

Application Number: 036/OFF/005/2018

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 ("Act").

AND

IN THE MATTER

of an application by **Shree Sai Holdings (New Plymouth) Limited** for a new Off-Licence pursuant to s.100 of the Sale and Supply of Alcohol Act 2012 ("Act"), in relation to the premises situated at 446 Victoria Avenue, Whanganui.

BEFORE THE WHANGANUI DISTRICT LICENSING COMMITTEE

Chairman: Mr Stuart Hylton
Member: Mrs Nicki Higgle
Member: Mr Hamish McDouall

HEARING at the Whanganui District Council Chambers on Tuesday 27th November, 2018.

APPEARANCES

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| Mr Sahill Sharma | Applicant |
| Mr J H Wiles | Counsel for the Applicant |
| Mr W R Zander | Whanganui District Council Chief Alcohol Licensing Inspector – in Opposition |
| Dr N Jackson | for Chief Alcohol Licensing Inspector |
| Mr A K J Thomson | NZ Police – to Assist |
| Mr S. Wainhouse | NZ Police – to assist |
| Mr P. O'Connor | Medical Officer of Health – to Assist |

DECISION OF THE COMMITTEE

Application

[1] On the 25th July 2018 the applicant Shree Sai Holdings (New Plymouth) Limited, applied for a new Off Licence (bottle store) in relation to the premises situated at 446 Victoria Avenue, Whanganui.

[2] The Applicant Company has two Directors, Sahil Sharma and Aman Singh. The two Directors are involved in several Companies that own and operate a number of alcohol licenced premises, four of which are located within Whanganui and are Off-licence premises.

[3] The proposed premises is a vacant video ezy store which is one of three businesses sharing a larger commercial building. The principle entrance is off Victoria Avenue with the commercial building set back off the Avenue behind a service station forecourt and parking area. The applicant would share the commercial building with two other businesses i.e. Gull Service Station and Domino's Pizza.

[4] The application was publically advertised on the 27 July and again on the 3 August 2018 with the objection period ceasing on 17 August 2018. Seven objections were received outside the statutory objection period and all sought s.208 waiver for their omission. In a decision on the 30 August 2018 this District Licensing Committee declined to grant the waivers and give the objectors 'status' due to the objections being received well outside the statutory timeframe.

Opposition

[5] The file the District Licensing Committee ("DLC") received included s. 103 reports from the Medical Officer of Health and Inspector. The Police were provided with a copy of the application on the 30 July 2018 but did not furnish a report within the statutory timeframe. Therefore in accordance with s. 103(4) of the Act, we assume they do not oppose the application.

[6] The Medical Officer of Health in his report dated 20 August 2018, stated no opposition to the application and the Inspector in his report received 1 October 2018 recorded opposition to the issue of the licence due to s.105(1)(i) and s. 36(f) matters.

[7] The Inspector's report dated 1 October 2018 records the s.105 (1)(i) opposition to the application and concludes – *"I also submit that it is not desirable for the Committee to issue any further licenses for this locality. Laird Park is an area that suffers from extremely high levels of deprivation and is already saturated by eight off licensed premises. As shown in Dr Jackson's report, the addition of another licenced premises in this locality will increase alcohol related harm. This coupled with the Community's strong views against another bottle store, suggest it is not desirable for the issue of any further licences in this locality"* (sic).

[8] Due to the reported opposition the matter was set down for public hearing in accordance with s. 202(3) of the Act.

Hearing

[9] At the beginning of the hearing the DLC Chairman asked the Inspector and Applicant whether the issues to be heard under opposition were confined to s. 36(f) and 105(1)(i) matters. The inspector was able to confirm that his original concern regarding s. 36(f) matters had been withdrawn after his attention had been drawn to relevant case decision *Medical Officer of Health v Boutique Wines Ltd (2017) NZARLA PH178*.

Applicant's Evidence

[10] The applicants evidence centred around the proposition that the applicant was an experienced operator within the bottle store industry, had never failed any controlled purchase operations, met the s.105 criteria to be granted a licence and contended that the Inspector in his evidence had not provided or presented any compelling evidence to support a submission that amenity and good order are already badly affected.

