

Decision No. 60B [2017] 1724

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012.

AND

IN THE MATTER

of application under s. 99 of the Sale and Supply of Alcohol Act 2012 by **Miknik Limited** in respect of premises at **579 Colombo Street, Christchurch**, to be known as **A Rolling Stone**.

RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: P R Rogers

Members: Mr P Buttell and Mr A Lawn.

HEARING at Christchurch on the 13 June 2017

PRESENT: **Nicola Dodge and Michael Kane** – On behalf of the applicant
Katia Fraser – Counsel for applicant
Anneke Lavery – Licensing Inspector – in opposition
Constable Adrienne Jones – NZ Police – in opposition
Paula Williams – On behalf of the Medical Officer of Health – in opposition
Allison Houston (Inspector) - to assist
Suzzane Ramsay – Expert witness for the Inspector
Sergeant Strick – NZ Police – witness
Sergeant Strong – NZ Police - witness
Janet Anderson – Committee Adviser

INTRODUCTION

[1] This matter concerns an application by Miknik Limited for a new On-licence at 579 Colombo Street, Christchurch, to be known as A Rolling Stone.

[2] The Licensing Inspector, New Zealand Police and the Medical Officer of Health (MOH) were in opposition to the application. These three organisations are to be known as The Agencies.

[3] The parties to the proceedings were identified. An explanation was given that the applicant would give his evidence in support of his application followed by the Agencies. Members of the Committee could ask questions at any time and witnesses could be cross-examined by the other parties.

[4] The Hearing was being held as a result of opposition from the Agencies in relation to an application lodged in the name of Miknik Limited with Nicola Kane and a Michael Dodge as sole directors. In this decision they will be referred to as the applicants. The application was lodged on the 5th of September 2016. Since the Hearing the applicants have decided to call the premises 'A Rolling Stone'.

[5] The premises concerned are on one of the city's main thoroughfares, in the central business district, and consist of a new two storey building with a glass frontage.

THE HEARING

Evidence of Applicant

[6] **Ms Dodge** on behalf of the applicant gave evidence of her experience in the industry and of currently operating The Claddagh at Ferrymead Christchurch, whilst previously operating The Irishman on Manchester Street and the Irishman Too on St Asaph Street. Early in her evidence she apologised for the state of the application. She stated she had met with the Agencies on a number of occasions and made a number of changes as a result of their concerns.

[7] The witness gave evidence that the Agencies concerns included the way she and Mr Kane had operated Irishman Too and she agreed that the premises were too large. She stated that it ended up not operating in the manner originally intended due to the number of patrons they were getting through the doors on busy nights.

[8] The witness said the new premises were approximately a quarter of the size of Irishman Too with a maximum capacity of 167 patrons. The intention was to operate it as a traditional Irish Pub and they anticipated it would not attract the type of customers that Irishman Too did.

[9] The witness said that she understood the Agencies had concerns on the lack of progress over the fit-out of the premises and this was due to the fact that they had stopped the bulk of the work, not knowing if they would get a licence.

[10] The applicant described an outside area that would be included in the licence, if granted, with no alcohol in this area after 9.00 pm on peak nights. With the type of operation

envisaged the applicant did not see that there would be queuing outside the premises on busy nights but if there was, it would be restricted to the car park in front of the premises. At the hearing she said the premises would have a full commercial kitchen and outside peak times there would be a snack menu available. This was changed after the Hearing through an undertaking that the commercial kitchen would be operating with a full menu until the premises closed.

[11] Ms Dodge commented on amenity and good order and stated that it was not good at present as the area is essentially full of construction sites and empty sections. However she saw her new premises as raising the amenity of the area. If the application was granted with the hours sought till 3.00 am there would be security working on the front doors and also keeping a lookout over the car park. She believed this would also improve the amenity and good order of the area.

[12] Concerning noise, the applicants' lease restricts the noise from the premises to 75 decibels before 9.00 pm. This would not be an issue as they will not be having live music before this time. With reference to the comments in the CPTED report Ms Dodge stated that the nearby land has been fenced and is now a construction site. She had been told by the building manager that there was going to be a bar/restaurant on the ground floor of the new building. The applicants had also spoken to the building manager about having a barrier across the entrance to the carpark on peak nights.

