

Application 19/042/2019

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND
IN THE MATTER of an application by
Te Kuiti Holdings Limited
for an off-licence pursuant to section 100 of
the Act in respect of the premises trading as
Te Kuiti SuperValue Supermarket

HEARING at the Waitomo District Council Chamber on Friday 22 November 2019

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Mr J Gower, Dr M Cameron

APPEARANCES

Mr J Young – Counsel for Te Kuiti Holdings Limited
Mr T Xing – Director, Te Kuiti Holdings Limited
Mr P Radich – Te Kuiti Holdings Limited
Mr L Norris - Licensing Inspector
Mrs N Zeier – Medical Officer of Health

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. This decision replaces the decision dated 23 January 2020, correcting an error in the wording of condition (g). The remainder of the decision remains the same.
2. Pursuant to Section 203 (5) of the Sale and Supply of Alcohol Act 2012, an order is made prohibiting the publication of Exhibit 2 & 3 entitled:
 - a) New Business Declaration: Statement of Gross Annual Sales Revenue – Grocery Store (1/4/18 to 24/2/19).
 - b) New Business Declaration: Statement of Gross Annual Sales Revenue – Grocery Store (25/2/19 to 30/9/19).

This order applies in perpetuity.

3. The application for an off-licence authorising the sale and supply of alcohol for consumption off the premises, to any person who is present on the premises is granted. The licence may issue upon payment of the annual fee.
4. This licence continues in force until the close of the period of 12 months after the day it is issued.
5. The licence is subject to the following conditions:
 - (a) Alcohol may be sold only on Monday to Sunday, from 7.00am to 10.00pm.
 - (b) No alcohol may be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1.00pm on Anzac Day.
 - (c) No alcohol may be sold other than:
 - (i) Beer that complies with the appropriate New Zealand food standard for beer; or
 - (ii) Mead that complies with the appropriate New Zealand food standard for mead; or
 - (iii) Fruit or vegetable wine that complies with the appropriate New Zealand food standard for fruit and vegetable wine; or
 - (iv) Grape wine that complies with the appropriate New Zealand food standard for grape wine; or
 - (v) A food flavouring, prepared for culinary purposes, that is unsuitable for drinking undiluted.
 - (d) The area where alcohol is to be sold is described in the plan date stamped as received by the District Licensing Committee on 20 December 2019. The only area permitted within that plan, as an area for the display and promotion of alcohol pursuant to section 112 is the area shaded blue with the perimeter highlighted in red.
 - (e) From Monday 3 February 2020, the licensee is prohibited from displaying or promoting alcohol on any part of the non-refrigerated free-standing or fixed shelving within the single alcohol area that directly faces the main body of the store. Alcohol may be displayed or promoted on the end of shelving units within the single alcohol area, but this display or promotion must be screened from viewing from the main body of the premises with solid panelling.
 - (f) The entire premises is undesignated.
 - (g) A holder of a manager's certificate, or a properly appointed temporary or acting manager, must be on duty and on the premises at all times alcohol is sold. If a duty manager is not present then there must be no alcohol sales and a notice displayed advising the public of this fact.
 - (h) A manager's register (as required by s.232 of the Act) is to be maintained and available on site.

- (i) A Host Responsibility Policy must be maintained and displayed at all points of sale and the licensee must ensure all staff receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012.
- (j) There must be no sale or supply of alcohol to minors or intoxicated persons and there must be appropriate signs detailing these restrictions at every point of sale.
- (k) Drinking water must be freely available and displayed whenever alcohol is being supplied by way of complimentary tastings.
- (l) The Licensee must ensure the following are displayed;
 - i) A sign to be seen from outside the principal entrance stating the ordinary hours of business during which the premises will be open for the sale of alcohol.
 - ii) A copy of the original licence with all the conditions, just inside the principal entrance so persons entering can read it.
 - iii) A sign in a prominent place identifying the duty manager.

Reasons

The Application

1. This is an application by Te Kuiti Holdings Limited for an off-licence in respect of the premises situated at 95 Rora Street, Te Kuiti and known as Te Kuiti SuperValue Supermarket. This grocery store has held an off-licence since 16 March 2006. Te Kuiti Holdings Limited has been operating the premises as a grocery store under a temporary authority since 25 February 2019.

