

**MINUTES OF AN ORDINARY MEETING OF THE HEARINGS COMMITTEE HELD IN
THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,
ON THURSDAY, 29 NOVEMBER 2001, COMMENCING AT 9.20 AM.**

PRESENT:

Councillors	GE	Nash, JP (Chairperson)
	RP	Dallow, QPM, JP (Deputy Chairperson)
	BA	Brady, JP
	DA	Yates
	PA	Hulse
	VS	Neeson, JP

Ward Representative
Mrs DJ Webster (Massey Community Board)

OBSERVERS:

Mrs EG Francke	(Chairperson New Lynn Community Board)
Ms GPJ Marshall	(New Lynn Community Board)
Ms KG Perri	(Massey Community Board)

IN ATTENDANCE:

Manager: Operations Support
Manager: Consent Services
Solicitor: J Watson
Committee Secretary: S Hargis

1 APOLOGIES

There were no Apologies.

2 URGENT BUSINESS

There was no Urgent Business.

3 APPLICATION FOR SPECIAL LICENSE PURSUANT TO SECTION 73 OF THE SALE OF LIQUOR ACT 1989 - MARKOVINA VINEYARD LIMITED

The Chairperson asked if any person present objects to a member of this Committee who is also a member of the Waitakere Licensing Trust sitting on the Hearings Committee for this application.

The applicant assented and no other party objected.

9.25 am M Markovina gave evidence (for the applicant) and responded to questions from Inspector M Thorburn, Constable Loye and Cr Dallow.

9.40 am Inspector M Thorburn gave evidence in opposition to the application and responded to questions from M Markovina, Crs Brady, Dallow and Neeson.

10.02 am Constable Loye gave evidence in opposition to the application and responded to questions from M Markovina, Crs Brady and Hulse.

10.20 am M Markovina (for the applicant) applied to give further evidence and did so. There were no questions as a result.

- 10.25 am Inspector M Thorburn made submissions in opposition to the application.
- 10.40 am Constable Loye made submissions in opposition to the application and responded to questions from Cr Nash.
- 10.47 am M Markovina (for the applicant) made submissions in support of the application and responded to questions from Cr Neeson.
- 10.55 am Hearing Closed and the Committee went into deliberation.

2706/2001
MOVED by Cr Neeson, seconded Cr Dallow:

That pursuant to Section 107(3) of the Sale of Liquor Act 1989 this part of the sitting be held in private having regard to the public interest and the interests of persons appearing and being heard.

CARRIED

2707/2001
MOVED by Cr Neeson, seconded Cr Yates:

That the public be readmitted.

CARRIED

2708/2001
MOVED by Cr Dallow, seconded Cr Yates:

That the application be Markovina Vineyard Limited for a special license, pursuant to Section 73 of the Sale of Liquor Act 1989, at 190 Lincoln Road, Henderson be declined for reasons set out in the attached decision.

CARRIED

12.05 pm The Chairperson thanked members for their attendance and attention to business and declared the meeting closed.

CONFIRMED AT AN ORDINARY MEETING OF
THE HEARINGS COMMITTEE HELD ON

DATE:.....

CHAIRPERSON:.....

DECISION

Before the Waitakere District Licensing Agency

No.

In the Matter of **The Sale of Liquor Act 1989 (“the Act”)**

And

In the Matter of **an application by Markovina Vineyards Limited for a special licence pursuant to sections 73 and 75 of the Act in respect of the premises situated at 90 Lincoln Road, Henderson**

