



DECISION

64/DLC DEC/1/2020

Timaru District Licensing Committee Hearing

Monday, 24 August 2020

Application for Off Licence

by BS Chahal Enterprises Limited and known as "Super Liquor Timaru"

Ref:

1365060

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 BS Chahal 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 the corner of Butler and North Streets, in Timaru and proposed to trade as Super Liquor Timaru

BEFORE THE TIMARU DISTRICT LICENSING COMMITTEE

Commissioner Sharyn Cain
Member Cr Peter Burt
Member Cr Gavin Oliver

BY WAY OF PUBLIC HEARING

Timaru District Licensing Committee hearing was held in Caroline Bay Community Lounge, Caroline Bay, Timaru on Monday 24 August 2020 commencing at 9.30am. Timaru was under level 2 Covid restrictions and appropriate measures were put in place as per Ministry of Health guidelines.

APPEARANCES

Mr Gurjeet Singh – Applicant
Mr Craig Shearer – Representative for the Applicant
Mr Paul Webster – Witness for the Applicant
Mr Dennis Veal – on behalf of Alcohol Action South Canterbury – in opposition
Mr Wayne Cummings - Liquor 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
Tracy Tierney – Group Manager Environmental Services
Debbie Fortuin – District Licensing Committee Secretary
Ange Lumsden – Minute Secretary

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

1. This application is for a NEW bottle store style Off Licence, and was received by the Timaru District Licensing Committee on 4 June 2020. The criterion found at section 105 and 106 of the Sale and Supply of Alcohol Act 2012 (the Act) applies to this application.
2. The applicant is a private company: BS Chahal Enterprises Limited (hereinafter referred to as “the applicant”), which was incorporated under the Companies Act 1993 on 8 May 2020. The Directors and Shareholders of the company are: Gurjeet Singh and Baljendra Singh.

3. The application is in respect of the premises situated at the corner of Butler and North Streets in Timaru and is proposed to trade as Super Liquor Timaru. The building is currently vacant and is sited within Commercial 1B zone of the Timaru District Plan, with an Off Licence being deemed a permitted activity.
4. The applicant seeks hours of Monday to Sunday, 7.00am - 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.
5. The application was publicly notified on the Timaru Council website on 5 June 2020, and resulted in two objections being received within the statutory reporting timeframe. One objection was from the following:
6. Dennis Veal – Alcohol Action South Canterbury
7. It is to be noted that the other objection, received by Anthony John Loftus, has been dismissed as per Section 102(1) of the Sale and Supply of Alcohol Act 2012 – the objector has no greater interest in the application than the public generally.
8. At a meeting of the Timaru District Licensing Committee held on 30 July 2020, the Committee considered the Licensing Inspector's Report dated 2 July 2020, which did not oppose the application.
9. The Committee noted that the New Zealand Police reported on 16 June 2020, and did not oppose the application.
10. The Committee further noted that the Medical Officer of Health reported on 22 June 2020, and opposed the application, with opposition focused primarily on the large number of "sensitive sites" in close proximity to the proposed premises, and there being a sufficient number of Off Licence alcohol outlets in the vicinity already.
11. The Committee reviewed the objections received within the statutory timeframe, being from Dennis Veal - Alcohol Action South Canterbury, and opposition from the Medical Officer of Health.
12. After due consideration, the committee agreed that the application would require a public hearing to determine the outcome of the application.

THE HEARING EVIDENCE AND SUBMISSIONS – IN SUMMARY

Representative for the Applicant – Craig Shearer

13. Mr Shearer gave his thanks for continuing with the hearing and accepting his attendance, after an exemption was granted for Mr Shearer to leave Auckland, which was under Level 3 Covid restrictions.
14. Mr Shearer introduced himself as a principal in Ignition Group Limited specialising in providing alcohol licensing and related consultancy services to the alcohol industry throughout New Zealand.
15. Mr Shearer detailed general information of the application as above, and read out his opening submission.
16. Mr Shearer submitted that the Council has issued both planning and building certificates that verify the use in this zone and building compliance for the proposed use; the owner has provided approval for the use of the premises as an off licence; and that the building was previously a car sales yard and is currently vacant.
17. Mr Shearer made commentary on the non disclosure of a previous Infringement Notice in the application, and submitted that the application was prepared jointly with Ignition Group and although advised of the infringement notice by the applicant, the omission was not rectified when the application was submitted by Ignition.
18. Mr Shearer drew attention to the fact that neither the Inspector nor Police had reported in opposition to the application.
19. Mr Shearer sought that the objection of Mr Dennis Veal was granted no standing.
20. Mr Shearer introduced the witnesses for the applicant.

