

IN THE MATTER

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

AND

IN THE MATTER

of an application by **Lads Brewing Company Limited** for a new Onlicence pursuant to s.100 of the Sale and Supply of Alcohol Act 2012 ("Act"), in relation to the premises situated at 47 Anzac Parade (known as 1 Taylor Street), Whanganui, and known as 'Lads Brewing Company'.

BEFORE THE WHANGANUI DISTRICT LICENSING COMMITTEE

Chairman: Mr Stuart Hylton
Member: Mr Robert Moore
Member: Ms Annette Main

HEARING at the Cooks Gardens Function Centre on Monday 1 August, 2022.

APPEARANCES

Mr Andrew Solesbury	Applicant (One of the four Directors/Shareholders)
Mr Timoti Rangi	Applicant (One of the four Directors/Shareholders)
Mr Steve Turfrey	Whanganui District Council Chief Alcohol Licensing Inspector – in opposition.
Mr John Sherwood	Expert Witness, Building Compliance Officer, Whanganui District Council, summonsed to appear.
Mr Greg Hoobin	Expert Witness, Building Control Manager, Whanganui District Council, summonsed to appear.

Mr Dean Balkin

Expert Witness, Team Leader Planning,
Whanganui District Council, summonsed to
appear.

Ms Therese Back

Expert Witness, Environmental Health Officer, Whanganui
District Council, summonsed to appear.

DECISION OF THE COMMITTEE

Application

- [1] On 27 May 2022, **Lads Brewing Company Limited (“Applicant”)**, made application for a new Tavern Style On-licence in relation to their premises at 47 Anzac Parade (known as 1 Taylor Street), Whanganui, that currently trades as ‘Lads Brewing Company’ being a brewery and brew wholesaler.
- [2] Previous to this application, the applicant has applied for and been issued 24 onlicence type special licences at their premises since starting the brewery. They now wish to expand the sale and consumption of product capacity and capability, on the premises, through the procurement of a substantive On-licence.
- [3] The applicant is a company with four directors/shareholders – Andrew Solesbury, Timoti Rangi, Hamiora Rangi and Adam Murphy. Andrew Solesbury and Adam Murphy are the named managers for the licence although both have pending Manager

Certificate applications with this District Licensing Committee (“DLC”). The premises will continue to be known as “Lad’s Brewing Company” and is seeking a ‘supervised’ designation across the entire licensed premises.

- [4] The licensed area was defined on the floor plan dated 27 May 2022 and relates to the external area of the complex only i.e. internal building is not to be licensed due to building code restrictions. The requested licensed area is small and is referred to as the ‘garden bar area’. According to Whanganui District Council Town Planning and Building Certificate a maximum of 95 people can be on-site at any one time. The principle entrance is off Taylor Street.
- [5] The premises is located within the suburb known as Durie Hill, although it sits at the base of the hill in close proximity to State Highway 4, the Whanganui River and across the street from another licensed tavern known as ‘The Red Lion’. The site is zoned ‘Outer Commercial’ and borders a neighbouring ‘Residential Zone’.
- [6] The application seeks to operate between the days and hours of Monday to Sunday, 11.00 am and 12.00 midnight.
- [7] The application included a section 100(f) certificate issued by the Whanganui District Council stating that the proposed Tavern and use complies with the

Resource Management Act 1991 and Building Act 2004, conditional upon certain requirements happening prior to the external courtyard being used as a garden bar. (our emphasis) **Notification, Objection and Opposition**

- [8] The application was publicly notified in accordance with s.101 of the Act.
- [9] The application attracted one public objection within the prescribed statutory timeframe. The objection was received from Mr Geoff and Mrs Genevieve Lott who reside at 10 Taylor Street, Whanganui. They objected on the grounds of 'amenity and good order', specifically proximity, parking, noise, amenity, litter and disorder matters.
- [10] The objectors live on the opposite side of the road as the applicants premises, approximately 100m above Lad's Brewery.
- [11] The objectors chose not to attend the hearing.
- [12] Both the Inspector and Police enquired into the application and furnished s.103 reports in opposition. The Medical Officer of Health furnished a report of no opposition. [13] The Police opposed the application in relation to –

- The object of the Act
- Amenity and good order

No evidence was supplied by Police to support the opposition and there was no Police appearance at the hearing.

- [14] The Inspectors opposition covered the following section 105 criteria matters:

- The object of the Act
- The proposed days and hours of sale
- Design and layout
- Amenity and good order

The Inspector concluded in his report that on balance '*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 a licence*'.

