

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **RICHMOND
LIQUORMART LIMITED** pursuant to
s. 17 of the Act for the issue of an
off-licence in respect of premises
situated at 3 Gladstone Road,
Richmond known as Black Bull
Liquor Richmond

BEFORE THE TASMAN DISTRICT LICENSING COMMITTEE

Chairman: Cr D J Ogilvie
Members: Mr D R Lewis
Mr L C Gabites

HEARING at RICHMOND on 20 November 2017

APPEARANCES

Mr Sahil Sharma – representing the applicant
Ms T Waddington – Tasman District Licensing Inspector – to assist
Ms A Price – under delegation from the Medical Officer of Health – to assist
Sergeant K Bruning – NZ Police – to assist

RESERVED DECISION OF THE COMMITTEE

Introduction.

[1] This application before the Committee is for the issue of a new off-licence for premises to be known as Richmond Liquormart Limited and trading as Black Bull Liquor Richmond, whose registered office is in Porirua. This company has several premises around the country and operates under the Thirsty Liquor brand. The applicant Sahil Sharma is a director of the company and it has been trading for some time. The business will trade as a stand-alone bottle store.

[2] Public notice of the off-licence application attracted 13 objections from residents who lived in Richmond and the surrounding rural area. All objections raised the issue that one more liquor outlet would impact on the amenity and good order of the area. None of the objectors wished to be heard at any hearing. There was no opposition from any of the three reporting agencies. However, because of the public objection the application was set down for a public hearing pursuant to s.202(3) of the Act.

The Applicant.

[3] Mr Sharma stated that the company had done due diligence and would bring to Richmond significant experience gained in operating similar operations elsewhere. He told the hearing that he has five years' experience in alcohol related business and that previously he had held several positions in New Zealand Companies. He is currently involved in 16 bottle stores in the lower North Island.

[4] Mr Sharma provided an outline of how he has operated in other locations with an emphasis on his responsibilities as a licensee. His company has been involved in the community by supporting several organisations. He has never failed a Controlled Purchase Operation and has never been issued with any infringement notices. He also outlined his familiarity with the Local Alcohol Policy.

[6] In response to questions Mr Sharma outlined the number of CCTV cameras that would be adequate to ensure that every part of the premises would be able to be seen. He also addressed traffic flow and parking and asked that we note this has been a commercial space for some time. He said he will take steps to ensure safe traffic movements out of the parking area either back onto Queen Street or through to Oxford Street. He responded to the objections associated with density and amenity and good order by suggesting that with three other stand-alone bottle stores already in Richmond one additional store would not create too many. His research had shown the population of Richmond and surrounding areas four stand-alone bottle stores would mean one store for every 3450 people. He also asked us to note the level of training he would provide staff, the number of staff and the processes they will have to deal with underage and intoxication issues.

[7] During the presentation of his evidence it became clear that Mr Sharma was a very responsible operator and saw the sale of alcohol as a privilege and not a right.

[8] What Mr Sharma is hoping to achieve is to provide a business that will not undercut the competition, but offer a good service.

[9] In answering a question Mr Sharma reiterated the undertakings he had given earlier to the Licensing Inspector as a part of the application process.

- There will be no prices or product advertising on the exterior of the premises
- There will be no single sale of ready to drink beverages (RTD's)
- There will be no sales of 'shots', 'bombs' or other single serve packages of spirits or liqueurs equivalent in strength to one or more standard drinks per package
- Except for craft beers, there are to be no single sales of any beer in containers under 500ml.

The Licensing Inspector.

[11] Ms Tracy Waddington has been a Licensing Inspector with the Tasman District Council for several years. In her report Ms Waddington did not oppose the application and stated that she did not believe the addition of another stand-alone bottle store would impact on the amenity and good order of the area. Whilst there was a school and church in the vicinity the locations of the shop did not place it on the usual route for pedestrians.

[12] Ms Waddington confirmed the hours applied for were 9am to 10pm Monday to Sunday but that during discussions with the applicant he indicated that the opening hours will likely be less. She indicated that those hours were not unreasonable and given they were likely to be less on some days she was happy to support them.

[13] In answer to a question on density Ms Waddington said she did not believe there was an issue with density given the location of the other stand-alone bottle stores in Richmond.

The Medical Officer of Health.

[14] Ms Anne Price is an Alcohol Licensing Officer & Health Promoter with full delegation from the Medical Officer of Health in accordance with section 151 Sale and Supply of Alcohol Act 2012. The delegation relates to the Nelson Marlborough Health District. She has 10 years public health experience and 1 years' experience in her current role. This application was received by the Public Health Service from the Tasman District Council to allow an inquiry into the application under section

103 (3) (a) Sale and Supply of alcohol Act 2012. Given the time frames for reporting and the initial risk assessment of the application an interim opposition to the application was lodged.

