

Renewal of On Licence

Sections 14 to 16, and 64, Sale and Supply of Alcohol Act 2012

Pursuant to the Sale and Supply of Alcohol Act 2012 (the **Act**), **BEVIN LIMITED** (the licensee) is authorised to sell and supply alcohol on the premises situated at **22 WILSON ROAD, WAIHI BEACH** and known as **LA VIE EN ROSE WAIHI BEACH**, to any person for consumption on the premises and to let people consume alcohol there.

The authority conferred by this licence must be exercised through a manager or managers appointed by the licensee in accordance with subpart 7 of Part 2 of the Act.

CONDITIONS

This licence is subject to the following conditions:

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours:
Monday to Sunday 4.00pm to 11.30pm;
2. **No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is on the premises to dine;**
3. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
4. The Licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages,
5. Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted,
6. A properly appointed certificated or Acting or Temporary Manager must be on duty at all times when the premises are open for the sale and supply of alcohol, and their full name must be on a sign prominently displayed-in the premises,
7. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises;
8. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol;
 - c. A copy of the licence attached to the premises so as to be easily read by persons attending the premises.

DURATION

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

- (a) until the close of the period for which it was last renewed; or
- (b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, until the close of the period of 3 years after the period for which it was last renewed.

This licence replaces licence no. 022/ON/7488/2019 and this licence continues in force until 13 February 2026 unless again renewed.

Dated at Tauranga on the 21st day of December 2023


Secretary
District Licensing Committee
Western Bay of Plenty District Council



Decision number: 22/RENOFF/8873/2023

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

AND

IN THE MATTER of an application
by **BVSS 2015 Wines and
Spirits Limited**
pursuant to s.127 of the Act
for the renewal of an OFF
Licence for premises situated
at 18a Wilson Street, Waihi
Beach known as "Liquor
Barrel Waihi Beach"

**DECISION OF THE WESTERN BAY OF PLENTY DISTRICT LICENSING
COMMITTEE**

Chairman: Murray Clearwater
Member: Bev Edlin
Member: Arthur Wilkinson

HEARING at Tauranga on the 30th of October 2023

APPEARANCES

Mr Gurwinder Singh for BVSS 2015 Wines and Spirits Limited ("the applicant")

Ms Micaela Turner – Western Bay of Plenty Alcohol Licensing Inspector ("the
Inspector") – to assist

Ms. Dawn Meertens- for the Medical Officer of Health (MOoH) – in opposition
Sergeant Nigel Sanderson – NZ Police to assist

RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application received on the 4th of April 2023, BVSS 2015 Wines & Spirits Limited applied for the renewal of an off-licence in respect of premises situated at 18a Wilson Street, Waihi Beach now known as "Liquor Barrel Waihi Beach"



2. The current licensed days and hours are Monday to Sunday 8.00am to 9.00pm as amended by the recently renewed Western Bay of Plenty Local Alcohol Policy (LAP). These hours are also within the default national maximum trading hours for off licences.
3. The application was duly advertised and was reported on by the agencies. The delegated officer for the Medical Officer of Health opposed the renewal on the following grounds: "*The Medical Officer of Health opposes the sale of single alcohol products that are 500ml and under at low prices, external advertising of RTDs and bright colours promoting alcohol.*"
4. The report went on to say that the Medical Officer of Health recommends the following:
 - 1) *Signage shall be limited to displaying the store name and logo on the existing roof display.*
 - 2) *No bright colours shall be used in the external decoration of the premises*
 - 3) *No specific product or price specials shall be displayed externally.*
 - 4) *No external advertising shall be displayed by way of flags or sandwich boards outside the store.*
 - 5) *There is to be no single sales of mainstream beers, ciders, shots and RTDs under 500mls and/or those not designed by the manufacturer to be sold as single serves. Any single sales are to be sold at a minimum price of \$6.00.*
5. After a series of e-mail exchanges and discussions between the parties the applicant agreed to all but the second condition.
6. The Inspector does not oppose the renewal, nor does she support the imposition of additional discretionary conditions.
7. The Police do not oppose the renewal.
8. In a Minute dated 27 June 2023 the DLC required the MOoH to provide evidence on why the additional discretionary conditions were sought for this bottle store at this location.
9. The application was set down for a formal hearing as the Committee needed to hear the concerns of the MOoH around single sales.

