



Off Licence Renewal

Sections 17 to 20, and 64, Sale and Supply of Alcohol Act 2012

Pursuant to the Sale and Supply of Alcohol Act 2012 (the **Act**), **JONES RETAIL LIMITED** (the licensee) is authorised to sell alcohol on the premises situated at **37-41 MAIN ROAD, KATIKATI** and known as **KATIKATI FOUR SQUARE**, to any person for consumption off the premises and to supply alcohol free, as a sample, for consumption on the premises. The licensee is also authorised to sell alcohol on or from the premises and deliver it somewhere else.

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

CONDITIONS

This licence is subject to the following conditions:

1. Alcohol may be sold on, or delivered from, the premises for consumption off the premises, and supplied free as a sample for consumption on the premises, only on the following days and hours:
Monday to Sunday 7.00am to 10.00pm;
2. No alcohol is to be sold on, or delivered from, the premises on Good Friday, Easter Sunday, Christmas Day or before 1.00 pm on Anzac Day;
3. No alcohol may be sold other than –
 - a. beer that complies with the appropriate New Zealand food standard for beer; or
 - b. mead that complies with the appropriate New Zealand food standard for mead; or
 - c. fruit or vegetable wine that complies with the appropriate New Zealand food standard for fruit or vegetable wine; or
 - d. grape wine that complies with the appropriate New Zealand food standard for grape wine; or
 - e. a food flavouring, prepared for culinary purposes, that is unsuitable for drinking undiluted;
4. While alcohol is being supplied free as a sample, water is to be provided to patrons at no cost from a water supply prominently situated on the premises;
5. A properly appointed Certificated, or Acting or Temporary, Manager must be on duty, at or nearby the point of sale, at all times when the premises are open for the sale and supply of alcohol.
6. The Licensee must display signage as follows:
 - a. At every point of sale signage detailing the restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. A copy of the licence attached to the inside of the premises so as to be easily read by people entering each principle entrance to the premises; and
 - c. A sign prominently displayed at the premises, which identifies by name the manager for the time being on duty.
7. The "single alcohol area" for the premises is as described on the plan dated **11 June 2019** and attached at Appendix 'A' to this decision. The licensee must ensure that:
 - a. No alcohol is displayed, promoted or advertised outside the single alcohol area; and
 - b. No products other than alcohol, low-alcohol and non-alcoholic beer, wine or mead are displayed, promoted or advertised inside the single alcohol area.

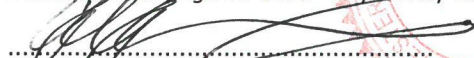
DURATION

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

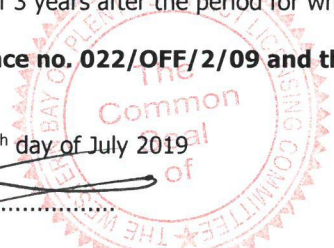
- (a) until the close of the period for which it was last renewed; or
- (b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, until the close of the period of 3 years after the period for which it was last renewed.

This licence replaces licence no. 022/OFF/2/09 and this licence continues in force until 17 March 2022 unless again renewed.

Dated at Tauranga on the 8th day of July 2019


.....
Secretary

District Licensing Committee, Western Bay of Plenty District Council



22/RENOFF/7526/2019

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 ('the Act')

AND

IN THE MATTER

of an application by **JONES RETAIL LIMITED** for the renewal of an off-licence pursuant to s.127 of the Act in respect of premises situated at 37-41 Main Road, KatiKati trading as "Katikati Four Square"

BEFORE THE WESTERN BAY OF PLENTY DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Don Thwaites
Member: Steve Williams

HEARING at Tauranga on the 11th day of June 2019

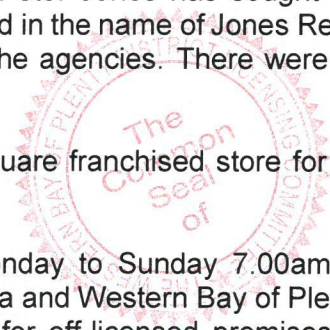
APPEARANCES

Mr Peter Jones- for the Applicant
Mr Dougal Elvin – Western Bay of Plenty Alcohol Licensing Inspector ("the Inspector")
– to assist
Sergeant Trevor Brown – Police Alcohol Harm Reduction Officer – to assist
Ms. Dawn Meertens- designated officer for the Medical Officer of Health – in
opposition

