

Application Number: 036/ON/011/2016

IN THE MATTER

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

AND

IN THE MATTER

of an application by **Bricklane Limited** for renewal of On-Licence pursuant to s.127 of the Sale and Supply of Alcohol Act 2012 ("Act"), in relation to the premises situated at 98 Victoria Avenue/1-5 Maria Place, Whanganui.

BEFORE THE WHANGANUI DISTRICT LICENSING COMMITTEE

Chairman: Mr Stuart Hylton
Member: Mrs Nicki Higgie
Member: Mr Hamish McDouall

HEARING at the Whanganui District Council Chambers on Wednesday 18 December, 2019.

APPEARANCES

Mr Scott Oliver	Counsel for the Applicant
Mr Leslie Kiriona	Applicant
Mr W R Zander	Whanganui District Council Chief Alcohol Licensing Inspector – to Assist
Mrs Therese Back	Whanganui District Council Licensing Inspector – to assist
Constable Keith Thomson	NZ Police – to Assist

OBJECTORS

Mr Michael Dewhirst	Counsel for Flowering Rata Limited
Mr Bryce Mason	Director of Flowering Rata Limited
Mr Andrew Tripe	Director of ACT Investments Limited

DECISION OF THE COMMITTEE

Application

[1] This decision relates to an application by Bricklane Limited, Trading as Mint Café and Frank Bar and Eatery (“the applicant”), for the renewal of an On Licence pursuant to s.127 of the Sale and Supply of Alcohol Act 2012 (“Act”). The application was made on 1 October 2019 and sought to renew licence no. 036/ON/011/2016.

[2] The licence covers two premises consisting two separate buildings in Mint Café and Bar (1-5 Maria Place) and Frank Bar and Eatery (98 Victoria Avenue). The current licence being renewed has split designations for the various bars at different hours reflecting the intended nature and clientele of the respective bars. The applicant within the renewal application and associated public notice seeks a variation to conduct the premises principally as a Tavern as opposed to that of a Restaurant. In discussions with the Inspector the applicant has also agreed in writing to amend the hours and designations for the two principal bars as follows:

- **Mint Bar/Cafe:** ‘*Undesignated*’ from 8.00am to 10.00pm and then ‘*Supervised*’ from 10.00pm to 2.00am the following day.
- **Frank Bar:** ‘*Supervised*’ from 8.00am to 2.00am the following day.

[3] The licence also covers two public areas covered by Licence to Occupy permission from Council. The Licence to Occupy conditions only permit consumption of food and beverages between the hours of –

- 9.00am to 11.00pm Public Space (Majestic Square) off Mint Café
- 9.00am to 9.00pm Public Space between Frank Bar and Victoria Avenue

[4] The Applicant Company has one Director, Leslie Kiriona, who is a hands-on operator of the licence and certified manager for the licence.

[5] The application was notified to the Police, Medical Officer of Health and Inspector in accordance with s. 129 requirements. Each reported separately offering no opposition to the application.

[6] The application was publicly notified on the 3 and 10 October 2019. Two objections were received and in an earlier ‘Direction Notice’ issued by this Committee on 15 October 2019, the two objections were determined to have ‘status’ in terms of compliance with s. 128(1),(2) and (3) objection requirements. Accordingly the matter was set down for hearing.

Objections

[7] Two objections were received. One from ACT Investments Limited and one from Flowering Rata Limited. Both objectors have an interest in the licensed premises being renewed.

[8] The landlord of 98 Victoria Ave, ACT Investments Limited, objected to the renewal application on the basis that the *Maria Lane* area is not subject to the lease agreement with the applicant and that this area is now subject to a separate lease agreement with another tenant, who wishes to apply for its own alcohol licence. ACT Investments Limited also contended that the original licence should not have been issued in its entirety and the current licensee has operated the licence in breach of its conditions.

