

Decision N° **OF0054**

In the Matter

of the Sale and Supply of Alcohol Act 2012

And

In the Matter

of an application by **General Distributors Limited** for the renewal and variation of an Off licence pursuant to ss.100, 120 and 127 of the Act in respect of premises situated at **125-129 Victoria Street, Dargaville, Kaipara District** known as "**Countdown Dargaville**"

Before the Kaipara District Licensing Committee

Chair: Mr Peter Winder

Members: Mr Gordon Lambeth, Mr Mark Farnsworth

In Attendance: Governance Services Manager: Sean Mahoney
General Manager Planning and Regulatory: Fran Mikulicic
Chief Licensing Inspector: Rachel Sheppard

Decision (From the Hearing)

The Application

This is for an application for the renewal and variation of an Off licence to General Distributors Limited (GDL) situated at 125-29 Victoria Street, Dargaville, Kaipara District known as Countdown Dargaville.

The applicant is seeking to renew the current off-licence for the premises and to vary the licence to extend the hours when alcohol may be sold from the current hours of 9.00am to 9.00pm to new hours of 7.00am to 9.00pm.

This application was received on 16 July 2015 and made under ss. 120 and 127 of the Sale and Supply of Alcohol Act 2012 and determined by the District Licensing Committee under ss.104 and 130 of the Act.



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The application for the renewal and variation of the Off licence was reported on by the Police on 10 August 2015, the Medical Officer of Health on 14 August 2015 and the Inspector on 19 August 2015.

All members of the DLC have conducted visits to the site and have witnessed the operation of the supermarket.

The Medical Officer of Health opposed the renewal and variation application contending that:

- (a) the single alcohol area layout is not conducive to limiting exposure of alcohol for sale, and
- (b) that the two hour increase in trading hours was excessive.

The Police opposed the variation application in relation to the extension of the proposed licensed hours.

The application did not attract any objection from the public in general and is determined under s.202(3) of the Act.

The matter was heard by the full Kaipara District Council District Licensing Committee on 7 December 2015. The Applicant was represented by Mr Duncan McGill. The Medical Officer of Health was represented by Mr Wayne McKean, and the NZ Police were represented by Sgt Clement.

The Applicant called sworn evidence from Mr Stuart Worsnop. The Medical Officer of Health called sworn evidence from:

- Dr Clair Mills (Medical Officer of Health, Northland DHB)
- Fran Glamuzina (a public health nurse employed by the Northland DHB in Kaipara)
- Hal Harding (representing Kaipara Abuse Prevention Inc)
- Dr Liz Hunn (GP and Medical Officer for Timatanga Hou the regional detoxification in-patient unit situated at Dargaville Hospital)
- Allan (Sonny) Nesbit, Chair of Te Roroa
- Sue Plunkett (Public Health Nurse based in Dargaville).

The New Zealand Police called sworn evidence from Constable Nicolas Wilson.

None of the evidence was pre-circulated. None of the parties provided advice to the District Licensing Committee (DLC) in advance of the hearing of the nature or extent of the evidence that they would be providing, or a list of witnesses.

Cross examination of the witnesses was allowed. All witnesses were questioned by members of the DLC.

The Applicant presented substantial opening and closing arguments in writing at the hearing. Due to time constraints on the day these were received by the DLC. The reporting agencies were given the opportunity to respond to the closing submissions by close of business on Friday 11 December, the DLC reserved its decision and the hearing was closed.



The DLC received closing submissions on behalf of the Medical Officer of Health on 10 December. It then received further, unsolicited submissions in reply from the Applicant on 18 December.

The DLC then deliberated and reached its decision.

Context

The application relates to the sale and supply of alcohol from a supermarket. GDL is a wholly owned subsidiary of Progressive Enterprises Ltd. They have successfully operated a Countdown supermarket with an off-licence in Dargaville since 2007. The supermarket was re-built and opened as a new store in August 2014. Up until the opening of the new store GDL held an off-licence which allowed the sale of alcohol between 7.00am and 9.00pm.

In anticipation of the opening of the new store GDL applied for a new licence with the same opening hours as were used by the old store. The opening hours were opposed by the Medical Officer of Health and the Police. Concerns were also raised about the positioning of the single-alcohol area within the supermarket and its visibility and prominence at the entrance to the store.

