

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by **KELVIN GRAEME LONG and ROCHELLE KATHLEEN EVERS**, trading in partnership, pursuant to s.18 of the Act for renewal of an on-licence in respect of premises situated at 6 Marsden Road, Paihia, known as "Alfresco's"

BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY

Chairman: District Court Judge J D Hole

Member: Mr R S Miller

HEARING at PAIHIA on 15 September 2014

APPEARANCES

Mr R C Mark – counsel for the applicants

Mr J A Thorne – Far North District Licensing Inspector – to assist

Senior Constable G Wright – NZ Police – to assist

Mr J Baguley – counsel for the objector

Objectors

Ms A Farac

Mr D Pollock

DECISION OF THE AUTHORITY

[1] The holder of the on-licence issued in respect of the premises situated at 6 Marsden Road, Paihia, known as "Alfresco's" is the partnership of Kelvin Graeme Long and Rochelle Kathleen Evers. Mr Long has retired from the partnership. Any renewed licence to be issued as a result of this decision will be in the name of Rochelle Kathleen Evers. The renewal application was filed in breach of s.18(2)(b) of the Act but not after the expiration of the licence. An application was made in terms of s.111 of the Act in respect of both of these matters. The omissions were not wilful. The waiver application is granted.

[2] This decision relates to an application for the renewal of the on-licence in respect of the premises known as "Alfresco's". None of the reporting agencies opposed the application. There were two objectors who operate the Anchorage Motel which is situated immediately behind the premises.

[3] The objectors took issue with the "*manner in which the licensee has conducted the sale and supply of liquor pursuant to the licence*" and as a result challenged their suitability. The basis of the objection was unreasonable noise emanating from the premises.

[4] On Sundays, between 3.00 pm and 6.00 pm live music is played in the premises. In addition, on Thursday evenings acoustic music is played in the premises. The objectors have lodged a number of noise complaints with the territorial authority but no action has ever been taken in respect of them. Usually by the time the noise inspectors have arrived at the premises the music has ceased.

[5] Since the application was filed on 18 December 2012 the parties have endeavoured to negotiate an agreement. Whilst the applicant and the objectors were in general agreement as to the nature of the agreement, the objectors were concerned that the applicant would breach it.

[6] At the hearing, through her counsel, the applicant undertook:-

- (a) That live music on Sundays will not commence before 2.55 pm each Sunday and will cease no later than 6.30 pm each Sunday.
- (b) That on Thursday nights between 6.00 pm and 10.00 pm only acoustic music will be played at the premises but only one acoustic musician will play.
- (c) There will be no extension of music offered in the premises on days other than Sundays and Thursdays without the applicant first consulting with the objectors.

[7] The only aspect of the undertakings objected to by the objectors was that the Sunday music would cease at 6.30 pm rather than, as they wished, 6.00 pm. The reason that the applicant sought to discontinue the Sunday music at 6.30 pm was to permit musicians to complete items commenced just before 6.00 pm. Generally, the music will cease at 6.00 pm or shortly thereafter because the musicians need to have left the premises for the evening meals to be served. In the circumstances the objectors' request that music cease at 6.00 pm is unreasonable.

[8] The objectors were also concerned that delivery vehicles might attend upon the premises before 8.00 am and that a rubbish collection could occur before 8.00 am. The rubbish collection is outside the control of the applicant. The applicant has taken all reasonable steps to ensure that all deliveries to the premises do not occur before 8.00 am.

[9] On the basis of the undertakings given by the applicant, the Authority is prepared to grant the renewal application. It is satisfied that the application meets the criteria contained in s.22 of the Act.

[10] The renewal application is granted accordingly.

DATED at WELLINGTON this 8th day of October 2014

M Langworthy
Secretary