The Reports

2. The application was advertised, and no objections were received from members of the public. Police did not oppose the application. However, the Licensing Inspector and the Medical Officer of Health opposed the application on the grounds that the single alcohol area does not limit, so far as is reasonably practicable, the exposure of shoppers to displays and promotions of alcohol, and is therefore not compliant with sections 112 – 114.
3. As a result of these concerns being raised, the licensing committee directed that the matter be heard at a public hearing. A site visit was conducted prior to the hearing.

Is the proposed Te Kuiti SuperValue Supermarket a grocery store?

4. In deciding whether to grant an off-licence, the licensing committee must be satisfied that the premises is one of the categories than an off-licence can be granted for. An off-licence cannot be granted for a petrol station, garage, dairy, convenience store or a shop within a shop (section 36). However, an off-licence can be granted for a grocery store.
5. In deciding whether a shop is a grocery store the licensing committee must decide whether the shop (section 33(1)):

- a) has the characteristics normally associated with shops of the kind commonly thought of as grocery stores; and
 - b) sells a range of food products and other household items; but
 - c) sells food products as its principal business.
6. To be a grocery store, the sale of foods products must be the biggest category of revenue after GST and NZ lotteries revenue is deducted. If food products are not the biggest category, then the premises is likely to be a dairy or convenience store that is not able to hold an off-licence.
 7. The Licensing Inspector and Medical Officer of Health initially opposed the application on the grounds that incorrect annual sales revenue data had been provided. The premises is an existing business and therefore in determining whether or not it meets the definition of a grocery store, Te Kuiti Holdings Limited must provide a statement of annual sales revenue for a period of 12 months, ending no more than 90 days before the time at which the application for the issue of an off-licence was made. Te Kuiti Holdings Limited initially provided a statement of gross sales revenue for the period 1/4/19 to 31/3/20, which is projected annual sales.
 8. However, the correct information was provided at the hearing. It was prepared from sales information sourced from the previous owner, Pavan Sharma Limited. This sales information covered the period from 1/4/18 to 24/2/19. In addition, Te Kuiti Holdings Limited also provided sales information for the period since taking possession of the business, from 25/02/2019 to 30/09/2019. Therefore, it was accepted that the correct annual sales revenue had been provided. The opposition by the Licensing Inspector and Medical Officer of Health regarding this matter was withdrawn.
 9. Cathy Scott, agent for Te Kuiti Holdings Limited requested that a confidentiality order be placed on the sales information, on the basis that it is commercially sensitive, so that it does not form part of the public record. Section 203(5) provides that the licensing committee may make an order prohibiting publication of any report or description of any part of the proceedings. In considering whether to make such an order, the licensing committee must “consider both the public interest in being able to learn of the proceedings ... and the privacy of persons whose affairs are before the committee” (section 203(6)).
 10. The licensing committee grants this application and makes an order prohibiting publication of the Exhibits 2 & 3 relating to gross annual sales revenue. The licensing committee accepts that this evidence is commercially sensitive. In addition, the public interest in being able to learn of the proceedings will not be affected, because access to this sales information is not necessary to gain an understanding of the proceedings.
 11. The licensing committee is satisfied that Te Kuiti SuperValue Supermarket is a grocery store. The size and layout of the shop have the look and feel of a grocery store. A range of food products and other household items are sold. The Statement of Annual Sales Revenue prepared by a chartered accountant shows that food products form the greatest category of gross sales. Therefore, Te Kuiti SuperValue Supermarket is entitled to hold an off-licence.

The criteria under the Act

12. The object of the Act is to ensure that the sale and supply of alcohol is undertaken safely and responsibly, and the harm caused by excessive or inappropriate consumption of alcohol is

minimised (s 4).

