

**Decision No. 60B [2014] 1565**

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012.

**AND**

**IN THE MATTER**

of application under s.99 of the Sale and Supply of Alcohol Act 2012 by Bond Markets Limited in respect of premises at 41 Bishopdale Court, Christchurch, known as Bishopdale New World

**RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE**

Chairperson: **Mr P R Rogers**

Members: **Mr A Lawn and Mr R Wilson**

**HEARING** at Christchurch on the 26 June 2014

**PRESENT:** **Nigel Paul Bond** - Company Director Bond Markets Limited  
**Allison Houston** - Licensing Inspector  
**Sergeant Giddens** - NZ Police  
**Peter Shaw** - on behalf of the Medical Officer of Health  
**Malcolm Couling** - Counsel for applicant  
**Janet Anderson** - Hearings Adviser

**INTRODUCTION**

[1] The parties to the proceeding were identified and the applicant would be able to give evidence in support of his application.

[2] This matter concerns an application for an Off-licence for a supermarket by Bond Markets Limited. Objections have been received from the Alcohol Inspector, NZ Police and the Medical Officer of Health (the Agencies) to the proposed Single Alcohol Area (SAA).

## **THE HEARING**

### **Evidence from applicant - Nigel Paul Bond on behalf of Bonds Markets Limited.**

Mr Bond was represented by counsel – Mr Couling.

[3] Mr Couling had Mr Bond read from a prepared brief and explained his role in the company as sole director and responsible for the running of the business on a day to day basis. He gave a history of his involvement in supermarkets over 28 years. He commented that he had read the reports of the Inspector, the Police, and the Medical Officer of Health who were in opposition to the application. He added that he had had discussions at the premises with the Agencies on the 10 April 2014 and there had been a general walk around of the Supermarket.

[4] The applicant in his brief identified what he considered to be the sole matter to be determined at the Hearing and that was in relation to the SAA. To assist the Hearing he had produced a plan of the layout of the Supermarket setting out his proposed SAA. He explained how the proposed SAA area was selected and summarised his understandings of the opposition raised by the Agencies.

[5] Mr Bond pointed out that the evidence of the Licensing Inspector would differ from the Medical Officer of Health's position, in that the Inspector did not object to end of aisle displays. The Inspector's main opposition was concerning customers who passed through the main body of the premises when proceeding from the alcohol area.

[6] The Police position is based on the belief that the proposed area did not comply with s.115(b) of the Act and that the Police view was that a customer purchasing dairy or bakery items on the far wall of the Supermarket would be required to walk into an alcohol area to obtain the goods and then their direct path through to the point of sale was through the alcohol area.

[7] The applicant referred us to an explanation of the Act set out in the Foodstuffs Summary. In that explanation it explained that s.113(5) is essentially an entrance and exit restriction and that there must be an alcohol free area between the main body of the premises and the general point of sale.

[8] The applicant gave evidence that in his opinion there was confusion amongst the Reporting Agencies over the sections concerning the SAA provisions. He then alluded to the Alcohol Reform Bill and letters from the Minister of Justice and the fact that these should be used to interpret the wording of the Act.

[9] He said the proposal for his SAA came into existence after discussing the requirements of the Act with Foodstuffs Management and the previous owner. He was conscious of the need to produce a solution that met the requirements of conditions of SAA, he did say however that there were considerable space constraints which limited the options for this store.

[10] He said that some end of aisle displays had been removed under his proposal which meant that they would not be possible to be seen from the checkouts.

## **CROSS EXAMINATION**

### **Licensing Inspector - Allison Houston**

[11] The Inspector asked the applicant to agree that the legislation talked about from the main body and the route taken towards the checkout and the applicant agreed. The Inspector questioned where the main body is and the applicant replied leaving the last of the aisles. Mr Bond did agree that the checkout area did not start at the boundary of where the red line indicating the main body of the store had been drawn and the customers had to be able to come round the end of the aisle and down the next aisle.

[12] Counsel in re-examination just confirmed that the main body of store was at the point the red line had been drawn on the plan and the applicant confirmed it was.

### **NZ Police - Sergeant Giddens**

[13] The Sergeant read s.113(5)(b)(ii) to the applicant and asked him if he considered that his plan complied with that section. He confirmed with the applicant that the dairy and bread area opposite where the alcohol is displayed is in the main body of the shop and the most direct route through from the dairy section to the checkout was through the alcohol area and the applicant replied that that was correct.

[14] The Sergeant asked if the plan of SAA complied with s.113(5)(b)(ii), the applicant replied as far as practicable.

### **Canterbury District Health Board - Peter Shaw**

[15] Mr Shaw had the applicant confirm that the purpose of s.112 of the Act was to restrict the exposure to alcohol and the applicant replied as far as is reasonably practicable. When asked, the applicant confirmed that the proposal he had put forward meets that standard of s.112.

