

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

AND

IN THE MATTER of an application by **NEKITA
ENTERPRISES Limited** for an OFF-
Licence pursuant to s.99 of the Act
in respect of premises situated
at **93 Main Street, Methven**, to
be known as '**Methven Super
Liquor**'.

BEFORE THE ASHBURTON DISTRICT LICENSING COMMITTEE

Chairman: I.J. Burgess
Members: A.J. Lawn
R.J. Kilworth (Mrs)

HEARING at Ashburton on March 20th 2017

APPEARANCES

Mr C. Shearer – for the applicant
Mrs H. A. Faass - Ashburton District Council Licensing Inspector – to assist
Sergeant M. Hamilton – N Z Police – to assist

Mrs K. Webster – For the Medical Officer of Health – Mrs Webster sought leave to
be excused from today's hearing. Such permission for non-appearance
was granted. An earlier report from Mrs Webster was available.

OBJECTORS:

There were twelve objections received by the DLC secretary in opposition to this application.
Those listed below chose to appear at the hearing and be heard.

- (1) Mr D. den Baars, for the Methven Blue Pub
- (2) Mrs S. Dickson, for the Catholic Women's League
- (3) The Reverend M. Keith, for the All Saints Anglican Church
- (4) Mr M. Nordqvist – Methven Resident
- (5) Mr D. Schroeder – Methven Resident
- (6) Mr R. Smith – Methven Resident
- (7) Mr M Taylor – For the Mt. Hutt Elim Church, Methven
- (8) Mrs J. Wright – For the Plains Presbyterian Church, Methven

APPEARING FOR THE APPLICANT:

Mr H. Singh – Applicant
Mr G. Hoar – For the Super Liquor Group

DECISION ON THE PAPERS

- (1) The application before us is for an Off-Licence in respect of premises located at 93 Main Street, Methven. Should the application be successful, the store will be known as Methven Super Liquor. The premises are presently occupied by the Methven Red Cross with a lease that expires on the 31st of March 2017. The applicant will therefore be unable to commence the fit-out until the premises become vacant on or after April 1st. The applicant has provided a floor plan for his intended off-licence, and there are no compliance issues expected. Mr Robert Smallbone, the building owner has given written approval of tenure. These premises were used as a bottle store some years ago, but the business closed after operating for 2 to 3 years.
- (2) Much of the objection to this application stemmed from the gradual proliferation of alcohol licences in Methven, proximity to sensitive sites, and exposure of alcohol to children passing the store, or sighting alcohol advertising. There are multiple licences in Methven many of which are On-Licences for restaurants or accommodation houses. There are two Grocery Stores with Off-Licences and one other full Off-Licence which is attached to the Brown Pub. Much of the concern held by objectors was a fear that another Off-Licence would increase the availability and hence increase the consumption of alcohol in Methven.
- (3) The number of objectors was fairly evenly spread with three representing the various churches in Methven and one person representing the Catholic Women's League. Three were concerned residents and one was representing the Blue Pub.
- (4) The Reverend M. Keith gave evidence of the distances of sensitive sites from the proposed Liquor store. These included but were not limited to:
- Methven Primary School (220m)
 - Mr. Hutt College (380m)
 - Our Lady of the Snows Primary School (550M)
 - Powerzone After School Care (120m)
 - Leap ahead (150m)
 - Plunket (150m)
 - Methven Playcentre (300m)
 - Methven Pre School (450M)

Churches listed with distances, including but not limited to:

- Mt Hutt Elim Church (120M)
- All Saints Anglican Church (150M)
- St. John's Presbyterian Church (350)
- Our Lady of the Snows Catholic Church (550)

The Reverend M. Keith in a very comprehensive submission outlined his concerns for the community if this Licence is granted.

None of the institutions listed above made a submission in opposition to the application.

