

IN THE MATTER

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

AND

IN THE MATTER

of an application by **SANDHU 2014 LIMITED** pursuant to s.127 of the Act for the renewal of an ON Licence in respect of premises situated at 17 Plummers Point Road, Omokoroa known as "Sandhu Bar"

HEARING BEFORE THE WESTERN BAY OF PLENTY DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Michael Jones
Member: Arthur Wilkinson

HEARING at Tauranga on 12 December 2018.

APPEARANCES

Ms. Gagan Deep Kaur– for the applicant Sandhu 2014 Limited ("the applicant")
Mr Dougal Elvin – Western Bay of Plenty Licensing Inspector – in opposition
Sergeant Trevor Brown – Police Alcohol Harm Reduction Officer – to assist
Ms. Dawn Meertens- representing the Medical Officer of Health- to assist
Mr & Mrs. Phillip and Donna Cox - Objectors

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

1. By an application received on the 16th of May 2018, **Sandhu 2014 Limited** applied for the renewal and variation of their On Licence. It was duly advertised in the BOP Times on the 26th of May and 2 June 2018 and **one** public objection was received within the permitted timeline.

2. The applicant sought the rollover of the existing licensed hours of Monday to Sunday 10.00am to 12 midnight. These hours are within the default national maximum trading hours for an On Licence and the operative Tauranga and Western Bay of Plenty Local Alcohol Policy (“the LAP”).
3. The business is a small tavern with two pool tables and nine gaming machines and is situated in a semi isolated, rural, light commercial complex near Omokoroa, 170 metres from State Highway 2.
4. They have a regular clientele of ‘after work’ patrons who play pool and the pokies and operate the juke box. We are told 98% of them are smokers and they like to sit outside at the bar leaners in the semi enclosed outdoor area.
5. The Performance Standards in the Western Bay of Plenty District Plan are found in Part 4C.1.3.2. Effectively, noise from activities in this zone must not exceed the prescribed noise limits at the boundary of any other property adjacent to the activity as follows:

*Monday to Saturday 7.00am to 10.00pm an L10 of **50 dBA***

*Sunday 7.00am to 6.00pm an L10 of **50 dBA***

At all other times (i.e. 10.00pm to 7.00am) and on public holidays 40 dBA L10 and 65 dBA Lmax.

6. Police do not oppose the renewal of the licence but express concerns about the isolation of the premises and the need for strong management and the ‘self-monitoring’ of patrons by the licensee. The Police suggested that if the extension in to the carpark was to be granted then maybe it should be time limited to 9pm at the latest.
7. The MOoH did not report within the required timeframe and on that basis, we can assume that they have no matters in opposition.
8. The Inspector opposes the renewal application believing that the management of the premises is not robust enough to deal with the incidents that have occurred over the last 12 months, namely allegations of noise complaints, no substantive food being available on the premises and two occasions where fighting has occurred within the vicinity of the bar’s carpark.
9. Mr and Mrs. Cox live on an elevated site across the road less than one kilometre from the premises. In a letter of objection to the DLC they stated that they have been regularly disturbed by music, people noise and car noise from patrons of the business. They also allege that patrons have been left on site by staff to drink and play music “until all hours.”

10. They were also visited, and rung, by persons from the bar after they had lodged their objection.
11. The application was set down for a formal hearing as the Committee needed to hear about the concerns held by the objectors and the Inspector.

Applicant's Evidence

12. Ms. Gagan Deep Kaur appeared from the applicant company.
13. She told the Committee she was speaking on behalf of her husband who is a director of the company, but she was the 'hands-on' operator of the business. Gurinder Pal Singh, her husband, sat in on the hearing.
14. However, she also said that she has a 2-year-old daughter now who occupies much of her time and she relies on her certificated managers to run the business for her on a day to day basis.
15. Ms. Kaur told us that they bought the business in 2014 and that the licence had been renewed once in 2015. There are 7 other businesses in the commercial complex including a restaurant, The Black Sheep Bar, a coffee distributor, Big Chill, Just Cabins and a towage company.
16. She said they had only had a live band once, in 2014, and since then it has been a Juke box and speakers. She asked why the objectors had not complained on other nights as they had had big gatherings previously for pool tournaments, but no complaints were received. She seemed to think that it was the objector's responsibility to complain about the noise and not hers to monitor and control noise emissions from the premises.
17. She told us if there are complaints, she is happy to turn the music down. Under cross-examination she told us that there were two speakers inside the premises and two in the outside enclosure. The speakers faced inwards and volume was controlled by staff behind the bar.
18. Ms. Kaur conceded that Sandhu Bar was the only business open after 10.00pm in the complex but said most nights they were closed earlier than that. Due to her child care responsibilities she was only on site for a few hours a day during daytime. Earlier in cross-examination from the Inspector she told us that she was on-site for 15-20 hours per week. When asked if she would remove the outside speakers if so ordered she said she would if required to do so. She hoped to re-apply for a manager's certificate and spend more time physically running the bar than she had previously been doing.
19. She relied on two certificated managers, Robyn Mitchell and Kushdeep, to run the business in the afternoons and evenings.

