

Decision number: 022/ON/9055/2024

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

AND

IN THE MATTER of an application
by **RCMK Limited**
pursuant to s.100 of the Act
for an ON Licence for
premises situated at 93
Jellicoe Street, Te Puke
known as “**Marigold Cafe**”

**RESERVED DECISION OF THE WESTERN BAY OF PLENTY DISTRICT
LICENSING COMMITTEE**

Chairman: Murray Clearwater
Member: Arthur Wilkinson
Member: Bev Edlin

HEARING at Tauranga on the 21st of March 2024

APPEARANCES

Mr Ravinder Singh Chahal - for the Applicant RCMK Limited (“the applicant”)
Mr Gaurav Nanda – for the Applicant
Ms Micaela Turner – Western Bay of Plenty Alcohol Licensing Inspector (“the
Inspector”) – to assist
Sergeant Dan Roser – Police Alcohol Harm Prevention Officer (AHPO) – no report
in opposition (No Appearance)
Ms. Dawn Meertens- for the Medical Officer of Health (MOoH) – no report in
opposition (no appearance)

Public Objectors:

The application was publicly notified in **The Te Puke Times** newspaper on the 20th
of October 2023 and again on the 2nd of November 2023. By the cut off time of 30
November 2023 three objections had been received from members of the public.



1. Mrs. Joan Dugmore
2. Ms. Kassie Ellis
3. Mr. Mark Simpson

RESERVED DECISION OF THE COMMITTEE

Background

1. The township of Te Puke has a residential population of around 13,000 and there are a number of residential and commercial developments underway in the district. It is expected that the population will swell by an additional 10,000 in the coming years. Infrastructure and service providers will be required for the growing population.
2. Marigold Café has been in the main street of Te Puke for many years. By all accounts it has a good reputation as a daytime café offering light meals and cabinet food.
3. Te Puke has recent history of public place drinking and alcohol related harm caused by street dwellers and other vulnerable persons. This has affected the town centre negatively and projects have been put in place to limit access to alcohol by these persons.

Applicants Evidence

4. Ravinder Singh Chahal told us that he bought Marigold Cafe in May of 2023 and in October he decided to try and extend the offering to include a dinner service with alcohol.
5. He has worked in restaurants for several years in Rotorua and has employed an experienced certificated manager to lead a staff of eight at Marigold Cafe. He does not plan to work in front of house himself but will be overseeing the running of the business.
6. He confirmed that the business would remain a low risk, class 3 restaurant with only table service of alcohol to patrons inside the premises.



7. He was questioned by the Committee and told us that his experienced manager would be in charge of training the new staff. He was aware of the issues around alcohol abuse in Te Puke and that he had had no problems so far with those that lived on the streets and in the parks.
8. He was aware that he could not allow intoxicated persons to be on the premises.
9. He was told by Kassie Ellis that they should stick to what they are currently doing i.e. a daytime alcohol free café.
10. His main certificated manager, Gaurav Nanda, then addressed the Committee. He said he had more than 10 years' experience in hospitality and had agreed to run the business for his friend. He plans to work the middle shift and oversee the staff as they settled into the new regime should a licence be granted.
11. In response to questions from the Committee, he said he already had two additional certificated managers waiting to start work. The outside tables would come inside during the afternoon and no alcohol would be permitted to be consumed outside the premises.

Evidence of the Inspector

12. The Report of the Inspector was affirmed as true and correct.
13. Inspector Turner's conclusion was that an ON Licence could be granted for this low-risk activity.

Objectors

14. First, we heard from Mrs. Joan Dugmore. She is a long time local resident and has serious concerns for the town due to the abuse of alcohol. She said Marigold Café is a family café and should stay that way. She said there are already 15 sellers of alcohol in the town, and they did not need anymore. She said parking is already at a premium and this proposal would make it worse.
15. To questions from the Committee, she agreed that if the town continued to grow as predicted then there would be a need for more facilities and shops. She said, "*The place won't cope with the influx.*"



16. She was concerned about the existing problems with homeless people living on the street and abusing alcohol. She conceded that the proposed activity with table service only of alcohol, did alleviate some of her concerns.
17. Ms. Kassie Ellis is a social worker in Te Puke and the Chair of the Te Puke Community Board. However, she appeared before us as a natural person. She held serious concerns about the current effects of excessive alcohol consumption in and around Te Puke. To the operators of Marigold Café, she said *"You are a great business, stay that way. Don't become part of the problem."*
18. The third objector, Mr. Mark Simpson, was unable to appear in person to support his objection due to work commitments. His concerns were very similar to those of the first two objectors. He believed that Te Puke did not need another outlet for alcohol.

