

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

AND

IN THE MATTER of an application by **General Distributors Limited**
under s.127 of the Act for renewal of **Off - Licence**
035/OFF/006/2013, or Countdown Hawera, Union
Street, Hawera.

BEFORE THE SOUTH TARANAKI DISTRICT LICENSING COMMITTEE AT HAWERA

Chairperson: Cr. I.J. Wards

Members: Cr. K.V. Bourke

Cr. S. Mackay

HEARING at Hawera on the **Fifth** day of **September** **2017**

APPEARANCES:

Ms Allison Arthur-Young - Counsel for the applicant Company

Mr Paul Radich

Ms Chantelle Denton – South Taranaki District Licensing Inspector – to assist

Also in Attendance:

Mr Mark Superfine – Licensing Inspector

Mr Doug Scott – Regulatory Manager

Ms Nicky Maeda – Committee Governance Advisor

Ms Jacqui Kennedy – Stenographer

Opening Remarks

The District Licensing Committee Chairman Mr Wards in opening the hearing welcomed everyone, introduced the Committee members, and advised those attending of the hearing procedure.

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction:

- [1] Before the Committee is an application by **General Distributors Limited** under s.127 of the Act for renewal of **Off - Licence 035/OFF/006/2013**, for Countdown Hawera, Union Street, Hawera.
- [2] The application is dated 17th November 2016 and was first advertised on **16th November 2016** and again on **23rd November 2016** The application must be considered under the Sale and Supply of Alcohol Act 2012 and in accordance with the criteria set forth in s. 131 of the Act.
- [3] There were no public objections received to the application.
- [4] This is the first application for renewal of the Supermarket Off Licence since the introduction of the Sale and Supply of Alcohol Act 2012
- [5] The Police offered no objection to the application.
- [6] The Medical Officer of Health initially opposed the application but withdrew opposition a few days prior to the hearing. However the MOH in his report noted *“The issue of the alcohol area being located in an area that must be passed through to get from the main body of the store to the general point of sale as described in s. 113(5) has not been resolved by any proposed changes and is an issue that the committee may wish to consider.”*
- [7] The committee is concerned that a reporting agency that has a statutory duty to report on licence applications has reported that it has no matters in opposition but then goes on to raise matters that it states as being unresolved.
- If the agency has unresolved matters to report on then in the interest of natural justice it must appear and be examined and cross examined before the committee can give any credence to the matter raised.
- [8] The Inspector Ms Denton reported on the application and brought to the committees attention that the applicant had submitted a revised single alcohol area six days prior to the hearing. She stated that her report therefore related to a different SAA to that now proposed by the applicant.
- [9] Based on the Inspectors report and the submissions of counsel for the applicant, Ms Alison Authur – Young we conclude that the only issues in dispute were:
1. Whether the proposed single alcohol area contains the most direct route between the main body of the premises, and either the entrance of the store or a checkout, s.113(5)

2. Whether the single alcohol area limits as far as reasonably practicable the exposure of shoppers to displays, promotions and advertisements of alcohol.

[10] Referring to point 1. Ms Arthur – Young submitted that the proposed single alcohol area is not on a route from the main body of the store as the aisle it is in *generally contains non – essential goods. And that it is entirely possible for a customer to complete a standard shop without needing to go into that part of the store.*

[11] Referring to point 2. Ms Arthur – Young submitted that the proposed single alcohol area limits exposure of shoppers to displays, promotions and advertisements of alcohol through being in a single location, and as far away as possible to the store entrance, and away from the main body of the store, in the final aisle of the store, and is not visible from outside the single area.

[12] Ms Arthur – Young stated that the store owner has recently received resource consent to build a new store and that the current store will then be demolished. This may occur in 18 – 24 months and is why the applicant has proposed a 2 year period for this licence.

[13] Ms Arthur – Young further submitted that *it would not be reasonably practicable to locate or relocate the single alcohol area to some separate area in the store.* She also stated that the single alcohol area will almost always be between some part of the store and a checkout, unless in an alcove or separate room.

[14] Ms Arthur – Young responding to a question from the chair expressed the opinion that the aisle that contains the single alcohol area is not part of the main body of the store.

[15] Mr Paul Anthony Radich the Alcohol Responsibility Manager for the applicant company GDL was called by counsel for the applicant. He explained that he has been liaising with the Inspector and reporting agencies.

[16] Mr Radich stated that the single alcohol area had been changed at the request of “the regulators.” Questioned on who the regulators were Mr Radich said he did not know.

[17] Mr Wards stated that the DLC had visited the store on 30th August and noted that four displays of beer cartons were placed outside the single area and asked if this was normal practice. Mr Radich said that he did not know, but that it was disappointing, but that there was no single area condition on the licence so the store could display alcohol anywhere in the store.

