



Decision number: 022/OFF/6942/2018

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an application by Jones Liquor Limited
in respect of an application for a new off- licence
for premises situated at 37 Main Road, Katikati
trading as Katikati Wines and Spirits

Hearing Date: 27 November 2017

Committee: Mr Michael Jones (Commissioner/Chair)
Mr James Davison (Member)
Mr Don Thwaites (Member/Councillor)

Appearances: Mr Peter Jones (Applicant)
Ms Setareh Masoud-Ansari (Barrister/Legal Counsel representing the Applicant)
Mr Dougal Elvin (Licensing Inspector) – to assist
Sgt Trevor Brown (NZ Police) – to assist
Ms Dawn Meertens (representing Medical Officer of Health) – in opposition
Mr James Scarfe (in support for the Medical Officer of Health)

DECISION BEFORE THE WESTERN BAY OF PLENTY DISTRICT LICENSING COMMITTEE

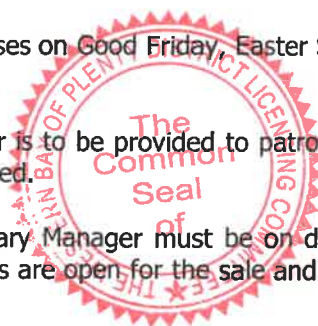
The application for a new off-licence is granted, subject to the conditions set out below. The Applicant may sell and deliver alcohol for consumption off the premises, or to provide samples of alcohol to persons on the premises.

The licence will expire one year from the date of issue, unless renewed

CONDITIONS

The licence is subject to the following conditions:

1. Alcohol may be sold on or delivered from the premises for consumption off the premises, or supplied free as a sample for consumption on the premises only on the following days and hours: Monday to Sunday 7:00am to 10:00pm.
2. No alcohol is to be sold on or delivered from the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day.
3. While alcohol is being supplied free as a sample, water is to be provided to patrons free of charge at the place where the samples are being supplied.
4. A properly appointed certificated or acting or Temporary Manager must be on duty, at or nearby the point of sale, at all times when the premises are open for the sale and supply of alcohol.



5. The Licensee must display signage as follows:
 - a. At every point of sale detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. A copy of the licence attached to the inside of the premises so as to be easily read by people entering each principle entrance to the premises; and
 - c. A sign prominently displayed at the premises, which identifies by name the manager for the time being on duty.
6. The whole of the premises is designated as a supervised area
7. Single bottles or cans of ready to drink products shall not be displayed for sale, or sold, where the volume is 330ml or less, unless the manufacturer intends for the item to be sold as a single serve.
8. There shall be no display or sale of single bottles of mainstream beers, where the volume is 330ml or less, and not intended by the manufacturer to be sold as a single item. The mainstream beers to which this condition relates are named as follows: Lion Red, Waikato Draught, Speights Gold Medal Ale, Export Gold, Tui East India Pale Ale. This condition does not apply to any other beer.
9. Where items of products classified in conditions 7 and 8 are to be sold, they are to be sold as multiples.
10. For the avoidance of doubt, craft beers, or items where the manufacturer classifies the item as a craft beer, or cider, or craft ready to drink product, may be displayed for sale and sold as a single item even though it is in bottles or cans which are 330ml or less."

BACKGROUND TO DECISION

The Committee must consider an application by Jones Liquor Limited (the Applicant) for a new off-licence to sell and supply alcohol for premises which trade as a bottle store, under the trading name of Katikati Wines and Spirits.

The application was publicly notified on the following dates; August 24, 2017, and August 31, 2017 and public objections were received from the following members of the public:

- D & J Logan
- T Burdett
- J Torrie – withdrawn on 19 October 2017
- L Fisher
- C Oates
- I Mitchell
- K.B Sampson – Late objection

No objectors were present at the hearing.

All reporting agencies received copies of the application. No opposition was received from the Licensing Inspector or the Police. Opposition to the licence application was received from the Medical Officer of Health.

Due to the public objections and opposition from the Medical Officer of Health the matter came before the Licensing Committee to consider by way of public hearing.

POSITION OF THE REPORTING AGENCIES

Inspectors Position

The Committee has received a detailed report on the application from Licensing Inspector Mr Elvin. Mr Elvin raised no matters in opposition to the application.



