

# Decision for On-licence Application



DLC Reference Number: ON192

**IN THE MATTER** of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER** of an application by **Amlex Limited** for an On-Licence pursuant to section 105 of the Act in respect of premises situated at 3 Deel Street, Alexandra trading as AmiGos.

## **BEFORE THE CENTRAL OTAGO DISTRICT LICENSING COMMITTEE**

Neil J Gillespie (Chairman)  
Dr Michael MacAvoy  
Brett Pay

**HEARING** held at Alexandra on 5 July 2018

## **APPEARANCES**

### Applicant

James Emanuel, representing Amlex Limited

### Objectors

Kevin and Heather Trainor  
Sam Malcolm  
Gay Hughes, representing David Toner

### Supporting Agencies

Stephanie Bekhuis-Pay, Medical Officer of Health (to assist the Committee, no submission or opposition)  
Linda Ferrier, Licensing Inspector, Central Otago District Council

## **DECISION**

### **Background**

This is an application by Amlex Ltd for an On-Licence in respect of premises situated at 3 Deel Street, Alexandra, known as AmiGos. The premises is an existing building that has not previously been licensed under the Act and until recently was occupied by McLellan's Plumbing & Heating, who operated a retail business from the building.

The applicant proposes to operate as a class 1 restaurant which is defined as a restaurant with a separate bar area which may from time to time be operated in the nature of a tavern, such as serving alcohol without meals to tables situated in the bar area. The applicant has sought a licence to sell and supply alcohol for consumption on the premises Monday to Sunday from 8.00am to 1.30am the following day.

Reports advising no opposition to the application were received from Police and the Medical Officer of Health. The Licensing Inspector provided a comprehensive report in

which she did not oppose the application but made recommendations to the Committee regarding operating hours and the issue of amplified music.

Public notification of the application attracted objections from 20 residential property owners and occupants in the immediate vicinity, of which two have subsequently been withdrawn following a meeting held between the applicant and the objectors.

The objectors raised concerns regarding the proposed operating hours and the likely loss of amenity and good order of the area due to noise and antisocial behaviour associated with late night alcohol consumption at the premises.

Amenity and good order' is defined in section 5 of the Act as:

*"...the extent to which, and ways in which, the locality in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable."*

### **Applicant's Submission**

Mr Emanuel pointed out that the shareholders, who will have an active role in the operation of the business, have had an extensive history of involvement in the hospitality industry and operate similar businesses in Cromwell and Wanaka. He referred to data identifying the popular dining times at their Cromwell restaurant and a Noise Management Plan which was developed and submitted in support of the application following the meeting they held with the objectors.

Although their Cromwell restaurant has a licence to sell alcohol Monday to Sunday from 8.00am to 2.00am the following day, the popular dining times were identified as being between 12noon and 12midnight. This information was supported by the Noise Management Plan which noted that "the majority of our guests have generally gone before 10.00pm, and rarely stay after 12.00am".

In explanation of the Noise Management Plan, Mr Emanuel explained that it had been developed specifically for the proposed premises to address the concerns of the neighbours.

### **Reporting Agencies**

The committee noted that the Police and Medical Officer of Health did not oppose the application.

Licensing Inspector, Ms Ferrier reported that:

*"The main part of the building is to be occupied by the restaurant area, shown with tables and chairs and includes an outdoor dining area along the western side of the premises. A separate 'back bar' area is located internally and shows couches, tables and fixed seating. The kitchen and bar service areas along with toilets, a dry store and chiller occupy the remainder of the ground level. The area to be licensed for the sale, supply and consumption of alcohol is the ground floor level only, with storage and staff areas being located on the first floor level".*

In assessing the statutory criteria of the Act, Ms Ferrier noted that:

#### Object of the Act

*"Overall, it is my view that granting the on-licence would be consistent with the object of the Act.*

*In coming to this conclusion, I have had regard to the nature of the premises, (being a class 1 restaurant with the sale of food being the principal business), the applicant's host responsibility policy which*

*demonstrates that suitable measures will be undertaken with regard to the responsible sale/supply of alcohol and that harm will be minimised, staff training procedures and the receipt of unopposed reports from Police and Medical Officer of Health”.*

*Suitability of the applicant*

*“The applicant has extensive experience in the hospitality industry and operates similar premises trading as Amigos, located at 50 The Mall, Cromwell and Ardmore Street, Wanaka.*

*The directors and shareholders all hold current manager’s certificates along with numerous members of staff as detailed in the application”.*

