

Decision number: 22/RENOFF/9012/2024

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

AND

IN THE MATTER of an application
by **Graduate Trading
Limited**
pursuant to s.127 of the Act
for the renewal of an OFF
Licence for premises situated
at 74-76 Main Road, Katikati
Street known as "Bottle-O
Katikati"

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

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

HEARING at Tauranga on the 16th of May 2024

APPEARANCES

Mr Robert Davies counsel for Graduate Trading Limited. (GTL)
Mr Jaskamal (Sunny) Singh for Graduate Trading Limited ("the applicant")
Mr Jatinder (Jassi) Singh for Graduate Trading Limited

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

Ms. Dawn Meertens- for the Medical Officer of Health ("MOoH") – in opposition

Sergeant Dan Roser – NZ Police Alcohol Harm Prevention Officer ("AHPO") to assist



RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application received on the 5th of October 2023, Graduate Trading Limited (GTL) applied for the renewal of an off-licence in respect of premises situated at 74-76 Main Road, Katikati known as Bottle-O Katikati.”
2. The current licensed days and hours are **Monday to Sunday 8.00am to 9.00pm** in line with the recently refreshed Western Bay of Plenty Local Alcohol Policy (LAP). These hours are also within the default national maximum trading hours for off licences.
3. The application was duly advertised and was reported on by the agencies. The delegated officer for the Medical Officer of Health opposed the renewal on the grounds that selling single serves in a “high deprivation area” would not help achieve the Object of the Act.
4. The Inspector does not oppose the renewal, nor does she support the imposition of additional discretionary conditions.
5. The Police do not oppose the renewal.
6. The application was set down for a formal hearing pursuant to Section 134 and the Committee needed to hear the arguments around single sales.

Applicant’s Evidence

7. Mr. Robert Davies, counsel for GTL, provided us with his usual helpful opening in which he referred us to relevant case law and also to the fact that his client had a single sales condition imposed by the DLC on one of their other stores and have voluntarily included it in their business practices at couple of their other stores.
8. He said that due to the demographics of their customer base in Katikati they do not believe a single sale condition is warranted. They do not dispute the raw data provided by James Scarfe, the data analyst, but do question its relevance to this application.
9. Jaskamal (Sunny) Singh spoke to us on behalf of the company. He told us that he and his extended family own and operate 8 licensed premises in Western Bay of Plenty and Tauranga.
10. He told us about their staffing and training programmes and their place in the Katikati community. The business is situated in the main street of Katikati and they are happy to be situated next door to the Police Station and are fully aware of the 24/7 Alcohol ban in Katikati township.



11. They were surprised that the MOoH has raised the issue of suitability. They have never had a compliance issue at the store, and he believed they had good systems and training at the store and around the sale and supply of alcohol.
12. He said a ban on the sale of single high strength beers under 500 ml was not necessary. They did not have 'at risk' clientele trying to buy those products.
13. They do make single sales of Diesel and Woodstock RTDs to a small number of customers who just want to purchase a couple of cold drinks to take home.
14. He was asked about local social issues, and he said that more than 90% of their customers were local people and not many young people tried to purchase alcohol. He said the clientele was very different from the Mount Maunganui store where customers are mainly young people.
15. In regard to intoxication, he said they turn away about 1-2 persons a week whom they have deemed to be intoxicated and therefore unable to be lawfully served.
16. They did not have a problem with customers opening their purchases and drinking them in the car park or on the street to their knowledge.
17. He had not seen people drinking in the park and that Katikati was their 'best' store as far as being easy to manage.

Police Evidence

18. We spoke briefly with Sergeant Dan Roser who told us that the Bottle-O Katikati was not a problem store for the Police. He said there were 2-3 'old lags' who frequent the township, but they did not come to notice in any significant way.
19. He personally vetted the application for renewal and saw no reason to oppose or seek any additional discretionary conditions.
20. He agreed with the concept that the DLC had to be satisfied that there should be a purpose and a reason for discretionary conditions to be added to a licence.

Inspectors Evidence

21. Ms. Micaela Turner is the Alcohol Licensing Inspector for Western Bay of Plenty. She confirmed her report was accurate and up to date.
22. The Inspector confirmed her non-opposition and that she saw no need for any additional discretionary conditions to be added to the licence.