[15] Ms Price advised that a joint site meeting with the applicant was arranged and attended by Police, Licensing Inspector and the Public Health Service. The information gained from that meeting resulted in a full report dated 8 November 2017 in which the initial opposition to the application was withdrawn.

[16] Ms Price advised that a further site visit prior to opening was planned to ensure the layout as it was described by the applicant in the earlier meeting was achieved. She advised us that the licence hours applied for were in keeping with the Local Alcohol Policy and the applicant had a social responsibility policy in place. As is the case in the issue of a new licence the granting of the licence for one year is not opposed by Public Health. Ms Price advised us that as this was an application for a new licence then amenity and good order was hard to predict but on the information provided, location of the premises and discussions with the applicant she did not believe that the amenity and good order of the area would likely be reduced to more than a minor extent by the effects of the issue of this licence.

The Police

[17] Sergeant Kyle Bruning is the Alcohol Harm Reduction Officer for the Nelson Bays Police and has the responsibility to report on all applications made under the Sale and Supply of Alcohol Act 2012 for Police.

[18] Sergeant Bruning advised us he had met with the applicant at the same time as the other agencies and he found the applicant helpful and aware of his responsibilities. He had originally lodged an interim opposition on behalf of Police due to time constraints. Following the meeting with the applicant that opposition had been withdrawn.

[19] In answer to a question Sergeant Bruning advised us that while there could be a problem with traffic leaving the car park on to Gladstone Road it had been an area used for some time and while busy there have been no identified problems.

The Objections.

[20] There are a total of 13 objection lodged in respect to this application and all but one were through the online objection provision provided on the Tasman District Council Website. One objection was handwritten and received as hard copy. Most of the objectors cited amenity and good order as the grounds for their objection. None of the objectors chose to appear at the hearing so we were left with only their written material.

[21] Section 102 Sale and Supply of Alcohol Act 2012 states an objection must be in writing and filed with the licensing committee within 15 working days after the first publication of the public notice of the making of the application. It further states that no objection may be made in relation to a matter other than a matter specified in section 105. In this case the objections met that criteria.

[22] For the purposes of determining the validity of objections, Section 102(1) of the Sale and Supply of Alcohol Act 2012 states:

“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”.

In relation to geographic proximity of objectors, in *Re I S Dhillon and Sons Ltd [2019] NZARLA 256*, the Authority recorded at [37]: *that a one kilometre radius “is a notional area often used to determine*

whether there is an interest greater than the public generally". Only four objectors meet that geographic criteria.

[23] One objector is employed as a general and trauma surgeon in Nelson Hospital and cites concern with the increasing effects of alcohol related harm on the population generally, hospital staff, and the scarce resources available within the curative health system. Whilst living 1.4 kilometres from the proposed site for the premises, that objector's involvement in treating alcohol related health harm in the community may provide a reason for him to be regarded as a person who has a greater interest in the application than the public generally.

[24] Of the 5 objectors that may be considered to have a greater interest in the application than the public generally, four cite "amenity and good order", and one cites "density and location" as grounds for objection. Additionally, two of the objectors also cite "any relevant local alcohol policy" and "the manner in which the applicant has sold, supplied, displayed, advertised or promoted alcohol".

[25] We have carefully given the matters of density and amenity and good order consideration, and have been presented with no evidence that an additional stand-alone bottle store will have any significant impact.

[26] In application PH 1470/2009 by Min Sung Kim and Ji Sun Chang for an off-licence before the Liquor Licensing Authority, Judge E W Unwin stated at para [12]:

As for the remaining objectors, their objections carry little weight. Given the lack of any explanation for their non-appearance it is not possible to ascertain whether these objectors wish to continue with their objections or have lost interest in the outcome. At any event the applicants and their agents were prevented from testing any of these objector's claims and assertions. To make a ruling adverse to an applicant based on an unsupported objection is a denial of natural justice.

We are guided by the Authority's view that making a ruling adverse to an applicant based on unsupported objections is a denial of natural justice.

[27] The words "natural justice" have specific meaning in the law. Natural justice comprises two rules: the rule against bias and the rule of the right to a fair hearing. Because of the necessity of maintaining public confidence in the legal system (which includes not only the courts but all public decision-making bodies) it is most important that people who are engaged in these processes feel that they have had a fair hearing and that there has been no bias.