[9] The current tenant of *Maria Lane*, Flowering Rata Limited, also objected to the renewal application. They raised issues of legitimacy of issuing the original licence over an area they believe the applicant did not have a lease for, suitability of the applicant and design and layout of the premises.

Direction Notice

[10] In our Direction Notice issued to all parties on the 15 October 2019, we set down an outline of what the District Licensing Committee's ("Committee") focus was for the hearing.

[11] In that Direction Notice we made it clear that it is not within our jurisdictional power to resolve contractual disputes around the applicant's tenure over *Maria Lane* however it was of relevance to establish the applicant's tenure over all parts of the premises that it wishes to have renewed. We invited the applicant to provide evidence that it has current lawful authority to occupy and use *Maria Lane* and/or to provide submissions as to the appropriateness of issuing a single licence over both establishments which excludes this area. The applicant provided information in this regard and this was shared with all parties to proceedings and formed part of the information to the hearing.

[12] With regard to issues raised around the legitimacy of granting a single licence over the two entire premises when the previous licence was issued in 2016, the Committee further commented in its Direction Notice that it believed it was not bound by its previous decision and could take a different approach with respect to the present renewal application on the basis of new evidence where different facts emerge.

Hearing

[13] At the beginning of the hearing the DLC Chairman noted that s. 131(2) stipulates that the Committee when deciding whether to renew a licence must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

Applicant's Evidence

[14] The applicant's evidence centred around the proposition that the applicant has always had lawful authority to use and pass through the area within their licensed premise commonly referred to as *Maria Lane*.

[15] Key submissions of Mr Oliver as Counsel for the Applicant and evidence by Mr Kiriona as applicant, were: -

- Bricklane acknowledges it does not have exclusive right of use of *Maria Lane* and only asserts a right to pass over from one venue to another;
- Mr Kiriona had unsigned draft Heads of Agreements with ACT Investments Limited (Landlord) that showed evidence of discussion around the tenant's "*right of way on foot through the yard at the back of the Building, for access to the tenant's adjacent premises...*" (sic)
- The applicant has adequate control of the area generally which was supported in the Inspector's report which states that the inspector '*does not have any particular problems or concerns with the design and layout*'.
- There is a manager on duty in each of the bars/premises.
- There was always an understanding that Bricklane would have flow between Mint and Frank through *Maria Lane* and it was now a 'huge impact' to move food and alcohol between the two properties following a stop to that access.
- The Deed of Lease had the necessary wording to reflect necessary access through *Maria Lane*.
- The change to Tavern-type licence was due to the use of the premises generally along with the restriction in hours afforded to Restaurant-type licences under the recently adopted Local Alcohol Policy.
- Over the past three years and prior to being 'locked out' the applicant had used the *Maria Lane* part of his licensed premises for transport of food/alcohol between premises, rubbish collection, washing mats and an area for smokers, including drinking.
- The applicant's view that having one licence over two non-contiguous premises was permissible provided the applicant could show adequate control over the areas to be covered. Mr Oliver noted decisions *Gourmet Wine & Cheese [2001] NZLLA 570* and *Austin's Food Design Events Limited [2002] NZLLA 464* to support this view.

[16] Under questioning Mr Kiriona advised that access through *Maria Lane* had ceased around July 2019 when construction started.

[17] Under further questioning of what current systems there were in place to stop intoxicated persons entering *Maria Lane* as part of his licensed premises, Mr Kiriona advised that he currently did not have a system in place but was proposing to contract a security person on the doors at all times.

Mr Tripe's Evidence

[18] Mr Tripe is the owner of the land and buildings known as 98 Victoria Avenue, Whanganui and trading as ACT Investments Limited. Generally Mr Tripe objected to the renewal application on the basis that the *Maria Lane* area is not subject to the lease agreement with the applicant and that this area is now subject to a separate lease agreement with another tenant, who wishes to apply for its own alcohol licence. Mr Tripe also contends that the original licence should not have been issued in its entirety, the current licence is being operated as a tavern rather than restaurant allowed for under the current licence and lease; and the current licensee has operated the licence in breach of its licence conditions.