21. The panel had no questions for Mr Shearer at this point.

The Applicant – Gurjeet Singh (Director/Shareholder)

22. The Committee took the brief of evidence provided by Mr Singh as read.
23. Mr Singh identified himself as one of two directors of the company making this application. The other director being his brother, Baljendra Singh, who was unable to attend the hearing as he had been called to India due to a health emergency of their father.
24. Mr Singh noted that the site is in the Commercial 1B zone of the Timaru District Plan in which bottle stores are a permitted activity, and that the locality is a well-established commercial area of Timaru. The building was previously a car sales yard which has closed in the last two months and is ideally set out for use as an off licence, and he believes that the proposed store, if approved by the District Licensing Committee, will provide a stable and long-term tenancy for the property owner.
25. Mr Singh owns three existing off licenced premises being Super Liquor Octagon in Dunedin, Super Liquor Temuka and Super Liquor Waimate. He also holds the on licence for the Crown Hotel in Temuka.
26. Mr Singh submitted that neither himself nor his brother have ever failed a controlled purchase operation in relation to selling alcohol to minors or to intoxicated persons, have never incurred any negative holdings, and neither have any criminal convictions.
27. Mr Singh referred to the matter of the infringement notice for not having food available at the Crown Hotel in Temuka on 29 June 2019, which he stated occurred about three weeks after they took over the operation of the on licence. He submits that they were still in the process of establishing all their systems and there was misunderstanding by a staff member about the operation of the kitchen.
28. Mr Singh acknowledged that he had learned from that experience the importance of having systems fully ready on day one.
29. Regarding staffing, Mr Singh stated that he will initially manage the store with his business partner and brother Baljendra Singh and use, on a rostered basis, the current managers from his Temuka operations. There is a total of six certified managers at the Crown Hotel and Super Liquor Temuka bottle store. If the licence is granted for this site, they will employ at least 2 new staff for the Timaru store and they will encourage them to apply for Managers Certificates. His preference is to employ local people.
30. Mr Singh stated that their store will operate within the policy guidance provided by the Timaru Local Alcohol Policy. For example, the days and hours requested in the application are from 7am to 9pm Monday to Sunday, the store will have a “supervised” designation to ensure no unaccompanied minors are permitted in the premises, there are no stipulated education facilities within 100 metres, and the store will be located within a Commercial Zone.
31. In terms of the design and layout of the store, if the licence is granted the store will be branded as a Super Liquor store and Mr Singh provided a “mock-up” picture of the external appearance of the new store.
32. Other considerations stated by Mr Singh included the need for good lighting and keeping areas free from clutter so workers at the store could observe what is happening in and around the store, the installation of CCTV cameras inside and outside the premises aimed at discouraging any crime or vandalism, an alarm and panic button to be installed, along with internal security fences which will be put in place in the evenings over all windows to prevent anyone trying to break-in.
33. It was also Mr Singh’s submission that there would be no significant noise levels generated by the store that could adversely affect the amenity and good order of the locality.