The Committee's Decision and Reasons

[28] To a large extent the issues that were raised by the objectors relating to amenity and good order are difficult to predict given this is a new licence application. The same is true for the manner in which the applicant has sold, supplied, displayed, advertised or promoted alcohol. We have heard no evidence that the applicant has failed to meet expectations around those parameters. The objections based on *any relevant local alcohol policy* do not identify how the applicant has failed to comply with the Tasman District Council's Local Alcohol Policy (LAP) in any respect. We can see no such failure. The objection relating to density and location was refuted by the applicant's evidence, and was not supported by the Licensing Inspectors evidence.

[29] Section 5 of the Act defines *amenity and good order of the locality*, in relation to an application for or for the renewal of a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated is pleasant and agreeable.

The Act further states in Section 106 that:

Considering effects of the 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 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."

This is a particularly important component of this application as the objections received have identified amenity and good order as being the greatest concern. In determining whether the amenity and good order of the locality is likely to be reduced the question is whether it is above mere possibility. This is discussed in the Court of Appeal decision *Port Nelson Ltd v Commerce Commission* [1996] 3 NZLR 554 (CA) where the Court discussed the meaning of 'likely' and in particular the degree of probability it contemplates, and held that:

"...bearing in mind the purpose of the provision the appropriate level is that above mere possibility but not so high as more likely than not and is best expressed as a real and substantial risk that the stated consequences will happen."

[30] When considering an application to issue a licence, the criteria to which this Committee must have regard are contained in s.105 of the Act. There is little point in reciting these criteria because in our view the application reaches that criteria.

[31] As was outlined in the evidence of Ms Price it is difficult to predict whether amenity and good order is likely to be impacted, and as we have already stated it needs to be as a real and substantial risk. We support that view and do not believe there is a likelihood of such risk.

[32] We also refer to the decision of Moore J in **Auckland Medical Officer of Health v Birthcare Auckland Limited** [2015 NZHC 2689] and in particular to the comments as follows:

"There is no reason in principle why the "causal nexus" approach adopted under the 1989 Act and approved in decisions of this Court, should not continue to be relevant and applicable under the new Act. Indeed, it was not suggested in argument that a different legal test should be adopted. Under both Acts the relevant enquiry is the same; the Authority is required to have regard to the s.105 criteria and then step back and consider whether there is any evidence to suggest that granting the application will be contrary to the object of the Act contained in s.4(1). Namely that the sale supply and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by excessive or inappropriate consumption of alcohol should be minimised."

[33] We have had regard to the criteria in s.105 as well as the evidence and submissions from the applicant, the objectors and the reporting agencies. We have then stood back and considered whether there was any evidence to suggest that granting the application for this off-licence would be contrary to the object of the Act in s.4(1). In this case, there is no evidence of any significant impact on amenity and good area of the location. Accordingly, the licence will be granted for a period of one year.

[34] Licences are issued subject to the standard conditions. Section 110 provides the licensing committee to impose additional conditions.

[35] Section 116 provides a list of particular discretionary conditions, and other compulsory conditions: off-licences, as follows:

“(1) The licensing authority or licensing committee concerned may issue an off-licence subject to conditions of any or all of the following kinds:

(a) conditions prescribing steps to be taken by the licensee to ensure that the provisions of this Act relating to the sale of alcohol to prohibited persons are observed:

(b) conditions prescribing the people or kinds of person to whom alcohol may be sold or supplied:

(c) in the case of premises where (in the opinion of the authority or committee) the principal business carried on is not the manufacture or sale of alcohol, conditions relating to the kind or kinds of alcohol that may be sold or delivered on or from the premises.

(2) The licensing authority or licensing committee concerned must ensure that every off-licence it issues is issued subject to conditions—

(a) stating the days on which and the hours during which alcohol may be sold or delivered; and

(b) if there are in force regulations under this Act empowering the authority or committee to determine for premises of different kinds different levels of licensing fee prescribed by the regulations, stating the fees payable for the licensing of the premises concerned; and

(c) stating (directly or by description) a place or places on the premises at which drinking water is to be freely available to customers, while alcohol is being supplied free as a sample on the premises.

(3) In deciding the conditions under subsection (2)(a) subject to which a licence is to be issued, the licensing authority or licensing committee concerned may have regard to the site of the premises in relation to neighbouring land use.”

[36] Accordingly the off-licence will be issued for a period of 1-year subject the following conditions:

- The hours of the off-licence will be Monday to Sunday 9am – 10pm
- There will be no prices or product advertising on the exterior of the premises
- There will be no single sale of ready to drink beverages (RTD's)
- There will be no sales of 'shots', 'bombs' or other single serve packages of spirits or liqueurs equivalent in strength to one or more standard drinks per package
- Except for craft beers, there are to be no single sales of any beer in containers under 500ml.

[37] The licence may issue as soon as the annual licence fee is paid.

DATED at RICHMOND this 24th day of November 2017

Councillor David Ogilvie
Chairman

