

Decision No. 60B [2015] 2640

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 **Casino Bar Limited** in respect of premises at **63 Victoria Street, Christchurch**, to be known as **Calendar Girls**.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: **Mr P R Rogers**

Members: **Messrs R Wilson JP and P Buttell**

HEARING at Christchurch on the 10 and 11 September 2015.

PRESENT:
Aaron Richard Greenwood – Director of Casino Bar Limited
James Alan Sampson – Witness for applicant
Laura Catherine Buttimore – Witness for applicant
Jennifer Davison – Alcohol Licensing Inspector
Sergeant J Harris – NZ Police

Paula Williams – Representing the Medical Officer of Health

Doctor Marjorie Manthei – Representing Victoria

Neighbourhood Association (VNA)

Lee and Philip Trusttum – Representing Inner City West

Neighbourhood Association (ICON)

Professor Robert Manthei – Objector

Richard Bluett – Objector

Alan Dormer – Counsel representing applicant

Olivia Morgan – Counsel assisting Mr Dormer

Janet Anderson – Committee Adviser

INTRODUCTION

[1] This is an application by Casino Bar Limited (CBL) for an On-licence for premises situated at 63 Victoria Street Christchurch and to trade as Calendar Girls (CG).

[2] The business of CG has operated in Christchurch for the last 17 years and Aaron Greenwood was appointed a director of CBL on the 19 June 2013. The premise of CG currently operates at 196 Hereford Street Christchurch but the building is due for demolition in December 2015 as a result the earthquake. While those premises are currently licenced a new licence is sought for 63 Victoria Street.

[3] This application relates to a business that was going to operate under the name of Corporate Affairs, however at the Hearing it was advised that these premises will be called Calendar Girls which is the name of a business currently operated by the applicant in Christchurch.

[4] While 63 Victoria Street was an existing building it has been re-clad on the outside and totally remodelled on the inside to suit the purposes of the applicant's business which the witness stated was to be "adult entertainment".

[5] Aaron Greenwood is the sole director of CBL and the shares are held by Alan Sampson Limited, Vicki Samson being the sole shareholder. She was not able to be at the Hearing being overseas. The information supplied to the Hearing and all matters relating to the company were supplied by Aaron Greenwood.

EVIDENCE OF APPLICANT

[6] Mr Greenwood on behalf of the applicant gave evidence and stated that during the past 17 years the business in Christchurch had been well managed and that there had been no alcohol related problems.

[7] Prior to the earthquake in 2011 CG was located at two addresses in Christchurch one of them being 196 Hereford Street. After the earthquake they could only operate out of the Hereford Street address but as stated this is now due to be demolished hence why a new location and licence was being sought. The witness stated that the applicant had worked with Christchurch Earthquake Recovery Authority (CERA) and the Council to find a suitable location and the address at Victoria Street had been suggested as a result of this being within the designated sex industry area specified in the District Plan.

[8] The witness said in effect they are simply transferring their business to Victoria Street and all aspects of the business will remain the same. In March 2015 Casino Bar applied for a licence and the business model relies on patrons booking private dancers and paying tips to the girls. The adult entertainment would consist of strip tease, lap dancers and associated entertainment together with a brothel. The primary purpose of people visiting the premises is not the purchase of alcohol which represents 25% of their business with the sale of food 1% and adult entertainment 74%.

[9] The witness went on at some length to explain the monitoring of alcohol sales or consumption at the premises and that the sale of alcohol was not their principle source of business. He said an entry fee of \$30 would be charged and the cheapest alcoholic drinks that can be purchased will be \$12. He said that in his experience this tended to control the type of person that came into the premises and that patrons considered a visit to CG as being a "social enterprise".

[10] The witness said that he noted that in the Inspector's Report it had been stated that this was an application for a high risk premise, he disputed this and nothing in his experience would lead him to believe that it was a high risk premise, as heavy drinking is not part of the business and the applicant did not want those intoxicated patrons on the premises, and they had good procedures in place to monitor any intoxication issues.

