



TAWA TALK

April 2020

Welcome to the latest updates from the Tawa Business Group. In this issue:

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Help us let our community know when you're open

None of us would ever have expected that the last number of weeks would have been spent the way we've spent them! We hope this finds everyone safe and well in their respective bubbles, and to essential workers we thank you for all your work to date.

With the country having moved to Alert Level 3, many of you will be looking to re-open your business in some shape or form. We know that the Tawa locals are looking forward to supporting you as much as possible, and to that end we want to make sure they know that you're out there and trading.

To help us to do this, we would very much appreciate you providing us with information that we can share with the wider community, specifically:

Your business name:

The nature of your business:

Your trading address:

When you are opening (or confirm that you are already operating):

Your opening hours:

How you will be operating (please be very specific here – click and collect, orders via website, orders via phone, orders via email, payment by Ping or credit card, payment via bank account etc):

Please email this information through to Sharon McKenzie, our BID Manager, at sharon@tawabusiness.co.nz. She will be collating information and sharing this through appropriate channels so we can all be supporting you to get back up and running.

We also suggest checking out the following links to help raise your company's visibility:

<https://www.wellingtonnz.com/now-is-the-time-to-love-local/>

<https://www.swiftly.nz/spread-the-word>

<https://sosbusiness.nz/>

<https://www.visawoap.com/users/login>

<https://www.facebook.com/tawabusiness/>

<https://www.facebook.com/groups/701254429944972/> (Tawa Community Noticeboard)

Signage for Alert Level 3

One of our BID members, **ImagineThat** <https://www.imaginethat.nz/>, has pulled together a range of signage products and packages to help you implement any changes needed when you re-open.

We would like to see visible signs on all our premises as they re-open, and also want to make sure that people continue to protect themselves and others. We have therefore obtained a supply of the signs below and are making them available for members. If you would like a copy of any of these signs, please contact sharon@tawabusiness.co.nz.



The Tawa Business Group is also offering a 15% discount (to a maximum of \$40) on any other products members wish to purchase. When placing an order, mention that you are a member of the Tawa Business Group and would like the discount applied. To see the full range of products available from ImagineThat, please refer to the Covid19 page on their website.

Mentoring support

We have a number of members within our BID area who are available to help you through this difficult time.

Laura Humphreys is a business mentor who is available to help business owners navigate their way through our current environment. Laura can be contacted through her company website www.liber8yourbusiness.com or phone 021 667 785.

Laura is also launching an online course “Thriving through Crisis”. Led by Laura, and including guest experts, this course is developed to help deal with the crisis mindset and develop and create steps and models, strategies and tactics for new post Level 4/Level 3 and potential recession future. You can work through the three modules – Confidence Through Crisis, Continuity through Crisis and Creativity through Crisis – in your own time. Check out more info via this link <https://liber8academy.thinkific.com/>.

The cost to sign up for the course is \$39, however the **Tawa Business Group will provide a 50% subsidy** for any members who wish to sign up. Just enter the code TAWA when making your booking to receive the discount.

Tony Hassed, Chairman of the Tawa Residents Association, is a business mentor with Business Mentors NZ. He is happy to chat with anyone who may want some support or assistance. Tony can be contacted on phone 021 374 592.

Question and Answer sessions

A number of our members recently joined in for Zoom sessions set up by Greg O'Connor, MP for Ohariu, with legal experts in both Employment and Property Law, as well as a Q&A session with him.

Greg's team have collated the information discussed at these, as well as a general Q&A session with Greg. We have attached these at the end of this newsletter, so if you're interested go take a look 😊

WellingtonNZ webinars

WellingtonNZ have held a number of topical webinars over the past couple of weeks – we've listed these below.

If you weren't able to join but are interested in any of these topics, just click on this link

<https://www.wellingtonnz.com/business/online-workshops-building-business-resilience/>, scroll down to "Online Seminar Schedule" and watch any of the webinars in your own time.

Thursday 30 April	Digital tools for eCommerce
Thursday 23 April	Digital marketing
Thursday 16 April	Strategy & Innovation in the new market
Thursday 9 April	Business Response Tourism Sector Forum
Tuesday 7 April	Business Response Screen Sector Forum
Thursday 2 April	For Arts and Events sector
Friday 27 March	Moving your business and yourself to Alert Level 4
Wednesday 25 March	For Wellington Region Hospitality and Retail sector
Tuesday 24 March	For all Wellington Region businesses

WellingtonNZ delivers regional hospitality financial support

WellingtonNZ is offering meal delivery rebates to Wellington regional eateries for the two confirmed weeks of Alert Level 3. A rebate of \$10 per meal delivery, to a maximum of \$500 per business, is available to eateries across the region who are using their own delivering service or a delivery app such as Uber Eats, Delivery Easy and Food Ninja.

