

Western Bay of Plenty District Council

**Minutes of Meeting No. DL13 of the District Licensing Committee
held on 11 June 2019 in the Council Chamber, Barkes Corner, Tauranga
Commencing at 2.20 p.m.**

Present

Commissioner M Clearwater (Chairperson), Councillor D Thwaites (Deputy Chairperson), and Member S Williams

In Attendance

A Curtis (District Licensing Secretary/Compliance and Monitoring Manager), G Golding (Team Leader Compliance Support), D Elvin (Alcohol Licensing Inspector), E Clarke (Technical Support Officer - Alcohol and Compliance), and B Clarke (Senior Governance Advisor)

Others

As listed in the minutes.

DL13.1 Conflict of Interest Declarations

Commissioner Murray Clearwater, Councillor Don Thwaites, and Member Steve Williams each declared that they had no conflicts of interest in relation to Application No. LL7526.

DL13.2 Hearing: Application No. LL7526 for the renewal on an off licence under Sections 100 and 127(2) of the Sale and Supply of Alcohol Act 2012 - Applicant: Jones Retail Limited - Premise located at 37-41 Main Road, Katikati, trading as Katikati Four Square

The District Licensing Committee considered the application and all related documentation as follows:

- a) An application for the renewal of an off licence dated 11 February 2019;
- b) Supporting information to the application;
- c) Reporting Agency reports as follows:

- New Zealand Police report dated 25 February 2019;
- Medical Officer of Health report dated 8 March 2019;
- Alcohol Licensing Inspector's report dated 18 April 2019.

Chairperson's Introduction

The Chairperson invited the Compliance and Monitoring Manager to provide an overview of house keeping matters and emergency evacuation procedure. He introduced Members of the Committee, acknowledged staff present, and welcomed parties making appearances. He provided an introduction of the application under consideration, advised that the Committee had read all evidence, and that all parties with speaking rights had the right to cross-examine the party giving evidence.

Appearance for the Applicant

- Mr Peter Jones, Director of Jones Retail Limited (the Applicant).

Appearances for the Reporting Agencies

- Mr Dougal Elvin, Alcohol Licensing Inspector, (WBOPDC)
- Sergeant Trevor Brown, Liquor Licensing Coordinator - Western BOP, (NZ Police)
- Ms Dawn Meertens, Technical Officer for the Medical Officer of Health (BOP District Health Board).

Submitters in Opposition

There were no Submitters in Opposition. A reporting agency, being the Medical Officer of Health, was appearing in opposition.

1. Evidence for the Applicant

Mr Peter Jones, Director of Jones Retail Limited, (the Applicant), tendered an apology for lateness, due to the need to manage short staffing issues which had arisen that morning. He was sworn in, and tabled evidence (1) which he read in full, with the exception of the introduction.

Scope of Evidence

- Introduction;
- Four Square Katikati operations;
- Christchurch Medical Officer of Health vs J & G Vaudrey Limited (High Court case);
- Single Alcohol Areas (SAA's) not prohibited under Section 113(5)(b) of the Sale and Supply of Alcohol Act 2012 ('the Act');
- The Medical Officer of Health's submission in opposition.

In summary, Mr Jones addressed the Hearing as follows:

- He did not understand the Medical Officer of Health's opposition, as he believed that the Single Alcohol Area (SAA) in his premises was compliant, specifically following alterations made three years ago to permit the approval of the renewal of an off licence on the papers.
- He had a franchise agreement with Foodstuffs NZ. Jointly, they took the Local Alcohol Policy seriously and provided training and refresher programmes for staff at least yearly, and as required.
- Any failure to comply with the Act could breach the franchise agreement he had with Foodstuffs NZ, and such a breach may lead to the loss of the Foodstuffs NZ banner.
- With regard to the purpose of limiting alcohol exposure, this had not been raised in the Medical Officer of Health's emailed notice of opposition, and the issue had only been disclosed to him a day before the hearing.
- He referred to tabled item (2), which was an updated floor plan of his premises, which corrected the angle of a small part of the perimeter. He believed it limited the exposure of shoppers to alcohol as far as was reasonably practicable. It was not in either of the prohibited areas defined in the Act.
- It was his belief that the SAA was only one area and was not split into two areas, as alleged by the Medical Officer of Health.

Cross Examinations

a) Mr Jones responded to questions from the Technical Officer for the Medical Officer of Health as follows:

- At the time of the last licence renewal, he had a different area, as there had been a beer pellet display by the mussel machine; thirteen doors of non-alcoholic drinks; a further bay of wine; and open viewing from the milk fridge across to the wine area.
- To enable the last renewal of licence to proceed, he had compromised, by building a wall which had created a closed-in area. This was not favoured for security reasons, as people could shop lift unseen, whereas in the past, without the wall they could have been seen.
- He had removed the wine aisle; had taken the ends off the aisles, and removed the beer pallet by the mussel machine. A bay of alcohol had been lost as well, which meant a reduced alcohol product area.