Cross Examination

[13] The Inspector asked what was the intended target market and the applicant replied it would be 25 year olds and upwards. When asked about the hours sought she replied that it was important for them when looking at premises that it should be an area where a 3.00 am closing time was permitted and the premise in question is in a mixed use area. In reply to a question concerning noise containment she replied that she considered noise would not be a problem as the band would be located at the rear of the premises.

[14] Ms Dodge was then asked if she knew what the object of the Act was and seemed to be at a loss for words and could not answer the question.

[15] Under questioning from the Inspector concerning the outside area, she said that they intended to have about three or four tables with a separate small smoking area. No alcohol would be allowed in this area after 9.00 pm.

[16] The MOH questioned the operation of the old Irishman Too premises and the applicant admitted that they were always trying to play "catch up" in relation to their management of the premises. The applicant confirmed they would be joining the alcohol accord.

[17] The Police questioned the applicant over the management of the premises and the general managers who had been at Irishman Too and the applicant replied that there was still one manager now employed at the Claddagh and they may leave him there. The applicant was asked if there was a training manual and she replied that there was.

[18] There was a lot of discussion concerning the area to be licensed and the applicant agreed that the plan previously supplied with their application did not show the latest layout of the premises nor the outside area. She produced to the Hearing the latest plan and it was

agreed this would be finalised and supplied to the Agencies and the Committee at a later date.

Re-examination

[19] Counsel revisited the question concerning the object of the Act, and the applicant explained that she had been taken by surprise and then gave a passable definition of the meaning of that section.

Questions from the Committee

[20] The Committee asked as to how she knows how many persons are on the premises at any one time and she replied that security personnel have a clicker to keep count. Asked whether any enforcement action had been taken at the Claddagh, she replied there had been none.

Evidence of co-director.

[21] Mr Kane under cross examination gave evidence, describing the design of the premises and stating it would be a typical Irish pub with booths and tables. He agreed that this is not what the plan showed that was produced to the Hearing. He said the details were still being finalised but it would be designed on the same lines as The Irishman on Manchester Street with Irish paraphernalia.

[22] When questioned over the running of Irishman Too the witness used words such as “shambolic” and “a constant battle” and he admitted that producing a final plan of the premises detailing the licensed area only at the Hearing was “embarrassing”.

Evidence of the Agencies

[23] The Agencies produced a number of witnesses whose briefs of evidence had been produced and taken as read without cross-examination. This included evidence of Senior Inspector Martin Ferguson. His brief gave details of visits to Irishman Too on a number of occasions and the sighting of intoxicated persons, vomiting, and once a person asleep under a table. He described this would be highly unusual on most licensed premises.

Evidence of the Police

[24] Sergeant Harris gave evidence as supervisor of the Alcohol Harm Reduction Unit (AHRU) for the last two and half years and stated that prior to joining the police he had previously worked in the hospitality industry for twelve years. He described the work he had to carry out in relation to one of the applicant’s previous premises, the Irishman Too, and stated that it became a key consumer of his time.

[25] The premises, Irishman Too, were also creating a lot of comment from other police units as to the behaviour on the premises, such as intoxication, fighting and other issues. From August to November 2015 a number of further offences were linked to the premises. Over a period of time meetings were held with the management of Irishman Too. In March 2016, as a result of on-going problems and the finding of one of the licensees intoxicated on the premises, the Agencies re-doubled their focus on the premises.

[26] In April 2016 enforcement papers were forwarded to the Alcohol Licensing Regulatory Authority (ARLA) initially detailing the failed Controlled Purchase Operation. As a result of ongoing intoxication offenses on the premises an application for suspension of the licence was forwarded to ARLA in May 2016. In an agreed joint memorandum and summary of facts submitted by the Police and the applicant, the company received a four days suspension of their licence. However due to tenancy issues the premises ceased trading and the suspension was never served.

[27] The Sergeant said what was striking about the Irishman Too was, while the size of the building was not unusual, what was unusual was that the licensed area included the car park and the premises could hold more than 500 patrons if the licensee chose.

[28] The Sergeant said the premises which are the subject of this application were significantly smaller than Irishman Too. The concerns he had over the new premise were the days and hours of operation, design and layout, sale of goods other than alcohol and good order and amenity of the locality.

