

**IN THE MATTER**

of the Sale and Supply of Alcohol  
Act 2012

**AND**

**IN THE MATTER**

an application by **Compass  
Liquor Limited** pursuant to  
section 100 of the Sale and  
Supply of Alcohol Act 2012 for a  
new Off-licence in respect of the  
premises situated at 140/3 Kapiti  
Road, Paraparaumu.

**BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE**

Chair: Ms Fiona M Vining  
Members: Mr Trevor Knowles  
Ms Hilary Wooding

**HEARING** at Council Chambers, 175 Rimu Road, Paraparaumu, on 1 December 2016

**APPEARANCES**

- Mr Fraser Davidson, Director of the Applicant
- Mr Shane Elers, witness for the Applicant
- Sergeant Damian Rapira- Davies, NZ Police
- Mr Jeremy Pupich, Regional Public Health
- Ms Andrea Boston, Regional Public Health,
- Ms Katherine McLellan, Inspector

**RESERVED DECISION OF THE COMMITTEE**

***Introduction***

- [1] Compass Liquor Limited has applied for a new off licence in respect of its premises situated at 104/3 Kapiti Road Paraparaumu.
- [2] The applicant has been operating the premises under six Temporary Authority orders since 3 November 2015.

***Preliminary procedural matter***

- [3] In 2015 the Chair of Committee appeared before the Committee to give evidence, in her role as chair of the Paraparaumu/Raumati Community Board, on behalf of that Board, opposing the application for an off-licence for premises on the opposite side of the road to the premises which are the subject of this application.
- [4] At the beginning of the hearing the Chair raised this issue, noting that she had received legal advice that the previous role did not create a conflict of interest and

provided all parties with the opportunity to comment or make submissions on this matter if they wished. No parties wished to raise any points on this issue.

### ***The Application***

- [5] The Applicant's evidence was provided by Mr Fraser Davidson, who is the director of the applicant company, Compass Liquor Limited and Mr Shane Elers, who is the Regional Operations Manager for Liquorland Limited. The proposed licence would be operated as a Liquorland franchise store.
- [6] As part of the evidence for the Applicant a bundle of eleven documents was provided to the Committee and the parties to the hearing. Mr Davidson asked that this documentation be kept confidential as it included commercially sensitive information. Following consideration of section 203 of the Sale of Alcohol Act 2013 ("the Act"), the Committee makes an order under subsection 203(5) prohibiting publications of the contents of that bundle of documents, with the exception of the table of contents provided on page one.

### **Evidence of Mr Elers**

- [7] Mr Elers outlined his qualifications and experience in the industry, which included experience in a number of Liquorland stores across the region.
- [8] Mr Elers raised a concern that he believed the objections raised to the application were primarily driven by how the previous operator "The Mill" had operated. He emphasised that the current mode of operating was very different from The Mill who previously occupied the site. The Committee notes that it has not taken into account how the previous operator managed its operations.
- [9] Mr Elers gave evidence as to requirements for a Liquorland branded franchise and to Liquorland's approach and where it aims to position itself in the market.
- [10] He explained that the franchisee selection process was very prescriptive and rigorous, both at the application phase and afterward, with periodic reviews and police vetting. A high level of ethical and legal awareness was required. Psychometric testing had been recently introduced. Mr Davidson has passed all the requirements and was considered a good 'fit' with the Liquorland brand.
- [11] He outlined Liquorland's approach to the sale of alcohol: it was a nation-wide company selling products at the higher end of the spectrum, including better quality wines and craft beers. He described in detail how staff were selected, inducted, trained and supervised and the handbook and manual for franchisees and staff.
- [12] Liquorland provides significant control as to how Liquorland franchise stores are operated. Each store has a 'Vulnerable Persons Log' as well as a restricted sales policy. Product specials are run from Head Office. Exterior signage was carefully controlled from Head Office. No parallel imported products may be sold.
- [13] Mr Elers stated that the opposition to the application appeared to be based in the two other stores in the vicinity closing at 9.00 pm but there was no evidence that a later closing time, such as was being sought, would reduce amenity in the area.