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

*“I believe the site at 3 Deel Street is a suitable location for a licensed restaurant and in coming to that conclusion I am guided by the fact that it is located in the Business Resource Area and the site standards for this zone contain rules relating to noise performance standards as measured at the Residential Resource Area boundary, specifically to mitigate the adverse effects from noise. Council has made the decision through the Resource Management Act 1991 (RMA) that the site is suitable for restaurants and taverns by including those activities in the Business Resource Area as a permitted activity without the need for resource consent”.*

## **Objectors**

Mr Sam Malcolm said that:

*“Without a doubt we feel that the amenity and good order of the area would be affected if the licence were granted. Noise is of particular concern to us. Currently the neighbourhood is peaceful at night and I have no doubt that this restaurant will generate background noise that we otherwise would not have had to deal with”.*

*“In my objection letter I have highlighted other concerns relating to the amenity and good order of the area specifically drunk, disorderly and noisy patrons within the vicinity of our home”.*

Mr Kevin Trainor who spoke on behalf of sixteen other objecting residents who all live within 100 metres of the premises said:

*“The effects from the granting of a liquor licence here will have a major effect on our quiet community both from the sounds emanating from patrons coming and going and from the premises itself.”*

Mrs Heather Trainor expressed her concerns to the Committee of how the granting of the licence would affect their personal lives, and believed a business with a late night liquor licence would use the licence to its full extent whenever possible.

In addition to the matters covered by the other objectors, Ms Gay Hughes raised the matter of all the parties being

*“victims of historic Council planning decisions that have not provided a buffer zone between a Business Resource Area and a Residential Area thus allowing for the potential for incompatibility of use”.*

The Committee noted this as a concern which should be addressed as a submission to the District Plan review.

Ms Hughes also raised an issue of the application being notified as a Restaurant with no mention of it being described as a "Class 1 Restaurant". Ms Ferrier advised that, as it was notified, the application correctly detailed the proposed uses and activities that were intended by the applicant. Ms Ferrier explained further that the Act only refers to a restaurant on-licence and these are further classified by the Sale and Supply of Alcohol (Fees) Regulation 2013 for the purpose of calculating a risk based fee for the premises.

### **Reasons for Decision**

In deciding whether to issue a licence, the Committee has had regard to the following matters as set-out in section 105 of the Act

- (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 of the Act*

In reviewing these matters the Committee has noted the comments outlined in the Licensing Inspector's report and concur with those assessments. As those opposed to the application are mainly concerned with the proposed operating hours and the potential effects on the amenity and good order of the locality, the committee turned its mind to the criteria set out in section 106 of the Act:

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

In forming an opinion on the effect the proposed activity would have on the amenity and good order of the locality, the Committee is aware that the previous use of the building was that of a plumbers trade depot with an associated retail outlet. The Committee also notes that there are a number of other activities which are permitted within this Business Resource Area under the provisions of the District Plan which may have a similar effect as the proposed restaurant.

The Resource Management Local Authority Compliance Certificate identifies the application as a class 1 restaurant and states that;

*“The proposed use of the premises as a restaurant meets the requirements of the Resource Management Act 1991 as it is a permitted activity within the Business Resource Area. However this is on the proviso that the operation of the restaurant activity complies with the rules and standards set out in Sections 11 to 15 of this District Plan and the standards set out in Rule 8.3 6.*

*Note: The design of and the internal building fit-out of the premises needs to be undertaken in such a manner that results in the restaurant activity achieving compliance with the following noise and light spill performance standards:*

**8.3.6 (vi) Noise**

*All activities shall be conducted so as to ensure the following noise limits are not exceeded at any point within any other site within the Business Resource Area.*

<i>On any day 7.00am — 10.00pm</i>	<i>65 dBA L<sub>10</sub></i>
<i>10.00pm — 7.00am the following day</i>	<i>45 dBA L<sub>10</sub></i>
	<i>85 dBA L<sub>max</sub></i>

*Provided that the following noise limits shall not be exceeded at any point within the Residential Resource Area:*

<i>On any day 7.00am — 10.00pm</i>	<i>55 dBA L<sub>10</sub></i>
<i>10.00pm — 7.00am the following day</i>	<i>45 dBA L<sub>10</sub></i>
	<i>70 dBA L<sub>max</sub></i>

In assessing the ability of the business to comply with these standards, the Committee has given significant weight to the Noise Management Plan in its deliberations and expects the applicant would comply with all aspects of the plan should a licence be granted. The Committee is mindful of the difficulties of assessing the effects of an activity prior to it commencing operation, however the concerns of the objectors cannot be disregarded on the basis of a lack of evidence.