[18] All parties to the hearing agreed that the only issues to be resolved were:

1. Whether the proposed single alcohol area contains the most direct route between the main body of the premises, and either the entrance of the store or a checkout, s.113(5)(b)(ii)

2. Whether the single alcohol area limits as far as reasonably practicable the exposure of shoppers to displays, promotions and advertisements of alcohol.

[19] There were several different descriptions of a single alcohol area discussed during the hearing.

a) That described in the original application. Comprising the last section of both sides of aisle five just before the checkout area with, and without, a cut through from aisle five to aisle four.

b) The modified proposal put forward by the applicant a few days prior to the hearing comprising one side only of the last section of aisle five just prior to the checkout area.

c) A single alcohol area as described in a) but with the top end nearest the checkout area closed off so there would be no direct route through the SAA to the checkout thus creating an alcove or Cul de Sac for the SAA. We note that the applicant indicated in the hearing that opening a cut through of a couple of bays from aisle five to aisle four was something they would be willing to do. As this would be outside the SAA we are unable to make it a condition, however we are grateful to the applicant for demonstrating a willingness to explore solutions as we see this as a means of describing a SAA where shoppers avoid taking the most direct route through the SAA to the checkout.

[20] On the question of the most direct route from the main body of the store and the check-out Ms Arthur – Young expressed the opinion that aisle five is not part of the main body of the store. We consider that if this were the case then any part of the store could be described as not being part of the main body of the store.

[21] We are of the view that any aisle or product display area is a part of the main body of the store, and, that with the applicants proposed SAA shoppers in aisle five would find the most direct route to the checkout would be through the SAA.

[22] For example, a child sent to the supermarket to purchase milk and entering aisle five where the milk is, would find the milk next to the alcohol, and then quite logically pass on through the alcohol area to the checkout.

[23] The applicant has proposed to modify their store layout by providing a cut through from aisle five to aisle four. However we are of the opinion that the most direct route to the checkout would still remain as through the alcohol area.

[24] We therefore conclude that for the SAA to reasonably limit shoppers exposure to displays and promotions and advertisements for alcohol, the Single Alcohol Area description will be:

- a) Contained in the area as described in the original application. i.e. on both sides of the top end of aisle five.
- b) display cabinetry across the top end nearest the checkout forming part of the SAA.
- c) Shoppers access to the checkout could be via a cut through from aisle five to aisle four as the applicant offered to do. The logical place for this would be immediately prior to the SAA therefore avoiding any direct route through the SAA to the checkout area.

[25] **Decision**

Licence 035/OFF/006/2013 is hereby renewed for 2 years from the date of this decision with the following conditions:

- (a) No liquor is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day, or before 1.00 pm on Anzac Day.
 - (b) No liquor is to be sold other than:
 - (i) Wine that conforms to the standard prescribed by Regulation 219 of the Food Regulations 1984 (SR 1984/262) or any standard that may be prescribed pursuant to the Food Act 1981 in substitution for that standard; and,
 - (ii) Sparkling wine that conforms to the standard that conforms prescribed by Regulation 220 of those regulations, or any other standard that may be prescribed pursuant to the Food Act 1981 in substitution for that standard; and,
 - (iii) Fruit wine that conforms to the standard prescribed by Regulation 226 of those Regulations, or any other standard that may be prescribed pursuant to the Food Act 1981 in substitution for that standard; and,
 - (iv) Sparkling fruit wine that conforms to the standard prescribed by Regulation 227 of those Regulations, or any other standard that may be prescribed pursuant to the Food Act 1981 in substitution for that standard; and,
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- (v) Mead that conforms to the standard prescribed by Regulation 226 of those Regulations, or any other standard that may be prescribed pursuant to the Food Act 1981 in substitution for that standard; and,
 - (vi) Beer that conforms to the standard prescribed by Regulation 218 of those Regulations, or any other standard that may be prescribed pursuant to the Food Act 1981 in substitution for that standard; and,
 - (vii) Any food condiment containing liquor if the food condiment has been prepared for culinary purposes; and rendered unsuitable for drinking.
- (c) Liquor may be sold or delivered only on the following days and during the following hours:

Monday to Sunday 7.00 am to 11.00 pm.

- (d) A properly appointed Certified, Acting or Temporary Manager must be on duty, at or nearby the point of sale, at all times when the premises are open for the sale and supply of alcohol.

(e) The licensee must display signage as follows:

- (i) At every point of sale detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
- (ii) A copy of the licence attached to the inside of the premises as to be easily read by people entering each principle entrance to the premises; and
- (iii) A sign prominently displayed at the premises, which identifies by name the manager for the time being on duty.