Following meetings between the applicant and the reporting agencies GDL amended its application to reflect opening hours of 9.00am to 9.00pm. Following discussion with the agencies GDL also undertook to provide screening of the single alcohol area through the provision of shelving to the left of the entrance. The new shelving was to be x metres long and x metres high and was intended to provide a physical and visual separation between the main entrance to the store and the single-alcohol area. This amended application was not opposed. The amended application was determined on the papers by the Alcohol Regulatory Licensing Agency in Wellington on 19 August 2014 and the licence was issued on 19 August 2014 for a period of one-year. Because GDL amended the application in such a way as to remove the objections of the reporting agencies no hearing tested the strength or robustness of the concerns relating to opening hours that the reporting agencies had raised.

Kaipara District does not have a Local Alcohol Policy which would direct the DLC to deviate from the maximum national default hours.



The Report from the Licensing Inspector

The District's Licensing Inspector offered no opposition to the application. The Licensing Inspector's report to the DLC assesses the application in terms of all of the relevant criteria under the Act. Importantly the Licensing Inspector notes, amongst other things, that:

- a) *"The renewal of the off-licence applied for may increase risk of exposure for the general public, in terms of the increased hours applied for by the applicant. However, the hours applied for meet the requirements of the Sale and Supply of Alcohol Act 2012, in the absence of a local alcohol policy. Therefore it is recommended that while the licensing inspector does not object to the proposed application, the District Licensing Committee proceed with evaluation of the possible impacts on alcohol related harms that may result from the proposed changes."*
- b) *The applicant is known to council, and had no issues in the past that could have affected the suitability requirements"* [reference to s105(1)(b)]
- c) *"The licence applied for covers Monday-Sunday 7am – 9.00pm. This application meets the permitted default national trading hours as set out in Section 43 of the Act."* [reference to s105(1)(d) of the Act]
- d) *"The design and layout of the single-alcohol area is less than desirable. The intent of the Sale and Supply of Alcohol Act 2012, Section 112(1) is to limit exposure of shoppers in supermarkets to displays and promotions of alcohol and advertisements to [sic] alcohol. However, it is acknowledged that the shelving units placed at the entrance somewhat limit the visibility to parts of the alcohol area and these should remain as per the documented layout provided by the applicant."* [reference to s105(1)(e) of the Act]

Overall, the Licensing Inspector considered that the applicant and the application meet the requirements of the Act.

The Evidence presented by the Applicant

The evidence presented by the Applicant dealt with the object of the Act and the matters that the DLC is required to consider when dealing with the application. The evidence focused on the location and design of the single alcohol area and the potential to relocate or change the area, including the practicality and cost implications of alternative approaches and locations. The evidence also focused on the time of the day that sales including alcohol took place, the pattern of sales that occurred at the old supermarket when alcohol sales were permitted from 7.00am, and patterns of sales at supermarkets elsewhere in Northland.



This evidence was that substantially relocating or changing the single alcohol area would be costly impractical, present different challenges in terms of supervision, and have little impact on the visibility of alcohol within the store. The Applicant's evidence also questioned whether, given the low volume of sales before 9.00am, a change to the licensed hours would have any significant impact on either the amount of alcohol sold, or the extent of alcohol related harm within the community.

The applicant also presented a substantial casebook with relevant recent decisions relating to Northland supermarkets.

The Evidence and opposition presented by the Medical Officer of Health

The evidence presented by and on behalf of the Medical Officer of Health focused on alcohol related harm in Northland and Dargaville and opposed the application with respect to the proposed opening hours and the design of the single-alcohol area.

There is no doubt that there is a concerning level of alcohol related harm within the Kaipara community. The witnesses called by Counsel for the Medical Officer of Health illustrated the impact and harm that alcohol causes. Their description of the personal impact of alcohol harm on individuals and families was moving. The evidence also presented a range of studies and literature that explore the evidence that alcohol harm can be reduced by reducing access to and availability of alcohol.

However, the DLC received no hard evidence that would link the timing of sales prior to 9.00am at Countdown Dargaville to either an increase in alcohol sales, or to an increase in alcohol related harm. Indeed, no evidence was introduced to illustrate any decrease in alcohol related harm since the licensed hours of Countdown Dargaville were reduced in August 2014. The DLC recognises that this is difficult. It does not help that there are few reliable statistics available to quantify impacts. Worse still, those measures that do exist generally do not relate solely to Kaipara district, let alone to Dargaville. Compounding this, the analysis of Countdown's sales information presented by Dr Mills misrepresented the scale of alcohol sales at the supermarket.

The most persuasive argument that was presented was in relation to providing a time of the day at which those recovering from alcohol abuse could shop without the temptation to purchase any. However, we note that the Act does not deal with this, neither is the applicant under any obligation to provide such an opportunity.

The Medical Officer of Health's evidence and submissions argued for far greater separation of the single-alcohol area from the rest of the store.



The Evidence presented by the Police

The Police presented no evidence in relation to the proposed trading hours.