[11] In relation to noise levels there was a noise plan in place and the construction materials used were to minimise noise transfer. A security plan had been completed and was supplied to the Hearing in relation to noise, vandalism and litter

[12] In relation to opening hours this would depend on patronage but if there was a demand such as Cup Week they could be open 24 hours but were seeking a licence to sell alcohol from 8 am to 4 am. The witness understood concerns had been raised about the need to sell alcohol from 8 am and the witness said that while they would not be selling alcohol in the normal course of business at 8 am but they would need some flexibility around the time as there might be events and promotions such as the Champagne Breakfast for Cup Week.

[13] The witness considered it unlikely that patrons would come to CG after 3 am with other bars in the vicinity and taking into consideration the cover charge.

[14] The witness noted that the Inspector had raised concerns over the use of the ground floor outside seating area and advised that this was not to be used past 11 pm, patrons

would have to enter the premises, pay the entrance fee, purchase their drink inside the premises and then come back down to outside.

[15] The witness commented on the Resource Consent decision obtained and that the Commissioner determined that the adverse effects for the proposed activity “were no more than minor”.

[16] The witness explained the role of James Samson who is a person who had been mentioned in the reports from the Agency concerning suitability. The witness said that James is Alan and Vicki’s son but he does not interfere in the decisions of the business of CBL and has no involvement in the bar management, his only involvement being limited to property, funding matters and marketing/promotion of the national CG business. Mr Sampson in evidence confirmed this.

CROSS EXAMINATION BY INSPECTOR

[17] The Inspector verified with the witness that while he had received the Inspector’s Report he had not read it. He confirmed that the business plan was to continue trading after 4 am in the adult entertainment business, while realising that alcohol sales had to stop at 4 am, he agreed that this was correct. The Inspector queried the plans for the premises and the witness replied that entry would be by the ground floor and alcohol would be served on the first and second floor. The Inspector confirmed that patrons buy alcohol via a table service arrangement but there was also a bar. It was confirmed by the witness that waitresses would be serving the tables and they have a different role from the girls involved in entertainment. The Inspector queried the use of the ground floor of the building and the witness confirmed that there was a separate tenant. The Inspector asked as to how the ground floor was to be managed and he replied that there was some indication that it would be a 9 – 5 pm business on the ground floor and that the outside area operated by CG would close at 11 pm. He saw it as an area where people would stand before they enter the premises, keep out of the weather and while they had a smoking deck inside the building patrons would perceive that they could use it for smoking. The Inspector asked would it be used for alcohol consumption and the witness replied “yes”.

[18] The Inspector inquired as to how they would avoid selling alcohol past 4 am and the witness replied that effectively that after 3.55 am the computers controlling the tills will not accept any payments for alcohol under a \$1000 each and so no-one was going to pay a \$1000 for a drink. In his words this being the easiest way to control the sale of alcohol.

[19] The Inspector questioned the witness concerning the Alcohol Management Plan and it was put to him that it was more of a host responsibility policy; the witness disagreed with the Inspector. When cross examined by the Inspector the witness agreed that while the Casino can operate 24 hours day and there was a nearby premise which closed at 3 am (it is in fact 4 am) and while he had been to the area he had not been to any of the bars nearby. When

asked what his impression of the area was he replied a developing area, vibrant, full of restaurants and bars, he agreed he had not been down there at 4 am in the morning.

CROSS EXAMINATION BY POLICE

[20] Sergeant Harris cross examined Mr Greenwood as to whether they thought that there would be an increase in business due to the new location; the witness thought that this was not going to be the case.

[21] The Sergeant queried that with the new location for this business being right opposite the Casino that it would attract more people to his premises and was there any system for queueing? The witness replied that they were not a rush hour type bar and as the entertainment started at 8 pm there would be busier times during the night. The Sergeant queried how many Duty Managers would be on duty and the witness replied there would be one Duty Manager in charge of the premises with another person with a Duty Manager's licence would be on the other floor. The Sergeant queried a Manager on each floor and the witness replied 'yes'.

