

Alcohol licensing infosheet

Amenity and good order

What is amenity and good order?

Amenity and good order is defined in the Sale and Supply of Alcohol Act 2012 (SSAA) as “... the extent to which, and ways in which, the locality in which the premises concerned are situated is...pleasant and agreeable” (s5).

Amenity and good order can have a physical, or intangible component, which may include the character and appearance of a building; proximity to shopping facilities; provision of parking facilities, traffic density and movements; quality of infrastructure; absence of noise and disorder; and unsightliness or offensive odours.

Amenity and good order is more specifically addressed in s105(1)(h) and (i). The High Court in *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 characterised the amenity and good order of the locality as an “integral part” of the mandatory criteria in s105(1)(h) and (i) of SSAA. Section 105 relevantly outlines criteria for the issue of licences as follows:

105 Criteria for issue of licences

(i) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*

....

- (h) *whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
- (i) *whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*

- (i) *they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
- (ii) *it is nevertheless desirable not to issue any further licences:*

....

When considering the effects of issue or renewal of a licence on the amenity and good order of a locality (s106), ARLA or the DLC must have regard to the matters set out in s106:

106 Considering effects of issue or renewal of licence on amenity and good order of locality

- (1) *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.
- (2) In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):
- (a) current, and possible future, noise levels:
 - (b) current, and possible future, levels of nuisance and vandalism.

Evidence of amenity and good order

The High Court made several observations regarding amenity and good order in *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315. It observed that the decision maker is required to form a judgment on the facts of the specific case rather than it being something that an applicant is required to prove:

It seems to me that question whether amenity and good order will not be materially reduced is one on which a judgment must be formed by the Authority, on the facts of a specific case, as opposed to something that an applicant is required to prove on a balance of probabilities. The difficulties inherent in proving a negative support that view (at [53]).

The High Court went on to record:

[61] In my view, the Authority erred in requiring Venus to establish that the amenity and good order criterion had been established. It was obliged to inquire into that consideration and to form its own opinion on the basis of the evidence adduced.

In *Shady Lady Lighting*, the High Court endorsed *Venus* and recorded (footnotes omitted):

[52] Heath J, in Re Venus NZ Limited examined whether the applicant in that case bore an onus to satisfy the Authority that in granting an off-licence there would be no likely reduction to the amenity and good order of the locality if the off-licence were granted. Although dealing with different provisions in the Act which require the Authority to form an opinion on the effect the licence may have on the amenity and good order of the locality, his Honour described the Authority's role as essentially an inquisitorial one where notions of onus of proof may not be helpful or appropriate.

New licences

For new licences, ss105 and 106 specify that, in deciding whether amenity and good order would be likely to be reduced by more than a minor extent, the following must be taken into account:

- current, and possible future levels of noise, nuisance and vandalism
- the number of other licensed premises in the area
- compatibility with the current and future use of surrounding properties.

Under s105, the DLC or ARLA must also have regard to whether the amenity and good order of the locality are already so badly affected by the effects of the current licences in the area that the issue of the licence would be unlikely to reduce the amenity and good order of the locality further; but it is nevertheless desirable not to issue this licence.

This requires an assessment of the effect (if any) of the premises already located in the area. It can be considered to engage a two-step enquiry:

- Consideration of whether the amenity and good order are already so badly affected by the effects of the issue of existing licences that they would be unlikely to be reduced further (or to only a minor extent).
- That it is nevertheless desirable not to issue any further licenses in the locality.

The DLC or ARLA is not *required* to decline to issue the licence where the amenity and good order are already badly affected, it is a discretion to do so. That is, in badly affected areas the DLC or ARLA can still issue a licence.

Renewals

On renewal applications, the DLC must consider whether the amenity and good order would likely be increased by more than a minor extent by not renewing the licence; and must have regard to current and possible future levels of noise, nuisance and vandalism – see ss106(2) and 131(1)(b).

Determining amenity and good order

Many factors have an effect on the amenity and good order of a locality. For example, late trading, noise, litter, anti-social behaviour and congestion around licensed premises can detract from amenity and good order and cause concerns for the community. They can also impact on a licensee's suitability. In *Nishchay's Liquor Centre* [2013] NZARLA 837 the Authority recorded:

[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.

....

[60] 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."

Noise is often identified as a nuisance in the local environment and is a frequent cause of complaints. A noise management plan may be required, for example where a premises has:

- live or loud music
- people spilling out into a residential neighbourhood
- received a noise complaint in the past year
- late operating hours
- a discretionary condition on the licence to comply with an alcohol management plan or noise management plan.

Resource consents

Any resource consent conditions relating to noise coming from the premises need to be complied with when the premises is operating. This will contribute towards mitigating noise-related issues as much as possible ie, closing doors and windows, limiting the number of people able to use outside spaces, sound limiters on stereos, and no outside speakers.

In certain situations, the expectation is that the applicant will have a noise management plan in place as part of any resource consent conditions.

If these conditions are breached repeatedly, an abatement notice might be served by the territorial authority. Any breaches of the abatement notice could see the premises fined or prosecuted. This could raise suitability concerns in future alcohol licensing situations.

Hints and tips

The following cases might be of assistance in considering good order and amenity:

- *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100
- *R S Dhillon Limited* [2013] NZARLA PH 920
- *Venus NZ Ltd* [2015] NZHC 1377, [2015] NZARLA 1315
- *Pangotra Holdings (Palmerston North) Ltd* [2014] NZARLA 228
- *Hari Om (2013) Ltd* [2014] NZARLA 159 at [30]
- *Nishchay's Liquor Centre* [2013] NZARLA 837

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