

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

AND

IN THE MATTER of an application by **DOC HAWKES BAY LIMITED** pursuant to s100 of the Act for an ON Licence in respect of premises situated at 1 Emerson Street, Napier South, Napier, and known as Lone Star Napier.

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman: Mr DE Fellows
Members: Mr J Cocking
 Councillor F White

HEARING at Napier on Tuesday 15th December 2015

APPEARANCES

Mrs J Dougherty	for the Applicant
Ms I Squire	for the Objectors
Mrs T Campbell	Objector

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

INTRODUCTION

1. This is an application by DOC Hawkes Bay Limited for an On Licence in respect of premises situated at 1 Emerson Street Napier and known as Lone Star Napier. The general nature of the business as described in the application is that in the style of a restaurant tavern.
2. The hearing was delayed due to the non appearance of the applicant. Following contact with the applicant, who confirmed receipt of the notice of hearing but were unaware of their need to attend, an appearance was made. An explanation of the hearing procedure was given and they were advised that if it commenced and continued to its conclusion, a decision would be reached, and would be final (subject to appeal). As the applicants were unprepared with any submissions they were offered the opportunity for an adjournment. This offer was declined.
3. The applicant has purchased the Lone Star franchise and has operated the business under a Temporary Authority for a little over 3 months. The restaurant is housed on the ground floor of a commercial and residential building, known as the T & G Building, in a prime location on Napier's seafront, and opposite the Masonic, a large hotel, tavern and restaurant complex.

4. All reporting agencies offered no objection to the application. The public notice however received two objections from residents and apartment owners within and adjoining the Lone Star building, challenging the hours of operation and the effect of the change from a restaurant to a tavern on the amenity and good order of the locality.

THE HEARING

5. Mrs Jolanta Dougherty, director and 50% shareholder of DOC Hawkes Bay Limited gave evidence, that concerns regarding the use of the business were unfounded and that there were to be no changes to the present operation. She stated that the Lone Star franchise required the business to serve full menu meals until at least 10.00 p.m. Thereafter, for economic reasons, the kitchen staff would be reduced to provide only the bar snack menu, at times when business was quiet.
6. She further stated that the only change to the licence requirements were a reduction in operating hours from 3.00am to 2.00am. This was related at a meeting with residents and owners at which it was also agreed to continue the gentleman's agreement of not emptying glass and bottle refuse into the outdoor bins between the hours of 9.00pm and 7.00am the following day.
7. In relation to the inclusion of a tavern along with a restaurant, describing the general nature of the business in the business details of the application, Mrs Dougherty stated that as they would continue to operate the small bar off the Hastings Street entrance, when appropriate, after their required minimum 10.00pm full menu closure, she assumed this designation was required.
8. Upon questioned as to operation of the bar area, she confirmed that nothing would change. There would be the usual service of preprandial and postprandial drinks and casual customers from off the street. There would be no bands, DJ's or other entertainment other than a television and background music which would be relayed to outside speakers to serve the alfresco seating in Emerson Street, under a licence to occupy. This music would cease late in the evening.
9. When asked about the application indicating only one certificated manager, Mrs. Dougherty replied that she and another employee held Manager's Certificates and her husband and joint shareholder, was awaiting the granting of his Manager's Certificate.
10. Ms Ingrid Squire gave evidence that she represented herself as a resident and apartment owner in the T & G building together with 3 other apartment owners in the same building and also Norshka Holdings Limited for the Campbell Family Trust through its director Mr. D K Campbell, provider of long term accommodation in two properties bordering the T & G Building.
11. Ms Squire stated that there was genuine concern from all residents of the changing nature of the business from a family restaurant to a tavern. She stated that at a meeting on the 9th November Mrs. Dougherty confirmed her intention to focus on the bar aspect of the business.

12. The residents' concerns were two fold, noise from staff leaving at 2.00am at the rear of the restaurant into an alleyway overseen by all residents, and music playing outside on the Emerson Street frontage. She was also concerned that under a tavern licence to 2.00am, music within the building could reverberate to her apartment above. Ms Squire also concurred with the written objection from Mr Campbell in respect of the use of the alleyway for staff parking, and the request to reduce the hours from 2.00 am to 12.00 midnight.
13. Mr Sheehan asked about the relationship between the residents and the new occupiers. Ms Squire responded that they had no ill feelings toward them and considered them to be responsible people to whom they had no objection.
14. Mrs Tina Campbell in giving evidence emphasized the problem from noise from staff leaving, to vehicle engines being started and general conversation from departing employees. She had also noticed an increase in noise level of the outside speakers following occupation by the new owners.
15. The Chief Liquor Licensing Inspector, Mr Sheehan, when questioned about the premises confirmed that he had no reservations about approving the application and that to the best of his knowledge no complaints had been received about the operation of the business.
16. Asked the same question, Constable Glentworth offered the same negative response that the Police had, to the best of his knowledge, never been called to the Lone Star upon a complaint.
17. In summing up, Mrs Dougherty was adamant that they were not intending to concentrate on the tavern aspect and had no intention of changing the nature of the business from a family restaurant. She re-iterated that the only change from the present licence was to reduce the closing hour from 3.00am to 2.00am and that closing time earlier than that would be the norm.
18. Regarding the alleged noise caused by the parking of staff vehicles in the alleyway, she and her husband agreed that employees would not park their vehicles there. She acquiesced to the gentleman's agreement in respect of bottle disposal to be included as a condition of the licence.

