

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

AND

IN THE MATTER of an application by the partnership of MICHELLE JACQUELINE PEPENE and DEREK WINSTON PAENGA trading as MP & DP PARTNERSHIP 2015 pursuant to Sections 100 of the Act, for an on-licence, for premises situated at 340, Meeanee Road, Meeanee, Napier, known as "The Meeanee Hotel".

BEFORE THE NAPIER DISTRICT LICENSING COMMITTEE

Chairman: Mr DE Fellows
Members: Mr JCocking
Mr RH Pinkham QPM

HEARING at Napier on Thursday 2nd June 2016

APPEARANCES

Ms MJ Pepene	Applicant
Sergeant R Wylie	NZ Police – to assist
Mr J Sheehan	District Licensing Inspector- to assist
Ms T Te Whaiti	for Medical Officer of Health- to assist
Mr BFG Church	Objector

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

1. This is an application by the partnership of Michelle Jacqueline Pepene and Derek Winston Paenga trading as MP & DP Partnership 2015, for an on-licence for its premises at 340 Meeanee Road, Meeanee, Napier, and known as The Meeanee Hotel.
2. All the reporting agencies offered no opposition or objections to the application. An objection from Mr BFG Church was received following public notice of the application, within the required time frame. His objection is based on the suitability of the applicant.
3. The Committee finds that the objector has status pursuant to s128(1) of the Act, and that he has a greater interest in the application than the public generally as he lives in very close proximity to the applicants premises.

The Hearing

4. Ms Pepene gave evidence on behalf of the partnership and presented a letter of support to the application from four people, listed as two local residents, the landlord and a witness, none of whom wished to give evidence.
5. She stated that her evidence was in response to the letter of objection from Mr Church, and referred to the excessive noise complaint. She stated that the partnership has been operating under a Temporary Authority for the past six months and considered the excessive noise episode, which she acknowledged, to have been an isolated incident.
6. In response to that complaint she said that the matter had been discussed with the objector and that they had ceased providing live music until a review of their policy. They have also consulted a Sound Engineer on ways to curb the emission of noise and are considering double glazing to all windows of the function room as a positive solution.
7. Ms Pepene refuted claims made by Mr Church that a serious assault occurred at their premises, as the Police have not had cause to visit them in their 6 month occupation. She said his reference to historical issues at the Meeanee Hotel were not relevant to their occupation of the business. Also once patrons had left the hotel, their behavior was outside their control.
8. She stated that Mr Church's visit on 27th February, to request that the noise he complained of the previous weekend was not repeated this weekend, lead to an argument with her partner Mr Derek Paenga which resulted in his expulsion from the premises.
9. Ms Pepene stated that whilst she was not present, the argument was heard by two people in the nearby gaming room who said Mr Church was insulting, bringing up unrelated personal issues.
10. When questioned by Mr Sheehan, she acquiesced that Mr Church's visit was justified following the excessive noise, that Mr Paenga was equally aggressive, that his manner was not acceptable for encouraging sensible host responsibility and was not becoming of a certificated duty manager.
11. Mr Church gave evidence referring to his letter of objection. He stated that he had witnessed an assault outside the hotel which was referred to the Police, and of many cases of people urinating, often in broad daylight, outside the premises. He stated that in his 25 years residency opposite the Hotel he had witnessed many incidents.
12. He said that on 20th February noise from the pub was intolerable, and he had called them on several occasions that night, with no response. Unable to sleep, he walked his dog and was clearly able to hear the music several hundred meters away. The following weekend on 27th February, he visited the hotel and approached Mr Paenga to request that should they have a band that night, the volume be reduced from that of the previous week.

