

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012 ('the Act')

**AND**

**IN THE MATTER**

of an application by **BVS WINES & SPIRITS 2015 LIMITED** for the grant of an off-licence pursuant to s.100 of the Act in respect of premises situated at Unit B, 19 Paora Hapi Street, Taupo to be known as "Star Liquor Store"

**BEFORE THE TAUPO DISTRICT LICENSING COMMITTEE**

Chairman: Murray Clearwater  
Member: Eric Foley  
Member: Michael Knowles

**HEARING** at Taupo on 26<sup>th</sup> day of February 2016

**APPEARANCES**

Mr R J Hooker– for BVS Wines & Spirits 2015 Limited- ("the applicant")  
Mr Grant Singer – Taupo Licensing Inspector ("the Inspector") – in opposition  
Sergeant Christopher Turnbull – Police Alcohol Harm Reduction Officer – in opposition  
Ms. Dawn Meertens—Representing the Medical Officer of Health ("MOoH") - in opposition

**RESERVED DECISION OF THE COMMITTEE**

**Introduction**

1. By an application dated the 30<sup>th</sup> of October 2015, BVS Wines and Spirits 2015 Limited (the applicant) applied for an off-licence to open a bottle store in a vacant tenancy on Paora Hapi Street Taupo. It was duly advertised and attracted 16 public objections and was reported with 'matters in opposition' by the agencies.
2. The applicant sought the licensed hours of Monday to Sunday 9.00am to 11.00pm. These hours were within the default national maximum trading hours for off licences.

3. The proposed premises is situated in a block of retail shops on Paora Hapi Street within the Taupo Permanent Alcohol ban area.
4. The Agency representatives oppose the application believing that an additional outlet in the area will inevitably result in more alcohol related harm in the community and that the amenity and good order of the area is already adversely affected and will be further affected by more than a minor extent.
5. The application was set down for a formal hearing as the Committee needed to hear the concerns of the objectors and the agencies.

### **Applicant's Evidence**

6. Mr Hooker provided the Committee with a short opening and called two witnesses for the applicant company.
7. We first heard from one of the directors of BVS Wines & Spirits 2015 Limited, Mr Sarbdeep Singh, who spoke to his application and confirmed the brief of evidence of his fellow director Ranjodh Singh as true and correct. He told the Committee Mr Ranjodh Singh would be responsible for the day to day management of the business and that he held a current managers certificate.
8. The two directors told the Committee that they are directors and shareholders in two other bottle stores, one in Papamoa Tauranga and another in Cambridge.
9. They said they were competent operators and would operate the Taupo store within the law. In his Brief of Evidence Ranjodh Singh said in paragraph 13 "*....we cannot directly control where it is consumed other than as provided in the Act*"
10. In paragraph 14 he said "*There are a number of popular "Bring Your Own" restaurants in Taupo where the patrons are permitted to bring their own wine and we will cater for that market.*"
11. He said "*the store would not be located in an area where there are high levels of unemployment which can be associated with alcohol misuse.*"
12. He also tabled a document, by consent, prepared by Catriona Eagles, a Senior Planner from a company called Cheal based in Taupo. The document outlines Taupo population demographics and a chart of off-licensed outlets in the district.
13. Mr Sarbdeep Singh was cross-examined by the agencies on his evidence and the contents of the Cheal report.
14. He confirmed that both he and his fellow director were domiciled in Tauranga and 'if necessary' one of them would relocate to Taupo. During later questions on this matter he confirmed that Mr Ranjodh Singh would move to Taupo if the licence was granted. He said they would employ local staff if that was necessary.
15. Both directors were questioned about the level of contact they had made with nearby businesses and/or business associations. They conceded that they had not personally contacted anyone and they believed that their landlord had

