

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

AND

IN THE MATTER of an application by **BAY VENTURES LIMITED** pursuant to Sections 99 of the Act, for an On-Licence, for the premises situated at 19, Meeanee Quay, Westshore, Napier, known as "Habitat on the Quay".

BEFORE THE NAPIER DISTRICT LICENSING COMMITTEE

Chairman: Mr S. Hylton
Members: Mrs F. White
Mr D.E Fellows

HEARING at Hawkes Bay Business Hub, 36, Bridge Street, Napier.
On Monday 15th February 2021.

APPEARANCES

Mr L. Singh.	Applicant.
Mr J. Cameron.	Counsel for the Applicant.
Sgt. R. Wylie.	NZ Police, to assist.
Mr D. Waugh.	Liquor Licensing Inspector, to assist.
Ms T. Te Whaiti.	for Medical Officer of Health, to assist.

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

1. This is an application by Bay Ventures Limited for an On Licence for the premises situated at 19, Meeanee Quay, Westshore, Napier and known as Habitat on the Quay.
2. The application drew no reports of opposition from the Police, Medical Officer of Health or the Licensing Inspector, but three objections were received from the public within the statutory time frame, all of which were deemed to meet the prescribed requirements for public objections.
3. Prior to the hearing two of the three objectors had notified of their non-attendance. At midnight before the hearing a National Alert Level 2 Covid restriction had been introduced, consequently the third objector, a school principal, advised that his responsibility was with his staff and pupils at school and was unlikely to be able to attend.
4. The matters raised by the objectors related to the amenity and good order provisions of sec 105 (1) (h) and (i) and the hours of operation of sec 105 (1) (d). These issues were summarized in the Licensing Inspector's report and although the Inspector shared some of these concerns it was not to the extent that he opposed the application.

5. The Committee decided that there was a case for gathering further information on the application and that natural justice would be served by continuing with the hearing.

The Hearing

6. Mr Justin Cameron, Counsel for the Applicant, spoke at length covering and expanding on the information proved by Mr Lovedeep Singh in his application. He confirmed Mr Singh was the sole director and principal shareholder of the company, with Mr Narinder Singh, and they intended to run the business as a fine dining five star restaurant.

7. He stated that the premises were previously used as a restaurant which held an On Licence as part of a motel complex, but had been closed since October 2018, when the motels had been acquired for transitional housing.

8. In respect of the management, Mr Cameron stated that in addition to the two managers listed on the application, further staff have been contacted and would be available once the licence is issued. He stated that both shareholders will also be undergoing training towards certification.

9. Mr Lovedeep Singh, stated he had no written evidence to give but confirmed all that his Counsel had stated was true and that he would answer any questions raised in cross examination on matters dealt with by Mr Cameron, and any other issues.

10. In answer to questions raised on the staff availability for the hours of operation, Mr Singh stated that the hours of 8.00am to 12.00midnight, Monday to Sunday, were standard hours, but would not be used. He stated that initially he intends to open from 5.00pm to 10.00 pm for dinner, 7 days a week, and at lunchtimes on weekends.

11. Mr Lovedeep and Mr Cameron then requested a pause in the proceedings, and with Mr Narinder Singh discussed the hours of operation following a request from the Chair as to what hours they would consider acceptable should the need arise. Upon resuming the cross examination Mr Lovedeep Singh stated that the hours of 11.00 am to 11.00 pm, Monday to Sunday, could be accommodated.

12. With reference to those hours and the staffing concerns raised by Mr Waugh, the Licensing Inspector, Mr Singh said that Mr Sanandeep Singh, a certificated manager listed on his application and at present working in Wairoa, would be joining the business, also another certificated manager Mr Pahadur Singh would be given an employment contract once the business is up and running. He further confirmed that Mr Narinder Singh let his certificate lapse in 2018 but would be seeking a renewal, and that he would also be seeking qualification.

13. Mr Singh stated that the menu provided with the application was a guide to the fine dining the company would be providing, and would be adjusted following consultation with the chef once on contract. He confirmed that a BYO endorsement was required.

