



DECISION

64/DLC DEC/1/2021

Timaru District Licensing Committee Hearing

Monday, 22 February 2021

Application for Off Licence

by Gulati Brothers Enterprises Limited and known as “Canterbury Liquor”

Ref:

1407084

IN THE MATTER

Of the Sale and Supply of Alcohol Act 2012
(hereinafter referred to as “the Act”)

AND**IN THE MATTER**

Of an application by Gulati Brothers Enterprises Limited pursuant to section 105 and 106 of the Act for a NEW Bottle Store style OFF licence in respect of the premises situated at 155B Hilton Highway, in Timaru and proposed to trade as “Canterbury Liquor”

RESERVED DECISION OF THE TIMARU DISTRICT LICENSING COMMITTEE**BEFORE THE TIMARU DISTRICT LICENSING COMMITTEE**

Member Cr Peter Burt (Acting as Commissioner)
Member Cr Gavin Oliver
Member David Jack

BY WAY OF PUBLIC HEARING

Timaru District Licensing Committee hearing was held in Council Chambers, Timaru District Council, 2 King George Place, Timaru on Monday 22 February 2021 commencing at 10.00am.

APPEARANCES

Mr Kunal Gulati – Applicant
Mr Peter Egden – Representative for the Applicant
Mr Dennis Veal – on behalf of Alcohol Action South Canterbury – in opposition
Jim Kroening – in opposition
Ms Helen Barbour and Olivia Ensor – Alcohol Licensing Officer, Community and Public Health, Canterbury District Health Board - on behalf of Medical Officer of Health via delegation under s151 – in opposition
Mrs Sharon Hoogenraad, Chief Licensing Inspector, Timaru District Council
Sergeant Sam Winchester – Alcohol Harm Reduction Officer, New Zealand Police

In attendance:

Alison Gray – in support of Dennis Veal
Debbie Fortuin – District Licensing Committee Secretary
Ange Lumsden – Minute Secretary

RESERVED DECISION OF THE TIMARU DISTRICT LICENSING COMMITTEE**Introduction**

1. The Commissioner advised that we would not be issuing a summons to Bronwyn Chittock (Manager – Flip Out) or Stephen Parker (landlord) as previously mentioned in a Timaru District Licensing Committee minute dated 23 November 2020.
2. Declaration of conflict of interest: David Jack has a conflict with Pam Donaldson (Objector), but Pam Donaldson is no longer giving evidence today.

3. This application is for a NEW bottle store style Off Licence, and was received by the Timaru District Licensing Committee on 10 September 2020. The criterion found at section 105 and 106 of the Sale and Supply of Alcohol Act 2012 (the Act) applies to this application.
4. The applicant is a private company: Gulati Brothers Enterprises Limited (hereinafter referred to as “the applicant”), which was incorporated under the Companies Act 1993 on 1 August 2019. The Sole Director and Shareholder of the company is Kunal Gulati.
5. The application is in respect of the premises situated at 155B Hilton Highway in Timaru and is proposed to trade as Thirsty Liquor. It was noted that the application was advertised to trade as Canterbury Liquor. The building is sited within industrial zone of the Timaru District Plan, with an Off Licence being deemed a permitted activity.
6. Clarification was sought by Immigration NZ | Ministry of Business, Innovation & Employment (MBIE) regarding any possible employment relation issues however they advised there were no issues with the applicant from their perspective as “the applicant is a New Zealand citizen”.
7. The applicant seeks hours of Monday to Sunday, 10.00am - 9.00pm. These hours are within the default national trading hours for off-licences as set out at s.43(1)(b) of the Act, and also adhere to the Local Alcohol Policy.
8. The application was publicly notified on the Timaru Council website on 15 September 2020 with a deadline of 7 October 2020, and resulted in four objections being received within the statutory reporting timeframe.
 - a. Pam Donaldson
 - b. Marg and Jim Kroening
 - c. Dennis Veal – on behalf of Alcohol Action South Canterbury
 - d. Medical Officer of Health
 - e. *Withdrawn* - Flip Out Timaru - This objection was received by the Ministry of Health representative on 25 September 2020 (within the timeframe) however as it was not received by the DLC Secretary within the prescribed timeframe therefore it is not deemed valid. On 2 November 2020 they withdrew the objection.
 - f. *Withdrawn* – NZ Police

