

No. 63/MDLC DEC/1/2016 (On) and
No. 63/MDLC DEC/2/2016 (Off)

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by McKenzie
Country Enterprises Limited pursuant
to s.105 of the Act for a new On and
Off Licence in respect of the
premises situated at 69 Main Street,
Fairlie known as the "Top Pub"

BEFORE THE MACKENZIE DISTRICT LICENSING COMMITTEE

Commissioner: Pat Mulvey
Member: Claire Barlow
Member: Graham Smith

HEARING at FAIRLIE on 7 April 2016

APPEARANCES

Mr Thomas Carmichael – Representative for the Applicant
Miss Kisshano Melecio – Sole Director of McKenzie Country Enterprises Limited - Applicant
Sergeant Mylen Hamilton – NZ Police – in opposition
Mrs Sharon Hoogenraad – Mackenzie District Chief Licensing Inspector – in opposition
Mr Peter Shaw – Representative of Medical Officer of Health Canterbury – in opposition
Mr Shayne Broughton – Representative of Medical Officer of Health – in opposition

RESERVED DECISION OF THE COMMITTEE


- 1 The Applicant on 14 December 2015 made application to the Mackenzie District Licensing Committee for a hotel style on-licence and a hotel style off-licence. The applications resulted from a change in ownership of the lease to trade as the Top Pub, which is situated at 69 Main Street, Fairlie. The premises is currently trading under a Temporary Authority over each of the base on and off- licences.
- 2 Opposition to the applications had been received from both the Chief Inspector and the Medical Officer of Health within the statutory reporting time. An opposition was lodged by Police outside of the statutory reporting time. All oppositions related to the suitability of the Applicant under Section 105 (1)(b) of the Sale and Supply of Alcohol Act 2012 (the Act).
- 3 Following a meeting of the Mackenzie District Licensing Committee on 8 March 2016 in relation to both the applications, and based on the information provided by the Chief Licensing Inspectors report, a hearing was convened for 7 April 2016 to determine the

suitability to of the sole director of Mckenzie Country Enterprises Limited, namely Miss Melecio, to be a licensee.

- 4 At that hearing evidence was heard from the Applicant's representative Mr Carmichael and from Miss Melecio. The evidence presented related to the suitability of the Applicant in terms of Section 105 (1)(b) of the Act.
- 5 Evidence was given by Mr Carmichael that Miss Melecio and her partner Mr Tony Kavanaugh were "out of their depth" and were "too inexperienced" to operate a licensed premises. He acknowledged that the incidences of gross intoxication on the premises, lack of availability of food and other breaches whilst under a Temporary Authority were symptomatic of the Applicant's lack of experience.
- 6 Evidence was given by Miss Melecio, by way of cross examination, during which she was unable to demonstrate a basic level of knowledge of her responsibilities as a licensee in terms of the Act. It was noted that when questioned, she was unable to state in her own words the object of the Act.
- 7 During proceedings the Applicant through Mr Carmichael offered to withdraw the applications and requested that the Applicant be permitted to continue to trade on the existing Temporary Authority's for a period of four weeks, to enable the Applicant to attract a sale of the business whilst it was still operating. After discussion of the possible outcomes dependant on whether or not the applications were withdrawn or not, the Applicant elected to withdraw the applications.
- 8 The Committee agreed to consider the Applicant's proposal as described by Mr Carmichael.
- 9 In response to a request for comment from the Commissioner, Sergeant Hamilton spoke on behalf of the Police and said that there was no objection to the proposal from Police on the proviso that hours were restricted from 11am to 9pm.
- 10 Mr Carmichael agreed to these hours on behalf of the Applicant.
- 11 The Commissioner asked Mr Shaw for comment on the proposal. Mr Shaw stated *"We would have no issue with the (restricted) hours but certainly there are some issues behind the scenes we are clearly not comfortable with. It is a question of how much alcohol related harm is acceptable. That's where we (Health) are coming from."*
- 12 The evidence heard from the Applicant and Mr Carmichael, when considered in deliberations subsequent to the hearing, proved sufficient for the Committee to be satisfied that had a determination as to the suitability of the Applicant been required, it would have reached a finding that the Applicant was not suitable to be a licensee.
- 13 The Committee deliberated on the Applicant's proposal, giving consideration to the evidence heard during proceedings, including evidence relating to the Applicant's suitability, the amount of stock held on site being described as "minimal" by Mr Carmichael and the comment of Mr Shaw pointing to the object of the Act.
- 14 The Committee has decided due to the limited amount of stock on hand the Applicant is unlikely to engage in a "large fire sale" to dispose of stock therefore the need for extra time does not apply. The decision then in relation to Mr Carmichael's proposal relates firstly to the foundational reason for allowing the proposal to go ahead being in keeping with the object of the Act, and secondly whether or not a mechanism in law exists for the proposal to go ahead.

- 15 Mr Carmichael stated that the purpose of the proposal was to enable the Applicant to attract a sale of the business whilst it was still operating. The Committee draws the inference from this statement that the purpose of the proposal, then, is to provide the Applicant with the best opportunity of obtaining the optimum market price for the business. This is a commercial matter and does not contribute toward achieving the object of the Act.
- 16 The second point for consideration was whether or not a mechanism in law exists to permit the proposal to go ahead. The purpose of a Temporary Authority is to allow a prospective licensee to operate over a base licence belonging to another person or entity for the purpose of applying for their own licence to operate the premises. This gives the Applicant the necessary time to submit a completed application and the time for the District Licensing Committee to assess the merits of the application and conduct of the Applicant against the provisions of the Act. Once a decision on the application is made by the Committee, or the application is withdrawn, or the base licence expires, the Temporary Authority ceases to exist. The only way for the Committee to accommodate the Applicant's proposal would be for the Committee to not accept the withdrawal of the applications or delay the decision for a period of four weeks. The Committee is not aware of any circumstances where this arrangement has occurred previously. It is of the opinion that for the proposal to be considered, it would need to be satisfied that it was on a sound foundation in law based on a legal opinion, be satisfied that the Applicant be of sound character and have a good knowledge of the Act, and be satisfied that the purpose for the proposed arrangement was for a reason that contributed toward the object of the Act.
- 17 Taking into consideration all matters the Committee is not satisfied that the Applicant has met any of the criteria outlined above and as a consequence has accepted the withdrawal of the applications as requested by the Applicant. The Committee declines to accept the Applicant's proposal.
- 18 The Applicant's Temporary Authority for the on-licence and the Temporary Authority for the off-licence will cease to exist upon receipt of this decision and all sales of alcohol must desist from that time.

DATED at Fairlie this 11th day of April 2016.


P Mulvey
Commissioner
Mackenzie District Licensing Committee

