

Decision number: LIQ-15304-ONO/2023

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

AND

IN THE MATTER of an application
by **Crafty Local Limited**
pursuant to s.100 of the Act
for an ON Licence for
premises situated at 6/76
Marsden Road, Paihia to be
known as "**The Crafty Local**"

DECISION OF THE FAR NORTH DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: John Thorne
Member: Martin Macpherson

HEARING at Paihia on Thursday 19 October 2023

APPEARANCES

Ms. Emma Smith – counsel for the applicant, **Crafty Local Limited** (“the applicant”)

Ms. Karen Marie Smith- for the applicant

Ms. Natasha Thompson – Far North Alcohol Licensing Inspector (“the Inspector”) – to assist.

Sergeant Michelle Row – Police Alcohol Harm Prevention Officer (AHPO) – to assist.

Mrs. Wendy Antrobus- for the Medical Officer of Health (MOoH) to assist.

Public Objectors:

1. Walter Colville (withdrawn)
2. Graeme McKay
3. David and Glennis Kingdom
4. John Tuinier
5. Andrew Miller and Susanne Otway
6. Ingrid and Dean Thompson

RESERVED DECISION OF THE COMMITTEE**Introduction**

Crafty Local Limited has applied for a Class 2 restaurant style ON Licence for premises in the 'CBD' of Paihia. The premises was previously the Westpac Bank and has had a full renovation and fit out as an up-market restaurant.

The application is for a restaurant style ON Licence featuring local produce and craft beers. The application drew six objections from neighbours, nearby property owners and the applicants former landlord where she previously operated a licensed premises elsewhere in Paihia. Three indicated a desire to attend the hearing and be heard. Two objectors attended on the day to support their objections.

Applicants Evidence

1. Ms. Emma Smith began with a helpful opening and told the Committee that her client, Karen Smith, was an experienced licensee and had been operating in Kings Road for several years before her lease at Thirty30 was not renewed. She submitted that the new medium risk activity planned for the Marsden Road site would not reduce the amenity and good order of the area by more than a minor extent.
2. The Applicant Karen Smith told the Committee she is the sole director and shareholder of Crafty Local Limited.
3. Ms. Smith told the Committee that a full renovation has taken place with a new kitchen and layout. New furniture has been brought in and the premises

soundproofed and repainted. She plans to operate as a sit down class 2 restaurant specialising in local produce with local wines and craft beers from the region. RTDs will not be sold at the premises.

4. Ms. Smith told us that they she hoped to create an 'English Local' that would appeal to families and tourists alike.
5. She operated Thirty30 in Kings Road for 8 years and believed it was a successful operation. She tendered seven supportive testimonials from previous Paihia business and personal contacts.
6. Ms. Smith told the Committee she has developed an experienced team of chefs and certificated managers to operate the business and she will also be working on the premises on a daily basis.
7. The original hours sought were 8.00am to 1.00am the following day.
8. As a result of the agencies and objectors concerns, She had offered to reduce the hours sought during the 'winter' months of April to October to Monday to Sunday 8.00am to 12.00 midnight. Miss Smith believed there was a demand, and scope, for late night dining in Paihia.
9. The applicant has prepared a Noise Management Plan (NMP) that sets out the measures that she will put in place to ensure that they do not contribute to excessive nuisance and disorder. She hoped to have live music, or a DJ infrequently, and for private bookings on New Years Eve, for example.
10. Ms. Smith believed that the price point of their products would not attract the heavy drinking crowd to Crafty Local.
11. The Committee asked if she understood the restrictions on a Class 2 restaurant i.e., that there could only be casual consumption of alcohol **whilst the premises was operating as a restaurant**. She acknowledged that she understood what was expected of a licensee holding this type of licence.
12. However, the Committee suggested that the Supervised Area designation she had sought is more appropriate for a tavern style operation. She had also ticked the box indicating that the sale of alcohol would be the principal purpose. This was amended to 'food' when prompted by the licensing team in June 2023.

