

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by **THE
GLENORCHY MARKET PLACE**
pursuant to ss. 34 and 99 of the
Act for an off-licence in respect of
premises situated at 62-64 Oban
Street, Glenorchy, known as “Mrs
Woolly’s General Store”

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin
Members: Mr J M Mann
Mr L A Cocks

HEARING at QUEENSTOWN on 31 October 2017

APPEARANCES

Mr R S Cunliffe – for the applicant
Ms C J Steele – Queenstown Lakes Licensing Inspector – to assist
Sergeant T Haggart – N Z Police – to assist
Mr P J Egden – for objectors A Angus, C T N Brownie, D Kirkwood
Mrs P A and Mr P Fraser – objectors – in person
Ms N Gladding – objector – in person

RESERVED DECISION OF THE COMMITTEE

Introduction.

- [1] Before the Committee is an opposed application by The Glenorchy Market Place (hereafter called ‘the company’), for an off-licence. The application is to be determined under s. 34(1) and (2) of the Act. Pursuant to that section, an off-licence may be granted for premises not of a kind described in s.32(1) of the Act, if the Committee is satisfied that in Glenorchy, the sale of alcohol in a bottle store, or a supermarket, or a grocery or premises where the principal business is the manufacture of alcohol, would not be economic. In addition the Committee must be satisfied that the grant of such a licence will not cause any significant increase in alcohol related harm.
- [2] The premises are located at 62-64 Oban Street in Glenorchy and the existing business is known as “Mrs Woolly’s General Store”. Glenorchy is a small town located 45 kilometres to the west of Queenstown at the head of Lake Wakatipu. Its main industries are farming and tourism. It is the starting point

for several popular tramps including “The Routeburn Track”. It has been showcased to the world as the setting in such films as “Lord of the Rings”, “The Chronicles of Narnia” and the “Top of the Lake”.

- [3] According to the last census in 2013, the population was 363. “Mrs Woolly’s General Store” operates as a general store and tourist centre. The goods available for purchase range from gift items and clothing, to organic grocery produce, household cleaning products and ready to eat meals and snack food. The application is limited to local wines and craft beers which the applicant wishes to showcase as part of its current business.
- [4] The Glenorchy Market Place is a New Zealand unlimited company. It is governed by a constitution. There are three directors. Mr P S and Mrs D R Brainerd are both directors. They reside in America but spend part of the year in New Zealand. The third director is Stephen Morgan Hewland who is based in Glenorchy and is the General Manager of the Glenorchy Marketplace Project.
- [5] The shareholding is held by the Glenorchy Marketplace Foundation and the constitution provides for the profits to be used for the benefit of the Glenorchy Community Trust. The purpose of this Trust is to support environmental, educational, public health and cultural projects in the district. The company purchased the store in 2014. It appears that Mr and Mrs Brainerd have a long term vision to establish an array of environmentally sustainable accommodation and retail services in Glenorchy, with the profits being gifted back into the community. The business employs between 15 and 20 staff. If the licence is granted it is expected that four members of staff will hold a Manager’s Certificate.
- [6] In her report, the Inspector stated that she was satisfied that the company is a suitable entity to be involved in the ownership and management of licensed premises. Seven on-site special licences have previously been issued to the company covering multiple events, primarily, community market style gatherings with live music and workshops. There have been no issues from a licensing perspective in the way that the events have been run.
- [7] The company sought trading hours from 10.00am to 6.00pm Monday to Sunday. Such hours would be among the most conservative ever to have been sought from us. The company’s intention is that a range of six to eight Otago wines priced between \$24.00 and \$45.00 a bottle and around six varieties of craft beers priced between \$8.00 and \$12.00 each, will be available to supplement the organic and higher end top quality produce on offer.
- [8] There will be no signage outside or indeed inside the premises save for a label naming the product and its price. Furthermore the areas which will be used for the display of wine and craft beers are very small. The manager calculated the area as less than 1% of the total floor space. The target market is expected to be those visiting the area rather than locals. There are three other licensed premises within 500 metres of the premises. Two of the premises (Glenorchy Hotel and Bold Peak Lodge) have hotel style licences, and each of these hold an associated off-licence as well. There is also a cafe which has an on-licence.

