

IN THE MATTER of the Sale of
Liquor Act 1989

AND

IN THE MATTER of applications by
JIMANNA HOLDINGS
LIMITED for on and
off-licences
pursuant to ss.7 and
29 of the Act in
respect of premises
situated at the
corner of Brewster
Street and
Shakespeare Road,
Napier, known as
"Shakespeare Inn"

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge J P Gatley
Members: Mrs P M Thompson
Mr J W Thompson

HEARING at NAPIER on 9 June 1993

APPEARANCES

J R and A M Hunter - Directors of applicant company
P R Dunford - Napier District Licensing Agency Inspector
H D Cowie) in person
B M Wilkie) in opposition
L D Willoughby)

DECISION

Jimanna Holdings Limited has made application for on and
off-licences in respect of premises situated at the corner of
Brewster Street and Shakespeare Road, Napier, known as
"Shakespeare Inn".

Following the hearing of an opposed application on 1 December
1992 Authority Decision 4027/4028/92 authorised the grant of on
and off-licences to Kay Hotel Limited in respect of the
Shakespeare Inn with on-licence hours of:-

Monday to Thursday 9.00 am to 11.00 pm
Friday and Saturday 9.00 am to 12.00 midnight



In a supplementary decision (765/93) following advice from the District Licensing Agency that full cooking facilities had been installed, the hours of 9.00 am to 11.00 pm on Sundays, Good Friday and Christmas Day for the sale of liquor to persons present on the premises for the purpose of dining were added.

The present applicant is currently trading pursuant to a temporary authority issued by the Napier District Licensing Agency with the same hours as those approved for Kay Hotel Limited.

Jimanna Holdings Limited initially sought on and off-licences with the following hours:-

<u>Brewsters Club Bar and Cabana Band Bar</u>	
Sunday to Thursday	9.00 am to 11.00 pm
Friday and Saturday	9.00 am to 12.00 midnight
<u>Cab Corner Bar</u>	
Monday to Sunday	9.00 am to 3.00 am the following day

Off-licence hours sought are the same as for the on-licence as the hours are only sought for across the bar sales. The premises do not include a separate bottle store.

Public notice of the application attracted objections from neighbouring residents and accordingly the matters were set down for public hearing.

Subsequently the applicant decided to seek even more extensive hours. Public notice was given of "alteration to requested hours of operation" with the public being advised that at the hearing of the previously notified application the applicant would seek leave to extend the trading hours sought to "9.00 am - 3.00 am following day, every day, to take effect when the Licensing Authority receive confirmation from the District Licensing Agency that soundproofing work has been completed."

Public notification of the alteration and hours sought attracted a petition of opposition with 44 signatures from 33 households.

At the hearing Mr J R Hunter as a Director of the applicant company explained steps taken by the applicant:-

- "1. We commissioned an Acoustic Engineer from Auckland, Mr Nevil Hegley Msc (ENG), CEng, MICE, MIPENZ, MASA, as recommended by the Napier City Council Environmental Health Office, to visit Shakespeare Inn and advise us what steps need to be taken to reduce noise levels emitted from the Cabana Bar caused by the playing of amplified live music down to acceptable levels as set out by the NCC Environmental Health Office. (A copy of Mr Hegley's report was produced.)



2. We then consulted the Liquor Licensing Inspector's office with this report, and obtained their support for our application."

(Mr Hunter then gave details of the additional public notification mentioned above.)

- "3. We wrote to all people who objected to our original application and explained our intent to ask this hearing for consideration to change our application."

The report from Mr Hegley outlined the measures the applicant would have to take to reduce the emission of band noise from the hotel to 40 dBA on the nearest residential boundary. Mr Hunter said that the work recommended by Mr Hegley would cost \$30,000. Mr Hunter asked that we grant the application with trading hours of 9.00 am to 3.00 am the following day, every day "to take effect when the Liquor Licensing Authority receive confirmation from the District Licensing Agency that soundproofing work has been completed on our Cabana music bar and that until soundproofing has been completed the hours as applied for (previously) be granted."

The three objectors who appeared gave evidence as to their grounds of objection based on noise emission from the hotel and the noise of departing patrons and their vehicles. The petition from objecting residents included:-

"We do not believe there is any guarantee that the promised soundproofing will reduce sound noise to an acceptable level. Therefore if this intended work is to be a consideration in the granting of a licence this present application should not be heard until the sound proof work in the Cabana Bar has been completed."

Mr P R Dunford, District Licensing Agency Inspector, tabled the following statement at the hearing:-

"I can confirm that I would offer no objection to an extension of hours until 3.00 a.m. for the Hotel upon completion of all acoustical engineering work as stated in the letter from Hegley acoustic Consultants dated 21 April 1993.

Mr Hegley is one of the most experienced Acoustic Engineers in New Zealand and I have spoken to him regarding this particular acoustic problem.

