

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012  
("the Act")

**A N D**

**IN THE MATTER**

of an application from **Firebird2020 Limited** pursuant to s100 of the Act for a new On-Licence in respect of the premises situated at 58 Oxford Street, Levin, known as 'Firebird Café'

Decision 136/2023

**BEFORE THE HOROWHENUA DISTRICT LICENSING COMMITTEE**

Chairperson: Cr Ross Brannigan  
Members: Mr Allen Little  
Mr Martyn Slade

**HEARING** at Levin on 8 June 2023.

**APPEARANCES**

- (a) Ms Toni Frances Bolland – Applicant
- (b) Alcohol Harm Prevention, Senior Constable Simon Carter – NZ Police, in opposition
- (c) Mr Eric Gimpel – Alcohol Licensing Inspector
- (d) Ms Jill Job – Public Health, Te Whatu Ora, Health New Zealand

**RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE**

**Introduction**

1. This application follows a previous application that was first received on 31 October 2022, and put on hold as incomplete because the application did not meet the lodgement requirements as per section 100(c) and 100(f) of the Act, in that the application did not provide details of any persons that hold a current Managers Certificate, and no confirmation of a certificate of compliance from the Territory Authority.
2. In an application that was received as complete on 15 February 2023, Toni Frances Bolland, as the sole Director for Firebird2020 Limited applied for a new On-Licence for the premises situated at 58 Oxford Street, Levin, trading as Firebird Café.
3. The application was duly advertised on Councils website and the premises itself between 16 February and 9 March 2023, which resulted in no public objections. In accordance with section 103 of the Act, the application was sent to agencies to inquire into the application. Matters of opposition were received from the NZ Police during this process.

4. The applicant sought a new On-Licence to operate seven (7) days a week from 11.00am to 11.00pm. These hours are within the default national maximum trading hours for an On-Licence, and with the operative Horowhenua Local Alcohol Policy (“the LAP”).
5. Firebird2020 Limited leases the building at 58-60 Oxford Street Levin, and provided confirmation of permission to serve alcohol on the premises from the building owner.

## **Background**

Firebird Café is a pizzeria restaurant located in a commercial area on Oxford Street Levin. The pizzeria has a largely open plan floorplan with a staging area used for live entertainment, and an eclectic arrangement of seating options in the space. The café opened in May 2021 and the applicant has held a number of special licences since this time, for mainly music events.

## **Reporting agencies**

Reports were received from all three agencies, with NZ Police submitting matters in opposition. The Licensing Inspector and the Medical Officer of Health submitted no matters in opposition, however provided recommendation to the Committee of suitable conditions to be added to any licence granted.

NZ Police opposed the application based on concerns based on applicant suitability.

## **Evidence**

### **Applicant**

1. Toni Bolland introduced herself and told the Committee of her vision for the Firebird Café. Toni told the Committee that the premises was set-up as a social connection space, to help create a community family friendly environment with local and outside of town people where everyone can get involved. Ms Bolland said the premises isn't a bar but a community space, for people to visit and have good food and maybe listen to a performance.
2. Ms Bolland told the Committee that the focus of having an alcohol license is not about money, but about community. Telling the Committee that to have a licence would complete the package for her premises, of providing a place to have a timeout, a dinner or lunch event.
3. Ms Bolland addressed the concerns reported in the brief of evidence supplied by NZ Police, telling the Committee that she is willing to cut the hours down from 11.00am till 11.00pm seven days a week, to 11.00am till 11.00pm on four days a week being from Thursday to Sunday.
4. On behalf of the applicant, Ms Lilly Saville told the Committee that many people who visit the premises say that they need a licence, providing feedback that there is no-where else around like it. Ms Saville said that it's about New Zealand culture, that it is nothing special but part of the Kiwi culture.
5. Ms Saville confirmed to the Committee that alcohol is proposed to be supplied through table service, telling the Committee that this is part of the experience and creates more control. Ms Saville said that table service helps the overall team work better and that it is a better system for their business. Further on the topic of table service, Ms Bolland acknowledged that although it can difficult to manage at times, it was better than having to deal with queues and the chaos associated with bar service.
6. Responding to a question from the Committee about the applicants commitment to training and development, Ms Bolland responded by saying that they had implemented staff meetings, and

that in the recruitment of new staff that they are looking for hospitality stars who share the “dream and vision” as opposed to people who are there for the money.

