

**IN THE MATTER**

of the Sale of Liquor Act 1989

**AND**

**IN THE MATTER**

of an application by **WINO NZ LIMITED** for an off-licence pursuant to s.31 of the Act in respect of premises situated at 92 College Street, Palmerston North, known as "Liquorland Awapuni"

**BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY**

Chairman: District Court Judge J D Hole

Member: Mr D E Major

**HEARING** at PALMERSTON NORTH on 1 April 2014

**APPEARANCES**

Mr B Stewart – for the applicant

Sergeant J Veale – NZ Police – in opposition

Miss S C Mitchell – Palmerston North District Licensing Inspector – to assist

**Objectors**

Mrs K P Hunter

Mr A D John

Miss V E Husband

Mrs J M Chapple (representing the Vestry of St Matthew's Church)

Rev R R Dell

**RESERVED DECISION OF THE AUTHORITY**

***Introduction***

[1] This decision relates to an application dated 21 November 2013 in respect of premises at 92 College Street, Awapuni, Palmerston North, to be known as "Liquorland Awapuni". It is proposed that the business will trade as a bottle store. Initially the application sought hours for the sale of liquor as follows:

Monday to Saturday	9.00 am to 11.00 pm
Sunday	12.00 pm to 8.00 pm

[2] During the course of the application, the applicant has reduced the proposed hours in an endeavour to accommodate the concerns of neighbouring residents. Ultimately, at the hearing, the applicant amended the proposed hours sought for the sale of liquor as follows:

Monday to Thursday	10.00 am to 8.00 pm
Friday and Saturday	10.00 am to 9.00 pm
Sunday	12.00 pm to 7.00 pm

[3] It is proposed that the premises will be designated supervised.

[4] No matters in opposition were raised by the Police, Medical Officer of Health or the Licensing Inspector. In these circumstances each of the reporting agencies were deemed to accept that the application meets the relevant criteria.

### ***Legal Requirements***

[5] The application is dated 21 November 2013. Pursuant to s.407 of the Sale and Supply of Alcohol Act 2012 the application must be dealt with under the Sale of Liquor Act 1989. However, the criteria referred to in ss.105 and 106 of the Sale and Supply of Alcohol Act 2012 apply. Any conditions that might be imposed would be authorised by s.37 of the Sale of Liquor Act 1989. It is noted that s.117 of the Sale and Supply of Alcohol Act 2012 is not one of the “*new provisions*” referred to in s.407(4) of the Sale and Supply of Alcohol Act 2012.

### ***Objections***

[6] Advertising attracted four letters of objection. A further objection (that of Mrs Chapple) was received six days after the final date for lodgement. There was no opposition to a waiver being granted in terms of s.111 of the Sale of Liquor Act 1989 and it is conceded that the late filing of the objection was not wilful.

[7] All the objectors live in close proximity to the proposed premises. The proposed premises form part and parcel of a small shopping block in Awapuni. It is essentially a residential area.

[8] As is so often the case where an applicant seeks to establish off-licensed premises in a residential area, residents of that area become concerned as to the likely effect that the premises will have on their way of life. This case is no exception. However, until approximately two years ago there was a bottle store (also operating under the “Liquorland” franchise label) attached to the “Awapuni Hotel”.

[9] Almost all the fears expressed by the objectors relate to undesirable activities that can occur in relation to a bottle store during the hours of darkness. Included in the matters raised by objectors are fears that:

- [a] Children will play in a nearby hilly playground after persons who have bought alcohol from the proposed premises have been drinking there at night leaving their debris behind them;
- [b] Persons, having purchased alcohol from the proposed premises, will drink it in the car park and adjacent grounds of St Matthew’s Church at night leaving their debris behind them;
- [c] Intoxicated persons will drive to the premises to obtain alcohol;
- [d] Undesirable persons will congregate around the premises and abuse residents;

- [e] Undesirable noise will be generated by the proposed bottle store at night;
- [f] The proposed premises will become a haven for intoxicated persons creating a danger for local residents;
- [g] Undesirable persons will congregate at night in the alleyway adjacent to St Matthew's Church; and
- [h] The activities at Jack n' Jill Children's Centre will be prejudiced by the presence of the bottle shop.

### ***Authority's decision and reasons***

[10] The Authority appreciates that not all the matters raised in the preceding paragraphs could occur at night. However, it also takes into account the fact that the applicant already operates a bottle store known as "Liquorland Albert Street" and a "4 Square" grocery business in Hokowhitu, Palmerston North. Apart from an incident which occurred in July 2009 when there was a failed controlled purchase operation, the applicant and its associated company, Happy New Star International Limited, have operated licensed premises for a number of years without problems arising. The failed controlled purchase operation occurred when a staff member sold alcohol to a minor contrary to the direct instructions of Xing Xu who is the sole director of the applicant. It was significant that three witnesses who worked or lived very close to "Liquorland Albert Street" were prepared to give evidence in support of the application. Their evidence was compelling and indicated that the applicant is very good at what it does and that premises operated by it are unlikely to generate the sort of problems feared by the objectors. This is particularly the case given the proposed reduced hours of operation.

[11] With reference to the criteria referred to in s.105(1) of the Sale and Supply of Alcohol Act 2012, it is the object of the Act coupled with the effects of the issue of a licence on the amenity and good order of the locality (ss.105(1)(a) and (h) of the Sale and Supply of Alcohol Act 2012) that are relevant. When considering s.105(1)(h) (the amenity provision) s.106 is also relevant. The Authority is required to consider such matters as possible future noise levels, nuisance and vandalism. In addition, it needs to consider whether the purposes for which the premises are intended to be used are compatible with surrounding land use.

[12] Most of the fears of the objectors relate to potential possible adverse night time activities and the proposed amended hours go to a large extent to obviate their concerns. Whilst the Authority appreciates that it is possible that the proposed premises could generate a small amount of noise and associated nuisance, it is unlikely that these will impact to a significant extent on the amenity and good order of the locality. Likewise, it recognises that the purpose for which the proposed premises will be used is not completely compatible with neighbouring land use. In particular, the fact that St Matthew's Church is across the road from the proposed premises needs to be taken into account and the Authority recognises that already the church grounds and adjacent alleyway are used by undesirable persons for unacceptable activities. Nevertheless, it seems unlikely that if this application is granted there will be any significant increase in the problems experienced by the church authorities.

[13] The Authority concludes that if this application is granted the amenity and good order of the locality is unlikely to be reduced by more than a minor extent, if at all. Further, there is no evidence to suggest that the object of the Act (as set out in s.4 of the Sale and Supply of Alcohol Act 2012) cannot be achieved if this application is granted.

[14] Accordingly, the application as amended is granted.

[15] The licence will not issue until the expiry of 20 working days from the date of this decision. That period is the time provided by s.140 of the Act for the lodging of a notice of appeal.

**DATED** at WELLINGTON this 14<sup>th</sup> day of April 2014

A E Cannell  
Deputy Secretary