[29] When a 1.00 am closing time was mentioned to the applicant as a way of mitigating any future problems, the response was that it would not be worth operating the premises if they could not be licensed to 3.00 am. The witness stated that this put the premises into the high risk category.

[30] During meetings over the new premises there were discussions over a small outside area and the Sergeant had understood there was to be a wall around the area. He had found at the Hearing that it was only going to consist of planter boxes with hedging in them.

Cross Examination

[31] The Inspector asked the witness to state what his main concerns were about the application and he responded that from a Police perspective the St Asaph Street precinct was the worst late night area in the city. The MOH confirmed with the Sergeant that the later a premise trades there are more intoxication issues. The witness also confirmed that the St Asaph Street Accord contained a one-way door operation time from 2.00 am. He added that most trouble occurred at the entrance way to premises and that having a the car park, which was a public space, in front of the premises created control issues for door security.

[32] Counsel asked the witness whether he had knowledge of the premises known as The Irishman which had been in Manchester Street, prior to the earthquakes of 2010/2011. The witness replied no, as it had closed prior to his time with the AHRU. Counsel asked if he had visited the Claddagh the other licenced premises run by the applicant, and he replied he had not.

[33] The Committee asked the Sergeant, given that the new premises only holds 167, how he would describe the size of the premises and he replied "pretty modest" and he agreed that in relation to suitability of the premises, the suitability increases with the reduction in size. Asked what would remove some his concerns about this application he replied that if the premises had more of a food focus, and was less dance focused, this would help but that he was not convinced having an Irish themed bar would mitigate his concerns. In reply to a further question from the Committee the Sergeant said, in his opinion, the customers set the tone rather than the décor.

[34] Sergeant Strick in his brief, which was taken as read stated that his duties were as a supervisor of what is called a Police Support Unit formerly known as Team Policing. He had worked with this unit for five and half years and this gave him a good overview of the behaviour of the public across Christchurch. He said on his visits to the Irishman Too there had always been a level of uneasiness. He had felt this from time to time at other licensed premises but it was always there when then they visited the premises in question.

[35] Sergeant Strong whose brief was taken as read was also the supervisor of a second Police Support Unit. He detailed in his brief similar concerns to those held by Sergeant Strick, in particular the level of disorder in the streets due to the presence of the Irishman Too and how, while still busy late at night on Friday and Saturday, there was less disorder after it stopped trading. In relation to inside the Irishman Too he described it as a “free for all” on the premises and blamed this on a lack of security for the numbers on the premises.

[36] Ms Lavery called two witnesses who ran businesses either next door or on the first storey of the premises. Ms Davidson who is the general manager of a business on the first storey of 579 Colombo Street had concerns as she sometimes has staff working until 9.00 pm and sometimes even later due to the international nature of her business. She had concerns over noise and safety issues with staff leaving in the evening and also the access to the car park should staff be picked up by taxi.

[37] The second witness Mr Miroslaw gave evidence of owning a gym and being told when he signed his lease that it was a café/restaurant going in next door, not a nightclub or bar. He had concerns as to the type of person this would attract to the area immediately round his gym and the presence of bottles and other debris that could be left in the car park. The witness said he had concerns as he had heard there was going to be a barrier across the car park entrance and this could cause access problems for his clients.

Expert Evidence

[38] The Inspector called Suzanne Ramsay as an expert witness in Crime Prevention through Environmental Design (CPTED). Ms Ramsay gave details of being employed by the Christchurch City Council as a CPTED specialist. She consults and teaches CPTED and is a member of a number of CPTED related organisations. She confirmed she had read the High Court rules regarding expert witnesses and agreed to abide by them.

[39] She produced to the Committee a document entitled St Asaph Street Precinct CPTED Report which had been requested by the Council’s Alcohol Licensing Team Leader, to assess the impact of the late night economy (LNE).

[40] The report was very comprehensive and covered the wider area in the St Asaph Street Precinct and was not just based around the premises in question at 579 Colombo Street. Some of the points to come out of the report were that most licensed premises are open to 3.00 am. A number of the sites in the block are vacant and others have empty buildings. There is a mixture of retail, commercial and hospitality on St Asaph Street. The report covered some activity in the car park of 579 Colombo with people congregating and persons coming and going after parking their cars.

