

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

AND

IN THE MATTER of an application for an Off-licence pursuant to s. 99 in respect of premises situated at 56-60 Tancred Street, Hokitika and known as The Bottle-O by S & P Private Limited.

BEFORE THE WESTLAND DISTRICT LICENSING COMMITTEE

Chairperson: Commissioner Richard Simpson

Members: Bryce Thomson

Timothy Teen

HEARING: Held at the Westland District Council Chambers, 34 Weld Street, Hokitika on Tuesday 27 February, 2018, commencing at 10.30am.

APPEARANCES:

J D Young Counsel for S & P Private Limited (the applicant)

Prabhat Dixit Witness for and Director of the applicant company

Barbara Holland Alcohol Action West Coast (AAWC)

Rosie McGrath Active West Coast

RESERVED DECISION

1. Introduction:

1. The application relates to a new off-licence to be operated from an existing premises at 56-60 Tancred Street, Hokitika. A new off-licence was granted in

2016 to allow the sale and supply of alcohol from the premises. The premises operated under the "Brews" livery.

2. The applicant is the holder of a temporary authority that allows the applicant to sell and supply alcohol from the premises under the "Bottle-O" livery.
3. The principle purpose of the undertaking is the use of the premises as a bottle store for the sale and delivery of alcohol to the public.
4. The applicant seeks to sell or deliver liquor from the premises on Monday to Sunday between the hours of 8.00am and 10.00pm each day.
5. The statutory report from the Inspector supported the grant of the application.
6. The report from the Police had no objection to the grant of the application.
7. The report of the Medical Officer of Health opposed the grant of the application.
8. Objections were received from:
 - (a) Active West Coast
 - (b) Alcohol Action West Coast

2. Preliminary

1. Forty minutes before the commencement of the hearing the Licensing Committee Chairperson was advised by the Secretary that the Medical Officer of Health was unable to be present and had forwarded a sworn statement to be presented at the hearing.
2. A chance remark during the discussion resulted in the Secretary advising that there was a deficiency in that the statutory 10 days' notice had not been given to the parties concerning the hearing date.
3. The Chairperson then met the Members and advised them of the deficiency. The Committee Advisor, Ms. Jones was in the room at the time and she advised that there had been some discussion in the hearing room just a few minutes previously concerning the deficiency.
4. The Chairperson and the Members then met briefly with the Secretary to consider a way forward, if necessary.

5. A decision was made to proceed if the parties present were prepared to do so and use section 208 of the Act to grant a waiver relating to the oversight on the basis that the notice was 9 days rather than the required 10 days.

3. Hearing

1. The Chairperson opened the meeting by referring to the deficiency noted above. The hearing parties were advised that an appropriate way forward, initially, was to consider the sworn statement of the Medical Officer of Health and then determine if there was any likely prejudice to any party in proceeding.
2. Parties took the opportunity to acquaint themselves with the sworn statement from the Medical Officer of Health.
3. None of the parties considered that there was any prejudicial outcome in proceeding and that a waiver pursuant to the provisions of section 208 could be granted on the basis that the neglect in setting the hearing date was not willful.
4. We have, accordingly, resolved to waive the requirement for the 10 days' notice on the basis that no party is prejudiced and that 9 days' notice were given.

4. Applicant's evidence:

1. Mr. Young made submissions for the applicant. It is important for us to note that this application is to allow the continued operation of existing premises for which an off-licence has been granted and that consideration of objections are restricted to issues surrounding the suitability of the applicant (section 102 (4) & (4A)).
2. Mr. Young also explained the statutory issues relating to what constituted "suitability" and covered matters relating to amenity and good order as well as the way in which the applicant intends to operate the premises.
3. The legal submission encouraged us to consider the question of reasonableness and proportionality in relation to the objections raised.
4. Mr. Young was cross examined.

