

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of applications by **N.B.T. LIMITED** pursuant to ss.18 and 41 of the Act for the renewal of on and off - licences in respect of premises situated at 6 Jacks Pass Road, Hanmer Springs, known as "Saints"

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge E W Unwin
Member: Mr J C Crookston

HEARING at RANGIORA on 24 June 2005 and 22 August 2005

APPEARANCES

Mr S I Giles – on behalf of applicant
Mr G D Jones and Miss D Vukelic – for Hurunui District Licensing Agency Inspector –
in opposition
Mr P N Shaw – Medical Officer of Health – in opposition to application for renewal of
on-licence

RESERVED DECISION OF THE AUTHORITY

Introduction

[1] On 24 December 2003, N.B.T Limited (hereafter called the company), was granted an on and off-licence by the Hurunui District Licensing Agency. The on-licence was a tavern style licence which enabled the company to trade seven days a week between the hours of 7.00 am to 3.00 am the following day. Mr Stacey Ivan Giles is the sole director and a shareholder of the company. At the time of the original application, he had had previous experience working with his father in licensed premises in Hanmer. Mr Giles had been responsible for the building and fitting out the new premises. The applications were granted on the papers without opposition.

[2] The business known as "Saints" began operating on 30 December 2003. Mr Giles initially employed two managers being Aaron Greenwood and Scott Raumati both of whom held General Manager's Certificates. "Saints" has a pool table, lounge and coffee areas, a small dance floor, and booths. It is difficult to describe the business from a licensing perspective, because it has a number of features including a pizzeria. The dance floor is normally covered with tables, but

these can be moved to enable patrons to dance on late nights. Ancillary to the dance floor are speakers, coloured flashing lights, and a revolving glass ball.

[3] During the first year's operations (specifically on 16 April, 20 April, 28 April and 10 December 2004), the District Licensing Agency received complaints about noise and disorderly behaviour surrounding "Saints". These were from the neighbouring motel proprietors as well as members of the public living near by. On each occasion, the complaint was investigated, and on each occasion Mr Giles undertook to visit the affected properties and take action in response to the concerns.

[4] On 1 December 2004, the applicant made application for the renewal of the two licences following the "probationary" year. No variation to the existing conditions of the licences was sought. Public notification attracted four letters of objection from neighbouring residents, property owners and businesses. The general nature of the opposition related to allegations of intoxication, noise concerns particularly loud music, and from patrons leaving at 3.00 am, disorderly behaviour, and property damage.

[5] The Medical Officer of Health initially reported that there was no opposition to the renewal, although the letter did note that there had been insufficient time to complete any investigation. Some six days later on 17 January 2005, (within the time frame for reporting), the Medical Officer of Health advised that certain information had been received relating to the licensee's conduct. He confirmed that until the information had been investigated, then the application would be opposed. The letter stated that a more comprehensive report would follow. Subsequently, on 21 February 2005, a full report in opposition was filed detailing concerns about the promotion of the premises as a nightclub, and referring to associated concerns.

[6] Mr Giles submitted that as the Medical Officer of Health (in his letter of 17 January 2005), had not revealed any grounds for opposition, then his evidence and objection should be disregarded. Pursuant to s.20 (3) of the Act both the Police and Medical Officer of Health are required to enquire into the application, and file a report on the application, within 15 working days of receiving it, if they have any matters in opposition. Pursuant to s.2 of the Act, a working day excludes the period between 20 December and 15 January. We ruled that it was clear that the Medical Officer of Health did have matters in opposition, (described as information received about the licensee's conduct). As he had advised that a more comprehensive report would follow, we indicated that his status was bona fide, and that his evidence would be admitted.

[7] The position was not the same for the Police. They did not oppose the application. On 2 March 2005, well after the reporting time, a letter was received expressing support for the District Licensing Agency's opposition to the renewal. Mr Giles submitted that this report should be disregarded, and that no Police evidence should be allowed. We accepted the submission, although by virtue of s. 108 of the Act, any member of the Police is entitled to appear and be heard at any proceedings before the Authority. There are however, no cross-examination rights. As it happens, the Police evidence was called by counsel for the District Licensing Agency.

[8] The District Licensing Agency Inspector is not constrained by any time limits. In a report dated 13 December 2004, he referred to the complaints as well as comments he had received about allowing minors and intoxicated patrons on the

premises. He stated that the premises would be monitored closely in the future. He recommended that the applications be granted subject to matters such as food availability, certified managers being present, and strict control about minors and intoxicated persons. Subsequently, on 7 February 2005 after receiving the letters of opposition, he revised his recommendation and requested that the trading hours be cut back from 3.00 am to 1.00 am.

