

Notice of Decision



Decision No. 57/OFF/494/2023

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by Barbour
Vineyards Limited for an off-licence
pursuant to s.99 of the Act in respect
of premises situated at 4 Gilbert
Street, Amberley known as
“Fernbank Wine“

BEFORE THE Hurunui District Licensing Committee

Commissioner: Mr M Ward
Members: Councillor P White
Mr D Kidd

DECISION OF THE COMMITTEE (ON THE PAPERS)

INTRODUCTION

- [1] An application by Barbour Vineyards Limited for an off-licence in respect of premises situated at 4 Gilbert Street, Amberley and to be known as “Fernbank Wine“.
- [2] The applicant is seeking the off-licence to be endorsed under s. 40 of the Act for the remote sales of alcohol only.
- [3] The Licensing Inspector, Police and Medical Officer of Health did not raise any matters in opposition to the application.
- [4] During the public notification period of the application, one public objection was received. The Licensing Committee considered the public objector had standing as an objector, as the objector is not a trade competitor, and the objection relates to the matters set out in s. 105 of the Act.
- [5] An invitation from the applicant to meet with the objector to discuss the application and address any of their concerns was declined by the public objector.
- [6] The public objector requested that the application proceeds to a public hearing, under s. 202 of the Act.

- [7] The Licensing Committee issued a Notice of Hearing dated 10 November 2023. The hearing was set for Friday 8 December 2023 from 12.30pm at the Hurunui District Council Chambers in Amberley.
- [8] The Notice of Hearing also set down instructions for each party to exchange information prior to the hearing.
- [9] The public objector disclosed a submission to be presented by his wife. The disclosure documents were received on Sunday 19 November 2023.
- [10] The applicant disclosed a brief of evidence and exhibits on Monday 27 November 2023.
- [11] The District Licensing Committee Secretary contacted the public objector to discuss the process for representation at the hearing. During that conversation, the public objector advised that he no longer intended to appear at the public hearing and does not require one. This was confirmed this in an email to the District Licensing Committee Secretary.
- [12] There is no agency opposition to this application, however one public objection was received. The public objector does not require a public hearing, as set out in s. 202(3)(c) of the Act.
- [13] Accordingly, the Licensing Committee have cancelled the public hearing. Instead, the Licensing Committee have met privately to consider the application 'on the papers.'

PUBLIC OBJECTION

- [14] On 29 September 2023, the Licensing Committee received a public objection to the application from Mr Wayne Cameron.
- [15] Mr Cameron raised concerns relating to s. 105(1)(a), (c) and (i) of the Act.
- [16] In terms of the object of the Act, s. 105(1)(a), Mr Cameron wrote:

“Section 4(2)(b) any harm to society generally or the community, directly or indirectly caused or directly or indirectly contributed to, by any crime, damage, disease, disorderly behaviour, illness or injury of a kind.

Harm caused to society will increase due to crime with an off-licence situated in a residential area which is already seeing increased home break-ins. With alcohol stored on the premises, this significantly increases the changes of not only the premises attracting burglaries but also the surrounding residential properties. Amberley already has an abundance of stores in which alcohol is readily available and if another premises is added this increase the number of alcohol related accidents, violence and crime in the Hurunui District.”

[17] In terms of the relevant Local Alcohol Policy, s. 105(1)(d), Mr Cameron wrote:

“The Hurunui Local Alcohol Policy 2017 states hours of operation for Off Licence (all types) are opening at 7am and closing at 10pm. While the operation of the license is remote, the delivery to and from the premises would be required to be within the hours of operation to ensure the noise levels remain acceptable in a residential area.”

