

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **TAIAROA
CAPITAL LIMITED** pursuant to
ss. 120 and 127 of the Act for
the renewal and a variation to
an on-licence in respect of
premises situated at 26 Camp
Street, Queenstown, and
known as “Bungalow”

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr J M Mann
Members: Mr L A Cocks
Mr P M Jones

HEARING at QUEENSTOWN on 8th September 2022

APPEARANCES

Mr D K Taiaroa – representing Bungalow – applicant
Ms T J Surrey – Counsel for the applicant
Sgt S J Matheson – Police – to assist
Mrs S A Bekhuis-Pay – Medical Officer of Health – to assist
Mr N P Bates – Queenstown Lakes Licensing Inspector – to assist
Mr T Manning – Public Objector

RESERVED DECISION OF THE COMMITTEE

Introduction.

- [1] This is an application by Taiaroa Capital Limited (the Company) for the renewal and variation to the conditions of an on-licence in respect of premises situated on the first floor of 26 Camp Street Queenstown and known as Bungalow. Mr Daniel Kerei Taiaroa is the sole director and shareholder of the Company.

- [2] The premises is a bar, frequented more in the later hours of the night by younger patrons and is located over a bottle store in a multi-use building. The business is positioned in the Central Business District of Queenstown in what could be described as its town square and is in company with several other bars, restaurants and cafes.
- [3] The application was lodged on the 9th January 2020 prior to the expiry of the existing licence however the necessary public notification was conducted outside the statutory timeframe. The applicant has sought a waiver pursuant to section 208 of the Act for the error which is granted by the Committee.
- [4] The variation application involves an extension to the closing time of the existing trading hours from 10.00pm until 12.00am midnight for an open space at the front of the premises referred to as the outside balcony area. The extended time involved to process the required resource consent resulted in the delayed reporting of this alcohol licence application.
- [5] The application received a public objection on 20th March 2020 from Mr Tim Manning. Mr Manning owns an apartment directly opposite the premises, about 150 metres away. Mr Manning's objection was general in nature but it qualified under s.102 of the Act and was accepted. He reiterated his concerns regarding the conduct of the premises to the Inspector on 11th March 2022 and a notice of hearing was subsequently issued for the 8th September 2022.

The Hearing

- [6] Ms T J Surrey, solicitor, submitted on behalf of the applicant to the Committee. Ms Surrey suggested that despite the public notification process for this application not being completed within the statutory time frame, it was eventually concluded without prejudice to the general public as evidenced by the fact that an objection was received.
- [7] Ms Surrey's submission continues on to state that the objection to the application was from Mr Tim Manning, owner of a property within a larger building opposite from the applicant's premises. This property is rented out on Air BnB and is in fact a holiday house that Mr Manning uses on occasion. Further, Ms Surrey submits that neither Mr Manning's objection nor the submission received in advance of the hearing contain substantive evidence. In short, Mr Manning's objection to the application concerns the operation of the premises in general along with the associated noise issues.
- [8] Ms Surrey submits the resource consent granted to the applicant to operate the balcony area of the premises is until mid-night every night. Since a comprehensive Noise Management Plan (NMP) has been activated on site, there have been three complaints received, two from Mr Manning. All of these complaints were after midnight. Ms Surrey went on to include commentary regarding the potential effects on the environment from the resource consent decision.

The character and intensity of the surrounding environment is vibrant, noisy and active throughout the day and evening hours and is generally as would be anticipated for a Town Centre.

There are a number of other on-licence activities within the vicinity of the site including the Pig n Whistle, 1876, Brazz and the Speights Ale House. These activities, and that of the subject of this application are considered suitable to locate within this Town Centre Environment.