[9] In the interim period after the file had been forwarded to the Authority, a round table meeting was held on 17 March 2005. Present were Mr S I Giles and his father, representatives from the Police, Medical Officer of Health, and District Licensing Agency. The Inspector wrote that there had been a marked improvement in the management of the business, and respective agencies had recommended that the applications be adjourned for six months. This was on the basis that the premises would be monitored, with a view to a possible withdrawal of the opposition if the applicant could demonstrate that the improvement was permanent.

[10] Because the objectors had not been party to the discussions, and because the applications had been temporarily scheduled for June 2005, and because a further delay might mean that the application may not be heard until 2006, it was decided to proceed with the hearing. This was on the basis that the application for adjournment could be repeated at the hearing if the agencies thought it appropriate. Three days before the hearing, Mr Giles applied for an adjournment on the basis that he had recently received the briefs, and did not have time to answer the substance of the objections. The application was opposed as some eight witnesses had been briefed to appear. Accordingly, it was decided that we would hear the opposition first, following which the applications would be adjourned to a later date to allow Mr Giles the opportunity to answer any criticisms about his suitability, or the hours of operation.

The Opposition Evidence

[11] In his opening remarks, Mr G D Jones as counsel for the District Licensing Agency Inspector, stressed that the Inspector did not object to the renewals per se. The major concern was the closing time. He submitted that the evidence would show that since February 2005, the applicant's closing time had been voluntarily restricted to 1.00 am, and that consequently the level of public complaints had been reduced. Mr Giles denied any suggestion that the closing time had been changed, so that this assertion became a matter of proof.

[12] David John Shovel is the Environmental Health Services Manager for Food & Health Standards New Zealand Limited (Christchurch), which contracts its environment health services to the Hurunui District Council. He has been a certified and registered Environmental Health Officer for 11 years. He confirmed that during 2004, he had received a number of complaints about excessive noise and disorderly behaviour allegedly associated with "Saints", and that he had investigated each one of the complaints, and spoken with Mr Giles about them. Mr Shovel sought to outline the letters of opposition which he had received. As stated in other decisions, such letters provide more of a background. They do not have the status of hard evidence until the objectors have given evidence and been cross-examined.

[13] Mr Giles had undertaken to visit the affected properties and act accordingly. In their discussions, Mr Giles had readily admitted to Mr Shovel that he had allowed unaccompanied minors on the premises in the early evening to buy pizza and soft

drinks. He did not think he was doing anything wrong, and considered he was providing a service to Hanmer Springs. Mr Giles immediately ceased the practice when Mr Shovel told him of the effect of the supervised designation on his premises

[14] Mr Shovel gave evidence that on 17 March 2005, a meeting was held at Mr Giles' request with Mr Shovel and the other reporting agencies, and members of the staff of "Saints". He confirmed that at the meeting, Mr Giles tabled documents that purported to be a response to the complaints and objections. These documents questioned the professionalism and integrity of the enforcement agencies. They reveal a complete lack of understanding of the role and responsibility of the reporting agencies, and the comments contained therein raise serious questions about Mr Giles' suitability. Fortunately for him, he revealed that his father had assisted him to compile the response.

[15] Mr T N Giles gave evidence at the resumed hearing. He read out a litany of personal abuse aimed at Mr Shovel and other objectors. We ruled that there was no need to confront Mr Giles about his attack which was in our view unnecessary, unjust, uncalled for, and irrelevant.

[16] From time to time in proceedings before us, parties seek to attack the messenger rather than the message. In doing so, they need to know that they are more likely to send out a signal about their own suitability to hold a licence. We accept that all parties are entitled to be dealt with fairly and professionally by District Licensing Agency Inspectors, the Medical Officer of Health, and the Police. Where this does not happen we have not hesitated to make comment. However, the great majority of all inspectors, and health professionals, and members of the Police who have appeared before us have been totally professional. We rely on them to monitor and enforce the Act. Without their assistance, there would be no point in having a licensing system. Those who seek to indirectly undermine and intimidate the reporting agencies need to understand that they are unlikely to receive any sympathy in this forum.

[17] At the meeting referred to above, Mr Giles offered to close his premises at 1.00 am if the other licensed premises in Hanmer Springs agreed to do the same. Mr Shovel advised Mr Giles that the other premises had not caused any problems. Mr Shovel produced a letter dated 4 April 2005 addressed to the District Council from guests of the "Hanmer Inn Motel". This letter complained about the behaviour of patrons of "Saints" on the Saturday, as well as the loud music and loud and coarse language. They stated that they were kept awake from midnight to 3.00 am.

