

Decision No. 1747-1750/96

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by TAPAS LIMITED pursuant to ss.7 and 29 of the Act for on and off-licences in respect of premises situated at 5 Rimu Street, Ohakune, Ruapehu District, known as "Margarita's Bar and Restaurant"

AND

IN THE MATTER

of an application by POWDERHORN LEISURE LIMITED pursuant to s.18 of the Act for renewal on an on-licence in respect of premises situated at the corner of Mangawhero Terrace and Thames Street, Ohakune, Ruapehu District, known as "Powderkeg Inn"

AND

IN THE MATTER

of an application by POWDERHORN LEISURE LIMITED to redefine premises pursuant to Reg. 7(3), the Sale of Liquor Regulations 1990 in respect of premises situated at the corner of Mangawhero Terrace and Thames Street, Ohakune, Ruapehu District, known as "Powderkeg Inn"

AND

IN THE MATTER

of an application by TUROA SKI ACCOMMODATION LIMITED pursuant to s.18 of the Act for renewal of an on-licence in respect of premises situated at Thames Street, Ohakune, Ruapehu District, known as "The Turoa Lodge"



BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge J P Gatley

Members: Mr R J S Munro

Mr J W Thompson

HEARING at OHAKUNE on 2 July 1996

APPEARANCES

Mr A Dormer for Tapas Limited

Mr W J McDonald - Director of Powderhorn Leisure Limited

Mr A M Boyle for Turoa Ski Accommodation Limited

Pastor J L Mason - objector

Senior Sergeant S R Bielby - NZ Police - to assist

Mrs N M Middleton - Ruapehu District Licensing Agency - to assist

DECISION

At this hearing, we considered three applications relating to premises in Ohakune which attracted similar objections from Pastor J L Mason of the Apostolic Church concerning the closing hour of trading. The fourth application, which related to redefinition of one of the premises pursuant to Reg. 7 of the Sale of Liquor Regulations 1990, was for convenience set down at the same time.

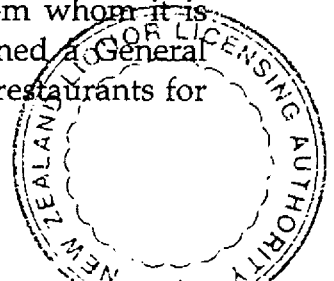
TAPAS LIMITED

This is a new application by a company for on and off-licences in established tavern type premises. The hours sought for the sale of liquor are:

On-licence Monday to Saturday 7.00 am to 3.00 am the following day to any person present.
Sundays, Good Friday, Christmas Day 7.00 am to 3.00 am the following day to any person present for the purpose of dining.

Off-licence Monday to Saturday 7.00 am to 11.00 pm.

Mr A Dormer called Mr P H McCabe, a director of the applicant, who told us he holds 25% of the shares in the company and intends to manage the operation of the premises. His older brother, holds 75% of the shares. The premises are currently being operated subject to a licence held by Mr McCabe's father, from whom it is intended the applicant would obtain a lease. Mr P H McCabe gained a General Manager's certificate in August 1992 and has worked in taverns and restaurants for the last eight years.



Mr P H McCabe had from 30 September 1994 been a 50% shareholder in a company known as "Margarita's Bar and Restaurant Limited" operating in Queen Street, Auckland City. As a result of a police application, that company had its on and off-licences suspended by this Authority for three months from 22 December 1994. The police evidence was of intoxicated and under age patrons on the premises.

In Decisions No. 2339/94 - 2342/94 the Authority said:

"Whilst the matters outlined in the Police application are serious, we do not consider them to be such that the McCabe family should be precluded from being given an opportunity to prove that they can manage the proposed new licensed premises in a responsible manner. Accordingly we do not propose to make a finding that members of the McCabe family - or any company in which they have a controlling interest are unsuitable to hold a liquor licence; ... "

In a report to the District Licensing Agency pursuant to s.11(1)(b) of the Act, the regulatory manager of the Ruapehu District Licensing Agency, acting as an inspector, did not oppose the grant of on or off-licences to the company.

POWDERHORN LEISURE LIMITED

There are two applications. The first seeks renewal for the same hours for an on-licence, and the second is an application pursuant to Reg. 7 of the Sale of Liquor Regulations 1990 to increase the area covered by the licence. The premises have been redeveloped and offer full conference and restaurant facilities. A Resource Management Certificate dated 1 July 1996, forwarded to our Secretary following the hearing, certifies that a hotel, including accommodation, licensed restaurants and bars, and its proposed use, now meets the requirements of the Resource Management Act 1991.

The applicant seeks trading hours for the sale of liquor as follows:

Monday to Saturday 7.00 am to 3.00 am the following day to any person present

Sunday, Good Friday and Christmas Day 7.00 am to 3.00 am the following day to persons living on the premises or present on the premises for the purpose of dining.

