

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by **PLEASANT POINT SUPERMARKET LIMITED** pursuant to section 100 and 127 of the Act for a renewal of Off Licence in respect of premises situated at 93 Main Road, Pleasant Point and known as the "**PLEASANT POINT FOUR SQUARE**".

BEFORE THE TIMARU DISTRICT LICENSING COMMITTEE

Commissioner: Sharyn Cain
Member: Cr Peter Burt
Member: Cr Dave Jack

BY WAY OF PUBLIC HEARING

Timaru District Licensing Committee Hearing was held in the Council Chambers, Timaru District Council, 2 King George Place, Timaru on Monday 11 December 2017 at 10.00am

PRESENT

Mr Paul Cooper – District Licensing Committee Secretary

APPEARANCES

Mr John McDonald – Applicant
Mr Shayne Broughton, Liquor Licensing Health Promoter, Canterbury District Health Board – Reporting Agency in Opposition
Sharon Hoogenraad, Chief Licensing Inspector, Timaru District Council – Reporting Agency
Sergeant Gregory Sutherland, Alcohol Harm Reduction Officer, New Zealand Police – Reporting Agency

RESERVED DECISION OF THE TIMARU DISTRICT LICENSING COMMITTEE

Information

1. This application is for a renewal / variation Supermarket Style OFF Licence. 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 application is in respect of the premises situated at 93 Main Road, Pleasant Point, which trades as Pleasant Point Four Square.
3. The application for a Supermarket Style OFF Licence was received by the Timaru District Licensing Committee on 6 September 2017.

4. The applicant is a partnership, with the partners named as John McDonald, and Suzanne McDonald.
5. The application was publicly notified in the Timaru Herald on 22 September 2017 and 29 September 2017, and resulted in a report in opposition being received from the Medical Officer of Health within the statutory reporting time. No public objections were received.
6. The application was presented to the Timaru District Licencing Commissioner on 8 November 2017, and on perusal some potential concerns regarding the proposed single alcohol area were noted. A minute was sent out requesting further information from the applicant, which was received.
7. At a meeting of the Timaru District Licencing Committee held on 16 November 2017, the Committee considered the Licensing Inspector's Report dated 6 November 2017, which did not oppose the application. The Committee noted that the New Zealand Police reported on 26 September 2017, and did not oppose the application. The Medical Officer of Health opposed this application, as per the letter received 29 September 2017, solely in respect of the proposed single alcohol area. The Committee reviewed the objection received. 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

The Applicant – Mr J McDonald

8. His family have lived in Pleasant Point for 28 years, and purchased the supermarket in 1995. Mr McDonald noted that himself, and his wife Sue, are very active in the community and support a number of clubs and organisations.
9. At last renewal in 2014, under the Sale and Supply of Alcohol Act 2012, the tri agencies visited *"as they believed products where they were located, had to be moved to suitable new location, and after agencies discussed among themselves where that would be". "It was decided that the far end of supermarket was best place and gave us area to be used. It was smaller than we had previous but we had no choice"*.
10. As the, then current, chiller could not be relocated, a new chiller and wine shelving was purchased at considerable cost. The chiller is run by an outside unit, and the wine shelving is earthquake proof shelving fitted to the floor and wall with wire at the front so the wine bottles don't fall out. They also invested in CCTV to ensure they were watching all areas of the supermarket. Approximately \$20,000 was spent on the introduction of the single alcohol area.
11. Mr McDonald noted that they are responsible retailers, and they are successful because they look after the locals, with most of their customer base being regulars.
12. The current single alcohol area can't be seen from the checkout area, and customers expect them to have a range of beer and wine. Aisle widths have to be suitable for mobility scooters.
13. The current wine shelving is unsuitable for aisle location due to the difference in size.

14. Mr McDonald was surprised and disappointed at having to attend a hearing as he believed they had conformed to all agencies requests on their previous renewal.

Cross Examination of Applicant

15. Mr McDonald disagreed with Mr Broughtons comparison to plans from other supermarkets, for example Tekapo, as it was a new store in the process of identifying a single alcohol area, which he had already done at last renewal. Mr McDonald did agree that excess alcohol is detrimental but was unsure what else he could do as he is already very proactive around the regulations and responsibilities under the Act. Mr Broughton questions the applicants understanding of changes in legislation, but when Mr McDonald queried what had changed, Mr Broughton acknowledged that *"the rules haven't changed, the interpretation has changed"*.
16. Mr McDonald acknowledged that there is alcohol harm in all communities but that he was not personally aware of any incidents. He also acknowledged that he is a large alcohol supplier in Pleasant Point but not the main supplier, with another venue nearby, and people choosing to purchase in Timaru.
17. Mr McDonald did not think that the plan was drawn exactly to scale but that the end of the wine shelving and the aisle it went to were consistent in the plan provided.
18. Mr McDonald noted he couldn't use the wine shelving in a centre aisle as it was an unsuitable height and width, and couldn't be secured effectively.
19. Mr McDonald agreed with the Commissioners request as to removing the signage above the wine shelving as it was inconsistent with other signage in the store. He further noted that there are 15 CCTV cameras operating at all times, that are recording, and the screens for viewing are located in the supermarket office and are also streamed to his phone when he is not on the premises.

