

**DECISION of the QUEENSTOWN LAKES DISTRICT
LICENSING COMMITTEE**

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by **Double Black
Cafe Limited** pursuant to Section
99 of the Act for a new on Licence
in respect of premises situated at
47 Kingfisher Crescent Albert
Town Queenstown Lakes District
known as "Double Black Cafe"

Introduction

- [1] This is an application by Double Black Cafe Limited (the applicant) for a new on licence situated at 47 Kingfisher Crescent in Albert Town. The nature of the business is that of a daytime cafe. It has resource consent to operate until 6.00pm each day. The cafe will offer a selection of cabinet food as well as made to order breakfast and lunch food. In addition, a range of wine and beer will be available along with light beer, and a selection of non alcoholic beverages.

The Premises

- [2] The Premises have recently been built in an area of an existing sub division called Riverside Park in Albert Town. The interior of the premises is relatively small with seating for approximately 32 patrons. This is a mixture bench and stool seating along with some free standing tables and chairs. There is a counter with a food cabinet to one side and a coffee service station to the other. Access to the kitchen is in between the two. A set of ranch sliders leads out to a partially paved and grassed courtyard area. This contains some outdoor furniture and a sand pit.
- [3] Located next to the cafe and part of the same building is a child day care facility. This is owned and operated by some of the same shareholders as the Double Black Cafe Limited. A 1.8m high solid fence separates the cafe from the child care facility. The fence is constructed from 25mm boards providing both sight obstruction and some acoustic insulation for both of these businesses. Visibility into the cafe is primarily through the glass door and a window to the right at its principal entrance, and also through the double slider doors from the courtyard.

The Application

- [4] The applicant is an incorporated company with three directors. These being:
Christopher Robert Macfie
Dorothy Christine Macfie
Jillian Robyn Macfie

The hours of operation applied for are:

Inside and Outside area:

Monday to Sunday 11.00am until 5.30pm

The applicant has supplied a written host responsibility policy and has advised that the following staff members hold Managers Certificates:

Jillian Macfie and Marjorie McNeilly

- [5] The applications were publicly notified in the Otago Daily Times on the 18th January and the 25th January 2016 respectively. No objections were received from the general public.

The Reporting Agencies

- [6] The application drew two responses in opposition from the agencies; both of which were outside the reporting time frame. In an email to the licensing inspector received Tuesday 9th February 2016, the Alcohol Harm Prevention Support Officer for the Queenstown Police wrote that she had received a late submission from Wanaka Police which stated they wished to oppose the application due to the proximity of the child care centre to the applicant's premises.
- [7] The second late report came from the Medical Officer of Health (MoH) for Public Health South Dr Derek Bell, in an email dated 15th Feb 2016 in which he stated that he had been contacted by the Police about their concerns, and that he also had similar concerns around the premises proximity to a child care facility and the associated effects, particularly the service and consumption of alcohol and smoking. This report followed an initial report from the delegated MoH, Ms Lynette Grace who stated on the 25th January 2016 that there was no opposition to this new on licence. Further, that through the application process, Ms Grace had contacted Ms Jillian Macfie about the possibility of the Cafe being smoke free due to its proximity to the child care centre. The Inspector confirmed in her report that the applicant had decided to make the premises smoke free, and that on a visit noted there was signage affixed to the fence in the outdoor area.

The Inspector

- [8] The Inspector, in her report of 7th April 2016, noted that whilst the concerns from both the Police and the MoH had been raised outside of the reporting time frame there were some points the committee may care to give some consideration to under Section 106 of the Sale and Supply of Alcohol Act 2012 concerning effects on amenity and good order.
- [9] On receipt of this report, the committee notified the Secretary of the District Licensing Committee that the matter required a hearing.
- [10] The Inspector supplied a supplementary report to the committee on the 18th April 2016. Following a courtesy call to the applicant to inform and outline the nature of a hearing, the Inspector received in reply an email from Ms Jillian Macfie dated 15th April 2016 with a letter attached. The letter stated that the applicant wished to amend the hours they wished to sell alcohol.
- [11] The new hours the applicant wished to sell alcohol were Saturday, Sunday and Public Holiday's (other than the sacrosanct restricted days) from 11.00am through to 5.30pm. The applicant hoped that this would alleviate the MoH and Police concerns about licensed premises operating next door to a child care facility as the proposed hours would mean the facility would be closed on the days the cafe would potentially be selling alcohol.

Further Submissions

- [12] On the 19th April 2016, the committee received copies of two updated submissions from the Inspector.
In an email the MoH, Dr Derek Bell stated that after he had considered the inspectors report and the supplementary report, he did not have any concerns with this application.
In an email from the Wanaka Community Prevention Officer, Constable Mike Thomas confirmed the Police did not have further concerns with this application.

Decision and Reasons

- [13] The Inspector drew the committee's attention to matters for consideration under Section 106 and then helpfully reminded us of NZARLA PH 194 *Stephen Dennis Sargent and Kapiti Supermarket Limited* where the authority was critical of what was deemed an abuse of practice when agencies report outside of the statutory time frames. These matters would have been central to a decision had not the initiative been reasserted by the applicant.

- [14] A letter from the applicant to the Inspector dated 15th April 2016 that requested the application be resubmitted to the committee with the new licensed hours which crucially separated the licensed trading hours of the cafe from the hours of operation of the child care centre. This initiative effectively removed the agencies matters in opposition.
- [15] Taking into account the change to the application as well as the lack of any opposition and after considering the criteria set out in Section 105 of the Act, the committee has resolved to grant the application ON 616 by Double Black Cafe Limited for premises known as the Double Black Cafe on the papers.

Dated at Queenstown this Monday, 16th May 2016

A handwritten signature in blue ink, appearing to read 'D. Mann', is written over the printed name of the Commissioner.

Commissioner
Queenstown Lakes District Licensing Committee