[19] At the hearing Mr Tripe advised that he had originally worked with the applicant to set up the extension that is Frank Bar.

[20] Mr Tripe had approached the applicant to stop the use of *Maria Lane* for unpermitted activities and tried to resolve access only issues between buildings, which was the original agreement. Mr Tripe advised that Mr Kiriona had not responded on numerous occasions to his attempts to resolve access only issues.

[21] The hearing heard that prior to this renewal application, all parties including Flowering Rata Limited and Council Officers had met to try and resolve matters with an option for three new licences to be applied for over Mint/Frank and *Maria Lane*. This did not happen causing great angst for Mr Tripe and the new lessees for *Maria Lane*, finally resulting in the landlord instructing access to *Maria Lane*, by the applicant, be stopped.

[22] Mr Tripe believed the applicant had not provided an adequate response to the Committee's Clause 12 Direction Notice request for information in that there was no evidence or admission that the applicant had lawful authority to occupy or use *Maria Lane* and no submission as to the appropriateness of issuing a single licence over the premises including *Maria Lane*.

[23] In summing up Mr Tripe said Bricklane had no right to occupy the *Maria Lane* area and he would like to see a single licence issued for Frank/Mint Bars without *Maria Lane* included.

[24] Under questioning/cross examination Mr Tripe confirmed:

- *Maria Lane* is leased by Flowering Rata Limited, not Bricklane Limited. This lease was in place from 2018 and was produced as evidence at the hearing.
- There was never any lease agreements for use or to occupy the *Maria Lane* area, it was purely for access only.

- Prior to issuing his letter of 'no objection' to the liquor licence in 2016, he had not seen or asked to see the Bricklane licence application showing *Maria Lane* to be part of the licensed area as a 'Proposed Garden Bar'.
- He was unaware of the specific regulatory requirement relating to his claim Bricklane's occupancy numbers on occasions were more than the 199 people allowed by Council. He had no evidence of this alleged breach, had not brought this matter to Council's attention nor had he raised concerns with Council over the licence being operated outside that of a Restaurant and its conditions.
- That his contention the applicant was 'deceitful' in applying for a licence across *Maria Lane* was 'harsh' as he had mistakenly not read the application clearly showing *Maria Lane* as part of the 2016 application.

Mr Mason's Evidence

[25] Mr Mason is a Director of Flowering Rata Limited and operator of the business known as *Maria Lane* Restaurant which occupies the space between Mint Café and Frank Bar (*Maria Lane*).

[26] Flowering Rata Limited has a written lease agreement over *Maria Lane* dated 26 November 2018 until 2025 and operates a Mexican style street food outlet.

[27] Flowering Rata Limited's written objection raised issues of legitimacy of issuing the original licence over an area they believe the applicant did not have a lease for, suitability of the applicant based on manipulation and abuse of the licensing process for its own commercial ends and design and layout of the premises.

[28] Flowering Rata Limited believe the renewal of the licence is simply an anti-competitive device. They had tried to resolve the issues in good faith by allowing access from the back door of Mint Café to the back door of Frank, to allow the continued passage of food. This good faith had disappeared as the relational issues continued culminating in access arrangements being terminated.

[29] Flowering Rata Limited were not responsible if intoxicated persons were to enter their Mexican Style Food Outlet as they did not hold a liquor licence however under the current licence Bricklane would be in breach of their liquor licence if this situation arose.

[30] The Objector questions whether the applicant is a fit and proper person to hold a licence at all given his apparent deliberate attempt to stall lease dispute negotiations, failure to take the renewal process seriously and lack of understanding of his licensing responsibilities.

[31] The Objector seeks that the renewal application be declined.

