

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **FEVER
ENTERTAINMENT LIMITED** for a new On
Licence pursuant to s.100 of the Act in
respect of premises situated at 53 Devon
Street East, NEW PLYMOUTH 4310
known as "**FEVER**".

HEARING BEFORE THE NEW PLYMOUTH DISTRICT LICENSING COMMITTEE (THE COMMITTEE)

Chairperson: Neil Volzke
Member: Malcolm Greig
Member: Peter Coles

HEARING at New Plymouth on 19 December 2022

APPEARANCES

Andre Craig – Fever Entertainment Limited (the applicant)

Elaine Gill – (by Teams) Liardet Apartments Body Corporate Committee - in opposition
Elaine Gill -- (by Teams) Individual – in opposition
Fiona Gallie – in opposition
Jill Kennaugh – in opposition
Lorraine Osborne – in opposition

Meldin Moos - Licensing Inspector

RESERVED DECISION OF THE COMMITTEE

Introduction

1. We have before us an application by **FEVER ENTERTAINMENT LIMITED** dated 11 July 2022 for a new On Licence in respect of the premises situated at **53 Devon Street East, New Plymouth 4310** known as "**FEVER**". This is a multi-story, concrete building located in the CBD of New Plymouth and the application relates to the basement area of this building.
2. The application was publicly notified on the New Plymouth District Council website from 13 July 2022 to 3 August 2022. Notice was also placed at the principal entrance.
3. In response to the public notice, thirteen objections were received from members of the public. Of these, eleven were deemed to have "standing" as they have a greater interest in the application than the public generally, due to being owners or residents of the Liardet Apartments which is located in close geographical proximity to the proposed premises. Two objectors did not have standing and were discounted.

4. The Licensing Inspector reports that concerns had also been raised by the statutory reporting agencies, being: the NZ Police, the Medical Officer of Health and the Licensing Inspector. As a result, the application held over and was not presented to the Licensing Committee at that time. In the three-month period that followed, the applicant went about doing the work necessary to address these concerns and objections. This involved physical work at the premises and a range of amendments to the original application.
5. The Licensing Inspector advised all objectors by email on 27 October 2022 that the application had been amended and provided details of what those amendments were. He also informed objectors that the reporting agencies (NZ Police, Medical Officer of Health) and Fire and Emergency NZ (FENZ) are no longer opposed to the granting of the licence. *(A copy of his email was provided to the committee).*
6. Objectors were also informed that a public hearing may be required by the Licensing Committee and if that was to happen, they could request to be heard. Objectors were then asked to indicate, by 4 November 2022, whether they wanted to be heard should the opportunity arise. Five objectors responded that they wanted to be heard, the remaining objectors did not respond.
7. The application, with amendments, was then forwarded to the Licensing Committee for determination. The Commissioner confirmed that the objectors did have a right to be heard and a hearing would be held. Notice of the hearing was duly given to all parties and set down for 19 December 2022.

Chairman's remarks prior to proceeding with hearing:

8. In preparation for this meeting all parties were asked to provide any written evidence to the committee secretary by 9th December 2022. No additional evidence was received.
9. The Committee notes in the application, under section 8 Business Details, the comments regarding the principal purpose of the business as "Adult entertainment, including but not limited to exotic dancing, escort services, bordello".
 - (a) The chairman commented: I think it is helpful at this stage for us to acknowledge that some people may find this type of adult themed business objectionable and they have commented to that effect in their submission. We want to make it clear at this point, that this committee will not be offering an opinion on this particular type of business and entertainment activity.
 - (b) The sole purpose of this hearing is to determine whether the applicant has met the requirements of the Sale and Supply of Alcohol Act so he can either be:
 - i. issued with an On-Licence and if so, what conditions if any, should be applied to that Licence, OR
 - ii. the application should be declined
10. The chairman also informed the meeting that on 14 December 2022 the Committee members visited the premises at 53 Devon Street East and also looked at the area around Liardet Apartments. This site visit allowed Committee members to familiarise themselves with the general area and better understand the lay out of the premises and the issues

that objectors have raised. The visit was arranged by the Licensing Inspector and there was no participation by the applicant.