[22] The Sergeant questioned the witness at length about how the premises would operate particularly in relation to the use of private rooms and alcohol consumption within those rooms.

[23] The Sergeant asked the witness if he had read his report dated 9 April and it transpired that the witness had not read the report. There was a discussion as to why these particular premises would be allowed to be open after 4 am and the witness replied because of the style of the licence. The Sergeant queried, was this because your business is not primarily selling alcohol? The witness replied correct. The Sergeant questioned the witness on the percentage of alcohol sales and the witness advised that 75% of the business would be from other means and 25% from the sale of alcohol.

[24] The Sergeant put it to the witness, would he consider an undertaking for there to be half hour 'drink-up' time if the licence were granted. This would mean the applicant would stop selling at 3.30 am given that a 'drink-up' time is not a condition of the sort of licence that might be granted and the witness replied "of course we would".

CROSS EXAMINATION BY MEDICAL OFFICER OF HEALTH (MOH)

[25] Ms Williams for the MOH asked the witness about the preparation of the hospitality policy. He said for the social responsibility policy attached to the application is now superseded by the Alcohol Management Plan and the witness agreed that it was. MOH asked the witness what his understanding of a Host Responsibility was and he replied to minimise harm caused by alcohol consumption, to provide safe premises, safe transport and food.

[26] The MOH then queried the witness about various aspects of their operation concerning such things as free water and water signage. The witness was asked whether food would be served throughout the night free of charge. The witness said that while there was free food there would be a menu and when it was put to the witness was his preference for free food, rather than making an extra 1% in actually selling food. He replied he thought it was a good idea and suited the premises and types of services they are offering.

CROSS EXAMINATION BY OBJECTORS

Doctor Manthei

[27] Dr Manthei on behalf of VNA queried the witness as to contact he had had with the Residents' Associations and was asked to summarise his understanding of the issues the residents have. He replied that it was his understanding the residents were quite happy with the operation itself but they were worried about the hours of operation and the impact to the residents in regard to the quietness and enjoyment of the area they live in. When asked what sort of impact, he replied "noise and vandalism around the area". Dr Manthei then asked what steps have you taken to ensure that the effects would be minor. He replied they are going to be part of the "Victoria Street Watch" and that the security firm they use has a phone line for residents to ring up.

[28] Dr Manthei asked if he understood the contents of the Local Alcohol Policy (LAP) and he replied that he understood that it would be 1 am trading. When asked "why do you think that is the case?" the witness replied he could not comment as to why they wanted to restrict the area that before the LAP was brought in they had already leased the premises and been advised by the government departments to move there.

[29] When asked, he confirmed that this would have been after the earthquakes. Dr Manthei put it to the witness that he stated in the applications that there were several premises that would trade until 4 am or later in the night when in fact there were only two, the witness replied "yes he understood the Casino was 24 hours a day and there was one other premise that traded until 4 am".

[30] Dr Manthei's final question to the witness was that the witness had not been to the area between 1 am and 2 am to see the situation for himself and he replied "no".

Professor Manthei

[31] Professor Manthei then cross examined the witness concerning the proximity of the premises to residential dwellings and would think that it was closer than 75 metres. The witness replied that he thought it was over 75 metres and he was told by Professor Manthei that in fact it was 47 metres.

[32] Professor Manthei put it to the witness that the addition of another bar trading well into the early hours of the morning would add to the massive free loading and side loading. The witness disagreed with this.

Ms Trusttum

[33] Ms Trusttum inquired of the witness how many restaurants were in the area. It was agreed they were surrounded by “food places”.

Mr Bluett

[34] Mr Bluett queried the witness as to his current premises in Hereford Street and how close would the closest residences be? The witness replied he had no idea. Mr Bluett enquired as to what knowledge he had of residences in the Victoria Street area and he had no knowledge prior to being told by the previous Objector that it was 47 metres. Mr Greenwood replied no, he had understood that it was about 75 metres.

EVIDENCE OF OBJECTORS**Doctor Manthei**

[35] Doctor Marjorie Manthei gave evidence in relation to and on behalf of the Victoria Neighbourhood Association (VNA) this is in association with a number of residents in the vicinity of the premises particularly to the north.

