

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

**AND**

**IN THE MATTER** of an application by SPRIG & FERN LIMITED  
for an on-licence and an off-licence pursuant  
to Sections 14 and 17 of the Act in respect to  
premises at 67 Aranui Road, Mapua.

**BEFORE THE DISTRICT LICENSING COMMITTEE AT TASMAN**

**Chairperson:** Mr B Ensor

**Members:** Mr D Lewis

Mr L Gabites

**Hearing at Tasman District Council on 25 February 2015**

**Appearances**

Ms J Swift for the Applicant

Mr P Fry for the Applicant

Mrs Z Moulam Licensing Inspector at Tasman District Council – to assist

Dr A Lindsay Medical Officer of Health – to assist

Sergeant S Savage Police – to assist

**Objectors**

Mr and Mrs Bevan 16 Higgs Road, Mapua – to present

Mr and Mrs Halse 24 Higgs Road, Mapua – written submission only

Mr R Cobb 18 Higgs Road, Mapua – written submission only

**RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE**

**1 Introduction**

This application is for a new on-licence under section 14 of the Sale and Supply of Alcohol Act 2012 and a new Off-Licence under section 17 of the Act. The applications relate to premises at 67 Aranui Road, Mapua. The premises are to be known as the Sprig & Fern Tavern, Mapua. The site is located in an area of Mapua adjacent to both residential and commercial properties.

The site was previously operated as a restaurant known as The Tap Ale house until April 2014. SPRIG & FERN LIMITED operates a number of taverns in the Nelson, Tasman and Wellington areas. These taverns are referred to in the application and evidence by the applicant.



## **2 Other relevant matters in this application include:**

The applicant company SPRIG & FERN LIMITED is owned by Tracy and Ken Banner and each tavern, including this one, is operated by way of a licensed agreement with the operator. The day to day operation under this licence agreement will be with Peter Fry and Susan Bloomfield who already operate the Motueka Sprig and Fern Tavern. They both hold current Manager's Certificates.

The address of the premises is 67 Aranui Road, Mapua and has previously been a licensed premises. The area is zoned commercial and is adjacent to the Mapua Village which has a range of commercial properties, a community hall and sports facilities. There are residential properties immediately adjacent to the premises.

The premises are owned by Inkwel Holdings Limited which has consented to this application. The principal purpose of the business will be sale and supply of alcohol and substantial food. The applicant proposes to sell and supply alcohol by way of an on-licence from Monday to Sunday between 8am and 1am the following day, and an off-licence from Monday to Sunday between 8am and 10pm Monday to Sunday.

Objections to this application were received from:

Mr and Mrs Bevan, 16 Higgs Road, Mapua

Mr and Mrs Halse, 24 Higgs Road, Mapua

Mr Cobb, 18 Higgs Road, Mapua

Each of the objectors was considered to have a greater interest than the public generally by virtue of their close proximity to the applicant premises. Only Mr Bevan chose to appear before the committee.

## **3 Application for waiver under Section 208 Sale and Supply of Alcohol Act 2012**

The applicant company SPRIG & FERN LIMITED, through their agent Ms Swift, has made application for a waiver under the provisions of Section 208 in an email to the Council's Licensing Inspector on 10 February 2015. The waiver seeks to change the name of the applicant company from Sprig and Fern Limited, to that of Thomas Fry Limited.

**Section 208 reads:**

**208 Licensing authority or licensing committee may waive certain omissions where any person has neglected or omitted to do any act or thing in the precise manner or within the precise time prescribed by this Act, the licensing authority or (as the case may require) the licensing committee or the chairperson, if satisfied that the neglect or omission was not wilful, may waive the same on such terms as they think equitable.**

The Committee understands that there will be no change to the details contained in the licence applications for the management of the premises. That will remain the responsibility of Mr Fry and Ms Bloomfield. The committee hereby grants the waiver as it is satisfied there will be no material effect on these proceedings.

## **4 Applicants evidence**

Ms Swift gave evidence in support of the application in respect to the Sprig and Fern, Mapua. She provided the hearing with written evidence.

In her evidence Ms Swift confirmed the details of the premises including location, ownership and management arrangements.

She outlined details of a recent resource consent that was granted to the premises by Tasman District Council changing the building use from Restaurant to Tavern. The conditions of the resource consent are consistent with the hours applied for in the licence applications. The consent restricts the premises to a closing time of 1.00am.

