

**IN THE MATTER**

of the Sale and Supply of Alcohol Act  
2012

**AND**

**IN THE MATTER**

of an application by **Flowering Rata Limited** for an On- Licence pursuant to section 100 of the Sale and Supply of Alcohol Act 2012, in respect of the premises situated at 98 Victoria Avenue, Whanganui and known as “Maria Lane Eatery and Bar”.

**BEFORE THE WHANGANUI DISTRICT LICENSING COMMITTEE**

The application for a new On-Licence was advertised in the Whanganui Chronicle on the 19 and 26 November 2019; together with statutory signage on the building. One objection was received.

**Objection and Status**

The objection was received on 28<sup>th</sup> November 2019 from Leslie Kiriona who has a licence for Frank and Mint Café and Bar, 98 Victoria Avenue/5 Maria Place, Whanganui. No other objections were received within the statutory timeframe.

Mr Kiriona objects on the grounds that he has an existing alcohol licence over the area in question that Flowering Rate Limited want to licence.

This Committee has assessed the objection in order to determine whether the objection has status in terms of compliance with s. 102 objection requirements.

The objection status test in this situation is a three way statutory test.

First, does the objector have a ‘greater interest in the application for it than the publically generally’? Clearly Mr Kiriona has a ‘greater interest than the public’ as he is a neighbouring licensee with claims to the property in question.

Secondly, the objection must be in writing and filed with the licensing committee within 15 working days after the first publication of the public notice. The application was filed on the 18 November 2019, the first public notice was placed on the 19 November 2019 with the Flowering Rate Limited objection received on the 28<sup>th</sup> November 2019. Therefore the objection was made inside the 15 working days required.

The third test for an objection is that it must be made in relation to a matter specified in s. 105 of the Act. The objection states the grounds for objection being the objector has an existing licence over the area in question. The objector provided further evidence to support this claim.

It is the Committee’s view that the grounds for this objection has circumstantial relationship to s. 105 matters, specifically –

*(a) the object of the Act; (c) the design and layout of any proposed premises; and (j) whether the applicant has appropriate systems, staff, and training to comply with the law.*

This circumstantial relationship exists due to an existing licence held by the objector that extends across Maria Lane. This was recently subject to a renewal application that was heard by this Committee on the 17<sup>th</sup> January 2019. The resultant hearing decision issued by this Committee has not been appealed resulting in the property in question being removed from the objector's substantive licence.

In the Committee's view this decision and revised licence area, has now resulted in the grounds for objection having no relevance and therefore no status.

Therefore the matter is considered by the Whanganui District Licensing Commissioner on the papers contained in the full file provided by the secretary in accordance with the provisions of s.202 (1) and 191(2) of the Sale and Supply of Alcohol Act 2012.

**Commissioner:       Stuart Hylton**

**RESERVED DECISION OF THE WHANGANUI DISTRICT LICENSING COMMITTEE**

***Application***

(1) The application was made on the 19 November 2019 on the prescribed form. The application seeks to establish a new license for a recently established restaurant/cafe at 98 Victoria Avenue, Whanganui. The applicant has obtained the necessary resource consent and lease to hold and manage a Liquor Licence. The general nature of the business is that of a restaurant/café that is undesignated.

(2) The premises at 98 Victoria Avenue, Whanganui is owned by ACT Investments Limited who have confirmed in writing that the applicant has a lease for the area in question including the ability to be licensed. The licensed area is to include an area of public place outside the principle entrance which is subject to a 'licence to occupy' issued by Council.

(3) The applicant is an incorporated company, incorporated in 2018, with two directors and three shareholders.

(4) The premise will be known as 'Maria Lane Eatery and Bar' and is seeking to be 'undesignated' which is suitable for a Restaurant type licence. The applicant provided evidence of suitable tenure, a letter in relation to evacuation planning compliance and a Certificate of Compliance from Council in relation to Building and Planning.

(5) The complete file that the District Licensing Committee received included –

- The application
- Certificate of incorporation
- Floor plan
- A s. 100(f) RMA/ Building Act compliance letter from Council
- Letter from applicant's landlord agreeing to the application to be licensed.
- Letter from landlord representative as having the necessary evacuation scheme
- Copy of public notice on the building

- Host Responsibility Policy
- Copy of supporting letter from landlord
- Full menu
- Public Advert wording
- Reports from Police, Medical Officer of Health and Inspector

### ***Decision Making***

(6) In considering this application for On-Licence the District licensing Committee (here in after referred to as the ‘Committee’) had regard to the criteria specified under s. 105 of the Act.

#### **(7) the object of this Act:**

This is a new licensee, licence and relatively new restaurant. The applicant provided a Host Responsibility Policy that shows how alcohol will be sold in a responsible manner under the licence. If followed this should ensure the object of the Act continues to be complied with. The applicant has the initial first year to show that they can operate the licence in accordance with the Act and the licence conditions.