[11] Mr Wiles, Counsel for the applicant, noted that neither the Police nor the Medical Officer of Health opposed the application and submitted the fact that there was no opposition from a highly specialised agency such as the Medical Officer of Health, might lead the Committee to believe that Dr Jackson's evidence is somewhat generalised and hypothetical.

[12] Mr Wiles further submitted that there does not appear to be, and will not be specific evidence justifying any conclusion that amenity and good order of the general locality are already badly affected. i.e. s.105 (1)(i). Mr Wiles went on to say in his written evidence - "*Surely, if that were the case, then the Police and the Medical Officer of Health would have submitted objections supported by evidence*".

[13] Mr Wiles submitted that 'proliferation' would not seem to be a live issue because the application is within the cap of 16 in the Provisional Local Alcohol Policy (PLAP). Mr Wiles noted there are no sensitive sites within 100 metres by road, the hours sought are within the PLAP and the applicant is opposed to 'cost cutting'.

[14] In terms of the PLAP and its 'cap', Mr Wiles referred the Committee to *Shady Lady Lighting v Lower Hutt Liquorland (2018) NZARLA 198-199* where ARLA conferred that LAPs which are not yet in force, are not a mandatory consideration and that indeed the DLC in the Decision appealed from was correct and not wrong in not considering as such.

Inspector's Evidence

[15] Chief Alcohol Licensing Inspector Mr Zander opposed the application within his s.103 (2) report due to issues of *locality and deprivation, Off-licence saturation and community views*. The Inspectors report included a witness report from Dr Nicki Jackson, Executive Director of Alcohol Healthwatch. During the hearing both the Inspector and Dr Jackson produced further briefs of evidence.

Locality and Deprivation

[16]The inspector reported that the proposed premise was located within the Laird Park area of Whanganui which experiences extremely high levels of deprivation, ranking in the top 1-6% in NZ. This area is surrounded by several alcohol licensed premises, aggravating the deprivation stressors such as crime and health.

[17]Mr Zander stated that Laird Park is ranked in the top 1.4% of all neighbourhoods in New Zealand for crime and that Dr Jackson's evidence of studies confirmed the relationship between alcohol licence density and alcohol related harms and the vulnerability of deprived areas to alcohol related harm.

Off licence saturation

[18]Mr Zander's report and attached maps showed there were 10 licensed premises within a 500m radius of the proposed premise, of which four are off licensed premises. There are a further three off licensed premises within 800m and an additional off licence within a 1km radius.

[19]The Inspector's evidence referred to the evidence that formed the proposed LAP which states - *"This report suggests where there is a concentration of licensed premises, and the relatively higher availability of alcohol (Central Whanganui, Whanganui East, Aramoho, Gonville, and Castlecliff), then there is also a higher frequency of violence events and drunk custodies than areas where there is a lesser concentration of licenses and relatively less availability of alcohol."*

[20]The Inspector's evidence further stated – *"it appears the saturation of off licences, and the availability of alcohol in this area, is a contributing factor to the extremely high deprivation (predominantly through crime) and consequent low amenity and good order of Laird Park"*.

Community Views

[21] The inspector contended that the number of public objections received for this application, although well outside the objection timeframe, provided an insight into the Community view toward an additional Off-licence in Whanganui. This community view was also evident, according to Mr Zander, by the special consultation conducted recently for Council's PLAP which saw strong support for a cap on Off Licence Premises in Whanganui. The inspector noted an additional licence will require an increase in the current Cap proposed in Whanganui's PLAP.

[22]The inspector called Dr Jackson to be his expert witness at the hearing.

[23]At the hearing Mr Wiles questioned whether Dr Jackson can establish an interest greater than that of the general public and why Dr Jackson's evidence should be entertained when she had filed an objection that has been declined.

[24]The Committee prior to determining this application considered Mr Wiles query and concluded the Inspector indeed had the right to inquire into the application and present all information he believes is relevant to the application (s. 103) as well as

having the ability under s. 204(3) to call, examine, or cross-examine witnesses, in proceedings...(Committee's emphasis)

[25]Dr Jackson's brief contended a new bottle store in the locality is likely to contribute to increased alcohol related harm and this arises from characteristics of the vicinity that predispose its residents and visitors to experiencing alcohol related harm.