[16] Mr Shaw put it to the applicant that if the cooler was turned around to face into aisle 7 and that on the opposite side of aisle 7 alcohol could be displayed at the end of aisle 7 was closed off, he would lose very little linear meterage of alcohol display.

[17] The applicant did not think closing off the end of an aisle was an option as it would be a real danger for shoppers from flying glass, the Committee presumed in an earthquake. He also said it was not acceptable to lose the linear meterage by moving the wine from aisle 8 to aisle 7. He thought the proposal was impracticable.

[18] The applicant was asked about the percentage of alcohol sale compared to groceries and under the protection of s.203 prohibiting publication of the information he confirmed that it would be about 10% and confirmed for the other stores he had owned it would be about the same.

## REPORTING AGENCIES

### Licensing Inspector – Allison Houston

[19] The Inspector's Report and other documentation had previously been supplied to the Committee. The Inspector Ms. Houston read from a prepared brief she said an application for an Off-licence was received by the Alcohol Licensing team on 24 February 2014. Amongst the bundle of documents received was a plan of the premises showing the whole of the footprint of the premises including an area highlighted and marked "A" indicating the proposed alcohol area.

[20] There were a number of meetings with the applicant together with the Agencies and in the end the Inspector took the view that the applicants proposed alcohol area did not fill the requirements of the Act. She did propose an alternative option which she thought may meet the requirements for a single area condition and this became known as Plan C.

[21] The Inspector had no concerns as to the suitability of the licensee and noted that that he was an experienced operator of a large supermarket.

[22] She considered the opposition turned on section 113(5)(b)(ii) and these had not been met in the applicant's proposal area. She therefore sought the guidance of the Committee particularly around the meanings of "main body of the premises" and the word "through" in relation to section 113 of the Act.

### Police – Sergeant Giddens

[23] Reported that the Police concerns were that the proposed alcohol area was located in such a way that members of the public who had been to the dairy getting milk etc. to get to the checkout had to pass through the alcohol area. They were in support of the Medical Officer of Health's plan as it reduced exposure.

### Medical Officer of Health - Peter Shaw

[24] Mr Shaw read from a prepared brief and indicated on the 27 March 2014 he received a request from the Christchurch District Licensing Committee for a report on an application from Bond Markets Limited for an off-licence for their supermarket. He confirmed having visited the premises with members of the Agency and that the applicant was seeking a single area condition which covered the eastern side of the aisle running almost the full length of the store from the dairy display area to the checkouts.

[25] Mr Shaw raised concerns that the most direct route from the dairy area to the checkouts was through the alcohol aisle. As a result the Medical Officer of Health opposed the application and relied on s.112(1) and quoting from the brief "to limit, (so far as reasonably practicable) the exposure of shoppers in supermarket and grocery stores to displays and promotions of alcohol and advertisements for alcohol".

[26] The view of the Medical Officer of Health, was that the exposure of alcohol to the customers was very deliberate and therefore failed to meet the requirements of s.113. The Medical Officer of Health does not accept that the cost should be entertained as a single



factor when deciding on “reasonably practicable” given the enormous cost of alcohol abuse to the New Zealand economy.

[27] In conclusion Mr Shaw said the Medical Officer of Health firmly held the view that the proposal put forward by the applicant does not meet the requirements of the legislation, therefore the application be refused unless the applicant can put forward an acceptable alternative.

## **CROSS EXAMINATION**

**Mr Lawn** - Committee Member

[28] Mr Lawn questioned the applicant about the layout of the supermarket before he purchased and Mr Bond replied that it was refurbished seven years ago and that the layout had not changed.

[29] Mr Lawn put it to the applicant about moving the alcohol area and he replied it was impossible to move it to a more suitable area and that there was always going to be traffic passing through. Mr Lawn continued to cross examine as to the Medical Officer of Health’s proposal that a ‘U’ shape in aisle 7 would not be a better solution

**Mr Rogers** – Chairperson,

[30] Mr Rogers confirmed that the location of the alcohol displays had not changed and the applicant replied with the exception of the end of aisle displays.

**Mr Wilson** - Committee member

[31] Mr Wilson asked when the applicant had taken over the store did he have discussion with the previous owner and had they used s.112 of the Act as a starting point. Mr Bond replied he had taken his lead on the matter from the Foodstuffs. He continued that his proposal was the best solution available and did not see how it could be improved in a practical way.

## **SUBMISSION from Agencies**

**Alcohol Inspector**

[32] Ms Houston’s submission covered off that this was a new licence application and so therefore the applicant was not afforded the opportunity under s.115 to have a delay in the application of an SAA.