Medical Officer of Health Position

The Alcohol Regulatory Officer, Ms Meertens, is in opposition to the application. Her opposition is in relation to section 105 (1) (a) and (h) and section 106.

The Medical Officer of Health concerns were the following:

- a) Single sales may be harmful to the community in general.
- b) An additional off-licensed premises increased accessibility to alcohol leading to increased harm.
- c) The proposed "new" licence moving further down the road may affect the amenity and good order of the community and users of the surrounding areas.
- d) The location of the premises was in a high deprivation decile area.

NZ Police Position

Sergeant Brown of the NZ Police raised no matters in opposition to the application

APPLICANTS CASE

Applicant's evidence

Evidence of Ms Masoud-Ansari:

That the Committee had before it an unusual situation, with two applications for two premises within a short location of each other. Both applicants had licences previously, and that the suitability of the applicants was not in question. Her leading submission was that there was no legal impediment to granting both applications.

Ms Masoud- Ansari detailed that the Local Alcohol Policy was the significant guiding document which set the framework in place about store hours, and whether there should be a cap on the number of outlets. No restrictions on number of outlets applied in the Council's Local Alcohol Policy. Further, that in terms of the store hours, the applicant, Jones Liquor Limited, was seeking to operate within the Policy hours.

Ms Masoud- Ansari then outlined that the legal framework was heavily influenced by case law, in terms of section 105 and 106. The Medical Officer of Health had referred the Panel to a number of cases which reflected on these sections of the Act. In particular, the case of Birthcare, the court was clear about the criteria of section 105, and the criteria defined localised, demonstrated harm as associated with that applicant.

The second case which had been referred to was Liquor King, Kent Terrace, this case outlined that there was not the burden on any statutory office holder (e.g. MOH) to prove anything, they were reporting and that was their statutory duty under section 102. However they were required under that duty to look into the application, into hours, products sold, how they intended to operate, and then under amenity and good order to look at the local harm.

The Committee had heard from the Medical Officer of Health representatives in the evidence for Telford Yards Limited this morning regarding census data, but this was a 'tricky' thing to apply here. It was 2013 data, and did not show the increase in population in the entirety of this area, did not take into account that a large proportion of the population in the defined area were, in fact, retirees. It was considered that the data was generic.

It was noted that the MOH had concern with people between the ages of 15-24 consuming alcohol, they were a problematic age, and every single retailer had practices/procedures in place to manage that issue. The applicant was not new to this Act, and had been running Four Square Katikati for the past eleven years without issue.

The evidence in opposition by the Medical Officer of Health had to be reasonable, and able to be 'tied in' to the evidence of harm in Katikati, in this particular location as this was the area the application was concerned with. The Applicant's store was not the only store, there were six or



more other stores, some were 'mixed' stores but there were really only three that were off-licence outlets.

Mr Peter Jones (Applicant- Jones Liquor Limited) evidence:

Mr Jones tabled his submission. He requested that it be taken as read and provided a summary of his submission.

He advised that a few years ago he had purchased the property, which incorporated the Four Square and existing liquor shop. He operated the Four Square, and had leased out the liquor shop premises. The lease for the liquor store was ending, and this provided an opportunity to take over the premises, lifting the standard. He wanted to utilise this premises to be able to sell a variety of products and spirits that his customers wanted.

He was a responsible operator of a supermarket that retailed wine and beer conscientiously, and he was a 'local'. He was Chairman of the North Island Four Square committee and expected to lead by example in terms of meeting the requirements and obligations of the law in business operations.

He was a member of the Tauranga Western Bay Off-Licence Alcohol Accord. As such, he knew the issues in the community, and how, as retailers they managed their responses as retailers of alcoholic products. He knew who the vulnerable members of the community were and they would be managed in accordance with their Restrictive Sales Policy. He had a positive relationship with the Police and the Council.

If the licence was granted, he would be monitoring the carpark area, and looking at combined deliveries, so there would be less traffic. There was rear access and storage at the rear of the store that he would be utilising. He did not intend to market cheap alcohol as that was against Liquorland policy.

He did not believe that the amenity and good order of the neighbourhood or the commercial precinct would be lessened if this licence was granted.

