

# MEETING — AGENDA —

Ngā Take

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Western Bay of Plenty  
District Council

# DISTRICT LICENSING COMMITTEE

*Komiti Raihana-ā-Rohe*

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**DL12**  
**Monday, 17 June 2019**  
**Council Chambers**  
**Barkes Corner, Tauranga**  
**11.00am**

# Notice of Meeting No DL12 Te Karere

## District Licensing Committee Komiti Raihana-a-Rohe

**Monday, 17 June 2019**  
**Council Chambers**  
**Barkes Corner**  
**11.00am**

Commissioners: Murray Clearwater (Chairperson)  
Arthur Wilkinson

Community Appointee: James Davison

Media  
Staff

Miriam Taris  
**Chief Executive Officer**  
**Western Bay of Plenty District Council**



Te Kaunihera a rohe mai i nga Kuri-a-Whareki ki Otamarakau ki te Uru

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# **District Licensing Committee Delegations Mangai o Te Kaunihera**

## **Quorum:**

Commissioner and two members from the list (Section 191 – Sale and Supply of Alcohol Act 2012)

## **Role:**

As conferred under the Sale and Supply of Alcohol Act 2012:

- To consider and determine applications for licences and manager's certificates
- To consider and determine applications for renewal of licences and manager's certificates
- To consider and determine applications for temporary authority to carry on the sale and supply of alcohol in accordance with section 136 of the Sale and Supply of Alcohol Act 2012
- To consider and determine applications for the variation, suspension, or cancellation of special licences
- To consider and determine applications for the variation of licences (other than special licences) unless the application is brought under section 280 of the Sale and Supply of Alcohol Act 2012
- With the leave of the chairperson for the licensing authority, to refer applications to the licensing authority
- To conduct inquiries and to make reports as may be required of it by the licensing authority under section 175 of the Sale and Supply of Alcohol Act 2012
- Any other functions conferred on licensing committees by or under the Sale and Supply of Alcohol Act 2012 or any other enactment

## **Chair's Delegation:**

Where no objection to the application has been received within the timeframes as prescribed under the Act the authority to decide on the papers and issue decisions on such applications (Section 191 (2) Sale and Supply of Alcohol Act 2012).

# Agenda for Meeting No. DL12

## Pages

**Present  
In Attendance  
Apologies**

DL12.1      **Conflict of Interest Declarations**

Members of the appointed District Licensing Committee to declare whether or not they have any conflicts of interest in relation to the application before them.

DL12.2      **HEARING: Application No. LL 7445 for a Renewal of an Of Licence under Section 100 and 127(2), Sale and Supply of Alcohol Act 2012 - Applicant: HB Enterprises Limited - Premise located at 33 Jellicoe Street, Te Puke, trading as Te Puke Bottle O**      5-87

The Committee to hear all evidence and consider the attached application and following documentation:

- |  |       |
|--|-------|
| a) Application for renewal of off licence dated 14 November 2018                                 | 5-35  |
| b) Supporting information for application  | 36    |
| c) Reports   |       |
| • New Zealand Police dated 16 November 2018  | 37    |
| • Medical Officer of health dated 3 December 2018  | 38    |
| • Alcohol Licensing Inspector dated 17 April 2019  | 39-49 |
| ○ Statement to the New Zealand Police regarding incident on Friday 5 April 2019.                 | 50-52 |
| ○ Report from New Zealand Police titled Te Puke: Alcohol Related Offending and dated 9 May 2019. | 53-61 |
| ○ Current case law regarding Amenity and Good Order and renewals of off-licences                 | 62-87 |



Application for New or Renewal of Off-Licence (Including Club Off-Licence Renewals) Sections 100 and 127(2), Sale and Supply of Alcohol Act 2012

RECEIVED 14 NOV 2018 WESTERN BOP DISTRICT COUNCIL

Fill this form out with the assistance of the guide attached

- New Off-Licence Renewal Off-Licence

1. Applicant Details

a. Applicant/Property Owner Agent Other (provide contact details below)
b. Full name of applicant (legal entity who will receive the proceeds from the sale of liquor) HB ENTERPRISES LIMITED
Previous names or other names known by THE BOTTLE-O TE PUKE
Postal address 2 ACORNIA CLOSE OHAUITI TAURANGA -3112
Occupation RETAILER Date of Birth 03/03/1959
Phone: Business (.07.) 5737879 Private (.....) Mobile (.021) 02344984
Email HBENTERPRISESLIMITED@GMAIL.CO.NZ Fax (.07.)5794660
Website address
c. Preferred means for formal correspondence Mail Email Fax
d. Status of applicant
Natural Person Local Authority Body Corporate to which Section 28(1)(b)(f) of the Act applies
Private Company Trustee Manager under the Protection of Personal Property Rights Act 1988
Partnership Public Company Government Department or other instrument of the Crown
Club Licensing Trust Board, organisation, or other body to which section 28(1)(c)(f) of the Act applies
e. Does the premises hold an existing licence? Yes No
f. Is there an existing licence held for the premises or conveyance concerned? Yes No
State type of licence OFF - LICENSE Number 022/ OFF/05/2016

Deposit Fee: \$350.00

Note: This is a deposit only. An invoice for the outstanding balance will be sent to the applicant once the correct weighting category has been selected. The outstanding balance is required to be paid prior to the licence being issued.

(for office use) LIQL
Application 7445 Premise No
Date received (date stamp) 7445 Receipt 79708 Contact ID 175053

P/3005/13558

ex 6248

exp 15/12

**1. Applicant Details (Continued)**

g. Have your or any business partners been convicted of any offence?  Yes  No

If Yes, what are the details of each offence?

(NOTE: You are entitled to protection under the Criminal Records (Clean Slate) Act. Disclose only convictions not eligible for concealment under the Clean Slate Act)

Name	Nature of Offence	Date of Conviction	Penalty Suffered
JASPAL SINGH	FAIL IN CPO AT MERIVALE LIQUOR	...../DEC/2016	MANAGER LICENSE WAS SUSPENDED FOR 28 DAYS AND STORE WAS SHUT FOR 2 DAYS
.....	.....	...../...../.....	.....
.....	.....	...../...../.....	.....
.....	.....	...../...../.....	.....

(NOTE: Continue on a separate page if necessary and attach to this application)

h. Is this the applicant's first licensed premises?  Yes  No

If yes, has the applicant prepared a financial plan for the business?  Yes  No

**Select one of the following (Numbered 2 - 5):**

**2. Further Details Where Applicant is a Company**

a. Date of Incorporation 26 / MAY / 2011 b. Place of Incorporation TAURANGA

c. Full details of each Director and the Secretary

Name	Address	Date of Birth	Place of Birth	Position Held
JASPAL SINGH	2 ACORNIA CLOSE OHAUITI TAURANGA	03 / 03 / 1959	INDIA	DIRECTOR
PARAMJIT KAUR	2 ACORNIA CLOSE OHAUITI TAURANGA	13 / 11 / 1963	INDIA	DIRECTOR
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....

**3. Further Details where Applicant is a Private Company**

a.  Authorised capital  Paid-up capital

b. Full details of each person who holds any shares issued by the company

Name	Address	Date of Birth	Place of Birth	Position Held	Face value of shares (eg 100 x \$1 shares)
JASPAL SINGH	2 ACORNIA CLOSE OHAUITI TAURANGA	03 / 03 / 1959	INDIA	DIRECTOR	50%
PARAMJIT KAUR	2 ACORNIA CLOSE OHAUITI TAURANGA	13 / 11 / 1963	INDIA	DIRECTOR	50%
.....	.....	...../...../.....	.....	.....	.....
.....	.....	...../...../.....	.....	.....	.....
.....	.....	...../...../.....	.....	.....	.....

**4. Further Details where Applicant is a Public Company**

a. Full details of each person who holds 20% or more of the shares, or any particular class of shares, issued by the company

Name	Address	Date of Birth	Place of Birth	Position Held
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....

**5. Further Details Where Applicant is a Partnership**

a. Full details of each partner as follows

Name	Address	Date of Birth	Place of Birth	Signature
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....
.....	.....	...../...../.....	.....	.....

**6. Premises Details**

a. Existing trading name for premises THE BOTTLE-O TE PUKE  
 Proposed trading name for premises THE BOTTLE-O TE PUKE  
 Address of proposed licensed premises 33 JELILOCOE STREET, TE PUKE -3119

- b. Is a licence sought conditional upon construction or completion of building work?  Yes  No
- c. Do you own the proposed licensed premises?  Yes  No

**If no:**

(i) Full name of the owner WILLIAM JAMES CAVANAHG  
 • Full address of the owner TE PUKE

(ii) What form of tenure of the premises will you have? LEASE  
 • What term of tenure will you have? 12 YEAR FINAL EXPIRY DATE IS 14 MAY 2025

d. Type of premises

- Hotel or Tavern     Supermarket     Premises on which principal business is manufacture or sale of liquor
- Club     Grocery store     Internet based
- Other, please state BOTTLE STORE

**7. Designated Areas**

a.. What part (if any) as indicated on the attached floor plan, of the premises do you intend should be designated as

- (i) A restricted area N/A
- (ii) A supervised area THE ENTIRE PREMISES
- (iii) An undesignated area (specify reason) .....

**8. Business Details**

a.. Is the sale of liquor intended to be the principal purpose of the business?  Yes  No

**If no:**

(i) What is intended to be the principal purpose of the business? .....

(ii) What part of section 32 of the Sale of and Supply of Alcohol Act is applicable to this application? (Refer to copy of section 32 attached).  
32(1)(B)

b.. Are you engaged, or intending to be engaged, in the sale or supply of any goods other than liquor or food, or in the provision of any services other than those directly related to the sale or supply of liquor and food?  Yes  No

**If yes,** what is the nature of those other goods and services? .....

SALE OF TOBACCO PRODUCTS AND NON ALCOHOLIC DRINKS

c.. What days and hours do you intend to sell liquor under the licence? (The days and hours should reflect the entire hours you intend to operate your business and should be no greater than what was applied for on your Certificate of Compliance)

**Days** MONDAY TO SUNDAY **Hours** From 9.00 AM To 10.00 PM

d.. Do you intend to provide complimentary samples of liquor on the premises?  Yes  No

**9. Conditions**

a. What experience and training has the applicant undertaken:  
ME AND MY FAMILY ARE IN LIQUOR TRADE SINCE LAST 7 YEARS. I OWN MERIVALE LIQUOR CENTRE (407 FRASER STREET TAURANGA), AVENUE LIQUOR CENTRE (ELEVENTH AVENUE TAURANGA ), THE BOTTLE-O (33 JELICOE STREET TE PUKE) THE BOOHAI BAR AND LIQUOR CENTRE (112 MAIN ROAD KATIKATI), HOG AND HOUNDS SPORTS BAR (57-61 TIRAU STREET PUTARURU) AND STADIUM SPORTS BAR (91 JELICOE STREET TE PUKE)

b. What steps do you propose to take to ensure that the requirements of the Act in relation to the sale of liquor to prohibited persons are observed?  
APPROPRIATE SIGNAGE WILL BE DISPLAYED ,A SOCIAL RESPONSIBILITY POLICY WILL BE IN PLACE AND DISPLAYED, THE MANAGER WILL TAKE CONTROL ANY SITUATION THAT MIGHT LEAD TO A BREACH IN THE PROVISION OF THE ACT, EVIDENCE OF AGE DOCUMENT ARE REQUESTED FROM ANY PERSON LOOKING TO BE UNDER THE AGE OF 25 YEARS

c. What other steps does the applicant propose to promote the responsible consumption of alcohol?  
MANAGER AND STAFF WILL SUPPLY THE ALCOHOL TO THE CUSTOMER IN A SAFE AND RESPONSIBLE MANNER SO THAT NO HARM IS CAUSED BY ITS EXCESSIVE USE

d. What other systems (including training systems), and staff in place (or to be in place) for compliance with the Act?  
THE MANAGER WILL INSURE THAT ALL STAFF ARE TRAINED IN THEIR REQUIREMENT AND RESPONSIBILITY UNDER THE ACT PARTICULAR ATTENTION IS PAID TO THE IDENTIFICATION OF MINOR AND SIGN OF INTOXICATION. FURTHER TRAINING WILL BE GIVEN BY THE PROFFECTIONAL FOR NZQA UNIT STANDARD 4646 AND 16705



**9. Conditions** *(Continued)*

e. Are any changes sought to the present conditions of the licence (ie days or hours)?

- **IF NO** – Go straight to Section 11

Yes  No

- **IF YES** – Continue

Changes relating to the days and hours of the liquor licence

(i) What are the days and hours shown on the licence at present?

(ii) What are the changes sought?

Days	Hours	Days	Hours
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

f. Changes relating to other conditions of the liquor licence

(i) What are the conditions of the licence at present?

(ii) What are the changes sought?

.....	.....
.....	.....
.....	.....

What are the full reasons for the changes sought? .....

.....

Where **changes to the days and/or hours** of the licence are sought, has the applicant:

- Contacted the Western Bay Duty Planner Consents on 571 8008 prior to submitting this application to obtain advice as to whether the changes comply with planning requirements and or any resource consents relevant to the premises?  Yes  No

- Filed for a Certificate of Compliance with the renewal application? The Certificate of Compliance provides the required official confirmation the changes comply with all planning requirements  Yes  No

**10. Management of Premise**

At all times when liquor is being sold or supplied to the public, a manager (appointed under Section 217 of the Sale and Supply of Alcohol Act) must be on duty (except where section 215 of the Act applies to Club's).

a. Details of **ALL** managers currently employed:

- |   |  |
|---|--|
| • Full name <u>HARKANWALJIT SINGH</u> .....                   | • Certificate number <u>022/CERT/7166/2018</u> ..... |
| • Residential address <u>3 BAYLY ROAD TE PUKE</u> .....       | • Expiry date <u>05/04/2021</u> .....                |
| .....   | .....  |
| • Full name <u>MICHAEL ROBERT NORMAN FRANICEVIC</u> .....     | • Certificate number <u>21/CERT/21904/2017</u> ..... |
| • Residential address <u>111 DIXION ROAD PAPAMOA</u> .....    | • Expiry date <u>30/09/2020</u> .....                |
| .....   | .....  |
| • Full name <u>JASPREET SINGH</u> .....                       | • Certificate number <u>022/CERT/6955/2018</u> ..... |
| • Residential address <u>2 COOLGARDIE CLOSE PAPAMOA</u> ..... | • Expiry date <u>22/02/2019</u> .....                |

..... *(Continue on separate sheet if necessary)*

- b. If no managers have yet been appointed, what is your proposal relating to Section 214 of the Sale and Supply of Alcohol Act requiring a manager to be present at all times?

.....  
 .....

**11. Further details where the licence is a club licence**

It is a requirement to have in place a written host responsibility policy outlining the establishment's commitment to providing a safe drinking environment. This policy should be prominently displayed in the premises. Examples of draft host responsibility policies are provided at the back of the attached Pacific Health questionnaire for your reference. If you have any questions concerning this, please contact Pacific Health on 571 8975.

Copy of the host responsibility policy is attached  Yes  No

**12. Signature of Applicant**

- a. Before signing the application, please refer to and complete the check list at the end of this form.

b. Applicant's signature Jaspal Singh Date 14 / 11 / 18  
*(must be signed by the Licensee personally)*

• Please note – If applying as a company, please indicate your relationship to the company, eg Director, Secretary

Relationship DIRECTOR Name JASPAL SINGH

**13. Check List – Please Tick ✓**

- a. IMPORTANT – The application will not be accepted by the District Licensing Committee until:**
- **ALL questions on the application form have been answered in full.**  Yes  No
  - **ALL additional documentation as indicated below are attached to the application.**  Yes  No
- Please note that if any of the documents below have been filed with a previous application, you are required to file them again with this application.
- b. FOR RENEWAL APPLICATIONS Have You Included:**
1. **Where changes to days/hours are being sought**, the completed 100(f) Sale and Supply of Alcohol Certificate application form?  Yes  No
  2. **Where the licence is an off-licence or club licence**, a copy of your host responsibility policy?  Yes  No
  3. **Where the licence is an off-licence or club licence**, the completed Pacific Health questionnaire?  Yes  No
  4. **The completed Fire Service Data Sheet**  Yes  No
- c. Additional Documents Required**
1. **Original Certificate of Compliance under Section 100(f) of the Sale and Supply of Alcohol Act.** You should have already applied for and been issued this document prior to filing this application.  Yes  No
  2. **Photograph** or artist's impression of the exterior of the premises.  Yes  No
  3. **Map** indicating where the premises is located.  Yes  No
  4. **Scale Plan** of entire premises showing the layout of the premises including where any tables and chairs will be located and outlining:
    - The inside area for sale and supply of liquor, including any cool store areas the customer may have access to.
    - Principal entrance/s.
  5. **Host Responsibility Policy**  Yes  No
  6. **Where changes to days/hours are being sought, the completed Certificate of Compliance application form?**  Yes  No
  7. **Manager's certificate** of person/persons intending to be the manager of the premises, or if this document has not been issued at the time of filing this application, the date the manager's certificate application was filed with the District Licensing Committee  Yes  No
  8. **Where the applicant is not the owner of the building, a written statement from the owner** to the effect that the owner has no objection to the grant of the licence.  Yes  No
  9. **Where the applicant is a company, a copy of the Certificate of Incorporation.**  Yes  No
  10. **Where the applicant is a partnership of more than two persons, evidence of formal partnership.** Where the applicant is a Body Corporate, a copy of Certificate of Incorporation (or equivalent document).  Yes  No
  11. **Where the application relates to a supermarket, particulars of the floor area**, including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items.  Yes  No
  12. **Where the application relates to a grocery store, certified accounts** showing the annual sales revenue percentage of turnover that is derived from the sale of main order household foodstuffs as required by Regulation 12 or 13 (as the case requires) of the Sale and Supply of Alcohol Regulations 2013..  Yes  No
  13. **Deposit Fee of \$350.00** (includes GST)  Yes  No
- d. Have you completed the attached Toi Te Ora Public Health Questionnaire?**  Yes  No
- e. Have you completed the Amenity and Good Order Questionnaire?**  Yes  No
- f. Have you signed and dated the form personally?**  Yes  No

## Sale and Supply of Alcohol Act 2012 Public Health Questionnaire for Off-Licence Applications

This questionnaire helps ensure that licensees meet the requirements of the Sale and Supply of Alcohol Act 2012 in relation to the public health consequences of alcohol use, such as alcohol-related health problems and preventable death or disability from alcohol-related motor vehicle crashes.