[26]Dr Jackson gave evidence of density (per population) of Off- licences in the area units surrounding the proposed site, Whanganui wide area St John Ambulance Service alcohol—related ambulance attendances stats, data from NZ Health Survey 2016/17 showing drinking and hazardous drinking for the Whanganui DHB when compared to the National average, NZ Police database of Victimisations by time and place; and the relationship of this data to alcohol related harm to the locality.

[27]Dr Jackson offered a 'single sales' condition should the licence be granted.

[28]In conclusion Dr Jackson believed the evidence supports a precautionary approach in the consideration of the application and stated *"until the causal pathways are more clearly understood, the threshold for outlet density in disadvantaged areas should be lower. There is already appears (sic) to be an adequate supply of off-licence alcohol in the locality under consideration"*.

[29]Under cross examination, Mr Wiles asked Dr Jackson to explain paragraphs 34 to 37 of her report which concludes that the relationship between bottle stores and anti-social behaviour etc **are weaker in the area units surrounding 446 Victoria Avenue** than the North Island as a whole. Dr Jackson responded that it's important to provide all the information to a hearing and that a possible explanation for this statistic could relate to the level of police activity in the area.

[30]Again under cross examination Mr Wiles asked Dr Jackson how the Committee knows that the area has high levels of deprivation, including low income, unemployment, poor health, and high levels of crime. Dr Jackson responded advising the information was collected by The University of Auckland using seven domains of deprivation. The information and has been peer reviewed internationally.

[31]Under questioning from DLC Member Higgie, Dr Jackson put the reason the percentage of Whanganui people attending A & E is higher than the than national average (Para 19), down to a higher aged population.

[32]DLC Member McDouall questioned Dr Jackson over the areas presented in her report, what constituted 'locality' under the Act and why she had made assumptions from one database and not another. Dr Jackson confirmed she had presented the mesh block data and there are bound to be differences from region to region.

[33]On further questioning from Mr McDouall, Dr Jackson suggested the Committee should be looking at a 1km radius when considering the locality impacted by the issue of an off-licence.

[34] On questioning from DLC Chair Hylton, Dr Jackson said the multiple stressors referred in her evidence are mostly the result of social policy in New Zealand but added that alcohol use does play a part.

Police's Evidence

[35] Chair Hylton asked Senior Constable Thomson to be sworn in and be questioned by parties to the hearing. Mr Thomson advised he was a Senior Constable for the NZ Police and is Whanganui's Alcohol Harm Prevention Officer.

[36] On questioning Mr Thomson advised that he did not oppose the application and formed this view after making his usual enquiries about the company, managers, criminal history and looking at crime stats for the area. He further advised that Police do not hold any statistics on alcohol related harm to oppose the application.

[37] When asked about the claim within Dr Jackson's evidence that the relationships between bottle store density and anti-social behaviour were weaker in the Laird Park area than North Island average due to the level of Police activity in the area, Mr Thomson suggested his colleague Senior Sergeant Wainhouse was best placed to answer the question.

[38] Senior Sergeant Wainhouse was sworn in and advised as Prevention Manager his role was to deploy staff and tactics to counter areas of crime. He told the hearing that whilst Police did not specifically provide additional surveillance in the Laird Park area, the area bisects the upper end of the CBD area which is a point of Police attention for Thursday, Friday and Saturday nights.

[39] In response to a question how Police record call out events, Senior Sergeant Wainhouse advised Police record data according to their CARD system (computer dispatch system) which does not link to alcohol consumption nor the outcome of the investigation.

[40] Senior Sergeant Wainhouse, in answer to a question, advised that he could not tie back the number of victimisations over last 12 months, shown in a table presented by Dr Jackson, to alcohol.

[41] Mr Wiles asked Senior Sergeant Wainhouse if the most troublesome areas are where the greatest aggregation of people are on a Thursday, Friday and Saturday nights and where violence and disorder takes place rather than in private homes? Mr Wainhouse agreed and said public places and the CBD areas were where most violence and public disorder takes place.

[42] In answer to a question from Mr Zander, Senior Sergeant Wainhouse agreed that that alcohol plays a part in the crime for this locality.

