

IN THE MATTER

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

AND

IN THE MATTER

of an application by **Golden Rays Limited** pursuant to section 31 of the Sale of Liquor Act 1989 for an Off Licence in respect of premises at 19 Carlyle Street, Napier, and known as Super Liquor Napier

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman: Mr D Fellows
Members: Cr R Lutter
Cr F White

HEARING at Napier City Council on Monday 10 February 2014

APPEARANCES

Mr C Shearer For the applicant
Mr S McDowell For the applicant
Mr R Kumar Applicant
Mr J Sheehan District Licensing Inspector – to assist

IN ATTENDANCE

Sergeant Ray Wylie NZ Police – to assist

Objectors

Mr G Thornton Assisting Kevin Redden, Bilbir Singh
Mr K Redden 7a Avondale Road
Mr B Singh 9 Balmoral Street
Ms T Appleby Nfinite Fitness and Health

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

1. This is an application by Golden Rays Ltd for an Off Licence pursuant to section 31 of the Sale of Liquor Act 1989 and shall be dealt with by this Committee under the authority provided by section 415 of the Sale and Supply of Alcohol Act 2012 under the provision of that Act pursuant to section 407.
2. The application relates to the premises at 19 Carlyle Street, Napier for a stand alone bottle store to be known as Super Liquor Napier. The shop is in the north west corner of a small courtyard style shopping area adjacent to a pizza parlour and shares parking facilities with a fitness centre. The premises lie within a designated liquor ban area and

whilst vacant at present had been operated as a bottle store in the past. A certificate has been issued by Napier City Council pursuant to the Resource Management Act 1991, confirming the proposed use as a retail liquor store meets the requirements of that Act. The owner of the premises has given consent for the proposed activity. A Building Code Compliance Certificate has been obtained confirming compliance with the NZ Building Code.

3. The Police, the Chief Liquor Licensing Inspector and the Medical Officer of Health do not oppose the application.
4. Public Notices attracted six individual objections within the required time frame.
5. Mr Shearer acting as lead for the applicant questioned the status of the objectors and requested the Committee to establish their standings at the conclusion of his opening submission.
6. At face value, only one objector Tessa Appleby appeared to have status as a person with a greater interest than the public generally, and was initially prepared to be heard. Two other objectors present at the hearing, Mr Kevin Redden and Mr Balbir Singh had representation and establishment of their status would have been heard when called to give evidence.
7. The applicant, Mr Rajiv Kumar, together with Suresh Goel, is a director and shareholder of the applicant company. He gave evidence on behalf of the applicant. The applicant operates another Off Licence in Hastings under the Super Liquor franchise .
8. Mr Kumar holds a General Manager's Certificate as does Mr Goel and a further Managers Certificate holder, Mr Pankaj Goel will manage the shop. Mr Kumar confirmed during cross examination that only certificated managers would be employed in the sale and supply of alcohol and accepted this as a condition of licence.
9. Whilst working as Duty Manager at Tuakau Liquor Centre, Manukau City in 2009, Mr Kumar had his General Manager's Certificate suspended for 3 weeks following a staff member making a sale to a minor in a controlled purchase operation. He has had a clean record since. Mr Kumar has become extremely careful in this matter since and has implemented a formal training programme.
10. Mr Kumar said that the other business in Hastings is well patronised by the community which they support through sponsorship to local clubs including R.S.A., golf, rugby and service clubs which they propose to continue in their Napier store.
11. Trading hours to sell liquor are sought between 8.00 am and 11.00 pm daily. Mr Kumar acknowledged that the proposed joint Local Alcohol Policy had hours much reduced which he would be happy to comply with when adopted, but meantime wished to trade with hours similar (but reduced) to other businesses in the area.
12. The applicant seeks to designate the premises as a supervised area.

13. The applicant through its franchisor has appointed the liquor licensing consultancy, Ignition Group Ltd and Mr Steven McDowell a consultant with the company, gave evidence in support of the application. He spoke of the training programme, answered the concerns of the objectors and addressed the criteria in respect of which regard must be had.

