

TASMAN DISTRICT LICENSING COMMITTEE

Decision No. 002/ON0256/2025
002/OF0227/2025

Under

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

AND

IN THE MATTER

of an application by **RJ & C Enterprises Limited** for renewal of ON and OFF licences pursuant to section 127 of the Act in respect of premises situated at 191 High Street, Motueka and known as Sprig & Fern Motueka.

AND

Decision No: 002/MGR3273/2025

IN THE MATTER

of an application by **Raymond Francis Cusack** for the renewal of a manager's certificate pursuant to s 224 of the Act.

BEFORE THE TASMAN DISTRICT LICENSING COMMITTEE

The TASMAN DISTRICT LICENSING COMMITTEE (DLC)

Chairman: Brent Maru

Members: Graham Caradus
Jean Hodson

Hearing at Motueka Library, Motueka on 28 February 2025

The Applicants:

For ON0256 (51/ON/038/2024) and OF0227 (51/OF/034/2024)

RJ & C Enterprises Limited - represented by Janet Margaret Sim and Raymond Francis Cusack

For MGR3273 (51/CERT/079/2023)

Raymond Francis Cusack

Appearances

Ms Tracy Waddington	Licensing Inspector at Tasman District Council
Sgt Stephen Savage	Alcohol Harm Prevention – Nelson Bays Police
Ms Anne Price	Ministry of Health - Te Whatu Ora

DECISION OF THE TASMAN DISTRICT LICENSING COMMITTEE

INTRODUCTION

1. The DLC has before it the following two matters:
 - a. an application by **RJ & C Enterprises Limited** for the renewal of ON and OFF licences pursuant to section 127 of the Act in respect of the premises at 191 High Street, Motueka, known as Sprig & Fern Motueka (the premises); and
 - b. an application by **Raymond Francis Cusack** for the renewal of a manager's certificate pursuant to section 224 of the Act.
2. RJ & C Enterprises Limited applied for the renewal of their ON and OFF licences in respect of the premises on the 20 August 2024.
3. The applications for the renewal of RJ & C Enterprises Limited for ON and OFF licences listed the directors and shareholders of the company as Janet Margaret Sim 25%, Raymond Francis Cusack 25% and Clinton Victor Bloomfield 50% respectively.
4. Raymond Francis Cusack applied for the renewal of his manager's certificate on 13 September 2024.
5. Mr Cusack disclosed a conviction of driving with an excess breath alcohol (10 September 2024) within his application for the renewal of his manager's certificate.
6. Police, with Mr Cusack's agreement, made a section 285 application to The Alcohol Regulatory and Licensing Authority, (ARLA), under the Act. The decision of the Authority [2024] NZARLA 224 established that Mr Cusack on the 18 August 2024 was processed by Police for driving with an excess breath alcohol concentration. He registered an excess level of 772 micrograms per litre of breath. On 10 September 2024 he was convicted in the Nelson District Court, fined \$780 and disqualified from driving for six months. This is his second conviction; he was previously convicted of driving with an excess breath alcohol in 2012.

7. ARLA imposed a 28-day suspension on Mr Cusack's manager's certificate for the period of Tuesday 22 October until Monday 18 November 2024 inclusive.
8. The reporting agencies in their reports, (Police -19 September 2024, Medical Officer of Health – 11 September 2024 and the Licensing Inspector – 14 November 2024) offered no opposition to the application of renewal of RJ & C Enterprises Limited ON and OFF licences and offered no opposition to the renewal of Mr Cusack's manager's certificate.
9. The applications were considered on 21 November 2024 by the DLC as prescribed in section 134 of the Act, (on papers). At this meeting the Chair considered section 105(1)(b) and resolved to convene a full meeting of the DLC to review the application for the ON and OFF licences for RJ & C Enterprises Limited and the renewal manager's certificate for Mr Cusack.
10. On the 28 November 2024, the DLC convened as prescribed in section 134 of the Act to consider both RJ & C Enterprises Limited's application for the renewal of the ON and OFF licences; and the application for renewal of Raymond Francis Cusack's manager's certificate, (on papers). The DLC recognised that the applicants, RJ & C Enterprises Limited and Mr Cusack had been issued a one-year licence previously following their purchase of the Sprig & Fern Motueka, which is essentially considered a "probationary" period. Within this probationary period, Mr Cusack, had been convicted of driving with excess breath alcohol. The DLC was unable to satisfy itself on the suitability of the applicants, (on papers) and therefore decided to convene a public hearing to consider the applications as prescribed in section 202(1) of the Act.
11. The notice was issued by the DLC for a Public Hearing to consider the application for the renewal of Raymond Francis Cusack's manager's certificate and RJ & C Enterprises Limited application for renewal for both the ON and OFF licences for the premises.
12. On 4 December 2024, a Controlled Purchase Operation, (CPO) was undertaken in the Tasman District by Police and an Inspector involving two 17-year-old volunteers. One of the venues visited was the Sprig & Fern Motueka. On this occasion, alcohol was sold to minors by Mr Cusack, who was also the certified

