

[2013] NZARLA PH 837

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by **NISHCHAY'S ENTERPRISES LIMITED** for an off-licence pursuant to s.31 of the Act in respect of premises situated at 21 Fantame Street, Porirua East, Porirua known as "Nishchay's Liquor Centre"

BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY

Chairman: District Court Judge J D Hole
Member: Mr Major

HEARING at Porirua on 5 and 6 August 2013

APPEARANCES

Mr G D S Taylor and Miss S McIver - for applicant
Senior Sergeant S D Sargent - NZ Police - in opposition
Dr S G Palmer – Medical Officer of Health – in opposition
Mr W B Berkland - Porirua District Licensing Agency Inspector - to assist
Mr A G Sherriff - for the objectors named in Appendix 1

RESERVED DECISION OF THE AUTHORITY

Introduction

History

[1] On 24 May 2012 the Authority issued a decision (*Chiman D Patel* [2012] NZLLA PH 570-571) where an application for a renewal of an off-licence in respect of the premises (which are the subject of this decision) was granted. That decision amended the trading hours to Monday to Friday 9.00 am to 2:45 pm and 3:15 pm to 8.00 pm (provided that the premises need not be closed from 2:45 pm to 3:15 pm when the Russell School is closed), Saturday 9.00 am to 9.00 pm and Sunday 11.00 am to 6.00 pm. Previously, the off-licence had permitted the business to trade as a bottle store closing at 12.00 midnight each day.

[2] The application for the renewal of the off-licence had been opposed by the Police and the Medical Officer of Health. In addition, there were 88 objections to the application. The decision sets out in detail many of the concerns raised by the Police, the Medical Officer of Health and objectors. It was as a result of those concerns that the trading hours were substantially reduced.

[3] The licensee, Chiman D Patel, continued to operate the business until he surrendered his off-licence on 1 May 2013. Since that time the business has not traded.

[4] Thus, there is evidence as to how the premises traded from about 2004 until the decision of 24 May 2012 when it was permitted to trade until midnight each day. Then there is evidence as to how the premises operated from 24 May 2012 until 1 May 2013 under the substantially reduced hours. Finally, there is evidence as to what occurred after the premises closed on 1 May 2013.

[5] Throughout the period from 1998 until the date of this decision the building containing the premises have been owned by Nishchay's Enterprises Limited. It had operated a bottle store from the premises from between 1998 and 2004. Then the premises were leased to Chiman D Patel who continued the bottle store operation.

This Application

[6] This decision relates to an application for a new off-licence. The applicant had endeavoured to obtain a temporary authority so that the business could continue to operate after 1 May 2013. The temporary authority could not issue because Chiman D Patel had surrendered the off-licence.

[7] As the application was filed on 26 March 2013 the provisions of the Sale of Liquor Act 1989 (in this decision, "the Act") apply: not the Sale and Supply of Alcohol Act 2012.

[8] The fact that the premises had previously been the subject of an off licence does not affect this application in the sense that s.32(4) of the Act does not apply: this application must be treated as a new application. Thus, it is a new off-licence that is applied for and the criteria applicable to the application are set out in s.35 of the Act subject to the overarching object of the Act, as set in s.4.

The Applicant

[9] The applicant has successfully operated off-licensed premises for 14 years. This includes the premises that are the subject of this application.

[10] The directors of the applicant are Umesh Patel and Bhanumati Patel (who gave the evidence in support of the application). There are, in addition to the two directors, two silent share-holders who are the children of the directors. The children became share-holders in the applicant company in 1998 when they were infants. (Nothing turns on this. It was suggested the children shareholders denoted unsuitability. More likely it results from legitimate (but possible unwise) taxation avoidance advice; although there was no such evidence).

[11] Whilst the applicant has operated eight bottle stores since 1998, it has never been the subject of successful enforcement proceedings. In other words, there is no record of it having sold alcohol to minors or to intoxicated persons or of it having traded outside its licensed hours.

