

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **PJ's BARS
AND RESTAURANTS NZ
LIMITED** trading as "**THE
MUCKY DUCK**" pursuant to
s.100 of the Act for a new on-
licence.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr P M Jones
Members: Mr L A Cocks
Mr C J Cooney

HEARING at QUEENSTOWN on 14th August 2024

APPEARANCES

Mr J J Jones – Representing PJ's Bars and Restaurants NZ Ltd – applicant
Mr R Peterson - Witness
Ms T J Surrey – Counsel for the applicant
Ms K E Burns – Queenstown Lakes District Licensing Inspector – to assist
Ms L Grace – Medical Officer of Health – to assist
Sergeant S Matheson – NZ Police – in opposition

DECISION OF THE COMMITTEE

Introduction.

- [1] Before the Committee is an application by PJ's Bars and Restaurants NZ Ltd trading as 'The Mucky Duck' (the applicant) for a new on-licence in respect of premises to be known as 'The Mucky Duck', situated at 29 Ballarat Street, Queenstown. The application was received by the Queenstown Lakes District Licensing Agency (the Agency) on the 19th April 2024. The applicant intends to operate the premises pursuant to a 'Tavern' style licence with a 'High' risk rating. The hours sought are Monday to Sunday 8:00am to 4:00am the following day.
- [2] The applicant has renovated an existing pizza establishment and although listed as being at 29 Ballarat Street the public will use Searle Lane as the entry

point. Searle Lane is situated within the Queenstown Town Centre and is a small laneway with dual use for pedestrians and vehicles. There are nine tavern and eight restaurant premises within fifty metres of the premises, with seven of the taverns being located on Searle Lane.

- [3] Access to the premises is gained through a one-way entry door located on Searle Lane, with all exits being via a side door leading onto a thoroughfare from Ballarat Street to Searle Lane. No outside licensed area is sought. There is seating available to customers within the premises, and food available onsite will include a bar menu with tortilla chips, mini pizzas, toppas, soup and sausage rolls. A relationship has also been established with a nearby business for the delivery of burgers ordered through a QR code.
- [4] The Building Compliance Certificate was sent to the QLDC Planning team following the issue of a resource consent for the extension of the trading hours. No response has yet been received. The building portion of the Compliance Certificate was signed off by the QLDC on the 29th April 2024.
- [5] The application did not generate any public objection however, it did draw a report in opposition from the Police. In that report, the Police submitted that the issue of a further licence permitting trading till 4:00am in the Searle Lane locality will increase the amount of harm and will reduce, by more than a minor extent, the amenity and good order of the locality.
- [6] The 'Mucky Duck' has previously been a licensed premises in the Queenstown CBD albeit in a different location. The applicant, PJ's Bars and Restaurants NZ Limited, is a New Zealand Limited Company registered with the NZ Companies Office and was incorporated in 2004. There are two directors of the company, being:
- Aiden Kevin Jones
 - John Joseph Jones

There is one allocation of shares owned by Mr John Joseph Jones.

- [7] The application was sent to the agencies, which drew the report from Police in opposition on the 16th May 2024 stating:

"The police oppose this application under section 105(1)(d) & (i) of the Sale and Supply of Alcohol Act 2012. Searle Lane and the surrounding areas of the CBD already have a high number of licenced premises that have 4:00am closing times. This area suffers from high amounts of drugs and anti-social behaviour, violence and other offences of which alcohol is a strong contributing factor. Police are concerned that another venue that closes at 4:00am will contribute to the harm in the area and will have a negative effect on amenity and good order."

- [8] A notice of hearing was subsequently issued for the 14th August 2024.

The Hearing

- [9] The sickness of one of the nominated Committee members on the morning of the hearing resulted in the late inclusion of Mr L A Cocks. All parties accepted this change of Committee member.
- [10] Ms Surrey submitted on behalf of the applicant that the object of the Sale and Supply of Alcohol Act 2012 is that the sale, supply and consumption of alcohol is carried out responsibly and that the harm caused by excessive consumption is minimised. She submitted that the object of the Act will not be compromised by the operation of an additional on-licence in this area of the Queenstown Town Centre, and whilst there are currently seven other licenced premises operating in the immediate area of Searle Lane (being the main access lane way to the Mucky Duck premises) the issue of this licence will not cause an increase in the number of people in the area, and will provide a further hospitality option in the area.
- [11] Ms Surrey tendered a letter from Hospitality New Zealand supporting the application, and several other documents including emails from NZ Police and another Queenstown licensee highlighting Mr John Jones's history as a respected and experienced hospitality manager in the town.
- [12] Ms Surrey highlighted that Mr John Jones had a 20-year history in the hospitality industry in Queenstown. There had been no issues or concerns raised over this lengthy period, he was perceived as a good operator with a close working relationship with police, and the current application displays a high level of proactiveness in the installation of staff training, security staff deployment, management processes, CCTV and additional lighting to improve safety and decrease potential issues.
- [13] With respect to the issue of amenity and good order Ms Surrey submitted the Committee is required to form an opinion as to whether the amenity and good order of the locality would likely to be reduced by more than a minor extent by the effects of the issue of the licence. She stated that Mr John Jones has liaised with neighbouring businesses including the Nomads Backpackers and other licenced premises to mitigate any concerns and has implemented volume controls on the music system to avoid noise pollution.
- [14] The submission contained helpful references in case law for matters the Committee must have a regard to in forming an opinion on the issue of this on-licence in respect of the applicant's suitability and the amenity and good order of the location.
- [15] In summary Ms Surrey submitted that this application meets the criteria for the issue of the on-licence, the applicant is suitable to hold an on-licence, the trading hours sought are appropriate, there will be no negative effect on the amenity and good order of the location and the issue of the licence will not cause any significant alcohol related harm.