- [9] No designation is sought. The Glenorchy Primary School is located on the other side of the road from the store. The children who attend the school are known to call in to the store to purchase sweets and ice creams. The business previously operated an off-licence (grocery style) for about 18 months in 2008/2009, and there was no indication of any effect or impact on the amenity and good order of the locality. The Inspector stated in her report that in her opinion the issuing of an off-licence would have less than a minor effect on the amenity and good order of the locality.
- [10] There were no reports with matters in opposition from the Police, Medical Officer of Health or the Inspector. The Fire Service stated that they were in touch with the owners about compliance matters and no licence can issue until a certificate of fire compliance has been received. In the same vein a building compliance certificate covering alterations will also be required before a licence can issue.
- [11] Public notification attracted seven objections from residents and others. The objections covered a range of issues ranging from the close proximity of the local Primary School, to the issue of whether the business was a convenience store, as well as density of licences. One of the objectors did not appear. The Glenorchy Primary School took the trouble to forward a submission which will be discussed later in this decision.

The Application.

- [12] Ms Debbie Marie Crompton is the manager of “Mrs Woolly’s” and has been working there for four years. She clearly takes great pride in the business which she described as a unique offering in both Glenorchy and the wider Queenstown area. She is responsible for managing the retail operation, ordering stock, arranging staff rosters, staffing, accounts and administration. She has had 25 years experience in the food and wine service and tourism industry and is the holder of the Licence Controller Qualification. She reports to Mrs Brainerd on a day to day basis.
- [13] Ms Crompton advised that the store is open every day from 10.00am to 5.30pm extending to 9.00am to 6.00pm in the summer months. She explained about the extensive list of food and gift items on sale. Among the grocery items there are a large range of gourmet delicatessen products. With regard to the takeaway foods, the focus is on healthy products, as all such food is made on the day of sale. The store provides freshly prepared ready meals, as well as lunch and dinner packs for horse trekkers and helicopter tourists. “Mrs Woolly’s” prides itself on using fresh ingredients and local produce.
- [14] There is an extensive selection of gifts including art, jewellery, souvenirs and New Zealand products such as luxury possum merino clothing and Manuka honeys. The business offers a variety of tourist bookings and is a natural stopping point for visitors arriving from Queenstown by road. The company takes bookings for jet boat rides, horse riding and ‘Lord of the Rings’ tours. The Trip Advisor reviews make fascinating reading. Some of the reviews included:

“One of the best gift shops we have ever been to”
 “Super store of the kind they don’t make any more”
 “Yummy food and cute shop”
 “This shop has got stuff that is unique to this place”
 “It was lovely to stop off & stroll inside the very interesting Mrs Woolly’s
 General Store”

- [15] Ms Crompton provided us with sales figures for the period 1 April 2016 to 31 March 2017 showing that giftware accounted for 52% of turnover, grocery 25%, pantry 20%, and tourism activities 3%. In other words giftware and the tourism activities accounted for 55% of total turnover. In addition there were figures for the period 1 April 2017 to 24 October 2017 confirming that giftware and tourism activities were steady at 55%
- [16] Ms Compton did not believe that the store could be classified as either a dairy or a convenience store. She argued that many of the food items would never be found in a convenience store. She stated that they expected that alcohol sales would be a small percentage of overall sales. She confirmed that the sale of alcohol in a grocery or supermarket or bottle store in Glenorchy, would struggle to be viable. She considered that a limited range of local wines and craft beers will provide an additional retail opportunity for the company and its customers.
- [17] As stated above, Mr S M Hewland is a director of the company. He has been the Project General Manager since 2015. His qualifications for the role are more than adequate. He produced copies of the company’s constitution as well as the Charitable Trust Deed. He also gave his opinion that the sale of alcohol in a business such as a bottle store or a grocery store would not be economically viable in Glenorchy given the number of permanent residents and the seasonal nature of tourist visitors. He advised that although the summer brought many visitors to the area, it was much quieter in the winter.
- [18] Mr Hewland confirmed that a retail operation akin to a general store has been on the site for many years. He described Mrs Woolly’s as a quintessential general store. He also confirmed that the company had no intention of promoting the sale of alcohol either in its street signage or with sandwich boards. In respect of concerns about outside consumption of alcohol, Mr Hewland advised that there was no intention to promote or encourage this practice.