- contacted nearby businesses.
16. They were questioned about the presence, and hours, of the Permanent Alcohol Ban. They did not know the hours or the exact boundaries on the banned area. They reiterated again that they were not responsible for what purchasers did with the alcohol once they left the store.
  17. When asked if they planned to sell single serves of main-stream beers and RTDs and shots they said they did intend to do so but would accept a directive not to do so if the Committee required it.
  18. Mr Sarbdeep Singh was questioned on the Cheal report and accepted that the errors identified in the report by the agencies were true. He said *"It's not a big issue that I don't have a knowledge of the local community. Just need 2-3 weeks"*
  19. Mr Singh was questioned by Ms. Meertens about his responsibilities to the community by opening another store. He said *"We have no responsibility once alcohol leaves the store. It does not increase availability just provides additional opportunity."*
  20. It was put to him by Ms. Meertens that the area involved carried a Deprivation Index of 9 indicating it was a highly deprived area. He did not agree with that statement.
  21. In answer to a question from the Committee about the hours of operation Mr Singh said his company would accept a 10pm finish if that was the decision of the Committee.
  22. In closing his case for his clients Mr Hooker says his client's application will meet the Object of the Act because ***"They will safely and responsibly sell alcohol resulting in minimal harm due to excessive or inappropriate consumption."***
  23. With respect, we suggest that that is a very generalist comment and a very long bow to draw particularly when his client was at pains to tell the Committee several times that they were 'not responsible' for what happens after the alcohol leaves the store. Technically he is correct which is why the DLC must have regard to all the site-specific factors involved in an application.
  24. He repeated his client's comments about the 'proliferation' of BYO restaurants and that would be a prime market for his clients. To our personal knowledge there are very few, if any, solely BYO endorsed restaurants in the Taupo District and a small number of other fully-licensed restaurants who may or may-not permit limited BYO opportunities.

### **Police Evidence**

25. Sgt Christopher Turnbull confirmed his Brief of Evidence as true and correct and spoke to the alcohol offending profile report he produced. He told the committee that there were already 9 off-licensed premises within one kilometre of the proposed bottle store. Five outlets were within 500 metres of the proposed premises. He believed that the amenity and good order of the

area would be further diminished by the opening of an additional alcohol outlet in the area.

26. He said that it was commonly accepted that 75% of all alcohol consumed was purchased from off-licensed premises and therefore off licences were the main contributor to alcohol related harm.
27. He told the Committee that in the 24-month period 1 January 2014 to 12 December 2015 there were 1335 actual or suspected 'alcohol-related' offences reported to the police in the Taupo District. In his own opinion and experience, he said many hundreds of other incidents and offences are not reported.
28. He said the Police believe that more than 63% of ALL offences reported in the Taupo District are alcohol related.
29. He said more than 75% of the 366 offences reported in the Taupo CBD were likely to be alcohol related.
30. The Sergeant said the applicants had failed to demonstrate any local knowledge of the community they hoped to operate within. He referred the Committee to the applicant's comment that "*damage from looting or vandalism is covered by insurance policies.*" The Police believe this indicates a complete lack of awareness of the social harms and anxieties that such anti-social behaviours generate for community members.
31. In his closing statement the Sergeant referred us to a number of ARLA and HC decisions around amenity and good order and the suitability of applicants.
32. It was the belief of the Police that there was already demonstrable alcohol related harm occurring in the Taupo CBD and an additional outlet would further reduce the amenity and good order by a significant amount.
33. He also believed that the applicants had failed to show sufficient knowledge of the community and nor had they shown that they could prevent a further degradation of the amenity and good order.

### **Medical Officer of Health Evidence**

34. Ms. Dawn Meertens qualified herself as a designated officer acting on behalf of the Medical Officer of Health.
35. She said that the application was opposed by the MOoH on the grounds that the amenity and good order of the locality would be affected by more than a minor extent and that granting of the licence would not be consistent with the Object of the Act.
36. Ms. Meertens called Mr James Scarfe, a Public Health analyst for the Ministry of Health. He produced 2013 census data that showed the average deprivation score for Taupo Central (the proposed store will be within this mesh block) was a decile 9 score being the second poorest 10% of areas in New Zealand.
37. Mr Hooker put to Mr Scarfe that the decile ratings of the two schools in the area were 4 and 5 respectively and this was a good rating. Mr Scarfe explained that the two decile ratings were unrelated and the deprivation decile score of 9 indicated Taupo central was a very deprived area.

38. The MOOH witnesses also produced and referred us to the 2012 Population Survey Toi Te Ora-Public Health Service. In this document it showed that 59% of Taupo residents thought there was too many places selling alcohol, 78% thought there should be a cap on the number of outlets in an area and 73% supported reducing the number of places that can sell alcohol.
39. Ms. Meertens quoted commentary from a recent ARLA decision **[2014] NZARLA 881 MASTERTON LIQUOR LIMITED V JAQUIERY** in which it was said the national average is 1 licensed outlet per 1000 people. Taupo's current ratio is 1 outlet per 822 persons and if the licence was to issue the ratio would drop to 1 outlet per 802 persons.
40. Ms. Meertens went on to submit that the MOOH held concerns relating to the proposal to sell single sales and shots especially as the proposed premises was within the Taupo Permanent alcohol ban area. She also reinforced opposition to the proposed closing time of 11pm saying it would increase the availability of alcohol late at night in an area that is already deprived.
41. In closing Ms. Meertens told the Committee that to grant the licence would go against the will of the Community and that the Committee should put considerable weight on the research findings about the number of outlets and increasing the availability of alcohol and the subsequent effects on the amenity and good order of the locality.