[41] A significant risk identified was the use of razor wire which the report identified as not suitable for an urban environment and being more suitable to an industrial or rural area. The geography of the area to the rear of the premises in question is identified as an at risk area due to it being a “rabbit warren” of interconnecting alley ways and concealed spaces. In the view of the witness this risk was exacerbated by the closeness of the LNE area and, should a licence be issued for 579 Colombo Street, Ms Ramsay stated this risk will be further elevated.

[42] In general comments the report covered the fact that the area of St Asaph Street had changed a lot in the last six years since the earthquakes and is likely to be the focus of redevelopment of the LNE as the Provisional Local Alcohol Plan provides for development in this part of the city.

[43] The report expresses concerns that the establishment of a new licensed premise at the proposed location may have further impact on LNE harms, being somewhat separate and round the corner from St Asaph Street.

[44] The writer makes 15 recommendations, which she sees as needing implementation in the general area of the precinct. One of these directly relates to the premises in question and that concerns the razor wire which is on the boundary with 579 and 591 Colombo Street. She comments that resource consent is required for its use in Christchurch City.

[45] Under questioning from the Inspector the witness said there was a relationship between the quality of the fit out and the behaviour of the patrons and the higher the quality of the fit out the higher the feeling of high amenity. Ms Ramsay said that on one of her late night visits she had seen a lot of people congregating on the Colombo and St Asaph Street corner. She went on to say the problem of pedestrian congestion in relation to licensed premises coupled with the consumption of alcohol causes the most injuries. Therefore where there is a cluster of bars then there will be greater harm caused in public places.

Cross Examination

[46] The MOH enquired as to the suitability of the site in a late night precinct area and the witness replied it would have been better if it was round the corner in St Asaph Street rather than in Colombo Street.

[47] Counsel for the applicant questioned the witness as to the distance to the closest licensed premise which was round the corner in St Asaph Street and she replied 50 to 60 metres, (The Inspector clarified this and said she had checked and it was 73 metres to the Engineers licensed premises). It was put to the witness that the recommendations in her report were outside the control of the applicant and she replied, “yes”. The Committee asked whether the evidence she had heard that the premises were intended to be an Irish themed bar with a capacity of 167 patron had changed her view about its location. She replied that some licensed premises which aim for an up market demographic have within 6 months had to lower their aspirations.

That ended the Hearing.

DECISION

[48] All the evidence presented to the Committee was considered, and the Committee had regard to the various sections of the Act. In particular the sections listed below:

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

Section 105 - Criteria for issue of a licence:

- (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.

Section 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:
 - (i) 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 3(2) The purpose of the Act.

The characteristics of the new system are that—

- (a) it is reasonable; and
- (b) its administration helps to achieve the object of this Act.

CONSIDERATIONS

[49] In this matter the applicant company has sought an On-licence for the address of 579 Colombo Street, Christchurch. The premises are located just south of St Asaph Street and on the western side of the road.

[50] The three Agencies opposed the application on a number of grounds and while there were no objectors two nearby business owners were called as witnesses by the Inspector to give evidence of the alleged effect this new licence if issued, would have on their businesses.

[51] The premise concerned is in a newly built glass fronted two storey building with a car park between the front of the building and Colombo Street and it is intended to have an Irish theme. There is a building currently under construction on the northern side and a building on the southern side which is occupied by a gym.

[52] The Christchurch City Council currently has no Local Alcohol Plan (LAP) but has a Provisional LAP. This has yet to be finalised and as a result it cannot be taken into consideration for forming the basis for this decision. The Committee has therefore to look at the evidence produced, submissions from all parties, the Sale and Supply of Alcohol Act 2012 and relevant case law in coming to its decision.

[53] The section that the Committee needs to focus its mind on is s.105 of the Act and it is appropriate that we deal with the matters raised sub-section by sub-section. Sub-section (a) object of the Act, will be considered later in this decision as it was not an issue raised at the Hearing.

[54] Sub-section (b) - suitability of the applicant. This was an issue raised by the Agencies and it concerns the running of the premises called Irishman Too in nearby St Asaph Street. The applicants had previously been running a tavern called The Irishman in Manchester Street, Christchurch which was damaged by the earthquakes of 2010 and 2011, and had to close. The applicants were granted a licence for a premise in St Asaph Street and it was called Irishman Too. Those premises, which included both the building and the car park, also licenced, had a large capacity of up to 500.

