

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by **General Distributers Limited** for an off licence pursuant to s.31 of the Sale of Liquor Act 1989 in respect of premises situated at **9 Kamo Road, Whangarei** known as "**Countdown Regent**"

BEFORE THE WHANGAREI DISTRICT LICENSING COMMITTEE

Chairman: Councillor John Williamson
Member: Lee Andrews
Member: Mervyn Williams

DECISION (ON THE PAPERS)

This is an application by General Distributers Limited dated 17 December 2013, for an off licence in respect of premises situated at 9 Kamo Road, Whangarei, known as "Countdown Regent" The general nature of the business is that of a supermarket.

The application

The application was made under section 36(1)(d)(i) the Sale of Liquor Act 1989 to the then Whangarei District Licensing Agency for an **Off Licence** in respect of a new supermarket to be constructed at **9 Kamo Road, Regent, Whangarei**, and be known as "**Countdown Regent**"

This new supermarket will ultimately replace an aging Countdown Kensington supermarket which was situated further north on Kamo Road . The Kensington premises has held an off-licence for many years.

The application was made in the name of "General Distributers Limited", a private company incorporated on 30 September 1987. The directors are David John Chambers and Gideon Nigel Robert Thomas.

Section 36 of the Sale of Liquor Act 1989 provides for the issue of an off licence to supermarkets as follows.

36. Types of premises in respect of which off-licence may be granted

(1) Except as provided in subsections (2) to (5) of this section, an off-licence shall be granted

(d) In respect of –

(i) Any supermarket having a floor area at least 1000 square metres (including any separate departments set aside for such foodstuff as fresh meat, fresh fruit and vegetables, and delicatessen items);

The applicant meets the requirements of s.36 (1) (d) (i) in that the store is deemed and has been assessed as a supermarket having a floor area at least 1000 square metres (including any separate departments set aside for such foodstuff as fresh meat, fresh fruit and vegetables, and delicatessen items. We are satisfied that the business is a supermarket.

The Sale of Liquor Act 1989 was repealed on the 19 December 2014 when it was replaced by the Sale and Supply of Alcohol Act 2012 . The application was made between 6 months and 12 months after day of assent of the Sale and Supply of Alcohol Act 2012 and as such section 407 of the 2012 Act applies as to how this application is determined. Section 407 provides that the application must be dealt with under the 1989 Act but with certain provisions of the 2012 Act to also apply. Consequently

the District Licensing Committee must have regard to the matters as set out in section 105 Sale and Supply of Alcohol Act 2012 when deciding whether to issue a licence.

Section 105 Criteria for issue of licences

In deciding whether to issue a licence, the licensing committee concerned must have regard to the criteria as set in section 105 (1) of the Sale and Supply Act 2012 as follows:

- (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.*

Hours of operation

The applicant initially applied for the hours 7.00 am to 11.00 pm, Monday to Sunday.

These hours sought sat outside the hours required under the Whangarei District Licensing Agency Liquor Licensing Policy, to which we have regard. The hours also did not accord to a recent ARLA decision in which the policy hours for supermarkets were tested along with other matters. In a decision relating to WHANGAREI WAREHOUSE LIMITED (PakNSave, Walton Street Whangarei) the Authority granted trading hours of 8.00 am to 10.00pm Monday to Sunday and these hours are seen at this time as a bench mark for other supermarkets in the district. The Medical Officer of Health, Police and the Inspector initially opposed the application because of hours sought but withdrew the opposition when the applicant agreed to operate the lesser hours of 8.00am to 10.00 pm each day.

In an email from the applicant's agent, Duncan Cotterill, the applicant on 10 June 2014 agreed to amend the application to ensure that the hours sought then complied with the ARLA – Pak n Save test case decision of:

Monday to Sunday 8.00am to 10.00pm

Management of the premises

The directors of the applicant company are David John Chambers and Gideon Nigel Robert Thomas.