Ms Swift outlined details of other licensed premises in the Mapua area and indicated the hours applied for were similar to those premises. She also described action taken to mitigate any noise including double glazing, soundproofing and the implementation of a noise management plan for the premises.

Ms Swift then commented on matters raised in the objections:

**Suitability of applicants** – Ms Swift considered that the applicants had considerable experience and there had been no concerns raised in respect to the premises they currently manage in Motueka.

**Design and Layout of the premises** – the interior of the premises has been changed to address potential noise issues and as none of the reporting agencies expressed concern the applicant believes design and layout has been addressed.

**Trading hours** – The objectors had suggested a closing time of 10pm for the tavern and 8.30pm for the deck areas. Ms Swift suggested that this was unreasonable given the previous licence for this premises was 2am closing including deck areas. She used the example of other Sprig & Fern Taverns close to residential areas and considered the hours applied for were not inconsistent with the other premises identified. In each case she indicated that even though the premises referred to had music there had been no reported issues.

Ms Swift indicated many residents wanted the Sprig and Fern to open in Mapua. When asked why those people were not at the hearing to support the application she said that they understood the concerns were around noise and music and the supporters would not add any value to that matter.

She agreed that music was an issue for objectors but it was important to the operation of the tavern and if a compromise was to be reached then that could be made in respect to the days and times music could be played at the Tavern.

In response to questions regarding the outside areas Ms Swift reiterated the closure of the outdoor areas at 11pm was their preferred option. She also assured the committee the area in front of the premises which is adjacent to the footpath would be clearly delineated by fencing and hedging.

**The applicant gave the following undertakings:**

- The Noise Management Plan submitted with the application will be implemented including staff training.
- CCTV will be used to monitor areas that are not visible from the bar including the outside area adjacent to the footpath and they will be monitored.
- All trade on the decks will cease at 11pm.
- No music will be played outside the tavern and there will be no speakers on the deck areas.
- Immediate neighbours will be offered the personal mobile phone number of Mr Peter Fry to call if there are any noise problems.
- Live music will cease at 12 midnight.
- Notices will be displayed in the bar asking patrons to respect the neighbours when leaving the premises.
- The area at the front of premises adjacent to the footpath will delineated by a fence and hedging.

Mr Fry also gave evidence and reiterated the best option for the premises was to have the outdoor areas open until 11pm. He assured the committee they would be able to manage patrons who needed to move from the outdoor areas once they are closed.

In answer to a question regarding building a relationship with the community Mr Fry indicated they had not given any thought to that at this stage.

He provided information to the committee about how they planned to manage the premises with similar rules as the tavern in Motueka. They have identified 4 certified managers who are available and while not a preferred option will consider door staff should that be identified as a need.

Mr Fry also said as they were going to install CCTV in the tavern he had no objection to it being included as a condition on any licence.

## **5 Reporting Agencies**

Dr Lindsay, Medical Officer of Health (MOH) gave evidence to the Committee about how an application was processed and what was assessed in coming to a decision whether to lodge an objection or not. He tabled his report prepared for the hearing.

Dr Lindsay advised that after an application is received and assigned to a Health Promotion Officer it is assessed on the papers prior to a site visit. The site visit involves meeting with the applicant to provide information on their obligations under the Sale and Supply of Alcohol Act including host responsibility. It will also provide an opportunity to address gaps or concerns.

It was the view of the MOH that the applicants' history in another premises demonstrated they had the ability to undertake the role including staff training, management and host responsibility at the tavern. He also concluded that the Noise Management Plan submitted should lessen the noise from the premises.

The Medical Officer of Health did not have any objection to the applications.

Mrs Moulam, Licensing Inspector Tasman District Council tabled her report and identified the key issues for the committee. She felt that potential noise was the principal concern of the objectors. Her report identified that allowing the use of the decks to a reasonable hour would have a limited effect on the amenity and good order. Mrs Moulam considered that imposing conditions around noise management and limiting the use of decks would be a more proportionate measure than reducing trading hours.

She said in her view the noise management plan will go some way to reducing the noise. She believed it was reasonable to assume that the cliff behind the building provided an ideal sound barrier.