[55] The Irishman Too opened in October 2012 and would have had a one year licence for what is commonly called the probationary year, followed by a three year renewal. On the 6 March 2016, Michael Kane, one of the applicants, was found intoxicated on the premises of Irishman Too and subsequently enforcement action was taken by the Police under s. 280 of the Act. On the 19 March 2016 a controlled purchase operation was carried out on the premises and staff sold to a minor. This did not relate to the applicants directly, neither of them being the persons that sold or were the certified duty manager at the time. An agreed summary of facts was forwarded to the Alcohol Regulatory Licensing Authority (ARLA) and a suspension of the licence ordered, but the premises closed over a tenancy issue before the suspension could be served.

[56] A wealth of evidence was produced by the Agencies concerning the operation of the Irishman Too premises. All the Agencies agreed this was the number one problem premise in the central city of Christchurch and took up a lot of their time. The premises were often visited by the Police Support Units, commonly called Team Policing, and the Sergeants in charge of the Units gave evidence describing the atmosphere as one of unease when they entered the premises. One of them commented that this was not the normal feeling he felt when he went into other licenced premises but it was always present at the Irishman Too.

[57] The Committee was left in no doubt that the management of Irishman Too brought into question the suitability of both applicants and this would have in the Committee's view possibly tainted this application to a point where the Committee would have no other option than to find the applicants unsuitable. However, there are a number of other factors to be considered, chiefly the fact that alongside the running of Irishman Too the applicants have been running another successful licensed premise at Ferrymead, Christchurch called The Claddagh.

[58] Looking at the issues raised **Page decision** – *Pankhurst J HC A84/98*.

“That implies an onus upon the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of the particular case: for example the place, the intended business (here in a difficult central city location), the nature of the business itself the hours of operation and the intended activities, provide the basis for the assessment of the individual”.

[59] Clearly, looking at the Page decision, to just focus on the performance of the applicants in relation to their running of the Irishman Too would be taking a too narrow approach given evidence of their suitability in relation to the running of The Claddagh.

[60] The Claddagh, from the evidence before the Committee, is being well run and has not been the cause of any adverse comment from the Agencies. A lot of evidence was given that it is the clientele that a premise attracts which can dictate how it is run and the effect on the amenity and good order of the surrounding area. Where the people it attracts are in a state of intoxication then this can lead to what has in the past been referred to as the “moth to the flame effect”. This has not been the case at The Claddagh as it appears to attract a different type of clientele.

[61] In an undertaking supplied after the Hearing the applicants have changed the trading name of the new premises to ‘A Rolling Stone’. The committee views this as a positive step and a willingness by the applicants to remove a possible connection with the Irishman Too by way of the name of the tavern.

[62] A Rolling Stone will have a maximum capacity of 167 persons, approximately a quarter of that of the Irishman Too premise and similar to the capacity of The Claddagh. This means it will not be attracting the numbers that Irishman Too did, which was estimated as having 1000 clients through the door on a busy night. While the intention had been to call the new premise “The Irishman” it was discussed during the Hearing that this may result in attracting the same clientele as the Irishman Too.

[63] Considering the Sheard case: ***Re Sheard*** [1996] NZAR 61, Holland J made these comments on the issue of suitability:

“To refuse an application for an on-licence on grounds of suitability the Authority has to be satisfied on the balance of probabilities that the character of the applicant has been shown to be such that he is not likely to carry out the responsibilities that go with the holding of a licence.”

[64] The Committee's opinion based on the evidence is that we are satisfied on the balance of probabilities that the character of the applicants has been shown to be such that they are

likely to carry out the responsibilities that go with the holding of a licence, therefore we find the applicants suitable to run the premises in question.

[65] Sub-section (c) - as previously mentioned Christchurch has no current LAP.

[66] Sub-section (d) concerns the days and hours of operation of the premises and the applicants have sought 8.00 am to 3.00 am the following day. Evidence from the Agencies was that this was too late and the later the trading time the greater the harm, particularly after 1.00 am. This premise is within 60 metres of the St Asaph Street precinct which has to a large extent other similar premises closing at 3.00 am. In an undertaking the applicants have agreed to a 2.00 am one way door. The Committee notes that the Certificate under s. 100(f) of the Act allows for the sale and consumption of alcohol as a permitted activity until 3.00 am. The Committee considered it would therefore be unreasonable to restrict this premise to a 1.00 am closing, subject to s. 3(2)(a) of the Act.

