

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 in respect of premises situated at 70 Cron Street, Franz Josef and known as Kingtiger Eastern Eatinghouse by Jamie Francis Caldwell

BEFORE THE WESTLAND DISTRICT LICENSING COMMITTEE

Chairperson: Commissioner Richard Simpson

Members: Bryce Thomson

Cr. Graeme Olson; Deputy Chairman

HEARING: Held at the Westland District Council Chambers, 34 Weld Street, Hokitika on Tuesday 22 May, 2018, commencing at 10.30am.

APPEARANCES:

N Laing Counsel for Jamie Francis Caldwell (the applicant)

J F Caldwell Witness for and sole Director of the applicant company

W H Knightbridge Westland District Council Licensing Inspector

Andrew Hocken Objector; Managing Director Aspen Court Ltd and on behalf of Pete Nikalls and Sue Hocken of Aspen Court Motels

RESERVED DECISION

1. Introduction:

1. The application relates to the renewal of an On-licence on the same terms to those that exist. The premises are situated at 70 Cron Street, Franz Josef.

2. The premises have been licensed for many years; the applicant has some 28 years' experience in the hospitality industry.
3. The principal purpose of the undertaking is the use of the premises as a restaurant. Including an outside area that is exposed to the elements .The complex does include a small bar area with dimensions of about 5 meters by 5 meters There is a third important area to the premises which is currently unlicensed after 10.00pm; it is referred to as the smoking area
4. The applicant is an Individual (Jamie Francis Caldwell) who is the sole Director and Shareholder of a company named The Landing Bar Limited The company runs the Kingtiger Eastern Eating House (Kingtiger) at Franz Josef.
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 3.00am the next day.
6. The statutory report from the Inspector provided options for resolving noise emanating from the site.
7. The Police and The Medical Officer of Health do not oppose the grant of the application.
8. Three Objections from the public were received. From Andrew Hocken who is the managing Director of Aspen Court Limited, Pete Nikalls and Sue Hocken who are the managers of Aspen Court Motel and The Scenic Hotel Group who own and operate the Scenic Hotel, Franz Josef Glacier, Te Waionui Forest Retreat and the Kea Staff Village at Franz Josef. The objections sited noise factors associated with the Kingtiger as the reasons for objection.

2. Preliminary

1. For the record, each member of the Committee is in possession of a copy of the complete file. The Chairperson made reference to this fact at the commencement of the hearing when he advised that a quick perusal of the file indicated that there was reference in the file to a decision that he had made some years earlier in a different capacity for the Westland District Council The Decision related to the use of the outside dining area at the Kingtiger. The Chairperson was of the view that matters around that decision were not a conflict of interest and that no member of the committee had identified a conflict of interest. The Chairperson did express the opinion that if there were any parties who were not happy about the effect of the decision made earlier then those concerns should be directed to

the Westland District Council and should not be part of the consideration of the work of the District Licensing Committee

3. Applicant's evidence:

1. Mr. Laing made opening comments for the applicant. In particular, we were told that Mr. Caldwell accepted that there were issues for him to address around noise management on the site. Mr. Laing's submission was that the applicant was responding to those matters that he had to address and that noise emanating from the premises was being taken seriously which was a suitable response from a licensee.
2. Jamie Francis Caldwell presented prepared evidence. He told us of the nature of the operation of the premises which, although a restaurant, has a Bar area and an outside area for dining or gathering. In particular we learned that Mr. Caldwell was committed to his Asian themed restaurant and last year had encouraged locals to join him at the Kingtiger on Chinese New Year and Diwali. These events have proved to be of significance to the community with the participation of other community groups
3. Mr. Caldwell told us of the systems that he has put in place including staff training and procedures for monitoring noise. The applicant also led us through the vagaries and uncertainties of noise identification.
4. Mr. Caldwell concluded with the assertion that the design of the premises was suitable for a restaurant and bar and that there were systems in place appropriate to the management needs of the premises.
5. Cross examination looked at some of the details of the noise issues that Kingtiger is faced with. Clearly the festival nights of Diwali and Chinese New Year were significant occasions and equally as clearly there are procedures adopted by the applicant to address general noise and its mitigation and that both Mr. Caldwell and his staff are constantly responsive to assessment and mitigation.

4. Opposition:

A. Police

The police did not have any opposition to the renewal application

B. Medical Officer of Health

The Medical Officer of Health did not have any opposition to the renewal application.

C. Westland District Inspector

1. Wayne Harry Knightbridge is the Westland District licensing Inspector. He presented prepared evidence.
2. Noise assessment and monitoring took the thrust of the inspector's evidence
3. In the inspector's opinion the noise from the Kingtiger on a particular occasion was excessive and the noise was able to be attributed to the use of what he described as the smoking and patio areas

D. Objectors:

1. Objections had been received from the Scenic Hotel Group, Andrew Hocken who is the managing Director of Aspen Court Limited as well as Pete Nikalls and Sue Hocken who are the managers of Aspen Court Motel which adjoins the Kingtiger premises. We were surprised that the Scenic Hotel Group did not attend the Hearing to clearly state the case.
2. Andrew Hocken did attend and appeared on his own behalf and on behalf of Pete Nikalls and Sue Hocken. Mr. Hocken spoke particularly of the frustrations in dealing with noise from the premises. He was firmly of the view that the attitude of management was not appropriate and that the street side use of the premises (the smoking and patio areas) were the main Sources of the noise that he experienced.
3. The period of cross examination was significant. Mr. Hocken did concede that there had been a massive improvement as far as noise was concerned in recent months. What impressed us was the demeanor of Mr. Hocken and the applicant during their cross-examinations. In our view it was a demonstration of dignity and respect which gave us considerable confidence that the way forward would soon become clear.