Decision of the Waitakere District Licensing Agency

1. This is an application under s.73 of the Act by Markovina Vineyards Limited for a special licence covering six separate events between 23 November 2001 and 7 December 2001, all of which are to be held at premises known as Brewmasters, situated at 190 Lincoln Road, Henderson, Waitakere City.
2. The Agency heard evidence from Mr Markovina for the applicant, from Ms Thornber for the Inspector and from Constable Loye for the Police. The Agency also heard submissions from all of those parties. The Agency then closed the hearing to deliberate and reach a decision.
3. Mr Markovina for the applicant noted that some of the events for which the special licence was sought had already passed. He indicated that he viewed this application as somewhat of a test case so as to obtain a decision as to whether he could obtain special licences of this type.
4. In making its decision, the Agency considered s.79 of the Act. Having regard to s.79(1)(a), the Agency does not consider that the nature of the series of occasions or events is appropriate for the issue of a special licence.
5. The applicant runs a business whereby it arranges social functions, largely for corporate entities. It picks up the participants of those functions in a bus and drives them out to the premises, puts on the function where food is provided and alcohol sold and returns the participants to the pickup point at the end of the function.
6. Whereas each function may be a special occasion for the corporate entity involved, it is not the corporate entity which is applying for the special licence in this case. Insofar as the applicant is concerned, the events for which a special licence is sought are not a particular occasion or event or a particular series of occasions or events.
7. Evidence was given that this was the third year in which Mr Markovina, a key director of the applicant, has operated a business in this fashion by applying for special licences. The Agency notes that this application is made in the name of Markovina Vineyards Limited, and that for the two previous years special licences were obtained in the name of the Party Bus Company Limited. Mark Markovina is also a key director of that company.
8. However, the Agency has had regard to the evidence and submissions of the Inspector which encouraged us to lift the “corporate veil” to ensure that the objectives of the Act are being met. Based on the evidence of the Inspector and the Police, the Agency is satisfied that Mr Markovina’s company, the Party Bus Company Limited, has operated a business using special licences to carry on a regular trading operation for the last two years. Indeed, evidence was given of 21 or more events which were run pursuant to special licences in 2000, a number of which took place at the premises for which this special licence is sought.

9. It is the Agency's opinion that if it was to grant the special licence sought by Markovina Vineyards Limited in this case, it will be allowing that trading operation to continue under the umbrella of special licences for a third year.
10. In this regard, the Agency is mindful of the Liquor Licensing Authority's decision in *Police v. Franklin* 1813/92, where it was said that a special licence should not be granted as a substitute for a permanent licence. The Agency also specifically refers to the Liquor Licensing Authority's decision in *Lions International, Ruapehu Club (Inc) of New Zealand* 1287/94, at page 7:

"Although an Agency might consider a new application in 12 months time on roll over conditions, and exceptionally perhaps for a second time, a series of 12 months licences would fly in the face of the structure of the Act. A special licence is not a club licence, and should not be renewed annually indefinitely."
11. The Agency bears those decisions in mind and considers that it should lift the "corporate veil" to look past the applicant to the person running the applicant's business, or Mr Markovina in this case. The agency is satisfied that one of Mr Markovina's companies has operated a business using special licences for the previous two years. The Agency considers that the applicant, another of Mr Markovina's companies, is intending to do the same, using the special licence it applies for in this case as a basis for doing so. The Agency considers that it is not appropriate to grant a special licence to the applicant in these circumstances.
12. The Agency also gives consideration to the report and evidence given by the Inspector which sets out (amongst other things) an agreement that the Inspector and Police had with the Party Bus Company Limited at the end of the year 2000, after a large number of special licences had been obtained by that company in that year. The agreement was that the Inspector and Police would not oppose the special licence sought by that company at that time, and that company would then find suitable premises and apply for a substantive on-licence to avoid the need for further special licences.
13. Although the Party Bus Company Limited is not applying for the special licence in this case, the Agency notes that Mr Markovina is a key director of both that company and Markovina Vineyards Limited, the applicant for the special licence in this case. Accordingly, the Agency records the concerns raised by the Inspector and the Police that this application could be seen as an attempt to circumvent the agreement referred to above.
14. The special licence sought by the applicant is declined.

GE Nash, JP
Chairperson
Hearings Committee

Dated the day of 2001