

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of two applications by **RIMU
GROVE WINERY LIMITED**
pursuant to s. 125 and s.127 of
the Act for renewal of an on and
off-licence with variation of
conditions in respect of premises
situated at 404/6 Aranui Road,
Mapua, known as Rimu Wine Bar

BEFORE THE TASMAN DISTRICT LICENSING COMMITTEE

Chairman: Mr D Ogilvie
Members: Mr M Fitzsimons
Mr L C Gabites

HEARING at RICHMOND on 23 March 2021

APPEARANCES

Mr Patrick Stowe – representing the applicant
Ms B Dunn – representing the applicant
Mr Graham Caradus - Tasman District Licensing Inspector – to assist
Ms Anne Price – under delegation from the Medical Officer of Health – to assist
Sergeant K Bruning – NZ Police – to assist
Mrs Clare Kinninmonth – objector – in opposition
Mrs Marion Satherley – objector – in opposition
Mr Colin Walker – Objector – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction.

[1] There are two applications before the Committee. The applications are by Rimu Grove Winery Limited for the renewal of both an on-licence with variation of conditions and an off-licence with variation of conditions, in respect of premises situated at 404/6 Aranui Road, Mapua, known as Rimu Wine Bar. The applicant seeks to vary the defined area of both licences including an extension of the outdoor areas. The business trades as a Wine Bar, tasting room, off-licence and restaurant. It has been operated by the applicant on its present site for a period of five years.

[2] Public notice of the licence renewal applications attracted four objections from members of the public and was set down for a public hearing in accordance with section 203 (3) of the Act.

Objections were received from:

Mrs Clare Kinninmonth, 20B Tahi Street, Mapua
Mrs Marion Satherley, 69 Stafford Drive, Ruby Bay
Mr Colin Walker, 9 Langford Drive, Mapua
Mrs Marion Satherley, Chairperson, Mapua and Districts Community Association
Incorporated

[3] Under the provisions of section 102(1) of the Act states 'A person may object to the grant of a licence only if he or she has a greater interest in the application than the public generally.' Mrs Kinninmonth and Mr Walker were considered to have a greater interest than the public generally by virtue of living in close proximity to the premises. Mrs Satherley was also considered to have a greater interest than the public generally, by virtue of her involvement with the Mapua Wharf Working Group, despite being resident two kilometres from the premises and it established her status of the right to object. The Committee determined that the objection from Mapua and Districts Community Association Incorporated failed to meet the provisions of section 102(1) of the Act, as this section, in the view of the committee, is clear that any objection must be lodged by a natural person therefore excluding a corporate body. Each of the valid objectors chose to appear before the Committee. Each objector had similar issues that formed part of their objection relating to the extension of outdoor areas and the pedestrian access.

The Applicant

[4] Ms Dunn presented evidence for the applicant. Ms Dunn emphasised that the company wanted to continue operating the business with the best interests of the area in mind and as an asset to the Mapua community. The applicant told the Committee that the wine sales and tasting business had previously been in Bronte Road but with recent events and changes in their business patterns it made sense to move their whole operation to the Mapua location. When the opportunity of a vacant premises next door to the existing premises was presented they began conversations with the property owner (Tasman District Council) to take over the lease and look at options for the premises. The purpose of the variation applied for is to offer a wine tasting experience to patrons who visit their premises.

[5] Ms Dunn went on to indicate that their plan is to continue to offer food and alcohol to seated customers as they had in the past and add a tasting room in the newly leased premises on the eastern side of the building. She indicated that they have a great relationship with other premises at the wharf area. While they have a menu available they also allow customers who purchase fish and chips at the business opposite to eat them with a drink at the Rimu Wine Bar. As well they offer the Jellyfish Café menu to customers. They were aware of the Alcohol Control By-Law in the area but see the plan to delineate between the licensed area and the public space as a way to mitigate any risk to people. It was important to the applicant to establish delineation and not to expect any patrons or pedestrians to observe an imaginary line or boundary. The current Tasman District's Alcohol Control By-Law allows for public consumption of 'takeaway' alcohol in the wharf area between 7.00am and 7.00pm.

[6] Ms Dunn asked that the Committee note that over the past few months the District Council and the company had taken significant steps to identify a way forward should this application to extend the licensed area be approved. The company is committed to making sure there are adequate physical barriers in place and that procedures are in place to ensure patrons do not stray beyond the licensed area.

[7] The applicant noted that the improvements carried out by the Council in the wharf area have heralded a significant increase in the numbers of tourists and residents to the wharf. The constantly growing popularity of the Mapua wharf area has created pressure on all retailers and hospitality venues.

[8] What Mr Stowe and Ms Dunn hope to achieve is that with an increase in the size of the internal and external spaces available to the company's customers it will improve people's wine experience and improve the overall experience of visiting this area. As well they wish to bring their whole operation to one location.