In answer to questions Mrs Moulam informed the committee there had been a number of complaints mainly about music up to July 2012. An abatement notice was served on the previous licensee in July 2012 and until the premises closed in April 2014 there were six further complaints about loud music. Mrs Moulam's report on the application in discussing those six complaints noted that "None of the complaints were able to be substantiated by the noise control officer".

Mrs Moulam said the resource consent allows for 80 people on the first floor and 48 on the outside decks. It is up to the applicants to manage those people especially when the outside decks are closed. In answer to a further question Mrs Moulam was able to clarify that the fire evacuation plan allowed for 100 people on the first floor and agreed there could be a scenario that if the tavern was at capacity then it would mean not everyone from the deck could be accommodated on the first floor once the decks were closed at 11pm.

She outlined the process relating to noise complaints. As a first response Council's noise control officer visits the scene and makes a subjective assessment of the noise. He does not use any equipment as that is a more involved process and requires an assessment over time. Noise in that case is measured at the boundary of the property. She also indicated that the levels set in the resource management plan are quite low when measured at the boundary. The levels are also lower after 9pm.

In answer to a further question from the Chair she understood there were more properties to be built nearby and in some cases they would be closer to the tavern than the current houses. She felt the noise management plan provided by the applicant was an appropriate procedure to deal with any noise issues.

Sergeant Savage Alcohol Harm Reduction Officer NZ Police told the hearing that Police had no objection to these applications. He outlined for the committee the process used to reach that conclusion. He had found the applicants were suitable given their record of well-run premises in Motueka. Sergeant Savage said the amenity and good order would not be affected given the way the applicants had conducted their business in Motueka. Reported crime in the area has reduced in the last 12 months and the local Community Constable has reported no problems recently in the area. While there has been small amounts of graffiti and vandalism this is not generally attributed to bar patrons but often involves a younger age group. He stated that the operating hours were satisfactory if they were set at 1am.

In answer to a question from the chair Sergeant Savage indicated that the coverage of the area from Motueka was now 24 hours every day and response times are better than they have been.

## **6 Objectors**

Mr Bevan, 16 Higgs Road, Mapua told the hearing he had lived at his current address for the past 8 years and their property was 40 metres from the Sprig and Fern Tavern. Both he and his wife welcomed the building being used again but were concerned about the noise issue as that had affected their ability to enjoy their house and to sleep at night due to noise from the tavern. He said the previous operator had live music, disco music and numbers of people on the decks and this created a problem with noise that could be heard from their property. They have no way of knowing in advance that there will not be problems in the future with the new operators of the tavern.

Mr Bevan said, "As the tavern is close to many family homes we ask the committee to take a careful approach in the first year. That will help build confidence in the community that Sprig and Fern will do what they say around management of the tavern."

Mr Bevan said they are aware that there have been some problems at other Sprig & Fern taverns but they have been resolved. Given that Sprig & Fern have indicated they are family focussed, friendly and provide good food then early closing would be in good faith and not create a problem. He felt that if there are no people outside and no music then it is likely there will be no problem. Mr Bevan stated that if they experience audible sound at their property then they may make a complaint about the noise.

In answer to a question from Dr Lindsay Mr Bevan said the noise had resulted in adverse health effects and they had required medical attention. He said that making complaints is hard work. When asked about the offer of the mobile phone number to call Mr Fry he said he reserved the right to call council. He was not sure that a telephone call would result in a response to the noise.

He said the main problem seemed to be amplified music with deep bass as there have been times when other music is played without a problem. He is not aware of any other noise problems in the Mapua area.

In their submission Mr and Mrs Bevan suggested closing the decks at 8.30pm but he was happy to compromise and 9pm would be acceptable. He also agreed that a different time for music earlier in

the week, with later times on Friday and Saturday evenings would be more acceptable. There are young families in Mapua he said. Friday and Saturday night are the times you expect music to be played at the tavern. He also felt that the Noise Management Plan was more about a complaint system as opposed to dealing with noise before it happened. He also said he is happy to meet with Mr Fry to discuss his concerns.

## **7 Applicant Right of Reply**

Ms Swift then addressed the Committee through the applicant's right of reply. She said they believe that the suggested closing times of 9 or 10pm is unreasonable and that the applicant has demonstrated that through comparable premises where there is music and no problems are encountered. Ms Swift considered that closing the decks earlier than 11pm will just exacerbate the problems of numbers moving inside the premises as many people were expected to leave the tavern between 10 and 11pm

Ms Swift said that the applicant had previously offered the opportunity for Mr and Mrs Bevan to provide feedback on the application but that did not eventuate.