14. He stated that the budget for the business was around \$60,000, with a seating capacity as shown in the deposited plan of a maximum of 40 diners. He confirmed that his target cliental was not based around the transitional housing tenants. The applicant's commercial interest in the site was confirmed to be that of the restaurant only and not the Motel accommodation.

15. Following questions from Sgt. Wylie, Mr Singh confirmed that there would be no bar, as all alcohol would be served at the table. He also stated that BYO wines would be served by waiters. He confirmed his knowledge of the provision for Temporary Managers when asked.

16. Mrs Theresa Te Whaiti, representing the MOH, sought clarification of the position of the principal entrance. Mr Singh confirmed that this entrance was accessed from the driveway to the transitional housing units. He further stated that this area was not for patrons parking, as parking was available on the street only.

17. Mr Darryn Waugh, Liquor Licensing Inspector, gave further evidence stating he was satisfied that the concerns in his report in relation to hours of operation and staffing had been covered, and he would concentrate on the issues relevant to sec 105 (1)(h) and (i).

18. He confirmed that the proposed restaurant had previously been licensed as part of the Marineland Motel complex which included all the motel units. The motel On Licence lapsed in October 2018. Under cross examination he stated that a visit to the premises was probably done annually and at no time was there ever any cause for concern.

19. He stated that on receiving the public objections and the concerns of crime, local and domestic violence and general disturbance of the peace, in and around the transitional housing units, he made Official Information Act enquiries with the Ministry of Social Development.

20. He said that the response for information indicated that the 22 units have been used for transitional housing since October 2018, and generally have an average of 90% occupation rate. He learnt that housing support services were contracted to Emerge Aotearoa, but after considerable effort, he was unable to contact them.

21. Mr Waugh stated he made an Official Information Act enquiry with the Police National Intelligence Agency (NIA) requesting the number of occurrences in the Westshore suburb of disorder/fighting, family violence, burglary, theft ex car, unlawful taking and assaults, between 1 June 2018 and 23 November 2020, together with specific occurrences at Marineland Motel, 19 Meenaee Quay, and those occurrences involving alcohol. He stated he further requested the same information for the Westshore suburb from 1 January 2016 to 31 May 2018.

22. Mr Waugh revealed that the NIA were unable to answer all his requests but provided information relating to occurrences at Marineland Motel since the provision of transitional housing. He stated there were 108 attendances, 66 were of domestic violence and assaults, and records showed there were 6 occasions where alcohol was involved.

23. Mr Waugh further stated that within 1 km of the proposed restaurant there were 3 Off licence and 12 On licence premises, and referenced sec 105 (1)(i) with respect to the number of licensed premises already in the area. He felt he was not in a position to answer whether this was sufficient grounds for the refusal to the issue of another licence.

24. Upon cross examination Mr Waugh conceded that the offences he referred to were rare at licensed restaurants, that 6 alcohol related offences were not related to a restaurant and were very low in number, and that it was unlikely that the tenants of the transitional housing would frequent a fine dining restaurant.

25. Sgt Wylie was asked for comment in respect of the seemingly high number of attendances in the locality. He stated that this information from NIA was not readily available to him, and explained that whilst the information was reported, it was raw data and could not be used as finite information. The number of occurrences could include many visits in respect of the same domestic incident, and the reporting was often of a “tick the box” nature, where alcohol and other observations were noted. He confirmed that the Police did not consider the number unusual.

26. He further stated that transitional housing tenants were vulnerable in relation to alcohol abuse, but acquired their alcohol from low cost off licence sales. He said that anecdotal evidence suggested restaurants posed no problems in respect of alcohol abuse, and could see no effect on the amenity and good order of the area to the issue of this licence.

27. Sgt. Wylie also expanded on the number of licensed premises in the area of the proposed restaurant, and said that most were far away across the estuary and were not considered as part of the restaurant locality, neither would the restaurant be included in the walk past route, and the Police did not consider them relevant to the amenity and good order issue.

28. In his closing submission Mr Cameron confirmed that full employment contracts would be made once the licence was granted. He emphasized that Mr Narinder Singh, the minor shareholder of the company, had many years’ experience in the hospitality industry. He concurred with the Police observation that the transitional housing tenants would not be likely to use the restaurant.