5. Prabhat Dixit presented evidence. Mr. Dixit is a Director of the applicant company. He has worked at different times in various sectors of the hospitality industry over the last 10 years.
6. Mr. Dixit appraised us as to how he would be operating the premises and how he is currently operating the business under the temporary authority. Mr. Dixit works closely with his business partner and co-Director, Manzoor Singh. We were shown the staff rosters and we were advised how staff training would work.
7. In cross examination Mr. Dixit advised that the training systems in place were an initiative of the applicant. Ms. Holland noted that the Inspector had reported that the two Directors and two full-time staff would reside in Hokitika and she asked as to how the applicant could continue with Canterbury based interests and live in Hokitika at the same time. Mr. Dixit made it clear that his evidence is that each of the two Directors will be living in Hokitika twice a fortnight. Mr. Dixit also elucidated on his manager's certificate which was endorsed only for his Pegasus premises. He was confident that the endorsement would be lifted.
8. There was some interest shown by Ms. McGrath in relation to the operation of the rosters which were appended to the statement of Mr. Dixit; in particular she was concerned as to how a lone employee could operate the premises and attend to the responsible sale of alcohol and take a break and do the various tasks required of an employee who was not always in the front of the shop. Mr. Dixit's response was that he knows his business and its busy times which can readily be managed by a single person.

5. Objections:

A. Alcohol Action West Coast (AAWC).

1. Barbara Holland, who is an individual member of AAWC, presented prepared evidence which concluded that the application was not likely to further the wellbeing of the community.
2. We learned that AAWC is comprised of various sectors of West Coast health providers as well as individuals. It is an organisation that has a social concern about the availability and use of alcohol. It is an organisation that holds that community wellbeing can be enhanced by reducing alcohol availability from off-licence premises because the alcohol is consumed in uncontrolled environments. Certainly AAWC contends that a growth in the number of off-licences is a cause

for concern because it would be contrary to the object of the Act to reduce alcohol related harm.

3. Mr. Young, in cross examination, particularly referred to the AAWC statement and the statistics that indicated levels of hospital admissions, road traffic crashes and alcohol related deaths on the West Coast as being above the national average. Mr. Young asked for Ms. Holland to comment on the Westland component of those figures and she agreed that the Westland figures were much lower. Ms. Holland conceded that the figures were selected to suit her case.
4. In addition, Ms. Holland made it clear that she and AAWC were not happy with aspects of the Act.

B. Active West Coast (AWC)

1. Rosie McGrath presented prepared evidence.
2. We learned that AWC is comprised of various sectors of West Coast health providers with a goal of reducing alcohol related harm and holds the view that the granting of the licence will add to alcohol related harm in Hokitika.
3. AWC is concerned that the applicant failed to identify “sensitive sites”; namely the Medical center, the Health Center, The Hokitika (sic) Pharmacy and Poutini Wairoa, the West Coast Maori Health provider.
4. In cross examination we learned that the term “sensitive site” is something that has come out of the Local Alcohol Policy considerations elsewhere. It is not a legislative term but it has grown to be accepted that there could be conflicts between premises that sell alcohol and some other premises such as schools.
5. AWC certainly regards the Hokitika Health Centre as a sensitive site and AWC was trying to assist the Committee in identifying it as such.
6. In cross examination, Mr. Young asked why the AWC submission did not raise the matter of the suitability of the applicant and Ms. McGrath responded that AWC wished to take a more holistic approach and look at the application generally. As with the AAWC evidence, the question of the data relating to hospital admissions, road traffic crashes and alcohol related deaths on the West Coast was referred to in relation to the gross figures and their comparison with the national figures and the particular Westland figures that were lower than the

national average. Ms. McGrath's response was that "we are here to paint the worst picture".

6. Applicant's summing up:

1. Counsel for the applicant encouraged us to give limited weight to the sworn statement of the Medical Officer of Health as she was not in attendance and could not answer questions on its content. Mr. Young referred us to paragraph 29 of Dr. Brunton's sworn statement in relation to the *Pangotra* decision and asked that we recognise that there are some differences between the application relating to the community of Johnsonville and the community of Hokitika.
2. The rosters referred to by Mr. Dixit were the subject of scrutiny by the objectors and we were asked by Mr. Young to recognise that a business such as proposed by the applicant is not constantly busy but there are always slower times when the staff get to take a break.
3. Mr. Young briefly canvassed the legislative history which began with the reforms of the Sale of Liquor Act 1989 which was followed by a further reform with the Sale and Supply of Alcohol Act 2012 which put an onus on an applicant to make a case for the grant of a licence.
4. Questions as to the suitability of the applicant were described by Mr. Young as "tenuous".
5. Mr. Young did note that the consumption of alcohol was declining nationally. This fact is not readily identifiable in the public health data provided by the Medical Officer of Health, AAWC and AWC. Such a fact was not acknowledged.
6. Mr. Young finished his summing up by noting that the important issues for his client were that the question of suitability. Issues relating to systems, staff & training; site, amenity & good order were, he contended, outside the scope of our deliberations by virtue of section 102 (4A).