- [15] This Committee issued a Direction Notice on the 7 July 2022 assessing the objector as meeting s. 102(1) (2) and (3) status requirements, setting the matter down for hearing and summoning appropriate Council Officers to assist as expert witnesses at the hearing.

Hearing General

[16] The hearing established early on that the only matters at play i.e. in contention, were the four matters raised by the Inspector which are detailed in paragraph [14] above. Principally that's amenity and good order matters.

Further Evidence Produced at the Hearing

[17] At the start of the hearing the following evidence was produced and given to all parties to proceedings:

- Photo's 1 to 5, supplied by the Inspector and included site views of 'Lad's' including from the street.
- Photo 6 – from Inspector showing photo of previous special licence event at Lad's.
- Email from Carolyn McIntyre, Senior Planner to Andrew Solesbury dated 11 April 2022, outlining planning requirements for the proposed site.
- Neighbourhood Survey on good order and amenity from Therese Back, Council's Environmental Health Officer.
- Noise rules extract from Whanganui District Plan produced by Therese Back, Council's Environmental Health Officer.

Oral Evidence of Expert Witnesses Building Control

[18] Mr Sherwood and Mr Hoobin, Whanganui District Council Building Officials, noted they had been in regular correspondence with the applicant through the various special licences obtained over the past two years and again with the applicant's onlicence application. Generally officials were looking at how the proposed site could work for the applicant within the parameters of the Building Act.

[19] They advised the Committee that the current building is designated as a warehouse and is not permitted for public use or access and a maximum of 13 persons are allowed within the building at any one time.

[20] The rest of the site i.e. outdoor proposed garden bar, is allowed 95 persons.

[21] Officials further noted that whilst correspondence between parties had addressed outstanding issues such as number of toilets, fire design, method of keeping patrons out of the building, fencing structures etc, there will need to be a Building Consent for the required toilets when installed and a final code compliance certificate issued. Officials believed this was achievable.

Planning

[22] Mr Balkin, Team Leader Planning, Whanganui District Council, reiterated the site was zoned outer commercial for which the proposed use was permitted with no 'triggers' for any additional compliance certificates.

[23] Mr Balkin read aloud the contents of Carolyn McIntyre's (Council Planner) email to Andrew Solesbury.

[24] In answer to a question, Mr Balkin said that there is always potential for conflicting views between varying land uses within the same neighbourhood. He said the issue is between regulatory control and the perception of an individual, e.g. a resident. If these match, there is no issue.

[25] In answer to a question around the district plans coverage of amenity loss, Mr Balkin said the current plan took effect in 2001 and the understanding of amenity and the potential for conflict over use is not to the level of complexity it would be if the plan had been drafted today.

[26] Mr Balkin further advised that any remedy must match the complaint. Planning enforcement will always revert to the intention of the controls, i.e. objective of the particular zone/land. Off street car parking is not required in this situation however the applicant's intention to provide some is advisable.

Environmental Health

[27] Therese Back, Environmental Health Officer, Whanganui District Council, spoke to the amenity and good order survey officers undertook from Durie Hill residents living in proximity to the Lads Brewing site. The survey, taken a few days before the hearing, surveyed thirteen respondents from the twenty households that were door knocked. The objector was not canvassed.

[28] The surveyors asked four questions of residents canvassing their concerns or issues with noise, parking, vandalism/graffiti and offensive behaviour in the area over the last twelve months. Only five respondents noted any issues and only one related to the Lads previous operations with the comment recorded '*occasionally hears from Lads but not an issue*'.

[29] Therese Back advised the Committee how noise levels are calculated noting that noise levels take into account background noise such as from traffic. She further advised that if the licence is approved, the applicant would have to comply with the submitted noise management plan and noise readings could be undertaken to access compliance.

[30] Upon further questioning Therese Back agreed that noise is complex to measure, the District Plan noise rules were last reviewed in 2014 and the area generally had a high level of amenity and good order. The applicant had recently amended their noise management plan noise levels to reflect the District Plan levels.

Opening Submissions Applicant

[31] Mr Solesbury, on behalf of the applicant, said he felt the concept of a garden bar had been thoroughly trialled over the last two years through the 24 special licence events.

[32] Mr Solesbury said that although the days and hours requested were Monday to Sunday 11.00am to 12.00 midnight, the primary operation would be an afternoon to early evening venue and due to being an outdoor garden bar would be reflective of the seasons.

[33] Bands will be trialled and chosen to provide acoustic music. Live music will not go past 6.00pm. The stereo will play until 10.30 or 11.00pm.

[34] With limited space the applicant aims for around 40 to 50 patrons as a maximum on any given evening.