[12] Neither of the directors live in Porirua. Nevertheless, Mrs Patel testified that she cares about the community in which the premises are situated. Indeed, she claims that the reason that the applicant decided not to renew the lease of the premises to

Chiman D Patel was because of the way in which the premises had been operated and the concerns expressed by the community. The proposal to take over the business at 21 Fantame Street, Porirua East entailed the applicant closing another profitable business.

[13] In the application, the proposed hours were to be Sunday to Thursday 9.00 am to 9.00 pm and Friday and Saturday 9.00 am to 10.00 pm (excluding Anzac Day before 1.00 pm, Good Friday, Easter Sunday and Christmas Day).

[14] As a result of discussions with the Inspector, the application was amended as follows: Monday to Friday 9.00 am to 2.45 pm and 3.15 pm to 8.00 pm (premises are not required to be closed between 2.45 pm and 3.15 pm when Russell School is closed), Saturday 9.00 am to 9.00 pm and Sunday 11.00 am to 6.00 pm.

[15] At the hearing Mrs Patel amended the hours sought by the applicant as follows:

When the Russell School is operating, Monday to Friday from 9.30 am to 2.45 pm and 3.15 pm to 8.00 pm.

When the Russell School is not operating, Monday to Friday 9.00 am to 8.00 pm.

Saturday 9.00 am to 9.00 pm.

Sunday 11.00 am to 6.00 pm

(apart from the usual sacrosanct days).

[16] The applicant's policy is not to use "loss leaders" or to undercut the price of a product sold by a competitor. It will meet a competitor's price but not sell below it. If the price of obtaining a product is greater than \$10 the applicant will sell it for no less than the purchase price plus 10-15 percent. (There was no mention of what would happen in respect of lower priced products (such as RTDs): this is material in respect of the location of the premises).

[17] It was proposed that the whole of the premises would be designated as a supervised area.

[18] It was intended that a duty manager (holding a General Manager's Certificate) would be on the premises at all times when they are open for the sale of alcohol.

[19] Staff would be obliged to check identification at the principal entrance of the store for any customer entering the store who looks "*as if he or she could be under 18*" Appropriate signage to this effect would be posted at the entrance to the premises.

[20] It was intended that any staff member who sold to minor or intoxicated person or outside the opening hours will be responsible to pay any fine imposed.

[21] The in-store point of sale scanning system would require a scan of any identification before selling alcohol.

[22] A host responsibility policy would be in place.

[23] To avoid unintentionally opening outside licensed hours, the duty manager would be instructed to start closing the premises 15 minutes before closing time.

[24] To ameliorate the concerns by the Russell School staff and board, the applicant Mrs Patel and her husband had met with them to explain the proposed operation.

The Inspector

[25] As the applicant had agreed to amend its proposed trading hours, the Inspector did not oppose the application. He submitted to the Authority an environmental scan which listed all the off-licences in Porirua, the sensitive users within approximately one kilometre radius of the premises, and two maps. In Porirua there are six full off-licensed premises and five grocery or supermarket businesses holding off-licences. In Porirua East there are three full off-licensed premises and three grocery stores/supermarkets holding off-licenses. Within approximately one kilometre radius of the premises there are eight schools including Russell Primary School which is directly opposite the premises. There are seven churches, two of which are less than 300 metres from the premises. The Calliope Crescent playground and the Cannons Creek Park are both under 500 metres from the premises.

The Police

[26] Senior Sergeant Sargent produced an intelligence report dated 2 August 2013 relating to the premises and its environs. This was intended to provide updated data since the last decision. Inter alia it states:

“The Fantame Street data shows a seasonal trend of elevated incident/offences from May to June each year. During the year when Fantame Liquor Store was operating under reduced hours there was a reduction from 1.03 incident/offences per day to 0.90 per day. When the shop closed in May 2013 the incident/offence per day fell even further to 0.71 incident/offences per day”

Although the per day reductions appear small when looked at in isolation, when they are totalled over a period of time, either by month or by year the reduction size has a proportional and more realistic reduction. For example the May three year average, per day reduction went from 1.03 to 0.71 in May 2013. In whole numbers it was a reduction from 32 incident/offences to 22 or a 31% reduction”

It is considered that one of the contributing factors to this reduction of incidents and offences within the Fantame Street environment is due to the reduced hours and then the closure of Fantame Liquor Store”.

