

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by SONNY HANG CHIN pursuant to ss.18 and 41 of the Act for renewal of on and off-licences in respect of premises situated at 19 Carroll Street, Dunedin known as the "Rugby Hotel"

BEFORE THE LIQUOR LICENSING AUTHORITY

Quorum: Mr R J S Munro  
Mr J W Thompson

HEARING at DUNEDIN on 23 November 1999

APPEARANCES

Mr S H Chin – applicant  
Mr A J Calder – Dunedin District Licensing Agency Inspector – in opposition  
Dr J D Holmes – District Medical Officer of Health – in opposition  
Sergeant M C Hepburn – NZ Police – to assist  
No appearances by objectors

DECISION

We have before us two applications by Sonny Hang Chin for renewal of on and off-licences in respect of premises situated at 19 Carroll Street, Dunedin, known as the "Rugby Hotel". Objections to both applications were received following public notification, and both matters were set down for public hearing.

Mr Chin told us that the site of his premises has been used for drinking since 1863. The area of land on which it is sited is zoned industrial. He opposed any reduction in the hours of trading sought by the objectors, and suggested:

*"Basically it's a case of buyer beware".*

Mr Chin produced a sketch of the area showing other nearby premises which included a panelbeater, an electrical firm, a tea company and student housing flats. Mr Chin told us that a major part of his trade arose very late at night, primarily on Thursday, Friday and Saturday evenings and that patrons arrived on his premises after visiting other licensed premises. The licences authorise trading for a hotel as follows:

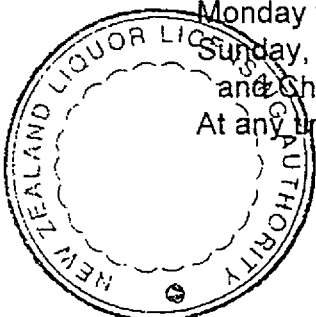
On-licence:

Monday to Saturday  
Sunday, Good Friday  
and Christmas Day

7.00 am to 3.00 am the following day

7.00 am to 3.00 am (dining only)

At any time on any day to persons living on the premises as a lodger or employee.



Off-licence:Across the bar

Monday to Friday

7.00 am to 3.00 am the following day

Saturday

7.00 am to 12.00 midnight

From any bottlestore

Monday to Saturday

7.00 am to 11.00 pm

The provisions of s.117 of the Sale of Liquor Amendment Act 1999 now extend these hours on Sundays after 1 December 1999.

Reports on Opposition

Mr A J Calder, a Dunedin District Licensing Agency Inspector told the Authority that he had visited the premises twice in 1999 on monitoring visits. During a visit on 28 August 1999 at 6.00 pm with Miss K Elliot, the Alcohol Health Promotion Advisor, Mr Calder was told that no food was available. None had been available since the bar had opened for trading that day. There was no duty manager present on the premises. On returning at 7.30 pm Mr Calder spoke to the duty manager (Mr Rob Berry) who again stated that there was no food available at that time and it would not be available until 9.00 pm that evening. Mr Calder visited again around 6.00 pm on 6 November 1999, this time accompanied by the Medical Officer of Health, Dr J Holmes. In response to questions about food, only one pizza was found stored in a chiller cabinet although the duty manager (again Mr Berry) said there were pies available in the freezer in the kitchen.

The kitchen was locked and Mr Berry did not have a key. Mr Berry said that Mr Chin held the key and would not be in until about 9.00 pm.

As a result of those visits Mr Calder recommends that the licence be renewed for 12 months only, and the hours are reduced to conform to hours in the Dunedin City Council Sale of Liquor Policy for premises in or adjacent to a residential area. Those hours are:

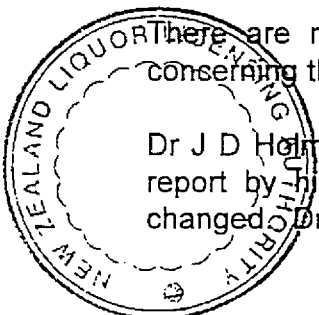
Monday to Wednesday	9.00 am to 10.00 pm
Thursday	9.00 am to 11.00 pm
Friday - Saturday	9.00 am to 12.00 midnight
Sunday	9.00 am to 10.00 pm

An earlier report by Mr Calder dated 9 February 1999 noted the results of an inspection on 3 December 1998. Mr Calder stated:-

*"At the time of my inspection the kitchen was not operative. As such I do not believe that this premises is capable of producing a meal for those on the premises for the purpose of dining. This is a direct contravention of the Sunday, Good Friday and Christmas Day provisions."*

There are no records of any noise complaints received by the Dunedin City Council concerning the Rugby Hotel.