[18] When questioned about the letter, Mr S I Giles acknowledged that he might have been in breach of the relevant planning noise levels but pointed out that no readings had been taken. The original planning consent document stated that the sale of liquor on the site was a permitted activity provided such activity complied with the following noise levels:

7.00 am to 7.00 pm daily 55 dBA L₁₀
 7.00 pm to 7.00 am daily 45 dBA L₁₀
 10.00 pm to 7.00 am daily 75 dBA L_{max}

[19] Mr Shovel stated that since that time, there had been no further complaints although he had understood that "Saints" now regularly closed at around 12.00 to 1.00 am. Consequently he felt that the issues had been dealt with and the noise and

other disturbance reduced to an acceptable level. He re-iterated his recommendation that the closing hour be brought back to 1.00 am. Mr Shovel was cross-examined by Mr Giles and displayed a high level of professionalism as well as an excellent facility for note taking and a memory for detail.

[20] As explained above, the hearing was adjourned for nearly two months between 24 June 2005 and 22 August 2005. Mr Shovel supplied a report covering that period. Based on information received, he stated that the premises continued to be closed earlier than 3.00 am. Mr Shovel also recounted an incident on 6 August 2005 based on what he had been told by three patrons none of whom wished to give their names for fear of intimidation. In the circumstances we were not prepared to give the matters any credence. Mr Shovel retained a lack of confidence in the applicant's ability to manage the premises adequately after 1.00 am.

[21] Senior Constable C R G Hughey has been permanently stationed at the Hanmer Police Station since December 2001. He gave evidence that since "Saints" began operating, the township has experienced an increase in complaints received relating to disorder, and noise levels within the area surrounding the premises. For example he spoke of an incident on 1 January 2005, when a youth who was very intoxicated told the police that he had spent the evening at "Saints". Senior Constable Hughey was at the meeting on 17 March 2005, and confirmed that he and the others had agreed that "Saints" had improved in the way it managed its operations, and that the problems associated with disorder and noise had reduced.

[22] Senior Constable Hughey stated that since February 2005, the Police had experienced a decrease in the number of complaints received. He said that he believed that the drop in the number of complaints was directly related to the fact that the management had been closing earlier. He concluded that based on his experience of policing Hanmer of the past four years and his direct involvement with "Saints" that an earlier closing time would have a beneficial effect on the level of alcohol-related disorder and vandalism in the vicinity.

[23] Glenn Andrew Daniels is the General Manager of the "Heritage Hotel" in Hanmer. He has held a General Manager's Certificate for approximately 13 years. He is a member of the Community Watch Group that he helped to establish. The group started operating at about the same time as "Saints" opened. Mr Daniels stated that once every three months he patrols the streets of Hanmer during the night. He said that he has often seen heavily intoxicated persons leaving "Saints" although he could not say whether or not they had been refused entry.

[24] At about 2.20 am on Sunday 13 February 2005, Mr Daniels was patrolling Hanmer when he saw two completely intoxicated males leaving "Saints". He recognised them because he had had dealings with them earlier in the night for incidents of disorderly behaviour. At about 2.30 am he and his co-patroller came across a young girl who was lying on the footpath. She seemed oblivious to her surroundings. She was unable to stand up. Her friends confirmed that they had been drinking in "Saints".

[25] Mr Daniels opined that since February 2004, the number of incidents in the town were less, and the incidents of vandalism had decreased. He thought that this was because the premises had been shutting earlier. He also believed that shutting earlier would ensure that the premises were better managed.

[26] Carl James Roberts has been the proprietor of the Hanmer Security Services for three and a half years. He is also the operator of the Hanmer taxi service and a member of the Hanmer Community Watch group. He performs security services every night both in his separate capacities as a security guard and a taxi driver. He stated that in that capacity, he had had an opportunity to observe the "Saints" operation since it had opened. He had also noticed that the "Alpine Village Inn", which is next door to "Saints" and has an older clientele, generally closes earlier than "Saints" at about midnight to 1.00 am, even though both have authorised hours to 3.00 am. He stated that the "Alpine Village Inn" had a security person on the door checking people entering the premises, whereas until recently, "Saints" had no security on the door.

[27] Mr Roberts also opined that since "Saints" had opened there had been an increase in disorder, noise and intoxication within the surrounding area. He said that during 2004, he had often noticed patrons stumble out of the bar and into the car park. He also referred to unspecified incidents of intoxicated patrons leaving "Saints", as well as other incidents of disorderly behaviour and vandalism, which he assumed were caused by "Saints" patrons because "Saints" was the only bar open in town at that time.

[28] Mr Roberts referred to the incident on 13 February 2005 at 2.30 am when he was with Mr Daniels on patrol with the Community Watch group. He said he had been watching the entrance of "Saints" and had seen a young, heavily intoxicated girl walking from "Saints" and collapse on the footpath. She was barely conscious.