This questionnaire will enable the completion of the Medical Officer of Health report on your license application. Your license application cannot be processed without completion of this questionnaire.

Name of Licensed Premises: THE BOTTLE-O TE PUKE

Name of applicant: H B ENTERPRISES LTD

Type of application:	New <input type="checkbox"/>	Renewal <input checked="" type="checkbox"/>
Premises type:	Bottle store <input type="checkbox"/>	Supermarket <input type="checkbox"/>
	Tavern <input type="checkbox"/>	Grocery <input type="checkbox"/>
	Online <input type="checkbox"/>	Auctioneer <input type="checkbox"/>

Other .....

### Social Responsibility

- a. Do you have a written policy outlining how you will meet your responsibilities under the Act? Yes  No   
 If yes, please attach a copy.
- b. Do you have tastings? Yes  No   
 If yes, is water freely available? Yes  No

### Amenities and Good Order

What steps will you take to ensure your business does not impact negatively on your neighbours? eg noise, nuisance and vandalism?

If any customer seen consuming purchased liquor on streets or surrounding environs, they will be .....  
 tresspassed from the premises. There is no person to believe that the issue of this license will negatively  
 impact on the neighbouring environment amenity and good order.

### Staff Training

- a. Do you provide training to staff on the SaSA 2012? Yes  No

If yes: In-house training, by whom?

Senior Store Manager will provide training to staff. Approved providers will be used for further training.  
 .....

Courses, provided by? Approved providers

**Intoxicated Patrons**

- a. How do you prevent intoxicated people from entering your premises?  
 They would be advised that no alcohol would be sold to them and ask them to politely to leave.  
 .....
- b. How do you identify if a person is intoxicated?  
 Co-ordination, speech, appearance, behaviour  
 .....
- c. What process do you have to deal with intoxicated patrons?  
 The manager will be trained in procedure.  
 .....
- d. Do you display signage stating that intoxicated patrons will not be served alcohol? Yes  No   
 (This signage can be provided by the Public Health Service)

**Minors**

- a. What forms of identification do your staff accept?
 

NZ photographic driver's license	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
NZ or overseas passports	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
HANZ 18+ card	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Other forms of I.D – <i>please describe</i>		
<u>No other forms are acceptable</u>		
- b. Do you display signage stating alcohol will not be sold to minors? Yes  No
- c. Are staff aware of their responsibilities under the Sale and Supply of Alcohol Act regarding supply of alcohol to minors? Yes  No
- d. What process do you have in place to prevent minors from entering your premises?  
The entire premises will be supervised.
- e. Do you have on-line sales? Yes  No   
 If yes, what steps do you take to ensure alcohol is not sold to minors?  
N/A

**Alcohol Promotion**

Do you run alcohol promotions (e.g. free products/services, competitions, 2 for 1 deals, etc) Yes   
 No   
 Give recent examples  
 .....

Do you have exterior advertising? Yes  No   
 Building ads, Yes  No   
 Sandwich boards, Yes  No   
 Billboards Yes  No

What percentage of your front window is covered in alcohol advertising?

No front window, outside is clearly visible through the front door, also CCTV camera is capturing the complete front

What alcohol brands and products are you currently advertising in your windows? Give examples.

Franchise signage showing brand name and wine bottles.

**FOR SUPERMARKETS AND GROCERY STORES ONLY**

N/A

In which area of the store is your alcohol located?

.....  
 Please attach a floor plan.

Are your in-store alcohol promotions confined to the designated alcohol area? Yes  No

Please identify the categories of products your store sells (tick all appropriate actions)

Fresh meat (not including processed and cured meats eg bacon, salami, ham sausages etc)

Fresh produce (fruit, vegetables)

Frozen meat

Dairy products

Breads, cereals, rice, pasta

Staples – flour, spices, sugar and other items used for baking

Health and beauty

Tinned foods

Household – non grocery items that are needed for household maintenance – detergent, rubbish bags, cleaning supplies, etc.

Approximately what percentage of your store do the above products occupy?

**Smoke-free Environments Act 1990**

Do you sell tobacco? Yes  No

Are tobacco products visible to the public? Yes  No

..... HB Enterprises limited ..... (Full name), the Licensee\* for

..... The Bottle O, Te Puke .....

I have read and understood each of the above questions and I agree to comply with the measures outlined here throughout this next licensing period.

Signed: [Signature]

Dated: 14/11/18

Position/Title: Director

*A Public Health Alcohol Regulatory Officer, on behalf of the Medical Officer of Health, may visit your premises, from time to time, in order to undertake a Sale and Supply of Alcohol Act 2012 compliance visit.*

**All applications filed after 18 June 2013 require the Agency to take into account the criteria of the Sale and Supply of Alcohol Act 2012 (section 105).**

**To support your application, please supply the information required and answer the questions listed in this form.**

### Scale Floor Plan

Provide a scale floor plan which also shows the design and layout of the premises.

This should include: (identifying your principal entrance)

- Seating and tables
- A list of facilities, ie bar, toilets, stage, etc.
- CCTV placement
- Security lighting

Also, for Off-Licences:

- A description of your product types, where they are displayed and stored.

### 1. The reporting agencies must consider any effects the issue of the licence will have on amenity and good order - please answer the following:

#### For all licences:

- a) Advise proximity of all childcare centres, schools and churches within 500m - a site plan would assist.  
 NONE
- b) How many residential neighbours would you have within 50 metres?  
 NONE
- c) Security - what security systems do you have and state location (outdoor lighting, indoor/outdoor CCTV, other)?  
 INDOOR/OUTDOOR CCTV WITH GOOD VISIBILITY
- d) Internal layout - can the entire premises be seen by the cashier? Is there good visibility in the cool store areas (Off-Licence)? Where there are blind spots, are mirrors or CCTV installed? Is the internal lighting inside the premises suitable?  
 YES
- e) Windows - is there good visibility into and from the premises and the street?  
 WINDOW IS COVERD BY THE BOTTLE-O FRANCHISE POSTER BUT STAFF CAN SEE CLEARLY WITH CCTV
- f) Lighting - does the lighting outside the premises discourage loitering? Does the lighting allow staff to check ID's, etc?  
 YES. THERE WILL BE SUFFICIENT LIGHTING AT THE FRONT OF THE STORE AND ADEQUATE VISIBILITY INTO THE STORE.
- g) Security - will you employ security staff and when will they be used?  
 no need we never face any problem past 6 years
- h) Security staff - how many security staff hold a Certificate of Approval and formal registration or qualification? If so wh  
 will be qualified if they engaged  
 WE DO NOT NEED SECURITY STAFF AT MY STORE. IF WE NEED TO HIRE, WE WILL HIRE QUALIFIED STAFF.

<b>Additional Information required for On-Licence and Club Licences.</b>	
<b>Noise</b>	
i)	Explain clearly all types* of entertainment you will be providing and when (* amplified music or large crowd noise relate) Type n/a here _____
j)	Noise management - do you have a noise management plan or an acoustic report prepared by a suitably qualified and experienced Acoustic Engineer? n/a _____
k)	Noise mitigation - what mitigation will/is be/being undertaken (include any details regarding noise monitoring)? n/a _____
<b>What outside / off premise advertising involving liquor will you be doing?</b>	
l)	Newspaper/Magazine SOME TIME IN A NEWSPAPER / RADIO. _____
m)	Shop windows? no _____
n)	On your premises - roof/other? building _____
o)	Street/Footpath signs? no _____
p)	Social Media Sites i.e. Twitter/Facebook, Online Magazines, Websites, etc? NO _____
A copy or sample of your advertising would be of assistance	
<b>Systems and Staff Training</b>	
q)	Are you involved in any mystery shopper type programmes? bottle-o franchise of tasman liquor company _____
r)	What till prompt systems do you have regarding age checks? WE HAVE PUT A BIG SIGN ON THE TOP OF SCREEN "ASK ID" _____
s)	What staff training is provided with regard to Sale of Alcohol compliance and Host Responsibility practices - explain content, duration and how often this training is provided. WE HAVE MONTHLY MEETING IN WHICH STAFF TRAINING IS GIVEN BY SENIOR MANAGER REGARDING LIQUOR ACT. _____
t)	Please provide copies of any written material you supply to staff regarding staff training (attach to this form). HOSPITALITY OF NEW ZEALAND GIVE US TRAINING MATERIAL TIME TO TIME. _____
<b>2. Marketing and Promotions</b>	
a)	What percentage of the front windows will be clear and transparent? FRONT WINDOW IS COVERED BY FRANCHISE SIGNAGE BUT WE HAVE WIDE GLASS DOOR THROUGH WHICH STAFF CAN SEE CLEARLY OUTSIDE PREMISES. GOOD VISIBILITY THROUGH CCTV. _____
b)	What is the target market for the business? LOCAL RESIDENCE _____



c)	What is your policy regarding pricing and promotions? <u>ACCORDING TO FRANCHISE</u>
d)	Will there be single sales (Off-Licence)? <u>YES BUT NOT SO MANY.</u>
<b>Renewals Only</b>	
e)	Have you had any complaints from the neighbours (including confirmed noise complaints) that you are aware of? <u>never</u>
f)	Has your business been subject to a Police controlled Purchase Operation (CPO)? If so, what were the results? <u>When police controlled purchase operation they do not disclosed with us but this never happened with us</u>
g)	Have you or your business ever appeared before the Alcohol Regulatory and Licensing Authority? If so, for what reason? <u>no</u>
<b>3. The granting, or renewal, of this application will contribute to the Object of the Act by:</b>	
•	Steps taken to ensure the sale, supply and consumption of alcohol will be undertaken safely and responsibly: <u>SIGNAGE WILL BE DISPLAYED. ALCOHOL WILL NOT BE PROMOTED IN AN IRRESPONSIBLE MANNER.</u> <u>THE MANAGER WILL ENSURE THAT PROHIBITED PERSONS ARE NOT SOLD ALCOHOL.</u> <u>the social responsibilty policy will be headed to.</u>
•	The harm caused by the excessive or inappropriate consumption of alcohol will be minimised by: <u>RESPONSIBLE CONSUMPTION OF ALCOHOL SIGNAGE WILL BE DISPLAYED AT THE POINT OF SALE.</u> <u>STAFF WILL NOT SELL LIQUOR TO CUSTOMERS WHERE THEY BELIEVE THE PURCHASER IS NOT INTENTED CONSUMER.</u>
<b>Any other comments you wish to make to support your application being determined:</b> <u>WE ARE IN THE BUSINESS FROM PAST 6 YEARS AND WE DID NOT FACE ANY PROBLEM IN THAT TIME PERIOD.</u>	



# COMPANIES OFFICE



FOR MORE  
OUR REGISTRATION DETAILS

## Company Extract

HB ENTERPRISES LIMITED

3398191

NZBN: 9429031082877

<b>Entity Type:</b>	NZ Limited Company
<b>Incorporated:</b>	26 May 2011
<b>Current Status:</b>	Registered
<b>Constitution Filed:</b>	Yes
<b>Annual Return Filing Month:</b>	March

**Ultimate holding company:** [Not specified]

### Company Addresses

#### Registered Office

Bay Accounting & Financial Services Limited, 2 Orange Lane, Bethlehem, Tauranga, 3110, NZ

#### Address for Service

Bay Accounting & Financial Services Limited, 2 Orange Lane, Bethlehem, Tauranga, 3110, NZ

### Directors

KAUR, Paramjit

28 Oteki Park Drive, Welcome Bay, Tauranga, 3112, NZ

SINGH, Jaspal

28 Oteki Park Drive, Welcome Bay, Tauranga, 3112, NZ

### Shareholdings

**Total Number of Shares:** 100

**Extensive Shareholdings:** No

50 SINGH, Jaspal  
28 Oteki Park Drive, Welcome Bay, Tauranga, 3112, NZ

50 KAUR, Paramjit  
28 Oteki Park Drive, Welcome Bay, Tauranga, 3112, NZ

Licence No: 022/OFF/05/2016

## Notice of Renewal of Off Licence

Section 135, Sale and Supply of Alcohol Act 2012

To: **HB ENTERPRISES LIMITED**

Licence 022/OFF/05/2016 replacing licence 022/OFF/9/11.

The Off Licence in respect of the premises situated at 33 JELICOE STREET, TE PUKE and known as "THE BOTTLE O" is renewed.


The present conditions of Licence No 022/OFF/9/11 shall continue to apply.

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

- Until the close of the period for which it is renewed; or
- If an application for the renewal of the licence is duly made before it would otherwise expire, until the close of the period of 3 years after the date for which it is renewed.

The period which the licence is renewed is three years expiring on 15 December 2018.

**DATED** at Tauranga on the 27<sup>th</sup> day of April 2016.



Secretary

**Western Bay of Plenty District Licensing Committee**

Western Bay of Plenty

# DEED OF LEASE

SIXTH EDITION 2012

DEED made the 15<sup>th</sup> day of May 2013

**LANDLORD** WILLIAM JAMES CAVANAGH, KRISTY ELIZABETH CAVANAGH and JOHN STUART DONALD (as trustees of the Bill Cavanagh Family Trust) as to a 1/2 share and WILLIAM JAMES CAVANAGH, KRISTY ELIZABETH CAVANAGH and JOHN STUART DONALD (as trustees of the Elaine Cavanagh Family Trust)

**TENANT** HB ENTERPRISES LIMITED


**GUARANTOR** JASPAL SINGH and PARAMJIT KAUR

THE LANDLORD leases to the Tenant and the Tenant takes on lease the premises and the car parks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND THE TENANT covenant as set out in the First and Second Schedules.

THE GUARANTOR covenants with the Landlord as set out in the Third Schedule.

**SIGNED** by the Landlord \*  
William James Cavanagh, Kristy Elizabeth Cavanagh  
and John Stuart Donald  
in the presence of:

  
\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name


Megan Shelley Howard  
Legal Executive  
Te Puke  
\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Witness Address



  
\_\_\_\_\_  
Signature of Landlord

William James Cavanagh and Kristy Elizabeth Cavanagh  
Print Full Name  
(for a company specify position:  
Director/Attorney/Authorised Signatory)

  
\_\_\_\_\_  
Signature of Landlord

John Stuart Donald  
Print Full Name  
(for a company specify position:  
Director/Attorney/Authorised Signatory)

\* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

**Note:** Signing by a company - please refer to the note on page 2

**SIGNED** by the Tenant \*  
HB ENTERPRISES LIMITED  
in the presence of:

[Signature]  
Witness Signature

Witness Name

ANNE LOUISE HOLLOWAY  
Witness Occupation  
SOLICITOR  
TAIRANGA

Witness Address

[Signature]  
Signature of Tenant

Jaspal Singh  
Print Full Name  
(for a company specify position:  
Director/Attorney/Authorised Signatory)

[Signature]  
Signature of Tenant

Paramjit Kaur  
Print Full Name  
(for a company specify position:  
Director/Attorney/Authorised Signatory)

**SIGNED** by the Guarantor \*  
JASPAL SINGH and PARAMJIT KAUR  
in the presence of:

[Signature]  
Witness Signature

Witness Name

ANNE LOUISE HOLLOWAY  
Witness Occupation  
SOLICITOR  
TAIRANGA

Witness Address

[Signature]  
Signature of Guarantor

Jaspal Singh  
Print Full Name  
(for a company specify position:  
Director/Attorney/Authorised Signatory)

[Signature]  
Signature of Guarantor

Paramjit Kaur  
Print Full Name  
(for a company specify position:  
Director/Attorney/Authorised Signatory)



\* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

**Note: Signing by a company** – to ensure that this document binds the company as a deed, it must be signed in accordance with section 180 of the Companies Act 1993.  
If two directors sign, no witnessing is necessary.  
If only one director or a director and authorised signatory(ies) or attorney(ies) sign, signatures must be witnessed.