Applicant Evidence

- [16] Mr John Jones is the Managing Director of PJ's Bars and Restaurants NZ Limited. He outlined in his evidence a history in the hospitality industry which commenced as a 13-year-old in the United Kingdom working in his parents' licensed premises and has seen him opening in excess of 100 'business sites' in the industry across the UK, Spain, Ireland and New Zealand.
- [17] Mr Jones has been involved in the Queenstown hospitality industry since 2003 and has operated a large number of licenced premises and other businesses since that time. He stated he has never had any issues with Police, Public Health and Council over this entire period and was proud of his reputation as a good operator.
- [18] Mr Jones stated he was seeking a licence that permitted trading till 4:00am to ensure he had a 'level playing field' with the other licenced premises in the locality, but he believed it was more than likely that most days would see trading between 3pm and 2am. However, if special events were occurring such as overseas sport, or there was a demand for the 4am closure then they would trade till that time. He also outlined the liaison he had undertaken with close businesses to mitigate any negative effects from the operation, and outlined the management, training, food, CCTV, lighting and security measures he intends to implement if successful in the granting of the licence.
- [19] Mr Jones stated he had read the Police report which objected to the issue of the on-licence, and he believes that the proposals and management plans he has in place should alleviate these concerns. The Mucky Duck will be targeting an older clientele who he believes are unlikely to contribute to the noise, nuisance and vandalism. He also stated that his experienced managers, bar staff and security staff, robust staff training processes and his strong record in successfully managing licenced premises as well as his desire to, and history of, work with other stakeholders should alleviate concerns. He finally stated he has previously operated a business under the Mucky Duck trading name in another part of the CBD which was licensed till 4:00am with no issues or police concerns.
- [20] Richard Peterson gave evidence in his capacity as Group Operations Manager for two companies owned by Mr John Jones, namely Queenstown Hospitality 2012 Limited and PJ's Bars and Restaurants NZ Limited.
- [21] Mr Peterson outlined his extensive experience in the hospitality industry across the United Kingdom and New Zealand which included both management and training roles. Mr Peterson expanded upon the management and security systems which would be in place, which included CPTED design and the use of CCTV to record patrons' identification on entry. He stated he seeks to operate over and above the regulations to ensure a safe and enjoyable environment and would personally be conducting regular unannounced visits to the premises to ensure management and staff were operating in accordance with the company's requirements. He also presented an email from NZ Police Sergeant Bridget Martin of Queenstown dated June 2024 stating she was 'very

impressed with the operation you are running' in respect of another of the company's businesses in Queenstown, Club Soho.

- [22] In summary Mr Peterson stated he believes the plans and procedures they have developed for the Mucky Duck, and those already in place in their other establishments, will ensure that the premises are operated to a high standard.

The Police

- [23] Sergeant Matheson stated that Police did not hold concerns over the management of the Mucky Duck, nor the issue of 4:00am closure licences per se, but believed the issue of a further licence permitting trading till 4:00am in the Searle Lane locality will increase the amount of harm and will reduce, by more than a minor extent, the amenity and good order of the locality.
- [24] Sergeant Matheson told us that businesses close to the Mucky Duck such as the Night and Day and taxi rank, are problem areas for disorderly behaviour, intoxication, thefts and assaults. He produced six Police Intelligence data reports which highlight the instances of crime, particularly alcohol related crime, in the area surrounding Searle Lane and the Mucky Duck location. The graphs covered a five-year period.
- [25] In response to a question from the Committee Sergeant Matheson stated the Police are attempting to take a reasonable and proportionate approach to the trading hours sought, and he believed a closing time of 2:00am would be more appropriate and would decrease the likelihood of adding to the existing level of harm experienced in the locality.