5. Applicant's summing up:

1. Mr. Laing took the opportunity during closing remarks to make some important points relating to our duty to assess the application within the renewal criteria as the Act requires.
2. Mr. Laing noted that Mr. Hocken is much happier and there have been some significant improvements. The attitude of the applicant is one of cooperation and helpfulness with appropriate responses to the concerns raised. Mr. Caldwell is not in denial and takes responsibility for his premises and its effect on others. In addition we were encouraged to ask ourselves the question "If we refuse the application is the situation likely to be better than it is now?"

6. Evaluation and Discussion:

1. We are aware that Mr. Laing applied to the Secretary of the District Licensing Committee for a delay in proceedings so that evidence could be prepared relating to noise mitigation measures. The request was declined by the Secretary subsequent to consultation with the Chairperson on the grounds that there had been sufficient notice of the hearing and that it was important for the committee to be seen to moving its work load rather than delaying decisions. We note that the applicant has commissioned Marshall Day Acoustics to undertake noise assessment at the premises. Additionally, Mr. Caldwell has indicated his willingness to do what is necessary in terms of mitigation following the completion of the assessment.
2. We agree with the approach of the Secretary in not delaying proceedings but the obvious outcome is that we may well have had all the details necessary for proper mitigation and those measures could have been well scrutinized by us as well as the other parties through cross examination.
3. The opposite aspect is that a company with the standing of Marshall Day Acoustics is most unlikely to come to conclusions that will be unsatisfactory so there is no reason why Marshall Day cannot continue with their task.
4. The Westland District Licensing Committee does not need to see the details of the analysis or the details of the mitigation. Mr. Caldwell, on his own admission, acknowledges that there is a problem for him to address and he needs to do so as a responsible licensee.
5. We do not see ourselves as essential to the commissioning of whatever works are necessary to eliminate an accepted noise problem at Kingtiger. It really

doesn't matter what the nature of the problem is, if there is a problem then it needs to be fixed.

6. Mr. Caldwell seems to have made some progress in this regard and he should now complete that task.
7. The Committee records it's thanks to the inspector who had a bold attempt at providing details that may have assisted us in understanding the intricacies of noise assessment and control noting that the Chairperson did observe during the hearing that in his experience noise is an issue that readily blurs the lines between objectivity and subjectivity.
8. We have carefully considered our approach to this application which is governed by Section 105 of the Act which requires us to take a considered and reasonable approach that does not necessarily involve us finding solutions to the problems of others.
9. What we are required to do is consider the public objections and any opposition filed by the statutory agencies. Section 131 then directs our attention to a particular approach including the provisions of Section 105. We are satisfied as to those criteria; we are faced with the renewal of a licence for a premises that appears to be well operated save that there is an off-site noise issue that affects others. We take considerable comfort that the applicant acknowledges the issues that he is faced with and that he has already taken expert advice to rectify that which needs to be rectified. We readily conclude as to the suitability of the applicant at the same time acknowledging that there may need to be a change to the design and layout of the premises as Identified by the Inspector.
10. We have also considered the question that if the licence is renewed without addressing the noise problems that have been presented to us that there may not be an imperative for Mr. Caldwell to act responsibly and appropriately until the next renewal application is received. Our assessment of Mr. Caldwell does not support the possibility that he will sit back and do nothing in the interim. We conclude that he will continue to act responsibly and appropriately.
11. We have nothing before us that would indicate that the object of the Act is not being met at the Kingtiger and we conclude that our approach is reasonable in the circumstances.

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 application for the renewal of an on-licence by Jamie Francis Caldwell for premises at 70 Cron Street, Franz Josef and known as Kingtiger Eastern Eatinghouse, is granted pursuant to s.211 (1) of the Act as Decision Number 112-2018 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 3.00am 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 13 July 2017, in place at all times.

- (c) *The principal entrance is to be described as "the entrance from Cron Street, Franz Josef".*

- (d) *Designated Areas:*

Restricted Area

- (i) *The Restaurant Seating Area after 10.00pm*

Unlicensed area

- (i) *The Outside Patio Area and the Smokers' Area from 10.00pm*
- (ii) *The Outside Grass Area from 10.00pm*

Supervised Area

- (i) *The Inside Small Bar Area near the principal entrance from 8.00am until 10.00pm*
- (i) *The Outside Grassed Area from 8.00am until 10.00pm*

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 21st day of June, 2018.



Chairperson, Westland District Licensing Committee