

Decision Number:

048/2024/HCDLC/018

IN THE MATTER

of section 127 of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Chapelli's Café & Bar Limited, trading as Roadhouse Bar & Grill, for a Renewal of an On-Licence, situated at 18 Laings Road, Lower Hutt.

BEFORE THE LOWER HUTT DISTRICT LICENSING COMMITTEE

Chair:

Cr Simon Edwards

Members:

Cr Brady Dyer, Peter Glensor

HEARING

held at Hutt City Council Chambers, 30 Laings Road, Lower Hutt on 7 December 2023.

APPEARANCES

Applicant:

Geoffrey Potter

Applicant and Co-Director of Chapelli's Café & Bar Limited

Alyn Higgins

Counsel for Applicant

Bruce Partridge

Co-Director of Chapelli's Café & Bar Limited

Stacy Moke

General Manager, Roadhouse Bar & Grill

Charmaine Giles

Tenant of adjacent apartment to Roadhouse Bar & Grill

Steve Tanner

Co-Director of Landlord who owns the premises

Hutt City Council:

Tracy Gibson

Alcohol Team Lead, (reporting Licensing Inspector), Hutt City Council

David Tu

Environmental Health Officer, Hutt City Council, expert witness

Submitters:

Daniel Watt (via audio visual link)

Linda Salter – supporting witness

Sara Jones (via audio visual link) – supporting witness

Antonio Salter (via audio visual link) – supporting witness

Natasha Muldrock – supporting witness

Daniel Savage (via audio visual link)

IN ATTENDANCE

Kate Glanville

Senior Democracy Advisor, Hutt City Council

Heather Clegg

Minute Taker, Hutt City Council

Chris Speakman

Public Health Advisor, Medical Officer of Health (observing)

Greg Mullany

Public Health Advisor, Medical Officer of Health (observing)

Tessa Hope-Williams

Submitter (observing)

DECISION OF THE DISTRICT LICENSING COMMITTEE

Decision

- [1] The Lower Hutt District Licensing Committee (the Committee), acting pursuant to the Sale and Supply of Alcohol Act 2012 **GRANTS** a Truncated Renewal of an On-Licence for Chapelli's Café & Bar Limited, trading as Roadhouse Bar & Grill, situated at 18 Laings Road, Lower Hutt, until 31 March 2025.

Introduction

- [2] Chapelli's Café & Bar, trading as Roadhouse Bar & Grill, applied to renew the On-Licence for the premises located at 18 Laings Road, Lower Hutt. The application was lodged on 20 March 2023. No changes to the details of the On-Licence were requested.
- [3] The Roadhouse Bar & Grill is located on the ground floor of a four/five storey building, and a licensed premise has been in this location continuously for the past 40 years. This building was originally constructed as a commercial office block building. However, in August 2021, building consent was issued to convert the building into residential apartments, along with the undertaking of earthquake-strengthening works. Construction took place over the following six months, and the building is now comprised of commercial premises on the ground floor, 10 residential apartments on each of the upper three floors and two (existing) apartments on the fourth floor (32 residential apartments in total). The top floor also holds the Machine Room and Tank Room.
- [4] Two of the Committee members did not undertake a site visit, as they were familiar with the location and layout of the premises. A third Committee member made a site visit on the day of the hearing.
- [5] No objections from reporting agencies were lodged to the application. However, the tenants/owners of three apartments in the building submitted written objections, with several supporting witnesses (also tenants and/or apartment owners).
- [6] The Medical Officer of Health did not submit to this application (having been served notice in the required form and within time). The Committee noted two representatives attended and observed the hearing but did not participate in the proceedings.

The Applicant

The Applicant's Statements of Evidence and Oral Submissions at Hearing

- [7] The Applicant attended the hearing, elaborated on his statement of evidence and answered questions from the Committee. His main points were:
- The Applicant took his responsibilities as an applicant very seriously, having been a qualified Chartered Accountant for 19 years, and been in a business partnership for this establishment with co-director, Bruce Partridge, for nearly eight years.
 - The Applicant explained he co-owned several licensed establishments throughout the Wellington region, and that all had received renewal licences without incident or objection.

- Upon purchasing the establishment, it took time to rebuild the business, and the COVID interruption caused staffing issues (difficulties in securing suitably qualified staff), which were now being resolved.
- In 2021, renovation construction began on the building, which necessitated the premises being closed for three weeks while the ceiling was lowered to allow for installing electrical and plumbing fittings for the above apartments. This work was unexpected, but the premises had been very accommodating.
- The Applicant recalled that his business partner, Mr Partridge, had challenged the developer regarding noise insulation between the premises and the apartments. However, their concerns were dismissed as the renovation had received building consent. He expressed his concern to the Committee that double-glazed windows had not been retrofitted to the apartments, and he had assumed the building consent would have required the appropriate noise insulation measures to be retrofitted. He expressed concern that as long as the windows of the apartments above the bar remained single-glazed, whatever noise control measures he may instigate may be insufficient to satisfy some apartment tenants. He acknowledged having no expertise in these matters and that he had relied on Hutt City Council to administer the requirements of the Building Act about noise insulation.
- The Applicant explained there were two principle public accesses to the establishment, and generally, the doors were on a reverse swing (ie closed automatically). He advised the establishment had experienced two armed holdups, resulting in the policy being that the doors were locked at night, with doormen manually admitting (and exiting) patrons.
- The Applicant acknowledged that the pizza restaurant made the indoor environment quite warm, especially over the summer, and that the bi-fold doors to the two pavement encroachment areas were often open at night.
- The Applicant advised there was no air conditioning throughout the establishment.
- The Applicant advised it was establishment policy not to admit anyone displaying gang paraphernalia. However, it was impossible not to admit gang members who were not displaying gang paraphernalia. He believed the establishment did not have a problem with gang patrons.
- The Applicant acknowledged intoxicated persons did sometimes attempt to gain entry to the establishment and that when they were refused, issues with their behaviour had occurred on the public street. He believed there was a low frequency of issues occurring and that people not associated with the establishment in any way frequented the public street, with the establishment having no influence over those persons' behaviour.
- The Applicant could offer no explanation when questioned regarding the high number of noise complaints received, and the significant drop in complaint numbers since the On-Licence Renewal application had been made. He confirmed business operations had not changed significantly in this time.
- The Applicant confirmed he had never met with the principal objector, Mr Watt, and had not fielded any written or oral concerns until receipt of the written objection to the On-Licence application. He also confirmed that all day to day management of the premises had been delegated to the Bar Manager, Ms Stacy