20. Upon receipt of the objection to the renewal, her senior manager, Robyn Mitchell, wrote a letter and canvassed the three neighbours across the road.
21. She wanted the residents to complain directly to her, not the council and she said she would fix any problems they had.
22. She denied that patrons had been left in the outdoor area to keep on drinking but accepted that as it was left open at night patrons could re-enter the enclosure after staff have left. She also agreed that she had no control over patrons remaining in cars or arriving after-hours and drinking and playing music in the car park.
23. The usual hours of business were as follows: Monday, Tuesday & Thursday 2.00pm to 8.00pmish; Wednesday is pool night 2.00pm to 9.00-11.00pm; Friday 11.30am to 11.00pmish and Saturday, Sunday 11.30am to 9.00pmish.
24. She was asked about what transport options were offered to patrons and she told us that they had taxi cards in the bar and a staff member who now drove a courtesy vehicle for them. Under questioning she conceded that he did not have a P endorsement on his driver's licence for him to do that.
25. We asked her about the prevailing noise limits in the District Plan. She was unaware of them and also failed to adequately explain the Object of the Act.
26. She was asked about the provision of food available ON the premises. She conceded that they had breached the Act in January 2018 when the Inspector conducted a site inspection. She believed having the adjacent restaurant's menu available in the bar was sufficient.
27. She conceded that they did not have a register of manager appointments as required by section 232 of the Act.
28. When asked about why she had sought to expand the licensed area to cover a portion of the carpark she was unable to expand on the reasoning other than to say she no longer wanted to seek the enlargement until she had spoken with the landlord. In our view this request appeared to be an attempt to legitimise the drinking and socialising in the car park instead of dealing with the problem itself.
29. We then heard from Robyn Mitchell. She told us she has been working in hospitality for about 8 years and the last 4-5 of those have been at Sandhu Bar. She has previously worked at the Te Puna Tavern. She and Kushdeep cover the main operating hours at Sandhu.
30. She told us about her clientele, namely that they were locals and came to the bar after working at nearby businesses. She said they liked to play the duke box and

the pokies. She said 98% of them were smokers and most sat outside smoking and drinking in the outdoor area.

31. She agreed that they sold little food but did have supplies now if required to make something up. The restaurant next door was also available if necessary if her customers asked for food.
32. Ms. Mitchell confirmed to the Committee that the outside area was left open after-hours and could be re-occupied by patrons after staff had left.

Inspector's Evidence

33. Dougal Laurence Elvin is the Alcohol Licensing Inspector for Western Bay of Plenty.

34. He told us that he had enquired into the application for renewal and variation of the licence and he had concluded that the applicants had bought their overall suitability to hold a licence in to question due to a number of incidents over the last 12 months or so.

35. He received a noise complaint in January 2018 from the Cox's and whilst preparing his response he uncovered other noise complaints and allegations that patrons had been left on site after staff had left and that there had been two reports of fighting in the carpark in July 2017. There was no direct evidence that the persons fighting were customers of Sandhu or had come from cars parked in the vicinity.

36. During a compliance inspection on the 26th of January 2018 he discovered that there was no food for patrons available on site. Staff told him they believed displaying the menu from the restaurant next door was sufficient to comply with the Act.

37. A meeting was held with the applicant on 31 January 2018 and Ms. Kaur agreed to better monitor noise and ensure that adequate stocks of food was available on site for patrons. She did not accept that the patrons who were said to be fighting were from her bar.

38. A further noise complaint was received on Sunday the 6th of May 2018 at 7.20pm. The Inspector contacted the applicant who arranged for the music to be turned down.

39. The Inspector had further discussions with Ms. Kaur about the renewal process and the proposed variation of the licensed area. The request for variation was subsequently withdrawn.

40. On 24 July 2018 he was contacted by Philip Cox who told him he received a phone call from a patron who alleged he was a shareholder of the bar. He sounded intoxicated and wanted to discuss the opposition that had been lodged. Mr Cox had to hang up on him to end the call.

41. Overall the Inspector believed he could not recommend the renewal of the bar's licence.

Public Objection

42. We then heard from Donna and Philip Cox who had lodged an objection to the renewal in a letter received by the DLC on the 8th of June 2018.