[36] The witness pointed out that there were at least nine current or planned residential complexes within 150 metre radius of CG with more only slightly further away and that in the 20 years prior to the earthquake VNA received no complaints about licensed premises on Victoria Street. The witness saw the perceived problems as:

- firstly the number of people migrating along Victoria Street into residential areas
- broken beer bottles and cans left in surrounding properties and streets
- party buses dropping off passengers in the nearby area
- noise and disturbance as late as 3.30 – 4 am when patrons returned to their cars parked in residential streets.

[37] The Association wished to point out that there were only two premises with licenses to 4 am along the entire length of Victoria Street and this was an unfortunate precedent with the likely outcome that Victoria Street could become even more of a destination for late night drinking than it is.

[38] The Association highlighted the impact on residential amenity and listed these as sleep disruption, a feeling of intimidation from large groups sometimes aggressive, increased vandalism and petty crime, anti-social behaviour and party buses dropping off 20-30 passengers at various points in the neighbourhood.

[39] The witness went on to say that in the Association’s experience the above disturbances when viewed as a whole constitute a significant impact on the residential amenity, safety and

quality of life, and the cumulative effect of having other licensed premises trading later than 1 am would be more than minor.

Ms Trusttum

[40] Lee Trusttum gave evidence on her own behalf and on behalf of Inner City West Neighbourhood Association (ICON). She quoted the distances the new premises of CG would be from other licensed premises and that their property is approximately 250 metres from CG.

[41] She wanted to point out that the area is developing again after the earthquake and in her opinion has become attractive to new residents who will be looking for high end residential accommodation. The number of empty sections was of concern as a result of demolitions after the earthquake and the perception the prospective new owners would have of living so close to a premises such as described in the application. She produced a map and photographs indicating the area around 63 Victoria Street indicating the number of domestic dwellings and empty sections as a result of demolitions after the earthquake.

[42] She perceived this application if it was granted would result in a reduction of residential amenity and therefore opposes the application on the following grounds:

- The CG application would indicate that nuisance and vandalism will increase once more as a result of intoxicated persons from yet another bar.
- ICON's opposes the application based on amenity and good order of the locality being reduced by more than a minor extent by the issuing of another licence for a bar.
- The issuing of the licence would be contrary to the protection of residential amenity and finally the witness and the organisation wish the application to be declined.

Mr Bluett

[43] Richard Bluett gave evidence on his own behalf as being a resident living near the proposed premises he said that there should be a feeling of residential wellbeing, happiness and contentment. The witness highlighted that if another licence is granted it will add to the effects of increased traffic, noise, door slams, loitering of patrons in the area and a loss of residential cohesion in the area as a perception that the character is changing. The witness pointed out that there were sensitive sites within 215 metres namely schools and a square used by the school for sports.

[44] The witness urged the Committee to take a "wise hand and an ultra-precautionary approach" by declining the application.

Professor Manthei

[45] Professor Robert Manthei gave evidence that in his original objection he stated that the requested hours were too late for premises close to residential neighbourhoods. If approved it would be yet another late night premise in an area already compromised and that the CG premises back directly on land zoned for residential use. He said, he lives 3.5 blocks away he knows from experience that every new premise that opens brings additional patrons and the premises impact on all Victoria Street. He therefore wished the Committee not to approve this licence.

[46] At the Hearing he made two additional points that the trading hours he believed originally to be 3 am he now found that this was 4 am and believed the applicant had been misleading when he stated in his application that several other premises traded until that hour and that this was in fact false.

[47] He had concerns that the applicants business while clearly called “adult entertainment” included prostitution and given close proximity to residential premises the hours sought were inappropriate and would impact negatively on the character and amenity of the adjacent residential sites. He considered that the business owners had selected a totally inappropriate site for this particular business.

[48] He therefore sought the Committee not to approve this application.

SUBMISSIONS

[49] The Committee was requested to allow written submissions to be supplied after the Hearing.

