

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012 ("the Act")

A N D

IN THE MATTER

of an application from **KIWANO
LIMITED** pursuant to s100 of the Act
for a new Off-Licence Decision 58/2015

BEFORE THE HOROWHENUA DISTRICT LICENSING COMMITTEE

Chairperson: Cr Ross Brannigan
Members: Mr Philip Comber
Mr Craig Fleury

HEARING at Levin on 14 March 2016.

APPEARANCES

- (a) Mr Gagandeep Bagga – Applicant
- (b) Ms Parlato & Ms Cannell – Counsel on behalf of Mr Brian Bishop – in opposition
- (c) Mr Corey MacMillan – in opposition
- (d) Ms Corrine Smith – in opposition
- (e) Ms Sharon Williams – in opposition
- (f) Mr Dean File – in opposition
- (g) Snr Constable Anthony Clarke, NZ Police – to assist
- (h) Ms Lisa Roiri, Liquor Licensing Inspector – to assist

DECISION OF THE DISTRICT LICENSING COMMITTEE

1. Introduction

- 1.1 This decision relates to an application by Kiwano Limited, trading as Shannon Liquor Centre, for an off-licence in respect of the premises located at 13 Ballance Street, Shannon.
- 1.2 The application was filed on 9 December 2015, with the hearing held on 14 March 2016.
- 1.3 An off-licence is sought for seven (7) days a week.
- 1.4 A site visit was conducted by the District Licensing Committee on 11 March 2016.
- 1.5 The application attracted a total of eighteen (18) objections, one (1) in support of the application, and a petition containing 390 signatures against the application.
- 1.6 The applicant is a company (5845456) incorporated on 11 November 2015. The company has one director/shareholder, Gagandeep Bagga born 16 April 1986 in Ludhiana (Punjab).
- 1.7 Gagandeep Bagga's Manager's Certificate number is 40/CERT/086/2014 which was granted by the Horowhenua District Licensing Committee on 15 May 2014 and has been renewed once since issue. The certificate is currently due to expire on 16 May 2018 unless renewed before this time.
- 1.8 Gagandeep Bagga currently is a director and shareholder of a company called Iconic Liquor Limited (5695190) incorporated on 5 May 2015. Iconic Liquor Limited has two shareholders/directors, Gagandeep Bagga and Neera Dang.

2. Reporting agencies

None of the reporting agencies: NZ Police, Medical Officer of Health or the District Licensing Inspector, opposed the application.

3. Submissions and Evidence

- 3.1 The Applicant, Mr Bagga, commenced his evidence by providing background, recent work history and commenting on various aspects of his application. Mr Bagga also spoke about hours of trading and proposed advertising which would include their address and phone number, but not specials as other retailers currently do. With regard to the sale of 'single items' such as RTDs, Mr Bagga said that this will not occur unless there is dated or end of the line stock.

- 3.2 Ms Parlato and Ms Cannell on behalf of Mr Brian Bishop, Club Hotel Owner, presented evidence in opposition to the application. Mr Bishop was unable to attend the meeting but did send his apologies. Evidence included the ratio of Off-Licence amenities located in Shannon per person compared to the National average of 1 :1000 and risk of alcohol related harm in a low socio-economic community.

Snr Constable Clark was asked to clarify the current manning of the Shannon Police Station which he informed is a one man station at present. The station is, however, designated as a two-man station. The Foxton station covered the Shannon area if required and at un-manned times.

- 3.3 Mr Corey MacMillan, Shannon business owner, provided evidence in opposition to the application talking about alcohol harm and effects of alcohol on the community in general. The hours of the new off-licence, if granted, would extend the hours of alcohol being available. Mr MacMillan believed that the community did not need or want another off-licence premises and he appealed to the Committee to make a decision that was morally right. Further, he pointed out the good work in cleaning up the reputation of Shannon over the years and he would not like to see that work undone.

The Chair clarified the opening hours that the applicant had proposed which did not extend the hours that alcohol would be available in Shannon as the Hotel had longer opening hours.

- 3.4 The next objector to give evidence was Ms Corrine Smith who had been a Shannon resident since 1990. Ms Smith's evidence covered issues with the sale of alcohol in Shannon which is a low social demographic area and impact on the already high family violence within the Horowhenua District. Ms Smith spoke about her observations of issues with alcohol in Shannon and reducing harm to the community.

In response to a question regarding the bus stop used by school-aged students, it was clarified that children using the bus stop were already exposed to a liquor outlet.

