

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

AND

IN THE MATTER of an application by CRAZY
HORSE LTD for an On Licence
pursuant to s99 of the Act for
premises known as Thai
Orchid situated at 21
Riccarton Road, Christchurch.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing at Christchurch on 28th May 2018

Chairperson Mr R.J.Wilson _{JP}
Members Ms C.Robinson
Mr D.Blackwell _{QSM}

Present Mr J.Stokes, Crazy Horse Ltd, Applicant
Ms J.Deerai (Jum), Crazy Horse Ltd
Mrs J.Ramsay, District Alcohol Licensing Inspector
Sgt D.Robertson, NZ Police
Ms P.Williams for the Medical Officer of Health
Mrs J.Anderson, Hearings Adviser, CCC

INTRODUCTION

[1] We are dealing with an application by Crazy Horse Ltd (the Applicant) for an On-Licence for premises known as Thai Orchid situated at 21 Riccarton Road, Christchurch (the premises). The business is in the nature of a restaurant. The application is opposed by the Inspector, the NZ Police and the Medical Officer of Health (the Agencies).

[2] A waiver is sought with respect to a publication error in the wording of the public notices. The notice advised requested hours of 10 am to 11 pm. These would be in breach of the Resource Consent for this business and must be 11 am to 11 pm. No one is disadvantaged by the error and the waiver is granted pursuant to s208.

[3] This application was received on 27th July 2017. The business has been trading under a Temporary Authority since June 2017, four Temporary Authorities having been issued in that time. The delay in processing the substantive licence application is unusual. We have been told that it has risen through the Inspector being away on leave and the Applicant being slow or reluctant to produce required documentation. The District Licensing Committee when considering the last application for a Temporary Authority expressed its concern at the delay and indicated that a further Temporary Authority was unlikely to be granted. Although there was no opposition to the issue of four Temporary Authorities from the Agencies, the Agencies now oppose the application before this Committee on the basis that the Applicant has not satisfied them on various matters.

[4] It should be noted that the premises, Thai Orchid, under previous management, has not had a good reputation. We have been told that it was known as a place where students could congregate to have a cheap meal and consume BYO alcohol before often going on to party at other venues. It has been reported that there was intoxication, spilt food and alcohol, noise and general poor behavior.

EVIDENCE

[5] The Committee noted that it had received and read extensive documentation from the Applicant's sole Director, Mr Julian Stokes and the Agencies and that was now part of the application file. There was no need to read that into evidence but witnesses were free to elaborate if they wished. The Chairperson reminded the Applicant, Mr Stokes, that the hearing was about matters pertaining to the Sale & Supply of Alcohol Act 2012 and he should try to concentrate on relevant issues although the Committee was prepared to give him fairly wide latitude. It would ultimately determine what was relevant in its deliberations.

[6] Mr Stokes said that he was aware of the bad reputation Thai Orchid had before he bought it. He had been reluctant to do so particularly when he discovered it was not making a profit, however his friend Jum (Ms Deerai) persuaded him that the business could be turned around. He himself had a vision of what it might be. The first few months were tough but by introducing systems and new requirements for customer and staff behavior the restaurant is now very popular and trading well. Previously about 25% of the customers were students who had no respect for good food and used the restaurant as somewhere to congregate and drink cheap BYO alcohol. He had introduced a regime of requiring customers to pay for damage and cleaning costs and a requirement that full meals be ordered before alcohol was consumed. He had also introduced a BYO policy that limited alcohol to one bottle between two diners. As a result the number of student customers declined and more older people began to frequent the restaurant. The reputation of the restaurant has steadily improved and it has now been rated as the best Thai restaurant in Christchurch.

[7] Mr Stokes acknowledged that he had been slow to appreciate the requirements of the Agencies with respect to the sale of alcohol. This was partly due to his preoccupation with the overall improvement of the restaurant so that it was financially viable and partly because he chose to take time to become familiar with what he termed the terminology of the hospitality industry before he embarked on developing procedures and policies for alcohol management. However he pointed to the number one rating given the restaurant by TripAdvisor and said that people, particularly tourists, were not going to give a high rating of their dining experience if they were seated adjacent to noisy, poorly behaved and intoxicated young people. The situation had clearly changed from when the restaurant was under its previous management.