manager on duty at the time. Mr Cusack acknowledged making the sale. Police have filed a section 285 application for suspension or cancellation of the manager certificate to ARLA. The outcome of the section 285 application has not yet been determined.

13. On the 19 February 2025, the DLC issued a memo 001/ON0256/2025, 001/OF0227/2025, 001/MGR3273/2025 requesting a copy of the Certificate of Incorporation (printed 19/2/25) to be provided to all parties confirming current directors and shareholders of RJ & C Enterprises Limited. This Certificate stated that Mr Clinton Bloomfield was removed as a director on 26 July 2024.
14. Updated reports from the reporting agencies have been received (Police 28 February 2025, Medical Officer of Health 11 February 2025 and the Licensing Inspector 14 February 2025). Whilst some concern was highlighted in the reporting agencies reports, no opposition was lodged against the renewal application for RJ & C Enterprises Limited in regard to the ON and OFF licences. Police and the Licensing Inspector entered opposition for the renewal of Mr Cusack manager's certificate.
15. The criteria for renewal the DLC must have regard to are set out in the Act:
 - a. In the matter of the application for renewal by RJ & C Enterprises Limited section 131 (a), (c) and (d) must be given regard to by the DLC.
 - b. The application for the renewal of the manager's certificate for Mr Cusack must give regard to section 227 (a), (b), (c) and (d).

AT THE HEARING

The Applicant

16. Neither of the applicants submitted any evidence prior to the hearing.
17. Ms Sim and Mr Cusack appeared in person. The applicant opened their submission acknowledging the facts of the events as they were outlined in the evidence presented by the reporting agencies and there was no dispute with the evidence that was presented.

18. Ms Sim stated that they had researched what some likely consequences of the hearing could be. The DLC refocused Ms Sim to present on the positive aspects and improvements that had been made.
19. Ms Sim stated that *“they considered themselves custodians of a space. Number one is social connection so that our community has a space, especially females they can come on their own, families, our young ones, youth. That they are socialising in a controlled environment, and it is healthy, they don’t have devices and it is just back to basics. I am really proud of the vibe / culture that we have created”*.
20. Ms Sim also works in education and *“likes to see the young people come through to the Sprig. For my family it is a healthy relationship with alcohol, my mum never drinks, my dad did but it was always a fun experiencing socialising around it. It was never unhealthy. I am aware of children and families where it is unhealthy. I just like to supply that space where it is safe”*.
21. Ms Sim said *“I come from a coaching background and our staff are a team. We have our leaders and young ones and are always modelling. Everyone has each other’s back. Communicate throughout our shifts, through emails. I know our team read the emails as I get questions for clarification. We don’t sit in a meeting just to have a meeting, but we are proactively communicating”*.
22. Ms Sim stated that *“Feedback from our community – we are always talking with them, mingling with our community. We are open to people coming in and we have two ladies wanting to organise a connect night, have quiz nights, an art night. The Sprig & Fern is a good brand. We are really good at looking after our locals, but we love tourists, and we receive really great feedback which relates to the awesome work our team does”*.
23. Ms Sim stated that *“We are still finding our way always learning but has been a successful time since we have been there”*.