### Evidence of Mr Davidson

- [14] In his application, Mr Davidson stated that he has worked in the retail alcohol industry for 13 years, five years as Assistant Manager of Duffy and Finns in Porirua, becoming a Manager in 2010 when the store became Liquorland Porirua. He has held a Manager's Certificate for twelve years.
- [15] Mr Davidson's evidence was that the issues raised in opposition to the application were issues that related to the store's previous operation as "The Mill".
- [16] Mr Davidson gave a number of examples of how he had changed operation of the store from when he purchased it as "The Mill", including changing the layout of the store, no longer selling single RTDs and no longer selling parallel imported spirits. He also requires staff to sign off daily that they are aware of their legal obligations regarding the sale of liquor.
- [17] Mr Davidson stated that he had made a personal decision not to sell single RTDs or mainstream beers under 440ml. However, he stated that he would not agree to the undertaking proposed by the objectors not to sell single units of RTDs and mainstream beers as he believed it was open to interpretation of what is a "mainstream beer" and he was concerned that he might get "caught out" by a difference of opinion as to the interpretation of that term.
- [18] Initially, the application for a licence proposed a closing time of 11.00 pm, however, this was reduced to 10.00 pm. Mr Davidson did not agree to a 9.00 pm closing time. Mr Davidson stated that he did not think it would be fair that he be required to have a 9.00 pm closing time when the three local supermarkets and Liquor King Main Road all trade until at least 10.00 pm. When questioned he acknowledged that he does not have a significant number of sales after 9.00 pm, but was of the opinion that there was also a risk of losing future business if he was closed after 9.00 pm and his competitors were not. He felt that a customer who found his business closed when trying to make a purchase after 9.00 pm, who found a competitor open at that time, was more likely to return to that competitor for future purchases.
- [19] In response to questions, Mr Davidson stated that at present there was no external advertising in place, but that there would be in future in accordance with the Liquorland brand. He did not agree that external advertising had not been put in place while awaiting this hearing.

### **Reporting Agencies**

#### Evidence of the Licensing Inspector

- [20] The Inspector did not oppose the objection but did share the concerns raised by the Police and Medical Officer of Health regarding opening hours, the potential sales of single units of RTDs and mainstream beers under 500ml and the potential for external promotion of alcohol pricing. She recommended conditions to manage those concerns.
- [21] The Inspector noted that the two new licensees closest to the Applicant (Liquor King and Black Bull Liquor) have a 9.00 pm closing time. The 9.00 pm closing time has also been applied to recently renewed licences for bottle stores in the wider area, more specifically Brews Paraparaumu Beach and Bootleggers North Beach.

### Evidence of the Police

- [22] The evidence of the police was provided by Sergeant Rapira-Davies.
- [23] Sgt Rapira-Davies stated that the police invite any licensees to communicate with the police as to whether any particular products are suitable to be sold as singles prior to stock being purchased.
- [24] While the Police opposed the application on a number of grounds, Sgt Rapira-Davies noted in response to a question from the Committee, that the Police did regard that Applicant as suitable to hold a licence, subject to the issues regarding closing hours and the sale of single RTDs and mainstream beers being satisfactorily resolved. In response to a question from the Committee, Sgt Rapira-Davies stated that the police did not have a problem with external advertising which doesn't mention a product or price.
- [25] Sgt Rapira-Davies provided substantial information about incidents that the police were called to within the vicinity of the proposed store, which police had found were likely to have an alcohol component. Sgt Rapira-Davies acknowledged that much of his evidence dwelt on general information about alcohol harm. His view was that while it could not be proven that any of the harm emanated from the applicant's site it was important to consider the application in context.
- [26] In response to the questions, Sgt Rapira-Davies acknowledged that considerable changes had been made to the site to improve it and the applicant's policy on restricted sales was appropriate. He accepted the intention behind the applicant's policies was helpful.
- [27] Sgt Rapira-Davies evidence was that single sales of RTDs create problems. In his view, the applicant was still selling RTDs in the form of vodka sorbets. The applicant did not accept that these were RTDs. Sgt Rapira-Davies also stated that the sale of beer, regardless of brand, was going to be appealing to the at-risk young person and this was problematic for Police.
- [28] In response to questions from Mr Pupich, Sgt Rapira-Davies agreed that responsible sales don't always result in responsible consumption and that sales made late at night were more likely to be implicated in harmful incidents. For example at least half of the young people processed through police cells for alcohol-related incidents come from outside Wellington. In his experience, a lot of young people go to Wellington to socialise and may pre-load in Kapiti first.

### Evidence of the Medical Officer of Health

- [29] The evidence for the Medical Officer of Health was provided by Jeremy Pupich, Alcohol Regulatory Officer, Regional Public Health and Andrea Boston, Regional Public Health Advisor, Regional Public Health.
- [30] The Medical Officer of Health opposed the application. While a number of concerns were raised in the letter of opposition filed and the evidence provided it appeared to the Committee that the concerns were primarily about the conditions that might be imposed rather than the issue of the licence itself.
- [31] During the hearing, in response to a question from the Committee, Mr Pupich stated that if the conditions requested were imposed he would not oppose the application.