[33] She said that in her opinion, other than the questions around the SAA the applicant met the criteria of the Act under s.105. She commented he was an experienced operator, and this was unlikely to be a problem premise.

[34] Ms Houston said the area in dispute was s.113(5)(b)(ii) and in particular “does the alcohol area include any part of (or all of) any area through which the most direct pedestrian route between the main body of premises and the checkout area passes”

[35] S.112 of the Act has as its purpose a provision to describe a one area condition and the purposes of this is achieved by the application of s.113 and is given effect to by s.114. She commented that the Act did not supply a definition for “main body” and “through” whilst did provide a definition for “general point of sale”.

[36] She asked that in applying a test to the SAA for the supermarket, and applying s.113 was this met by the plan proposed by the applicant? If not, is this met by another alternative plan proposed by the Committee as SAA applying as far as reasonably practicable.

[37] The Committee must be satisfied that the applicant has fulfilled its onus in the case for the current plan proposed by the applicant. In her submissions the Inspector submitted that the applicant had failed to establish this.

[38] In conclusion she said that the SAA as proposed in the Inspector’s Report Plan C made a SAA that would meet the criteria of s.112 to s.114 and would be reasonably practical in the circumstances.

### **NZ Police**

[39] It is the Police position that the applicant is clearly in breach of s.113(5)(b)(ii) and the SAA does not comply with that subsection. The Sergeant believed the applicant had made a poor attempt to comply with his obligations under the Act. The police do not believe cost and profitability should be the primary drivers. They said he’d given very little weight to the purpose and object of the Act.

[40] The Police’s final position was that the applicant had done very little to limit the exposure of their shoppers to alcohol.

### **Medical Officer of Health**

[41] Their submission was that in the view of the Medical Officer of Health that s.112(1) sets out the purpose of 11, 113 and 144 and that clearly the applicant has failed to limit exposure of alcohol to shoppers. This relates not only to the length of store display but also the end of aisle displays.

[42] Mr Shaw submitted that it was the responsibility of the applicant to satisfy the Committee that there was no other reasonably practical configuration that would reduce exposure to the shopper. The applicant had dismissed suggestion from both the Inspector and Medical Officer of Health and believed his proposal is the only option, offering no alternative.

[43] In conclusion their submission ends with the proposed SAA being unacceptable in the terms of the legislation.

### **SUBMISSION on behalf of Bond Market Limited**

[44] Counsel’s submission covered off where he saw the failings of the Agencies and he concentrated on the wordings of s.113 (5)(b)(ii) and in particular, the words “any area of the premises through which the most pedestrian route between the main body of the premises and the general point of sale passes”.

[45] Counsel contention was s.113(5)(b)(ii) created what he called an exit and entry test and that the word “between” meant the area between the main body of the store and the entry or exits (in other words the checkouts). The applicant had produced a plan of the store where a line across the store at the end of aisles closest to the checkouts and Counsel argued that the main body of the store stopped at that line.

[46] The Counsel touched on the alternative options which was Plan C produced by the Inspector and another suggestion from the Medical Officer of Health, which became a “U” shaped alcohol area as one end of the aisle was blocked off. Counsel commented that alcohol could not be displayed in any of the aisles because there would always be a direct route between the alcohol area and checkouts.

[47] He believed that it was Parliament’s intention not to allow a single area sale in that “in between area”. That is the area between the body of the store and the checkout area.

[48] At paragraph 50 of the submission Counsel talks of the modern approach to statutory interpretation being founded on the key concept of purpose and context the “purposive approach”.

[49] At paragraph 54 he states that the context can be both internal and external and that the Courts have looked at developments and practices considering the range of intrinsic material as an aid to interpretation which includes Parliamentary history.

[50] At Paragraph 81 of the Submission Counsel quotes s.112 (1) and that the Agencies had focused on the two words “the purpose” and ignored the words “of this section and sections 113 and 114”.

[51] Counsel contended that s.113 and s.114 when mentioned in s.112 stand aside and he believes that as a result s.112 (1) is misunderstood and s.112 (1) should not be used to control or direct actions under s.113 or s.114.

[52] At paragraph 88 Counsel maintains that in s.112(1) is there any requirement for the Committee to undertake a further assessment to see whether or not there can be other measures put in place to limit the exposure of shoppers.

[53] Counsel touched on Mr Bond’s evidence that the Bishopdale New World is constrained both in size and layout and that there was no other area where alcohol could be easily placed. He made mention that the coolers for the alcohol are plumbed and that in order to make a significant alteration there would be considerable costs involved.

[54] Counsel considers that the single alcohol area (SAA) mentioned by Mr Bond balances his needs as an operator to maintain an appropriate balance of grocery lines as well as alcohol. At Paragraph 106 he states that nowhere in any of the other aisles would alcohol be placed where at some point a customer would not walk through to complete a full shop.

