

Decision Number 149/2023

**IN THE MATTER**

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

**AND**

**IN THE MATTER**

of an application by **Nolan South Limited** pursuant to s.100 of the  
Act for the grant of an off-licence  
in respect of premises situated at  
37 Main Road, Hari Hari, trading  
as "The Rushes Café & Bar."

**BEFORE THE WESTLAND DISTRICT LICENSING COMMITTEE**

Chairman: Murray Clearwater

Member: Alan Stobie

Member: Miriama Johnsen

**HEARING** at Hokitika on 11 March 2024

**APPEARANCES**

Mr. Christopher Nolan- for the applicant Nolan South Limited ("the applicant")

Ms. Adeline Nolan – for the applicant

Mr. Wayne Knightbridge – Westland Alcohol Licensing Inspector ("the Inspector") –  
to assist.

Sergeant Russell Glue –Police Alcohol Harm Prevention Officer ("AHPO") – to assist.

Mr. Rodney Beckett- delegated officer for the Medical Officer of Health ("MOoH") – to  
assist.

**RESERVED DECISION OF THE COMMITTEE**

**Introduction**

1. In August 2022, **Nolan South Limited** applied for the grant of an ON and OFF licences for premises situated on 37 Main Road Hari Hari. The business was known as the Pukeko Store and café. The previous owners appear to have been operating as a grocery store for many years.
2. Temporary Authorities were sought by the Nolans, and they were granted but not pursued when the base licence expired. The owners have embarked on an

extensive renovation of the complex. Outdoor dining tables and a large deck have been built on the site.

3. In November 2023 the ON licence was granted on the papers, but the OFF licence was set down for a hearing as it appeared the business no longer qualified as a grocery store as prescribed in Section 32 (1) (f).
4. Projected revenue figures provided showed that convenience foods would be the principal revenue source and food products only 2<sup>nd</sup> equal in rank.
5. The application was set down for a public hearing.

### **Applicant's Evidence**

6. We heard from Mrs. Adeline Nolan who was assisted by her husband Christopher. They had no prepared evidence in chief but told us that they still believed the store was a grocery store and not a convenience store.
7. She told us that they bought the business about 18 months ago and have built the deck and renovated the café side of the business. They have since bought a farm and it took some time to get the CCC signed off for the deck.
8. She said they had reasonable off sales in 2022 as the hotel across the way only opened late in the day and did not have a large range of alcoholic products for off sales.
9. They are still part of the On the Spot franchise that operates under the Foodstuffs banner and want to keep that going. They get fresh supplies of groceries, fruit and veges 3 times a week and they told us that many customers make large grocery purchases.
10. Hari Hari is in a remote area of the West Coast and is about 40 kilometers from the next settlement both north and south.

### **Police Evidence**

11. Although not in opposition, Sergeant Glue produced a printout of the police data systems showing, as expected, that there is little crime or disorder in this area of the Coast.
12. Neither the Medical Officer of Health, nor the Inspector, raised any matters in opposition.

## Relevant legislation

13. Section 3 of the Sale and Supply of Alcohol Act 2012 (“the Act”) states the purpose of the Act as follows:

- (1) *The purpose of Parts 1 and 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.*

14. Section 4 states the object of the Act as follows:

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

26. Determining whether premises are a grocery store

- (1) *In this section,—*  
*food product—*
  - (a) *does not include—*
    - (i) *alcohol, confectionery, ready-to-eat prepared food, or snack food; or*
    - (ii) *a drink (other than milk) sold in a container with a capacity of 1 litre or less; but*
  - (b) *includes delicatessen items that are not ready-to-eat prepared food or snack food;*
- grocery store means a shop that—*
  - (a) *has the characteristics normally associated with shops of the kind commonly thought of as grocery shops; and*
  - (b) *comprises premises where—*
    - (i) *a range of food products and other household items is sold; but*
    - (ii) *the principal business carried on is or will be the sale of food products*

*ready-to-eat prepared food—*

- (a) *includes food for the time being declared by regulations under this Act to be ready-to-eat prepared food; and*
- (b) *does not include food for the time being declared by regulations under this Act not to be ready-to-eat prepared food;*

*snack food—*

- (a) *includes food for the time being declared by regulations under this Act to be snack food; and*
- (b) *does not include food for the time being declared by regulations under this Act not to be snack food.*

- (2) *In forming for the purposes of this Act an opinion on whether any premises are a grocery store, the licensing authority or a licensing committee—*

- (a) *must have regard to—*
  - (i) *the size, layout, and appearance of the premises; and*
  - (ii) *a statement of the annual sales revenues (or projected annual sales revenues) of the premises, produced in accordance with any regulations in force under this Act prescribing what information such statements must contain and how it must be set out; and*
  - (iii) *the number, range, and kinds of items on sale (or expected to be on sale) on the premises; and*
- (b) *may have regard to any other matters it thinks relevant; and*
- (c) *may determine that the premises do not have the characteristics normally associated with a shop of the kind commonly thought of as a grocery shop by virtue of characteristics that the premises and the items on sale there lack or will lack, characteristics that the premises and the items on sale there have or will have, or a combination of both.*

