

**IN THE MATTER**

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

**AND**

**IN THE MATTER**

Of an application from  
**MANAKAU HOTEL (2015)**  
**LIMITED** pursuant to s127 2) of  
the Act for the Renewal of an  
On-Licence

Decision 4/2017

**BEFORE THE HOROWHENUA DISTRICT LICENSING COMMITTEE**

Chairperson: Cr Ross Brannigan  
Members: Mr Philip Comber  
Mr Allen Little

**HEARING** at Levin on 20 December 2016.

**APPEARANCES**

- (a) Ms Natalie Smith for the applicant
- (b) Ms Moira Cooke for the applicant
- (c) Mr Vincent Cornell-Cooke for the applicant
- (d) Ms Judith Webby – resident
- (e) Ms Helen Feek - resident
- (f) Ms Susan Gardner – resident
- (g) Mr James McCown – resident
- (h) Senior Constable Simon Carter, NZ Police
- (i) Ms Lisa Roiri, Liquor Licensing Inspector – to assist

**DECISION OF THE DISTRICT LICENCING COMMITTEE**

**Introduction**

This decision relates to an application by Manakau Hotel (2015) Limited for renewal of an on-licence in respect of the premises trading as Manakau Hotel situated at 39 Honi Taipua Street, Manakau.

The application was filed on 6 October 2016, with the hearing held on 20 December 2016.

A renewal licence is sought for seven days a week from 9.00 am to 1.00 am the following morning.

## **Reporting Agencies**

None of the reporting agencies: NZ Police, Public Health or the Liquor Licensing Inspector, opposed the application.

However during the administration period of the application, an event was held at the Manakau Hotel which resulted in seven (7) noise complaints, a verbal warning to abate noise and a formal excessive noise direction. In consideration to the parties who submitted noise complaints on the night of this event, a District Licencing Committee Hearing was held.

At the time of the hearing the applicant was working towards attaining an approved fire evacuation scheme.

## **Background**

There has been a hotel operating from this site for many years under various names and licensees.

The company was incorporated on 13 August 2015, with a capital of 100 shares, with Milton and Denise Steele being equal shareholders and the Directors of the company at this time.

Since incorporation there has been one (1) change in shareholders and Directors with effect from 12 October 2016:

- (a) Vincent Maehe Te Kakakura Corneli-Cooke – 51 shares
- (b) Natalie Ngatinii Smith – 49 shares

On 2 December 2016 the hotel hosted a music event of a well-known NZ artist that generated seven (7) noise complaints between 8.06pm and 12.03am. One (1) verbal warning to abate the noise was given by Council's noise control contractor, and a formal Excessive Noise Direction notice was issued at 11.34pm.

## **Evidence**

1. Ms Natalie Smith, Ms Moira Cooke and Mr Vincent Cornell-Cooke appeared on behalf of the applicant. Ms Smith spoke to the Committee about the success of a recent event held on 2 December 2016 at the hotel of a performance of a well-known music artist, and it having attracted patrons from as far field as Porirua and Wellington.
2. Ms Smith informed of her previous experience working in pubs in Levin and Central City Wellington and of her business partner, Mr Cornell-Cooke's experience in organizing events. Ms Smith said the hotel was working to produce a noise control plan and offered to provide an event calendar to the Committee and the Community.
3. Ms Smith advised the Committee of the hotels slogan "Continue as One" in work with the community and of her opinion in believing the present operating hours (9.00pm to 1.00am the following morning) to fair and reasonable.

4. Ms Cooke spoke about having met with the hotel's events manager, Paepae Management following noise complaints received regarding the event held on 2 December 2016. Ms Cooke told the Committee of her interaction with Council's noise control contractor on the night of the event and of her understanding of being allowed one (1) hour to shut down the event from being issued an abatement notice at 11.20pm. Ms Cooke believed that compliance with this notice occurred whereby both the garden bar and the inside entertainment finished at 12.10am and the bar closed at 12.20am.
5. Mr Little questioned whether the applicant had dealt with a similar situations in the past, Ms Smith informed that when running the Q Bar and Lounge in Courtney Place Wellington she managed through a similar situation by working with the residents and providing a six (6) month calendar of events. Mr Little also asked Ms Smith if she had personally met with the Manakau Community of which she replied she hadn't personally but understood that Mr Cornell-Cooke and Ms Cooke had.
6. Mr Comber questioned the applicant what time was thought reasonable to shut down an event. Ms Cooke responded that 10.00 pm or 11.00 pm would be reasonable in the garden bar, and 12.00 am inside the premises.
7. The applicant mentioned a petition they had that was signed by seventy three (73) locals stating they wished to keep the venue open. Following further questions from Mr Little and Mr Comber it was established that the people who had signed the petition were all patrons of the business and were not necessarily residents in Manakau Village.
8. The Chair informed that the petition would simply be noted.
9. Four (4) local residents spoke about their concerns regarding noise in relation to the event on 2 December 2016; Ms Judy Webby including a written statement from Geoff Stent, Ms Helen Feek, Ms Susan Gardner and Mr James McCown.
10. When speaking to the Committee all outlined similar concerns, namely noise from the DJ playing outside in the garden bar earlier in the evening and noise from inside the premises later; the bass in particular was highlighted as being an issue.
11. In her evidence Ms Webby informed the Committee that she had not received any notification from the applicant about the event, and in her opinion she did not consider the community had been informed.
12. Ms Webby informed the Committee that she had called the pub on the night regarding the noise to ask them to turn it down, but no-one answered the phone.
13. Ms Webby and Mr Stent expressed that they considered the applicant to have showed a disrespect to noise control for not heeding the verbal warning, and they observed there was no lessening of the noise until 12.45am.
14. Ms Webby also advised the Committee of having witnessed people outside in the hotel in the public carpark consuming alcohol around 8.30pm.