RESERVED DECISION OF THE COMMITTEE

Introduction

1. In an application dated the 11th of February 2019, Peter Jones has sought the renewal of the off-licence 22/RENOFF/6323/2017 held in the name of Jones Retail Limited. It was duly advertised and reported on by the agencies. There were no objections lodged by members of the public.
2. The applicant has owned and operated the Four Square franchised store for 12 years.
3. The current licence permits alcohol sales from Monday to Sunday 7.00am to 10.00pm and is compliant with the operative Tauranga and Western Bay of Plenty Local Alcohol Policy that sets the maximum hours for off-licensed premises to



7.00am to 10.00pm. **No changes are sought.**

4. The Medical Officer of Health (MOoH) opposes the application believing that the Single Alcohol Area (SAA) still does not comply with the requirements of s.112-114 of the Act and in so doing does not help achieve the Object of the Act.
5. The Police and the Licensing Inspector do not oppose the renewal.
6. A plan of the SAA was lodged with the application. All other parts of the renewal are uncontested, and the hearing was to focus on the perimeter and description of the SAA.

Applicant's Evidence

7. Mr Peter Jones is the owner operator of Jones Retail Limited and told us he did not understand the MOoH opposition as he believed that the SAA was compliant after the alterations that were made three years ago to permit the approval of the last renewal of licence on the papers.
8. He told the Committee of the company's commitment to be a responsible retailer of alcohol including the checks and balances that they have in place to not sell alcohol to minors and intoxicated persons and their efforts to comply with the Act generally.
9. He referred to a refreshed plan that he submitted during the hearing correcting the angle of one small part of the perimeter and said that he believed it limited the exposure of shoppers to alcohol as far as reasonably practicable and was not in either of the prohibited areas defined in the Act.
10. He also said that he believed the SAA was in one area only and not two as alleged by the MOoH.
11. He told us that he has 'wrestled with' the issue but did not see a better spot in the store for the display and advertising of alcohol.
12. In his extensive written brief of evidence, he focused on the perimeter of the area and not any potential 'exposure issues' as these had not been raised in the MOoH opposition email of 8 March 2019. He asked the Committee to note that the MOoH had now raised exposure issues in their closing submission that was only disclosed a day before the hearing without giving the applicant a chance to prepare a response.
13. Under questioning we put an option to move the SAA from aisle 2 to aisle 3 to provide better customer flow past the SAA but Mr Jones saw little merit in it.
14. Mr Jones asked the Committee to finalise the SAA as it is currently laid out once and for all.

Inspector's Evidence

15. The Inspector report was accepted into evidence and we note that he believed that the SAA was compliant, and that the application met the criteria for renewal.

Police Evidence

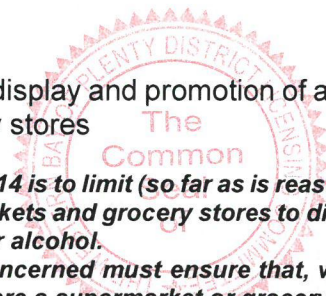
16. Sergeant Brown was present at the hearing to assist the Committee and we note that the Police do not oppose the renewal of the licence.

Medical Officer of Health Evidence.

17. Ms. Dawn Meertens is an experienced designated officer for the Medical Officer of Health (MOoH). The officer somewhat surprised the Committee by choosing not to adduce any direct evidence in support of the MOoH opposition and instead intended to rely on a closing submission outlining their concerns. As we noted when the applicant was giving evidence, the issue of exposure to alcohol was not directly raised by the MOoH in the notice of opposition and consequently we confined the witness to only those matters raised in her emailed opposition.
18. The officer told us she believed that the SAA was in two areas and non-compliant because of that. She further believed that the SAA was in a prohibited area as it encompassed one of the thoroughfares in the store.
19. Ms. Meertens referred us to the well-known authorities in these matters Vaudrey and Hasler in support of her stance.