Moke, and that she had relayed to him details of the confrontation between Mr Watt and staff members, which had resulted in him issuing a statement to all staff members that they were not to engage with Mr Watt. He explained this had been issued to keep his staff safe.

- When questioned by the Committee, the Applicant acknowledged he had not initiated dialogue with any of the objectors or other tenants/owners of the building and that, in hindsight, there were perhaps times when he could have. He confirmed that he believed the establishment was operating within the law and that there was no need to approach the Body Corporate.
- The Applicant reiterated that the establishment had continuously operated according to the law and had immediately responded upon receipt of the single noise infringement notice that had been issued. He said he was unaware of the 120 noise complaints received (he knew of perhaps 20 to 30) and that the attending noise control officers had advised the establishment was “doing what was expected of us”.
- The Applicant advised the establishment had passed all Controlled Purchase Operations (CPOs).

[8] Mr Partridge acknowledged the large number of noise complaints that had been received (more than 120), noting that only one had resulted in action being required from the establishment, which had been done immediately. He explained the measures that management had undertaken to address the noise complaints that had been lodged with council (but had been found not to breach the limits):

- Staff training regarding controlling noise;
- Correction of a technical issue that resulted in a staff cell phone being linked to the establishment’s sound system, starting after 3am on one occasion. The sound system now has an automatic complete cut-off at 3am, regardless of who tries to access it remotely.
- Purchase of a decibel noise meter, which would be used regularly throughout the opening hours by trained staff;
- Music system set to a maximum decibel level (45-55dB outside);
- No music speakers being located outside the premises;
- Host Responsibility Policy had his personal cellphone number listed.

[9] Mr Partridge explained he was on site often (primarily on Thursday nights and Sunday evenings and sometimes on Friday and Saturday evenings) and infrequently during the rest of the week. He advised he often emptied the recycling bins. He confirmed he was on-call for the bar management and could arrive promptly if called to do so. He further confirmed that the residential tenants of the building did not have his business card and had not approached management to obtain it.

[10] Ms Moke outlined her manager function as including reading the incident book daily and checking any footage from the previous night. She maintained her primary function was to ensure the safety of all staff members. She advised she had been a bar manager for 20 years and had worked within the hospitality industry for 22 years. Ms Moke confirmed there were Karaoke sessions held at the establishment at a

frequency of possibly six nights per month, dependent on the foot traffic the establishment received. She explained that the sound system for the karaoke was operated throughout the televisions within the establishment. Ms Moke confirmed that a Noise Control Officer sometimes took readings of noise levels on their phones when they arrived and that if they asked management to close the doors, this was done immediately. She believed there had been no difference in the attitude of the Noise Control officers since July 2023.

- [11] Ms Moke confirmed that patrons could operate the volume control for the sound system at the establishment and that removing the control from public access would be a straightforward exercise.
- [12] Mr Tanner advised he had a good working relationship with the co-directors of the premises, noting the good communication lines, responsiveness, flexibility, and open-mindedness of the owners of the premises, particularly during the renovation and construction period. He said when he had been made aware of any tenant noise complaints through the Body Corporate regarding his tenants (the premises), he believed his tenants had acted immediately. He explained that all apartment owners (including the commercial business owners) were members of the Body Corporate and that a Body Corporate Manager existed. He concluded he hoped to continue the working relationship with the premises for many years. He explained he was not a building expert and had relied heavily on Hutt City Council's building consent process to ensure the renovation construction works complied with the Building Act.
- [13] Ms Giles advised she was the owner of one of the apartments on the first floor of the building (Apartment 102) and that her biggest complaint regarding noise came from traffic. She explained she had never had issues with sleeping or trouble with concentration in her apartment, had not witnessed illegal activities or excessive amounts of rubbish on the street, and believed the staff members to be friendly. She had no objection to the re-issue of the On-Licence. She confirmed her apartment windows had not been retrofitted with double-glazing by the developers, who had informed her that because the building had a heritage listing, such retrofitting could not occur. She advised she had since found out the building does not have a heritage listing. She also advised that when she first moved into her apartment, she had experienced a noise issue with emptying the rubbish and recycle bins associated with the premises. Once she had approached management and explained the situation, they had been more than accommodating. There were no longer any noise issues.
- [14] *Committee's Overall Finding of the Applicant's evidence:*
- Credible;
 - Some naivety regarding the building process and expectations. As the operator of a business that generates noise, particularly after normal business hours, it might have been expected the operator would be very diligent about ensuring a developer of residential apartments goes above the premises and the council, considering consent, would install sufficient sound insulation.