[67] Sub-section (e) comments on the design and layout of the premises. The Committee has found this problematic in previous instances where a new building, which is still undertaking a fit-out is concerned and the Agencies have raised objections concerning the design and layout. The Committee has sympathy when an applicant does not want to proceed with further expense whilst not knowing whether a licence is going to be granted. It believes the wise approach is to have the applicants produce and give evidence of the intended design and layout. If subsequently the decision is to grant the application, there should be conditions around the final design and layout requiring the approval of the Agencies before the granting of the licence.

[68] The documents supplied to the Committee prior to the Hearing and the information supplied to the Agencies was confusing, as was the evidence given at the Hearing. There was no plan of the interior design of the premises produced at the Hearing and it was only after the Hearing a finalised plan was supplied.

[69] Likewise the documentation provided with the application relating to the food service was confusing and comments made to the Agencies prior to the Hearing raised their concerns. The confusion has now been removed with the applicants confirming that a commercial kitchen will be installed and an undertaking was given after the Hearing that the kitchen would stay open until the premises close rather than just supplying snack food late at night. The Committee commends this undertaking as we see it helps in reducing alcohol harm and increases the amenity of the premises to have dining available throughout the night.

[70] The Committee intends to make it a condition of this decision that the licence will only be issued after approval of the layout and design is given by the Agencies. If approval is not given then there will be a re-hearing to decide on the matters in dispute.

[71] In evidence Ms Dodge stated that the small outside area, with seating available would be enclosed using planter boxes filled with a buxus hedge. The applicant was seeking for this area to be licensed, however on a Friday and Saturday night she said no alcohol would be allowed in this area after 9.00pm. As a result the area marked on the plan of the premises outside of the main door, 9 metres by 1.5 metres will only be licensed from 8.00 am to 9.00 pm on a Friday and Saturday night.

[72] Another matter of concern to the Committee and the Agencies in relation to the outside area was the enclosure being defined by planter boxes containing buxus hedging. The Police, and rightly so, saw a problem of control on busy nights with patrons able to pass items backward and forwards through the hedge. As a result of these concerns, in an undertaking given after the Hearing, the applicant agreed to erect a removable solid backing to the height of 1.8 metres behind the planters which will be in place from 9.00 pm on a Friday and Saturday night. This area will then effectively become simply a smoking area during those hours.

[73] Sub-section (h) – Amenity and good order of the locality - The Committee notes that the Certificate under s. 100(f) in the bundle of documents supplied, has a letter to the applicants advising that this letter serves as a Certificate of Compliance (Sale Of Alcohol); and records the address of 579 Colombo Street as being zoned Central City Mixed in the Christchurch City Plan, with a recommendation that these zones allow for food and beverage outlets as a permitted use. It goes on to say the sale and supply of alcohol for consumption on the premises complies with the District Plan Resource Management Act 1991, or by way of resource consent.

[74] Evidence was produced of the harms of late night consumption of alcohol and the effects on the amenity and good order. It was the opinion of the Committee that it was not convinced that the addition of another late night venue would decrease the amenity and good order by more than a minor amount, pursuant to s. 105(h) of the Act. There was a lot of evidence produced by Ms Ramsay who conducted a thorough CPTED of the area and clearly there are amenity and good order issues late at night, however as stated the Committee believes the impact of the premise in question will be small.

[75] Looking at the application of s.106 of the Act and the context of this being a mixed use zone under the District Plan, noise is obviously an issue across the board. Due to the premises being in the central business district (CBD) on one of Christchurch's main streets the background noise from traffic, people on the street and entertainment premises will be significant. The Committee fails to see that, given the size of the premises in question and the fact that the band when playing is at the rear of the premises, noise from within the premises will be excessive. The applicants have given an undertaking there will be no outside speakers.

[76] The Committee had some sympathy for the occupants whose business is above the premises in question and it is unfortunate that this business does not finish at the normal office times. The Committee comes back to the zoning of the area and its mixed use. Likewise the gym that operates next door to the premises cannot, in the view of the Committee expect not to have an entertainment venue next door to them in a mixed use zone. To refuse the application on the grounds of the proximity of these two businesses, would in the view of the Committee be in breach of s. 3(2)(a), in that it would be unreasonable.