34. The applicant wants to maintain a high standard of presentation of the store and take pride in being part of the business community. To achieve these standards any signs of vandalism on or near the premises would be quickly corrected, including graffiti removed. Nuisance behaviour would reflect badly upon the store, potentially upset customers and would not be tolerated, and they would monitor the external appearance of the store each day and ensure the street area outside is kept clean and tidy.
35. Mr Singh noted the proposed premise is within the Timaru liquor ban area and stated they would be monitoring the street around their store to ensure the liquor ban is not contravened.
36. Mr Singh understood that there were 17 off licences in the Timaru urban area, 18 if including DB Breweries at Washdyke, and the population of urban Timaru is 25900 (using Timaru District Council's website statistics) so the ratio of off licences to population is 1/1438, well above the generally accepted ratio of one per thousand population.
37. In terms of local businesses, community organisations or residents, Mr Singh states that they would welcome feedback from those owning or occupying land near their premises, and if their store was in any way impacting upon them they would be very happy to proactively communicate with those people and try and rectify their concerns if they were able to.
38. Mr Singh does not believe there is any evidence suggesting the amenity and good order of this part of Timaru is badly affected by the effects of existing licences, in fact his general observations are that, on the contrary, this locality in Timaru has very high amenity and good order and is a very "pleasant and agreeable place".
39. Lastly Mr Singh noted that he was keen to work with all three of the reporting agencies to ensure they are all aware of issues that may arise from time to time, and he believes that good relationships and working together can help avoid problems that may develop.
40. When asked if there was any community consultation with regard to the location, Mr Singh answered that he had contacted neighbours in the area to discuss the application and there was no objections or concerns raised, but he also admitted that he hadn't contacted any of the perceived "sensitive sites" within the area.
41. When questioned about the failed food control purchase operation (CPO) and the discrepancies in the statement from the applicant, Mr Singh advised that he had informed their representative of the failed CPO and that Mr Shearer had already explained the administrative error.
42. Cr Burt intervened and asked if Mr Cummings had disclosed his notes regarding the failed food CPO, to which he admitted that he had not submitted them as evidence.
43. Mr Shearer, on behalf of the applicant, noted that one of the issues that was raised was around managers, and he stated that Mr Singh has seven duty managers, not including himself and his business partner, and will be employing staff while the premise is being prepared.

Witness – Paul Webster

44. The Committee took the brief of evidence provided by Mr Webster as read.
45. Mr Webster is employed by Super Liquor Holdings Limited (Super Liquor) as the Franchise Manager for the Canterbury and Upper South Island area. In this role he is responsible for overseeing Super Liquor Franchises in his region.
46. Mr Webster stated that he is familiar with, and supports the application by B S Chahal Limited for a licence to operate a Super Liquor franchised store at 31 North Street, Timaru.
47. Super Liquor is a national retail liquor chain, with over 140 Super Liquor branded bottle stores in New Zealand. Each store is a locally operated business which has entered into a franchise agreement with Super Liquor.

48. Mr Webster's evidence was aimed at providing the background to Super Liquor including the support they provide to franchisees and the standards they apply, specifically, the structure and operation of Super Liquor; their approach to marketing including their target market, the safe and responsible sale of alcohol, and the minimisation of harm.
49. Mr Webster stated that Super Liquor takes its obligation to minimise alcohol related harm seriously, and it is very selective about the people it accepts as franchisees. He noted they receive many applications to become franchisees, many of which are declined due to lack of suitability. Over the last 18 months Super Liquor Holdings has declined approximately 35 interested parties and since the COVID 3 lockdown moved to level one earlier this year they have declined 11 formal applications.
50. Mr Webster submitted that the directors of BS Chahal Enterprises Limited, Gurjeet Singh and Baljendra Singh (the Directors) are well known to Super Liquor, with Gurjeet owning three Super Liquor stores in the Octagon, Waimate and Temuka. Mr Webster regularly visits two of these stores as a Franchise Manager, and Baljendra has worked in Super Liquor stores in Waimate and Oamaru. He gave evidence that Gurjeet Singh has always scored highly in his compliance audits.
51. Mr Webster has known Gurjeet Singh for approximately 4.5 years, and states he has found him to be a hardworking, professional, and honest person. Baljendra Singh he has also known for 4.5 years, and as Super Liquor's Franchise Manager for this area he supports this application for an off-licence in Timaru. He also submitted that he has considerable confidence in Gurjeet Singh and Baljendra Singh, having found them to be conscientious in his dealings with them and noted that he will continue to work closely with them both.
52. Mr Webster provided evidence including the Super Liquor current compliance audit, training, and systems and compliance manual.
53. Cr Burt queried whether the compliance audit was internal or external and Mr Webster confirmed that Super Liquor Holdings Limited do the auditing of all franchises.
54. Mrs Hoogenraad queried whether Super Liquor send mystery shoppers to the franchises and he confirmed they do.