DECISION OF THE COMMITTEE AND REASONS

19. We are satisfied that the objectors have a greater interest in the application than the public generally. Whilst no complaints or concerns about the operation of the business have been voiced in the past, their perception of the activities of a tavern style premises is understandable. It is therefore, to the use of the premises, we turn our attention.
20. The Lone Star chain is a franchise recognized as a family restaurant. A "restaurant" is defined in s5 of the Act;

Restaurant means premises that –

- a) are not a conveyance; and*
- b) are used or intended to be used in the course of business **principally for supplying meals** to the public for eating on the premises. (our emphasis)*

21. The word principally allows us to better define the present application. We noted in her evidence that Mrs Dougherty confirmed that on the majority of occasions the premises would close following the 10.00pm meal service requirement of the franchise. This indicates that often 100% of the operating hours would be devoted to meal service and should the business continue operating to 2.00am, more than 75% of the time would be for the service of meals...
22. Turning to the definition of a “tavern”, again found in s5 of the Act;
- tavern –*
- a) means premises used or intended to be used in the course of business **principally for providing alcohol** and other refreshments to the public; but*
 - b) does not include an airport bar (our emphasis).*
23. We are satisfied that the provision of alcohol is not the principal intention or purpose of the Lone Star Napier operation.
24. We are further aware of dual designations in respect of On licensed premises, whereby a tavern style business, with excellent restaurant facilities, can be defined as such for brunch, lunch and afternoon teas, but revert to a tavern licence from the evening onwards. We do not consider that this family restaurant hours and interior design would lend itself to a dual designation possibility.
25. The public notices correctly inserted stated that the general nature of the business was that of a restaurant. Had it not been for the meeting between the applicant and Ms Squire where she understood that there was to be a change in designation and to her perusal of the application where a tavern was included. This matter may never have reached the stage of requiring a hearing.
26. Objections in relation to the applications are found in s.102 of the Act. Sub-section 4 is relevant and states:
- (4) An objection may be made only in relation to the suitability of the applicant if*
 - (a) the application relates to any premises for which a licence is in force;*
 - and*
 - (b) the applicant seeks conditions the same as applying to that licence.*
27. We consider that the applicant was misguided in choosing to include the operation of a tavern in the application. We are satisfied that the operation is that of a restaurant, which apart from the requested reduction in hours, would place it firmly as an application to which s.102 ss(4) would apply. The objectors have confirmed that they have no concerns regarding the suitability of the applicant, and we are further satisfied that in any case the objections related to activities that were presumptive rather than actual. The Inspector, the Police and the MOH have no objection relating to suitability.

28. The application for an ON licence by DOC Hawkes Bay Limited is granted. A copy of the licence is attached to and forms part of this decision.
29. The licence may issue immediately.

DATED at Napier this 21st day of December 2015

A handwritten signature in blue ink, appearing to read 'D Fellows', with a horizontal line underneath the name.

DE Fellows
Chairman
Napier District Licensing Committee

ON-LICENCE*Sections 14 to 16, and 64, Sale and Supply of Alcohol Act 2012*

PURSUANT to the Sale and Supply of Alcohol Act 2012 (the Act), **DOC Hawkes Bay Limited** (the licensee) is authorised to sell and supply alcohol on the premises situated at 1 Emerson Street, Napier South, Napier, and known as "Lone Star Napier", to any person for consumption on the premises and to let people consume alcohol there.

The authority conferred by this licence must be exercised through a manager or managers appointed by the licensee in accordance with Subpart 7 of Part 2 of the Act.

CONDITIONS

This licence is subject to the following conditions:

- (a) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, or Christmas Day, or before 1 pm on Anzac Day to any person who is not present on the premises to dine.
- (b) Alcohol may be sold only whilst the premises are being operated as a restaurant but not other than on the following days and during the following hours:

Monday to Sunday 8.00am to 2.00am the following day.

- (c) The following steps must be taken to promote the responsible consumption of alcohol:
 - (i) The licensee must ensure that signs are prominently displayed within the licensed premises detailing information regarding alternative forms of transport from the premises.
 - (ii) The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of alcohol.
- (d) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed: suitable signs must be displayed adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (e) Drinking water is to be freely available and shall be served directly to patrons at the table and located at the bar service area.
- (f) The transfer of glass bottles into receptacles outside the premises shall not occur on any day between 9.00pm and 7.00am the following day.

DURATION

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

- (a) Either—
 - (i) Until the close of the period for which it was last renewed; or
 - (ii) If it has never been renewed, until the close of the period of 12 months after the day it was issued; but
- (b) If an application for the renewal of the licence is duly made before the licence would otherwise expire, either—
 - (i) Until the close of the period of 3 years after the period for which it was last renewed; or
 - (ii) If it has never been renewed, until the close of the period of 4 years after the day it was issued.

Dated at Napier this 21st day of December 2015.

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Secretary,
Napier District Licensing Committee.

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, the licence expires on:

21st December 2016