The District Licensing Agency Inspector.

- [19] In her final submissions, Ms Steele raised some interesting issues. She submitted that the general store was a unique operation having the characteristics of a range of different business types and it would be difficult to class the premises as a convenience store or a dairy given the make-up of sales. She noted that the seven objections that had been received represented less than 2% of the permanent population of Glenorchy. She questioned whether there was any evidence that the proposal would result in alcohol related harm in the community.

The Objections.

- [20] Mr C T N Brownie gave evidence. He works for the Glenorchy Hotel & Backpackers Limited which is owned by his partner. The hotel has an on and off-licence. Mr Brownie stated that he was objecting as a concerned citizen. His main concern was the proximity of the premises to the Glenorchy Primary School as the children have access to the camping ground next door to the store. Furthermore the children go to the store to purchase sweets and ice creams. He argued that the business was a convenience store. He had other concerns such as the Wakatipu High School children being collected and dropped off on the road close by “Mrs Woolly’s”.
- [21] Mr A G Angus lives 26 kilometres away from Glenorchy. He resides 20 minutes away by car and 10 minutes by boat. He considered that the proposed liquor outlet was too close to the school. He stated that he spends many hours each week helping to minimise alcohol damage in Glenorchy and Queenstown, and that he regularly sees the brutal effects that alcohol has on society. He considered that there were already sufficient alcohol outlets in Glenorchy.
- [22] Mr D Kirkwood was not present but was represented by Mr Egden. His concern was the closeness of the premises to the Glenorchy Primary School and the fact that the children visited the store to purchase sweets and confectionary. He was concerned that people might drink a bottle of wine or beer in the outside shop area. He thought that Glenorchy did not need any more licences.
- [23] Ms N Gladding has lived in Glenorchy for 17 years and has two children who attend the Primary School. She has previously held a Manager’s Certificate for a year. She argued that the General Store was a convenience store and that the current density of licences precluded a third off-licence being granted. She also contended that the grant of the licence would cause significant harm and that the good order and amenity of the locality would be reduced because of the proximity of the proposed licence to houses, the school and residences. She submitted that the applicant was unsuitable and that the object of the Act would not be met by the granting of the licence.
- [23] In support of her objection, Ms Gladding argued that both visitor and permanent populations were growing rapidly. She submitted that the licence would cause increased alcohol related harm particularly for self-drive tourists. Her arguments on whether the store was a ‘high-end’ convenience store, included the proximity of the camping ground; the location of the store in the centre of the township, the lack of any supermarket, and the sales of hats, socks, stationery as well as pies, snacks, juices etc.,
- [24] Ms Gladding also contended that increased access to alcohol will increase alcohol related harm. On the issue of density she quoted from the decision in *Medical Officer of Health v Nexon Holdings Limited [2016] NZARLA PH 492* as follows:

“[39] The inclusion of s 34 (1)(b) means that s 34 licences should only be available where the grant is such as not to cause any significant increase in alcohol-related harm. These premises are ones where due to their remoteness

no other off-licensed premises are operating in the area. As the purpose of the Act is, inter alia, to put in place a reasonable system over the sale and supply of alcohol, s 34 provides a balance between harm minimisation objectives and the public having a reasonable access to off-licensed alcohol.”

- [25] Ms Gladding submitted that the amenity of the locality would be adversely affected by people drinking in the next door camping ground. On the issue of suitability, she contended that none of the directors had ever held a manager's certificate and that two of the Directors lived overseas. And finally, that she had once worked for Mr Graham Dunstan (one of the employees nominated as applying for a manager's certificate) at another licensed premises in 2013, and had been unjustifiably dismissed.
- [26] Ms P A Fraser spoke on behalf of herself and her husband. She stated that there was no need for another licence in Glenorchy. She considered that most of the local people she knew, bought food products from Mrs Woolly's that they needed in a hurry, which supported her claim that the business was a convenience store. She argued that young people would attempt to purchase single bottles of alcohol if the licence was granted. As with the other objectors, Ms Fraser considered that the proximity to the camping ground and the primary school, would reduce the amenity and good order of the locality.