13. In deciding whether to issue a licence the licensing committee must have regard to the criteria in section 105 of the Act. Therefore this committee must consider the following questions within the framework of the purpose and object of the Act:
 - a) Is the applicant suitable?
 - b) Are the days and hours during which the applicant proposes to sell alcohol reasonable?
 - c) Is the design and layout of the premises suitable?
 - d) Does the applicant propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?
 - e) Will the amenity and good order of the locality be reduced to more than a minor extent by the effects of the issue of licence? Is the amenity and good order of the locality already so badly affected by the effects of the existing licenses that it is unlikely to be reduced further by the effects of the issue of the licence or is it desirable not to issue any further licenses?
 - f) Does the applicant have appropriate systems, staff and training to comply with the law?
 - g) Have the Police, Inspector and Medical Officer of Health raised any relevant considerations?
 - h) Does the application comply with the Waitomo District Local Alcohol Policy?
14. The licensing committee is satisfied that Te Kuiti Holdings Limited is a suitable entity to hold an off-licence. The sole director, Mr Xing, is the holder of a current manager's certificate and has previous experience owning and operating an off-licence premises. The premises has been visited by the Inspector while operating under a temporary authority and has been found to operate in accordance with the requirements of the Act. The proposed hours of operation are reasonable. The application complies with the Waitomo District Local Alcohol Policy.
15. The licensing committee is satisfied that the grant of an off-licence to Te Kuiti Holdings Limited will not reduce, to more than a minor extent, the amenity and good order of the locality. There have not been any concerns raised regarding the previous operation of this premises, and no concerns were raised by the reporting agencies in relation to amenity and good order.
16. Te Kuiti Holdings Limited has an appropriate Host Responsibility Policy and staff training procedures in place to ensure compliance with the Act. There are six Duty Managers who are responsible for ensuring compliance with the Act. Staff training records have been provided. The committee is satisfied that the applicant has appropriate systems, staff and training to comply with the law.

Does the application contain an appropriate single alcohol area?

17. When issuing an off-licence for a grocery store, the licensing committee must impose a condition on the licence describing one area within the premises "as a permitted area for the display and promotion of alcohol" (section 112(2)). The single alcohol area must (so far as is reasonably practicable) "limit the exposure of shoppers in supermarkets ... to displays and promotions of alcohol" (section 112(1)). It may not be situated in an area "through which the most direct pedestrian route between the entrance to the premises and main body of the premises" or an area "through which the most direct pedestrian route between the main body of the premises and any general point of sale passes" (section 113(5)). No display or promotion

of alcohol is permitted outside the alcohol area (section 114(1)(a)). A licensee must not display, promote or advertise non-alcohol products in a single alcohol area (SAA) that does not contain sub-areas (section 114(1)).

18. The Court of Appeal in the *Vaudrey*¹ decision, stated that:

Section 113(1) directs the decision-maker to give genuine attention and thought to the purpose stated in s112(1) in describing the perimeter of the single area. “The decision-maker must take into account the purpose of limiting so far as reasonably practicable the extent of shoppers’ exposure to alcohol displays, promotions and advertisements in describing the alcohol area” (*Vaudrey* decision, at [79]).

19. Gendall J in the High Court *Vaudrey* decision summarised the considerations for the licensing committee in relation to a single alcohol area:

“(d) In the case of an application for an off-licence which is also a supermarket or grocery store, the relevant body must impose a single area condition if it grants a licence. This entails an evaluative exercise requiring the relevant body to:

- (i) be satisfied that the proposed area is a single area;
- (ii) be satisfied that the proposed area complies with s 113(5)(b);
- (iii) consider whether the proposed area plan limits, so far as is reasonably practicable, the exposure of shoppers to displays, promotions and advertisements of alcohol;

In undertaking this evaluative exercise, it is the role of the District Licensing Committee or the Authority concerned (not of the applicant) to describe the single alcohol area. Thus the relevant body is not limited to accepting or rejecting the plan put forward by the applicant. Rather, the relevant body must describe an area which is considered to comply with the above criteria after hearing evidence and submissions from all relevant parties.