Reporting Agencies

[15] The application was referred to the Medical Officer of Health, the Licensing Inspector and the Police for comment in accordance with the ARLA Practice Directions and Statement issued on 26 November 2013. No objections from the Police or the Medical Officer of Health had been received. The report from the Licensing Inspector advised that Fire and Emergency New Zealand (FENZ) had initially objected to the application due to the approved evacuation scheme for the establishment not being maintained through regular six monthly evacuation trials. This objection was subsequently withdrawn upon receipt of trial evacuation documentation being received.

District Licensing Inspector

[16] We received a detailed written report from the Alcohol Team Lead (the reporting Licensing Inspector), which provided a good background to the application, concluding that due to the objections received from the public, they recommended a hearing be held. Their report raised no objections regarding the application. However, they did recommend a truncated renewal period should the Committee be of the mind to renew the licence due to the issue of the noise complaints received over time and the public objections received to the application.

[17] The Licensing Inspector did not question the applicant's suitability, concluding the applicant had owned the business since 2015 and had a good compliance record. We were informed that a peak-hour compliance visit by Licensing Inspectors in August 2023 found an Acting Manager on duty. We held that position for approximately two months without notification to the DLC or the Police. Management was notified of this.

[18] The Licensing Inspector's report also informed us all required systems, staff and training processes complied with the requirements of the Act, including:

- having a relevant and up-to-date Security Plan;
- having a current Staff Training and Development Plan;
- having appropriate Monitoring Systems for Minors and Intoxicated Patrons;
- having a relevant Host Responsibility Policy;
- having a Noise Management Plan; and
- having a Food Control Plan (which we note expired during the period between this On-Licence application being lodged, and the hearing by the Committee).

[19] The Licensing Inspector's report concluded the visual amenities of the premises and surrounds were clean and tidy, with no visible evidence of graffiti or vandalism at the time of the inspection associated with the application.

[20] The Licensing Inspector's report highlighted the noise complaints emanating from the applicant's establishment, which had been received from 30 November 2020 until 26 August 2023. Details of the 70 attendances by Noise Control Officers during this time were provided, with one Excessive Noise Direction (END) issued (as a result of a complaint received on 5 August 2023).

- [21] We were advised of a letter sent to the establishment in December 2022 from the Environmental Health Manager, alerting the applicant to the number of noise complaints received and requesting all practicable steps be undertaken to ensure all noise was minimised. We have already detailed the applicant's steps in paragraph 8 above.
- [22] Upon being questioned by the Committee, the Licensing Inspector confirmed that the previous Noise Control Contractors had not had their contract renewed in 2023 due to poor performance and that a new contractor had been operating since July 2023. They advised the Committee to be cautious regarding the low level of noise infringement notices issued to the establishment prior to July 2023. However, they agreed with counsel for the applicant that this caution did not equate to implications that all the noise level readings taken by the previous contractors could be construed as incorrect.
- [23] The Environmental Health Officer (EHO) provided an expert witness statement and presented evidence at the hearing. They outlined the process undertaken when monitoring the noise levels of a premise and explained the influence any background noise may have on readings and the effect of bass low frequency noise. We learned that this latter noise can easily penetrate through floors and walls of buildings, to the point of vibration inside a room, and that it was difficult to mitigate against such noise completely.
- [24] The EHO also advised that noise can penetrate through floor or wall openings, eg holes made for pipes or electrical fittings. If these holes are not treated acoustically appropriately, noise issues could arise.
- [25] On 8 April 2023, between 11pm and midnight, we were informed the EHO was able to take noise measurements from inside Apartment 103 immediately above the premises, belonging to objectors Mr and Mrs Watt, and that they noted all noise levels recorded emanating from the establishment were within the District Plan Commercial Activity Area noise limits. It was interesting to read that this EHO recorded the relatively low external sound insulation level of approximately 17dBA (compared to a new build requirement of a minimum of 30dBA) of the complainant's apartment above the establishment. We note the complainant had told the EHO that when loud and amplified music and loud bass were played inside the premises, their bedroom floor vibrated, and they had trouble sleeping.
- [26] In response to questions from the Committee, the EHO repeatedly recommended an effective Noise Management Plan was required for the establishment, and the existing Noise Management Plan was insufficient. They advised an approved Acoustic Engineer would provide good advice, including recommending systems and structures to provide an effective Noise Management Plan. They elaborated that this would include (but would not be limited to):
- Collating basic noise information;
 - Predicting worse case scenarios regarding noise levels;
 - Situations when doors should be closed;

- Singing noise limits;
 - Possibility of a noise limiter on the sound system and big TV screens;
- [27] The EHO cast doubt over the ability of lay people to effectively take noise readings from a handheld noise meter device purchased over the counter. They agreed with counsel for the applicant that reducing the hours that music was permitted to be played could assist in reducing noise from the establishment into the apartments in the building. They reiterated that evidence based investigations were required, by approved and suitably qualified consultants. The EHO confirmed that, in their opinion, the level of noise insulation in the redevelopment of the building was not ideal.
- [28] The EHO explained that many noise insulation requirements related to new builds, whereas the building in question already existed. They acknowledged the Acoustic Engineer report (by Marshall Day) commissioned by the developers, and that the report was concerned with noise insulation between the residential apartments within the building (both vertically and horizontally), and not between tenancies of differing uses within the building (i.e. commercial and residential). The EHO advised that he had received advice from the resource consent team that retrofitted double-glazed windows could not be a resource consent condition. The EHO further advised us that such retrofitting would improve the noise insulation properties of the windows by up to 25dBA, thus giving the apartments an external sound insulation level of approximately 42dBA, which would exceed the minimum 30dBA requirement for new builds.
- [29] The EHO confirmed that District Plan noise limits were not uniform throughout New Zealand and were dependent on the activity area they related to. The EHO confirmed that a limit of 55dBA in a commercial area (such as exits for the Lower Hutt CBD) was appropriate.
- [30] *Committee's overall finding of the Licensing Inspector's evidence:*
- Report was useful and credible;
 - Expert witness evidence was helpful.

