

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 ('the Act')

AND

IN THE MATTER

of an application by **ASC4K LIMITED** for the grant of an ON Licence pursuant to s.100 of the Act in respect of premises situated at 14 Runanga Street, Taupō known as "The Storehouse Cafe"

BEFORE THE TAUPO DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Graeme Cushing
Member: Cr John Williamson

HEARING at Taupo on 5 June 2024

APPEARANCES

Mr. Shailendra Chourasia – for the applicant ASC4K Limited
Ms. Alina Chourasia- for the applicant

Mr. Grant Singer – Tauranga Alcohol Licensing Inspector – to assist

RESERVED DECISION OF THE COMMITTEE

Introduction

1. In February 2024 the applicant, **ASC4K Limited**, applied for a renewal of the On Licence in force at The Storehouse Café. The application raised a concern for the Inspector because the applicants had previously run the Storehouse under a company called **Shail Trading Limited**.
2. The directors advised the Inspector that they had placed Shail Trading Limited into voluntary liquidation due to large debts with their bank, IRD, ACC and other small creditors.

3. They were advised to stop trading in alcohol by the Inspector, and on the 22nd of February 2024 an application was lodged for a **new ON Licence** for The Storehouse Café in the name of **ASC4K Limited**.
4. The application was set down for a formal hearing as the Committee needed to examine the financial processes that had been undertaken and whether the alter egos of the applicant company were still suitable to be granted an ON Licence.

Applicant's Evidence

5. The first to speak with us was Alina Chourasia who is a co-director of the company. She told us that she and her husband, Shailendra, had owned the Storehouse since 2017. Just before COVID they purchased a bar in Rotorua called Abracadabra Café & Bar.
6. They were badly affected by COVID, as were all hospitality businesses, and they had to prop up the Rotorua business with earnings from The Storehouse.
7. They eventually sold off Abracadabra at a “huge loss” in November 2023.
8. She said they formed a new company and sold The Storehouse to the new entity for “pure emotional reasons” as a legacy for one of their daughters.
9. After speaking to legal advisors and “four liquidators” she says they were advised to place Shail Trading Limited into voluntary liquidation.
10. She told us that function bookings and concerts are good earners for the business, but we had to remind her that the previous licence and the one sought by them now, were for a low-risk Class 3 restaurant which is a sit down dining venue with only table service of alcohol.
11. This was a serious error on their part to have, and apply for the lowest risk, and lowest cost, rated licence and then operate as a Class 2 or even Class 1 restaurant.
12. She told us that the business was popular and currently viable and producing a profit for them at this time even without alcohol sales. They are open from 7.00am to 3.00pm 7 days a week but had been staying open later if they had a function booked.
13. We asked them to provide the Committee with an updated report from the liquidator as to their current level of debt and evidence of any repayment plans in place.
14. This was received on the 11th of June and as expected contained no helpful information on the current financial position of Shail Trading Limited and that the

liquidator would provide a 6-monthly report that would be issued before the end of September 2024.

15. During questioning Mr. Chourasia conceded he had been through two previous liquidations, but he blamed these on the other business partners and not his own mis-management.

Inspectors Evidence

16. The report from Inspector Singer was confirmed and taken as read.

Closings

17. The Inspector said the Chourasia's appear to be good business operators in his dealings with them, but he was concerned about the changing companies and the debt left behind by Shail Trading Limited.
18. The applicants said they were trying their best and weren't running away from their debts. They had spoken to four liquidators trying to get the right solution for their problems.
19. They regret changing the company name for the licence renewal but if Shail Trading Limited was to be declared insolvent they could well be tarnished by the fall out. When asked why they had removed Alina from the directorship of Shail Trading Limited they admitted it was to protect her from the demise of the company should it go under.

Relevant legislation

20. 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.***
21. 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).*
22. Section 105 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to grant a licence as follows:

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

23. 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

24. 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.

25. We are also required to consider the Purpose of the Act and ensure that our decision making is reasonable and benefits the community as a whole.

26. We return to these clauses later in the decision to measure the remaining considerations against the Object of the Act.

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

27. Section 105(1)(b) says that the applicant must be a suitable entity to hold an ON-licence. As the higher courts have made clear, suitability is not created in a vacuum.

28. In **Re Sheard 1 NZLR 751 (1995)**¹ Holland J said:

“...The real test for suitability is whether the character of the applicant has shown to be such that he is not likely to carry out properly the responsibilities that go with holding a licence...”