(e) There is no ability under sections 112 – 114 of the Act to impose general conditions (but that power is found in s 117).” (*Christchurch Medical Officer of Health v J & C Vaudrey Limited* [2015] NZHC 2749, [61])

20. The Court of Appeal in the *Vaudrey* decision summarised the options open to the licensing committee after completing the evaluative exercise:

- (i) the decision-maker cannot describe a single area different from that proposed by the applicant if the application is granted on the papers under s 202(1);
- (ii) the decision-maker can describe a single area which is a sub-area of the area proposed by the applicant provided that the applicant has a proper opportunity to be heard at a hearing with reference to the reduced area;
- (iii) the decision-maker cannot unilaterally describe a single area which is in a different location from that proposed by the applicant unless the applicant is properly consulted and agrees to that different single area; and

¹ *J & C Vaudrey Limited v Canterbury Medical Officer of Health* [2016] NZCA 539.

(iv) the decision-maker must decline the application if, having undertaken the evaluative exercise described by Gendall J at [61(a)(i)–(iii)], the applicant’s proposed single area is not acceptable to the decision-maker. (*The J & C Vaudrey Limited v Canterbury Medical Officer of Health* [2016] NZCA 539 at [79]).

21. When the application was filed, the applicant’s agent Cathy Scott commented that Te Kuiti Holdings Limited purchased an existing, franchised grocery store that had had its licence renewed in 2016. Cathy Scott was aware that the Licensing Inspector had discussed “non-compliance” of the single alcohol area with the previous owner. Unfortunately, neither the previous owner nor the franchisor had addressed this issue prior to the sale. Te Kuiti Holdings Limited installed an 1800mm wall (the same height as the beer fridge) to separate it from the point of sale.
22. It is unfortunate that Te Kuiti Holdings Limited has been faced with a challenge to a SAA that is currently licensed. Mr Young pointed out that the SAA is largely the same as that licensed and operated by the previous owner, with the following modifications:
 - a) A wall dissecting the SAA and points of sale;
 - b) Removal of a column of egg shelving; and
 - c) Reduction of SAA footprint to ensure remaining the egg shelves do not intrude into the SAA.
23. Mr Young submitted that the fact that the premises already exists with an SAA is relevant to the committee’s consideration of the proportionality of possible conditions and costs. Nevertheless, the licensing committee must consider each application that comes before it afresh and undertake the evaluative exercise endorsed by the High Court and Court of Appeal.
24. The plan shows that the proposed SAA measures 11 metres by 8.5 meters. The representative for the Medical Officer of Health, Mrs Zeier, gave evidence that she had visited the store and took measurements of the SAA. She found that the plan submitted was not the correct shape and did not contain accurate measurements. Mr Young accepted that the plan needed to be amended to make it accurate.
25. The proposed SAA is located to the right hand side front corner of the store as viewed when standing facing the principal entrance to the store at the front of the premises. It consists of a beer and wine chiller running the length of the single alcohol area on the back wall and a separate double-sided shelf running parallel to the chiller along the length of the area, which includes end of aisles displays of alcohol.
26. Mr Young submitted that, in terms of section 113(5), the SAA is compliant. Mr Radich gave evidence that broadly speaking, the main body of the premises is the rectangular area around the shelving and aisles, excluding the “racetrack” on the periphery. Mr Radich suggested that if you draw the shortest line possible straight from the point of sale nearest the SAA (which is adjacent to the new wall) to the main body of the supermarket, the line does not pass through the SAA. The licensing committee accepts this evidence and notes that there are other grocery stores in the Waipa, Otorohanga and Waitomo Districts with a SAA alcove located in the same position. Therefore, the committee accepts that the SAA is not in a prohibited area of the premises.