In Pro-Entertain Ltd (2009) LLA PH1023 the Liquor Licensing Authority reiterated that:

*“the apprehension of problems is not, (on its own), a legal ground for objection. However, if there is a legal objection then there is nothing to restrain an objector from raising concerns about what might happen if a licence is granted. The impact of a licence on a community can be detrimental to that community. Such apprehensions cannot prevent the issue of a licence, but they may well have an impact on the conditions of any licence that is issued. Logically such evidence may affect the settling of trading hours.”*

The Authority went on to say that:

*“our policy has been to act conservatively when fixing the operating hours for a new licence. This is an important point particularly where there is public opposition. We have regularly taken the view that later trading hours should be earned, particularly on renewal when the neighbours and the reporting agencies have the opportunity to assess the impact of the new business. It could also be argued that the operation of a restaurant would not normally call for such a late trading hour.”*

This approach followed on from an earlier decision of *R L & R A Mason [2003] LLA PH 616-617* where the Authority stated:

*“Any new licence is issued for a period of one year. This gives residents and the authorities the opportunity to monitor the premises to see exactly what sort of business is developed. If the applicants show a lack of commitment to host responsibility, or to the conditions of the licence, then the Authority has the power to refuse to renew the licence, or amend the hours of opening. In this way the applicants have a clear incentive to ensure that the concerns expressed by the objectors do not become reality.”*

In the evidence presented by the applicant the Committee was advised that the hours sought for the licence could be amended to the following:

Sunday to Thursday from 10.00am to 12.00midnight  
Friday, Saturday and New Year's Eve from 10.00am to 1.00am the following day

The Committee is of the view that any licence granted should be limited to the following hours:

Sunday to Thursday from 10.00am to 11.00pm  
Friday and Saturday from 10.00am to 12.00 midnight  
Outdoor dining area - Monday to Sunday from 10.00am to 10.00pm

The Committee believes that they have adopted a conservative approach to the hours that a licence could be issued for, which gives both the applicant and the objectors the opportunity to seek a variation to the hours when the licence comes up for renewal in twelve months' time.

With respect to the request for extended hours for New Year's Eve, the Committee believes that should a licence be issued and the applicant considers this necessary, there is the opportunity for them to make application for a special licence.

The Committee does not accept the applicant's argument that the hours of any licence issued should be extended to allow staff to have a social drink after work. The intention of the licence is to restrict the period when alcohol can be sold and supplied for consumption on the premises when the premises are operating as a restaurant. The issue of staff bonding and relaxation is not a matter which needs to be addressed by any licence.

It was evident from the comments made by the objectors that they had previously been exposed to antisocial behaviour as a result of a licensed premises which had operated in the near vicinity. Although the Committee cannot give assurances that this will not occur as a result of granting a licence to these premises, we believe that if the applicant complies with the requirements of the Act; the conditions of the licence and the Noise Management Plan submitted, the effect on the amenity and good order of the area could be considered to be unlikely to be more than minor.

### **Decision**

We are satisfied as to the matters to which we must have regard as set out in Sections 105 and 106 of the Act and **grant Amlex Limited a class 1 restaurant style on-licence.**

The licence will not issue until all relevant Building Control clearances have been obtained from the Central Otago District Council. The applicant is not entitled to sell alcohol until the licence is issued.

This licence is subject to the following conditions:

- a) No alcohol is to be sold on Good Friday, Easter Sunday, Christmas Day or before 1.00pm on Anzac Day to any person who is not on the premises for the purpose of dining.
- b) Alcohol may be sold only when the premises are being operated as a Restaurant but not other than on the following days and hours:  
  
Sunday to Thursday from 10.00am to 11.00pm  
Friday and Saturday from 10.00am to 12.00 midnight  
Outdoor dining area - Monday to Sunday from 10.00am to 10.00pm
- c) The licensee must have available for consumption on the premises, at all times when the premises are open for the sale of alcohol, a reasonable range of non-alcoholic refreshments, low-alcohol beverages and free drinking water.
- d) When open for the sale of alcohol, food must be available for consumption on the premises at all times in accordance with the menu submitted with the application for the licence, or variations of the menu of a similar range.
- e) The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of alcohol.
- f) The following part of the premises is designated as a supervised area: Bar Area
- g) The licensee must ensure that the provisions of the Act relating to the sale, supply and consumption 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.

- h) A copy of this licence must be displayed at the principal entrance to the premises.
- i) The licensee must ensure that signs are prominently displayed within the licensed premises detailing information regarding alternative forms of transport from the premises.

Dated at Alexandra this 11<sup>th</sup> day of July 2018



Neil J Gillespie  
Chairman  
Central Otago District Licensing Committee