Medical Officer of Health Evidence

[43] Dr Patrick O'Connor, Medical Officer of Health, was sworn in and advised the hearing that whilst his report didn't oppose the application, he supported the PLAP cap on the number of Off-licences in Whanganui.

[44]Dr O'Connor further advised that his first reaction to the application was to oppose it as it was clearly against the will which people expressed in the PLAP however he realised the LAP was provisional and the application was below the cap suggested.

[45]Dr O'Connor provided background information around the Deprivation Index, it's make up, recognition and use for research across the country.

Applicant's Summation

[46]Mr Wiles commenced his summary referring to the Inspectors report that acknowledged that the applicant is a well-respected operator, aware of his responsibilities under the Act and has received generally positive responses around the applicants operations.

[47]Neither the Police nor the Medical Officer of Health have opposed the application and neither does the Licensing Inspector raise any suitability concerns.

[48]Mr Wiles suggested the fact the Medical Officer of Health had not opposed the application is somewhat significant and asked the Committee to treat Dr Jackson's evidence with caution as it is based on other people's research and statistics, including some older university studies, is speculative and the people who prepared the research are not available to be cross examined.

[49]Mr Wiles added that because there is no opposition to the application from specialised agencies such as the Medical Officer of Health, he asked the Committee to treat Dr Jackson's evidence as general and hypothetical.

[50]Mr Wiles said the Inspector is basing his opposition on s105(1)(i) however Mr Wiles submits that there is no specific evidence justifying a conclusion that "amenity and good order" of the general locality are already badly affected by existing licences. The committee needed to look at locality as a whole and be satisfied that amenity and good order are already badly affected. If this was the case, then there would be an expectation that the Police and Medical Officer of Health would have more concern and have opposed the licence application.

[51]Mr Wiles suggested proliferation would not seem to be a live issue and in any event, it would appear granting this application will still be within the provisions of the Provisional LAP.

[52]Mr Wiles said the applicant's evidence indicates no sensitive sites within 100 metres by road, issuing the licence will not exceed the proposed limit, the hours sought are within the PLAP provisions and there will be no price cutting.

[53]Mr Wiles referred to the case of *Shady Lady Lighting Ltd vs Patel (2018) NZARLA* advising a Provisional LAP was in place with a cap proposal at the time and ARLA made it quite clear in rejecting any appeals to Provisional LAP's that they are not a mandatory consideration and any DLC is correct in deciding to not even consider such.

[54] There was no new evidence that granting this licence would not meet the object of the Act.

Committee's Decision and Reasons

[55] In considering this application the Committee had regard to the criteria under s.105 of the Act i.e.

(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.

Section 105(1)(i) Opposition

[56] The Committee first turned its mind to s. 105(1)(i) as this was the section for which the Inspector based his opposition and evidence on. S.105(1)(i) states the DLC must have regard to (when deciding whether to issue a 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:

The term “amenity and good order of the locality” is defined by s.5(1) of the Act as follows:

“amenity and good order of the locality, in relation to an application for or for the renewal of a licence, means the extent to which, and 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 are) pleasant and agreeable .”

In forming an opinion on whether the amenity and good order criteria have been met, s.106 sets out relevant factors to be considered. Whilst this section specifically refers to s.105(1)(h) analysis, the DLC believes it has relevance in accessing amenity and good order of a locality matters stipulated in s.105(1)(i). S.106 states:

“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:

(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.”

[57] The Committee in considering the opposition under s. 105(1)(i) was mindful that all three elements had to be established to be considered.

[58] The Committee heard evidence from the Chief Inspector and his witness to support the view that the amenity and good order of the locality are affected already by the issue of existing licences. That view was based on ‘deprivation of the locality’ and ‘licence saturation’. The opposition evidence focused on the area unit (geographical boundary units used by Statistics NZ) known as ‘Laird Park’. The proposed premises is on the North Western boundary of this area unit along with bordering the Collegiate Area Unit.

[59] The Committee heard Laird Park experiences extremely high levels of deprivation, ranking it in the top 1-6% in NZ as well as ranking it in the top 1.4% of all neighbourhoods in New Zealand for crime. Mr Zander’s evidence contended these high levels of deprivation present a negative effect on good order of the area. In para 23 of his brief of evidence, Mr Zander states –“*Simply, high deprivation is not pleasant and agreeable*’.