[9] Mr Stowe and Ms Dunn are currently in negotiation with the District Council, as the property owner, to lease the outdoor area adjacent to the eastern part of their tenancy, so that they can extend their tasting options, have pre-booked small functions and provide more outdoor seating for dining. These changes will ensure a better operation within clearly defined licensed spaces. They stated that in their view the new proposal has the potential to change the way alcohol is served in this space and ensure the behaviour of the patrons.

[10] Finally, when questioned by the Committee, the applicant described how each area would operate and in particular gave the undertaking no tastings would occur in the outdoor licensed spaces. They also indicated to the Committee that while the 'tasting room' would involve individual interaction between staff and a customer it will also be used for small functions as well. Tastings will also occur in the bar area from time to time.

[11] In cross-examination, both Mr Caradus and Sergeant Bruning sought clarification from the applicant that the undertaking provided in relation to the use of the outdoor area was an acceptable compromise should this application be granted. The applicants agreed. Mr Stowe and Ms Dunn showed a willingness to comply with any condition imposed on the licence by the Committee.

The Licensing Inspector

[12] Mr Graham Caradus the Licensing Inspector with the Tasman District Council provided a very comprehensive report on this application. In his report Mr Caradus did not oppose the applications and advised the committee that he became confused about the areas and the intended use of each area. At the hearing along with Sergeant Bruning this was now clear. Mr Caradus also identified both in his evidence and in cross examination by the objectors that the type of barrier used was outside the scope of this application. What was important to him was what was planned for inside the licensed area. He indicated that some form of delineation would be very important alongside any public access through the licensed area.

[13] Mr Caradus informed the committee that there had been no complaints and the Rimu Wine Bar had not come to the attention of the Inspectorate since it was issued a licence. His report was accepted by all parties as having been read.

[14] In response to questions, Mr Caradus made the observation that he expected good licensees to be proactive in the management of their alcohol licence rather than reactive. He suggested that the concerns around defining the licensed area, access and the current plan for the tasting room that had been raised could be resolved by the imposition of conditions on the licence. In response to a question he indicated that the walkway was undesirable as it created a technical breach of the alcohol control by-law. Such conditions should include a clear understanding of how each area was to be utilised.

The Police

[15] Sergeant Bruning gave evidence in written form that was taken as read. He added to this by informing the hearing that he carried out inquiries into the application and was satisfied with the licence being renewed. He attended a meeting on site and his concerns regarding the off-licence were clarified and he offered no objection to the applications.

[16] Sergeant Bruning went on to inform the Committee that until the hearing he had assumed that the off-licence and tastings would occur in the tasting room and he was unaware that the outdoor area was being considered for off-licence sales and tastings and that would be a concern to him. He was now assured that this would not happen.

[17] Given the assurance from the applicant he has no issue with the application as the premises have always been well run.

[18] In answer to a question from the Committee, Sergeant Bruning indicated that conditions on the licence relating to where tastings would take place and clarity around pedestrian access would be acceptable to him.

The Medical Officer of Health

[19] Ms Anne Price is an Alcohol Licensing Officer under delegation from the Medical Officer of Health in accordance with section 151 of the Sale and Supply of Alcohol Act 2012. Ms Price submitted a report on this application and based on information available at that time did not have any matters in opposition. Similarly to Police and the Licensing Inspector she was concerned there had been changes but clarification at the hearing including an oral agreement regarding the Tasting Room assured her there were still no matters in opposition.

[20] Previously Ms Price attended an onsite meeting with Sgt Bruning and Mr Stowe. The main reason for the visit was to view the extension of the outdoor area and the additional off-licence sales and tasting room. Ms Price was assured by Mr Stowe of how the 'new' area would operate and later provided her with an update plan of the extended area.

The Objections

[21] Ms Clare Kininmonth resides within 1 km radius of the premises and was considered a person with a greater interest than the public generally. Like the other objectors her main concern was the extension of the premises limiting access to the wharf area especially for disabled persons. Ms Kininmonth provided the committee with some photographs of the area around the Rimu Wine Bar to demonstrate her concerns. In the photographs she provided some suggested options for pedestrian access onto the wharf area that did not include access through the licensed areas. She advised the committee that she had no objection to the renewal of the licence for the premises but remained concerned about access through the licensed premises.

[22] Ms Satherley resides some two kilometres from the Rimu Wine Bar. Given her involvement in the area as a member of the Mapua wharf working group, she demonstrated to the committee an established status that allowed her the right to object. The Committee agreed her evidence should be heard.

[23] In her objection, Ms Satherley stated that the extended outdoor area will impact on pedestrian access to the wharf area at Mapua. She offered some suggestions that the committee could consider as conditions should the licence be granted. These included a solid barrier to be provided around the edge of the designated licensed area and that there be no pedestrian access and that this area should be separate to the premises. In her view it was important to ensure pedestrians entering the wharf area were kept safe and separate.

[24] Mr Colin Walker resides a short distance from the Mapua wharf and regularly uses the area as a part of his exercise regime. He was concerned the area was being overtaken by commercial premises. While he has no objection to the issue of the licensed premises and what happens inside he objected to any alcohol outside those premises.