24. The Applicant responded to questions from the DLC stating.
- a. Since the CPO we have all come together.
 - b. A staff member has completed their Licence Controller Qualification (LCQ) and they have come back and shared their learning.
 - c. We have talked about what to do if someone looks under 25.
 - d. I feel we have given the staff the confidence to manage the supply of alcohol to minors.
 - e. Ms Sim advised that there had been no changes to the point-of-sale system.
 - f. Mr Cusack advised that improvements made to mitigate the sale to minors had resulted in a handwritten date being written and stuck to the till each day to provide staff with the date at which all purchasers had to meet.
 - g. An additional staff member has received their manager's certificate.
 - h. The Directors had met with the Sprig & Fern franchise holder and explained what had happened. Ms Sim advised that an offer of help from the franchisee was made, however Ms Sim said they did not want to impose.
 - i. Both Mr Cusack and Ms Sim explained to the DLC that they were both still engaged in external employment, Ms Sim in education and Mr Cusack within the building industry and that workload and external stresses and worry had been high.
 - j. Ms Sim confirmed that they are members of Hospitality New Zealand.
25. The DLC, through questioning, confirmed that the directorship and shareholdings of RJ & C Enterprises Limited, now differ to that disclosed within the application for renewal dated 20 August 2024. Clarification about the changes referring to the particulars of the directors for RJ & C Enterprises Limited showed that Mr Clinton Bloomfield was listed as ceasing to be a director as of 26 July 2024. Ms Sim advised that Mr Bloomfield was financially involved with the lease and the

business through a transition period over December 2024 / January 2025 until various financial and lease matters were settled.

26. Ms Sim confirmed that the current directorship / shareholding is held by Janet Margaret Sim 50% and Raymond Francis Cusack 50%. The change in directorship/shareholding was not advised to ARLA within the required 10 working days. The requirement to do this is clearly stipulated within the letter from the Tasman District Council accompanying the issued licence.
27. In questions relating to Mr Cusack's managers certificate the DLC were informed:
 - a. Mr Cusack worked across multiple jobs and as a result worked long hours and was experiencing stress at the time of the failed CPO.
 - b. Mr Cusack explained details leading to his driving with excess breath alcohol conviction and explained that on the night he had stayed on at the premises with a friend and had a few drinks. Mr Cusack said his friend walked home and Mr Cusack made the decision to drive and was subsequently stopped and tested by Police.
 - c. The DLC asked Ms Sim if she had a "gut feeling" that Mr Cusack may drive home, Ms Sim answered "yes".
 - d. Mr Cusack accepted his lack of judgement and pleaded guilty to the charge and agreed to the section 285 application to ARLA.
28. The DLC sought to gain clarity regarding Mr Cusack's relationship with alcohol and, more so, his respect for the legislation in relation to the minimisation of harm from the sale and supply of alcohol. Mr Cusack in reply took ownership of his actions and understood the potential consequences of these actions. He advised that following the conviction for driving with excess breath alcohol he had refrained from consuming alcohol for a few months and has limited his intake.

29. Mr Cusack stated that he had previously been tested under a CPO and had in that instance correctly checked identification of the customer and correctly declined the sale. Mr Cusack was unable to recall the date of the earlier CPO, however, the Licensing Inspector was able to confirm the CPO date, but did not have any detail on who the staff member was at the time. The DLC have no reason to doubt Mr Cusack's statement that he was at that time the staff member who refused the sale to a minor.

Police

30. Sergeant Steve Savage has policed in Nelson Bays for 26 years and currently works in the Alcohol Harm Reduction and Community role. As part of his role, he reports on licence applications and conducts compliance and enforcement under the Sale and Supply of Alcohol Act.

31. Sergeant Savage presented his brief of evidence to the DLC regarding the applications from RJ & C Enterprises Limited and Raymond Francis Cusack:

- a. RJ & C Enterprises Limited has two directors, Raymond Cusack and Janet Sim, these directors also hold 50% shares each.
- b. Mr Cusack was processed for driving with excess breath alcohol on the 18 August 2024. His breath reading was 772 micrograms of alcohol per litre of breath.
- c. The limit for driving is 250 micrograms of alcohol per litre of breath.
- d. Mr Cusack appeared in the Nelson District Court on the 10 of September 2024 and was convicted on the charge. He was disqualified from driving for 6 months and fined \$780.
- e. At the time of this offence Mr Cusack held a duty managers certificate.
- f. It is noted that Mr Cusack had previously been convicted for driving with excess breath alcohol on the 5 November 2012. Mr Cusack was not a duty manager when the 2012 offence was committed.