[60] The Inspectors evidence also centred on the density/saturation of licensed premises in the locality which is detailed in paragraphs 19 to 21 of this decision. Dr Jackson’s evidence of studies claimed to confirm the relationship between alcohol licence density and alcohol related harms and the vulnerability of deprived areas to alcohol related harm. Dr Jackson cited data from St John Ambulance Service alcohol-related ambulance attendances statistics, data from NZ Health Survey 2016/17 showing drinking and hazardous drinking for the Whanganui DHB when compared to the National average, NZ Police database of Victimisations by time and place; to support her claims.

[61] On this matter the Applicant’s Counsel argued that it was significant that neither the Police nor the Medical Officer of Health have opposed the application which you would expect them to do if the amenity and good order were already so badly affected. Mr Wiles asked the Committee to treat Dr Jackson’s evidence with caution as some of the studies were old, speculative and researches themselves unable to be cross examined.

[62] Mr Wiles submitted that there is no specific evidence justifying a conclusion that “amenity and good order” of the general locality are already badly affected and that the committee needed to look at locality as a whole and be satisfied that amenity and good order are already badly affected.

Committee's opinion on s. 105(1)(i) matters:

[63] To prepare ourselves for the decision the Committee took a site visit primarily to establish in our minds the exact location of the proposed bottle shop in the neighbourhood, its relationship to other licensed premises and the general appearance of amenity and good order of the area. We recorded that the premise location is within a very vibrant part of the northern area of the Whanganui CBD and a focal point for persons to shop for their basic needs such as groceries, petrol, takeaway foods etc. The retail area is pleasant with three of Whanganui's four main supermarket stores within an 800m radius of the proposed premise, meaning retail in the area will be from a wide District catchment. We noted that the premises has its back to the Laird Park area in question and is focused towards the North and Western areas surrounding the site. Putting the evidence aside when looking at the residential neighbourhood of the Laird Park area, the Committee noted the area is of mixed use with medium to high density residential housing that known to be predominantly tenanted rather than owner occupied. The area is part of Whanganui's 'old town' area, comprising of some of Whanganui's older housing stock at varying states of repair and keep. We noted there appeared to be a growing trend of repair and replacement to a number of properties in the area, not uncommon with the rest of the city, giving a feel of regeneration of the "old town". Whilst we understand the area to be deprived according to statistics we didn't get an overwhelming sense or strong impression of a struggling neighbourhood when measured against some of the other struggling areas of the city.

[64] The question we have to determine in the first instance is *whether in our opinion the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences.* (our emphasis)

[65] We base our opinion on what we have read and heard from the various parties to the hearing and our own observations of the site.

[66] The evidence produced by the Inspector unequivocally points to the Laird Park area being affected by levels of deprivation and that currently the area has a reasonably high number of existing licensed premises, including off licensed premises. The question is whether this deprivation is 'so bad', linked to amenity and good order and affected by the effects of the issue of existing licences. In opposing the application it is up to the Inspector within his evidence to positively prove this question.

[67] Based on the evidence we heard and our observations, this Committee is of the opinion the necessary standard of proof in this regard brought by the opposition, is insufficient.

[68] The Committee bases this opinion on the following:

- Some of the evidence brought by the Inspector was general in nature and unspecific to the location