Objectors

- [31] Three objections were received from the general public, with one having four supporting witnesses. We concur with the Licensing Inspector in that these objectors are considered to have a greater interest in the application than the public in general, based on their properties being located within the same building as the applicant's establishment.
- [32] Mr and Mrs Watt explained their objections related to noise and the general amenity of the area, and that they did not object to a family friendly restaurant operating from the premises. They explained in detail the effect the noise emanating from the premises had on their everyday lives. We were dismayed to hear that they felt they could no longer live in their house (Apartment 103) due to the noise coming from the premises

and that this noise was having great adverse effects on their health and ability to sleep or function within their home. Mrs Watt explained her anxiety issues, which had begun since moving into their home. Mr Watt advised the winter months were slightly more bearable. However, the noise was still very loud, with their home vibrating due to low-frequency bass noise. He confirmed he would only call Noise Control when they could not sleep due to the noise from the establishment and that sometimes, a Noise Control Officer would not respond or would arrive after the premises had closed.

- [33] The Watts also advised us of their feelings of being unsafe when approaching the entrance to the apartments in the evenings, with people they believe are associated with the establishment, smoking, drinking, shouting, and generally behaving poorly outside the building. They denied being aggressive towards the staff of the establishment. They explained they were highly stressed and fed up with the noise, unruly behaviour of patrons, and the amount of rubbish left each night after the establishment closed. In response to questions, Mr Watt believed the broken glass on the pavement outside the building most nights came from patrons of the establishment; however, he did not have photographic evidence of people smashing glass bottles. He did not believe the establishment did enough to clean the area outside the building each night. Mr Watt confirmed they had witnessed police attending the establishment twice since they had lived in their home and believed that staff were exhausted and not adequately trained.
- [34] Mr Watt believed Ms Giles's apartment was not directly above the premises and faced south and away from the main entrance. In contrast, their home was directly above the main rooms of the premises and was, therefore, more adversely affected by the operation of the premises.
- [35] Mr Watt called his supporting witnesses, as he believed the applicant did not act responsibly, required their staff to work excessive hours and did not provide adequate staff training. Ms Muldrock explained she believed she was employed illegally as a Duty Manager with no training, was required to work 12-hour shifts, not take breaks, and witnessed alcohol being served outside of the liquor license hours. She confirmed the establishment had paid for her to obtain her LCQ training. However, she had struggled to find the time to complete it. She confirmed staff were aware of noise complaints from residents in the building. However, she believed management was not concerned with the noise issue. She did not know of the existence of the Noise Management Plan. We were provided with pay slips and rosters from Ms Muldrock, which showed the hours she worked and classified as a DM (Duty Manager).
- [36] Mr Salter explained he worked as a kitchen hand at the establishment for two weeks and lived in his mother's apartment (number 104). He believed Ms Muldrock was required to work long shifts, that he was also required to work double shifts and that sometimes there was not a Duty Manager on the premises. He advised he left his position due to poor management, including staff drinking and smoking while on duty.

- [37] Due to timing issues, unfortunately Ms Jones was unavailable to give her evidence via audio visual link, and Ms Clegg read out her written statement. Ms Jones' concerns reiterated the concerns already raised and stated she believed the street to be quiet and that it should remain a residential street.
- [38] Mr Watt confirmed he had provided a letter to many of the tenants in the building, advising he could help with writing an objection to the renewal application, as many of the residents did not speak fluent English (English was their second language) and/or were scared refugees. He believed many tenants/owners were scared to object to anything, while others did not have the time to commit to the lengthy objection process. He also believed that the noise complaints dropped due to the many complainants moving out. People were aware of this process being underway and believed their concerns would be heard and the issues resolved. He was scathing in his recollections of the previous Noise Control Officers and believed they did not undertake their job responsibly, were unhelpful, and invariably did not arrive when called. He explained that the Body Corporate only met once a year and that he did not believe the Body Corporate was very responsive. He understood it cost money to call a corporate meeting and that gathering all owners on a single day was very difficult. Ms Slater advised a consultant management company to run the Body Corporate.
- [39] Ms Slater supported Watt's objections, explaining she owned Apartment 104, and while she used to reside there, she could no longer cope with the noise from the bar and had moved to another location in the city. She provided us with recording examples of intoxicated people leaving the establishment late at night and yelling coming from patrons. She stated she felt too intimidated to complain to the staff late at night. Ms Slater believed there should not be intoxicated patrons at a liquor premises if that premises were being run according to the law. She requested management take responsibility for the aggressive and unruly behaviour of patrons (including those who urinated against the building) and for the hours that liquor was being sold. She also requested management speak with all apartment owners/tenants to demonstrate their statement of wanting to have a good relationship with neighbours.
- [40] Ms Slater provided evidence from an Air BnB tenant who had rented her apartment, which explained the tenant could no longer stay there due to the excessive noise making sleep impossible. Ms Slater advised she was now left with paying a mortgage on a property she could not reside in and could not rent out. When questioned, she confirmed she had called the Noise Control Officers but had been advised to ring back after a period of time. She had called the Police on one occasion and laid a complaint about unruly behaviour and drunk driving.
- [41] Mr Savage advised that he lived in Apartment 204 and had retrospectively fitted double glazing and honeycomb blinds to his bedroom windows. However, he was still required to wear noise-cancelling headphones to bed some nights to ensure he got