**FIRST SCHEDULE**

1. **PREMISES:** The shop premises and back yard space situated at 33 Jellicoe Street, Te Puke (further described on the attached plan)
2. **CAR PARKS:** Nil
3. **TERM:** 3 years
4. **COMMENCEMENT DATE:** 15 May 2013
5. **RIGHTS OF RENEWAL:** 3 of 3 years each
6. **RENEWAL DATES:** 15 May 2016, 15 May 2019, 15 May 2022
7. **FINAL EXPIRY DATE:** 14 May 2025
8. **ANNUAL RENT:**
- |                                   |              |                    |                 |
|-----------------------------------|--------------|--------------------|-----------------|
|                                   | Premises     | \$12,807.30        | plus GST        |
| (Subject to review if applicable) | Car Parks    | \$-                | plus GST        |
|                                   | <b>TOTAL</b> | <b>\$12,807.30</b> | <b>plus GST</b> |
9. **MONTHLY RENT:** \$1,067.28 plus GST
10. **RENT PAYMENT DATES:** The 15th day of each month commencing on the 15th day of May 2013
11. **RENT REVIEW DATES:** (Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)
1. Market rent review dates:  
Each renewal date (and refer to Clause 2.1(d))
  2. CPI rent review dates:  
-
12. **PROPORTION OF OUTGOINGS:** 33 %  
(subclause 3.1)
13. **DEFAULT INTEREST RATE:** 15 % per annum  
(subclause 5.1)
14. **BUSINESS USE:** Liquor store  
(subclause 16.1)



*[Handwritten signature]*

To

The District Licensing Committee  
Western Bay of Plenty  
Tauranga

Sub: no objection Certificate

I am the owner of 33 Jellicoe Street, Te Puke. I lease my property to Hbenterpriseslimited T/A The Bottle-O, Te Puke. I have no objection in that if council renew their license.

Please feel free to contact me.

With Regards



Bill Cavanagh  
0274963957  
trisbcav@gmail.com

4.11.18

# **THE BOTTLE-O**

## **SOCIAL RESPONSIBILITY POLICY**

**THE MANAGEMENT AND STAFF TAKE THEIR SOCIAL RESPONSIBILITY SERIOUSLY AND ALWAYS ATTEMPT, WHERE POSSIBLE, TO ENSURE THE FOLLOWING:**

- **IT IS OUR RESPONSIBILITY TO ENSURE, WHERE EVER POSSIBLE THAT ALCOHOL IS NOT ON SUPPLIED TO PROHIBITED PERSON.**
- **WE WILL REQUEST IDENTIFICATION FROM ANY ONE THAT LOOKS UNDER THE AGE OF 25 YEAR.**
- **WE WILL NOT SERVE MINORS.**
- **WE WILL NOT SERVE INTOXICATED PERSON.**
- **DURING TASTING WATER WILL BE FREELY AVAILABLE.**
- **ALCOHOL WILL NOT BE PROMOTED IN AN IRRESPONSIBLE MANNER.**

**FROM THE MANAGEMENT AND STAFF**



Certificate No. 21/CERT/21904/2017

## **NOTICE OF RENEWAL OF MANAGER'S CERTIFICATE**

Section 226, Sale and Supply of Alcohol Act 2012

**To, MICHAEL ROBERT NORMAN FRANICEVIC**

Your manager's certificate is renewed.

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 Manager's Certificates, this Certificate.

**expires on 30 September 2020**

unless again renewed.

**Renewed at Tauranga 28 September 2017**



Darrienne Daupney

**SECRETARY  
TAURANGA DISTRICT LICENSING COMMITTEE**



Certificate No. 022/CERT/7166/2018

## Notice of Renewal of Manager's Certificate Section 226, Sale and Supply of Alcohol Act 2012

Pursuant to the Sale and Supply of Alcohol Act 2012

### HARKANWALJIT SINGH

is authorised to manage any licensed premises in respect of which a licence is in force.

Subject to the requirements of the Act relating to fees, and to the provisions of the Act relating to the suspension and cancellation of managers' certificates, this certificate continues in force—

- (a) either—
  - (i) until the close of the period for which it was last renewed; or
  - (ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but
  
- (b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either—
  - (i) until the close of the period of 3 years after the period for which it was last renewed; or
  - (ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

**This certificate expires at the close of 5 April 2021**

**DATED** at Tauranga on the 27<sup>th</sup> day of April 2018.



Secretary

**Western Bay of Plenty District Licensing Committee**



Certificate No. 022/CERT/6955/2018

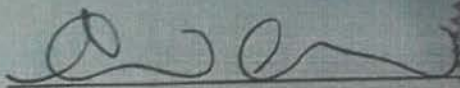
**MANAGER'S CERTIFICATE***Section 217, Sale and Supply of Alcohol Act 2012*

Pursuant to the Sale and Supply of Alcohol Act 2012

**JASPREET SINGH**

is authorised to manage any licensed premises in respect of which a licence is in force. Subject to the requirements of the Act relating to fees, and to the provisions of the Act relating to the suspension and cancellation of managers' certificates, this certificate continues in force—

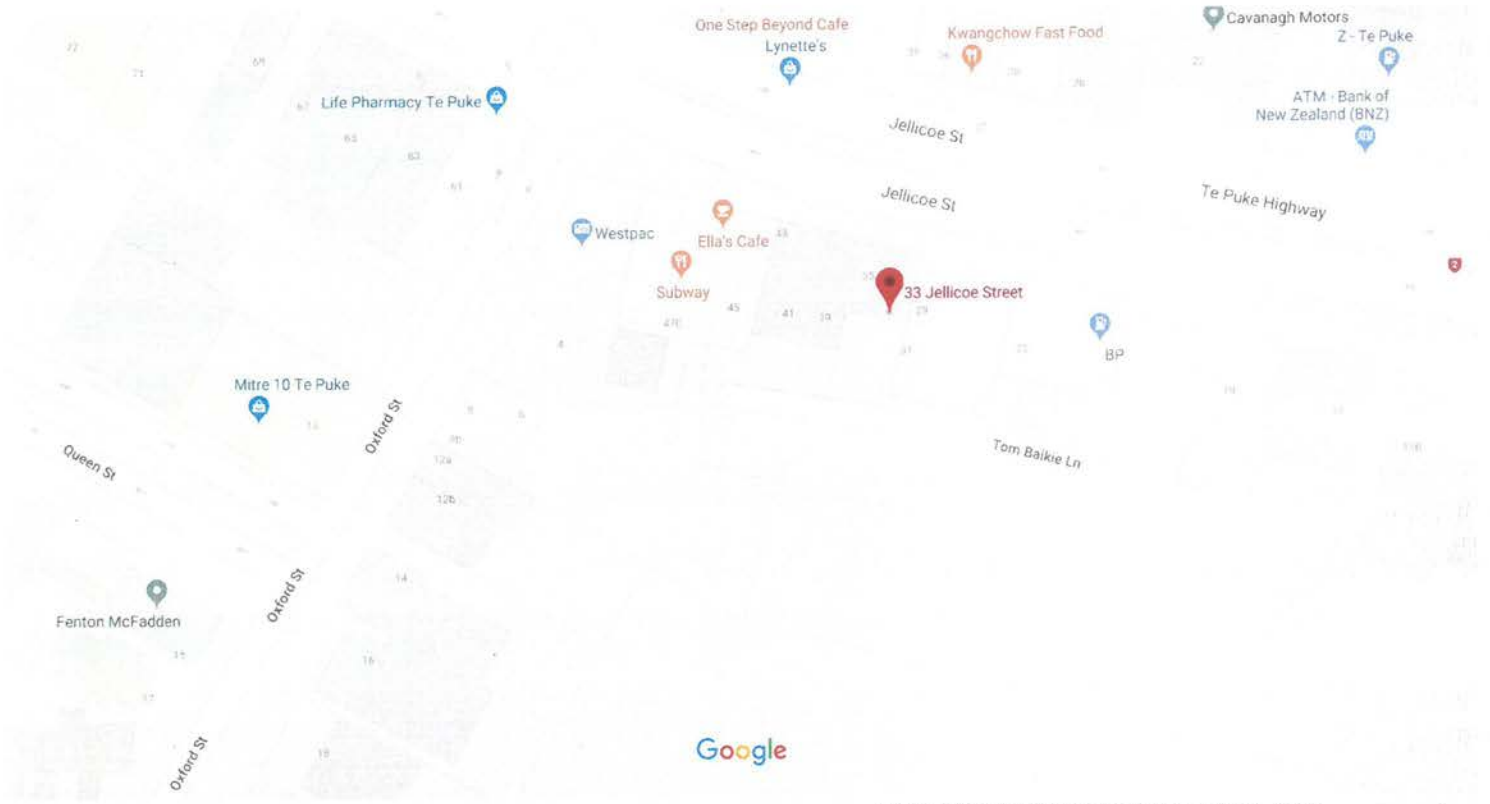
- (a) either—
- (i) until the close of the period for which it was last renewed; or
  - (ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but
- (b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either—
- (i) until the close of the period of 3 years after the period for which it was last renewed; or
  - (ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

**This certificate expires at the close of 22 February 2019**Dated at Tauranga on the 22<sup>nd</sup> day of February 2018


Secretary  
Western Bay of Plenty District Licensing Committee



33 Jellicoe St



Map data ©2018 Google, MapData Sciences Pty Ltd, PSMA 20 m



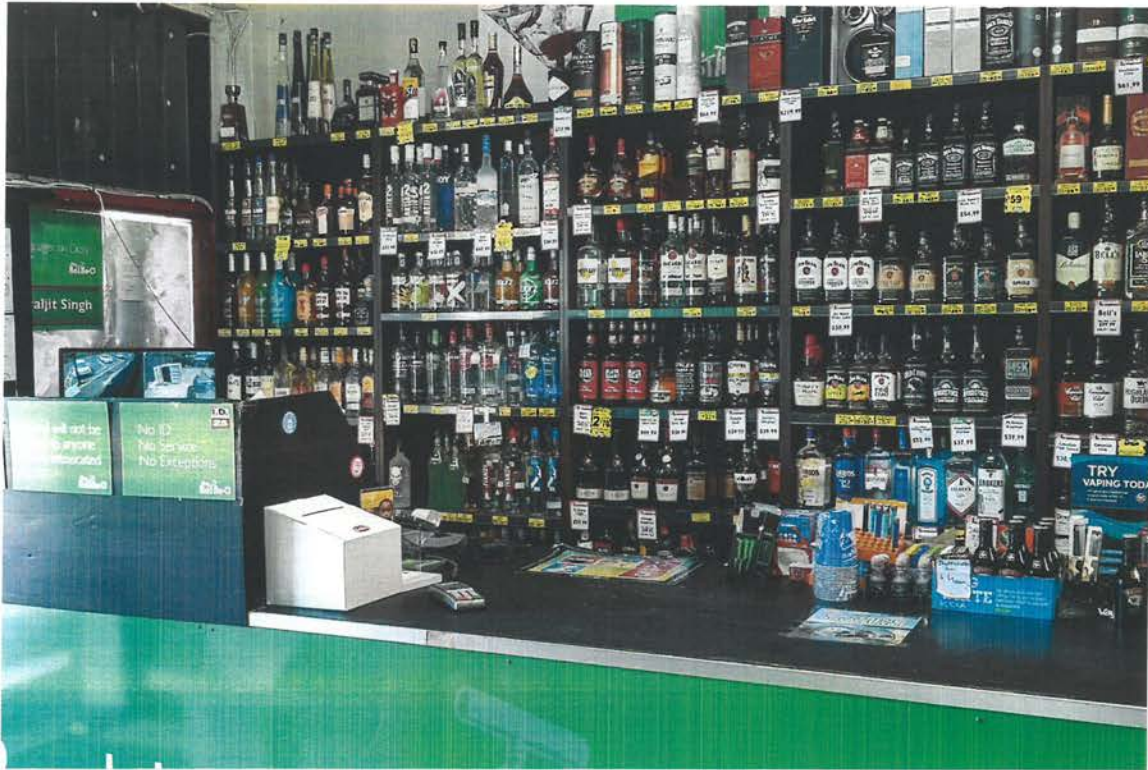
33 Jellicoe St

Te Puke 3119

687H+QQ Te Puke, Bay Of Plenty





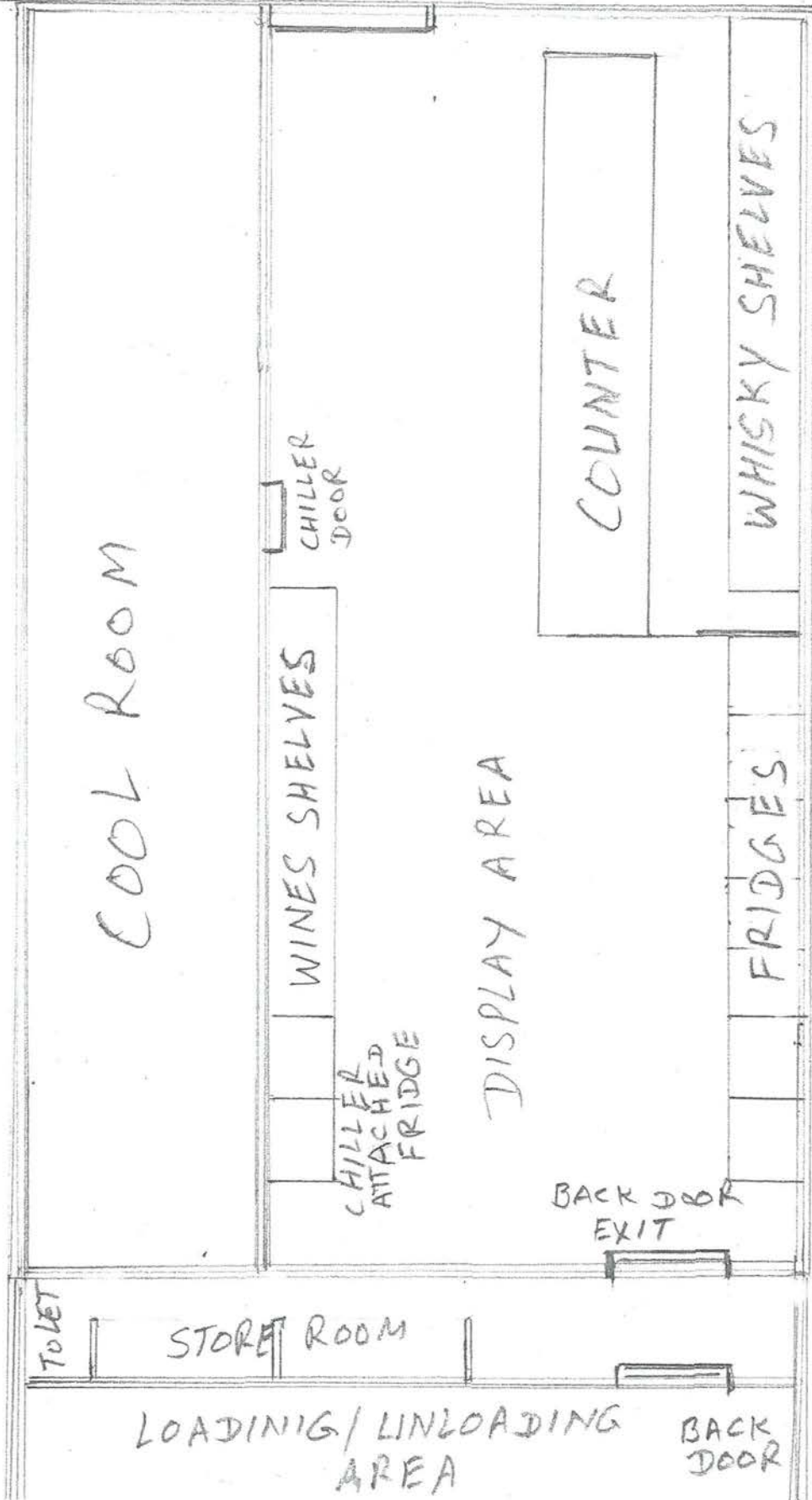


# JELlicoe STREET TE PUKE

GROUND FLOOR PLAN 33 JELlicoe STREET  
THE BOTTLER TE PUKE



MAIN ENTERENCE









# Intoxication Assessment Tool

Indicators may include but are not limited to:

	SOBER	INFLUENCED	INTOXICATED
<b>S</b> peech	Coherent, clear speech, normal tone/volume, may be talkative.	May be overly talkative, opinionated and interrupts, may stumble over words, becoming loud, inappropriate language, jokes, comments.	Slurring, difficulty forming words, loud, repetitive, loses train of thought, nonsensical, unintelligible.
<b>C</b> oordination	Coordinated, balanced, standing without help or support.	Slowed or delayed reactions, swagger or occasional staggers or sways.	Spills drinks, stumbles, trips, weaves, walks into objects, unable to stand un-aided or sit straight.
<b>A</b> pppearance	Tidy, clear eyes, alert.	Vacant or blank expression, smell of alcohol on breath, may look untidy.	Bloodshot eyes, eyes glazed, inability to focus, tired, asleep, dishevelled.
<b>B</b> ehaviour	Behaving sensibly but may be more relaxed.	Over friendly or withdrawn, inappropriate or risky actions, argumentative, annoying, fading attention, increased consumption rate.	Seriously inappropriate actions or language, aggressive, rude, belligerent, obnoxious behaviour affecting other customers.
	<b>Monitor &amp; serve responsibly</b>	<b>Intervene</b>	<b>Deny &amp; remove</b>

## Intoxication definition

INTOXICATED means observably affected by alcohol, other drugs, or other substances (or a combination of two or all of those things) to such a degree that two or more of the following are evident: (a) appearance is affected; (b) behaviour is impaired; (c) coordination is impaired; (d) speech is impaired.



**Western Bay of Plenty District Council  
Confirmation of Compliance Pursuant to  
Section 228 Sale of Liquor Act 1989**


- |    |                                |  |
|----|--------------------------------|--|
| 1. | <b>Applicant</b>               | HB Enterprises Ltd   |
| 2. | <b>Location of Property</b>    | 33 Jellicoe Street, Te Puke  |
| 3. | <b>Legal Description</b>       | Lot 2 Deposited Plan S 29324   |
| 4. | <b>Zone</b>                    | Commercial   |
| 5. | <b>District Plan</b>           | Western Bay of Plenty Proposed District Plan   |
| 6. | <b>Description of Activity</b> | Off Licence application under Section 31(1)(e) Sale of Liquor Act 1989 for premises "Whisky Station".<br>The hours of operation: Monday – Sunday 9am – 11pm. |
| 7. | <b>Statement of Compliance</b> |  |

On 4 November 2011, the day this application was received, the activity described above is a permitted activity under the Western Bay of Plenty Proposed District Plan (Rule 17.3.1) & also the provisions under Section 4B (Rule 4B.4.7) Transportation which requires 4 car parks onsite, the relevant provisions of which are beyond the stage they can be affected by submission or appeal.