Reporting Agency in Opposition – Mr S Broughton

20. Mr Broughton is employed by the Canterbury District Health Board (CDHB) as a Liquor Licencing Officer, with a delegation from the Medical Officer of Health, under Section 151 of the Sale and Supply of Alcohol Act 2012, and has held this position since 2012. Prior to the appointment with CDHB, Mr Broughton was a constable with the New Zealand Police for 24 years.
21. Mr Broughton submitted that *"the issue they have with the single alcohol area is that the plan shows two aisles that lead into the wine display rack. These corridor ends are a window to the wine and beer and leads to the exposure of shoppers to displays of alcohol while they are outside the single alcohol area"*.
22. Mr Broughton referred to a number of points from the Law Commission Report – 'Alcohol in our Lives: Curbing the Harm' which was received in evidence. He noted that *"although the displays of wine and beer in this supermarket are not end caps, the L shaped layout works in a similar fashion in exposing shoppers to a range of alcohol while shopping for other products"*.

23. Mr Broughton submitted in to evidence the Judgment of Gendall J (2015 NZHC 2749) and made reference to [83] *"Reasonably practicable' is a narrower term than 'physically possible' and seems to me to imply that a computation must be made by the owner, in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time, or trouble) is placed in the other; and that if it be shown that there is a gross disproportion between them – the defendants discharge the onus on them"* and believes that the end of aisle corridor displays can be easily limited, and that it is reasonably practicable to move the alcohol from the area where it is displayed.
24. Mr Broughton provided in to evidence a study of 'Children's exposure to alcohol marketing within supermarkets: An objective analysis using GPS technology and wearable cameras' conducted by the University of Otago – Health and Place 46 (2017) 274-280. No reference to specific parts of the study was made, but the evidence was accepted as read.
25. Mr Broughton submitted that the less alcohol sold, the less alcohol related harm, and provided statistical information around crash data for the Timaru area and Pleasant Point. He further submitted evidence from the Policedata.nz site with the statistics of offences recorded as happening in a public place, and in residential dwellings, noting that *"half of all serious violent crimes are related to alcohol and one third of all police apprehensions involve alcohol"*
26. Mr Broughton provided a division of the gross annual income for alcohol sales per week, and per day. Further data and graphical information was provided but as this was based on Mr Broughton's assumptions, rather than facts, the Commissioner disallowed further discussion on that part of the evidence.
27. Mr Broughton submitted that he does not believe that the single alcohol area meets the requirements of the Act.

Cross Examination of Mr Broughton

28. When questioned by Cr Burt, Mr Broughton thought that his assumptions on the split of sales of beer and wine were a good indication but thought that there was probably more beer sales than wine, noting this would still be an assumption. He further stated that he grew up in Pleasant Point, was aware that some people buy their alcohol in Timaru, and that Pleasant Point Four Square was not the primary supplier.
29. Mr Broughton thought they gave *"accurate and sound advice"* to the applicant at the previous renewal and stated that *"we allowed it to be an L shape"*. On current interpretation of the Act, Mr Broughton stated that it is now the preference for the single alcohol area to be side by side (preferably) or a U shape. He stated that they didn't oppose a previous application by the Fairlie Supermarket in August 2016, which has a similar L shape configuration, as case law was under appeal.
30. When questioned by the Commissioner with regard to the conclusions in the University of Otago Study, Mr Broughton agreed with one of the concluded points - that the rear of the store is the best place for a single alcohol area.

