

On Licence

Section 14 to 16, 64 and 135, Sale and Supply of Alcohol Act 2012

007/ON/63/2019

Pursuant to the Sale and Supply of Alcohol Act 2012 (the Act) **Bayside Fine Food Limited** (the licensee) is authorised to sell and supply alcohol on the premises situated at **70 Kokihi Lane, Snells Beach, Auckland 0920** and known as **Bayside**, to any person for consumption on the premises and to let people consume alcohol there.

The authority conferred by this licence must be exercised through a manager or managers appointed by the licensee in accordance with Subpart 7 of Part 2 of the Act.

CONDITIONS

This licence is subject to the following conditions:

- (a) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day to any person who is not present on the premises to dine.
- (b) **Alcohol may be sold only on the following days and during the following hours:**
On such days and during such hours as the premises are being operated as a Class 3 RESTAURANT but not other than on the following days and hours:

Monday to Sunday	8.00am to 10.00pm
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- (c) Drinking water is to be freely available to customers served to the table.
- (d) The following steps must be taken to promote the responsible consumption of alcohol:
 - (i) The licensee must ensure that all staff comply with the host responsibility plan submitted with the application for an on-licence detailing the steps to be taken by the licensee to ensure a safe drinking environment.
- (e) 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:
 - (i) Ensure that no intoxicated persons are allowed to enter or to remain on the premises.
 - (ii) Ensure that appropriate signs are prominently displayed detailing the statutory restrictions on the supply of alcohol to minors and intoxicated persons adjacent to every point of sale.
- (f) The whole of the premises is **Undesignated**.

DURATION

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

- (a) either—
 - (i) until the close of the period for which it was last renewed; or
 - (ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but
- (b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either—
 - (i) until the close of the period of 3 years after the period for which it was last renewed; or
 - (ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

This licence expires at the close of 23 August 2020 unless renewed.

Dated at Auckland on 23 August 2019



Secretary, Auckland District Licensing Committee



NOTE: The requirements of the Act found at sections 51 to 54, 56 and 57, in relation to the provision of food, low and non-alcoholic beverages, transport and signage must be adhered to. The licensed premises are more precisely identified as outlined in a plan date stamped as received by the Auckland District Licensing Committee on 1 April 2019.

52000162930

[2019] ADLC 8220037025

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by
BAYSIDE FINE FOODS LIMITED
pursuant to s. 99 of the Act for the grant
of an On-Licence in respect of premises
situated at; Shop 70 Kokihi Lane Snells
Beach, Auckland, and known as
“Bayside”.

BEFORE THE AUCKLAND DISTRICT LICENSING COMMITTEE

Chairperson: Gavin Campbell

Members: Gwen Bull
Ken Taylor

Decision (on the papers)

DECISION OF THE AUCKLAND DISTRICT LICENSING COMMITTEE

Introduction

- [1] Before the District Licensing Committee (the Committee) is an application for the grant of an On-Licence by Bayside Fine Foods Limited (the Applicant), made pursuant to s. 127 of the Sale and Supply of Alcohol Act 2012 (the Act). The application seeks a restaurant style On-Licence for premises situated at; Shop 70 Kokihi Lane Snells Beach, Auckland, and known as “Bayside”.

Applicant

- [2] The Applicant is a private company: Bayside Fine Foods Limited. The Applicant company has two Director Shareholders being James and Deanna Dehlisen both of Omaha.

Reporting Agencies

- [3] The application was processed in the usual manner. The Inspector provided a report on the application without opposition as did both the Medical Officer of Health (MoH) and the New Zealand Police.

[4] The application drew a number (10) of letters in objection, all the objectors claimed a greater interest than the public in general as they all either resided or own property within the immediate vicinity of the applicants proposed premises.

[5] The objectors raised a number of criteria in their written objection, these were

- 105(1)(d) the days on which and the hours during which the applicant proposes to sell alcohol
- 105(1)(e) the design and layout of the proposed premises
- 105(1)(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

[6] Accordingly, pursuant to s. 202(3) of the Act, the matter was set for determination by the Committee.

