

Decision number: 32/OFF/4221/2024

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

AND

IN THE MATTER of an application
by **Taumarunui Liquor
2007 Limited**
pursuant to s.127 of the Act
for the renewal of an OFF
Licence for premises situated
at 15 Hakiaha Street,
Taumarunui known as
“Taumarunui Liquorland”

DECISION OF THE RUAPEHU DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Stuart Hylton
Member: Brenda Ralph

HEARING at Taumarunui on the Monday 20 May 2024

APPEARANCES

Mr. Grant Henderson for Taumarunui Liquor 2007 Limited (“the applicant”)
Mr. Geoff Henderson for Taumarunui Liquor 2007 Limited

Ms. Flora Tavish – Ruapehu Alcohol Licensing Inspector (“the Inspector”) – to assist

Ms. Ayobami Adesanya- for the Medical Officer of Health (MOoH) – in opposition
Mr. Michael Keehan- Public Health Analyst

Senior Constable Peter Marks – Alcohol Harm Prevention Officer NZ Police to assist

RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application received on the 26 July 2023, **Taumarunui Liquor 2007 Limited** applied for the renewal of an off-licence in respect of premises situated at 15 Hakiaha

Street, Taumarunui known as “Taumarunui Liquorland.”

2. The current days and hours are **Monday to Sunday 9.00am to 10.00pm** and are within parameters of the Ruapehu 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 without referencing any of the clauses outlined in Section 131 of the Act but believed that the sale of singles of RTDs and beers at very cheap prices contravenes Section 131(d) i.e. *“the manner in which the applicant has sold.... displayed, advertised or promoted alcohol.”*
4. The MOoH also sought a condition banning the advertising of alcohol products on the external surfaces of the store. This has been consented to by the applicant.
5. The Inspector does not oppose the renewal but supports the imposition of additional discretionary conditions around the remote sale of alcohol via the website.
6. The Police do not oppose the renewal.
7. The application was set down for a formal hearing as the Committee needed to hear the concerns of the MOoH around the single sales of alcohol at the store.

Applicant’s Evidence

8. Mr. Grant Henderson spoke to us on behalf of the company. He had not prepared a written Brief of Evidence but had pre-circulated a Brief of Evidence for Opal Te Ahuru who is one of his employees. On the day of the hearing, he also submitted opening submissions on behalf of the company. Both documents had been prepared by his legal counsel, Simon Middlemiss, but Mr. Middlemiss was not present to open the case or lead the evidence.
9. We asked Mr. Henderson where Ms. Te Ahuru was. He said she was busy with her children and would not be appearing before the Committee. This was a concern to the Committee because in her proposed evidence at 24 & 25 she said up to a *“quarter of the space in the chillers is set aside to store and display singles.”* She added *“roughly a quarter of the customer we have, buy one or more singles.”*¹
10. It was put to Mr. Henderson that the photos of the single sale displays from August 2023 did not align with the observations of the Committee Chairperson during a site visit the night before the hearing. He agreed that quite a lot of the single sales product was now clipped up into 4 packs and he recently increased the prices from the \$1.50s

¹ Proposed BOE Opal Te Ahuru paragraphs 24 & 25.

and \$1.80s bottles that were in the 2023 photos. He argued that providing singles was a responsible activity and were at higher prices than if bought by the box lot. He believed it allowed customers to moderate their drinking volume effectively.

11. He said he is at the store almost every day and in his opinion less than 10% of customers wanted to purchase singles.
12. He also agreed that currently the single sale items on display occupied only one shelf in one chiller window.
13. He was also asked about local social issues and he said they only had a few 'problem' people and not many underage youths tried to purchase alcohol. He said there are not any homeless people or 'rough sleepers' in the area that he is aware of, nor is he aware of any emergency housing nearby.
14. 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.
15. During questioning, he said his customers wanted the business to keep single sales because they often only wanted to buy a couple of beers or RTDs. He confirmed that the store is situated in an Alcohol Ban Area and that he had not seen any customers drinking alcohol in the car park.
16. He confirmed with the Inspector that they did have a single sale condition on the Eastside store because they did have a problematic group of people over there that would abuse cheap alcohol if they could. He has since sold that store.
17. He said he was happy to not have alcohol brand signage on the store front and would also not stock shots if the Committee thought that was necessary. He said they are no longer popular, and they sell very little of them.
18. He was asked if offering cheap singles of alcoholic products promoted the safe and healthy use of alcohol. He said most customers only buy a few and they had recently put the prices up by 50c or more per item.
19. Mr. Henderson said 40% of the store's sales were RTDs followed by beer and then wine and spirits. It was put to him that the displays and prices in the August photos were extensive and said to be some of the cheapest seen by the agencies, and the Committee chair. He said they had now clipped up a lot of products in to fours and put the prices up. Less than 4% of sales were singles and/or clipped up packs.