Applicant's Evidence

10. Mr. Gurwinder Singh spoke to us on behalf of the company. He had not prepared a written Brief of Evidence but told us that he and his family had been running the store for 8 years without incident. They had recently changed from a Liquor Centre franchise to an independent store, hence, the rebranding to Barrel Liquor Waihi Beach.



11. He said he used to break open boxes and sell single Woodstock RTDs for \$4 each, but now he does not sell them as singles. He has also raised the prices for the 500ml can range to \$6.00 or more. He said there were questions asked by his customers to start with but now they are accepting of the situation as other stores also had also increased their products to \$6.00 and above.
12. He was also asked about local social issues and he said they only had a few homeless type people and not many young people who tried to purchase alcohol.
13. In regard to intoxication, he said they turn away about 1-2 persons a week during the winter and 3-4 a week during the summer whom they have deemed to be intoxicated and therefore unable to be lawfully served.
14. He said the population rises from 1,800 in the winter to nearly 20,000 in the summer. He confirmed that there was a 24/7 alcohol ban in the public spaces at Waihi Beach. They did not have a problem with customers opening their purchases and drinking them on the street to his knowledge.
15. He was asked by Ms. Meertens if he had been forced to sign the form with the agreed conditions on it. He said he was not forced but that he wanted to save hearing time and didn't mind agreeing to the conditions.

Police Evidence

16. At the request of the Committee Sergeant Nigel Sanderson was sworn in and reconfirmed that the Police stance was of no opposition to the renewal. He said he had been in the Police for 15 years and he estimated that two-thirds of their work was alcohol related. He said Waihi Beach had the full range of population demographics and had its share of people living in vehicles and some with drinking problems.
17. In the summer there were breaches of the Alcohol Ban and Infringement Notices were issued by his staff. He said there were three off-licensed premises in the Waihi Beach area. Two superettes who could only sell beer and wine and the bottle store with the full range of products including spirits and RTDs.
18. He said a lot of the holidaymakers would bring their own supply of alcohol into town too.
19. In regard to Gurwinder Singh and the Barrel Liquor Waihi Beach store, Sergeant Sanderson said they had very few problems with them, but he thought they were a little RTD 'heavy.'
20. He personally vetted the application for renewal and saw no reason to oppose or seek any additional discretionary conditions.



21. He agreed with the concept that the DLC had to be satisfied that there should be a purpose and a reason for discretionary conditions to be added to a licence.

Inspectors Evidence

22. Ms. Micaela Turner is the Alcohol Licensing Inspector for Western Bay of Plenty. She confirmed her report was accurate and up to date. She added that the Waihi Beach demographics were very different between summer and winter.
23. The Inspector confirmed her non-opposition and that she saw no need for any additional discretionary conditions to be added to the licence.

Medical Officer of Health's Evidence

24. Ms. Dawn Meertens, told the Committee that the MOoH had 'withdrawn' their opposition and that that decision was based on a store visit she conducted that confirmed that the store did not sell singles of mainstream products and RTDs and that the 500ml single cans were all priced at \$6 or above.
25. She **recommended** that the conditions agreed to by the applicant be formalised as conditions of licence.
26. However, the documentation provided to the DLC stated that the opposition would only be satisfied if all the conditions **were** imposed by the DLC.
27. The MOoH presented no evidence to show that Waihi Beach was a vulnerable community or that there was widespread use and abuse of alcohol in the area.

Relevant legislation

28. Section 3 of the Sale and Supply of Alcohol Act 2012 ("the Act") states the purpose of the Act as follows:
- (1) *The purpose of Parts 1 and 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.*



29. Section 4 states the object of the Act as follows:

- (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 and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*

30. Sections 131 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to approve a renewal of the licence:

131 Criteria for renewal

- (1) *In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
- (a) *the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*
 - (b) *whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*
 - (c) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*
 - (d) *the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*

31. The Act requires that when deciding whether to renew a licence, or not, the licensing committee must have regard to the matters contained in sections 131 of the Act. We now consider them in greater depth.