Medical Officer of Health's Evidence

23. Ms. Dawn Meertens, called public health analyst, James Scarfe, to provide the DLC with an insight into the population demographics of the Katikati community.
24. Mr. Scarfe told us that Katikati had an elevated rate of hospital admissions wholly attributable to alcohol. He said the Bay of Plenty DHB area, as a whole, had a higher rate of hazardous drinking compared to the rest of New Zealand.
25. He was unable to link those factors, in other than general terms, to Katikati, or to the provision of alcohol from this store, let alone the contribution potentially made by the provision of single sales of alcoholic products.
26. We asked him about the presence and occupancy of any emergency housing in the area. He said the only evidence he had was that there were two facilities that were drawing payments from the Government agencies in 2023. He was unable to provide any current statistics on the numbers of people in emergency housing nearby.
27. He also confirmed his statistics were based on the 2018 census material that is now 6 years old. He agreed that current statistics could show a better or worse scenario.
28. Ms. Meertens then spoke on her opposition to the renewal and argued that a discretionary condition banning "cheap high strength single vessels of alcohol 500ml and under, excluding craft beers, and low alcohol beverages" would be beneficial to the amenity and good order of the area.
29. She had no direct evidence to show that an increase in the amenity and good order of the area, could be a realistic outcome of the measure.
30. In closing Ms. Meertens encouraged the Committee to adopt the recent Supreme Court dicta in that we should read Section 3 and 4 together and that our decisions should benefit the community as a whole.
31. We are also acutely aware that the imposition of discretionary conditions need to be reasonable and a proportionate response to any risk that should be abated.

Relevant legislation

32. Section 3 of the Sale and Supply of Alcohol Act 2012 ("the Act") states the purpose of the Act as follows:

(1) *The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –*



- (a) *to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and*
 - (b) *to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*
- (2) *The characteristics of the new system are that–*
- (a) *It is reasonable; and*
 - (b) *Its administration helps to achieve the object of this Act.*
33. Section 4 states the object of the Act as follows:
- (1) *The object of this Act is that –*
 - (a) *The sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
 - (b) *The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*
 - (2) *For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –*
 - (a) *Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
 - (b) *Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*
34. Sections 131 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to approve a renewal of the licence:
- 131 Criteria for renewal*
- (1) *In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - (a) *the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*
 - (b) *whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*
 - (c) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*
 - (d) *the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*
35. The Act requires that when deciding whether to renew a licence, or not, the licensing committee must have regard to the matters contained in section 131 of the Act. We now consider them in greater depth.

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

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



37. The evidence was that the applicant was well aware of its responsibilities and had been selling and supplying alcohol in a safe and responsible manner.
38. An example of that professionalism was the evidence that the applicants had imposed single sale restrictions voluntarily at some of their other stores.
39. As we have often said, the operators of off-licensed premises can do little to influence the moderate and appropriate consumption of alcohol as consumption occurs away from the premises.
40. We will return to the **Object and the Purpose of the Act** once we have discussed the other relevant criteria.

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

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

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

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

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

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

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

44. The Committee is aware of the design and layout of the premises. It is unremarkable and there are no overt displays of single sale items in the 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.

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

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



46. No other services are offered.

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

47. The applicant advises that there are several staff with manager's certificates attached to the business and that they do hold regular training sessions.

48. There was no challenge made in relation to the systems, staff and training at these premises.

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

49. The Police have not opposed the renewal. The Medical Officer of Health opposed the renewal due to the potential harm arising from the single sales of high strength beers.

50. We discuss the issue of single sales and conditional oppositions further later in this decision.

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

51. No evidence has been adduced to show that this premises is adversely affecting the amenity and good order of the locality. The statistical data provided does show an elevated rate of hospital admissions but as Mr. Scarfe conceded these are mainly due to admissions for conditions wholly caused by alcohol such as cirrhosis of the liver and similar afflictions.

52. There was no evidence of homeless street dwellers, or other vulnerable persons, begging or stealing coins for a quick single vessel fix from the bottle store.

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

53. We are satisfied that the applicant has not been overtly displaying or advertising alcohol products and prices. The Singhs told us they do not overtly advertise the single sales of RTDs and only make them available to their regular customers who only purchase a couple to take home 3-4 times a week.