some sleep. He also advised he had informed the Licensing Inspector that the Licence to Occupy the pavement was required to be smoke-free and that until he had done so, this was not known by the authorities and had not been policed by either them or the staff of the premises. He confirmed it was now a designated smoke-free area. He acknowledged improvements had been made to the establishment's operation since he had complained; however, he believed any collaborative process moving forward would be difficult.

[42] In response to questions, Mr Savage confirmed he had taken photos of unruly behaviour from his home. However, he did not believe it was his place to continually provide evidence of unacceptable behaviour when management had already been alerted to such occurrences previously. He confirmed he felt intimidated and scared to approach staff at the premises. He believed it was up to the council to ensure the establishment operated according to the law. Mr Savage believed the number of Karaoke sessions had reduced throughout 2023 and that primarily, the noise he was hearing in his apartment now stemmed from the street rather than from the premises as it had done when he first moved in.

[43] In response to questions from the Committee regarding reverse sensitivity and the fact that a licensed premise had operated for many years before the conversion of the upper floors of the building to residential apartments, all the objectors indicated they had not undertaken a thorough due diligence process prior to purchasing their homes. Mr Watt explained he visited the apartment during daytime hours and believed the establishment was a family-friendly pizza restaurant that did not operate late at night. Ms Slater advised that she was purchasing an apartment on the other side of the building.

[44] *Committee's Overall Finding of the Objector's Evidence:*

- Distressing to hear the testimonies;
- Material losses and health/sleep difficulty concerns speak strongly to us;
- Naivety of apartment owners regarding due diligence, standard of building insulation materials, and reverse sensitivity issues.

Legislation

Sale and Supply of Alcohol Act 2012

Section 3

[45] The Act's general purpose is to benefit the community as a whole and to implement a new system of control over the sale and supply of alcohol.¹

Section 4

[46] The object of the Act is to ensure that alcohol is sold and supplied safely and responsibly and that any harm caused by the excessive or inappropriate consumption of alcohol is minimised.²

Section 131

¹ Sale and Supply of Alcohol Act 2012 (the Act), s 3

² As above, s 4(1)

[47] Section 131 details the Criteria for Renewal. They are as follows:

1. *In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - a) *The matters set out in paragraphs (a) to (g), (j) and (k) of section 105(1);*
 - b) *Whether (in its opinion) the amenity and good order of the locality would be likely to be increased by more than a minor extent by the effects of a refusal to renew the license;*
 - c) *Any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129;*
 - d) *The manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*
2. *The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.*

Section 105

[48] Section 105(1) Criteria for Issue of Licences:

- 1. In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
- a. *The object of the Act;*
 - b. *The suitability of the applicant;*
 - c. *Any relevant local alcohol policy;*
 - d. *The days on which and the hours during which the applicant proposed to sell alcohol;*
 - e. *The design and layout of any proposed premises;*
 - f. *Whether the applicant is engaged in, or proposed on the premises to engage in, the sale of goods other than alcohol, low alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods;*
 - g. *Whether the applicant is engaged in, or proposed on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services;*
 - h. *Whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence;*
 - i. *Whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that –*
 - i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
 - ii.) it is nevertheless desirable not to issue any further licences;*
 - j. *Whether the applicant has appropriate systems, staff and training to comply with the law;*

k. Any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.

Case Law

[49] The following case law has been provided to the Committee to assist in considering its decision.

[50] *Ponda Holdings Ltd (2014) NZARLA PH588*, paragraph 12³

[12] when considering 131 (1)(b)... where there are no adverse comments by the reporting agencies it is unlikely that an objector will satisfy the Authority that "the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence".

[51] *Hospo Brothers Limited [2023] WDLC LL1340*⁴, paragraphs 6.31 and 6.32

S131(1)(b) is also a matter to which the District Licensing Committee must have regard in assessing effects on amenity and good order. The Committee was aware of how long The Brook has traded from this site and that if the licence is renewed, it will continue to trade. Although the area is zoned Residential B, the premises has a historical use right under the District Plan and the surrounding areas are mostly zoned for business and commercial activity. It is the Committee's view that the community has grown around the site over the last two decades and the site has continuously been a licensed premise, that everything otherwise remaining the same in scope, the purposes are compatible.

It is the Committee's opinion that given the applicant's efforts to address the objection to excessive noise from the Riverstone Motel and the lack of evidence provided by any party of nuisance or vandalism associated with the premises, the renewal of the on-licence would not reduce the amenity and good order of the locality by more than a minor extent.

[52] *Paihia Saltwater (2001) Limited NZLLA PH391*⁵

Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes the view that if no attempt is made to prevent the escape of, or reduce noise, then it is the Authority's duty to monitor the hours of opening, if not the existence of the licence. ... We will always give full credit to those holders who acknowledge any existing noise problem and try to do something about it. In our view the term "host responsibility" does not exclude the people who live nearby.