[55] At Paragraph 99 Counsel commented that it does not give the Committee more tools in the tool box to go back and regulate the layout of a single alcohol area within s.113(5) once it has determined whether the proposed SAA complies with s.113(5).

**That ended the hearing.**

## **DECISION**

[56] All the evidence presented to the Committee was considered, and the Committee had regards to the various sections of the Act. In particular the sections listed below:

### **Section 105 Criteria for issue of a licence:**

(1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned 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 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 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 effects 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.

(2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

[57] The Committee has no concerns over the suitability of the applicants.

### **Section 112 Compulsory conditions relating to display and promotion of alcohol in single area in supermarkets and grocery stores**

(1) The purpose of this section and section 113 and 114 is to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol.

(2) The licensing authority or licensing committee concerned must ensure that, when it issues or renews an off-licence for premises that are a supermarket or grocery store, it imposes on the licence a condition describing one area within the premises as a permitted area for the display and promotion of alcohol.

- (3) On the renewal of an off-licence for premises that are a supermarket or grocery store, any single-area condition imposed when the licence was issued (or was last renewed) expires.
- (4) Subsection (3) is subject to section 15(4).

### Section 113 Describing alcohol areas

- (1) The licensing authority or licensing committee concerned must have regard to section 112—
- (a) when describing an alcohol area; and
  - (b) when taking any other action under this section; and
  - (c) when forming any opinion for the purposes of this section.
- (2) An alcohol area must be described by means of a plan of the footprint of the premises concerned (or, in the case of premises on more than one level, a plan of the footprint of the level on which the area is or is to be located) showing—
- (a) the proposed configuration and arrangement (or, in the case of the renewal of a licence, the existing or any proposed new configuration and arrangement) of the premises or level; and
  - (b) the perimeter of the area.
- (3) The area may be so described that it is divided into 2 or 3 sub-areas; and in that case,—
- (a) the perimeter of each sub-area must be separately described; and
  - (b) the licensing authority or licensing committee concerned must designate one sub-area as the core area and one sub-area as the secondary area, and (if the area is divided into 3 sub-areas) must designate one sub-area as the overflow area.
- (4) The perimeter of the area or any sub-area may pass through the proposed locations (or, in the case of the renewal of a licence, any existing or proposed new locations) of any display units.
- (5) The authority or committee must describe an alcohol area within the premises only if, in its opinion,—
- (a) it is a single area; and
  - (b) the premises are (or will be) so configured and arranged that the area does not contain any part of (or all of)—
    - (i) any area of the premises through which the most direct pedestrian route between any entrance to the premises and the main body of the premises passes; or
    - (ii) any area of the premises through which the most direct pedestrian route between the main body of the premises and any general point of sale passes.
- (6) For the purposes of this section and section 114, **general point of sale** means anything that is—
- (a) a checkout, till, or cashbox where goods other than alcohol (or alcohol and goods other than alcohol) may be bought; or
  - (b) a device by which goods other than alcohol (or alcohol and goods other than alcohol) may be paid for without the involvement of any person other than the buyer.

**The Object of the Act as below:**

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 or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[58] **The issue** to be determined by this Committee concerns sections 112 to 114 of the Act In light of the Interpretation Act 1999 (IA). In the IA it prescribes what should be taken into consideration, in particular the provisions of sub section 5(3) of the Act which has been reproduced in this decision.

**Interpretation Act 1999 Section 5**

Ascertaining meaning of legislation

(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.

(2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.

(3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

[59] The applicant in this matter bought the supermarket in question in early 2014 and has had discussions with the previous owner and the Foodstuffs management concerning the SAA. He agreed that the area where the alcohol is displayed had been in place prior to him purchasing the store. The applicant stated the premises became a New World Supermarket seven years ago, at which time it was refurbished. No refurbishment had taken place since, so the alcohol has been located in that position to the present day.

[60] The applicant said that there were serious size constraints at the store and considered he had no option other than to site the alcohol where it is. He believed the setup he proposed exposed shoppers to alcohol for the minimum time. The applicant believed that the words “reasonably practicable” in the legislation means also reasonably

practicable operationally, in his words “how we operate the store”. He also admitted under cross examination that whether he likes it or not, the sale of alcohol is 10% of the business.

[61] The Committee does not take the view that financial or operational concerns should be taken into consideration when considering the term “reasonably practicable”. It should instead be considered, as is it reasonably feasible to locate a single alcohol area in a proposed area of the supermarket taking into consideration location and logistical matters.

[62] We do not believe that just “going along” with the status quo after the enactment of a piece of Legislation such as the Sale and Supply of Alcohol Act 2012, is in the spirit of s.3 of the Act which has as its purpose:

### **Purpose Section 3**

(1)The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole,—

(a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and

(b)to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.