- [32] Mr Pupich's evidence was that statistics show high levels of alcohol-related harm in the area and that sales of RTDs and single sales contribute to pre-loading and side-loading. He stated that the high risk time period was 9.00 – 10.00 pm on weekends. He also noted that the proposed trading hours were not consistent with the liquor ban hours pertaining to the car park outside the premises.
- [33] Mr Pupich acknowledged that he did not have any evidence specific to the applicant's store.
- [34] Ms Boston stated that the application was opposed on the grounds that the proposed operation does not minimise harm. Her evidence was that the trading hours should be restricted in order to reduce the amount of alcohol-related harm the community is exposed to, and reduce the late hours associated with an increase in consumption. She also stated that it was important to be consistent with other retailers in the area.
- [35] Ms Boston stated that there was no requirement for Regional Public Health to prove a nexus between the area and effects.
- [36] Ms Boston provided a statistical analysis which showed that residents of Paraparaumu Central are disproportionally represented in alcohol related admissions to hospital. In most measures, it was in the top 10% of admissions. She also referred to national studies showing that later purchases were associated with greater quantities consumed on a drinking occasion and that reducing hours of trade was found to mitigate the risk factor of excessive consumption particularly for those most at risk.
- [37] Ms Boston acknowledged that the statistics were not able to provide any information about which outlets supplied alcohol to particular individuals.

### ***The Law***

- [38] Section 105 of the Act sets out the criteria that the committee must consider when deciding whether to issue a licence. This section states:
- (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.

### ***Discussion***

- [39] The object of the Act is the overarching principle, or touchstone for determining off-licence applications. As Heath J put it in *Re Venus* [2015] NZHC 1377:

[20] Although the “object” of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the “object” of the legislation. It seems to me that the test may be articulated as follows: is the Authority satisfied, having considered all relevant factors set out in s105(1)(b)–(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act?

- [40] On this basis, the Committee considered the various criteria set out in section 105, with the final consideration being the object of the Act.

### ***Suitability of the Applicant***

- [41] Under this ground, the Medical Officer of Health raised a concern that the Applicant had not consulted with the community, in particular, possible sensitive sites, prior to applying for the license.

- [42] After the Applicant applied for a licence, this issue was raised with Mr Davidson by the Medical Officer of Health. Mr Davidson gave evidence that prior to the hearing that he had talked to neighbouring retailers and nearby sensitive sites. It is disappointing that the Applicant, through its director Mr Davidson, had not made appropriate inquiries prior to making his application.

- [43] In *R S Dhillon Limited* [2013] NZARLA PH 920, it was noted:

[49] The fact that the applicant seemed to have no knowledge of the locality or the potential problems associated with it goes to its lack of suitability. If the applicant had indicated some knowledge of the environment in which it proposes to set up a bottle store, then it follows that it would have discussed the measures necessary to assist in the minimisation of harm caused by excessive or inappropriate consumption of alcohol purchased at its premises.

- [44] On the other hand, the Committee observed that Mr Davidson had significant experience in the industry and took into account his evidence as to the changes he had made to how the store operated compared to previously. This evidence supported his statement that he intended to act as a responsible retailer. Mr Davidson was also able to clearly explain the steps he had taken to make sure that staff felt empowered to refuse service to customers in various situations.

- [45] Based on this evidence, combined with the extensive policies provided (which are discussed in more detail below), the Committee is satisfied as to the suitability of the applicant.

### ***Any relevant local alcohol policy***

- [46] There is no local alcohol policy in place.