[27] In his evidence, Senior Sergeant Sargent (who is a very experienced alcohol harm reduction officer and has operated in the Porirua area for many years) was not as coy as the author of the report. He stated that the reduced crime was, on the balance of probabilities, attributable to the reduced hours and then the closure of the premises. There were no other identifiable factors involved.

The Medical Officer of Health

[28] The Medical Officer of Health appeared pursuant to s.108 of the Act. Dr Palmer questioned the suitability of the applicant. Whilst the applicant might well meet the suitability criteria for an off-licence in another location such as a central business

district or industrial area, or possibly even another residential area, and although this applicant might well have met suitability criteria in the past, it was necessary for the applicant to demonstrate that it had engaged with the local people and listened to and heard their views. He considered that the applicant had failed to do this. He noted that the location of the premises is much closer to places of residence and a school than any other liquor store in Porirua City. He was cognisant of the feelings expressed by the local community at the 2012 hearing. He suggested that this was a good example of where a liquor store might be permitted under a district scheme; and yet the location was not suitable because of the premises' close proximity to residences and a school.

[29] Dr Palmer noted that the Wellington Hospital Emergency Department statistics showed that the suburb in which the premises are located had a very high rate of alcohol related emergency department attendances. However, recent data (covering the period when the hours were restricted and then when the business was closed) shows relatively little change from that which was presented to the Authority in 2012. One of the reasons for this was that the reduction in hours limited the attraction of customers from outside the suburb and this distorted the analysis. He did not have statistics for the period after the premises closed in May 2013. He doubted that the statistics would alter significantly as local residents might shift to purchasing liquor from other nearby liquor stores.

The Objectors

[30] A list of the objectors is contained in Appendix 1. It may be observed that they cover a wide spectrum of society. There is a significant diversity of ages, ethnicity, status in society, educational achievement, occupation, and other matters. Their common interest is that they do not want a bottle shop to be established at 21 Fantame Street and accordingly ask that the application be refused.

[31] Of the 48 objectors, 11 gave evidence. It is not intended to detail their evidence extensively in this decision. Nor is it intended to refer specifically to each witness: rather, where a witness strayed beyond the overall tenor of the objectors' common cause, this is detailed. Overall, their evidence showed that the various abuses referred to in the 2012 decision continued on a reduced basis after the operating hours had been curtailed. However, when the premises ceased operating as a bottle store, virtually all the abuses disappeared.

[32] Matthew Paul Crawshaw, who is not only a local resident but also the Chairman of the Russell School Board of Trustees, described the effect of the cessation of the business as follows:

"Then in late April 2013, Mr Patel surrendered his liquor licence and Thirsty Liquor has since been closed – the only reminder of the store being the bright orange paint on the closed garage door. The impact of there being no hours at which a bottle store has been operating has been beyond my expectation. My wife and I have no recollection of being woken once by drunken or disorderly behaviour in the three month period. Formerly this was unheard of. Neighbours who we used to frequently observe intoxicated have not once staggered drunkenly up our street like they used to. We are not aware of finding any cans, bottles or broken glass. The shopping centre has become so safe that we are now comfortable to send out children there without an adult. Every

neighbour we talk to confirms the same observations. The school's experience has also been transformed. In other words, effectively overnight once the bottle store closed there was a complete transformation. The only evidence we now have is the complete absence of all the negative effects of alcohol in our neighbourhood which were once common place ..."

[33] Mr Crawshaw referred to the meeting between himself, the principal of Russell School and the directors of the applicant. It seems, that the directors read a letter to those attending the meeting. (This was confirmed by Mrs Patel who produced the letter). The letter implied that Chiman D Patel was the reason for all the problems experienced at the school and it was for this reason that the lease was not renewed. The directors thought that it was unfair that they were being punished (by the opposition to the application) for what had occurred previously. Mr Crawshaw said that after listening to the directors read the letter, the school representatives said that they were welcome to run a business in the neighbourhood but the school did not want a bottle store immediately across the road. He noted that the directors had made no effort to inquire as to what measures could be implemented which might make a difference.

