



Decision No. 11233/2018

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 (the Act)

AND

IN THE MATTER

of an application by **VDV VENTURES LIMITED** for renewal of an OFF-Licence 27/OFF/9571/2015 pursuant to section 127 of the Act in respect to premises at the Kaiti Mall, 506 Wainui Road Gisborne, trading as Red Door Liquor Kaiti.

BEFORE THE GISBORNE DISTRICT LICENSING COMMITTEE AT GISBORNE

Chairperson: Councillor Pat Seymour

Members: Ken Lyell, Peter Williamson

HEARING at Gisborne District Council Chambers on Tuesday 12 March 2018 at 9am.

APPEARANCES

VDV Ventures Ltd	Applicant
Ms Jenny Akurangi	To assist the Applicant
Ms Wendy Kitt	Licensing Inspector – to assist
Ms Julie Lloyd	Chief Licensing Inspector to assist
Sergeant Isaac Ngatai	Alcohol Harm Reduction Officer, Gisborne Police to assist
Ms Lizz Crawford	Objector
Dr Grant Hewison	by zoom to assist the objector with process

RESERVED DECISION OF THE GISBORNE DISTRICT LICENSING COMMITTEE

INTRODUCTION

1. VDV Ventures has made application to the Gisborne District Licensing Committee to renew an OFF-Licence to sell and supply alcohol for consumption off the premises.
2. Mr Van der Velde operates six off-licensed bottle stores in Gisborne, including the three Red Door Stores, Liquorland Gisborne and Liquorland Gladstone Road, and The Bottle Shop. Mr Van der Velde holds a current manager's certificate and has no alcohol related convictions. All the properties that Mr Van der Velde operates are reported as very well run, including complying with all promotional protocols and have not had any recent issues.
3. The licence expiry date is 24 February 2019 and the application was lodged on 16 November 2018, therefore the licence remains current while the renewal application is determined.

4. The premises have been licensed as a bottle store since at least 1993 (earliest records on file). The applicant has held an off licence for this business since March 2006.
5. The landowner of the site changed recently and the applicant now leases the premises from the property owner, Fortitude Limited, who has given permission for the applicant to hold an alcohol licence in a letter dated 12 November 2018.
6. In terms of the fee category the licensed premises has been assessed as Off-Licence Bottle Store and has been assigned a medium fee category which means the applicant has paid \$816.50 for the application.
7. The District licensing Inspector reports "that based on discussions with the applicant, inspection of the premises, the supplementary documentation accompanying the application, and the reports filed, it is my opinion that the applicant is aware of their responsibilities under the Act, and is suitable to operate the licensed premises."
8. There are no matters of concern from reporting agencies.
9. In accordance with Section 102 of the Sale and Supply of Alcohol Act 2012, the District Licensing Committee Secretariat received two individual objections to the application.
10. The District Licensing Committee met to determine the validity of objectors and in a minute issued on 20 December 2018, found that Ms Lizz Crawford met the test of having an interest greater than the public generally. Ms Crawford resided within 1 km of the location of the Kaiti Red Door Liquor. The other objection was late and therefore could not be considered.
11. The objection of Ms Crawford referred to "all matters in the Act" and in particular:
 - suitability of the applicant;
 - density of Off Licences in the locality;
 - vulnerability of population;
 - sensitive sites; and
 - nuisance and vandalism.

APPLICATION

12. The applicant is a private company, duly incorporated under the Companies Act 1993 on 3 April 2001 (1129753).
13. The company has two directors, Helen Clare Van der Velde and Martinus Jan Van der Velde.
14. The shareholders of applicant company are:

Allocation	Shareholder	No. of shares
1. 1000 shares	Helen Clare Van der Velde, Martinus Jan Van der Velde and Allan de Lautour	1000

15. The primary business activity is an off-licensed bottle store where at least 85% of the annual sales revenue is from the sale of alcohol for consumption somewhere else.
16. Mr van der Velde has been in the liquor industry more than 40 years. He owns eight stores located in Gisborne, Ohope and Whakatane. He is the immediate Past President of Hospitality New Zealand Gisborne Branch, Chairman of the Local Liquor Accord and on the Liquorland Franchise Advisory Committee. He files reports to the Department of statistics for alcohol sales in this area on a quarterly basis.