THE HEARING EVIDENCE AND SUBMISSIONS – IN SUMMARY

Representative for the Applicant – Peter Egden

9. Mr Egden queried whether Mr Kroening and Mr Veal will be taking part in the hearing due to not filing a brief of evidence. The Commissioner confirmed that we will proceed with the objectors giving evidence today.
10. Mr Egden provided a synopsis of submissions of Counsel for the Applicant.
11. Mr Egden advised that Mr Gulati has an involvement with Harjit Singh (Nekita Enterprises Limited) and was involved with one of his stores in New Brighton and managed this from 2011 to 2015. When he took over he adopted the practice of the previous manager. Sometimes they would pay staff through the till. Mr Gulati accepts that he should have made further enquiries regarding the way they processed payments to staff.
12. Mr Egden noted the proximity of Flip Out. He noted this is not a sensitive site with regards to the District Plan. It was noted that there is a service lane separating the premises and that alcohol advertising will not be placed on front on the building or on signage. Mr Egden does not believe this is an impediment and believes there is greater exposure in the supermarket.
13. The members had no questions for the applicants representative.

The Applicant – Kunal Gulati (Director/Shareholder)

14. Mr Gulati read through his Brief of Evidence provided in the disclosure document.
15. Mr Gulati confirmed there has been a change in the trading name, from Canterbury Liquor to Thirsty Liquor Washdyke.
16. Member Jack queried whether not advertising alcohol will be detrimental to his business. Mr Gulati does not think so. Mr Gulati confirmed a tear drop flag will be used, along with a sign and these will say bottle store, but will not have any advertising.
17. The Licensing Inspector noted that there is a change in the managers proposed to work at the store. Mr Gulati confirmed this is the case and proposes to hire two local staff.
18. Sergeant Winchester asked whether Mr Gulati knows how many people in Timaru hold managers. Mr Gulati will have someone from Christchurch in the position should he not have hired locally in time.
19. Medical Officer of Health representative asked why Mr Gulati decided on the Washdyke area. Mr Gulati advised he had carried out research around where current bottle stores are and could see there is a gap, with the closest Big Daddys. There is also a lot of traffic travelling from industrial area back into town. Mr Gulati believes the area is progressive and that most people are employed and can afford to spend money. Mr Gulati looked at other sites before confirming this location.
20. Medical Officer of Health representative asked if Mr Gulati had approached local communities about this application and he advised he had only contacted the business on each side.
21. Medical Officer of Health representative asked Mr Gulati what he thinks the target market is and he believes it is people aged around 30-40.
22. Mr Gualti confirmed that he fills in as duty manager in Nikita Enterprises Limited stores if required.
23. Mr Gulati confirmed that Harjit Singh has no involvement with Mr Gulati's businesses but he is his mentor.
24. Ms Barbour asked Mr Gulati to clarify statements made in the Employment Relations Determination around the dual payment system. He noted that he was paying the staff from the till, printing the receipt and giving it to the accountant. The accountant wasn't fully aware of the system being used.
25. Sergeant Winchester questioned the till payments and how it ended up being so much (\$20,000). Mr Gulati noted that Harjit Singh had many stores. Mr Gulati also noted that staff who put allegations on Mr Singh were not paid anything further i.e. they were not underpaid. Mr Gulati confirmed he understood that this practice does not constitute good business processes.
26. Mr Gulati decided to go with Thirsty Liquor as it gives him more freedom to run his business as some other franchises put too many financial restrictions on them.

Objector – Dennis Veal – Alcohol Action Group

27. Mr Veal noted that he has a greater than general public as is a member of a community group – Alcohol Action Group.
28. Mr Veal noted that in the documentation Mr Gulati asked if he knew the people objecting he might be able to convince them otherwise. Mr Veal considers this is irresponsible. Mr Egden noted that Mr Gulati may have wanted to discuss the issues with the objectors and resolve them through a discussion.

Objector – Jim Kroening

29. Mr Kroening is the closest house (100m) and believes the locality is wrong as well as being next to a children's activity area. He believes bottle stores are subject to what he described as "ram raids" and therefore increase the incidents of offending.

Medical Officer of Health – Helen Barbour (acting under designation)

- 30. Ms Barbour provided a revised map showing locality.
- 31. Ms Barbour noted she is covering this area (Timaru) due to the previous staff member leaving. Mr Egden queried how many times Ms Barbour has visited for this application and she confirmed twice. Mr Egden confirmed that Ms Barbour's opinion is that having a bottle store in this area may increase alcohol related harm.
- 32. Ms Barbour noted that the host responsibility policy repeats itself and seems to relate to a on licence with its reference to food and non-alcohol beverages. She believes the staff training manual is not sufficient and needs to be set out clearer for staff even though managers are experienced. Mr Egden noted that Mr Gulati has had 10 years of working in the industry with no issues, and believes his track record speaks for itself.

