

IN THE MATTER of the Sale of Liquor Act 1989

AND

IN THE MATTER of an application by TONCI EDI MARINOVIC pursuant to s.16 of the Act for variation of the conditions of an on-licence in respect of premises situated at 98 Hinemoa Street, Birkenhead, North Shore City, known as "Cafe 98".

AND

IN THE MATTER of an application by ROBIN ADRIAN FISCHER pursuant to s.7 of the Act for an on-licence in respect of premises situated at 136 Hinemoa Street, Birkenhead, North Shore City, known as "Trio Cafe & Deli".

BEFORE THE LIQUOR LICENSING AUTHORITY

Quorum

Chairman: District Court Judge J P Gatley

Member: Mr R J S Munro

HEARING at AUCKLAND on 6 August 1996

APPEARANCES

Mr T Marinovic- applicant (Cafe 98)

Mr R A Fischer - applicant (Trio Deli & Cafe)

Mr R J Lea - objector, on behalf of self and Mrs S M Lea - Cafe 98

Mrs L Murray - objector, on behalf of self and Mr Murray - Cafe 98

Mr D L Love - objector, on behalf of self and Mrs P Love - Cafe 98

Mr R P White - objector, Cafe 98 and Trio Cafe & Deli

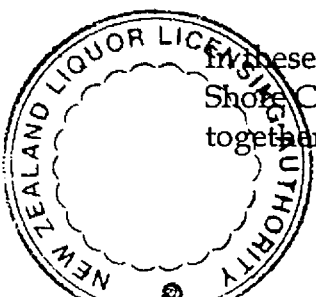
Mrs F P White - objector, Cafe 98 and Trio Cafe & Deli

Mr A S Cotter - objector, Trio Cafe & Deli

Mrs P M Cudby- North Shore District Licensing Agency Inspector - to assist

DECISION

In these proceedings, two applications for premises in the same street in North Shore City attracted objectors expressing similar concerns, and were called together.



Tonci Edi Marinovic already holds an on-licence for the operation of "Cafe 98" at 98 Hinemoa Street, Birkenhead, North Shore City. He now seeks to extend, by way of variation, the current hours which are Monday to Sunday 9.00 am to 5.00 pm, to 9.00 am to 12.00 midnight on all days except Sunday, when closure would be at 11.00 pm.

Mr Marinovic sought and obtained a resource consent from the Birkenhead Community Board Town Planning Sub-committee (acting under delegated authority) on 8 March 1996. That consent, which is to be reviewed after six months, authorises the hours sought for resource management purposes, with the exception that Sunday trading is limited to 10.00 am to 11.00 pm only. Those were the hours advertised and also sought at the hearing - in contrast to the original written application.

Mr Marinovic explained that he seeks to meet local demand by operating in the evenings - initially from Wednesday to Saturdays only. He has extensive experience in the industry. There was no question raised at the hearing as to his suitability to operate the licence with the extended hours.

Robin Fischer seeks a new on-licence for premises situated at 136 Hinemoa Street, Birkenhead, North Shore City, trading as Trio Cafe & Deli. He seeks authorisation to sell or supply liquor to any person present for the purpose of dining in accordance with s.7(1)(c) of the Act during the following hours:-

Monday to Saturday	10.00 am - 11.00 pm
Sunday	10.00 am - 3.00 pm

Mr Fischer has obtained a resource consent authorising these hours from the local authority. Mr Fischer described himself as an "*international hotelier*" with experience gained overseas. He is also the principal in a consultancy company. No question arose at the hearing as to his suitability to hold the on-licence he seeks.

We heard from Mr Lea, Mrs Murray and Mr Love who, as objectors, explained their written concerns in more detail. We also subsequently considered the written material on the complete file. The predominant concern was over noise and parking in this area, which is a C3 heritage zone that local residents seek to preserve.

Mrs Cudby, the North Shore District Licensing Agency Inspector, in her report commented that since October 1995, Cafe 98 has been well managed and has never caused any concern to the North Shore District Licensing Agency. She recommended approval of the variation sought by Mr Marinovic.