[34] Chris Wood is the Deputy Principal of Porirua College. Porirua College is a decile 1a co-educational state secondary school with a roll of 605 pupils. It is 750 metres from the proposed premises. He had been worried about the excessive liquor advertising at the premises during the Chiman D Patel regime. The advertising of RTDs was of concern. He said the advertising was contrary to what the school endeavoured to teach its pupils as to the responsible use of alcohol. He noted that the reduction of trading hours from mid 2012 until 1 May 2013 and then the subsequent closure of the store had led to a reduced number of recorded alcohol related incidents at the school. In this regard from 1 December 2011 to 31 July 2012 there were five incidents; from 1 August 2012 to 30 April 2013 there were three incidents; and from 1 May 2013 to 31 July 2013 there were no incidents.

[35] Sose Annandale is the principal of Russell School. It is a decile 1 a primary school in a low socio-economic area. With this comes the usual range of challenges including high unemployment, and parents on low fixed incomes.

[36] She objected to extravagant advertising of alcohol as the children are already *"on the back foot and don't need any more negative factors impeding on their development"*.

[37] She noted how in 2006 the school decided to erect three metre high steel gates at the top of its driveway and on the two alley-ways to prevent access into the school and its field outside school hours. The fortress appearance distresses the school community but it has been the only way to prevent the alcohol abuse problems which occurred there. Nevertheless, problems continued.

[38] Until the end of April 2013 people continued to carry their alcohol through the school grounds during the daytime from the premises to residences on the other side of the school. Those people were often affected by liquor, rude and abusive towards staff and this often occurred in the presence of the children.

[39] Ms Annandale stated that between May 2012 and the end of April 2013 there was a dramatic improvement as a result of the reduced hours of operation. The

trespassing continued. There was still some broken glass and empty or half empty liquor bottles found on the school's property. Graffiti still occurred. However, all of this was on a much reduced scale.

[40] Since the beginning of May 2013 all of this had stopped. Apparently there is no longer broken glass or empty containers or the usual general rubbish arising from alcohol impaired trespassers in the school grounds. There have been no intoxicated persons coming through the school grounds during school hours and the school is no longer used as a short cut for the carrying of alcohol.

[41] Ms Annandale's plea to the Authority was "*to protect the most vulnerable people in our society, our young children, from unhealthy exposure to alcohol messages and behaviours that used to result in the vandalism of Russell School.*" She asked that the children have the right factors to thrive in their learning environment; and that their families and communities need to be able to access the school without impediment. Staff, too, need to feel safe in their working environment. These rights were significantly impaired when the premises operated as a bottle store.

[42] Christopher Ross Collings is a Lieutenant in the Salvation Army based in Porirua. In Fantame Street the Salvation Army operates an emergency housing service for up to nine women and their children. The houses are within sight of the premises. In addition there is a Child, Youth and Family home caring for troubled people directly across the road from that emergency housing. He stated that since the bottle store closed he does not recall having to clean up dried up vomit and broken glass and empty liquor bottles from the Salvation Army's properties.

[43] Paula MacEwan, who lives next door to the Fantame Street shops, reiterated the various problems mentioned in the 2012 decision. She noted that since that decision the noise was considerably reduced and there was less loitering. There was less broken glass in the area. There was less traffic and generally less trouble from alcohol abuse in the neighbourhood. She then stated:

"I now want to tell you what it has been like since May this year when Mr Patel's store closed. It is almost, in comparison with before, like a ghost town. This is what I think suburbia should be like. It is extremely quiet. I haven't seen any fighting. I haven't seen any riff raff hanging around the shop. It is very rare now to see any broken glass at all. The road traffic is at a minimum. The noise has reduced further from the previous 12 months. Friday and Saturday, because of the lack of the bottle store, are the same in our neighbourhood as a Monday and a Tuesday. This is unbelievably good. There is zero loitering. I have not seen anyone go to the toilet in the street or in anyone's front yard or in front of the school at all since the store closed."