Matter of Clarification

The Technical Officer for the Medical Officer of Health then questioned the Applicant in relation to exposure to alcohol.

The Chairperson advised that the Committee was aware of the issue, but as the Medical Officer of Health had not raised this issue in its email notice of opposition, the witness was not required to respond on the matter. He ruled that the Medical Officer of Health was confined to only those matters outlined in its email.

Cross Examinations *continued*

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

- He was aware that he was able to configure and display what he wanted to within the SAA.
- He would not want to inhibit the progress of his customers in their travel around the store by putting boxes of wine and beer, or any other products, in their way.
- In terms of aisle layout, non-alcoholic products were on the other side of the aisle from the alcohol products. Shoppers often walked past alcohol on one side in many stores.
- In terms of destination buying, some shoppers entered an area to get a particular non-alcohol product.
- The High Court had confirmed that proprietors were free to display in the SAA. It was the most 'worn piece of floor' for deliveries.

Matter of Clarification

The Chairperson clarified that if there were any potential requirements for alterations in store configuration, (should they be deemed reasonably practicable), this was a matter for the Committee to decide upon.

Cross Examinations continued

a) Mr Jones responded to questions from the Committee as follows:

- In terms of the layout of his shop, the milk and cereals were easy to get to. If a new shopper entered, they would get to the customer entry and see the first sign for milk or cereal.
- The customer may choose to retreat back to the entrance to see the aisle signs, or to walk along the back wall and look up to the aisle signs. How customers navigated around the shop was entirely their choice.
- The store had a separate plan for health and safety events. In terms of fire exits, customers would be encouraged to exit at the front entrance, as a preference to other exits.
- The Coca Cola fridges were not owned by the shop. They were located on the left hand wall near the chilled beer, wine and other cold drinks.

- The wall that had been built since the last renewal was constructed of ply and screened the products from view. Alcohol products were not stacked up and visible.
- If the aisles were split and allowed people to go through to the milk area, there would be little to no impact on the store.
- He had never counted the number of people proceeding to the SAA. He accepted that there would be many people going through, particularly if they were doing a full shop. A survey would have to be done to correctly determine numbers.
- He had purchased the Four Square in December 2006, expanded the business, and moved to the current site in 2009.
- He had involved experts when considering the location of the SAA. It was not about profit. There would always be proximity to other products, as it had to be adjacent to something in the store.
- A few years ago, they had considered displaying alcohol down the back wall, but it would seem far worse for exposure to other aisles and was not the answer.
- If shoppers came up to the wine and beer area, if they were not purchasing alcohol they could choose to back up and complete their shop without going through the alcohol area.
- He had to provide for the needs of all customers. In terms of practicality, alcohol location was often about the dimensions available in the premises. There was a wider or deeper line near the frozen foods.
- In terms of an option to move the SAA from aisle 2 to aisle 3, he saw little merit in it. Aisle 2 was currently the same as it was at the time of the last renewal, with the only difference being the loss of the end of the aisle.
- He had considered many alternatives for location. Currently, the SAA was in the best available location within his premises.
- He had made substantial changes to accommodate the Medical Officer of Health's requirements, and requested that the Committee finalise and rule on the SAA as it was currently laid out.

b) Mr Jones responded to further questions from the Technical Officer for the Medical Officer of Health as follows:

- In terms of the ability to swap the frozen foods with the chilled wine and beer, the reason frozen foods were between aisles 1 and 2 was that it was a double sided display area. Frozen foods and chilled foods were also run off different compressor systems.

2. Evidence of the Alcohol Licensing Inspector

Dougal Elvin, the Alcohol Licensing Inspector was present at the hearing to assist. His report was accepted into evidence, and it was noted that he considered that the SAA met the criteria for renewal.

3. Evidence of the NZ Police

Sergeant Trevor Brown was present at the hearing to assist. He noted that the NZ Police did not oppose the renewal of the license.

4. Evidence for the Medical Officer of Health [*in opposition*]

The Chairperson noted that the Technical Officer for the Medical Officer of Health had lodged a notice of opposition by email. However, upon enquiry, had not provided any direct 'Brief of Evidence' in support of the Medical Officer of Health's opposition. He advised that the Committee expected to be provided with evidence from a reporting agency appearing in opposition to an application, and evidence to which the Applicant could reasonably be expected to respond.

Ms Meertens requested that she be permitted to rely on a pre-circulated submission, and a verbal address to the hearing. This approach was accepted by the Committee as a way to progress.

Scope of Pre-circulated Submission

- Introduction;
- Applicable law;
- Application and general criteria;
- SAA conditions;
- Additional conditions;
- Reasons for opposition;
- Conclusion.