The total amount available to hospitality businesses under the scheme is \$250,000 and demand is expected to be high with 30 per cent of the region's 1600 eateries expected to either resume or start home deliveries when Alert Level 3 comes into force on Tuesday. Details of the scheme can be found [here](#). If you could like more information on the press releases relating to this, please email sharon@tawabusiness.co.nz and we can send you a copy.

Change of Chairperson for the Tawa Business Group

At the beginning of this month **Ant Simon** advised of his intention to step down from the Chairperson role for the Tawa Business Group.

Ant became involved in the Tawa Business Group when the idea of setting up a Business Improvement District was put forward by Wellington City Council and Tawa Residents' Association in early 2016. He had been involved in the Marsden Village BID for 10 years, so the idea made perfect sense to him as he felt Tawa business needed cohesion. The interim Executive at the time in mid-2016 put a massive amount of work into preparing for the poll needed to establish the BID, and Ant was heavily involved in that. Since the successful poll and the establishment of Tawa Business Group Incorporated he has been Chair of the Executive.

Ant says "We have spent countless hours getting the group to a point where I feel it is in a very good space, and I am happy to pass the reins over to Darcy, confident he has the skills needed to carry the group forward for the benefit of Tawa business."

Whilst Ant will remain on the Executive Committee, please join us in thanking him for his input over the past four years.

As a result of Ant's resignation, **Darcy Brittliff** has been elected by the TBG Executive Committee to the position of Chairperson.

Darcy is the Managing Director of Tawa based company Orogen Limited. Orogen is a professional planning, civil engineering, and survey firm providing development and infrastructure services across lower New Zealand.

Darcy brings a strong breadth of knowledge and skills to the Tawa Business Group from business strategy, management, to expertise dealing with Infrastructure, Regional, and Local Authorities. He is a member of the Engineering New Zealand, Association of Consulting Engineers New Zealand, and is recognised as a Chartered Professional Engineer.

Outside of work Darcy enjoys spending quality time with his family and friends.



Useful links

<https://www.manaaki.io/>

<https://worksafe.govt.nz/managing-health-and-safety/novel-coronavirus-covid/alert-level-3-whats-worksafes-approach/>

<https://www.wecc.org.nz/>

<https://www.nzte.govt.nz/search?searchterm=covid%2019&search-term=covid%2019&no-scroll=true>

EMPLOYMENT

Employment Law provisions continue to remain the same through the Covid19 levels. These has only been one exception relating to the collective bargaining provisions, which was made a few days ago.

Everything else concerning salary/wage entitlements and any other obligations to employees, for instance, those regarding leave provisions are the same as a month ago.

What has changed for employers is the provision of The Wage Subsidy Scheme which was implemented on 17 March and modified on 27 March.

Employers availing themselves of The Wage Subsidy Scheme are asked to make their best endeavours to not make staff redundant inside of the 12 week time period of this subsidy and to pay their staff 80% of their ordinary wage.

If during the lockdown period there is no work and if employees can't work from home, if a staff member is ready willing and able to do their job then they should be paid, if they are not "able" then within the legal community there are a range of views as to the employers responsibility regarding wage and salary payments. If you are unclear at all check the employment contract you have with your employee and then refer to the law. MBIE are available to respond to questions. Click here for the latest information from MBIE: <https://www.mbie.govt.nz/about/open-government-and-official-information/coronavirus-covid-19/>.

If you need to make changes to employment contracts, these must be made in writing and the staff member must document an agreement with these changes whether by txt or email or hard copy document for the change to be valid.

Wage Subsidy Rules: Staff are entitled to be paid at least the subsidy and if they are part time they can expect to be paid their ordinary part time wage.

You can go down to the level of the subsidy and pay your employees the subsidy only if you as the Employer can demonstrate you have used your best endeavours to pay them 80% but have not been able achieve this because of your business circumstances.

Q: How do we determine what best endeavours are?

A: You need a business rationale to stop paying people at the 80% level. Be prepared to be audited and be in a position where you can explain to MBIE why your business could not pay to the 80%.

Business owners have dual responsibilities in this situation, they have a responsibility not only to their staff, they are responsible to their shareholders and to be a prudent company director. The government has implemented a Safe Harbour policy which allows a company time to financially navigate through this time.

Ask "what can I do to avoid letting staff go or to avoid putting the company at risk?"