[8] With respect to failure to produce required documentation, in particular a training manual, Mr Stokes said that initially he had been reluctant because he thought the Agencies were after business systems which he had developed over 20 years. He did not trust them not to share his intellectual property with other businesses. He realised now that this was a misunderstanding which had come about through him not knowing the terminology. He had produced a training manual which he said was a work in progress. The manual was produced as Exhibit JS1. He also sought to produce two letters of support from immediate neighbours. These were admitted as Exhibit JS2, although Mr Stokes was advised

that their value was limited by the writers not being present and available for cross examination.

CROSS EXAMINATION

[9] The Inspector, Mrs Ramsay, asked Mr Stokes what was the Object of the Act. He responded accurately although his recollection of what constituted "harm" was not particularly clear. She then proceeded to question the financial security of the business. Mr Stokes responded that he was the owner of a successful IT business and had been for 20 years. He also owned property. Thai Orchid was on a sound financial footing but he required it to show a profit hence his emphasis on putting business systems in place. Jum had a financial stake in the business but this was under a verbal agreement. She was not currently a registered shareholder although it was his intention that she become one and also a Director. This was not possible at present as she did not have the appropriate visa. This was being worked through with the immigration authorities.

[10] With respect to future development of the premises, Mr Stokes said it was the intention to seat large groups downstairs in future so as to allow better supervision. Already smaller groups and couples were being accommodated upstairs. This change would proceed along with redecoration and refitting as the increase in profit permitted. With respect to the BYO policy, Mr Stokes acknowledged that he was flexible about it. If a group brought more alcohol than the policy allowed he would take the excess and store it in the chiller. Should the group be behaving he might on request release the surplus bottles for consumption. He acknowledged that alcohol issues had not been given priority by him in the past. Instead he had concentrated on growing the image and reputation of the restaurant.

[11] Sergeant Robertson asked about Mr Stoke's knowledge of the business prior to his purchasing it. He knew it had a reputation as a place for students to consume cheap alcohol as his friend Jum worked there. However he did not realise how bad it was. Initially he thought good food and service would be enough to turn it around but he now knows that is insufficient. He introduced a system of fines or extra charges for such things as spilt food and drink requiring cleaning and broken furniture. He believed this action was necessary to achieve a major impact quickly. He agreed it was not appropriate now and reference to

such had already been removed from menus. He outlined how the host responsibility policy worked and how staff were trained to look for and deal with signs of intoxication. He acknowledged that a breach of s237 of the Act with respect to the irresponsible promotion of alcohol had occurred in Fathers Day advertising. This was a misunderstanding of what was permitted.

[12] Ms Williams for the Medical Officer of Health questioned Mr Stokes about his training programme. He responded that he held a full staff meeting every Saturday and training was always a part of that. This was undertaken by Jum and himself but they also brought people in to deal with specialist matters. He acknowledged he did not have the skills or experience to do it all. He produced a log which staff signed to record their presence at the training session. Mr Stokes agreed that he needed to complete his own study and obtain his Duty Manager's Certificate. He also agreed that he had been slow in responding to Agencies' requests for information but repeated his earlier explanation that this was because he accorded higher priority to more immediate issues such as the installation of security cameras. Mr Stokes did not see students as normal diners when he took over the restaurant. Now he did and this was because staff spent time with them talking and providing information about Thai culture and food. "Now they come for the great food, not a piss up".

[13] To the Chairperson Mr Stokes acknowledged that he had been growing concerned about the number of Temporary Authorities and the delay in getting the substantive licence. With respect to whether he had considered doing away with BYO altogether given it was so contentious, he said he had thought about it but wanted to convert people rather than antagonize them. He stood to lose about 30% of his trade at that stage. Now BYO is important in another respect. The restaurant attracts business meetings where BYO is preferred. This could be 20% of his turnover.