District Licensing Committee Discussion, Findings, Decision and Reasons

Section 105 criteria

[53] As articulated by Heath J in *Re Venus NZ Ltd*,⁶ while the object of the Act is stated as one of the criteria to be considered under s 105, the remaining factors must be weighed

³ *Ponda Holdings Ltd (2014) NZARLA PH588*

⁴ *Hospo Brothers Limited [2023] WDLC LL1340*

⁵ *Paihia Saltwater (2001) Limited NZLLA PH391*

⁶ *Re Venus NZ Ltd [2015] NZHC 1377*

- against the “object” of the Act. Consequently, after considering the criteria in s105, a licensing committee is then required to step back and consider whether the grant of an On-Licence is consistent with the object of the Act. This also applies to an application for renewal and the criteria for renewal in s131 (which overlap with s105).
- [54] In *Riccarton Liquor Ltd v Ferguson* the Authority observed that in some cases, one or more of the criteria in s105 may be fundamental or critical and may assume prominence over other criteria in s105.
- [55] Turning to s105(1)(c), the Committee noted there is a Local Alcohol Policy (LAP) in place for Lower Hutt City. We believe the proposal is in accordance with the LAP and note that no comments or objections to the contrary were received.
- [56] Turning to s105(1)(d), the Committee noted that the objectors requested the premises reduce its hours of operation – one suggestion was to close at 9pm. We heard that a licensed premises had been in this same location for the past 40 years. We heard from all the objectors that whilst they acknowledged the presence of the premises when they were considering purchasing their homes, none of them had investigated the exact nature of the business or its hours of operation. Indeed one objector advised us they had believed they were purchasing an apartment on the other side of the building, and one had assumed the establishment was a family friendly pizza restaurant.
- [57] Unfortunately, in this case, we believe the premise “buyer beware” is very pertinent, as are the Resource Management Act (RMA) principles regarding reverse sensitivity. The establishment is located within an established Commercial Activity Area, albeit one in which residential activities are recently being developed above ground floor level in several buildings. Visitors and, indeed, new residents to the area must expect some noise to be associated with the activities already established in the area. (*Auckland Medical Officer of Health v Birthcare Auckland Limited* [2015] NZHC 2689).
- [58] We would have expected the residential redevelopment to include retrofitting of at least double-glazed windows and comprehensive noise insulation between the ground floor and first floor. However, we were advised that the Building Code only required noise insulation between the residential units (installed and confirmed by the objectors), and not between the two different uses. We note that lowering the ceiling in the premises was required to allow for new pipe and electrical servicing requirements for the new apartments above and that the building consent shows these were installed according to the Building Act. Any soundproofing (noise insulation) required was to insulate from possible noise from the pipes.
- [59] Accordingly, we find the proposed days and hours applied for the sale of alcohol to be suitable, with the reduction of the outside areas (to be closed at 10pm each evening), having been presented with no evidence to the contrary.
- [60] Turning to s105(1)(e), we note the premises have the approval from the landlord to sell and supply alcohol from the premises. The information accompanying the application explained the premises consisted of a main bar area, a separate gaming area, a kitchen

area, and toilets. We were informed by the plans that the Applicant included the outdoor area within the licensed area. This outdoor area received a Licence to Occupy (Encroachment) renewal on September 18, 2023, valid until October 2026. The licensing inspector's report concluded that there are no issues or concerns with the premises' design and layout, and we concur with that view. We note the layout and design were not proposed to be altered from the existing licence plans. In the absence of evidence to the contrary, we find that the design and layout of the premises are suitable.

[61] Turning to s105(1)(f), we were presented with no formal objections or evidence to the contrary that there were sales of items other than alcohol, low- and non-alcoholic refreshments and food on the premises. Accordingly, we find that only such items are offered for sale. We note the establishment operates under a Food Control Plan. However, the Licensing Inspector's report advised this Plan expired on 30 September 2023. We would hope a renewal has been applied for and issued.

[62] Concerning s105(1)(g), we were presented with no evidence that services other than the supply of food, alcoholic, low- and non-alcoholic refreshments were undertaken on site. Accordingly, we find that those are the only services the establishment provides. We note that a Gaming Lounge is operating within a separate room within the establishment, and evidence presented to us showed this was operating according to the relevant law.

[63] With respect to s105(1)(h), the requirements of s106 must be had regard to, including:

- (1)(a) (i) *current, and possible future, noise levels;*
- (ii) *current, and possible future, levels of nuisance and vandalism;*
- (iii) *the number of premises for which licences of the kind concerned are already held;*

We will deal with these issues later in this decision.

- (1)(b) (i) *the purposes for which land near the premises concerned is used;*
- (ii) *the purposes for which those premises will be used if the licence is issued.*

[64] The requirements of (1)(b) deal with using land near the premises. We have already detailed that the premises are located within a commercial area and that licensed premises have been there for many years. We accept that the former commercial offices and spaces on the floors above ground level have recently changed use – to be now exclusively residential – and that this use will continue whether or not the On-Licence is renewed. We refer to *Auckland Medical Officer of Health v Birthcare Auckland Limited [2015] NZHC 2689*, where it was ruled that some noise is to be expected from a lawfully established operation. In this case, it is a commercial activity within an established Commercial Activity Area.

