It is clear to the committee that the applicant is very passionate about preserving and enhancing the heritage of the building with a view to returning to its former glory. The

potential for the premises was clear in photographs shown to the committee; however the reality is that the functions such as in the pictures have not happened for many years.

Overall the committee is satisfied that the applicant is a suitable person to hold a licence.

However the committee does note that there are areas for improvement that can be made to ensure that the business operation continues to comply with the object of the Act.

The committee notes Mr McKernan has the sole responsibility to ensure that his managers certificate is kept current.

The committee notes that s.214 is especially important to be aware of as the applicant is for all intents and purposes the sole certificated manager as the usual staff member does not hold a manager's certificate and the applicant's brother is only present on a very limited basis.

If the premises were to operate for anywhere near the full number licensed hours, then further certificated managers would need to be found. As it currently stands one further manager is advisable to ensure safe operation.

Areas of the premises that are currently under renovation or repairs must be brought up to a usable standard to be included as licensed areas going forward. As the applicant has stated that this could be achieved in a relatively short period of time the committee is of a mind to keep all those indoor areas included on the floor plan within this licence. Should they not be brought up to standard within the period of this license then it is suggested that they be removed until such time as they are completed at which time a variation may be sought.

The legal principles governing licence renewals are well established. In deciding whether to renew a licence, the Committee's role is "an evaluative one," requiring the Committee to make a merits-based determination of the application before it. This involves a two-step process. First, the Committee must consider any objections and have regard to the criteria in section 131 of the Act, which requires the Committee to "actively and thoughtfully consider the relevant matters." Second, the Committee must then step back and consider whether the application is capable of meeting the object of the Act.

1. The hours as applied for are agreed to.
2. All indoor areas applied for, on the floor plan are approved for this license, however if they are to be included in future licences they should be in a useable condition at the time of application. The reason for still including them now rather than at a future time is to allow the applicant the opportunity to get those areas up to standard without the need for a variation to the floor plan.
3. If the outdoor 'el fresco' seating area is to be used then a special license should be applied for when those events arise. The committee is not of a mind to include this area indefinitely.

Note: that the main street of Waihi is subject to a public alcohol ban and therefore an exemption may need to be sought.

4. Another certificated manager is needed to safely operate the business.
5. OFF sales over the bar rather than through the designated bottle store is acceptable.
6. Licence period of 1 year from 3 February 2026. (Expiry 3 February 2027)

The licence is subject to the following conditions:

1. Alcohol may only be on the following days during the following hours:
ON

Monday to Saturday 8.00am to 1.00am the following day
Sunday 8:00am to 11:00pm

OFF

Monday to Sunday 8:00am to 8:00pm

2. There must be no sale or supply of alcohol to minors or intoxicated persons, and appropriate signs must be displayed detailing these restrictions.
3. Drinking water must be freely available and displayed whenever alcohol is being supplied.
4. The Licensee must ensure the following are displayed:
 - i. A sign visible from outside the principal entrance stating the ordinary hours of business when the premises will be open for the sale of alcohol.
 - ii. A copy of the original licence with all conditions located just inside the principal entrance where persons entering can read it.
 - iii. A sign in a prominent place identifying the duty manager's name.

Conclusion

We have considered the criteria in section 105 and the submissions and evidence of the Applicant and reporting agencies. Standing back and evaluating all relevant factors, we have formed an opinion that the ON and OFF licence applications are consistent with the object of the Act. We are satisfied that the grant of the ON and OFF licences, with appropriate conditions, will ensure the safe and responsible supply of alcohol and the minimisation of harm caused by excessive or inappropriate use of alcohol. Therefore, the application for the issue of the ON and OFF licence is granted.

The ON and OFF licence is granted for an initial period of 12 months, to allow sufficient time for all areas intended to be used in the operation of the premises to be brought up to an acceptable standard.

Dated at Paeroa this 3rd day of February 2026

Paul Milner
Chairperson