17. As this application relates to the renewal of an off-licence for an existing bottle store, the location of the premises complies (by exception) with the requirements of section 3.1.1 of the Gisborne District Local Alcohol Policy (GDLAP) even though there are sensitive sites within 150m (see section on amenity and good order for more information).
18. The application complies with the maximum hours detailed in section 3.2 of the GDLAP for off-licensed premises.
19. The licensed area is designated 'supervised'. This is suitable as it allows children under the age of eighteen to be on the premises when accompanied by their parent or legal guardian when the alternative would be to leave them outside.

APPLICANT EVIDENCE

20. The applicant provided to the Committee the Department Sales Record 01 Jan 2019 to 11 March 2019 of Red Door Liquor which provided a pie graph percentage breakdown by product of sale in Red Door for that period. Cigarettes, tobacco and other [chips and snack food] made up 13.3% of sales.
21. In his tabled evidence Mr van der Velde advised:

The staff at the Red Doors are aware that we operate an ID25 policy. There is a prompt on the till so the staff can refer to this if in doubt of age. I require that all retail staff complete their LCQ as soon as possible after starting employment. This is to ensure they are aware of their responsibilities under the Sale of Liquor. It is noted in their employment contracts that any breaches under the Sale of Liquor Act are deemed as serious misconduct and as a result, means instant dismissal.

Since purchasing the store, there have been no occasions where the authorities have had any issue with the activities of the store, and they have noted this in their reports. We are the only bottle shop in the area and service Kaiti, Sponge Bay, Wainui and visitors from the Coast.

The Kaiti Mall property was recently sold and the new owners have replaced the rubbish bins and given the place a facelift. They now have a cleaning regime and graffiti damage is quickly repaired. We are working with them to provide a safe, clean and friendly environment to shop in. To this end we have recently spent a lot of money refurbishing our store. This has been appreciated by the locals.

REPORTING AGENCIES

Police

22. Police have provided a report dated 26 November 2018 that offers no opposition to the application.
23. Sergeant (Sgt) Ngatai in his evidence confirmed that his responsibility included the vetting of all types of licensed applications made to the District Licensing Agency.
24. Sgt Ngatai confirmed that the object of the monitoring process is to ensure that premises and persons applying to hold such licences maintain standards reflecting the criteria to continue to hold or obtain these licences.
25. Police submit that they have considered 'Criteria for renewal' under section 131 and have no matters of concern.
26. Sgt Ngatai indicated that in his opinion the two managers listed were sufficient to operate the premises and that appropriate systems and staff were in place to comply with the law.

Over the past six years Police have conducted six controlled purchase operations at the Red Door Liquor Kaiti which have been passed on all occasions; there is nothing significant to report about the premises over the past seven years.

27. Sgt Ngatai tabled a prepared document sourced from Police internet crime statistics providing a comparison between Elgin/Airport and the Outer Kaiti area. Sgt Ngatai noted that the Elgin area is actually twice as likely to experience crime as the Kaiti area.
28. Attached as Exhibit 2 and 2a. The tables give the number of recorded crimes, the actual time and date of the actual events for the period 1 Jan 2018 to 1 Jan 2019. "For Outer Kaiti [exhibit 2] the number of reported offences is 54, and that is crime related to incidence that cause injury; sexual related offences, unlawful entry with intent/burglary, theft and related offences [exhibit 2a] is a comparison for the Elgin/Airport area where there were 79 recorded offences in relation to those recorded crimes.
29. Sgt Ngatai's evidence showed data for 2014-15, 2015-16, 2016-17 and 2017-18; averaged the offences were 56.2 for Outer Kaiti and 84.4 for Elgin/Airport.
30. Committee member Mr Lyell responded to Sgt Ngatai that the information would be more helpful if it was alcohol related figures.
31. Sgt Ngatai responded that is the important thing to note. They are not alcohol related stats. These are reported crime. "I can't report alcohol-related crime as the data is not that accurate".
32. Ms Crawford asked Sgt Ngatai about mana pai Kaiti. "How many other Police districts have an entity like mana pai Kaiti? Is it fair to say these programmes were established because of high family harm in particular domestic violence and alcohol related harm"?
33. Sgt Ngatai responded, "out of Gisborne I believe Northland and the Counties. "It was basically the centre of domestic violence and to possibly help families get out of that domestic violence".
34. Ms Crawford queried with Sgt Ngatai if it was possible to present a comparison of Inner Kaiti, outer Kaiti and Kaiti. Sergeant responded that the stats were for Outer Kaiti. In response to a further query re the relevance between Kaiti and Elgin and the fact that they are not alcohol related stats but crime related. Sgt Ngatai responded those are the offences. "That is the data that is on the site. I can't change the information".