Objector – Dennis Veal

55. The Commissioner gave leave for Mr Veal to speak to his objection, and answer questions, but noted that if the appropriate criteria were not addressed then the objection would have little probative value and would be weighted accordingly in the decision making process.
56. Mr Veal noted that he has requested information from the Hospital and the Police on alcohol related harm, which he did not receive in time to be submitted as evidence.
57. Mr Veal believes there is a correlation with density of outlets and increase of alcohol related harm, and his submission is related to reducing the accessibility of alcohol as per one of five directives put forward by Alcohol Action New Zealand for effective regulation.
58. A summary of the book "Alcohol: No Ordinary Commodity" was provided for context.
59. Mr Veal noted that he does not have anything official stating his representation of Alcohol Action NZ and wasn't aware this is required as the panel did not require it last time.
60. When questioned regarding any particular issues he had with the proposed premise, application, or locality, Mr Veal answered that his concerns were of a general nature and he had no evidence of anything particular to this application.
61. Regarding his thoughts on the current amenity and good order, and any future concerns, Mr Veal had no comments to make other than the proximity to the Police Station should help.

Medical Officer of Health – Wayne Cummings (acting under designation)

62. The Committee took the brief of evidence provided by Mr Cummings as read.
63. Since September 2018, Mr Cummings has been employed by Community and Public Health, a division of the Canterbury District Health Board, as the Liquor Licensing Officer for Timaru. He holds a delegation under s151 of the Sale and Supply of Alcohol Act 2012 from the Medical Officer of Health, Dr Cheryl Brunton, and represents her at this hearing.
64. Along with the review, investigation, and reporting on applications, and monitoring of licenced premises, Mr Cummings notes that his key focus is Host Responsibility aimed at reducing intoxication, and the sale and supply of alcohol to minors.
65. Mr Cummings submitted that the definition of “sensitive” is defined by LEXICO powered by Oxford is 1. Quick to detect or respond to slight changes, signals, or influences. 2. Easily damaged, injured or distressed by slight changes.
66. He noted that the location is situated on the edge of the commercial area and abuts a residential area, with residences as close as 120 metres from the location. Further, that there is a usual resident population of 3,453 people (2018 Census) within a one kilometre radius of the proposed premises and 1,527 of these people (44%) live within an area which is classified as being in the most deprived 20% in New Zealand. 3,057 people (88.5%) live within boundaries classified in the lower half (50%) of area by NZDep2018.
67. Mr Cummings referred to the number and location of existing on and off licensed premises within a one kilometre radius of the proposed location. He also referred to the fact that the applicant has nominated nine sensitive sites within 460 metres of the location, including the Community Corrective Services where offenders with community based sentences attend to start and finish work.
68. Mr Cummings provided the following excerpt as evidence - In Breaking the Cycle: Our Drug and Alcohol Strategy through to 2020, Hon Judith Collins Minister for Corrections stated in her Ministers Forward: *Alcohol and other drug (AOD) addiction is a serious health issue that is a major factor contributing to crime and other social harm in our community. The prevalence rates for addiction issues in the prison population are much higher than the rest of the New Zealand population. Approximately 60% of community based offenders have an identified AOD need and 87% of prisoners have experienced an AOD problem over their lifetime. Approximately 50% of crime is committed by people under the influence of AOD.*
69. Mr Cummings further submitted that his inquiries have revealed that there are several further sensitive sites near the location that are frequented by vulnerable people with drug and alcohol addictions such as Emerge Aotearoa, CSS Disability Action (South Canterbury), NEXT Needle Exchange Service, and Drug and Alcohol Support Services. He also notes the location is adjacent to two funeral homes, a dairy frequented by students, and is within near proximity of Family Planning and Women’s Wellness Centre, Presbyterian Support Service Family Works, Presbyterian Support South Canterbury (PSSC), two medical centres, a pharmacy, Aoraki Midwives, and the Timaru Masjid.
70. Mr Cummings referenced case law as follows - Alcohol Regulatory and Licencing Authority (NZARLA) issued a decision on 19 February 2016 on appeal by Pangotra Holdings (Palmerston North) Limited [Sai Wholesale Liquor[2016] NZARLA PH73] against a decision of the Wellington District Licensing Agency to decline an application for an off licence for premises in Johnsonville 31. With regard to sensitive sites the Authority stated:
[36] The Authority considers that the DLC did not err in this regard. There are sensitive premises within the locality and permitting an additional off-licence within the locality would undoubtedly affect persons involved in those sensitive activities (e.g. recovering alcoholics) to some degree.