Applicant's Evidence

11. Mr Craig appeared at the hearing and did not have legal representation. At the hearing he indicated he did not have any new information to add to his amended application that had been submitted prior to this meeting.
12. Mr Craig gave a short verbal presentation that highlighted he had made a significant number of changes to his original proposal. He had done so willingly to address the concerns raised by agencies and objectors. Mr Craig commented that he had made as much change as he could and that he has tried to assist and resolve any issues.
13. Mr Craig highlighted that he was now compliant with all of the regulatory requirements needed.
14. Mr Craig also commented on the objections and suggested some people may be objecting more on the basis of their opposition to his adult themed business activities rather than the alcohol licence itself. He explained that his business was a legitimate and legal business.
15. The Chairman had addressed this issue in his opening remarks and explained the Committee's position on this matter.

Police Evidence

16. At the time the application was lodged in July, the NZ Police had raised concerns about the application. The applicant was made aware and in response during the intervening period, he went about addressing these concerns.
17. On 4 November 2022 the Licensing Inspector sent an email to Phillip Quinn of the NZ Police advising him of the amendments to the application. In response Mr Quinn stated that "the Police concerns around the application have been addressed through negotiations and meetings over the last 4-5 months. The Police no longer oppose the application"
18. The NZ Police did not appear or provide any other evidence at this hearing.

Medical Officer of Health Evidence

19. At the time the application was lodged in July, the Medical Officer of Health raised concerns about the application. The applicant was made aware and in response during the intervening period, he went about addressing these concerns.
20. On 4 November 2022 the Licensing Inspector sent an email to Carly Stevenson, the Health Protection Officer for the Medical Officer of Health, advising her of the amendments to the application. In response Ms Stevenson stated "Based on the reduction in opening hours and a one-way door policy from 2:00am, we are happy to withdraw our opposition". *(The opening hours and one way door policy are referred to later in this report)*
21. The Health Protection Officer did not appear or provide any other evidence at this hearing.

Fire and Emergency NZ (FENZ)

22. At the time the application was lodged in July, FENZ raised concerns about the application. The applicant was made aware and in response during the intervening period, he went about addressing these concerns.
23. On 4 November 2022 the Licensing Inspector sent an email to Matt Crabtree, the Senior Risk Reduction Officer at FENZ, advising him of the amendments to the application. In response Mr Crabtree stated "Fire and Emergency New Zealand can confirm the building owner currently has an operative approved evacuation scheme as of the 3rd October 2022". The Committee understands this to mean that FENZ has no opposition to the application.
24. The Senior Risk Reduction Officer did not appear or provide any other evidence at this hearing.

Licensing Inspectors Evidence

25. The Licensing Inspector's report was taken as read. At the time the application was lodged in July, the Inspector became aware of the objections and shared some of the concerns of the reporting agencies. After the amendments have been made to the application, the Inspector reports that he no longer has those concerns.

In the Inspector's report he makes the following statements:

- There is no reason to believe that the issue of this Licence will disadvantage any neighbouring landowners or occupiers
- There is no objection from the Inspector to the goods and/or services that the applicant is engaged with in relation to the principal activity of this business
- There is no reason to believe that Fever Entertainment limited is not a suitable applicant to hold an alcohol Licence
- A Restricted designation has been sought. The Inspector considers this to be appropriate for this type of business

and within his report comments that:

- The Inspector supports these (amended) hours and one -way door restriction
- With regards to environment, current and potential noise levels - nothing to report
- With regards to environment, current and potential levels of nuisance and vandalism – a search of council records shows there have been no complaints in the immediate vicinity regarding nuisance and vandalism and anti-social behaviour
- With Regards to environment, CPTED analysis: CCTV is operating in the area that is directly linked to the police station
- With regards to Conduct of Licence, the applicant appears to have appropriate systems, staff and training to comply with the law

Collectively these comments and other report content raise no opposition to the Licence being granted. The Committee puts some weight on the professional opinion of the Inspector.