Chief Licencing Inspector – Sharon Hoogenraad

31. The Inspector noted no objection to the application.

New Zealand Police – Sergeant Gregory Sutherland

32. Sergeant Sutherland noted no objection to the application, but was required to take the stand to answer pertinent questions.
33. Sergeant Sutherland agreed that his role was to look at the wider view of alcohol harm, and that he would not necessarily oppose an application around placement of alcohol within a supermarket. He stated that “*we stick to our own knitting*” and that no inference was to be drawn whether they approve or disapprove.
34. Sergeant Sutherland stated that he looks at the suitability of the applicant, and any incidents directly attributable to the specific applicant’s premises. He had no evidence of any related incidents.
35. When questioned on the Police statistics used in evidence by Mr Broughton, Sergeant Sutherland stated there had been three crashes in Pleasant Point and none had a direct link to Pleasant Point Four Square. He further stated that the he had no knowledge of what the breakdown of the Public Place and Residential offences to alcohol related statistics would be.
36. Sergeant Sutherland had no knowledge of any failed Controlled Purchase Operations (CPO), but was aware that the Pleasant Point Four Square had had two successful CPO’s.
37. Mr Broughton questioned Sergeant Sutherland on how many ‘jobs’ have alcohol as a factor, to which the response was that domestic violence would probably be 70% or more. Sergeant Sutherland acknowledged that he lives in Pleasant Point, and that there is alcohol related harm in Pleasant Point. As part of an incident they do not trace the bottle to the store, but they do undertake a ‘Last drinks survey’, and his guess would be that 50% or more had been drinking at home.
38. Sergeant Sutherland has had six months in this position, but has been policing in South Canterbury for 20 years.

Site Visit – Commissioner Cain

39. A site visit was undertaken on Thursday 7 December 2017. The named Manager was on duty and all appropriate signage was displayed. The single alcohol area (SAA) was not identifiable from the front entrance of the store, and visibility was limited to the aisles in the back right corner of the premises. Numerous security cameras were noted, and the manager advised that these were recording at all times and viewable on screens in the office. The SAA was noted as relatively discrete, other than the two red signs on the wall above, which were partially obscured with gift bags. Signage regarding responsibilities under the Act was displayed appropriately within the SAA. The supermarket has a small footprint, for a supermarket. Photos and video footage was taken by the Commissioner and provided to the other members of the Hearing Panel.

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

Criteria for Issue of Licences

- (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.*
- (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

- (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

40. **Suitability of applicant** – None of the reporting agencies raised any issues as to the suitability of the applicant. The Timaru District Licensing Committee notes no concern, and is satisfied with the suitability of the applicant.

41. **Any relevant local alcohol policy** – The Timaru District Licencing Committee has regard to the joint Local Alcohol Policy of the Timaru, Waimate, and Mackenzie District Councils. The trading hours sought in the application of 8.00am-9.00pm, Monday-Sunday complies with the Local Alcohol Policy. The Timaru District Licencing Committee notes no concern, and is satisfied that the application meets the requirements of the Local Alcohol Policy.
42. **Days and hours** – The trading hours sought in the application are 8.00am-9.00pm, Monday-Sunday. The times requested are within the applicants Resource Consent, and the Local Alcohol Policy requirements. The Timaru District Licencing Committee notes no concern, and is satisfied that the application meets the requirements of the Act.
43. **The design and layout of the premises** - The Inspector raised no issues as to the design and layout of the premises, however the Medical Officer of Health had objected to the proposed single area, as shown on the proposed plan of the premises in the application, dated 20 October 2017. This matter is dealt with throughout the document.
44. **Other goods or services** – The reporting agencies raised no issues under this provision. The Timaru District Licencing Committee notes no concern, and is satisfied that the application meets the requirements of the Act.
45. **Any matters dealt with in any report from the Police, an Inspector, or a Medical Officer of Health made under section 103** – Neither the Police, or the Licencing Inspector raised any matters under section 103. The Medical Officer of Health is in opposition to the application, with specific regard to the single area defined on the applicants plan, and those matters are addressed throughout this document.
46. **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 - No matters of objection were raised by the reporting agencies, under this section of the Act. The Timaru District Licencing Committee notes no concern, and is satisfied that the application meets the requirements of the Act.
47. **Systems, staff, and training to comply with the law** - The Timaru District Licencing Committee is satisfied that the Applicant has sufficient systems, staff, and training to comply with the law.
48. **Reporting agencies** - The reporting agencies' positions have been discussed above.

FINDINGS OF THE COMMITTEE

49. The Committee have considered the matters provided for in s.105, including s.106 (1) [a] and [b]
50. As no objection has been raised by the reporting agencies, or the Timaru District Licencing Committee, to any criteria other than Section 105 (1) (e) - the design and layout of any proposed premises, in particular the location of the single alcohol area, this is the item with which this decision will rest.