Cross Examination of applicant

Mr Jones responded to questions from the Panel as follows:

Branding and Style of operation: He detailed that Foodstuffs is a cooperative and the second largest company in New Zealand after Fonterra. Foodstuffs is owned by the owners of Pak n Save's, New World's, Four Square's as a group, and Foodstuffs also own the Liquorland chain. The Liquorland franchise operated throughout the country, it was a smaller premise, so they are aiming to run a boutique style operation. The new store would be called Katikati Wines and Spirits, but the signage and colouring of the branding had not been finalised.

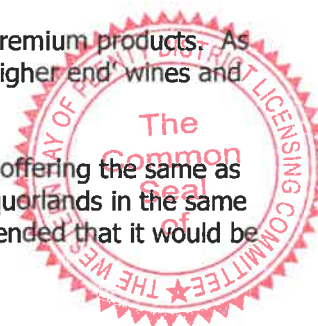
The final product range would be aimed at the premium market, and that product range had not yet been defined, but it was not intended to have the same product range as the other Liquorland. They would follow Liquorland policy.

RTD's and single sales: The RTDs would not be stacked at the front of the store. In terms of restricting the promotion of RTD's, he would have to take advice on that. With regard to single bottle beer sales, he did not want to be restricted to no single sales, and made no undertaking.

Ms Masoud-Ansari gave clarification as follows:

The store was a new enterprise and would be a fine wines store focusing on premium products. As such, the products would be different to those sold in the Four Square, with 'higher end' wines and spirits sold.

Katikati would be one of the first towns to have a boutique store that was not offering the same as other 'mainstream' Liquorland stores. Liquorland did not permit competing Liquorlands in the same area. The final selection of products had not been finalised, but it was not intended that it would be selling cheap products.



It was understood that the Committee was concerned about promotion of single sale products, and Mr Jones would have to discuss the matter with Liquorland Head Office. The fact that the law was silent on single sale promotions meant that the Panel would have to make a decision on a case-by-case basis, and that was entirely down to the Panel's evaluation and based on the evidence before them.

Mr Jones responded to questions from the Liquor Licensing Inspector as follows:

Procedures for management of the store- Mr Jones detailed that the new store location would allow ease of management, he would be right there, the stores linked with a door at the back, and he would be able to go from his office in the wider store and into the new store. He would employ dedicated General Managers who were members of the community for the new store.

Mr Jones responded to questions from the Police as follows:

Harm from alcohol – Mr Jones detailed that with respect to assessing the harm from his liquor sales that he was unable to view what happened in his customer's homes, and no one could know that. He could not see what happened with any of the products he sold at Four Square, for example, if a craft knife was used for harm, or if a glue or solvent was used for sniffing, so there were a lot of things he could not see that happened with products he sold.

Ms Masoud-Ansari objected in this matter, that Sergeant Brown had raised issues around the generality of harm from alcohol, but it was guided by statute, and was a regulated product. All that Mr Jones could do was to determine the level of harm that was localised, and that was before this Committee

Mr Jones advised he was not aware of Police having an issue with this application, or opposing it in any way.

Price Wars- The Police questioned pricing and would his new premises association with the Four Square and Liquorland provide a platform for a price war in Katikati. Mr Jones advised that Countdown Supermarket was a lot bigger operation than his was. He did not try to compete; his pricing was a little higher than New World's. He would not intentionally be involved in a 'price war' with anyone else in town.

Ms Masoud-Ansari addressed the Panel, noting that Mr Jones could not go to another store and ask them to reduce their prices for beer so that he could operate, as he desired. It was not simply the market driving behaviour, it was Liquorland policies, and was the way "top-down" control worked, prices were not specific to a store or town. Mr Jones would be stocking sherry and port and those were not products that any store but a fine wines store would be stocking.

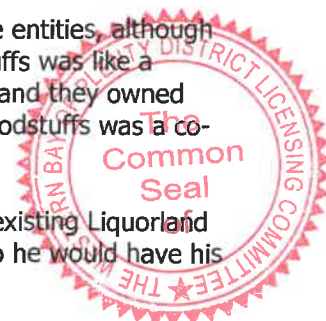
Mr Jones responded to questions from the Medical Officer of Health as follows:

Co-located premises operation- With regard to the close location of his two businesses that there would be an open "office" door between the two premises for staff use, and he would have more than one Duty Manager. There would be a separate Manager in the bottle store, but if one person was sick, the other Manager could go between them.