[7] Prior to the Hearing, the applicant amended the application to seek trading hours for the Sale and Supply of Alcohol from:

Sunday to Thursday 8.00 am until 10.00 pm, and
Friday and Saturday 8.00 am until 11.00 pm

To:

Monday to Sunday 8.00 am until 10.00 pm

[8] Subsequent to the amendment to the hours sought, all but one (1) of the Objectors withdrew their opposition. The remaining objector; Ms Anna Sullivan indicated that she would not be appearing at the Hearing and had asked another of the Objectors to appear on her behalf.

[9] A copy of Ms Sullivan's evidence was supplied to the Committees Secretariat and forwarded to the Committee for consideration. We have often said, including in the Committees (differently constituted) decision: ¹ [2017] ADLC 8220003222 Boutique Wines Limited:

We would point out that: If Objectors do not appear before us, and no explanation is received for their absence, then it is likely that their objection will have no value. Similarly, where it appears that an Objector is unable to satisfy us that their Objection is within the permitted scope of the matters contained within the Act that we are obliged to consider, then little, if any weight can be given to the objection.

Whilst we are satisfied as to Ms Sullivan's reason for not appearing before us, we must also be cognisant of the provisions of s. 202(3) of the Act which says:

¹ [2017] ADLC 8220003222 Boutique Wines Limited

(3) Where an objection is filed within the prescribed time, the licensing authority or licensing committee concerned must convene a public hearing to consider the application, unless—

(a) the application is withdrawn; or

(b) **having considered the application, the authority or committee believes that the objection is vexatious or based on grounds outside the scope of this Act;**
or

(c) the objector does not require a public hearing.

(our emphasis)

[10] When looking at the evidence that Ms Sullivan wished to have brought to our attention which is shown as:

- *Most importantly I think the protection of the endangered dotterills needs to be emphasized to the hearing as the dotterills. People walking the beach at night after consuming alcohol will be a threat to the endangered foreshore nesting birds.*
- *It would likely be helpful if you could emphasize the point that dogs are not allowed on the beach during summer because of the possibility of harming the survival of the nesting dotterills.*
- *Dotterills I have attached a photo of a nest from a couple of years ago when they were nesting just along from where the cafe is located. Locals erected the fence to try and protect them and educate people. Our dotterills are on the endangered species list and there are a number of programs that DOC and volunteers are doing to try and save these endangered birds. There are estimated to be only 1700 dotterills nationwide making them more endangered than some species of kiwi.*
- *The godwits arrive at Snells beach in September each year after flying 12,000 kilometres from Alaska for eight or nine days, non-stop to get here. When they arrive, they are exhausted as they have burnt up their body fat to make the arduous journey. They are here to fatten up and at low-tide these very small wading birds can be found feeding in the exposed mudflats. They stay in the area often until early April before making their return journey north. They stay together in a flock, are very skittish and easily frightened They are a significant feature of the uniqueness of the Snells beach foreshore. Their feeding sites are decreasing at a rapid rate so it is incumbent on us to try and maintain their traditional feeding sites.*
- *Spoonbills These majestic birds have not been seen in Snells beach for several years. However, just a couple of months ago a small 'bowl' of spoonbills numbering between 2 -8 on any given day, have been regularly feeding on the incoming and outgoing tides right in front of the cafe.*

- *Spoonbills are sensitive to disturbance during the breeding season, and are vulnerable to development and recreational activities. Department of Conservation classifies spoonbills as naturally uncommon but increasing with a restricted range.*

At first glance, the evidence to be submitted by Ms Sullivan would in our opinion be outside of the scope of the Act. Even if we were to associate the intended evidence from M. Sullivan as an Amenity and Good Order issue, then the criteria that we must consider at s. 106 of the Act in forming our opinion, do not extend to the concerns shown in her submissions.

[11] No application for an adjournment of the proceedings was received from Ms. Sullivan.