- (3) *Paragraph (a) of the definition in subsection (1) of food product is for the avoidance of doubt only, and does not extend the generality of the term. (underlining our emphasis)*

27. Section 36 of the Act says:

*No off-licences for petrol stations, certain garages, dairies, convenience stores, conveyances, or shops within shops*

*The licensing authority or licensing committee concerned must not direct that an off-licence should be issued for any premises if (in its opinion)—*

- (a) *the principal business carried on there is—*
  - (i) *the sale of automotive fuels; or*
  - (ii) *the repair and servicing of motor vehicles and the sale of automotive fuels; or*
- (b) *they are a shop of the kind commonly thought of as a dairy; or*
- (c) *they are a shop of the kind commonly thought of as a convenience store;*  
*or*
- (d) *they are a conveyance; or*
- (e) *they are situated (wholly or partially) within a shop; or*
- (f) *the public can reach them directly from a shop, or directly from premises where the principal business carried on is a business of a kind described in paragraph (a).*

28. Regulation 12 says:

**Requirements for statements of annual sales revenue (existing businesses)**

*(1) Requirements for statements of annual sales revenue (existing businesses)*

*(1) In the case of premises to which subclause (2) applies, the statement of annual sales revenue to which, by virtue of section 33(2)(a)(ii) of the Act, the licensing authority or a licensing committee must have regard in determining for the purposes of the Act whether any premises are a grocery store must contain—*

*(a) a statement of the gross sales revenue of the business being carried on, on the premises for the period of 12 months ending no more than 90 days before the time at which the application for the issue or renewal of an off-licence for the premises is made,—*

*(i) excluding GST; and*

*(ii) excluding excise duty and excise-equivalent duty on tobacco products; (our emphasis) and*

*(iii) after deduction of all revenue from sales of lotto, Keno, Instant Kiwi, or any other New Zealand lottery promoted by the New Zealand Lotteries Commission; and*

*(b) a statement assigning the remainder of that revenue to the following categories:*

*(i) the sale of food products:*

*(ii) the sale of alcohol:*

*(iii) the sale of tobacco:*

*(iv) the sale of convenience foods:*

*(v) other revenue; and*

*(c) a statement from a chartered accountant verifying the figures given as correct according to prepared accounts.*

*(2) This subclause applies to premises where, as at the time at which an application for the issue or renewal of an off-licence for the premises is made,—*

*(a) business has been carried on for 12 months or more; and*

*(b) the business being carried on has not changed materially for at least 12 months before that time.*

**Further Considerations and Reasons for our Decision**

29. Pursuant to Section 33(2) of the Act, the Committee needed to be satisfied that the business was that of a grocery store and not a dairy or convenience store.
30. Firstly, we tasked the Nolans to go back to their accountant and provide us with the latest sales revenue figures as the provided projected figures were nearly 2 years old. We also asked for a full set of colour photos showing the product lines and quantities of food products that were available in the store.

31. We are mindful of the Alcohol Regulatory Licensing Authority (ARLA) decision [2016] NZARLA PH 486 UDAY INVESTMENTS LIMITED<sup>1</sup> in which the Authority made it clear that **food products must be 'first in rank' in sales revenue** for a grocery store style OFF Licence to be granted or renewed.
32. The first consideration under Section 32 is the size, layout and appearance of the premises. This store is medium in size and contains a free standing rack of food products and other household goods.
33. Chilled cabinets and drink fridges take up the sides of the shop and groceries, cleaning products and hardware are on the racks.
34. The Single Alcohol Area (SAA) is as compliantly situated as can be expected in a medium-sized store.
35. The second consideration is the provision of accurate projected annual sales revenue data. The first set of projected revenue had convenience foods as the principal income stream. However, the new trading figures provided showed that the premises appeared to have been selling spirits under this operator and the previous owners. This is **not permitted** under a grocery style off licence.
36. The third consideration is the number, range and kinds of items on sale. The file now contains a helpful set of colour photographs of the store and its contents.
37. We found from the photos supplied, and our assessments, that there was a reasonable range of food products and grocery items but **not to the levels or range expected of a standalone grocery store.**

**Other criteria to be considered.**

38. The Act provides that in deciding whether to grant a licence, the licensing committee must have regard to the matters contained in section 105 of the Act. In light of the recent Supreme Court ruling, we are also required to read the **Purpose of Act** together with the **Object of the Act**.
39. The Purpose of the Act tells us that the characteristics of the 'new system' will be that it is to be reasonable, and its administration helps to achieve the object of the Act. Importantly this Section says the purpose of the Act is to **benefit the community as a whole.**
40. Hari Hari is 40 kilometers from the nearest food store. We are told the nearby hotel has a limited range of alcohol for sale for offsite consumption and often doesn't open until later in the day.