#### **Inspector's Evidence**

42. The Inspector's report was taken as read and he referred us to the diagrams that he produced, by consent, showing 5 off-licensed outlets within 500 metres of the proposed site.
43. He further commented on the proposed hours of operation believing 11pm was too late and the lack of hands on management proposed by the applicants was concerning. There was a concession during cross examination of the applicants when Ranjodh Singh indicated that they would accept a 10pm finish if the Committee so decreed and he would personally move to Taupo to manage the store.
44. Mr Singer said the Permanent Alcohol Ban enveloped the proposed site and it was away from the main CBD foot traffic laneways and that the amenity and good order of the locality would be affected by more than a minor extent if the licence was granted.

#### **Public Objections**

45. Fifteen objections from members of the public were lodged within the required time with the DLC. A further objection was lodged out of time.

46. The objectors were called to give evidence in support of their objections. None were present to do so.

### **Relevant legislation**

47. Section 3 of the Sale and Supply of Alcohol Act 2012 (“the Act”) states the purpose of the Act as follows:

- (1) The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –**
  - (a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and**
  - (b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.**
  
- (2) The characteristics of the new system are that–**
  - (a) It is reasonable; and**
  - (b) Its administration helps to achieve the object of this Act.**

48. Section 4 states the object of the Act as follows:

- (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 and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).**

49. Section 105 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to grant a licence as follows:

#### **105 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.

## **106 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.

(2) In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):

(a) current, and possible future, noise levels:

(b) current, and possible future, levels of nuisance and vandalism.

## **Reasons for the decision**

50. Firstly, we comment on the public objections. Parliament was quite emphatic that they wanted the new Act to provide the public with a greater opportunity to be heard on licence applications. Two of the objectors were from organisations who deal with the after effects of alcohol abuse namely Woman's Refuge and 'arc Counselling Services'. For reasons to which we are not privy they chose not to appear in support of their objections.

51. We note that the Liquor Licensing Authority said in **GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03** where objectors failed to appear in support of their objections:

***“The objections will have little probative value if those making the allegations in the objection are not able, or prepared, to appear at the hearing to affirm, or swear, to the truth of what they are saying. By not appearing, their opinions and concerns cannot be tested by cross-examination by the applicant or questioned by members of the Authority.”***

52. We put little weight on the objections for that reason but do note that the majority of them believed that increased density of licensed outlets would inevitably result in greater harms for the Taupo community and demands on social services.
53. We also take in to account the studies on outlet density and case law relating to amenity and good order but we exercise caution in applying the findings as we accept that such findings are site specific and may not apply to every case that comes before us. Countering this we apply weight to evidence relating to the high deprivation score indicating that the Taupo community as a whole is a poor community and subject to the negative norms associated with alcohol abuse. Taupo may have a high tourist count and some affluent areas but tourists are transient and the affluent areas are small and outside the Taupo Central Mesh Block.
54. We now turn our attention to the other matters to which we must have regard.

#### **Other criteria to be considered**

55. The Act provides that in deciding whether to grant a licence, the licensing committee **must have regard to** the matters contained in section 105 and 106 of the Act.

#### **Section 105(1)(a) The Object of the Act**

56. Section 105(1)(a) of the Act requires the Committee to have regard to the object of the Act and in particular that the sale, supply and consumption of alcohol should be undertaken safely and responsibly and that the harm, both directly and indirectly, caused by the excessive or inappropriate consumption of alcohol should be minimised.
57. It is a given that although off-licensed sellers may exercise some influence over the **sale** of alcohol they can do little, if anything, to control the later on-supply and consumption of alcohol as it occurs away from the seller's premises and their sphere of control. We noted that Messer's Singh told us not once, but several times, that as long as they don't sell to minors and intoxicated persons they are complying with the law. We thought the demeanor of Mr Sarbdeep Singh was rather cavalier in this regard and although he was strictly technically correct that as long as they don't commit statutory offences they won't offend against the Act but they are required to assist in achieving the Object of the Act by conducting thorough market research around the population demographics and the location of outlets.
58. In this case the applicants produced a flawed document relating to location and numbers of off licensed premises and failed undertake any enquiries personally on the desirability, or otherwise, of another outlet in the Taupo CBD.