Authority's Decision and Reasons

[44] In *Otara, Papatoetoe Local Board v Joban Enterprises Ltd* (CIV 2011-404-007930; [2012] NZHC 1406) Heath J suggested an appropriate framework to assist the undertaking of the evaluative exercise required in the determination of applications for off-licences. First, the criteria set out in s.35(1) of the Act should be considered. Then the reports of the reporting agencies (in this case, including the evidence of Dr Palmer) requires consideration. In considering those reports the criteria mentioned in s.35(1) of the Act and the Act's object are relevant. The

objectors' evidence should then be considered. Objections are confined to the s.35(1) of the Act criteria. Having considered all of that information, the Authority needs to stand back and form a view as to whether there is any evidence that the grant of the application will be contrary to s.4(1) of the Act and increase the risk of alcohol abuse. A causal nexus is required between such evidence and the relevant risk.

[45] The format suggested in *Joban Enterprises Ltd* is useful. However, inevitably there is overlapping and intermingling of the various issues.

Section 35(1) of the Act Criteria

[46] Section 35(1) of the Act reads:

In considering any application for an off licence, the Licensing Authority or District Licensing Agency, or as the case may be, must have regard to the following matters:

- (a) the suitability of the applicant;**
- (b) the days on which and the hours during which the applicant proposes to sell liquor;**
- (c) the areas of the premises, if any, that the applicant proposes should be designated as restricted areas or supervised areas;**
- (d) the steps proposed to be taken by the applicant to ensure that the requirements of this Act in relation to the sale of liquor to prohibited persons are observed;**
- (e) whether the applicant is engaged, or proposes to engage, in –**
 - (i) the sale or supply of any other goods besides liquor; or**
 - (ii) the provision of any services other than those directly related to the sale or supply of liquor, - and, if so, the nature of those goods or services:**
- (f) any matters dealt with in any report made under section 33 of this Act.**

[47] Dealing with the criteria in the reverse order: the matters dealt with in the reporting agencies' reports, are essentially s.4 issues. They will be dealt with when the object of the Act is considered. Subsections (e) and (d) of s.35(1) pose no problems.

[48] Section 35(1)(c) is problematical. The applicant proposes that the premises should be designated as being a supervised area. Significantly, previously when the premises traded under the Chiman D Patel licence, they had been designated "restricted". Given the socio-economic area in which the premises are situated and the various problems generated by the premises as detailed in the 2012 decision, a restricted designation would have been more appropriate.

[49] The proposed hours of the business (as ultimately amended by Mrs Patel in her evidence) conformed generally to those imposed by the Authority in its 2012 decision. The evidence heard by the Authority indicates that those hours had the effect of reducing liquor abuse significantly. Nevertheless, the evidence also indicates that the hours were not sufficiently restrictive to limit liquor abuse to an acceptable level.

[50] In layman's terms, Dr Palmer summed up the suitability of the applicant well. In many respects the applicant is eminently suitable to operate licensed premises. It has a very good record. However, in a locality such as Fantame Street in Porirua East, he thought that the applicant needed to show greater sensitivity to the local community. He was plainly appalled at the way in which the applicant had sought to confront the Russell School authorities. The Authority agrees that the approach of the applicant to the school authorities shows that it was tactless and insensitive to the school's widely known concerns. There was no attempt to find out what the school thought about the proposal or what measures could be taken to ameliorate the school's concern.

[51] Dr Palmer's approach to the concept of suitability mirrors that of Pankhurst J in *Page v Police* (unreported HCV Christchurch AP84/98 24 July 1998) in which he said:

"Section 13(1)(a) [section 35(1) of the Act, in this case] provides that the applicant for an on licence must demonstrate his or her suitability. In other words what is required is a positive finding. That implies an onus on the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of the particular case: For example, the place, the intended business (here in a difficult central city location), the nature of the business itself, the hours of operation and the intended activities, provide the basis for the assessment of the individual."

[52] In this case, the suitability of the applicant needs to be determined in the context of the location of the proposed premises. The liquor abuse that has occurred as a result of the premises' operations is detailed in the 2012 decision. That abuse reduced when the trading hours were reduced. It virtually ceased, if the objectors are to be believed, when the premises closed for business. The effect of that evidence is that when attempting to demonstrate its suitability, the applicant has a very high threshold to meet. To put the concept in a reverse order, at the present time, without there being an off-licence at the premises, there is virtually no liquor abuse in the area. An off-licence with restricted hours has had the effect of creating liquor abuse issues. These were significantly amplified when the licence permitted trading until 12.00 midnight each day. In this context, any applicant would face real difficulties in establishing its suitability.