Inspector

35. The District Licensing Inspector Ms Wendy Kitt does not oppose the application, having regard to the particulars of the application and the relevant statutory criteria under the Act(s).
36. The Inspector recommends that the licence be renewed.
37. The Inspector confirmed that she had considered the application under sections 131,105 and 106 and has no issues of concern.
38. Ms Kitt reports that an inspection of the premises has been undertaken to ascertain through the application of CPTED principles any identifiable issue or concerns regarding the design of the premises.
 - The front of the premises is floor to ceiling glass with good visibility into the premises.
 - Monitoring cameras are located strategically both inside and outside the premises and staff can view all locations on the screen at the counter.
 - Lighting inside the premises is very good allowing staff to view ID cards.
 - Lighting outside the premises in the carpark and at the rear of the building is suitable.

- The counter is positioned so that staff can view all parts of the premises accessible to patrons as well as the shop front.
 - The cash register is front facing.
 - Staff are visible to patrons.
39. Ms Kitt's opinion is that the design and layout of the premises is adequate to fulfil the object of the Act in terms of minimising potential harm and ensuring a safe environment for patrons and staff, in conjunction with the applicant's operational procedures.
 40. The following areas have been considered with respect to the amenity and good order of the locality and the effect of the licensed premises:
 41. The Council has no record (including Police reporting) of any existing nuisance and vandalism issues in the locality or during the prior operation of this licensed premises.
 42. Ms Kitt reports that the design and layout and the operational procedures of the premises should minimise any potential for these issues to arise or contribute to future levels of nuisance and vandalism.
 43. Adjacent activity and sensitive sites were noted in Ms Kitt's report and the Committee considered the matters raised by Ms Crawford in tabled questions to the Police, Applicant and Committee in relation to location, renewal, colour of the premise and the matter of a sandwich board were all addressed thoroughly in paras 45, 46 and 48 of the Inspector's report.
 44. Ms Kitt reports on the monitoring systems in place for the premise.
 45. ID checking is undertaken by staff for all persons who appear to be under 25 years of age. There is an age check facility on the till system.
 46. All staff are trained in identifying signs of intoxication using the SCAB model. Alcohol will not be sold to those customers that display signs of being observably adversely affected by alcohol. All persons considered intoxicated are refused service and all incidents are recorded via an incident book.
 47. Information is shared freely between VDV Ventures outlets staff, and the Police, to ensure any problems with persons are not simply transferred between premises or into the general area.
 48. The Licensing Inspector observed that in her opinion after reviewing the application, supporting information and discussions with the applicant, the applicant has demonstrated that there are appropriate systems, staff and training to meet the requirements of the Act.
 49. In response to a question from Ms Crawford in relation to the six off-licence bottle stores in Gisborne, including three other Red Doors, Ms Crawford explored with Ms Kitt if they were all located next to a supermarket, or in close proximity or density.
 50. The detail of Ms Crawford's concerns was considered by the Committee in preparation for the hearing.
 51. Ms Kitt confirmed that the Kaiti Red Door was close to a supermarket but that other Red Door off-licences were only close to a small grocery store or dairy and in the case of Elgin a small superette. Ms Kitt further responded that she did not see a build-up of the density of off licences as suggested by Ms Crawford.
 52. Mr Lyell explored with Ms Kitt the lack of floor plan for the Red Door premise as required for renewals. Ms Kitt responded that the floor plan of the premise is on file in Council and that she considered the photos provided were adequate to show the layout in the premises. Ms Kitt accepted that she had neglected to ensure that the site plan was included.