7. Ms Bolland told the Committee that if granted a licence, she will adhere to the law around alcohol licensing; that she works on mutual respect and will be happy to have inspectors come and visit whenever. In regards to the applicant’s relationship with agencies, Ms Bolland said that there is a lot of repair.

#### The Police Submission

8. Senior Constable Simon Carter addressed the Committee prepared a written brief of evidence which was provided to the Committee and all parties prior to the hearing. Senior Constable Carter spoke to the majority of his written submission, however at times took some parts of the evidence as read by the committee.
9. Police told the Committee that the basis for their opposition was surrounding the object of the act; suitability of the applicant with regards to the applicant’s non-compliance and disregard of the Covid-19 alert level systems and the introduction of the Covid-19 traffic light system; the Horowhenua Local Alcohol Policy with regards to the proximity of the premises to the Weraroa Domain; and whether the applicant has appropriate systems, staff and training in place to comply with the law.
10. Senior Constable Carter acknowledged that in relation to the suitability of the applicant that the previous reserved decision of the Committee, decision 63/2023 encompasses many of the same points raised and heard during the hearing held in March 2023. Senior Constable Carter told the Committee that the relationship with the applicant has vastly improved since the pandemic.
11. Senior Constable Carter said that Police concern with the applicants suitability stem from the conduct of the applicant during the nation’s response to the Covid-19 pandemic. Police submitted that reports were made by members of the public via the Police 105 reporting line informing of breaches of the Covid-19 protection framework laws in place at the time by the applicant at Firebird Café. Police were of the belief that these reports could not be ignored and should be considered by the Committee with regards to this application. In the brief of evidence submitted by Police there were summaries of the separate incidents that were reported to Police 105 line between 25 July 2021 and 4 February 2022.
12. Police submitted that it is their view it was the applicants stance during the pandemic, and the messaging displayed by the applicant was a position of non-compliance, and together with reported breaches of the Covid-19 protection framework, was seen as an attack towards Government decisions. Police submitted that they are a direct agent of the Government whilst performing their duties, and referred to the following decision of the Licensing Authority with regards to the applicants suitability;

Saints, re [2005] NZLLA 584:

*“From time to time in proceedings before us, parties seek to attack the messenger rather than the message. In doing so, they need to know that they are more likely to send out a signal about their own suitability to hold a licence. We accept that all parties are entitled to be dealt with fairly and professionally by District Licensing Agency Inspectors, the Medical Officer of Health, and the Police. Where this does not happen we have not hesitated to make comment. However, the great majority of all inspectors, and health professionals, and members of the Police who have appeared before us have been totally professional. We rely on them to monitor and enforce the Act. Without their assistance, there would be no point in having a licensing system. Those who seek to indirectly undermine and*

*intimidate the reporting agencies need to understand that they are unlikely to receive any sympathy in this forum."*

13. Senior Constable Carter told the Committee that Police do not question the applicant's own values or personal beliefs during the Covid-19 national response period. Instead, Police submitted that in order to be a licensee, there must be a very strong level of trust and belief that all applicants will uphold all of the laws and regulations all of the time, despite one's own personal beliefs. Police submitted the following case law in support of this concern;

Two Brothers Wholesale Limited [2021] NZARLA 32:

*"...decision refers to the fact that there is no special statutory meaning of "suitability". That does not surprise me. Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in the Concise Oxford dictionary as "well fitted for the purpose, appropriate".*

14. Police submitted that location of the premises is in an area of town where there is a high density of other licensed premises and pointed the Committee to the Horowhenua Local Alcohol Policy point 1.5 concerning the limiting of licensed premises in the location and density in particular areas.
15. It was submitted that the proposed premises is situated within 100 metres of the legal site boundary of a public park, being Weraroa Domain across the road; Police referring to point 7.2(b) of the Horowhenua LAP