Questioning of the Inspector

[32] Mr Zander, Whanganui District Council Chief Alcohol Licensing Inspector, gave the following advice to questions:

- In Mr Zander's opinion there is no evidence to suggest a licence can't be issued over non-contiguous properties however suggested the Committee should consider conditions to ensure appropriate controls are in place under one licence. This opinion is based on *HMSC-AIAL Ltd [2010] NZLLA 840* where it shows the Authority are accepting of such non-contiguous arrangements that continue today.
- The Inspector also cautioned that having one licence across both properties would mean that any enforcement issues surrounding a particular bar would affect the base licence as a whole.
- Historically there had been two noise complaints in relation to Bricklane which had been resolved satisfactorily and over the last six months there had been complaints received regarding rubbish and parking that had also been dealt with and resolved.
- He agreed that a change licence style to 'Tavern' from 'Restaurant' was appropriate and that the renewal phase was a good time to make the change.

Summary by Applicant

[33] The applicant has sought a roll-over of his licence as per the application however the loss of access over *Maria Lane* had become a big issue.

[34] If the Committee did not see the renewal of the licence in its entirety as an outcome, then the applicant seeks a licence to cover the two non-contiguous areas.

Committee's Conclusions and Reasons

[35] In considering this application for renewal the Committee had regard to the criteria under s. 131(1) of the Act i.e.

(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 authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

Relevant parts of Section 105(1) -

(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:

(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.

[36] The Committee notes that none of the s. 129 reports from Police, Medical Officer of Health or Inspector have any opposition to the renewal application.

[37] The Committee also notes that the applicant, after discussions with the inspector, agreed to renew the licence as a 'tavern' type premise including a change of designation/hours to seek Mint Bar as 'undesigned' from 8.00am to 10.00pm and

then 'supervised' from 10.00pm to 2.00am the following day and Frank Bar to be 'supervised' from 8.00am to 2.00am the following day – all Monday to Sunday.

[38] The Committee further notes its Direction Notice prior to the hearing making it clear that it is not within this Committee's jurisdictional power to resolve contractual disputes however it was of relevance to establish the applicant's tenure over all parts of the premises that it wishes to have renewed. We invited the applicant to provide evidence that it has current lawful authority to occupy and use *Maria Lane* and/or to provide submissions as to the appropriateness of issuing a single licence over both establishments which excludes this area

[39] Both objectors argued that the licence in its current form should not be renewed primarily on grounds that the applicant has no lease or rights to use *Maria Lane* as part of a licensed premises. ACT Investments Limited also argued the current licensee has operated the licence in breach of its conditions and Flowering Rata Limited further questioned the suitability of the applicant.

[40] We deal with each of these objection allegations separately.

Breach of Conditions

[41] ACT Investments Limited argued that the applicant had breached its licence conditions by operating as a nightclub/tavern rather than a restaurant and also that the Frank Bar had exceeded their 199 person limit 'on many occasions'.

[42] The Committee noted that none of the enforcement agencies had raised this matter in their reports/submissions and ACT Investments Limited under cross-examination from the Inspector acknowledged these breaches had not been raised with Council over the past three years.

[43] Under cross-examination ACT Investments Limited could not advise what the regulatory requirement was for Frank Bar to be limited to 199 persons nor could they provide any evidence to back up the claim that it had been breached.

[44] On the matter of 'type' of operation, the Committee notes this is a matter that is determined through the licence application process, including public notice, but is not contained on the licence itself. Notwithstanding the 'type' of operation may well affect statutory conditions relating to 'designations' over parts of the premises as per s. 119 requirements.

[45] Although the current licence was applied for in 2016 as a 'restaurant' type, the Committee at that time when renewing the varied application to include Frank Bar, placed varied 'designations' based on hours of the day to reflect the varied type of trading anticipated at the establishment.

[46] The Committee acknowledges that over a three-year renewal period licensed premises trading patterns change, especially new bars such as Frank Bar and that an appropriate time to reflect this change is often at the time of renewal.