Again, whilst this was not determinative, it was a factor to be taken into account in the evaluation of s.105(1)(h) of the Act as to whether the issue of the additional off-licence would reduce the amenity and good order of the locality.

71. Mr Cummings gave his account of interactions with Mr Gurjeet Singh as the Licensee of the Crown Hotel in Temuka, including a subsequent failure of a food controlled purchase operation and issuance of an Alcohol Infringement Offence Notice (AION) by the Police. In the application, subject of this hearing, it states “during his time working in the alcohol industry he has never failed a CPO, nor have people whom he supervised or been employed by him”. Mr Singh is nominated as the sole director and shareholder of KSK PVT Limited (Crown Hotel Temuka) and is also nominated as a duty manager.
72. In summary, Mr Cummings submitted that the granting of a new Off Licence to the applicant is likely to increase the risk of alcohol-related harm in the Timaru community, through its proximity to various sensitive sites and its location in a comparatively deprived community which is already over supplied with alcohol outlets.
73. Mr Cummings provided two exhibits from information contained in the Community and Public Health database, and NZDep2018 - a map showing the location of key sites including licensed premises and sensitive sites, and other pertinent information.
74. When queried whether he accepts the reason given by Mr Shearer for the non-disclosure of the failed CPO and whether he agreed that it’s a minor issue in the context of this application, Mr Cummings did not agree and still took issue with the CPO not being disclosed and perceived it to be an ethical issue. Mr Cummings could not say that Mr Singh wasn’t a suitable applicant when asked whether there were any other reasons for concern.
75. The applicants representative asked Mr Cummings about his concern around road trauma on State Highway 1 and how the granting of this application would increase the risk, to which Mr Cummings said that he was concerned about people buying alcohol and then driving. When asked to supply local evidence of this Mr Cummings advised that this information was unavailable to him.
76. Mr Cummings was satisfied with the additional information regarding staffing numbers, and timeline of employment.
77. Mr Cummings agreed that the general rule of thumb is a ratio of off licences to persons of 1/1000.
78. When asked about the current amenity and good order and how much of the area is residential, Mr Cummings responded that during the week the area is pleasant but he’s not sure about the weekend, and he couldn’t clarify the residential statistics. On further questioning as to what the specific issues with amenity and good order are he reiterated his concern regarding the number of sensitive sites and vulnerable people around the area.
79. Mr Cummings was asked whether he was familiar with the Local Alcohol Policy (LAP) definition of a sensitive site and what it specifies, to which he answered that it was some time since he had read it and he disagreed with quite a bit of the LAP.
80. Mr Shearer queried why a Funeral Home is classed in his report as a sensitive site. Mr Cummings thinks that people attending the Funeral Home could be vulnerable.
81. Mr Shearer noted that there is an off licence located 50 metres from a school down the road and asked if Mr Cummings is aware of any issues relating to this. Mr Cummings confirmed he was not aware of any.
82. Mr Shearer asked if Mr Cummings was aware of any specific evidence of alcohol related harm in Timaru. Mr Cummings confirmed he was not aware of any.
83. When asked whether he had spoken to any of the sensitive sites he had named in his submission, and why they had not opposed the application, Mr Cummings responded that he had spoken to some but they preferred not to be involved.