Chief Licensing Inspector – Sharon Hoogenraad

- 33. Sergeant Winchester asked the Inspector whether the training is suitable. She believes that the franchise Thirsty Liquor will provide a toolkit, and also took into account the experience of the applicant and that he has certificated managers.

New Zealand Police – Sergeant Sam Winchester

- 34. Sergeant Winchester initially made an objection but this has since been withdrawn.
- 35. Member Burt queried Sergeant Winchester around crime in the area and whether he thinks this will make a difference. Sergeant Winchester provided verbal data on last 12 months. There was 1,032 reported incidents within 1,000 metres. This includes everything (traffic stops etc). Offences likely to include alcohol was a total of 18. This isn't cross referenced to be certain that they are related to alcohol.
- 36. Sergeant Winchester believes liquor stores are not always subject to ram raids as mentioned by Mr Kroening. Alcohol is a highly targeted thing in thefts. He cannot remember the last time there was a ram raid. Shoplifting is more common.

Representative for the Applicant – Peter Egden

- 37. Mr Egden summarised that Mr Gulati's involvement with the New Brighton liquor store should not be an impediment with the granting of this licence. He believes his evidence establishes he is suitable.
- 38. With regard to the trampoline business, Mr Gulati has confirmed there will be no advertising of alcohol, just the name of the business on signs and the business.

Medical Officer of Health – Helen Barbour (acting under designation)

- 39. The Medical Officer of Health raises concern that the amenity and good order of the locality could be affected.
- 40. The Medical Officer of Health has provided submissions on numerous Local Alcohol Policies throughout Canterbury and is of the view that the term sensitive sites covers a much broader spectrum than just pre-schools, primary and secondary schools.
- 41. It is submitted that the Committee should have consideration to other sensitive sites which may be present in the district when assessing alcohol related harm. Sensitive sites such as addiction clinics, mental health facilities, schools, churches and women's refuge centres to name a few.

42. The Timaru District LAP has no restrictions on the location of a licensed premises in relation to sensitive sites if the proposed premise is within an industrial zone, however this proposed premises is next door to a venue frequented by families and children during the day and night time.
43. The Medical Officer of Health believes the physical evidence on staff, training and systems before the Committee today is lacking.
44. There is some doubt as to whether Mr Gulati will carry out the responsibilities and obligations that go with holding a licence.
45. Holding a licence to sell alcohol is a privilege and the responsibilities that go with it are to ensure that it does not have negative ramifications within the community.
46. The Ministry of Health believe that in conclusion, the applicant does not meet all of the criteria pursuant to s.105 of the Act.

SECTION 105 and 106 (1) [a] [b]

Criteria for issue of licences

47. (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.
48. (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.

Considering effects of issue or renewal of licence on amenity and good order of locality

49. (1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—
 - a) the following matters (as they relate to the locality):
 - i. current, and possible future, noise levels:

- ii. current, and possible future, levels of nuisance and vandalism:
- iii. the number of premises for which licences of the kind concerned are already held; and
- b) the extent to which the following purposes are compatible:
 - i. the purposes for which land near the premises concerned is used:
 - ii. the purposes for which those premises will be used if the licence is issued.