[12] Public Hearings of the Committee are expensive both in time and fiscally. The Committee considered the matter in light of the withdrawal of the other objections. We note Ms Sullivan's initial letter of objection also made reference to the days and hours of trade sought. Ms Sullivan suggested truncated hours of no later than 9.00 pm. We think that the amended hours as sought better reflect the style of the licence sought, and we consider that the objectors that withdrew their objections acted reasonably in doing so. Given all of the above, that is:

- 1). No application for adjournment,
- 2). The submissions being outside of the scope of the Act, and
- 3). That Ms Sullivan had indicated that truncated hours of operation would be appropriate.

²The alcohol licensing hours of the café should be restricted to better fit with the social and protected wild-life environment of the area, not undermine community well-being, and be restricted to daylight hours or no later than 9.00pm

(exert from Letter of Objection Sullivan dated 08 April 2019)

Then in our opinion the requirement to hold a public hearing of the Committee was superfluous. Accordingly, we chose to vacate the hearing and deal with the matter on the papers before us.

Committee's Decision and Reasons

[13] When considering the criteria for the issue of licenses as contained within s. 105 of the Act, the Committee must have regard to a number of issues. These include;

- (i) the object of this Act:
- (ii) the suitability of the applicant:
- (iii) any relevant local alcohol policy:

² (exert from Letter of Objection Sullivan dated 08 April 2019)

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

(iv) the design and layout of the premises:

(v) the effect if any on amenity and good order:

And;

(vii) any matters dealt with in any report from the Police, Inspector, or a Medical Officer of Health made under section 103 of the Act:

[14] In assessing the application against the criteria found in s.105; we find that;

[15] There is no question as to the suitability of the Applicant.

[16] There is no Local Alcohol Policy (LAP) in force for the area.

[17] The proposed hours of operation of the premises are less the National Default Hours pursuant to section 43(1)(a) of the Act, for premises for which an On-Licence is held, and in line with style of licence sought.

[18] The Inspector has filed a comprehensive report with the District Licensing Committee pursuant to Section 103 (2) of the Act. The report does not need to be restated, it is clear and covers off all the criteria of s. 105 of the Act that we are required to consider, and also s. 106 of the Act which relate to Amenity and Good Order provisions.

[19] We are satisfied as to the matters which we must have regard as set out in s.105 of the Act, and we are satisfied that the application meets the Purpose and Object of the Act. Accordingly, we grant the applicant an On-Licence for the Sale and Supply of Alcohol for consumption on the premises. The licence will be subject to conditions as recommended by the Inspector in the report dated the 29th of April 2019. The licence is granted from the 22nd of July 2019 for a period of 1 year and will expire on the 22nd of July 2020.

[20] Conditions

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

(b) **Alcohol may be sold only on the following days and during the following hours: On such days and during such hours as the premises are being operated as a class 3 Restaurant but not other than on the following days and hours:**

Monday to Sunday from 8.00 am until 10.00 pm

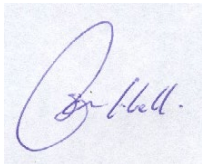
(c) Drinking water will be available to customers served to the table.

- (d) The following steps must be taken to promote the responsible consumption of alcohol:
 - (i) The licensee must ensure that all staff comply with the host responsibility plan submitted with the application for an on-licence detailing the steps to be taken by the licensee to ensure a safe drinking environment.
- (e) 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:
 - (i) Ensure that no intoxicated persons are allowed to enter or to remain on the premises.
 - (ii) Ensure that appropriate signs are prominently displayed detailing the statutory restrictions on the supply of alcohol to minors and intoxicated persons adjacent to every point of sale.
- (f) The whole of the premises is undesignated.

[21] I refer any party who wishes to appeal this decision or part of this decision to sections 154 through to 158 of the Act.

[22] I refer any party who wishes to appeal this decision or part of this decision to sections 154 through to 158 of the Act.

Dated at Auckland this 22nd day of July 2019



Gavin Campbell
Chairperson
Auckland District Licensing Committee.

Members: Gwen Bull
 Ken Taylor