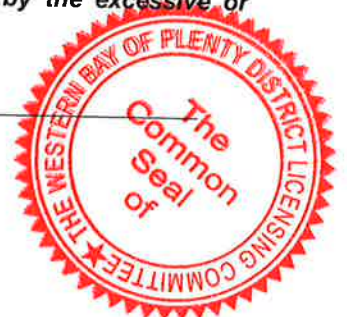
Relevant legislation

19. **Section 3 of the Act states the purpose of the Act as follows:**

- (1) *The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –*
- (a) *to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and*
- (b) *to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*
- (2) *The characteristics of the new system are that–*
- (a) *It is reasonable; and*
- (b) *Its administration helps to achieve the object of this Act.*

20. **Section 4 states the Object of the Act as follows:**

- (1) *The object of this Act is that –*
- (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 minimised.*
- (2) *For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –*
- (a) *Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*



(b) Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

21. Section 105 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to grant a licence:

105 Criteria for issue of licences

(1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

(a) the object of this Act:

(b) the suitability of the applicant:

(c) any relevant local alcohol policy:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(e) the design and layout of any proposed premises:

(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, non-alcoholic refreshments, and food, and if so, which goods:

(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:

(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:

(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—

(i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but

(ii) it is nevertheless desirable not to issue any further licences:

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

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).

(2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

106 Considering effects of issue or renewal of licence on amenity and good order of locality

(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—

(a) the following matters (as they relate to the locality):

(i) current, and possible future, noise levels:

(ii) current, and possible future, levels of nuisance and vandalism:



(iii) the number of premises for which licences of the kind concerned are already held; and

(b) the extent to which the following purposes are compatible:

(i) the purposes for which land near the premises concerned is used:

(ii) the purposes for which those premises will be used if the licence is issued.

(2) In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):

(a) current, and possible future, noise levels:

(b) current, and possible future, levels of nuisance and vandalism.

Reasons for the decision

The Act requires that when deciding whether to grant a licence or not, the licensing committee **must have regard** to the matters contained in section 105 and 106 of the Act.

Section 105(1)(a) The Object of the Act

22. Section 105(1)(a) of the Act requires the licensing committee to have regard to the object of the Act and in particular that the sale, supply and consumption of alcohol should be **undertaken safely and responsibly**. Also, the harm caused by the **excessive or inappropriate use of alcohol should be minimised**.
23. We must also read Section 3 together with Section 4 and ensure that the administration of the Act is **reasonable and benefits the community as a whole**.
24. We come back to the Object once we have considered the other clauses of 105 & 106.

Section 105(1)(b) Suitability of the Applicant

25. Section 105(1)(b) says that the applicant must be a suitable entity to hold an on-licence. In this regard the suitability of the applicant is not seriously challenged by any party. Mr. Chahal appears to be a sensible and knowledgeable individual and we find him and RCMK Limited suitable to hold an ON Licence.
26. One of the positive features of this application is the large number of current and future staff appointments that are planned. We often have to consider applications



with only skeleton crew proposals and inexperienced staff.

Section 105(1)(c) Relevant Local Alcohol Policy

27. In respect of section 105(1)(c) of the Act there is a relevant Local Alcohol Policy (LAP) in force and the application complies with the policy recommendations for ON Licences.

Section 105(1)(d) The days and hours of operation of the licence

28. The proposed maximum operating hours are **Monday to Sunday 9.00am to 10.00pm**. These days and hours are within the default national maximum trading hours for ON licences and the provisions of the Western Bay of Plenty LAP.
29. The hours sought are similar to the two other evening restaurants in the town.

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

30. There were concerns raised about the design and layout of the premises, i.e. is the building fit for purpose. The applicant has provided a building and planning certificate that says that the proposal meets the town planning requirements and the provisions of the Building Code.
31. We cannot go behind these certificates. The applicant also advised that if the business is successful, he does intend to invest in new fittings for the Café.

Section 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, non-alcoholic refreshments, and food, and if so, which goods?

32. The applicant advised they will be selling a full range of meals with low and non-alcoholic beverages. The daytime café cabinet food options will still be available. They are yet to finalise their evening menu. The intimated offer of a Beer Burger and fries is what we would expect in a pub and not a class three restaurant.
33. There should be an extensive range of substantive meal options based on restaurant style dining.

Section 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, and food, and if so, which services



34. No other services will be offered.

Section 105(1)(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:

35. We are directed to the parameters of s.106(1) and to have regard to a series of matters (as they relate to the locality). Firstly, we consider current and possible future noise levels.
36. There is no evidence that this proposal will introduce additional noise into the main street environment due to the low-risk class 3 status of the restaurant.
37. Regarding the current, and possible future, levels of nuisance and vandalism. We know of the current situation and that of previous years. There is no evidence to suggest that this proposal would increase levels of anti-social behaviours.
38. We are required to take into account: "the purposes for which land near the premises concerned is used." This is the business centre of the town. There are similar licensed establishments and a pub nearby.

