

SALE AND SUPPLY OF ALCOHOL ACT 2012

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an application by HOSPO BROTHERS LIMITED for the renewal of an on-licence pursuant to Section 127 of the Sale and Supply of Alcohol Act 2012 in respect of the premises situated at 16 Southbrook Road, Rangiora.

BEFORE THE WAIMAKARIRI DISTRICT LICENSING COMMITTEE AT RANGIORA

Chairman: Commissioner Neville Atkinson
Members: Commissioners Paul Williams and Jim Gerard

HEARING at the Waimakariri District Council Chambers, 215 High Street, Rangiora, on Monday, 28 August 2023.

APPEARANCES

For the Applicant:

Mr J D Young (Brookfields Lawyers)
Mr D Singh (Hospo Brothers Limited)

Reporting Agencies

Mr R Deo District Licensing Inspector – application referred to the District Licensing Committee for determination of the application under section 127 of the Sale and Supply of Alcohol Act 2012.

Senior Constable G Craddock New Zealand Police – to assist.

Ms P Williams Medical Officer of Health – to assist.

Objectors:

Mr M Dougan (Riverstone Motel)

CONFLICT OF INTEREST

None

1. INTRODUCTION – THE WAIMAKARIRI DISTRICT LICENSING COMMITTEE

- 1.1 Before the Committee was an application for the renewal of an on-licence LL1340 by Hospo Brothers Limited in respect of premises situated at 16 Southbrook Road, Rangiora, known as The Brook Bar and Eatery (The Brook).
- 1.2 The premise is currently trading by means of an ON licence pursuant to licence number 058/ON/00029/2021, which the Waimakariri District Licensing Committee issued on 15 October 2021.
- 1.3 The property is zoned Residential B in the Waimakariri District Council District Plan, and the surrounding areas are mostly zoned for business and commercial activity. The Brook is adjacent to the Riverstone Motel, Liquorland Southbrook Bottle Store, and residential at back to the east, across a creek to the south next to a Pak 'N Save Supermarket.
- 1.4 The applicant applied on 19 September 2023 for renewal of its ON licence under section 127 of the Sale and Supply of Alcohol Act 2012. The principal purpose of the business and premises is that of a tavern and eatery. The application did not seek to change the hours of operation for the ON-licence, which are 8am to 11pm Sunday to Thursday and 8am to 1am (next day) Friday and Saturday.
- 1.5 The reporting Agencies raised no opposition; however, they raised some matters for the District Licensing Committee consideration.
- 1.6 An objection to the application was received from the Riverstone Motel based on:
 - (a) the suitability of the applicant.
 - (b) the days on which and hours during which the applicant proposes to sell alcohol.
 - (c) the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food.
 - (d) the effect on amenity and good order of the locality
 - (e) whether the applicant has appropriate systems, staff, and training to comply with the law.
- 1.7 Following opposition from the Riverstone Motel, a hearing was convened on 28 August 2023. Six Minutes were issued to all parties from the District Licensing Committee seeking submissions from the parties regarding the application. Also, a Minute was issued to all parties at the conclusion of the hearing for comment on proposed conditions if the District Licensing Committee was of the mind to grant the application.

2. THE APPLICANT

- 2.1 Counsel for the applicant, Mr J D Young, tabled a brief opening submission, noting the reporting Agencies and the Licencing Inspector did not oppose the application. There was one public objection. Mr Young advised that although the onus was on the applicant to establish suitability, there was a reasonably high threshold to be met by the objector in order to displace the absence of concerns by the reporting Agencies. Moreover, the goal of the Sale and Supply of Alcohol Act 2012 (the Act) was to minimise the harm caused by excessive or inappropriate consumption of alcohol and not eliminate it. In addition, the focus must be on the risk of harm from a particular premises and not alcohol harm in general. Mr Young referred to the Auckland Medical Officer of Health v Birthcare Auckland Limited [20151 NZHC 2689].