Relevant legislation

20. Section 112 Compulsory conditions relating to the display and promotion of alcohol in single alcohol area in supermarkets and grocery stores
 - (1) *The purpose of this section and sections 113 and 114 is to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol.*
 - (2) *The licensing authority or licensing committee concerned must ensure that, when it issues or renews an off-licence for premises that are a supermarket or grocery store, it imposes on the licence a condition describing one area within the premises as a permitted area for the display and promotion of alcohol.*



(3) On the renewal of an off-licence for premises that are a supermarket or grocery store, any single-area condition imposed when the licence was issued (or was last renewed) expires.

(4) Subsection (3) is subject to section 115(4).

21. Section 113 Describing alcohol areas

(1) The licensing authority or licensing committee concerned must have regard to section 112(1)—

(a) when describing an alcohol area; and

(b) when taking any other action under this section; and

(c) when forming any opinion for the purposes of this section.

(2) An alcohol area must be described by means of a plan of the footprint of the premises concerned (or, in the case of premises on more than one level, a plan of the footprint of the level on which the area is or is to be located) showing—

(a) the proposed configuration and arrangement (or, in the case of the renewal of a licence, the existing or any proposed new configuration and arrangement) of the premises or level; and

(b) the perimeter of the area.

... (5) The authority or committee must describe an alcohol area within the premises only if, in its opinion,—

(a) it is a single area; and

(b) the premises are (or will be) so configured and arranged that the area does not contain any part of (or all of)—

(i) any area of the premises through which the most direct pedestrian route between any entrance to the premises and the main body of the premises passes; or

(ii) any area of the premises through which the most direct pedestrian route between the main body of the premises and any general point of sale passes.

(6) For the purposes of this section and section 114, general point of sale means anything that is—

(a) a checkout, till, or cashbox where goods other than alcohol (or alcohol and goods other than alcohol) may be bought; or

(b) a device by which goods other than alcohol (or alcohol and goods other than alcohol) may be paid for without the involvement of any person other than the buyer.

22. Section 114 Effect of single-area conditions

(1) Every single-area condition takes effect as a condition that the licensee of the premises concerned must ensure that—

(a) no display or promotion of, or advertisement for, alcohol occurs on the premises at any place outside the alcohol area; and

(b) the premises are not reconfigured or rearranged in a way whose effect (whether intentional or not) is that the alcohol area contains—

(i) any area of the premises through which the most direct pedestrian route between any entrance to the premises and the main body of the premises passes; or

(ii) any area of the premises through which the most direct pedestrian route between the main body of the premises and any general point of sale passes.

(2) If the alcohol area has not been so described that it is divided into 2 or 3 sub-areas, a single-area condition also takes effect as a condition that the licensee of the premises concerned must ensure that no display or promotion of, or advertisement for, a product that is not alcohol occurs on the premises at any place inside the alcohol

area.

....

(5) *For the purposes of this section,—*

(a) *neither of the following is a promotion of alcohol:*

(i) *a sign (consistent with other general signage in the supermarket or grocery store concerned) giving directions to, or describing the location of, an area where alcohol is available for purchase:*

(ii) *a newspaper, magazine, or catalogue containing a promotion of or advertisement for alcohol; and*

(b) *described means described under section 113; and*

(c) *designated means designated under section 113(3)(b).*

23. Section 131 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to renew a licence as follows:

(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, and 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.*

Further Considerations

Other criteria to be considered

24. The Act provides that in deciding whether to renew a licence, the licensing committee must also have regard to the matters contained in section 131 and 132 of the Act.

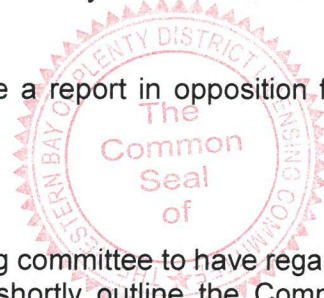
25. In regard to the Section 131(1)(a) criteria we discuss them in greater depth below.

26. Regarding the remaining criteria in 131 we do not believe that if we were to refuse this renewal the amenity and good order of the locality would increase by more than a minor extent.

