

Decision dated 01 July 2016

11/OFF/1/2016

In the matter of the Sale and Supply of Alcohol Act 2012
Sections 17-19, 28, 32-36, 99-108, and 116

And

In the matter of an Application for Off Licence by **Heslik Limited**

in respect of premises referred to as **Hahei Wines & Spirits** proposed to be
located at **3 Grange Road Hahei.**

Introduction

1. This Application is dated **12/01/2016** and was received by the District Licensing Agency on **13/01/2016**, at a time when the Sale and Supply of Alcohol Act 2012 (the 2012 Act) had come into force and accordingly, it is to be decided under the 2012 Act.

The Application

2. The Application as lodged seeks a new Off Licence **to sell High End Wines, Spirits & Boutique Beers from a new bottle store premises which is part of a block of shops in the main shopping centre of Hahei.**
3. Certificates have been given by the local authority that the proposed use of the premises meets the requirements of the Resource Management Act 1991 and the Building Code. In addition, a statement by the Applicant for the purposes of S.100(d) of the 2012 Act has been lodged with the Application.
4. The days and hours during which the Applicant proposes to sell or deliver alcohol, are:
7 days a week 9.00 am to 9.00 pm.
5. The application was sent to the NZ Police, the Medical Officer of Health, and to the NZ Fire Service. No objection has been made by any of those agencies/services.
6. The Application was publicly notified as required by the 2012 Act – objections from a number of members of the public have been received raising the following issues;

- there are already enough liquor outlets in the area;
- Hahei is a family friendly town with approximately 300 permanent residents;
- property owners are happy with the amenities they already have;
- current infrastructure is under pressure already from the volume of visitors;
- the car park is on private land and not subject to the local liquor ban;
- no current litter bins are provided;
- Hahei already has a problem with littering, fires and broken bottles on the beach;
- no Police presence in Hahei;
- Hahei has a huge pedestrian population and parking problems;
- local businesses already struggle to survive in the off season;
- the community does not need this applicant doing business in Hahei;
- the town centre is located within close proximity and the community will be negatively impacted by the proposal;
- the crime rate and alcohol related injuries and accidents will increase.

7. The Chief Licensing Inspector has inquired into the Application and lodged with the Agency/Committee a Report recommending that the application is heard via a public hearing as per Section 202 of the Act.

The report however advises, inter alia, that;

- 7.1 The applicant is a limited liability company and, as such, is permitted to be an applicant for an off licence;
- 7.2 The principal purpose of the business is the sale of alcohol;
- 7.3 In terms of Section 28 of the Act, the applicant satisfies the relevant criteria to be the holder of an off licence;
- 7.4 The proposed layout of the interior of the store is in keeping with a premises of this nature;
- 7.5 The applicant has advised that there are no sensitive sites within reasonable proximity to the premises;
- 7.6 The Thames Coromandel District Council has a record of 4 licensed premises in the settlement of Hahei which hold 5 licences in total, namely 2 off licences and 3 on licences.

Pre-Hearing

8. In response to the large number of objections that were received a minute was issued by the District Licensing Committee (Minute 1) encouraging the objectors to join together where they were saying substantially the same thing.

9. The minute also requested that written statements were to be lodged with the committee and served on the parties prior to the hearing for efficiency purposes.
10. The committee notes that objector Barbara Ritchie was appointed spokesperson for 18 of the objectors, Sam and Pauline Verran would represent themselves and the other 5 objectors had not responded.
11. The committee wishes to acknowledge and thank the parties for their co-operation in regard to Minute 1. This assisted in the efficient running and conduct of the hearing.

Hearing and Evidence

12. By reason of public objections having been lodged a public hearing was held in the council chamber of the Thames Coromandel District Council's office in Thames on Tuesday 28 June 2016 commencing at 10.00 am before the Thames Coromandel District Licensing Committee panel of Peter French (Chair), Tony Fox (member) and Brent Holmes (member).
13. The applicant was represented by Raewyn Slikas and supported by Bruce Heslop, her partner, and Jay Slikas, her son.
14. Barbara Ritchie and Pauline Verran appeared on behalf of the objectors.
15. The Thames Coromandel Chief Licensing Inspector, Ms Tanya O'Shannessey, appeared for the Inspectorate.
16. Raewyn Slikas gave evidence on behalf of the applicant and presented the following information :
 - 16.1 Their aim was to sell and supply alcohol safely and responsibly;
 - 16.2 The reason she decided to apply for an off licence was that she and her partner had been successfully operating a liquor store in Cook's Beach for the past 4 years and had requests from residents of Hahei that she should consider a store in Hahei because there was a lack of choice in Hahei and the current suppliers were too expensive;
 - 16.3 She believed residents and visitors to Hahei deserved a better service and to cater for future growth in the area;
 - 16.4 She acknowledged the traffic problems but added that a local liquor store would mean locals would not need to drive out of town to obtain the alcohol they wanted reducing the traffic on the roads;