[77] Looking at the Venus decision below, the Committee has formed its view on the facts raised in this Hearing and made its judgement that amenity and good order will not be materially reduced, by more than a minor extent, by the effects of the issue of this licence.

Re Venus NZ Limited [2015] NZHC 1377.

[53] ... it seems to me that [the (sic)] question whether amenity and good order will not be materially reduced is one on which a judgement must be formed by the Authority, on the facts

of a specific case, as opposed to something that an applicant is required to prove on the balance of probabilities. The difficulties inherent in proving a negative support that view.

[78] In relation to nuisance and vandalism the applicants have given evidence of an intention to have the car park in front of the premises tidied up at the end of each day. The Committee is of the opinion that the issue of nuisance and vandalism will be no worse than having an empty section or vacant building. Christchurch is unique in that the fabric in large areas of the city is having to be re-built after the earthquake to improve the amenity and good order of the central business district.

[79] Sub-section (j) appropriate systems, staff and training. The applicant produced after the Hearing a number of documents entitled Induction and Training Manual. In the Committee's opinion these are the bare minimum that it would expect to see and under training would have expected more on the provisions of the Act to re-inforce the training undertaken in the Licenced Controller Qualification.

[80] In making its decision the Committee has considered the appropriate sections of the Sale and Supply of Alcohol Act 2012 and as a starting point we should look at the object of the Act. To paraphrase the object of the Act; the sale and supply of alcohol should be undertaken safely and responsibly and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

[81] Finally the Committee sees no conflict with the object of the Act, in this instance the granting of this application is no different to many other licensed premises in the area. The applicants have stated it is to have an Irish theme and there is nothing different or controversial that would cause us to have concerns that the object of the Act would be breached.

CONCLUSION

[82] The Committee, after hearing all the evidence was convinced that this application would not breach the object of the Act and that in relation to amenity and good order it would not affect the locality by more than a minor extent.

[83] While clearly the Agencies and witnesses would prefer not to see this licence issued, as stated previously it is the view of the Committee, that it should be issued having regard to section 3(2)(a) of the Act, namely that the stated intention of the legislation is that the system be reasonable.

[84] As stated at paragraph [64] of this Decision.

“The Committees opinion based on the evidence is that, we are satisfied on the balance of probabilities that the character of the applicants has been shown to be such that they are likely to carry out the responsibilities that go with the holding of a licence, therefore we find the applicants suitable to run the premises in question”.

[85] The licence can therefore be granted subject to the undertakings and conditions below.

UNDERTAKINGS

[86] The **attached Undertakings signed by the applicant's solicitor and dated 30th June 2017** and attached to this Decision will be considered conditions of the licence.

[87] The Committee places its own condition that, **prior to the issue of the licence the applicant seeks and obtains the approval of the Agencies in relation to the design and layout of the premises.**

[88] The licence will be subject to the following conditions:-

Discretionary conditions – section 110 (1)

(a) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:

Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.

(b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:

Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.

Compulsory conditions – section 110 (2)

The following conditions are compulsory:

(a) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day to any person who is not present on the premises to dine.

(b) Alcohol may only be sold the following days and during the following hours when the premises are being operated as a tavern:

Within the building:

Monday to Sunday, between the hours of 8.00 am to 3.00 am the following day

Outside area:

Sunday to Thursday, between the hours of 8.00 am to 3.00 am the following day
Friday and Saturday, between the hours of 8.00 am to 9.00 pm

(c) Water will be freely available to customers on the premises while the premises are open for business.

One-way door - Section 111(1)

(a) A one-way door shall operate from 2.00 am.

Section 117 – Other Discretionary conditions

(a) The following steps must be taken to promote the responsible consumption of alcohol:

The licence must implement and maintain the steps proposed in their host responsibility policy aimed at promoting the reasonable consumption of alcohol.

(b) Any other discretionary conditions that the applicant has agreed:

- water from reticulated stations
- The undertaking supplied by the applicant through their solicitor dated 30 June 2017, is to be considered a condition of the licence.

Section 119 – Restricted or supervised areas (hotel or tavern)

The whole of the premises is designated as a supervised area.