- 2.2 Mr Young believed that the applicant was qualified to run the premises, as there were none of the usual "red flags" present, such as criminal convictions, dishonesty offences, or a general disregard for the law. In relation to amenity and good order, Mr Young submitted that The Brook is located in mainly a commercial area, and the expectations of people visiting such an area, therefore, must be that there would be some noise associated with the activities in the area. Mr Young again referred to the Auckland Medical Officer of Health v Birthcare Auckland Limited [20151 NZHC 2689].
- 2.3 Mr Young acknowledged that there had been noise complaints issues. However, there had not been a raft of excessive noise complaints, which resulted in equipment seizure. The Brook endeavours to respond to the concerns of its neighbours and has taken steps to limit excessive noise. Mr Young noted that none of the other residents in the area had raised concerns regarding excessive noise, nor have they objected to the renewal of the ON licence. Mr Young referred to the decision The Narrows Landing Limited [LLA PH 479/2003].
- 2.4 Mr Young called Mr D Singh, a Director and 100% shareholder of Hospo Brothers Limited, to give evidence. Mr Singh took his Statement of Evidence dated 17 August 2023, provided to the District Licensing Committee before the hearing, as true. He highlighted that they have tried to implement measures to alleviate excessive noise, monitor intoxication, update staff records, and comply with the Fire Safety Standards.
- 2.5 Mr Deo enquired how many Duty Managers are employed at The Brook. Mr Singh confirmed that, including him, there were three Duty Managers. Also, they were in the process of hiring two more, one who has already started her training and one who will start next week.
- 2.6 Mr Deo asked if Mr Singh worked at The Brook full-time. Mr Singh explained that he alternated between The Brook and another premises they own in Rangiora. There is a roster of when he works at each premises. Mr Deo further enquired if Mr Singh kept any records of staff meetings and training and also when Mr Singh last met with his staff. Mr Singh confirmed that notes are taken at staff meetings, and the previous staff meeting was held on Tuesday, 22 August 2023, with the Bar and Kitchen Managers.
- 2.7 Senior Constable G Craddock from the New Zealand Police raised various questions regarding The Brooks' Staff Training Checklist. Mr Singh advised that all staff are required to complete the Staff Training Checklist after studying the Brook Bar and Eatery Staff Training and Induction Manual. Mr Singh confirmed that the Staff Training Checklist was developed in-house on the advice of Hospitality New Zealand, of which they are a member. Staff are expected to answer questionnaires highlighting "possible scenarios" as part of their ongoing training. Senior Constable Craddock also had several questions regarding the working schedule of the Duty Managers.
- 2.8 Senior Constable Craddock questioned if The Brook had trespassed any members of the public under the Trespass Act 1980 in 2023. Mr Singh noted that a member of the public was trespassed on Sunday, 27 August 2023, due to insulting behaviour. Hospo Brothers Limited also operates the Main Street Sports Bar in Rangiora and is investigating the possibility of trespassing offenders from both premises. The Brook also advises other hospitality establishments in the area of people that have been trespassed.

- 2.9 Senior Constable Craddock sought clarity on the letters provided to neighbouring properties about noise. Mr Singh explained that the letters were delivered to all the neighbouring properties in November 2023 to ascertain if they were experiencing excessive noise. Letters advising the neighbours of live band night in March 2023 were hand-delivered, as it was a "Band only" weekend. The Brook has only been hosting live music regularly since May 2023. Senior Constable Craddock noted that the Riverstone Motel had raised concerns about the people noise and foul language in the smoking area and car park. Mr Singh explained that after being notified of the Riverstone Motel's concerns, they have been trying to mitigate the noise by encouraging people to use the main entrance on Southbrook Road and by parking the Courtesy Bus at the main entrance. Regarding foul language, staff were only notified after the fact and, therefore, could not act.
- 2.10 In response to questions by Senior Constable Craddock, Mr Singh also confirmed that the Noise Management Plan was drafted in-house. He advised that most evenings, the music in the outdoor smoking area is turned down by 8pm, except for international sporting events. However, the main crowd watches sporting events on the big screen television inside the premises. There was only a small television for the few people who wished to smoke in the outside area, and there was, very little people noise during main sporting events.
- 2.11 The Medical Officer of Health, Ms P Williams, questioned how many hours The Brook operated, to which Mr Singh replied that The Brook normally operated for approximately 80 to 85 hours a week. Mr Singh explained the working arrangements of the Duty Managers and confirmed that with the new appointments, they believed that a sufficient number of Duty Managers would be employed.
- 2.12 Commissioner N Atkinson asked if Mr Singh was on the premises the evening of 25 March 2023 when the fire exit was reportedly locked. Mr Singh explained that although he was on duty, he was driving the courtesy van that evening and, therefore, was not on the premises. The staff on duty locked the fire exit to prevent people from taking alcohol outside and the noise travelling. However, they recognise this was a mistake and have implemented the necessary training to ensure this did not occur again. Mr Singh confirmed that on the said evening, staff did report that a complaint had been received; however, he was under the impression that it was acceptable to lock the fire exit and, therefore, did not act.
- 2.13 Commissioner J Gerard enquired if Mr Singh agreed with Mr Young that there were none of the usual "red flags" in light of the issues experienced at the applicant's other premises, such as the Yaldhurst Hotel and the Stadium Tavern. Mr Singh noted that they were working on eliminating any issues. However, he acknowledged that the challenges experienced at the applicant's other premises may raise the question of the suitability of the applicant.
- 2.14 Commissioner Gerard questioned if the side door at the northern side of the premises could be converted into a self-release fire door. Mr Singh confirmed that this was possible.
- 2.15 Commissioner Gerard noted that the speakers in the outdoor smoking area faced the Riverstone Motel. He enquired if it was possible that the speakers be set up in such a way as to minimise noise projecting towards the adjoining properties. Mr Singh advised that they were prepared to investigate the matter.
- 2.16 In response to questions from Commissioner Gerard, Mr Singh confirmed that the gambling machines in the outdoor smoking area were licensed.