53. The Committee accepted this explanation, [noting section 208 of the Sale and Supply of Alcohol Act] and agreed that the internal set up of the premise was apparent from photographs provided with the application. Committee members have also made individual site visits to the premise.

54. Sgt Ngatai explored with Ms Crawford the claim that she had made in her question statements on the potential provision of alcohol to young people.

55. Ms Crawford described the following event.

Between approximately 6.15pm to 6.45pm on February 6th, when I was parked at the Kaiti Mall, I saw an older female and a younger male walk into Red Door Liquor Store. They both entered the walk-in fridge where some beer and RTDs are kept. The female carried the alcohol to the counter while the younger male walked beside her. The younger male stood by the female at the counter. She was too young to be his parent or a guardian. He then turned within 10 seconds and exited the store. He waited outside the door. The female came out of the Red Door Liquor Store and they both left together. The female carried the alcohol throughout the time.

56. Ms Crawford went on to suggest in her questions that this was evidence of the female purchasing liquor for the younger male.

57. Sgt Ngatai questioned Ms Crawford "Did you actually see any transfer of this alcohol to that person?"

58. Ms Crawford responded, "No, the female carried the alcohol the whole time."

Medical Officer of Health

59. The reporting Officer for the Medical Officer of Health did not submit a report within the 15 working day statutory timeframe prescribed under Section 103(3)(b) of the Act. It is therefore assumed, under Section 103(4) of the Act, that the Medical Officer of Health does not oppose the application.

60. Ms Crawford's questions provided prior to the hearing for the MOH contained replicated questions directed to other parties to the hearing.

APPLICANT'S UNDERTAKINGS

61. Two employees have formal manager's qualifications and training.

Manager's Name	Certificate No.	Expiry Date
Jenny Akurangi	27/CERT/9152/2015	6/5/21
Te Mataara Watene	27/CERT/11110/2018	15/11/21

This is deemed sufficient for the intended days and hours of sale under the licence.

62. One other staff member involved in the sale and supply of alcohol is trained in the premises host responsibility policy, operational procedures, and the requirements of the Act and the licence. That person holds their LCQ but has not applied for a manager's certificate. Mr Van der Velde operates under his manager's certificate across all stores.

63. Mr Van der Velde regularly supplies an updated spreadsheet of current managers for each of his premises. Mr Van der Velde puts all staff through the LCQ training to ensure they have a firm understanding of their responsibilities.

OBJECTIONS

64. Two objections were received, one was late and not accepted.
65. The objection of Ms Lizz Crawford as the grounds described earlier in this report was accepted.
66. On the Day prior to the hearing the DLC administration officer received from the objector sets of questions for each of the persons involved in the hearing, These sets were sent on to the parties including the Applicant, Police, MOH and the Licensing Inspector.
67. On subsequently reviewing the questions, in total 67, on the morning of the hearing the Committee considered they were repetitive and called for opinions rather than to clarify matters of fact or evidence.
68. The Committee Chair at the opening of the hearing advised Ms Crawford that her written questions would be considered in the overall scope of the hearing. That many of the questions were covered by the Inspector's report and that the scope of some of the questions fall into section 202 (3)(b).
69. The Committee Chair advised Ms Crawford that she could ask further questions of the parties as the hearing progressed. Ms Crawford acknowledged acceptance of this ruling.
70. Subsequently Dr Grant Hewison joined the hearing by zoom specifically to assist Ms Crawford with process. Dr Hewison was not connected to the hearing from 9.00am due to technical difficulties.
71. Dr Hewison was not sworn in as he confirmed he was not there to question but to assist Ms Crawford.
72. On occasions Dr Hewison interjected the proceedings of the hearing while attempting to give Ms Crawford direction.
73. The applicant Mr Van der Velde explored with Ms Crawford her recorded date and time of the occasion she described of the female purchasing alcohol and Ms Crawford contention that the alcohol could have been purchased for the minor.
74. Mr Van der Velde said he had researched back over the cameras monitoring in his store for the period that was described and he could not find the event Ms Crawford had discussed.
75. Ms Crawford referred to the Inspector's report at para 35 where it notes "external advertising is minimal and there are no promotions of any sort." Ms Crawford sought to question the applicant in regard to promotion of alcohol through a face book page.
76. The applicant, Mr van der Velde, responded, "We have a face book page for Red Door Liquor Store but it hasn't actually been operated on for a long time. We have not had any promotions for a long time either."

