

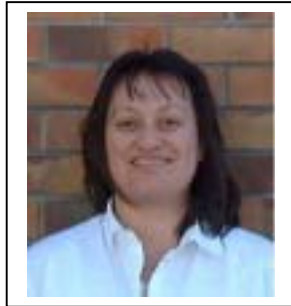
# LOCAL LIQUOR WANGANUI

A newsletter prepared by the Wanganui District Licensing Agency for those in the liquor industry

Issue 15

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## NEW W A G E N Z O H E E M



As a result of Council reorganisation changes have been made to the Agency team.

Ruth Beard is now the agencies Licensing Officer. While Ruth may be new to Council she brings a wealth of administrative experience to the position. She has proven to be a quick learner and is very thorough with her work. Improvements made thus far to the Agencies records includes the establishment of separate files for individual managers and premise details are finally on a computer database. Further development of these records will be Ruth's priority.



As part of the reorganisation, and Councils recognition of the important role the liquor industry plays within the community,

Doug Bonner has been appointed as a full time District Licensing Agency Inspector. Doug's intention is to comply with the statement made by the Chairman of the Licensing Authority. "I expect that Licensing Inspectors will develop a liaison with the operators of premises and will have contact with Licensees and Managers other than some cursory inspection in conjunction with renewal. I expect Inspectors to know the licensed operations in their area".

This also meets the Wanganui District councils Mission Statement: To build a better community with the people of the Wanganui District.



Feel free to call us – Ruth Beard 349 0001 or Doug Bonner 349 0544

**Notice of appointment, etc of manager, temporary or acting manager Section 130 of the Sales of Liquor Act 1989 (1) says:**

'A licensee must give notice.... of the appointment, or the cancellation or termination of the appointment, of any manager, temporary manager, or acting manager'. Notice is given if the notice is given within two working days to the District Licensing Agency, Licensing Authority and the Police.

It is not necessary to comply with the above where the appointment of a temporary or acting manager is for a period not exceeding 48 hours.

Also note that the Authority is taking 'technical breaches', such as these, seriously. Remember that it is the Licensees responsibility to ensure the person appointed is aware of the appointment – even if it's only for a few hours, and the persons name is displayed as required by section 115 (2) of the Act.



The following article appeared in the March 2002 issue of Liquorlaw Update - a publication of Minter Ellison Rudd Watts and is reprinted with the kind permission of the authors Jason Welsh and Chris Simmons.

This is very timely and is applicable to all licence holders – Clubs included! Be aware that recently one local licence renewal was opposed on these very grounds

**Noise – not just a resource management issue!**

In recent decisions, the Liquor Licensing Authority has “drawn a line in the sand” on the issue of noise when determining applications for liquor licences. To ensure that their licences are renewed without reduced operation hours, licensees will now need to ensure that their premises are operated so as not to constitute a nuisance to neighbouring residents. This new approach affects not just suburban premises but also inner city establishments, given the rise in recent years of residential apartments. The Authority has taken the issue of unreasonable noise so seriously in recent decisions it has even declined applications for an on-licence as it had no faith the licensee would comply with the areas’ noise restrictions.

**Traditional Approach**

Traditionally, noise has not been seen as a matter to

considered by the Authority under the *Sale of Liquor Act (1989)*. In *J K and W Wilson Ltd* (LLA 1073/91) the Authority declined to rule on the issue of noise, and found that it was not empowered to impose conditions to protect the interest of neighbouring residents by restricting the number of patrons or the level of noise that emanated from the premises.

In later decisions, for example *Chevron Holdings Limited* (LLA 849/94), the authority expressly held that it is not charged with imposing conditions regarding the level of noise that may come from licensed premises. Noise matters, the authority held are the responsibility of local authorities under the Resource Management Act.

**Recent Decisions**

However, in a series of recent decision, in particular *Paihia Saltwater (2001) Limited* (LLA 391/2001), the Authority has signalled a

change in attitude. In that case, the authority stated:

*“Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes the view that if no attempt is made to prevent the escape of, or reduce, noise, then it is the Authority’s duty to monitor the hours of opening, if not the existence of the licence”.*

The Authority has noted that its more proactive approach is due to a number of changes in drinking and entertainment habits. For example, the Authority considers that music tastes have altered; young people tend to want to “party” at much later hours; and music (particularly the bass) is louder and more intrusive.

**Changing Communities**

The Authority has also considered the issue of the tension between the hospitality industry and inner city residents, and has

developed a position significantly different from earlier decisions. The decisions in *Kitty O'Briens Iris Pub Limited* (LLA 142-143/97) and *Chris Yates Holdings* (1999) *Limited* (LLA 450-451/2001), although only 4 years apart, exemplify this change in position. These cases had very similar facts – both involved inner city taverns being gradually surrounded by residential properties as a result of changing land uses, and noise issues being raised by neighbouring objects.