Decision of the Committee and Reasons

29. Whilst it was disappointing that none of the objectors were able to attend, the reason for one of which was totally outside his control, we were satisfied that all the objectors concerns were well documented in the Inspector’s Report and well considered during the hearing by way of questioning and cross examination.

30. The Committee in determining this application is mindful that all of the three statutory reporting agencies responsible for surveillance and monitoring of licensed premises, offered reports of ‘no opposition’.

In British Isles Inn Limited NZLLA PH 406/2006, the Authority stated [at 39]: “...We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an Applicant is unsuitable.”

More recently in Ponda Holdings Limited [2014] NZARLA PH 558 the Authority said [at 12-13]: “The same principle applies to the new criteria contained in s 131 and 105 of the Act. Thus, when considering s 131(1)(b) of the Sale and Supply of Alcohol Act 2012, where there are no adverse comments by the reporting agencies it is unlikely that an objector will satisfy the Authority that “the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence”.

In Narrows Landing Limited NZLLA PH 479/2003, the Authority recognised that it can be hard for objectors to mount a sustainable objection in respect of matters such as noise and nuisance. However, it is equally difficult for an Applicant to respond effectively if the criticisms are too generalised.

31. Within this context the level of objection and threshold of evidential argument would need to be conclusive in order for this application to be declined. Additionally the fact that the objectors did not attend the hearing and were unable to have their evidence cross-examined by parties including this Committee, lessens the weighting we can give the information contained within the objections.

In *Kim and Chang (Liquor Mate)* [2009] NZLLA 1470, the Authority stated [at12]: “As for the remaining objectors, their objections carry little weight. Given the lack of any explanation for their non-appearance it is not possible to ascertain whether these objectors wish to continue with their objections or have lost interest in the outcome. At any event the Applicants and their agents were prevented from testing any of these objector’s claims and assertions. To make a ruling adverse to an Applicant based on an unsupported objection is a denial of natural justice.”

32. Notwithstanding the above matters of law for which we must have regard to in our decision, the Committee were of the view the objections were legitimate concerns and well made.

33. The Committee is required, in respect of an application for an on-licence, to:

- (a) Consider any objections;
- (b) Consider any and all reports filed by the agencies;
- (c) Have regard to criteria stipulated in s.105 of the Act;
- (d) Finally cross-check whether the application is capable of meeting the object of the Act as stated in s. 4.

s105 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.*

We shall address each issue individually

34. **Sec 105(1)(a) Object of the Act.** This relates to the safe and responsible sale supply and consumption of alcohol and the minimization of harm caused by excessive or inappropriate consumption of alcohol. All the reporting agencies consider that the occupants of the transitional housing units would be unlikely to use the restaurant facilities, and would be unlikely to be affected by its presence, to which we concur. Furthermore, we are satisfied, that having considered the remaining criteria in sec 105(1), that the proposed licence offers no inducement to create a breach of the object of the Act than any other well run licensed restaurant.

35. **Sec 105(1)(b) Suitability.** Bay Ventures Ltd are a registered company with no apparent misdemeanors and have a shareholder, and an impending employee, with experience in the hospitality industry. We are therefore satisfied with the suitability of the applicant.

36. **Sec 105(1)(c) Local Alcohol Policy.** The application meets all the relevant requirements.

37. **Sec 105(1)(d) Days and Hours of Operation.** The requested hours of 8.00 am to 12.00 midnight, Monday to Sunday, were raised by objectors and the inspector as of concern. That concern related to the extensive number of hours the restaurant might be open per week along with the applicants' ability to manage those extensive hours with only one named certified manager. The Committee heard that the actual hours of operation intended by the applicant was far less than those applied for, notwithstanding special occasions etc. As these concerns were raised by submitters and the applicant stated that they could live with truncated hours, the Committee is satisfied that the revised hours of 11.00 am to 11.00 pm, Monday to Sunday, are more realistic hours should the license be granted.

38. **Sec 105(1)(e) Design and Layout.** The layout was comparable to many other restaurants, and the principal entrance location from the driveway to the transitional housing units was acceptable.

