

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application for an off
licence by **SRS Ghuman &
Sons Ltd** for a bottle store to
be situated at 36 Gloucester
Street, Nelson

BEFORE THE NELSON DISTRICT LICENSING COMMITTEE

Commissioner: EOK Blaikie

Members: G Collingwood, D Shaw

HEARING

Council Chamber, Nelson City Council,
on 26 March 2014

APPEARANCES

A Pazin – Counsel for Applicant

N McFadden – Counsel for Objectors, DF Allpress, K Douglas and
AM Milligan

Sergeant SV Savage – New Zealand Police

Dr E Kiddle – Medical Officer of Health

S Lawrence – Licensing Inspector

Objectors in person

M Lawrey

A Knott

RESERVED DECISION OF NELSON DISTRICT LICENSING

COMMITTEE

1) Introduction

This is an application by SRS Ghurman & Sons Ltd dated 27 January 2014 for an off licence at the premises at 36 Gloucester Street, Nelson.

The Committee understands the business is to be known as The Bottle Store.

Gloucester Street is in the industrial zone of The Nelson Resource Management Plan. The proposed location is surrounded by a range of retail and service businesses. A resource consent has been granted for the proposed retail activity at the site. The building on the site is currently under construction and the applicant company has signed a lease agreement dated 2 December 2013 for a period of 4 years. The lease commences 3 April 2014 with further rights of renewal. This agreement is conditional upon the applicant company obtaining the appropriate consents and in particular the off licence which is the subject of this application.

The sole director and shareholder of the applicant company is Rambir Singh (the applicant).

The application has been publicly notified with the result that 29 objections were received along with a petition signed by 75 individuals in support.

Included in the 29 objections were a number of people, who, because of residence location and other issues did not qualify as having a greater interest in the application than the public generally. The Committee met on 12 March to determine the validity of objections. These objectors were notified prior to the hearing as were the remaining objectors who were asked if they intended to appear at the hearing. The two objectors identified at the commencement of this decision appeared. The other valid objections have also been considered by the Committee. It is to be noted, however, that the evidence of these objectors has not been tested by way of cross examination.

This application has attracted considerable public interest. The hearing commenced at 9.00am with some preliminary guidelines being given including a direction that the evidence of the applicant and the objectors represented by counsel and other objectors be exchanged prior to the commencement of the hearing. The Committee made this direction given the onus on the applicant to persuade the Committee on all matters including those raised by the objectors in proving his case.

The reporting officers filed reports, none of which indicated any opposition to the application although Dr Kiddle's report expressed some concerns. Attached to his report as background information was a copy of his report to the Nelson City Council Regarding Local Alcohol Policies dated 20 June 2013.

The location at 36 Gloucester Street is approximately 1km from Victory Square Community where there is an off licence. A New World Supermarket is situated close to the end of Gloucester Street on Vanguard Street, a Liquorland off licence is approximately 300m from the premises on Vanguard Street and a Countdown Supermarket is approximately 500m from the premises on St Vincent Street which also has access from Vanguard Street. The Post Boy Hotel is situated about 5 premises from the proposed premises and on the same side of Gloucester Street. United Video, the business owned by Alan Knott, an objector, is on the opposite side of Gloucester Street at the Vanguard Street corner. Pioneer Park, another area of interest in this case, is located within 300m at the foot of Washington Valley Road, being a road which connects to Gloucester Street. The Men's Night Shelter is situated approximately 300m from the application site on Vanguard Street, opposite Liquorland.

2) Applicants Evidence

The applicant and his wife, Sukhraj Kaur, presently reside in Palmerston North where he has been working for an employer IS Dhillon & Sons Ltd. This company operates a group of businesses in Palmerston North and Fielding and are franchise holders for the Big Barrel Group which is based in Hawkes Bay, owning and operating approximately 10 off licences in that and other areas. The applicant indicated on several occasions that he does not propose to allow his business in Nelson to be named or become part of the Big Barrel franchise.

He has had 5 years experience holding a Managers Certificate and since 2009 he has been employed as a Duty Manager in the Palmerston North area.

He intends to relocate to Nelson with his wife, Sukhraj Kaur, should he receive a favourable decision from this Committee. The applicant stated that it was not his intention to operate a business with cheap discounted or low range of alcohol. Instead he proposed to concentrate on a full range, including premium champagnes, wines and spirits. He further indicated he did not intend to sell RTDs or standard beer in single cans or single bottles.

The applicant seeks hours of sale between 9am and 9pm seven days a week.