The Glenorchy Primary School.

- [27] The Committee received a letter from the Glenorchy School Board Chairperson and the School Principal. This followed a survey seeking feedback about the proposal for an off-licence from parents. 48 forms had been distributed by the school to the parents and 19 (39%) had been returned. Given the fact that the objectors all referred to the issue of proximity to the school, the outcome of the survey seemed to us to be important.
- [28] The vast majority of parents who returned the forms either had no objection or were neutral or were ambiguous. On that basis, the school decided not to object but to write a letter instead. The letter referred to three matters: (a) Potential traffic concerns as a result of an increased reason to visit the store; (b) Possible roadside advertising; and (c) Possible consumption of alcohol on school grounds. All these issues were adequately addressed by Mr Hewland.

Submissions of counsel for three objectors.

- [29] Mr Egden covered the four principal grounds of objection by his clients. These were density (s.34), proximity to primary school (s.106), a convenience store (s.36), and unsuitability (s.105). In addition he argued that the purpose of s. 34 was to enable premises in remote areas to sell alcohol so as to provide a service in those localities without which residents would have to travel some distance to purchase alcohol. He submitted that there was no evidence that a small grocery store would not be economic.
- [30] Mr Egden argued that the range of products for sale 'suggested' that the store came within the definition of a convenience store and was thus prohibited from being granted a licence. He further contended that the locality of the store was an important factor. In particular, he submitted that if the gift section was

redefined as items for personal use and convenience, then the turnover figures would no longer have probative effect.

- [31] In terms of amenity and good order, he pointed out that under s.106 of the Act, one of the factors to be taken into account when we form an opinion about possible deterioration of the pleasant and agreeable neighbourhood was the number of off-licences already existing. Also we must have regard to the purpose for which land nearby is used (the school), and whether such use is compatible with a licence.
- [32] As to unsuitability Mr Egden noted that the company has no previous experience with the operation or management of licensed premises and there was a question mark about one of the proposed managers.

Submissions of counsel for the applicant.

- [33] Mr R S Cunliffe suggested that Mr Egden had added a gloss to the wording of the relevant sections in the Act and that we should be careful to apply the standards and principles as required by the Act and not what may or may not have been intended. He was able to provide an interesting summary of the applications for an off-licence that have been filed over the past ten years. In addition he helpfully supplied a number of decisions made by the Alcohol Regulatory and Licensing Authority since the new Act has come into force. These are discussed below.

The Committee's Decision and Reasons.

- [34] In this case, the Committee is governed by ss. 32, 34, 36, 105 and 106 of the Act. The significant section is 34 which is set out as follows:

- (1) **The licensing authority or licensing committee concerned may direct that an off-licence should be issued for premises not of a kind described in section 32(1) if satisfied –**
- (a) **that, in the area where they are situated, the sale of alcohol in premises of a kind described in section 32(1)(b),(d),(e) or (f) would not be economic; and**
- (b) **that the granting of the licence would not cause any significant increase in alcohol-related harm.**
- (2) **Subsection (1) overrides section 32(1) but is overridden by section 36**

- [35] We may issue an off-licence for premises such as a general store or a retail shop provided the store or the shop is situated in an area where the sale of alcohol in a bottle store, or premises where the principal business is the manufacture of alcohol (such as a craft brewery), or a supermarket, or a grocery, would not be economic. Such licences are sometimes called 'remote location' licences.
- [36] In the context of this case we may only grant such a licence if we are satisfied that the issue of the licence would not cause any significant increase in alcohol-related harm, and only if the premises is not a dairy or a convenience store, and we are satisfied that the applicant is suitable. Finally, we must have regard to whether, in our 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.