27. This leaves the issue of exposure of shoppers to displays and promotions of alcohol as being the key matter for the licensing committee to decide.
28. Both the Medical Officer of Health and the Licensing Inspector are concerned about the long double-sided shelf that faces the rear of the store. The Licensing Inspector stated that it is visible to shoppers using four of the aisles and is “likely to attract the attention of those customers not wishing, at the outset, to purchase alcohol”.
29. Mr Radich submitted that the SAA limits the exposure of shoppers to displays, promotions and advertisements of alcohol (so far as reasonably practicable). In his evidence, he noted that:
- a) It is located far from the entrance. In that regard, the SAA is distinguishable from that considered by the Authority in *Countdown Bureta Park*.
 - b) The premises is small and, therefore, the options for the SAA are limited. I consider the current location to be as good as any other potential location. For example, if the SAA were in the far left-hand corner of the store with a similar shelving arrangement, exposure would be the same or very similar. I don’t support moving the SAA closer to the main entrance;
 - c) The SAA itself is relatively small when compared to the store’s overall retail footprint. As noted above shelving bays and product lines are modest in comparison to other stores;
 - d) Shoppers can traverse the entire store without entering the SAA;
 - e) Stacking is not used. This is because the shelving unit is preferred to stacking;
 - f) The shelving unit is located to provide adequate room to move trolleys between the fridge and shelves. It cannot be any further recessed into the proposed SAA;
 - g) The current gap between the racking (as it stands now) and the refrigeration unit is approximately 1.4m. In an ideal world this gap would be 2 metres to allow trolleys to move freely throughout the area without damaging stock ...
 - h) If we moved the racking back toward the refrigeration units (putting the expense to one side for a moment) the gap between the racking and the refrigeration unit would be 900mm. A gap that size is barely enough room to fit a trolley through. This creates stock loss issues when people inevitably hit the racking with their trolleys. I have explained this to the reporting agencies (on) a few occasions now. Put into perspective, the gap between shelving in the grocery aisles is at least 1.5 metres ...
 - i) We have explored lifting the racking and turning it the other way. In other words, instead of running the east to west we would turn them north to south. This significantly impacts the range in the store because the immediate impact is that we would need to reduce the alcohol range in-store by 80 product lines;
 - j) In addition, if the racking were rotated to run north to south, the racking would come out much further than it does now because of the standard dimensions of the racking. Purpose built racking for the space is very expensive. This would mean the gap between the grocery racking and the alcohol racking would be as little as 900mm in some spots and maximum of one metre in others ...
30. The licensing committee took some photos during the site visit, showing the view of the SAA from various parts of the store. These were presented, accepted as evidence, and then discussed with all parties at the hearing. We disagree with Mr Radich and have formed the unanimous view that the SAA is highly visible from many parts of the premises. It can be seen as customers walk down the entire length of four aisles adjacent to the SAA. It can be seen from the check-out end of every aisle and from the place where customers queue for both check-outs. When this conclusion was explained at the hearing, it was not disputed by the applicant or

the reporting agencies. In addition, during the site visit we noticed that a customer getting eggs pushed his trolley into part of the SAA and then backed out again.

31. Even though the SAA is located far from the entrance, it is highly visible from numerous parts of the premises. While the SAA itself is relatively small, the length of the double-sided shelf that faces the rear of the store stands out. We agree with the Licensing Inspector that it is “likely to attract the attention of those customers not wishing, at the outset, to purchase alcohol”. It is correct to say that shoppers can traverse the entire store without entering the SAA. However, it is unlikely that a shopper would be able to traverse many parts of the store without being exposed to extensive displays and promotions of alcohol. It appears that the wall that has been erected only screens off the SAA from the view of customers standing in the check-out area immediately next to the till and does not limit exposure of shoppers to displays and promotions of alcohol during what would be considered a normal shopping trip.
32. Therefore, having undertaken the evaluative exercise described in *Vaudrey*, the licensing committee is not satisfied that the proposed SAA limits (so far as reasonably practicable) the exposure of shoppers in the grocery store to displays and promotions of alcohol, as required by section 112(1)). The proposed SAA is not acceptable to the committee. This is primarily because of the long outward facing shelf of wine, which is highly prominent and visible to shoppers from a substantial proportion of the premises, including where customers queue for both checkout counters. Therefore, as discussed at the hearing, in order to grant the off-licence application, an alternative needs to be found.
33. We accept the evidence of Mr Radich that:
 - a) It is not practical to shrink the size of the SAA by pushing the outside edge and the location of the shelving unit towards the chiller as the aisles would be too small.
 - b) There are no other obvious locations for the SAA that would be likely to reduce the exposure of customers to displays of alcohol.
 - c) There would be no benefit to turning the shelf around to face north to south (parallel to the aisles in the main body of the premises) because customers would still see the displays of alcohol in the chiller and would also see down into the short aisles from many different angles.
34. Following the options open to the committee as noted in the *Vaudrey* decision, if the proposed SAA is not acceptable to the committee, the committee must decline the application (at [79]).
35. However, the other options outlined in *Vaudrey* offer a way forward without declining the application. The licensing committee considers that the proposed SAA, with some minor modifications, alongside a section 117 condition prohibiting the display of alcohol on the outward facing shelf would, so far as is reasonably practicable, limit the exposure of shoppers to displays and promotions of alcohol, as required by section 112(1)). With such a section 117 condition in place, the proposed SAA would be acceptable to the committee.
36. In the recent *Countdown Bureta Park* [2019] NZARLA 200, the Licensing Authority considered exposure and found that it was open to a licensing committee to impose a condition under section 117 prohibiting end of aisle displays. In considering the imposition of a section 117 condition for SAA, the Licensing Authority outlined the gateway test to be met:
 - a) Will the condition be inconsistent with the Act?
 - b) Is the condition reasonable?
 - c) Is the condition an absolute prohibition?