Reporting Agency

14. Neither the Police nor the Inspector oppose the application. In fact the Police while in attendance did not appear at the hearing. The Police report noted the suspension of Mr Kumar's General Manager's Certificate and confirmed that neither he nor Mr Goel had come to the attention of the Police since then.
15. Mr Jason Sheehan, the Napier District Licensing Inspector spoke to his report. Whilst summarising the objections received, no comment was made in respect of the validity of each but he stated the only criteria of section 105 that was relevant, related to the days and hours of operation.
16. All the criteria had been addressed to his satisfaction. With regard to suitability he stated *"the applicant company has been operating similar premises within the jurisdiction of the Hastings District Licensing Committee for some time. Inquiries with the Hastings Licensing Inspector and Police have indicated that the management and operation of these premises does not raise any concerns"*.

His only other less than positive statement related to systems staff and training, where he stated *"The applicant has supplied additional information detailing the appropriate systems staff and training to be put in place to ensure compliance with the law. Although much of the information contained within those documents is vague, the unambiguous details around systems, staff and training appear to be more than adequate"*.

Objections

17. Mr Gavin Thornton appeared for the objectors Mr Redden and Mr Singh and had confined himself to cross examining the applicant's witnesses and making his submissions. These matters were directed at the suitability of the applicant. Pursuant to section 102 of the Act objectors can only object to matters specified in section 105. However, section 102(4) states -

"An objection may be made only in relation to the suitability of the applicant if -

- a) The application relates to any premises for which a licence is in force; and**
- b) The applicant seeks conditions the same as applying to that licence.**

The ambiguity of this sub-section is not lost on the Committee.

Mr Thornton also referred to matters such as the design and layout of the premises, the amenity and good order issues and staff training.

18. Mr Thornton advised that his clients no longer wished to give evidence. This raises the issue as to whether an objector who fails to give evidence should be entitled to cross-examine and whether the Committee should take any notice of any evidence elicited as a result. The same issue arises in respect of submissions made by an objector who fails to give evidence.
19. The need to adjudicate on these issues becomes unnecessary as we are satisfied that the cross examination questions were satisfactorily explained and accounted for by the witnesses and had no outcome on the effect of this hearing. Furthermore, the status of the objectors was no longer relevant as no evidence was forthcoming. However, the Committee hold the belief that if an application is to be scrutinised and challenged then the applicant must have the opportunity to question the challenger.
20. Ms Tessa Appleby from Nfinite Fitness and Health, the business operated from a building adjacent to the proposed bottle store and sharing the same open courtyard car parking area, also stated she no longer wished to take the stand as she was satisfied having heard the evidence that her concerns had been answered.
21. All the objectors were addressed and their attention was drawn to the constant reminder by the Liquor Licensing Authority and the recently established Alcohol Licensing and Regulatory Authority of their decision in respect of objectors in *Liquor World Limited* [2009] NZLLA1189 –

“If objectors do not appear and no explanation is received for their absence, then it is likely that their objections will have no value. On the other hand if they appear and do not address the above criteria then their objection will also have little probative value”.

Mr Thornton acknowledged the address.

Decision of Committee and Reasons

22. Notwithstanding the application was submitted under the provisions of the Sale of Liquor Act 1989 it must be considered under the Sale and Supply of Alcohol Act 2012 with all its relevant requirements.
23. In considering an application for an Off Licence the Committee is directed by section 105 (1) of the Act to have regard to the following criteria –
 - (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 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 licenses 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 licenses:**
 - (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.**
24. The object of the Act principally in this instance is that the sale and supply of alcohol is undertaken safely and responsibly in order to minimise the harm caused by excessive or inappropriate consumption of alcohol. The franchise Host Responsibility Policy and training would appear to satisfy as far as practicable this requirement. The intention not to sell loss leaders or single bottle sales (bottles of alcoholic beverages containing less than 500 mls), their attention to sales to minors and patrolling of immediate vicinity within a liquor ban area, favours well for meeting the objective. Furthermore, the applicant’s commitment to only employ certificated managers in the sale and supply of alcohol satisfies us that the object of the Act has been met.
25. There were no adverse comments from the reporting agencies in regard to suitability. The applicant is an established operator and the inspectors enquiries into their business in the neighbouring authority, raised no concerns about the management or operation from the Police or Licensing Inspector.
26. There is no Local Alcohol Policy in place at the present time. The applicant was nevertheless aware of the Policy and its potential effect on their business.
27. We are satisfied that the hours sought by the application are appropriate. They are within the national default hours, meet Resource Management Act requirements and are in line with other and indeed less than most other nearby liquor outlets.
28. The proposed layout of the store appears to be satisfactory as the blind spot hidden from the counter area and the chiller room are served by a CCTV camera viewed from the counter, all other areas are clearly visible. Mr McDowell states in his evidence that the design adopts many of the Crime Prevention through Environmental Design guidelines produced by the N.Z. Police and the former Alcohol Advisory Council of N.Z.
29. The applicant does not propose to sell any other goods other than alcohol, packaged snack foods and a range of non-alcoholic soft drinks.