84. The Commissioner queried the case law stated in point 30. and 31. of his brief and asked Mr Cummings whether he had read the full case law and would acknowledge that there were significant other reasons why the application was declined, including but not limited to, a substantial amount of local evidence and statistics. Mr Cummings agreed that it did not provide the full picture.
85. Mr Cummings admitted that he only had general evidence and nothing specific to the local area.

Chief Licensing Inspector – Sharon Hoogenraad

86. The Inspector noted no objection to the application.
87. When questioned Mrs Hoogenraad agreed that the area was pleasant and agreeable, that she had no issues with the applicants suitability, and that she didn't believe the amenity and good order was any different to any other part of Timaru.
88. Mr Cummings asked how sensitive premises are determined. Mrs Hoogenraad confirmed that sensitive premises are determined by the definition provided in the Local Alcohol Policy.

New Zealand Police – Sergeant Sam Winchester

89. Sergeant Winchester noted no objection to the application.
90. When questioned Sergeant Winchester confirmed there are no current major issues regarding the amenity and good order of the proposed location, and that he could not see any arising should the application be granted, but that time would tell. Sergeant Winchester agreed, in his personal opinion, that the area was of high deprivation.
91. The Commissioner noted that Mr Veal requested statistics from the Police under the Official Information Act and asked whether Sergeant Winchester was aware of why they were not provided. Sergeant Winchester stated that he was not aware of the request, and that he did not know why it was not provided.
92. The Commissioner asked if Sergeant Winchester was aware of any alcohol related harm issues within the area. Sergeant Winchester responded that he was not aware of any.
93. Cr Burt asked what impact the Police Station being in the area would have on the application. Sergeant Winchester confirmed it could be a factor in the deterrence of alcohol related harm.

Representative for the Applicant – Craig Shearer

94. Mr Shearer does not think the applicant has any issues with suitability and noted that the applicant has learnt his lesson with regards to the failed control purchase operation.
95. Mr Shearer noted that this application complies with the Local Alcohol Policy and the Act. Mr Shearer also noted that the design and layout is well thought out in accordance with the Act.
96. Mr Shearer reminded the panel that the Inspector and New Zealand Police have not opposed the application.
97. Mr Shearer noted that the amenity and good order will not be reduced by more than a minor extent according to statements provided today.

SALE AND SUPPLY OF ALCOHOL ACT 2012

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

Criteria for issue of licences

98. (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.
99. (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

100. (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

101. **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.
102. **Suitability of Applicant** – Mr Cummings had concerns regarding the applicants suitability due to the non-disclosure of a previous Infringement Notice and failed food CPO, and his perception that the information given did not match with his recollection of events. Mr Cummings did not enter his own notes or any other proof in to evidence, and so the committee gives the benefit of the doubt to the applicant that this was an administrative error on their part. Neither of the other reporting agencies or objectors raised any issues as to the suitability of the applicant. The committee is satisfied with the suitability of the applicant.

103. **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.
104. **Days and hours** – The applicant has requested hours of Monday-Sunday 7.00am-9.00pm. The times requested are within the applicants Resource Consent, and the Local Alcohol Policy requirements. The committee is satisfied that the days and hours requested are suitable.
105. **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 30 July 2020, and mock photos of the exterior provided by the applicant.
106. **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.
107. **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.
108. **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.”**
109. Potential for an increase in anti-social behaviour such as nuisance and vandalism – neither the Police, nor the Timaru District Council have received complaints or reports of anti-social behaviour (i.e. loitering or graffiti) in connection with this applicant, or the locality of the proposed premises. No evidence has been provided to indicate that this may change if the application were to be granted.
110. Potential for an increase in drink driving – neither the Police nor the objectors provided local evidence to support this possibility.
111. No noise complaints have been received by either the Police or Timaru District Council regarding the proposed location, and the applicant has provided reasonable measures to mitigate it becoming an issue in future.
112. No local evidence or expert testimony has been provided to substantiate the concern regarding increased alcohol related harm.
113. The perceived proliferation of licenced premises within Timaru was a concern of both the objector, and the reporting agency in opposition.
114. In the decision of *Hari Om (2013) Limited* NZARLA [2014] PH 000309 the Authority stated;
[27] Whether or not this application should be granted revolves around a consideration of s.105(1)(h) and s.105(1)(a) of the Sale and Supply of Alcohol Act 2012. The issue as to whether 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 is one of the new criteria introduced by the Sale and Supply of Alcohol Act 2012. Section 106(1)(a)(iii) requires the Authority to have regard to the number of premises for which similar off-licences are already held. Thus, whilst under the Sale of Liquor Act 1989 the proliferation of liquor licenses was not relevant, it now becomes very relevant.
115. The site is zoned Commercial Zone 1B in the Timaru District Plan. Commercial Activity, including the sale of liquor, is a permitted activity in the zone.