7. Evaluation and Discussion:

1. We need to be clear that in addition to the information made available to us at the hearing, each of us is in possession of a copy of the complete file which includes a copy of the application and supporting information, copies of the reports from the Inspector, the Police and the Medical Officer of Health as well as copies of the original objections.

2. We note that the Inspector is satisfied as to the suitability of the applicant.
3. We note that the Police have no objection to the grant of the licence.
4. In our view, the application is well made. It is clear and it appears to have been made with commitment.
5. We appreciate that this view is at odds with the opinions of others. The application omitted to note a couple of sensitive sites in that the Health Centre and the Westland Pharmacy were quite close. There is a subjective element in this. The term "sensitive site" has come into vogue by virtue of the formulation of Local Alcohol Plans in other Districts. We note that the owner of the Westland Pharmacy and the West Coast District Health Board have not objected to the application; they are the owners of the sites. Maybe they don't regard themselves as the owners of sensitive sites. Maybe they do. It has taken two third parties (AAWC and AWC) to bring the issue of those two sensitive sites to our attention. We do not, by virtue of the statutory duty of the Medical Officer of Health, regard that office as third party.
6. A summer is not made by a swallow and an omission of the subjective identification of a neighbouring site does not make for a beyond the bounds of reasonableness incursion into the question of the suitability of an applicant.
7. In addition, an application is required to be served on the Police, the Medical Officer of Health and an Inspector. Those agencies are required to enquire into the application and, in the case of the Inspector, report on it (the Police and the Medical Officer of Health may report). Where there are perceived deficiencies identified they can either be dealt with by way of opposition or by way of enquiry and alteration to an application if thought necessary or if such a course of action is thought to be appropriate. In this case, the Inspector canvassed the "omission" with the applicant and addressed the issue in his report. The Medical Officer of Health remained staunch notwithstanding the non-support from the Inspector.
8. The suitability of an applicant has been well considered judicially. Issues relating to character, convictions, sobriety, attitude, honesty and ability are salient issues. We are of the view that the suitability of this applicant cannot be regarded as being compromised by the omission of the observation of a couple of neighbouring properties. To do so would be beyond the realms of reasonableness.

9. In addition, it is obvious to even the most cursory of glances, that Hokitika is a small town with a small Commercial Core Zone. The nature of the community is such that various activities will be in close proximity to each other. The mere “being there” is not, in our view, the issue. The important matter is the way that the Bottle-O premises is being and is to be, managed. We note that there have been no concerns during the lives of the temporary authorities and should circumstances change in the future, there is the obvious review on the renewal of the licence.
10. We have got confidence after listening to Mr. Dixit and observing his demeanor that he is, in fact, an honest and hard working person who is capable of bringing credit to the hospitality industry.
11. We are also cognisant of the fact that there were several objectors at the original hearing for the “Brews” premises but they have not materialised on the occasion of this application. It is possible that the operation of the premises has allayed their initial fears.
12. Ms. Holland and Ms. McGrath were passionate representatives of their organisations. They are committed to a lowering of the incidence of alcohol abuse in the West Coast community. They truly want change to the way in which alcohol is available; so much so that they compromised their positions with the way in which they presented evidence. It was of concern that Ms. McGrath said that she wanted to “paint the worst picture” and that Ms. Holland chose figures that were not objective to support her case. The figures that indicated levels of hospital admissions, road traffic crashes and alcohol related deaths on the West Coast as being above the national average had been chosen in terms of what was referred to as “the big picture” knowing that the details relating to Westland were different.
13. We share the concerns of the objectors, AAWC and AWC. We struggle to think that sensible people would be anything other than concerned with the abuse of alcohol in our community in any manner, shape or form. We are on the same page but the issue for us is that we must make our decisions in accordance with the Act and in accordance with what is reasonable.
14. The Chairman referred to the legislative history during Ms. McGrath’s presentation. This was followed up later by Mr. Young in his summing up. The Act we have is the Act we have. It has come a long way since 1989 with several significant reforming amendments such as Sunday and supermarket trading