30. The applicant states that no other services are proposed.
31. Mr McDowell again provided comprehensive evidence that the amenity and good order of the locality was unlikely to be reduced by the issue of the licence. The only effect on the locality could be attributed to noise from vehicles driving in and out of the parking area. This was mitigated by its position on a major road, the proximity of the Countdown Supermarket entrance and exit of their large car park opposite and the inaudibility of internal noise generated from within the store.
32. We are satisfied that the issue of a further licence will not adversely effect the amenity and good order of the locality. Whilst there are 5 other Off Licence premises within 500 metres of the proposed store, three are supermarkets. All stores, as emphasised by Mr McDowell are on the Southern side of the thoroughfare therefore making access to this store more accessible to east travelling traffic.
33. The applicant has confirmed the installation of CCTV cameras, two of which will be in the car park. The area will be patrolled on an hourly basis at night which should ensure the likelihood of noise, nuisance and vandalism will be greatly reduced. Lighting will be installed in the car park and the loading area at the rear of the store.
34. The overriding effects of noise from other sources, the installation of CCTV cameras and lighting, patrols of the immediate vicinity of the shop which include a litter collecting exercise and the easy access to the store satisfy us that the provision of section 106 **“Considering effects of issue or renewal of licence on amenity and good order of the locality”** will not be compromised.
35. Super Liquor have ensured through its employment of a specialised alcohol licensing consultancy that staff training, training programmes and guidelines on business systems and processes are adequately managed. Every opportunity is provided for managers to continue with training programmes through the provision of a manual dealing with matters from the Act, minors, and from designations to armed robbery information.
36. No matters were raised by the reporting agencies.
37. The application is granted subject to the following conditions:
 - (a) **No alcohol is to be sold or delivered on Good Friday, Christmas Day, or before 1 pm on Anzac Day:**
 - (b) **No alcohol is to be sold or delivered on Easter Sunday unless the alcohol is grape wine or fruit or vegetable wine made –**
 - (i) **On the premises; or**
 - (ii) **From grapes or fruit harvested from land on which the premises are situated:**
 - (c) **Alcohol may be sold only on the following days and during the following hours:**

Monday to Sunday 8.00am till 11.00pm

- (d) The whole of the premises is designated as a Supervised area**
 - (e) The following steps must be taken by the licensee to ensure that the provisions of this Act relating to the sale of alcohol to prohibited persons are observed:**
 - (i) Appropriate signs must be prominently displayed adjacent to every point of sale detailing the statutory restrictions on the supply of liquor to minors and the complete prohibition on sales to intoxicated persons.**
 - (ii) All staff involved in the sale or supply of liquor to the public must hold a prescribed qualification in terms of section 218 of the Act.**
 - (f) Appropriate signs must be prominently displayed adjacent to every point of sale indicating the premises are located within the Napier CBD liquor ban area.**
 - (g) There must be no single sale of any alcoholic beverage in a container of less than 500 millilitres.**
 - (h) At any time while alcohol is being supplied free as a sample on the premises, drinking water is to be freely available to customers. This must be located and available from the same place at which the free sample is given.**
38. The licence will not issue until all signage requirements camera and lighting installations, and all other relevant matters are completed to the satisfaction of the Napier District Licensing Committee Chief Liquor Licensing Inspector.

Dated at Napier City Council this 18 day of February 2014

A handwritten signature in blue ink, appearing to read 'DE Fellows', with a horizontal line underneath the name.

**DE Fellows
Chairman**