[14] Mr Blackwell asked whether Mr Stokes understood what the Agencies required of him. He responded that it was to know the purpose and object of the Act and to act as a responsible host. He believed he had now provided all the documents that were required of him. He considered Thai Orchid was no longer seen as "a student place". Ms Robinson sought greater clarity on the BYO policy. Did Mr Stokes think he should adhere to it strictly. Mr Stokes responded that he thought it was OK to deviate from the policy in individual cases where he had

assessed the situation and concluded that individuals were not behaving badly or intoxicated. He thought the host should have discretion.

EVIDENCE OF Ms J.DEERAI (Jum)

[15] Ms Deerai said she was the manager of the restaurant. She had worked there for 4½ years. Prior to Mr Stokes taking over, students used to take a whole lot of beer and wine upstairs. They spilt food and drink and vomited on the floor. It was difficult to manage as few of the staff spoke English. Now the BYO policy is much better, there are signs up and people are expected to order food. There is an incident book where any issues are recorded. Overall the management style is much better. She produced several photographs of people enjoying themselves.

[16] Mrs Ramsay questioned whether Ms Deerai would become a shareholder when she gets residency. Ms Deerai responded that this was the intention. She confirmed that she understood why the Agencies needed the information they had requested and the importance of being able to work with them. Sergeant Robertson asked her response when Mr Stokes apparently said it was OK for customers to get influenced by alcohol. She replied she had said “no,no,no!” She said that she adhered to the BYO policy and would not permit additional alcohol. She concluded “I am the boss and I am not going to break the law”. Ms Robinson asked for clarification about becoming a Director. Ms Deerai responded that she understood she would be a shareholder not a Director. She said she was good at dealing with the customers and the food but not running the business. In any case she understood she would not be able to be a Director because of the immigration or company law.

EVIDENCE OF MRS J.RAMSAY, INSPECTOR

[17] Mrs Ramsay spoke briefly to her report. She referred to the Toolkit designed by the Health Promotion Agency in conjunction with licensing inspectors. She said it contained minimum standards and was being issued to all licensed premises in the District.

CROSS EXAMINATION

[18] Mr Stokes asked whether Mrs Ramsay knew the previous owners of the business. She did not. He asked whether she was she aware of the reputation of the restaurant under previous management. She was. Mr Stokes wanted to know whether the extensive enquiries, requirements for documents and the like were out of the ordinary. Mrs Ramsay assured him that his application had been processed and reported on in exactly the same way as other applications. Sergeant Robertson wanted to know what documentation in particular had been sought. Mrs Ramsay replied that it was a staff training manual which she considered vital. Asked whether she thought Mr Stokes had gained sufficient experience to allay concerns Mrs Ramsay replied that she did not.

[19] Mr Blackwell wanted to know what further actions could be taken at Thai Orchid to address concerns. Mrs Ramsay responded that she did not believe anything could be done while Mr Stokes was the Director. She then outlined the different roles of Duty Manager and licensee making the point that although the Duty Manager had direct responsibility under the law for compliance with the Act this did not absolve the licensee of his responsibilities. They were of a higher order and involved such things as making the policies within which the business operated.

EVIDENCE OF SERGEANT DAVID ROBERTSON AND CROSS EXAMINATION

[20] Sergeant Robertson had nothing to add to his tabled report but made himself available for cross examination. Mr Stokes wanted to know whether he knew the previous owners. Sergeant Robertson did not and explained he had only been in his present role since last July. Mr Stokes suggested a lot of the negative report was based on his lack of understanding of the terminology. Sergeant Robertson responded that the primary focus for Police was suitability. He did not dispute that Mr Stokes had an intent to run a restaurant where people would have a good experience but this did not equate with suitability under the Act. Pressed for an example Sergeant Robertson said that Mr Stokes had thought it was OK for people to get a bit influenced by alcohol but being under the influence is a definition of intoxication. Asked to comment on the plan to have more functions downstairs Sergeant Robertson agreed this had to be a good move. He also saw the installation of security cameras and better lighting as positive moves. He agreed the BYO policy which had been instituted was a step forward. He had not seen the staff training manual so could not comment on it. He still believed Mr

Stokes did not have an appropriate understanding of the responsibilities of a licensee. As he had remarked in his report "He just doesn't get it".