[Note: please ensure the car parks are labeled correctly for customers]

  
Jody Schuurman  
**Consents Technician**  
P/3005/13558/2  
ID: 4068  
13 December 2011

Approved under Delegated Authority

  
.....  
Chris Watt  
**Consents Manager**

Date: .....

14/12/2011

8 Te Puke Times

bayofplentytimes.co.nz | Nov 22, 2018

**PUBLIC NOTICE OF AN APPLICATION FOR Off licence Section 101, Sale and Supply of Alcohol Act 2012**

HB ENTERPRISES LIMITED has made application to the District Licensing Committee at Western Bay of Plenty for the renewal of an OFF LICENCE in respect of the premises situated at 33 JELICOE STREET and known as THE BOTTLE O.

The general nature of the business to be conducted under the licence is a Bottle Store.

The days on which and the hours during which liquor is currently being sold under the licence are:

**Monday to Sunday 9:00am to 10:00pm**

The application may be inspected during ordinary office hours at the Western Bay of Plenty District Licensing Committee at Barkes Corner, Greerton, Tauranga.

Any person who is entitled to object and who wishes to object to the grant of the application may, not later than 15 working days after the date of the first publication of the application in a newspaper or newspaper in accordance with the Sale and Supply of Alcohol Act 2012, file a notice in writing of the objection with the Secretary of the District Licensing Committee at the Western Bay of Plenty District Council, Private Bag 12803, Tauranga.

No objection to the issue of a licence may be made in relation to a matter other than a matter specified in section 105(1) of the Sale and Supply of Alcohol Act 2012.

No objection to the renewal of a licence may be made in relation to a matter other than a matter specified in section 131 of the Sale and Supply of Alcohol Act 2012.

This is the first publication of this notice.



**Public Notices**

**PUBLIC NOTICE OF AN APPLICATION FOR Off licence Section 101, Sale and Supply of Alcohol Act 2012**

HB ENTERPRISES LIMITED has made application to the District Licensing Committee at Western Bay of Plenty for the renewal of an OFF LICENCE in respect of the premises situated at 33 JELICOE STREET and known as THE BOTTLE O.

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Any person who is entitled to object and who wishes to object to the grant of the application may, not later than 15 working days after the date of the first publication of the application in a newspaper or newspapers in accordance with the Sale and Supply of Alcohol Act 2012, file a notice in writing of the objection with the Secretary of the District Licensing Committee at the Western Bay of Plenty District Council, Private Bag 12803, Tauranga.

No objection to the issue of a licence may be made in relation to a matter other than a matter specified in section 105(1) of the Sale and Supply of Alcohol Act 2012.

No objection to the renewal of a licence may be made in relation to a matter other than a matter specified in section 131 of the Sale and Supply of Alcohol Act 2012.

This is the second publication of this notice. This notice was first published on 22/11/18

10 Te Puke Times

bayofplentytimes.co.nz | Nov 29, 2018

7445  
29/11/18



**REPORT ON APPLICATION FOR 'OFF' LICENCE (renewal)  
SALE AND SUPPLY OF ALCOHOL ACT 2012**

16/11/2018

The Secretary  
District Licensing Committee  
WBOP District Council  
Private Bag 12803  
TAURANGA

Dear Sir/Madam,

**APPLICANT:** HB Enterprises Limited

**APPLICATION NUMBER:** 7445

**TRADING AS:** The Bottle-O Te Puke

**ADDRESS:** 33 Jellicoe Street Te Puke

**TYPE OF APPLICATION:** Renewal –OFF licence

**STATUS:** NOT OPPOSED

An application for the issuing of a renewal of an OFF Licence for the above named applicant and premises was received by the New Zealand Police at the Western Bay of Plenty Liquor Licensing Unit.

Following a review of the application Police are not opposed.

Should you require any further information in relation to this application, please contact the writer on the email or numbers listed below.

Yours faithfully,

Trevor Brown  
Sergeant (TB6550)  
Alcohol Harm Prevention Co-ordinator  
**WESTERN BAY OF PLENTY**

**Emily Clarke**

---

**From:** Dawn Meertens <Dawn.Meertens@bopdhb.govt.nz> on behalf of Liquor <Liquor@bopdhb.govt.nz>  
**Sent:** Monday, 3 December 2018 4:53 PM  
**To:** Liquor Licence; BROWN, Trevor; 'jon.rewi@fire.org.nz'  
**Cc:** Carol Arundel; Dougal Elvin  
**Subject:** RE: LL7445 Application for Off Licence for The Bottle O (A3320744)

Hi Emily

The Medical Officer of Health **IS OPPOSED** to this application being renewed.

The applicant has indicated that they sell single bottles of alcohol. I take that to mean, small bottles of mainstream beers, ciders and RTDs.

This application is opposed under sec 4, 105(1)(a).

Dawn Meertens  
Technical Officer

Phone: 07 349 7260  
Mobile: 021 473 524  
Website: [www.toiteora.govt.nz](http://www.toiteora.govt.nz)

-----Original Message-----

From: Liquor Licence [<mailto:Liquor.Licence@westernbay.govt.nz>]  
Sent: Friday, 16 November 2018 1:58 p.m.  
To: BROWN, Trevor; Liquor; 'jon.rewi@fire.org.nz'  
Subject: LL7445 Application for Off Licence for The Bottle O (A3320744)

For your reports please

Emily Clarke has sent you a copy of "LL7445 Application for Off Licence for The Bottle O" (A3320744) v1.0 from Objective.

The information contained in this message (and any accompanying documents) is CONFIDENTIAL and may also be LEGALLY PRIVILEGED, intended only for the recipient(s) named above.

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# Report on an Application for Renewal of Off-licence

Under section 103(2) of the Sale and Supply of Alcohol Act 2012

**To:** District Licensing Committee

**From:** Dougal Elvin – Alcohol Licensing

**Date:** Inspector 17 April 2019

## 1. APPLICATION DESCRIPTION

### 1.1. Application and Property Details

Applicant’s Name: HB Enterprises Limited

Site Address: 33 Jellicoe Street, Te Puke.

Trading Name: The Bottle-O Te Puke

Type of Premises: Bottle Store

Risk Rating: Medium

Application Number: LL7445

Date Received by Council: 14 November 2018

Current Licence Expires: 15 December 2018

Changes being sought? NO

## 2. EXECUTIVE SUMMARY

This is a report for an application for a renewal of an off-licence. The criteria found at section 131 of the Sale and Supply of Alcohol Act 2012 (the Act) applies to this application.

The applicant does not seek any changes to the licence.

I consider the sale and supply of alcohol under these conditions is consistent with the purpose of the Act and satisfies the criteria as stipulated under section 131.

No public objections have been duly made. The Police have not opposed this application, but the Medical Officer of Health has opposed this application due to the fact the applicant offers single sales. After much consideration I also oppose this application due to concerns with the amenity and good order of Te Puke town centre.



### 3. APPLICANT AND APPLICATION

#### 3.1 Applicant

The applicant is a private company.

A general discussion was had with the staff at the premises on 22 November 2018.

The applicant is aware of their responsibilities under the Act.

I have no concerns with the applicant with respect to suitability. The applicant operates a number of businesses selling alcohol.

I do have concerns with alcohol being sold to a small contingent of people in Te Puke that I refer to as the street drinkers, who insist on drinking in the town centre of Te Puke, which is a liquor ban area.

The behaviour of these street drinkers in their drunken states ranges from rowdy and loud behaviour to the offensive and disorderly.

#### 3.2 Comment

There is no reason to believe that the applicant is not suitable to hold a licence. But I do have concerns with the fact that alcohol is being sold to the street drinkers, who then breach the liquor ban by consuming it in the town centre.

### 4. OBJECTIONS AND EXTERNAL REPORTS

#### 4.1 Public Notice

The application was publicly notified in the Te Puke Times on the following dates:

Te Puke Times:

- First Notice 22 November 2018
- Second Notice 29 November 2018

The objection period expired on: 13 December 2018

#### 4.2 Objections

No objections have been received following the public notification.





#### 4.3 Police Report

Police reported on the application on 16 November 2018. That report does not oppose the application.

#### 4.4 Medical Officer of Health Report

*The Medical Officer of Health reported on the application on 3 December 2018 and opposes the application under section 4 and 105 (1) (a) with respect to the single sale of bottles of alcohol.*

### 5. PREMISES

#### 5.1 Principal Entrance

The principal entrance is accessed from: Pavement in front of the store on Jellicoe Street, Te Puke.

#### 5.2 Kind of Premises

An off-licence may be renewed for this kind of premises, because it meets the description found at section 32(1) (b) of the Act.

The most recent annual sales figures indicate that 96% of the sales of the business is alcohol, which meets the criteria as stipulated under section 32(1) (b).

#### 5.3 Planning and Building Matters

There have been no issues raised in regards to the building code or the Resource Management Act 1991.

#### 5.4 Previous History

No information has come to light from any of the agencies regarding any issues with this bottle store (other than the opposition to this application by the MOH). Te Puke town centre has a liquor ban in force for 24 hours a day. There are a small number of people who congregate within the liquor ban area and consume alcohol. It is unknown if this group of people are all homeless or not. In their wake discarded packaging is often left sprawled along the road verge and more often than not, is the black cardboard packaging of “New Zealand Lager”, which tends to be the drink of choice.



All the off-licence premises within Te Puke have been asked not to serve alcohol to this drinking contingent as by doing so they are enabling the drinkers to breach the liquor ban. The liquor ban area is enforced by the local Police.

The staff at the Bottle O are adamant they will not and do not serve this small group of people.

As of 5 April 2019 information has come to light to indicate the Bottle O has been observed selling alcohol to the street drinkers. As a consequence I am opposing this application as the information indicates the Bottle O is potentially selling alcohol to the street drinkers when they are already under the influence of alcohol.

## 5.5 Site Inspection

I visited the premises on 22 November 2018 at approximately 4.35 pm. All required signage was clearly displayed and a manager was on duty. There was no concerns with any promotions. There appeared to be sufficient levels of staff to manage the premises effectively.

## 5.6 Comment

I do not oppose the design and layout of the premises. The applicant appears to have appropriate systems, staff, and training to comply with the law.

The fact the Bottle O is possibly selling alcohol to the street drinkers is having a detrimental effect on the town centre in terms of the rowdy behaviour of the street drinkers when they are under the influence of alcohol.

I have asked the licensee to remove the green opaque branding from the front window so the duty managers can observe what is happening outside the store in terms of the street drinkers. The store does have CCTV but it is limited in its capability to observe the greater outlook of Jellicoe Street.

# 6. ENVIRONMENTAL SCAN

## 6.1 Current and Potential Levels of Noise, Nuisance and Vandalism

### Liquor ban – the situation.

Te Puke town centre has a liquor ban. The liquor ban bylaw is enforced by the Police.

There appeared to be a small number of people (who I shall refer to as street drinkers) who consume alcohol in the town centre irrespective of the liquor ban. All the off-licence



premises within the town centre have been spoken to with respect to not to selling alcohol to the street drinkers.

The problem is the behaviour of the street drinkers.

There are a small number of places where the drinkers hang out and consume their alcohol.

1. The seating area in Jubilee Park behind the car park off Commerce Lane.
2. The seating area next to the children’s playground in Jubilee Park.
3. The grassy area behind the Library.
4. Behind the billboards next to the old Railway station on Jellicoe Street.
5. On a bench adjacent to Countdown car park, hidden from Jellicoe Street.

The following pictures show the discarded litter they leave in their wake.





In recent months the number of street drinkers appears to have increased and the number of conversations I have with licensees seems to have increased as well in regards to the rowdy and disorderly behaviour of the street drinkers. Instead of discreetly hiding their drinking they are now openly drinking in the streets as the following pictures show:



The two people on the bench are drinking Kingfisher strong beer (7.2%), the same as the people sat on the pavement. The lady was transferring a box of Tui Bourbon & Cola (7%) into her bag, whilst the man with the grey t-shirt was removing evidence of the Tui cans and placing them in the bin. All three pictures are within the liquor ban zone.

Irrespective of the talks with all the off-licence premises the street drinkers are still managing to purchase alcohol and consume it within the liquor ban area.

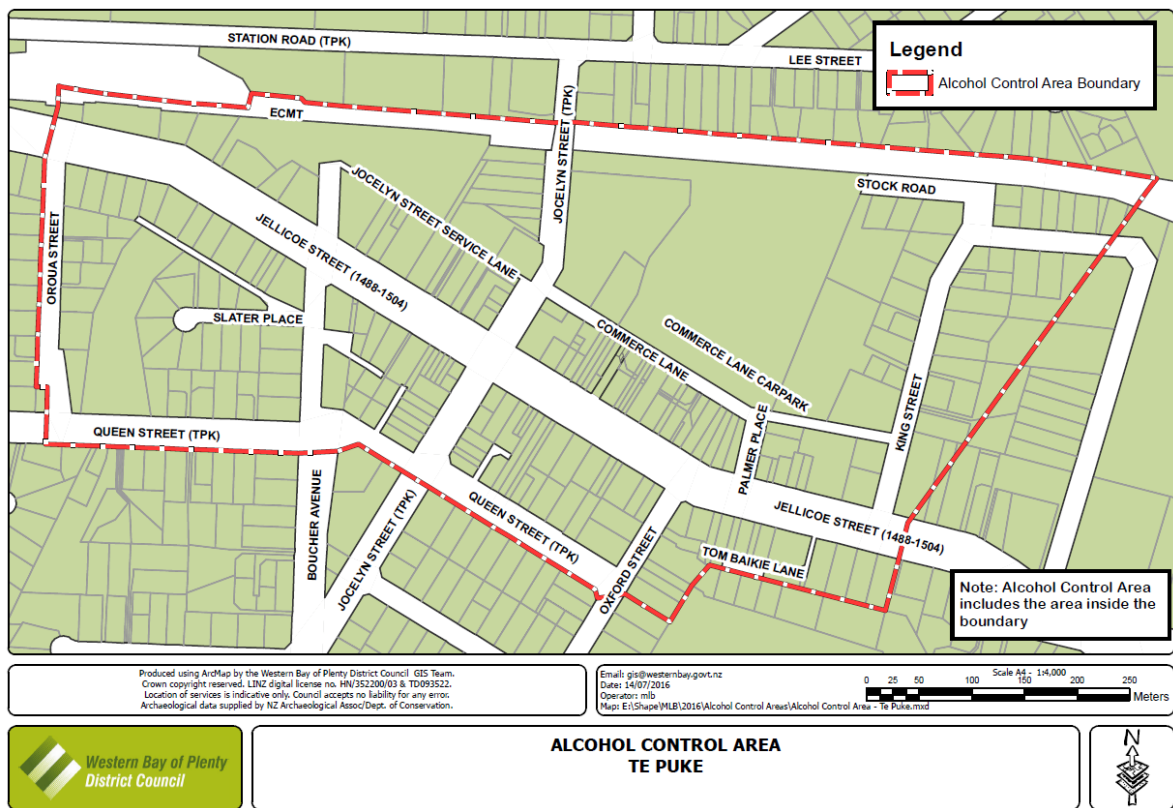
The only trend I have observed in relation to the type of alcohol consumed by the street drinkers is that fact that it is relatively high in alcohol content and cheap. New Zealand Lager is a cheap product that has an alcohol level percentage of 5%. As can be seen from the photographs, the discarded bottles are empty spirit bottles and the drink of choice with the street drinkers on the bench is Kingfisher Strong Beer (7.2%).



There is no doubt in my mind that alcohol drinks of this nature are only purchased due to the strength of alcohol. There appears to be no distinction between boxes of lager, bottles of spirits or single sales; what matters is the strength of the alcohol to achieve the desired effect.

The Liquor Ban Zone – Te Puke

The liquor ban perimeter stretches from Oroua Street, down to Queen Street, across to and beyond King Street and up towards the railway line as can be seen in the following map. Everywhere inside the perimeter is the liquor ban area.

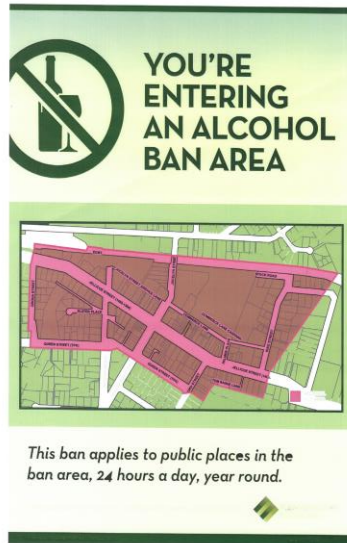


What progress has been made so far in regards to reducing the current drinking problem within the liquor ban area?

1. Police – I have spoken to the Alcohol Harm Reduction Officer with respect to my concerns over the street drinkers. Even though the Police have the authority under the by-law to take positive action against anyone breaching the liquor ban, the Police have to prioritize the incidents they attend.



