

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

AND

IN THE MATTER of an application by
BOTEKO 2017 LTD for an
On-Licence (Endorsed
under s37) pursuant to s99
of the Act for premises
known as Boteco situated
at 237 Kilmore Street,
Christchurch.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson Mr R.J.Wilson JP
Members Mr P. Rogers
Mr D. Blackwell OSM

[1] This is an application by Boteco 2017 Ltd for an On-Licence (Endorsed under s37 as BYO) pursuant to s.99 of the Act for premises known as Boteco situated at 237 Kilmore Street, Christchurch. The premises are in the nature of a restaurant.

[2] These premises were previously fully licensed but have changed ownership and the new owner Mr Mahmoud Rawhi Moh'd does not wish to sell alcohol. However some of his customers wish to have wine or beer with their meals and he now seeks a licence endorsed for BYO to meet their needs.

[3] The application was duly advertised and no public objection or notice of desire to be heard has been received. No matters have been raised in opposition by the Inspector or by the Medical Officer of Health in reports required by s103 of the Act. However the NZ Police have reported in opposition because of concerns about Mr Moh'd's suitability to hold a licence. Opposition by the Police does not of itself trigger the need for a public hearing, s.202 of the Act providing that only public objections require this. The Committee may choose to decide the matter on the papers although s191(2) requires a full quorum of three Members sitting. The Committee has given careful consideration to the matter and has decided for the reasons set out below that a public hearing is not necessary. We therefore proceed to determine the matter on the papers.

POLICE CONCERNS

[4] The Police oppose the application at this time because Mr Moh'd has a matter before the Courts. We are told that the matter is of a violent nature and if proven could call into question Mr Moh'd's suitability to hold a licence. However we are also told that Mr Moh'd intends to defend the matter. The alleged offence apparently occurred some time ago. The case is to be heard by a Judge alone and a date has been set in August for call over. It is possible that the actual hearing may be months away. In the meantime Mr Moh'd says he is losing customers.

[5] While we appreciate the concerns of the Police we believe that the principle of "innocent until proven guilty" applies here. A possible conviction for an offence in the future is not something that the District Licensing Committee should take into account with regard to suitability. It might be different if Mr Moh'd had previous convictions but we understand that he is otherwise a man of good character who has achieved success in his profession, is hard working and has a family to support.

[6] We are mindful also that should Mr Moh'd be convicted of an offence in the future the Police have the option to seek a rehearing of the matter under s201(4) of the Act or apply to the Alcohol Regulatory and Licensing Authority to suspend or cancel the licence pursuant to s280. Another option might be to raise concerns when the licence comes up for renewal in a year's time.

DECISION

[7] We are satisfied as to the matters to which we must have regard as set out in s105 of the Act and we grant the applicant pursuant to s104(1) of the Act an On-Licence (Endorsed under s.37 for BYO) for a period of one year.

Endorsement (BYO)

s.37 of the Act applies to this licence, and the licensee is also authorized to-

- Let any person who is on the premises to dine consume any alcohol brought there by that person or by any other person who is there to dine with him or her; and
- Let the person who brought the alcohol to the premises remove any of it from the restaurant if the container is sealed or resealed; and
- Sell and supply, for consumption on the premises by any person who is there to dine, any food or hot drink containing not more than 14.33% alcohol by volume; and
- Let people consume alcohol on the premises.

[8] The licence will not issue until all clearances have been received and fees paid.

[9] The applicants' attention is drawn to s259 of the Act which makes it an offence to fail to comply with certain requirements and restrictions imposed by or under this Act specifically ss 46 to 63.

[10] The licence will be subject to the following conditions:

Compulsory Conditions

- (a) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day or before 1 pm on Anzac Day to any person not present on the premises to dine.
- (b) Alcohol may only be sold and supplied on the following days and during the following hours when the business is being operated as a BYO restaurant:
Monday to Sunday 8 am to 11 pm
- (c) Water must be freely available to customers at all times while the premises are open for business.

Discretionary Conditions

- (a) The following steps must be taken to ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed:
 - Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition of sales to intoxicated persons.
- (b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises are concerned:
 - Alcohol must only be sold, supplied and consumed in the area marked on the plan submitted with the application.
- (c) The following steps must be taken to promote the reasonable consumption of alcohol:
 - The licensee must implement and maintain the steps proposed in its Host Responsibility Policy aimed at promoting the reasonable consumption of alcohol.

Other restrictions and requirements to be noted on the licence

s51 Non alcoholic drinks to be available

s52 Low alcohol drinks to be available

s53 Food to be available

s54 Help with information about transport to be available

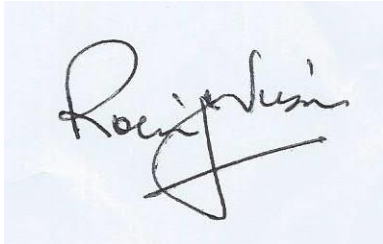
s56 Display of signs

s57 Display of licences

[11] The premises are not designated.

We note that RMA 92023649 applies to these premises.

DATED at Christchurch this 12th day of July 2018.

A handwritten signature in black ink on a light blue background. The signature is cursive and appears to read 'R.J. Wilson'.

R.J. Wilson
Chairperson
Christchurch District Licensing Committee