- (5) The applicants and principals of Nekita Enterprises Limited are Mr Harjit and Mrs Shereen Singh who are the only directors of Nekita Enterprises Limited, Mr and Mrs Singh reside at 51 Pages Road, Linwood, Christchurch. Mr and Mrs Singh are very experienced in their field, presently being the owners of nine Super Liquor Stores in Canterbury as well as a Hotel, and three independent Bottle Stores. While there was objection to a further licence being granted in Methven, there was no objection regarding the suitability of the applicant.
- (6) The application seeks an Off-Licence subject to s.32 of the Act to trade as a bottle store. The proposed hours for this off-licence are to be 9.00am – 9.00pm Monday to Sunday. These hours will comply with the proposed Ashburton District Local Alcohol Policy when it is adopted. The designation sought for the proposed Bottle Store is to be 'supervised'.
- (7) The Licensing Inspector in her report on the application raised no objection subject to a final inspection when the store is fitted out, and suitably qualified staff are employed. The N Z Police have no objection to the granting of this licence. Mrs K Webster, for the Minister of Health has signalled an objection because she has been unable to sight the completed bottle store, and is also concerned about staffing. Mrs Webster, who was excused from the hearing, and the Medical Officer of Health remain opposed until these concerns are satisfied. It is expected that once the concerns are remedied to the Medical Officer of Health and Mrs Webster's satisfaction such opposition will be withdrawn
- (8) Mr Craig Shearer a principal of Ignition Group Limited, a company specialising in providing alcohol licensing and consultancy services to the alcohol industry, led the case for the applicant, Nekita Enterprises Limited. Mr Shearer told the hearing that the application was made with the support of Super Liquor Holdings, the franchising company for all Super Liquor Stores. Super Liquor is a national retail liquor chain with 130 franchisees located from Kaitaia to Invercargill. Mr Shearer told the hearing that he would introduce Mr Greg Hoar, Operations Manager for Super Liquor who will give evidence on the systems and support that Super Liquor provides to their franchise holders, and the operation of the Super Liquor brand. Mr Shearer will also introduce Mr Harjit Singh as the owner and director of Nekita Enterprises.
- (9) *Mr Shearer gave evidence on:*
- *The Scope of the Evidence.*
 - *s.105 Criteria for issue of licences.*
 - *s106 Considering effects of issues or renewal of licences on amenity and good order of the locality.*
 - *The object of the Act.*
- (10) Mr Shearer also commented on the reports of the Inspector and the Medical Officer of Health and told the hearing that in his opinion it was unreasonable for the MOH to insist upon the store being fitted out before a licence is granted or before the applicant has access to the premises. Likewise it is considered unreasonable to expect the applicant to employ staff, again before a licence is issued
- 11) Commenting on the Inspectors report Mr Shearer noted that there were 12 objections received. In summary the key issues are:

- Density – there are already enough alcohol licences:
- Amenity and good order will be affected:
- Location in relation to sensitive sites eg Schools, Churches and open Parks
- Alcohol related harm will be increased:
- Vulnerable community:
- Potential for increased underage drinking:
- The object of the Act is not complied with:

Mr Singh will address the specific criteria in his evidence as required by s105.

- (12) Mr Greg Hoar, the operations manager for the Super Liquor chain provided evidence pertaining to the support provided to franchisees and the standards that apply.

Specifically Mr Hoar addressed the hearing on:

- The Structure and operation of Super Liquor.
- The approach of Super Liquor to marketing including the target market.
- **The safe and responsible sale of alcohol, and the minimisation of harm.**

- (13) As stated in previously there are 130 Super Liquor branded bottle stores in New Zealand. Each store is a locally operated business which has entered into a franchise agreement with Super Liquor. Each franchisee receives the benefits of, and honours the obligations of participating in the Super Liquor branded system.

- (14) Mr Hoar stated that Super Liquor franchisees pride themselves on being part of the communities they serve, supporting local businesses, charities, and sports clubs. Super Liquor has a cooperative group culture. Franchisees are required to stock a core range of products approved by the Marketing Committee. Beyond this franchisees tailor their products to their local market. Prices would not be advertised outside a store at discounts of more than 25%.

- (15) Super Liquor is a member of the Franchise Association and Hospitality New Zealand. From time to time Super Liquor also operates a mystery shopper programme where a third party company checks that stores are meeting age verification, service and promotional standards.

- (16) Mr Hoar gave evidence that Mr and Mrs Singh operate extremely professionally managed businesses with strong systems and processes in place. They are highly regarded within the Super Liquor Group and the Liquor Industry. Mr Hoar concluded by stating that he regularly holds up Mr and Mrs Singh's businesses as an example to others on how a Super Liquor store should look.

EVIDENCE OF HARJIT SINGH

- (17) Mr Singh introduced himself and told the hearing that he and his wife Shereen were the two directors of Nekita Enterprises Limited, the company that is applying for the licence which is the subject of today's hearing.