[18] In terms of the amenity and good order of the locality, s. 105(1)(i), Mr Cameron wrote:

“Harmful and hazardous alcohol consumption continues to be an issue in New Zealand; over 80% of adults in Aotearoa New Zealand drink alcohol, and nearly 1 in 4 adults who drink are classed as hazardous drinkers. Additionally, the Alcohol Use in New Zealand Survey 2019/20 survey found that those in rural areas were; more likely to have consumed alcohol in the last week, less likely to drink within the recommended daily and weekly limits, less likely to follow low-risk alcohol drinking advice. Regional data from the NZHS indicates that 1 in 5 Canterbury residents are hazardous drinkers. Of those who have consumed alcohol in the past year, 1 in 4 are classed as hazardous drinkers. Heavy episodic drinking is common with around 1 in 4 reporting heavy drinking once a month, and 1 in 6 reporting heavy drinking at least weekly. Those aged 25-44 years account for the highest proportion of hazardous drinkers and are more likely to have heavy episodic episodes of drinking. Based on the 2018 Census the median age for the Hurunui area is 44.4.

Licensed premises in Amberley currently only exist in commercial or business properties. The application made for 4 Gilbert Street is a residential area that should not be permitted to allow the sale and storage of alcohol also due to the disruption of noise and additional road traffic (couriers and delivery trucks) in the residential area which will personally affect myself, my family and my neighbours.”

EVIDENCE AND SUBMISSIONS

[19] In preparation for the hearing, which was subsequently cancelled, the Licensing Committee received a submission from the public objector and a brief of evidence and exhibits from Ms Helen Barbour, Director for the applicant company. The Licensing Committee have summarised the disclosure documents received.

Public Objector

[20] Referring to section 105(1)(a) of the Act, Mr Cameron submitted that the harm caused to society will increase. He considers that, if an off-licence granted to a residential area it will create a greater target for crime. Mr Cameron said, “Gilbert Street has Dock Creek crossing from his property into the applicant’s property. Due to the accessibility, he is concerned about the safety and security of the applicants and the security of our property if their property is the target of theft.”

[21] Referring to section 105(1)(d) of the Act – the days and hours proposed for the sale and supply of alcohol, Mr Cameron said, “the Local Alcohol Policy states hours of operation for an off licence is between 7am to 10pm. He submitted, “for a residential area the noise levels would still need to be at acceptable levels. Our

concern is the level of noise of bottles and or boxes being moved and the noise of delivery vehicles in our quiet street will be very disruptive to our neighbourhood and to his family.”

- [22] Mr Cameron proposed that the applicant considers storage and distribution of alcohol from their work premises instead of their home as this would remedy all our concerns. He added, “there are already six licensed alcohol traders in Amberley all in business areas with good security having one at 4 Gilbert Street in a residential area would not be desirable or safe so a new licence should not be issued.”

The Applicant

- [23] Mrs Barbour stated that she is the owner and director of Barbour Vineyards Limited, along with her husband, Matthew Barbour.
- [24] Mrs Barbour confirmed that an application by Barbour Vineyards Limited for a new off-licence, to be endorsed under s. 40 of the Act for the remote sales of alcohol, was lodged on 20 September 2023. Mrs Barbour confirmed that she is seeking for the premises situated at 4 Gilbert Street, Amberley to be licensed. She noted that this is her home address.
- [25] Mrs Barbour stated that the application was discussed and lodged with the Chief Licensing Inspector. Mrs Barbour noted that she also lodged an application for new manager’s certificate for herself at the same time.
- [26] Mrs Barbour said additional information was provided with the application, including the company’s background, the proposed method of operation for labelling and launching the wine and how the products would be sold and distributed if the licence was granted.
- [27] Mrs Barbour provided information about her knowledge and experience of the Act (disclosed as Exhibit HB001).
- [28] Mrs Barbour disclosed an email from the Alcohol Licensing Officer for Te Whatu Ora regarding the website (disclosed as Exhibit HB002).
- [29] Mrs Barbour stated that she was made aware of the public objection to the application during a phone call and email from the District Licensing Committee Secretary. Mrs Barbour stated she asked for information about the correct process for approaching the public objector, to discuss concerns and find a way forward, as this is encouraged by caselaw.
- [30] Mrs Barbour stated an invitation was sent to the public objector, via the District Licensing Committee Secretary, however this was declined.
- [31] Mrs Barbour noted that she did not raise concerns in relation to the standing of the objector or validity of the objection from Mr Cameron. She considers that it is

good that members of the community have a voice in licensing matters, subject to them understanding what the applicant intends to do with the business.