- Some of the evidence around location deprivation was conflicting when measured against other locations and national data
- Lack of specific amenity and good order data in relation to the area such as crime, noise, nuisance, vandalism etc
- The Committee took a broader view of the locality than that of the Inspector and looked at the overall amenity and good order of the whole area. We noted Dr Jackson's comments in paragraphs 25, 26 and 27 of her report especially where a positive relationship was found between the quantity of alcohol consumed by adolescents and the density of outlets within a 10-minute drive. A 10 minute drive in Whanganui allows one to drive across the entire urban catchment. Whilst Laird Park does border the proposed site, if you take a 1 km radius around the site other areas such as St Johns Hill, Springvale, and College Estate figure predominantly and in our view equally form the 'location'.
- We did give weighting to the fact that both the Medical Officer of Health and Police inquired into the application and both filed reports of no opposition. We agree in part with Mr Wiles that if the area was already so badly affected by existing licences that surely the Police/Medical Officer of Health, given the nature of their roles and the requirement under s.295 for all three reporting agencies to collaborate on monitoring and enforcement arrangements under the Act, would have raised those concerns in their reports or opposed the application as well.
- The Committee specifically called the Police to hear evidence regarding specific crime and disorder in the area given they are specialists in this field. Their lack of evidence regarding crime and statistics in the general location was compelling in its silence notwithstanding the noted difficulties Police have with their recording systems.
- The *causal nexus* between existing licensed premises and amenity and good order of the locality was unsubstantiated to the degree necessary to refuse to issue the licence under this section.
- With regards to the argument of licence saturation the Committee noted that this premises was part of a greater retail area for Whanganui generally and could expect custom from wide and far especially from the Northern areas of the District where this bottle store would be the closest.
- Whilst the PLAP and its research did give some basis to the argument that the Community wanted a cap for off licences, the reality is this additional licence will be within the proposed cap. Notwithstanding the cap, the LAP is provisional and this Committee has no statutory compulsion to have regard to it.
- The Committee further noted the conflicting evidence contained in Dr Jackson's report in relation to alcohol outlet density and harm specifically paragraphs 18, 21, 36 and 37.

- Some of the evidence produced by the Inspector, especially his witness Dr Jackson, related to s. 105(1)(h) matters (issues of amenity and good order being reduced by the issue of the licence) rather than s. 105(1)(i) matters (amenity and good order already been reduced by existing licences).

[69] Therefore on balance, based on the proof of evidence brought by the Inspector in opposition and the Committees own evaluative exercise, in our opinion the amenity and good order of the locality are not already so badly affected by the effects of the issue of existing licences...that it is undesirable to issue this licence.

Suitability (s.105 (1)(b))

[70] The Committee heard from the applicant that they had over 5 years' experience in the industry, operated 18 bottle stores in the Lower North Island including 4 in Whanganui, had never failed a Controlled Purchase Operation and was a well-respected operator.

[71] The applicant named three certified managers to manage the licence which is seen as sufficient.

[72] The Inspector in his report commented that he had '*canvassed other Alcohol Licensing Inspectors whom have dealings with the Applicant. I received generally positive responses around the applicant's operation with some minor matters that have since been addressed...There is no reason to believe that the applicant is not suitable to hold a licence*'.

[73] None of the s.103 reports by Police, Inspector and Medical Officer of Health raise any suitability issues of the applicant and neither does this Committee.

Local Alcohol Policy (s.105 (1)(c))

[74] The Committee heard at the hearing and then sought and obtained information from the Whanganui District Council following the hearing that confirmed that the Whanganui District Council Local Alcohol Policy is still 'provisional' and waiting for Council to resubmit the PLAP to ARLA under s.84 and notify relevant submitters. It's anticipated the PLAP will not come into force until sometime in 2019.

[75] During the hearing the Committee also heard some rather conflicting evidence from the Inspector and Applicant as to the 'cap' contained within the PLAP for Off-licence premises (excluding supermarkets and grocery stores). Post-hearing the Council were able to confirm that the amended PLAP now records that '*from the date this policy comes into force, no further new off-licences will be considered appropriate under this policy if the grant of that further new off-licence would bring the total number of off-licences in the region to 14 or more*'.

[76] Further information from Whanganui District Council confirmed that there are currently 12 off licences issued (excluding supermarkets and grocery stores) meaning if issued, this application would bring the total to 13, under the cap of 14 in the PLAP.

[77]The Committee acknowledges that the PLAP is not yet in force and its provisions are not mandatory. Therefore we consider it difficult to decline the application based on a proposed cap. In any event the proposed licence would be within the proposed cap.

[78]The Committee did have regard to some of the evidence produced within the PLAP in considering s.105 (1)(i) amenity and good order issues as discussed in paragraph 68.

Days and Hours (s.105(1)(d))

[79]The hours sought by the applicant of Monday to Sunday 9.00am to 9.30pm are within the PLAP's hours for bottle stores of 7.00am to 10.00pm. Days and hours were not raised within s.103 reports or at the hearing as an issue and this Committee has no concerns.