(2) The characteristics of the new system are that—

(a) it is reasonable; and

(b) its administration helps to achieve the object of this Act.

[63] The Committee is of the view that ss.2(b) concerning any harm to society generally or the community, directly or indirectly which contributes to the crime, damage, death, disease etc. needs to be considered as the overarching principle when considering s.113 and the other related sections.

[64] Much has been made as to how the Committee should interpret the legislation, the Committee is clear s.3 of Interpretation Act 1999 lays out what things can be considered and such indicators are things such as preambles, the analysis, a table of comments, headings to parts and sections, marginal notes, diagrams, graphics, examples and explanatory material and the organisation and format of the enactment.

[65] We have heard from the Counsel, that he believes that to have the emphasis on the word “through”, is misguided and is only the third word of importance in that section. The important word being “between”. The importance of this word was not raised by the Agencies as an issued either in evidence in chief or their submission.

[66] Looking at the Concise Oxford Dictionary these words have got various meanings...

**“through”** (adjective)“(of traffic) passing through a place to its destination”

(*adverb*)“through a thing from side to side, from end to end, from beginning to end”

**“between”** (*predicate and adverb*) “In, into, along, or across, a space, line, interval, or route, bounded by (any number of, esp. two, points, lines dates, etc.)”

From the Inspector’s Report she has quoted –

**“main body”** includes:

“Chief in size or extent; constituting the bulk or principal part; designating the chief part of the thing specified”. (The Committee agrees with this definition).

[67] The Committee believes that the correct approach to statutory interpretation is to use the Interpretation Act 1999 which provides “the meaning of an enactment must be explained from its text and in the light of its’ purpose”. As specified previously subsection 2 then highlights what that means and limits it to things within the Act not outside the Act.

[68] Likewise Counsel stated to obtain the context of any material contained in the course of the actual passing of the Act that can include recourse changes to the Bill during its passage through the House, the Parliamentary debates, Supplementary Order Papers.

[69] For this reason the background material relating to the Bill, letters from the Justice Minister, or Supplementary Audit Papers must be balanced by the words in the enactment.

[70] The Committee has considered New Zealand Legislative Advisory Committee Guidelines Chapter 3a on Statutory Interpretation, Legislative History page 76, which reads:

#### Legislative history

Although they were once excluded from consideration, it is now not uncommon for courts and other interpreters to refer to legislative or parliamentary history to assist in the interpretation of Acts. Among the materials which are referred to in this way are:

- reports of committees recommending legislation;

- explanatory notes to Bills;
- amendments made to Bills during the parliamentary process;
- commentaries of parliamentary select committees;
- parliamentary debates as reported in Hansard.

Most often such materials are referred to simply to provide contextual background, but on occasion they can be helpful in providing indications of the purpose of a provision, or sometimes even evidence of the intended application of a provision to a particular situation. Extracts from Ministers’ speeches in parliamentary debates are the most commonly referred to. However, caution is required. Only the words of the statute as enacted represent the intention of Parliament; the statements found in the legislative history are only indications of what the promoters of a particular



provision believed. Thus, statements in the parliamentary history must not be allowed to supersede or qualify the words of the Act itself.

[71] To the Committee the important words from the above guidelines are “Only the words of the statute as enacted represent the intention of Parliament”. For this reason we put aside Counsel’s contention and rather looked at the purpose and object of the Act.

[72] A Liquor Licensing Authority decision gives some guidance on the importance to be placed on words in a section in the matter of, Woodward Group Limited Decision No. PH 1415/2008, paragraph 46, “It seems to us that Parliament had declared that it was no longer appropriate to adopt a fair, large and liberal construction and interpretation of any statute. Put in another way, statutes should be interpreted on the basis that the words should bear their plain and ordinary meaning, provided that any resultant interpretation did not offend against the statute’s object”.

[73] At paragraph 50 of his decision, Judge Unwin quoted the following High Court case:

In the High Court decision of Michael John Lopdell and another v Deli Holdings and another, High Court Auckland 10 December 2001 AP 97/01, Randerson J upheld the appeals. He stated that the grant of a licence to premises where the principal business was the sale of food was precluded by the Act. In other words, a liberal approach to the wording in the Act was inappropriate.

[74] While the above case concerned the sale of food and alcohol, the principle is the same in that a liberal approach to wording of the Act is inappropriate when considered in the light of the statute’s object.

[75] Clearly the words “through”, “main body” and “between” should be given a plain and clear meaning, not a constrained distorted meaning where the purpose of the Act is put aside and the whole section hangs on one word “between”.