Dr J D Holmes, the District Medical Officer of Health, appeared and referred to an earlier report by his predecessor dated 2 December 1998. Since that time the position has changed. Dr Holmes, Mr Calder (as an Inspector) and Sergeant M Hepburn of the Dunedin



Police now oppose renewal of both applications under existing conditions. A joint memorandum expressed the grounds of that opposition as:-

*"That the present hours do not fall within the Dunedin City Council Sale of Liquor Policy for premises in, or adjacent to, a residential area and further that the licensee has not complied with the conditions of the current on-licence in relation to the availability of food".*

Dr Holmes also suggested that renewal should be for one year only, that the hours comply with the Dunedin City Council Sale of Policy for premises adjacent to a residential area and that-

- "1. The licensee ensure that at all times alcohol is sold, bar staff have access to a range of frozen food or meals stored on the premises.*
- 2. The licensee provide appropriate facilities for heating and serving food.*
- 3. Menus advising patrons of the range of foods available are clearly displayed in the bar area at all times.*
- 4. The District Licensing Agency and the Police regularly monitor and enforce the conditions of the on-licence".*

Dr Holmes referred the Authority to extracts from the New Zealand National Drug Policy which seeks to reduce hazardous and excessive consumption of alcohol and to the concept of "host responsibility" which includes the requirement that food and non-alcoholic refreshments be available and actively promoted to patrons at all times when alcohol is sold.

Dr Holmes expressed his opinion that food on these premises is not available in accordance with the conditions of the licence.

#### Objectors' Written Evidence

None of the objectors who lived near the applicant's premises appeared at the public hearing to support their written objections. The complete file contains objections alleging patrons leave the hotel drunk, together with complaints of excessive noise, vomit and urination in the street and fights and domestic type incidents.

In closing submissions Mr Chin told the Authority that he imposed reasonable standards and that food was available on the premises. If necessary he would ring "Wonder Wok", which is a separate business run by a relative, which is able to deliver food to the premises when and if needed. In opposing Mr Calder's recommendations for early closing he noted that pool games frequently did not finish until around 11.00 pm; 10.00 pm closing would create obvious difficulties.

#### Authority Conclusion and Reasons

We accept evidence from an Inspector and others that food has not been available for consumption on the premises in accordance with condition (c) of on-licence 069/ON/36/97. That condition requires:-



*"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".*

We find that that condition of the on-licence has not been met.

In determining an application for renewal of an on-licence the Authority is directed by s.22 of the Act to have regard to the following matters:-

- "a) The suitability of the licensee.*
- b) The conditions attaching to the licence.*
- c) The manner in which the licensee has conducted the sale and supply of liquor pursuant to the licence.*
- d) Any matters dealt with in the report made under s.20 of this Act".*

In relation to the off-licence there are similar criteria contained in s.45.

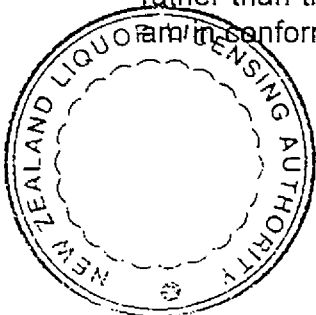
Any licensee who does not fulfil the conditions attaching to licences, particularly after receiving visits and warnings, may well be unsuitable to continue holding his or her licences. The combination of no food being available contrary to a significant condition, objections to renewal from neighbouring residents, and reporting officer's joint recommendations raise that possibility.

No objectors chose to attend our public hearing. This lessens the weight to be accorded to their objections. The site is in an industrial area for resource management purposes. Further, there have been no noise complaints recorded by the Dunedin City Council pursuant to the Resource Management Act which specifically relate to Mr Chin's premises. We accept his suggestion that noise is also likely to have been created from patrons of other premises in the general area. Evidence on this point is inconclusive.

Mr Chin should be well aware that the privilege of holding on and off-licences comes together with burdens. Either he is able to uphold the law including fulfilment of all the conditions of the licences or he is not. It is clear that these premises cater for a late night crowd. If the opportunity to trade to those customers at that time is reduced as suggested by the reporting authorities, Mr Chin will probably find that his business effectively no longer exists.

We have decided to give Mr Chin a final chance to correct the problems outlined to us.

Only a short renewal period is appropriate to enable Mr Chin that opportunity and to demonstrate that he is capable of running these premises in accordance with the law. If he fails to do so and when renewal is again sought, it may well be that renewal is refused rather than the hours being reduced. Nevertheless, the opening hour will be varied to 9.00 am in conformity with the local authority "policy".



The on and off-licences are renewed until 1 July 2000 on existing conditions other than hours. After considering the effect of s.117 of the Sale of Liquor Amendment Act 1999, the hours will be:-

On-licence:

Monday to Saturday	9.00 am to 3.00 am the following day
Sunday	9.00 am to 10.00 pm

Off-licence:

Across the Bar

Monday to Sunday	9.00 am to 3.00 am the following day
Sunday	9.00 am to 10.00 pm

From any bottle store:

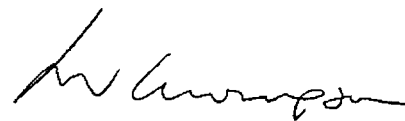
Monday to Saturday	9.00 am to 11.00 pm
Sunday	9.00 am to 10.00 pm

We are satisfied as to the matters to which we must have regard as set out in ss.22 and 45 of the Act. We renew the licences until 1 July 2000, and authorise the issue of replacement licences and renewal certificates.

DATED at WELLINGTON this 25<sup>th</sup> day of December 1999

  
R J S Munro  
Member



  
J W Thompson  
Member