[65] Turning to s105(j), we note the Licensing Inspector did raise an issue that a staff member spoke to on a site visit on 11 August 2023 had not undertaken any staff training. The Applicant later rectified this and explained the staff member was nervous

and had completed the required training. We heard from objectors supporting Mr Watt that very little staff training was available and that one (Ms Muldrock) had operated as a Duty Manager for a length of time without any training. The Applicant disputed this. The Applicant also explained that all staff members were members of the Staff What's App page, which provided regular updates and information for all staff. The Licensing Inspector's report concluded all staff were trained in identifying signs of intoxication, and all incidents were recorded appropriately in the Incident Book. We were also informed that a What's App page exists between all liquor outlets and bars in the vicinity and that staff members utilised this to alert other bars nearby if a patron had been evicted. Ms Moke advised that all staff training was recorded in the appropriate document. At best, we were presented with conflicting evidence relating to staff training. We expect the Licensing Inspectorate to keep a close eye on staff training.

- [66] The term "appropriate systems, staff and training to comply with the law" is not limited to the Sale and Supply of Alcohol Act 2012. We would expect that management operates according to employment law.
- [67] Finally, we turn to s105(k), the matters raised in the Reporting Agencies reports. Only the Licensing Inspector lodged a report on this application for an On-Licence renewal. We have dealt with this report above.

Section 131 Criteria

- [68] The matters set out in s105 have been described above. About s131(b), amenity and good order, we were presented with conflicting evidence from the objectors and the Applicant. We regard amenity to include the cleanliness of the environment and good order to include behaviour.
- [69] When questioned, Mr Watt advised he was unaware if the Body Corporate employed a cleaning crew to clean the exterior areas of the building. However, he did advise the interior common areas were cleaned by a contractor. He further advised that when confronted with broken glass outside the entrance doors to the apartments, he pushed it to one side. Mr Watt told us that there was generally a lot of rubbish left from the bar each night, which ruined the area's amenity. The objectors and support witnesses also spoke of vomit on the pavement or gutter outside the premises; however, they provided no details as to when this was witnessed.
- [70] The Applicant and Ms Moke advised that staff cleaned up the areas outside the establishment after closing time each night. We recommend tightening and strengthening this action. Mr Partridge advised he emptied rubbish and recycling into the bins outside prior to 9pm when he was present on site. The Licensing Inspector's report advised the Hutt City Council's Safety Manager that the Safe City Ambassadors have not reported any calls, and no complaints have been received regarding anti-social behaviour in this area of the city. We received no conclusive evidence that any broken glass emanated from the establishment. We note this bar is located within the CBD, in close proximity to other bars, and on a public street. We accept the statement from the Applicant that members of the public who frequent the street (Laings Road is a through road, and the subject site is on the corner of Queens Drive and Laings Road,

a busy intersection) who are not patrons of their establishment. We also accept the Applicant's statement that they have no control over patrons once they have left the establishment.

- [71] We heard of the concerning incident where a fight had broken out outside the establishment. We accepted the Applicant's explanation of the event, including that staff followed the Security Plan and were praised by the Police for doing so. We note that the objectors could not provide the exact details of the incident (including the date) and acknowledge that the Applicant was aware of the incident and had acted accordingly. We were presented with no evidence to show that such incidents were a common occurrence outside the premises, and whilst distressing to witness, we believe management and staff dealt with that incident well.
- [72] The Committee needs to consider the evidence before it regarding any current or likely future nuisance or vandalism attributable to the activity of the licence. We note that the Licensing Inspector has received or pointed out no complaints regarding vandalism. We are mindful of the finding in *Ponda Holdings Ltd*⁷, such that where no adverse comments from reporting agencies regarding amenities and good orders are received, an objector will unlikely satisfy the Authority that such adverse effects exist. We did question the objectors and the Applicant regarding the amenity and good order and are satisfied that the amenity and good order of the locality would not be likely to increase, by more than a minor extent, by the effects of a refusal to renew the licence.
- [73] Concerning s131(c), there were no reports submitted by the Police or the Medical Officer of Health, and we have dealt with the Licensing Inspector's report above.
- [74] We now turn our attention to the issue of noise. The Licensing Inspector's report informed us that there have been 126 noise complaints relating to the establishment and 70 attendances by Noise Control Officers from 30 November 2020 to 26 August 2023. From these, only one End Noise Direction (END) notice was issued, relating to a call out on 5 August 2023, after the premises had closed for the night. We were informed this occurrence was an anomaly relating to unauthorised use of the sound equipment by a staff member and that steps have been taken to ensure this did not occur again.
- [75] We were genuinely dismayed and distressed to hear the testimonies of the objectors regarding noise and were concerned for their well-being. We recommend that Body Corporate becomes more involved in the conflict between the building users. We believe reducing the hours of operation of the outside portions of the establishment will go some way to reducing noise (and indeed potential unruly behaviours). Accordingly, we place a condition on this renewal of hours of operation of the outside areas to be 10am to 10pm, Monday to Sunday.

