

**Decision Number: 60F [2024] 18151**

**IN THE MATTER OF**

the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER OF**

an application by **N APRIL LIMITED** for renewal of an Off-Licence in respect of premises situated at 332 Hereford Street, Christchurch, known as '**LiquorLand Fitzgerald Avenue**'

**BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE**

Chairperson: **Mrs M Redstone**

Members: **Mr G Clapp**

**Mr M Hossain**

**HEARING** at CHRISTCHURCH on **Thursday 27 June 2024**

**APPEARANCES**

**Mr R Cheng** – representing director and shareholder of N April Limited - Applicant

**Mr P Egden** – Counsel for the Applicant

**Mr B Marra-Stevenson** – Objector

**Dr G Hewison** – Counsel for the Objector (Mr Peters)

**Mr G Hay** – Licensing Inspector – to assist

**Sergeant D Robertson** – NZ Police – to assist

**Senior Constable M Joliffe** - NZ Police - to assist

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**RESERVED DECISION OF THE COMMITTEE**

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**INTRODUCTION**

[1] This is an application by **N APRIL LIMITED** ('**the Applicant**' or '**Applicant Company**' hereafter) for renewal of an Off-Licence in relation to premises situated at 332 Hereford Street, Christchurch, known as '**LiquorLand Fitzgerald Avenue**'. The application was received by the Christchurch City Council Alcohol Licensing team on 7 December 2023.

[2] The Applicant Company has one director, Ruoxi (Neal) Cheng, who is the also the sole shareholder.

[3] The general nature of the business is that of a bottle store. The Applicant has sought the following trading hours:

## **Monday to Sunday, between the hours of 9.00am and 10.00pm**

These hours are less than the default national maximum trading hours for an Off-Licence.<sup>1</sup>

[4] One public objection was received within the required timeframe.

[5] The application drew no opposition from the reporting agencies.

[6] The District Licensing Committee (**'the Committee'**) members undertook a visit to the locality to assess the surroundings prior to the hearing. The Committee also conducted a site visit of the premises on Tuesday 25 June 2024.

[7] Counsel agreed prior to the hearing that they would not cross-examine witnesses. They were invited to ask questions through the Chair.

### **CRITERIA FOR RENEWAL**

[8] In an application for renewal the Committee is required, pursuant to s131(1) of the Sale and Supply of Alcohol Act 2012 (**'the Act'**), to have regard to:

- (a) the matters set out in paragraphs (a) to (g), (j) and (k) of s105(1);
- (b) whether ... the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence;
- (c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health by virtue of section 129;
- (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

### **OPENING SUBMISSIONS**

[9] Counsel for both the Applicant and the Objector provided helpful opening submissions which were taken as read. Counsel spoke to those briefly, setting out the position of their clients.

### **THE APPLICANT**

[10] On behalf of the Applicant Company, Mr Cheng advised that he had met with and listened to the objector and had made some changes to the layout of his accordingly. He had moved Nitro out of sight from the front of the store to a bottom shelf in the refrigerated area and has similarly moved other identified products from the store area to the refrigerated area. The high-strength beers were limited to one shelf in the fridge and mostly priced at \$5.99 per unit. There were no *'dump stacks'* of alcohol reduced in price.

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<sup>1</sup> Section 43 of the Sale and Supply of Alcohol Act.

[11] Mr Cheng acknowledged that he had only cleaned up rubbish in the carpark area allocated to his business and had not, until recently, cleaned rubbish from the whole of the carpark area including the tussock garden. He was now cleaning the whole area and the garden once a week, but undertook to do this every day.

[12] Mr Cheng responded to questions about the close proximity of the premises to the Central Mission and incidents of people rough-sleeping and drinking alcohol in the carpark area. The whole carpark area is not visible on the applicant's security cameras but staff did try to walk around the area whenever possible during their shifts and move on any people drinking in the carpark, or calling the Police to assist if they felt unsafe asking people to move.

[13] The Committee raised concerns with the applicant as to single sales, particularly those broken from larger packaging, together with the concern of the Medical Officer of Health around single sales of high strength beer (7.2% and above) selling at \$5.49 per unit.

[14] In response to a question from the Committee the Applicant advised that his busiest time is between 4:00pm and 7:00pm. In response to further questions, he said the advertising on the bollards outside his premises were gone and there would be no advertising on the bollards in the future.

## **THE TRI-AGENCIES**

[15] There were no objections to the renewal of the licence from the Agencies. However, there were issues raised and preferences noted for the consideration of the Committee.

[16] Snr Const Joliffe for the Police provided a report and spoke to the challenges of boy-races along the four avenues and people living on the streets within the alcohol ban area. He said that since the Applicant purchased the premises there had been 10 incidents recorded at the premises, not all alcohol-related. As there was a relatively large carpark adjacent to the premises it tended to be a gathering place for boy-racers whose passengers were very often consuming alcohol.