- 2.17 Commissioner P Williams enquired if Mr Singh knew if Room 18 of the Riverstone Motel was soundproofed. Mr Singh commented that the Riverstone Motel advertised their rooms as being soundproof. Also, none of the guests of the Riverstone Motel who frequented The Brook had complained about noise. However, Mr Singh noted that people may open their motel room windows and thus hear the noise.
- 2.18 Commissioner Atkinson sought clarity on the car park shared with the Riverstone Motel. Mr Singh advised that the parking spaces were not allocated, and it is "first in, first served". Mr Singh explained that the Riverstone Motel disputed the shared use of the carpark as they wanted the parking spaces near the Riverstone Motel reserved for their patrons. However, Mr Singh had confirmed with his landlord that in terms of his lease agreement, it was a shared car park with no designated parking, except for the three accessible parking spaces. Commissioner Atkinson requested that the District Licensing Committee be provided with a copy of the lease agreement pertaining to the shared car park.
- 2.19 Commissioner Atkinson asked if, to Mr Singh's knowledge, Room 18 was occupied for longer than the other rooms in the Riverstone Motel. Mr Singh believed Room 18 was similar to any of the motel's other rooms, except that it had multiple beds.
- 2.20 Commissioner Atkinson questioned why the Riverstone Motel would maintain that Mr Singh was rarely on the premises. Mr Singh noted that it had to be based on hearsay as they have never requested staff records to confirm which staff were on duty.
- 2.21 The Chairperson thanked Mr Young and Mr Singh.

3. REPORTING AGENCIES

- 3.1 Mr R Deo, Licensing Inspector, was called, and his report was taken as read. Senior Constable Craddock asked if Mr Deo believed that the two managers on duty during their site inspection on 1 April 2023 were sufficient. Mr Deo responded that only two Duty Manager was not considered adequate.
- 3.2 The Medical Officer of Health, Ms P Williams, had no questions for Mr Deo.
- 3.3 Commissioner Gerard questioned why Mr Deo recommended that a security guard be employed when live bands perform at the premises. Mr Deo explained that a security guard could control the people using the fire door at the northern side of the premises and direct patrons to use the main entrance to access the smoking area. Also, they could assist with intoxicated people and crowd control.
- 3.4 Commissioner Gerard observed that the Sale and Supply of Alcohol Act 2012 compelled The Brook to employ an adequate number of qualified duty managers. Mr Deo agreed, noting that The Brook's current Duty Managers were working very long hours, hence his recommendation for them to employ more Duty Managers and ensure sufficient managers on duty at one time to manage the premises effectively.
- 3.5 Commissioner Williams questioned how excessive noise is measured. Mr Deo explained the process of measuring noise and noted that 'excessive noise' was subjective and was based on the opinion of the inspector called out to deal with the noise complaint. He confirmed that the inspector dealing with the noise complaint does not usually use a Noise Level Meter. According to the Council's records, there had been only two excessive noise complaints, which were subsequently dealt with.

- 3.6 Commissioner Williams asked if there were excessive noise complaints when The previous operator managed The Brook. Mr Deo confirmed that there had been complaints in previous years when there was live music, however, these were managed.
- 3.7 In response to questions from Commissioner Atkinson, Mr Deo told the District Licensing Committee that the Old Southbrook Hotel was previously on the site while the surrounding area was vacant. The previous owners underwent a Resource Consent process when the property was subdivided. The premises had historical use rights under the District Plan and is zone Residential B. This was similar to many pubs around the country. Mr Deo noted that an amendment to the zoning of the premises would not affect the management of excessive noise, as the receiving environment is where the noise had to exceed the threshold. Hence, the noise level had to exceed 50db at the boundary of the premises, which was quite a high level, considering the ambient noise in the area. Mr Deo therefore believed that maintaining a good relationship with neighbouring properties was the best way to manage excessive noise complaints.
- 3.8 Mr Young questioned based on the performance of the premises thus far and considering that only two noise complaints had been received, did Mr Deo believe that the employment of a security guard when live bands are performing would adequately address excessive noise complaints. Mr Deo confirmed that a security guard would assist the Duty Managers who were working long hours by manning the fire door, directing patrons, and assisting with intoxicated people and crowd control.
- 3.9 Mr Young sought clarity about the resolution of the two excessive noise directives issued to the previous licensee. Mr Deo advised that the issues were discussed with the Director of the Brook, who was requested to manage the noise because if they failed to do so, it may influence their alcohol licence. Also, Mr Deo confirmed they were required to implement a Noise Management Plan.
- 3.10 Mr Young noted that Mr Deo was not opposing the application, however, he suggested that some conditions be included. Mr Deo agreed that he was not objecting to the application renewal. He also confirmed that he was now satisfied with the record-keeping of the premises.
- 3.11 Mr Young questioned if Mr Deo accepted that there was an industry-wide challenge to secure suitable, experienced Duty Managers. Mr Deo disagreed as he believed that if establishments were prepared to pay for experienced Duty Managers, there would be qualified people ready to work for them.
- 3.12 Mr Young asked if the complaint regarding light glare from the Riverstone Motel, referred to in Mr Deo's report, was promptly handled by the applicant. Mr Deo confirmed that the matter had been resolved.
- 3.13 In response to questions raised by Mr Young, Mr Deo agreed that the applicant had been open to change and had complied with all the conditions set out. He, therefore, now does not question the applicant's suitability under the Act.
- 3.14 Commissioner Atkinson sought clarity on why Mr Deo would recommend that a condition be imposed to compel the applicant to maintain the Duty Managers' records, as the Act already required this. He also noted the recommendation that the company is to employ an adequate number of qualified Duty Managers and questioned who decides what an "adequate number" was. Mr Deo agreed that the keeping of Duty Managers' records was already a requirement of the Act. However, the applicant had failed to comply with this condition in the past, hence the recommendation to ensure ongoing record keeping. He suggested that the District Licensing Committee issue an Advisory Note to the applicant in this regard rather than making it a condition of the licence. Also, Mr Deo noted that the

