

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

AND

IN THE MATTER of an application by **GAHATRAJ2017 LIMITED** pursuant to sec 136 of the Act for a Temporary Authority for premises situated at 29, Carlyle Street, Napier South, Napier, and known as Mumbai Spice Restaurant.

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman: Mr D.E. Fellows.
Members: Councilor K. Price.
Mr R.H. Pinkham. QPM.

HEARING at National Aquarium of New Zealand on Thursday 4th April 2019.

APPEARANCES

Mr. A. Julka. Agent for the applicant.
Ms P. Kami. Applicant to assist.
Mr D.L. Waugh. District Licensing Inspector-in opposition.
Cstbl. D. Power. NZ Police to assist

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

1. This is an application by Gahatraj2017 Limited for a Temporary Authority (TA) for premises situated at 29, Carlyle Street, Napier South, Napier, and known as Mumbai Spice Restaurant
2. The application is opposed by the Licensing Inspector, in that the applicant has breached condition (f) of the Temporary Authority for failing to make an application for an On-licence

The Hearing

3. Mr Anmol Julka represented Ms Parbiti Kami, the sole director of Gahatraj2017 Limited, and said he acted for her in the whole application process. He stated that an On-licence application had not been submitted as it was deficient of a map of the premises
4. He further stated that he had constantly asked the owner of the premises for a floor plan, and whilst it was always promised, it had never been produced. He also said that he had asked the Council for a copy of the plan from the original application, but they

were unable to locate one on file.

5. Asked why he had not drawn one himself, he replied that he thought it had to come from the owner. Questioned if he had approached the company lawyer to request from the owner, a floor plan, he replied he had not. He was also silent on the question of employing a professional draughtsman to draw up a plan.
6. He stated that before the first TA had expired he had taken an On-licence application to the Council, but was told that it could not be processed prior to the expiry of the present TA, and that another application was required. At that time he said the Inspector had advised him that the On-licence application could not be accepted as it was incomplete and required a floor plan.
7. Mr Julka said he again visited the Council a few weeks ago for a third TA. He said that Mr Waugh had told him the application would be opposed if a complete On-licence application was not presented before the TA expired on the 5th April. He said that he was told a site map was all that was required.
8. Mr Waugh spoke to his report and confirmed that at both meetings with Mr Julka he had emphasized the need for a site map.
9. He produced a job sheet of the meeting on the 15th March, which was accepted as true and correct by Mr Julka. The job sheet indicated that the only reason given for not making an application for an On-licence was that the applicant had not acquired a site map. The job sheet also recorded Mr Waugh's proposed objection to the application.
10. Notwithstanding his opposition, Mr Waugh concluded that he had now located the missing floor plan of the premises, and would make this available to the applicant, and further stated that should Gahatraj2017 Limited speedily make application for an On-licence before April 6th, he would not oppose its issue.

Decision and Reasons

11. We must have regard to the matters set out in section 136 of the Act when considering any application for a Temporary Authority. This section states inter alia;
 - (1) *A licensing committee may, on the application of a person who appears to the committee to have the right, title, estate, or interest in any premises or in any business conducted in any premises, for which an on-licence or off-licence is in force, make an order authorizing the applicant (or some suitable person nominated by the applicant) to carry on the sale and supply of alcohol for a period, not exceeding 3 months, stated in the order.*
And further.....
 - (4) *On making an order, the committee-*
 - (a) *must impose any conditions that this Act requires an on-licence or off-licence (as the case requires) to be issued subject to; and*
 - (b) *may impose any condition that this Act enables an on-licence or off-licence (as the case requires) to be issued subject to; and*
 - (c) *may impose any other reasonable conditions it thinks fit.*

12. It has been the policy of this committee to include a condition on all Temporary Authority's, where necessary, which states;

"A substantive licence application is to be made by the holder of this Temporary Authority within the three month term of the order."

13. We are satisfied as to the applicant's bona fide title to the premises, and accept that all other matters required to be considered have been met, with the exception of the condition relating to the application for a substantive licence within the prescribed time.
14. We also recognize that the period for which the Temporary Authority was issued has not yet passed, and the Inspectors offer to make the approved floor plan available to the applicant, may yet see compliance with that Authority.
15. For that reason, we took the unprecedented step at the hearing, of emphasizing the importance of responsible actions relating to the sale and supply of alcohol, and the requirements associated with that responsibility. We stated we were bemused that such a simple requirement of producing a floor plan for an already prepared application, could lead to the present, quite correct, opposition by the Inspector.
16. We further recognised the lifeline offered by the Inspector in respect of the floor plan (incorrectly described as a site map), and stated that should a complete On-licence application be lodged with the District Licensing Committee on Friday 5th April, the application for a third Temporary Authority would be granted on the papers, as no contravention of the conditions had occurred, and we requested the Licensing Inspector to advise the Committee of the situation by office close time on the 5th April .
17. Should no application be received on time, the hearing will re-convene to conclude the proceedings.
18. The applicant was advised that regardless of the outcome, the Temporary Authority will expire at 12.00midnight on the 5th April 2019, after which no alcohol may be sold, supplied or consumed on or from the premise to which it relates.

The hearing was adjourned at 2-45pm.

Continuation

By e-mail on Friday 5th April 2019 Mr Waugh, the Liquor Licensing Inspector reported;

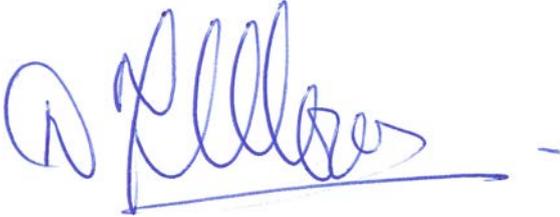
"This morning we received a complete application from Gahatraj2017 Limited for a new On-licence for the restaurant known as Mumbai Spice."

As a consequence the conditions of the current Temporary Authority have been met, and opposition from the Liquor Licensing Inspector becomes ultra vires.

We are satisfied as to the matters to which we must have regard as set out in s.136 of the Sale and Supply of Alcohol Act 2012, and we grant the application.

A copy of the Order, 30/TA/1390/2019 setting out the conditions to which it is subject is attached to and forms part of this decision.

Dated at Napier City Council this 8th day of April 2019.

A handwritten signature in blue ink, appearing to read 'A. P. ...', with a horizontal line underneath.

Chairman
Napier District Licensing Committee.