

**IN THE MATTER**

of the Sale and Supply of  
Alcohol Act 2012

**AND**

**IN THE MATTER**

of two applications by  
**GOLDEN BEAR BREWING  
LIMITED** pursuant to s.127 of  
the Act for renewal of an on  
and off-licence in respect of  
premises situated at 8 Aranui  
Road, Mapua, known as  
"Golden Bear Brewing"

**AND**

**IN THE MATTER**

of an application by **JAMES  
JOSEPH MATRANGA** for the  
renewal of a Manager's  
Certificate

**BEFORE THE TASMAN DISTRICT LICENSING COMMITTEE**

Chairman: Mr E W Unwin  
Members: Ms J S Hodson  
Mr L C Gabites

**HEARING** at RICHMOND on 22 August 2016

**APPEARANCES**

Mr J J Matranga – representing the applicants  
Ms Z Moulam – Tasman District Licensing Inspector – to assist  
Ms C McIntosh – under delegation from the Medical Officer of Health – to assist  
Sergeant K Bruning – NZ Police – to assist  
Mr P M Coeland – objector – in opposition

**RESERVED DECISION OF THE COMMITTEE**

***Introduction.***

- [1] There are three applications before the Committee. The first two applications are for the renewal of an on and off-licence held by Golden Bear Brewing Limited (the Company) which is based at the Mapua Wharf area. Mr J J Matranga is a major shareholder and director of the company. The business trades as a craft brewery as well as a 'neighbourhood' bar and cafe. It has been operated by the company on its present site since October 2008. The third application is for the renewal of Mr Matranga's manager's certificate.

- [2] Public notice of the licence renewal applications attracted an objection from Mr P M Coeland a neighbouring business owner. He had issues with the way that the licence has been operated over the last three years. His main concern was that the company's customers had been drinking outside the defined licensed area. He also had some concerns about the company's patrons using the private parking areas or otherwise obstructing the legitimate use of such car parks. He submitted that the licence should only be renewed when all his concerns had been addressed, and suitable outcomes proposed. There was no opposition from any of the three reporting agencies. However, because of the public objection the applications were set down for a public hearing pursuant to s.202(3) of the Act.
- [3] There were no concerns from the Inspector or the Police about the renewal of Mr Matranga's manager's certificate. Nevertheless, the application was included in the papers for the public hearing in case any of the matters raised by the objector reflected on the manner in which Mr Matranga had managed the sale and supply of alcohol pursuant to the licences, with the aim of contributing to the reduction of alcohol-related harm. (s.227(c) refers).

### **The Applications.**

- [4] Mr Matranga stated that the company did its best to operate a business which was an asset to the Mapua community. By not operating late at night, and by encouraging a friendly local atmosphere and responsible drinking behaviours, Mr Matranga claimed a large measure of success. He confirmed that in the nearly eight years of operation, there had been no serious incidents at the bar such as fighting or underage drinking. On the other hand, he accepted that historically there had been difficulty with patrons leaving the licensed area.
- [5] Mr Matranga argued that any breaches of the licence conditions were partly due to the small size of the inside and outside licensed areas, as well as the original concept of having split outside drinking spaces separated by a walkway. Another problem was the way that the outside drinking zones were delineated. He claimed that it is always going to be difficult to expect patrons to observe an imaginary line or boundary. Further he contended that the Tasman District's alcohol plan allows for public consumption of 'takeaway' alcohol in the wharf area between 7.00am and 7.00pm. Members of the public can be seen consuming alcohol (from bottles as well as glasses) while seated in public areas between the brewery/bar and the sea.
- [6] Mr Matranga asked that we note that over the past few months the District Council and his company had taken significant steps to remedy the issues by the construction of planter boxes and seating which now surround the building on all sides, and clearly defines the licensed area. The current situation was that not only were there physical barriers, but signs had been erected, and staff members were constantly on the lookout to ensure that customers did not stray. He said he was confident that the risk of patrons leaving the licensed area had been substantially mitigated.