51. Under Section 112 (2) the licensing authority or licensing committee concerned must ensure that, when it issues or renews an off-licence for premises that are a supermarket or grocery store, it imposes on the licence a condition describing one area within the premises as a permitted area for the display and promotion of alcohol.
52. The purpose of Section 112, 113, and 114 is to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol.
53. The Committee has considered five main points as follows:

The impact of end of aisle (end cap) displays within the single alcohol area, with regard to exposure to shoppers

54. The Timaru District Licensing Committee has identified aisle end promotions and displays as something that can usually be removed to meet with our expectation of limiting the exposure to shoppers. The proposed plan, dated 20 October 2017, does not have any end of aisles identified and the Committee finds that this shall remain the position for the single alcohol area.

The impact of end of aisle corridor displays within the proposed single alcohol area

55. The Committee, after reviewing the current and proposed plan, and the Commissioner undertaking a site visit, finds that the configuration does allow for unintended viewing of alcohol. However, the Committee believes that the impact has been minimised by the location being in the rear of the store, the relatively small footprint of the single alcohol area (SAA), the undertaking to remove the inconsistent signage, and the fact that the SAA cannot be identified from the entrance or checkout area of the premises.

The height of shelving units

56. The Committee notes that the wine shelving in the current, and proposed single alcohol area (SAA) is located against a wall as it is a purpose built, earthquake proof design. The shelving is in one piece and is attached to the wall and floor, for safety, and is taller and wider than the centre aisle shelving.
57. The Committee finds that centre aisle shelving needs to be of a consistent height, and so the wine shelving could not easily be reconfigured.

The practical and financial consequences for the applicant

58. The committee finds that the Applicant undertook alterations, and bore considerable financial implications at their last renewal. That renewal was granted under the provisions of the Sale and Supply of Alcohol Act 2012, once the changes identified by the tri agencies, had been undertaken. Mr Broughton believes that the interpretation of the relevant section of the Act has changed since that time, but the Committee finds that it remains their responsibility to weigh up the perceived benefits versus the sacrifice involved in the measures necessary for averting the risk, on a case by case basis.
59. The Committee agrees with Mr Broughtons statement that he thought they gave "accurate and sound advice" to the applicant at the previous renewal, and also agrees with Mr McDonald that he complied with all requests to avert the perceived risks, including a reduction in the footprint for alcohol products.

60. The Committee finds that in addition to the single alcohol area layout changes suggested at the previous renewal, the applicant chose to install more safety conscious shelving, and also 15 CCTV cameras that are monitored and recorded via screens in the office and the applicant's personal mobile phone.
61. The Committee finds that the Applicant would endure further practical and financial consequences should a reconfiguration be imposed, as the current wine shelving would be impractical for centre aisle use, and due to the small overall footprint of the supermarket any changes would have a flow on effect to other areas of the premise.

Any incidents or evidence that increases the risk factor for this premise, or applicant

62. The Committee finds that they are satisfied as to the suitability of the applicant, as are all the reporting agencies.
63. The Committee finds that there are no incidents on record that increase the risk profile of this particular premise, to the contrary the Committee was pleased to hear evidence of two successful controlled purchase operations being undertaken at Pleasant Point Four Square.
64. The Committee agrees that alcohol related harm is a risk factor in every community, with Pleasant Point being no exception, but finds that the applicant has undertaken considerable effort to mitigate that risk.

DECISION OF THE COMMITTEE

65. The Timaru District Licencing Committee is committed to making consistent decisions within its jurisdiction, wherever practicable, and has identified aisle end promotions and displays as something that can usually be removed to meet with our expectation of limiting the exposure to shoppers. Other considerations such as practical and financial considerations, effort to comply, risk level, and health and safety, are pertinent when making our decision.
66. The Timaru District Licencing Committee accepts that the applicant, in this instance, has undertaken considerable practical and financial steps to adhere with the single alcohol area (SAA) provisions in the Act, including a reduction in the footprint for alcohol products. It is our decision that further configuration changes to the SAA would impose further time and expense to the applicant that outweighs the perceived benefit. It is also noted that the current wine shelving also provides a benefit to the community at large of having been located and designed with health and safety considerations in mind.
67. Therefore, having reviewed all of the evidence before us and after due consideration, the Committee is satisfied that the application has met all the matters provided for in s.105, including s.106 (1) [a] and [b], and the application by Pleasant Point Supermarket Limited shall be hereby granted with the following conditions:
 - The red signage above the single alcohol area is to be removed, as it is not in keeping with the rest of the locations signage.
 - No end of aisle displays, including stacks of product on the floor.

68. The Committee thanks all parties for their participation in the hearing process, and reminds that any party to a District Licencing Committee (DLC) Hearing may appeal the decision of the DLC within 10 working days of the date of the decision being notified to that party, as per Section 154-155 of the Sale and Alcohol Act 2012.

Dated at Timaru, on this 25th day of January 2018


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Sharyn Cain
Commissioner
Timaru District Licensing Committee