

**BEFORE THE ALCOHOL AND REGULATORY LICENSING AUTHORITY
AT AUCKLAND**

[Q OFL 2016 2865]

UNDER the Sale and Supply of Alcohol Act 2012 (**Act**)

IN THE MATTER of an appeal under section 154 of the Act against a decision of the Auckland District Licensing Committee in respect of premises situated at 527 Great North Road, Grey Lyn, Auckland, trading as "GREY LYNN WINE AND SPIRITS"

BETWEEN **SURREY CRESCENT WORKING GROUP**
Appellant

BETWEEN **DURGA SAI HOLDING LIMITED**
Respondent

SUBMISSIONS ON BEHALF OF WAITEMATĀ LOCAL BOARD

Dated: 10 January 2017

WAITEMATĀ LOCAL BOARD
52 Swanson Street, Auckland
Private Bag 92300, Victoria Street West
Auckland 1142, New Zealand

MAY IT PLEASE THE AUTHORITY:

Introduction

1. The Waitematā Local Board (**Local Board**) formally resolved to make an objection to the application by the Respondent (Durga Sai Holding Limited) and duly filed an objection with the Auckland District Licensing Committee (**DLC**)¹ in accordance with section 102 of the Act.
2. On 3 October 2016 Mr Christopher Dempsey, a member of the Local Board, appeared before the DLC to speak to the objection made by the Local Board and give evidence in support of that objection.
3. Mr Dempsey provided evidence under oath and was listed as an objector in the decision issued by the DLC on 11 October 2016 (**Decision**).
4. While recording in the Decision that Mr Dempsey's evidence was given under oath,² the Decision also records that the Committee ruled:³

... that whilst the Waitemata Local Board did not have an interest greater than the public generally, Mr Dempsey would be permitted, based on the number of objections received from members of the community, to speak in support of those objections.

5. The Appellant has alleged that this ruling by the DLC was made in error.⁴
6. The Local Board agrees that the ruling was made in error, with the effect that the Local Board's objection was not accepted by the DLC (although it is unclear from the Decision whether or not this is the case as the Local Board is listed as an objector and Mr Dempsey gave evidence under oath).
7. It is this alleged error that has prompted the Local Board to appear pursuant to section 204(3)(b) of the Act.

Interest greater than the public generally

8. A person may object to the grant of a licence only if he or she has a "greater interest in the application for the licence than the public generally".⁵ The Local Board considers that it fits within this qualifier for the reasons discussed below.
9. Relevantly, the Liquor Licensing Authority (**LLA**) has previously addressed the matter of interest greater than the public generally in relation to local authorities and elected members in *General Distributors Limited PH0038/2009* (copy of this decision **attached**).

¹ The Local Board's objection is included at page 169 of the Agenda prepared and circulated in advance of the hearing before the DLC.

² Decision, at [41].

³ Decision, at [22].

⁴ Grounds of Appeal, at 11.

⁵ Section 102(1), the Act.

10. In *General Distributors Limited*, where the then Mayor of Papakura District Council sought to object to an application to renew an off-licence on behalf of the Papakura District Council, the LLA noted:

*[24] The presence of the Mayor speaking on behalf of his Council does not have the same effect as a policy that has been adopted after public debate. However, we thought the concerns of the elected representatives as expressed by the Mayor had real substance. **It is clear that the Mayor of a Council does have an interest in the renewal of a licence that is greater than that of the public generally...***

[25] In this case the District Council through its Mayor, clearly believes that the Papakura Town Centre will be safer place and will regain its reputation if "Countdown" is required to close earlier and open later. As we said in Gary William George and Karen Ann George LLA PH 993-994/2007:

"This is not a novel situation. A number of local bodies have expressed concerns about the need to claw back trading hours to reduce what they see as the incidence of alcohol fuelled unruly behaviour and noise. In many parts of the country the public (through their local authorities), are seeking a curtailing of closing hours".

*[26] **The District Council has to consider not only the needs and requirements of those involved in the industry, but also the interests of the wider community. In this case the community had spoken through its elected representative. The impact of a Mayor of a city, prepared to appear and plead that city's case for a reduction of trading hours, should not be underestimated.***

[Emphasis added]

11. The Local Board submits that it can be properly considered to have an interest greater than that of the public generally. In support of this submission the Local board notes that:
- a. The Local Government (Auckland Council) Act 2009 (**LGACA**) established local boards for the specific purpose of "enabling democratic decision making by, and on behalf of, communities", which supports the contention that the Local Board is able to speak on behalf of its community.
 - b. Pursuant to sections 16 and 17 of LGACA, local boards may be delegated certain decision-making functions on behalf of the governing body of Auckland Council.
 - c. Section 12 of LGACA provides that local boards do not have separate standing from Auckland Council, which means that where they have been delegated certain functions they exercise those on behalf of Auckland Council.
12. Significantly, on 25 September 2014 the Governing Body of Auckland Council delegated to local boards the power to object to licence applications in their local board area.⁶

⁶ GB/2014/103.

13. The resolutions issued by the Governing Body at that meeting are, relevantly:

That the Governing Body:

...

- c) *agrees that local boards have a significant role in understanding, representing and advocating for community priorities and preferences around alcohol policy and licensing;*
 - d) *delegate to local boards the power to object to licence applications.*
14. In reliance on the *General Distributors Limited* decision, which accepted the validity of an objection by a local authority (and elected representatives representing local authorities), the Local Board submits that as it has been delegated the power to object to licence applications on behalf of Auckland Council, it properly fits within the qualifier set out in section 102(1) of the Act.
15. Accordingly, the Local Board submits that the DLC erred in making the ruling set out at paragraph [22] of the Decision, and seeks that the objection made by the Local Board is deemed to have been validly made and, accordingly, is considered (along with the evidence presented by the Local Board) by the Authority in reaching its decision on the appeal.

DATED the 10th day of January 2017

Waitematā Local Board