

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an application for the renewal of an On-licence pursuant to s. 127 and the variation of a condition pursuant to s.120 in respect of premises situated at 12 State Highway No 6, Franz Josef and known as Blue Ice Cafe by Blue Ice Investments Limited.

BEFORE THE WESTLAND DISTRICT LICENSING COMMITTEE

Chairperson: Commissioner Richard Simpson

Members: Bryce Thomson

Timothy Teen

HEARING: Held at the Westland District Council Chambers, 34 Weld Street, Hokitika on Tuesday 10 April, 2018, commencing at 10.30am.

APPEARANCES:

N Laing Counsel for Blue Ice Investments Limited (the applicant)

C R Brooks Witness for and Director of the applicant company

P Watson New Zealand Police

R E Beckett Alcohol Licensing Officer

W H Knightbridge Westland District Council Licensing Inspector

RESERVED DECISION

1. Introduction:

1. The application relates to the renewal of an On-licence on the same terms to those that exist with the exception that a variation to designation is sought in relation to the use of outside verandah and deck areas. The premises are situated at 12 Sate Highway 6, Franz Josef.
2. The premises have been licensed for many years; the last 15 years have seen the premises occupied by the current applicant.
3. The principle purpose of the undertaking is the use of the premises as a restaurant.
4. The applicant is a company (Blue Ice Investments Limited) and Christopher Rex Brooks is a Director and majority shareholder.
5. The applicant seeks to continue to sell and supply alcohol from the premises on Monday to Sunday between the hours of 8.00am and 4.00am the next day. The current licence specifically excludes the two upper deck areas and the ground floor verandah area as part of the licensed premises from 11.00pm. The variation is to allow the three deck area to be part of the substantive premises at all times that the premises are open for the sale and supply of alcohol.
6. The statutory report from the Inspector recommends that the hours be reduced to a closing time of 3.00am and that the status-quo remains with regard to the outside deck areas and that the variation not be agreed to.
7. A report from the Police takes the same approach as the Inspector.
8. A report of the Medical Officer of Health opposed the grant of the application on the basis of the applicant's history to comply with the existing on-licence, the inadequacy of the application the hours sought and amenity issues.
9. No objections from the public were received.

2. Preliminary

1. For the record, each member of the Committee is in possession of a copy of the complete file.

3. Applicant's evidence:

1. Mr. Laing made opening comments for the applicant. In particular, we were told that Mr. Brooks can be relied on to do the right things. He is a local resident,

hard-working and honest. As an example, the two indiscretions associated with controlled purchase operations were examples of Mr. Brooks taking the matter very seriously and making amends and improvements to procedures.

2. Mr. Laing's submission was that we were faced with an application that basically related to potential noise as a result of using the outside areas as part of the licensed premises. We were asked to note that the outside areas were being used now but not for the consumption of alcohol. The thrust of the submission was that Mr. Brooks will, if necessary, respond to any issues that arise as a result of the use of the outside areas and their inclusion as part of the licensed premises.
3. Christopher Rex Brooks presented prepared evidence. He told us of the nature of the operation of the premises which, although a restaurant, has an upstairs area that is host to karaoke nights, darts, pool and other games not provided at other bars in Franz Josef. The upstairs area is also available for dining purposes. Mr. Brooks also talked through the two failures that he was faced with as a result of controlled purchase operations and the procedural alterations that he put in place as a result of those failures.
4. Mr. Brooks told us of the systems that he has put in place including staff training. The whole of the premises is monitored with cctv and there are constant staff "walk-throughs" just to keep surveillance to a standard. He also explained the alterations that had been made to the west-facing upper deck and the polycarbonate walls and ceilings put in place as a result of a condition to the last renewal application. He explained the delays that he was faced with concerning those improvements, in particular, dealing with the roading authority.
5. Mr. Brooks elucidated particularly on the availability of food after the kitchen closed for the provision of main menu items, the noise management training manual and the staff systems and training log. The position of the Blue Ice Café in relation to other premises was also highlighted for us.
6. Cross examination looked more closely at the reason for wanting the outside areas included as part of the designated premises which was something that other Franz Josef premises had. Monitoring of the premises was explained in more detail, in particular, the transition from one duty-manager to another. The propensity for more noise as a consequence of alcohol consumption on the decks was also examined.

4. Opposition:

A. Police

1. Acting Senior Sergeant Paul Watson presented prepared evidence. The Police have concerns about the hours sought and would appreciate the closure of the Blue Ice Café at no later than 3.00am which is more in conformity with other premises at Franz Josef. There is also a concern that the addition of the open deck areas to the premises for the consumption of alcohol is likely to adversely affect the amenity and good order of the location and adversely impact on the community and that monitoring of those areas by staff would be problematic.
2. Cross examination helpfully looked at the monitoring issue which clarified a Police concern. The way in which the outside areas would be used was also considered further with an acknowledgement that they were being utilised currently for the purposes of eating and talking and gathering with the obvious current difference being that alcohol was not permitted to be consumed in those areas after 11.00pm.