[47] The Committee notes that it is the wish of the applicant to change the type of licence from a restaurant to that of a tavern with some associated 'designation' changes.

[48] We do not find there to be any conclusive evidence to suggest the applicant has breached its conditions of its current licence.

Suitability of the Applicant

[49] Flowering Rata Limited objected to the renewal application on two key matters one being the suitability of the applicant.

[50] In their objection, Flowering Rata Limited stated that they “*believe Bricklane is manipulating the licensing process for its own commercial ends...we do not believe that a proper person would abuse the process under the Act for such ends...to assert a right of renewal over Maria Lane is dishonest and lacks integrity.*”

[51] When considering the suitability of an applicant in terms of s. 105(1)(b) of the Act this Committee is mindful that the assessment requires a broad evaluative approach that includes the character and reputation of the applicant, its previous operation of the premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. These matters are traversed by the Authority in decisions *New Zealand Police v Casino Bar No. 3 Limited* CIV 2012-485-1491, *Re Sheard* [1996] 1 NZLR 751 and Dobson J in *Casino Bar No 3 Limited*.

[52] Further the Committee notes that none of the reporting agencies have raised any concern with the applicant's suitability in their reports.

[53] The grounds for questioning a company's suitability, as pursued by the objector, is always going to be difficult as indicated in *British Isles Inn Limited* PH 406/2006. As the Authority stated in that decision at paragraph 39: “*Although the onus is on the company to establish its suitability, there is a reasonably high threshold to be met by the objectors in order to displace the absence of concerns by the reporting agencies. 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.*”

[54] Also the Committee notes the objection around suitability clearly traverses into areas of ‘prejudicial effect’ that this Committee cannot take into account as stipulated in paragraph 13 above and s. 131 (2) of the Act. That said this does not disqualify the objector's points that are not barred by this section.

[55] Allegations around suitability are serious allegations requiring strong proof. As the outcome of a renewal application can result in a refusal, and therefore a loss of business, the serious allegations used to oppose a renewal require strong evidential support.

[56] The Committee understands that the relationships between the various competing parties has fractured over time as we heard from the objector's submissions that ‘*it is obvious that absence of good faith is apparent in this matter*’. However a level of competitive advantage always exists in business for which the licensing process is no exception.

[57] However the applicant has an existing licence for which it has a right to apply to renew which it has done so in the required timeframe and manner. Whether it chose

to take this course of action over another that may have been discussed with other parties earlier, does not in itself lead us to question the applicant's suitability in the context of the Act and this application. To simply apply to renew one's licence is a right all licensees have and surely a right Bricklane must also have albeit within a messy situation not entirely of its own making.

[58] On balance, based on the proof of evidence brought by the Objector in opposition, the information garnered during the hearing and the Committee's own broad evaluative exercise, in our opinion the suitability of the applicant was found to be sufficient to warrant renewal of the application.

Design and Layout of Premise (s.105(1)(e))

[59] The Committee now turns its mind to the substantive focus of the hearing being the ability or otherwise of the applicant to use and manage that area currently contained within the licence and referred to as *Maria Lane*.

[60] The Committee made it clear to the applicant within its Direction Notice prior to the hearing that it provide evidence that it has current lawful authority to occupy or use *Maria Lane*.

[61] While exclusive tenure over all of the premises is not a requirement for a licence to be granted, it must be established that there are lawful rights over all areas proposed to be licensed and that the applicant has the ability to control those areas satisfactorily in order to ensure the safe and responsible sale and consumption of alcohol in accordance with the object of the Act. In particular, if there is no legal authority to occupy or use the garden area, we fail to see how this area could lawfully form part of the licensed premises.

[62] In response to this Committee's request for evidence, the applicant supplied further information on the 28 November 2019 which formed Reference G on the Hearing Agenda.