39. **Sec 105 (1)(f) Sale of Other Goods.** The applicant has stated no other goods will be offered or sold.

40. **Sec 105(1)(g) Other Services.** The applicant has stated they will not be engaging in any other services.

41. **Sec 105(1)(h) Reduction in amenity and good order by the effects of the issue of the licence.** We have heard from the Licensing Inspector that from information he has accessed, there appears to have been a reduction in the amenity and good order of the neighbourhood created by the introduction of the use of the Motel complex for transitional housing. Both the Police and the Licensing Inspector stated that restaurants are very rarely the cause of public disorder. The Inspector also stated that inspections and visits, generally annually, to the premises had never given cause for concern or problems. We considered that whilst street parking could give rise to occasional complaint, the premises had nevertheless received Resource Consent approval. This, together with the reduced hours, and the reporting agency's evidence that restaurants rarely give rise to disorder,

we are of the opinion that the amenity and good order of the locality will not be reduced further than only a minor extent.

42. **Sec 105(1)(i) Whether the amenity and good order of the locality are already so badly affected by the effects of existing licenses (our emphasis).** The Licensing Inspector stated that of the 15 licensed premises in the locality, only 2, a Liquorland off-licence and the Westshore Hotel, could be considered as relevant to the locality of the application. This was also agreed to by Sgt. Wylie who added that the other licensed premises were so remote as not to be considered as part of this application's locality, even to the extent that it is not considered as being 'en route' to those premises, but is best thought of as a stand-alone application. We are therefore of the opinion that the effects of the amenity and good order caused by other existing licences is of minor consequence to this locality and therefore has little effect on the desirability to issue a further licence.

43. **Sec 105(1)(j) Systems Staff and Training.** The Committee heard evidence of the applicants' staff availability and understanding of the need to obtain the necessary qualifications and manager's certificates. We are satisfied that the applicant will take the necessary steps to fulfil the necessary systems, staff and training to manage the license and meet conditions of the license and requirements of the Act e.g. Subpart 7 of the Act relating to management requirements of licensed premises.

44. **Sec 105(1)(k) Reports from Agencies.** Matters from these reports have been suitability covered in earlier evidence.

45. Lastly, the Committee is required to consider the application in light of the object of the Act. That is having regard to the criteria in s.105, and having balanced the evidence before it, the Committee is required to consider whether the grant of the licence is consistent with the Act's object of minimising alcohol-related harm. On balance and considering the evidence before it, the Committee is satisfied that grant of this licence is consistent with the Act's object.

46. We are satisfied that the concerns of the objectors, as they relate to this licensing matter, have been suitably considered and that the application for an On-licence by Bay Ventures Limited meets all the requirements with which we must have regard. Accordingly we grant the issue of the On-licence.

47. The licence will not issue until the expiry of 10 working days from the date of this decision. That period is the time provided by s.155 of the Act for the lodging of a notice of appeal.

48. The application is approved for one year and 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 whilst the premises are being operated as a restaurant only on the following days and during the following hours:

Monday to Sunday 11.00am to 11.00pm.

- (c) The following steps must be taken to promote the responsible consumption of alcohol:

- (i) At all times when the premises are open for the sale of alcohol, a reasonable range of non-

alcoholic refreshments and low alcoholic beverages must be available.

- (ii) The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of alcohol.
 - (iii) Food must be available for consumption on the premises at all times when the premises are open for the sale of alcohol in accordance with the menu submitted with the application for a licence, or variations of that menu of a similar range and standard.
 - (iv) The licensee must ensure that signs are prominently displayed within the licensed premises detailing the availability of assistance and information regarding alternative forms of transport from the premises.
- (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 at the bar or counter and served directly to patrons at the table.
- (f) The whole of the premises is undesignated.
- (g) The principal entrance for the display of signs and the licence, and those parts of the premises for the consumption of alcohol are more precisely outlined in a plan of the premises, date stamped as received by the Napier District Licensing Committee on 28th October 2020.

Dated at Napier this 1st day of March 2021



Stuart Hylton
Chairman
Napier District Licensing Committee.