The evidence presented by the Police related to the experience and observations of Constable Wilson with respect to the location and supervision of the single alcohol area and the extent of alcohol related harm within the district. His evidence highlighted the visibility of the area, the need for adequate supervision of it, and the need for visibility from the checkout area to ensure this. Constable Wilson's evidence also noted previous theft of casks of wine from the area. Under cross-examination Constable Wilson noted the significant amount of Police time that is devoted to dealing with matters in which alcohol is a contributing factor.

The Decision

It is common ground that the application and the applicant meets all necessary requirements under the Act other than the two matters that were the focus of the hearing:

- (a) the hours during which sales are permitted, and
- (b) the layout of the single-alcohol area.

Single Layout area

The DLC has accepted the advice from the Licensing Inspector that the layout of the single-alcohol area is less than desirable, but observes that it is similar to a range of other single-alcohol areas in supermarkets both within and neighbouring Kaipara District. The DLC noted the conflicting views that it received regarding the need for visibility to ensure adequate supervision and oversight of the area, and a strong desire to make the single alcohol area more enclosed and more physically separate from the rest of the store. The DLC accepted the evidence of Mr Worsnop that relocating the single-alcohol area within the store would be very costly and impractical.

The DLC has concluded that the single-alcohol area complies with the requirements of sections 112, 113 and 114 of the Act, provided the shelving units that separate the area from the main entrance are high enough to obscure the area from patrons entering the store. It was understood that the Applicant undertook to place shelving units 1.6 metres high and 3.8 metres long in this area. At the times that members of the DLC visited the store, the shelving was shorter than this. This meant the patrons entering the store could see over the shelves and into the single alcohol area. One of the conditions of this decision is that the shelving separating the main entrance from the single alcohol area must be at least 1.6 metres high and 3.8 metres long.



Licensed Hours

Having considered the evidence in the case book the majority decision of the DLC is to grant the extension of hours when alcohol may be sold from the current hours of 9.00am to 9.00pm to new hours of 7.00am to 9.00pm.

The DLC accepts the agreement put by the Medical Officer of Health that there is alcohol harm within the communities of Dargaville and Kaipara. However, the evidence presented did not demonstrate that there had been any reduction in alcohol harm since the licenced hours were reduced in August 2014, neither did it provide any reason to believe that 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 for the hours sought by the applicant.

Through cross-examination of witnesses the Applicant explored the potential for the additional licenced hours to result in a change in the timing of alcohol purchases rather than any increase in alcohol sales and consumption. No evidence was presented to dispute the argument by Counsel for the Applicant that in response to increased hours at the start of the day Countdown shoppers would most likely spend the same amount of money on alcohol as they did previously.

The DLC notes the careful wording of s105(1)(h) of the Act:

"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."

This section clearly provides within the schema of the Act the potential to issue a licence that may have a negative impact on amenity and good order, provided that DLC considers that the impact would be no more than minor.

Having considered the time of day for which the additional trading hours are sought, the sales data presented by the applicant and the evidence put before it, the DLC has concluded that the application for additional hours meets the requirements of s105 of the Act, and that any impact on the amenity and good order of the locality would be no more than minor.

Accordingly, we are satisfied as to the matters to which we must have regard as set out in ss.105 and 131 of the Act and we grant the renewal and variation of the Off licence under s.202(3).

We renew the Off licence until 19 August 2018 pursuant to s.135(1) of the Act, that being the anniversary date of the licence and three years from the most current date of expiry and authorise the issue of a replacement licence and a notice of renewal.



The licensee's attention is drawn to condition (c) of replacement licence 03/OFF/019 /2015 to ensure that drinking water is readily available and free of charge to customers at all times that the licensed premises are providing tastings. Signage directing people to drinking water must be prominently displayed on the premises during tastings.

The licensee's attention is drawn to condition (g) of the replacement licence relating to the description of the single-alcohol area and the location and dimensions of the shelving units that separate the single-alcohol area from the main entrance to the store.

The licensee's attention is drawn to s.56 and s.57 of the Act obliging the holder of the off-licence to display:

- (i) A sign to the exterior of the premises, so as to be easily read by persons outside each principal entrance, stating the ordinary hours of business during which the premises will be open for the sale of alcohol; and
- (ii) A copy of the licence, and of the conditions of the licence, attached to the interior of the premises so as to be easily read by persons entering through each principal entrance; and
- (iii) A sign prominently displayed inside the premise, which identifies by name the manager for the time being on duty.

DATED at Mangawhai this 09th day of February 2016



Peter Winder

Chair

Kaipara District Licensing Committee