[76] The Committee rejects this as a strained interpretation of s.113 and it is not what was intended under the Interpretation Act 1999. It is true that the words “direct route to the main body of the premises” does not suggest a starting point, but a starting point has to be from some point in the store. It would be illogical to say that the starting point was at the edge of the main body closest to the checkouts, when it could be said that it was from the back edge of the main body. The logical conclusion is to take the words “through” as to mean to pass through any part of the main body.

[77] Going back to the evidence produced and the submissions by Counsel, he believes that the section turns on the word “between”. His interpretation of the Legislation is that the SAA is restricted from being placed between a line drawn cross the end of the aisles closest to the exit area (checkouts), to be the boundary of the main body and the checkouts themselves.

[78] The Committee does not take this view as the argument appears to overlook the fact that goods, confectioneries, magazines etc. are also displayed at the general point of sale:

**(6) For the purposes of this section and section 114, general point of sale means anything that is—**

**(a) a checkout, till, or cashbox where goods other than alcohol (or alcohol and goods other than alcohol) may be bought; or**

- 1. (b) a device by which goods other than alcohol (or alcohol and goods other than alcohol) may be paid for without the involvement of any person other than the buyer.**

[79] It is the Committee's view that the boundary of the main body should be drawn immediately at the point where the sales transaction takes place. This would mean that up until the time that the goods are handed over to the checkout operator and money changes hands to make the sale complete and that is anything located on the stores side of the till is within the main body of the store.

[80] However the Counsel wanted to stick with the arbitrary red line immediately across then end of the aisles closest to the checkout. It was Committee's view that this was clearly an attempt by Counsel to restrict the main body to as smaller area as possible. The Committee rejects this view and as mentioned previously, clearly goods are for sale at the checkout and that clearly is part of the main body of the shop.

[81] The matter to consider therefore is, what alcohol area can be described by the Committee so that it complies the Act?

[82] A number of proposals have been put forward, one by the applicant which we will call Plan A and this showed one aisle (aisle 8) of alcohol with a break in the middle, one side of the aisle being coolers the other shelving. Evidence from the applicant indicated total length of alcohol displayed was 29.1 metres of alcohol.

[83] The Committee after carrying out a site visit consider that this store when compared to other supermarkets seemed to have a higher percentage of space related to alcohol to groceries etc. than some other supermarkets, even some of those belonging to Foodstuffs Group.

[84] Given the space constraints in this supermarket the Committee considers that a reasonable approach would be to balance the size of the supermarket to the size of the SAA, particularly if it allows in the Committee's view compliance with the Act.

[85] At Paragraph 99 of Counsel submission he commented that it does not give the Committee more tools in the tool box to go back and regulate the layout of a single alcohol area within s.113(5). While we may not take this approach, the Counsel failed to mention that s.117 allows a Committee to put any conditions on a licence that it sees fit.

## **Section 117 Other discretionary conditions**

**(1) The licensing authority or licensing committee concerned may issue any licence subject to any reasonable conditions not inconsistent with this Act.**

**(2) The generality of subsection (1) is not limited or affected by any other provision of this Act.**

[86] To apply this section it would not be inconsistent with the Act for a Licensing Committee to specify some conditions as long as it was reasonable and that could include where alcohol was located in a supermarket relying on section 3 and 4 of the Act.

[87] The Committee rejects Counsel's argument at para 88 of his submission that there is any requirement on the Committee to undertake a further assessment of whether there could be other measures put in place to limit the exposure to the shopper. The Committee relies on s.113(5) which says that the Committee must describe an alcohol area within the premises only if in its' opinion it fits within the categories under ss.5(b)(i) and (ii).

[88] Counsel touched on Mr Bond's evidence that the Bishopdale New World is constrained both in size and layout and that there was no other area where alcohol could be easily placed. He made out that the chillers for the alcohol are plumbed and that in order to make a significant alteration there would be considerable costs involved.

[89] The Committee should point out that this had been one of the factors that led it to the conclusion that it would be reasonable to switch the coolers from one side to the other of the row as this would be minimal cost to Mr Bond.

[90] During the Hearing it is clear that neither the applicant nor the Counsel had another proposal on the table. The committee put aside the proposal of the Inspector on the basis that any increase of linear meterage of alcohol display was unacceptable and not within the spirit of the Act. Likewise the proposal by the Medical Officer of Health to have an aisle blocked off was problematic in relation to public safety and was not a reasonably practical solution.

## **CONCLUSION**

[91] The Committee has given considerable thought to the issues raised. As a result, it is the decision of the Committee to grant the application with the following conditions:

### **Compulsory Conditions**

Section 112(2)

- (a) The single area for the display and promotion of alcohol is the area marked in pink on the plans marked "A" and "B", being the plan approved by the District Licensing Committee

**Section 116(2)**

- (a) No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1 pm on Anzac Day.
- (b) Alcohol may only be sold or delivered on the following days and during the following hours- **Monday to Sunday 7.00 am to 11.00 pm.**
- (c) Drinking water is to be freely available to customers while alcohol is being supplied free as a sample on the premises.