#### **(8) the suitability of the applicant:**

The applicant, Flowering Rata Limited, is an incorporated company with two directors and three shareholders. The directors have an interest to ensure the licence is a success and the statutory responsibilities are adhered to.

Two certified managers are named on the licence application. This is seen as adequate.

(9) The inspector and reporting agencies do not challenge suitability of the applicant and neither do I.

#### **(10) any relevant local alcohol policy:**

The Whanganui LAP has been adopted. The LAP allows for discretionary conditions relating to On-licences. The inspector has recommended that the following condition be placed on the licence stating –

- *The licensee will record and maintain a register of significant alcohol related incidents and have that register available for inspection by an enforcement officer at any time during trading hours.*

The applicant has signalled they are happy with this recommended condition to be included on the licence. On this basis these seem to be reasonable conditions to include. No other discretionary conditions under the LAP were recommended by any of the reporting agencies.

#### **(11) the days on which and the hours during which the applicant proposes to sell alcohol:**

The applicant has applied for the following days and hours –

- **(Interior) Monday to Sunday, 8.00am to 12.00 midnight,**

- **(Exterior – LTO area) Monday to Sunday, 9.00am to 11.00pm.**

**(12) the design and layout of any proposed premises:**

The application included a floor plan that shows the area to be licensed including the public space immediately outside the restaurant for which the applicant has a ‘licence to occupy’ with Council. The area to be licensed is a relatively small and simple area to monitor and manage. The whole of the licensed premise is to be ‘undesigned’ which is supported by the inspector. The public space area needs to be clearly delineated to ensure patrons know where they can consume alcohol.

**(13) 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:**

No.

**(14) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:**

Within the agency reports there are no concerns about the possible reduction in amenity and good order from any licence issue.

Whilst the premise is new, it is surrounded by other food and beverage premises within the Central Business Commercial zone which should ensure the amenity and good order of the locality are not effected by more than a minor extent.

**(15) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—**

**(i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but**

**(ii) it is nevertheless desirable not to issue any further licences:**

No concerns raised.

**(16) whether the applicant has appropriate systems, staff, and training to comply with the law:**

If the host responsibility policy is followed the licence holder should have no problems with compliance. The applicant appears to be taking their licensing responsibilities seriously which should assist the premise to be run in a compliant manner.

***Reporting Agencies***

(17) The following reports were received under section 103 of the Act.

(18) **Police** – Report received on 9 December 2019, offering no opposition.

(19) **Medical Officer of Health** - Report received on 4 December 2019, offering no opposition.

(20) **Licensing Inspector**

Full report dated 28 January 2020. The inspector provided a comprehensive report into the application, has met the applicant and concluded that the application is complete, appears to meet the criteria for a new on-licence and therefore has no opposition to the application.

***Committees Decision and Reason***

(21) Based on the evidence provided to me within the complete file, lack of opposition from the relevant agencies, my assessment above, I conclude that the application meets the s. 105 criteria under the Act to be granted an on-licence for the premise situated at 98 Victoria Avenue, Whanganui and known as ‘Maria Lane Eatery and Bar’.

(22) Accordingly the application is **approved** for issue for one year subject to the following conditions and payment of any outstanding fees, if any.

(23) The licence will be subject to the following conditions:

- (a) 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.
- (b) The licensee must have free drinking water available for customers at each bar whilst open for business.
- (c) Liquor may only be sold only on the following days and during the following hours:
  - **Interior** **Monday to Sunday, 8.00am to 12.00**  
**midnight,**
  - **Exterior – LTO area** **Monday to Sunday, 9.00am to 11.00pm.**

EXCEPT THAT on Good Friday, Easter Sunday, and Christmas Day, or before 1pm on Anzac Day, no alcohol is to be sold or supplied on the premises unless the buyer is a person who is present on the premises to dine or residing or lodging on the premises.

- (d) Food must be available for consumption on the premises at all times when the premises are open for the sale of alcohol in accordance with the menu submitted with the application, or variations of that menu of a similar range and standard.
- (e) The licensee must ensure that, at any time customers are lawfully on the premises,—
  - (i) 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
  - (ii) 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
  - (iii) those staff will on demand give any customer appropriate advice free.

- (f) The licensee must ensure that for each principal entrance to the premises 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
- (g) 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—
  - (a) attached to the inside of the premises concerned; and
  - (b) so as to be easily read by people entering each principal entrance.
- (h) The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of alcohol.
- (i) 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.
- (j) The whole of the licensed premises is to be **‘undesigned’**.
- (k) The licensee must record and maintain a register of significant alcohol related incidents and have that register available for inspection by an enforcement officer at any time during trading hours.

### 3 Decision

Accordingly the application is **Approved** for issue from this date, subject to a signed Licence to Occupy being received.

**Dated at Whanganui District this 31 January 2020.**

**Signed**

  
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**Stuart Hylton**  
**Whanganui District Licensing Commissioner**