2. The People's Project – I have met and spoken to a member of the People's Project to gain insight into how to communicate with the street drinkers and understand the problems they face that lead them to drink and stay on the streets.
3. Empowerment NZ – This is an organization in Te Puke that hosts and provides community services such as foodbank, budgeting services and social workers. They also provide showers for personal hygiene and counselling services. I met the General Manager to see if he or the organization could have any influence on preventing their customers from drinking in the street. Further information would indicate that not all the people drinking in the street are homeless. The other factor that came to light is that some of the people on the street suffer from addiction and / or mental health issues. At the end of the day the organization could do nothing more than advise their customers not to drink in the liquor zone, but couldn't provide a deterrent.
4. The off-licenses – every off-licence premises has been spoken to in the town center regarding selling alcohol to the street drinkers. Although all the premises agreed they didn't want to sell to the street drinkers, some of them acknowledged the difficulty of knowing who the street drinkers were and the tricks they played in order to obtain alcohol such as sending in other people to obtain the alcohol on their behalf. The duty manager at the Bottle O stated he felt this was an on-going problem because as soon he realizes who is purchasing alcohol on behalf of the street drinkers, he will stop selling to that person; but the street drinkers just as quickly find someone else to send in. And so it becomes an on-going battle.
5. In response to the needs of the off-licenses efforts have been made by the Parking Warden to capture the images of the street drinkers on camera as the Social workers at Empowerment NZ have agreed to name the pictures. However this comes at a cost. Pointing a camera at the street drinkers can illicit unknown risks and responses. The idea was to provide a list of faces and names for the off-licenses so they knew who not to sell to. This is still on-going and proving difficult as the street drinkers disappear, new drinkers appear on the street.
6. The Council have printed out laminated signs that all off-licenses in the town center have received and been asked to display. The signs illustrate the Alcohol Ban Area and explains there is a 24hrs a day, year round ban on drinking in public places in the ban area as can be seen here:



The following off-licenses have received the signs as indicated above on 21 March 2019:

1. Te Puke Super Liquor – A3 size sign.
2. Te Puke New World – A3 size sign.
3. Countdown Te Puke – A3 sized sign.
4. Te Puke Liquor Spot – A3 sized sign.
5. Thirsty Liquor – A3 sized sign.
6. Te Puke Four Square – A4 sized sign.
7. Bottle O – A3 sign and 2 A4 sized signs.

On 26 March 2019 I also spoke to the director of the Bottle O and advised him that I thought it might be a wise idea to remove the opaque green coloured transfers on the window of his store so his duty managers could see through the window into Jellicoe Street, which potentially allows the duty manager to see where the street drinkers are and who they might be asking to purchase alcohol for them.

Current case law regarding Amenity & Good Order and renewals of off-licenses

The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited [2018] NZHC 1123 [18 May 2018] makes the following comments:

*[65] The primary conclusion to be drawn from the evidence is that there can be no realistic doubt the premises contributes to some of the alcohol-related harm in the locality.... Liquor King supplies products clearly associated in the evidence with alcohol-related harm and breaches of liquor bans.*

*[67] There is no challenge to the suitability of the operations or the professionalism of the operator. Nevertheless, in this statutory setting the professionalism of the operator*



*becomes subordinate to the extreme alcohol-related harm which is evidenced. Mr La Hood drew attention to the DLC's observation that a licensee may be a model operator but if its products are consumed after sale in a harmful way the operator may bear the consequences by way of restrictions on the licence. The observation is well made. The Act looks to minimise alcohol-related harm. Where there is an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant or renewal of a licence, the harm must be minimised not ignored or condoned.*

*[68] In the face of such evidence the Act does not countenance the continuation of high levels of alcohol-related harm. The Act requires minimisation of the alcohol-related harm. The task of the DLC was to respond to the risk and it did so. It is not necessary to establish, as the Authority required, that the proposed operation "would be likely to lead to" alcohol-related harm. To require demonstration of a link to this degree of specificity is not much different from requiring proof. Requiring proof of "a causative link is not only unrealistic but in contrary to the correct legal position".*

#### Incidents of note:

1. A witness has observed one of the street drinkers enter Bottle O whilst (in their opinion) exhibiting signs of intoxication and leave after making a purchase.
2. I wrote a statement to the Police regarding an incident that took place on Friday 5 April 2019 in the liquor ban area, where I was verbally abused and threatened by two of the street drinkers with the support of members of the public. The street drinkers had been consuming alcohol.
3. The Police have reported an increase in alcohol-related offending in Te Puke liquor ban area in a report dated 9 May 2018.
4. The reserves officer for Jubilee Park is frequently having to deal with the aftermath of the street drinkers consuming alcohol in Jubilee Park.

## **6.2 Comment**

Based on my observations to date and the information provided I believe the amenity and good order of Te Puke would substantially increase if the supply of alcohol to the street drinkers was restricted, if not removed altogether. I don't envisage it would stop the problem of the street drinkers needing alcohol in order to function, but if they were prevented or restricted from purchasing alcohol in Te Puke they would have to go elsewhere to obtain it.

The fact is the street drinkers are still able to obtain alcohol and I feel the bottle stores could make a real difference to the community of Te Puke if they took greater strides to prevent alcohol being sold to the street drinkers.





**7. CONCLUSION AND CONDITIONS**

**7.1 Conclusion**

I have inquired into this application and based on the information provided, I oppose this application.

Prepared by

A handwritten signature in blue ink, appearing to read 'D. Elvin'.

.....

Dougal Elvin

**Alcohol Licensing Inspector**

I am the Alcohol Licensing Inspector for the Western Bay of Plenty District Council and have been an Alcohol Licensing Inspector since December 2013. I am based at the Council offices at Barkes Corner, Cameron Road, Tauranga.

This statement is about an incident that took place on Palmer Place, Te Puke on a public bench outside the bar known as Anann Pineapple Pub.

There are four people who I will mention in this statement.

The first person is a white male who is about 55 years old, about 6'2" tall and had a heavy stout build. He was wearing a dark grey fleece type jersey, black shorts and wore glasses. His head was either shaved or balding. He had rather dry skin and faint red patches on his face. I shall refer to this person as the bald male. He appeared to speak with a local accent.

The second person was an older looking female in company with the bald male. She was white and looked approximately 60 years old. She had shoulder length dirty blonde / grey hair and was wearing a red and white top. She was of medium build and approximately 5'8" tall. She also appeared to speak with a local accent. I shall refer to this person as the bald man's partner.

The third person was a tall male approximately 6'2" tall with a slender build and possibly of Maori heritage as he had a slighter darker complexion. He looked about 45 to 50 years old. He has short dark hair with a few grey hairs speckled throughout. He had white / grey stubble. He wore a camo coloured top and wore grey jogging pants and black shoes. He had a thin angular face and spoke with a local accent. I shall refer to this person as the male with the camo top.

The fourth person was also possibly of Maori heritage and complexion, but was considerably shorter than the male with a camo top. He looked about 40-45 years old. He wore a dark beanie hat and had very distinguishable eyes, almost of oriental origin. He wore a dark coloured jacket and wore shorts. He had thin legs. The only distinguishing feature I recall is that he had a faint moustache. He too spoke with a local accent and was carrying a bag on his back. I will refer to him as the shorter male.

On Friday 5 April 2019 at approximately 3.00 pm I attended the Anann Pineapple Pub on Palmer Place, Te Puke, due to information received that people had been consuming alcohol in the street within the liquor ban area.

After speaking with the licensee I left the bar and observed the male with a Camo top and the shorter male sitting on the bench outside the bar. They were both holding cans of lager that I recognised to be Kingfisher strong beer (7.2%). The male with the camo top appeared to be swaying whilst sat on the bench.

I approached the two males on the bench and asked them where they purchased their beer as they were drinking in a liquor ban area.

Almost immediately I was blindsided from left side by the bald male and his partner. The bald male stood over me and made a point of standing so close I could smell his breath. He shouted, "YOU ARE A PIG!" And continued with: YOU NEED TO LEAVE THESE GOOD PEOPLE ALONE AND STOP PICKING ON THEM".

I explained I was the Liquor Inspector and the two people he was referring to sat on the bench were drinking alcohol in a liquor ban area and I was enquiring to where they purchased their alcohol from. However, I felt my words were falling on deaf ears.

He was standing so close that his face was less than 20 centimetres away. I could feel his posture growing closer as he continued to make his point that I was a bully and that I should be leaving these good people alone. I cannot recall what he was doing with his arms; but I felt uncomfortable and I took his stance, demeanour and tone as a deliberate attempt to intimate me into backing off.

At some point the bald man's partner chimed in echoing the sentiments of the bald man, although I didn't take much notice of her as I didn't want to divert my attention away from the actions of the bald male.

It occurred to me that I recognised the bald man and his partner as they had only moments previously been sat in the Pineapple bar.

I informed the bald man I didn't appreciate his aggressive behaviour and I was going to continue to speak to the two males on the bench and ignore him.

The bald man then turned to the two males on the bench and shook their hands and sat down next to them on the bench. I saw this as an intention to obstruct my enquiries.

It was at this point the short male spoke up and said, "YOU NEED TO FUCK OFF CUNT" and then, "YOU SOUND LIKE A POM".

The bald male at this point folded his arms in the manner of a petulant child and said "YEAH, WHY DON'T YOU JUST FUCK OFF BACK". The bald man's partner appeared alarmed at what the bald man had just said.

I was in disbelief at the attitude of the bald man and asked, "ARE WE REALLY GOING TO BE RACIST ABOUT THIS?" To which the bald man exclaimed, "YES".

The camo man then stood up off the bench and slurred something that insinuated he was going to hurt me. I quickly explained that wasn't going to happen and he slumped back down on the bench. The camo man had glazed eyes and was swaying on his feet and was in no fit state to be standing let alone trying to fight.

I reiterated (again) that I was simply there to ask where they had purchased their beer from and was not picking on anyone. It was clearly obvious I wasn't going to get anywhere while the bald man and his partner were deliberately being obstructive and realised I should simply leave.

At this point the shorter male who was now on his feet looked at me and said, "I SHOULD FUCKIN' DROP YOU". I once again explained perhaps that wasn't a good idea and walked away back into the bar. The shorter male also looked a little worse for wear and his eyes were also glazed, but unlike the camo male, he could speak without slurring.

I was appalled at the behaviour of all four people and found their remarks were offensive and racist, and their actions were deliberately intended to intimidate me.

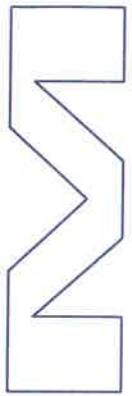
The amount of time I was in view of the four people mentioned in this incidents was for no more than two minutes. The closest I was to the bald male was within 20 centimetres. He was taller than me and I had to look up at him. The other three people mentioned in the statement were within a distance of 3 meters. Visibility was fine as it was a clear day. I do wear glasses for corrective vision and I was wearing them at the time of the incident. There were no obstructions to my view. I have not met any of these people previously and the reason I recall the incident was due to being utterly astounded that a member of the public would behave in such a poor manner in order to defend the rights of someone to consume alcohol in a liquor ban area.

Dougal ELVIN

9 April 2019 – 5.00 pm.



**CRIME PROFILE**  
**WBP/CP/180509**



# Te Puke: Alcohol Related Offending

*09 May 2018*

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WBOP Alcohol Harm Reduction Officer	WBOP District Council – Senior Policy Analyst

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## 1. Introduction

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- 1.1 Western Bay of Plenty Council is reviewing its current Liquor Control bylaw for Te Puke. Council is required to determine whether the current ban areas meet the new legislative threshold set by the introduction of alcohol reform legislation in 2012.
- 1.2 The purpose of this report is to provide Western Bay of Plenty District Council with data to identify the level of offending and harm which occurs within Te Puke that can be attributed to alcohol consumption.

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## 2. Background and Detail

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- 2.1 Alcohol is an accepted contributing factor in violence, family violence and disorder offending. There are also known links to youth offending.
- 2.2 By understanding the level of alcohol related harm in the community and public areas, Police and Local Council can make informed decisions regarding liquor free areas with a view to reducing harm.

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## 3. Methodology

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- 3.1 An analysis of offences in Katikati was conducted for the period 1 May 2016 – 30 April 2018 as detailed below.
- 3.2 All drink driving offences (A Series) and breach of liquor (W Series) were included in the data analysed.
- 3.3 Violence and Disorder offending over the past two years were analysed over the key crime types. The specific crime types were:
- 3.4 Homicide; Grievous Assault; Serious Assault; Minor Assault; Threats/Intimidation; Unlawful Assembly; Sexual Affronts; Sexual Attacks; Immoral Behaviour; and Disorder.
- 3.5 Police National Headquarters has identified that within three time bands a proportion of the above crimes can be related to alcohol.
  - i) Between 2100-0600 hours an estimated 75 per cent are alcohol related
  - ii) Between 1600-2100 hours an estimated 50 per cent are alcohol related
  - iii) Between 0600-1600 hours an estimated 25 per cent are alcohol related.

### CAVEAT

- 3.6 *"These provisional statistics count data differently from other statistics released by the New Zealand Police. As a result they may not be comparable with other statistics. Please also note that these statistics are drawn from a dynamic operational database. Figures reported on different dates may vary, due to data being continually updated in the relevant police system."*

## 4. Analysis

- 4.1 Figure 1 in the Appendix identifies the spatial location of all the licenced premises currently in Te Puke.
- 4.2 The total number of the above offences and incidents within Te Puke over the two year period is 1,005. Of these offences and incidents, 177 (18%) are known to be alcohol related and a further 317 (32%) are estimated to be alcohol related, totalling 494 alcohol related occurrences in Te Puke over two years. This illustrates a significant level of alcohol related harm in the community.
- 4.3 There were 160 drink driving charges in Te Puke in the two year period analysed. 47 (29%) of these occurred within the current Liquor Ban Area.
- 4.4 There were 54 disorder offences. Of these, 17 (31%) were in the current Liquor Ban Area. This is where the majority of licenced premises are.
- 4.5 Violent and sexual offending is distributed throughout the town with the majority occurring in residential properties. There were 90 violent offences of which 37 (41%) can be estimated to be attributed to alcohol.
- 4.6 Table 1 below shows the total number of offences that occurred and those which can be attributed to alcohol as described above.

*Table 1: Offending reported in Te Puke between 1 May 2016 – 30 April 2018*

Offence Type	Total Offences	Total Alcohol Related Offences
AGGRAVATED ASSAULTS	2	1
BEHAVIOUR OFFENCES	54	23
BLOOD ALCOHOL OFFENCES	23	23
COMMON ASSAULT	22	8
EVIDENTIAL BREATH OFFENCES	131	131
FAILING TO SURRENDER KEYS	3	3
INDECENT ASSAULTS	17	7
INDECENT PERFORMANCE AND ACTS	1	0
KEYS REMOVED FORBID DRIVE	2	2
MURDER	1	1
SEXUAL VIOLATION	17	8
THREATENS TO KILL/DO GBH	19	9
UNLAWFUL SEXUAL INTERCOURSE	5	1
WOUNDING WITH INTENT	6	2
ALCOHOL RELATED OFFENCES	1	1
Domestic Dispute	689	264
Drunk Custody	9	9
Drunk Home	1	1
Breach of Peace	2	1
<b>TOTAL Offences</b>	<b>1005</b>	
<b>Alcohol Related offences</b>		<b>494</b>



- 4.7 Table 2 below shows the total number of offences which occurred in non-residential locations such as public places and commercial areas, and the proportion which can be attributed to alcohol as described above.

*Table 2: Offending reported in Te Puke in non-residential locations between 1 May 2016 – 30 April 2018.*

Offence Type	Total Offences	Total Alcohol Related Offences
AGGRAVATED ASSAULTS	2	1
BEHAVIOUR OFFENCES	36	15
BLOOD ALCOHOL OFFENCES	23	23
COMMON ASSAULT	8	3
EVIDENTIAL BREATH OFFENCES	127	127
FAILING TO SURRENDER KEYS	3	3
INDECENT ASSAULTS	4	2
INDECENT PERFORMANCE AND ACTS	1	0
KEYS REMOVED FORBID DRIVE	1	1
SEXUAL VIOLATION	8	3
THREATENS TO KILL/DO GBH	7	2
UNLAWFUL SEXUAL INTERCOURSE	2	1
WOUNDING WITH INTENT	2	1
ALCOHOL RELATED OFFENCES	1	1
Domestic Dispute	95	37
Drunk Custody	6	6
Breach of Peace	1	1
<b>TOTAL Offences</b>	<b>327</b>	
<b>Alcohol Related offences</b>		<b>225</b>

- 4.8 Table 3 below shows the number of offences that occurred in the Liquor Ban Area in non-residential locations (public place and commercial). Of the 108 offences that occurred in this zone, 98 were in public or commercial places.
- 4.9 Of the 108 offences in the Alcohol Free Zone, 71 (66%) are known or estimated to be alcohol related.

*Table 3: Offending reported in the liquor ban area in Te Puke in non-residential locations between 1 May 2016 – 30 April 2018.*

Offence Type	Number of Offences
BEHAVIOUR OFFENCES	17
BLOOD ALCOHOL OFFENCES	2
COMMON ASSAULT	2
EVIDENTIAL BREATH OFFENCES	43
FAILING TO SURRENDER KEYS	2
SEXUAL VIOLATION	1
THREATENS TO KILL/DO GBH	2
UNLAWFUL SEXUAL INTERCOURSE	1
WOUNDING WITH INTENT	1

Domestic Dispute	24
Drunk Custody	3
<b>TOTAL Offences</b>	<b>98</b>

- 4.10 Figure 3 in the appendix illustrates the data shown in Table 3 above, of all offences recorded as occurring in a non-residential location, clustered by location.
- 4.11 The above data was compared with the same data extract taken from a similar report completed in 2016,<sup>1</sup> for the timeframe 1 January 2014 – 23 December 2015. This shows that although there was a substantial increase in the overall number of offences, there was a drop in both overall violent offending and alcohol related violent offending in Te Puke. This is illustrated in Table 4 below.