In stating that no objection would be made it is assumed that the work as detailed is supervised by a suitably qualified design professional who is prepared to issue a Producer Statement (as defined in the Building Act 1991) for the construction."



In response to a question from the Authority Mr Dunford said there were six or seven hotels and taverns in Napier with nearby residential neighbours that had had trading hours authorised to 3.00 am. He undertook to let us have a memorandum detailing the particular premises.

We have received Mr Dunford's memorandum giving details of five hotels and taverns in Napier having residential neighbours and trading hours authorised until 3.00 am. They can all be distinguished from the present applicant in that the manner of operation of the particular premises prior to extended hours being sought did not attract widespread objections from nearby residents. Only one of the five attracted objections (Bayview Hotel, Petane Road, Napier) but when the Bayview application was set down for public hearing no appearances were recorded by or on behalf of any objectors.

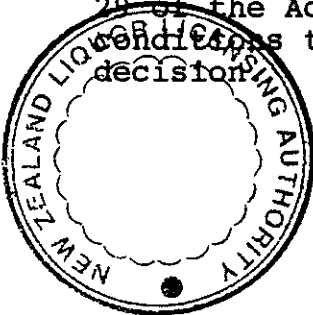
In contrast, successive applications by different owners of the Shakespeare Inn for an extension of trading hours have attracted widespread objections with two hearings before the Authority in the last six months. The hearing on 9 June last was attended by a large number of concerned residents.

Mr Hunter has recognised that there is a problem with the Shakespeare Inn having later hours and has taken the right steps by seeking advice from both the District Licensing Agency and an acoustics expert. However, we accept the contention of the objectors that there is no guarantee that the expenditure of \$30,000 on soundproofing would completely eliminate noise emission problems. Even if it did, soundproofing obviously cannot ameliorate in any way the problems associated with the departure of patrons on foot or by vehicle at closing time.

Mr Dunford submitted that with later trading hours there would not be problems of a large number of patrons leaving the premises at the same time as at present. That may well be so, but in our view it does not alter the fact that where a premise has a history of departing patrons having caused annoyance to neighbours, it is not appropriate to grant trading hours until 3.00 am.

We have no doubt the present applicant would sincerely take every possible step to try and have the Shakespeare Inn trade in harmony with its neighbours. We have given careful consideration to the evidence adduced but after having regard to the site of the Shakespeare Inn in relation to neighbouring residential properties we are not persuaded that its trading hours should be extended. The applications will be granted with the same trading hours as authorised for the previous licensee.

In all other respects we are satisfied as to the matters to which we must have regard as set out in ss.13 and 35, and authorise the issue of on and off-licences pursuant to ss.7 and 28 of the Act. Copies of the licences setting out the conditions to which each is subject are attached to this decision.



The licences may issue immediately.

The applicants' attention is drawn to ss.25 and 48 of the Act obliging the holders of licences to display:-

1. A sign attached to the exterior of the premises, so as to be easily read by persons outside each principal entrance, stating the ordinary hours of business during which the premises will be open for the sale of liquor AND
2. A copy of the licence, and of the conditions of the licence, attached to the interior of the premises so as to be easily read by persons entering through each principal entrance.

DATED at WELLINGTON this 7th day of JULY 1993


Judge J P Gattley
Chairman



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COPY

ON LICENCE

030/ON/16/93

Sections 7 and 114, Sale of Liquor Act 1989

PURSUANT to the Sale of Liquor Act 1989, **JIMANNA HOLDINGS LIMITED** is authorised to sell and supply liquor on the premises situated at the corner of Brewster Street and Shakespeare Road, Napier and known as "Shakespeare Hotel", for consumption on the premises to:

- (a) Any person who is for the time being living on the premises, whether as a lodger or an employee of the licensee, or otherwise; or
- (b) Any person who is present on the premises for the purpose of dining; or
- (c) Any person who is present on the premises for the purpose of attending any function or entertainment (whether live or not); or
- (d) Any other person who is present on the premises,

and to allow the consumption of liquor on the premises by any such person.

The authority conferred by this licence shall be exercised by the licensee (if an individual) or through a manager or managers appointed by the licensee in accordance with Part VI of the Act.