*"No new on-licences shall be issued for any premises located within 100 metres of the legal site boundary of any school, early childcare facility, place of worship, Marae, health care facility, public park or reserve, urupa, or cemetery existing at the time the licence application is made."*

16. Senior Constable Carter told the Committee of Police concerns that if the premises is licensed that consideration be given by the Committee about the impact the floor to ceiling windows directly facing the road, and the proximity to the nearby public park where families and other members of the public frequent. Submitting that to do so without consideration would be inconsistent with the LAP provisions.
17. It was submitted that a strip about table height across all of the windows to provide a visual barrier between the patrons and the outside public would be appropriate, as well as the installation of signage inside the premises informing that no alcohol is to be taken outside. It was noted by Police that the area outside the premises is included in the Horowhenua Alcohol Bylaw, Alcohol Ban area.
18. Police also submitted concern that the days and hours applied for will be unmanageable with only one duty manager. Police submitting that additional staff are required who are suitably qualified and who can provide cover in the duty manager position. Furthermore, Police requested the review of the proposed days and hours to reflect when a certified duty manager could be present at all times the premises is open.

#### Alcohol Licensing Inspector

19. Mr Gimpel referred to his written report submitted as required by section 103 of the Act and requested the Committee take the report as read. There were no matters of opposition included in the inspector's written report, however Mr Gimpel provided recommendation to the Committee encouraging standard conditions be included in any licence granted.

#### Medical Officer of Health

20. Ms Job addressed the Committee on behalf of the Medical Officer of Health, and Te Whatu Ora. Ms Job told the Committee that a visit to the premises was carried out by the agency in February 2023. Ms Job told the Committee that the agency thought the applicant had good systems in place to manage the sale and supply of alcohol responsibly, however noted that they held concern about the number of certified managers employed, with a view there was not enough cover for the days and hours applied for.
21. Ms Job told the Committee that the main concern in relation to this application is the applicants disregard for the Covid-19 rules during the pandemic. Posing the question of how agencies and the Committee can have confidence in applicant's adherence to the law when behaviour displayed during the Covid-19 period did not comply, potentially putting the public at risk at the time.

### **Legal framework**

22. The criteria the Committee must use in considering whether to issue this licence are set out in section 105 of the Act. It is also noted that when forming an opinion in respect of effects on amenity and good order the committee must also consider section 106.

### **Section 105 matters**

#### ***Object of the Act – s105(1)(a)***

23. The Committee has considered the object of the Act in reaching its decision on the application and did not have any concerns regarding the safe and responsible sale, supply and consumption of alcohol or in relation to minimising excessive or inappropriate alcohol consumption.

#### ***Suitability – s105(1)(b)***

24. The Committee acknowledged that this was a large consideration in the report and evidence submitted by Police, and sought assurances from the applicant with regards to their commitment to observing alcohol laws and the responsibilities of a licensee.
25. The Committee made note of the recent improvement in the relationship between the applicant and the agencies notably the Police, and expects to see this continue.

#### ***Any relevant local alcohol policy – s105(1)(c)***

26. The application of the Horowhenua Local Alcohol Policy also featured prominently during the hearing, and the Committee canvassed all aspects of the LAP with particular focus on the location of the premises and part 7.2(b) of the policy.
27. The Committee discussed the proximity of the premises to the public park across the road, and how the sale, supply and consumption of alcohol might be viewed from the public spaces.
28. The Committee has considered the applicants evidence about the predominant business carried out in the premises being for seated dining where alcohol is supplied by table service. The Committee expressed their support of the operation of the premises in this manner.
29. While the Committee accepts that the location of the premises is in breach of part 7.2(b) of the LAP. The Committee also accepts that the proposed operation of the premises in this location is not too dis-similar to the activities already operating on the site. Therefore, the Committee

considers that the operation of a licensed premises in the proposed location will have a less than minor impact on the community and the area.