**Discretionary Conditions – s116(1)**

- (a) 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-
  - Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the total prohibition on sales to intoxicated persons.
- (b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed –
  - Alcohol must only be sold or supplied within the area marked on the plan approved by the District Licensing Committee.
- (c) The whole of the premises is undesignated.

Other restrictions and requirements to be noted on the licence:

- s.56 Display of signs
- s.57 Display of licenses
- s.58 Restriction on the kinds of alcohol sold in supermarkets and grocery shops, and in premises directly accessible from supermarkets or grocery shops
- s.59 requirements relating to remote sales by holders of Off-licenses
- s.214 Manager to be on duty at all times and responsible for compliance

The licence may issue when all clearances have been received and all required fees have been paid.

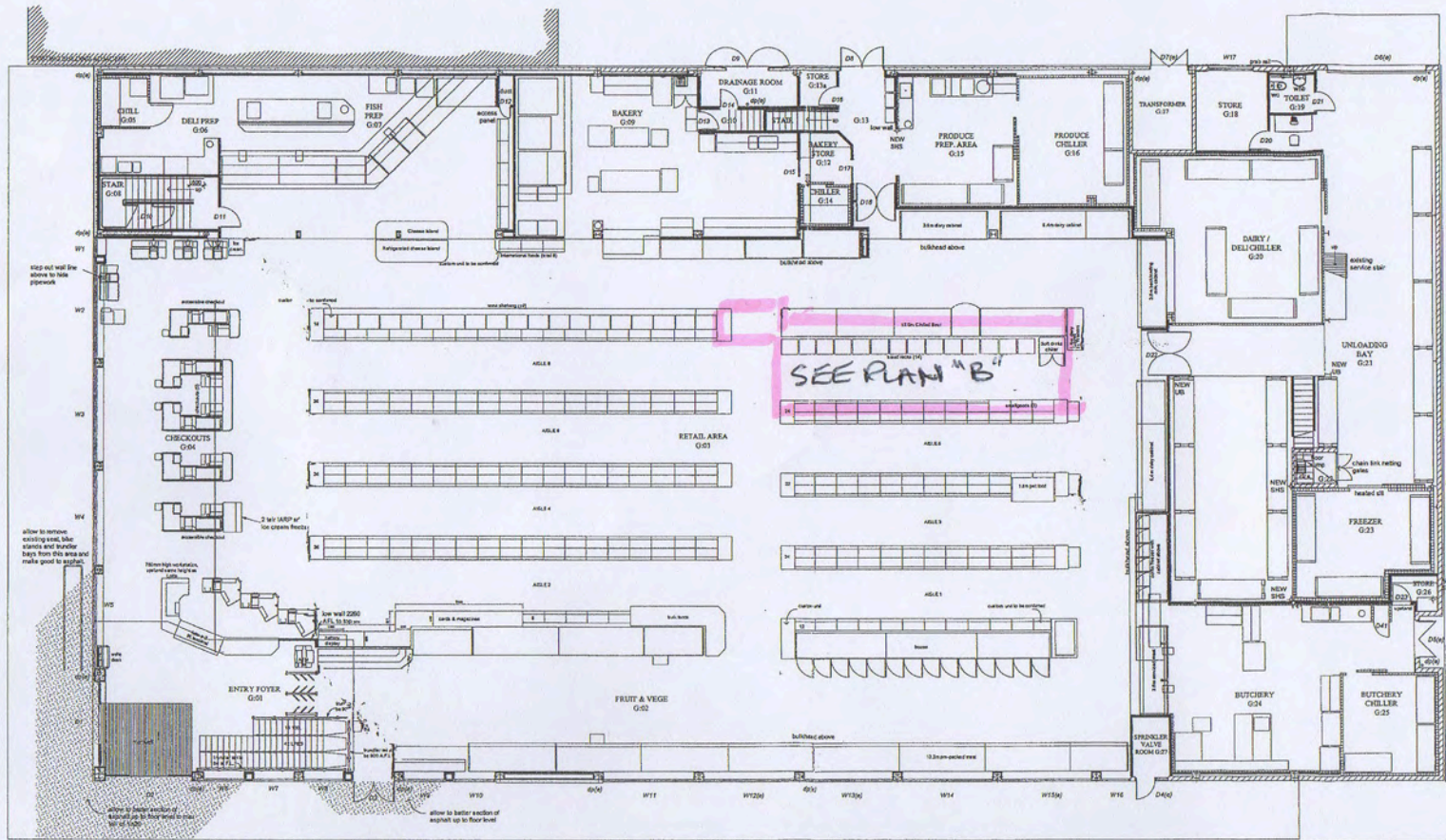
**DATED** this 17th day of July 2014.