- [7] Two matters became clear as Mr Matranga was giving his evidence. The first was that he is operating in a fluid environment where the space available both inside and outside the premises is subject to change. Secondly the improvements carried out by the District Council have heralded a significant increase in the numbers of tourists and locals to the wharf. The constantly growing popularity of the Mapua wharf area has created pressure on all retailers and hospitality venues.
- [8] What Mr Matranga is hoping to achieve is a significant increase in the size of the internal and external spaces available to the company's customers. In a decision of this Committee dated 26 May last, the company was granted a temporary licence to enable it to sell and supply alcohol in an increased area that links with the current area, and extends it to the south and east of the building. This area is to be included in the current renewal application, and the company is granted a s.208 waiver because the variation was not included in the public notification. We are satisfied that the omission was not wilful, and that it is important that the temporary licence is subsumed within the full on-licence if and when it is renewed.
- [9] Mr Matranga is currently in negotiation with the District Council to lease the remainder of the eastern part of the building, so that he can not only extend his internal bar area, but also create an open plan with large bi-fold doors and windows in the eastern and southern walls giving a full view of the estuary as well as the new outdoor area. His long term intention (if he can secure the lease) is to reconfigure the bar to this side of the building, and to use the new entrance/exit as the only way in which patrons can arrive at and leave the bar. These grand designs will not only reduce crowding but change the way that the bar is utilised. In our view the new proposal is a potential game changer in terms of how the patrons behave, but of course this has yet to be tested, and agreement with the Council has yet to be reached.
- [10] Finally, Mr Matranga submitted that the objection was more personal than objective, and he believed was based on commercial reasons arising from Mr Coeland having to leave the main building in 2012, when his lease expired. Mr Matranga argued that prior to 2012 there had never been an issue or a complaint about the way patrons behaved. Mr Coeland disputed any suggestion that he was personally motivated by commercial reasons. It was apparent that the two businessmen are unlikely to reach agreement on any of their respective claims and counterclaims.
- [11] On the other hand, it is fair to say that Mr Matranga showed a willingness to comply with any condition imposed by the Committee on the licence. In his final submissions, Mr Matranga accepted that the hearing had changed his attitude to his overall responsibility to be less reactive and more proactive in ensuring that the conditions of the licence were observed. If this proves to be the case, then the objection process resulting in a public hearing will have been proved to be worthwhile. Time will tell.

**The Licensing Inspector.**

- [12] Ms Zoe Moulam has been a Licensing Inspector with the Tasman District Council for six years. In her report Ms Moulam did not oppose the applications and stated that she believed that the installation of the physical boundaries would greatly assist with keeping customers inside the defined area, and make it easier to manage. She noted that the planter boxes provided clear delineation of the area in question, and they made it hard to spill out from. She confirmed that live music is hosted twice a week generally for three hours to 9.00pm on a Friday, and for three hours to 6.00pm on a Sunday. They are well advertised on the website. One noise complaint had been received during the previous three years.
- [13] Ms Moulam gave evidence of complaints received in October 2013 about people consuming alcohol outside the licensed areas. Photographs were produced at the time. Mr Matranga suggested that some of the glasses of liquid that were shown in the photographs may have come from other licensed premises and the matter could not be taken any further. We note that on the 18 October 2013, the Environmental Health Co-ordinator asked Mr Matranga to provide a detailed management plan that would detail how people in the extended outdoor area would be controlled. The above incident resulted in a redefinition of the outdoor area, enabling patrons of the brewery to consume alcohol in a separate zone opposite the current area, but divided by a walkway.
- [14] There was a further complaint received on 3 December 2013 regarding the same issue, as well as noise from a band on an undefined date. Once again the Environmental Health Co-ordinator wrote to the complainant explaining that it was necessary for any noise complaint to be phoned in immediately so that the noise level could be checked. The letter pointed out that the records showed that this was the first such complaint on the data base. The complainant was advised that Council staff had spent some time working with the proprietor to ensure that his patrons did not wander from the site with glasses of alcohol in the future. The only other complaint was also one relating to excessive noise and this was received two days after an event on a Sunday afternoon in late October 2014.
- [15] In her final submissions, Ms Moulam made the observation that she expected good licensees to be proactive in the management of their alcohol licence rather than reactive. She suggested that the concerns that had been raised could be alleviated by the imposition of conditions on the licence. Such conditions would include a requirement for a management plan dealing with supervision of the outdoor areas, minimum staffing levels, meetings with other retailers and hospitality venues to discuss mutual issues and concerns, and the potential use of cameras.

### **The Medical Officer of Health.**

- [16] Ms Carol McIntosh is an Alcohol Licensing Officer & Health Promoter supporting the work of the Medical Officer of Health. She has been in this role eight years. She conducted a full interview with Mr Matranga and for the most part she considered that good host responsibility practices were in place. She noted the potential for concern relating to the monitoring and control of the outdoor area. Mr Matranga had responded by saying that customers taking drinks beyond the perimeters seldom happened due to the vigilance of staff. He stated that he had six or seven staff during busy trading rising to eight or nine when the business was exceptionally busy. All staff were instructed to constantly circulate in the outside area.
- [17] Ms McIntosh advised that the outdoor area had first been established when the licence was granted in 2008. Since that time the area had been extended or altered at least twice including the present arrangement which is the subject of a temporary licence. She reported no matters in opposition based partly on assurances given by Mr Matranga that he has good relations with his commercial neighbours who had never made any complaint to him about noise from the on-licence or the band, or other forms of disturbance.