CLOSING STATEMENTS

[21] Mr Stokes said he had found the whole exercise interesting but difficult. He was frustrated that references were still being made to the reputation of the restaurant when he first bought it and was new to the industry. He believed the changes made were evidenced by the views of clients and neighbours. It was so much better. He was also frustrated that much of the opposition seemed to be based on the failure to produce a training manual. There were many ways to do training not just through a manual. He noted the regular Saturday staff meetings where training was a key part. He hoped the Committee had recognised the progress that had been made. With respect to BYO, he pointed out that if Thai Orchid did not offer this facility customers would likely go elsewhere where they would not be so safe.

[22] Mrs Ramsay said Agencies were entitled to take a precautionary approach. This was a premise where people had been sick on the floor and alcohol passed in through a toilet window to thwart BYO controls. She did not think the letters of support could be given much weight as the writers were not present for cross examination. Suitability had not been proved and the onus was on the Applicant to prove his suitability not on the Agencies to prove otherwise. Very little documentation had been produced with respect to staff training. Agencies need to have faith in Duty Managers and licensees. Evidence had been inconsistent with respect to the BYO policy. This was not demonstrating minimisation of harm to the smallest extent. There were some positives with respect to Jum but her residency state was uncertain. She said the Applicant appeared to believe this was just a tick box exercise. A positive finding is required with respect to suitability. Her submission is that the Applicant is not suitable. Mrs Ramsay indicated that should the company be restructured then a new application could be made. She recommended that if the Committee were of a mind to grant the application there ought to be a condition that there be no BYO and another condition that Mr Stokes not be permitted to work on the premises.

[23] Sergeant Robertson conceded that this was not a high-risk premise although it can be a place where students go to drink. There is the opportunity to preload.

There is a need for clear processes to mitigate the risk. Appropriately trained and qualified staff are needed to mitigate risk and they must be firm in implementing policies. He considered Mr Stokes had shown a lack of understanding of what is required of a licensee. Sergeant Robertson explained that the Police had tried to work with him but still maintained the view that he is not suitable.

[24] Ms Williams drew attention to the BYO policy which she said should not be discretionary. Mr Stokes did not seem to understand this. She acknowledged the skills that Jum brought to the business and noted that she appeared to value Mr Stokes backup and confidence in her. However Mr Stokes is the sole Director. As licensee he is required to have a greater knowledge than a Duty Manager. In her view Mr Stokes should be seeking the input of another experienced person as a Director. This may be Jum if her residency status permits or perhaps someone else in the industry who could act as a mentor.

[25] Mr Stokes concluded with the observation that the Agencies did not seem able to see past the incidents which had happened under the previous ownership. He believed they had made great steps towards getting the business as good as it can be.

[26] The hearing concluded at this point with the decision being reserved.

ASSESSMENT

[27] All three Agencies oppose the granting of this application. The Committee has considered all the matters listed in s105 of the Act but believes the opposition may be considered under three sections, viz
s105(b) the suitability of the applicant:
s105(e) the design and layout of any proposed premises and
s105(j) whether the applicant has appropriate systems, staff and training to comply with the law.

[28] We find on the evidence that the concerns raised under s105(e) have now been resolved. Clearly under previous management there were issues around groups, particularly students, gathering upstairs, it seems with the prime intention of consuming cheap alcohol. We were told of the undesirable consequences of that. However according to the evidence we heard that is a thing

of the past. The Applicant has taken several steps to improve the situation including accommodating groups in the downstairs part of the restaurant where better supervision is available. We heard from Sergeant Robertson an acknowledgement that this was a positive step and was having the desired result. We heard no evidence from the Agencies that the poor standard of behaviour that took place under the previous management has continued under the Applicant.