- g. Sergeant Savage met with Mr Cusack on the 14 September 2024 and discussed the drink driving incident and Mr Cusack signed an agreed summary of facts and agreed to suspension documents which were forwarded to the ARLA along with a section 285 application.
- h. Sergeant Savage at this meeting stated that he “made it clear that any further offending would put his suitability in question”. Sergeant Savage stated “he”, meaning Mr Cusack understood that.
- i. ARLA agreed to hear the matters “on the papers” and issued decision **2024 NZARLA 224**, suspending the managers certificate of Raymond Cusack for 28 days, the dates for the suspension being 22 October to 18 November 2024 inclusive.
- j. On the 19 of September Sergeant Savage reported to the Tasman DLC no Police objection to the renewal applications and the managers certificate renewal. That report noted the 2012 conviction as well as the 2024 conviction and ARLA action.
- k. On the 4 December 2024 Police and Deirdre O’Grady from the Tasman District Council Licensing team carried out a CPO with two 17 year old volunteers. We visited a number of premises in the Tasman area.
- l. At 5.30pm the two volunteers entered the Sprig & Fern Motueka. They approached the bar and were served by Mr Cusack.
- m. The volunteers asked for two pints of berry cider, Mr Cusack poured the pints which was 4% alcohol volume. He then asked for one of the volunteers for ID which was provided.
- n. The ID was the real driver’s licence for the volunteer and correctly showed that he was 17 years of age.
- o. Mr Cusack checked the ID then accepted payment for the cider.
- p. The volunteers took their drinks to the outside area and advised me that they had purchased alcohol.

- q. I entered the premises and spoke to the volunteers, they pointed out Mr Cusack as the seller, he was visible from where the boys were seated.
- r. I then spoke to Mr Cusack and noted his name was displayed as the duty manager.
- s. Mr Cusack acknowledged making the sale and said that he had a lot on his mind, he added that he had a quick look at the identification but got the date wrong.
- t. An agreed summary of incident was completed and sent to the Authority along with s280 and s285 applications. The Authority have not actioned the applications and appear to be waiting for the outcome of this DLC hearing.
- u. There had been no other issues or incidents of concern for the premises.
- v. On the 4 December whilst speaking to Mr Cusack about the CPO failure I asked him to show me the Point of Sale (POS) process to see what prompts show up on the screen, particularly around proof of age.
- w. There is a small date in the top corner of the screen which says the purchaser must be born before (shows date). It was hard to see and when a drink was selected from the menu it went to another screen where the date no longer appeared.
- x. There were no prompts asking if the purchaser appeared under 25 nor any prompts where the seller would need to type in the purchaser's date of birth.
- y. The POS system was not well suited for evidence of age reminders. I gave advice to Mr Cusack to improve this system and gave examples of systems used at other licensed premises.
- z. I will be interested to hear if this advice has been taken on board by Mr Cusack.
- aa. In regard to the ON and OFF licence applications I still have no objection to their renewal, however, I would like to be satisfied that better systems and training have been implemented.

- bb. The CPO failure is the only incident of concern for the ON licence. If the POS system has improved my concerns are allayed.
 - cc. In regard to the managers renewal application for Mr Cusack I have changed my stance and believe firmly that his managers certificate should not be renewed.
 - dd. If the CPO failure had occurred prior to my initial reporting for the renewal, then I would have opposed the renewal on suitability grounds.
 - ee. The recent drink driving conviction and selling alcohol to minors within a short time frame calls into question his suitability.
 - ff. This is aggravated by the fact that this happened within the one year issued with his 'probationary' manager's certificate.
32. In response to questions from the DLC, Sergeant Savage stated that:
- a. He strongly re-stated his disappointment that the Applicants had made little effort to improve systems, specifically the updating of the POS system.
 - b. His evidence regarding Mr Cusack only checking the ID for one of the CPO volunteers remained as stated within his evidence.
 - c. In reply to the DLC about what he considered would be a likely outcome of the section 280 application to ARLA, Sergeant Savage responded that for first time breaches this would normally be a suspension of licence for a period of 48 hours, however, it is uncertain at this time if ARLA will consider this "on papers" or convene a hearing considering Mr Cusack's previous conviction.