Countdown Supermarkets are owned and operated under a corporate structure and not franchise owner-operators, which according to the applicant ensures that there is single corporate oversight of systems for controlling the sale of beer and wine.

The applicant claims to be extremely experienced in managing supermarkets, as they operate 150 Off-licensed stores nationally, serving more than 2.5 million customers each week. Further more procedures require that every alcohol sales is authorised by supervisors, rather than checkout operators, irrelevant of the age of the purchaser. The applicant has provided a list containing the names of 11 certificated duty managers, who will be employed at the proposed new store.

The Police have offered no objection to the application and are satisfied as to the suitability of the applicant and the nominated duty managers.

Public notice

The applicant has undertaken public notifications, as required under the Act. These were published in the 'Northern Advocate' on 16 January 2014 and 23 January 2014. No objections were received.

Resource Management Act and Building Code certificates.

The applicant has provided a certificate from the Whangarei District Council that the activity meets the requirements of the Resource Management Act 1991.

The building however is under construction but very near completion. The applicant has been unable to provide a certificate stating that the building complies with the provisions of the Building Act 2004. Mr Paul Van der Sluis, Whangarei District Council Team Leader – Building Consents, explained that the applicant was going to apply for a Certificate of Public Use (CPU), which if granted, would allow the applicant to open the building for shoppers. Mr Van der Sluis advised us that a certificate attesting to compliance with the building Act 1992 could not be granted until a code compliance certificate (CCC) was issued and that this could not be issued until all features of construction including acoustic fencing, car parks and such like had been completed. He advised that it was accepted practice that premises under construction of this nature operated under a CPU which ensure that the building was safe to be occupied prior to a Building Act certificate being issued. In this regard. We are therefore satisfied that once the applicant obtained a certificate of public use (CPU) it would be reasonable to issue a liquor licence.

Alcohol area

S.112 – 115 of the Sale and Supply of Alcohol Act 2012 provides for alcohol areas in supermarkets and grocery stores. The purpose of these provisions is to limit (so far as reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol. Such displays and promotions must be undertaken in defined areas of the premises. While this is not one of the matters which we must have regard to under section 407 of the Act (because the application was received during that period between 6 months and 12 months after day of accent) the applicant never the less has agreed to meet these requirements and to provide an alcohol area at this stage rather than to wait until renewal of any off licence granted in 12 months time. This agreement is in response to concerns raised by the Medical Officer of Health and the Licensing Inspector.

The applicant has provided a layout plan (date stamped as received by the District Licensing Committee on the 13 May 2014) showing the alcohol area. The area is on the north western wall of the supermarket.

DECISION

The committee has received reports on the application from the Police, the Medical Officer of Health and the Licensing Inspector and none have raised matters in opposition. The application was duly advertised and no objection or notice of desire to be heard has been received. Accordingly we deal with the matters on the papers.

We are satisfied as to the matters to which we must have regard as set out in s.105 of the Act and we grant the applicant an on licence subject to the following conditions.

(a) No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day.

(b) Alcohol may be sold only on the following days and during the following hours:
Monday to Sunday 8.00am to 10.00pm

(c) The whole of the premises is undesignated.

(d) The permitted area for the display and promotion of alcohol is that area situated against the northern wall of the store, adjoining the bakery preparation area, as shown on the plan, received by the District Licensing Committee and date stamped 13 May 2014.

(e) In accordance with s 114 of the Act, the licensee must ensure that no display or promotion of, or advertisement for, alcohol occurs on the premises at any place outside of the alcohol area and that other requirements of S 114 are otherwise complied with at all times.

(e) The licensee must ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and complete prohibition on sales to intoxicated persons.

(f) While alcohol is being supplied free as a sample, free drinking water must be provided for customers at the tasting location, situated within the alcohol display area.

The licence certificate will **not** issue, until such time as the applicant has been issued with a Certificate of Public Use (CPU) by the Whangarei District Council to the satisfaction of the Committee Secretary.

DATED at Whangarei this 24th day of June 2014

Chairman
Whangarei District Licensing Committee

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