In terms of sending customers who wanted to buy port or sherry into the new premises, and not sending them to the existing premises, yes, he could send them to an existing premises for sherry and port, but as they were already his customers, if he gets this licence he would naturally send them to his own store.

Company entity- Mr Jones detailed that Foodstuffs and Liquorland were separate entities, although Foodstuffs owned Liquorland. Liquorland was an entity of Foodstuffs, so Foodstuffs was like a 'parent company'. They also owned New World's, Four Square's, Pak-in-Save's, and they owned Gilmour's. There were Liquorland boutique stores in the suburbs of Auckland. Foodstuffs was a co-operative that people owned with shares.

Promotions- With regard to the type of promotion by Liquorland in Katikati, the existing Liquorland store did have promotional flyers but his store would not be called Liquorland, so he would have his own advertising.



Ms Masoud-Ansari addressed the Hearing, regarding pricing noting that, Liquorland pricing was set corporately, with a determination of what was across the market, ie national or regional so it could not be set at a local level, and in fact if Mr Jones went against accepted price promotions he may stand to lose his ability to sell.

Local alcohol policy- Mr Jones advised that he did not personally submit to the hearings in relation to the Local Alcohol Policy, although the Foodstuffs Group did, because they had many supermarkets in the area. If there was no cap in the policy, consideration of number of premises was at the discretion of the Committee.

Ms Masoud-Ansari supported Mr Jones in addressing the following in relation to matters raised by the Technical Officer, Medical Officer of Health:

In relation to single sales or single items for sale, Mr Jones would reconsider the single sales RTD's and the sales of cheap RTD items.

In relation to security and car parks, such as having a Duty Manager, having shelves not too high so there was clear visibility, clear glass doors to the chiller; the Four Square staff were walking the carpark, filling gas bottles, and could be observing, and there should any incidents occur. They had not noted any issues with the liquor store customers with the current owners. There had been one argument escalating in their carpark, which they had needed to call the Police . They had walked the carpark early in the morning and picked up some cans, and bottles that they did not like having to do.

In relation to any additional measures, he would put up signage to assist. He had a vested interest in the customers of the Four Square feeling comfortable. They were located in a key area of the town so would continue that vigilance.

The current store had been purpose -built as a wine shop in 1983, and had been a liquor store that entire time. He accepted that his ability to trade there would be subject to the decision of this District Licensing Committee.

Mr Jones responded to further questions from the Panel as follows:

Signage- signage would be limited as there were large windows at the front that took up a lot of space, and a town artistic mural on the side and southern side of the building. In terms of the posters shown on either side of the main entrance he would possibly intend to have those, at a maximum. They were possibly only an A1 size poster. He did not intend to have any sandwich boards.

INSPECTORS EVIDENCE:

The Liquor Licensing Inspector advised that he had no additional evidence to provide and his report was taken as read.

POLICE EVIDENCE:

Sergeant Brown advised that he had no additional evidence to provide, and his report was taken as read.

MOH EVIDENCE:

Ms Meertens did not read her submission in full to the hearing, as this has been presented to the Committee at the hearing for Telford Yards Limited earlier in the day.

In summary, Ms Meertens recommended, in the first instance, that this application be refused. However, that the following conditions be imposed if a licence was issued:

- a) That the Panel use its discretion under Section 117 of the Act to exclude single sales of mainstream imported and local beers that were 500ml and under, including those with high alcohol content (over 7%), ciders and RTD's; except for wines over 375ml and craft beers.



- b) That alcohol that may appeal to young people/minors was not advertised externally.
- c) That the hours for the sale of alcohol be from 9.00am to 9.00pm.

Cross Examination of MOH

Mr Meertens responded to questions from the applicant as follows:

Report on the application- She agreed her report was a letter specifying sections of the Act under which she opposed the application, followed by a report dated 31 October 2017. She confirmed this report was the same as for the previous applicant that day, with applicant details changed, she noted that the object of Act was what the Hearing was focusing on, and specifically in regard to Katikati. There was no local research for Katikati, only research around alcohol harm, and she was reporting that an increase in the number of licensed premises increased the potential for alcohol harm.

