

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by **OBL NELSON LIMITED** for a new on-licence in respect of the premises located at 221 Hardy Street, Nelson, to be known as Frances 'Fanny's' Nelson

BEFORE THE NELSON DISTRICT LICENSING COMMITTEE

Chair: Bruce Fraser
Members: Derek Shaw
Laurie Gabites

HEARING at NELSON on 5 September 2025

DECISION: 17 September 2025

APPEARANCES: N Inkster for the Applicant
K & MK Whitehead as Objectors
Sergeant S Savage for the Police
A Price for Ministry of Health
I Jones Licensing Inspector

RESERVED DECISION OF THE COMMITTEE

Introduction

1. This decision relates to an application by OBL Nelson Limited (**OBL**) for an on licence for premises at 221 Hardy Street, Nelson (the **Premises**) trading as Frances 'Fanny's' Nelson. For the purposes of this decision we refer to the "Group" as including OBL Nelson Limited and its associated entities that operate hospitality venues in Christchurch.
2. The Premises have been used as a bar for a number of years and the last owner of the business traded under the name "The Buxton". The applicant currently holds a temporary authority for the Premises.
3. Given the history of the Premises and the fact that an on licence is in place we note the provisions of section 102 of the Sale and Supply of Alcohol Act (**SSAA / the Act**). Of particular relevance, where the application is for a licence of the same kind as that is currently in force and on the same conditions s102(4A) of the Act limits objections to the suitability of the applicant only. The

applicant in this instance however sought different hours to those for the Buxton and those new hours were publicly notified (as required by the Act). As a consequence, that subsection did not apply.

The Application

4. The application, as filed, sought an on-licence for the Premises operating as a tavern Monday – Sunday 8:00am – 2:00am the following day. Those hours were included in the notice and in the public notification required by s101 of the Act.
5. Following consultation between the applicant, the Police, Medical Officer of Health, and the Licensing Inspector (the **Tri Agencies**) the hours were amended as follows:

Monday – Wednesday:	11:00am – 11:00pm
Thursday – Saturday	11:00.am – 2:00am the following day
Sunday	11:00am – 11:00pm provided that where the following Monday is a public holiday the hours are 11:00am to 2:00am the following day.
6. The application included a sound management plan (the **Sound Management Plan**). A copy of that plan is attached as an appendix to this decision.

The Law

7. The law governing licence applications is well established and well known. The criteria for consideration are set out in s105 of the Act. That section provides:

105 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 this 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 proposes to sell alcohol:*
 - (e) *the design and layout of any proposed premises:*
 - (f) *whether the applicant is engaged in, or proposes 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 proposes 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.*
 - (2) *The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*
8. Relevantly in the context of this application and the objection received, s106 directs the Committee on matters of amenity and good order. The section has been described by Churchman J as a “*legislative aid*” for decision makers forming an opinion on amenity and good order.”¹ The section states:

106 Considering effects of issue or renewal of licence on amenity and good order of locality

- (1) *In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—*
 - (a) *the following matters (as they relate to the locality):*
 - (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; and*
 - (b) *the extent to which the following purposes are compatible:*
 - (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.*
- (2) *In forming for the purposes of section 131(1)(b) an opinion on whether 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 a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):*
 - (a) *current, and possible future, noise levels:*
 - (b) *current, and possible future, levels of nuisance and vandalism.*

¹ Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd [2018] NZHC 3100 @ [66]

The Tri Agencies

9. The Tri Agencies each reported on the application on the basis of the amended hours. None objected to the application, as amended.
10. In his report to the Committee Sergeant Savage for the Police noted the amended hours and advised it had been agreed with the applicant that there would be two security personnel on site from 10:00pm onwards Thursday – Saturday. He also noted that a discussion had been held on the importance of CCTV particularly on the Buxton side carpark. On the basis of the foregoing the Police did not oppose the application.
11. In her report as the local alcohol licensing officer Ms Price, after reviewing relevant criteria, concluded that it was not expected the amenity and good order of the locality would be reduced by more than a minor extent by the issue of the licence and the Ministry of Health raised no opposition to the application.
12. The local licensing inspector, Mr Jones, also reviewed the application, and in his report recorded his understanding that the business was targeting “*an older crowd (i.e. not the 18-25 age group)*”. He expressed the view that the amenity and good order of the locality was unlikely to be increased by more than a minor extent by the {issue of the] licence and no matter was raised in opposition.