Mrs Cudby also supported Mr Fischer's application for Trio Cafe & Deli, and commented:-

"I do not believe that the grant of the on-licence will unduly increase the problems that residents have been experiencing for a number of years ..."

There was no objection by the Police to either application.

CONCLUSION

The suitability of both applicants is not in issue, but the question of trading hours in applications such as these involves a question of "*neighbouring land use*" in terms of s.14(7) of the Act.

In such applications, we are particularly keen to weigh the views of elected local community representatives, in this case, the Birkenhead Community Board. In each application they have considered the local situation. In granting a resource consent they have put a restriction in place; the consent is to be reviewed in six months. Control of noise and parking is under the control of the North Shore City Council, as the local authority for the city.

There will also be further formal opportunities for neighbours to object; Mr Marinovic will presumably apply for renewal of his existing on-licence prior to 11 October 1996, and if granted, Mr Fischer's initial licence will run for only 12 months.

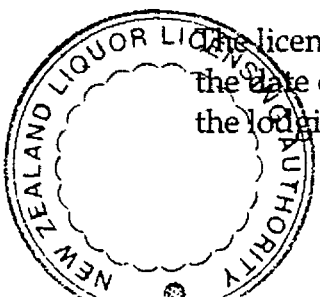
After weighing the evidence, including the Inspector's comments and the objectors' natural concerns, we are satisfied that each application should be granted for the hours now sought. They are not excessive in our view. We have little doubt that if difficulties arise, they will quickly be drawn to the attention of the local authority and its District Licensing Inspector. Applications to cancel, suspend, or vary the licence can, if necessary, be made at any time by an Inspector. In addition, the local authority will review its decision to grant resource consent for additional hours under the Resource Management Act 1991.

Accordingly we deal with the applications as follows:

Cafe 98

We are satisfied as to the matters to which we must have regard as set out in s.13 of the Act and we grant the applicant an on-licence authorising the sale and supply of liquor, for consumption on the premises, to any person who is present on the premises for the purpose of dining.

The licence may issue immediately following the expiry of 20 working days from the date of this decision. That period is the time required by s.140 of the Act for the lodging of a notice of appeal.



The entrance from Rugby Road is designated as the principal entrance.

The licence will be 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) Liquor may be sold only on the following days and during the following hours:

Monday to Saturday	9.00 am to 12.00 midnight
Sunday	10.00 am to 11.00 pm
- (c) Food shall be available for consumption on the premises at all times when the premises are open for the sale of liquor in accordance with the menu submitted with the application for a licence or variations of that menu of similar range and standard.

THE LICENSED PREMISES

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 98 Hinemoa Street, Birkenhead, North Shore City are more precisely identified in a plan date stamped as received by Tribunals Division on 24 August 1995.

Trio Deli & Cafe

We are satisfied as to the matters to which we must have regard as set out in s.13 of the Act and we grant the applicant an on-licence authorising the sale and supply of liquor, for consumption on the premises, to any person who is present on the premises for the purpose of dining.

The licence shall not issue until:-

1. The expiry of 20 working days from the date of this decision; that period is the time provided by s.140 of the Act for the lodging of a notice of appeal.
2. The Authority has received confirmation from the District Licensing Agency that all relevant clearances have been obtained.

The entrance from Hinemoa Street is designated as the principal entrance.



The licence will be 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) Liquor may be sold only on the following days and during the following hours:

Monday to Saturday	10.00 am to 11.00 pm
Sunday	10.00 am to 3.00 pm
- (c) Food shall be available for consumption on the premises at all times when the premises are open for the sale of liquor in accordance with the menu submitted with the application for a licence or variations of that menu of similar range and standard.


THE LICENSED PREMISES

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 136 Hinemoa Street, Birkenhead, North Shore City are more precisely identified in a plan date stamped as received by Tribunals Division on 20 May 1996.

The applicants attention is drawn to s.25 of the Act obliging the holder of an on-licence 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 ready be persons entering through each principal entrance.

DATED at WELLINGTON this 4th day of September 1996


 R Barber
 Deputy Secretary