- (a) A Building Certificate was issued on 27 September 2022 confirming that the building complies with the provisions of the New Zealand Building Code to the extent required by the Building Act 2004. Before the Territorial Authority was able to issue the certificate, certain outstanding matters needed to be addressed (e.g., non-compliant electrical systems as per the Notice to Fix, a current Warrant of Fitness, and the provision of an approved evacuation plan). All these matters were satisfactorily completed which allowed for the issue of the Building Certificate.
- (b) A Planning Certificate was issued on 21 July 2022 confirming that the premises is located in the Business A Environment Area under the New Plymouth District Plan. The on-licence applied for is a Permitted Activity under the District Plan and the activity will comply with the relevant Performance Standards of the Business A Environment Area.

Objectors Evidence

- 26. Of the eleven objectors, five spoke at the hearing. All of the objectors were owners/residents of Liardet Apartments which is located in close proximity on Liardet Street. Prior to the hearing, the Committee members had visited the area to familiarise themselves with this location.
- 27. The objection received from the Body Corporate Committee of Liardet Apartments was submitted in behalf of twenty-four owners of the apartments in the block. One other owner had requested not to be included.
- 28. The remaining objections were received individually, although all were very similar in content and raised issues that were mostly common to each other. Where possible the issues have been considered collectively as follows:

The Days and Hours Sought

- 29. Objectors opposed the original, proposed licensing hours in the application and regarded them as excessive. If granted the hours would most likely reduce the amenity and good order of the locality. Some verbal evidence at the hearing referenced their opposition to the original hours and not to the amended hours proposed.
- 30. The original proposed hours sought for the sale and supply of alcohol were:

Monday to Sunday from 10.00 am to 3.00 am the following day
- 31. Objectors raised concerns that the mainly Saturday, late night antics and disruptive behaviour that they sometimes experienced, would become more common if these late-night hours were approved for every day of the week at the Fever premises.
- 32. The applicant subsequently amended the above trading hours to:

Sunday to Wednesday from 5.00 pm to 12.00 am (Midnight) and,
Thursday to Saturday from 5.00 pm to 3.00 am the following day.
- 33. A one-way door restriction from 2.00 am on Friday, Saturday, and Sunday will apply.

34. This original proposal totalled up to 119 hours per week, but with the amended hours, this was reduced to 58 hours per week.

The Committee agrees with the submissions of all eleven objectors and the concerns raised by the NZ Police and Medical Officer of Health, that the original hours were excessive. The applicant has agreed to amend the hours and the Licensing Inspector supports these hours as well.

The Committee makes the amended hours shown above a condition of this Licence.

35. Another recommendation from the reporting agencies is the introduction of a one-way door restriction on the three nights of the week when the hours extend to 3:00 am. This will further address the concerns of the residents of Liardet Apartments by limiting the ability of people to come and go from the premises in that last Licenced hour.

The Committee makes the one-way door restriction shown above a condition of this Licence.

Amenity and good order - potential excessive noise and unruly behaviour

36. Objectors have all raised concerns over the potential for excessive noise emanating from the Devon Street premises, as well as possible noise and disruption caused by patrons in the general street vicinity of the premises. These concerns appear to largely arise from situations they currently experience. This occurs mainly late on Saturday nights and which they anecdotally associate mainly with one other late night Licenced premises located on Devon Street.
37. The Committee accepts their assertions that noisy, anti-social, poor behaviour does occur from time to time in the CBD area. While the behaviour standards of the future patrons at the Fever premises is unknown at this time, measures are in place to mitigate against the risk of poor behaviour. This will be monitored by agencies on an ongoing basis.
38. The Committee notes that the applicant initially sought the Licenced area to be on three separate floors of the building but with the amended application, the applicant has reduced the Licenced area sought significantly to the single area of the basement of the building. This area is accessed only from Devon Street and is below street level. In the Committee's opinion, the concrete structure of the building and the basement layout, will both have a depressing effect on potential noise.
39. When presenting their evidence, several objectors were asked by the Committee whether they had heard noise coming from the premises during the last few months while renovation work was being undertaken, none had. This suggests the existing buffers will be helpful.