- [9] Ms Surrey submits that the object of the Act will not be compromised by this application. That there have been issues historically with the operational management of the premises is acknowledged, however management has enhanced and improved its day to day systems operations. It is submitted that Queenstown Police do not have any concerns with the suitability of either the applicant, or the director of the applicant company.
- [10] Ms Surrey submits that it is significant that there is no opposition from the reporting agencies, and that there are no matters in any reports that would affect the renewal of an on-licence. The submission referred to the issues mentioned in an email dated 26th February 2020 were prior to the application for a renewal being filed and that the Police had not opposed the renewal then and they do not now. Further, the submission reminded the Committee that if this renewal is granted, it will only be until the 10th January 2023 when any issues of concern could be addressed at the next renewal.
- [11] Ms Surrey submits that in addition to a General Manager, the applicant has the appropriately certified managers and security personnel along with the necessary systems in place to manage the sale and supply of alcohol, and to comply with the law.
- [12] The submission contained helpful references in case law for matters the Committee must have regard to in forming an opinion of the renewal on the amenity and good order of the locality. Ms Surrey submits that the effects of the extension of trading hours has been traversed by the resource consent process. The submission continues that the sale of alcohol to eight people from 10.00pm to midnight on the balcony area will not increase the noise levels, nuisance or vandalism, and the amenity and good order of the location will not be compromised.
- [13] Ms Surrey submits the NMP is a fundamental component of compliance. There have been three noise complaints over the winter season, two from the objector. The third complaint resulted in an Excessive Noise Direction (END) being issued. The management of Bungalow acted on this to resolve concerns.
- [14] In summary, Ms Surrey submits that the application meets the criteria for the renewal and variation of the on-licence. The applicant is suitable, the trading hours are appropriate to the licence sought, the effect on the amenity and good order of the location will be less than minor, and there is no opposition from the reporting agencies.

- [15] In conclusion, Ms Surrey submits that the concerns of a lone objector ought not prevent the issue of an on-licence where the applicant meets the criteria set out in S.105 of the Act.

Applicant Evidence

- [16] Mr Daniel Kerei Taiaroa is the Managing Director of Taiaroa Capital Limited, the applicant. Mr Taiaroa is the sole director and shareholder of the applicant company. He is 40 years old, has been the owner of the Bungalow for 10 years and lives in Christchurch. He has worked in hospitality for over 20 years, has been a licensee for 10 of them and currently owns and operates 4 licensed venues.
- [17] Mr Taiaroa described the applicant's premises as having been operating as a venue since the early 2000's, and is well known for hosting local, national and international DJ.s who usually perform at large scale festivals throughout New Zealand. Mr Taiaroa stated that Bungalow is a very popular bar with people on holiday, looking for a good night out and a venue to listen to music and dance. The bar is open 5 or 6 nights a week and gets busy from 11.00pm and midnight with a capacity of 105 guests. He added that Bungalow was a finalist for Venue of the Year at George FM's 2017 awards.
- [18] Mr Taiaroa outlined to the Committee some difficult times he has experienced with the Alcohol Regulatory and Licensing Authority (ARLA) and the District Licensing Agency (QLDLC). These involved a 48 hour suspension in 2013 for Skybar, the former name for Bungalow and a second 48 hour suspension in 2019 for another of Mr Taiaroa's venues, this time in Wanaka. He went on to assure the Committee there had not been any other matters concerning his venues warranting intervention by any agency since.
- [19] Mr Taiaroa gave evidence concerning the staff and management arrangements at Bungalow. He believes the strength of his business lies heavily within the senior managers all of whom are very experienced, well trained and capable. Staff retention has been excellent in difficult times and Mr Taiaroa considers this a testament to the quality of the operation.
- [20] Mr Taiaroa credits his general manager Mr Tom Jacob who has been working for the applicant since 2016, with looking after all staff and certified manager training for the venue. Mr Taiaroa is in daily contact with Mr Jacob and this allows Mr Taiaroa to primarily live in Christchurch with his family and return to Queenstown every two or three weeks.
- [21] Mr Taiaroa addressed the emailed Police report on the application dated 26th February 2020 for the renewal of Bungalow's on-licence. Mr Taiaroa stated that Bungalow had worked closely with the Police from late 2019 as part of a graduated response discussed with Sergeant Brooks. He went on to say they

had reviewed and improved the entire management system, updated CCTV and lighting and introduced a rigorous approach to door screening. Mr Taiaroa's stated aim is to have a positive working relationship with Queenstown Police.