- [32] Mrs Barbour provided a response to Mr Cameron's submission and public objection.
- [33] Referring to Mr Cameron's first concern about the harm caused by crime, Mrs Barbour submitted that "off-licence bottle stores, such as Thirsty Liquor and Super Liquor, are regularly reported to attract undesirable behaviour, vulnerable persons and crime. These companies use strong branding colours and signage across the entire building to attract customers." Mrs Barbour stated that this application is for online sales only and there will be no signage or change in appearance to the building that relates to the sale of alcohol. Mrs Barbour confirmed that no one will be allowed to collect their purchased from the premises.
- [34] Mrs Barbour stated, after hearing the concerns about crime, she has purchased and installed 4 Security cameras to survey areas surrounding the property. The cameras provide instant notifications to Mr and Mrs Barbour's phones when somebody approaches the building, and footage is recorded.
- [35] Referring to Mr Cameron's second concern relating to the amenity and good order of the locality, Mrs Barbour submitted that the amenity and good order of the Gilbert Street and its environs is not so badly affected by the effects of existing licences. Mrs Barbour stated, "to the contrary, the area is pleasant and agreeable, and she further submitted that issuing a remote sale off-licence in this area is not likely to reduce the good order and amenity to more than a minor extent."
- [36] Mrs Barbour noted the concerns around potential noise and additional road traffic from the proposed licensed premises being in a residential area. Mrs Barbour submitted that noise attributed to this business will be little more than a courier vehicle arriving and leaving the premises. Referring to the information provided with the application, Mrs Barbour confirmed the wine will be packaged at a bonded store off site and will await collection by courier from 4 Gilbert Street Amberley the following day.
- [37] Mrs Barbour noted that courier services currently drop off and collect items for personal use from the address on a regular basis, and it is not foreseen that any wine sales for collection will require additional courier vehicles to be used. Mrs Barbour stated that if a licence were to be granted, they anticipate there will be one to two courier collections at most on a given day.
- [38] Mrs Barbour considers that Mr Cameron's submission introduces new concerns under section 105(1)(d) of the Act, and those concerns are dealt with under s. 49 of the Act – remote sales exempted from trading hours restrictions.

RELEVANT LEGAL CONSIDERATIONS

[39] The Licensing Committee must determine whether a new licence to sell and supply alcohol can be granted, and if so, the conditions that would apply. The criteria for issue of a licence are found at ss. 105 and 106 of the Act.

[40] It is necessary to first discuss the overarching purpose of the Act. Any interpretation of the Act must be ascertained from its text and considering its purpose.

Purpose of the Act

[41] The purpose of the Act is found at s. 3 and provides:

3 Purpose

- (1) The purpose of Parts 1 to 3 and the schedule of this Act is, for the benefit of the community as a whole, —
 - (a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and
 - (b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.
- (2) The characteristics of the new system are that—
 - (a) it is reasonable; and
 - (b) its administration helps to achieve the object of this Act.

[42] In summary, the purpose of the Act is intended to *benefit the community*. Any outcome achieved must be reasonable, and directed toward achieving the object of the Act, which is found at s. 4, being:

4 Object

- (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).

[43] The Act provides two overarching objects. Firstly, that when alcohol is sold, supplied, or consumed, it is undertaken safely and responsibly. It is important to emphasise that the object of the Act is not only around how alcohol is sold and supplied by licensees, but how its customers consume it.

[44] The second overarching object is to minimise harm which occurs from excessive or inappropriate consumption of alcohol.