116. The Licensing Inspectors report also commented that the premise is located in an area that is predominately commercial, which is confirmed by the committee members personal knowledge of the location.
117. There are currently 3 other OFF licences within 200m of the proposed location. These consist of:
- Countdown Browne Street (Supermarket)
 - Warehouse Liquor (Bottle store)
 - Big Daddy's Timaru (Bottle store)
118. The national average ratio of off licences to persons is 1/1000, and this application, if granted, would mean a ratio of 1/1363 in the Timaru Urban Area.
119. 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.
120. Whilst the committee acknowledges that there are a number of nearby premises that are frequented by vulnerable persons, there has been no local evidence or statistics provided to show that there has been any increase in alcohol related harm.
121. The Committee considers that there has been little relevant evidence or expert testimonial supplied by the objectors with regard to proliferation, in this particular area. The committee also notes that there was no objection received from the Licensing Inspector or New Zealand Police with regard to this matter, or any objections from neighbouring businesses/organisations with vulnerable persons.
122. The committee is satisfied that the amenity and good order of the locality would be unlikely to be reduced, to more than a minor extent, by the effects of the issue of the licence.

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

123. **(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

124. The Committee is satisfied that the amenity and good order of the locality would be unlikely to be reduced, to more than a minor extent, by the effects of the issue of the licence.

Systems, staff, and training to comply with the law

125. The Medical Officer of Health raised concerns regarding the lack of managers and staff identified in the application, and the limited detail regarding a timeline for employment of more staff. The committee shared those concerns when reviewing the application and had therefore sought clarification prior to the hearing. Two emails were received dated 17 July 2020 that verified the managers employed by each premise - Waimate Super Liquor (3), Super Liquor Octagon (3), Crown Hotel and Super Liquor Temuka (4), and Gurjeet Singh and Baljendra Singh are also listed as managers available to work at any of the aforementioned premises. The applicant provided a submission that the employment of additional local staff for the proposed new premises would be undertaken as soon as the application was approved.
126. The Committee is satisfied that the Applicant has sufficient systems, staff, and training to comply with the law.

127. **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]. Mr Cummings raised a concern that another Off Licence would increase the probability of road trauma on State Highway 1 (230m away), however was unable to provide any evidence to support this concern, and the New Zealand Police did not provide any opposition on this basis. New Zealand Police and the Chief Licensing Inspector did not reference any matters of concern in their reports. The Committee is satisfied that any matters raised by the Reporting Agencies have been addressed.

DECISION OF COMMITTEE

128. 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, particularly given the timing and requirements put in place to adhere to Covid level 2 restrictions.
129. The Committee have considered the matters provided for in s.105, including s.106 (1)[a] and [b], and we consider that those matters have been satisfied by the Applicant in this case.
130. 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).
131. Based on all the documentation before us, we consider there is no evidence demonstrating a link between the proposed premises, and alcohol-related harm. We are also not convinced that to grant this off-licence would likely reduce the amenity and good order of the locality to a more than minor extent.
132. Overall, we are satisfied as to the matters to which we must have regard in s.105 and s.106 of the Act, and we are satisfied that this application meets the purpose and object of the Act. Accordingly, we consider that the application should be granted pursuant to s.105 of the Act.
133. We grant the Off Licence for a period of 12 months from the date the licence is issued, with the whole premises to be designated as SUPERVISED.
134. The days and times of the Licence being Monday to Sunday 7.00am to 9.00pm.
135. 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 28th day of August 2020


Sharyn Cain
Commissioner
Timaru District Licensing Committee