Reasons for the Decision

54. Single sales have become a vexing issue for DLCs and the hospitality industry generally.



55. On the one hand it could be said that it is socially responsible to allow a customer to buy a single beer or a RTD if that is their wish.
56. On the other hand, some retailers have exploited the opportunity and deliberately 'broken' boxes of product so they can make single sales for at low as \$1.00 per bottle or can.
57. This is colloquially known as 'pocket money liquor.' Situations have arisen where street dwellers and beggars can beg, borrow or steal a few coins and can then repeatedly return to the bottle store and access more and more alcohol as the day goes on.
58. The immediate amenity and good order of the area is often reduced, offences are committed, and the Police end up having to deal with intoxicated persons and disorderly behaviour.
59. So how do we find the happy balance between the rights of the responsible purchaser and the need to deter the problematic singles sales that can, and do, occur in some communities?
60. The regulatory agencies have been recommending, and DLCs have been imposing a variety of restrictive conditions when circumstances support such impositions, and we have done so on a number of occasions.
61. We also believe that they should not be imposed arbitrarily and should be site specific.
62. As Gendall J so aptly stated in **J & G Vaudrey Limited CIV-2015-409-000098 [2015] NZHC 2749¹**

At [14] In particular I have found:

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

(c)...

(d)...

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

(f).....

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

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



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

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

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

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

(v) the condition must be a proportionate response;

(b) ...

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

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

63. It is not the role of the MOoH to try to impose a raft of generic conditions on every off licensed premises that come before them for enquiry and reporting.
64. It is the role of the DLC, and the DLC alone, to decide what is appropriate, or not, for a particular premises. We do encourage the agencies to present their views and recommendations but when they do, we expect to see evidence relating to **a risk to be abated or a benefit to be secured**.
65. Unfortunately, a number of appeals have gone to ARLA and been upheld, rejected and/or modified to a point where now some agencies are pushing for mandatory inclusion of conditions around single sales as they have been "approved by ARLA."
66. This is **not the case** as often the conditions have been consented to by the applicant, and may, or may not, have been appropriate for that location and merely rolled over by ARLA without being tested as to their appropriateness, or not.
67. While there is merit in having such conditions as part of Local Alcohol Policies and being consistent across the district, we believe that all discretionary conditions must be necessary and site specific. Applicants are entitled to a level playing field if, and when, the playing field is level!



68. However, if we were to have a bottle store in an Alcohol Ban Area, with a high deprivation vulnerable population nearby and evidence of 'at risk' persons seeking pocket money alcohol AND operators catering to those demands by breaking boxes and offering \$1, \$2, or \$3 beers and RTDs, discretionary conditions around single sales will very likely be appropriate and will be imposed either by consent or via the hearing process.
69. In this case we have a bottle store operating in a 24/7 Alcohol Ban Area but no hard evidence of localised alcohol abuse or social issues. The evidence suggest single sales are a very minor proportion of sales and no additional intervention is necessary.
70. For the reasons above, the Committee has determined that renewal should be granted with no change to the existing conditions.

The Decision

The Licence will be renewed for three (3) years from the expiry of the current licence on the following conditions:

1. Alcohol may be sold on, or delivered from, the premises for consumption off the premises, or supplied free as a sample for consumption on the premises, only on the following days and hours: **Monday to Sunday 8.00am to 9.00pm;**
 2. No alcohol is to be sold on, or delivered from, the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day.
 3. While alcohol is being supplied free as a sample, water is to be provided to patrons free of charge at the place where the samples are being supplied.
 4. The whole of the premises is designated as a **Supervised Area**;
 5. The Licensee must have available for consumption off the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages.
 6. A properly appointed certificated or Acting or Temporary Manager must be on duty at all times, within the licensed area, when the premises are open for the sale and supply of alcohol and their full name must be on a sign prominently displayed in the premises.
11. The Licensee must display:
- a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;



- b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale and supply of alcohol.
- c. A copy of the licence is to be attached to the inside of the premises so as to be easily read by people entering each principal entrance.

DATED at TAURANGA this 22nd day of May 2024



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

NOTE

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