Committee would have to decide what would be considered an "adequate number" of Duty Managers. However, he believed four Duty Managers would be ideal for this premises.

- 3.15 In response to questions raised by Commissioner Atkinson, Mr Deo confirmed that no noise complaints had been received from the residential properties at the back of the property, which were closer to the area where the live bands were playing. In fact, the property owners have written a letter in support of The Brook.
- 3.16 Commissioner Atkinson asked if Mr Deo was aware of any complaints regarding the amenity and good order of the premises. Mr Deo advised that the Council had not received any complaints other than the two excessive noise complaints.
- 3.17 The Chairperson thanked Mr Deo.
- 3.18 Senior Constable G Craddock, New Zealand Police, was called, and her report was taken as read, noting that the witness from Fire and Emergency New Zealand (FENZ) was not available to testify to what she observed on 25 March 2023. Mr Deo enquired if Senior Constable Craddock was satisfied with the number of Duty Managers The Brook employs. Senior Constable Craddock replied that it should be sufficient once the two additional Duty Managers were trained.
- 3.18 The Medical Officer of Health, Ms P Williams, had no questions for Constable Craddock.
- 3.19 Mr Young confirmed that Senior Constable Craddock did not initially oppose the application, however, when Ms R H McNicol raised the concerns, she believed it should be brought to the District Licensing Committee's attention. Mr Young asked if Senior Constable Craddock was satisfied that Mr Singh had recognised the error of locking the fire door and had taken sufficient steps to ensure it would not happen in future. Senior Constable Craddock agreed that she was satisfied that the matter had been resolved.
- 3.20 Mr Young questioned if Senior Constable Craddock accepted that there was an industry-wide challenge to secure suitable, experienced Duty Managers. Senior Constable Craddock noted that post-Covid there had been a shortage of qualified Duty Managers, however, currently, she believed there to be no problem securing competent staff.
- 3.21 Commissioner Atkinson asked if Senior Constable Craddock was aware of any complaints regarding the amenity and good order of the premises, to which she confirmed that the New Zealand Police had not received any complaints.
- 3.22 The Chairperson thanked Senior Constable Craddock.

4. THE OBJECTOR

- 4.1 Mr M Dougan appeared on behalf of the Riverstone Motel. His report was taken as read. Mr Deo enquired how many noise complaints Mr Dougan has made to the Council. Mr Dougan stated that he and his wife had made at least 12 complaints regarding excessive noise.

- 4.2 Senior Constable Craddock noted that Riverstone Motel's objection maintained that the applicant, Mr Singh, was rarely on the premises. She questioned if Mr Dougan had noticed a change. Mr Dougan commented that they only go to The Brook occasionally and can, therefore, not confirm if Mr Singh is on the premises.
- 4.3 Senior Constable Craddock questioned the main source of the noise, and Mr Dougan advised that the excessive noise emanated from the outdoor smoking area and when people left the premises late at night or early in the morning.
- 4.4 Senior Constable Craddock asked if Mr Dougan had observed any security at The Brook. Mr Dougan noted that the only security guards he was aware of were those mentioned in the FENZ letter.
- 4.5 In response to a question from Ms P Williams, Mr Dougan commented that in his experience, most of the problems happened after 11pm, hence the Riverstone Motel's recommendation that no alcohol be served after 11pm. Mr Dougan noted that, in general, Friday and Saturday were more problematic than Sunday to Thursday.
- 4.6 Mr Young questioned over what period the Riverstone Motel made the approximately 12 noise complaints. Mr Young further questioned if these complaints were made to the Council, as the information provided to the applicant by the Council indicated that only two noise complaints had been received. Mr Dougan confirmed that at least 12 noise complaints were made to the Council last year.
- 4.7 Noting the only security that Mr Dougan was aware of was that mentioned in the FENZ letter. Mr Young asked if it was possible that there was security on nights that Mr Dougan just did not observe. Mr Dougan acknowledged that it was possible.
- 4.8 In response to questions from Mr Young, Mr Dougan explained that the Riverstone Motel's rooms had been soundproofed as far as possible. However, sound travels and the soundproofing measures, therefore, do not stop excessive noise. Mr Dougan explained that people may not complain about the excessive noise in online reviews. However, they did complain to the motel staff, which reflected poorly on the Riverstone Motel. Mr Dougan acknowledged that the Riverstone Motel advertised The Brook on its website and that they had a cashback agreement with The Brook, which they were happy to continue.
- 4.9 Mr Young enquired if Mr Dougan considered the premises better managed under the previous operator. Mr Dougan noted that they had an opportunity to meet with the previous operator and discuss their concerns. It was agreed that three extra security staff would be stationed outside the premises when live bands were performing. Also, the side door on the northern side would be kept closed when bands were playing, and access would be controlled by security staff. Although the forementioned arrangements acceptably controlled the noise, neither the operators controlled the foul language in the outdoor smoking area. Mr Dougan agreed that it might help if signage were erected in the outdoor smoking area, requesting patrons to respect the neighbouring properties.
- 4.10 Mr Young questioned if Mr Dougan accepted that there were commercial activities in this area, to which Mr Dougan maintained that it was a Residential Zone.

