

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

AND

IN THE MATTER of an application by **TOAST HOSPITALITY LIMITED** for an on-licence pursuant to s.100 of the Act in respect of premises situated at 10 West Quay, Ahuriri, Napier and known as "The Dutch At The Bluewater"

BEFORE THE NAPIER DISTRICT LICENSING COMMITTEE AT NAPIER

Chairperson: Mr D Fellows
Members: Cr F White
Mr R Pinkham

HEARING at Napier City Council on Thursday 11 December 2014

APPEARANCES

Mr D Cooper Applicant
Mr J Sheehan District Licensing Inspector
Sergeant R Wylie New Zealand Police - to assist

Observers

Ms A Bullock
Ms J Bliss for Medical Officer of Health

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

INTRODUCTION

1. This is an application by **TOAST HOSPITALITY LIMITED** for an on-licence in respect of premises situated at 10 West Quay, Ahuriri, Napier and known as "The Dutch At The Bluewater". The general nature of the business to be undertaken is that of a tavern.
2. Whilst the operation of the premises had a chequered start, trading under a Temporary Authority, liaison between the reporting agencies and the licensee have resolved the management issues.
3. The Police, Chief Liquor Licensing Inspector and the Medical Officer of Health raise no objection to the issue of the license, however the Inspector has some serious doubts as to the shareholding entity of the company as it is affected by the Sale and Supply of Alcohol Act 2012:
s70 Notification of Licensing Authority by beneficial owner of shares of change of shareholding.
He advised the applicant he would be recommending to the DLC that the application be determined by a public hearing in order to have sworn evidence given under oath.

4. All agencies reported dissatisfaction with the applicant's answers to Amenity and Good Order section of the application, which gave rise to a meeting between the police, the inspector and Mr Dion Cooper the director and sole shareholder of Toast Hospitality Ltd.
5. A week after the meeting the police reported that they had received an updated application addressing Amenity and Good Order and although the answers were not exhausted and comprehensive they were sufficient to answer the questions and were accepted by all the agencies.
6. The police at an all agency meeting discussed with Mr Cooper that during the operation of the business by the applicant over a period of six months, the premises had escalated from "of note" to "problematic" on the Graduated Response Model (GRM) with drink driving convictions being the main contributing factor
7. In his evidence, Sgt Wylie described the methodology of the GRM and, whilst confirming that results following answers on a systematic inspection check sheet provided useful information, it was not accurate or specific, but pointed only to trends for particular premises.
8. As a result of these discussions, the licensee was asked, with the assistance of the police, to prepare a Risk Mitigation Action Plan. It was reported that Mr Cooper was extremely co-operative, and since their meeting, the steps recently taken by Mr Cooper to address the issues had indicated a downward trend in the GRM.
9. The Medical Officer of Health reported that two Controlled Purchase Operations (for food) had been carried out. One related to a visit by an adult volunteer customer who at 12.15am, when entering the premises, was advised that they were just closing, but allowed him entry, where he purchased a beer but was told that no food was available. On a second occasion, an off duty police officer and another person entered the premises at 11.40pm, and just after midnight asked if food was available and received the answer "we only have pies and stuff". When enquiring whether more substantial food was available nearby, the duty manager responded "not at this time of night". No menu was offered nor any effort made to promote food.
10. These issues were discussed at the all agency meeting, and a final report from the MOH stated:
"At this time we are satisfied that the implementation of the (*Risk Mitigation*) Action Plan will help to address our concerns in relation to food."
The report concluded that they had no opposition to the issue of the licence.
11. We heard that arrangements had been made for all the parties to meet in three months from the first meeting (early November), and at that meeting all agencies were satisfied with the good progress that had been made and that no further action would be necessary.

THE HEARING

Mr Dion Jason Cooper, for Toast Hospitality Limited

12. The only issue raised for the hearing centred on the honesty of Mr Cooper in relation to the shareholdings of the company.