[35] In response to questions Mr Solesbury outlined the measures that are expected to be taken to prevent public access into the building, options for toilet installations and off-site parking. The applicant intends to lease an open space at 9 Taylor Street for customer parking even though it's not a Council requirement.

[36] In answer to a question from the Committee, the applicant advised they hadn't really had to manage rowdy patrons from past events as they tend not to be too rowdy. They have never had to eject any patrons but have had cause to refuse people alcohol. The applicant outlined their experience within the industry.

[37] In response to a question about the risks associated with migration, the applicant sees their venue as a starting point for patrons before migrating into town for a different experience and potentially a meal.

[38] Further the applicant advised their venue was targeting a certain clientele focusing on sales of craft beers with no sale of RTD's etc. Outdoor craft beer venues were a popular licensed premise feature on the national scene. The applicant wanted to bring this experience to Whanganui without hurting any existing businesses.

[39] In response to questions from the Inspector the applicant stated they were well aware of the risk from excessive noise and would look to control this through the sound desk and undertaking occasional noise readings. They believed staff would be able to see and intervene if patrons tried to exit the venue into an alcohol ban area with alcohol.

Inspector

[40] Mr Turfrey, Inspector, stated he noted the concerns of the objector and at issue with this application was the object of the Act and whether this application can accord with this objective, especially in terms of amenity and good order. In choosing to report in opposition and raise concerns to the Committee, he considered all aspects of the Act and the potential harmful affects the application might have on the wider community. In doing so he balanced probability and common sense.

[41] Mr Turfrey confirmed that the Lad's Brewing Company have had two formal inspections in the past and found to be compliant on both occasions. In that respect amenity and good order during special licenced events had been well managed.

[42] Mr Turfrey also confirmed that if the mitigation measures were successful, as discussed in the application and during the hearing, his concerns could be alleviated. Mr Turfrey noted that any complaints would have to be investigated by Council or the other agencies, with any serious or ongoing issues potentially resulting in application to the Alcohol Regulatory Licensing Authority for suspension/cancellation of licence or direct District Court enforcement action.

Committee's Decision and Reasons

[43] In considering this application the Committee had regard to the criteria under s.105 of the Act i.e.

Section 105

(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](#).

[44] As stated earlier in this decision, the main areas of contention for this application were the amenity and good order concerns, the proposed days and hours of sale, design and layout of the premises and by association object of the Act.

[45] These concerns were traversed by the objector and inspector and to a lesser degree, the Police.

[46] Unfortunately, the Police were unable to attend the hearing to offer any evidence and their report in opposition also contained no evidence. On that basis their opposition carries little if any probative weighting.

[47] The objector's letter of opposition was useful insofar as it reasonably raised concerns about the application based on previous special licence events held on the premises by the applicant. On the face of the opposition the experience of the objector concerning noise emanating from the site is real and prompts the objector to raise further amenity and good order concerns due to the more extensive days and hours applied for by the applicant. We note the objector is the closest residence to the proposed site being a short distance up the road on an elevated site.

[48] Unfortunately, the sole objector chose not to attend the hearing and was not able to be questioned on their experience in the past nor on their concerns with the proposed application.

[49] In *Kim and Chang (Liquor Mate)* [2009] NZLLA 1470, the Authority said the following in relation to non-appearances from objectors – *"As for the remaining objectors, their objections carry little weight...at any event the applicants and their agents were prevented from testing any of these objector's claims and assertions. To make a ruling adverse to an applicant based on an unsupported objection is a denial of natural justice."*

[50] Therefore, we are unable to place much weight on the objector's submission. That said, the objection did serve to raise potential concerns around amenity and good order with this application given the nature of the tavern being an outdoor garden bar and the proximity of the bar to a large area of residential use.

Inspectors Opposition

[51] The Inspectors comprehensive report rightly canvassed the potential for good order and amenity issues to arise should the licence be approved. As often is the case with new applications, reporting agencies as indeed this Committee, is faced with an evaluative exercise to determine what might happen if a licence was to be issued. This is especially true when considering potential amenity and good order issues.

[52] The Inspector noted inspections during previous special licence events had not raised any non-compliance issues nor had raised concerns with amenity and good order. The Inspector also noted Council's records had not shown any amenity and good order complaints from the wider community towards the previous 20 special licence events held over the past two years.

General

[53] There was no suggestion or evidence produced to suggest the applicants were not suitable in their desire or capability to run a successful licensed premises with

no or minimal adverse effect on the receiving environment. Indeed, the Committee found the applicant genuine in their evidence and we have no reason to believe they will not do everything in their powers to run the premises according to any set conditions including district plan noise rules.