RELEVANT SECTIONS 105 AND 106 ADDRESSED

50. **The Object of the Act** – given the lack of local evidence to suggest or prove that the object of the Act would not be met, the committee is satisfied that the application will give effect to the Object of the Act.
51. **Suitability of Applicant** – There were some suggestions that Mr Gulati was not a suitable applicant due to proceedings relating to Mr Hajit Singh. The Timaru District Licensing Committee believes that as Mr Gulati has not had any issues with regards to his liquor licences in the past, nor any issues with NZ Police, that he is a suitable applicant.
52. **Any relevant local alcohol policy** – The Timaru District Licensing Committee has regard to the joint Local Alcohol Policy of the Timaru, Waimate, and Mackenzie District Councils. In summary, no matters have been identified that conflict with the Local Alcohol Policy. The Committee is satisfied that the application adheres to the Local Alcohol Policy.
53. **Days and hours** – The applicant has requested hours of Monday-Sunday 10.00am-9.00pm. The times requested are within the Local Alcohol Policy requirements. The Committee is satisfied that the days and hours requested are suitable.
54. **The design and layout of the proposed premises** - None of the reporting agencies or objectors raised any issues as to the design and layout of the premises. The Committee is satisfied with the design and layout of the proposed premises as per the floor plan dated 7 October 2020.
55. **Other goods** – The applicant does not intend to sell any other goods. None of the reporting agencies or objectors raised any issues under this provision. The Committee is satisfied that this provision has been suitably addressed.
56. **Other services** - The applicant does not intend to provide any other services. None of the reporting agencies or objectors raised any issues under this provision. The Committee is satisfied that this provision has been suitably addressed.
57. **Amenity and Good Order – 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 – In terms of 131(1) (b), the expression “amenity and good order” is defined in the Act (s.5) as meaning: “the extent to which, and ways in which, the locality in which the premises concerned are situated is... pleasant and agreeable.”**
58. Potential for an increase in anti-social behaviour such as nuisance and vandalism – the Police provided verbal data showing there may have been 18 alcohol related within 1,000m of the locality in the last year. These 18 incidents have not been cross referenced to check whether in fact alcohol was related.
59. Potential for an increase in drink driving – neither the Police nor the objectors provided local evidence to support this possibility.
60. No noise complaints have been received by either the Police or Timaru District Council regarding the proposed location.
61. No local evidence or expert testimony has been provided to substantiate the concern regarding increased alcohol related harm.
62. The site is zoned Industrial Zone in the Timaru District Plan. The sale of liquor, is a permitted activity in the zone.

63. There are no Early Childhood Centres, Primary Schools, or Secondary Schools within 100 metres of the proposed premises, as prescribed in the Local Alcohol Policy. The discretionary condition policy within the LAP regarding the aforementioned education facilities does not apply to premises that are located in a commercial zone of the Timaru District Plan, and the Plan is silent on the as to the provisions as they relate to an Industrial Zone.

Amenity and Good Order – 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

64. **(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

65. The Committee believes that the amenity and good order of the locality would be reduced, to a more than a minor extent, by the effects of the issue of the licence due to the sensitive site situation in a neighbouring property being Flip Out.

Systems, staff, and training to comply with the law

66. The Committee is satisfied that the Applicant has sufficient systems, staff, and training to comply with the law.
67. **Any matters dealt with in any report from the Police, an Inspector, or a Medical Officer of Health made under section 103** – The Medical Officer of Health submitted a report in opposition and the majority of those matters have been addressed under the criteria in s105 and s106 (1) [a] [b]. New Zealand Police and the Chief Licensing Inspector did not reference any matters of concern in their reports.

Hearing closed at 11.42am.

DECISION OF COMMITTEE

68. The Committee would like to thank all those involved in the hearing for providing their submissions and briefs of evidence in sufficient time prior to the hearing to allow all parties to review the documentation. We also appreciate the time taken to attend the hearing and provide further commentary and answer questions to allow the Committee to make an informed decision.
69. The Committee have considered the matters provided for in s.105, including s.106 (1)[a] and [b].
70. Having reviewed all of the evidence before us we are mindful that we should stand back and consider the Act's object as contained in s.4, which states 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" (with "harm" being defined widely and incorporating the harm (direct or indirect) caused by the excessive or inappropriate consumption of alcohol).
71. Based on all the documentation before us, we consider there are unforeseen circumstances with regard to the premises being in an industrial zone and having a child's activity area neighbouring the property, the premises being Flip Out Trampoline Arena. We believe the granting of this off-licence would reduce the amenity and good order of the locality to a more than minor extent. Sensitive sites are defined as areas, premises or facilities that are either considered more sensitive to alcohol-related harm, or are already experiencing greater levels of alcohol related harm than other areas as determined by the DLC. Such sites include, but are not limited to, educational institutions, spiritual

facilities, marae and recreational facilities. Due to the fact that the neighbouring business operates primarily for the same demographic of the population that is specifically identified in the LAP as Early Childhood, Primary Schools and Secondary Schools, the very same consideration for identifying these premises as sensitive sites should be applied with regards to neighbouring premises (Flip-out). Based on that assessment we believe that no measure of mitigation to reduce the obvious operations of a bottle store could in any way address the loss of amenity and good order by the measure required.

72. Given this determination we therefore consider that the application does not meet the purpose of the Act and accordingly we decline the application.
73. We refer any party who wishes to appeal this decision, or part of this decision, to sections 154 through to 158 of the Act. This decision does not have any effect until 10 working days from the date of the decision.

Dated at Timaru, on this 24 February 2021



Peter Burt
Acting Commissioner

Timaru District Licensing Committee