- 16.5 Opening a new store would not stop alcohol being consumed but her experience was that most people purchase their alcohol and go home to consume it not hang around the area drinking;
- 16.6 She had placed a notice on the counter of their store in Cook's Beach seeking support from Hahei residents who travelled to obtain alcohol from Cooks Beach. She tabled 3 pages (the committee notes the pages containing 42 signatures), she stated, from Hahei residents who supported her application;
- 16.7 The application was for 12 hours per day 9 am - 9 pm but she indicated the hours of operation would probably be the same as the ones they operate at Cooks Beach, namely in winter midday - 6 pm and in summer 11 am - 7 pm. They had no intention of remaining open till 9 pm.
17. Neither Mrs Ritchie nor Mrs Verran had any questions for Mrs Slikas.
18. In response to questions from the licensing panel Mrs Slikas added the following information:
- 18.1 Mrs Slikas and Mr Heslop were partners in the business and they had had no previous experience in the sale and supply of alcohol prior to opening their bottle store in Cooks Beach 4 years ago;
- 18.2 They would be supported by Mrs Slikas' son Jay who, along with Mrs Slikas, held a current Manager's Certificate and had held it for about 18 months. He had moved back to New Zealand from Australia and between the two of them and a third person, who also held a current Manager's Certificate, would rotate between the two stores;
- 18.3 Her son had been helping out at Cooks Beach and had experience in dealing with intoxicated and underaged customers;
- 18.4 She was very aware of when people were intoxicated and would refuse service when required;
- 18.5 She was naive when she objected to the local brewing company application for an off licence in 2014 because she was worried about it becoming a tavern but now realised it was a well operated business;
- 18.6 She explained her understanding of how to identify signs of intoxication and her policy was of seeking proof of age for customers she did not know or who she suspected were underage;
- 18.7 Children would not be allowed in the store unaccompanied, no alcohol would be consumed on the premises and alcohol would be bagged for transportation purposes;
- 18.8 Any suggestion of her customers consuming the alcohol purchased in the vicinity of the store or for the purpose of supplying to minors would be refused service;

- 18.9 She expected that more rubbish would be generated from the local takeaway bar than from her bottle store and did acknowledge parking was a problem. She added that it was better to have a business operating rather than an empty shop and parking would be a problem whatever business occupied the store;
- 18.10 The premise was currently vacant and she was accepting that advice to customers should be given regarding the local liquor ban if her application was successful.
19. In response to questions from the Licensing Inspector, Mrs Slikas stated that the point of difference for the proposed bottle store was to provide more choice for locals and tourists at competitive prices. She added that the intention was to preserve the family friendly atmosphere and she was not intending to have advertising over the front window of the store.
20. Mrs Ritchie, representing herself and a number of other objectors, presented an additional written submission to the panel highlighting a Summary of the objections referred to by those she represented as listed in article 6 of this decision. She acknowledged that her feeling was the applicant was probably going to be granted a licence because they pass all the criteria. She was concerned about the tone of Mrs Slikas' responses which in one case, she says, convinced an objector to withdraw her objection because she felt intimidated. She also reiterated that non-resident rate payers had the right to object because they own property in Hahei despite what the applicant might think. She queried the intention of the applicant to open reduced hours and sought clarification on how that would be controlled.
21. In response to questions from the panel Mrs Ritchie added that she felt Hahei was different from other towns in Mercury Bay because of the small privately owned car park that was heavily used by pedestrians. She also added that Hahei did not have a main street and that further alcohol outlets would just add to the current chaos. She also suggested that people would drive to Hahei from other areas just to purchase alcohol. The panel struggled to accept this suggestion. She further commented that the application would probably be approved but added that reduced hours should be considered by the panel.
22. At this point, the Chief Licensing Inspector answered Mrs Ritchie's enquiries that it was up to the applicant to decide on what hours they should open for within the

terms of their licence and if the business changed hands a new application would be required which would then be open for public consideration.

