

IN THE MATTER of the Sale and Supply of Alcohol Act 2012
AND
IN THE MATTER of an application by SAR LIMITED
pursuant to s 136 of the Act for a
Temporary Authority Order in respect of
premises situated at 37 Vine Street,
Whangarei and known as Shotgun Betty's.

BEFORE THE WHANGAREI DISTRICT LICENSING COMMITTEE

Chairman: Councillor Greg Innes

Members: Paul Dimery

Mark Vincent

HEARING at WHANGAREI DISTRICT COUNCIL on 10 June 2014

APPEARANCES

Mr Trevor James – applicant

Mr Perry – to assist applicant

Mr Maeva – Head of Security, Shotgun Betty's, for applicant

Mr Reiner Mussle – Whangarei District Licensing Inspector

Sergeant Howard Clement, Police – in opposition

Sergeant Darren Sullivan, Police – in opposition

Sergeant Kim Adamson, Police – in opposition

Senior Constable Tony Mackereth, Police – in opposition

Constable Sandra Mortensen, Police – in opposition

Julian Dawson – legal counsel for District Licensing Committee

DECISION OF THE WHANGAREI DISTRICT LICENSING COMMITTEE

- 1) This decision relates to an application made by SAR Limited under s 136 of the Act on the 3 June 2014 for a temporary authority order for premises situated at 37 Vine Street, Whangarei known as Shotgun Betty's. Police have opposed the application and the matter has been set down for a public hearing at short notice.
- 2) Mr Trevor James is the sole shareholder and director of SAR Limited. At the commencement of the hearing Mr James sought an adjournment on the grounds that he had not had sufficient time to seek legal representation and to properly prepare to defend allegations made by the Police in opposition to the application. Mr James told the committee that he had only received final Police evidence from the Committee secretary on the morning of the hearing and that his legal counsel, a Mr Jackson, was unable to attend the hearing because of short notice. Mr Perry, a solicitor was at the hearing on the

instruction of Mr Jackson to provide support to Mr James but Mr James said that should the hearing proceed he would need to make submission himself.

- 3) On the matter of the short notice we sought clarification from Mr Mussle the Licensing Inspector. Mr Mussle said that a Temporary Authority held by SAR Limited was due to expire on the 12 June 2014. Mr James had repeatedly been reminded by Mr Mussle, as early as 8 May 2014 and again on the 19 May 2014 that a another temporary authority would need to be granted prior to the 12 June 2014 so that he could continue to trade after that date. Furthermore Mr James was aware that the Police were taking enforcement action against him in respect of the management of Shotgun Betty's and had said that they would opposed any application for temporary authority. Mr Mussle had advised Mr James that in such circumstances the District Licensing Committee would need to determine the application by way of public hearing, and that this would require some time to deal with and that he should make application at least 20 working days prior to 12th June 2014. In the circumstances Mr James chose to make application on the 3rd June 2014 which is 7 working days prior to the expiry of the current temporary authority.
- 4) The committee was under very tight time frames to hear the application so that SAR Limited was given the opportunity to continue to operate after the 12 June 2014. The committee could have set a date for a hearing after the 12th June but chose not to because this would have require SAR Limited to cease trading until another temporary authority was granted. We heard from the Police that they had made an effort under the same time constraint as the applicant to be prepared for the early hearing and they wished to proceed with the hearing. We believe that the applicant had been given enough warning of an impending hearing to be properly prepared and offered Mr James the option of either proceeding today or alternatively to have the matter adjourned to another date in two weeks time. Mr James elected to proceed with the hearing.
- 5) The history relating to the applicant is that SAR Limited took over the premises known as "Malbas" in Vine Street and gained a temporary authority to operate under the On-licence (002/ON/13/2011) issued to Malbas Bar & Nightclub Limited, which currently remains in force. More recently Police have raised concerns regarding the management of the premises (the same matters which are raised in opposition to the grant of the application before the committee at this hearing) and have on the 29th of May 2014 made application to ARLA under s.280 of the Sale and Supply of Alcohol Act 2012 for the suspension or cancellation of the On-licence held by Malbas Bar & Nightclub Limited and the Temporary Authority currently in force, which was issued by the Committee on 11 March 2014 and is due to expire on 12 June 2014. This matter is now before ARLA for determination as will be the application for the on licence. An On licence application made by SAR Limited on the 17th December 2013 under the Sale of Liquor Act 1989, is also to be sent to ARLA for determination as this has also been opposed by the Police on the same grounds.
- 6) Section 136 of the Act provides for the grant of a temporary authority order as follows:
 - 136 Temporary authorities: on-licences and off-licences**
 - (1) *A licensing committee may, on the application of a person who appears to the committee to have any right, title, estate, or interest in any premises, or any business conducted in any premises, for which an on-licence or off-licence is in force, make an order authorising the applicant (or some suitable person nominated by the applicant) to carry on the sale and supply of alcohol for a period, not exceeding 3 months, stated in the order.*
 - (2) *The application must be made in the prescribed form and manner and be accompanied by the prescribed fee.*

(3) The committee may hear and determine the application without notice, or direct that notice of the application and the time and place fixed for any hearing be served on any persons and in any manner the committee specifies.

