



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF EXTRAORDINARY MEETING

HEARINGS COMMITTEE

Pursuant to Standing Order 14.3, I hereby give notice that an Extraordinary Meeting of the Hearings Committee will be held on:-

DATE: **Monday, 19 December 2005** **TIME:** **9.30 am**

VENUE: **Civic Centre, 6 Waipareira Avenue, Lincoln, Waitakere City**

to consider an application for a Special Licence pursuant to Section 74 of the Sale of Liquor Act 1989 by E & F Enterprises Limited situated at 3109-3115 Great North Road, New Lynn, Waitakere City and to take any necessary action connected therewith.

7 December 2005

Owena Schuster
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8864

MEMBERSHIP:

Councillors	DQ	Battersby, JP (Chairperson)
	WW	Flaunty, QSM, JP (Deputy Chairperson)
	PA	Hulse
	JP	Lawley
	VS	Neeson, JP
	CA	Stone
Alternate Council Representative	LA	Cooper

Ward Representative				
	Mrs	EG	Francke	(New Lynn Community Board)
Alternate Ward Representative				
	Ms	SL	Taylor	(New Lynn Community Board)

(Quorum 4 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

AGENDA FOR AN EXTRAORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY, ON MONDAY, 19 DECEMBER 2005, COMMENCING AT 9.30 AM.

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1 APOLOGIES



2 ELECTION OF CHAIRPERSON TO PRESIDE AT THIS HEARING

As the Chairperson and Deputy Chairperson were not present due to a declaration of interest as they both Committee Members sit on a Licensing Trust in Waitakere city.



3 APPLICATION FOR SPECIAL LICENCE SECTION 74, SALE OF LIQUOR ACT 1989

APPLICATION

A1-A2 This report as attached at pages A1 to A2, relates to an application for a Special Licence for: E & F Enterprises Limited.

A3 For premises situated at: 3109-3115 Great North Road, New Lynn, Waitakere City, as attached at page A3.

And known as: Club Leon.

EVENT / OCCASION

The particular event for which this special licence is being sought is: "Fundraising Social".

The times and dates of this event or series of events is: Sunday, 25 December 2005 and Sunday, 2 January 2006.

BACKGROUND

The applicant company, E & F Enterprises Limited, lodged an application for an entertainment venue style on-licence with the Waitakere District Licensing Agency in November 1999. That application was publicly notified and a petition of 81 signatures and 1 individual objection were received in response to the public notices.

On 3 January 2000, the Liquor Licensing Authority, satisfied that the objections were not made in relation to any of the matters specified in Section 13(1) of the Act, as required by Section 10(3) of the Act, granted the application choosing to deal with the matter "on the papers".

A4

On 3 February 2000, the applicant company E & F Enterprises Limited was issued with on-licence 006/ON/1/2000, as attached at page A4, for premises located at 3109-3115 Great North Road, New Lynn, Waitakere City, known as Club Leon. That licence was issued, dated 3 February 2000, with a date of expiry of 3 February 2001. The conditions attached to on-licence 006/ON/1/2000 authorise the sale and supply of liquor to the public during the following days and hours:

Sunday to Wednesday	4.00 pm to 1.00 am the following day
Thursday to Saturday	4.00 pm to 3.00 am the following day.

On 9 January 2001, an application for the renewal of on-licence 006/ON/1/2000 was received by the Waitakere District Licensing Agency. That application was publicly notified and no objections were received. On 12 June 2001, a notice of renewal was issued to the applicant company renewing on-licence 006/ON/1/2000 for a further three years to 3 February 2004.

On 9 January 2004, an application for the renewal of on-licence 006/ON/1/2000 was received by the Waitakere District Licensing Agency. That application was publicly notified and no objections were received, the application did however draw opposition from the District Licensing Agency Inspector and Police. That opposition was in relation to the following issues:

- Noise complaints - since the premises opened in early 2000, there have been 95 noise complaints received by the Waitakere City Council in relation to the premises. As a consequence there have been 29 excessive noise directions issued to the premises by Waitakere City Council.
- Complaints from the Medical Officer of Health - Several site inspections by field officers from this agency have shown that the premises regularly traded in breach of condition (c) of on-licence 006/ON/1/2000.
- Issues raised by the New Zealand Fire Service.
- Effects on neighbouring properties - Police raised concerns regarding the effects that the operation of the premises had had on neighbouring properties in the twelve months preceding the application for renewal.

Following the opposition from the District Licensing Agency and Police, in May 2004, the application for renewal was sent to the Liquor Licensing Authority for their determination. The premises were then monitored by all statutory reporting agencies whilst awaiting a hearing date in front of the Liquor Licensing Authority. In February 2005, satisfied that the operation of the premises had improved, the reporting agencies withdrew the opposition to the renewal. The Liquor Licensing Authority then dealt with the matter "on the papers", and in a decision dated 9 March 2005, renewed the licence for a further three year period to 3 February 2007.

SPECIAL LICENSES

A5

Section 74 of the Sale of Liquor Act 1989, as attached at page A5 states:

"Without limiting anything in Section 73 of this Act, a special licence may be granted in accordance with this Part of this Act to the holder of an on-licence or to the holder of a club licence, authorising the holder from time to time to sell and supply liquor for consumption on the premises at any time when the premises are required to be closed for the sale of liquor, to persons attending social gatherings of any kind or kinds specified in the licence."