---

<sup>1</sup> (ARLA) decision [2016] NZARLA PH 486 UDAY INVESTMENTS LIMITED

#### **Section 105(1)(a) The Object of the Act**

41. Section 105(1)(a) of the Act requires that the Committee **must have regard** to the Object of the Act. The licensing committee is satisfied that the grant of the licence, if the business can be described as a Grocery Store, would not offend against the Object of the Act. The Act prescribes that genuine grocery stores can be granted a licence to sell beer, wine and mead for consumption off the premises.
42. We sought the previous application files for this store and established that it has been operating as a grocery store selling only beer, wine and cider.
43. We believe that a Section 34 uneconomic exception OFF Licence could be granted and will not cause a significant increase in alcohol related harm in Hari Hari especially if the applicant agrees not to sell spirits.

#### **Section 105(1)(b) Suitability of the Applicant**

44. Section 105(1)(b) provides that the applicant must be a suitable entity to hold an off-licence. In this instance, the suitability of the applicant is not challenged by the agencies. The Committee is satisfied that the applicant is a suitable entity to hold an alcohol licence.

#### **Section 105(1)(c) Relevant Local Alcohol Policy**

45. There is no Local Alcohol Policy. There is nothing for us to consider.

#### **Section 105(1)(d) The days and hours of operation of the licence**

46. The days and hours sought are **Monday to Sunday 10.00am to 10.00pm**. They are unremarkable and within the default national maximum trading hours for off licences.

#### **Section 105(1)(e) The design and layout of any proposed premises**

47. The design and layout of the premises is that of a medium sized **General Store and café not a grocery store**.

#### **Section 105(1)(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.**

48. The applicant also sells a good range of other products including magazines, toys, novelty items, phone cards, cleaning products and hardware.

**Section 105(1)(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 and non-alcoholic refreshments, and food, and if so, which services.**

49. No other services are offered.

**Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law.**

50. We are satisfied that the Nolans' are mature and sensible individuals and will undertake their responsibilities properly. Certificated managers are appointed to the business.

**Section 105(1)(k) Any matters dealt with in any report of the Police, the Inspector and the Medical Officer of Health under Section 129**

51. There have been no concerns raised by the agencies and we record their position as being to assist the Committee.

### **Reasons for the Decision**

52. Section 3 of the Act requires us to act reasonably with the aim of achieving the Object of the Act in the exercise of our duties. We are also bound to determine this application within the provisions of this Act.
53. Overall, we are satisfied that a Section 34 uneconomic exception off licence can be granted. That will allow them to sell beer, wine and mead. By email dated 25 March 2024 the applicants agree not to sell spirits. The 'spirits' in the revenue data was apparently a coding error and has been repaired.
54. As said in **Hayford v Christchurch DLA, 3/12/93 Holland J, HC Christchurch, A201/92**<sup>2</sup>. Holland J stated: "*A holder of a liquor licence under the Sale of Liquor Act 1989 is granted a privilege. It permits him to sell liquor when others are not permitted to do so.*"
55. In **Nishchay Enterprises Limited (Supra)**<sup>3</sup> at paragraph [54] the Authority referred to the recognised test for suitability as contained in Re Sheard [1996] 1NZLR 751 where Holland J said at 758:  
"*The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence.*"

---

<sup>2</sup> Hayford v Christchurch DLA, 3/12/93 Holland J, HC Christchurch, A201/92

<sup>3</sup> Nishchay Enterprises Limited (Supra)

56. The ball is firmly in the court of the Nolan's to respect the privilege we are granting them today.

### **The Decision**

The **Westland District Licensing Committee**, acting pursuant to the Sale and Supply of Alcohol Act 2012 **grants** an application by **Nolan South Limited** for an off-licence in respect of premises situated at 37 Main Road Hari Hari, trading as "**The Rushes Café & Bar.**"

The following **conditions** apply to the licence.

1. Alcohol may be sold on, or delivered from, the premises for consumption off the premises, or supplied free as a sample for consumption on the premises, only on the following days and hours: **Monday to Sunday 10.00am to 10.00pm;**
2. No alcohol is to be sold on, or delivered from, the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day.
3. While alcohol is being supplied free as a sample, water is to be provided to patrons free of charge at the place where the samples are being supplied;
4. The Licensee must have available for purchase on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages;
5. **Only beer, wine, cider and mead can be sold under this licence. No spirits may be sold.**
6. **A properly appointed Certificated, or Acting or Temporary, Manager must be on duty at all times, within the licensed area, when the premises are open for the sale and supply of alcohol and their full name must be on a sign prominently displayed in the premises;**
7. The Licensee must display:
  - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
  - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol.

- c. A sign prominently displayed at the premises, which identifies by name the manager for the time being on duty.

The Licence is granted for 12 months from the date of issue.

**DATED** at HOKITIKA this 25<sup>th</sup> day of March 2024



Murray Clearwater  
Commissioner  
For the Westland District Licensing Committee