Other restrictions and requirements

Section 50 – One-way door restrictions in local alcohol policies to be complied with

Section 51 – Non-alcoholic drinks to be available

Section 52 – Low alcoholic drinks to be available

Section 53 – Food to be available

Section 54 – Help with information about transport to be available

Section 56 – Display of signs

Section 57 – Display of licences

Section 214 – Manager to be on duty at all times and responsible for compliance

A copy of the licence setting out the conditions to which it is subject is attached to this decision. The licence shall be issued for 1 year.

THE LICENSED PREMISES

The premises are identified on the plan provided dated 30 June 2017 for the licence. Undertakings apply to this licence and form part of its conditions.

DATED this 19th day of 2017

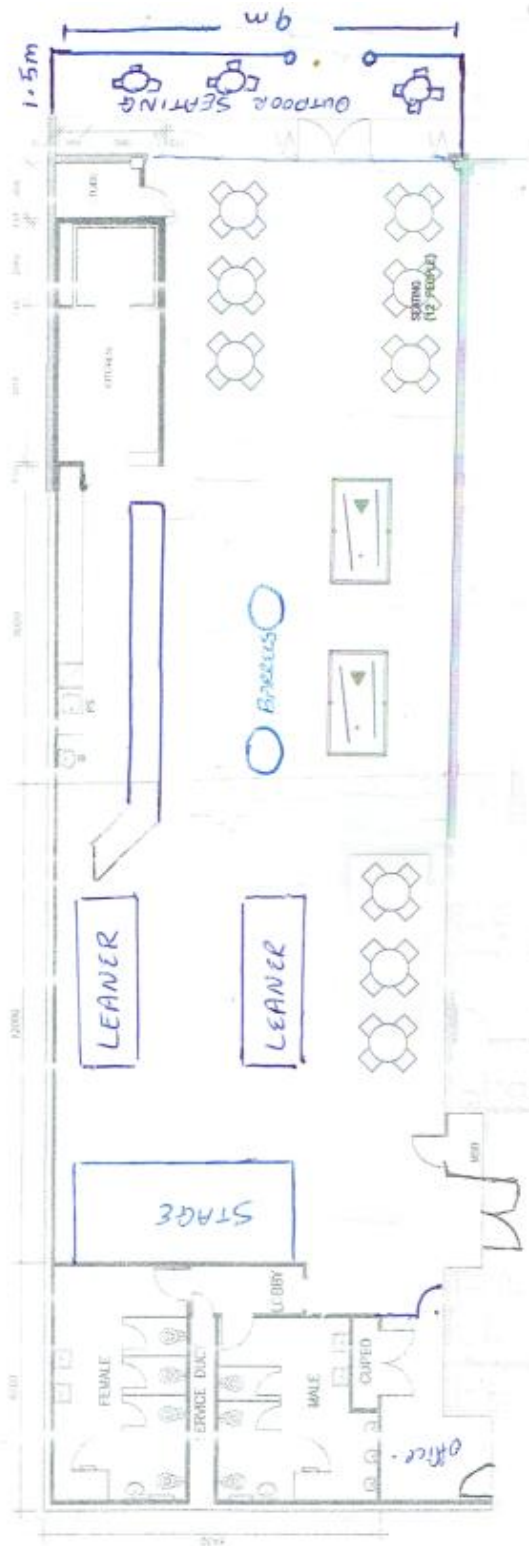


P R Rogers

Chairperson

CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Final Plan



Ground floor plan
PLAN - GENERAL ARRANGEMENT
SCALE 1:100
OCCUPANCY 50 GUESTS, 30 STAFF



Undertakings by Miknik Limited in respect of premises at 579 Colombo Street,
Christchurch

The applicant undertakes that:

- (a) The outdoor area will be enclosed by way of boxed planters with a removable solid backing 1.8m in height. The backing will be placed behind the planters at 9pm on Friday and Saturday nights.
- (b) A commercial kitchen will be installed into the premises.
- (c) The name of the premises will be changed to "*A Rolling Stone*".
- (d) Food from the full menu will be available until the premises close.
- (e) Reticulated water will be provided at the premises.
- (f) No outdoor speakers will be located in the outdoor area.
- (g) A CPTED assessment review for the fit-out will be undertaken.



Nicola Dodge

⊙



Mike Kane

Dated: 30/6/17