[29] We are also satisfied that the Applicant has met the requirements of s105(j). We acknowledge that it has been a frustrating exercise for the Agencies. In particular it has proved difficult for the Agencies to get the Applicant to produce a staff training manual. At the hearing itself Mr Stokes produced a large folder (Exhibit JS1) which purported to be a staff training manual. Mr Stokes acknowledged it was a work in progress. We accept that there was no opportunity for the Inspector, the Police nor the MOH to examine the folder and offer any considered opinion on its contents. However the Committee has had the opportunity to peruse the contents of the folder as part of our deliberations post hearing. While the folder does not contain the step by step details of training we think the Agencies are seeking we believe it contains most the material that staff might be expected to be required to familiarise themselves with. There is a lot of information there particularly in the newly issued On-Licensed Premises Toolkit produced by the Health Promotion Agency which has been incorporated. Mr Stokes has stated that he welcomed the issue of the Toolkit and was keen to use it. We think the expression "work in progress" is a fair description of where Mr Stokes is at with respect to a training manual but we concede he has made a useful start. We were impressed that he takes the trouble to require staff to sign a log to record their presence at the weekly staff meetings where training is a component.

[30] With respect to other systems and procedures, Mr Stokes was at pains to point out to us that his business for many years has involved developing various systems for use in businesses. We accept that he has the knowledge and the skills in this area. We were concerned however that having developed a policy on BYO he felt free to ignore it when he chose. We will return to this matter under the next heading.

[31] From the reports we have received and the evidence we heard it is clear that it is s105(b) the suitability of the applicant that most concern the Agencies. We were referred to, but in any case are very familiar with the relevant case law. Two decisions stand out:

Page v Police (HC Christchurch AP84/98 24 July 1998) where Panckhurst J said "the applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding".

and

Hayford v Christchurch District Licensing Agency (HC Christchurch AP201/92 3 December 1993) where Holland J said "A holder of a liquor licence under the Sale of Liquor Act is granted a privilege. It permits him to sell liquor when others are not permitted to do so."

Both decisions were made under the previous legislation but are totally relevant to this hearing where the new legislation has corresponding provisions.

[32] From our experience of Mr Stokes as a witness we totally understand how Agencies have found him difficult to work with and in the end concluded that he was a person who struggled to demonstrate his suitability to hold an alcohol licence. He was verbose, frequently went off at a tangent and did not convince us that even at this late stage he fully appreciated the responsibilities of a licensee. However, he did acknowledge that he had failed to give the administrative requirements relating to the sale and supply of alcohol the attention required. He told us that there were many matters relating to the business needing his attention when he took over and he had been required to prioritize them. He said he was now prepared to give the priority required to alcohol matters. We accept that the standard of this restaurant has improved markedly in the time Mr Stokes has owned it. If there are major concerns about how it is operating now we did not hear of them.

[33] We are concerned about the BYO policy and the approach that Mr Stokes takes to it. The policy itself seems a reasonable one and we would expect Mr Stokes to adhere to it strictly along with every other staff member. There should be no room for anyone to make a judgement that in a particular case the policy should be relaxed. Mr Stokes did not seem to appreciate that, although, in her evidence Ms Deerai (Jum) certainly did. The Inspector has recommended that if

we were to grant the licence we should include a condition that there be no BYO. We think this would be a step too far. BYO customers are still an important part of the clientele and contribute to the financial viability of the business. However we would be prepared to consider a condition that the BYO policy once adopted should be strictly adhered to without exception.

[34] The three Agency witnesses all argued that Mr Stokes had failed to demonstrate his suitability to hold a licence. We acknowledge their concerns but have to balance them against other characteristics that Mr Stokes presents. We heard no evidence to dispute that he is a man of good character. As far as we are aware he has no criminal convictions. He is a successful businessman of some twenty years standing by his own account and this was not challenged. He is a mature man who presents well despite the tendency to verbosity we noted earlier. He satisfied us that he has the financial means to put behind the business. He is prepared to acknowledge the strengths of Ms Deerai (Jum) his day to day manager. What appears to be missing and this is at the heart of Agency concerns is his reluctance to date to give matters relating to the sale and supply of alcohol the priority that the Act requires. We think that the importance of this is dawning on Mr Stokes and with further support and guidance, perhaps accompanied by a change in management structure, he can meet the demand. Mr Stokes explained that he was in the process of completing the LCQ requirements and intended to apply for a Duty Manager's Certificate. On balance we are able to reach a positive finding under this heading. It follows that we would not be prepared to make a condition that he not work in the business. In our view that would be entirely over the top. We find that any gaps in Mr Stokes' knowledge of the industry and legislative requirements will be adequately addressed once he completes his LCQ qualification. It is also desirable for him to hold a Duty Manager's Certificate if he continues to undertake a hands-on role as a host at the restaurant. We require him to complete his studies for the LCQ within the next six months and also seek to obtain his Duty Manager's Certificate thereafter.