Ms Meertens was sworn in, and verbally addressed the Hearing as follows:

- The key concern was that the premise was configured so that customers must walk through the SAA when shopping, as a natural progression.
- She had visited the store, and suggested that going through the SAA was also the most direct point back to the checkouts.
- Shoppers did not normally 'turn around' when they saw alcohol, whether they wanted to buy it or not, they usually continued and walked through that area.
- She considered that the SAA was in a prohibited area, as it encompassed one of the thoroughfares in the store.
- She considered that the SAA was in two areas and was also near the entrance to the checkout area, which made it non-compliant.
- She considered that the application should be declined for the reasons she had given.

Cross Examinations

- a) Ms Meertens, Technical Officer for the Medical Officer of Health responded to questions from the Committee as follows:
- In discussing the layout of the SAA, she had referred to the 'Bishop Dale layout'. In the 'Bishop Dale' layout, customers did not actually need to walk through the SAA to shop, as alcohol was either on the shopper's left or right. Displays were permitted in the perimeter. In Katikati Four Square, shoppers had to walk through the SAA.
- b) Ms Meertens, Technical Officer for the Medical Officer of Health responded to questions from the Applicant as follows:
- Her opposition was not about people looking at alcohol, from the back wall for example, but with them having to walk through a SAA.
- c) Ms Meertens, Technical Officer for the Medical Officer of Health responded to a further question from the Committee as follows:
- Her submission was not about exposure, as she had not raised it in the notice of opposition lodged. She reiterated that the Hearing today was about the fact that shoppers had to walk through the SAA, which they should not have to do.

4.00 p.m. The Hearing adjourned.

4.15 p.m. The Hearing reconvened.

5. Closing Submissions from Reporting Agencies

Following the hearing of submissions presented:

a) Alcohol Licensing Inspector

The Alcohol Licensing Inspector had not opposed the application, and his position had not changed.

b) NZ Police

The NZ Police had not opposed the application, and that position had not changed.

c) Medical Officer of Health

Ms Meertens, Technical Officer for the Medical Officer of Health, tabled an item and highlighted key points in summary as follows:

- The proposed area, when a perimeter was drawn around it, was so configured and arranged that it contained an area of the premises through which the most direct pedestrian route between the main body of the premises and any general point of sales passed.
- The Medical Officer of Health submitted that the application should be declined because the SAA was unsuitable in light of the availability of other areas which would limit exposure materially better than what was proposed and which would be reasonably practicable to implement.

Ms Meertens responded to questions as follows:

- Initially she had considered an option that might assist, and had suggested the SAA down one aisle and along the back wall. She thought this might work, as plumbing alterations would not be as costly as with other potential options.
- If considering the way people normally shopped, it was not necessarily to go down each aisle, but it often worked like a 'racetrack' where there was a circuit, but people veered off down aisles to get a desired item.

6. Applicant's Right of Reply

In summary, Mr Jones addressed the hearing as follows:

- It was his understanding that an Applicant did not need to adjust or redesign the premises every time a licence required renewal, otherwise this would create uncertainty.
- It appeared the hearing was only being held to consider the SAA. Ms Meertens had reached a compromise of sorts with him on this matter before, and he was unsure why her position had changed.
- The District Licensing Committee had accepted the design and had approved the last application. There had been no change since then.
- It appeared that the Medical Officer of Health had changed its position, but in terms of his business operations, nothing had changed. On this basis, he agreed that the SAA must be reviewed once and for all, to provide certainty for the future.
- The Act prohibited a SAA being the last thing a customer walked through on their way out of a grocery store, or from being the first area when entering the same premises. In his premises, shoppers could avoid or turn away from the SAA if they chose to.
- The SAA had been improved and it was not located in the entry or the checkout area.
- There had been talk of alcohol in the vicinity of staple foods such as milk or bread. Anywhere alcohol was located in the store, it would be near non-alcohol products. The legislation did not state that alcohol products could not be near dairy products or bread.

- It was legal to sell alcohol and Katikati Four Square was doing so responsibly.
- He had considered whether there were any further changes in the location of the SAA that could be made, but there were no options that would rule out prohibitive cost to him for little benefit.

7. Closure of the Evidential Hearing

The Chairperson thanked all parties and closed the evidential hearing, advising that the Committee reserved its decision.

The Hearing concluded at 4.37 p.m.

Minute Note 1: The **DECISION** of the Western Bay of Plenty District Licensing Committee, dated 18 June 2019 is attached. The website copy includes a hyperlink to the decision only as follows:

[District Licensing Committee Decision - Application No. LL7526 for Katikati Four Square](#)

Confirmed as a true and correct record

Murray Clearwater
Chairperson

Date

DL13