*Table 4: Comparison of offending for two distinct 2 year time periods 2014/2015 and 2016/2018 reported in Te Puke*

	Jan 2014 - Dec 2015	May 2016 - April 2017	Comparison
Total Offences	781	1005	29%
Total Alcohol Related Offences	461	494	7%
Total Violent/Sexual Offences	93	90	3%
Total Violent/Sexual Alcohol Related offences	43	36	16%

## 5. Conclusions and Recommendations

It can be concluded that there is a considerable amount of alcohol related offending that occurs in Te Puke, with an estimated 50% being alcohol related. Of the 108 offences in the Alcohol Free Zone, 71 (66%) are known or estimated to be alcohol related.

Comparison of data for two 2-year time periods across 2014/2015 and 2016/2018 shows that there has been a small increase in Alcohol related offences and as a result, the Liquor ban area should remain in place as a deterrent for this type of offending. It is noted that there has been a decrease in violent alcohol related offending in this area.

<sup>1</sup> Alcohol Related Offending – Te Puke v3, 06 November 2015, BOPDHQ NZ Police reference WBP/CP/151106

Appendix

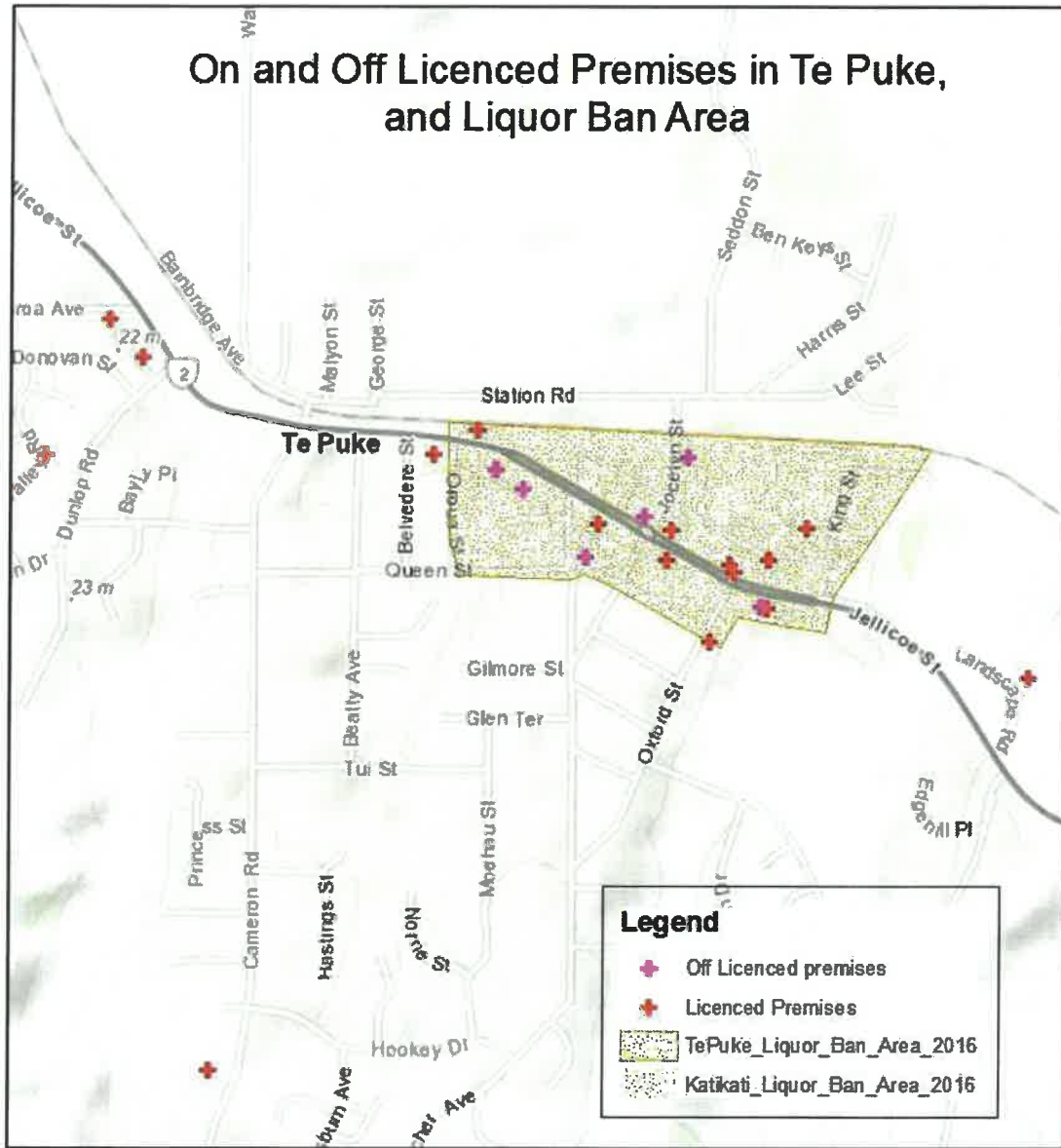


Figure 1: Licenced premises in Te Puke.

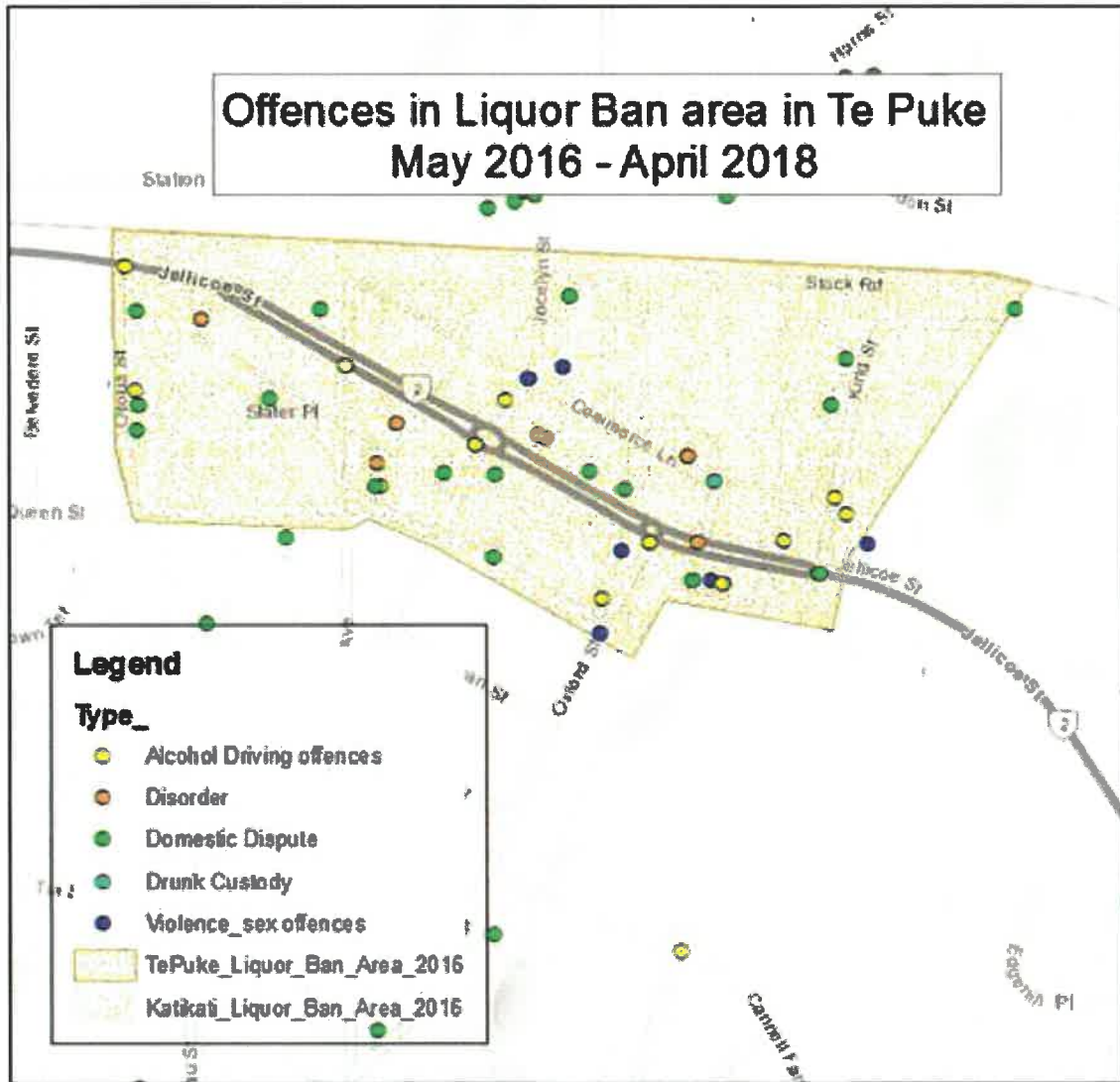


Figure 2: Offences in Te Puke in the liquor ban area in the last two years.

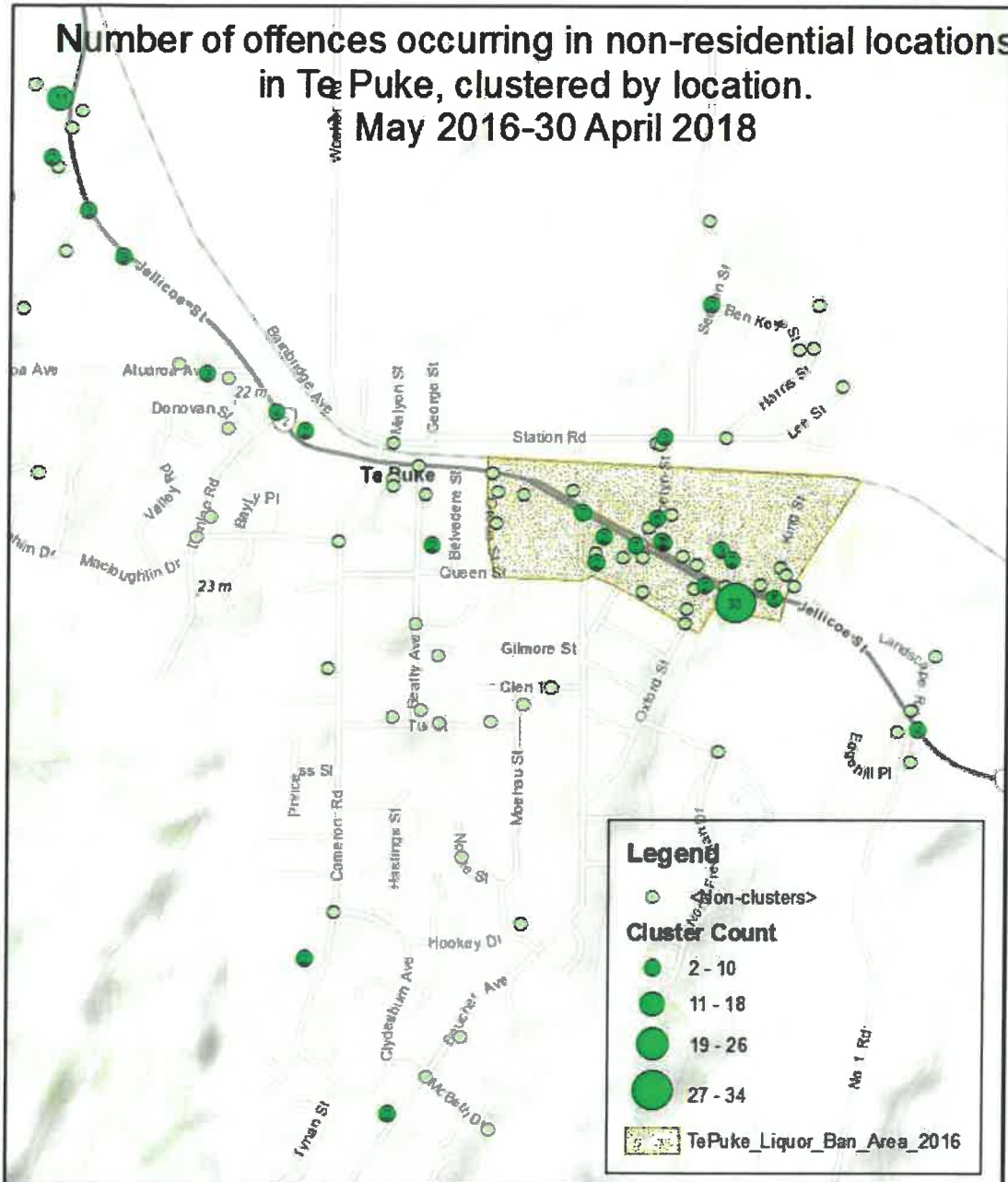


Figure 3: Offences in Te Puke in the last two years, occurring in non-residential locations, clustered by location.

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-Ā-TARA ROHE**

**CIV-2017-485-506  
[2018] NZHC 1123**

IN THE MATTER of an appeal under s 162 of the Sale and  
Supply of Alcohol Act 2012

BETWEEN THE MEDICAL OFFICER OF HEALTH  
(WELLINGTON REGION)  
Appellant

AND LION LIQUOR RETAIL LIMITED  
Respondent

NEW ZEALAND POLICE  
Interested Party

Hearing: 26 October 2017

Appearances: G Allan, D R La Hood and B Curtis for Appellant  
A A Arthur-Young and M J Doesburg for Respondent

Judgment: 18 May 2018

Recalled and Reissued: 21 May 2018

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**JUDGMENT OF CLARK J**

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*Pursuant to r 11.5 of the High Court Rules I direct  
the delivery time of this judgment is  
4:00 pm on 18 May 2018*

## Introduction

[1] A short distance from Courtenay Place, on the edge of Wellington’s entertainment precinct, Lion Liquor Retail Ltd (Lion) operates an off-licence bottle store known as Liquor King Kent Terrace. As permitted by the conditions of the licence Liquor King operated between 8.00 am and 11.00 pm seven days a week. When Lion applied to renew the licence in 2016 the Wellington District Licensing Committee (DLC) renewed the licence subject to a condition that alcohol could not be sold or supplied on Fridays or Saturdays after 9.00 pm.<sup>1</sup>

[2] Lion appealed to the Alcohol Regulatory Licensing Authority (Authority). The Authority allowed the appeal and modified the condition to permit Lion to sell alcohol until 11.00 pm on Fridays and Saturdays.<sup>2</sup>

[3] The Medical Officer of Health<sup>3</sup> and New Zealand Police challenge the Authority’s decision.<sup>4</sup> They say the Authority failed to recognise the evaluative and inquisitorial approach required of it by the Sale and Supply of Alcohol Act 2012 (the Act or 2012 Act) and that it erred in its approach to the application which was for renewal of a licence rather than an application for a licence. Further, it is said the Authority’s decision is “unsupportable” on the evidence and is plainly wrong.

[4] Two principal issues are raised by the appeal:

- (a) whether the Authority applied the correct legal test in setting the trading hours condition; and
- (b) whether the Authority erred in its conclusion there was an insufficient evidential basis to maintain the hours condition.

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<sup>1</sup> *Re Lion Liquor Retail Ltd* [2016] NZDLCWN 1572 at 51.

<sup>2</sup> *Lion Liquor Retail Ltd v Medical Officer of Health* [2017] NZARLA PH 170 at [72].

<sup>3</sup> The Medical Officer of Health, Wellington Region, is Dr Stephen Palmer.

<sup>4</sup> The Medical Officer of Health and New Zealand Police are, together, referred to as the “**reporting agencies**”.

## **Background**

[5] Lion is the retail arm of Lion Beer, Spirits & Wines (NZ) Ltd. Lion has a long history of alcohol retailing in New Zealand. It operates 39 retail stores nation-wide. One of the stores is Liquor King Kent Terrace.

[6] Liquor King Kent Terrace has been in operation since 1993. The store is highly visible on a prominent location on the corner of Kent Terrace and Elizabeth Street, at the edge, as previously described, of the Courtenay Place entertainment precinct. Liquor King is 170m from Clyde Quay Primary School which shares with Liquor King the block on Elizabeth Street. There is a liquor ban in the area.

[7] The premises comprise a ground level floor space of approximately 200m<sup>2</sup> with displays of alcohol, chillers, a craft beer filling station and an office. Liquor King has 14 car parks adjacent to Kent Terrace. Within a 500m radius there are approximately 130 on-licensed premises and 13 off-licensed premises.

## **Decision of the Wellington DLC**

[8] The DLC heard evidence and submissions over two days. Evidence by way of written brief and oral evidence was given by:

- Mr Fowlie, the branch manager of Liquor King Kent Terrace;
- Mr Joseph, Liquor King's southern regional manager;
- Dr Palmer, the Medical Officer of Health;
- Sergeant Rapira-Davies representing the New Zealand Police; and
- Mr Christie, a local resident who filed a notice of objection.

[9] Mr Guruvayurappan, the Licensing Inspector, appeared but did not oppose the application and made no submissions.