B. Medical Officer of Health

1. Rodney Edward Beckett is an Alcohol Licensing Officer on the West Coast and holds a specific delegation from the Medical Officer of Health for representation purposes. Mr. Beckett presented prepared evidence.
2. The major concerns are those associated with amenity, noise and the fact that there were delays around the polycarbonate sheet installation on the upper deck as a consequence of the last renewal application.
3. Cross examination considered the noise potential. Mr. Beckett did not purport to be a sound-engineer and his approach was the practical consideration of alcohol being consumed on the exterior parts of the premises, late at night and the very real possibility of elevated noise levels which can be an outcome of alcohol consumption in groups. He did acknowledge that there were no problems of a noise nature at present but the consumption of alcohol on the decks could change that.
4. Mr. Beckett had undertaken night-time monitoring at Franz Josef and he had not observed any problems with the current use of the decks which did not include the consumption of alcohol thereon.

5. With regard to alcohol related harm, Mr. Beckett advised that it was not an identified issue.

C. Westland District Inspector

1. Wayne Harry Knightbridge is the Westland District licensing Inspector. He presented prepared evidence.
2. Amenity and good order of the locality was the thrust of the Inspector's evidence. He is concerned that the use of the deck areas for the consumption of alcohol will raise noise levels and result in a negative impact.
3. Cross examination revealed that in the time that the Inspector had worked for the Westland District Council, there had never been a complaint about noise emanating from the Blue Ice Café and there had never been a need to conduct a noise survey in the vicinity of the premises.
4. It would also appear to the Inspector that the measures taken by the applicant as a result of the last renewal process have been effective. The Inspector does not have any issues relating to the suitability of the applicant.
5. The committee did take a brief adjournment at this point and returned to hear Mr. Laing sum up. Before doing so, however, we did ask the Inspector what the situation would be if there were noise issues to be addressed as a result of our decision. His response was that it is an evidence based matter and that there could be difficulties in gaining the evidence given the distances involved. We thank him for his candor with a question at a time that he was not anticipating one. We appreciate his advice.

5. Applicant's summing up:

1. Mr. Laing deposed that the suitability of the applicant was not in doubt. We were asked to consider what the applicant has done in response to the previous renewal and in response to the two failed controlled purchase operations.
2. In the first instance, the double doors leading to the exterior and the polycarbonate panels have been installed. Secondly, the applicant has taken real and meaningful steps to ensure that such a failure does not happen again.
3. We were asked to consider the renewal criteria at s.131(1)(b) relating to amenity and good order and whether it would be increased, by more than a minor extent, by the refusal of the application. It was made clear to us that the outside areas

are being used currently. But not for the consumption of alcohol after 11.00pm. Additionally, the premises are being operated until 4.00am. The current situation is not resulting in noise complaints or complaints relating to amenity and good order.

4. We were asked to consider the track record of the applicant which included taking appropriate steps when necessary and operating a safe and responsibly run premises. Mr. Laing's submission to us was that we should ask ourselves the question; is this applicant capable of monitoring the premises at all times, acting appropriately when necessary and achieving the outcomes envisaged by the Act?

6. Evaluation and Discussion:

1. We are not the least concerned with the suitability of the applicant. Mr. Brooks, as the representative of Blue Ice Investments Limited, impressed us with his knowledge and his commitment to the undertaking.
2. We agree that the only issue for us is the amenity and good order of the locality and the noise that could be generated as a consequence of the use of the outside areas.
3. Because Mr. Brooks has been at the premises in a significant leadership role for 15 years we have a very good concept of what the "base situation" is. It seems to us to be in the nature of zero.
4. There were two failed controlled purchase operations and the applicant has dealt with those. We got the impression that he was constantly exhorting his staff to be diligent; to the extent that he was concerned that constant exhortation could cause his staff to not hear the message. We have formed the impression that the applicant is serious about the responsibilities that are his to observe.
5. A particular issue for us relates to the public notification of the application. It did not result in a single objection from the public. This is a premises that is currently operating until 4.00am and it is the only premises in Franz Josef to do so. On that basis alone we could expect some amenity issues involving intoxication, noise, vandalism or, at the very least a community irritant. There would appear to be no public interest in the application.
6. There was an incident necessitating the intervention of the Police on the main road outside the Blue Ice Café after the premises had been closed for at least 30

minutes. The premises were not to blame. The applicant was not at fault but the location of the incident did give rise to queries. We do not believe that the incident referred to is an indication of the way in which the premises is managed.