- (18) Two of the reporting Agencies have expressed concerns about staffing. In reply to a question from the Licensing Inspector Mrs Faass, who explained there was a minimum training period of six months before a person could become a Duty Manager, Mr Singh testified that he had an experienced Duty Manager in another

- (19) Mr Singh's evidence addressed the following matters:
- Background to the application.
 - All the Section 105(1) criteria of the sale and supply of Alcohol Act, and in particular
 - (b) His suitability as an applicant to hold a licence.
 - (e) The design and layout of the premises
 - (h) and (i) The amenity and good order of the locality
 - (j) Appropriate systems, staffing and training. Mr Singh proposes to comply with the law.
- (20) Mr Singh gave evidence of the location of the proposed site. Mr Singh told the hearing that he had considered the issues raised by the objectors. He noted that the proposed hours of 9.00am to 9.00pm were within the hours proposed by the A.D.C. provisional LAP which are 7am – 9.30pm.
- (21) On his suitability as an applicant Mr. Singh pointed to the number of off-licences his company operates in Canterbury which collectively serve 27,000 customers per week. It is noted that none of the reporting agencies opposed his suitability. Mr and Mrs Singh have held manager's certificates continuously since 2001 and neither has had an application declined. No CPO has been failed during that time while Mr Singh was the Duty Manager. There was one only blemish when a minor was served. This was back in 2006.
- (22) Mr Singh gave notice that if his application is successful he intends to employ store managers who are experienced retailers in the alcohol industry, as well as requiring all staff to complete the LCQ training.
- (23) On the design and layout of the proposed store, Mr Singh testified that good design and layout is important to minimise potential harm to patrons and staff. He intends to adopt many of the Crime Prevention through Environmental Design (CPTED) guidelines produced by the NZ police and the Health Promotion Agency. The premises will be well lit both at the entrance and throughout the store.
- (24) CCTV: A number of cameras will be installed, aimed at minimising any illegal or inappropriate behaviour in the store, and in the car parking area.
- (25) Staffing: Mr Singh gave the hearing an estimate of 2 ½ to 3 full time equivalent staff employed at the store. During busy times there will be at least two staff on duty and when it is not so busy one duty manager will be on duty. Mr Singh believes that adequate staffing is important for the security of staff and customers during 'vulnerable' times.
- (26) RTD's and other drinks that appeal to young people will not be located near the front of the store so that they will be less visible to young people in the carpark or from the street.
- (27) In answer to a question about single sales Mr Singh declared that he would allow single sales of craft beers and miniatures. When questioned about single sales of

standard beers Mr Singh said that would only happen if the packaging had been damaged.

Page 6

- (28) **Evidence of Tenure:**
In answer to a question regarding the timing of the completion of the fit-out, and when the store will be staffed and ready for the reporting agencies to view, Mr Singh told the hearing that the fit-out would take at least six weeks
- (29) **The Amenity and good order of the locality:**
Mr. Singh anticipates that no significant noise levels will be generated by the store that could adversely affect the amenity and good order of the locality.
- (30) **Current and possibly future levels of nuisance and vandalism:**
Super Liquor as a brand prides itself on being part of the communities it serves, and the maintenance of high standards therefore any signs of vandalism on or near the premises will be dealt with quickly, including the removal of any graffiti. As Mr Hoar testified Super Liquor regularly audits its stores to ensure high standards of tidiness, cleanliness, appropriate advertising and the correct use of cash register systems.

REPORTING AGENCIES:

- (31) **Mrs H A Faass, Licensing Inspector for the A.D.C.** spoke to her report on the application and spoke of Harjit and Shereen Singh as being holders of Managers' Certificates. Other suitably qualified managers will need to be appointed before the licence can issue. This has been discussed and agreed with the applicant, Mr Singh.
- (32) **Criteria for an Off Licence:**
- Object of the Act: The applicant has multiple stores operating in Canterbury and appears to understand the object of the Act.
 - Suitability of the Applicant:
The applicant meets the requirements of the Act. The Inspector considers the applicant to be suitable
 - Days and hours Sought
The days and hours sought are Monday to Sunday 9.00am to 9.00pm
- (33) **Designated Areas:**
- The applicants seeks a licenced area of Supervised for the entire store. Mrs Faass considers that to be suitable.
- (34) **Design and Layout of proposed premises:**
- Designated areas – The entire store will be Supervised.
 - CPTED principles – These have been considered and there are no issues identified.
 - A site visit will be required before the store is opened to ensure compliance with all signage. A plan of the layout has been furnished by the applicant
 - Planning and building compliance – All building and planning matters are compliant.
- (35) **Steps in relation to the sale of liquor to prohibited persons:**
Notices will be displayed in relation to minors and intoxicated persons. ID will be requested. Consumption of liquor will be monitored and server intervention implemented. All notices will be in place when the store opens.
- (36) **Proposals relating to the sale of non-alcoholic refreshments, food, low-alcohol beverages and information about alternative forms of transport.**

- A reasonable range of non-alcoholic and low-alcoholic beverages will be available.
- Drinking water will be freely available when tastings are being held in store

Amenity and good order of the locality:

- This is a new store to be located at 93 Main street, Methven in premises previously occupied by the Methven red Cross.
- There is one other full Off Licence in Methven, located at the Brown Pub. There are two grocery stores with Off Licences in Methven.
- The proposed bottle store will run under the Super Liquor brand and franchise system
- There are a number of sensitive sites within 500 m of the proposed store.

