

Decision Number: 60F [2024] 17916

IN THE MATTER OF the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF an application by **SKUDAR LIMITED** for renewal of an Off-Licence in respect of premises situated at 21 Shands Road, Christchurch, known as '**LiquorLand Hornby**'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: **Mrs M Redstone JP**
Members: **Ms T McIlraith**
Mr M Hossain JP

HEARING at CHRISTCHURCH on **Thursday 28 March 2024**

APPEARANCES

Mr D Reid – representing director and shareholder of Skudar Limited - Applicant
Mr P Egden – Counsel for the Applicant
Mr M Peters – Objector
Dr L Gordon – Counsel for the Objector (Mr Peters)
Mr C Ewing – Objector
Ms A Lavery – Licensing Inspector – to assist
Ms P Williams – Medical Officer of Health representative – to assist
Sergeant D Robertson – NZ Police – to assist

RESERVED DECISION OF THE COMMITTEE

INTRODUCTION

[1] This is an application by **SKUDAR LIMITED** ('**the Applicant**' or '**Applicant Company**' hereafter) for renewal of an Off-Licence in relation to premises situated at 21 Shands Road, Hornby, Christchurch, known as 'LiquorLand Hornby'. The application was received by the Christchurch City Council Alcohol Licensing team on 26 May 2023.

[2] The Applicant Company has one director, Damien Reid, 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 8.00am and 10.00pm

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

[4] Four public objections were received within the required timeframe, two of which were withdrawn following meetings between those Objectors and the Applicant.

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

[6] The District Licensing Committee (**'the Committee'**) members each 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 Wednesday 27 March 2024.

CRITERIA FOR RENEWAL

[7] 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

[8] Counsel for both the Applicant and Mr Peters, one of the two Objectors who appeared at the hearing, provided helpful opening submissions which were taken as read. Counsel spoke to those briefly, setting out the position of their clients.

THE APPLICANT

[9] On behalf of the Applicant Company, Mr Reid advised that he had listened to objectors and made changes accordingly. This had resulted in two objections being withdrawn. In response to concerns of the objectors, he had: moved Nitro out of sight from the front of the store; reduced high-strength beers to one fridge; increased the price of most single serve products; and, removed all *'dump stacks'* of alcohol reduced in price. He agreed he had in the past purchased *Charged*, an alcohol-mixed energy drink, as a clearance item but, with hindsight, thought this decision was perhaps ill-conceived and not

¹ Section 43 of the Sale and Supply of Alcohol Act.

something he would repeat. He said further that he could have sold it at a cheaper price but considered it would have been irresponsible to do so.

[10] Mr Reid said, in his experience, single cans of beer were predominantly purchased by those who simply wanted one can, to be drunk over a whole night, rather than buying a multipack which they would probably consume over the same period of time simply because it was there.

[11] Mr Reid said he had a good relationship with the staff from the Ministry of Social Development ('MSD') and in fact shares a courtyard with them where they have morning and afternoon tea. He has asked them on a number of occasions to raise with him any issues they may see with their two businesses being situated in very close proximity.

THE TRI-AGENCIES

[12] There was no objection from the Agencies. The Police provided a helpful report of calls to incidents in the Hornby area where alcohol was a contributing factor. In response to a question, Sergeant Robertson advised that there were several other areas of Christchurch where alcohol-related incidents required significantly higher Police call-outs.

[13] The Licensing Inspector, Ms Lavery, produced an email from MSD advising that they had been housed in their current site at Hornby since November 2004 and "*were not aware of any concerns being raised regarding the bottle store next door*".

[14] Ms Lavery provided information in respect of the Index of Multiple Deprivation ('IMD') produced by the University of Auckland's Faculty of Medical and Health Sciences. The Hornby area has an overall IMD ranking of Decile 7. This is in the context of a Decile 9-10 areas being considered the most deprived and Decile 1-2 areas being least deprived.

THE OBJECTORS

[15] As stated above there were four public objections, two of which were withdrawn following consultation.

[16] The Objectors, Mr Ewing and Mr Peters both objected on the grounds of suitability and amenity and good order.

[17] As to suitability, they both agreed that the Applicant Company's premises and the surrounding area were kept clean and tidy and the store frontage presented well from the outside. They both said 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.

[18] As to amenity and good order, the Objectors pointed to the premises being next door to MSD offices, and located in a low decile area. Mr Ewing is Director of Te Whare Awhero (Hope House), which is located some 350m from Liquorland Hornby. Hope House has been providing community and social services in the Hornby area for over 30 years. Mr Ewing referred to the effects alcohol has on the lives of the individuals and families that his organisation supports. Mr Ewing was articulate and, in evidence, gave the Committee a very helpful overview of the work his organisation does in the community, which is to be commended. Mr Peters is a local resident and Christchurch City Councillor for Hornby and his concern was similarly the effect alcohol has on people living in low decile areas.