30. Furthermore, in relation to part 7.2(a) of the LAP, the Committee accepts the Certificate of Compliance has been obtained by the applicant, Firebird2020 Limited, and therefore warrants no further consideration by this Committee.

***The days upon which the Applicant proposes to open – s105(1)(d)***

31. The Committee considered the evidence given by Police and the Medical Officer of Health in relation to the number of certified Managers available for the premises; and acknowledges and accepts the applicant's suggestion to reduce the number of days and hours the premises operates.

***The design and layout of the premises – s105(1)(e)***

32. The Committee are satisfied that the premises is well set up for the proposed operation, accepting that the premises is currently operating in a significantly similar manner.
33. The Committee noted that there is facility for residential accommodation on the premises, and notes that at present it is not occupied; as well as the applicant's aspirations of turning the upstairs area into a gallery. The Committee therefore cautions the applicant to ensure that should this accommodation be used or the gallery be further explored that it will need to be managed with adherence to any alcohol licence and its conditions.
34. The Committee had some concern about pedestrians and members of the public being able to view the sale, supply and consumption of alcohol from the outside, and have considered appropriate conditions to reduce this occurrence. The Committee considers that screening from the public is appropriate as a condition which is to form part of the requirements to the issue of the licence.

***Sale of goods and services other than those relating to alcohol and food – s105(1)(f) & (g)***

35. The Committee had no concerns in this regard.

***Amenity and good order – s105(1) (h) & (i)***

36. The question the Committee must answer is whether the amenity and good order of the area would be likely to be reduced to more than a minor extent by the effects of the issue of the licence. Consideration must also be given to section 106(1)(a) & (b).
37. The Committee did not have any concerns in relation to current or possible future noise levels associated with the activity.
38. The Committee acknowledges the current use of the property and are of the view that the primary activity on the premises is restaurant dining type operation, with the sale and supply of alcohol being complimentary to these operations, in providing a convivial seated dining and live music event environment.

***Appropriate systems, staff and training – s 105(1)(j)***

39. The Committee noted the applicant has two staff that have recently attained their Managers Certificates, and that other staff had also recently sat and passed their licensing controller qualifications. The Committee was encouraged by the support provided to the applicant by her

daughters, one of which was present at the hearing, and both of whom hold current Managers Certificates.

40. From the evidence presented during the hearing, the Committee considered that the number of certified Managers available for the premises is not sufficient for the successful operation of the premises. The Committee acknowledged and agreed with the applicants suggestion of reducing the days and hours the premises is proposed to operate.

### **Reporting agencies – s105(1)(k)**

41. The Committee considered all evidence provided by the reporting agencies during the hearing, and in coming to this decision.

### **Conclusion**

42. The Committee is satisfied that through the hearings process carried out that the proposed sale and consumption of alcohol on the premises is to be secondary to the predominant activity of seated dining operations, the Committee noting that the general public would see no material change to the activity already happening on the site.
43. The Committee took note of the concerns raised with regards to the possible visibility of alcohol products from the public areas being the footpath outside the premises, as well as the public park across the road, and in doing so considered in particular one of the goals in the LAP being *“...so that licensing decisions, encourage licensed environments that foster positive, responsible drinking behaviour and minimise alcohol-related harm.”*

### **Decision**

Giving due consideration to all the evidence before the Committee and during the hearing, and for the reasons outlined above the decision of the Committee is to grant the licence application for Firebird2020 Limited, subject to the standard conditions within the Act, with the following additional conditions:

- Alcohol may be sold only between the hours of 11am to 11.00pm on Thursday, Friday, Saturday and Sunday.
- Signage be erected inside the building and in a prominent and easily identified location near the exit informing that alcohol is not permitted outside the main doors on Oxford Street Levin, nor outside the licensed area.
- No alcohol is not to be advertised, sold, supplied or consumed outside the premises which includes the outdoor seating area directly outside the building.
- Alcohol must be sold and supplied by table service only.

**DATED** at LEVIN this 19<sup>th</sup> day of July 2023.



R Brannigan  
Chairperson