43. They live across the road in an elevated position about 800 metres from the tavern and we accept their status as someone with a greater interest than the public at large. This point was not challenged by the applicant in any case.

44. We first heard from Donna Cox who told us that for many months they had been putting up with late night drunken behaviour and music playing up to 12.30am she alleged.

45. It came to a head in January 2018 when the music was loud enough to stop her from sleeping at 12.30am. She tried several times to call the police and eventually at 1.00am she shouted, from her property, at the people making the noise to turn the music off which they promptly did and shortly after they left the carpark.

46. She said that on this occasion the barman had locked up for the night and left them in the carpark as they "often did."

47. She said that this was on a Monday night but also occurred on other nights. She had previously rung Noise Control, but this provided "little relief" she told us.

48. Mr Philip Cox spoke to us briefly and said the noise problem was progressively getting worse over the last 12 months. Noisy individuals at the bar and in the carpark are not supervised overtly or controlled by the staff he said.

49. In closing the Cox's said the patrons and noise levels need to be managed a lot better than they currently are.

Relevant legislation

50. Section 3 of the Act states the purpose of the Act as follows:

- (1) *The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –*
 - (a) *to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and*
 - (b) *to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*
- (2) *The characteristics of the new system are that–*
 - (a) *It is reasonable; and*
 - (b) *Its administration helps to achieve the object of this Act.*

51. Section 4 states the object of the Act as follows:

- (1) *The object of this Act is that –*
 - (a) *The sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
 - (b) *The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*
- (2) *For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –*
 - (a) *Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
 - (b) *Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*

52. Sections 131/132 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to approve a renewal of the licence:

131 Criteria for renewal

(1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

(a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):

(b) whether (in its opinion) 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 dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:

(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

The clauses in 105 that we must consider are:

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).....***
 - (i).....***
 - (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](#).***

Discussion

- 53. The Act requires that when deciding whether to renew a licence, or not, the licensing committee must have regard to the matters contained in sections 131/132 of the Act.
- 54. Having done that, we need to stand back and assess whether granting the application would assist in achieving the object of the Act.

Section 105(1)(a) The Object of the Act

- 55. Section 105(1)(a) of the Act requires the licensing committee to have regard to the object of the Act and in particular that the sale, supply and consumption of alcohol should be undertaken safely and responsibly.
- 56. There is no direct evidence before us about unsafe or irresponsible promotion of alcohol have been occurring on this site. However, leaving patrons with access to the outdoor area or sitting in their cars drinking nearby is unwise to say the least.
- 57. Failing to have substantive food options available on site was also a bad lapse in judgement. The provision of tasty substantive food options is essential in a tavern style environment.

Section 105(1)(b) Suitability of the Applicant

- 58. The applicant must be a suitable person to hold an ON-licence.

59. The Inspector believes the applicants have damaged their suitability by not managing noise effectively, leaving patrons 'on-site', failing to have adequate food on site and wanting to vary the licensed area to allow patrons to drink in the carpark.

60. We find that the applicant **has bought** their on-going suitability in to question.

Section 105(1)(c) Relevant Local Alcohol Policy

61. The activity is within the permissions contained in the Local Alcohol Policy.

Section 105(1)(d) The days and hours of operation of the licence

62. The current operating hours are Monday to Sunday 10.00am to 12.00pm midnight.

63. As we heard the actual operating hours are often well within those maximum times, but we also heard evidence of noise and disorderly behaviour, probably in the car park, after 12 midnight and up to 1.00am.

64. Later evening hours must be earned and respected especially when residential dwellings are nearby. Adjusting the hours of operation are a tool that can be utilised by the Committee to better fit the environment a premises is located in or to bring about a change of behaviour.

Section 105(1)(e) The design and layout of any proposed premises

65. The Committee is aware of the design and layout of the premises as we conducted a site visit after the public hearing.

66. The current set up of the outdoor area with external speakers is concerning. Even with the speakers facing towards the pub wall there would be an element of 'bounce' and noise is quite likely being deflected across the road to the elevated position occupied by the objectors.

67. There are two controllers for the speakers in the bar area with an effective volume range of 1-5. One set controls the inside speakers, one set controls the outside speakers. Although the controllers are on the staff side of the bar, they are accessible by patrons. At the hearing Ms. Mitchell conceded that patrons do try to increase the volume when they hear a song they like.

68. What certainly is problematic, is that the outdoor area is open at one end to accommodate the Smokefree Environments Act rules and as such, encourages patrons to stay on after hours and/or re-populate the area once staff have gone home.