- [22] Mr Taiaroa denied the assertion by the objector, Mr Tim Manning that Bungalow encourages guests and groups to drink shots. He also denied Mr Manning's assertion that the owners have required police intervention, stating that he is the sole owner of Bungalow and he has never been arrested or detained by Police.
- [23] Mr Taiaroa then went on to describe the subject area of the variation application. He said the balcony area is small and has room for three tables and about 10 chairs pointing out that neighbouring venues have larger licensed outdoor courtyards which are often full until midnight. He continued by stating that noise management as being a big part of his teams focus and complaints are logged and taken very seriously.
- [24] In response to questions, Mr Taiaroa outlined the extra noise controls in place when DJ's were performing including the controlled use of the balcony. He noted that the sliding doors behind the DJ booth were not functional for patrons to have free access to the balcony. He described in detail measures taken to reduce the impact of noise including double glazing, air conditioning units, door auto closers, a locked, calibrated music volume limiter and the provision of a decibel reader as required.
- [25] A copy of the NMP was filed as an exhibit with the committee. Mr Taiaroa stated the plan was put together professionally by sound engineers Tonkin and Taylor and peer reviewed.
- [26] Responding to further questions, Mr Taiaroa refuted the claims by Mr Manning that noise from the Bungalow could be heard 1 Km away and that windows and doors were being left open after 10.00pm almost every night despite a general rule from the QLDC to the contrary.
- [27] Mr Taiaroa concluded by stating that he was immensely proud of Bungalow as it is one of the most popular venues in Queenstown. He reiterated that it was nationally recognised, added to the culture and night life of Queenstown and has had hundreds of thousands of guests enjoying themselves.
- [28] The Committee has accepted a written brief as the evidence of Mr Thomas Jacob, of Queenstown, General Manager of Bungalow who was unable to appear at the hearing. Mr Jacob is 32 years old and has worked at Bungalow since 2016. He has been the General Manager responsible for the day to day running of the premises for the last four years.
- [29] Mr Jacob submits that the bar generally opens at 5.00pm and trades through to closing at 4.00am. Bungalow has a full menu and a full range of alcohol is available. There is a happy hour between 8.00pm and 10.00pm where house drinks and cocktails are discounted but they do not offer any other drink promotions or discounts.

- [30] Mr Jacob is responsible for all management and staff training. He states that training is taken very seriously and a copy of the staff training records accompanied the brief of evidence. There are six certified managers who currently work at Bungalow, four of which joined in 2018.
- [31] Mr Jacob's submission reiterates much of the material covered by Mr Taiaroa including the means of containing noise within the venue, control of the sound system, customer behaviour on and off premise and the close working relationship with the security personnel.
- [32] Mr Jacob mentions a good working relationship with the agencies and his aim to work with them in a positive and cooperative manner. He also mentions a one month's voluntary suspension of his managers certificate for an off duty scuffle after an application had been made to ARLA by Sergeant Brooks.

The Reporting Agencies

- [33] The agencies reported on the application. Mrs S A Bekhuis-Pay appeared to assist and Mr Aaron Whipp, delegated by the Medical Officer of Health reported by email on the 27th February 2020 that he has no opposition to the renewal of the licence.
- [34] Sergeant S J Matheson appeared at the hearing to assist. Sergeant Chris Brooks of Queenstown Police supplied a comprehensive and detailed report in response to the application on 26th February 2020 with no opposition to the renewal of the licence. For completeness, this report is included below and has been accepted as evidence by the Committee.

The following is our report on the application by Taiaroa Capital Ltd for a renewal and variation of their 'On' licence.

We have spent some time deliberating and seeking advice on this application for the following reasons.

Police have spent considerable time working with this bar. On the 13th November 2019 we presented to Mr Daniel Taiaroa owner of Bungalow Bar, police data showing a high level of criminal offending linked to the bar. This included drink driving, assaults, fighting and intoxication.

For example in 2019 Police had 25 incidents linked to the bar. Compiling this information and presenting it to him would have been a shock for him as although frontline officers may have had individual interactions with the bar this was the first time the data has been presented together.

As such we engaged with our partner agencies and met with the bar operations manager Thomas Jacobs and owner Daniel Taiaroa. Our goal was to work with the bar to improve its operation, locality, and effect on the community.

Section 4(1)(b) of the Sale and Supply of Alcohol Act 2012 states that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

Section 105(1)(h) states that whether 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 licence.

They agreed to undertake a graduated response with us and provided a plan which included improving CCTV, maintenance to the toilet area, install outdoor lighting for better queue management. Improving the lighting inside to avoid dark areas. Provide drug management plan and increase the standard of security. Some of these have been completed with other items still being worked on.

Daniel Taiaroa mistrusts the police and in a recent meeting affirmed this view to us. This is disappointing as by our actions we have and continue to work with the bar. We intend to continue the graduated response until there is a decline in effect on the community.

Some of the improvements should have been done without police needing to address them. CCTV and lighting for example should be of a high standard in any bar.

The owner lives in Christchurch, but what is clear is he needs to provide strong leadership and cannot run this bar from a distance.