[17] The Licensing Inspector, Mr Hay, provided a helpful report which included a copy of Index of Multiple Deprivation ('**IMD**') report, a copy of the Alcohol Ban map and a Community Profile for the Central Ward. The IMD report summarised that the community in the locality of the premises is Decile 8 in deprivation. The summary further noted that the community has a lower than average Māori population and a lower than average Pacific population.

[18] The Inspector and the Police said in response to a question from the Committee that they would prefer a closing time of 9:00pm, given this premises is situated on the edge of an Alcohol Ban area. However neither they, nor the objector, produced any evidence to the Committee to convince it that

the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the reducing the licensed hours by one hour.

### **THE OBJECTORS**

[19] As stated above there was one objector, Mr Marra-Stevenson. His objection was on the grounds of suitability and amenity and good order.

[20] Mr Marra-Stevenson's Brief of Evidence was taken as read, and he produced a number of photos which highlighted his concerns about the area surrounding the premises. He noted, and the photos showed, alcohol-related rubbish throughout the tussock gardens which formed the edge of the carpark outside the premises. He acknowledged that this carpark was shared with the Laundromat and the Gym.

[21] The Objector called Rev Chris Orczy, an ordained Chaplain of the Anglican Church. His role is to walk the streets of the central city and work with the homeless, the needy, and anyone else who needs his help. He described his work and spoke of the difficulties in dealing with drunkenness in the central city, which sometimes leads to violence. He is opposed to all alcohol outlets in the city, particularly in the alcohol ban area, as he sees the consequences of alcohol consumption by vulnerable people, the harm it does, and the alcohol-related rubbish on the streets. He also expressed concern about pre-loading in streets at the edge of the alcohol ban area by people attending events in the central city.

[22] Mr Marra-Stevenson submitted that the Applicant was unsuitable on the grounds of selling "cheap" single high-strength beers and alcohol such as *Nitro* and breaking down of packaged beers and RTDs to sell individually. Mr Marra-Stevenson had met with Mr Cheng on more than one occasion and had submitted some proposed conditions to him that he considered should form part of any licence granted. Mr Cheng advised by email that he could not agree to all the conditions suggested as they were "outside the intention of the Act and create an unfair trading environment with our competitors in the market".

[23] Mr Marra-Stevenson was concerned that there were not obvious "Liquor Ban Area" signs in such a large carpark. In discussion Mr Cheng advised that the Landlord has agreed to "Liquor Ban Area" signs being installed, and Mr Cheng will approach him about some signage in the Laundromat to indicate it was in an Alcohol Ban area and prohibiting alcohol consumption on the premises.

### **FINAL SUBMISSIONS:**

[24] At the conclusion of the hearing the Committee asked for final submissions from the Applicant and the Objector in writing to be filed by Monday 15 July 2024, given that it had asked the Applicant to consider some Conditions/Undertakings.

[25] The Committee received helpful final submissions from Counsel for both the Applicant and the Objector.

[26] The Applicant offered the following undertakings:

- (a) Subject to the landlord's approval, the applicant will erect signage in the carpark advising that it is part of an Alcohol Ban area;
- (b) The applicant will discuss with the Landlord and the owner of the Laundromat premises the possibility of putting a sign in the laundromat advising that no alcohol is to be consumed on the premises;
- (c) To discuss with the Landlord and other tenants the possibility of painting the background of the green coloured sign on Fitzgerald Avenue a more neutral colour, but maintaining the LiquorLand green to that part of the sign advertising the applicant's premises;
- (d) To maintain his current CTV cameras which cover the area of the carpark adjacent to the premises and to investigate with the landlord the possible installation of additional CCTV cameras in the carpark area;
- (e) No single unit sales of RTDs;
- (f) Nitro will only be displayed for sale in the bottom shelf at the back of the chiller;
- (g) The price of Nitro will not be discounted;
- (h) If anyone is found drinking in the carpark and it is considered safe to do so, a staff member will approach them and advise them that they are in an Alcohol Ban area and ask them to desist. If they refuse to do so, the Police will be called;
- (i) If anyone who has purchased alcohol from the bottle store is found drinking in the carpark and it is considered safe to do so, they will be advised that they are in an Alcohol Ban area and asked to desist. If they refuse to do so, or should they later purchase alcohol from the store and consume it in the carpark, they will be trespassed from the store.

[27] In addition the applicant made the following undertakings in the course of the hearing:

- (a) No external facing advertising, including on the bollards in front of the premises;
- (b) No single sales from broken packages;
- (c) Soju has been moved to and will remain only on the bottom shelf in the chiller area;

- (d) There will be no service to anyone in school uniform, regardless of age;
- (e) Any remote sales are delivered the day following purchase;
- (f) The Applicant will ensure that the carpark and gardens surrounding the premises are kept free of alcohol-related rubbish.