Section 105(1)(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

69.No 'other' goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and basic food items are sold on the premises.

Section 105(1)(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, and good, and if so, which services.

70.Nine gaming machines are operated on this site.

Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law

71. The applicant advises that her two staff members hold manager's certificates and she intends to reapply for her own certificate now that her child is older. Only one staff member is working at any point in time.
72. We asked about training sessions and were told that the staff have met maybe twice in 2018 for unpaid meetings. Ms. Kaur did not identify any issues raised.
73. We were disappointed to hear that Ms. Kaur did not know she had to maintain a register of manager appointments, nor did she have a good grasp of the object of the Act.
74. She did not know the prevailing noise limits applicable to the environment she had her business in nor those applicable to receiving sites nearby.
75. She told us more than once that they have had noisy events previously but there were no complaints. She seemed to miss the point that the responsibility was hers to operate compliantly and within the prevailing noise limits not just within the tolerances, or not, of her neighbours.

Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129

76. The Police have not raised any matters of concern now that the request for an extended licensed area in to the carpark has been withdrawn.
77. The Medical Officer of Health has no matters in opposition.
- 78.The Inspector reports that the application appears to meet the criteria for renewal but is concerned that the deficiencies that have come to light tarnish the suitability of the applicant company and its hands-on operators.

Reasons for the Decision

79. Section 3 of the Act requires us to act reasonably in the exercise of our duties and to regulate with the aim of contributing to the Object of the Act.
80. We note that there are no matters in opposition formally raised by the Police or the Medical Officer of Health. There is one public objection alleging excessive noise and poor management of unruly patrons.
81. The Inspector believes that there are managerial deficiencies evident and that they have failed to effectively deal with issues when they arose.
82. Pursuant to Section 131 (1)(b) the Committee must have regard as to whether the operation of this licence has adversely affected the amenity and good order of the area by more than a minor extent, and, whether in our opinion, the amenity and good order of the area would be increased by refusing the renewal.
83. By a slim margin we find Sandhu 2014 Limited a suitable entity to hold an ON Licence despite the medium high-risk environment they choose to operate in.
84. In our opinion the threshold has not been reached to refuse the renewal of the licence for the following reasons. Firstly, the business is relatively small and in an isolated location. Secondly, that while we accept that there has been deficiencies and noise generated at an unacceptable level, what we **do not** have before us is subjective or objective measurements of the noise for us to weigh against the standards. Thirdly, the applicant has shown a willingness to adopt noise attenuation measures and is prepared to make changes should we determine that they are necessary.
85. We intend to impose several conditions that we think are necessary to ensure compliance with this Act and Western Bay of Plenty District Plan.
86. The outdoor speakers are to be turned off at 8.00pm Monday to Saturday and kept off on Sundays.
87. The Juke Box controls are to be relocated or secured so that only staff can alter the volume.
88. The outdoor semi-enclosed area is to have a screen fitted so that it can be rendered unfit for use after closing time.
89. The licence will be renewed for 18 months only from the expiry of the current licence i.e. 10 June 2018. The new licence expiry date will be 10 December 2019.

90. We will expect full reports from all parties at that time to ascertain whether compliance with this Act and the RMA has been achieved and maintained.

The Decision

The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, approves an application by Sandhu 2014 Limited for a renewal of the ON Licence in respect of premises situated at 17 Plummers Point Road, Omokoroa.


We refresh the current licence conditions to reflect best practice as well.

The Licence is renewed for 18 months only from 10 June 2018 subject to the following conditions.

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours: **Monday to Sunday 10.00am to 12 midnight;**
2. No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is on the premises to dine;
3. The whole of the premises including the outdoor area is designated as a **Supervised Area;**
4. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
5. The Licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages,
6. Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted,
7. A properly appointed certificated or Acting or Temporary Manager must be on duty at all times when the premises are open for the sale and supply of alcohol, and their full name must be on a sign prominently displayed-in the premises,

8. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises;
9. **The outdoor speakers are to be turned off at 8.00pm Monday to Saturday and kept off on Sundays.**
10. **The Juke Box controls are to be relocated or secured so that only staff can alter the volume.**
11. **The outdoor semi-enclosed area is to have a screen fitted so that it can be rendered unfit for use after closing time.**
12. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol;
 - c. A copy of the licence attached to the premises so as to be easily read by persons attending the premises.

DATED at TAURANGA this 26th day of December 2018



Murray Clearwater
Commissioner
For the Western Bay of Plenty District Licensing Committee

NOTE

Sections 152 to 155 of the Act relating to the right to appeal this decision are in effect. This decision is suspended until 10 working days after the date on which notice of this decision is given to the applicant and the objector.