He is relying on his managerial experience to identify intoxicated people, appropriate staff training and he will be assisted in the early stages by his brother-in-law, Mr Jagraj Singh Tiwana who holds a Managers Certificate. It is intended that Mr Jagraj Singh Tiwana will provide on-site assistance for between 3-6 months.

Extensive exhibits were presented showing the proposed layout of the premises; advertising and the significant spaces for chillers and the wide range of premium beers, spirits and wine. The applicant has indicated that external and internal closed circuit cameras will be installed with signage indicating their presence. It is proposed that the premises be designated as supervised and there is an intention to operate a no school uniforms policy.

The applicant has indicated that he has no intention of entering into a liquor price war in Nelson, nor does he intend to sell below cost price.

During his evidence in chief and cross examination, the applicant addressed the significant grounds of objection in this case. He has been aware of the other licensed premises already referred to; he understands the concerns expressed on behalf of the Victory Square residents and has undertaken some observation of traffic and pedestrian movements in the immediate vicinity.

Considerable cross examination covered the concerns of the residents of the Victory Community. He did not believe that the operation of his licensed premises would adversely affect the amenity values of the area. He referred to his operating hours as being less than the new

default hours in The Act and being in compliance with the proposed hours indicated in the Draft Local Alcohol Policy. The applicant also proposed a number of conditions which he suggested could be included in the licence, these being conditions which he believed would remove any or reduce the impact of his business on the amenity and good order of the locality.

The above constitutes a summary of the applicant's evidence. More detailed comments will be made in this decision when considering the particular objections which have been raised.

3) Proposed Conditions by the Applicant

During the hearing the applicant proposed certain conditions should his licence be granted and gave some assurances in relation to the future operation of the business. The proposed conditions are:

- a) no single can or bottle sales of RTDs;
- b) no single sales of cans or bottles of ordinary commercial beer products with the exception of the more expensive craft beer products;
- c) no pallets of alcohol to be displayed on the floor area of the shop;
- d) no sales of any "legal high" type products;
- e) appropriate signage to be displayed as regards minors and intoxicated individuals which are to be visible from outside the shop and to be attached to windows or doors with similar signage to be on display close to all points of sale in the premises;
- f) For the sale of special deals and/or promotion there will be no external "sandwich board" advertising signage outside the premises and there will only be one such sign inside the window visible from the outside.

The applicant gave certain assurances as to his intentions should the application be granted. The first related to his intention to undertake a regular rubbish clean up in Gloucester Street and surrounding areas, including Pioneer Park and the United Video forecourt.

A further assurance was given as regards the involvement of the Big Barrel stores and the indication by the applicant that it is not intended that his business in Nelson will become part of the Big Barrel franchise.

The applicant has given evidence of his intention to make his cellphone number available and to meet with local people to discuss any concerns they may have regarding his off-licence premises.

He also indicated an intention to undertake a clear area of litter in the immediate vicinity including Pioneer Park and the United Video forecourt.

4) Reporting Officers Evidence

As mentioned the three reports indicated no opposition to this application. Each were cross examined. Sergeant Savage referred to the reduction in problems in the Victory Square area over the years brought about through effective policing and extensive community involvement. Mr Lawrence, as inspector, indicated a view to the effect that the proposed location was on the periphery or border of the Victory Square community. Dr Kiddle, whilst raising his concerns generally, having heard the evidence and cross examination of the applicant re-affirmed his stance of no opposition to the application before the Committee.

5) Objections

The Committee heard evidence from the objectors which can be summarised as follows:

- a) The presence of a Night Shelter situated in Vanguard Street approximately 300m from the site. This shelter provides over night accommodation for men, most of whom have significant alcohol and other drug dependency issues. Evidence has been given by Mr Allpress that there may be an exacerbation of the problems with an additional liquor outlet in the vicinity. In this regard the Committee notes the objection by Gavin Snowball, the Managing Director of the company trading as Liquorland Nelson at 31 Vanguard Street, Nelson being directly opposite the Night Shelter. Mr Snowball's objection has been considered by the Committee and it is noted that he did not choose to make himself available for cross examination.
- b) Several objectors claimed that the additional off licence would have an effect on the amenity and good order of various locations including Victory Square and Pioneer Park. As regards the Victory community, references have been made by objectors to the increase in litter; medical problems through abuse of liquor;

relationship problems through alcohol consumption and the other problems associated with more or easier access to cheaper alcohol. In regard to the Victory community it is clear that community has current concerns regarding an off licence which has commenced recent operations in the area.

