

**DECISION NUMBER**

**0042/2022**

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **GENERAL DISTRIBUTORS LIMITED** for a renewal of Off- Licence pursuant to section 127 of the Sale and Supply of Alcohol Act 2012, in respect of the premises situated at 36 Carlyle Street, Napier South, Napier and known as "Countdown Carlyle".

**BEFORE THE NAPIER DISTRICT LICENSING COMMITTEE**

The application for renewal of Off-Licence was advertised in the Hawkes Bay Today on the 21 and 28 September 2021 with no objections received.

No matters of opposition were raised under section 128 and 129 reports; therefore the matter was considered by the Napier District Licensing Commissioner on the papers contained in the full file provided by the secretary in accordance with the provisions of s.202 (1) and 191(2) of the Sale and Supply of Alcohol Act 2012.

**Commissioner:Stuart Hylton**

**RESERVED DECISION OF THE NAPIER DISTRICT LICENSING COMMITTEE**

***Application***

(1) The premises at 36 Carlyle Street, Napier is currently operating as an off licence 'Supermarket' (030/OFF/0042/2018) and this application is to renew the licence.

(2) The application to renew was made on the 13 September 2021 on the prescribed form. The application seeks to renew with the same existing conditions. The general nature of the business will continue to be that of a 'Supermarket Style Off-Licence'.

(3) The inspectors report contained a thorough examination of the applicant's status as a supermarket within the definitions contained within section 33 of the Act and Regulation 12 of the Sale and Supply of Alcohol Regulations 2013 (including evidence provided by the applicant's accountants to show principal activity by way of sales revenue from food products). I accept the inspector's analysis and agree with the inspectors conclusion that the premises is a supermarket commonly recognized

throughout New Zealand and therefore constitutes a premises for which off-licences may be issued in terms of s. 32 of the Act.

- (4) The complete file that I received included –
- The application
  - Floor plan showing single alcohol display area
  - Sales revenue notice from applicants accountant
  - Draft renewal advertisement
  - Fire evacuation scheme declaration from owner
  - Permission letter from owner
  - Photos from interior of shop taken by the inspector
  - Reports from Police, Medical Officer of Health and Inspector

### ***Decision Making***

(5) In considering this application for renewal of Off-Licence the District licensing Committee (here in after referred to as; the Committee) had regard to the criteria specified under s. 131 of the Act.

(6) The Committee must also have regard to the stores display and promotion of alcohol and set a condition in relation to ‘single alcohol area/s’ in accordance with s. 112 of the Act. That section is copied for clarity:

### **s. 112 Compulsory conditions relating to display and promotion of alcohol in single area in supermarkets and grocery stores**

*(1)The purpose of this section and [sections 113](#) and [114](#) is to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol.*

*(2)The licensing authority or licensing committee concerned must ensure that, when it issues or renews an off-licence for premises that are a supermarket or grocery store, it imposes on the licence a condition describing one area within the premises as a permitted area for the display and promotion of alcohol.*

*(3)On the renewal of an off-licence for premises that are a supermarket or grocery store, any single-area condition imposed when the licence was issued (or was last renewed) expires.*

*(4)Subsection (3) is subject to [section 115\(4\)](#).*

(7) Sections 113 to 115 go on to further describe the requirements when determining ‘single alcohol area/s’.

(8) The purpose of a single alcohol area under the Act is to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol.

(9) The application contained the following information to assist the Committee to make its decision on the s.112 matter:

- A copy of a premise floor plan indicating single alcohol area.
- The Inspectors report stated that the single area currently in use, and as marked on the plan, complies with the s. 112 to 114 requirements.

(10) The location of the Single Alcohol Area is within display units on the left hand side of the store as you enter the store, away from the store entrance and exit. The display is not large or unnecessarily extravagant and blends in reasonably well with other refrigerated dairy displays.

(11) This area, in my view, is outside –

- the most direct pedestrian route between the entrance to the premises and the general point of sale.
- the most direct pedestrian route between the main body of the premises and the general point of sale.

This is a requirement of s.113 (5)(b).

(12) The reporting agencies have all enquired into the application, offered no opposition to the Single Alcohol Area or the substantive licence. Therefore on balance based on the information supplied within the complete file and my site inspection, I am of the opinion that the proposed Single Alcohol Area as shown on the 'file' floor plan and currently in use, is compliant with s. 112 – 115 requirements.