Local alcohol policy- In terms of the Local Alcohol Policy, and the fact that it did not cap the number of licenced premises, she believed that these decisions had been left to the District Licensing Committee.

Opposition and conditions- The Medical Officer of Health had not opposed every single licence application. In relation to her submission, with a requested condition to be imposed she had asked for those conditions, as the Medical Officer of Health did know that these could reduce harm.

Mr Scarfe responded to questions from the applicant as follows:

Census data- Katikati community had a deprivation decile of category of 8, that was the higher end of the scale. A neighbouring area was decile category 5, just to clarify. It was accepted that the statistics were four years old.

Ms Meertens responded to questions from the panel as follows:

Harm- Estimates of demonstrable harm and how it was measured had been included in the research. The studies link increased alcohol related harm and additional outlets. There were positive associations seen between outlet density being reduced, and reduced harm. As the number of bottle scores increased, the harm scores increased and there was an accumulative effect and an increase in binge drinking. It was not a matter of saying this particular bottle store resulted in X amount of binge drinkers, it was saying in this particular area there was a greater risk of binge drinker.

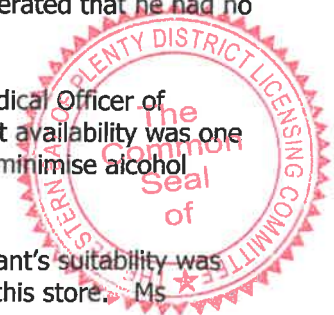
Ms Masoud-Ansari for the applicant noted that the population was greater in the general Katikati/Western Bay area that stated for Katikati, and was also greatly increased during holiday periods, when the population could be as high as 25,000. Taking this into account, this could change the density to population numbers. Mr Jones noted that a lot of surrounding communities came into Katikati and purchased from his store, and he felt the numbers could be as high as 12,000.

CLOSING COMMENTS

The Licensing Inspector raised no further issues in closing comments, and reiterated that he had no opposition to the application.

Sergeant Brown on behalf of the Police advised that Police did support the Medical Officer of Health's opposition to the application. He noted that Police had submitted that availability was one of the key considerations, and he reiterated that the Object of the Act was to minimise alcohol harm.

Ms Meertens on behalf of the Medical Officer of Health advised that the Applicant's suitability was not in question, but the consideration was his application for a new licence in this store. Ms



Meertens recommended that only one of the Applications before the District Licensing Committee today (Telford Yards Limited and Jones Liquor Limited) was granted, or that neither be granted. Ms Meertens noted that the matters raised by the Medical Officer of Health went beyond stating the sections under which the application was opposed, and the report she had submitted on 31 October 2017 was a report, and could not be deemed not to be a report. Ms Meertens also advised that in the case of the Local Alcohol Policy, if there was a cap on licensed premises, that would be an end to the matter, but we do not have this in place. The decision to be made was whether an additional outlet would cause increased harm and that was what must be decided.

Ms Masoud-Ansari on behalf of the applicant advised that there was no cap on numbers of licensed premises in the Local Alcohol Policy, and that the committee must consider the requirements under the Act with regard to the individual premises effect on amenity and good order.

Ms Masoud-Ansari outlined that there has been no opposition from the Police or Inspector with regard to amenity and good order and that if there was an issue that would have been presented to the committee.

Ms Masoud-Ansari advised that Mr Jones is a member of this community and will look at the operation including hours of trade and, management of the carpark in a responsible manner. He has a responsible sales policy that work because he already has them in place for his current store.

Ms Masoud-Ansari advised this is not a run of the mill liquor store, but a boutique store and will sell high end product.

DISCUSSION

The Chairperson addressed the matter of the public objectors at the introduction to the hearing and noted that the Authority stated that if objectors were not in attendance then "little or no weight" could be given to their objections. Accordingly, the Committee has made note of the objections, but as the objectors were not able to present evidence or be questioned regarding their concerns, the Committee has not considered the issues raised.

As indicated at the hearing, there are a number of matters that the Committee must determine. The primary issue to determine is whether the licence should be issued. If the licence is to be issued, then the Committee must determine the conditions, which are to attach to the licence.