Police do not oppose this application. We will continue to work on improvements in ensuring our community is safe

The Resource Consent

[35] The premises is located within the Town Centre Entertainment Precinct and the Town Centre Special Character Area. The resource consents in place were considered by the Company as being no longer appropriate for the existing business or the proposed activities to be included in the variation application. An application for a new consent was granted on the 11th August 2021 subject to conditions and the ability to review those conditions.

[36] The premises has a history of noise complaints dating back to 2015. One of the required conditions was the preparation of an NMP. The objective of the NMP is to ensure that noise emissions are minimised, and do not exceed the relevant levels within the proposed district plan (PDP). The NMP was approved by the monitoring and enforcement team of the QLDC on the 24th February 2022.

The Inspector

[37] Mr Nathan Peter Bates appeared as the Alcohol Licensing Inspector. Mr Bates gave evidence supplementary to the report of Ms Tara McGivern dated 30th March 2022.

[38] Mr Bates was able to update the Committee on the ongoing nature of noise complaints since the original report from Ms McGivern dated 30th March 2022. That report contained references to over 20 noise related complaints attributed to Bungalow during the period from the last renewal of its on-licence. Mr Bates

stated that there were three Requests for Service (RFS) requiring the attention of noise control officers for incidents after midnight. Of the three, one was issued with an END and no action was taken with the other two.

- [39] Mr Bates states that on Saturday 30th July 2022 around 11.30pm whilst monitoring licensed premises with two public health officials he noted that there was no extraordinary noise coming from Bungalow. A video of the visit does record loud music but Mr Bates can confirm this was coming from another premises further away. No noise was coming from Bungalow at that time. A subsequent visit by Mr Bates at 12.30am on the same evening was reported as having no excessive noise. A visit through the premises at this time was noted without issues.

The Objection

- [40] Mr Tim Manning, of 50 Stanley Street Queenstown has submitted an objection pursuant to s.102 of the Act to this renewal and variation application by the company. Mr Manning owns an apartment on the third floor of a mixed use building directly opposite the applicant's premises at a distance of approximately 150 metres. He has owned the apartment for 22 years using it on occasion for approximately three or four weeks for personal holidays but primarily lists it as a holiday rental with Air BnB and the like.
- [41] Mr Manning's concerns are general in nature but appear to relate to matters concerning the days and hours of the operation, the amenity and good order of the locality and initially to the applicant's suitability. The written submission describes in detail some of the effects, including acoustic and behavioural of the patrons of Bungalow some of which he contends are adversely affected by alcohol. Most of the anti-social activity and noise identified by Mr Manning in his submission appear to peak after the closing time of nearby premises around 2.00am until sometime after 4.30am.
- [42] Mr Manning submits that this is a very noisy bar, which he did observe during a visit with his son, as being too loud for conversation, and it emits unreasonably loud noises into the neighbourhood through open windows, doors and security entrances and exits. Mr Manning doubts the efficacy of the NMP and the associated peer review.
- [43] Mr Manning confirms that he is aware that his apartment faces the Town Centre zone and informed the Committee that he too has experience as a bar proprietor. The first 15 years of apartment ownership were very pleasant. He was enjoying an occupancy rate in the 90% range. The apartment's reviews now show a negative reaction to noise in the location portion of the rating system. Since that time he has taken steps to ameliorate the effects from the zone on his apartment by installing double glazing, acoustic curtains and timber batten shutters to the windows.
- [44] Mr Manning maintains that he does not want to close the bar down. He has never been in contact with the Company or its owner but he wants action taken

by them to mitigate the effects of the bar's activities. Mr Manning went on to suggest locks on windows from a certain time, a double door air lock system for entry and exit to prevent noise escape, securing the deck ranch slider from midnight and whenever DJs are performing and a plastic acoustic barrier around the outer edge of the balcony, were reasonable, positive measures the applicant could agree to undertake to ensure compliance.

The Committee's Decision and Reasons

[45] The hearing on the 8th September came by way of public objection. As it appears to the Committee, the objection relates to S.105(1)(h) of the Act

(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*

and to S.105(1)(d) of the Act

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

[46] The final submission from the Inspector reminded us that the application received no matters in opposition from the Police or the MOH. The applicant Company has received 100(f) compliance certificates from both the Building and Planning departments of the QLDC. This indicates compliance with the new resource consent that permits the activity of later outside trading hours, the subject of this S.120 variation application.