[35] The representative of the Medical Officer of Health, Ms Williams, in her closing submission has recommended that Mr Stokes should be required to restructure his business by adding another Director with hospitality industry experience. Mr Stokes has said that once current immigration difficulties are resolved he proposes to admit Ms Deerai as a shareholder and to offer her a Director's role. We would certainly support such a move if it is possible as Ms

Deerai impressed us with her commitment to meeting the requirements of the Act. If Ms Deerai were not eligible he might consider another person with the requisite skills. We would certainly be more comfortable with Mr Stokes as a licensee in the knowledge that he had support and advice from someone with practical experience in the industry. We do not think we should make it a condition of licence however as achieving this may involve factors beyond Mr Stokes' immediate control.

[36] As required by s105(1)(a) we have also had regard to the Object of the Act. We are satisfied on the evidence of Ms Deerai and the improved standards that the Thai Orchid now operates under as explained by Mr Stokes, that subject to conditions, the sale, supply and consumption of alcohol can be undertaken safely and responsibly; and the harm caused by the excessive or inappropriate consumption of alcohol should be minimized.

CONCLUSION

[37] The conclusion we have reached after having regard to the matters set out in s105 and then taking a step back and considering the Object of the Act is that an On-Licence can be granted subject to the statutory conditions and some special conditions we have formulated. We remind the Applicant that the licence is initially granted for one year only. If the Inspector is to report to us positively at renewal, with support from the other Agencies, we would expect a sound working relationship to have developed between the parties and the various matters we have referred to addressed.

DECISION

[38] The decision is that the Applicant, Crazy Horse Ltd, is granted an On-Licence for the premises known as Thai Orchid situated at 21 Riccarton Road, Christchurch for a period of one year. We confirm that the area licensed is that shown on the plan submitted with the application.

[39] The Applicant's attention is drawn to s259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under this Act, specifically s46 to 63 and s231(1).

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

Compulsory Conditions s110(2)

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

Discretionary Conditions s110(1)

(a) The following steps must be taken to ensure that the provisions of the Act relating to the sale 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 on 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 concerned are observed:

Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.

(c) The following steps must be taken to promote the responsible consumption of alcohol:

The licensee must implement and maintain the steps proposed in his host responsibility policy aimed at promoting the reasonable consumption of alcohol.

Other Discretionary Conditions which in the opinion of the Committee are not inconsistent with the Act s117(1)

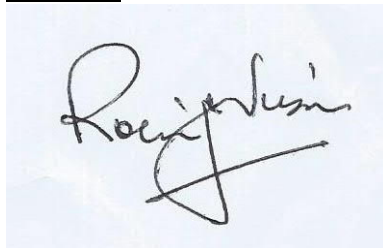
- (a) BYO alcohol must be strictly managed in accordance with the BYO policy submitted with the application and any subsequent versions. Any subsequent versions are to be supplied to the Alcohol Licensing Team immediately on implementation.
- (b) The Director of the licensee, Mr Stokes, is to obtain his LCQ certificate within six months of the granting of this licence. Mr Stokes is then to follow the steps to acquire a Duty Manager's Certificate without undue delay. Compliance with this condition shall be taken into account on renewal.

Other restrictions and requirements to be noted on the licence

- s51 Non alcoholic drinks to be available
- s52 Low alcoholic 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
- s214 Manager to be on duty at all times and responsible for compliance.

The premises are not designated.

DATED at Christchurch this 11th day of June 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