13. Ms. Smith agreed a Supervised Area designation would prevent grandparents from bringing their grandchildren to the venue, and uncles and aunties could not bring their nieces and nephews into the establishment.
14. She conceded that was not her intention and asked that the application be amended to indicate the premises would be undesignated i.e., that persons of any age could be there but only persons of age could purchase alcohol.
15. She described the extensive renovation and soundproofing undertaken.
16. Ms. Smith then responded to the objections received, and in particular to the objection from Dean and Ingrid Thompson. The Thompsons were her previous landlord at Thirty30 and the relationship between landlord and tenant was clearly fractious.
17. Ms. Smith believed the current objection was a vexatious attempt to interfere with her new venture. She asked the Committee to note the favourable testimonials supporting her reputation at Thirty30.
18. Questions were put to Ms. Smith by the objectors and the Committee. David Kingdom asked if she planned to have Karaoke at the premises. She said no, and she believed there would be no undue escape of noise from the premises.
19. John Tuinier asked about the price point of the cheapest drinks. Ms. Smith said it would be about \$6 for a low strength craft beer. She confirmed there would be no RTDs sold as the Crafty Local did not want to attract that type of drinker.
20. She confirmed to the Committee that the kitchen and full menu would be available until closing time and that 'live' music would only be once every two months in the winter but more frequent in the summer.
21. The Committee asked about the capacity of the premises, concerned that the building certificate indicated a capacity of 162. Ms. Smith said they planned for 82 seated patrons and agreed that 160 patrons would be shoulder to shoulder and too many for a sit down restaurant.
22. The Committee also clarified with her that a Class 2 Restaurant is just that, a restaurant providing meals to patrons sitting down at tables. Casual drinkers may be accommodated at the bar, and at the leaners, but **only** while the premises is **operating (in the present tense)** as a restaurant.

That was the case for the applicant.**Evidence of the MOoH**

23. Mrs. Wendy Antrobus appeared as delegated officer for the Medical Officer of Health. In her capacity to assist the Committee she confirmed that the MOoH was not opposed to the application.

24. The MOoH were supportive of the amended finish time for the winter months.

Evidence of the Inspector

25. Ms. Natasha Thompson appeared for the Inspectorate.

26. She stood by her report and believed that a Class 2 On Licence could be granted to the applicant. She confirmed that Ms. Smith previously operated the licensed premises on Kings Road Paihia known as the Thirty30 Bar. She had found her co-operative and competent as an operator describing her as a good operator.

27. Over the applicants tenure of Thirty30 the landlord had not filed any opposition to any of the ensuing triennial renewal applications. There were three such applications.

Evidence of the Police

28. We then heard briefly from Sergeant ROW of the Far North Police who said the Police had no concerns about the proposal now that the finish time had been amended.

29. She confirmed that Kings Road was a problem area for the Police due to late night revelers and the introduction of social housing clientele.

30. She believed the Crafty Local location will not face the same issues as those businesses in the Kings Road area.

Evidence of the Objectors.

31. Six public objections were received. Four did not attend to support their objections. Two objectors did not appear to support and speak to their objection.

32. As was said in GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03¹

“The objections will have little probative value if those making the allegations in the objection are not able, or prepared, to appear at the hearing to affirm, or swear, to the truth of what they are saying. By not appearing, their opinions and concerns cannot be tested by cross-examination by the applicant or questioned by members of the Authority.

33. We do acknowledge that an apology was received from Ingrid and Dean Thompson who advised the Committee that they were dealing with a family emergency and could not attend. However, the Committee take a similar approach to that of the Authority to the objectors who failed to attend this hearing to affirm their evidence and be subject to cross-examination. Their objection will most likely carry little probative value. Common concerns were shared by objectors except the Thompsons.

34. We were pleased that we did hear from two of the objectors.

35. The first objector to talk to us was Mr. David Kingdom who told us that he lives in Auckland but owns an apartment above the venue at Paihia Sails 1/82 Marsden Road. His main concern was the proposed late night closing time and his fear that it would operate as a tavern creating noise and nuisance.

36. He had no problems with a restaurant being established but thought it should close at around 10-11pm.

37. He has read the references from supporters of Ms. Smith and accepted an invitation to visit the premises after the hearing to see what she has created.