[45] The term ‘harm’ is defined in the object of the Act, s. 4(2), as shown above.

[46] The definition of ‘harm’ is very wide and includes any crime, property, damage, health effects, or disorderly behaviour. ‘Harm’ includes both the direct and indirect effects of those circumstances.

Minimisation of alcohol-related harm

[47] The object of the Act looks toward the minimisation of harm caused by excessive or inappropriate consumption of alcohol. As noted by the High Court in *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980:

... both the Authority, and this Court, must have regard to reducing alcohol-related harm to the smallest amount, extent, or degree, when making decisions on the grant or renewal of licences.

Approach to be taken by the Licensing Committee

[48] The Committee must undertake an evaluative approach and adopt a merits-based assessment of the application. At paragraph 55 of *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, there is no presumption that a new licence or renewal of an existing licence will be granted:

Thus, when the relevant body receives an application, they must consider it against s. 105 in deciding “whether to issue a licence”. There is no presumptive position, and certainly no forgone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

[49] The Committee must consider whether a causal nexus would exist between the effects of granting the application, and the harm which the object of the Act seeks to minimise. As stated in the *Birthcare* case [2016] NZAR487 at [50]:

... the Authority is required to have regard to s. 105 criteria (or in the case of a renewal the s. 105 criteria as modified by s. 131) and then step back and consider whether there is any evidence to suggest the granting of the application will be contrary to the object of the Act contained in s. 4(1), namely that the sale, supply and consumption of alcohol should be undertaken safely and responsibly and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

Onus of proof

[50] As noted above, it is for the Licensing Committee to undertake an evaluative approach to the application. In *Re Venus NZ Ltd*, Health J at [52]-[60] confirmed that the traditional civil approach to the applicant carrying an onus may not be appropriate in alcohol licensing applications. However, in relation to suitability,

the High Court has confirmed that there remains an onus on the applicant to establish that criteria.

- [51] That approach was cited with approval in *Birthcare*, at [52] where the Court confirmed, when referring to *Re Venus NZ Ltd*:

.. the Authority's role is essentially an inquisitive one where notions of onus of proof may not be helpful or appropriate.

- [52] The High Court in *Re Venus NZ Ltd* at [20] confirmed that the touchstone for consideration of the s. 105 criteria, must be the object of the Act:

Although the 'object' of the 2012 Act is stated as one of the 11 criteria to be considered on an application for an on-licence, it is difficult to see how the remaining factors can be weighted other than against the object of the new legislation. It seems to be that the test may be articulated as follows:

Is the Authority satisfied, having regard to all the relevant factors in s. 105(1)(b)-(k) of the 2012 Act, that the grant of an on-licence is consistent with the object of the Act?

Statutory criteria to be applied

Off-licence application:

- [53] In deciding whether to grant the licence, the Committee must have regard to the criteria set out in s. 105 of the Act, being:

105 Criteria for issue of licences

- (1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
- (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.
- (2) 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.

[54] When considering and forming an opinion on the amenity and good order of the locality, the Licensing Committee must take into consideration s. 106 of the Act, being:

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:
 - (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.

[55] To summarise what we have said we understand these are the guiding principles for us:

- (a) Our role is an evaluative one, in an inquisitorial sense. We are required to evaluate all the evidence before us, both in support of the application and in the opposition to the application.
- (b) After evaluating the evidence, we must make a merits-based determination as to whether or not the application should be granted.
- (c) We must have regard to the matters in ss. 105 and 106(1) of the Act.
- (d) To "*have regard to*" as a requirement means what it says. We do not have to give effect to anything and if, after having regard to a criterion, we conclude nevertheless to grant or refuse the applications that is permissible.
- (e) The weight we give to evidence is a matter for us realising that no party has any onus of proving anything.
- (f) Whilst we must have regard to all criteria when considering the issue of licence, we consider that the elevated mantle criteria for this application are:

- i. Section 105(1)(a) - the object of the Act;
 - ii. Section 105(1)(c) - the Local Alcohol Policy; and
 - iii. Section 105(1)(i) – amenity and good order of the locality.
- (g) Whilst we do not have to consider s. 3 separately, so long as we are reasonable in our evaluations, we likely will achieve the two aspects of the s. 4 object. We approach s. 4 on the basis that our decision must be consistent with both aspects in subsections (1)(a) and (1)(b).
- (h) We must stand back at the end and reassess our earlier conclusions against attainment of the s. 4 object. These two elements – the safe and responsible sale and supply and consumption of alcohol, and the minimisation of alcohol related harm – are equally important, are not to be balanced, and have precedence over the economic/commercial interests of a licensee or an applicant.
- (i) There is no presumption of a licence being granted under this 2012 legislation which, in that sense, is different from the previous 1989 Act.
- (j) We are required to form opinions on whether or not we consider the amenity and good order of Gilbert Street, Amberley and surrounding area would be likely to be reduced by more than a minor extent if we granted the licence – in doing so we are guided by having regard to the matters in s. 106(1).

ANALYSIS

S. 105(1)(a) Object of the Act

[56] The object of the Act is to reduce alcohol-related harm. Harm is defined broadly in the Act, as we have stated in the above sections.

[57] We are aware that the object of the Act has two parts; sale, supply and consumption of alcohol should be undertaken safely and responsibly, and alcohol-related harm should be minimised. Mr Cameron correctly identified the identified the direct and indirect harms associated with the excessive and inappropriate consumption of alcohol.

[58] We have weighed Mr Cameron’s concerns about increased crime and increased licensed premises and against the nature in which Mrs Barbour has proposed to operate the business. We recognise that appropriate crime mitigation measures have been put in place and there will be no advertising of alcohol attached to the building at Gilbert Street, Amberley. This gives us confidence that the application is not inconsistent with the Act.

[59] It is our view, having stepped back and weighed all of the evidence that we have before us, that on balance, it is our view that the applicant will undertake the safe and responsible sale and supply of alcohol on this premises and ensure the object of the Act is met.

S. 105(1)(b) Suitability of the applicant

- [60] The applicant, Barbour Vineyards Limited, is a limited liability company. The New Zealand Companies Office Register details that Helen Barbour and Matthew Barbour are the director and shareholders for the company.
- [61] Mrs Barbour worked as an Alcohol Licensing Officer for Community and Public Health (now Te Mana Ora). This role required her to inquire into and represent the Medical Officer of Health on applications for on, off and club licences and special licences. Mrs Barbour has a good understanding of the Sale and Supply of Alcohol Act 2012 and how it applies to alcohol businesses. In addition, Mrs Barbour has completed the Licence Controller Qualification.
- [62] The application has listed that Mrs Barbour will be the sole duty manager for the premises. An application for a manager's certificate has been lodged with the Licensing Committee and it is unopposed by the Licensing Inspector and Police.
- [63] We acknowledge, that on notification of the public objection, Mrs Barbour took a pragmatic approach to understanding the concerns raised by Mr Cameron. We recognise that Mrs Barbour offered to meet with the applicant to find a way forward, and when this was declined, she continued to find ways to address these concerns. We have the view that the principles of Nishchay suitability were endorsed by the applicant.
- [64] We have no concerns on this ground.

