

Decision No. <<LIQ23/10940.01>>

**IN THE MATTER**

of the Sale and Supply of Alcohol Act  
2012

**AND**

**IN THE MATTER**

of an application by **Mike's Holdings Limited** for a renewal of the On Licence pursuant to s.100 of the Act in respect of premises situated at 186 Devon Street East, NEW PLYMOUTH 4310 known as "**Mike's Bistro**".

**HEARING BEFORE THE NEW PLYMOUTH DISTRICT LICENSING COMMITTEE**

Chairperson: Neil Volzke  
Member: Paul Walden  
Member: Glen West

**HEARING** at New Plymouth on 29 April 2024

**APPEARANCES**

Ron Trigg – Mike's Holdings Limited (the applicant)  
Ian Calman – Asure Abode on Courtney Motor Inn (the objector)  
Gordon Coutts - Licensing Inspector

**NON APPEARANCES**

New Zealand Police  
The Medical Officer of Health  
Fire and Emergency New Zealand

**RESERVED DECISION OF THE COMMITTEE**

**Introduction**

1. We have before us an application by **MIKE'S HOLDINGS LIMITED** dated 4 January 2024 for a Renewal On Licence in respect of the premises situated at **186 Devon Street East, New Plymouth 4310** known as "**MIKE'S BISTRO**". This premise is located in the CBD of New Plymouth and the general nature of business conducted under the license is a Tavern Class 1 On License.
2. The application was publicly notified on the New Plymouth District Council website from 8 January 2024 to 19 February 2024. Notice was also placed at the principal entrance.
3. In response to the public notice, one objection was received from Mr Ian Calman who owns and operates the motel business Asure Abode on Courtney Motor Inn. The motel is located in close proximity to the licensed premises.

4. The Objector was informed by the Committee secretary that a public hearing may be required by the Licensing Committee and if that was to happen, he could request to be heard. Mr Calman confirmed that he did wish to be heard.
5. The application was then forwarded to the Licensing Committee that confirmed the objector 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 29 April 2024

#### **Chairman's remarks prior to proceeding with hearing:**

6. In preparation for this meeting all parties were asked to provide any written evidence to the committee secretary by 19<sup>th</sup> April 2024. No additional evidence was received.
7. The Chairman outlined the procedure for the meeting, including introductions from the parties.
8. The Chairman asked whether any witnesses would be called. There were none.
9. The Chairman sought clarification on which Section of the Act had the objection been made. The Inspectors Report and the Objector had referenced Section 105 (4), (5) and (8) which is not consistent with the numbering of the Act section 105. The Inspector had taken the numbering used in the objectors statement and the objector had taken this from the New Plymouth District Council website. It was subsequently confirmed the number (4), (5) and (8) used should have read (d), (e) and (section 131(1)(b)). The Committee accepts this explanation.

#### **Applicant's Evidence**

10. Mr Trigg appeared at the hearing and gave a verbal presentation that highlighted he had willingly made a significant number of changes to his premises to address the noise concerns raised by Mr Calman and other neighbours. Mr Trigg commented that he had made as much change as he could.
11. Mr Trigg explained that Mike's Bistro had held a liquor licence with New Plymouth District Council for over fifteen years, first in Urenui before moving the business to Devon Street in New Plymouth in 2018. The Bistro has never received an objection or visit from noise control and pro-actively try to mitigate the effects of the activities by consulting with the neighbours and that he has tried to assist and resolve any issues. Actions have been taken.
12. Mr Trigg stated that the Bistro has had requests from neighbours to reduce the effects of noise, referring to the nearby State Hotel and a Day Spa business next door. Subsequent measures have been undertaken, such as notifying the Day Spa when day-time sound checks will occur, additional acoustic insulation being installed, closing the external doors and windows at 10pm and turning off the outdoor speaker at 10 pm. These have been successful actions in reducing noise related concerns from neighbouring businesses. The Committee notes that neither of the two nearby businesses referred to by Mr Trigg have made objections to the license renewal.

Mr Trigg has engaged with a Wellington firm specialising in acoustics who made a list of recommendations, which included:

- a) Removing one of the two sub woofers, and lowering the base emitted from this subwoofer.
- b) Additional carpeting in and around the stage area
- c) Thick sound adsorbing panels being installed around the stage area.

The above measures have been completed and plans are in place for additional sound absorbing measures to be installed later in the year. **The Committee is of the view that Mr Trigg has made considerable efforts to mitigate the noise issue occurring on the occasions live bands play at the venue. Collectively these measures have helped address the noise issue, but they have not eliminated it entirely.**

13. Mr Trigg acknowledged that the objection made by Mr Calman had validity but re-affirmed that Mike's Bistro had taken steps to reduce noise associated with live music. Mr Calman has approached Mr Trigg two or three times to discuss the issue and each time the staff have gone through a checklist to ensure they have done everything they can to minimise noise.
14. Mr Trigg and Mr Calman have spoken previously about the sound escaping mainly through the roof of the building. Mr Trigg's says this is an assumption being made by Mr Calman. The noise and decibel levels between both businesses have not been independently, professionally measured.