38. Mr. John Tuinier lives in an apartment at Paihia Sails Unit 2/82 Marsden Road and strongly objected to the late hours sought by the applicant. He believed that late opening hours would generate anti-social behaviour and excessive noise. He said the area already had a significant number of burglaries and intentional damage offences in recent months.

¹ GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03

39. He was not convinced that the premises would operate as a restaurant and that it would be more akin to a bar or tavern. He queried whether the council officers and the Police had properly enquired into the allegations of the Thompsons. He noted that the town had a very low level of Police presence and visibility.
40. During questioning he conceded that he did not know the Thompsons, nor did he know whether their allegations were true or not. He was also told by the Inspector that enquiries had been made into council's databases about Ms. Smiths tenure of Thirty30 and nothing of significance was found.
41. It was unfortunate that the Thompsons did not appear in support of their objection.
42. Mr. Tuinier said if a licence was to be granted it should not extend beyond 10.30pm.

Closing Submissions

43. No final submissions were made by the agencies in closing. Mr. Tuinier said if a licence was to be granted it should not be later than an 11.00pm finish.
44. The Committee invited the applicant to take a short recess before closing their case for the grant an ON Licence. On their return Ms. Emma Smith reminded us that the agencies did not oppose the application, and her client was well regarded in the community and was an experienced licensee.
45. She said her client had listened to the objectors and their concerns about the 1.00am finish. She wished to amend the application to a 12.00 midnight finish all year round for the first 12 months of the licence.
46. She said the objectors were few in number compared to those able to object, and they strongly rejected the unsupported allegations of the Thompsons.
47. Her client asked for an opportunity to prove herself as a responsible licensee in this environment.
48. She confirmed that Karen Smith understood the requirements, and limitations, of a Class 2 restaurant and advised that the kitchen will not close while the premises is open. The principal business will be the sale of food with quality wines and craft beers on the side.

Relevant legislation

Section 3 of the Act states the purpose of the Act as follows:

- (1) *The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –*
 - (a) *to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and*
 - (b) *to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*
- (2) *The characteristics of the new system are that–*
 - (a) *It is reasonable; and*
 - (b) *Its administration helps to achieve the object of this Act.*

Section 4 states the object of the Act as follows:

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

Section 105 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to grant a licence as follows:

105Criteria for issue of licences

- (1)*In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - (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:*
 - *(h)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:*
 - *(i)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:*
 - *(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](#).*

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

106 Considering effects of issue or renewal of licence on amenity and good order of locality

(1)In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—

(a)the following matters (as they relate to the locality):

(i)current, and possible future, noise levels:

(ii)current, and possible future, levels of nuisance and vandalism:

(iii)the number of premises for which licences of the kind concerned are already held; and

(b)the extent to which the following purposes are compatible:

(i)the purposes for which land near the premises concerned is used:

(ii)the purposes for which those premises will be used if the licence is issued.

(2)In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):

(a)current, and possible future, noise levels:

(b)current, and possible future, levels of nuisance and vandalism.

Section 5 Interpretation

restaurant means premises that—

(a)are not a conveyance; and

(b)are used or intended to be used in the course of business principally for supplying meals to the public for eating on the premises

Sale and Supply of Alcohol (fees) Regulations 2013

Class 2 restaurant means a restaurant that has or applies for an on-licence and—

(a)has, in the opinion of the territorial authority, a separate bar; and

(b)in the opinion of the territorial authority, does not operate that bar area in the manner of a tavern at any time

REASONS FOR THE DECISION

49. We have considered the criteria prescribed in Section 105/106 of the Act and find no issue with the suitability of the applicant.
50. The crux of this application is around the business model they seek to license. We have made it crystal clear to the applicant that if the licence is to be granted, the business must operate as a sit down restaurant with diners eating meals at all times the premises is open. Whilst dining is occurring the business can cater for casual drinkers who can be principally drinking with food consumption 'on the side'.
51. As defined in the Fees Regulations a Class 2 Restaurant is premises that “**does not operate that bar area in the manner of a tavern at any time.**”
52. As conceded by counsel another critical consideration is the current amenity and good order of the locality and whether this proposal would add to the problems in Paihia generally, or would it provide an improvement to the hospitality businesses in the area by offering quality meals with primarily the table service of alcohol to patrons.
53. We also note considerable effort, and expense, to soundproof the building has occurred to ensure noise minimisation. During the hearing we discussed the escape of excessive and/or unreasonable noise. The applicant must also

factor in the effects of people noise of patrons coming and going from the venue, singing and laughing and the use of cars to and from the premises.