CONDITIONS

This licence is subject to the following conditions:

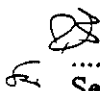
- (a) The licensee shall have available for consumption on the premises, at all times when the premises are open for the sale of liquor, a reasonable range of non-alcoholic refreshments:
- (b) No liquor shall be sold or supplied on any Sunday or on Good Friday or Christmas Day to any person other than -
 - (i) Any person who is for the time being living on the premises, whether as a lodger or an employee of the licensee, or otherwise, or
 - (ii) Any person who is present on the premises for the purpose of dining:
- (c) Liquor may be sold only on the following days and during the following hours:
 - (i) Monday to Thursday 9.00 am to 11.00 pm
Friday and Saturday 9.00 am to 12.00 midnight
 - (ii) On Sundays, Good Friday and Christmas Day 9.00 am to 11.00 pm to any person who is present on the premises for the purpose of dining.
- (d) Food shall be available for consumption on the premises as follows:
At all times when the premises are authorised to be open for the sale of liquor, food of a range and style similar to that shown on any menu submitted or a range of snack foods in the nature of pies, sandwiches, filled rolls, pizzas and the like, shall be conveniently available for all patrons and the availability of those foodstuffs shall be notified to them by appropriate notices throughout the premises.
- (e) Each of the following parts of the premises is designated as:
A supervised area: Every bar
- (f) The licensee shall ensure that the provisions of the Act relating to the sale and supply of liquor to prohibited persons are observed and shall:
 - (i) Display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the sale and supply of liquor to minors and the complete prohibition on sales to intoxicated persons; and
 - (ii) Have available for vendor staff forms of the kind anticipated by s.172 of the Act, enabling such staff to require customers to declare in writing that they are of the required age.

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 shall continue in force -

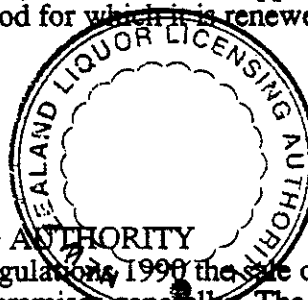
- (a) Until the close of the period of 1 year commencing with the date of its issue; or
- (b) If an application for the renewal of the licence is duly made, until the application is determined; or
- (c) If the licence is renewed, until the close of the period for which it is renewed.

DATED at WELLINGTON this 7th day of July 1993



Secretary

LIQUOR LICENSING AUTHORITY



NOTE (i) In terms of Reg. 7 of the Sale of Liquor Regulations 1990 the sale or supply or consumption of liquor is authorised in the premises generally. The premises located at the corner of Brewster Street and Shakespeare Road, Napier are more precisely identified in plans submitted with the application and date stamped as received by Tribunals Division on 14 April and 30 April 1993.

(ii) The entrance from Brewster Street is designated as the principal entrance.

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030/OFF/10/93

OFF-LICENCE

Sections 29 and 114, Sale of Liquor Act 1989

PURSUANT to the Sale of Liquor Act 1989, **JIMANNA HOLDINGS LIMITED** is authorised to sell or deliver liquor on or from the premises situated at the corner of Brewster Street and Shakespeare Road, Napier, and known as "Shakespeare Hotel", to any person for consumption off the premises.

The authority conferred by this licence shall be exercised by the licensee (if an individual) or through a manager or managers appointed by the licensee in accordance with Part VI of the Act.

CONDITIONS

This licence is subject to the following conditions:

- (a) No liquor shall be sold or delivered on any Sunday or on Good Friday or Christmas Day:
- (b) Liquor may be sold or delivered only on the following days and during the following hours:
 - (i) From any bottle store:
Monday to Saturday 9.00 am to 11.00 pm
 - (ii) Across the bar:
Monday to Thursday 9.00 am to 11.00 pm
Friday and Saturday 9.00 am to 12.00 midnight
- (c) Each of the following parts of the premises is designated as-
A supervised area: Every bar
- (d) The licensee shall ensure that the provisions of the Act relating to the sale and supply of liquor to prohibited persons are observed and shall:
 - (i) Display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the sale and supply of liquor to minors and the complete prohibition on sales to intoxicated persons: and
 - (ii) Have available for vendor staff forms of the kind anticipated by s.172 of the Act, enabling such staff to require customers to declare in writing that they are of the required age.

DURATION

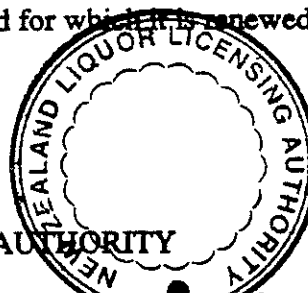
Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence shall continue in force -

- (a) Until the close of the period of 1 year commencing with the date of its issue; or
- (b) If an application for the renewal of the licence is duly made, until the application is determined; or
- (c) If the licence is renewed, until the close of the period for which it is renewed.

DATED at WELLINGTON this 7th day of July 1993



Secretary
LIQUOR LICENSING AUTHORITY



- NOTE:** (i) In terms of Reg.10 of the Sale of Liquor Regulations 1990 the sale or delivery of liquor is authorised in or from the premises generally. The premises located at the corner of Brewster Street and Shakespeare Road, Napier are more precisely identified in plans submitted with the application and dated stamped as received by Tribunals Division on 14 April 1993 and 30 April 1993.
- (ii) The entrance from Brewster Street is designated as the principal entrance.

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