Medical Officer of Health

33. Ms Anne Price is employed by Health New Zealand – Te Whatu Ora as the Alcohol Licensing Officer reporting on Alcohol Licensing matters on behalf of the Medical Officer of Health.
34. Ms Price confirms that she holds full delegation from the Medical Officer of Health pursuant to section 151 of the Sale and Supply of Alcohol Act 2012. This covers Nelson, Tasman and Marlborough areas.
35. Ms Price has held the Public Health Alcohol Licensing position for the past nine years.
36. Ms Price presented her brief of evidence to the DLC regarding the applications from RJ & C Enterprises Limited:
 - a. The three directors of RJ & C Enterprises Limited are Raymond Cusack, Janet Sim and Clinton Bloomfield.
 - b. I inquired into this ON and OFF licence application, which included an onsite meeting with Janet Sim and Raymond Cusack (5/9/24) and I submitted a no opposition report (11/9/24).
 - c. During my inquiry I was not aware of the excessive breath alcohol offence by Mr Cusack.
 - d. Since submitting my report, I have been made aware of a failed CPO at Sprig & Fern Motueka (4/12/24). Mr Cusack was the manager on duty and the seller of alcohol to the underage person.
 - e. Two offences in a relatively short time frame does not reflect favourably in regard to the suitability of Mr Cusack.
 - f. The Medical Officer of Health does not have a role regarding certification of managers.
 - g. At the time of submitting this document I had received confirmation from the DLC Secretary (via email – 11/2/25) that no brief of evidence and / or submission had been received from the applicant with no reason provided.

- h. I am here today to assist the DLC where I am able.
37. In response to questions from the DLC, Ms Price confirmed that:
- a. The Medical Officer of Health does not have a role regarding the certification of managers but did offer comment, “Two offences in a relatively short time frame does not reflect favourably in regard to the suitability of Mr Cusack”.
 - b. On behalf of the Medical Officer of Health, Ms Price did not oppose the renewal of RJ & C Enterprises Limited but would like to see improvements in systems and training.

The Licensing Inspector

38. Ms Tracy Waddington is an Alcohol Licensing Inspector at Tasman District Council, a position she has held for 16 years. Her role includes undertaking enquiries into alcohol licensing applications and reporting to the DLC under the Sale and Supply of Alcohol Act 2012 s103(2) and 141(2). As an Inspector Ms Waddington acts independently when exercising and performing functions and powers under the Act.
39. Ms Waddington presented her brief of evidence to the DLC regarding the applications from RJ & C Enterprises Limited and Raymond Francis Cusack:
- a. The directors of the applicant company are Raymond Francis Cusack and Janet Margaret Sim and they each hold 50% of the shares of the company.
 - b. I submitted my report on the renewal of the ON and OFF licence applications and Mr Cusack’s manager’s certificate renewal application on the 14 November 2024.
 - c. No opposition was raised to any of the applications.
 - d. The report noted Mr Cusack’s excess breath alcohol conviction and the subsequent four-week suspension of Mr Cusack’s manager’s certificate issued by ARLA.

- e. My report noted that while this was a very regrettable incident, given assurances by Mr Cusack that it would be an isolated aberration, no opposition was entered.
- f. No oppositions were submitted by either Police or MOH.
- g. As the Act provides at section 202(1) on this occasion, the DLC elected to convene a public hearing to consider the application.
- h. On 28 November 2024 a hearing was set down for 28 February 2025.
- i. On 4 December, a CPO was undertaken in the Tasman District by Police and an Inspector involving two 17-year-old volunteers.
- j. Alcohol was sold to the minors by Mr Cusack, who was also the manager on duty at the time.
- k. Mr Cusack has acknowledged making the sale and a section 280 application to ARLA has been made but has not yet been determined.
- l. It is possible that ARLA is waiting for the outcome of this hearing before considering the application.
- m. As stated previously, the renewal applications were not opposed at the time of writing for reasons I have explained.
- n. If the CPO failure had occurred prior to the finalisation of my reports, my conclusions would likely have been different.
- o. In relation to Mr Cusack's application for the renewal of his manager's certificate, the first year following the grant of a certificate is considered to be the probationary year.
- p. In this time, Mr Cusack has demonstrated a lack of regard to the responsibility placed on managers under the Act and I have little confidence that this will change.
- q. I submit that the application for the renewal of a manager's certificate should be declined.

- r. In relation to the substantive licences, the CPO failure is the single blemish in the record of the licensee who has been trading in these premises since 12 June 2023, initially under a Temporary Authority and then under the current licence, which was issued 21 September 2023.
 - s. It is clear that an improvement in systems and training is required to be implemented in the premises, however, to date no information in regard to this has been provided.
 - t. With such improvements in place, I have no opposition to the renewal of the substantive licences.
 - u. It is noted that as the applicant failed to produce any evidence or submissions by the required date, any matters that the applicant may have raised have not been able to be addressed.
40. In response to questions from the DLC, Ms Waddington confirmed that:
- a. The Sprig & Fern Motueka had been subject to an earlier Controlled Purchase Operation on the 11 August 2023. Ms Waddington could not confirm who the staff member who refused the sale to the minor was with the information available to her at the time.
41. The DLC prior to taking a short adjournment encouraged the reporting agencies and the Applicant to engage in discussion so that the Applicant could gain understanding of the expectations that were contained within the reports prior to closing submissions. The adjournment also provided a short period of time for the reporting agencies to consider any final closing statements after hearing the verbal evidence provided by the Applicant.
42. Prior to adjournment Ms Sim stated that what she has heard from the reporting agencies is that *“we haven’t presented any changes or taken on any changes. It just sounds like we need to get organised with our systems”*.
43. The DLC had no further questions for the Applicants nor the reporting agencies.