(38) NZ Police: The NZ Police do not object to a licence being issued.

While the Police did not furnish a formal report, Sergeant Hamilton, in response to a request from the panel, agreed to take the witness stand and answer questions on the level of crime, public nuisance and vandalism. Sergeant Hamilton testified that in his opinion Methven was no more adversely affected by these problems than other communities. In fact behavioural matters in Methven Sergeant Hamilton said, was generally better than those in Ashburton. Sergeant Hamilton believes that Methven is an agreeable place to live.

(39) The Medical Officer of Health:

In an earlier report the MOH raised an objection to the licence being granted. The objection relates to the fact that they cannot view the finished layout of the store. Subject to the layout being acceptable and suitable duty managers are retained, the objection will be withdrawn.

(40) Licensing Inspectors Recommendation:

Mrs Faass has no objection to the licence being granted subject to a final inspection when the building is completed and suitably qualified managers have been appointed. Concluding her report Mrs Faass noted there were 12 public objections.

(41) Public Objections:

As stated earlier there were 12 public objections received in respect of the application from Nekita Enterprises Limited. Those who chose to attend the hearing and be heard are listed below in alphabetical order:

(42) Mr D M den Baars who appeared on behalf of the Methven Blue Pub.

Mr den Baars spoke on proliferation of alcohol licences in relation to Methven's population. The location in relation to sensitive sites. Reducing alcohol related harm. Pre-loading and side loading and local knowledge.

(43) Mrs S Dickson who appeared on behalf of the Methven Branch of the Catholic Women's League in her written evidence stated that 'the granting of a further Licence to sell alcohol in Methven would not meet the first three objectives of the Sale and supply of alcohol Act 2012. Mrs Dickson submitted a vast amount of alcohol related harm information, including many references. At the hearing Mrs Dickson spoke of her concerns in relation to alcohol and domestic violence.

(44) The Reverend Mike Keith on behalf of All Saints Anglican Church, in his comprehensive submission wrote and spoke of proliferation of Off-Licences in Methven when compared to similar townships in Canterbury. The Rev. Keith wrote

and spoke of the location of the proposed bottle store in proximity to sensitive sites, such as Churches, Schools, Child Care facilities and Open Public Spaces.

Page 8

The Rev. Keith wrote that there is more than a minor level of harm (i.e. crime, nuisance, disorder and health concerns) due to the inappropriate and excessive consumption of alcohol. Inappropriate and excessive consumption of alcohol Rev. Keith wrote contributes to higher levels of crime, violence and drink driving.

- (45) **Mr Martin Nordqvist** A resident of Methven wrote and spoke of the three off - licences presently operating in Methven, and with the many other On-Licences were sufficient for Methven's limited population. Mr Nordqvist made comparisons with the number of licences in Methven and in Ashburton and was clearly concerned that a further licence in Methven would have an adverse effect on the community.
- (46) **Mr Duane Schroeder** a Methven resident wrote of concerns that the amenity and good order of the locality would likely be reduced and that the proposed premises being between existing alcohol establishments on Main Street will lead to the town being overly serviced by alcohol related businesses. Mr Schroeder was further concerned by the proliferation of licences in the township and believed that a further licence will contribute to an increase in the availability of RTD's and binge drinking by younger people.
- (47) **Mr Ron G. Smith.** A resident of Methven was also concerned about the proliferation of licences and thought the three existing Off-Licences were sufficient for the township along with the many On-Licences available. Mr Smith told of working in the proposed premises up until the business closed when it had previously been a bottle store. Mr Smith told of concerns that Methven would be known as a "boozy" town, and expressed further concerns about the viability of existing businesses.
- (48) **Mr Mark Taylor,** appearing for the Mt. Hutt Elim Church also wrote and spoke about amenity and good order being reduced. The proposed premises are very close to a number of sensitive sites including Churches, Schools, the Leap Ahead Pre-School, the After School Care program, the Scout Den and public parks. Mr Taylor expressed concerns that should the licence be granted, there will be an increase in drunk and disorderly behaviour in the township and especially in the public recreation areas.
- (49) **Mrs Joan Wright,** on behalf of the Plains Presbyterian Church and St Johns Church which is part of the Plains Parish. The concerns of the people of these Churches are the proliferation of licences in Methven. Of particular concern is the location of the proposed Super Liquor store and the number of children, estimated at 200, who would pass the premises on their way to and from school. These Parish's also expressed support for the objection from the Rev. Mike Keith the Vicar of All Saints Anglican Church.
- (50) **Collective Evidence of Objectors:**
When examining the evidence of the objectors, the proximity to Sensitive Sites, the Proliferation of Alcohol Outlets in total, and the perceived exposure to children of Alcohol advertising were common to many of the submissions.