Section 105(1)(a) The Object of the Act

32. The section requires the licensing committee to have regard to the object of the Act and in particular that the sale, supply and consumption of alcohol should be **undertaken safely and responsibly** and that the harm caused by the **excessive or inappropriate consumption of alcohol** should be minimised.

33. The evidence was that the applicant was well aware of its responsibilities and had been selling and supplying alcohol in a safe and responsible manner.

34. As we have often said the operators of off-licensed premises can do little to influence the moderate and appropriate consumption of alcohol as consumption occurs away from the premises.



35. We will return to the **Object and the Purpose of the Act** once we have discussed the other relevant criteria.

Section 105(1)(b) Suitability of the Applicant

36. The applicant must be a suitable entity to hold an Off-licence. No evidence was presented to the contrary.

Section 105(1)(c) Relevant Local Alcohol Policy

37. The application complies with the provisions of the recently refreshed and operative Western Bay of Plenty LAP.

Section 105(1)(d) The days and hours of operation of the licence

38. The days and hours of the current licence are within the default national maximum trading hours for off-licensed premises.

Section 105(1)(e) The design and layout of any proposed premises

39. The Committee is aware of the design and layout of the premises. It is unremarkable, other than as reported by the Police that the product range was a little RTD heavy as they are the only retailer of such products in the township.

Section 105(1)(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.

40. No goods other than alcohol, low-alcohol beverages, non-alcoholic refreshments, snack items and tobacco products are sold on the premises.

Section 105(1)(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, and food, and if so, which services.

41. No other services are offered.

Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law.

42. The applicant advises that there are several staff with manager's certificates attached to the business and that they hold regular training sessions.
43. There was no challenge made in relation to the systems, staff, and training at this premises.



Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129

44. The Police have not opposed the renewal. The Medical Officer of Health opposed the renewal due to single sales of mainstream beers and RTDs.
45. We discuss the issue of single sales and conditional oppositions in depth later in this decision.

(b)whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:

46. No evidence has been adduced to show that this premises is adversely affecting the amenity and good order of the locality.

(d)the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

47. We are satisfied that the applicant has not been overtly displaying or advertising alcohol products and prices.

Reasons for the Decision

48. Single sales are a vexing issue for DLCs and the hospitality industry generally.
49. On the one hand it could be said that it is socially responsible to allow a customer to buy a single beer or a RTD if that is their wish.
50. On the other hand, some retailers have exploited the opportunity and deliberately 'broken' boxes of product so they can make single sales for at low as \$1.00 per bottle or can.
51. This is colloquially known as 'pocket money liquor.' Situations have arisen where street dwellers and beggars can beg, borrow or steal a few coins and can then repeatedly return to the bottle store and access more and more alcohol as the day goes on.
52. The immediate amenity and good order of the area is often reduced, offences are committed, and the Police end up having to deal with intoxicated persons and disorderly behaviour.
53. So how do we find the happy balance between the rights of the responsible purchaser and the need to deter the problematic singles sales that can, and do, occur?



54. The regulatory agencies and DLCs have been imposing a variety of restrictive conditions when circumstances support such impositions, and we believe that they should not be imposed arbitrarily and should be site specific.
55. As Gendall J so aptly stated in J & G Vaudrey Limited CIV-2015-409-000098 [2015] NZHC 2749¹

At [14] In particular I have found:

(a) *The role of the District Licensing Committee and the Authority (the relevant body) upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination of the application.*

(b) ...

(c)...

(d)...

(e) *There is no ability under ss 112–114 of the Act to impose general conditions (but that power is to be found in s 117).*

(f).....