- 4.11 Responding to questions from Mr Young, Mr Dougan confirmed that he was not aware of complaints from other neighbours and that the Riverstone Motel had received a letter advising them when live bands would be playing. Mr Dougan noted that the main challenge was managing noise when the people left after the bands performed, rather than the live music. He agreed that it might alleviate some problems if people were directed to leave via the main entrance in Southbrook Road after closing and not through the side door at the northern side, provided that the courtesy van also departs from the main entrance. Furthermore, Mr Dougan endorsed the speakers in the outdoor smoking area being set up in such a way as to minimise noise projected towards the adjoining Riverstone Motel. In conclusion, Mr Dougan advised that they would be happy to regularly meet with the operator to discuss matters of concern.
- 4.12 Commissioner Gerard enquired what evidence the Riverstone Motel had that the applicant was unsuitable as alleged in their objection. Mr Dougan commented that the applicant is not on the premises and does not respond to their concerns. Mr Dougan confirmed that the provision of services other than those directly related to the sale of alcohol referred to the live music. Mr Dougan further advised that the patrons of The Brook vomited in the shared car park and used foul language thus created noise affecting the amenity and good order of the locality.
- 4.13 Commissioner Williams sought confirmation that all the Riverstone Motel's rooms had double glazing, which Mr Dougan confirmed.
- 4.14 Commissioner Gerard asked if there had been complaints from people staying in Room 18 about the traffic noise. Mr Dougan noted that Room 18 faced away from the road, and traffic noise was therefore minimal.
- 4.14 Commissioner Atkinson questioned if Room 18 was soundproofed to the same standard as the main part of the Riverstone Motel. Mr Dougan explained that Room 18 was a weatherboard building, however, they had undertaken measures to soundproof the room.
- 4.15 Commissioner Atkinson enquired if the Riverstone Motel would find it beneficial if the shared carpark was only used by The Brook staff in a bid to control the noise. However, Mr Dougan did not believe that it would make a difference.
- 4.16 Commissioner N Atkinson asked if the noise from the people in the outdoor area or the noise from the televisions in the outdoor area was the most bothersome. Mr Dougan confirmed that the people yelling, swearing, and screaming during licensed hours and after closing were the most disruptive.
- 4.17 Commissioner N Atkinson questioned that if the patrons of The Brook were requested to leave the premises via the main entrance and if the share carpark was better managed and clear signage was erected, would it alleviate some of the Riverstone Motel's concerns. Mr Dougan agreed that it may help, however, it was important that the patrons of The Brook acknowledged that the Riverstone Motel's guests have a right to use the shared car park.

5. SUMMING UP

- 5.1 The Chairperson, Commissioner Atkinson, confirmed that submissions to the submissions and the evidence heard should be provided to the District Licencing Committee in writing within five dates from the hearing.

6. DISCUSSION AND CONSIDERATION

- 6.1 In deciding whether to renew the ON licence, the District Licencing Committee has to have regard to section 131 of the Act and relevant matters of section 105. After having regard to the criteria for renewal in section 131 the Committee stood back to consider whether there is any evidence indicating that granting the application will be contrary to the object of the Act – section 4.