The Committee agrees with the recommended Licence area being the basement only and that this be designated as a Restricted area. This is a condition of this Licence.

40. The NZ Police requested the applicant to employ three Certified Security staff. Management and security staff will monitor and ensure that people do not loiter in the vicinity of the building as well as carry out regular checks at the rear of the building to prevent people from gathering there.

41. On its site visit to the area, the Committee noted the placement of a street security camera located in very close proximity to the entrance of the Fever premises and others in the immediate area. These are connected back to the New Plymouth police station and will provide added surveillance of the area.
42. The Committee also inspected the alleyway at the rear of the building and formed the view that it would be beneficial preventative action, to have the alleyway well lit. This was raised with the applicant at the hearing. Apparently, there are some lights in the area but they are not working and it is uncertain who owns and maintains them. The applicant agreed good lighting would be desirable and indicated a willingness to facilitate this.

The Committee recommends to the applicant that he takes a lead on this issue and ensures that the alleyway is adequately lit.

The Committee accepts that the above measures are most likely to reduce possible noise nuisance or the disruption of unruly behaviour of people outside the building.

The design, layout, safety and disrepair of the building

43. Objectors raised concerns over the appearance of the building (front and back) and the safety of the building, including earthquake soundness. Reference was made to the fact that the building had been unused for a lengthy period and that at one time had a Do Not Enter notice attached to it. Some objectors referred to the building as a “condemned” building. Mrs Kennaugh, a resident on Level 4 of Liardet Apartments provided photographs taken from her apartment which confirmed the poor visual appearance of the rear of the building.
44. The Committee notes considerable work has been undertaken by the applicant to achieve the standards required by law. The Licensing Inspectors report confirms the building is now compliant and has a Building Certificate and an approved Fire Evacuation plan. (Refer to paragraph 25) **The Committee has no concerns regarding building compliance.**
45. The appearance of the building is outside the scope of this Committee’s role. While this is of obvious concern to the objectors and maybe some others, we suggest that these matters be taken up with directly with the building owner.

Local Alcohol Policy

46. All objectors rejected the statements made in the Licensing Inspectors report which supported his view that the application was compliant with the policy. In particular the distances noted in his report were contested. The Inspectors report stated that “the Liardet Apartments is located at 22 Liardet Street, New Plymouth, which is Zoned as a Business Environment A area and not a Residential Environment area. The closest Residential Zone is more than 350m away from the proposed location of the premises.”
47. He also included a map showing that the distance from the front boundary of the Fever premises and the Liardet Apartments as 60.8 meters. When questioned on this the Inspector said he included this measurement only to show the general proximity of Liardet Apartments to the Fever premises.
48. Objectors took a different measurement point. They measured from the rear of the Fever building in a straight line to Liardet Apartments, which is a distance of around 21 meters. Some presented screen slides to confirm this. Objectors referred to the Local Alcohol Policy, specifically Clause 6.2.2 and said this application is not compliant.

49. The Committee accepts that both of these measurements are correct and ordinarily we would need to decide which of the two is applicable, however this is not required in this case. With reference to Clause 6.2.2 which reads:
50. “Nightclubs, taverns or adult premises and class 1 clubs shall be allowed in the New Plymouth Business Environment Areas A, B, C and D (but not within 50 metres of a residential zone or rural zone)”
51. The Committee’s view is that for the 50-metre rule to be applied, Liardet Apartments would need to be located in a residential zone, which it is not. Business Environment Area A describes the zone and the Local Alcohol Policy allows adult premises to be located there.
52. There does seem to be some misunderstanding on this issue, but simply put, because people happen to reside in a particular area (*in this case being a commercial zone*), that doesn’t change the legal status of the area to a residential zone.

The Committee agrees with Licensing Inspector that the application is compliant with the Local Alcohol Policy.