Negotiating staff taking their annual leave is one way of getting this liability off the company's books. If you do this 14 days notice must be given and again, as with any contractual change, staff need to document their agreement to taking the annual leave. In reaching agreements with staff, be honest and open with them about the situation the company is in. Take a 'we are all in this together' approach and ask can we change your hours or pay rate until we have more work. Be aware there are relationship consequences to how you manage staff through this time and that employers have a higher likelihood of retaining good staff and reinforcing working relationships and loyalties if they share with staff the full picture the company is dealing with.

We have discussed the legal lens with how to look at current challenges and there is also a health and safety lens to be aware of.

Work Safe are actively looking at breaches so in your business ask what are the risks? Assess them in a way that you can show how you have assessed them. For instance have notices up for staff, triage situations over the phone and document any process changes.

Q: How do we manage leave for essential workers for those who can't work?

A: In this situation the tests are different. The government has provided the Essential Worker Leave Subsidy for essential workers who are vulnerable or in a bubble with a vulnerable person and cannot work. It is possible to top up their wage/salary payments by having them utilise their sick leave. Are they actually sick? Possibly not but you can still top up their payments by utilising their sick leave.

Q: Are employers entitled to ask for verification of the requirement of the staff member to take sick leave?

A: Yes, employers can ask for a medical certificate or something in writing from their Doctor. If that is not feasible then some companies have asked staff to sign statutory declarations.

As we prepare to move into Level 3 where Safe Businesses are permitted to operate, Paul McBride's opinion was that the Essential Worker leave arrangement would carry over into the Safe Business environment which will operate in Level 3.

Q: For a business that will find it difficult to come back to work even under Level 3 and with staff who have commission based earnings as a significant portion of their salary it's possible there will be redundancies. How are these determined?

A: As advised earlier, deal with staff with an open hand, share your company position and if you have to let people go then define the criteria on which these decisions were taken. e.g. sales stats, length of time in the role.

Q: How do we treat the money that businesses have received from government?

A: Any funds received from government through the wage subsidy scheme or the essential worker leave scheme are Not tax deductible and should not be claimed as a deductible expense for GST purposes. In your books treat the money received from government as "other income". Ask payroll to keep a spreadsheet to show how these funds have been used for each staff member to top up their wages.

TENANCY AND LEASING

If you are a tenant be prepared to have discussions with your landlord. A good starting point is to find out what type of lease you have, it will enable you to have an informed conversation and help you to work towards a commercial agreement that is fair in the circumstances. Many people have a ADLS lease, these are provided by the Auckland District Law Society and have, unless it's been modified in your lease for some reason, a clause known as 27.5 provides that if you cannot access the premises because of an emergency you are entitled as the lessee or tenant, to an abatement on rent and outgoings as a fair proportion of costs.

So the next step, if you need to negotiate rent payments, is to come to an agreement with the landlord as to what is fair. If you don't have clause 27.5 in your lease you can still have this conversation but you will need to rely on a negotiated position with the landlord. Some things to consider in preparing to negotiate are:

- For the month of lockdown or for a specific time period tell your landlord that you need their help to bridge you through this time before you can get back to more normal cash flow. Rents traditionally don't go down and the landlord has this in their favour but they will be aware that in all of us going through recovery and until we regain the thrive phases, rents will fall away. Remind your landlord that you will be paying over the odds once your business becomes profitable again.
- If your place of business houses your IT equipment your landlord may tell you you are getting a benefit from this, one of your responses could be that the equipment is currently redundant, and if you can't use it (because you are working from home) that you are not getting the value from it. Talk to your landlord about what you are doing in your business that continues to generate productivity eg working online and working from home therefore ask why should I pay full rent through this lockdown time?

ADLS leases also have a termination clause which states that after 9 months of the premises being non accessible either party can walk away. Negotiate early, if it's in your best interests to stay in the premises, say you want to get through the impact of Covid19 and get back to the full rate of the rental payment as soon as possible.

Q: How does 27.5 clause work at Level 3?

A: Because in Level 3 we are still waiting for the Ministry of Health clarifications you may need to wait to see if your business can operate safely. Once you have assessed this re-explain to your landlord that you have no right to access therefore you cannot use the premises. Have a conversation with your landlord when you know more. If the overriding principal at Level 3 of Work from Home still applies to you in Level 3 then negotiate.

Q: What about Opex Fees, will we expect they will still be charged?

A: There is an operational obligation to pay these fees as a tenant but a landlord should be dropping any Opex costs they reasonably can eg cost of cleaners if the retail site does not need as much cleaning. Abatement of rent under 27.5 can also apply to Opex costs.