[10] The DLC considered there was sufficient evidence to support a reduction in sale hours on Fridays and Saturdays. The DLC based its conclusion on a range of factors including rates of alcohol-related harm reflected in the Police and hospital data; Liquor King's location in a significant centre of alcohol consumption close to residential dwellings and a primary school; and the evidence from Mr Christie as to the real consequences for the neighbouring community from off-licence alcohol consumption later in the evenings and weekends.<sup>5</sup>

[11] While the evidence supported a reduction in hours on Fridays and Saturdays, the DLC did not consider the evidence supported reduced hours on other days of the week. Any further reduction would not be proportionate to the identified harm.<sup>6</sup>

[12] Accordingly, the DLC renewed the licence subject to seven conditions two of which Lion appealed to Authority:

- (a) a condition that alcohol may be sold on, or delivered from, the premises only on Friday and Saturday between 8.00 am and 9.00 pm; and
- (b) a condition that all carry bags in which alcohol is sold to retail customers must be branded on at least one face of the bag with Liquor King branding.

#### **Decision of the Alcohol Regulatory and Licensing Authority**

[13] The Authority heard the appeal on 27 April 2017 and issued its decision on 12 May 2017.

[14] The Authority set out the background to the appeal before it, including the nature of the objection by Mr Christie. Mr Christie opposed renewal on the basis of trading hours. After setting out the grounds of appeal and the relevant provisions of the Act the Authority turned to the evidence and submissions.

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<sup>5</sup> *Re Lion Liquor Retail Ltd*, above n 1, at [182].

<sup>6</sup> At [183].

*Evidence and submissions*

[15] Lion's position before the Authority was that the causal nexus required the alcohol-related harm to be related to the specific trading hours condition. No logical link or causal nexus could be drawn between the evidence of alcohol-related harm and Liquor King's trading until 11.00 pm on Friday and Saturday nights. The evidence was "too general". Lion accepted there was evidence of alcohol-related harm within a 500m radius of its premises and this area encompasses approximately 130 bars, nightclubs and 12 other off-licences. But it submitted that if its store closed earlier customers would either purchase alcohol earlier or purchase from other nearby stores which remained open. Consequently, the benefit of reduced hours of alcohol sale would be lost. This created an uneven playing field. Restricting the sale hours on Friday and Saturday nights was arbitrary and unjustified.

[16] In essence, the Medical Officer of Health's position before the Authority was that users in the locality of the premises are especially vulnerable to alcohol-related harm either as consumers, residents or victims of alcohol-related violence. The Medical Officer of Health adduced evidence to demonstrate the vulnerability of the relevant community of users served by the premises. As alcohol supplied through off-licences is a significant contributor to alcohol-related harm the location and characteristics of the Lion's premises make it a likely contributor to alcohol-related harm in the locality on Friday and Saturday nights.

[17] The Authority summarised the evidence before the DLC in the following way:

- (a) The age demographic in the area of the premises is of a greater number of younger people in their late teens and twenties than the national profile.<sup>7</sup>
- (b) Alcohol-related attendances at Wellington Hospital Emergency Department are higher for people living in the locality of the premises than in Wellington generally.<sup>8</sup>

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<sup>7</sup> *Lion Liquor Retail Ltd v Medical Officer of Health*, above n 2, at [40].

<sup>8</sup> At [40].

- (c) Research showed that by comparison with adult drinkers, younger drinkers (aged 18 to 24) are more likely to consume alcohol outside the home.<sup>9</sup>
- (d) The attendances of younger people, females and males, at the Emergency Department peak early on Sunday morning and Saturday morning (in that decreasing order of magnitude). In Dr Palmer's opinion the majority of alcohol-related attendances relate to binge drinking.<sup>10</sup>
- (e) With the exception of one incident linking the purchase of alcohol from Liquor King to the hospital admission of a 19-year-old female the hospital admission data did not identify the source or time of purchase of alcohol.<sup>11</sup>
- (f) A total of 1626 calls for Police assistance over the year were for assistance for alcohol-related incidents within a 500m radius of the premises. Of the calls for assistance between 9.00 pm and 11.00 pm, 171 calls for assistance were within 500m of the premises. Police believed the concentration of calls between the hours of 9.00 pm and 11.00 pm to be largely attributed to off-licences.<sup>12</sup>
- (g) Over 960 alcohol infringement offence notices were issued during 2015 for breaches of the alcohol ban area "many" of which were issued within 500m of Lion's premises.<sup>13</sup>
- (h) There was evidence of a vulnerable neighbourhood due to the presence of low-income boarding houses, schools and child care centres.<sup>14</sup>

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<sup>9</sup> At [41].

<sup>10</sup> At [42].

<sup>11</sup> At [44].

<sup>12</sup> At [45]–[46].

<sup>13</sup> At [47].

<sup>14</sup> At [48].

- (i) The data showed twice the number of people who come to Police attention do so following the consumption of off-licence alcohol compared to alcohol purchased in on-licensed premises.<sup>15</sup>
- (j) Mr Christie gave evidence of litter, noise and the personal impact of vandalism and disturbances at night from drunk people. While Mr Christie could not say definitively the alcohol was sourced to Lion's premises, in his view the evidence strongly implicates the premises "as the trail of discarded cans and bottles ... is continuous from the premises to the nearby school."<sup>16</sup>

### *Reasoning*

[18] The Authority regarded it as "evident" from its consideration of two High Court decisions that:<sup>17</sup>

... the causal nexus which needs to be established is between the granting of the application for a licence (or in this case, a renewed licence), and the object of the Act contained in s 4(1). That is, a DLC needs to consider whether there is anything to suggest that granting the application will be contrary to the safe and responsible sale, supply and consumption of alcohol, or that granting the application will result in harm caused by the excessive or inappropriate consumption of alcohol such that that harm should be minimised.

[19] The Authority accepted there was undoubted evidence of excessive or inappropriate consumption of alcohol in the locality of the premises or in the Courtenay Place entertainment precinct more generally. The data did not, however, constitute evidence that excessive or inappropriate consumption of alcohol and increased alcohol-related harm would result from the renewal of Lion's licence.<sup>18</sup>

Or, put the other way, there is no 'causal' nexus between the grant of this renewal licence and general incidence of [alcohol-related harm] in the locality established by the respondents and objector.

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<sup>15</sup> At [49].

<sup>16</sup> At [51].

<sup>17</sup> At [58].

<sup>18</sup> At [61].

[20] The Authority considered that, in a licensing application such as this —<sup>19</sup>

... what is required is consideration of whether the proposed operation of the premises which is the subject of the application is likely to lead to harm caused by the excessive or inappropriate consumption of alcohol. In the case of a renewal, this includes consideration of how the premises have operated to date.

[21] The Authority emphasised the requirement for a necessary “link between the premises to the risk of excessive or inappropriate consumption at more than a generic level”.<sup>20</sup>

### **Grounds of appeal**

[22] In its notice of appeal Lion contends the Authority erred in law in the following respects:

- (a) The Authority applied the wrong test in determining what evidence was capable of establishing that a renewal of Lion’s licence would be contrary to the object of the Act.
- (b) The Authority erred in the approach to be taken in renewal applications as opposed to initial applications.
- (c) The Authority erred in regarding the evidence of the Police and the Medical Officer of Health as capable of establishing only:
  - (i) a positive correlation between alcohol consumption and alcohol-related harm or a positive correlation between the sale of alcohol from off-licences and alcohol-related harm.
  - (ii) the general proposition that alcohol from off-licences can be linked to alcohol-related harm and that vulnerability in the community is a result of alcohol availability.

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<sup>19</sup> At [61].

<sup>20</sup> At [63].

[23] The appeal is said to give rise to two questions of law:

- (a) In setting the mandatory conditions relating to the days and hours of operation under s 116(2)(a) of the Act, did the Authority fail to apply the correct legal test for imposing those conditions?
- (b) Was the Authority's conclusion that there was an insufficient evidential basis to maintain the hours condition under appeal a conclusion that was insupportable on the evidence and/or plainly wrong?

### **Principles governing appeal**

[24] This an appeal under s 162 of the Act. Appeals against the decision of the Authority under s 162 are appeals on questions of law. Such appeals are of limited scope. The decision of Kós J in *Triveni Puri Ltd v Commissioner of Police*<sup>21</sup> has been cited in support of the proposition that on appeal under s 162 the Court is not bound by the Authority's opinions merely because it is a specialist tribunal. The High Court is bound to reach its own independent conclusion.

[25] I observe that *Triveni Puri* was an appeal under s 138 of the Sale of Liquor Act 1989. Section 138 of the 1989 Act provided for appeals to the High Court against decisions of the Authority on grounds of unsuitability. Section 162 of the 2012 Act is a quite different appeal provision. It limits appeals to questions of law. In *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* Gendall J decided:<sup>22</sup>

... an appeal pursuant to s 162 of the Act ... is limited to points of law alone. This Court will not interfere with a decision unless it can be shown that the decision maker erred in law, accounted for irrelevant matters, failed to account for relevant matters, or was plainly wrong. Factual challenges, whether raised squarely or obliquely, will not be entertained on appeals of this kind, save to the extent they are capable of establishing that the decision appealed is plainly wrong. This is necessarily a very high threshold.

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<sup>21</sup> *Triveni Puri Ltd v Commissioner of Police* [2012] NZHC 2913, [2013] NZAR 88 at [19].

<sup>22</sup> *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382 at [17].

## Statutory framework

[26] The 2012 Act implemented the Government's response to the Law Commission's report *Alcohol in Our Lives: Curbing the Harm*.<sup>23</sup> The Legislature recognised excessive drinking and intoxication was contributing to New Zealand's crime rate, injury rate, and road crash statistics and was effecting the nation's overall level of health. It also recognised regulation alone would not turn around New Zealand's excessive drinking culture.<sup>24</sup>

Legislative settings can, however, support a safe and responsible drinking culture through controls on the availability of alcohol, requirements for safe and responsible licensed premises, and the management of alcohol in public.

[27] The policy objectives of the Bill were to:

- Reduce excessive drinking by young people and adults;
- Reduce the harm caused by alcohol use, including crime, disorder, public nuisance and negative public health outcomes;
- Support safe and responsible sale, supply and consumption of alcohol;
- Improve community input into local alcohol licensing decisions; and
- Improve the operation of the alcohol licensing system.

[28] These policy objectives were enacted in s 4, the object provision. Section 4 provides:

### **4 Object**

- (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

<sup>23</sup> Law Commission *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010), a report on the review of the regulatory framework for the sale and supply of liquor.

<sup>24</sup> Alcohol Reform Bill 2010 (236–1) (explanatory note) at 1.

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).

[29] There are two important features of the object provision that distinguish it from the object of the predecessor 1989 Act. First, one of the two objects of the 2012 Act is to minimise alcohol-related harm. By comparison the object of the 1989 Act was to establish a system of control over the sale and supply of liquor with the aim of “contributing to the reduction of liquor abuse”.<sup>25</sup>

[30] The second point is that harm is very broadly defined. Section 4(2) mirrors the definition of “alcohol-related harm” in s 5. Where the 1989 Act was concerned to reduce liquor “abuse” the concept of “harm” is central to the 2012 Act. The harm caused by excessive or inappropriate consumption of alcohol not only includes any crime, damage, disorderly behaviour, illness or injury directly or indirectly caused, or directly or indirectly contributed to by the excessive or inappropriate consumption of alcohol, but any harm to society generally or the community.

[31] Part 2 of the Act provides for the sale and supply of alcohol generally. Subpart 1 provides for four kinds of licence, the requirements for each, the authority to hold licences, and restrictions and conditions on licences. Subpart 2 provides for local alcohol policies which any territorial authority may have in relation to the sale, supply or consumption of alcohol within its district.

[32] The licensing process is provided for in subpart 3 which applies to on-licences, off-licences and club licences. An application for a licence is made to a licensing committee. A licensing committee must send a copy of every application for a licence to the Police, Medical Officer of Health and the Licensing Inspector appointed in the territorial authority’s district.<sup>26</sup> Section 105 sets out the criteria for the issue of a licence:

<sup>25</sup> Sale of Liquor Act 1989, s 4(1).

<sup>26</sup> Sale and Supply of Alcohol Act 2012, s 103.



**105 Criteria for issue of licences**

- (1) In deciding whether to issue a licence, the licensing authority or the DLC 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.

[33] Particular discretionary and compulsory conditions for off-licences are provided in s 116. Every off-licence issued must be subject to a condition stating the days on which and the hours during which alcohol may be sold.<sup>27</sup> Conditions may be varied under s 120 of the Act.

[34] Applications for renewal of a licence are made under s 127. As for applications for a licence there may be objections to renewal<sup>28</sup> and enquiries by the Police, Medical Officer of Health and Inspector.<sup>29</sup> The criteria for renewal of a licence are substantially the same as the criteria for issue of a licence in s 105. Criteria for renewal are set out in s 131:

**131 Criteria for renewal**

- (1) In deciding whether to renew a licence, the licensing authority or the DLC 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.
- (2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

[35] Conditions on renewed licences are imposed under s 132.

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<sup>27</sup> Section 116(2)(a).

<sup>28</sup> Section 128.

<sup>29</sup> Section 129.

**Question 1: did the Authority fail to apply the correct legal test in setting the hours of operation?**

*Appellants' submissions*

[36] Taking an overview of the Authority's errors, the Medical Officer of Health was critical of the Authority's failure to note many of the principles applicable to its appellate function. Mr Allan, counsel for the Medical Officer of Health, identified many such "failings" in the Authority's decision. For example the Authority did not expressly acknowledge that there is no presumption an existing licence will be renewed and that the task is an evaluative one in which notions of onus of proof are unlikely to be helpful. The Authority failed to interpret the object of the Act and it failed to recognise the precautionary principle.

[37] More particularly, Mr Allan submitted the Authority misunderstood the nature of the evaluative exercise it was required to undertake. It was wrong for the Authority to dismiss the reporting agencies' evidence and instead to require proof of a causal nexus between the grant of this renewal and the incidence of alcohol-related harm in the locality.

[38] The reporting agencies maintain that given the risks presented by established levels of alcohol-related harm associated with the phenomena of pre-loading and side-loading in and around Courtenay Place, reducing the availability of alcohol from Liquor King on Friday and Saturday nights was clearly rational in terms of helping to achieve the object of the Act.

*Respondent's submissions*

[39] The respondent rejects the appellants' contentions that the Authority failed to take into account relevant principles. In Lion's submission, the reporting agencies' arguments reflect a dissatisfaction with the Authority's evidential findings. In the context of an appeal on a question of law Ms Arthur-Young submitted the Court should be cautious to avoid engaging with the factual challenges which the appellants mount. There is nothing in the Authority's decision to suggest it applied the wrong approach. The Authority is a specialist tribunal and it carefully and thoughtfully summarised the data brought before it by the Medical Officer of Health and Police.

[40] In particular, the Authority placed no burden of proof on the reporting agencies and it correctly interpreted and applied the relevant statutory provisions. As to its alleged failure to apply the precautionary principle Ms Arthur-Young submitted the principle is not a mandatory relevant consideration but a tool the Authority may apply in appropriate circumstances. The precautionary principle is not a panacea for a lack of evidence.

[41] Finally, Lion submits the cases upon which the reporting agencies rely are distinguishable.

#### *Assessment*

[42] I do not accept that the mere omission of references to relevant case law or principles constitutes an error of law. It may be evident from a judicial body's decision that, even without recitation of relevant case law and principles, the applicable law nevertheless has been applied and a correct analytical approach taken. I also accept Ms Arthur-Young's submission that there is no obligation for a decision-maker to address every piece of evidence or argument raised.<sup>30</sup>


[43] On any analysis of the Act, and the various functions of the bodies making decisions under it, the object of the Act is the first criterion when considering applications for renewals. What the Court of Appeal described as the "modest object" of the Sale of Liquor Act 1989 has been replaced by a new Act signalling "a new community-oriented approach incorporating both purpose and object provisions".<sup>31</sup> Decision-making in the context of Lion's application is essentially rooted in a risk assessment. The factors to be considered in the course of assessing an application for a licence or for renewal, as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm.


[44] An application for renewal of a licence is to be assessed in light of a range of factors relevant to the particular application. There is no one test. Regard must be

<sup>30</sup> *Manukau City Council v Trustees of Mangere Lawn Cemetery* (1991) 15 NZTPA 58 (HC) at 61 cited in *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689, [2016] NZAR 287 at [106].

<sup>31</sup> *J & G Vaudrey Ltd v Canterbury Medical Officer of Health* [2016] NZCA 539, [2017] 2 NZLR 334 at [22]–[23].

had to the object of the Act and the statutory criteria for renewal. The criteria relevant to this application include the suitability of the applicant, the days on which and the hours during which the applicant proposes to sell alcohol, the design and layout of the premises, and the matters dealt with in the reports from the Police and Medical Officer of Health.<sup>32</sup> There is also to be regard for the amenity and good order of the locality and whether it would be likely to be increased by more than a minor extent, if a renewal were refused.<sup>33</sup>

 [45] The statutory provisions must be applied in a way that promotes the twin statutory objects which are that the sale, supply and consumption of alcohol should be undertaken safely and responsibly *and* that alcohol-related harm should be minimised. The aim of minimisation requires alcohol-related harm to be reduced to the smallest amount, extent or degree.<sup>34</sup>

 [46] No party contests that the proper approach to the application is evaluative and merits based.<sup>35</sup> The following further principles may be taken from the cases:

- (a) There is no presumption that an application for a licence will be granted or that a licence will be renewed.<sup>36</sup>
- (b) This is made reasonably plain by the fact the approach to renewal is virtually the same as the process engaged by an application for an initial licence.<sup>37</sup>
- (c) A licensing committee or Authority, after having regard to the criteria for renewal in s 131, is then to step back and consider whether there is any evidence indicating that granting the application will be contrary to

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<sup>32</sup> Section 131(1)(a), criteria for renewal including those matters set out in s 105(1) relating to criteria for issue.