which was ultimately followed by the 2012 reformed Act. The onus on the applicant at each level is now more considerable. The passion exhibited by Ms. McGrath and Ms. Holland was understandable but misguided in this forum. Such submissions are, in our view, more appropriately levelled at the legislature. If AAWC and AWC want change then the necessary submissions need to be directed elsewhere.

15. It is very difficult for us to see how AAWC and AWC can claim a greater interest in this application than the public generally (section 102(1)). On their own admission they were looking at the "bigger picture" and taking a "holistic approach"; that is not approaching the matter with integrity and we request that the Secretary considers the standing of AAWC and AWC should they choose to make a further foray into Westland's licensing affairs in the future.
16. The Medical Officer of Health's role is a statutory one and we expect the Medical Officer of Health to be a strong advocate for licensing issues with an eye for detail on the applicants that the Officer is enquiring into and reporting on.
17. In this case we are not able to support the Medical Officer of Health for the reasons that the opposition goes beyond the confines of the Act, in particular, section 102 (4) and (4A) which limit our consideration. There is still the issue of suitability but we are unconvinced that the applicant is unsuitable only because a "sensitive site" was not identified at the time of the making of the application. The Medical Officer of Health did point us to consideration of the *Pangotra Holdings* decision relating to premises in Johnsonville. This decision has been considered by us but there is too much dissimilarity to the current application in the nature of convictions, the rate of growth of the business and training concerns for us to give *Pangotra* any weight for consideration as to relevance.
18. We are cognisant of our duty to consider the issue of what is reasonable (s.3(2)(a)) and we do not share the opinion of the Medical Officer of Health that the applicant's suitability is compromised by its application. To do otherwise would not give suitable attention to the purpose or object of the Act as it is unclear to us what the risk is to meeting the object of the Act.

8. The Committee's Decision:

1. The Committee is satisfied that no person has been prejudicially affected by the short notice of the hearing. The parties in attendance at the hearing made the decision to proceed and, accordingly, we have decided that section 208 of the

Act to grant a waiver relating to the oversight on the basis that the notice was 9 days rather than the required 10 days can be granted.

2. The Committee is satisfied as to those matters provided for in ss.102 and 105 of the Act, that is to say, the suitability of the applicant.
3. The application for an off-licence by S & P Private Limited for existing premises at 56-60 Tancred Street, Hokitika and known as Bottle-O is granted pursuant to s.211 (1) of the Act as Decision Number 040-2018 and the Committee directs that a licence is to be issued at the expiry of ten (10) working days from the date of this decision; that period of time is the time provided under s.155(1) of the Act for the lodging of a notice of appeal.

9. Terms and Conditions

The licence is to be issued for a 12 month period.

- (a) Alcohol may be sold or delivered only on the following days and during the following hours:

Monday to Sunday 8.00am to 10.00pm the same day.

except when the licensee also holds a special licence for the premises, no alcohol is to be sold or delivered from the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day.

- (b) Pursuant to section 116(2)(c) of the Act, drinking water shall be freely available to all customers at each point of consumption while alcohol is being supplied free as a sample at all times that the licence is being exercised.
- (c) The principal entrance is to be described as “the entrance off Tancred Street”.
- (d) The entire premises is to be designated as a supervised area.

Duration

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

- (a) either—

- (i) until the close of the period for which it was last renewed; or

(ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but

(b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either—

(i) until the close of the period of 3 years after the period for which it was last renewed; or

(ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

Dated at Hokitika this 13th day of March, 2018.

A handwritten signature in black ink, appearing to be 'R. Smith', written in a cursive style.

Chairperson, Westland District Licensing Committee