CLOSING SUBMISSIONS

Police

44. In answer to the DLC's question the time of the Drink Driving incident, it was 0214hrs.
45. Regarding the ON and OFF licence during the break, I discussed with the Applicant the POS upgrade and gave them a name of a premises that had been through something similar.
46. Discussed the training incident register to be implemented.
47. Prior to this incident I had spoken to Tracy Banner about implementing some training with all of the Sprig & Fern franchises throughout Nelson Bay. Due to incidents around New Years Eve my availability was reduced, I am still looking to do this training around March 2025.
48. Police have no objection to the renewal of the ON and OFF licences but would respectfully recommend that the renewal be truncated if the DLC agrees to a 12-month period that would allow us monitor, have meetings and ensure compliance and then visit it in the 12-month period. This has been done with other premises and managers previously. This can be a valuable tool to ensure the changes do get taken up effectively.
49. Regarding the renewal of the managers certificate for Mr Cusack, I still object to his renewal, he has not convinced me otherwise. Mr Cusack has provided no evidence of steps he has taken to not drink drive again, such as counselling. As previously mentioned, I was very disappointed to see that the POS improvements weren't taken up as I had discussed those with him on the 4 December. Instead, he has taken up the easiest but least effective fix.
50. CPO volunteers did look young, dressed appropriately and a photo of the volunteers was offered to the DLC to view. The DLC did not seek to view the photo of the volunteers.

Medical Officer of Health

51. As suggested by the Chair the reporting agencies have had a discussion with the Applicants and the discussion included aspects regarding enough certified managers, contacting Tracy Banner for staff training, going to a premises that was suggested to them to review their till system, and there was recognition of their work overload. They indicated that they would look at these measures and anything else that could be reviewed.
52. No opposition for the renewal of an ON and OFF Licence truncated for one year.

The Licensing Inspector

53. When we consider the criteria for the renewal of a manager's certificate s227 there are a number of elements:
 - a. the applicant's suitability to be a manager
 - b. any convictions recorded against the applicant since the certificate was issued
 - c. the manner in which the manager has managed the sale and supply of alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol related harm
 - d. any matters dealt with in any report made under section 225
54. Unfortunately for Mr Cusack he has incurred both a conviction and a serious breach of the Act since the managers certificate was issued. Breach of s227(b) and (c) and obviously the suitability of the manager is what we have discussed today.
55. There is some quite recent caselaw "Ole Ltd and Bengel" where ARLA stated, *"put simply a person cannot be considered suitable to be a licensee or holder of a manager's certificate if they themselves cannot safely and responsibly consume alcohol. Also, when their consumption relates to convictions"*. The case was appealed to the High Court and was upheld.

56. My position on the renewal of Mr Cusack's certificate remains unchanged. Similarly to Steve what I have heard today from Mr Cusack has not been sufficient to convince me of any real changes and I oppose the renewal of the certificate.
57. Despite this if the DLC are of the mind to renew Mr Cusack's certificate then a truncated renewal of 12 months could be considered.
58. As we have discussed, improvements in systems and training are required for me to be satisfied that compliance with the Act can be maintained in respect to the substantive licences. Following our discussions in the break, I believe that Ms Sim and Mr Cusack now understand what is required of them in relation to these.
59. If the DLC are of the mind to issue renewal, there are a number of options available:
 - a. To hold off on the issue of the licences for a short period to allow implementation of the improvements to the POS system, staff training and to my mind recruiting of at least one other suitable duty manager. At the end of a short period supplementary reports could be submitted to the DLC and if no opposition was at this point, could then issue the licences based "on the papers".
 - b. The DLC may wish to consider a truncated renewal period for the licence – namely another probationary period if they are of the mind to renew the licences.
 - c. As stated in my original submission with the improvements that have been discussed to systems, staff and training I have no opposition to the renewal of the licences albeit I believe a one-year licence renewal period would be most appropriate in this case.

