

Decision No. **52/ON/005/2014**
Record No. 14210420

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Picton Enterprises No. 1 Limited, pursuant to section 105 of the Act, for variation of conditions of an on licence in respect of premises situated at the corner of High Street and London Quay, Picton, Blenheim, Marlborough District known as "Café Cortado"

BEFORE THE MARLBOROUGH DISTRICT LICENSING COMMITTEE

Chairman: John Leggett
Members: Graeme Barsanti
John Hill

DECISION

This is an application by Picton Enterprises No. 1 Limited for variation of conditions of an on licence in respect of premises situated at the corner of High Street and London Quay, Picton, Blenheim, Marlborough District known as "Café Cortado".

Picton Enterprises No. 1 Limited has held an on Licence for the premises known as Café Cortado from 17 December 2007.

Café Cortado undertook a lease of an outside dining area on 21 November 2012, through the issue of a Café Street Occupation Licence. The purpose of this licence is to "allow the Licensee to occupy the Licensed Area for the purposes of a street café and the conduct of business associated with the Licensee's adjoining premises". At the time of obtaining this Occupation Licence the applicant did not extend the area that was covered under the alcohol licence to include the leased space.

Café Cortado is located on the corner of High Street and London Quay in Picton. It is situated on the ground floor of the Quay Apartment Building.

In the neighbouring area there are four premises in close proximity to Café Cortado which have outside areas that are part of their alcohol licensed area. Three of these have the same hours for both their inside and outside licensed areas. The fourth, being Mikey's Bar, has reduced hours for their Courtyard area following a Liquor Licensing Authority Decision in August 2010. This decision followed 61 complaints of noise from this premises where 24 excessive noise directions were issued ([2010] NZLLA PH 849-851).

In January 2014 three noise complaints were received relating to "street parties" being held in the outdoor leased area. It was during the investigation of these complaints that it was ascertained the outdoor leased area was not part of the alcohol licensed area, and of course this promoted the application for variation of the on licence.

The first complaint was received on the evening of 11 January 2014 at 11:09pm. Council's after hours noise control contractor could not attend until five minutes past midnight. The noise level was assessed as non-excessive however a verbal request was given to the manager who stopped the music. Another complaint was received on the evening of 25 January 2014. Council records show two calls were made at 9:57pm and 11.23pm on this evening regarding noise from the street outside Café Cortado. A further complaint was received on 30 January 2014 to Environmental Health Officer Gina Ferguson regarding late night noise from Café Cortado's outside area.

The applicant has now requested that the entire premises including the outside leased area has the same licensed hours of 10am to midnight, Monday to Sunday.

The application was duly advertised and no objection was received from the reporting agencies. However a public objection was received from four residents of the Quay Apartments located above Café Cortado (Mr and Mrs McLean and Mr and Mrs Butts). The basis of the objection is noise and as such the objectors asked for reduced licensed hours for the area outside of the café sought under this variation application.

The objectors cited three instances that they consider had a detrimental effect on residents in their building. One of these is the event on 25 January 2014 referred to above, where the objectors state that three calls were made to Noise Control – Council records only show that two calls were made. It was noted by the objectors that the noise did not abate until around midnight. The second was on 23 February 2014 and the third on 8 March 2014 – Council records show that no calls were made to Noise Control on these two instances. The objectors do state that information was provided to Picton Police in regard to the 23 February 2014 instance. All issues were the loud amplified music and patron noise.

A public hearing was held on 25 July 2014 at 11.00 am.

Unfortunately the objectors were not able to attend the hearing. However we had the benefit of a further submission from Mr and Mrs McLean which was read by the Secretary. The points made by Mr and Mrs McLean were noted.

Ms Friedrich, a shareholder of Picton Enterprises No. 1 Limited, attended the hearing and gave a brief of evidence. Ms Friedrich was able to give explanations of what happened on the three instances of noise issues raised by the objectors. Ms Friedrich advised that a comprehensive Noise Management Plan had been put into place and worked through the Plan with the Committee. We acknowledge the work gone into this Plan and were impressed by its content. Ms Friedrich also noted that whilst running the Café they have never received any excessive noise directions or abatement notices.

Ms Friedrich also gave an undertaking that no more “street parties” would be held whilst Picton Enterprises No. 1 Limited were responsible for Café Cortado.

Also attending the hearing were Council's Liquor Licensing Inspector (Karen Winter) who authored the Inspector's Report into this matter and also Council's Environmental Health Officer (Gina Ferguson) who presented a supplementary report backgrounding environmental noise legislation.

It is noted that the on licence for this premise is up for renewal prior to 17 December 2014.

We are satisfied as to the matters to which we must have regard as set out in s.105 of the Act and we grant the applicant a variation of conditions of the on licence (052/ON/LIQ3195.02) authorising the sale and supply of alcohol for consumption on the premises, to any person who is present on the premises of the leased area as shown on the map date stamped 28 February 2014 with the same hours as the current on licence, with a condition that no “street party” type events be held on the premises (including the leased premises) of Café Cortado.

The licence may issue immediately following the close of the appeal period.

DATED at Blenheim this 24th day of October 2014



**SECRETARY
MARLBOROUGH DISTRICT LICENSING COMMITTEE**