- [37] Having heard all the evidence and listened to the submissions, we need to say at the outset that we are unaware of a more restrained and conservative licence application that has come before us since the Act came into force nearly five years ago. The company only wishes to sell a high end range of six to eight local Otago wines and around six varieties of high end craft beers. There will be no advertising or promotion outside the premises. The areas which will be used for the display of wine and craft beers are very small, and represent about 1% of total floor space, and the proposed trading hours are between 10.00am and 6.00pm.
- [38] The history of licence applications provided by Mr Cunliffe is relevant. Well before the company became involved, the Glenorchy General Store was granted a 'remote location' style off-licence. (See *Supremebrands Limited [2008] NZLLA 637*). The application had attracted an objection from a Queenstown resident who objected on the grounds of suitability. The Authority stated that given the lack of opposition from the Police, the objector would have great difficulty in persuading it that the applicant was unsuitable. It granted the application 'on the papers' on the basis that in Glenorchy, the sale of liquor in premises such as a bottle store would be uneconomic.
- [39] In 2010 there was a further application (see *Glenorchy General Store [2010] NZLLA 1349*). A different company sought the same style of off-licence. There were two objectors – a Ms C M Robinson who was a shareholder and director of the Glenorchy Hotel. The second objector who did not give evidence was Mr C T N Brownie. There was a public hearing in Queenstown in October 2010. The authority referred to an ongoing civil dispute between the objector's company and the applicant. The Authority declined the application. It had reservations about the applicant's suitability, and reservations about whether or not a stand-alone bottle store would be economic in Glenorchy, and whether the store at that time may have been a dairy.
- [40] In 2014, Pounamu Holdings 2014 Limited, a company linked to Glenorchy Marketplace applied for a grocery style off-licence. The forecasted sales showed groceries at 45% of total sales. There were objections and the application was set down for a public hearing. The application was withdrawn prior to the hearing.
- [41] Before dealing with the specific issues to be determined we comment on the status of two of the objectors. The objection from Ms Louise Newman starts with the words "As a regular visitor to Glenorchy". Her status is therefore unclear but at any event she did not appear.
- [42] It was difficult to establish Mr Angus' precise links with Glenorchy because there were some questions he declined to answer. Pursuant to s.106(1) of the Act, a person may object to the grant of a licence only if he or she has a greater interest in the application for it, than the public generally. This means that an objector must live or work or have a clear link or connection, sufficiently close to the proposed business, to be personally affected by the potential consequences of a licence being granted. Mr Angus has very firm

views about the harm that can be caused by the inappropriate or excessive use of alcohol, but in our opinion he failed to establish that he had a greater interest in the application than the public generally.

Suitability.

- [43] We deal first with the issue of suitability raised by Mr Egden and Ms Gladding. Given the lack of Police opposition we are satisfied that none of the Directors or shareholders has any relevant convictions. Prima facie they are suitable. The fact that the company may not have held a licence before is hardly relevant. Many applicants for a licence have no previous experience. As the licence states, the authority conferred by the licence, must be exercised through a manager or managers, appointed by the licensee under Subpart 7 of Part 2 of the Act.
- [44] The appointment of managers, the issues of staff training, and having appropriate systems in place are equally important issues. It is unlikely that an involvement in an employment dispute will impact on an application for a manager's certificate, but that is not a matter for us in this decision. There are sufficient managers to be appointed to ensure the licence is operated in accordance with the Act. If a person holds a certificate then prima facie he or she is suitable to manage licensed premises. We repeat that this proposal is a far cry from the operation of a street corner bottle store selling and advertising discounted alcohol products. In our view the applicant company is more than suitable.

In Glenorchy, would the sale of alcohol in bottle stores, wineries, groceries, craft breweries, wineries, or supermarkets be uneconomic?

- [45] With a permanent population of approximately 360 people with tourists in the summer but not in the winter, located 45 kilometres from Queenstown, we are again more than satisfied that the sale of alcohol in a bottle store or a grocery or supermarket or an alcohol manufacturer would not be economic. A licence is no longer cheap to maintain. There is now a yearly fee. There are costs associated with having a duty manager present at all times that alcohol is being sold. Taking on an alcohol licence is now a serious commercial proposition. To suggest that a bottle store (even a small one as proposed by Mr Egden) could survive financially with a population of +360 people defies reason in our opinion.
- [46] We are grateful to Mr Cunliffe for providing us with recent decisions from the Authority on this issue. In the *The Medical Officer of Health v Nexon Holdings Limited [2016] NZARLA PH 492*, the Authority was hearing an appeal against a local committee decision to renew a 'remote locality' off-licence in Ngunguru 20 kilometres east of Whangarei. The population there was 1500 people and the closest neighbouring communities are Tutukaka four kilometres away and Matapouri ten kilometres away. The appeal was dismissed.
- [47] In *Medical Officer of Health v Le Radiance [2015] NZARLA PH 283* the Authority heard an appeal against a Whangarei Licensing Committee decision granting a s.34(1)(a) licence to a general store. The area was Waipu Cove some ten kilometres from Waipu. The permanent population was 534. The appeal was dismissed. The Authority stated:

“In our view it was equally open to the District Licensing Committee to find that the discrete location of Waipu Cove as a coastal village sufficiently distanced it from Waipu Township such that bottle stores, supermarkets, grocery stores and alcohol manufacturers would be uneconomic in the area.”

- [48] In the decision of *Pauatahanui G S Limited [2017] NZARLA 256* the Licensing Committee had refused an application for a renewal of an off-licence for a general store on the basis that there was not sufficient evidence that it would be uneconomic to sell alcohol from a grocery store in that location. The applicant appealed and the Authority allowed the appeal. The case involved an isolated coastal town of 1000 people, 4 kilometres from Whitby, 7 kilometres from Mana and 10 kilometres from Porirua. The Committee had decided that there was insufficient evidence that the sale of alcohol from a bottle store or grocery would be uneconomic and that the business was a convenience store. The Authority reversed both findings and in particular stated:

“The Authority agrees with the Applicant that there is no onus on the applicant to establish on the balance of probabilities that the sale of alcohol in a grocery shop located in Pauatahanui would not be economic. Amongst other things this would be requiring the application to prove a negative which puts too great an onus on the applicant.”

- [49] The second leg to s.34 is that we must also be satisfied that the granting of the licence would not cause any significant increase in alcohol-related harm. There were concerns about the potential for minors to attempt to buy alcohol at the store and campers drinking in the camping ground. At any event the types of alcohol being sold and the price are not likely to attract younger drinkers. There was no probative evidence of any issues of vandalism, disorderly behaviour or alcohol related harm.
- [50] We can only repeat the evidence from the company. This new proposed business is not aimed at the local population. The target market is expected to be those visiting the area. We are talking about a limited range of expensive wines and craft beers which are not being promoted and are on limited display to provide an additional retail opportunity for the company and its customers. To suggest that there is likely to be a ‘significant’ increase in alcohol related harm from this new business is unreasonable in our view.
- [51] Ms Gladding referred us to the above decision and a quotation from the Authority set out in para [24] above. She argued that this effectively prevented us from granting the licence. It seems to us that the statement was made to support the contention that the public is entitled to reasonable access to off-licence alcohol. The Act does not say that a ‘remote location’ off-licence cannot be granted in an area where there are already off-licences associated with a hotel licence. Nor does it say that there cannot be more than one ‘remote location’ off-licence. We agree that if there was a bottle store or grocery store where alcohol was apparently being sold economically then the grant of a ‘remote location’ off-licence would be unlikely.

Is this store a shop of the kind commonly thought of as a convenience store or a dairy?

- [52] In forming an opinion about whether a store is a convenience shop, we have had regard to certain matters such as the size of the store, the layout and of course the contents. The building is two storied and the store occupies the ground floor. It has its own kitchen. Two thirds of the floor space available for retail is used for gifts and souvenir items, with the remainder being used to display the food and household items. The contrast between this store and what we understand to be a convenience store is marked. The gift style goods include clothing beauty products, jewellery, stationery, honey products, and souvenirs.
- [53] We agree with Ms Crompton that many of the food items for sale would not be found in either a typical dairy or a convenience store. No convenience store would host cooking classes as Mrs Woolly's does. No convenience store or dairy would have collectibles for sale worth between \$700.00 and \$5,000.00. Nor would such shops have metal sculptures. Few convenience stores have such limited trading hours. The prospect of a customer who visits a convenience store writing complementary remarks to Trip Advisor is highly unlikely. Under the Act the test is not whether a business is a 'high-end' convenience store as submitted by Ms Gladding.
- [54] And there are the figures. Mr Egden submitted that some of the gift items could be reclassified as convenience goods for example a comb or a pair of tramping socks purchased by a tourist who forgot to bring them. The fact remains that the majority of items that are sold by value have nothing to do with food or drink. And in our view, a convenience store exists for the convenience of people who are in need of an immediate food or drink or cigarette fix. We believe that people go to a convenience store to have a quick snack to satisfy their needs at the time, or to have a coffee to go, or to take advantage of the range of convenience items.
- [55] Finally there is the view of the premises. We were assisted by the photographs produced by the Inspector. In addition, one of the members of the Committee took a considered view of the premise, and the other two have visited the store in the past. We are unanimously of the opinion that these premises are neither a shop commonly thought of as a convenience store nor a shop commonly thought of as a dairy.