[47] Against this, we need to balance the concerns raised by Mr Manning the objector. These concerns appeared valid to the Inspector and they do to us. The Committee heard evidence from Mr Manning that the first fifteen years of his ownership of the apartment was fine. Mr Manning asserts that the environment in which his apartment is located has deteriorated since 2015. The Committee heard evidence from the Inspector related to noise complaints attributed to the applicants premises that are registered with the QLDC. Since 14th March 2019 there have been 24 RFS's and 21 complaints prior to the last renewal in 2017. The Committee is in no doubt that the noise emanating from the applicant's premises has been a reasonably consistent source of irritation for Mr Manning for some time.

[48] In the final submission for the applicant received on the 17th September 2022, Ms Surrey submits that these concerns ought not prevent the renewal and variation of the on-licence. Ms Surrey reminded the Committee of Mr Taiaroa's focus on noise management and the steps taken to mitigate and manage noise including maintaining a nightly report that will log noise complaints. In addition the Company has a strong focus on staff training.

- [49] To come to a determination on the renewal of the licence under S.131, we need to consider the criteria for renewal as outlined in S. 131(1)(b)

whether (in its opinion) the amenity and good order of the locality would be likely increased, by more than a minor extent, by the effects of a refusal to renew the licence.

The Authority made a number of comments regarding noise in LLA PH391/2001 – (Paihia)

[27]

It is our view that no-one should have to put up with persistent interference with their sleep patterns. We do not think it is sufficient to submit that a true test is the number of calls to the licensed premises or the Noise Abatement Officer. We have heard enough evidence to suggest that making such calls in the early hours of the morning is unpleasant and often unrewarding.

[28]

Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes the view that if no attempt is made to prevent the escape of, or reduce noise, then it is the Authority's duty to monitor the hours of opening, if not the existence of the licence.

- [50] When considering current and possible future noise levels the receiving environment of the noise has relevance. NZARLA 887 (2013) referred to the above

[28]

Of course, these comments need to be taken in the context of the particular environment in which the premises are situated. The Paihia decision related to premises in Paihia which is a small tourist resort town in the Bay of Islands. In this case, the premises are located in the centre of a busy entertainment area in the central part of Auckland City. The Quays Apartment Building is also located in that area. Accordingly, persons who choose to reside in apartments in this sort of area must expect the sort of noise that the environment generates. It is not unreasonable to expect people living in such an environment to have appropriate noise barriers built into their premises: for example, double glazing and air conditioning.

[29]

In the case of Mr McGill, his apartment has what is known as “hush glass” which presumably is intended to reduce noise. He stated that at night his bedroom windows are kept closed. However, the door from his bedroom leads to a short passage which leads to his lounge. The ranch slider doors in the lounge are often open: and they were on the nights when the various incidents referred to in his evidence occurred. In these circumstances, given that he was the only person who actually objected in detail to noise coming from the applicant's premises, it is significant that he had failed to protect himself against the environment in which he lives.

[30]

That does not mean that premises in the central business district of Auckland are immune from taking appropriate steps to make sure that noise emanating from their premises does not disturb residents. It is a matter of balance.

- [51] The Committee is aware from an update to the applicant's closing submissions that at the conclusion of the hearing Mr Taiaroa and Mr Manning had what Mr Taiaroa described as being a positive and constructive discussion and that an exchange of personal cell phone numbers had taken place. We are also aware that in response to the applicant's late closing submissions Mr Manning has further submitted that at that time, there was no evidence of the mitigation of noise measures promised by the applicant. Ms Surrey has since informed the Committee that the premises main door can no longer be pinned open and that this will help reduce noise emissions in future.
- [52] The fact that the next renewal of this on-licence falls due in January 2023 is perhaps fortunate for the applicant. There is an opportunity for the Company to demonstrate compliance and the effectiveness of their noise control measures as assured by the applicant in evidence. We do not expect another hearing to be necessary for the Committee to address what is a premises management issue.
- [53] The Committee has considered the criteria in accordance with s.131 of the Act and grants the renewal of the licence with the following conditions:
- a. Public access to the outside deck (balcony) is prohibited and the sliding door secured from 12.00 midnight.
 - b. All windows and open access points within the premises are closed and secured from 12.00 midnight.
 - c. The front door of the premises cannot be pinned open at any time.

The application for a S.120 variation to the conditions of the licence is granted. The authorised trading hours for the balcony will be -

Monday to Sunday 11.00am to 12.00 midnight.

The Licence is renewed until the 10th January 2023 that being the anniversary date and three years since the last renewal and the issue of a replaced licence is authorised.

DATED at Queenstown this 7th Day of October 2022



J.M.Mann
Commissioner