Staff

53. At the hearing objectors raise concerns about the ability and experience of the applicant to manage/supervise the premises. Some made reference to the multi levels of the building being problematic and difficult to supervise.
54. The Licensing Inspectors report addresses whether the applicant has appropriate systems, staff and training to comply with the law and he is satisfied that is the case.
55. During cross examination the applicant gave assurance that he was capable and that he would be employing suitably qualified and experienced staff. The addition of security staff at the premises, as recommended by the police, will be a very positive factor in supervising the patrons.
56. The reduction in the Licenced area to one level being the basement will also be a key factor.

The Committee accepts the Licensing Inspectors comments in respects of staffing matters.

The Committee also notes that, unlike some other Licenced premises, the sale of alcohol is not the principal purpose of the business.

The New Plymouth District Council Brothel and Commercial Sex Premises Bylaw

57. In their objections, some objectors referred to the New Plymouth District Council Brothel and Commercial Sex Premises Bylaw. This bylaw was revoked on 8 March 2022 and is no longer enforceable.

Inner City Vibrancy

58. Objection was raised about the effect the Fever premises might have on the attractiveness of the inner city as a living place. Objectors felt that allowing this adult themed business and/or more Licenced premises would be contradictory to Inner City promotional plans that the council had. This debate is not within the scope of this Committee and it is suggested this is a matter for council to consider.

Relevant Legislation

Section 105 states the 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.*

Section 106 considers the effects of the issue of a 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.*

Section 3 states the purpose of the Act

- (1) *The purpose of Parts 1 to 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.*

*In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
 the object of this Act:*

Closing Submission Applicant

59. Mr Craig had no further comments to make.

Chairman’s Closing Comments

60. The Chairman thanked all those people in attendance and all involved for their participation in this process and the good conduct during the hearing.
61. The Chairman noted the Committee will reserve their decision to consider all evidence and verbal information provided at the hearing.

Reasons for the Decision

62. The amended application included significant change from the original proposal. The collective changes gained the approval of all reporting agencies. The NZ Police, the Medical Officer of Health, the Licensing Inspector and FENZ offered no opposition to this application.
63. The application met regulatory standards for a Building Certificate and Resource Consent to be issued.
64. All changes to the application and conditions added were consistent in addressing in part, at least, the concerns raised by the residents of Liardet Apartments.
65. The Licence is issued for a twelve-month period. This will provide adequate time for any future concerns that may arise to be monitored and reported upon at the time of the Licence renewal.

The Decision

66. The New Plymouth District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **grants** the application by **Fever Entertainment Limited** for a new On Licence in respect of the premises situated at 53 Devon Street East, New Plymouth 4310 known as **Fever**.
67. We are satisfied as to the matters to which we must have regard, as set out in the Act, and we grant the new On Licence with the following terms and conditions:

Conditions
No alcohol is to be sold, supplied or consumed on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day to any person who is not— (i) present on the premises to dine.
Alcohol may only be available for sale, supply or consumption on the following days and during the following hours: Sunday to Wednesday from 5.00 pm to 12am (Midnight) and; Thursday to Saturday from 5.00 pm to 3.00 am the following day

Conditions

This licence is subject to a **one-way door restriction**.

This restriction applies on Friday, Saturday and Sunday from 2.00am when patrons may not enter from this; exit only.

The whole (or each of the following parts) of the premises is designated as:

RESTRICTED – Entire Basement Area

The Licenced area for onsite consumption of alcohol is limited to the floor area within the basement area as marked on the plan reference CLQ22/45164

A properly appointed certificated or Acting or Temporary Manager must be on duty at all times, within the Licenced area, 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.

Food must be available for consumption on the premises at all times the premises is open for the sale, supply and consumption of alcohol, in accordance with the 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.

The Licencee must have available for consumption on the premises, at all times when the premises are open for the sale of alcohol, free drinking water, a reasonable range of non-alcoholic and low-alcohol refreshments

The Licencee must ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.

The Licencee must ensure that signs are prominently displayed within the Licenced premises detailing information regarding alternative forms of transport from the premises.

The Licencee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of alcohol.

Duration of licence: 12 months after the issue of the licence.

DATED at New Plymouth this 22nd day of December 2022



Neil Volzke

Commissioner

New Plymouth District Licensing Committee