105(1)(b) the suitability of the applicant

- 6.2 The recognized test for suitability is contained in *Re Sheard (1996) 1NZLR 751* where Holland J said
“The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence.”
- 6.3 The onus of establishing suitability is on the applicant, as defined in *Page v Police AP 84/89* where Pankhurst J stated,
“The applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding. That implies an onus upon the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of a particular case.”
- 6.4 The District Licencing Committee is satisfied that the applicant has demonstrated that they are able to discharge properly the responsibilities that go with holding an ON licence. The Committee noted that the company's directors have been involved in the industry for several years and successfully operate five licensed premises. In the words of the applicant's representative Mr Young, *“None of the usual red flags are present (convictions, dishonesty offences or a general disregard for the law)”*. This was supported by none of the Agencies raising concerns about the suitability of the applicant. The Committee is satisfied that the applicant has shown sufficient experience in operating a licensed business in the three years of running The Brook with a record of compliance.
- 6.5 The Committee noted the objection from the Riverstone Motel was, according to Mr Dougan, based on *“the applicant not being on the premises and not responding to their concerns”*. However, the Committee also noted that in response to a question from Senior Constable Craddock, Mr Dougan replied: *“that they only go to The Brook occasionally and could therefore not confirm if Mr Singh was not on the premises.”* Also, there is evidence that the applicant did respond to the objectors concerns in that complaint about the light glare from the Brook Bar towards the Riverstone Motel, referred to in Mr Deo's report, was promptly handled by the applicant.

105(1)(c) any relevant local alcohol policy

- 6.6 The Act enables the Waimakariri District Council to develop a Local Alcohol Policy (LAP) to further control the location of licensed premises, the number of licensed premises in the district or any part of the district, the maximum trading hours, impose discretionary conditions on the issue of licences and impose one-way door restrictions. The District Licensing Committee are required to consider the LAP when making licensing decisions. The Brooke operates to the extent of the hours stipulated in the LAP.

105(1)(d) the days and hours during which the applicant proposes to sell alcohol

- 6.7 Riverstone Motel had sought that the closing hours be brought back to 11pm so that noise associated with patrons leaving The Brook occurred at an earlier time, as The Brook was located in a Residential Zone. The applicant sought to maintain its current hours.
- 6.8 The District Licencing Committee accepted that the property is zoned Residential B in the Waimakariri District Council District Plan. The Committee also observed that the surrounding areas are mostly zoned for business and commercial activity with a higher ambient noise. It is the Committee's view that due to the historical presents of The Brook on this site and the surrounding business and commercial activities, adjoining residents have come to expect a higher noise level in this area.
- 6.9 Also, the Committee noted that Mr Dougan agreed that some of the problems being experienced may be alleviated if people were directed to leave via the main entrance in Southbrook Road after closing and not through the side door at the northern side, provided that the courtesy van also departs from the main entrance. It was also observed that none of the other residential neighbours have complained about noise.
- 6.10 The Committee accepts the current proposed days and hours of operation. That is, alcohol will be sold by the applicant from the premises under the on-licence from Sunday to Thursday from 8am to 11pm and on Friday and Saturday from 8am to 1am the following day and that this complies with the LAP.

105(1)(e) the design and layout of any proposed premises

- 6.11 No change was proposed to the design and layout of the premises. The Licensing Inspector had raised no issues of concern regarding the design and layout.
- 6.12 However, the Riverstone Motel has raised concerns about noise from patrons leaving the premises via the side door at the northern side of the premises and also the noise from the outdoor smoking area. This could relate to the design and layout of the premises or, equally, to the management of the premises.
- 6.13 The Committee heard from the applicant that *"the main crowd watches sporting events on the big screen television inside The Brook. There was only a small television for the few people who wished to smoke in the outside area, there was, therefore, not much people noise during main sporting events"*. Also, in response to a question from Commissioner Gerard, the applicant undertook to investigate the possibility of the speakers in the outdoor area being set up in such a way as to minimise noise projected towards the adjoining properties. In this context and having regard to the Licensing Inspector's view, the Committee is satisfied that the design and layout of the premises are appropriate.

105(1)(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, and food, and, if so, which goods

6.14 The Brook has 18 class 4 gambling machines.

105(1)(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services.

6.15 Riverstone Motel confirmed their objection is based on the excessive noise of bands playing at The Brook. In this respect, the objection seems to be directed at whether the applicant was providing services other than those directly related to the sale of alcohol pursuant to s.105(1)(g) of the Act.

6.16 It has for some time now, been accepted that excessive noise is not simply a resource management issue, but also is a factor that needs to be considered by the District Licensing Committee. See *Paihia Saltwater (2001) Ltd NZLLA PH 391/2001*.

"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.

... We will always give full credit to those holders who acknowledge any existing noise problem and try to do something about it. In our view the term "host responsibility" does not exclude the people who live nearby.

Many licensed premises have shown that they can operate in harmony with their residential neighbours. It is no coincidence that the managers and owners of such premises also show a commitment to the reduction of liquor abuse. ..."

6.17 It is the Committee's view that the applicant has demonstrated that they acknowledge the concerns of the Riverstone Motel and that they have taken steps to alleviate the problem. The applicant delivered letters to all the neighbouring properties in November 2023 to ascertain if they were experiencing excessive noise. Also, letters were hand-delivered advising the neighbours of the Band only weekend in March 2023. In his evidence, the applicant, Mr Singh, advised that *"On live band nights, we close the bar entrance and smoking area sharing boundaries with neighbours and leave one entrance open, (restaurant entrance)."*

6.18 It is also noteworthy that the Waimakariri District Council only has a record of two noise complaints since the applicant has been operating the premises, and the Council has not undertaken any further monitoring of the noise emanating from The Brook.