### **The Objection.**

- [18] Mr P M Coeland is the proprietor of the "Coolchange Gallery" located diagonally opposite the south-west corner of the "Golden Bear Brewery": His original objection expressed a number of concerns but was short on specifics. He submitted that the company had continually flouted its liquor licence with total disregard to where its patrons drink and how this impinges on others. His argument was that "Golden Bear" patrons consume alcohol by the glass anywhere within the Mapua Wharf precinct and he supported this claim with a number of photographs. There were 15 photographs none of which were identified by date or time. Nine of the photographs appeared to show patrons drinking at a table outside his own business. There was a dispute between Mr Matranga and Mr Coeland as to whether people were encouraged to sit at this table, and we wondered whether the problem might be avoided if the table was shifted either to the licensed area, or further away from the brewery. Either way it seems to contribute to the ongoing disquiet between commercial neighbours.
- [19] Mr Coeland was adamant that his objection was not about retribution but was about the company understanding its obligations. He thought that the situation had arisen from complacency over the years as well as lack of monitoring and enforcement by the agencies. This in turn had led to complacency creep that had been taken advantage of by Mr Matranga who seemed to have immunity from liability. Mr Coeland accepted that the planter boxes might make a difference.



[20] In his objection, Mr Coeland also expressed his concerns about the private parking which is leased by retailers for the benefit of their customers. He submitted that the “Golden Bear” patrons were using the parking slots to pick up takeaways but also while drinking at the bar. He argued that in order to maintain the spaces for his customers he had to police the area. In summary, Mr Coeland acknowledged the amazing growth in numbers to the precinct, but seemed to place most of the blame on the lack of monitoring and intervention. So far as complaints about the use made of private car parks by alleged “Golden Bear” patrons, this is not a matter for the licensee. We understand that the owners of the car parks threaten to have the offending cars towed. They may have to go to the next stage if their businesses are affected. Finally, and as previously stated, the objection would have carried much greater weight had the complaints been detailed and specific as to dates and times.

### ***The Committee’s Decision and Reasons***

[21] To a large extent the issues that were raised by the objector over eight months ago have been overtaken by time. The improvements to the area created by the Council in the form of planter boxing has created visual as well as physical parameters that in our view will contain the company's patrons. There may be times when a patron will cross the line intentionally or unintentionally but as a result of the public hearing, any complacency will no longer exist. The company will respond.

[22] 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 because in our view the company is suitable. The issues in this case are the reports from the Inspector and the Medical Officer of Health, the object of the Act, the objection, and the manner in which the applicant has sold alcohol over the past three years.

[23] At any event we believe that the licences should be renewed. 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 one objection, 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.

[24] 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.”*

[25] We have had regard to the criteria in s.105 (as modified by s.131), as well as the evidence and submissions from the applicant, the objector and the reporting agencies. We have then stood back and considered whether there was any evidence to suggest that granting the application for the on-licence 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. Granted that there is some evidence of breaches of the conditions of the licence there is still no evidence at all that the renewal of the on-licence would undermine the object of the Act. Accordingly, the licences will be renewed.

[26] 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)

[27] 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 the on-licence.

[28] 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.*

[29] Accordingly, the on-licence will be renewed for three years with the temporary licensed outdoor area now included as licensed premises, and with the added condition that “Within three months of this decision, the licensee will provide the District Licensing Committee with a management plan that details how patrons in the outdoor area will be monitored and controlled.”


[30] Although not part of the condition we suggest that the company consider including in its plan 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 means by which the company will prevent patrons from other premises entering the outdoor area with alcohol they have purchased at other licensed premises;
- (d) the staffing arrangements that will occur in association with the use of the outdoor areas;
- (e) the rules about patrons drinking while sitting on the outside of the planter boxes; and
- (f) the establishment of an entry and exit to the outdoor area and how this exit/entry will be monitored.

[31] It seems to us that there are a number of issues still to be resolved dependant on whether the company is successful with its negotiations with the Council to lease the eastern interior of the building, and thereby create a new bar and a new main entrance/exit. Furthermore, it may be that the management plan is not considered acceptable by the reporting agencies. We think this management plan has to be a living document capable of amendment from time to time. This can be achieved between the company and the Inspector with the Committee being brought in when required. We are not in favour of the plan being too inflexible or unnecessarily prescriptive. 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 fluid and 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.

[32] Subject to the above we confirm the renewal of both the on and off-licences as well as the Manager's Certificate.

**DATED** at RICHMOND this 7<sup>th</sup> day of September 2016

  
P.P.  
Mr E W Unwin  
Chairman