(4) On making an order, the committee—

- (a) must impose any conditions that this Act requires an on-licence or off-licence (as the case requires) to be issued subject to; and*
- (b) may impose any conditions that this Act enables an on-licence or off-licence (as the case requires) to be issued subject to; and*
- (c) may impose any other reasonable conditions it thinks fit.*

(5) The person authorised by the order has for the purposes of this Act the same duties, obligations, and liabilities as the holder of the on-licence or off-licence concerned.

- 7) The applicant company has previously provided a signed 'deed of lease' from the building owner (the landlord) showing occupation from 1 August 2013. On the basis of this document the applicant has shown that they have an interest in the premises and are entitled to the grant of a temporary authority. Since that date the Agency and more recently the Committee have issue 3 temporary authority orders. The applicant made application for an on-licence, which will be determined by the Authority, opposed by the Police, and until this is determined the applicant needs to operate under temporary authorities.
- 8) The District Licensing Committee heard evidence from the Police and from the applicant Mr James. Five Police Officers gave evidence in person and two Police statements were taken as read with out cross examination as the officers did not attend the hearing. The Police evidence focused largely, although not exclusively on a single event which occurred on the 13 April 2014 at the premises in the early hours of the morning. Whilst accounts vary slightly, and the applicant disputed some of the facts, the Police allege that the incident which involved fighting and other unruly behavior was riotous and momentous.
- 9) Conversely the applicant (Mr James) downplayed the significance of that offence highlighting instead his history of management of licensed premises and what he considered to be generally good behavior. The Committee heard a variety of evidence of less minor incidences including intoxication to different degrees with associated behavior issues, violence and unruly behaviour both inside and outside the premises.
- 10) The applicant gave evidence that the incident on the 13 April 2014 was not a typical night and there were other events in the Whangarei central business district which compounded behavioural issues. Mr Maeva, the Head of Security at Shotgun Betty's, gave evidence that because Shotgun Betty's is the last premises open in the central business district it became a place of congregation.
- 11) Overall the Committee is concerned that the applicant is unable to effectively manage the premises especially during the late hours from 1.00am onwards without appropriate systems, staff, training processes and good premises layout and lighting.
- 12) This is an application for a temporary authority order under Section 136 (1) of the Act. Section 136 (1) refers in some way to suitability and because the District Licensing Committee is making a decision effectively on a "temporary licence" the matters under section 105 (criteria for the issue of licences) must be considered. Much of the evidence is focused on the suitability of the applicant and details around the management of systems , staff and the premises themselves.
- 13) Addressing these matters the Committee considers that there are issues that need to be addressed with the management of the premise but that the incident on the 13 April 2014 needs to be placed in context. It is apparent that operation of the premises after 1.00am is

particularly concerning. We have serious concerns about the suitability of Mr James to properly manage the premises under current practices.

THE DECISION

- 14) On balance the Committee grants a temporary authority order to SAR Limited for a one month period commencing on the 12 June 2014 and ending on the 12 July 2014 on the following conditions
1. The trading hours shall be Monday to Sunday 8.00am until 1.00am the following day.
 2. SAR Limited must file with Whangarei District Licensing Inspector for review and comment (including and comments received from the Police) a Management Plan which sets down how the following objectives and outcomes will be achieved:
 - A safe, controlled and orderly environment at the entrance to the premises on Vine Street.
 - Layout, design and lighting in the premises ensures a safe and orderly environment for patrons and staff.
 - Adequate staff are provided to ensure the safety, security and good order in the premises.
 - Staff are properly qualified and trained to fulfill their job requirements to ensure a safe and orderly environment.
 - The licensee's obligations under the Act are satisfied.

Specific measures detailed in the Management Plan should include:

 - The use of high visibility clothing to identify security staff
 - Adequate staff supervision of patrons and regular staff presence through out the premises
 - Improved lighting and supervision of the dance floor
 - Continued education and up skilling of duty managers.
 3. Drinking water is to be freely available while the business is open for business at the bar counter in the premises.

Finally the Committee observes that should Mr James not have obtained his own on-licence by the expiry of this temporary authority order then should a further temporary authority order be applied for we would expect the application for this order to be received by the Whangarei District Licensing Committee by the 27 June 2014 to allow proper preparation and circulation of evidence in the event of the need for a further public hearing.

DATED AT WHANGAREI this 12th day of June 2014

Councillor Greg Innes
Chairman