<sup>33</sup> Section 131(1)(b).

<sup>34</sup> *Re Penoy Spirits Ltd* [2014] NZARLA PH 697 at [19] adopting the New Shorter Oxford English Dictionary definition; *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980 at [18].


<sup>35</sup> *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 22, at [54].

<sup>36</sup> At [55].

<sup>37</sup> *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 30, at [48].

the statutory object in s 4.<sup>38</sup> Or, as Heath J articulated a “test”.<sup>39</sup>

Although the “object” of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the “object” of the legislation. It seems to me that the test may be articulated as follows: is the Authority satisfied, having considered all relevant factors set out in s 105(1)(b)–(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act?

- (d)  The breadth of the Authority’s functions suggests the application of rules involving onus of proof may be inappropriate.<sup>40</sup> Similarly there is no onus on the reporting agencies to prove the application should not be granted.<sup>41</sup>
- (e) The criteria for the issue of licences, and for renewal, are not to be interpreted in any narrow or exhaustive sense. The Authority may take into account anything which, from the terms of the statute as a whole, appears to be regarded by the legislature as relevant to licence conditions and the terms on which they should be granted. “That must include the statutory object referred to in s 4.”<sup>42</sup> The matters raised by s 4 are to be approached on a nationally consistent basis.<sup>43</sup>
- (f) The Authority is not required to be sure that particular conditions will reduce liquor abuse:<sup>44</sup>

It is entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective ... then it is entitled to test whether that possibility is a reality.

[47] To assist the risk assessment the legislature has given the reporting agencies a prominent role. Every application for a licence or for a renewal of a licence must be

<sup>38</sup> At [50].

<sup>39</sup> *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315 at [20].

<sup>40</sup> At [60]; and *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 30, at [52].

<sup>41</sup> *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 30, at [113].

<sup>42</sup> *Walker v Police* HC Wellington AP87/01, 31 May 2001 at [29] approved in *My Noodle Ltd v Queenstown Lakes District Council* [2009] NZCA 564, [2010] NZAR 152 at [67].

<sup>43</sup> *Walker v Police*, above n 42, at [29].

<sup>44</sup> *My Noodle Ltd v Queenstown Lakes District Council*, above n 42, at [74].

sent by the relevant licensing committee to the Police, Inspector and Medical Officer of Health.<sup>45</sup> Those bodies have an obligation to enquire into the application.<sup>46</sup> If there is no objection no report needs to be filed. If, however, there is any opposition to the application a report must be filed within 15 working days of receiving the application.<sup>47</sup> Those reports become matters to which the Authority or licensing committee “must have regard”.<sup>48</sup>

[48] There is every indication from the Authority’s decision that it did, indeed, take note of the reports of the Medical Officer of Health and Police. I see no error in that aspect of the Authority’s approach (I return to the Authority’s approach to the evidence in the discussion of the second question of law.) However, the Authority drew an impermissible distinction between the approach to be taken on a renewal application and the approach to be taken on an application for a licence. The Authority stated:<sup>49</sup>

In the context of a renewal application, a proposal to change trading hours on renewal ... where there is little or no issue about the manner in which the applicant has operated its licence in the past, *must be able to be explained by some evidence demonstrating abuse as a result of the granting of the renewal on those terms*. This is not because there is a presumption that the hours of any licence will be the national maximum default hours set out in s 43 of the Act, but because any change in conditions should not be arbitrary.

[49] The Authority assumed an evaluation of the criteria in ss 105 and 131 required a balance between allowing the safe and responsible sale, supply and consumption of alcohol, and minimisation of alcohol-related harm.<sup>50</sup>

[50] In my view, the Authority’s concern to achieve a “balance” led the Authority into error. Lion had expressed concern, reflected in its submissions before the Authority and in this appeal, at a potential loss of customers and market share if the hours during which it could sell alcohol were reduced. The Authority’s conclusions on this point effectively see the twin elements of the statutory objective as requiring to be in balance when s 4 requires both of the twin objectives to guide the application of the legislation. But the Act is clear. In deciding whether to renew or grant a licence

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<sup>45</sup> Sale and Supply of Alcohol Act, s 103(1).

<sup>46</sup> Section 103(2).

<sup>47</sup> Section 103(4).

<sup>48</sup> Section 131(1)(c).

<sup>49</sup> *Lion Liquor Retail Ltd v Medical Officer of Health*, above n 2, at [64].

<sup>50</sup> At [63].

the Authority and DLC “must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.”<sup>51</sup> As McGechan J observed in *Buzz & Bear Ltd v Woodroffe*:<sup>52</sup>

Any licensee takes a licence under risk that conditions may change, and a report may recommend adjustment. There is no asset protected for all time whatever may happen outside.

[51] Or, as the DLC observed, the Legislature’s expectation that alcohol-related harm will be minimised “does not yield to a licensee’s commercial or equitable interests”.<sup>53</sup>

[52] An appropriate framework when a licensing committee or authority is considering an application to grant an off-licence, or an application for renewal, contemplates the decision-maker considering:<sup>54</sup>

- (a) the criteria in s 131;
- (b) any reports presented by the Police, Medical Officer of Health and licensing inspector following their respective inquiries into the application; and
- (c) any objections filed in accordance with the statutory requirements for objections to renewal.

Having considered all of that information the Authority must stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires the Authority to form a view on whether there is any evidence to suggest that granting the application will contrary to s 4(1), increase the risk of alcohol abuse. While a causal nexus is required between such evidence and the relevant risk, it is unnecessary to qualify the nature of the link by reference to such words as “powerful” or “direct”.

[53] The Authority erred in formulating as the test: “whether a change in the premises closing hour can be said to be a rational response to the probability of a

<sup>51</sup> Sale and Supply of Alcohol Act, s 131(2).

<sup>52</sup> *Buzz & Bear Ltd v Woodroffe* [1996] NZAR 404 at 410.

<sup>53</sup> *Re Lion Liquor Retail Ltd*, above n 1, at [88].

<sup>54</sup> *Otara-Papatoetoe Local Board v Joban Enterprises Ltd* [2012] NZHC 1406, [2012] NZAR 714 at [31].



greater degree of abuse associated with the premises resulting from the grant of the renewal”.<sup>55</sup> That approach tends to favour perpetuation of the status quo for Lion rather than responding to the risks of alcohol-related harm which the evidence established and to which it can reasonably be inferred from the evidence, the premises contribute. In the face of those facts the Act requires a response which is aimed at minimising – that is, reducing to the smallest, amount, extent or degree – alcohol-related harm.

**Question 2: Did the Authority err in its conclusion there was an insufficient evidential basis to maintain the hours condition?**

*Appellants’ submissions*

[54] The appellants’ case is that the Authority’s decision was unsupported by the evidence. The appellants point to the following particular conclusion which the Authority reached:<sup>56</sup>

Evidence of vulnerability of the community is not sufficient to alter a premises operating in the absence of some link between the operation of those premises trading hours and that vulnerability.

[55] The reporting agencies submit they did not advance argument simply on the basis that users of the Courtenay Place entertainment precinct and nearby residents were vulnerable to alcohol-related harm. Nor did their evidence establish merely that the relevant community of users and residents were “vulnerable” or merely “that alcohol from off-licences can be linked to [alcohol-related harm] and that vulnerability in the community is a result of alcohol availability”.

[56] The Authority’s ultimate conclusion that there was no evidence of anything beyond the general proposition that alcohol from off-licences can be linked to alcohol-related harm and that vulnerability in the community is the result of alcohol availability is, in the appellants’ submission, plainly wrong. The conclusion is not only unsupported by the evidence but contradicted by the evidence.

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<sup>55</sup> *Lion Liquor Retail Ltd v Medical Officer of Health*, above n 2, at [65].

<sup>56</sup> At [66].

*Respondent's submissions*

[57] Ms Arthur-Young submitted an appellate court should take a cautious approach to an appeal from the Authority in light of its specialist tribunal status. Counsel cited the comments of Lord Donaldson MR to the effect that it did not matter the degree of certainty with which an appellate court considers it might have reached a different conclusion. What matters is whether the decision under appeal was a permissible option.<sup>57</sup>

[58] The respondent says the Authority plainly had regard to the matters raised in the reports from the Police and Medical Officer of Health. The Authority's decision includes a summary of their submissions and evidence. The Authority did not err by failing to summarise every piece of evidence or every argument raised. The Authority delivered an unusually long decision and its decision was available to it on the evidence.

[59] The Authority was cognisant of the evidence and the nature of the locality including the presence of other off and on-licenses where alcohol can be acquired late at night. In this context, it was permissible for the Authority to find the required causal nexus between Liquor King ceasing trading at 9.00 pm rather than 11.00 pm on Fridays and Saturdays, and a reduction of alcohol-related harm, was not made out.

*Assessment*

[60] The Authority saw the issue as being whether the DLC was required to establish a causal nexus between the premises and the trading hour condition to be imposed, and whether the evidence established that nexus.<sup>58</sup> The Authority regarded it as evident from the case law<sup>59</sup> that the causal nexus is between the grant of (in this case) a renewed licence and the statutory object in s 4. In terms of identifying the relevant nexus, the Authority was correct. Once the causal nexus was identified the

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<sup>57</sup> *Piggott Brothers & Co Ltd v Jackson* [1992] ICR 85 at 92 cited in *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [27].

<sup>58</sup> *Lion Liquor Retail Ltd v Medical Officer of Health*, above n 2, at [52].

<sup>59</sup> At [57]–[58] citing *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 30.

next step requires an evaluation of the evidence in order to assess the degree and nature of alcohol-related harm that is potentially linked to the licence.

[61] The Authority's assessment of the evidence was that there was no causal nexus between the renewal of the licence and the "general incidence of [alcohol-related harm] in the locality".<sup>60</sup> In apparently requiring a "positive correlation" between the proposed operation of the premises and alcohol-related harm the Authority seemed to require Liquor King to be at the centre of the harm.

[62] The reporting agencies do not contend that Liquor King is the sole originator of the alcohol-related harm which the evidence establishes in the locality. Rather, it is Liquor King's risk profile that is relevant. Dr Palmer's evidence was of a "high-risk demographic" and that off-licences in Wellington are the leading source of alcohol consumed by persons who present at Wellington Emergency Department with alcohol-related conditions. Liquor King is located at the boundary of two area units: Willis Street — Cambridge Terrace and Mt Victoria West.<sup>61</sup>

[63] The unusual demographic is due to the significant tertiary student population in these area units. Dr Palmer's evidence was that the 18 to 29-year age band is considered to be the high-risk demographic with regard to acute alcohol-related harm. Most other area units in Wellington City, he said, do not have such extreme levels of the high-risk demographic.

[64] Dr Palmer's evidence was based on data for alcohol-related attendances at the Emergency Department at Wellington Hospital over six years. While it is not possible to link individual alcohol-related attendances to specific off-licences it is known that more than three-quarters of all alcohol consumed is sourced from an off-licence. Liquor King's location is on the edge of the problematic Courtenay Place entertainment precinct which is characterised by binge drinking off-licence alcohol through pre- and side-loading, of RTDs in particular. Dr Palmer did not attempt to link specific alcohol-related harm to specific off-licences. Nor do I regard it as

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<sup>60</sup> At [61].

<sup>61</sup> An area unit is drawn from a census description of a "Census Area Unit". An area unit geographically represents a small suburb within a much larger district, town or city.

necessary.<sup>62</sup> The data and observational and opinion evidence of the reporting agencies:

- (a) identified the notoriously excessive incidence of alcohol-related harm to users and residents in the locality in the hours before midnight on Friday and Saturday nights; and
- (b) linked the risk of continued alcohol-related harm to alcohol supplied at those times by off-licenced premises. As Liquor King is one of only two major liquor stores in the Willis Street–Cambridge Terrace “area unit” and as Liquor King, but not the nearby Chaffers New World, supplies products clearly associated with alcohol-related harm it was difficult to imagine Liquor King is “not making a key contribution” to the high number of alcohol-related attendances in the area.



[65] The primary conclusion to be drawn from the evidence is that there can be no realistic doubt the premises contributes to some of the alcohol-related harm in the locality. Given the proximity of the premises to the entertainment precinct and the reasonable distance of other off-licences to those same consumers it can reasonably be accepted that alcohol will be purchased from the premises for pre-and side-loading. The Police evidence was that the two busiest suburbs in Wellington for alcohol-related crime are Te Aro and Wellington Central where Liquor King is located. Further, most CBD alcohol-related crime occurs in Courtenay Place and in close proximity to the premises. Liquor King supplies products clearly associated in the evidence with alcohol-related harm and breaches of liquor bans.

[66] Liquor King failed a controlled purchase operation involving sales to two 17-year olds. That issue has been resolved to the satisfaction of the Medical Officer of Health.

[67] There is no challenge to the suitability of the operations or the professionalism of the operator. Nevertheless, in this statutory setting the professionalism of the operator becomes subordinate to the extreme alcohol-related harm which is evidenced.

<sup>62</sup> See *Otara-Papatoetoe Local Board v Joban Enterprises Ltd*, above n 54, at [31].

Mr La Hood drew attention to the DLC's observation that a licensee may be a model operator but if its products are consumed after sale in a harmful way the operator may bear the consequences by way of restrictions on the licence.<sup>63</sup> The observation is well made. The Act looks to minimise alcohol-related harm. Where there is an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant or renewal of a licence, the harm must be minimised not ignored or condoned.

[68] In the face of such evidence the Act does not countenance the continuation of high levels of alcohol-related harm. The Act requires minimisation of the alcohol-related harm. The task of the DLC was to respond to the risk and it did so. It is not necessary to establish, as the Authority required, that the proposed operation "would be likely to lead to" alcohol-related harm.<sup>64</sup> To require demonstration of a link to this degree of specificity is not much different from requiring proof. Requiring proof of "a causative link is not only unrealistic but is contrary to the correct legal position".<sup>65</sup>

[69] I accept the submissions on behalf of the appellants. The Authority consistently emphasised what the evidence did not show or did not prove at the expense of what the evidence demonstrated.

[70] It was sufficient to engage the requirement to minimise alcohol-related harm that the evidence implicates the premises. The Authority erred in requiring evidence of demonstrable historical harm. Rather, it was required to assess risk which, by definition, is future risk. In that regard, there was extensive evidence of the alcohol-related harm associated with this locality on Friday and Saturday nights. In fact, the DLC in its decision described the evidence as compelling. Having read the evidence I agree with that assessment.

[71] With respect to the Authority I am of the view it both misdirected itself and reached a conclusion which I consider contradicts the true and only reasonable

<sup>63</sup> *Re Lion Liquor Retail Ltd*, above n 1, at [141].

<sup>64</sup> *Lion Liquor Retail Ltd v Medical Officer of Health*, above n 2, at [61].

<sup>65</sup> *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 30, at [61]–[62].

conclusion available on the evidence. The Authority thereby committed an error of law.<sup>66</sup>

### Summary

[72] On hearing an appeal, the High Court may confirm, modify or reverse the decision appealed against.<sup>67</sup> The power to “reverse” a decision includes the revocation or annulment of a decision.<sup>68</sup> The Authority’s decision will be set aside. The decision of the DLC is restored for the following reasons:

- (a) The legislative framework enacted by the 2012 Act was intended to restrict rather than relax drinking laws. The legislative measure proceeded on the basis of clear evidence showing a link between the availability of alcohol and alcohol-related harm.<sup>69</sup>
- (b) Consequently, national maximum trading hours were reduced. Off-licence trading hours are significantly less than the hours during which on-licensed premises may supply alcohol.
- (c) Regulating the availability of alcohol through restrictions on trading hours was one of the policy levers the Law Commission recognised as being available to reduce alcohol-related harm especially in relation to off-licence premises.<sup>70</sup>
- (d) The DLC correctly took account of the correlation between reduced hours and reduced alcohol-related harm. Indeed, Lion’s own witness accepted that with the reduction in national “default” hours there had been a reduction in overall alcohol-related harm.<sup>71</sup>
- (e) In all the circumstances the trading hours condition which the DLC

<sup>66</sup> Cf *Vodafone New Zealand Ltd v Commerce Commission* [2011] NZSC 138, [2012] 3 NZLR 153 at [58]

<sup>67</sup> Sale and Supply of Alcohol Act, s 161(7).

<sup>68</sup> *J & C Vaudrey v Canterbury Medical Officer of Health*, above n 31, at [77].

<sup>69</sup> As observed by the Hon Judith Collins when moving the third reading of the bill.

<sup>70</sup> Law Commission, above n 23, at [9.40]–[9.49].

<sup>71</sup> *Re Lion Liquor Retail Ltd*, above n 1, at [187]–[188].

imposed to minimise the established alcohol-related harm in the locality was principled. The DLC did not have to be sure the condition would, in fact, minimise alcohol-related harm. It was entitled to test the possibility.<sup>72</sup>

## Result

[73] The appeal is allowed.

[74] The questions of law are answered as follows:

Question 1: did the Authority fail to apply the correct legal test in setting the hours of operation?

Yes

Question 2: Did the Authority err in its approach to the evidential foundation required for its conclusion?

Yes

[75] Having succeeded in their appeal the appellants are entitled to costs. If costs are unable to be agreed between the parties they may file memoranda not exceeding five pages.

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Karen Clark J

Solicitors:  
Luke Cunningham Clere, Wellington for Appellant  
Russell McVeagh, Auckland for Respondent

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<sup>72</sup> As the Court of Appeal observed in *My Noodle Ltd v Queenstown Lakes District Council*, above n 42, at [74] the Authority and, I add, the DLC is entitled to apply the equivalent, in environmental law, of the precautionary principle.