

**IN THE MATTER**

of the Sale of Liquor Act 1989

**AND**

**IN THE MATTER**

of an application by **MARINA THAI RESTAURANT LIMITED** pursuant to s.18 of the Act for renewal of an on-licence in respect of premises situated at Shop C5, 1 Ara Tai, Half Moon Bay, Auckland, known as "Marina Thai Restaurant"

**BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY**

Deputy Chairman: District Court Judge J J Weir  
Member: Ms J D Moorhead

**HEARING** at AUCKLAND on 14 April 2014

**APPEARANCES**

Mr J H Wiles – for the applicant  
Mr G N Young – Auckland District Licensing Inspector – to assist  
Mr P Wilson – objector

**RESERVED DECISION OF THE AUTHORITY**

[1] This is an application by Marina Thai Restaurant Limited for renewal of an on-licence in respect of premises situated at Shop C5, 1 Ara Tai, Half Moon Bay, Auckland, known as "Marina Thai Restaurant". The business trades as a restaurant with hours authorised by the Act between 7.00 am and 1.00 am daily. No changes are sought to the conditions of the licence.

[2] There is no opposition from the regulatory authorities. There is one objector, a Mr Peter Wilson who is domiciled at Pegasus Place, Half Moon Bay, Auckland which is approximately 200 metres in a direct line from the premises and about 800 metres distant by road. The objector contends that the hours sought are excessive and that the applicant has demonstrated that it is not suitable to continue to hold the licence.

***Preliminary Issues***

[3] The applicant has publicly notified the public outside the 10 working days from the filing of the application for renewal. The consultant on behalf of the applicant has sought a waiver of that time limitation under s.111 of the Act.

[4] Although the objector opposes such a waiver he could not point to any prejudice or harm arising out of the late filing. Furthermore there was no suggestion that this omission was wilful. The time limitation in this case is accordingly waived.

### ***The Application***

[5] The criteria for renewal of this licence are set out in s.131 of the Sale and Supply of Alcohol Act 2012. The Licensing Inspector Mr G N Young has prepared a report dated 1 October 2013 which addresses these criteria. His conclusions are as follows:

- (i) That since the licence was issued to the applicant on 17 August 2012 the business has been operated strictly in accordance with the constraints of the licence.
- (ii) There have been no concerns raised in relation to impact on neighbouring land use.
- (iii) No noise complaints have been received by the Local Authority.
- (iv) There is no indication that the operation of the business has or will impact adversely on the object of the Act.
- (v) There is no indication of any potential for crime or disorder to occur in the locality.
- (vi) There is no reason to believe that the good order and amenity of the locality is likely to be compromised by the continued presence and operation of the business.

The Inspector accordingly offers no opposition to the application for renewal.

[6] The objections raised by the objector Mr Wilson are twofold. Firstly, that the hours sought are excessive and the hours granted by the original licence have not been utilised over the past year and they should therefore be limited. For the applicant, a Mr Jatetin Poomphame, in his evidence said that whilst it was true that the restaurant did not remain open for all of the hours granted in the licence, he still required those hours to provide him the flexibility which he required to run a successful business.

In our view that is a sensible position to take and the current hours are not out of the norm under the 1989 Act.

[7] The second point taken by the objector was that the applicant was serving alcohol outside the area defined by the licence.

[8] Mr Wilson produced photographs demonstrating that the restaurant has seating available for patrons on the terrace outside the restaurant where patrons consumed alcohol. The applicant confirmed that this was indeed the case but maintained that he was entitled to do so according to the terms of the licence.

[9] There is a clear confusion as to what exactly the defined area is according to the licence, and the Licensing Inspector Mr Young was unable to confirm the exact position for the Authority.

The applicant indicated that he would only operate the licence within the designated area as established by the Licensing Inspector.

[10] Following the hearing the Inspector provided our Secretary with scale plan that identified the extent of the premises. The Authority is satisfied that the premises have been utilised in an appropriate manner. Accordingly, in view of the undertaking given by the applicant in the previous paragraph, this application must succeed.

[11] We therefore renew the licence on the existing terms and conditions until 17 August 2016, that being a period of three years from the first anniversary of the licence, and we authorise the issue of a notice of renewal subject to the two following conditions:

- (i) The opening hours shall be no earlier than 8.00 am.
- (ii) That the applicant will only operate his licence within the defined area as established by the Licensing Inspector.

**DATED** at WELLINGTON this 7<sup>th</sup> day of May 2014

A E Cannell  
Deputy Secretary