[50] Dealing firstly with the applicant’s submission we take the point that the business has operated for 17 years. It appears the business has operated in Hereford Street with it having no more than a minor effect on the amenity and good order. We acknowledge that the high door charge and the high price of alcohol will discourage people from entering CG just to drink or to drink excessive amounts. In submissions the point was made that the applicant was encouraged to relocate to Victoria Street which is zoned hospitality.

[51] In his submission the Counsel for the applicant explained that certain information was not originally provided because of a mistaken understanding that under the CERA legislation it only required to transfer the existing licence not a new licence. However we believe the applicant should have been more forthcoming with the information and had more dialogue with the Agencies. It was not helpful to his cause when under cross examination he admitted he had not even read the Inspector’s or Police Report.

[52] The applicant’s written submission finished with an undertaking as an expression of goodwill and a spirit of cooperation that the applicant is prepared to accept the licence will cease at 3 am with a 30 minute ‘drink up’ time until 3.30 am.

[53] Turning now to the Agencies submissions, on the subject of suitability the Agencies submission paragraph 23, is that the place of intended business is the most important factor in relation to suitability in this matter. As previously mentioned the Council under the Brothels Bylaw have made this a designated area for this type of business and a Resource Consent has been granted. We agree with the comment in paragraph 42 of the Agencies submission that these types of licenses are not well catered for in the new Act while this has been described as an 'adult entertainment venue' licence. The Committee is of the view that this is an instance where this business does need specific provisions under the legislation.

[54] The Agencies raised in their submission the question of the residential accommodation and the noise, nuisance and vandalism and quoted the case *Ghetto Limited* [2014] NZARLA PH 172.

...[7]... "Victoria Street has changed in character since the earthquake. Prior to the earthquake licensed premises in Victoria Street attracted an older type of clientele whereas today patrons using various bars and restaurants are inclined to be younger more noisy and create more nuisance..[9].. now it is quite different and the residents' experience considerable nuisance and noise problems up until about 3-30 am on Fridays and Saturdays nights. They are no longer able to sleep and they spend the following mornings cleaning up debris..[16]... The Authority is very conscious of the problems being experienced by the Objectors".

[55] The Committee echoes these sentiments but does however believe there is a distinction between the CG type of operation and a tavern. As previously stated these premises will operate on the first and second floor of the building. While queueing was mentioned in evidence there is an area off the street where a small queue could form without coming out onto the footpath.

[56] Turning now to the submissions by the Objectors, in the VNA submission we agree with their comment under paragraph 1.2 that the applicant showed little knowledge of the locality of their premises particularly into the late night period. Mr Greenwood on behalf of the applicant knew little of the potential problems however he has been running the same business at another premise for a considerable time. The Committee does not see that this premise will have different problems than that of the business currently operating from their address in Hereford Street.

[57] In the VNA's submission they state that the applicant and his witnesses showed a lack of knowledge in supporting evidence in relation to the amenity and good order that would be less than minor.

[58] The Committee is of the view the Objectors and the Agencies failed to produce sufficient evidence for us to believe that the effects on amenity and good order would be more than minor should this application be granted.

[59] Under paragraph 2.2 of the VNA submission the Objectors say that the addition of each licence adds a cumulative effect on the residential amenity. While that may be correct the Committee believes that this premise will have no more than a minor effect on the amenity and good order.

[60] At paragraph 3.2 of the VNA submission concerning the two licensed premises trading later than 3 am namely the Cruz Bar which has a 4 am licence, the 3 am one way door and the Casino which has a 24 hour licence.

[61] We reject the view in the VNA submission that because the Casino operates under different legislation it is largely irrelevant that it operates 24 hours a day and has done for considerable time well before the earthquakes. We think in the overall scheme of things that it is very relevant that the Casino, the only premise with a 24 hours licence in the city is in the vicinity of other late night premises. We believe it is probably better for the community to have later trading enterprises in close proximity rather than spread across the city.