[63] Within the applicant's further evidence, Bricklane contends that there is a signed lease which includes ".....**necessary access and incidental facilities, but no exclusive or particular rights to use or occupy adjacent yard...**". ...In December 2016 the Landlord and I concluded a heads of agreement which lead to us signing the existing lease, clause 11 of the heads of agreement reads: "11. The Tenant will have right of way on foot through the yard at the back of the Building, for access to the Tenant's adjacent premises, but will not obstruct or keep anything in the yard and will keep it clean and tidy." The description of the leased area must be read in the context of this agreement and the right contained in it." And further "The landlord provided their consent to the current licence. There has been no agreement between the landlord and I since then to alter my rights under the lease".

[64] These arguments were further expressed by the applicant and their Counsel at the hearing.

[65] At the hearing the Committee heard further information around Leases and Heads of Agreements for *Maria Lane* between ACT Investments Limited and the Applicant. Some of this information was conflicting. The Committee also heard that –

- Flowering Rata Limited have a lease from ACT Investments Limited to use *Maria Lane*.
- Flowering Rata Limited has set up and now operates a Mexican Food Outlet from *Maria Lane*.
- The applicant has been formally written to by ACT Investments Limited to revoke all access rights.
- The applicant was now operating the licence without access through *Maria Lane*.

[66] The Committee does not want to nor does it have the power to rule on any access rights held by the applicant in respect to *Maria Lane*. Nor does it wish to comment on how or who caused this messy state of affairs to eventuate.

[67] What the Committee is clear about, is that the applicant has not shown sufficient evidence that it has the necessary rights and controls to continue to manage a licence over the *Maria Lane* area. The landlord has advised that all rights to the applicant have been extinguished, a lease exists to another entity which has taken up full use of the area concerned, resulting in the applicant having to navigate around the area they now wish to renew a licence for.

[68] Furthermore the necessary licensing controls the Committee sought from the applicant appear not to be in place especially when it was pointed out by Counsel for Flowering Rata Limited and by the Applicant under cross-examination that there is no reasonable means to keep intoxicated persons from entering *Maria Lane*, either currently or into the future.

[69] The Committee finds that this is an untenable situation and we fail to see how we could lawfully continue to license this particular area of the premises.

[70] Given the finding of the Committee that *Maria Lane* cannot form part of the applicant's licence to be renewed, the question then is whether the absence of this area is fatal to the renewal application or whether the licence can be renewed with a reduced footprint that excludes *Maria Lane*?

[71] At the hearing the Committee heard from the Inspector that Case Law had shown that the Authority were accepting of one licence across multiple (non-contiguous) properties. Mr Zander cited *Re HMSC-AIAL Ltd [2010] NZLLA 840*. Mr Zander also cautioned that such licences run the risk of having one enforcement proceeding relating to one bar affecting the whole premises.

[72] Additionally at the hearing Mr Oliver cited two Authority decisions which show licences across non-contiguous areas. *Austin's Food Design Events Limited LLA PH 464/2002* relates to an on-licence at the ASB tennis centre in Auckland, where the applicant had a contract to provide food and beverages to those attending the tennis centre, but did not have exclusive tenure as many areas where alcohol would be served were shared areas in common, and *The Gourmet Wine & Cheese Shop 2000 Limited LLA PH 570/2001*, where the Authority held that a tavern-style on-licence could be granted to the applicant where beer and wine was purchased from its premises and consumed in a communal food court.

[73] Similarly in *Calendar Girls [2016] NZARLA PH 71-72*, the Committee granted an on-licence to the Calendar Girls entertainment venue at a different location to where the licence had been granted previously. The licence applied to a two-storey nightclub style venue, with a separate ground floor drinking area adjacent to the footpath, which was connected to the rest of the premises via an unlicensed hallway. On appeal, the Authority upheld the grant of the licence to the main part of the premises but excluded the separate ground floor area. In its reasons, the Authority appeared to accept that it was possible to have a single licence over the separate area.