Mr W J McDonald, the general manager of the applicant, told us that he has held a general manager's certificate for 17 years and has 23 years experience in the industry. He said:

"The public have been conditioned to this freedom to be legally allowed to visit licensed establishments until 3.00 am or later, and for this to be restricted, we believe would be very damaging to the future of tourism and its associated benefits for the whole of Ohakune ... "

In relation to the redefinition application we were told that as a result of the Ruapehu District Council requirement for amalgamated titles under the Building Act 1991, the applicant seeks to extend the areas covered by the licence to the limit of its legal boundary. Scale plans were submitted with the application, and no objections received.

Consequential changes are sought to designations so that only the downstairs bar and restaurant and glasshouse are designated as "supervised" with the remainder of the premises being undesignated.

TUROA SKI ACCOMMODATION LIMITED

This is an application for renewal of an on-licence in respect of hotel premises on its existing terms. The applicant's solicitor, Mr Boyle, called Mr G Berry as manager of the premises. He explained that in 10 years operations the premises had caused no problems and no convictions had been recorded against the licensee. In answer to a question from Mr Boyle during cross-examination Pastor Mason complimented Mr Berry on his "*exemplary*" operation of the premises. Trading occurs from 7.00 am until 3.00 am the following day.

OBJECTION TO ALL APPLICATIONS

Pastor J L Mason opposed 3.00 am closing on all premises. He urged that "*very strong consideration*" be given by the Authority to closing all three premises at 12.00 midnight.

Mr Mason produced and showed slides as to the areas affected in Ohakune Junction which he described as residential as well as tourist areas. He has lived for four and a half years in the area and produced a folder of written material to support his arguments. The folder included maps, decisions of the Authority, submissions to the Ruapehu District Council on its Proposed District Plan, photographs, a paper on young drivers and newspaper clippings from the Ruapehu and Ohakune area highlighting vandalism and vehicle accidents in the area.

Mr Mason told us that he believes Ohakune faces a peculiar set of circumstances which would not normally require addressing elsewhere in New Zealand. The problems occur particularly from June to October when the mountain is usually open for skiing. He highlighted problems with noise (an amphitheatre effect), vandalism in the Ohakune Junction area, apparent lack of Police apprehension of offenders, and a need for a quieter residential area with greater peace and security. Although unable, for alleged privacy reasons, to mention specific cases Mr Mason told us that through his work, he was aware of the problems brought on by the excessive consumption of alcohol, particularly late at night and in the early morning. He did not wish to pursue an allegation of bribery made in passing during the hearing.

In part of the material accompanying his oral submissions, Mr Mason suggested that the approach adopted by the Christchurch City Council could be followed. In that city where licensed premises in or adjoining residential zones seek to operate between 11.00 pm and 7.00 am the following morning, a resource consent must first be issued by the local authority. The Christchurch City Council states :

"Premises for the sale and consumption of liquor often involve large concentrations of people and associated ancillary entertainment facilities. These can create significant impacts, particularly noise, on nearby residential properties. Such effects can create intolerable nuisance to residents at night, a matter which has become evident from experience. Accordingly the plan contains provisions which require any premises for the sale and consumption of liquor within, adjoining or across the road from a living zone to be subject to a discretionary activity procedure to enable adverse effects to be addressed".

The Council also states: ...

"(it) has no objection to increasing the licensing hours in most commercial and industrial zones but wishes to ensure that uses which attract large numbers of people do not adversely affect the amenities of the neighbourhood if they operated late at night in or adjoining residential zones".

POLICE AND DLA POSITION

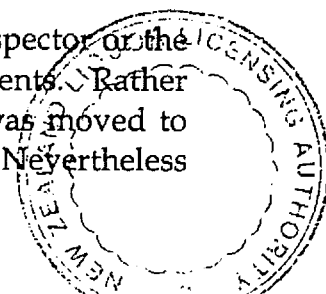
The Police confirmed their stance of "no objection" to all applications.

Mrs N Middleton, regulatory manager of the Ruapehu District Licensing Agency, indicated a similar stance and told us the Agency had no fixed position on hours in relation to these applications. In answer to a query from the Authority we were advised that there was no decision on submissions made in relation to the proposed Ruapehu District Plan.

CONCLUSION

We recently considered a series of cases, particularly in Queenstown, where the appropriate closing hour for trading had been argued. In the majority of cases the Local Authority, in its capacity as the District Licensing Agency, had formed a firm view as to what was desirable. Such a conclusion had arisen as the result of consultation by the Council followed by the creation of liquor licensing "policy" or alternatively as in Christchurch, expressed in the provisions of the district plan. The requirement to seek a resource consent, as a discretionary use, in effect pre-empts the grant of later hours by this Authority, unless the Local Authority concurs.

In these applications, there is no report in opposition either from an Inspector or the local Police. Further, no objections have been raised by nearby residents. Rather unusually, and reflecting the honesty of his clear beliefs, Mr Mason was moved to compliment Mr Berry of Turoa Lodge on the manner of its operations. Nevertheless



Mr Mason urges us to adopt 12.00 midnight closing in these applications as being in Ohakune's best interests.