Police Evidence

20. Senior Constable Peter Marks was sworn in and reconfirmed that the Police stance was not opposed to the renewal, but he then said he supported a condition around

- single sales. Senior Constable Marks is the Alcohol Harm Prevention Officer for the Ruapehu District and he had been a member of Police for 25 years.
21. He said he was very familiar with the district and said 50-60% of the Police workload was in the family harm area and about half of those incidents involved alcohol.
 22. Another Police member had reported on the renewal application when he was on leave, but he acknowledged that Liquorland was not a problem premises in his view, and he had never personally been there for a disorder incident or alcohol related harm incident.
 23. He told us there were very few breaches of the Alcohol Ban or Infringement Notices issued by his colleagues in Taumarunui. 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.
 24. He produced some incident data over a 4 ½ year period that showed 212 incidents that were recorded as alcohol related in Taumarunui. This equates to less than 40 a year, which seemed extremely low to the Committee.

Inspectors Evidence

25. Ms. Flora Tavish is the Alcohol Licensing Inspector for Ruapehu District. She confirmed her report was accurate and up to date. The Inspector confirmed her non-opposition and that she saw no need for any additional discretionary conditions to be added to the licence around single sales but did support the removal of brand signage from the front of the premises. She also recommended discretionary conditions around remote sales from the store that had been agreed to by Mr. Henderson.
26. She confirmed that Taumarunui was a highly deprived area and that that does raise an elevated mantle on the assessment of suitability of the applicant. This would include operating safely and responsibly around promoting alcohol sales.

Medical Officer of Health's Evidence

27. Ms. Ayobami Adesanya called public health analyst Michael Keehan to present evidence on the public health indicators for the district. He told the Committee that the data showed that Taumarunui was a "hot spot" for alcohol related harm and that most of the town was a decile 10 area meaning it was at the highest end of the deprivation indices for New Zealand.

28. He believed it was acceptable to use the “challenges of cashflow as a policy instrument to protect the health of customers”. Hence the recommendation around a single sale restriction condition.
29. His analysis of the data within a 2km radius around the premises created the risk ratio of 2.01 which brought the town into the ‘hot spot’ category. This assertion flew in the face of the evidence of the 25 year veteran of the local Police saying alcohol was not a significant driver of crime and incidents in Taumarunui.
30. Ms. Adesanya report covered off the visit to the premises in August of 2023 by her colleague Nicole Zeier. It was clear from the photographs taken that there was two full chillers of single serve options and at very cheap prices.
31. She reinforced a lot of the health indicator data that Michael Keehan had presented and believed a single sale condition was warranted at this store due to the high deprivation index of the township and the “still low’ prices of alcohol at the store.

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 sections 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 to have regard to the object of the Act and in particular that the sale, supply and consumption of alcohol should be **undertaken safely and responsibly and** that the harm caused by the **excessive or inappropriate consumption of alcohol** should be minimised.
37. The evidence from the applicant was that they were aware of their responsibilities and they ensure that they sell and supply alcohol in a safe and responsible manner.
38. We believe that the volume and pricing of single sales as depicted in the photos of August 2023 did not show that the applicant was looking out for the 'community as a whole'. The **proposed** evidence of Opal Te Ahuru that indicated as much as 25% of chiller space and 25% of customers bought singles was of concern to the Committee.
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 the consumption of the alcohol 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 evidence was presented to the contrary, but we agree that the extended definition of suitability is triggered by this application due to the health data and general social health indicators

of the Taumarunui township.

42. We balance that against the evidence of the Police that this store has not come to notice of the Police in recent times in an adverse manner.

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

43. The application fits within the provisions of the operative Ruapehu LAP.

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

44. The days and hours of **Monday to Sunday 9.00am to 10.00pm** in 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

45. The Committee is aware of the design and layout of the premises. In a site visit we noted that the product range was RTD 'heavy', but we noted much of the single products were clipped up in four packs and that only one shelf of 8-10 products were displayed as singles and they were not in a prominent position in the chiller. i.e. they were at floor level.

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.

46. 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.

47. No other services are offered.

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

48. The applicant advises that there are several staff with manager's certificates attached to the business and that they hold regular training sessions.
49. Evidence was provided of the regular and documented training at the store. There was no challenge made in relation to the systems, staff and training at this store.

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

50. The Police and the Inspector have not opposed the renewal. The Medical Officer of Health opposed the renewal due to the sale of cheap singles of mainstream beers and RTDs in a deprived community.
51. We discuss the issue of single sales and conditional oppositions in depth later in this decision.

131(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:

52. No evidence has been adduced to show that this premises is reducing the amenity and good order of the locality by more than a minor extent. Therefore, the amenity and good order of the area would be unlikely to increase, by more than a more extent, if we were to refuse the renewal.

131(1) (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 **is now not** overtly displaying or advertising the single sale of alcohol products and very low prices.