[53] The applicant sought to establish its suitability by adopting a narrow assessment of the meaning of that term. This approach was criticised in *New Zealand Police v Casino Bar No 3 Ltd* (CIV 2012-485-1491; [2013] NZHC 44). The High Court rejected the proposition that it was the manner in which the business would be operated as the determinate factor. Rather, suitability is a broad concept and the assessment of it includes the character and reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also includes matters raised in reports filed under s.33 of the Act and those reports may raise issues pertaining to the object of the Act as set out in s.4. Thus, whether or not the grant of the licence will result in the reduction or an increase in liquor abuse is a relevant issue.

[54] *Casino Bar No 3 Ltd* did not specifically refer to the test for suitability contained in *Sheard* [1996] 1 NZLR 751 where Holland J said at 758: *"The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence."* However, the judgement inferred that the test applied when the learned Judge referred with approval to Holland J's statement in *Sheard*: *"Suitability is a relatively broad concept and, in the context of an assessment of an application under s 13 of the Act, it relates to the suitability of the applicant to be granted the privilege of an on-licence to dispense liquor"*. Traditionally, that test has been interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus, it includes the object of the Act as set out in s.4. The *Sheard* test is not simply about how a business is likely to operate in the future. It is dependent on an assessment of the more generalised factors referred to in the previous paragraph. It includes how a

licensee will deal with liquor abuse issues that may arise from the establishment of the business. The usefulness of the *Sheard* test is that it gives a focus to the wider exercise contemplated in the *Casino Bar No 3 Ltd* decision by reminding one of the reason for the exercise.

[55] In this case, the applicant did not deal with potential liquor abuse issues at all. Indeed, it was obvious the applicant was unaware of many of the liquor abuse issues that occurred when the premises traded as a bottle store. Mrs Patel was unaware of the 2012 decision which detailed these abuses.

[56] How a licensee treats its neighbours is also an element of suitability. *Paihia Saltwater (2001) Ltd* NZLLA PH 391/2001 dealt with noise issues and a licensee's responsibilities in respect of them. Noise issues are only one of the matters that can adversely affect neighbours from the operation of licensed premises. Issues such as rubbish, graffiti, loitering, and the attraction of undesirables to premises in a residential area are all relevant factors. This concept is included in the legislation itself as, when imposing conditions, Section 37(5) of the Act entitles the Authority to have regard to the site of the premises "*in relation to neighbouring land use*".

[57] In attempting to establish its suitability, the failure of the directors of the applicant to have read the 2012 decision was unfortunate. That decision detailed the liquor abuse difficulties inherent in an off-licence in the premises. It was essential that the applicant knew of the difficulties with the premises; so it could explain how it would cope with them.

[58] The applicant's failure to engage with the objectors and other persons in the community before filing the application does not assist its case.

[59] Other issues detrimental to the applicant's suitability include the initial filing for longer trading hours than were permitted by the 2012 decision; whether or not there was to be a single sales policy; product advertising (including RTD's) and the proposed supervised designation. There was no suggestion that the applicant would adopt a no school uniform policy or employ only persons holding a General Manager's Certificate or having a Licence Controller Qualification. The proposal to seek identification from only those who appeared to be under 18 years of age is contrary to accepted industry practice which suggests that all those appearing to be under 25 should produce identification. The proposal that staff who breach the Act should pay any fine levied on the applicant means that the applicant would face no penalty in such circumstances: an instantaneous dismissal regime is frequently employed by other licensees.

[60] As Pankhurst J suggested in *Page* (supra), the locality of premises can have a bearing on the assessment of suitability. Many of the foregoing criticisms would be pedantic in most situations. However, the evidence establishes the Fantame Street locality as a particularly vulnerable and sensitive one. As previously mentioned, this has raised the threshold of suitability. Whilst the applicant, in most situations would have little difficulty in establishing its suitability, in this case its evidence, omissions and actions lead to a negative finding in respect of its suitability to operate an off-licence at the premises.