27. There are no public objections, but we do have a report in opposition from the MOoH.

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

28. Section 105(1)(a) of the Act requires the licensing committee to have regard to the Object of the Act. For the reasons we shall shortly outline the Committee is satisfied that a renewal of the licence would not offend against the Object of the Act.



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

29. Section 105(1)(b) requires that the applicant be a suitable entity to hold an off-licence. In this regard the suitability of the applicant is not challenged. Jones Retail Limited and its officers are experienced operators of off-licensed premises.

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

30. The Tauranga and Western Bay of Plenty Local Alcohol Policy became operative on the 16th of November 2015. The Policy limits trading hours for off licensed premises to Monday to Sunday 7.00am to 10.00pm. The application is compliant with the provisions of the LAP.

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

31. The current operating hours are Monday to Sunday 7.00am to 10.00pm. They are within the default national maximum trading hours for off licences and the limits of the local LAP.

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

32. The premises is a large grocery store with aisles and departments within the store. Other than the SAA, that is in dispute, there are no other alleged issues with the design and layout, and it is typical of stores of this nature. Annual sales figures were provided in the required format and we are entirely satisfied the business is that of a grocery store.

Section 105(1)(f) Whether the applicant is engaged in or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods.

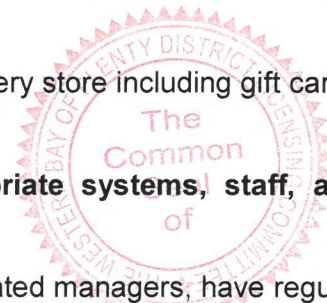
33. The applicant provided evidence of the large range of other goods they provide as described in the application consistent with being a large grocery store.

Section 105(1)(g) Whether the applicant is engaged in or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, and food, and if so, which services.

34. A number of other services are offered from the grocery store including gift cards, hireable floor cleaners, vegetable plants etc.

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

35. The applicant stated that they have at least 8 certificated managers, have regular staff meetings and have robust policies in place regarding the prohibition of the



sale and supply of alcohol to minors and intoxicated persons.

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

36. The MOoH opposes the application believing that the SAA layout is non-compliant with 113(5) of the Act and does not sufficiently limit the exposure of alcohol as required by s112.

Reasons for the decision

37. Section 3 of the Act requires us to act reasonably with the aim of helping to achieve the Object of the Act in the exercise of our duties.
38. We believe that the intent of Section 112-114 of the Act is quite simple, in that the exposure of shoppers in supermarkets and grocery stores to displays, promotions and advertisements for alcohol should be limited insofar as reasonably practicable.
39. Section 114(1), in our view, is also quite clear.
- (1) *Every single-area condition takes effect as a condition that the licensee of the premises concerned must ensure that—*
- (a) *no display or promotion of, or advertisement for, alcohol occurs on the premises at any place outside the alcohol area.*
40. The members of the Committee viewed the premises independently and are unanimous in the belief that the SAA is not in an area through which the most direct pedestrian route between the entrance to the premises and the main body of the premises, passes.
41. Neither is it in an area through which the most direct route from the main body of the premises and any general point of sale passes. In our opinion the proposed SAA complies with Section 113(5)(b) of the Act.
42. The only remaining issue is whether the SAA is one area or two as alleged by MOoH. We see a clear difference between supermarkets and grocery stores. Because grocery stores are generally smaller than supermarkets, product shelving and customer thoroughfares are going to be closer together. Whilst we must conduct an evaluative analysis of the layout, we must also apply a degree of reasonableness and weigh up the advantages and disadvantages against the practicalities of defining the SAA. There is a clear perimeter drawn on the plan and only approved items are displayed within the SAA. Again, we are satisfied that the SAA is one area and not two as argued by the MOoH.
43. Our considerations are more robust in a supermarket situation where there is greater space and product volumes than we generally see in grocery stores.
44. For completeness we intend to comment on the growing history on the limitation

of exposure of shoppers to alcohol displays, promotions and advertising.