[28] The Committee also noted at paragraph 37 of the Applicant's final submissions that it has raised the price on beers with an alcohol content of 7.2% from \$5.49 to \$6.00 and this will be added to the licence as an undertaking.

[29] The Objector submitted that the following conditions should be imposed:

- (a) No single sales of beer, cider or RTDs 600mls or less priced under \$6;
- (b) No single sales of beer, cider or RTDs containing alcohol content exceeding 7%;
- (c) No single sales of beer, cider or RTDs containing more than two standard drinks per container;
- (d) Licensed hours be reduced to Monday to Sunday 9.00am to 9.00pm (following the suggestion of the Police and evidence from the applicant that most sales take place between 4pm and 7pm);
- (e) Packs of mainstream beers and RTDs must not be broken down and sold as singles;
- (f) No alcohol advertising is to be displayed on the exterior of the store;
- (g) Stock on the shop floor is not to be directly stacked on the ground. Where shelving is not used, stacks are kept on pallets;
- (h) The sale of combined alcohol/energy drinks (such as Nitro) is prohibited.

[30] In addition, the Objector submitted the following condition should be added to the usual conditions surrounding Remote Sales. However, this was not raised at the hearing and the applicant had no opportunity to comment.

- v. The outside of the delivery package must contain the following words: CONTAINS ALCOHOL. Do not leave at destination without proof of delivery. Do not leave with persons under 18 years of age. If the receiver appears to be under the age of 25 years check valid identification such as current passport, driver licence or Hospitality NZ 18+ Card Evidence of Age

Document to ensure the receiver is 18 years of age or over. Do not leave with intoxicated persons.

[31] The Committee shares the concern of the Objector as to how Remote Sales of alcohol are delivered currently. However, to impose this condition on one Remote Seller would, in the opinion of the Committee, fail to address what is a national issue and would require a Legislative change. The Committee encourages the objector to raise this matter in a more appropriate national forum where better controls on remote sales could be addressed with an appropriate condition imposed on every remote seller in New Zealand.

[32] Further, the Committee has considered all of the conditions proposed by the Objector, many of which are given as undertakings by the Applicant.

## **EVALUATION AND FINDINGS**

[33] The Committee must first have regard to the objects of the Act and in particular to minimising the harm caused by the excessive or inappropriate consumption of alcohol.

[34] The duty to “*have regard to*” under s131 of the Act requires that we turn our mind to the listed criteria. We are required to give them “*genuine attention and thought*”. The weight to be attached to each is a matter for us to decide.<sup>2</sup> In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123, Clark J summarised the applicable principles in respect of the renewal of a licence. He said at [43]:

*“The factors to be considered in the course of assessing an application for a licence or for renewal, as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm”.*

[35] The Committee must consider the criteria for renewal as set out in s131 and the provisions of the Act in relation to the conditions sought by the objectors.

[36] The Committee is satisfied that the Applicant is a suitable entity to hold a licence and carries out its business in a way that fulfils the requirements set out in paragraphs (a) to (g), (j) and (k) of section 105(1).

[37] As to s131(1)(b), having read the reports of the reporting agencies, heard evidence as to reported alcohol harm in the area from the Police, and listened to the issues raised by the Objectors which were generalised and sometimes in the nature of conjecture, in the opinion of the Committee the amenity and good order of the locality would not be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence.

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<sup>2</sup> *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC).

[38] As to s.131(1)(c), whilst there were no objections to the renewal by the reporting Agencies, there were issues raised in the report on behalf of the Medical Officer of Health as to prices of some products and a preference noted by the Inspector and the Police for a 9:00pm closing.

[39] As to s.131(1)(d) of the Act, the applicant has taken action in response to concerns put to him by the Objector, both in meetings held prior to the hearing, and at the hearing, together with the concerns raised on behalf of the Medical Officer of Health.

[40] The Committee is satisfied the Applicant meets the criteria for extended suitability raised by the Objectors and in doing so acknowledges the undertakings made by the Applicant, which are commended by the Committee, and for the most part meet, or go a long way to meet, the conditions suggested by the Objector.

[41] The Committee is satisfied, based on the evidence presented, that the application for renewal should be granted for a period of **three (3) years**.

[42] The Committee thanks the Applicant, the Objectors and the Agencies for their valued input.

[43] A copy of the Licence setting out the conditions to which it is subject, is attached to this decision.

**DATED** at CHRISTCHURCH **this 29<sup>th</sup> day of July 2024**



**Merelyn Redstone**  
Chairperson  
**Christchurch District Licensing Committee**