105 (1)(j) whether the applicant has appropriate systems, staff, and training to comply with the law

6.19 The District Licensing Committee heard that Savannah Davies, Priyanka Sharma and Deepinder Singh were principally responsible for running the premises. All three hold managers certificates, and The Brook was in the process of hiring two more Duty Managers, one who has already started her training and one who will start the week of August 2023. The applicant provided evidence that staff were being trained in host responsibility and preventing people from becoming intoxicated. The Committee was provided with copies of The Brook's Host Responsibility Policy and Alcohol Management Plan.

6.20 The Licensing Inspector confirmed that he was satisfied that The Brook was now keeping Duty Managers' records as per the requirements of the Act.

6.21 Furthermore, the Committee observed that the Licensing Inspector and the New Zealand Police believed that the three current Duty Managers and the additional two Duty Managers would be sufficient to manage the premises.

105(1)(k) any matters dealt with in any report from the Police, an Inspector or a Medical Officer of Health made under section 103

6.22 The District Licensing Committee noted there were no objections from the Agencies. However, the New Zealand Police have submitted a supplementary report and statement dated 28 April 2023 with regard to an incident that took place at the premises on 25 March 2023. Noting that the witness from Fire and Emergency New Zealand (FENZ) was not available to testify to what she observed on 25 March 2023.

6.23 The Committee understood that the applicant intended to prevent people from taking alcohol outside and the noise travelling. However, the applicant has acknowledged this was a mistake and has implemented the necessary training to ensure this does not occur again.

6.24 The Committee further notes that the applicant has signed a statement that the building in which the premises are situated has an evacuation scheme for the public's safety that meets the requirements of section 76 of the Fire and Emergency Services New Zealand Act 2017.

6.25 The Committee took into consideration that in response to a question from Mr Young, Senior Constable Craddock confirmed that she was *"satisfied that the applicant has recognised the error of locking the fire door and has taken sufficient steps to ensure it would not happen in future"*. Senior Constable Craddock agreed that she was satisfied that the matter had been resolved.

S131 Criteria for renewal

6.26 In forming an opinion on s106, s105(h) and s131(1)(b), whether the amenity or good order of a locality would likely be increased, by more than a minor effect, by the effects of a refusal to renew the on-licence, the District Licensing Committee must have regard to:

- (a) Current, and possible future, noise levels and
- (b) Current, and possible future, levels of nuisance and vandalism.

6.27 The Committee needs to consider the evidence before it regarding any current or likely future noise levels or nuisance or vandalism attributable to the activity of the licence. The Committee needs to ask whether this diminishes the amenity and good order of the locality and, if so, whether a refusal to renew the ON licence would increase the amenity and good order to more than a minor extent.

6.28 It is noted that neither the New Zealand Police nor the Licensing Inspector had any questions concerning noise, nuisance, or vandalism. Only the Riverstone Motel objected to what they consider to be excessive noise and raised concerns about people vomiting in the shared car park and the foul language used by people, which may be considered a nuisance or vandalism.

6.29 Commissioner Atkinson asked if the Licensing Inspector was aware of any complaints regarding the amenity and good order of the premises, and Mr Deo advised that the Council had not received any complaints other than the two excessive noise complaints. Commissioner Atkinson also inquired if Senior Constable Craddock was aware of any complaints regarding the amenity and good order of the premises, to which she confirmed that the New Zealand Police had not received any complaints.

- 6.30 In forming its view the Committee noted that Ponda Holdings Ltd (2014) NZARLA PH558 states that *“when considering 131(1)(b)...where there are no adverse comments by the reporting Agencies it is unlikely that an objector will satisfy the Authority that “the amenity and good order of a locality would be likely be increased, by more than a minor extent, by the effects of a refusal to renew the licence.”*
- 6.31 S131(1)(b) is also a matter to which the District Licensing Committee must have regard in assessing effects on amenity and good order. The Committee was aware of how long The Brook has traded from this site and that if the licence is renewed it will continue to trade. Although the area is zoned Residential B, the premises has a historical use right under the District Plan and the surrounding areas are mostly zoned for business and commercial activity. It is the Committee’s view that the community has grown around the site over the last two decades and the site has continuously been a licensed premise, that everything otherwise remaining the same in scope, the purposes are compatible.
- 6.32 It is the Committee's opinion that given the applicant 's efforts to address the objection to excessive noise from the Riverstone Motel and the lack of evidence provided by any party of nuisance or vandalism associated with the premises, the renewal of the on-licence would not reduce the amenity and good order of the locality by more than a minor extent.
- 6.33 S131(1)(c) requires the District Licensing Committee to have regard to any matters dealt with in any report from the Agencies, and the recommendation in the Licencing Inspector's report regarding employing a security guard when bands are performing at the premises to assist the Duty Manager has been noted. However, the Committee also had regard to the statement of Ms R H McNicol that a security guard was present on the premises on 25 March 2023, thus indicating that The Brook was already employing security guards when deemed necessary. The Committee took into consideration that the Licencing Inspector confirmed that he was now satisfied that The Brook's keeping of Duty Managers' records was complying with the requirement of the Act. Furthermore, both the Licensing Inspector and the New Zealand Police believed that the three current Duty Managers and the additional two Duty Managers would be sufficient to manage the premises.
- 6.34 The Committee noted that the Fire and Emergency New Zealand (FENZ) witness was not available to be questioned about what she observed on 25 March 2023. However, they further noted that the New Zealand Police were satisfied that the matter had been resolved.
- 6.35 Section 131(1)(d) seeks regard to the manner in which the applicant has sold, displayed, advertised, or promoted alcohol. The District Licensing Committee noted that there was no comment on this matter by either the Licencing Inspector or the other Agencies, and in its view, the manner in which The Brook sold alcohol complied with the object of the Act.