54. The business is in the CBD of downtown Paihia and is surrounded by similar premises. There will be noise generated so it must be understood, and mitigated, so as not to create a noise nuisance for the occupiers of the adjacent residential properties.
55. Our method of determination has been set out succinctly in **Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2012] NZHC 1406; [2012] NZAR 717 (20 June 2012)**²
- Having considered all of that information, the Authority (the Committee) must stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires the Authority to form a view on whether there is any evidence to suggest that granting the application will be contrary to s 4(1), (and) increase the risk of alcohol abuse.*
56. In line with the recent Supreme Court ruling, we are now also required to consider Sections 3 & 4 together. I.e., that our administration of the Act is reasonable, and helps achieve the Object of the Act for the benefit of the Community as a whole.
57. After standing back and evaluating the evidence that has been placed before us, we believe that a competently managed medium-risk class 2 restaurant (as sought by the applicants) should not adversely affect the residential neighbours.
58. We are satisfied that the amenity and good order of the locality will not be reduced by more than a minor extent.
59. Noise will need to be closely monitored and we say again that people noise too, can become excessive, if not managed overtly.
60. In regard to noise, the Liquor Licensing Authority said in **Paihia Saltwater (2001) Limited LLA PH391/2001**.³
- [29] We will always give full credit to those (licence) holders who acknowledge any existing noise problem and try and do something*

² Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2012] NZHC 1406; [2012] NZAR 717 (20 June 2012)

³ **Paihia Saltwater (2001) Limited LLA PH391/2001**

about it. In our view the term 'host responsibility' does not exclude the people who live nearby.

[30] Many licensed premises have shown that they can operate in harmony with their residential neighbours. It is no co-incidence that the managers and owners of such premises also show a commitment to the reduction of liquor abuse."

61. That decision was written more than 22 years ago, but it is as pertinent today as it was then. Coincidentally it relates to premises nearby on Kings Road.
62. The applicant is an experienced licensee who is part of the community and has shown us that it cares about the Paihia area.
63. A new licence is granted for 12 months only, and the conditions can be reviewed upon renewal. The responsibility now lies with the applicant to operate this newly licensed premises compliantly, as a medium risk Class 2 restaurant.
64. We thank the objectors sincerely for bringing their concerns to the Committee. If things turn for the worse, they must raise their concerns directly with the applicant and/or the regulatory agencies.
65. We also firmly remind the applicant that the Committee can quickly rehear any matter it has determined at any time that it thinks fit. We would not be slow to do so if this venue quickly morphed into a tavern style premises.

THE DECISION

The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **grants** an application by **Crafty Local Limited** for an ON Licence for premises situated at 6/76 Marsden Road, Paihia known as "**Crafty Local**", subject to conditions.

The following conditions are to apply to the ON Licence:

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours: **Monday to Sunday 8.00am to 12.00 midnight;**
2. No alcohol is to be sold or supplied on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is on the premises to dine;

3. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
4. The licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages;
5. **No spirit based Ready to Drink (RTDs) are to be sold under this licence;**
6. Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted;
7. A properly appointed certificated, or Acting or Temporary, manager must be on duty at all times when the premises are open for the sale and supply of alcohol and their full name must be on a sign prominently displayed in the premises;
8. The licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises;
9. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol;
 - c. A copy of the licence attached to the premises so as to be easily read by persons attending the premises;

DATED at Paihia this 25th day of October 2023



Murray Clearwater
Chairperson/Commissioner
For The Far North District Licensing Committee

NOTE

Sections 152 to 155 of the Act relating to the right to appeal this decision are in effect. This decision is suspended until 10 working days after the date on which a copy of this decision is given to the objectors.

The Licence is not to issue until the Code Compliance Certificate (CCC) or a Certificate of Public Use (CPU) has been issued and delivered to the DLC.