- c) Limited informative evidence was presented regarding Pioneer Park. The Committee received an indication that Pioneer Park has been an area where alcohol has been consumed by undesirable people during later evening and night time hours.
- d) The Committee heard evidence from an experienced Practice Nurse, Annette Milligan, who owns and operates a nursing practice in Nile Street, Nelson. Her evidence presented clear indications of problems within the community caused by alcohol and/or drug abuse.
- e) Mr Lawrey, a resident from the Victory community, noted an increase in people drinking in public in the area along with a rise in the number of RTD cans, bottles, black plastic bags and empty cartons left lying about the place.
- f) The evidence of Mr Knott, a co-owner of United Video, indicated the need to provide additional security for his staff because of intoxicated persons especially on Friday and Saturday nights and his observation of young people drinking on their way into the CBD area of Nelson. There was further reference to the need to hose down the front door area of the business because of urination, vomit and other unpleasant activities close by.
- g) Counsel for the objectors raised in his submissions the issue of proliferation referring to the number of existing outlets within the distances referred to in this decision.
- h) Most of the objections arose from the contention that the proposed premises were within the locality of the areas of concern and in their view the amenity and good order of the locality would be likely to be reduced by more than a minor extent.

6) Decision

Legislation

Section 105(1) of the Act sets out the criteria to be considered in applications of this sort. In deciding whether to issue a licence, the Licensing Authority 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 proposing on the premises to engage in, the provision of services other than 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 affects of the issue of existent 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 affects 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.*

Section 3 of the Act sets out its purpose. It is to put in place a new system of control over the sale and supply of alcohol; and to reform the law generally relating to the sale and supply and consumption of alcohol. The characteristics of this new system are that:

- a) *It is reasonable; and*
- b) *Its administration helps to achieve the object of this Act.*

Section 4 sets out the Act's object. Section 4(1) reads:

- 1) *The object of this Act is that –*
 - a) *The sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
 - b) *The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*
- 2) *For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –*
 - a) *Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
 - b) *Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*

Section 5 defines the expression "*amenity and good order of the locality*" as meaning:

... the extent to which, and ways in which, the locality in which the premises concerned are situated is ... pleasant and agreeable.

An applicant for an off-licence must prove its case with the standard of proof on the balance of probabilities.

Returning to section 105 of the Act:

- a) Object of the Act – The Committee has considered the statutory criteria with particular regard to safe and responsible supply and sale of alcohol and issues relating to harm.

- b) Suitability - the Committee accepts that the applicant, having regard to his personal background, qualifications including Managers Certificate, work experience and lack of any adverse evidence concerning these matters is a suitable person to hold a licence.
- c) Local Alcohol Policy – the Local Alcohol Policy is currently in draft form and thus limited regard can be given to its provision. However, it is noted that the application complies with the draft policy, including the operating hours.
- d) Days and hours - the Committee is satisfied that the days on which and the hours during which the applicant proposes to sell the alcohol (9am – 9pm) are of no concern. It is noted in particular that the hours are less than those of the other premises referred to in this decision.
- e) Design and layout - there is considerable evidence before the Committee of a positive nature concerning design and layout issues and there has been no criticism of any particular relevance in this regard.
- f) Sale of Goods other than Alcohol and (g) Provision of Services - the applicant confirmed his intention to sell some non alcoholic beverages and food stuffs which he intends to locate near the point of sale along with bottled water and non alcoholic mixers and soft drink beverages. Some clothing and cigarettes will be sold. There will be no sales of such products to persons under 18. No services are proposed which are not related to the sale of alcohol.
- h) & i) Amenity and Good Order of the Locality issues – evidence and submissions relating to these issues were matters requiring careful attention. As a starting point, the Committee is of the view the Gloucester Street premises, being approximately 1 kilometre from Victory Square could not be classed as part of that locality. Between the two areas are numerous industrial and commercial premises and several large retail premises with a limited number of residences towards the Victory community. No objections have been received from any of these residences.

The Committee accepts the concerns of the Victory residents who have referred to the recently established off licence premises in their area and the problems apparently linked to the operation of those premises. The applicant has indicated his knowledge of the Victory issues and is

willing to engage with representatives of that community in the future and in doing so he intends to keep any effects of the licence being granted in his favour to a minor extent in that area.

The Committee has considered the evidence of Ms Kindra Douglas, Manager of the Victory Community Health Centre, and Ms Annette Milligan, the owner/operator of Independent Nursing Practice Ltd situated in Nile Street, Nelson. Ms Douglas provided clear evidence of the concerns and suffering in the Victory community with alcohol being a significant contributor to a range of harm. She refers in particular to a lack of parenting skills, neglect within the families, adults excessive consumption of alcohol, easier access to alcohol along with burglaries and instances of sexual violation. The health centre works alongside the police officers allocated to the area. She is particularly concerned about the impact of Victory Liquor Centre which has recently commenced operations in the area.