**Section 105(1)(b) Suitability of the Applicant**

59. Section 105(1)(b) says that the applicant must be a suitable person to hold an off-licence. In this regard the suitability of the applicant is not seriously challenged by any party although there was confusing statements in the application about serving minors accompanied by guardians.
60. It is accepted that the Singh's are experienced operators of licensed premises in other areas of the country.

**Section 105(1)(c) Relevant Local Alcohol Policy**

61. In respect of section 105(1)(c) of the Act there is no relevant local alcohol policy currently in existence. There is nothing for us to consider.

**Section 105(1)(d) The days and hours of operation of the licence**

62. The proposed operating hours are Monday to Sunday 9.00am to 11pm and are within the default national maximum trading hours for off licences of 7am to 11pm. The Singh's indicated at the hearing that that would accept a 10pm close if the Committee was to require it.

**Section 105(1)(e) The design and layout of any proposed premises**

63. The applicant intends to keep up to 50% of the frontage clear of signage and will have CCTV fitted throughout the building. They advised that the proposed business would be a Thirsty Liquor franchise and much of the advertising would be directed nationally.
64. We note that the location is not in the busy well-lit main foot traffic areas of the CBD.

**Section 105(1)(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**

65. The applicant advised they will sell a small amount of chips and peanuts and the like and also tobacco products.

**Section 105(1)(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, and good, and if so, which services.**

66. No other services are offered.

**Section 105(1)(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.**

67. We are directed to the parameters of s.106(1) and to have regard to a series of matters (as they relate to the locality). Firstly, we consider current and possible future noise levels. Mr Singh gave assurances that there will be no significant additional noise nuisance created by the activity;
68. In regard to the current, and possible future, levels of nuisance and vandalism we

note that the current 'calls for service' recorded by the Police are described as relatively high and the Sergeant conceded that there was already significant alcohol related harm and disorder in the CBD especially late at night;

69. We are further obliged to consider the number of premises for which licences of the kind concerned are already held. We heard that there are already 5 off-licensed bottle stores within 500 metres of the proposed store. The granting of this application would see a 6<sup>th</sup> outlet within this radius.

70. We are required to take in to account "the purposes for which land near the premises concerned in used." We note that there are two schools within 1 kilometre and a park diagonally across the road from the proposed site.

71. We are further required to take in to account "*the purposes for which those premises will be used if the licence is issued.*" The applicants seek to open a bottle store with a projected weekly turnover of \$45-50,000 not a small café selling a few glasses of wine.

**Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law**

72. The applicant advised that there would be 4 certificated managers, including themselves attached to the business. Under cross examination they conceded that all four named persons work at their other stores and that they would employ additional certificated managers if needed be.

73. The reporting agencies challenged the applicants on some confusing statements in their application including that you "can serve the minor under the supervision of their parents.." and that any 'looting and vandalism is covered by existing insurance policies.'

74. They were able to explain their views a little clearer under cross examination.

**Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129**

75. The Police oppose on density issues and the potential effects on the amenity and good order of the area. Those concerns have been discussed in greater detail elsewhere in this decision.

76. The Inspector holds concerns about the granting of another off-licensed outlet in the CBD. He also holds concerns on the applicant's ability to manage this store remotely from Tauranga.

77. The representative of the Medical Officer of Health opposed the application strongly using census data to show the Taupo Central Area to be a high deprivation area and was already well served with off-licensed outlets. MOoH were of the view that an additional outlet would significantly affect the already damaged amenity and good order of the area.

**The Decision**

78. Section 3 of the Act requires us to act reasonably in the exercise of our duties and to regulate with the aim of achieving the Object of the Act.
79. Mr Hooker helpfully referred us to the views of Justice Heath in the High Court appeal **Venus NZ Limited Hamilton High Court CIV2014-419-420** who said the test for District Licensing Committees is as follows "Is the Authority satisfied, having considered all the relevant factors set out in s105(1)(b)-(k) of the Act, that the grant of an off-licence is consistent with the Object of the Act.
80. This application was finely balanced but in our view the already high levels of alcohol related harm and offending in the locality coupled with a vulnerable base community and the presence of 5 off-licensed outlets with 500 metres already have tipped the pendulum to the negative.
81. We are not satisfied that the granting of this licence would be consistent with the Object of the Act.
82. The application for an Off Licence sought by BVS Wines and Spirits 2015 Limited for premises situated at 19 Paora Hapi Street, Taupo is refused.

**DATED** at TAUPO this 17th day of March 2016

A handwritten signature in black ink, appearing to read 'Murray Clearwater', is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Murray Clearwater  
Commissioner  
For the Taupo District Licensing Committee