The Committee's Decision and Reasons

[25] The issues that were raised by the objectors mainly relate to pedestrian access being compromised by a change in the external licensed area. This could in many ways be resolved in discussions between the property owner and the applicant. The improvements to the area nearby created by the Council in the form of planter boxing has created visual as well as physical parameters around most other premises and in the Committee's view that appears to have worked and could be applied to the Rimu Wine Bar.

[26] When considering an application to renew a licence, the criteria to which this Committee must have regard are contained in s.131 of the Act. There is little point in reciting these criteria as in our view the applicant has satisfied those criteria. The issue in this case is the objections and the Committee has taken notice of those objections in reaching its decision.

[27] The Committee has resolved that both licences should be renewed with the variations requested. There are two basic reasons. First, one of the purposes of the new Act (s.3(a)) is, for the benefit of the community as a whole, to put in place a new system of control over the sale and supply of alcohol with the characteristic that the new system is reasonable. We believe that to refuse a renewal in the face of the objections, would not be reasonable, and would not benefit the community as a whole. And we say that despite the fact that the company has the onus of establishing its suitability, and justifying its right to have its licences renewed.

[28] Secondly, we refer to the decision of Moore J in **Auckland Medical Officer of Health v Birthcare Auckland Limited [2015 NZHC 2689** and in particular to the comments at paragraph [50] as follows:

"There is no reason in principle why the "causal nexus" approach adopted under the 1989 Act and approved in decisions of this Court, should not continue to be relevant and applicable under the new Act. Indeed, it was not suggested in argument that a different legal test should be adopted. Under both Acts the relevant enquiry is the same; the Authority is required to have regard to the s.105 criteria (or in the case of a renewal the s. 105 criteria as modified by s.131) and then step back and consider whether there is any evidence to suggest that granting the application will be contrary to the object of the Act contained in s.4(1). Namely that the sale supply and consumption of alcohol should be undertaken safely and responsibly and the harm caused by excessive or inappropriate consumption of alcohol should be minimised."

[29] The Committee have considered the criteria in s.105 (as modified by s.131), as well as the evidence and submissions from the applicant, the objectors and the reporting agencies. We have then stood back and considered whether there is any evidence to suggest that granting the application for the on-licence and the off-licence, with the variations requested, would be contrary to the object of the Act in s.4(1). In this case, there is no evidence of unsafe or irresponsible sale and supply. There is no evidence of harm and no evidence at all that the renewal of the on-licence and the off-licence would undermine the object of the Act.

[30] However that is not the end of the matter. Licences are issued subject to conditions. Pursuant to s.135 of the Act after considering an application for the renewal of a licence, the Committee may renew the licence for a further period of not more than 3 years on -

- (a) the conditions presently attaching to it; or
- (b) **any different conditions, relating to any matter, that the committee thinks fit.** (Emphasis ours)

[31] We note that s.135 is subject to s.133. The latter section deals with renewals of licences where there is a relevant local alcohol policy. The Tasman District Council has a local alcohol policy in place but its contents are not really relevant to the present situation. In other words, the contents of s.133 of the Act do not really apply to the application for renewal of these licences.

[32] As was stated by Heron J in *Excel Promotions Limited v Police* [1998] NZAR 72/79:

Provided the safeguards in the Act are duly observed, the Sale of Liquor Act in itself does not and should not be seen as entrenching the rights of licensees if after proper inquiry, the Liquor Licensing Authority, a specialist body, considers licence renewal appropriate but only with different or further conditions applying to the licence.

[33] Accordingly, the on-licence and the off-licence will be renewed for three years with the licensed area as shown on plan dated 4 November 2020 and with the following additional conditions:

1. The outdoor licensed area shall be clearly defined and demarcated;
2. The area defined as the Tasting Room is to be used for tastings and small functions;
3. No tastings pursuant to the off-licence are to take place in the outdoor licensed areas;
4. There shall be no public thoroughfare through the outdoor licensed areas;
5. The new outdoor licensed area shall not be used until such time as it is clearly defined and demarcated.

[34] Although not part of the conditions we recommend that the company consider including in its planning for the management of the items that deal with (a) the means by which patrons will be controlled to ensure that they do not stray out of the defined area with alcohol that is intended to be consumed as part of the on-licence conditions; (b) the related question of how the defined area is to be marked or delineated; (c) the staffing arrangements that will occur in association with the use of the outdoor areas; and (d) the establishment of an entry and exit to the outdoor area and how this exit/entry will be monitored.

[35] There are a number of issues still to be resolved dependent on whether the company is successful in arranging a lease for the additional outdoor area on the eastern of the building, and thereby creating an outdoor area, a tasting room and having all their operations in one place. A commercial enterprise must have the autonomy to make its own business decisions provided such decisions do not bring it into conflict with the Act. Because of the ongoing nature of the process, we draw to the attention of the parties to the rights to rehear the applications contained in s.201(4) of the Act.

[36] Subject to the above we confirm the renewal of both the on and off-licences.

DATED at RICHMOND this 7th day of April 2021.



Mr D J Ogilvie
Chairman