### ***Sections 105/131 Analyses:***

#### **(13) the object of this Act:**

Both the Inspector and Medical Officer of Health inquired into the application seeking evidence that the object of the Act will be complied with under this licence. It is noted that the premise has not come to the notice of the authorities in an adverse way during the renewal period. The applicant's Host Responsibility Policy, if followed correctly, should ensure that the object of the act is complied with.

#### **(14) the suitability of the applicant:**

The applicant is a private company with no changes to structure noted during renewal period. The applicant supplied ten names of certified managers to be employed on the premises, which is seen as adequate for this type of licensed premise.

The inspector and reporting agencies do not challenge suitability of the applicant and neither do I.

#### **(15) any relevant local alcohol policy:**

The licence accords with the LAP.

#### **(16) the days on which and the hours during which the applicant proposes to sell alcohol:**

Applicant has applied for the existing hours:

**Monday to Sunday 7.00am to 10.00 pm.**

These hours are within the national trading hours and same as the hours contained in the current licence. These are considered fit for purpose and have operated without incident in the past.

#### **(17) the design and layout of any proposed premises:**

No CPTED assessment received with the application but as it's an existing licence with no issues reported I see no issue with design and layout. Single Alcohol Area layout is discussed earlier in this report.

**(18) 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 accept the inspectors assessment that there have been no complaints about nuisance type offences in the area in the past and that if managed well this should continue.

**(19) whether the applicant has appropriate systems, staff, and training to comply with the law:**

The applicant has nominated four managers of varied experience and skills. The inspector notes the applicant maintains excellent levels of staff training and performance.

#### ***Reporting Agencies***

(20) The following reports were received under section 103/129 of the Act.

(21) **Police** – Report received on 25 September 2021, of no opposition.

(22) **Medical Officer of Health** - Report received on 13 September 2021, of no opposition.

(23) **Licensing Inspector**

Full report dated 24 December 2021. The inspector provided, amongst other things, his assessment of the application in relation to the Act. He also assessed the application against s105 criteria. This assessment has been referred to in this report.

The inspector concluded that the application is complete and will likely meet the criteria for renewal on the conditions presently attached to the licence, with addition of a single area condition as requested and currently in use.

#### ***Committees Decision and Reason***

(24) Based on the evidence provided to me within the complete file, lack of opposition from the relevant agencies, my site inspection and my assessment above, I conclude that the application generally meets the s. 105/131 criteria under the Act to be granted renewal of an off-licence for the premise situated at 36 Carlyle Street, Napier South, Napier, to be known as 'Countdown Carlyle'.

(25) Accordingly the application is **approved** for renewal for three years subject to the following conditions and payment of any outstanding fees, if any.

(26) The following conditions will apply to the licence:

- (a) No alcohol is to be sold or delivered from the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00pm on Anzac Day
- (b) Alcohol may only be sold or delivered on the following days and during the following hours: **Monday to Sunday 7.00am to 10.00pm.**
- (c) The licensee and managers on duty must ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed and must display

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

- (d) The licensee must ensure that at all times a copy of the licence, together with a statement of all conditions subject to which it is issued, is displayed—
  - attached to the inside of the premises concerned; and
  - so as to be easily read by people entering each principal entrance.
- (e) Drinking water must be freely available to customers while alcohol is being supplied free as a sample on the premises and signage directing people to drinking water must be prominently displayed on the premises at that time.
- (f) No alcohol is to be sold on the premises unless it contains no more than 15% ethanol by volume measured at 20°C and is—
  - (a) beer that complies with the appropriate New Zealand food standard for beer; or
  - (b) mead that complies with the appropriate New Zealand food standard for mead; or
  - (c) fruit or vegetable wine that complies with the appropriate New Zealand food standard for fruit or vegetable wine (however that product may be described in the standard); or
  - (d) grape wine that complies with the appropriate New Zealand food standard for grape wine (however that product may be described in the standard); or
  - (e) a food flavouring, prepared for culinary purposes, that is unsuitable for drinking undiluted.
- (g) Only a Single Alcohol Area as delineated on the application file plan received by the DLC, is a permitted area for the display and promotion of alcohol.
- (h) The whole of the premises is ‘undesigned’.

**Dated at Napier District this 11th day of January 2022.**

**Signed**



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**Stuart Hylton**

**Napier District Licensing Commissioner**