COMMITTEE'S REASONS FOR THE DECISION

[62] To put the reasons for the Decision into context it should be noted that throughout the Hearing reference was made to the applicant seeking to trade until 4 am. In the written submission he amended this to 3 am with a 30 minute "drink-up time" to 3.30 am.

[63] The Committee took as a starting point Section 4 of the Act and any impact these premises might have on the 'Object of the Act'. In respect to the 'Object of the Act' the Committee's view is that this premise will be no worse or better than any other premise in relation to the safe and responsible consumption of alcohol and the harm caused by excessive and inappropriate consumption.

[64] It is the Committee's view that Section 3 of the Act, needs to bear in mind that it should have the characteristics that it is reasonable and its administration help to achieve the objects of the Act. We consider the appropriate section the Committee needs to turn its mind to is section 105, Criteria for Issue of the Licence. Within those criteria the Committee considers that there are four particular sub sections that need to be considered:

(b) the suitability of the applicant:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(h) whether (in its opinion) the good order and amenity 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 good order and amenity 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:

[65] Dealing first with suitability this was an issue that was raised by the Agencies in respect to this application. Particular issue was made of Mr Samson's suitability due to his previous convictions. Both the applicant and Mr Samson gave evidence and it was clear to the Committee that Mr Samson would not be involved in the running of the CG business. While the witness was cross examined over this, the Committee does not believe that the Agencies established that he was a person who was involved in the business to an extent where we should be concerned about his involvement. The Committee does not therefore consider this to be an issue.

[66] The issue of the suitability of the applicant and Mr Greenwood was tested under cross examination and we do not believe any evidence was produced to indicate to us the applicant or the business is not suitable to hold a licence. He has been involved in the CG business for a number of years and no evidence was produced of previous renewal applications being opposed by the Agencies in Christchurch.

[67] The second issue the Committee needs to address is the days and hours on which the business intends to operate. The applicant has applied for hours from 8 am to 4 am. A Resource Consent has been granted which indicates that the business can operate 24 hours a day. While the applicant can operate its "adult entertainment business" 24 hours a day the consent does not allow the sale of alcohol after 4 am. Evidence was produced and accepted by the Committee that the sale of alcohol will not be the main purpose of the business and sales figures produced showed that alcohol was approximately 25% of the total business.

[68] The effect of this is that if the licence was granted, the provisions of section 255 of the Act would not apply as the principal business was not the sale, supply and consumption of alcohol. However, sub section (1)(c)(i) of 255 would apply meaning there would be no provision for a 30 minute 'drink-up' time. This issue is dealt with later in the decision by way of a special condition.

[69] While dealing with hours it is important to state that immediately opposite the proposed premises is the Christchurch Casino which operates 24 hours a day. There was evidence given that there was only one other bar in Victoria Street that are licensed to 4 am and that there were a number of bars that went until 3 am.

[70] The Objectors placed a lot of emphasis on the Provisional LAP. The Committee notes that prior to the earthquake and under the former Council's Alcohol Policy the closing times had been set along Victoria Street at 1 am.

[71] The Objectors pointed out that if the Provisional Policy was accepted it would cause the licensed premises along Victoria Street to close at 1 am.

[72] This Committee cannot 'crystal ball' as to what the outcome of the appeal against the provisional LAP before the Licensing Authority may be. The Committee has to base its' decision on the evidence and the law as it stands today.

[73] At the end of the Hearing the Committee put it to the applicant that if they were of a mind to grant the application would he consider an undertaking that 'drink-up' time would be

at 3.30 am. The reply was this would be considered and addressed in the written submissions. It was pointed out by the witness for the applicant that with a \$30 door charge and drinks at \$12 each that he did not believe that those wanting a drink would come into the premises later than 3 am. To the Committee this was seen to stop migratory drinking and is in effect a one way door from 3 to 4 am.

[74] Under cross examination the witness for the applicant agreed that he would need to cover the alcohol or screen it so that it was not on display for sale should he continue to operate the business after 4 am.