**P R Rogers**  
Chairperson

**CHRISTCHURCH DISTRICT LICENSING COMMITTEE**

# BISHOPDALE NEW WORLD SUPERMARKET PLAN "A"



General Notes:  
 1. All dimensions are in meters unless otherwise stated and are to be verified on site.  
 2. All dimensions are to be verified on site.

Revision	By	Date
1		
2		
3		
4	Preparatory	19.11.13
5	Amendment	19.11.13

**FOODSTUFFS**  
 South Island Limited

**BISHOPDALE**  
 Liquor Area  
 Ground Floor

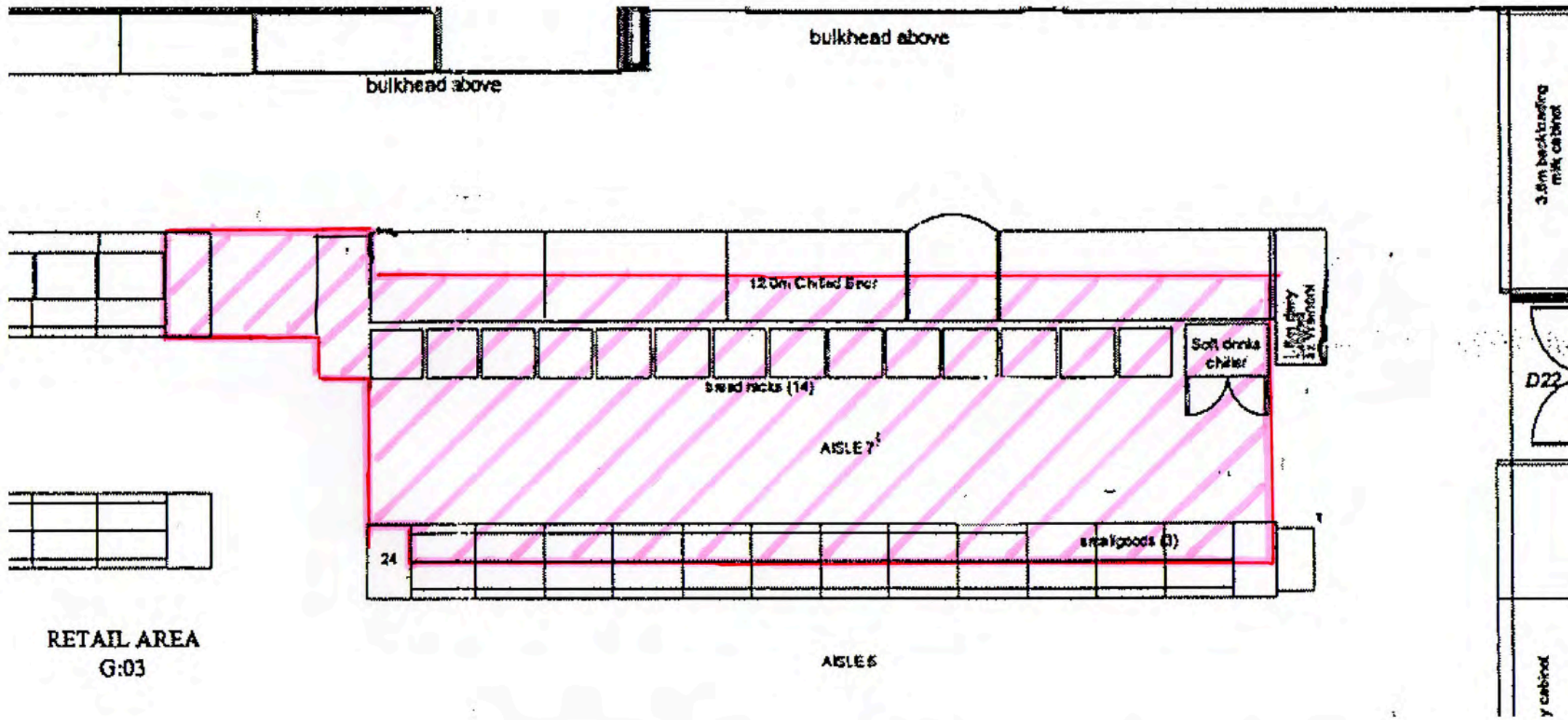
Drawing Scale	1:100	Drawn	T. Seurie
Project No.	AS.01-03	Date	19.11.13
Sheet No.	A	Number	A

ALL DIMENSIONS TO BE VERIFIED ON SITE



# BISHOPDALE NEW WORLD SUPERMARKET

ALCOHOL ARE MARKED IN PINK



RETAIL AREA  
G:03

AISLE 5

3.8m back trading  
milk cabinet

D22

y cabinet