S. 105(1)(c) Any relevant Local Alcohol Policy

- [65] The Hurunui District Council Local Alcohol Policy (LAP) 2017 came into force on 1 December 2017 and contains maximum trading hours permitted for the different kinds of licences. The maximum trading hours permitted for off-licences (all types) is 7.00am to 10.00pm.
- [66] The Licensing Committee have taken on board Mr Cameron's concerns around the hours of operation proposed by the applicant and the delivery of alcohol. These concerns have been discussed further in the amenity and good order criterion.
- [67] When reading the LAP 2017, it appears that the remote sales of alcohol, and arguably its delivery, must be between the hours of 7.00am to 10.00pm. However, section 49 of the Act specifically exempts remote sellers of alcohol from trading restrictions. It states:

49 Remote sales exempted from trading hours restrictions

- (1) A remote sale of alcohol may be made at any time on any day.
- (2) Subsection (1) –
 - (a) Overrides the restrictions on sales imposed by sections 46 and 48: but
 - (b) Is subject to the restrictions on delivery imposed by sections 48 and 59(1).

[68] Section 59 of the Act set out requirements relating to remote sales by holders of off-licences. Alcohol sold by remote sale must not be delivered to the buyer at any time after 11.00pm on any day and before 6.00am on the next day.

[69] Having considered Mr Cameron's objection and reasoning, we provided feedback to the Hurunui District Council during their recent review of the Local Alcohol Policy. As a result, the newly adopted Local Alcohol Policy, which comes into force on 1 March 2024, contains wording: Off-Licences (*with the exception of remote sales*) 7.00am to 9.00pm.

[70] We consider that the application is consistent with the Local Alcohol Policy.

S. 105(1)(d) Days and hours proposed for the sale and supply of alcohol

[71] The days and hours proposed for the sale and delivery of alcohol have been discussed in the criterion for the Local Alcohol Policy.

[72] We have no further comment or concerns to add on this ground.

S. 105(1)(e) Design and layout of the proposed premises

[73] We have no concerns on this ground.

S. 105(1)(f) and (g) Sale of goods and services other than alcohol and food

[74] We have no concerns on these grounds.

S. 105(1)(h) and (i) Amenity and good order of the locality

[75] There are two sub-sections in relation to the amenity and good order consideration, and we will consider those together. Section 105(1)(h) and (i) of the Act defines the *amenity and good order of the locality* considerations as follows:

(h) [The Licensing Committee must decide] whether (in its opinion) the amenity and good order of the locality would like to be reduced, to more than a minor extent, by the effects of the issue of a licence:

(i) [The Licensing Committee must decide] 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.

[76] The Licensing Committee states at the outset, that we find s. 105(1)(i) is not relevant in this case. We consider that this view is supported by the reporting agencies as they did not raise any concerns on this ground.

- [77] Amberley is not a location already so badly impacted by other licensed premises. Mrs Barbour talked about the pleasantness of the Gilbert Street area and surrounds. We will therefore proceed to focus our consideration on s. 105(1)(h).
- [78] The term *'amenity and good order of the locality'* is defined in s. 5 of the Act, the interpretation section, 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."*
- [79] Helpfully, the Act also sets out a range of considerations at s. 106, to aid in evaluating the *amenity and good order in a locality* consideration. We have included that section of the Act in the statutory criteria section above. We will further discuss s. 106 as we continue this discussion below.
- [80] The Committee must form an opinion as to whether the amenity and good order of the locality would likely be reduced by more than a minor extent by the grant of the licence. There is no obligation on the applicant to establish this criterion.
- [81] The Committee as applied the interpretation of 'likely' to mean more than a mere possibility, but not so high as to be expressed as a real and substantial risk that the considered consequence would happen.
- [82] The assessment of whether any impact on the locality would likely be 'more than minor' must involve an assessment, taking into consideration the receiving environment.
- [83] This is an application for the remote sales of alcohol only. The applicant has provided information about the way in which they intend to operate the business, should the Licensing Committee be of a mind to grant the licence.
- [84] Mrs Barbour has confirmed that bulk wine will not be stored at the premises, however when an online order is received, the applicant will package and label the wine at their bonded site in Waipara. The packaged wine will be taken home to Gilbert Street Amberley to be collected by the courier the following day.
- [85] In her evidence, Mrs Barbour has stated that she does not anticipate additional courier vehicles arriving and leaving from the premises (one to two at most per day), and purchasers are unable to collect their order from the premises. We accept that there will not be any external advertising of alcohol on the building.
- [86] We recognise that the applicant acknowledged the concerns of the objector relating to increased crime and considered positive steps have been taken by the applicant including the installation of 4 security cameras on the premises. We have not been advised of any other crime or vandalism in Gilbert Street, Amberley or surrounding area.