[75] The Committee now needs to turn its mind to section 105(h) of the Act in relation the amenity and good order of the locality. A great deal of well thought out and considered evidence was produced by the Objectors in relation to what they saw was a reduction of the amenity and good order of the locality. It was difficult for them as this is a new business in Victoria Street, to establish what the amenity and good order issues would be in the future with the addition of this licensed premise. It seemed to the Committee on the evidence produced that the location of the premises at the southern end of Victoria Street right opposite the Casino was an appropriate location for the premises.

[76] While any Resource Consent matters are not binding and should not be a basis for any decision under this Act. Clearly some of the City Plan decisions, the granting of the Resource Consents, the fact that this is a City Council designated sex industry location, should have a bearing on the views of the Committee.

[77] The evidence by the Objectors concerning vandalism, noise and other issues in the area was well documented and presented. Unfortunately it was not specific for the premises in question particularly as this was going to be a new business in Victoria Street. For this reason we did not find that we could lay any reduction of the amenity and good order of the locality at the door of CG.

[78] While the Agencies did not give evidence I note in the Inspector's Report supplied to the Committee that under the Assessment Criteria: Section 105, paragraph 13 page 6:

“If there are other premises in the area which already negatively impact on the good order and amenity of the area and the issue of another licence will significantly increase issues in the area, is it desirably not to grant this application?”

The Inspector has written “The corridor of premises on Victoria Street collectively have an impact on the amenity and good order of the locality. I cannot go so far as to say that the addition of this premise will significantly increase issues”.

[79] In the bundle of documents supplied to the Committee was the report from the Police at para 2, 2.1 made the statement that “it is difficult to predict with accuracy to what extent the levels of noise, nuisance and vandalism may change with an increase in patronage in the immediate area”.

[80] The Objectors produced evidence as the reduction to the amenity and good order and while there were valid points in relation to Victoria Street as a whole there was nothing specific under section 106 of the Act and while we turned our mind to the possible future noise, nuisance and vandalism, nothing persuaded us that it would reduce the amenity and good order by more than a minor extent if this licence was to be granted.

[81] The evidence from the Environmental Planner was that the premises would not reduce the amenity by more than a minor amount. The Committee did note that this witness had not been to Victoria Street in the early hours of the morning. This is seen as one of the problems, there is little disagreement that the amenity and good order of Victoria Street has changed since the earthquake.

[82] The question being asked of the Committee is this, is the addition of a new licence which will stop selling alcohol at 3 am, going to have more than a minor effect on the amenity and good order of the locality? The Committee's view is that it will not.

[83] In a recent High Court case; Venus NZ Limited [2015] NZHC 1377 (18 June 2015) the Judge commented that it is the Committee's job to decide on the effects a licensed premise has on amenity and good order. A reading of Heath J judgement in the Venus case at paragraph [61]:-

"In my view, the Authority erred in requiring Venus to establish the amenity and good order criteria had been established. It was obliged to inquire into that consideration and form its own opinion on the basis of the evidence produced".

[84] At paragraph [56] of the judgement the Judge stated that:-

"..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". He went on to say "That is one factor to be taken into account in determining whether a licence should be granted. To the extent that *Re Hari Om* held that there was an onus on an applicant to demonstrate that there would be no material reduction to the good order and amenity of the location. I consider that it was wrongly decided. In my view, no such onus exists".

[85] From this the Committee takes the view that it is required to be guided by the Venus judgement and take the question of amenity and good order as a whole. Evidence was given by the applicant and Ms Buttimore that the current premises did not impact on the amenity and good order of Hereford Street and the new premises were unlikely to affect the amenity and good order by less than a minor amount.

[86] The Committee noted that these premises will effectively operate from the first and second floor of the building and that the outside ground level area will be a seating area, albeit with consumption of alcohol with no sale of alcohol from this area.

[87] In relation to the premises the Committee did have concerns over the ground floor area and while in evidence it was stated that this area would not be used for the sale of alcohol, consideration was given by the Committee to making it a condition of the licence that alcohol could not be sold from that ground floor. As this was not canvassed at the Hearing the

Committee concluded the best course was to not include this as a condition as this matter could be reviewed at renewal, in 12 months' time.