13. In his evidence Mr Cooper re-emphasised that all issues raised in the reporting agencies reports had been overcome in a positive manner. Food was available at all hours and arrangements had been made with a local restaurant for more substantial meals.
14. The reduction in the GRM ratings were due to better management, including the provision of courtesy vans and arrangements with a local taxi company for services, which had been increased following the recent introduction of lower alcohol breath test limits. He was enthusiastic in attempting to form an Alcohol Accord with the many other licensed premise owners in the area.
15. Upon cross examination by the Chief Licensing Inspector, Mr Cooper confirmed he had a 100% shareholding in Toast Hospitality Limited, and on the 6th May 2014 was registered as the sole director of the company that was incorporated on 3rd April 2014.
16. Upon being asked where he obtained the money for the purchase of the business, he stated that the money was from the proceeds of the sale of Turks Bar, a licensed premises in Hastings.
17. He answered the questions of his purchase of the company, his links with previous employers and employees, and other matters relating to the sale and purchase of the business in an open and forthright manner and when questioned regarding the delay in the notification of his appointment as sole director and its registration notification, he placed the delay with the Companies Office.
18. He emphatically denied any suggestion that he was not the sole shareholder of the company, and that the previous owner Sander (Alex) Kersjes had no financial interest in the company.

Mr Jason Sheehan, Chief Liquor Licensing Inspector.

19. Mr Sheehan gave evidence sighting his report linking the applicant company with the previous licence holding company. He followed the trail after constantly receiving unsolicited information from many and varied sources, suggesting that Mr Alex Kersjes held an undeclared financial interest in the Dutch at the Bluewater.
20. Mr Sheehan summarised these links:
Alex Kersjes company, BBC Hospitality Ltd, a subsidiary of Why Hospitality Ltd (also owned by Mr Kersjes) purchased the Dutch at the Bluewater in 2013 for around \$690,000.
Dion Cooper was employed by Mr Kersjes as his general manager of the business.
Andrew Glover was employed as a chef by Mr Kersjes at the Peak Restaurant through Mr Kersjes company Altitude Hawkes Bay Ltd.
On 1st April 2014 Why Hospitality Ltd was placed in liquidation.
On 1st April 2014 Altitude Hawkes Bay Ltd was placed in liquidation.
On 3rd April 2014 BBC Hospitality Ltd was placed in liquidation
On 3rd April 2014 Toast Hospitality Ltd was incorporated and purchased the Dutch on the Bluewater for \$28,863, by the sole shareholder and director Andrew Glover.
On the 4th April 2014 Dion Cooper was appointed as a director of Toast Hospitality Ltd and was registered as such on 23rd April.
On 6th May 2014 Andrew Glover was removed as director of the company and Dion Cooper became the sole director and shareholder.

DECISION OF THE COMMITTEE AND REASONS

21. In considering an application for an On licence the committee is directed by s105 of the Act. As all parties offered no objection to the issue of the licence as submitted under the application, we shall direct our consideration only to:
s105(1)(b) Suitability of the applicant.
22. We were impressed with the manner in which Mr Cooper answered all questions raised by the Chief Inspector, he answered without hesitation and in a convincing and forthright manner all questions regarding his sole ownership of the company, and emphatically denied any financial interest by any other party.
23. While Mr Sheehan may have some justification in seeking sworn evidence under oath from the applicant in light of the timing of the negotiations, the past association with previous employers and employees of liquidated companies all within a very short space of time, and the apparent lower than basement price paid for the business, no evidence is before us that Mr Cooper is not the sole director and shareholder of Toast Hospitality Ltd.
24. We find the applicant suitable to hold an On Licence and grant the application accordingly with the same terms and conditions as applied for together with the following additional condition approved by the applicant:
 - c) *The operation of a one-way door restriction shall commence from 2.00am every day*
25. One other matter requiring our attention is the incorrect timing of the public notices. The application was filed on 4th June 2014, and the notices duly published on 6th and 13th June 2014, however the cheque accompanying the application was dishonoured and eventually re-presented and cleared on 10th July 2014, at which time the application was considered to have been made, thereby making the previous notices redundant.
26. We are satisfied that pursuant to s208 of the Act, this omission was not wilful nor did it disadvantage any objector and we issue a waiver accordingly.

The attached on-licence 30/ON/0388/2014 may issue immediately.

DATED at Napier City Council this 18th day of December 2014



Dave Fellows
Chairperson