[19] Mr Ewing had not objected previously, either in respect of this Off-Licence or any other Off-Licence in the area, while Mr Peters has objected to two other licence applications in the Hornby/Islington area in the past year, including the recent off-licence renewal application by PakN'Save Hornby. That hearing has taken place with a decision yet to be released. Both Mr Ewing and Mr Peters said they would be taking a greater interest in licence applications in the future as, in their view, it was a matter of trying to instigate licensing changes one licence at a time.

[20] The Objectors sought the conditions set out in paragraph 24 of the opening submissions of Counsel for Mr Peters, repeated at paragraph 19 of Mr Peter's brief of evidence, being:

- “(a) Stop selling 12% beers, and reduce the number of other high-alcohol (7% and above) beers to a small number, as determined by the Committee;*
- (b) Ensure that all single cans and bottles of beer, cider and RTDs are priced at \$6 or above;*
- (c) Stop selling all products like Nitro and Charged (AMEDS);*
- (d) Remove all dump stacks of singles of beer, cider and RTDS from the showroom and cool store; and,*
- (e) No longer purchase job lots of discontinued alcohol to sell at cheap prices.”*

EVALUATION AND FINDINGS

[21] 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.

[22] 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.² 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]:

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

“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”.

[23] 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.

[24] The Committee’s published practice note on single sales³ is an indication of conditions that may be imposed in highly deprived areas on a case-by-case basis. In this case, the Committee finds that the Applicant has taken a number of steps to address the issues raised, including: agreeing to not purchase job lots of discounted alcohol; decreasing the exposure of high-alcohol beers in its fridges; and, increasing the number of zero percent alcohol products available, even though the premises are not in a highly deprived areas as outlined in the practice note.

[25] Parliament has not changed the provisions of the Act which restrict the types of alcohol products legally sold in New Zealand. Nor has it introduced any controls on the price at which alcohol products can be sold. These matters remain for further review by the Government. Such a review, together with any advancement on the provision of a Local Alcohol Plan for Christchurch, would seem to the Committee to be the appropriate forms for Objectors to raise the types of concerns they have raised during the course of this hearing.

[26] The Committee concludes that it is inappropriate for Objectors to attempt to introduce unsanctioned product and price controls without providing any nexus evidence of alcohol-related harm or a substantial decrease in the amenity and good order of the surrounding community since the last renewal of the Licence.

[27] The Committee is inclined to follow the decision of the Dunedin District Licensing Committee in an application for renewal of an off-licence for a Pak’NSave premises at 86 Hillside Road, Dunedin.⁴ The Committee declined to impose conditions sought and at [65] stated:

“... Such a condition would ‘force’ customers to purchase multi packs of alcohol which would allow them to consume several units of alcohol, if not the whole pack, compared with the single unit if the condition was not imposed”.

[28] As to s131(a), the Committee is satisfied that the Applicant carries out his business in a way that fulfils the requirements set out in paragraphs (a) to (g), (j) and (k) of section 105(1) and would go as far as to say Mr Reid is a long-standing and very experienced Licensee who has a good knowledge of the community in which he is operating. Of the many premises visited by the Committee, the Applicant’s was one of the most well-presented and user-friendly premises.

³ Christchurch District Licensing Committee, Practice Note 2 – Single Sales, <https://ccc.govt.nz/assets/Documents/Consents-and-Licences/business-licences-and-consents/Alcohol/Practice-notes/Practice-Note-Single-Serves.pdf>

⁴ Dunedin DLC Decision 2023/08/OFF

[29] 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 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.

[30] As to s.131(1)(c), there were no issues raised by the reporting Agencies.

[31] As to s131(1)(d) of the Act, having accepted that the Applicant has agreed not to buy and then sell clearance items, and has responded to issues as to display raised by the objectors, the Committee is satisfied that the Applicant meets, or has taken action to meet, the requirements of this subsection. There is no advertising on the outside of the store, it has good visibility in and out, and the Committee and the Objectors agreed it presented as a pleasant environment.

[32] The changes to layout noted by Mr Reid, together with his current practice of not selling beers and RTDs with an ABV of over 8% for under \$6 per unit, are noted and the Committee is satisfied the Applicant meets the criteria for extended suitability raised by the Objectors.

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

ADDITIONAL COMMENTS

[34] The Committee appreciates that it is often difficult for objectors to attend and express themselves at public hearings. It welcomes community input and thanks both Mr Ewing and Mr Peters for their contribution to the hearing and their understanding of the issues faced in their community. It is hoped that hearings conducted under the new legislation coming into force on 30 May 2024 will assist in making the process easier for objectors to attend and bring evidence of their concerns to Licensing Committees.