45. On 6 November 2015, a High Court judgement was released relating to two off-licensed premises in Christchurch. **CHRISTCHURCH MEDICAL OFFICER OF HEALTH v J & G VAUDREY LIMITED [2015] NZHC 2749 [6 November 2015]**¹
46. In this ruling Justice Gendall said that DLCs were 'evaluative bodies' and were required to make a merit-based determination of the application and define and describe single alcohol areas.
42. The reality is that the High Court decision provides excellent guidance in how to deal with these types of applications. The Judge has helpfully outlined our role, and provided useful interpretation advice as follows:

At Para [14](d)

"In the case of an application for an off-licence which is also a supermarket or grocery store, the relevant body MUST impose a single area condition if it grants a licence.

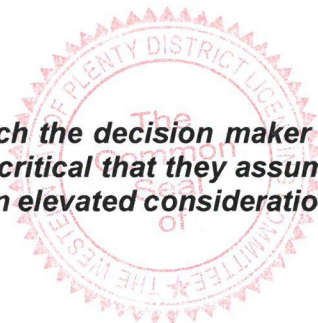
This entails an evaluative exercise requiring the relevant body to:

- (i) be satisfied that the proposed area is a single area;***
- (ii) be satisfied that the proposed area complies with s.113(5)(b);***
- (iii) consider whether the proposed plan limits, as far as is reasonably practicable, the exposure of shoppers to displays and promotions and advertisements for alcohol;***

"In undertaking this evaluative exercise, it is the role of the District Licensing Committee or the Authority concerned (not of the applicant) to describe the single alcohol area. Thus, the relevant body is not limited to simply accepting or rejecting the plan put forward by the applicant. Rather, the relevant body must describe an area which it considers complies with the above criteria after hearing evidence and submissions from all relevant parties." (Our emphasis)

At Para [16] (a)(v)

There will be cases where the matter(s) to which the decision maker is required to have regard are so fundamental or critical that they assume an elevated mantle – s.112(1) is an example of an elevated consideration.



¹ CHRISTCHURCH MEDICAL OFFICER OF HEALTH v J & G VAUDREY LIMITED [2015] NZHC 2749 [6 November 2015]

Para 16(c)

The standard of “so far as is reasonably practicable” specified in the Act comprises the following considerations:

- (i) the requirement is not absolute;***
- (ii) the physical possibility or feasibility of a task or course of action is not synonymous with reasonable practicality;***
- (iii) ascertaining what is reasonably practicable entails a balancing exercise between the benefit sought to be secured and the sacrifices that would be occasioned by securing that benefit (such as cost, time, difficulty, inconvenience);***
- (iv) the assessment is to proceed on the basis of information known at the time the decision is made; and***
- (v) the meaning of 'reasonably practicable' is not static – it will respond to the context in which it is used.***

At Para [31]

“The scheme of the Act, as it relates to the licensing or re-licensing of off- licence premises, can be summarised as follows:

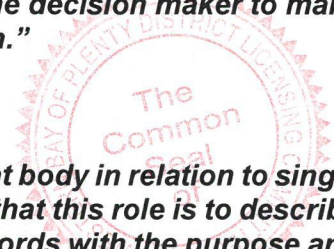
- (a) The general purpose of the Act is, for the benefit of the community as a whole, to implement a new system of control over the sale and supply of alcohol. The characteristics of this new scheme is to be that it is reasonable, and its administration is to assist in achieving the object of the Act.”.***

Para [56] (a)

“The role of the relevant body upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination on the application.”

Para [58]

“Nevertheless, on the issue as to the role of that body in relation to single area conditions, I have reached the clear view that this role is to describe an area which the authority considers best accords with the purpose and object of the Act the purpose more specifically stated in s.112(1), together with the requirements as mandated in s.113(5).”



Para [59] (h)

“The result I have reached is that the relevant body is able to assert a reasonable level of control over the single area condition. Its role is not limited to a “rubber stamping” one, but nor can it impose absolute limits.

Para [80]

The requirement “to limit” simply bears its ordinary meaning which is to restrict or restrain.