[88] The Objectors produced evidence that the premises are within 75 metres of the living zone. While this may be the case the Committee takes the view that these are District Plan and Resource matters and it should confine itself to matters applicable to this Act.

[89] The Committee undertook a brief site inspection which comprised driving past the premises. One is struck by the proliferation of restaurants, bars and the imposing façade of the Casino which takes up a whole block right opposite the proposed premises. On turning right into Kilmore Street to the west behind the proposed premises there are a large number of empty sections of mainly demolished dwellings. The perception in the neighbourhood as one drives along Victoria Street is that this is a business/entertainment area. It is only when one turns into Kilmore Street those dwellings can be seen.

SUMMARY

[90] In the Committee's view no causal nexus has been established by the Objectors or the Agencies linking these new premises to the matters in section 106.

[91] When considering the Object of the Act that the sale, supply and consumption should be undertaken safely and responsibly and the harm caused by excessive or inappropriate consumption should be minimised and that harm caused by excessive or inappropriate consumption included "any crime, damage, disorder etc.". We do not believe that the addition of this additional licence will bring about the harm to the community as set out in Section 4(2)(b).

DECISION

[91] This matter has concerned an application for a new on-licence which was opposed by the Agencies and a number of Objectors. Evidence was given by the applicant and witnesses and by the Objectors. Clearly the amenity and good order of Victoria Street has changed since the earthquake of 2011, prior to that Victoria Street had mainly restaurants and offices and due to the Council's Alcohol Policy in force at that time, licensing hours were restricted to 1 am. Since that time a number of licenses have been granted and a nearby licence has been granted to 4 am, with the subject's premises right opposite the Christchurch Casino which sells alcohol 24 hours a day.

[92] While during the Hearing discussion involved around the closing time of 4 am and a possible concession was given that that would include a 30 minute 'drink up' time meaning

that alcohol would not be served after 3.30 am. In an expression of good will and in the spirit of cooperation, in his written submission the applicant is prepared to accept end of licence hours at 3 am with a 30 minute 'drink up' time until 3.30 am.

[93] The Committee believes that on the evidence produced this licence should be granted and that the licensing hours finishing at 3 am will go some way to alleviate the Objectors and the Agencies concerns.

[94] We are satisfied as to the matters to which we must have regard as set out in s.105 and 106 of the Act and we grant the licence for a period of 1 year pursuant to s.104.

WAIVER

A waiver is sought and granted pursuant to s.208 of the Act due to a publication error in the wording of the public notices. The notices were advertised as a renewal. The applicant re-advertised the notice on 1 April 2015 with the correct wording. It is the Committee's view this has not prejudiced the public and the waiver is hereby granted.

The licence shall not issue until all building and compliance matters are signed off.

This is a new application for an On-licence therefore the licence shall be issued for 12 months at which time if issues have arisen they can be addressed at the time of renewal of the licence.

The applicant must comply with all conditions specified on a licence.

The applicant's attention is drawn to s.259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under this Act. Specifically s.46 to 63 and 231 (1).

The licence will be subject to the following conditions:-

Compulsory conditions – section 110 (2)

The following conditions are compulsory:

(a) No alcohol is to be sold or supplied 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 or supplied on the following days and during the following hours when the premises are being operated as an 'adult entertainment venue':

Interior of premises:

Monday to Sunday 8.00 am to 3.00 am the following day

Outside ground floor area

8.00 am to 11.00 pm

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

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.

(c) 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.

(d) The whole of the premises is designated as restricted.

(e) Pursuant to section 117(1) the Committee makes it a condition that alcohol can be consumed on the premises until 3.30 am.

Other restrictions and requirements

Section 50 – One-way door restrictions in local alcohol policies to 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 with the application for a licence.

DATED at Christchurch this 10 November 2015.

A handwritten signature in blue ink, appearing to read 'P R Rogers', is written over a light blue rectangular background.

P R Rogers

Chairperson

CHRISTCHURCH DISTRICT LICENSING COMMITTEE