The Inspector

- [26] Ms Burns presented a submission to the Committee in which she outlined the application, relevant case law and the Police opposition based on concerns over the potential impact on the amenity and good order of the locality surrounding Searle Lane if a further 4:00am licence was issued in an area which already has a high density of late night licensed premises. She also submitted that whilst the Medical Officer of Health did not oppose the application there were concerns raised about a further late-night licence in this area.

The Medical Officer of Health

- [27] Ms Grace presented a submission to the Committee and whilst the Medical Officer of Health did not oppose the application, concern was expressed that an additional late night licensed premise could raise the potential impact of decreased amenity and good order due to the current proliferation of such late-night venues.

The Committee's Decision and Reasons

- [28] The Committee considered all the evidence presented by parties at the hearing. The Police were clear they did not hold concerns over the suitability of the applicant but based their opposition on concerns over the issuing of another 4:00am licence in an area which already has a significant number of such licences and is believed to be a late-night problem area. The Police submitted that a 2:00am closure would be more appropriate in this case.
- [29] The Committee considered this application under s105 and s106 of the Act. In particular s105(1) directs that the Committee must have regard to the following matters:

- (h) whether (in its opinion) the amenity and good order of the locality would likely be reduced, to more than a minor extent, by the effects of the issue of this licence:**
- (i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the existing licences that**
- (i) they would be unlikely to be reduced further (or would be likely to be further reduced 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**

- [30] There are a number of decisions that we can use for guidance in this matter and both the Police, and the Inspector offered the following:

Christchurch Medical Officer of Health v J & G Vaudrey Limited

[55] Thus, when the relevant body receives an application, they must consider it against s 105 in deciding “whether to issue a licence”. There is no presumptive position, and certainly no foregone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

[56] So, in my view, the position can be summarised as follows:

(a) The role of the relevant body upon receipt of an application for the licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination on the application.

(b) In considering an application, the relevant body is fundamentally required to assess whether a licence ought to issue. In so doing, it must:

(i) Consider any objections made by persons who have a greater interest in the application than the public generally;

(ii) Consider any opposition filed by the constable in charge of the Police station nearest to where the application is filed, a Licensing Inspector, and the Medical Officer of Health;

(iii) Have regard to the criteria stipulated in s 105 of the Act...; and

(c) *The relevant body must finally cross-check whether the application is capable of meeting the object of the Act.*

[31] The Committee also recognised the decision from RE Venus NZ Ltd [2015] NZHC 1377, [2015] NZAR 1315 at paragraph 57:

'First, s 105(1)(h) and (i) of the 2012 Act, both of which deal with "amenity and good order" considerations, requires the Authority to form an "opinion". The need for a judicial body to form an independent opinion is conceptually different from a decision that is based on whether or not an applicant has established on a balance of probabilities that a relevant fact has been proved.'

[32] It is clear that the applicant company, and Mr John Jones and Richard Peterson are very experienced and well-respected operators in the hospitality industry. There have been no recorded issues or concerns brought to the Committee's attention over several decades of trade in the Queenstown community, indeed all commentary is of a positive nature.

[33] The Police Intelligence data provided by Sergeant Matheson was useful to the Committee, although the five-year time frame and lack of raw crime numbers, as opposed to percentages, impacted upon that value somewhat. However, the data indicated that the highest reported crime times were actually between 11:00pm and 2:00am daily. It is noted that the period from 2:00am till 4:00am is second to the midnight till 2:00am crime peak.

[34] The Committee considered whether the granting of a new 4:00am licence for the Mucky Duck would result in more people entering the Searle Lane locality, and if this did occur whether it would result in further problems and decreasing the amenity and good order of the area. As part of this consideration, we took account of the alternative argument put forward by the applicant's counsel, that the issue of such a licence to operators with a good record could have a positive effect on the area by providing a well-run premise with additional dedicated security staff, additional CCTV, and improved lighting.

[34] The evidence provided by Police in opposition to this application did not convince us that issuing the licence till 4:00am would reduce the amenity and good order of the locality to more than a minor extent. The statistical data provided by Police appeared to indicate that a 2:00am closure could provide the potential for more rather than less harm as this would see patrons being required to leave the premises at the peak crime period in the locality. Likewise, the concern that the establishment of an additional 4:00 am closing licenced premises in the locality would bring more people into the area, and potentially more issues, was unable to be supported by evidence, and in the opinion of the Committee can be considered only as speculation.

- [35] Finally, we took cognizance of the applicant's positive history in the Queenstown hospitality industry and his practices and procedures designed to actively reduce alcohol related harm and disorder in the Searle Lane locality.
- [36] The application by PJ's BARS AND RESTAURANTS NZ LIMITED trading as "THE MUCKY DUCK" for an on-licence with trading days and hours of Monday to Sunday 8.00am to 4.00am the following day, is granted.

DATED at Queenstown on this 19th day of August 2024

A handwritten signature in black ink, appearing to read "PM Jones", written in a cursive style.

PM Jones
Commissioner