

**IN THE MATTER**

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

**A N D**

**IN THE MATTER**

of an application from **SNM  
Enterprises LTD** pursuant to s100 of  
the Act for a new Off-Licence  
Decision 137/2017

**BEFORE THE HOROWHENUA DISTRICT LICENSING COMMITTEE**

Chairperson: Cr Ross Brannigan  
Members: Mr Philip Comber  
Mr Roger Perring

**HEARING** at Levin on 14 September 2017.

**APPEARANCES**

- (a) Mr Alastair Sherriff – Applicant's Counsel
- (b) Mr Sandeep Sharma – Applicant
- (c) Diana Posthuma, Hinemoa House
- (d) Reverend Ian J Boddy, Levin Uniting Church
- (e) Ms Amy Maere, Liquor Licencing Inspector
- (f) Senior Constable Simon Carter, NZ Police

**DECISION OF THE DISTRICT LICENSING COMMITTEE**

**Introduction**

This decision relates to an application by SNM Enterprises for an off-licence in respect of the premises proposed to trade as The Bottle-O situated at 86 Oxford Street Levin.

The application was filed on 10<sup>th</sup> August 2017, with the hearing held on 14 September 2017.

An off-licence is sought for seven (7) days a week from 9.00 am to 10.00 pm daily.

**Reporting agencies**

The Liquor Licencing Inspector opposed the application based on concerns regarding the suitability of the applicant in relation to recent industry experience, lack of appropriate systems in place, insufficient numbers of certified Managers, and a lack of understanding with regards to the Sale and Supply of Alcohol Act 2012.

NZ Police raised concerns with regards to the application not meeting the object of the Act, the suitability of the applicant and whether the applicant has appropriate systems, staff and training to comply with the law. NZ Police opposed the application on the basis of the design and layout of the proposed premises and that amenity and good order of the locality were likely to be reduced by more than a minor extent.

There was no opposition from the Medical Officer of Health.

Fire and Emergency New Zealand advises that the premises only requires a procedure in terms of section 21A and 21B of the Fire Service Act 1975 which is operative.

## **Background**

SNM Enterprises Ltd was incorporated on 9 October 2001, with a capital of 100 shares and sole Director Sandeep Sharma.

The applicant proposes to operate under the 'Bottle-O' franchise with a proposed trading name of Bottle-O Levin. The premises situated at 86 Oxford Street Levin are located in the central business district and was previously used as a charity shop.

There have been nine (9) public objections to the grant of this licence.

## **Preamble**

At the commencement of the hearing, Counsel for the applicant, Mr Alistair Sherriff spoke to the DLC in some detail. He advised the Committee that in the applicant's evidence the concerns relating to his suitability would be fully addressed and he also invited the Committee to consider in their deliberations the fact that from his perspective there was a five lane highway separating the proposed Bottle Store Site and the Church premises opposite, therefore there would be no affect on the church activities.

## **Evidence**

1. Mr Sandeep Sharma introduced himself as director and shareholder of SNM Enterprises Limited and outlined his personal background and previous experience in the liquor industry, which included owning and operating bottle stores in Vogel Street, Cloverlea in Palmerston North, in Marton and New Plymouth and then in Albert Street in Palmerston North.
2. Mr Sharma proceeded to read his prepared statement of evidence which he also provided in hard copy to members of the DLC.
3. Mr Sharma outlined that he had a good working relationship with Police and Liquor Licensing Inspectors in his previous off-licenced premises. Only one of Mr Sharma's businesses had failed a controlled purchase operation and at the time there was a Duty Manager on duty and he was not there at the time.
4. Mr Sharma apologised to the Committee for not providing more information in his application about how he proposes to operate the bottle store and said he could understand why the Police and the Liquor Licensing Inspector had concerns. Mr Sharma provided the Committee with more information about how he intends to operate the business including the following:
  - An updated map of the layout of the store
  - Information about how the Crime Prevention Through Environmental Control (CPTED) guidelines would be met
  - Host responsibility policy
  - Information regarding the intended managers
  - Staff training and systems
  - The mode of operation of goods deliveries to the premises.
5. Mrs Diana Posthuma, Hinemoa House spoke in support of her written objection stating that the Bottle Store would make it one of the closest to the Taitoko area making alcohol more easily accessible and that they already saw the effects on families where alcohol has a

presence therefore affecting the amenity and good order of the locality by more than a minor extent.

6. Reverend Ian J Boddy of Levin Uniting Church in support of the written objection by the Levin Uniting Parish which was accompanied by a document signed by 29 signatories. Reverend Boddy stated the Church were concerned about the effect on the amenity and good order of the area but specifically on the Church where he expressed the view that the church premises would likely be a haven for people to congregate and drink in. He also stressed that the Church facilities are in use daily for church and other community activities.
7. Senior Constable Simon Carter spoke in support of the Police written objection but acknowledged that from the evidence given by the Applicant Mr Sharma, concerns around suitability of the applicant, systems and staff training, and the design and layout of the proposed premises had been satisfied. Concerns around amenity and good order remained.
8. Mrs Amy Maere, Horowhenua District Council Liquor Licencing Inspector spoke in support of her written objection. She acknowledged that some of her concerns that led to her objection had been satisfied by the Applicants evidence, however she remained opposed to the application on the grounds of suitability of the applicant given the lack of quality in respect of the licence applications made by Mr Sharma combined with the fact that he had been out of the industry for a period of approximately 2 years.