The Applicant

60. Mr Cusack stated, “that during the break I had phoned the POS provider, and a fix will be implemented today”.
61. Mr Cusack stated that he “accepted that he had not convinced the reporting agencies of his suitability. Since the drink driving incident, I had stopped drinking for two months and now drink occasionally, just one or two. I don’t know how to convince you of my suitability any other way”.
62. Ms Sim apologised for not doing the changes, *“it wasn’t that we didn’t want to, just got a bit busy. It has pointed out that maybe we are too busy, which requires even more robust systems. I have communicated with Tracy (Sprig & Fern Franchisee), and she is happy to go over systems which we will do and it seems silly now it was a phone call and now the POS machine is in play. It points out to us that we have to do a few more changes so we are a bit more onto it with our systems”*.
63. Ms Sim’s stated that “Ray did stop drinking and just has one or two now and it is not every day”.

PRELIMINARY DECISION

64. The DLC reserved its full decision to be provided in writing, however, issued preliminary findings:
65. After considering the evidence before the DLC:
 - a. We have not heard sufficient evidence that favours the granting the renewal of a manager’s certificate for Raymond Francis Cusack. For clarity until the final written decision is issued, Mr Cusack retains his current manager’s certificate which provides a period of time to make provisions to cover the foreseen loss of Mr Cusack’s manager’s certificate.
 - b. It is the DLC’s interim finding that improvement is required to systems and training, the DLC accepts the stresses of working in business but the responsibilities of managing and owning a premises that sells alcohol has to be foremost.

- c. The DLC considered the recommendation from the Licensing Inspector regarding pausing to allow for improvements and requesting subsequent reports back from agencies, however the DLC indicates a preference to a one-year truncated renewal of both the ON and OFF licences which in essence is a further probationary year.

The DLC's Consideration – RJ & C Enterprises Limited

66. The application for the renewal of the ON and OFF licences by RJ & C Enterprises Limited, trading as the Sprig & Fern, Motueka is under section 127 of the Act. Whilst the reporting agencies sought improvements in systems, (specifically the upgrading of the POS system) and training there was no opposition from Police, Medical Officer of Health or the Licensing Inspector.
67. The DLC take this opportunity to clarify the directorship/shareholding of RJ & C Enterprises Limited. There are some discrepancies that the reporting agencies have not addressed within their reporting regarding the change in directorship/shareholdings of the Company. The application form for the renewal of the directorship/shareholdings are listed as Janet Margaet Sim 25%, Raymond Francis Cusack 25% and Clinton Victor Bloomfield 50%. Documents obtained from the Companies Registrar records Mr Bloomfield ceased to be a director of RJ & C Enterprises Limited on the 26 July 2024. Ms Sim provided a fuller explanation in that the transfer of lease and other financial matters were finalised over December 2024 – January 2025. Regardless of the timing it appears that RJ & C Enterprises Limited has failed to meet their obligation to inform ARLA of these changes.
68. The directors of the applicant company, RJ & C Enterprises Limited are confirmed as Raymond Francis Cusack and Janet Margaret Sim and they each hold 50% of the shares in the company.
69. The DLC had thorough and considered reports and evidence from each of the reporting agencies and accept that in their view the application of RJ & C Enterprises Limited meets the requirements of section 131 of the Act.
70. The DLC gave regard to section 131(a) and as such focused its attention to section 105(a), the object of the Act as set out in section 4.

71. The DLC has taken the approach that was set out by the Minister when this legislation was introduced to Parliament. It clearly signalled a new system of control. The object of the Act was not about the prohibition of alcohol but about the minimisation of harm. This further means it has a responsibility to consider all the evidence and then be satisfied that the management of this premises meets the object of the Act.
72. The fact that the sale of alcohol to a minor through the CPO was made by Mr Cusack must not be overlooked, nor dismissed lightly. The DLC considered whether the failure was one of solely poor judgement and practice by Mr Cusack who was both the identified certified manager and person responsible for the sale to a minor or whether a lack of proper systems was an underlying or contributing cause. The DLC accepted that Mr Cusack undertook a check of the ID for the failed CPO, but determined that on this occasion Mr Cusack made an error in judgement, that was not assisted by the POS system.
73. The DLC gave regard to section 131(c) recognising that whilst improvements were sought to systems and training there was no opposition from the reporting agencies.
74. The DLC then gave regard to Section 131(d) and considered the failed CPO. This was the first concern raised related to the ON-licence for RJ & C Enterprises Limited. It was also noted that on the 13 August 2023 a successful CPO was undertaken where no sale to a minor was made.
75. The reporting agencies through written evidence and closing statements all identified the current POS system as inadequate. Police gave a written statement about the vulnerability of the current POS system.
76. The Agencies, although not opposing the renewal of the ON and OFF licences, all sought for an improvement in the systems and recommended a truncated one-year period should a renewal be granted.
77. There has been no evidence presented to the DLC to suggest that the granting of renewal of the ON and OFF licences for RJ & C Enterprises Limited within this application will result in an increase in harm to the Community. In verbal evidence given by Ms Sim she stated that her philosophy of *“being the custodians for a*