Q: What position are we in if a lease has expired?

A: This does not make your position easier, you can negotiate hard knowing rents may drop but you could also risk losing your place of business.

Q: Has there been an average abatement percentage value for shopping malls?

A: If your landlord has not approached you then suggest getting together as a group to make an approach.

Australia has developed a set of 10 Principals as a guideline for businesses to have conversations with landlords. New Zealand has shied away from issuing principals preferring to leave these conversations to be a direct negotiation.

Q: If the cause of the inability to access is neither the landlord or the tenants fault then could a 50:50 abatement be adopted especially as having conversation about finances may reveal more then either party is willing to share?

A: This is an approach but as a way of dealing with the risk allocation point it's not that simple. Post this lockdown situation you will have a tenant who will have to carry the full risk of the rent. It is universally accepted that this is bad for everyone but in the long term it is more of a risk for tenants and ultimately it will be harder for them.

Q: Post Covid19 what is your opinion on clause 27.5 being tested?

A: It is usually tested in earthquake issues most recently Christchurch and Kaikoura. Guidance will be issued after this experience but Bruno expects it to still exist. But the economic impact of this event may be written into further clauses in leases. The learning from Christchurch is to act faster, assess the situation and decide do we continue the relationship on current terms or do we rewrite the deal?

Q: Is there any consideration for a rent relief package by government given the level of pain that will be experienced?

A: Support for business is under consideration and a recovery budget is also being developed.

Further information available:

For a general discussion on the approach to clause 27.5 of the ADLS lease refer to:

https://www.lawsociety.org.nz/_data/assets/pdf_file/0019/145522/20-April-2020.pdf and https://adls.org.nz/Attachment?Action=Download&Attachment_id=2261

Also for those wanting to see the Australian mandatory code of conduct on leasing principles for SMEs – refer: <https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>

GENERAL

The bottom line is we do not want to go back to Alert Level 4. The general principle for our businesses to apply is to operate in a contactless environment as possible. The rule in Level 3 is still for everyone to stay at home if they can.

While the requirements for managing Covid19 are being driven by Ashley Bloomfield, the Director General of Health, Greg assured there is as much work going on in the Minister of Finances office to assist the economy. There will be further announcements for support for business.

Q: Can motels open at Level 3?

A: We don't expect any change from what was occurring under level 4. However, it should be noted under AL4 they can operate for the following reasons:

- Any entity that provides accommodation services for essential workers, isolation/quarantine, and emergency housing
- Retirement villages
- Backpackers accommodation (see [Additional decisions and exemptions for more information](#))

They should be able to access support through wage subsidy, and small business support - <https://www.beehive.govt.nz/release/government-backs-business-through-covid-19> and more specifically https://www.beehive.govt.nz/sites/default/files/2020-04/15%20April%20SME%20factsheet_0.pdf

Q: What are the guidelines for operating safely during Alert Level 3:

A: Worksafe have some great guidelines <https://worksafe.govt.nz/managing-health-and-safety/novel-coronavirus-covid-19/transitioning-from-alert-level-4/>

Q: How should companies operate at Alert Level 3?

A: The broad principal to apply here is that in Level 3 there will still be no customer interface. For food businesses for instance they can fill online or phone orders with no contact pick up at the door of the business. Payment must be online.

Q: Do retail businesses have to put perspex barriers up, and will they still be required for Levels 2 and 1?

A: Regulations are still being drawn up and we will keep retailers advised.

Q: What support is in place for employees who want/need to make up their hours by working at multiple workplaces. Is there anyway they can avoid the secondary tax situation?

A: Recent changes to legislation mean that an individual working in multiple roles is no longer penalised by having to pay secondary tax. If the employees calculates their expected income and makes sure they are on the correct tax rate they are no longer penalised.

It was confirmed that the Government Wage Subsidy can be redistributed across employees and employers just need to show the distribution for audit purposes.

Q: What are the rules likely to look like for Level 2?

A: The Government is still working on the regulations for level 2 and information will be made available as decisions are made. It will be dependent on what the future brings and how our Covid cases are going.

Q: How is the postal system is currently operating?

A: it is still functioning as usual as it is considered an essential service.

Q: Can salons and hairdressers sell product?

A: Like other businesses they will be able to operate a click and collect or courier model – it just must be contactless.

Q: Is there any further support for businesses having to pay out more wages because of the increase in minimum wage during lockdown?

A: The increase in the expected minimum wage cost was built into the 12 week Government Wage Subsidy.