The Reporting Agencies

[61] Reference has already been made to Dr Palmer's contribution to the concept of the applicant's suitability. The Police evidence which showed a reduction of recorded incidents occurring as a result of the shortened hours and ultimate closure of the business was reinforced by the evidence of the objectors. It seemed to mirror the evidence of Mr Wood in respect of the incidents recorded in the Porirua College management system (see paragraph 15 of his evidence and paragraph [34] of this decision).

Objectors

[62] The evidence of the objectors has already been discussed under "Suitability". It is also relevant to the overall assessment of this application when the object of the Act is considered. The objectors are not entitled to object on s.4 grounds: see s.32(3) of the Act which states "*no objection may be made in relation to any matter other than one specified in s.35(1).*" While s.35(1)(f) refers to s.33 reports, these reports are not seen by objectors before they object. Thus, the objections cannot refer to them. However, as discussed under the heading of suitability, the object of the Act is relevant to that issue.

[63] The Authority appreciates that, in a case like this where the objectors take an adversarial role, some romancing is likely to occur. Nevertheless, the overall evidence is that liquor abuse decreased incrementally with the reduction of hours to the extent that it ceased almost completely when the business closed. This cannot be ignored as that evidence was corroborated to some extent by that of Mr Wood (when he detailed liquor fuelled incidents at Porirua College) and, more particularly, by the Police. On its own, the evidence of Mr Wood was insufficient from which any conclusion could be reached. The Police evidence was stronger; but, again as the author of the report stated, the improvements could be the result of other factors than what was happening at the premises. Senior Sergeant Sargent was unconvinced: his reputation and the fact he is a local police officer adds considerable weight to the Police case.

Object of the Act

[64] As was stated in *Joban* (supra), having considered the foregoing matters the Authority needs to stand back and consider whether or not the application should be granted, or granted with conditions. This requires a view to be formed on whether the grant of the application will increase the risk of alcohol abuse.

[65] In the Authority's experience, the issues raised in this application are unique. It is as if the Fantame Street premises had been the subject of an experiment. The Authority has evidence as to the liquor abuse issues that arose when the premises were open for the sale of liquor and closing at midnight. That evidence, which is detailed in the 2012 decision and which was repeated by many of the objectors in this case, indicates that serious liquor abuse problems arose during that time. Then there is the evidence as how those liquor abuse issues diminished significantly as a result of the reduced hours imposed as a result of the 2012 decision. Nevertheless, the evidence establishes that there remained unacceptable liquor abuses issues. This shows that the reduced hours imposed by the Authority were insufficient to

satisfactorily reduce liquor abuse occurring in respect of the premises. Finally, there is the evidence as to what occurred during the three months that the business was closed. The objectors would have the Authority believe that no liquor abuse issues arose then. This is unlikely to be the case because of the proximity of other bottle stores in the area. (The Authority noticed at least one discarded RTD bottle on one of the paths leading to the Russell School). It is unlikely that the cessation of business at 21 Fantame Street has resulted in no liquor abuse issues arising in the locality of the premises; but undoubtedly they have reduced.

[66] Nevertheless, the presence of a bottle store in this very vulnerable low socio-economic area containing a primary decile 1a school constitutes an unjustifiable hazard to the schools pupils and staff and to the school community. The existence of the nearby Salvation Army refuges and CYPs hostel add to the sensitive location; so does the residential nature of the locality. This environment will not be assisted by the granting of an off-licence within it: because of the proven liquor abuse issues that will arise.

Conclusion

[67] The liquor abuse issues that would arise if this application were granted are not figments of the imagination but supported by the facts established in these proceedings. To grant this application would be contrary to s.4 of the Act.

[68] The applicant has not established its suitability to the satisfaction of the Authority. The Authority acknowledges that the threshold is very high; indeed, it might be impossible for any applicant to establish it's suitability given the vulnerable location of the premises.