space. A space that allows connection, a safe space in a controlled, healthy environment” was a key focus.

78. It is apparent from the hearing that Ms Janet Sim as noted in the licence application does hold a managing role within the business and as such the DLC is confident that the licence renewals can be approved.
79. The DLC is aware that ARLA is yet to make a determination regarding the Police s280 application under the Sale and Supply of Alcohol Act 2012 regarding the failed CPO and this outstanding determination from ARLA has not factored into the decision of the DLC.

The DLC’s Considerations - Manager’s Certificate – Raymond Francis Cusack

80. This application for the renewal of Mr Cusack’s manager’s certificate under section 224 of the Act was not previously opposed by Police and the Licensing Inspector in the initial reporting, but following the failed CPO on the 4 December 2024, both Police and the Licensing Inspector now both oppose the renewal of the manager’s certificate for Raymond Francis Cusack.
81. The DLC has been presented with evidence that calls into question Mr Cusack’s relationship with alcohol. Specifically the recent driving with excess breath alcohol conviction on 10 September 2024 and his previous 2012 conviction must be given regard to as stated in section 227(b) of the Act.
82. Giving regard to section 227(c) the DLC must consider the failed CPO and finds that whilst poor systems contributed to the failure – the key factor was a lack of judgement and attention of Mr Cusack.
83. The DLC must also give regard to section 227(d) and reporting agencies, (Police and the Licensing Inspector) both submit opposition for the renewal of Mr Cusack’s manager’s certificate.
84. Through Mr Cusack’s evidence he did attest to a previous successful CPO where he declined a sale to a minor on the 11 August 2024. Mr Cusack also gave evidence of working multiple jobs, and at the time of the failed CPO stated he was under stress.

85. The application for renewal by Mr Cusack for his managers certificate is made as his first renewal, following what is acknowledged and referred to as a probationary period. As such with consideration of the conviction for driving with excess breath alcohol and the failed CPO, the DLC determined that Mr Cusack failed to meet the criteria for renewal.
86. The DLC is aware that ARLA is yet to make a determination regarding the Police section 285 application under the Sale and Supply of Alcohol Act 2012 regarding the failed CPO and this outstanding determination from ARLA has not factored into the decision of the DLC

DECISION – RJ & C Enterprises Limited – Renewal ON and OFF licences

87. There has been no concern raised regarding the renewal of the OFF-licence for the premises. Nevertheless, it is the DLC's view that the concerns regarding the failed CPO and the need to improve systems is equally applicable to the applicant's OFF-licence as it is for the ON-licence. The DLC as such determined that any renewal and conditions would be considered concurrently for both the ON and OFF licences.
88. With a careful approach and after considering all of the evidence, it is for these reasons the application for renewal of the ON and OFF licences for RJ & C Enterprises Limited, trading as Sprig & Fern Motueka is hereby granted under section 135(1) for a period of 12 months. This 12-month period is essentially viewed as a further probationary period and the DLC expects the Applicants to engage support as required from either their Franchisee or through Hospitality New Zealand to secure training and ongoing improvement to their systems. The DLC have heard that the Sprig & Fern Motueka is generally a well-run business and valued by the community as a safe and generally well managed venue that sells alcohol.

DECISION – Raymond Francis Cusack – Renewal manager’s certificate

89. In the matter of the renewal of Raymond Francis Cusack’s manager’s certificate the DLC strongly believe that the holding of a manager’s certificate is one of responsibility and expectation, and holders of such positions must be held to a high standard. The DLC refuses this renewal based on Mr Cusack’s inability to meet the criteria as defined in section 227 of the Act.
90. The applicant’s manager certificate MGR3273 shall expire on the date of this decision.

DATED at Richmond this day 20th of March 2025



Brent Maru
Chairperson