[74] Therefore this Committee is of a view that it can issue a renewal licence across the premises which excludes *Maria Lane*. On this basis the applicant will have to ensure its responsibilities in relation to control of patrons are managed throughout the premises and requirements around food are maintained to all parts. The Committee will add an additional condition to the renewed licence requiring a duty manager for both Frank and Mint Bars.

[75] The Committee notes that if the licensee is not happy with a non-contiguous licence across the premises, there is nothing stopping the applicant from applying at any stage for a separate licence for each premise.

Other s. 131 Matters including Object of the Act

[76] The Committee has considered all other Section 131 matters including the object of the Act in its decision. The only outstanding matter for this Committee to consider is the Local Alcohol Policy to which it must have regard to.

[77] In this respect the Committee requires that a one-way door restriction condition will apply to this renewal in accordance with the Local Alcohol Policy. This restriction will take effect one hour prior to licensed closing hours.

Conclusion

[78] For the reasons stated in this decision the application by Bricklane Limited for renewal of On Licence (tavern) in relation to the Mint Café and Bar (1-5 Maria Place) and Frank Bar and Eatery (98 Victoria Avenue) Whanganui, **is approved**, subject to an amended footprint excluding *Maria Lane* area and the conditions detailed below.

[79] The renewal licence can be issued immediately for a period of three years notwithstanding appeal provisions.

Conditions

[80] The following conditions will apply to the licence:

- (a) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1.00pm on Anzac Day to any person who is not present on the premises to dine.

(b) Alcohol may only be sold on the following days and during the following hours:

- **Internal Bars:** Monday to Sunday 8.00am to 2.00am, the following day.
- **External Area on Victoria Avenue:** Monday to Sunday 9.00am to 9.00pm.
- **External Area on Majestic Square:** Monday to Sunday 9.00am to 11.00pm.

(c) The licensee must ensure that for each principal entrance to the premises, being Watt Street and Victoria Avenue entrances, there is displayed at all times a sign attached to the inside or outside of the premises, so as to be easily read by people immediately outside the entrance, stating the ordinary hours of business during which the premises are open for the sale of alcohol.

(d) The licensee and managers on duty must ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of liquor to minors and the complete prohibition on sales to intoxicated persons.

(e) The licensee must ensure that at all times a copy of the licence, together with a statement of all conditions subject to which it is issued, is displayed—

- attached to the inside of the premises concerned; and
- so as to be easily read by people entering each principal entrance.

(f) The licensee must have free drinking water available for customers at each bar whilst open for business.

(g) The licensee must have available for consumption on the premises, at all times when the premises are open for the sale of alcohol, at reasonable prices, a reasonable range of non-alcoholic drinks and low alcohol drinks.

(h) 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 food list submitted with the application, or variations of that list of a similar range and standard.

(i) The licensee must ensure that, at any time customers are lawfully on the premises,—

- there is readily available to the customers, free, comprehensive, and accurate information about the forms of transport from the premises that are available at that time; and
- there are on the premises, and readily accessible to the customers, staff able to give them comprehensive and accurate information about

the forms of transport from the premises that are available at that time;
and

- those staff will on demand give any customer appropriate advice free.
- (j) The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of alcohol
- (k) Both Frank and Mint Bars must have a manager on duty at all times.
- (l) The whole of the premises must have a one-way door restriction in effect one hour prior to licensed closing hours.
- (m) The following licensing designations shall apply to the premises –
- **Mint Bar/Area:** ‘Undesignated’ from 8.00am to 10.00pm and ‘Supervised’ from 10.00pm to 2.00am the following day,
 - **Frank Bar/Area:** ‘Supervised’ from 8.00am to 2.00am the following day.

DATED at Whanganui this the 10 January 2020.


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Chairman – Stuart Hylton
Whanganui District Licensing Committee