The days and hours on which alcohol would be sold

- [47] The application is for alcohol to be sold on Monday to Sunday from 9.00 am to 10.00 pm. The initial application was for a closing time of 11.00 pm, however, the application to be considered at this hearing is for a 10.00 pm closing time.
- [48] One of the grounds of objection of both the Police and the MOH is that the licence hours should be limited until 9.00 pm each day.
- [49] There are two bottle stores within 300m of the proposed store. Both were granted initial licences in 2015 and began trading in 2016. Both agreed prior to the hearing for their licence applications to have a closing time of 9pm. As a result both have licences for trading hours ending at 9.00 pm each day.
- [50] There is also a supermarket and a grocery store within 300m of the proposed store. The supermarket holds a licence with a closing time of 10.00 pm. The grocery store (in the same block of shops as the applicant) holds a licence until 8.30 pm.
- [51] The premises are situated in an alcohol free zone that is in effect Monday to Sunday from 9.00 pm until 6.00 am the following day.
- [52] In his evidence it was clear that Mr Davidson had concerns that his opening hours might be limited until 9.00 pm but that in future his competitors might apply to increase their opening hours. He also noted that Liquor King in Ihakara Street is currently licensed until 11.00 pm each night. This licence expires in March 2017. We note that Mr Davidson made it clear that he was concerned that he might be required to close earlier than his competitors, however, by seeking to be open later than other liquor stores he is trying to create a position that the other stores will close earlier than his store.
- [53] The two other nearby liquor stores have quite reasonably agreed to close at 9.00 pm each night. If this licence allows for a 10.00 pm closing time it would not be surprising if those two liquor stores were to seek an extension of their licence to allow for a 10.00 pm closing time.
- [54] Having considered the evidence, the Committee has determined that a closing time of 9.00 pm will best meet the object of the Act, which is discussed further below.

The design and layout of the premises

- [55] Based on the evidence provided about the design and layout of the shop the Committee found this satisfactory.

Whether the applicant proposes to engage in the sale of goods other than beverages

- [56] The applicant proposes to also sell tobacco products in the store, but no other products other than those directly related to the sale of alcohol, low and non-alcoholic refreshments and food (such as chillies or nuts).

Whether the applicant proposes to engage in the provision of services other than the sale of beverages

- [57] The applicant does not propose to engage in the provision of services other than the sale of beverages apart from the sale of items set out in the paragraph above.

Whether the amenity and good order of the locality would be likely be reduced, to more than a minor extent, by the issue of the licence

- [58] The Licensing Inspector raised a concern that there might be a possibility for future issues for an increase in noise and vandalism, particularly with opening hours until 10.00 pm.

Whether the amenity and good order of the locality is already so badly affected by the issue of the licence, that the grant of a further licence would be unlikely to reduce the situation further, but nevertheless it would be desirable not to grant a further licence

- [59] This consideration has been covered under the previous heading.

Whether the applicant's appropriate systems, staff and training comply with the law

- [60] The applicant provided, as an attachment to his evidence, eleven Liquorland policies or other documents which apply to the store. Mr Davidson indicated in his evidence that he will be operating four Liquorland franchises in the Wellington region. He stated that he intends to be personally present at the Kapiti store at least once a week and that he has employed a further staff manager to oversee the four stores.
- [61] Mr Davidson's central Wellington store, like that of Kapiti, previously operated under the name "The Mill". The police were critical of Mr Davidson continuing to employ the same staff even though in the view of the police those staff had not shown high levels of compliance with the legislation. Mr Davidson emphasised that he had provided staff training of Liquorland processes and that it was important to him that staff feel that they are empowered to refuse service.
- [62] Mr Davidson is not responsible for the way in which the previous operator ran the Wellington store. The Applicant has taken steps to ensure that staff are properly trained and that such issues will not arise in future. That should result in approval not criticism.

Any matters dealt with in the report provided by the Police, Inspector, or Medical Officer of Health

- [63] The Police, Medical Officer of Health and Inspector also raised concerns about the single sales of RTDs and mainstream beer, as well as the applicant's intention to begin price based external advertising. Each of these parties recommended imposing conditions in relation to these issues. The various statutory bodies raised this issue in respect of various criteria relevant to the granting of a license. The Committee has considered these concerns when considering the object of the Act below.

The object of the Act

Object

- (1) The object of this Act is that—
- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
  - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
- (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and



- (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[64] In *Re Penoy Spirits Ltd* [2014] NZARLA 697, the Alcohol Regulatory and Licensing Authority (ARLA) has confirmed that the object of the Act is not to simply reduce alcohol related harm, it is something more. The Authority held that:

The object referred to in s 4 of the Sale and Supply of Alcohol Act 2012 is different from that in s 4 of the Sale of Liquor Act 1989. Now the aim is the minimisation of alcohol-related harm; not merely its reduction. Minimisation means 'reduced to the smallest amount, extent or degree' (New Shorter Oxford English Dictionary).

[65] The High Court in *Re Venus NZ Ltd* confirmed that approach stating:

"... both the Authority, and this Court, must have regard to reducing alcohol related harm to the smallest amount, extent or degree, when making decisions on the grant or renewal of a licence."