Evidence considered by the Panel:

- (51) In a small township such as Methven it would be very difficult if not impossible to have the distances from Sensitive Sites some objectors would like to see. In fact larger towns such as Ashburton have experienced similar difficulties.

Page 9

- (52) Many of the submissions have pointed to the total number of licences in Methven as a reason for their concerns with respect to any perceived increase in alcohol related harm. There is just one other 'Full' Off-Licence in Methven and that is attached to the Brown Pub.
- (53) The majority of the total number of licences in Methven are 'On' Licences issued to restaurants and accommodation houses. These licences do not permit sales of alcohol to be taken away from their premises.
- (54) Another of the common concerns of the submitters was the exposure to children of alcohol advertising when passing the store while walking to and from school. Providing there is no alcohol AO pricing ads in the windows on Main Street and in the windows of the car park, and provided the windows on Main Street are frosted, the danger of such exposure should be minimised.
- (55) The Rev. Mike Keith in his submission stated that "there is already more than a minor level of harm (i.e. crime, nuisance, disorder & health concerns) due to the inappropriate and excessive consumption of alcohol. When pressed for evidence to support such statements the Reverend admitted that official 'crime and "health' statistics are unavailable to him. The evidence of Sergeant Hamilton did not appear to support these statements, in fact the Sergeant testified that disorder was as the result of 'On' Licences.
- (56) Mr Singh in his evidence has given a number of undertakings with respect to advertising, staffing, siting of RTD's and such items that may appeal to younger people. CCTV cameras in store and in the car park. The hours sought for this application are well within those allowed by the Ashburton Local Alcohol Policy.

Decision of the District Licensing Committee:

- (57) After much consideration of all the evidence, the decision of the panel is that the application is granted for one year subject to the following conditions.
- **That the Main Street Windows of the premises located at 93 Main Street Methven are frosted. This is so that no evidence of alcohol products may be sighted by children passing the store on their way to and from school.**
 - **There will be no Advertising of Alcohol Prices in either the windows on Main Street, or the windows facing the car park.**
- (58) **The licence will not issue until all building and consent issues are complied with, and the fit-out and staffing issues are completed to the satisfaction of the Medical Officer of Health and the Licensing Inspector.**
- (59) **The licence will not issue until the expiry of 10 working days from the date this decision is given to all parties.** This period is the time provided by s. 155 of the Act for the lodging of a notice of appeal.

Compulsory Conditions – section 116(2)

- (a) No alcohol may be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1.00pm on ANZAC Day.
(b) No alcohol is to be sold or delivered on Easter Sunday unless the alcohol is grape wine or fruit or vegetable wine made on the premises.

Page 10

(c) Liquor may only be sold or delivered on the following days and during the following hours.

Monday to Sunday 9.00am to 9.00pm

(d) Signage must be displayed stating (directly or by description) a place or places on the premises at which drinking water is freely available to customers while alcohol is being supplied free as a sample on the premises.

Discretionary Conditions – section 116(1)

(a) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:

- Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.

(b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:

- Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.

(c) The whole of the premises shall be Supervised.

(d) There shall be no external advertising of alcohol products on the outside of the building or on advertising boards outside the premises.

Other restrictions and requirements

Section 56 – Display of signs

Section 57 – Display of licences

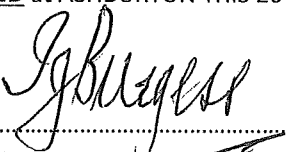
Section 214 - Manager to be on duty at all times and responsible for compliance.

A copy of the licence setting out the conditions to which it is subject is attached to this decision

THE LICENSED PREMISES

The premises are identified on the plan provided with the application for a licence.

DATED at ASHBURTON THIS 26th DAY OF March 2017.


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Chairperson
Ashburton District Licensing Committee