15. Ms Smith responded to Ms Webby's statement by claiming that people consuming alcohol in the carpark outside the premises was not her responsibility.
16. Ms Gardner informed the Committee she believed the event on 2 December to be noisy and that the noise complaints were justified. Ms Gardner also expressed her support for the hotel and mentioned the pub is an integral part of the community and the district and has supported the community in sports sponsorships and the ANZAC parade in the past.
17. The Liquor Licencing Inspector and NZ Police expressed no concern regarding the applicant's suitability.

## **Legal Framework**

18. The criteria the Committee must use in considering whether to issue this licence are set out in section 131 of the Act. These criteria largely repeat those under section 105 relating to issue of new licences, including having regard to the objects of the Act as set out in section 4.

More particularly, the Committee must consider:

- (a) the matters set out in section 105(1)(a) to (g), (j) and (k) of the Act;
- (b) whether 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;
- (c) any matters by reporting authorities; and
- (d) the manner in which the applicant has sold, displayed, advertised or promoted alcohol.

## **Committee's decision**

### Section 105 matters

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

The Committee has considered the object of the Act in reaching its decision on the application and is satisfied that the sale, supply and consumption of alcohol will be undertaken safely and responsibly, with harm caused by excessive or inappropriate alcohol consumption minimised.

#### *20. Suitability – s105(1)(b)*

The Committee was satisfied the applicant has established suitability and was impressed on the whole with the company's business plan and supporting information supplied for the hearing process. However the Committee had some concern regarding references in the business plan to free handles for player of the day, and asking customers whether they would like another drink when their glass is a 3<sup>rd</sup> full. This could be considered to be plying people with alcohol which goes against the spirit of the Act.

The Committee also noted concern in relation to the milling of people outside the premises and the applicant is reminded that they are responsible for patrons creating a nuisance outside the premises and need to take a proactive approach to mitigate this.

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

There is no Local Alcohol Policy in force for the area.

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

The hours proposed by the applicant are within the national maximum opening hours as set out in the Act and are considered reasonable.

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

The Committee notes concerns of witnesses who spoke about the noise disturbance and the ongoing impact on their quality of life given they live in close proximity to the business. The playing of amplified music in the garden bar was of particular concern and these effects need to be mitigated.

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

There are no issues arising under this heading.

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

The Act is concerned with the effects of alcohol but also extends to people's enjoyment of their environment. The Committee heard from one witness of the significance of the Manakau Hotel and its importance. The Committee is mindful of the setting of the premises in relation to neighbouring residential properties in particular concerns regarding the effects of noise emanating from the garden bar generated by amplified music.

The Committee therefore imposes by way of condition to the On-Licence the solution offered by the applicant where all amplified music in the garden bar area must cease by 10.00 pm, and inside the venue at 12.00 am.

The Committee heard from a witness that spoke about the history and community significance of the hotel and encourages the applicant to build relationships with the community.

*26. Appropriate systems, staff and training – s105(1)(j)*

There are no issues arising under this heading.

*27. Reporting agencies – s105(1)(k)*

The Committee had the benefit of a police report in relation to the event held on 2 December and stated that the event was well organised and under control.

**Conclusion – Renewal of On-Licence**

1. The Committee was satisfied that the applicant demonstrated suitability under the Act this was supported by the business plan and the noise management plan (received after the hearing).
2. The Committee noted the applicant mentioned a petition signed by 73 patrons of the premises, but this was not taken into account in the final decision.

3. The applicant is reminded of their duty under the Resource Management Act 1991 to take steps to prevent excessive or unreasonable noise emanating from the premises.
4. Accordingly, the decision of the Committee is to renew the On-licence for a period of three (3) years, subject to the following conditions:
  - There is to be no amplified music outside and in the garden bar after 10.00pm and inside the premises after 12.00am.
  - All outdoor speakers and amplifiers need to be positioned to face inwards to the premises and the bass is to be kept to a low level.
  - The applicant must lodge a final copy of the noise management plan with the Secretary.
  - Hotel management need to ensure that any verbal warning or written notice issued by Council's noise control contactor is complied with immediately.

DATED at LEVIN this <sup>11<sup>th</sup></sup> day of January 2017



R J Brannigan  
Chairperson