(f) A Single Alcohol Area described as follows;

- (1) Contained in the area as described in the original application. i.e. on both sides of aisle five, from the checkout end to bay 5 on the left and to bay 16 on the right, and with
- (2) display cabinetry across the top end nearest the checkout forming part of the SAA, through which shoppers cannot pass directly to the checkout, and with,

(3) Acknowledging that the applicants agreement to a cut through from aisle five to aisle four immediately prior to the entrance into the SAA would thus avoid any direct route through the SAA to the checkout area, and

(4) As shown on the plan attached as Appendix 1.

(g) Condition (f) is to take effect one month from the date of this decision.

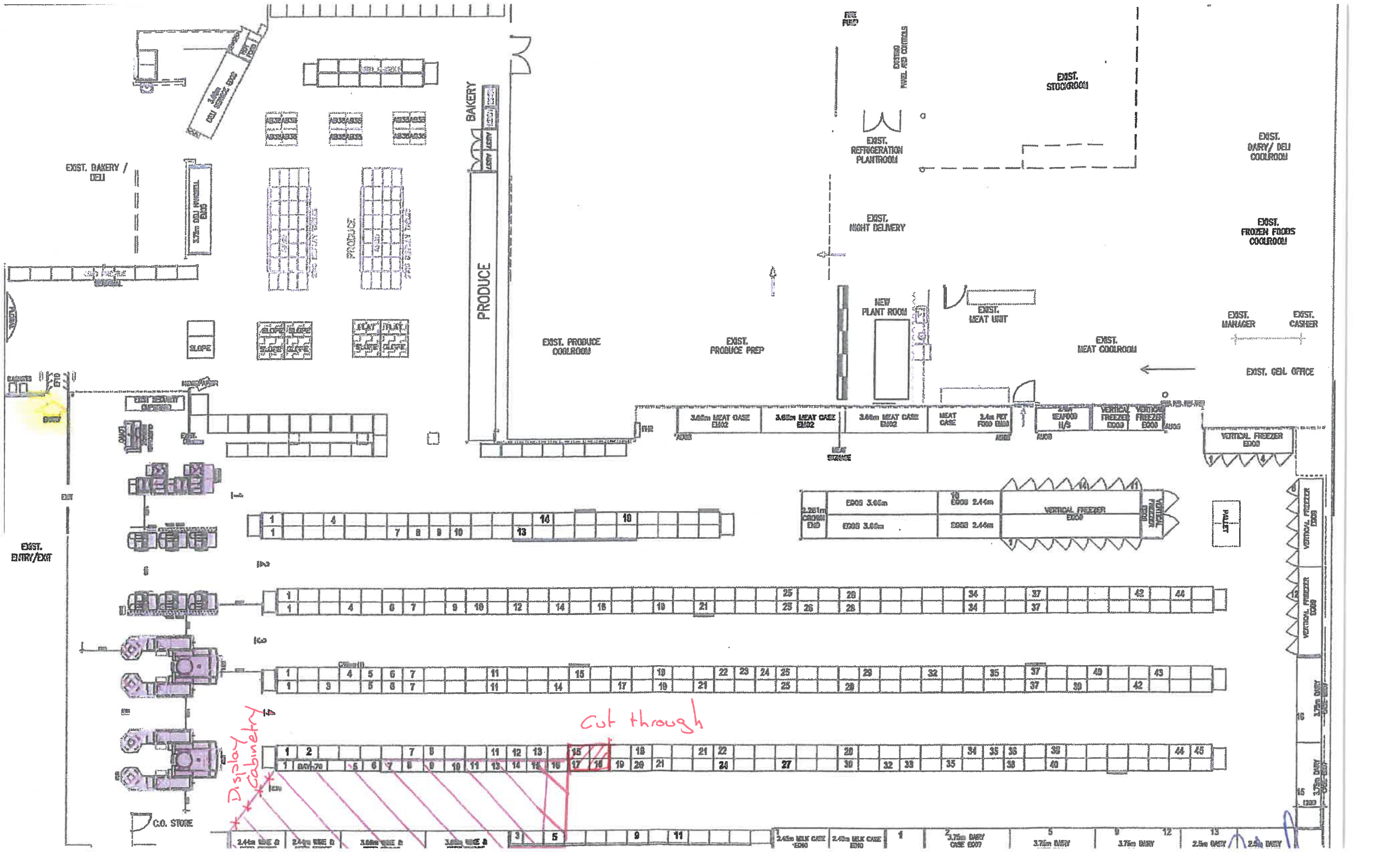
(h) The decision may be released immediately.

Dated at Hawera this *20th* day of October 2017



I J Wards

Chairman



Cut through

Display Cabinetry