LICENSING COMMITTEE DECISION AND REASONS

77. There is no evidence from the reporting Officer nor the Police that the applicant is not a suitable person to hold a licence for this premise.
78. The District Licensing Inspector reports that the design and layout of the premises is adequate to fulfil the objects of the Act in terms of minimising potential harm and ensuring a safe environment for patrons and staff, in conjunction with the applicant's operations procedures.
79. The District Licensing Inspector's report considers the possible and future level of nuisance and vandalism. While a GDC marked rubbish bin near the Red Door Liquor Store did exhibit signs of graffiti, this could not be directly attributed to the Red Door Liquor Store.

80. The objector stated that she did not agree with the sandwich board 'Open' sign at the entrance to the shop and sought a condition it should be removed. The District Licensing Committee notes the Inspector's report had no adverse comments after inspection and taking the CPTED approach to design.
81. The Inspector's report includes an image of the "open" sandwich board. The Committee is satisfied the board is basic information and not promotional. The shop has automatic sliding doors so the doors are closed at all times. The 'Open' sign sits outside as basic information. No specific condition as sought by the objector is justified.
82. The officer reports the Council [including police reporting] have no record of an existing nuisance and/or vandalism. The Red Door has its own internal CCTV and the Kaiti Mall carpark is viewed by two CCTV cameras monitored at the Police station.
83. The MOH have not responded to this application. The Committee can only assume then that the MOH are not concerned about the renewal of the licence for Red Door Kaiti.
84. Police reports on controlled purchase operations over six years indicate the business has always passed those tests.
85. Police provided the crime statistics that are available indicating the level of crime in Outer Kaiti compared with Elgin/Airport.
86. Mr Van der Velde has described the management practises and staff training in place at Red Door Kaiti to ensure the objects of the Sale and Supply of Alcohol Act are met.
87. As this application is for a renewal the application complies with the requirements of section 3.1.1 of the Gisborne District Council Local Alcohol Policy even though there are sensitive sites within 150m.
88. The Inspector in her opinion notes that after review of the application, supporting information and discussions with the applicant, the applicant has demonstrated that there are appropriate systems, staff and training to meet the requirements of the Act.
89. As this is a renewal application, the Sale and Supply of Alcohol Act 2012 section 131 applies and, in particular, section 131(1)(b). The Licensing Inspector has reported that, after considering all aspects, the amenity and good order of the locality would not be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence. After reading all papers and considering the evidence, the District Licensing Committee accepts the Inspector's view on this point.
90. After review of the application, supporting information and discussions with the applicant, in my opinion the applicant has demonstrated that there are appropriate systems, staff and training to meet the requirements of the Act.

The Committee having listened to and considered all evidence before it, and the relevant statutory criteria, formed the view that the application for the renewal of this OFF-Licence for Red Door Liquor Kaiti (VDV Ventures Ltd) be granted.

There are no new conditions

DATED at Gisborne this 27th day of March 2019

A handwritten signature in blue ink that reads "P. Seymour".

Cr Pat Seymour
Chairperson
Gisborne District Licensing Committee

On behalf of:

Mr Ken Lyell
Mr Peter Williamson

APPENDICES

- Mr Martinus van der Velde's evidence
- Sgt Isaac Ngatai's opening submission
- Sgt Isaac Ngatai's Exhibit P1
- Sgt Isaac Ngatai's Exhibit 2 & 2a
- Ms Wendy Kitt's (Licensing Inspector) opening submission
- Ms Lizz Crawford's objector statement