- [54] The Committee was also reasonably convinced that the applicant genuinely wants to operate a small-scale brewer type tavern that is targeting high end alcohol sales to people early in the night rather than the last bar of entertainment for migratory drinkers. That said we are conscious of how new bars can often change their style to cater for the market in order to survive.
- [55] The Committee found the evidence of the Council's expert witnesses as compelling. Their evidence gave us a level of comfort that the statutory requirements relating to building control, planning, parking etc can be met by the applicant i.e., none of the expert witnesses said that the outstanding matters to achieve the necessary Building and Resource Management Act certificate, can't be met.
- [56] Again, the Committee found the applicant's attitude to the concerns raised in this regard as 'responsible and practical'.
- [57] In *Venus NZ Ltd [2015] NZHC 1377* the Authority said – *"there is no onus on either party (burden of proof), but both must adduce evidence. The decision maker is required to form an independent opinion; this is different from a decision which would be based on whether a party has proved a relevant fact on the balance of probabilities."*
- [58] The evidence the Committee found particularly compelling during the hearing was the community survey undertaken by Council's Environmental Health Officer. The survey was an excellent initiative to gauge an unbiased representation of both the amenity and good order of the area generally and that caused by the applicant's previous special licence events. The survey showed that of the thirteen residences surveyed, none raised any amenity and good order concerns relating to the applicant's previous events using special licences.
- [59] The survey showed three of the respondents raised issues with noise in the area and one with parking (all unrelated to LAD's).
- [60] Also, compelling and reassuring to the Committee was the Inspectors advice that previous inspections had raised no concerns.
- [61] The Committee found no substantive evidence, apart from the objector's experience, that we must take little weighting of, which leads us to think the matters raised by the Inspector will eventuate as a matter of probability.
- [62] In coming to this conclusion, the Committee takes comfort that –
- Any new licence issued is issued for one year, often referred to as the 'probationary year'. During this time the applicant is expected to put 'their best foot forward', agencies can monitor their performance and generally get a better

idea of how the premises is run, and agencies have an opportunity to report on any 'issues' at first renewal phase,

- There are statutory remedies, including noise rules and licence conditions, at the disposal of the agencies to address issues prior to renewal period, should they arise and be needed,
- The applicant has agreed to actively monitor noise emanating from the site as detailed within their submitted Noise Plan.

[63] Lastly, the Committee is required to consider the application against the object of the Act. That is having regard to the criteria in s.105, and having balanced the evidence before it, the Committee is required to consider whether the grant of the licence is consistent with the Act's object of minimising alcohol-related harm.

(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 or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[64] Again, on balance and considering the evidence before it, the Committee is satisfied that grant of licence is consistent with the Act's object. The Committee is of the view the information and evidence supplied with the application by the applicant are a proportionate response to the potential harm caused by the issue of this licence.

Conclusion

[65] For the reasons stated above, the application by Lad's Brewing Company Limited for a new Tavern Style On-licence in relation to their premises at 47 Anzac Parade (known as 1 Taylor Street), Whanganui, **is unanimously approved.**

[66] The application is approved for one year from issue date with the conditions as detailed below.

[67] The licence will not issue until –

- (a) The applicant supplies an updated Resource Management Act/Building Act Certificate addressing outstanding matters raised during the application process.
- (b) The expiry of 10 working days from the date of this decision. That period is the time provided by s.155 of the Act for the lodging of a notice of appeal.

The company is not entitled to sell liquor under this application until the licence issues.

[68] We refer any party who wishes to appeal this decision or part of this decision to section 154 through to 158 of the Act.

Conditions

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

- (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) Alcohol may only be sold on such days and during such hours as the premises are being operated as a tavern but not other than on the following days and hours:

□ **Monday to Sunday, 11:00am to 12:00 midnight.**

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 a person 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 food list submitted with the application, or variations of that list of a similar range and standard.
- (e) 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.
- (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, together with a copy of the floor plan, is displayed -
- attached to the inside of the licensed premises concerned; and
 - 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 alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (j) The **entire** licensed premises is designated as being '**Supervised**'.
- (k) The principal entrance for the display of signs and the licence, and those parts of the premises licensed for the consumption of alcohol are more precisely outlined in a floor plan of the premises date stamped as accepted by the Whanganui District Licensing Committee on 27 May 2022.
- (l) 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.
- (m) The licensee must operate the licence in accordance with the updated noise management plan accepted by the Whanganui District licensing Committee on the 1 August 2022.

- (n) The Licensee must ensure litter (including but limited to vomit and alcohol related rubbish) is removed from outside the premises.

DATED at Whanganui this the 5 day of September 2022.



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Chairman – Stuart Hylton