## **8 Licensing Committee decision and reasons**

In addressing these applications the Committee has had regard to Section 105 of the Sale and Supply of Alcohol Act 2012.

### **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.**

## **The object of the Act**

The object of the Act set out in Section 4 states:

- (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 or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).**

In our view the applicant has provided information in the application and during the hearing that demonstrates that suitable measures will be undertaken with regard to responsible sale and supply of alcohol, and that harm will be minimised. The applicant has provided a host responsibility policy that demonstrates their commitment to complying with the Act.

## **Suitability of the applicant**

The applicants, Peter Fry and Susan Bloomfield, have been the licensees at the Sprig & Fern in Motueka since it opened in 2010. Under their management there have been no concerns regarding alcohol management at the premises. There have been four Controlled Purchase Operations at the Motueka Sprig & Fern since the premises opened and sales have been refused. The suitability of the applicant was not questioned by the Police. There is no reason to indicate Peter Fry and Susan Bloomfield are not suitable applicants to hold both an on and off-licence.

## **Any relevant local alcohol policy**

The Tasman District Local Alcohol Policy comes into effect on 14 March 2015. The proposed operation is consistent with the maximum hours in the policy for on and off-licensed premises.

## **The days and hours during which the applicant proposes to sell alcohol**

The applicant seeks the following days and hours for the licence:

On-licence: Monday to Sunday 8am to 1am the following day

Off-licence: Monday to Sunday 8am to 10pm

A Resource Consent for a change from a restaurant to tavern was granted on 15 December 2014. The resource consent limits the trading hours to 1am and this includes the provision in the Sale and Supply of Alcohol Act 2012 allowing persons to be on site up to 30 minutes after trading has ceased.

## **The design and layout of the proposed premises**

The design and layout of the premises has been changed somewhat from the previous layout with the objective of reducing noise emissions. The changes include moving the bar area, double glazing, insulation in the walls and moving the chiller unit.

The Committee carried out a site visit and were satisfied that the design and layout of the premises was appropriate. None of the reporting agencies had any adverse comments in relation to design and layout.

## **The sale of goods and the provision of services other than those directly relating to the sale of alcohol, low and non alcoholic refreshments and food**

Only those activities usually associated with a tavern will take place on the premises. The applicant advises this may include occasional live bands, quiz nights, board games evenings and the like. The applicant has provided information that demonstrates substantial food will be available when the tavern is open.

## **Amenity and good order of the locality**

Section 5 of the Act defines amenity and good order of the locality, in relation to an application for or for the renewal of a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated is pleasant and agreeable.

The Act further states in Section 106 that:

### **Considering effects of the 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 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."**

This is a particularly important component of this application as the objections received have identified noise from music as being the greatest concern. In determining whether the amenity and good order of the locality is likely to be reduced the question is whether it is above mere possibility. This is discussed in the Court of Appeal decision *Port Nelson Ltd v Commerce Commission*[1996] 3 NZLR 554 (CA) where the Court discussed the meaning of 'likely' and in particular the degree of probability it contemplates, and held that:

*"...bearing in mind the purpose of the provision the appropriate level is that above mere possibility but not so high as more likely than not and is best expressed as a real and substantial risk that the stated consequences will happen."*

In the Committee's view the history of these premises has shown noise to be a significant issue and has clearly affected the amenity and good order of the area by more than a minor amount. In listening to the applicant and other evidence the Committee believes the applicant is aware that there were previous noise complaints and has provided a noise management plan which details how they propose to manage noise issues. It includes measures such as:

Not using the outside decks after 11pm,

Closing windows,

live music to be played inside the tavern only,

the location, orientation and design of noise equipment to minimize emissions,

training for duty managers in noise management.



The Committee believes that these measures, if implemented correctly, will mitigate the generation of excessive noise.

The applicant has also detailed a complaints procedure to deal with noise complaints. This includes giving neighbours a mobile phone number to contact; recording the complaint and taking action to reduce the noise.

The Committee accepts all of the noise mitigation measures but believes noise is a risk if not managed and proposes to impose some conditions on the licence to ensure the Noise Management Plan is implemented. The compromise suggested by the applicant to have different times during the week at which the music will cease is considered appropriate.