(g) *The relevant body has a discretion to impose any further conditions which are reasonable and that are “not inconsistent” with the Act. In deciding whether to impose such conditions, the relevant considerations are these:*

(i) the relevant body must have identified a risk which it seeks to abate, or a benefit which it seeks to secure;

(ii) that risk or benefit must be consistent with the purpose and object of the Act, and not inconsistent with the Act in its entirety;

(iii) the relevant body must direct itself as to all relevant circumstances;

(iv) it must then weigh the risk to be abated, or benefit to be secured, against the relevant circumstances as identified;

(v) the condition must be a proportionate response;

(vi) an absolute prohibition would not ordinarily be reasonable, nor a condition which secured a benefit or abated a disbenefit only marginally, equally, a condition may not be absurd, ridiculous, patently unjustifiable, extreme or excessive; and

(vii) ultimately whether a condition is reasonable will depend on an objective assessment of whether there is a rational and proportionate connection between the identified risk or benefit, when weighed against all relevant considerations. (underlined text our emphasis)



¹ J & G Vaudrey Limited CIV-2015-409-000098 [2015] NZHC 2749

56. It is not the role of the MOoH to try to impose a raft of generic conditions on every off licensed premises that come before them for enquiry and reporting.
57. It is the role of the DLC, and the DLC alone, to decide what is appropriate, or not, for a particular premises. We do encourage the agencies to present their views and recommendations but when they do, we expect to see evidence relating to **a risk to be abated or benefit to be secured.**
58. Unfortunately, a number of appeals have gone to ARLA and been upheld, rejected and/or modified to a point where now some agencies are pushing for mandatory inclusion of conditions around single sales as they have been "approved by ARLA."
59. This is **not the case** as often the conditions have been consented to by the applicant, and may, or may not, have been appropriate for that location and merely rolled over by ARLA without being tested as to their appropriateness, or not.
60. While there is merit in having such conditions as part of Local Alcohol Policies and being consistent across the district, we believe that all discretionary conditions must be necessary and site specific. Applicants are entitled to a level playing field if, and when, the playing field is level!
61. However, if we were to have a bottle store in an Alcohol Ban Area, with a high deprivation vulnerable population nearby and evidence of 'at risk' persons seeking pocket money alcohol AND operators catering to those demands by breaking boxes and offering \$1,\$2,\$3 beers and RTDs, discretionary conditions around single sales will very likely be appropriate and will be imposed either by consent or via the hearing process.
62. In this case we have a bottle store operating in a 24/7 Alcohol Ban Area but no hard evidence of localised alcohol abuse and social issues. And refreshingly, the operator expresses a willingness to be part of the solution, and not be part of the problem.
63. As the sole seller of spirits and RTDs it is important that the applicant does not overtly advertise and promote RTDs and the like.
64. We also take into account the huge population increase over the summer party-season with customers who are unknown to the applicant.
65. For the reasons above the Committee has determined that some of the discussed discretionary conditions are appropriate and they will be imposed.



The Decision

The Licence will be renewed for three (3) years from the expiry of the current licence on 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 8.00am to 9.00pm;**
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. The whole of the premises is designated as a **Supervised Area;**
5. The Licensee must have available for consumption off the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages.
6. A properly appointed certificated or Acting or Temporary Manager must be on duty at all times, within the licensed area, when the premises are open for the sale and supply of alcohol and their full name must be on a sign prominently displayed in the premises.
7. **There is to be no single sales of mainstream beers, ciders, shots and RTDs under 500mls, and/or those not designed by the manufacturer to be sold as single serves.**
8. **No single sales of alcohol products are permitted under \$6.00 per unit.**
9. **No product brands or prices are to be displayed externally on the store building, or on flags, or sandwich boards.**
10. **By consent only the store name and logo is permitted on the existing roof structure.**
11. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol;



- c. A copy of the licence attached to the inside of the premises so as to be easily read by people entering each principal entrance.

DATED at TAURANGA this 3rd day of November 2023



Murray Clearwater
Commissioner
For the Western Bay of Plenty District Licensing Committee

NOTE

Sections 152 to 155 relating to the right to appeal this decision are in effect.
This decision shall have no effect until 10 working days after the date on which notice of this decision is given to the parties.