⁷ Ponda Holdings Ltd (2014) NZARLA PH588

- [76] We were astonished at the high number of callouts and the existence of just one END notice. The Licensing Inspector advised the Noise Control contract had recently been removed from one contractor, and a second contractor was now employed (from 1 July 2023). We noted that the Environmental Health Manager sent a letter to the Applicant in December 2022, advising them of the high number of noise complaints received from their establishment and requesting all practical steps be undertaken to ensure noise was minimised. We note that the noise complaints continued and that the EHO had strongly recommended that a suitably qualified acoustic consultant develop a new Noise Management Plan.
- [77] We heard of the establishment's measures to ensure noise was better managed. These are listed in paragraph 8 above. Also, at the hearing, Ms Moke undertook to remove the volume control from public accessibility, and the Applicant outlined a number of measures management was prepared to investigate during the next term of the On-Licence. We have made these "undertakings to investigate" to be conditions of this truncated renewal. We accept the evidence and strong recommendation from the EHO that a new Noise Management Plan, produced by a suitably qualified acoustic engineer, is required. We have set this as a condition of this truncated renewal. The development of this new Noise Management Plan must begin immediately, and the recommendations contained within it must be implemented.
- [78] We encourage all objectors to continue calling the Noise Control Officers and the Police for any criminal activity witnessed.
- [79] Concerning s131(d) and how the Applicant has sold, displayed, advertised, or promoted alcohol, we note that the Licensing Inspector raised no issues. The objectors collectively believed intoxicated patrons were being served alcohol. However, we were presented with no substantiating evidence to prove this. We heard from the Licensing Inspector that all staff were trained in identifying intoxicated persons and from the Manager of the premise that such persons were not served alcohol. We also learned of the What's App page that the bars in the area belong to, which is used to alert other premises to patrons who have been evicted from one bar. In the absence of evidence to the contrary, we therefore find that there are no issues with how the establishment has sold, displayed, advertised, or promoted alcohol and that the operation complies with the Act.

Suitability of the Applicant

- [80] We note that in the past, the establishment appeared to have operated with an Acting Duty Manager for several months without notification to the Licensing Inspectorate, the Police or the Committee. We expect this to be rectified immediately, and the Licensing Inspectorate will keep a close eye on the establishment's operation. We were disappointed and concerned that this evidence was presented before us today; however, we do not believe it constituted sufficient evidence to cancel the suitability of the Applicant.
- [81] The Applicant has demonstrated to us (through evidence and statements) his stated willingness to meet with Body Corporate representatives going forward and answer

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questions from all parties at the hearing) that they are suitable to hold an On-Licence. We consider that the issues identified throughout the Hearing and as raised by the Licensing Inspector and the objectors did raise some concerns around the suitability of the Applicant to hold an On-Licence, however on balance and with compliance to the attached conditions, we find that a granting a truncated renewal is appropriate.

[82] We note that this was an acrimonious hearing and would be difficult for the parties to find solutions/compromises. We advised you that there is no automatic right to a renewal of an On-Licence and that demonstration of good faith will be a factor in the renewal application in March 2025.

[83] After considering the application and evidence provided against the object of the Act in ss3 and 4 and the criteria for renewal in s131 of the Act, we grant the application for the renewal of an On-Licence.

Conclusion

[84] Having considered the application and relevant criteria under ss105 and 131 of the Act, and the purpose and object of the Act, the Committee are satisfied that the considerations fall to **GRANT** a Truncated Renewal of an On Licence to Chapelli's Café & Bar Limited, trading as Roadhouse Bar & Grill, situated at 18 Laings Road, Lower Hutt, (until 31 March 2025) subject to the attached conditions of consent.

Dated at Lower Hutt this 29th day of January 2024

Signed



Cr Simon Edwards
Chair, Lower Hutt District Licensing Committee

CONDITIONS OF TRUNCATED CONSENT FOR AN ON LICENCE TO CHAPPELLI'S CAFÉ & BAR LIMITED, TRADING AS ROADHOUSE BAR & GRILL, SITUATED AT 18 LAINGS ROAD, LOWER HUTT (Licence valid to 31 March 2025)

1. Alcohol may be sold and supplied for consumption on the premises only on the following days and hours:
Indoor: Monday to Sunday from 8am until 2am the following day;
Outdoor: Monday to Sunday from 10am until 10pm.
2. The outdoor area is to be closed at 10pm each evening.
3. The licensee must commission a new Noise Management Plan within two months of the decision, aimed at mitigating noise and vibrations affecting neighbouring apartments. The Noise Management Plan is to be prepared by a suitably qualified acoustics engineer. All recommendations must be implemented as soon as practicable and certainly within twelve months of receipt of the completed Noise Management Plan.
4. A copy of the new Noise Management Plan should be provided to each objector for their information.
5. The Applicant is to obtain technical advice regarding the autaset sound system, such that a maximum noise decibel limit is set for the speakers and television sets.
6. The Applicant is required to reposition all speakers to face inwards into the building, ensuring the sound is directed away from external windows and doors. The Licensing Inspector should visually verify compliance with this condition during routine inspections or any specific noise complaint investigations.
7. The Applicant must ensure no public access to the volume control for any sound system associated with the premises.
8. The Applicant is to investigate the installation of an air-conditioning unit to allow windows and doors to be closed.
9. The licensee is to demonstrate its best endeavours to enter dialogue with the Body Corporate, including owners of the apartments, to address noise issues.
10. The Applicant is encouraged to mediate negotiations with the objectors.
11. The Applicant will demonstrate how it will liaise with the landlord in investigations regarding retrofitting an acoustic ceiling.
12. The Applicant is to ensure regular cleaning of the area outside the premises is conducted throughout the hours of operation.
13. The following parts of the premises are designated as supervised areas: The entire premises except for the gaming room, which is restricted in accordance with the Gambling Act 2003.
14. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises.

15. The Applicant must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages.
16. Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted.
17. A properly appointed certificated or acting or temporary manager must be on duty at all times when the premises are open for the sale and supply of alcohol, and their full name must be on a sign prominently displayed on the premises.
18. The Applicant must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises.
19. The Applicant must display:
 - at every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - at the principle entrance to the premises, to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale and supply of alcohol, and the contact details for compliments/complaints to be directed to;
 - A copy of the licence is attached to the premises to be easily read by persons attending.

The premises are set out on the plan submitted with the application and date stamped [04.03.2023]. A note to this effect is to be made on the licence.