¹ Re Sheard 1 NZLR 751 (1995)

29. In Two Brothers Wholesale Limited [2021] NZARLA 32 at (103)² the Authority said:

*“... it is not correct that suitability must only be considered in the context of the operation of licensed premises as regards the safe and responsible sale and supply of alcohol.... suitability is much wider and includes considerations of the character and reputation of the applicant and its honesty as well as considerations of the operation of premises. Whether or not the grant of the licence will result in the reduction or increase in liquor abuse is a relevant issue as are considerations about how a licensee will deal with liquor abuse issues that may arise from the establishment of the business, **but suitability is not restricted to these matters.**” (highlighting our emphasis)*

30. In Utikerev Dhillon and Sons Ltd (2014) NZARLA 431 at (48)³

*“When assessing suitability, an applicant’s proposals as to how the business is to operate are relevant but focusing only on future conduct amounts to an error of law. **The applicant’s past conduct is also relevant.**”*

31. Even though the applicants appear to be good operators we are concerned that they clearly made decisions not to comply with their obligations under the Income Tax Act and the Accident Compensation Act and their obligations to their bank to repay loans.
32. We understand and accept that they went through extreme hardship during, and after, COVID but so did many other thousands of business who chose to scale down their businesses rather than breach their obligations to their creditors.
33. The Committee asks itself if they are prepared to breach these Acts and obligations what confidence can we have that they will always comply with the provisions of the Sale and Supply of Alcohol Act?

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

34. There is no Local Alcohol Policy in Taupō. We have nothing to consider.

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

35. The days and hours sought are **Monday to Sunday 9.00am to 12.00pm**

² Two Brothers Wholesale Limited [2021] 32 (ARLA) at (103)

³ Utikerev Dhillon and Sons Ltd (2014) NZAR 431 at (48)

midnight. These hours are not excessive and are within the default national maximum trading hours for ON licences.

36. However, they are **not indicative** of a business that should be operating as a Class 3 restaurant.

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

37. The design and layout of the premises is unremarkable.

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.

38. No other goods will be sold.

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.

39. No other services are 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.

40. We are directed to the parameters of s.106(1) that says we must have regard to a series of matters (as they relate to the locality).
41. We are further obliged to consider the number of premises for which licences of the kind concerned are already held. There are other licensed premises in the area but there has been no evidence to suggest there are too many restaurants in this part of town and its extended environment.
42. We are required to take into account “the purposes for which land near the premises concerned is used.” No evidence was adduced of sensitive sites, that could potentially be affected should we grant the licence.

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

43. The applicant advises that there are three certificated managers appointed to the business to provide coverage for the opening hours.

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

44. The Police have not opposed the application.
45. The Medical Officer of Health has not raised matters in opposition.
46. The Inspector does not oppose the application but is concerned about the financial shuffling that has been undertaken by the owners.

The Decision

47. Section 3 of the Act requires us to act reasonably in the exercise of our duties, and, to regulate with the aim of helping to achieve the Object of the Act. We are very mindful of this requirement and put much weight on it.
48. We have stood back and asked ourselves is the application capable of meeting the Object of Act in light of its purpose. We asked ourselves is it more likely than not that the applicant is able to uphold the law and effectively deal with the on-going challenges of operating even a low-risk licensed premises.
49. Unfortunately, by a narrow margin, we find **ASC4K Limited** an unsuitable entity to hold a ON Licence at this time. We suspect that the full consequences of the outstanding debts are yet to be realised. This concern is further compounded when we discovered that Shailendra Chourasia has been through two liquidation before, and Alina Chourasia has been through one before. Now they are heading into their third one.
50. Clearly lessons have not been learnt from those previous occasions.
51. We believe the applicants should consolidate their current business without alcohol sales. They need to operate their business within their financial means and not create additional debt. We would expect to see payment plans put in place, and honoured over a significant period of time, before their suitability to hold an alcohol licence is restored.
52. This finding of unsuitability is not infinite. Maybe in times to come, when the applicants have the business operating with all legislative requirements complied with, a fresh application might have a chance of success. A minimum of 12 months will be required from the date of this decision before this can come to pass.

DATED at Taupo this 15th day of June 2024

A handwritten signature in black ink, appearing to read 'Murray Clearwater', enclosed in a thin black rectangular border.

Murray Clearwater
Commissioner
For the Taupo District Licensing Committee

NOTE

Sections 153 to 155 relating to the right to appeal this decision are in effect.

The decision shall have effect even if an appeal is lodged with ARLA.