The Licensing Inspector also identified some uses in the village area which are deemed sensitive such as the children's play area, the health centre, sports fields and the community hall. However in the context of a typical village centre environment the co-location of these land uses is considered compatible.

### **Whether the applicant has appropriate systems, staff and training**

The applicant has provided management plans and supporting information that show there are three certified managers available to be on duty at the Tavern. In addition the applicant has indicated there are a further 4 people available who are certified managers.

According to the MOH the applicant has a good understanding of their responsibilities and in particular host responsibility.

The applicant is a member of Hospitality NZ and will utilise their materials for training staff members. A staff training module regarding noise management has been provided as part of the application.

The committee is satisfied that the applicant has systems in place to ensure prohibited persons will be dealt with in accordance with the Act. The information provided shows the applicant has appropriate systems, staff and training in place to meet the requirements of the Act.

### **Other matters**

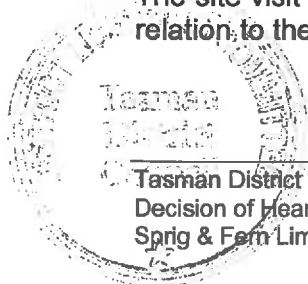
The applicant has provided a menu of food and detailed the provision of low alcoholic and non-alcoholic refreshments that satisfies the requirements of the Act.

The applicant will supply free water for the duration of trading which will be available from the bar upon request and in bottles with clean glasses.

The applicant has requested that the area immediately in front of the bar be designated supervised and the remainder of the premises and outdoor areas be undesignated. As families may be present with minors who are not their children for the purchase of food or non-alcoholic beverages, this is appropriate.

The committee carried out a site visit on Tuesday 24 February 2015. They visited the applicant premises and viewed all areas of the building, including the downstairs area whose use has not yet been determined. The committee also viewed the adjacent area of the village of Mapua and the properties in Higgs Road where the objectors reside.

The site visit provided the committee with a clear view of the area and the location of properties in relation to the applicant premises.



## Conclusion

The applications for both the on and off-licences are approved. While the committee acknowledges that some conditions may be restrictive, the applicant will have the opportunity to seek a variation of these at the time of the first renewal of the licence.

## Decision

The application by SPRIG & FERN LIMITED amended by waiver to THOMAS FRY LIMITED for an on-licence and an off-licence at 67 Aranui Road, Mapua for the premises to be known as Sprig and Fern Mapua is granted with the following conditions in addition to those imposed by the Act:

### On-licence

- The trading hours for the on-licence be Monday to Sunday 8am to 12.30am the following day.
- Monitored CCTV will be provided to cover all areas where there is no direct line of site from the bar.
- Should the ground floor be opened at any time in the future for the sale or supply of alcohol then an additional duty manager must be on duty in that area at all times it is open.
- Live music including DJ and karaoke will be permitted until 10pm on any night, and until 12 midnight on Fridays, Saturdays and public holidays.
- The outdoor seating areas will close at 10pm on Sunday to Thursday inclusive and at 11pm on Friday and Saturday. This restriction shall not apply to the ground floor area situated east of the main structure of the premises and adjacent to the footpath on Aranui Road, which may be made available to smokers at anytime the premises is open.
- The outdoor seating areas adjacent to the Aranui Road footpath shall be clearly delineated with fencing and hedging.
- The applicant will implement the Noise Management Plan and shall:
  - Locate no audio speakers outside of the premises;
  - Not allow live music performances outside of the premises
  - When live or amplified music is played within the premises, windows shall be kept closed, and self closing devices on doors shall be provided and be operational at all times during such occasions.
  - On occasions when bass frequencies are a component of live or amplified music, the licensee shall routinely monitor the impact outside the premises, and shall take such steps as required to minimise any adverse effects to neighbouring properties.

### Off-licence

- The hours for the off licence will be Monday to Sunday 8am to 10pm.

The licence will not issue until the expiry of 12 working days from the date of this decision. That period allows sufficient time for the lodging of a notice of appeal pursuant to section 154 of the Act.

**DATED** at RICHMOND this 9<sup>th</sup> day of March 2015



**Larissa Illing**  
**Secretary**  
**Tasman District Licensing Committee**