Mr Trigg and Mr Calman have met several times to discuss how to reduce the noise related issues. Together they had walked around the building late at night. Mr Trigg believes the sound was minimal at that time but agrees there does seem to be some odd effects with the surrounding buildings and when the wind is blowing in the right direction it does seem to be 'channelled' toward ASURE Abode Motel.

15. During his evidence Mr Trigg volunteered the information that his business was in the process of re-locating. His intention is to vacate the premises in June 2024. This information came as a surprise to the Committee and raised the question of the purpose of this hearing. In light of this, Mr Calman gave no indication that he wished to withdraw his objection.

### **Police Evidence**

16. The New Zealand Police have provided a report dated 8 January 2024. That report offers no opposition to this licence.
17. Police were not required to appear at this hearing.

### **Medical Officer of Health Evidence**

18. The Medical Officer of Health has provided a report dated 10 January 2024. That report offers no opposition to this licence.
19. The Medical Officer of Health was not required to appear at this hearing.

## **Fire and Emergency New Zealand (FENZ)**

20. Fire and Emergency New Zealand has provided a report dated 15 January 2024. That report offers no opposition to this licence.
21. Fire and Emergency New Zealand were not required to appear at this hearing.

## **Licensing Inspectors Evidence**

22. The Licensing Inspector's written report was received, and Mr Coutts did not add to this at the hearing. In his report the Inspector concluded he was satisfied that **MIKE'S HOLDINGS LIMITED** is a "fit and proper entity" to be granted a **renewed** on licence to sell and supply alcohol pursuant to the Sale and Supply of Alcohol Act 2012. **The Committee agrees with this statement.**
23. The Inspector also reported on the designation areas. He had discussed this matter with the applicant. The applicant indicated that the supervised area was located behind the bar, which is not within the licensed area. The applicant realised this error and requested that the supervised area be changed to the front of the bar as indicated on the floor plan.

**The Inspector believes that this error was not wilful and requests that it be waived under Section 208 provisions of the Act. The Committee agrees and grants the waiver.**

24. The Inspector has reported on the Section 105 requirements including parts (d), (e) and (h) which the objector has raised:
  - (d) **the days on which and the hours during which the applicant proposes to sell alcohol.** No change to the current hours were sought and no issues were raised.
  - (e) **the design and layout of the premises.** No changes to the design and layout of the premises were proposed and no issues were raised.
  - (h) **whether the amenity and good order of the locality would likely be increased, by more than a minor extent, by the effects of a refusal to renew the license.** The report comments on levels of nuisance and vandalism, the number of premises for which the same kind of licenses are already held and the purposes for which land near the premises concerned is used. No issues were raised with regard to these matters.
  - **Noise levels** were referenced in a complaint received by the New Plymouth council on 12 January 2024, regarding ongoing late night noise on Thursday and Friday nights.

The assessment of an investigation by the Environmental Officer was "no noise" at that time.

**The Committee notes that, collectively these comments and other report content raise no opposition to the Licence being granted nor any recommendations for a change to the license conditions.**

## **Objectors Evidence**

25. Mr Calman explained the effects the noise from Mike's Bistro has had on his motel ASURE Abode Motel located on Courtenay Street, New Plymouth. The noise is predominately from bands or live music on a Thursday, Friday, or Saturday night, and which he says has an impact on his business. Some guests have complained to him while others have stated they are not coming back due to the noise.

26. Mr Calman has become frustrated in the lack of progress to try and rectify the amount of excessive noise coming from Mike's Bistro. The building does have a metal roof and he is of the view that the noise predominately seems to be coming from there. Mr Calman has downloaded a noise monitor app on this phone and has gone for walks at night to measure the noise level. His evidence states that these readings are certainly higher than what is acceptable in the New Plymouth District Plan – Appeals Version.

Mr Calman did not provide evidence to say what the readings actually were and was not able to support his claims with measurements taken by a suitably qualified, independent person. This limits how much weight the Committee can put on his information.

27. Mr Calman acknowledged the acoustics in the area are quite strange, as just behind a neighbouring building to Mike's Bistro, and closer to ASURE Abode motel, the sound is much higher than in other parts of the neighbourhood, including the front of the building. This was a comment consistent with Mr Trigg's evidence.