Whilst the term “social gathering” has not been defined in Section 2 of the Sale of Liquor Act 1989, Brookers guide to the Sale of Liquor Act 1989, contains the following information in regard to a definition of “social gathering”:

- A6 *Definition goes beyond liquor consumption, as attached at page A6. In “Fitzroy Tavern 2/12/77, Pain SM, MC New Plymouth, Pain SM considered a “social gathering” to have the following characteristics:*
- *There must be a purpose for the function or gathering other than mere enjoyment of facilities;*
 - *Liquor consumption must be ancillary to the true purpose.*
 - *The attendees must only be promoters, the participants, and the specially invited guests who are participators in or spectators to the principle activity;*
 - *The gathering must come close to being “special” and;*
 - *Regularity is not necessarily a disqualifying feature.*

A7-A8 The liquor Licensing Authority issued the following Section 96 statement, as attached at pages A7 to A8, in relation to special licences on 19 October 1992:

1. SPECIAL LICENCES

- 1.1 *The Authority confirms its view expressed in Decision No. 1813/92 dated 3 June 1992 (New Zealand Police V Franklin District Licensing Agency), and earlier decisions, that a special licence should not be issued by a District Licensing Agency as a substitute for a “permanent” licence.*
- 1.2 *Special licences will often extend the trading hours permitted by the on, off or club licence in force. Agencies should ensure that the frequency of special licences for a particular premises does not, in effect, give ongoing trading hours for premises, which the licensee has been unable to obtain when seeking the existing licence. Likewise, the Authority would not expect special licences to issue where a permanent licence had been refused.*
- 1.3 *This statement sets out the Authorities general views on the administration of the Act as it relates to special licences.*
- 1.4 *The Authority wishes to make it clear that this statement should not be seen as -*
- 1.4.1 *A desire to disturb or interfere with the Agency’s exercise of its discretion to grant special licences in terms of 73 or 74; or*
- 1.4.2 *Predetermining any appeals that may be lodged to the Authority against decisions of the District Licensing Agencies granting or declining applications for a special licence.*

WAITAKERE CITY COUNCIL LIQUOR LICENSING POLICY 2003

This policy was adopted by the Waitakere City Council on 11 November 2003.

A9 Page 28 of the policy contains a table labelled “Special Licence Days And Hours Of Opening”, as attached at page A9. This table sets out the hours during which a special licence may be issued, pursuant to Section 73 or Section 74 of the Sale of Liquor Act 1989, based on the human environment (District Plan designation) of the premises for which the special licence has been applied for.

A10 The premises located at 3107-3109 Great North Road, New Lynn, Waitakere City are designated as “community” human environment, as attached at page A10. Using the table provided at page 28 of the policy, a special licence may only be issued between the hours of 9.00 am to 1.00 am the following day on any Sunday, for premises designated “community” human environment.

POLICE

A11 Police have provided a report dated 6 October 2005, and have opposed this application for a special licence, as attached at page A11. That police report was in response to the application as it was made in its original form, which included the hours of 12.00 midnight to 4.00 am the following day for Sunday, 25 December.

THE APPLICATION

A1-A2 This application was received by the Waitakere District Licensing Agency on 20 September 2005, as attached at pages A1 to A2. The days and hours originally requested as per the application are as follows:

Monday, 24 October 2005	1.00 am to 3.00 am
Sunday, 25 December 2005	Midnight to 4.00 am
Sunday, 2 January 2006	1.00 am to 3.00 am

A12-A13 On 10 October 2005, the Waitakere District Liquor Licensing Inspector wrote to the applicant company advising that the hours requested in the application did not accord with the hours specified in the Waitakere City Council Liquor Licensing Policy 2003, as attached at pages A12 to A13. The applicant was asked to reconfirm the hours requested in the application taking into consideration that any request for hours outside those specified in the policy would draw opposition from the Liquor Licensing Inspector.

The applicant was also asked to provide further information regarding the nature of the social gatherings for which the special licence was being applied for.

A14-A15 On 30 November 2005, a facsimile was received from the applicant company, as attached at pages A14 to A15. That facsimile amended the hours requested in the application to the following:

Sunday, 25 December 2005	1.00 am to 3.00 am
Sunday, 2 January 2006	1.00 am to 3.00 am

Additional information regarding the nature of the "social gatherings" for which the special licence has been applied for was also included in the facsimile dated 30 November 2005. That information appears to confirm that the "socials gatherings" do not involve any more than the selling of "tickets" to patrons already present on the premises for the purpose of normal trading, prior to the hours of trade authorised by the substantive licence passing, and the special licence coming into effect.

INSPECTORS REPORT

A16-A20 Pursuant to Section 78(3) I have enquired into the application for special licence and have prepared a report which has been forwarded to the secretary of the Waitakere District Licensing Agency, as attached at pages A16 to A20. That report opposes the granting of the application for a special licence and made the following recommendation:

That a public hearing be convened pursuant to Section 106(2) of the Sale of Liquor Act 1989, and that the matter be determined by the Waitakere District Licensing Agency.

CONCLUSION

1. In its amended form, the hours requested in the special licence application still do not accord with the hours specified in the Waitakere City Council Liquor Licensing Policy 2003.
2. The purpose for which the special licence application has been made would appear to be for an extension of “normal trading”, rather than for any legitimate “social gatherings” as required by Section 74 of the Sale of Liquor Act 1989, and as described above.
3. Police oppose the granting of the special licence application.
4. The Waitakere District Liquor Licensing Inspector opposes the granting of the special licence application.

RECOMMENDATION

That the application for special licence be refused for the reasons set out below:

- (a) In its amended form, the hours requested in the special licence application still do not accord with the hours specified in the Waitakere City Council Liquor Licensing Policy 2003.
- (b) The purpose for which the special licence application has been made would appear to be for an extension of “normal trading”, rather than for any legitimate “social gatherings” as required by Section 74 of the Sale of Liquor Act 1989, and as described above.

Report prepared by: Jason Sheehan, Liquor Licensing Inspector, Waitakere District Licensing Agency.