23. Mrs Pauline Verran was next to give evidence and confirmed that she and her husband stood by their original objection.
She confirmed that her and her husband had been involved with the Hahei Store for 13 years and they always had a certified manager on site when they were open.
She added that the community have a right to say what happens in their community.
She confirmed that children often come into their store but that the alcohol was stored at the rear of the premises behind an internal door.
The lollies and other attractions for young people were available at the front of the store so there was no need for them to be exposed to the alcohol storage area.
24. The Licensing Inspector then advised the panel that the Hahei Store had a licence authorising sale of beer, wine and spirits pursuant to S34 of the Act.
She also asked whether Mrs Verran was aware pursuant to S105(2) of the Act that the panel could not take into account trade competition when considering an application.
Mrs Verran acknowledged that she was not aware of that restriction.
25. In response to questions from the panel Mrs Verran conceded that there was no evidence to support a contention that the addition of another liquor outlet would increase the crime rate.
She could not provide any information or examples where alcohol-related harm had occurred in the vicinity of the location proposed for this off licence.
She acknowledged that she was aware of only one incident in 10 years in the vicinity of her store and that was a theft.
Her store hours of operation were 7 days a week 8 am - 8 pm during the summer and 9 am - 5 pm in the winter
She could not recall any alcohol related issues in the time she had been operating the store or prior, to her knowledge, even though the store had been selling alcohol for about 20 years.
26. The Chief Licensing Inspector was invited to add any further information not covered in her report.
She asked the applicant whether single sales of alcohol were contemplated and what the applicant's view was of a licence with reduced hours.
She also advised the hearing that the Thames Coromandel District now had an operative Local Alcohol Policy which restricted off licences to opening hours of 7 am -

9 pm and that had been confirmed on appeal. The earlier opening hours were to cater for supermarkets.

27. In summing up Mrs Slikas responded to the Licensing Inspector by stating that single sales were preferred by her to cater for craft beers that were often bought by customers individually because of the price and to try them out. She did not wish to amend the application in relation to hours of operation as she felt the Hahei Store opened for longer hours than her store contemplated and felt the hours of 9 am - 9 pm were fair and consistent. She was sad to hear that some people in Hahei did not want another liquor outlet and reminded the panel that most people drink responsibly. She had had no alcohol related incidents at the Cooks Beach store in the time they had been operating and did not want to see people continuing to drive from Hahei to Cooks Beach to purchase alcohol. She stated that children unaccompanied would not be permitted in her store and that could be controlled because of her intention to have the counter area next to the entrance. That was the conclusion of the applicant's summing up.
28. The committee notes at this point that there were written objections received from Christine Bannan, Neil Vowles, Michelle Saba, Sue Schick and James & Robyn Christie that were not represented by Mrs Ritchie. The committee confirms that all objections received whether in writing or presented verbally had been read and /or considered with equal weight by the panel. The committee further notes that the objectors not represented by Mrs Ritchie or Mrs Verran had referred to similar concerns and that for the committee it was not a numbers game but was, in fact, the quality of the objections and supporting evidence that carried more weight rather than the number of objections received.
29. The committee also notes that an anonymous written objection to this application was received on 23 March 2016 by the licensing agency notated "concerned residents". The committee further notes that the letter referred to the tone of the applicant's responses to written objections rather than specific and valid reasons for an objection and as such carry little or no weight in the committee's view in respect to this application and we put this anonymous letter to one side.

Assessment

30. In deciding whether to issue an off licence the Committee must have regard to the criteria for the issue of Licences specified in section 105 of the 2012 Act.
31. In those respects, the Committee is satisfied on the information presented to it that:
- (a) the Applicant qualifies to hold an off licence and is suitable to do so – s.105(l)(b);
 - (b) an operative Local Alcohol Policy is in force with respect to the Application and the application complies with it or, at the least, is not inconsistent with it – s.105(l)(c);
 - (c) the days and hours for which an off licence is sought are appropriate – s.105 (l)(d);
 - (d) the design and layout proposed for the premises are appropriate - s.105(l)(e);
 - (e) the proposed nature of the operation of the premises is a stand alone bottle store and no other services are proposed – s.105(l)(f);
 - (f) appropriate systems and staff are proposed to be in place by the applicant to ensure compliance with the law - s105(1)(j);
 - (g) there are no matters to be dealt with in any report from the Police, the inspector, or the Medical Officer of Health made under section 103 - s105(1)(k).
32. The principal issue raised by this application when considering the contents of the objections is the effects of the issue of an off licence for the proposed premises on the amenity and good order of the locality.
33. The committee notes that one of the objections is from the owners of the Hahei Store which operates within the vicinity of the proposed premises and holds an off licence. In this regard the committee is cognisant of the provisions of s105(2) which states:
- "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."*

34. Sections 105(1)(h) and (i) require the committee to have regard to:

"(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 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."*