Reasons for the Decision

54. Single sales are a vexing issue for DLCs and the retail alcohol 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 then repeatedly return to a 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 significantly 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?
60. The regulatory agencies and DLCs have been imposing a variety of restrictive conditions when circumstances support such restrictions, but we do believe that they should not be imposed arbitrarily, or as a 'policy instrument' and should also be site specific.
61. As Gendall J so aptly stated in **J & G Vaudrey Limited CIV-2015-409-000098 [2015] NZHC 2749²**

At [14] In particular I have found:

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

(b) ... (c) ... (d) ...

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

(f).....

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

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

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

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

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

(v) the condition must be a proportionate response;

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

(vii) ultimately whether a condition is reasonable will depend on an objective assessment of whether there is a rational and proportionate connection between

² J & G Vaudrey Limited CIV-2015-409-000098 [2015] NZHC 2749

***the identified risk or benefit, when weighed against all relevant considerations.
(underlined text our emphasis)***

62. 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.
63. 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**.
64. 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.”
65. 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.
66. 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 where, the playing field is level!
67. However, if we were to have a bottle store in an Alcohol Ban Area, with a high deprivation vulnerable population nearby **and evidence** of ‘at risk’ persons seeking pocket money alcohol **and** operators catering to those demands by breaking boxes and offering \$1, \$2, \$3 beers and RTDs, discretionary conditions around single sales will very likely be appropriate and will be imposed either by consent or via the hearing process.
68. In this case we have a bottle store operating in a 24/7 Alcohol Ban Area, in a high deprivation area, but no hard evidence of localised alcohol abuse. And refreshingly, an operator expressing a willingness to be part of the solution, and not be part of the problem.
69. As a significant seller of beer and RTDs it is important that the applicant does not overtly advertise and promote cheap singles of alcoholic products. We suspect that in August of 2023 that is what they were doing. However as adduced by Greg Henderson at the hearing, singles, including clipped up singles, **now amount** to only 4% of sales and that many customers were purchasing several singles at a time due to the perceived ‘cheap price.’
70. The applicant has agreed to keep the store frontage free of brand advertising of alcohol and to keep clipping up product into multiples of 4’s. We stop short of imposing a

minimum price cap on singles but would expect the 4 packs to retail at no less than \$11.99 as they do already in the store.

71. Similarly, we will not make it a condition of licence to remove single sales, but the applicant should be well aware that the range of products and prices on offer in August 2023 were in our view was not helping to achieve the object of the Act, i.e. that alcohol was being sold safely and responsibly.
72. Clearly, they have reflected on the opposition from the MOoH and made some marketing decisions on their own cognisance. We expect the new limited range and higher priced products to be maintained or restricted further.
73. The applicant also offered to remove shots from their stock range. We leave that to him to implement as there was no negative evidence adduced about shots being abused from this store.
74. We have evaluated and weighted the evidence before us from the MOoH and the applicant.
75. For the reasons above the Committee has determined that some of the discussed discretionary conditions are appropriate and they will be imposed.
76. By consent we also impose a number of conditions around remote internet sales of alcohol.

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 9.00am to 10.00pm;**
2. No alcohol is to be sold on, or delivered from, the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day.
3. While alcohol is being supplied free as a sample, water is to be provided to patrons free of charge at the place where the samples are being supplied.
4. The whole of the premises is designated as a **Supervised Area;**
5. The Licensee must have available for consumption off the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages.

6. A properly appointed certificated or Acting or Temporary Manager must be on duty at all times, within the licensed area, when the premises are open for the sale and supply of alcohol and their full name must be on a sign prominently displayed in the premises.
7. **No product brands or prices are to be displayed externally on the store building, or on flags, or sandwich boards.**
9. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol;
 - c. A copy of the licence is to be attached to the inside of the premises so as to be easily read by people entering each principal entrance.

REMOTE SALES

1. Alcohol may be sold from the premises **at any time on any day**, and delivered somewhere else for consumption off the premises;
2. No alcohol is to be delivered to the buyer (or to any other person on the buyer's behalf) at any time between 11:00pm and 6:00am the following day, on any day of the week;
3. The licensee must follow the procedures set out in Regulations 14 & 15 of the Sale and Supply of Alcohol Regulations 2013 to ensure that neither the purchaser nor the person to whom alcohol is delivered is a minor.
4. The licensee must state the licensee's name, licence number and the date the licence expires:
 - a. on every receipt issued for alcohol sold remotely;
 - b. in every catalogue, if alcohol is sold by remote sale using catalogues;
 - c. on the internet site, if alcohol is sold by remote sale using an internet site;
 - d. if alcohol is sold by remote sale using an internet site, the site must also display either a legible image of the licence, or a clearly identified link to such an image.

DATED at TAUMARUNUI this 29th day of May 2024



Murray Clearwater
Commissioner
For the Ruapehu District Licensing Committee

NOTE

**Sections 153 to 155 relating to the right to appeal this decision are in effect.
This decision shall have effect from the date of the decision.**

The renewed and refreshed licence may issue forthwith.