RELEVANT LEGISLATION

Section 3 of the Sale and Supply of Alcohol Act 2012-

(1) The purpose of [Parts 1 to 3](#) and the schedules of this Act is, for the benefit of the community as a whole,—

(a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and

(b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.

(2) The characteristics of the new system are that—

(a) it is reasonable; and

(b) its administration helps to achieve the object of this Act.

Section 4 of the Sale and Supply of Alcohol Act 2012-

(1) The object of this Act is that—

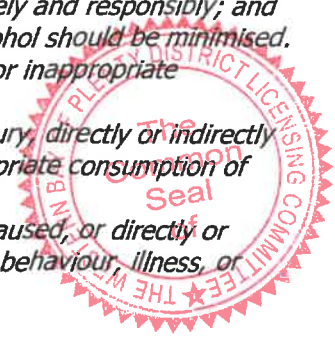
(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—

(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and

(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).



Section 105 of the Sale and Supply of Alcohol Act 2012-

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

(a) the object of this Act:

(b) the suitability of the applicant:

(c) any relevant local alcohol policy:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(e) the design and layout of any proposed premises:

(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:

(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:

(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:

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

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).

(2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

Considerations

In deciding whether to issue the licence, the District Licensing Committee must have regard to the criteria in section 105.

This requires the Committee to consider the following questions:

a) Does the grant of the licence ensure the safe and responsible supply of alcohol and the minimisation of harm caused by excessive or inappropriate use of alcohol?

The Committee heard evidence that Mr Jones in his existing Food Square business had been selling alcohol in a safe and responsible manner.

b) Is the applicant suitable?

The Committee heard evidence that the applicant being an existing business operator was a responsible and experienced operator.

c) Are the days and hours during which the applicant proposes to sell alcohol suitable?

The applied hours comply with the Tauranga and Western Bay of Plenty Local Alcohol Policy. The applicant proposed hours of operation are within these hours, and there is no evidence to support a further reduction in operating hours

d) Is the design and layout of the premises suitable?

The design and layout of the premises is acceptable.

e) Does the applicant propose to sell goods other than alcohol such as low-alcohol refreshments, non-alcoholic refreshments and food?

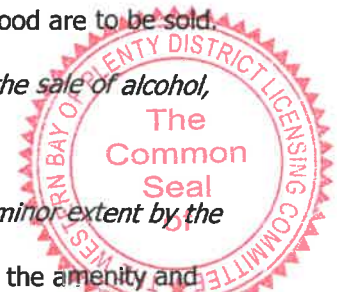
No goods other than alcohol, low and non alcohol refreshments, tobacco and food are to be sold.

f) Does the applicant propose to provide services other than those related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?

No other services are offered.

g) Will the amenity and good order of the locality be reduced to more than a minor extent by the issue of the license?

No evidence was produced that the issue of the licence would adversely affect the amenity and good order of the area. It was noted that no issues were raised by the Inspector or Police in their reports. The Medical Officer of Health produced general evidence that indicates an increase outlet



density will result in a reduction in amenity, however there was no evidence in relation to the potential amenity effects from this premises. It was noted that the Medical Officer of Health was supported by Inspector Brown at the hearing; however this was not indicated in his report to the Committee. The Committee anticipated that if there were an increased negative effect from the grant of this (or any other) licence that this would be addressed by reporting agencies at the time of the licence renewal.

h) Does the applicant have appropriate systems, staff and training to comply with the law?

The applicant provided details of the systems, and the operation of the business. It was noted that there are no issues with the current operation of the applicants existing business, however this operation was a different style of off licence from the applicants existing business. It is anticipated that the applicant will operate the new business in a manner consistent with the operation in the existing licensed premises.

i) Have the Police or Medical Officer of Health raised any concerns?

The Police have raised no specific matters in opposition in their reports; however, this was varied by Sergeant Brown at the hearing through supporting the MOH position.

The Medical Officer of Health has raised matters in opposition relating to:

- The number of licensed premises in Katikati
- Sales of RTD's and single bottle sales
- Hours of operation
- Amenity and good order.