28. Mr Calman was delighted to learn that Mike's Bistro is relocating, as the conversations with Mr Trigg to reduce excessive noise from Mike's Bistro have been going on for over two years. He saw this as a resolution to the noise problem.

29. In response to questions, Mr Calman acknowledged that the motel is located on a busy one-way system, across the road from a large supermarket, and that the location of the businesses is less an ideal. He explained that all units are double glazed, were well insulated and constructed from concrete, confirming he had taken steps to mitigate excessive noise for the motel premises.

30. Within Mr Calmans evidence was a reference to the Proposed District Plan – Appeals Version and the decibel limits specified within that document as they applied to various business zones. The Chairman explained that issues of non-compliance related to that plan were not within the scope of the Licensing Committee and would need to be dealt with elsewhere.

## **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:*
  - (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 131 Criteria for renewal**

- (1) *In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
  - (a) *the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*
  - (b) *whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*
  - (c) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*
  - (d) *the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*
- (2) *The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence*

### **Closing Right of Reply - Applicant**

31. Mr Trigg had no further evidence to offer but acknowledged the process was explained well, was easy to follow and thanked those involved.

### **Chairman's Closing Comments**

32. The Chairman commented that although Mr Trigg announced the pending relocation of Mike's Bistro, effectively resolving Mr Calmans immediate concerns, the hearing outcome will give some direction and could be of potential value to a new business that intends to move into the premises at a future date.
33. The Chairman also thanked those people in attendance for their participation in this process and the good conduct during the hearing. He noted the Committee will reserve their decision to consider all evidence and verbal information provided at the hearing.

## Reasons for the Decision

34. The reports received from all agencies offer no opposition to the renewal of this license and no changes to license conditions were requested.
35. Mr Calmans objection is based solely on noise concerns relating to the sometimes late night live music that relates to the Mike's Bistro premises. However, no clear evidence was provided that confirmed the noise levels were excessive, the occasions when this had occurred or at what volume levels the noise reached. No independent recording/assessment had been made and on the one occasion an investigation had occurred, noise levels were not excessive.

**It is difficult then for the Committee to impose conditions on the alcohol license that target the reduction in noise without substantive evidence to support this need. Therefore, the Committee has not imposed any special conditions in relation to this.**

36. However, the Committee accepts from the combined evidence of Mr Trigg and Mr Calman that at times there is noise that gives conflict to the business activities of both parties. The Committee accepts that Mr Trigg has made considerable efforts to address the noise concerns of his neighbours and is satisfied that his past efforts and future plans are reasonable. The fact that only one objection was received indicates a level of acceptance by others that Mr Trigg has made a genuine effort to remedy the situation.

Lastly, following Mr Trigg's announcement that he is vacating the building in the very near future, the Committee is of the view that imposing any specific noise control conditions on this license would be of little value at this time.

## The Decision

37. The New Plymouth District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **grants** the application by **Mike's Holdings Limited** for a renewal of the On Licence in respect of the premises situated at 186 Devon Street East, New Plymouth 4310 known as **Mike's Bistro**.

We are satisfied as to the matters to which we must have regard, as set out in the Act, and we grant the renewal On Licence with the following terms and conditions:

<b>Conditions</b>
The <b>ON LICENCE</b> be renewed for three (3) years from the date of expiry <b>7 February 2024</b> .
No alcohol is to be sold on the premises on <b>Good Friday, Easter Sunday, Christmas Day</b> , or <b>before 1 pm on Anzac Day</b> to any person who is not— (i) present on the premises to dine.
<b>SUPERVISED: BAR AREA</b> <b>UNDESIGNATED: REMAINDER OF PREMISES</b>
Alcohol may only be available for the sale, supply or consumption on the premises on the following days and during the following hours: <b>Monday to Saturday 8am to 2am the following day</b>

<b>Sunday</b>	<b>8am to 12midnight.</b>
<b>The licensed area for on-site consumption of alcohol is limited to the floor area within the Tavern area as marked on the plan dated 4 January 2024.</b>	
<b>A properly appointed certificated or Acting or Temporary Manager must be on duty at all times, within the licensed 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.</b>	
Food must be available for consumption on the premises at all times the premises are 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 licensee must have available for consumption on the premises, at all times when the premises are open for the sale of alcohol: freely available drinking water, a reasonable range of non-alcoholic and low-alcohol refreshments and low-alcohol beverages.	
The licensee 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 licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of alcohol.	
The licensee must ensure that signs are prominently displayed within the licensed premises detailing information regarding alternative forms of transport from the premises.	

**Duration of licence:** 36 months after the issue of the licence.

**DATED at New Plymouth this 9th day of May 2024**




---

Neil Volzke  
Commissioner  
**New Plymouth District Licensing Committee**