[69] The Authority has considered whether it would be possible to impose conditions which might satisfy the concerns raised in this decision. Obviously, those conditions would relate to trading hours and would have to take into account s.37(5) of the Act and its s.4 object. However, given the evidence that the Authority has heard in this case:

- even very restricted hours are unlikely to reduce liquor abuse to an acceptable level;
- further, the applicant has not established its suitability for even very restricted hours.

Accordingly, the Authority concludes that it is not possible to impose conditions which would enable it to grant this application.

[70] The application is refused.

DATED at WELLINGTON this 29th day of August 2013

B M Holmes
Deputy Secretary

APPENDIX 1 TO [2013] NZARLA PH

Objector	Position	Organisation
1. Sose Annandale	Principal	Russell School
2. Lynda Broadbent	Teacher	Russell School
3. Tania Forster	Teacher	Russell School
4. Matt Crawshaw	Chair of Board of Trustees	Russell School
5. Christine Crawshaw	Parent/ Caregiver	Russell School
6. Juliet Bellingham	Local Resident	
7. Pamela Coleman	Teacher	Russell School
8. Susan Connolly	Relief Teacher	Russell School
9. Jenny Cooze	Teacher	Russell School
10. Haider Hussain	Parent/ Caregiver	Russell School
11. Hali Mohamed	Parent/ Caregiver	Russell School
12. Kerry O'Leary	Parent/ Caregiver	Russell School
13. Kathleen Price	Teacher	Russell School
14. Ada Te Hauora	Parent/ Caregiver	Russell School
15. Rod Tennant	Librarian	Russell School
16. Deborah Wallace	School Secretary	Russell School
17. Helaina Walters	Teacher Aide	Russell School
18. Wendy Hing-Mather	Parent/ Caregiver	Russell School
19. Susan Hutchinson-Daniel	Volunteer	Russell School
20. Paul Mather	Parent/ Caregiver	Russell School
21. Andrew Peita	Teacher Aide	Russell School
22. Catriona Powell	Teacher	Russell School
23. Laura Roberts	Teacher	Russell School
24. Veronica Vaovasa	Parent/ Caregiver	Russell School

Objector	Position	Organisation
25. Jean Creelman	Local Resident	
26. Alexander Hohepa	Local Resident	
27. Sala Nimarota	Local Resident	
28. Jonathan Blackshaw	Local Resident	
29. Paula MacEwan	Local Resident	
30. Elizabeth Iona (BSW)	Social Worker	Salvation Army Porirua
31. Helen Janes (BSW)	Social Worker	Salvation Army Porirua Community Ministries Centre
32. Chris Collings	Lieutenant, Corps Officer and Director	Salvation Army Porirua Community Ministries Centre
33. Ebony Ngatoko	Social Worker	Salvation Army Porirua Community Ministries Centre
34. Damien Hazlewood	Senior Budget Advisor	Salvation Army Porirua Community Ministries Centre
35. Mirimam Simanu	Manager	Salvation Army Porirua Community Ministries Centre
36. Jade Karati	Administrator (Receptionist)	Salvation Army Porirua Community Ministries Centre
37. Doreen Cox	Member	The Salvation Army
38. Norman Millar	Member	The Salvation Army
39. Mavis Millar	Member	The Salvation Army
40. Douglas Rattray	Member	The Salvation Army
41. Chris Wood	Deputy Principal	Porirua College
42. Porirua Healthy Safer Trust (registered charitable trust)	C/- Jenny Lester Manager	Umbrella organisation known as Porirua Alcohol and Drug Cluster members include: <ul style="list-style-type: none"> • HVDHB • Police • Health Promotion Agency • CCDHB

Objector	Position	Organisation
		<ul style="list-style-type: none"> • Pacific Health Service • Maori Health Service • Wesley Community Action • Porirua CC • Ngatitoa Iwi • Compass Health • Well Trust • ACC • Youth Service • Porirua DC • Alcohol and Drug Co-Coordinator
43. Margaret Clark	Resident	
44. Timothy and Hannah Borrer	Resident	
45. Apolonia Muldrock	Resident	
46. Richard Davies	Caregiver of student	Russell School
47. Laura Buist	Caregiver of two students	Russell School
48. Rangi Mason	Parent of student; BOT member	Russell School