Will the condition be inconsistent with the Act?

37. In the High Court *Vaudrey* decision Gendall J stated that:

... The first requirement is that the condition not be inconsistent with the Act. This requires the relevant body to step back and consider the purpose and scheme of the Act, together with the more specific provisions, to ensure there is no inconsistency. This is not a particularly stringent first gateway test through which a condition must pass. In each case this requires a factual assessment. (*Christchurch Medical Officer of Health v J & C Vaudrey Limited* [2015] NZHC 2749, [100])

38. Given our finding that the long outward facing shelf of wine is highly prominent and visible to shoppers from a substantial proportion of the premises, including where customers queue for both checkout counters, it follows that the removal of the outward facing display of alcohol will significantly reduce or limit exposure of alcohol to shoppers. The removal of the outward facing displays and promotions of alcohol will reduce or “limit” the exposure of alcohol to such an extent that the alcohol area would then comply with section 112(1). Therefore, the first step in the gateway test is met.

Is the condition reasonable?

39. In the High Court *Vaudrey* decision, Gendall J observed that the test is an objective one and the requirement of reasonability invokes concepts of proportionality. In particular:

... There must be sufficient connection between the condition the relevant body wishes to impose and the risk it seeks to guard against. It follows as a matter of logic that the condition must be no more restrictive than is necessary to militate against the identified evil. It need hardly be said that a condition which is absurd, ridiculous, patently unjustifiable, extreme or excessive, will not be reasonable ... (*Christchurch Medical Officer of Health v J & C Vaudrey Limited* [2015] NZHC 2749, [101])

40. Mr Radich suggested that a requirement not to use the outward facing shelf is tantamount to requiring a wall across the outward facing perimeter of the SAA. It was the opinion of Mr Radich that this is not reasonable, nor what the legislation intends. Mr Young submitted that the imposition of restrictions on the use of this shelving would have significant and ongoing financial implications for Te Kuiti Holdings Limited, primarily because much more frequent restocking by staff will be required. Mr Radich pointed out that the shelving bay numbers and product lines are already modest.

41. We note that Mr Young submitted that this SAA is distinguishable from the one considered by the Licensing Authority in the *Countdown Bureta Park* decision, because it is located far from the entrance. However, the key similarity between the two cases is the fact that the display and promotion of alcohol is confronting to shoppers outside the SSA due to outward facing displays.

42. A section 117 condition prohibiting the display of alcohol on the outward facing shelf, would guard against the excessive exposure of shoppers to displays and promotions of alcohol, as required by section 112(1)). Mr Radich is correct to a certain extent when he says that a requirement not to use the outward facing shelf is tantamount to requiring a wall across the outward facing perimeter of the SAA. However, it is not a wall. The top row of alcohol in the chiller behind the shelf is still visible along with the alcohol on the small self ends. In addition, both ends of the chiller displays are observable from the alcove entrance and exit. It is acknowledged that the condition will have an impact on the number of products lines that Te Kuiti Holdings Limited will be able to display and more restocking will be required. However, Te

Kuiti Holdings Limited has not presented any evidence persuading the licensing committee that these costs will be prohibitive. In addition, Te Kuiti Holdings Limited will be able to fit some shelves to either end of the alcove and utilise these spaces to display alcohol.