[35] The Committee similarly acknowledges the difficulties faced by applicants in attending hearings where they feel they have to defend their businesses and their business practices. The Committee accepts that the applicant does not have an automatic right to have its licence renewed. However, the renewal process must be reasonable. This principle was recognised by the High Court in *Medical Officer of Health v Vaudrey & Bond*⁵. His Honour Justice Gendall said:

Once compliance with the Act has been secured in the first instance, a renewal would ordinarily be expected to be granted as a matter of course, absent material changes in circumstances. This is consistent with the intent of the Law Commission that compliance is "likely to be a one-off cost in most instances".

⁵ [2016] 2 NZLR 382

[36] In the present case, since the last renewal of the Applicant's Off-Licence there has not been any material changes in circumstances that would justify a change in approach by the Committee for a different outcome for the Applicant.

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

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

DATED at CHRISTCHURCH **this 29th day of April 2024**

A handwritten signature in black ink, appearing to read 'Merelyn Redstone', written in a cursive style.

Merelyn Redstone

Chairperson

Christchurch District Licensing Committee

Article I. **Decision Number: 60F**
[2024] 17916

IN THE MATTER OF

Article II. the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER OF

an application by **SKUDAR LIMITED** for an
Off-Licence Renewal pursuant to section
127 of the Act in respect of premises
situated at **21 Shands Road, Christchurch,**
known as '**LiquorLand Hornby**'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Mrs M Redstone JP
Committee Members: Ms T McIlraith
Mr M Hossain JP

RENEWAL OF OFF-LICENCE

[39] This is an application by **SKUDAR LIMITED** ('the applicant') for a renewal of an Off-Licence pursuant to section 129 of the Sale and Supply of Alcohol Act 2012 ('the Act') in respect of premises situated at **21 Shands Road, Christchurch,** known as '**LiquorLand Hornby**' (formerly **Henrys Hornby**). The Application was received on 23 May 2023.⁶

[40] The general nature of the premise is that of a **Bottle Store**.

[41] Following a hearing on 28 March 2024 the Licence was renewed for a period of three (3) years as set out in the decision of even date.

[42] Accordingly, pursuant to section 130(1) of the Act the Committee grants the application for a renewal of the Off-licence for a period of three years subject to the following conditions:

The Licensed Premises

(a) The premises are identified on the plan provided with the application for a licence.

Section 119 – Restricted or supervised areas

(b) The whole of the premises is designated as a supervised area.

⁶ 60/OFF/53/2020

Discretionary conditions – section 116 (1)

- (c) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - (i) Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (d) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - (i) Alcohol must only be sold and supplied within the area marked on the plan submitted with the application.

Compulsory conditions – section 116 (2)

- (e) No alcohol is to be sold or supplied on or from the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.
- (f) Alcohol may only be sold or delivered on the following days and during the following hours:
 - (i) **Monday to Sunday, between the hours 8:00am and 10:00pm.**
- (g) Drinking water is to be freely available to customers, while alcohol is being supplied free as a sample on the premises.

Section 117 – Other Discretionary conditions

- (h) The following steps must be taken to promote the responsible consumption of alcohol:
 - (i) The licensee must implement and maintain the steps proposed in The LiquorLand Host Responsibility Policy⁷ aimed at promoting the reasonable consumption of alcohol.

Conditions applying to all remote sales and supply of alcohol

- (i) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on every receipt issued for any alcohol sold via the internet site.

⁷ As attached to the application.

- (i) The licence holders name, the licence number, and the date on which the licence expires.
 - (ii) A copy of the licence or a clearly identified link to such image must be displayed in a prominent place on the internet site.
- (j) The following steps must be taken to verify that people are over the purchase age:
- (i) In the case of an order made using an internet site, telephone order, or physical order – The prospective buyer must declare that he is she is 18 years of age or over (and where the prospective receiver is involved that the prospective receiver is also 18 years of age or over)-
 1. Once, when the prospective buyer first commences the order process; and
 2. Again, immediately before the sale of alcohol is completed

Other restrictions and requirements

- (k) Section 56 – Display of signs
- (l) Section 57 – Display of licences
- (m) Section 59 – Requirements relating to remote sales by holders of off-licences.
- (n) Section 214 – Manager to be on duty at all times and responsible for compliance

[43] The licence shall be renewed for 3 years.

[44] The applicant's attention is drawn to section 259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under the Act. Specifically, sections 46 to 63 and 231(1). The applicant must comply with all conditions specified on a licence.

DATED at CHRISTCHURCH this 29th day of April 2024



Merelyn Redstone
Chairperson
Christchurch District Licensing Committee