**Section 105 (1)(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—
(i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
(ii) it is nevertheless desirable not to issue any further licences:**

39. This section required careful consideration. As we know all alcohol comes from licensed premises. Some is consumed on premises; some is taken away to be consumed elsewhere. Some is consumed in the nearby streets and parks and other public spaces.
40. We believe the on-licensed premises have to accept their share of the cost of alcohol related harm, but we also put responsibility at the feet of off-licensed premises and those that choose to drink in public places in breach of the Alcohol Ban and/or go on to act in a disorderly manner and/or commit offences.
41. It is with this complex background that we have formed our opinion as to whether the amenity and good order of the area will be reduced by more than a minor extent and whether it is desirable, or not, to grant another alcohol licence in the town.



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

42. As we have stated elsewhere it was refreshing to see an application with adequate staffing levels already in place and an assurance to employ more if required. Mr. Chahal also has the luxury of having a 10-year veteran of the NZ hospitality scene heading his staff for training purposes and supervision.

Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129

43. The Police and the Medical Officer of Health did not report with any matters in opposition. We can only assume they have no concerns about this proposal. The Inspector has reported unopposed and advises that the application is capable of being granted.

DISCUSSION & REASONS FOR THE DECISION

44. The accepted course on how to approach our task comes from the decision of the High Court in **Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2102] HCNZ 1406**¹. Applying the criteria used in that case we are expected to consider: (a) The relevant criteria in s.105 & 106; (b) Any reports presented by the Police, Medical Officer of Health and Alcohol Licensing Inspector following their respective inquiries into the application; and (c) any objections filed in accordance with the statutory requirements.
45. Having considered all this information (including the evidence for the applicant), we are required to stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires us to form a view on whether there is evidence to suggest that granting the application would be contrary to the Object and the Purpose of the Act.
46. The application for a licence is a process not an event. On one hand we have the known issues around drinking in public spaces and the resultant harms and disorder. On the other hand, we have a businessman wanting to expand his business and offer a low risk dining and drinking opportunity for the township.
47. While acknowledging that there are alcohol related problems within the Te Puke area, it is our view that as this is a low risk class 3 restaurant licence that is being sought, the

¹ Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2102] HCNZ 1406



amenity and good order of the area is unlikely to be reduced by more than a minor extent.

48. After standing back and evaluating the evidence that has been placed before us, we find that the current amenity and good order of the locality is not so badly affected by **the existing licensed premises** that we should not grant another.

THE DECISION

49. The District Licensing Committee has decided to grant the application for a low-risk Class 3 restaurant style ON Licence.
50. The licensed area will be as defined in the plan submitted excluding the outdoor area.
51. The licence is granted for 12 months, and the conditions can be reviewed if a renewal is sought. The ball is firmly in Mr Chahal's court to make this regime work and be in a position to show that he has sold, and supplied alcohol safely and responsibly in compliance with the conditions of the licence, and still has the support of the community.
52. We also clearly remind the applicant that the Committee can quickly rehear any matter it has determined at any time that it thinks fit.
53. To the objectors we thank them for their commitment to their town and we agree that the excessive and inappropriate consumption of alcohol and the resultant alcohol related harm must be minimised.
54. If operated correctly we do not believe this business will become part of the problem. If anything, it might encourage the moderate consumption of alcohol in a family friendly setting with good food, coffee, non-alcoholic refreshments along with alcohol.

The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, grants an application by RCMK Limited for an ON Licence in respect of premises situated at 93 Jellicoe Street, Te Puke known as " Marigold Cafe", subject to conditions.

When it issues the following conditions are to apply to this Class 3 restaurant style ON Licence:



1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours:
Interior- Monday to Sunday 9.00am to 10.00pm;
2. No alcohol is to be sold or supplied on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is on the premises to dine;
3. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
4. The licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages;
5. **Food must be available for consumption on the premises at all times when the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted;**
6. A properly appointed certificated, or Acting or Temporary, manager must be on duty at all times when the premises are open for the sale and supply of alcohol and their full name must be on a sign prominently displayed in the premises;
7. The licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises.
8. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol;
 - c. A copy of the licence attached to the premises so as to be easily read by persons attending the premises;

The licence is granted for 12 months from the date of issue.



DATED at TAURANGA this 25th day of March 2024



Murray Clearwater
Chairperson/Commissioner
For Western Bay of Plenty District Licensing Committee

NOTE

Sections 152 to 155 of the Act relating to the right to appeal this decision are in effect. This decision shall have no effect until 10 working days after the date on which notice of this decision is given to the applicant, and the objectors.