## **Legal framework**

9. The criteria the Committee must use in considering whether to issue this licence are set out in section 105 of the Act. It is also noted that when forming an opinion in respect of effects on amenity and good order the committee must also consider section 106.

## **Committee's decision**

### **Section 105 matters**

10. *Object of the Act – s105(1)(a)*

The Committee has considered the object of the Act in reaching its decision on the application but did not have any concerns regarding the safe and responsible sale, supply and consumption of alcohol or in relation to minimising excessive or inappropriate alcohol consumption.

11. *Suitability – s105(1)(b)*

The Committee noted that Mr Sharma's application had a number of deficiencies and that it would have been easier if Mr Sharma had submitted his application in a more professional and appropriate manner. Based on the evidence presented during the hearing however, the committee was satisfied that the applicant has the requisite experience, knowledge and willingness to carry out its duties. Accordingly the Committee believed that Mr Sandeep Sharma had demonstrated his suitability.

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

There is no Local Alcohol Policy in force for the area, however the DLC are aware that a provisional policy has been adopted and is currently being publicly notified. Due to the Local Alcohol Policy being in the provisional stage it has not had an effect on the decision.

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

The hours proposed by the applicant are within the national maximum opening hours as set out in Act, as well as the guidelines within the Horowhenua District Council's Sale of Liquor Policy 2006, and are consistent with the hours proposed in the Provisional Local Alcohol Policy. The hours are considered reasonable.

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

The applicant admitted that he did not provide much detail about the design and layout of his premises with the application. Further information was provided about how the applicant would ensure the premises layout met the CPTED principles, which satisfied the Committee.

The applicant outlined there would be a storage area on one side of the premises with a roller door accessible via the footpath on Oxford Street, and that deliveries would be unloaded directly onto the footpath with the use of forklifts. He also stated that he would be enquiring of Council whether bollards could be installed outside the premises.

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

The committee noted that tobacco will be sold from the premises but did not have any concerns with regards to this.

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

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. Consideration must also be given to section 106(1)(a) & (b).

The Committee did not have any concerns in relation to current or possible future noise levels associated with the activity.

The Committee however was satisfied that the amenity and good order of the locality would be reduced by more than a minor extent, both now and in the future, by the granting of the application, for the following reasons:

- a) The proposed bottle store is situated directly on State Highway 1 which is already at times heavily congested. This congestion is expected to increase when the next section of the Kapiti Expressway which will bypass the Town of Otaki, is opened.
- b) Although both Mr Sherriff and Mr Sharma described the road as an impenetrable barrier between the Church, the Adventure Park, and the new Bottle Store, the Committee was unconvinced that this was in fact so. The road is, in fact, marked out as a single lane in each direction with a wide painted median strip. In the Committee's view this wide median strip would simply be an invitation for pedestrians to cross the road to get to the bottle store.
- c) The premises to which this application applies is within a space of 550 metres of two stand alone large off licenced premises, and one other premises with an off licence attached to a club licence. All of these licences being on State Highway 1, and in the

Committee's view this is an undesirable aggregation of licenced premises in a short area.

- d) Also within the same area and on State Highway 1 is the Levin Adventure Park, a large children's play area which attracts a large number of children and picnic parties. Almost adjoining the Adventure Park is a church which was one of the objectors.
- e) The Committee noted the proposed bottle store was directly opposite a church which has buildings in daily use, and that one of the users is Alcoholics Anonymous. It also noted that there are a number of places within the church property where covert drinking could take place.
- f) The proposed premises will be accessed directly from the pedestrian footpath. There is no provision for off street parking and the Applicant acknowledges that all stock delivery will be across the footpath from goods delivery vehicles on State Highway 1. In the committee's view this will create a new hazard, particularly as the method of offloading will be by forklift. This will be a detraction from the amenities of the area which will be more than minor, particularly if there is increased traffic on State Highway 1.
- g) It was noted that all off the other off-licenced premises on State Highway 1 provide both customer off street parking and off road goods delivery areas.
- h) The Committee also considers that the amenities of the Adventure Park and, to a lesser extent the church would be affected to more than a minor extent by the creation of a new off licence in such close proximity. There have been past issues with vandalism in the park and although this has decreased the Committee is concerned that a new bottle store close by would cause a return of this problem.

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

From the evidence presented the Committee considered that Mr Sharma would have appropriate systems and training in place.

18. *Reporting agencies – s105(1)(k)*

The application was opposed by Senior Constable Simon Carter and Mrs Amy Maere, Liquor Licensing Inspector as noted in paragraphs 7 and 8 above.

There was no objection from the Medical Officer of Health.

19. *Manner of sale*

There are no issues associated with this matter.

**Conclusion**

20. The Committee discussed its previous decision (Kiwano Limited - Decision 58/2015) to grant a new off-licence to a premises in Shannon township. Several differences between the applications were noted, in particular that in the case of the Shannon premises the parking provisions were sufficient to allow safe unloading of delivery vehicles and the premises was not located close to a well utilised children's playground. The Kiwano decision related to a town where there were only two existing off licenced premises, one of which was a grocery store which sells beer and wines only. The Committee considers

the Shannon township situation to be quite different from an aggregation of off licenced premises in a short space of a busy State Highway.

**Decision**

21. The decision of this committee is to decline the application from SNM Enterprises Limited for a new Off-licence.
22. In coming to this decision the Committee has considered all aspects of Section 105 and 106 of the Sale and Supply of Alcohol Act 2012.

**DATED** at LEVIN this 27<sup>th</sup> day of September 2017.



R J Brannigan  
**Chairperson**