The Objector

13. In response to the public notification a late objection was received from Mr and Mrs Whitehead, who live in an apartment nearby. After considering the matter, the Committee exercised its discretion under s208 of the Act to accept the late objection.
14. The objection filed by Mr and Mrs Whitehead focused on their concerns about amplified music and mitigation of sound. These concerns were elaborated on in subsequent evidence, including oral evidence at the hearing, discussed below.
15. The objector’s stance can perhaps best be summarised by quoting a passage in an email sent by the objector to Mr Inkster (a director of the applicant) at 2:50pm on 2 September 2025, tabled as an exhibit at the hearing. It reads:

“I have always said that we want a restaurant/bar there, as there has been for 20 years. I have also always said we have reviewed your groups (sic) other operations and you are not the problem...but the next guy could be which has been our past experience.”

Evidence in Support of the Application

16. Evidence in support of the application was provided by:

- (a) Mr Inkster, a director of the Applicant company; and
- (b) Mr McKee, the owner of the Premises.

Mr Inkster

17. Mr Inkster's filed evidence included:

- (a) the previous tenant had run a night club and had installed a speaker and subwoofer, which he described as "*enough to make any building non sound proof*". The applicant would be "running" different music to that of the Buxton (the prior business).
- (b) his belief that Council bylaws would respond and address any potential noise concerns that arose.
- (c) confirmation that the applicant accepted "no outdoor speakers after 11:00pm". (In this context we note that the Premises include an outdoor area which fronts on to Buxton carpark, and that Mr & Mrs Whitehead live in an apartment at the southern end of that carpark.)

18. In his oral evidence Mr Inkster noted that a new licence is issued for 12 months and that renewal provides an opportunity to review relevant operational matters. In response to questions from the Committee he advised:

- (a) the Group had 9 venues in Christchurch, with 140 staff over a range of venues and with directors who had experience in the industry pre-dating the Christchurch earthquakes;
- (b) with one exception, lodged by a disgruntled patron who had been evicted, there had been no complaints in relation to the Group's venues.
- (c) the venues were "food driven" and live music was part of the offering, with live bands on Friday and Saturday, controlled by a sound mixer.
- (d) work has been done to "soften" the building by installing carpet and curtains.
- (e) their typical music offering was more akin to Motown Jazz, soft rock, Taylor Swift than to hard rock. Music would be "plug in and play", not with subwoofers.
- (f) the intention was to impose an "R20" designation so as to try and ensure they attracted patrons compatible with their business model.

19. Mr McKee's evidence as filed, included:
- (a) an extract from a copy of a building report dated 15 June 2015 undertaken by Hadley and Robinson Ltd, consulting engineers, that described the Premises as "*constructed almost entirely of reinforced concrete, including foundations, floors and roof*" (the **Building Report**).
 - (b) his view, referencing the Building Report, that "*the building is of an exceptionally high standard for noise containment*".
 - (c) a copy of information obtained from Nelson City Council, under the Local Government Official Information and Meetings Act, that identified Council had received two noise complaints under the previous operator.
20. Responding to questions from the Committee Mr McKee's oral evidence was that:
- (a) he had come to an agreement with the previous tenant to surrender that lease.
 - (b) he lived in Christchurch, was aware of the Group and its history, and he had approached Mr Inkster, who he viewed as a suitable tenant in light of his history, and he had rejected other potential tenants put forward by real estate agents.

Evidence in Opposition to the Application

21. Mr Whitehead's evidence (presented on behalf of himself and his wife):
- (a) drew attention to a number of errors in the application, largely as to other premises within a 100m and 500m radius of the Premises. (These were noted.)
 - (b) challenged the extent of the soundproof nature of the Premises as set out in the Building Report.
 - (c) sought "protection through the liquor licence conditions to avoid excessive noise during the currency of the licence".²
22. Both in the written evidence, and orally, Mr Whitehead confirmed that the objectors had "no issue" with the applicant and how the business would be run. His concern was that the Premises had a history of licensee turnover and he was concerned a new licensee might not be as responsible (our terminology) as the applicant. Specifically, Mr Whitehead sought an adequate sound management plan and "*compliance with Appendix 13 Nelson Resource Management Plan in regard to a new activity established under ICr. 42A*".