Ms Annette Milligan is a registered nurse with qualifications and 27 years experience. Her clinic specialises in family planning and sexual health and has an extensive client base. She refers to the increasing levels of harm to women who are consuming larger quantities of alcohol, some preloading and the questionable decisions these women make concerning their sexual health and activities whilst under the influence of alcohol. She refers to the other premises within the vicinity and notes her concern that the applicant in this case intends to sell spirits.

The Committee accepts the concerns outlined by Ms Douglas and Ms Milligan. The question to be considered is whether a causal link can be established between the concerns raised and the granting of this application. We do not believe that to be the case.

In regards to Pioneer Park which is some 300m distance from the proposed premises, there is insufficient evidence before the Committee that raises concern under the amenity and good order of this locality. Furthermore this park is the subject of a liquor ban imposed by a Nelson City Council bylaw.

The Men's Night Shelter issue is another matter which has received careful consideration by the Committee. It is situated approximately 300m from the premises and involves males who experience various problems including alcohol dependency. We believe that these people in acquiring alcohol are more likely to purchase alcohol at prices less

than or cheaper than those proposed in the application before us. For instance there has been evidence that a single RTD bottle can be acquired at the Liquorland premises of Mr Snowball directly opposite the Night Shelter area. Accordingly we are of the view that if the good order of the Men's Shelter is likely to be reduced it would be by no more than a minor extent if the licence was granted.

United Video being a short distance from the proposed premises is close to the CBD area of the City and is on a route used by younger pedestrians either already intoxicated or becoming intoxicated. Accordingly we are of the view this situation would not worsen by more than a minor extent if the licence was granted.

Reference has been made to various decisions, the application by HARI OM (2013) Ltd for an off licence in Taumarunui and the decision of RS DHILLON Ltd for an off licence in Ellerslie, Auckland. Both decisions were determined by the Alcohol Regulatory and Licensing Authority under the current legislation. The HARI decision dealt with and concentrated on the issue of proliferation. In that case reference was made to reports concerning Manakau City and comments from the Mayor of the Hauraki District regarding potential price cutting arising from additional demand. The application was refused. This case can be distinguished on its facts. When considering the proliferation argument, the Authority described Taumarunui as being of a static population, unlike Nelson and therefore any additional liquor outlet would have a more significant impact on the community.

The DHILLON case considered the suitability of the applicant, noting the opposition from the police and the issue of amenity and good order of the locality. The Authority determined that there was sufficient link between the proposed off licence and alcohol induced activities which occurred particularly in a reserve close to the proposed premises in the area. Again, this case can be distinguished on its facts. The matter for our determination is whether any impact would be to more than a minor extent and that involves an objective assessment of all the evidence.

It is further noted in the DHILLON case the presence of a school and kindergarten across the road from the proposed premises and a nearby dairy attracting children and students alighting from school buses. The immediate and surrounding area was described as being a quiet residential neighbourhood unlike the locality being considered in this case.

Conclusion

The evidence does not contravene the matters contained in Section 4 relating to the object of the Act.

The Committee notes that there have been no opposition from the reporting agencies being the Licensing Inspector, Police and Medical Officer of Health.

The Committee has reached the view that the applicant has addressed in an appropriate matter all issues contained in the legislation. The applicant is a suitable person and the days, hours proposed, design and layout and provision of non or low alcohol refreshments appropriate as the case may be.

In considering the amenity and good order of the locality, the Committee notes the location of Gloucester Street being close to the city fringe and on the extreme northern perimeter as regards the Victory community with a considerable buffer of industrial, commercial and retail premises between Gloucester Street and the Victory community.

As regards Pioneer Park there is limited evidence in relation to harm in that specific area.

The Night Shelter is situated directly opposite a licensed premises which retails single bottles and cheaper liquor than that proposed by the applicant.

Given the litter concerns, particularly those raised by Mr Lawrey and the assurances given by the applicant, the Committee expects the applicant to liaise with the objectors and neighbours over the arrangements for litter in the vicinity of his premises to be cleared on a regular basis.

Certain conditions have been proposed by the applicant which have relevance and the Committee concludes that any reduction in the amenity and good order of the locality is not likely to be reduced to more than a minor extent by the effects of the issue of this particular licence with the conditions below.

The carrying out of assurances given by the applicant recorded in this decision, would no doubt be a matter for consideration at a later time.