- 3.5 Ms Sharon Williams spoke about the 2013 census information quoting the population of Shannon being 1,239; to her this was not a developing community. Ms Williams talked about her involvement in the Shannon community as a social worker who worked predominately with children and youth. She informed that she had not noted much litter in the CBD over the last five to seven years and she was concerned that this would increase if there was another Off-Licence granted. Ms Williams also had concerns that people would start consuming alcohol in the local Skate Park. In conclusion, Ms Williams talked about the Off-Licence premises ratio per person in Shannon and the National average and what it would be if there was to be an additional Off-Licence granted.

- 3.6 Mr Dean File gave evidence as a Shannon resident and President of the Shannon Rugby Club. Mr File noted that the bus stop was near the existing establishment which had been there for many years. Mr File clarified with regard to the Church opening hours saying it was open all days of the week, not just on Sundays. Both current Off-Licence premises were active in the community and provided sponsorship to the Rugby Club. He felt that having another Off-Licence in the town would take away from the good image that had been created for Shannon.
- 3.7 Mr Comber informed the Chair that the petition did not comply with the law as set out in the Act. The only persons permitted by the Act to object are persons who have a greater interest in the application than the public generally. The only grounds of objection relate to the matters set out in section 105 of the Act. The Petition does not indicate either that those who signed it are persons qualified to object, nor does it indicate which of the permitted grounds of objection it is directed to. The Chair also noted that of the 394 signatures, 54 of these signatories resided outside of Shannon. The Petition was in any event lodged after the time for objections had expired.
- 3.8 Mr Comber asked Snr Constable Clarke to comment on the parameters for the Police to lodge an objection and the rationale for not submitting in this case. Snr Constable Clarke informed that in this case the Police looked at applicant suitability, CPOs and the running of the applicants business in Foxton. All of these areas were favourable; Police, therefore, did not find reason to submit an objection.

4. Legal framework

The criteria the Committee must use in considering whether to issue this licence are set out in section 105 of the Act.

5. Consideration of Section 105 matters

5.1 *Object of the Act – s105(1)(a)*

The Committee has considered the object of the Act in reaching its decision on the application.

It is satisfied that granting of a new Off-Licence would not result in unsafe or irresponsible sale or supply of alcohol or an increase in the harm envisaged by the Act. The granting of a third licence does not convince the Committee that there would be any marked increase in alcohol sales in Shannon.

5.2 *Suitability – s105(1)(b)*

The applicant is a limited liability company with the sole director being Mr Gagandeep Bagga. The Committee through the hearing process was able to clearly take confidence in his commitment to the task at hand, and confidence in the management of the premises through employment of experienced managers. Further, Mr Bagga is successfully operating a similar business in Foxton. There have also been no objections from the reporting agencies. Accordingly it is believed that Mr Bagga has demonstrated his suitability.

5.3 *Any relevant local alcohol policy – s105(1)(c)*

There is no Local Alcohol Policy in force for the area as defined by the 'Act' although there is a guidance policy in place that was developed under the 1989 Act. This application meets those expectations.

5.4 *The days upon which the Applicant proposes to open – s105(1)(d)*

The trading hours proposed are Sunday to Thursday 11.00 am to 8.00 pm and Friday and Saturday 11.00 am to 9.00 pm. These hours are within the National default hours of 7.00 am to 11.00 pm; also within the 2006 Guidance Policy hours, and are less than the two other Off-Licence premises operating in Shannon.

The proposed opening hours are, therefore, deemed reasonable.

5.5 *The design and layout of the premises – s105(1)(e)*

Sketch plans were included with the complete application file attached. The work on the premises has not commenced pending the decision made on this matter; however, the certificates required under planning and building related Council requirements have been obtained.

The proposed design and layout appears to be appropriate and is not to be altered by the applicant.

5.6 *Sale of goods and services other than those relating to alcohol and food – s105(1)(f) & (g)*

There are no issues arising under this heading.

5.7. *Amenity and good order – s105(1) (h) & (i)*

The Act is concerned with effects of alcohol but also extends to people's enjoyment of their environment. The question the Committee must answer is whether the amenity and good order of the area would be likely to be reduced to more than a minor extent by the effects of the issue of the licence. The Committee does not believe there will be any effect. The location is within the business area; it is a small operation; there is no evidence of any effect on the amenity and good order.

5.8 *Appropriate systems, staff and training – s 105(1)(j)*

Mr Bagga appears to have these in place. This is supported by the fact that he operates a similar business in Foxton without any issues.

5.9 *Reporting agencies – s105(1)(k)*

As noted at paragraph 2 above. In addition, the DLC regards the MidCentral District Health Board's Public Health Service as a key informant when forming a view about the impact on harm minimisation and changes to the amenity of an area. The non-objection to this application by the Medical Officer of Health was regarded by the DLC as significant.

5.10 The DLC is also required to take account of the requirements of section 105(2) of the 'Act' "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".