105(a) the Object of this Act

- 6.36 The object of this Act is:
- (a) *the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
 - (b) *the harm caused by the excessive or inappropriate consumption of alcohol should be minimized.*

- 6.37 Having considered the relevant factors of s105, the District Licensing Committee turned its mind to whether the renewal of the ON licence was consistent with the object of the Act. The Committee was aware that its consideration was not narrow and confined to just single elements of s105. The Committee was also aware when considering the object of the Act that it had two limbs; sale, supply and consumption of alcohol should be undertaken safely and responsibly, and alcohol-related harm should be minimised.
- 6.38 In the Committee's opinion, having stepped back, viewed the matter globally and weighed the applicant's evidence. The evidence and statements of the Agencies and the Riverstone Motel, on balance, it is the Committee's view that The Brook would undertake the safe and responsible sale and supply of alcohol on its premises. In doing so, the Committee concluded that because of the experience of the directors, the systems in place, and the monitoring by the Agencies, harm caused by excessive or inappropriate consumption of alcohol would be minimised. In the context of this application for this premises, the Committee considers that the renewal of the on-licence meets the object of the Act.

DECISION

The District Licensing Committee, pursuant to the Sale and Supply of Alcohol Act 2012 s127, grants the application by HOSPO BROTHERS LIMITED for the renewal of an on-licence in respect of premises situated at 16 Southbrook Road, Rangiora and known as The Brook Bar and Eatery subject to the following conditions:

- (a) The licensee must have available for consumption on the premises, at all times when the premises are open for the sale of alcohol, a reasonable range of non-alcoholic refreshments and low-alcohol beverages. The licence shall be subject to the following conditions:
- (b) No Alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on ANZAC Day to any person not present on the premises to dine.
- (c) Alcohol may be sold only on the following days and during the following hours:
 - (i) Sunday to Thursday 8.00 am to 11.00 pm; and
 - (ii) Friday and Saturday 8.00 am to 1.00 am the following day.
- (d) Water will be freely available to customers on the premises while the premises are open for the business.
- (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:
 - Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (f) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - Alcohol must be only sold, supplied, and consumed within the area marked on the plan submitted with the application.
 - That the speakers situated in the outdoor smoking area shall be set up in such a way as to minimise noise projected towards the adjoining properties, i.e that the speakers be turned to face the licensed premises.
 - That the side door at the northern side of the premises shall be converted into a self-release fire door.

- No exit shall be allowed via side door at the northern side of the premises after 11pm.
 - That exit from the premises after 11pm only be allowed via the main entrance facing Southbrook Road.
- (g) The following steps must be taken to promote the responsible consumption of alcohol:
- The licensee must implement and maintain the steps proposed in their Host Responsibility Policy aimed at promoting the reasonable consumption of alcohol.
- (f) The Restaurant area shall be **Undesignated**.
The remainder of the ground floor of the premises shall be **Supervised**.
The gaming area shall be **Restricted**.

OTHER RESTRICTIONS AND REQUIREMENTS

- Section 51 – Non-alcoholic drinks to be available.
- Section 52 – Low-alcohol drinks to be available.
- Section 53 – Food to be available.
- Section 54 – Help with and information about transport to be available.
- Section 56 – Display of signs.
- Section 57 – Display of licences.
- Section 214 – Manager to be on duty at all times and responsible for compliance.

THE LICENSED PREMISES

The premises situation at 16 Southbrook Road, Rangiora are more precisely identified as outlined in the plan submitted with the application.

DISPLAY OF LICENCE AND PRINCIPAL ENTRANCE

A copy of the licence must be displayed at the principal entrance to the premises.

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) Until the close of the period of 1 year commencing with the date of its issue; or
- (b) If an application for the renewal of the licence is duly made before it would otherwise expire, until the close of the period of 3 years after the period for which it is renewed.

DATED AT RANGIORA THIS 20 DAY OF OCTOBER 2023

Signed




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Neville Atkinson
CHAIRPERSON
WAIMAKARIRI DISTRICT LICENSING COMMITTEE