² Evidence of the objector, undated, page 122 of the bundle of documents, sworn at the hearing.

Tri Agencies

23. In oral evidence at the hearing Mr Jones, the local licensing inspector, advised:
- (a) he had spoken to the licensing inspector in Christchurch (where the Group has 9 venues) who confirmed they had no concerns with the Group's venue operations. His advice was that they were considered "extremely well run enterprises".
 - (b) in his view, the Premises operating under the Applicant would be "a *significant upgrade*" from the previous operation.
 - (c) he consider the hours "*amenable to the local community*".
24. Ms Price, the local licensing officer, confirmed she had no concerns with the application.
25. Sergeant Savage for the Police informed the Committee:
- (a) he believed the system, staffing, and vision of the Applicant would be a "*significant improvement*" on what had gone before.
 - (b) he viewed a noise measuring device (an option that had been mooted) as "unusual" and he believed the local authority would monitor noise.
 - (c) he saw the proposed R20 designation as "*great*". (He identified the 18 – 20 year olds as potentially a problem sector.)
 - (d) he wished to see 2 security personnel on site from 10:00pm onwards Thursday – Saturday (as set out in his report).

The Issue

26. We have referred to s105 above. Although the section requires consideration of numerous factors, the Premises have been used as a licensed venue for a number of years and the evidence and objections do not seek to challenge any issue other than amenity and good order, particularly in the context of noise.
27. The evidence presented to the committee was clearly focused on one issue – the noise potentially emanating from the Premises.
28. As the High Court has said previously, in some cases there are matters that are so fundamental or critical that they assume an "*elevated mantle*".³ The evidence and the objection clearly went to one issue and in our view establish this is such a case.

³ Per Gendall J in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2016] NZHC 73 @[121]

Amenity and Good Order of the Locality

29. The objection from Mr and Mrs Whitehead calls in to play s106(1)(a)(i), which requires the Committee to have regard to “*current, and possible future, noise levels*” as they relate to the locality.⁴ As earlier noted, that subsection is a “legislative aid” for decision makers forming an opinion on amenity and good order. The subsection directs consideration of:
- (a) the locality and noise levels in a wider context than the Premises.
 - (b) “possible future” noise levels.
30. The Committee notes that the information relevant to the application, and disclosed to all parties in advance of the hearing, includes a report from a council planner, dated 25 June 2025 (**Planner’s Report**). The Planner’s Report includes the following:
- (a) zone: Inner City Centre
 - (b) compliance with zoning rules? Yes
 - (c) resource consent required? No
 - (d) approved? Yes
31. The Planner’s Report also references rule ICr.42A and quotes the definition of “*noise-generating activities*” for the purposes of that rule. After consideration of that provision the Planner’s Report approved the application (as compliant with zoning rules and not needing a resource consent).
32. Both in his written evidence and orally at the hearing, Mr Whitehead advised that he and his wife had no issue with the applicant. Their stated concern was that the business might be sold and new owners take over and run a different business model⁵.
33. In the Committee’s view the requirement of s106(1)(a)(i) to consider “possible future” noise levels must relate to the application itself. We do not interpret the section to require the decision maker to look forward and contemplate possible future scenarios without evidence of those scenarios – to do so would be speculative and devoid of a factual foundation that underpins decisions on licensing (any many other) matters.

The Committee’s Decision and Reasons

34. The Premises are located in Nelson Central. They are in an area where they are surrounded by numerous bars and restaurants – many identified by Mr Whitehead. The Premises have been used as a bar for a number of years.