43. We intend to follow the direction and advice of the High Court that was further confirmed in the **Court of Appeal judgement CA37/2016 [2016] NZCA539**.
44. Firstly, we confirm that, in our opinion, the proposed SAA is not in any of the ‘prohibited areas.’
45. Secondly, in our opinion, based on the evidence and submissions put before us, and our own evaluative examination of the proposal, we are firmly of the view that layout is the most reasonably practicable available to the applicant. In other words, we see no significant advantages requiring it be moved somewhere else or modified in its current location.
46. In concluding this decision, we note Justice Gendall's comments in paragraph [31] that the general purpose of the Act is for the benefit of the community as a whole to implement a new system of control over the sale and supply of alcohol.
48. In line with the Purpose of the Act the characteristics of the new system are to be reasonable and its administration helps achieve the Object of the Act.

The Decision

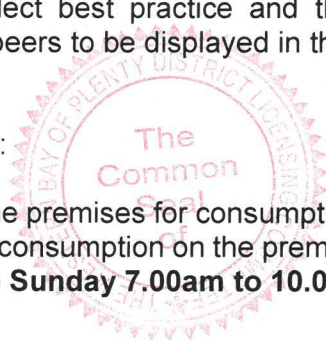
The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **approves** an application by **Jones Retail Limited** for the **renewal** of an OFF Licence in respect of premises situated 37-41 Main Road Katikati known as “Katikati Four Square” subject to conditions.

We also refresh the licence conditions to reflect best practice and the recent amendment to the Act permitting non-alcoholic beers to be displayed in the SAA.

Conditions:

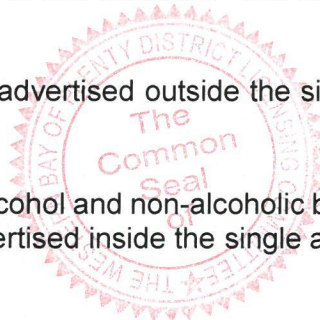
The licence is subject to the following conditions:

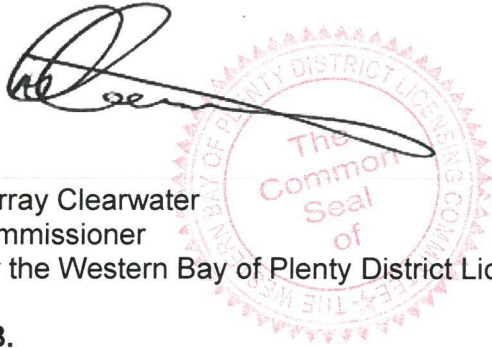
1. Alcohol may be sold on, or delivered from, the premises for consumption off the premises, and supplied free as a sample for consumption on the premises, only on the following days and hours: **Monday to Sunday 7.00am to 10.00pm;**



2. No alcohol is to be sold on, or delivered from, the premises on Good Friday, Easter Sunday, Christmas Day or before 1.00 pm on Anzac Day;
3. No alcohol may be sold other than –
 - a. beer that complies with the appropriate New Zealand food standard for beer; or
 - b. mead that complies with the appropriate New Zealand food standard for mead; or
 - c. fruit or vegetable wine that complies with the appropriate New Zealand food standard for fruit or vegetable wine; or
 - d. grape wine that complies with the appropriate New Zealand food standard for grape wine; or
 - e. a food flavouring, prepared for culinary purposes, that is unsuitable for drinking undiluted;
4. While alcohol is being supplied free as a sample, water is to be provided to patrons at no cost from a water supply prominently situated on the premises;
5. A properly appointed Certificated, or Acting or Temporary, Manager must be on duty, at or nearby the point of sale, at all times when the premises are open for the sale and supply of alcohol.
6. The Licensee must display signage as follows:
 - a. At every point of sale signage detailing the restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. A copy of the licence attached to the inside of the premises so as to be easily read by people entering each principle entrance to the premises; and
 - c. A sign prominently displayed at the premises, which identifies by name the manager for the time being on duty.
7. The “single alcohol area” for the premises is as described on the plan dated **11 June 2019** and attached at Appendix ‘A’ to this decision. The licensee must ensure that:
 - a. No alcohol is displayed, promoted or advertised outside the single alcohol area; and
 - b. No products other than alcohol, low-alcohol and non-alcoholic beer, wine or mead are displayed, promoted or advertised inside the single alcohol area.

DATED at TAURANGA this 18th day of June 2019





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

N.B.

Sections 152, 154 and 155 apply to this decision. It shall have no effect for 10 working days from the date was delivered to the parties.