7. The Blue Ice Café is being operated until 4.00am under its current licence. It is being operated without adverse comment or incident. Given the abilities of the applicant, in particular, Mr. Brooks, we have no concerns that the 4.00am closure will be able to continue without concern. It is the status quo and we expect the outcomes in the future to reflect the current situation.
8. We do not believe that there is a compelling need to align hours of closure across the township particularly for a premises that is not causing complaint to any of the statutory authorities involved or generating adverse concern from the public.
9. The outside deck areas have received a particular scrutiny from us. We uphold the decision of the previous Committee at the time of the last renewal relating to the use of the decks. It seems to us to be an appropriate response at the time. In addition, the double doors are now operative and the polycarbonate sheets are in place.
10. The difference for the future is that patrons could be on the decks and be able to consume alcohol at the same time. The decks are being used now, even from 11.00pm. They are used by people who choose to smoke, they are used by people who simply wish to sit and talk, they are used by diners and we assume that they are used by people to simply get a bit of fresh air. There is no suggestion that the decks are not being used by patrons who do not consume alcohol.
11. We think that there could be more noise if the decks are able to be used for the consumption of alcohol after 11.00pm but not so much as to adversely impact on the amenity and good order of the locality. There is also the local reality that the decks are not attractive in a blustery northerly, a bitter southerly, a showery westerly or an icy easterly. We suspect that the summer months will be the attractive time for the use of the decks and that their use could readily enhance the visitor experience.
12. Whatever the outcome, we know that the base line is zero and that Mr. Brooks is a good operator who does not want to call attention to himself, his staff or his premises for the wrong reasons. Should there be complaints or irritations then we

have some confidence, on the existing track record, that the applicant will respond and put right what needs to be put right.

13. We do not want to set the Council up with a difficult decision to enforce. We are ratepayers as is the applicant and we appreciate the logistic and financial difficulties associated with enforcement issues over the distance from the District Council Headquarters and the Blue Ice Café. We appreciate even more the inconvenience of the potential hour of complaints and the possibility that when an Inspector arrives to check on the situation there is the potential that the lights will be out and everyone has gone home. In this case, however, we are of the view that there will not be an enforcement issue for the Council because we are dealing with a man of integrity in the person of Mr. Brooks. He knows that the base environment is zero complaints, he appears to be proud of that record and if something is occurring to alter the status-quo, we have confidence that Mr. Brooks will do what is necessary to rectify any apparent problem encountered.
14. We are satisfied that the Blue Ice Café is a safe place to consume alcohol, that the premises are monitored in an appropriate manner and that the applicant is suitable and has a regard for the standing of the premises in the community and will not do anything to jeopardise that standing.

7. The Committee's Decision:

1. The Committee is satisfied as to those matters provided for in s.105 of the Act. Likewise, we are satisfied that the object of the Act (s.4) is able to be achieved.
2. The applications for the renewal of an on-licence and the variation of a condition relating to a designation by Blue Ice Investments Limited for premises at 12 State Highway 6, Franz Josef and known as Blue Ice Café, are granted pursuant to s.211 (1) of the Act as Decision Number 059-2018 and the Committee directs that a licence is to be issued at the expiry of ten (10) working days from the date of this decision; that period of time is the time provided under s.155(1) of the Act for the lodging of a notice of appeal.

8. Terms and Conditions

The licence is to be issued for a 3 year period.

- (a) *Alcohol may be sold or supplied only on the following days and during the following hours:*

Monday to Sunday 8.00am to 4.00am the next day.

except when the licensee also holds a special licence for the premises, no alcohol is to be sold or supplied from the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day to any person who is not—

(i) residing or lodging on the premises; or

(ii) present on the premises to dine.

(b) Pursuant to section 116(2)(c) of the Act, drinking water shall be freely available to all customers at the bar at all times that the licence is being exercised.

(c) In addition to the general responsibilities placed on the holder of a licence under the provisions of the Act, the following steps must be taken to promote the responsible consumption of alcohol:

There shall be a “Host Responsibility Policy”, similar to that which accompanied the application dated 2 September 2016, in place at all times.

(c) The principal entrance is to be described as “the entrance from State Highway No.6”.

(d) Designated Areas:

Supervised Areas:

(i) The bar area on the ground floor at all times.

(ii) The entire premises on both floor levels as well as the deck and verandah areas from 10.30pm until closure.

Duration

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

(a) either—

(i) until the close of the period for which it was last renewed; or

(ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but

(b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either—

(i) until the close of the period of 3 years after the period for which it was last renewed; or

(ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

Dated at Hokitika this 12th day of April, 2018.



Chairperson, Westland District Licensing Committee