⁴ Townhill Ltd v Alcohol Civic Hurunui Inc and Others [2021] NZARLA 50 @ [121]

⁵ See [15] above

35. None of the Tri-Agencies oppose the application. Indeed, the consensus is that the applicant is likely to conduct a business that will be an improvement on what has gone before.
36. The critical issue raised by the objector, and upon which we must decide is that of noise. The evidence does not invoke concerns regarding any of the other factors set out in s105 and we are satisfied on the evidence before us, particularly the reports from the Tri-Agencies, that there are no other matters required to be considered pursuant to s105 that are a concern in this application.
37. Mr Whitehead's objection was not to the applicant and its intended operation per se; rather it was a concern about what *might* happen with a future operator of the business and a desire to see rule ICr.42A invoked for this application.
38. The Planner's Report is clear: the application complies with Council requirements – the application was approved. It is not the role of this Committee to usurp the role of council planner and to second guess the planner's advice. In our view we are entitled to rely on that report. If the objector wishes to challenge the report there are other avenues open for them to do so.
39. It is well established that our function is an evaluative assessment of risk.⁶ In that context, "*A causal nexus is required between evidence to suggest that the grant of the application, contrary to the object of the Act, will increase the risk of alcohol abuse and the relevant risk.*"⁷
40. While we understand the concerns raised by Mr and Mrs Whitehead their concerns are speculative. There is no evidence to support those concerns and by the future looking nature of new operator concerns, there cannot be. Put simply, there is no evidence to provide the required "*causal nexus*".
41. In our view, the evidence presented to the Committee establishes that the applicant is responsible and will conduct a business that is consistent with the locality and that s105 factors are satisfied. We are satisfied that the amenity and good order of the locality will not likely be reduced by more than a minor extent by the effects of the issue of the licence sought by the applicant.
42. Applying the overriding test as to whether granting the application is consistent with the object of the Act the Committee's concluded opinion is that the object is met and the licence should be granted.

⁶ See *Sogi Trading Ltd v Licensing Inspector Auckland City Council et ors* [2020] NZARLA 96 @ [117]

⁷ *Sogi* @ [118]

43. We therefore grant the application for the on licence to be issued following hours:

Monday – Wednesday:	11:00am – 11:00pm
Thursday – Saturday:	11:00.am – 2:00am the following day
Sunday:	11:00am – 11:00pm provided that where the following Monday is a public holiday the hours are 11:00am to 2:00am the following day.

The licence is subject to the following conditions:

- (a) the outside speakers are to be turned off no later than 11:00pm each day.
 - (b) the applicant is to ensure that no less than two (2) security personnel are on the Premises from 10:00pm until closing on Thursday – Saturday evenings (both inclusive).
44. We do not impose a condition regarding CCTV coverage in the courtyard but note incidents in that area are likely to be a matter for consideration when the licence is renewed.

DATED at NELSON this 17th day of September 2025


B R Fraser
Chair
Nelson District Licensing Committee

Sound Management Action Plan

Frances “Fanny’s” Nelson

Frances “Fanny’s” Nelson is a multi-faceted hospitality operation, located within the central city of Nelson. We pride ourselves on our live music offering, however we are aware this comes with a responsibility to mitigate the impact that this activity may have on the area around us.

Given we are yet to be in full operation, this management plan is fluid and will require regular updating to ensure it achieves the desired outcomes.

This management plan is aimed to minimise the effects of amplified music operating within Fanny’s on the surrounding residential tenants. Please be aware that this is the most recent copy and may indeed be different in coming months/ years.

1. Keeping affecting doors closed

We have identified that the east facing door is a high contributor for the sound emissions most likely to affect our closest neighbours, therefore we maintain this door being closed during live music performance from 9pm or later. Due to this door being a Fire Exit, we are unable to keep this door permanently shut/ locked so we do so by stationing a security guard outside this door with their job being to ensure it is kept closed at all times where possible.

2. Turning off outside speakers

We have identified that our outside speakers could be a moderate contributor for the sound emissions most likely to affect our closest neighbours, therefore we ensure that these are turned off from 9pm every night.

3. Drummers instructed to bring brushes/ muffle drums

All drummers are required to bring brushes and/or provide muffling for their drum kit to reduce their onstage volume during performances. As a band’s overall amplified volume needs to be consistent across all instruments, a loud drumkit means the sound technician has to bring the rest of the band’s instruments up to a similar volume, disabling them from being able to keep the overall volume down.

4. Programming

Careful programming is applied to our weekly schedule, ensuring any louder band performances are featured in the weekends, while the acts that result in lower sound emissions are featured on the early nights of the week.