6. Other Matters

6.1 Counsel for the Club Hotel Owner (Mr Brian Bishop), an objector, provided us with copies of two reported decisions. One of the Alcohol Regulatory and Licensing Authority in relation to an Application for an Off-Licence in Masterton [2014] NZARLA PH 881, the other a decision by the Kapiti Coast Licensing Committee for an Off-Licence in Otaki [Decision 45/076/2015].

6.2 The Committee gave close consideration to these two cases in coming to its decision in this present case.

- 6.3 In respect of the Masterton case, the Committee considered that there were features in that case which distinguished it from the present Application. The DLC had accepted that Masterton “was saturated with off-licences” and that the granting of a new off-licence would accentuate that position in an area which is socially deprived and that was the direct opposite of what the Act was intended to do. That view was supported by evidence from a Police Sergeant and by the Licensing Inspector. The Authority stated in its decision that “there was just enough evidence for the DLC to conclude that the Masterton East community is an area where alcohol related harm prevails”. Although there was some evidence before the committee, in particular that of Ms Corrine Smith and Ms Sharon Williams, that Shannon was such a socially deprived area, and there was no cause to doubt the sincerity of their evidence, all though some of the evidence was conflicting, the view was formed that in the absence of objections by the Police (who were represented by Snr Constable Tony Clarke), Public Health (who did not appear) and the Licensing Inspector (Ms Roiri), the evidence did not satisfy the Committee that the position in Shannon was directly comparable to that of Masterton, or that Shannon was saturated with off-licences.
- 6.4 Although there was some statistical material put forward in the submission on behalf of Mr Bishop suggesting that there was some sort of test as to the number of licences appropriate to the population of an area, the Committee had considerable reservations about the methodology of such a submission. It does not appear to take into account the population of surrounding areas and how closely settled they are. While such statistics may be useful, they cannot, in the Committee’s view, be determinative. To do so would be too simplistic a view. These matters cannot be determined on basis of a formula..
- 6.5 The Otaki case appears to have turned to a very large extent on the suitability of the applicant, which was not an issue in this present Application. There was, however, considerable evidence of social deprivation given and this was supported by both the Police and Public Health, a feature noticeably different to this Application where there is no objection from either body. There was also, it appears in the Otaki Decision, impressive evidence from the local hapu.
- 6.6 The Committee therefore considers that both these decisions, while interesting, are different from this application.
- 6.7 In respect of the petition that was presented, it was noted that whilst it contained 390 signatures objecting to the issue of the licence, approximately 54 of these were not considered likely to have more of an interest in this matter than the general public as they did not live in Shannon. Additionally the petition was received after the period for objections had closed. Whilst the petition organisers and signatories were to be commended for their interest in their community, the petition could not be taken into account.

7. Decision

- 7.1 The Committee is satisfied as to the matters to which it must have regard in section 105 of the Act and the Committee is satisfied that this new Off-Licence application meets the purpose and object of the Act.
- 7.2 Accordingly, despite the objections that were received, the Committee considers that the licence be granted.
- 7.3 Only one (1) sandwich board sign may be displayed immediately outside the premises, and no alcohol branding is to be shown on the outside of the premises; however, the premises trading name is acceptable.

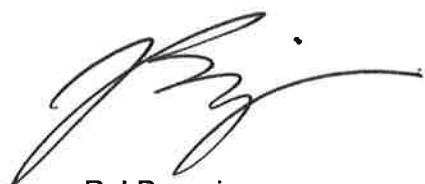
8. Issue of the Licence

8.1 The licence will not be issued until the expiry of ten (10) working days from the date of this decision. This is the period of time provided by s155 of the Act for the lodging of a Notice of Appeal. If no appeals are lodged within this timeframe, and subject to the requirements of the Act relating to the payment of fees; matters to be completed under a building consent; and an inspection of the premises by the Inspector; the licence can be issued pursuant to the conditions that follow:

- (i) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1.00 pm on Anzac Day, to any person.
- (ii) Alcohol may be sold only on the following days and during the following hours:

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|---------------------|----------------------|
| Sunday to Thursday | 11.00 am to 8.00 pm |
| Friday and Saturday | 11.00 am to 9.00 pm. |
- (iii) Water must be freely available from the counter when alcohol is being supplied free as a sample on the premises.
- (iv) A copy of this licence must be displayed at the principal entrance/s to the premises so as to be easily read by people entering each principal entrance.
- (v) At each principal entrance to the premises a sign must be displayed stating the hours of business during which the premises are open for the sale of alcohol.
- (vi) A sign must be clearly displayed stating the Duty Manager.
- (vii) No single sales of beer or RTS's.

DATED at LEVIN this11th..... day ofAPRIL.....2016



R J Brannigan
Chairperson