43. While the reporting agencies did not present any specific evidence linking the exposure of shoppers at this store to alcohol-related harm, the committee is nevertheless mindful that significant exposure of shoppers to displays and promotions of alcohol is linked to harm, and the committee is entitled to take a precautionary approach. If displays and promotions of alcohol were not linked to harm, then the committee notes that there would be no need for section 112(1) in the Act.
44. The committee considers that prohibiting the display and promotion of alcohol in the outward facing shelf is a reasonably practicable, and pragmatic solution, given that it would limit shoppers to exposure to displays and promotions of alcohol, while not requiring a significant re-configuration of the premises.
45. In summary, we consider that the benefit of limiting the exposure of shoppers to displays of alcohol by prohibiting the display and promotion of alcohol on the outward facing shelf, will outweigh the cost and inconvenience to Te Kuiti Holdings Limited. We consider it is an appropriate and proportionate response to mitigate the highly prominent and visible display and promotion of alcohol to shoppers from a substantial proportion of the premises, including where customers queue for both checkout counters.

Is the condition an absolute prohibition?

46. The licensing committee does not consider that the condition prohibiting the display of alcohol on the outward facing shelf, would be an absolute prohibition. This is because the shelf displays are still permitted on the other three sides of shelf in the middle of the SAA and around three sides of the alcove. Therefore, the condition is neither extreme nor excessive.

Te Kuiti Holdings Limited's response to two proposed section 117 condition alternatives

47. In order to give Te Kuiti Holdings Limited an opportunity to comment on a proposed section 117 condition, the applicant was informed that the licensing committee was prepared to approve one of the following two options:
 - a) A rectangle shaped single alcohol area similar to the plan dated 7/5/19, with a reduced perimeter that excludes the current outward facing shelf. This would allow Te Kuiti Holdings Limited to display any products of their choice on the outward facing shelves, or
 - b) A rectangle shaped single alcohol area similar to the plan dated 7/5/19, that includes all of the current shelving, but with a section 117 condition prohibiting the display of alcohol on the outward facing shelf. This would only allow Te Kuiti Holdings Limited to display zero alcohol beverages on the outward facing shelf.
48. Both of these options would only allow for one rack of eggs to be situated in the current location, in order to avoid customers going into the SAA when they get eggs.
49. Subsequent to the hearing, Mr Young advised the licensing committee that Te Kuiti Holdings Limited accepted option (b), on the basis that it would be able to continue using the shelf ends. Te Kuiti Holdings Limited proposed to have solid panelling on the side that faces the main body

aisles. This is acceptable to the licensing committee, because it effectively prevents the shelf ends from becoming an outward facing display. In addition, the shelf ends are not prominent to the same extent as the main shelf, because they are relatively small and do not contribute to exposure from viewpoints near the checkouts or the ends of most aisles.

50. The licensing committee is mindful that the applicant may wish to change the internal arrangement of shelving within the SAA, subsequent to the grant of the licence. The section 117 condition is worded so as not to prevent the applicant from making such changes, while still ensuring that the SAA will limit the exposure of shoppers to displays and promotions of alcohol. In addition, the section 117 condition (condition (e)) will apply from Monday 3 February 2020, giving Te Kuiti Holdings Limited 10 days to remove the alcohol from the outward facing shelf.
51. Te Kuiti Holdings Limited has now submitted an amended SAA (Appendix 1), that together with a section 117 condition prohibiting the display of alcohol on the outward facing shelf, is acceptable in terms of the requirements of sections 112 – 114. Finally, the measurements and shape of the SAA are now accurate.

Conclusion

52. In conclusion, the application for an off-licence is granted.

Dated this 23rd day of January 2020



Sara Grayson
Commissioner
Waitomo District Licensing Committee