Notwithstanding similar facts, the authority took a different approach to the noise issue in each decision. In *Kitty O'Briens*, the authority held that it was not fair for the licensee to have its trading hours suddenly reduced to those which are typically imposed for a tavern in a residential area.

By contrast, in *Chris Yates Holdings* the Authority stated: “*Any licensee takes a licence under risk that conditions may change, and a report may recommend adjustment. There is no asset protected for all time whatever may happen outside*”.

The Authority in *Chris Yates Holdings*, warned that in the event that noise continued to be an issue when the licence was next renewed, the applicant was at risk of having its hours substantially reduced under section 14(5) of the Act.

### **Reduced Hours**

A recent example of the Authority reducing an applicant's opening hours due to inaction over noise issues is provided in *Beta Trading Limited* (LLA 448-449/2001). This case related to an application for renewal of on

and Off-licences for the Waikanae Hotel. The application attracted opposition from a large number of residents, mainly because of noise emissions from the hotel.

In giving its decision, the Authority noted that the application was one of the worst examples of unsuitability due to noise emissions that it had heard. As a result the hours for the on-licence were reduced from a 3am close to 1am. Further, the licence was renewed for 18 months only (instead of the usual three years) to enable further monitoring of the applicant's operations.

A further instance where the applicant's trading hours have been reduced is the recent High Court decision *Sheepys Limited v Manukau District Licensing agency* (High Court, Auckland O'Regan J AP77-SW01). The Court held that the Authority was entitled to consider the impact of noise, and upheld the Authority's decision to reduce the trading hours.

### **'Suitability' to hold a licence**

The over arching criterion for all licence applications, renewals and general manager certificates is that of suitability. The issue of noise has been held to go towards a determination of an applicant's suitability to hold a liquor licence. In *K & J Fraser Limited* (LLA 406/2001) (later upheld by the High Court in *Sheepys Limited*), noise was one of several reasons why an application for an on-licence was declined. The Authority stated:

*“The question of noise is also a question of suitability and as we have said is not just a*

*Resource Management Act issue for the Council to address. We are not satisfied that the applicant has done or will do all that it can to operate within the terms of its Resource Management Act certificate. We have no confidence that the applicant will comply”.*

### **What it means for you**

The Authority has clearly signalled that dealing with noise complaints is no longer the exclusive dominion of local authorities, but is a direct reflection on the quality of management and suitability of an applicant for a liquor licence.

As a result, even well established licensed premises must now consider the effects (in terms of noise) of their operation. The powers of the Authority to decline an application, or reduce the hours permitted under a licence on the basis of unreasonable noise are independent of those of a local authority. As a result, it is possible that a licensee could face both *Resource Management Act* enforcement action, and variations to their licence under the *Sale of Liquor Act*.

For potential problem sites, a noise management plan, self-imposed monitoring and noise restriction measures may be necessary. This may extend to installing improved air conditioning, closing windows, and restrictions on amplified music.

**Disclaimer:** The above article is not intended to be fully comprehensive nor is it intended to be a substitute for legal advice. (For further advice contact the authorities on 09 3539821)

# Winter Sports

are under way again

Now's the time to provide a friendly reminder to all sportsclubs of their obligations under the Sale of Liquor Act 1989.

A Club Licence authorises the holder of a licence to sell and supply on the premises, for consumption on the premises to –

- a) Any member of the club; or
- b) Any person who is a guest of, and is accompanied by, a member of the club; or
- c) Any member of any other club with which the holder of the licence has an arrangement for reciprocal visiting rights for members of the clubs.



The above clearly means that members of the public are not allowed to just wander in and purchase liquor, unless invited as a just under clause b). Read clause b) again and note that it says ... “and is accompanied by, a member of the club”. So if a Police Officer was to inspect the premises, every person in attendance must be able to prove how they are entitled to be there. This proof will clearly be by way of production of a membership card (or similar proof), or clause b).

Even though you have club members under the age of 18 years they are, not allowed to be sold or supplied alcohol, unless by their parent or legal guardian.

With some clubs, members volunteer to do a stint behind the bar and therefore the members may not be aware of the laws under which liquor can be sold in the Club. Remember that the intoxication laws apply to clubs also!

A friendly reminder regarding the consumption of alcohol outside the premises while watching a game. Unless the outside area is included in your licence then liquor must be consumed within the clubrooms.

Good luck to all teams for the season.