13. Mr Church stated that after a brief unpleasant discussion he was told, menacingly, to leave the premises. He further stated that he has seen managers come and go, but this was the first time he had ever been threatened to be thrown out by any of them. He said that later that evening the noise was even worse than the previous week, and formal complaints were made to the council noise control call number.
14. He concluded by stating that he would rather not have objected to the application and was sorry to be at the Hearing, but was of the opinion that the aggressive and disrespectful attitude of Mr Paenga on that occasion was unbecoming of a hotel manager.
15. He said that over the last few months the noise had been well controlled and has had a visit from the partnership with a dramatic decrease in the noise. When questioned about the altercation with Mr Paenga, and had it intimidated him enough not to call again, Mr Church stated that “if you get bitten by a dog it would be unwise to try and pat him again”, however, since the argument things had settled down and he would not be deterred from another visit if necessary.
16. The alleged reporting of an assault at the hotel was unable to be confirmed by Sgt Wylie.
17. Mr Eric Le Roux is an Environmental Health Officer employed by the Napier City Council. He has sole responsibility for monitoring noise complaints from daily worksheets provided by Armourguard, council’s noise control contractors. He stated that complaints were investigated when at least two complaints were received for the same incident. He said that complaints regarding excessive noise had required investigation on 6th, 20th and 27th February, but due to the late arrival of the officer, at around 2.00 am closing time, no excessive noise could be established.
18. He confirmed that he had however visited the hotel and discussed the noise issues with the licensees.

Decision of the Committee and Reasons

19. We are required in respect of an application for an on-licence to consider the criteria set out in s.105 of the Act.

105 Criteria for issue of licences

- (1) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - (a) *the object of this act:*
 - (b) *the suitability of the applicant:*
 - (c) *any relevant local alcohol policy:*
 - (d) *the days on which and the hours during which the applicant proposes to sell alcohol:*
 - (e) *the design and layout of any proposed premises:*
 - (f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol*

refreshments, non-alcoholic refreshments, and food, and if so , which goods:

(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:

(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:

(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that –

(i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but

(ii) it is nevertheless desirable not to issue any further licences:

(j) whether the applicant has appropriate systems, staff, and training to comply with the law:

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.

(2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

20. It is our view adduced from the witnesses, that the real cause of objection is the behaviour of Mr Paenga towards Mr Church, bringing a sincere belief as to the suitability of the applicant.
21. The excessive noise, originally caused concern with complaints over 3 separate weekends, the worse allegedly following the visit to the hotel from the objector. We do however, look favourably on licensees who take these noise issues seriously and endeavour to meet with complainants and seek remedies through the proper professionals. All of which have been undertaken by the applicant.
22. It has been acknowledged by ARLA that licensees cannot be held responsible for the behavior of patrons who have left the premises. The lack of any Police evidence in respect of patrons' behaviour during the present licensees tenure cannot add any weight to the objection.
23. We admire Mr Church's handling of the upsetting noise issues of the 20th February, leaving messages with the licensees during the event without involving noise control officers, and delaying a visit for a week, to meet during daytime, was admirable and showed a sympathetic attitude towards the issues and one which could have been handled advantageously for all parties.

24. We have no doubt that the visit by Mr Church did not achieve its objective. However, to have denigrated to what appears to have been a slanging match reflects a less than desirable attitude from Mr Paenga, a certificated duty manager and partner of the business. It is understandable that following such a meeting and the subsequent excessive noisy evenings that Mr Church should question his suitability.
25. Ms Pepene, the joint partner, was honest enough to agree that such behavior was not warranted by her business partner, although we acknowledge that she was in a back office and not privy to all that went on.
26. Mr Church expressed, finally, of some reluctance to be at the hearing, and was complimentary to the attitude eventually adopted by the partnership and the past few months' trouble free operation of the business.
27. We are satisfied as to the relevant criteria of s.105. The period of issue for a new licence is for one year. The initial one year licensing period gives the partnership a suitable time to establish an acceptable rapport with residents of Meeanee.
28. We hope that the matters giving rise to this hearing will be a salutary lesson to Mr Paenga in terms of his responsibilities that go with being a partner and manager of licensed premises.
29. The licence is granted as applied for, subject to the conditions as indicated at paragraph 17 of the Inspectors report, with the exception that the public bar and garden bar are designated restricted.
On the provision that no appeal is received, the licence may issue at the expiration of the appeal period.

DATED at Napier this 13th day of June 2016

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