Design and Layout of Premise (s.105(1)(e))

[80]The premises to which the application relates is located at 446 Victoria Avenue, Whanganui and was formally occupied by Video Ezy. The premise is set back off Victoria Avenue and shares common footpath and parking with neighbouring businesses Domino's and Gull Service Station.

[81]The floor plan attached to the application shows a simple box type construction layout with a clear view of the premises from the counter and other areas including CCTV camera footage.

[82]The applicant stated within the application and confirmed during the hearing that there will be no advertising of any alcohol prices externally on the premises, outside the premises or on the roadside. The applicant also undertook to have at least 50% of external windows uncovered to allow passive surveillance from outside and from within.

[83]Design and layout of the premise issues were not raised by any of agencies within s.103 reports and similarly this Committee has no concerns.

Sale of Goods and Services other than Alcohol (s.105(1)(f) and (g))

[84]The applicant does not engage or propose on the premises to engage in the sale of goods other than alcohol, low alcohol/non-alcoholic beverages, tobacco and pre-packaged snacks.

Reduction of Amenity and Good Order of Locality by the Effects of the Issue of the Licence (s.105(1)(h))

[85]The Committee noted that the Inspector did not raise this section as an issue within his opposition and instead relied on s. 105(1)(i) matters as discussed in paragraphs 56 to 69 above. Dr Jackson raised the issue of the potential for price cutting due to clustered premises however this was discounted by the applicant within his application and reiterated with Mr Wiles brief when it was stated that the proposed outlet as opposed to cost cutting.

[86] That said some of the evidence produced by Mr Zander and Doctor Jackson did seem more relevant to s.105 (1)(h) matters than (i).

[87] In its opinion, the Committee did not feel the evidence was sufficient to suggest 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.

Systems, Procedures, Staff and Training (s.105(1)(j))

[88] The application detailed the certified managers who will be responsible for licence compliance along with staff training procedures and company compliance procedures. This was well documented and together with no adverse comments from any of the s.103 reports, gave the Committee comfort that systems, procedures, staff and training for this type of licensed premise is appropriate.

Section 105(1)(k) S.103 Reports

[89] The Committee had due regard to s. 103 reports within this decision.

Object (s.4 and 105(1)(a))

[90] Last, the Committee is required to consider the application in light of the object of the Act. That is having regard to the criteria in s. 105, and having balanced the evidence before it, the Committee was required to consider whether the grant of the licence was consistent with the Act's object of minimising alcohol-related harm.

(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 or indirectly contributed to, by any crime, damage, death,

disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[91] Again, on balance, the Committee is satisfied that grant of the licence is consistent with the Act's object. In forming this view, the decision of the Committee is finely balanced.

Conclusion

[92] For the reasons stated in this decision the application by Shree Sai Holdings Limited for a new Off Licence (bottle store) in relation to the premises situated at 446 Victoria Avenue, Whanganui, **is approved.**

[93] The application is approved with the standard conditions as detailed below including the single use condition discussed during the hearing.

Conditions

[94] The following conditions will apply to the licence:

- (a) No alcohol is to be sold or delivered from the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00pm on Anzac Day
- (b) Alcohol may only be sold or delivered on the following days and during the following hours:

Monday to Sunday 9.00am to 9.30pm.

- (c) The licensee must ensure that for each principal entrance to the premises there is displayed at all times a sign attached to the inside or outside of the premises, so as to be easily read by people immediately outside the entrance, stating the ordinary hours of business during which the premises are open for the sale of alcohol.
- (d) The licensee and managers on duty must ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of liquor to minors and the complete prohibition on sales to intoxicated persons.
- (e) The licensee must ensure that at all times a copy of the licence, together with a statement of all conditions subject to which it is issued, is displayed—
 - attached to the inside of the premises concerned; and
 - so as to be easily read by people entering each principal entrance.
- (f) Drinking water must be freely available to customers while alcohol is being supplied free as a sample on the premises and signage directing people to drinking water must be prominently displayed on the premises at that time.

(g) No single sales of:

(a) Beer or ready to drink spirits (RTD's) in bottles, cans or containers of less than 440mls in volume may occur except for craft beer; and

(b) Shots or pre-mixed shots.

(h) The whole of the premises is **designated 'supervised'**.

DATED at Whanganui this the 20th day of December 2018



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Chairman – Stuart Hylton