[66] Under section 117(1) of the Act, the Committee may impose conditions on the issue of any licence. Such conditions must be reasonable. The statutory agencies have recommended the imposing of conditions in relation to opening hours, single sales of RTDs and mainstream beers and external advertising. The reasons that have been given for the proposed conditions are essentially the minimising of alcohol related harm, giving effect to the object of the Act.

[67] Opening hours are addressed above.

[68] The recent decision of *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749/2015 discusses section 117 of the Act. In this decision, His Honour, Judge Gendall stated:

[104] I consider the principles can be stated as follows:

- (a) the relevant body must have identified a risk which it seeks to abate, or a benefit which it seeks to secure;
- (b) that risk or benefit must be consistent with the purpose and object of the Act, and not inconsistent with the Act in its entirety. In this respect the comments of the authors of *Sale of Alcohol* are usefully repeated:  
Any conditions considered under this provision must be reasonable, and, in the view of the authors, must relate to, and be consistent with, Parliament's intentions in the legislation as set out in ss 3 and 4 – the purpose and object of the Act;
- (c) the relevant body must direct itself as to all relevant circumstances;
- (d) it must then weigh the risk to be abated, or benefit to be secured, against the relevant circumstances as identified;
- (e) the condition must be a proportionate response.

[69] The particular concern raised regarding advertising of prices externally was that with other off-licences in close proximity that external price advertising would be used to compete for business. This might result in a "price war".

[70] The Committee notes that the two other liquor stores operating near the Applicant both agreed in the process of licensing hearings that they would not display external price based advertising.

- [71] The Applicant did not agree to not use external advertising. Mr Davidson advised the Licensing Inspector that there will be two A0 size promotional signs on the exterior window of the premises. Each sign will display a product name and a price. There has not been external advertising from the time that the first Temporary Authority was granted through to the date of the hearing.
- [72] The Committee notes that the Applicant has emphasised that he does not wish to compete on price but rather on having a superior product and that the target market for this shop could be described as "affluent retirees".
- [73] In her report, the Licensing Inspector noted that Mr Davidson had stated that his aim was to focus on range and selection rather than heavy discounting. Therefore, she questioned the need for external price advertising.
- [74] The object of the Act requires the minimisation of harm as much as is reasonably practical. A condition to prohibit external price based advertising is reasonable in these circumstances. It provides consistency between licences in this area. We note that while the other licences do not have this noted as a condition, both liquor stores agreed not to advertise externally. These licensees will be aware that not keeping to that agreement would not reflect well on them in applications to renew their licenses.
- [75] In addition, we note that the Applicant has been operating his store for a number of months without external advertising and has indicated that he does not intend to compete on price. In this regard, limiting external advertising will not have a significant impact.
- [76] In terms of the condition requested regarding the sale of RTDs and mainstream beers, we note that Mr Davidson has stated that he does not intend to sell single unit RTDs or mainstream beers. His stated that his concern was that such a condition would not be sufficiently "black and white" and that it was open to interpretation as to what would be a "mainstream beer". He did not want to take the risk that a difference in opinion as to interpretation would result in him being accused of breaching his licence.
- [77] While the Committee understands Mr Davidson's concerns, we note that local practice has not provided any evidence to support this concern. Sgt Rapira-Davies gave evidence that the Police will work with licensees and are happy to discuss with licensees whether the police view a particular product as a mainstream beer.
- [78] In *My Noodle Ltd v Queenstown-Lakes District Council* [2009] NZCA 564, the Court of Appeal considered conditions applying to closing times under the previous legislation. Given the greater focus on the minimisation of harm in the current legislation the Court of Appeal's analysis on this issue remains relevant. At para [74] the Court stated:
- In our view, the Authority is not required to be sure that particular conditions will reduce liquor abuse. It is entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective (as the Authority found there was in this case), then it is entitled to test whether that possibility is a reality. In this case, it clearly intended to test its hypothesis and keep the matter under review.
- [79] Having considered all the evidence, the Committee is of the view that conditions limiting external advertising and the single sale of mainstream beers and RTDs are likely to reduce the risk of alcohol related harm without being a significant limitation on the licensee. On that basis, the Committee regards it as appropriate to grant the licence subject to those conditions.



***Decision***

[80] The District Licensing Committee hereby grants the Application on the following conditions:

- a. The licence will be from 9.00 am to 9.00 pm seven days a week
- b. Single sales of mainstream beers and RTDs shall be prohibited
- c. External advertising showing a price shall be prohibited

**DATED** at Paraparaumu on 28 February 2017



Cr Fiona Vining  
Chair

