

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by **PANGOTRA HOLDINGS (PALMERSTON NORTH) LIMITED** for an off-licence pursuant to s.31 of the Act in respect of premises situated at Shop 8, 168-190 Rangitikei Street, Palmerston North, known as "Sai Wholesale Liquor"

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 J H Wiles – for the applicant
Mrs L D Kroll – Palmerston North District Licensing Inspector – to assist
Sergeant J Veale – NZ Police – to assist
Mr L W Findlay (representing Palmerston North Street Vans Incorporated) – objector
Mrs M A Maunder – objector

RESERVED DECISION OF THE AUTHORITY

Introduction

[1] This decision relates to an application dated 22 October 2013 in respect of premises at Shop 8, 168-190 Rangitikei Street, Palmerston North, to be known as "Sai Wholesale Liquor".

[2] A Certificate of Compliance was issued in respect of the Resource Management Act 1991. However, the Certificate of Compliance issued pursuant to the Building Act 2004 has not yet been obtained as further building work is necessary before the premises can open for business. In these circumstances, any licence authorised by this decision cannot be issued until an appropriate certificate in respect of the building has been received by the Authority.

[3] It is proposed that the business will trade as a bottle store with hours sought for the sale of liquor as follows:

Sunday to Wednesday	9.00 am to 9.00 pm
Thursday to Saturday	9.00 am to 11.00 pm

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

[5] No matters in opposition were raised by the Police, Medical Officer of Health or the Inspector.

[6] However, advertising attracting six letters of objection. Two of the objectors appeared at the hearing. It was evident that Mr Findlay representing the Palmerston North Street Vans Incorporated had an interest in the proceedings greater than the general public. However, when she was examined under oath, Mrs M A Maunder could not demonstrate such an interest. In these circumstances, at the commencement of the proceedings Mrs Maunder was advised that her objection would not be entertained.

Legal Requirements

[7] With the application being dated 22 October 2013, pursuant to s.407 of the Sale and Supply of Alcohol Act 2012, the Authority is obliged to deal with the application 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 to this application. In the event of the Authority requiring conditions to be imposed then those conditions can only be imposed pursuant to s.37 of the Sale of Liquor Act 1989 (s.117 of the Sale and Supply of Alcohol Act 2012 does not apply as that section is not included in the “new provisions” referred to in s.407(4) of the Sale and Supply of Alcohol Act 2012).

Issue

[8] With the reporting agencies not opposing the application, they are deemed to accept that the application meets the criteria set forth in ss.105 and 106 of the Sale and Supply of Alcohol Act 2012. This was not accepted by the objector however, who claimed that the application did not meet the criteria referred to in ss.105(1)(h) and 106(1)(b) of the Sale and Supply of Alcohol Act 2012. Thus, the objector was concerned that if the application were to be granted 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. In particular, he considered that the purposes for which land near the premises is used were incompatible with the purposes for which the proposed premises would be used if the licence were issued.

Objection

[9] The objector deposed that immediately next door to the proposed premises is the business known as the “Warehouse Stationery”. This is the largest stationery shop in Palmerston North. Almost all the schoolchildren in Palmerston North purchase their stationery from this business. Thus, during school holidays, weekends and after school, students patronise the “Warehouse Stationery”. Whilst the younger children are usually accompanied by parents or guardians, the more senior students are not.

[10] The organisation represented by Mr Findlay is a social services agency and part of Mr Findlay’s job with it is to counsel young people who are in trouble. In his evidence, Mr Findlay gave evidence as to how, in respect of another off-licensed premises, intermediate schoolchildren had ganged-up to shoplift from those premises. He said that the activities of those intermediate schoolchildren were typical of many young people who are inclined to form unofficial gangs to facilitate shoplifting. Frequently one or two of the students will distract the shopkeeper whilst the others steal product.

[11] Mr Findlay stated that he and his organisation do not normally oppose applications for licences. However, in this case they considered that should off-licensed premises be permitted to exist next door to a place where so many young people congregate, it was inevitable that shoplifting would occur by the young people. This would have the effect of young people, who are under the age of 18 years, having unauthorised access to alcohol.

Authority's Decision and Reasons.

[12] It was submitted on behalf of the applicant that the objector's concerns were fanciful and unrealistic. With good management and the application of commonsense there was no reason to suggest that the proposed premises would be targeted by youthful shoplifters.

[13] The Authority does not accept the applicant's submission in this regard. The Authority considers that the concerns of the objector are similar to those of objectors in such cases as *P P & G Basra Limited*, NZLLA PH540/2009 where proposed off-licensed premises were required to close when schoolchildren were likely to be in the vicinity. Further, Mr Findlay was able to cite a specific instance involving a bottle store in Palmerston North where his fears had been realised.

[14] As a result of the objection, it is evident that the purposes for which the premises would be used if the licence were issued are incompatible with the purposes for which the land occupied by the "Warehouse Stationery" is used: s.106(1)(b) of the Sale and Supply of Alcohol Act 2012. This is relevant as to the forming of an opinion in terms of s.105(1)(h) of the Sale and Supply of Alcohol Act 2012. The evidence establishes that the amenity and good order of the locality would be likely to be reduced if this application were granted.

[15] However, the Authority concludes that the amenity and good order of the locality would be likely to be reduced to only a minor extent if the premises are adequately staffed at vulnerable times. In these circumstances it is prepared to grant the application provided the licence is issued subject to a condition that will achieve this.

[16] Accordingly:-

The application is granted subject to a condition imposed pursuant to s.37(4)(c) coupled with s.37(5) of the Sale of Liquor Act 1989: that there shall be on duty in the premises a minimum of two staff members:

- between 9.00 am and 6.00 pm daily (when the "Warehouse Stationery" premises are open) during school holidays and on Saturdays;
- between 9.00 am and 5.00 pm on Sundays (including during school holidays) (again replicating the hours of the "Warehouse Stationery" business);
- and otherwise between 3.00 pm and 5.00 pm.

One of those staff members must monitor the entrance of the premises during the foregoing hours to prevent persons under the age of 18 years entering the premises unsupervised.

[17] 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 15th day of April 2014

A E Cannell
Deputy Secretary

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