Would the amenity and good order of the locality be likely to be reduced to more than a minor extent, by the effects of the issue of the licence?

- [56] Section 106 reads:

In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to –

- (a) the following matters (as they relate to the locality):
- (i) current, and possible future noise levels:
 - (ii) current and possible future, levels of nuisance and vandalism:
 - (iii) the number of premises for which licences of the kind concerned are already held; and

- (b) **the extent to which the following purposes are compatible:**
- (i) **the purposes for which land near the premises concerned is used:**
 - (ii) **the purposes for which those premises will be used if the licence is issued.**

- [57] The amenity and good order of an area is defined as the extent to which, and ways in which, the locality is pleasant and agreeable. There is no doubt that Glenorchy is a pleasant and agreeable country town. There may well be isolated alcohol fuelled incidents from time to time, but if there were unusual or significant issues of noise or nuisance or vandalism we would have heard from the Police. This is despite there being three licensed premises already based in the town (two with associated off-licences). A hotel, a lodge and a cafe.
- [58] Mr Cunliffe has helpfully referred us to the Court of Appeal's decision in *Port Nelson Limited v Commerce Commission* [1996] 3 ZLR 554 in which the Court stated when discussing the meaning of 'likely' that "bearing in mind the purpose of the provision, the appropriate level is that above mere possibility, but not so high as more likely than not, and is best expressed as a real and substantial risk that the stated consequences will happen."
- [59] The question is whether there is a real and substantial risk that the granting of an off-licence selling a small selection of local wines and boutique beers in a general store between 10.00am and 6.00pm essentially targeting the tourist market, would impact in a more than minor way on the current noise or vandalism levels? Is there a real and substantial risk that there will be a more than minor impact on the alcohol related health of the Glenorchy community? To what extent will the normal running of the Glenorchy Primary School be compatible with the operation of a limited off-licence situated over the road?
- [60] The answer to all questions is that there are unlikely to be any adverse effects from the issue of an off-licence in the form in which it has been requested. We have had regard to the question whether 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. In our opinion the answer is no. We agree with the Inspector.
- [61] It should be clear by now that we intend to grant the application in the terms requested. In our view the company meets all the relevant requirements for the issue of an off-licence under s.34 of the Act and in particular, that the grant of the licence will not undermine in any way the objects of the Act. There will be a condition that the only alcohol that may be sold pursuant to the licence will be wine made in Otago and craft beer. The licence cannot be issued until the compliance certificates referred to in Para [10] above have been received.
- [62] We have considered whether to add further conditions about advertising, pricing and promotion, but having set out its intentions as recorded in this decision, we are confident that the company will operate the licence in accordance with the evidence. We draw to the applicant's attention the concerns expressed by the objectors that the display of alcohol was too close to the confectionery. That will be a matter for the company and the positioning of the display can be reviewed in twelve months.

[63] Any new licence is issued for a period of one year. This gives the residents of Glenorchy and the reporting agencies the opportunity to monitor the business. If the company shows a lack of commitment to the conditions of the licence, or the limited way it has decided to display and sell alcohol, then the Authority has the power to refuse to renew the licence, or impose conditions. In this way the company has a clear incentive to ensure that the concerns expressed by the objectors do not become reality.

DATED at QUEENSTOWN this 27th day of November 2017



Mr E W. Unwin
Chairman