The off licence is granted from 17 April 2014 subject to the following conditions:

- 1) The hours of operation for the premises situated at 36 Gloucester Street, Nelson and known as The Bottle Store will be 9am to 9pm, seven days a week.
- 2) no single can or bottle sales of RTDs;
- 3) no single sales of cans or bottles of ordinary commercial beer products, with the exception of the more expensive craft beer products;
- 4) no pallets of alcohol to be displayed on the floor area of the shop;
- 5) no sales of any "legal high" type products;
- 6) appropriate signage to be displayed as regards minors and intoxicated individuals and the areas of liquor bans in Victory Square, Pioneer Park, CBD and surrounding areas, which are to be visible from outside the shop and to be attached to windows or doors with similar signage to be on display close to all points of sale in the premises;
- 7) For the sale of special deals and/or promotion there will be no external "sandwich board" advertising signage outside the premises and there will only be one such sign inside the window visible from the outside.

Date decision takes effect: 17 April 2014

Signed



E.O.K Blaikie

Commissioner District Licensing Committee

Date: 17/04/14

Minutes of a meeting of the District Licensing Committee

Held on Level 3, Civic House, Trafalgar Street, Nelson

On Wednesday 12 March 2014, commencing at 9.05am

Present: O Blaikie (Chairperson), G Collingwood and D Shaw

In Attendance: Administration Adviser (L Laird)

1. Application for Off-Licence – 36 Gloucester Street, Nelson

The Committee discussed each objection to the application, and assessed each against the criteria in section 105 and the procedure outlined in section 202 of the Sale and Supply of Liquor Act 2012.

As a starting point, the Committee assessed each objection in relation to its geographic location, using a map of the area, which highlighted a 1 – 1.5 km radius around the proposed location under application. The Committee agreed that applications outside of this radius did not have an interest greater than the general public.

The Chairperson, Mr Blaikie, encouraged the Committee to avoid being too restrictive in its assessment as the Act was in its early stages of application.

Upon considering the questionable objections, the Committee agreed to allow any objectors near to the 1.5km radius to have the opportunity to present during the hearing, with the onus being on the objector to prove that their objection was valid. It was noted that the objection should provide reasoning greater than avoiding a proliferation of liquor stores, or that drinking alcohol was perceived as community harm.

The Manager Resource Consents, Mandy Bishop, joined the meeting and advised the Committee to ensure that only objections with a clear interest greater than the general public, in line with section 105 of the Act, should be deemed valid. She reminded the Committee that section 105 of the Act was the only new part to this process. Ms Bishop provided commentary from the previous Sale of Liquor Act around what constitutes interest greater than the general public.

1.1 Objections

The Committee proceeded to assess each objection on the merits of section 105 of the Act.

Objector number	Name	Valid	Reason
1	R and M Palmer	No	No interest greater than the general public
2	Karen Wood	No	No interest greater than the general public
3	A M Hyman	No	No interest greater than the general public
4	Steve Marshall	No	No interest greater than the general public - no address provided, proliferation as a reason was considered not sufficient
5	B E Botting	No	No interest greater than the general public
6	Kindra Douglas - Victory Community Health	Yes	
7	Arthur Miller	No	No interest greater than the general public
8	Nicole Willis	Yes	
9	Neil Howard	Yes	
10	Lynn and Anita Hannen	Yes	
11	Dorothy Hambly	No	No interest greater than the general public
12	Matt Lawrey and Tania Norfolk	Yes	
13	Jan Marsh	Yes	
14	Annette Milligan - INP	Yes	
15	Rota Dommi	No	No interest greater than the general public
16	Allen and Karen Knott	Yes	
17	K Matheson	Yes	
18	Galen King	No	No interest greater than the general public -made no exact reference to where in the region he has an interest

19	Occupier 1/72 Queens Road	No	No interest greater than the general public
20	Johanna Tyson	No	No interest greater than the general public
21	John White	No	No interest greater than the general public
22	Jeff Chandler - ENZED	Yes	
23	David Allpress and Mary O'Reilly	Yes	
24	Ishna Jacobs	Yes	
25	Gavin Snowball - Liquorland	Yes	
26	Neighbourhood Connections	Yes	

It was noted the Committee would receive a report from the Medical Officer of Health, Police and Inspector.

2. Follow ups

The Committee asked if the objectors, and the applicant, could be contacted to find out if they were going to be present at the hearing, and if so, whether they were intending to bring a lawyer or other representation.

There being no further business the meeting ended at 10.17am.

Confirmed as a correct record of proceedings:

_____ Chairperson _____ Date