[87] When balancing the public objectors concerns about the increased noise from the traffic movements against the proposed operations, we consider it is unlikely that there will be a noticeable change in level of noise to the Gilbert Street Amberley area if the licence is to be issued.

[88] We note for completeness, the Licensing Committee have received a Planning Certificate, under s. 100(f) of the Act, stating that the activity of remote sales of alcohol complies with the Hurunui District Plan, provided that no customers are coming to the property.

S. 105(1)(j) Appropriate staff, systems, and training to comply with the law

[89] From the additional information provided with the application and the supporting information from Mrs Barbour's evidence, we are satisfied that the applicant has appropriate systems, staff, and training in place to comply with the law.

[90] We do not have any concerns on this ground.

S. 105(1)(k) Any matters dealt with in any report from the reporting agencies

[91] In the Police report dated 3 October 2023, Senior Constable Shaun Magill reported, "It is not opposed *however this is subject to a review of the website when it goes live and meets requirements e.g., age prompts.*"

[92] This matter was also highlighted in the report dated 10 October 2023, from Louisa Bromley, Alcohol Licensing Officer for the Medical Officer of Health.

[93] In the Inspector's Report dated 15 November 2023, Barry O'Regan, stated that the website is not currently live but is expected to be operational by mid-December 2023. The Licensing Inspector has advised Mrs Barbour of the requirements and informed her that these changes must be in place within ten working days of the receipt of the licence if it is issued.

[94] The Licensing Committee agree with this approach, and in granting this licence, have ordered an Alcohol Licensing Inspector to complete a check of the website, ***within ten working days of issue of the off-licence***, to ensure compliance with the requirements for remote sellers under the Act and Regulations.

[95] No other matters were raised by the reporting agencies.

DECISION

[96] For the reasons we have set out above, we are satisfied as to the matters to which we must have regard as set out in s. 105 of the Act and we grant the applicant an off-licence, endorsed under s. 40 of the Act, for the remote sales of alcohol.

[97] The licence may issue immediately.

[98] The Licensing Committee have ordered an Alcohol Licensing Inspector to complete a check of the website, *within ten working days of issue of the off-licence*, to ensure compliance with the requirements for remote sellers under the Act and Regulations.

Requirements on relating to remote sales by holders of off-licences

The applicant's attention is drawn to s. 59 of the Act: -

- (1) The holder of an off-licence must ensure that any alcohol sold by remote sale is not delivered to the buyer (or to any other person on the buyer's behalf) at any time after 11 pm on any day and before 6 am on the next day.
- (2) Subsection (1) applies whether the alcohol is delivered by the seller or by some other person.
- (3) The holder of an off-licence must take reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale (and, if a person other than the buyer is to receive it, to verify that the receiver) is not under the purchase age.
- (4) The holder of an off-licence takes reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale is not under the purchase age if he or she complies with a procedure declared by regulations made under this Act to be a reasonable procedure for the purposes of complying with subsection (3).
- (5) The holder of an off-licence who sells alcohol by remote sale via the Internet must comply with any regulations made under this Act requiring information to be visible on the holder's website when people browse, enter, or otherwise access it.
- (6) The holder of an off-licence who sells alcohol by remote sale by mail order must comply with any regulations made under this Act requiring information to be published in the holder's catalogues.
- (7) The holder of an off-licence who sells alcohol by remote sale by telephone must comply with any regulations made under this Act requiring information to be given to callers.

Dated at Amberley this 8th day of December 2023



Commissioner
Hurunui District Licensing Committee