35. Section 106(1) provides guidance to the committee in forming its opinion on amenity and good order matters by requiring the committee to have regard to:

"(a) *The following matters (as they relate to the locality):*

(i) *current, and possible future, noise levels;*

(ii) *current, and possibly 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 is used;*

(ii) *the purposes for which those premises will be used if a licence is issued."*

36. In addition to that, s5 defines "amenity and good order" as:

"The extent to which, and the ways in which, the locality in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel to are) pleasant and agreeable"

37. The committee's understanding of the recorded cases concerning amenity and good order is that whether a threshold of adverse effects sufficient to justify an application for a licence being declined is met, depends on the facts of each particular case.
38. In our opinion, on the information we have been given, both in writing and verbally, that threshold has not been passed on the facts of this particular application, or even come close to being passed.
39. Having regard to all the information before us, and adopting the evaluative approach indicated by cases such as;

"Venus NZ Ltd [2015] NZHC 1377 [15 June 2015]" (Venus)

that we should take, we are not persuaded that there is sufficient evidence for us not to grant this application.

40. In particular, we do not consider there is any, or any sufficient evidence before us, supporting the proliferation and availability theory arguments (namely, that increased access will result in more harm) implied in the objections.
41. In that regard, we have placed some weight on the absence of opposition from the Police and from the Medical Officer of Health, both of whom might have been expected to have opposed the application if there are the problems/concerns in Hahei that the objectors contend there is or could be.
- The committee also noted during the hearing that it was generally agreed by all parties that the travel time from Cooks Beach to Hahei was approximately 15 minutes and that was where the nearest Police presence was but only over holiday periods.
42. In the committee's view, there are no sensitive sites within the locality which might be adversely affected by the grant of the licence applied for.
43. Nor is the location of the site unsuitable from an environment perspective. If there are traffic and parking issues then they need to be addressed by the Thames Coromandel District Council under the Resource Management Act and the Local Government Act and/or by the owner of the land and buildings and/or by the New Zealand Police.
- If such problems exist, they are certainly not a barrier to the issue of an off licence for the proposed premises.

44. There is no evidence, or no sufficient evidence, of nuisance or vandalism in the locality of the proposed premises, nor evidence of noise problems.
45. We are therefore satisfied, for the purposes of s105(1)(h) and (i), that:
- (i) the amenity and good order of the locality is unlikely to be reduced to more than a minor extent by the effects of the issue of the Off Licence applied for;
 - (ii) the amenity and good order of the locality is not already so badly affected by the effects of the issue of existing licences that:
 - (a) they would likely be reduced further by the effects of the issue of an off licence to the applicant; or that
 - (b) it is nevertheless desirable not to issue any further licences.
46. Overall, having regard to all the information put before us, and exercising the evaluative function identified in Venus we are satisfied as to all the matters to which we are required to have regard under the 2012 Act, and are of the opinion that the purpose and objects of the 2012 Act are met by this application.
47. This application is therefore granted, subject to conditions usually imposed on Off Licences in the Thames Coromandel District and the following discretionary conditions referred to as part of the recently adopted Local Alcohol Policy for the Thames Coromandel District namely:
- (1) Display of safe drinking messages;
 - (2) General point of sale at or near the main entrance;
 - (3) Conditions that prohibit the access to the premises by unaccompanied minors.

Decision

48. The Committee hereby grants an Off Licence to Heslik Limited for a stand alone bottle store to be known as Hahei Wines & Spirits at 3 Grange Road Hahei, Monday to Sunday 09.00 am - 09.00 pm for the sale and supply of alcohol sold from the premises and otherwise as applied for, on the conditions currently imposed within the Thames-Coromandel District for Off Licences including the following standard and additional conditions namely:

- (1) no alcohol is to be sold or delivered on Good Friday, Christmas Day, or before 1.00 pm on Anzac Day;
- (2) the whole of the premises is designated as a Supervised area;
- (3) safe drinking messages are to be on display;
- (4) CCTV is to be installed in suitable locations to monitor vulnerable areas of the premises;
- (5) Application of CPTED principles to achieve the following outcomes:
Lighting -
 - * internal lighting enabling passive surveillance by staff and active surveillance by CCTV;
 - * lighting allowing customers to be seen as they enter the premises;
 - * lighting allowing staff to check IDs.
- (6) Internal Layout:
 - * general points of sale are positioned near the main entrance.
- (7) Access to the premises by unaccompanied minors is prohibited.



(signed for as authorised on behalf of)

P. L. French

Deputy Chairperson

Thames-Coromandel District Licensing Committee