We have delayed issuing this decision until we had the opportunity to consider and determine applications from Queenstown. Those decisions (LLA 1705, 1708, 1709/96) upheld the viewpoint of the Queenstown-Lakes District Licensing Agency that 2.30 am closing was generally desirable - at least within the Queenstown area itself. That "*policy*" of an elected local authority was reached after a lengthy process of consultation and meetings. Nelson City has conducted a similar process to establish its liquor "*policy*".

In these applications, no process of consultation has been undertaken by or on behalf of the Ruapehu District Council relating to any liquor policy. Mr Mason's submissions in relation to the district plan are but one aspect of what we imagine is a much wider mosaic to be considered by the Local Authority.

We have commonly regarded closing at 3.00 am the following day as appropriate for hotels and taverns where there are no countervailing arguments concerning neighbouring land use. When objections are received from those living nearby an earlier closing time is commonly applied. Here, that factor although raised by Mr Mason, does not seem to concern others in the town. Considering the material he produced in evidence Mr Mason is concerned with wider and general social concerns, and not merely those related to neighbouring land use.

In our view, the concerns properly raised by Mr Mason, should not succeed in the absence of evidence of wider support for that opinion within the local community. There could be a variety of such indications, but obviously one of the most powerful would be expressed via a resolution of the Local Authority, or by its proposed or operative district plan. We see little parallel between Ohakune and Christchurch City in planning terms. The latter has a number of different zones reflecting its greater size and diversity. There are closer parallels between Ohakune and Queenstown both in size and in the lack of an easily definable delineation between commercial and housing zones for planning purposes. In the Queenstown Commercial area, 2.30 am was fixed upon by the Local Authority as the appropriate hour for closure after prolonged local debate. An earlier position of 1.30 am closing was abandoned.

We are very reluctant to impose fixed closing hours on any area. We see the scheme of the 1989 Act as requiring a case by case consideration, and consider the statutory criteria with due weighting for local preferences in each application.

Against that background, we are not convinced in these applications that 12.00 midnight closing is appropriate. Whilst we could not preclude a "*blanket*" policy for the town if strong evidence in support was produced following widespread consultation by the Local Authority, that approach has not been sought here.

We determine the three applications as follows. The new licences may issue immediately following 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.

TAPAS LIMITED

(1) On-licence

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.

The entrance from Rimu 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) 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:

Monday to Saturday 7.00 am to 3.00 am the following day to any person who is present on the premises.

On Sundays, Good Friday and Christmas Day 7.00 am to 3.00 am the following day 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.

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 Rimu Street, Ohakune Junction, Ruapehu District are more precisely identified in a plan date stamped as received by Tribunals Division on 7 August 1995.

(2) Off-licence

We are satisfied as to the matters to which we must have regard as set out in s.35 of the Act and we grant the applicant an off-licence pursuant to s.29.

The licence will be 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:

Across the bar:

Monday to Saturday 7.00 am to 3.00 am the following day

- (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.

The licence will be endorsed as follows:-

"For the purpose of this licence the hours from 12.00 midnight on a Saturday to 3.00 am on a Sunday are considered to be part of Saturday."

The Licensed Premises

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 Rimu Street, Ohakune Junction, Ruapehu District are more precisely identified in a plan date stamped as received by Tribunals Division on 7 August 1995.

POWDERHORN LEISURE LIMITED

We grant the applicant an on-licence authorising the sale and supply of liquor, for consumption on the premises, to any person present on the premises for any of the purposes set out in s.7(1) of the Act. We also grant the Reg. 7 application in accordance with the scale plan supplied.

The entrances from Mangawhero Terrace and Thames Street are designated as the principal entrances.

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) 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) At any time on any day to any person who is for the time being living on the premises whether as a lodger or an employee of the licensee, or otherwise.
 - (ii) Monday to Saturday 7.00 am to 3.00 am the following day to any person who is present on the premises.
 - (iii) On Sundays, Good Friday and Christmas Day 7.00 am to 3.00 am the following day 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: the downstairs bar, restaurant, and glasshouse.
- (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.

The licence will be endorsed as follows:-

"For the purpose of this licence the hours from 12.00 midnight on a Saturday to 3.00 am on a Sunday are considered to be part of Saturday."

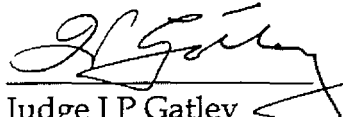
The Licensed Premises

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 the corner of Mangawhero Terrace and Thames Street, Ohakune, Ruapehu District are more precisely identified in a plan date stamped as received by Tribunals Division on 3 January 1996 and 26 June 1996.

TUROA SKI ACCOMMODATION LIMITED

We authorise the issue of a renewal notice on existing conditions for the on-licence for three years from the date of this decision.

DATED at WELLINGTON this 13th day of September 1996


Judge J P Gatley
Chairman



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