The evidential basis for the Medical Officer of Health opposition has been supplied in research documents, specifically the 2010 paper "Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study"; 2017 paper, "The relationship between alcohol outlets and harm. A spatial analysis for New Zealand"; the 2008 paper "Ready to Drink are associated with heavier drinking patterns among young females", and Ministry of Health 2015, "Alcohol use 2012/13: New Zealand Health Survey". All the research provided is published academic research.

The concern from the Committee is that the research is generic and a degree of interpretation is required in considering the applicability of the research to the application before the Committee.

The Committee is as aware as the reporting bodies are that alcohol harm does occur in our communities. What the Committee has to consider is whether it is appropriate to apply generic research and data in the absence of any locality or premises specific information to the considerations applicable under section 105, for this licence application.

Evidence locally suggests that the premises will be well managed, based on the existing business history of the applicant, and that the operation of the business will be in accordance with the Act.

There is no local evidence that supports that sales of RTD's and single bottle sales of mainstream beer is an issue either in terms of sales to local youth or that persons purchasing single bottles from the premises are likely to consume the alcohol whilst in the vicinity of the town centre, and accordingly breach Council's Liquor Control Bylaw. The Committee however does acknowledge that the national research does highlight single bottle sales, including RTD's as having the potential to lead to more risky drinking behaviour, particularly in a liquor ban area.

The Committee through the hearing indicated that it was interested in whether the applicant would provide any offer or any undertaking with respect to limiting the sales of single RTD's and mainstream beer, through limiting display of these products for sale. At the hearing the applicant indicated that RTD's would not be displayed at the entrance to the store, but has not made any other indication of controls that would be applied to limit promotion or sales of single bottle RTD's and mainstream beer.

The applicant made it clear that the parent company would need to be consulted regarding promotion and sales of goods, and that no commitment would be made without consultation on company practices. The Committee was disappointed to note that no representative was present at the hearing representing the Liquorland franchise, and it would have been the Committees preference to have a representative present to resolve queries regarding the company practices,



promotions and pricing at the hearing. The lack of any representation did leave the Committee uncertain about the level of control Mr Jones as the applicant would have in the overall running of the business as the business decisions of interest to the committee including alcohol promotion, types of products, advertising and display did not appear to be his to decide.

The Committee has advised by way of minute it's preference to include a condition on the licence regarding display of RTD's and single bottle sales of mainstream beer.

The Committee are satisfied with the proposed conditions and that the considerations fall in favour of the application being granted. There is no evidence from the reporting agencies or on the application file, which would suggest the applicant would sell or supply alcohol in any way contrary to the Act.

HEARING ADJOURNMENT

It is noted that this decision has been pending by the Committee.

At the conclusion of the hearing date 27 November 2017, the Committee sought written closing submissions in relation to matters outstanding at the hearing.

Following receipt of the written closing submission and subsequent deliberations in which the Committee was in favour of a condition being applied to the licence regarding the display of single sale RTD's and mainstream beer, a further Minute was sent by the Committee.

A response to the minute was received on 18 January 2018. This response detailed that whilst there was a lack of evidential foundation to support a condition, that as a responsible retailer that a number of proposed conditions were provided for the Committee consideration.

Further clarification of the proposed conditions was sought by the committee and the final conditions agreed by the applicant, as follows:

1. Single bottles or cans of ready to drink products shall not be displayed for sale, or sold, where the volume is 330ml or less, unless the manufacturer intends for the item to be sold as a single serve.
2. There shall be no display or sale of single bottles of mainstream beers, where the volume is 330ml or less, and not intended by the manufacturer to be sold as a single item. The mainstream beers to which this condition relates are named as follows: Lion Red, Waikato Draught, Speights Gold Medal Ale, Export Gold, Tui East India Pale Ale. This condition does not apply to any other beer.
3. Where items of products classified in conditions 1 and 2 are to be sold, they are to be sold as multiples.
4. For the avoidance of doubt, craft beers, or items where the manufacturer classifies the item as a craft beer, or cider, or craft ready to drink product, may be displayed for sale and sold as a single item even though it is in bottles or cans which are 330ml or less."

CONCLUSION

Having regard to the relevant provisions of the Sale and Supply of Alcohol Act 2012, the Committee is satisfied that a new off-licence should be granted, pursuant to the conditions set out above.

DATED this 12th day of February 2018



Michael Jones
Chairperson/Commissioner