[29] Finally, Mr Roberts gave evidence that since about February 2005, he had noticed that "Saints" usually closed between midnight and 1.00 am on weekends and between 11.30 pm and midnight during the week. Mr Roberts considered that since "Saints" had adopted earlier closing times and better door security, there had been a reduction in the level of alcohol related disorder and vandalism in the vicinity of "Saints". He had also noted patrons being turned away at the entrance.

[30] Edgar Frederick Bayne Hickmott is the owner of a number of rental properties in Hanmer. The house he lets at 4 Jacks Pass Road is the only one that has suffered a drop-off in tenants. It is situated approximately 10 metres from "Saints". His tenants had complained to him of unreasonable noise coming from the premises, which he could also hear from his home on Conical Hill Road.

[31] Mr Hickmott described "Saints" as a nightclub and not a pizzeria. He said that on occasions he had witnessed intoxicated patrons, whom he estimated to be in their mid-teens to mid-twenties, coming and going from "Saints", appearing to be very intoxicated and exhibiting bad behaviour, including driving away in cars while intoxicated. Prior to January 2005, he had had rubbish thrown onto his property as well as vandalism of his letterbox at 4 Jacks Pass Road. He gave evidence that prior to the opening of "Saints" he had experienced no such problems.

[32] Mr Hickmott acknowledged that since January 2005, there had been markedly less incidents of rubbish being deposited on his property. Mr Hickmott also confirmed that the "Alpine Village Inn", next door to "Saints," was a completely different operation, and had never been a cause of concern to him.

[33] Peter Norman Shaw is the Canterbury District Health Board Liquor Licensing Officer. His principal role is to make inquiries and prepares reports for the Medical

Officer of Health. He has previous experience as a Licensing Sergeant with the Police. As part of his job he visited "Saints" on two occasions.

[34] On 27 November 2004 at 12.15 am, he visited "Saints" with Mr Shovel. Mr Giles was the duty manager. While they were talking to Mr Giles, he noticed a young man entered the premises drinking from a brown bottle. Because of his appearance and unsteadiness on his feet, and glazed eyes, Mr Shaw formed the impression that he was intoxicated, and should not have been on the premises. He drew Mr Giles' attention to the young man. Mr Giles said he had been watching him earlier. He took the bottle from the patron, and gave him a glass of water, and allowed him to remain on the premises, saying he had problems with him before but on this occasion, he wasn't too bad.

[35] Mr Shaw then drew Mr Giles attention to a group of young people gathering in the carpark. Mr Giles immediately arranged for his barman, Scott Raumati, to go to the door and check their identification. Mr Shaw heard one of the group say that he had no identification. Mr Shaw then noticed that over half the group had to remain outside. Mr Shaw gained the impression that the checking of patrons' identification was being done for his benefit.

[36] On 11 January 2005, Mr Shaw prepared a report offering no opposition to the applications for renewal. On 17 January 2005, Mr Shaw received a telephone call from Mr Shovel expressing his concern about the operation of the premises after receiving information and complaints from residents of Hanmer. He then contacted Senior Constable Hughey who confirmed what was happening. The Medical Officer of Health submitted a report on 21 February 2005 opposing the applications.

[37] On 12 March 2005 at 11.00 pm Mr Shaw kept observations on the applicant's premises until 2.20 am on Sunday 13 March 2005. He produced a record of his observations, which he read. He observed people coming and going from the premises. He noticed that after midnight the noise levels from the premises seemed to increase, particularly the bass, and that the fanlight windows facing the street and carpark were wide open. He later found that the sound could be heard in the Jacks Pass Road area, but not in the main street of the Hanmer township. He saw Mr Giles do a walk round picking up a bottle. At 1.10 am, he noticed an intoxicated person enter the premises but then get ushered out. He returned and sat outside but was seen off the premises.

[38] At 2.25 am Mr Shaw entered the premises. He referred to two separate incidents where he saw two intoxicated males given glasses of iced water, but allowed to remain on the premises. Mr Shaw expressed concern to Mr Giles that he may be in breach of the Act by allowing intoxicated people to remain on the premises. Mr Giles said his practice was to allow them to stay if they were reasonable and agreed to drink non-alcoholic drinks. If intoxicated persons were caught accepting drinks from other people then they and the group they were with were asked to leave.

[39] At 2.35 am after all the patrons had left Terry Giles, Stacey Giles, and Scott Raumati opined to Mr Shaw that the concerns of the Police and the District Licensing Agency Inspector were unwarranted. Terry and Stacey Giles believed that it was also an unwarranted attempt by a few in the business community to reduce the hours of operation of "Saints". Stacey Giles denied the "night-club" tag given to the premises stating that he did no more than what other taverns do.

[40] Mr Shaw was not aware of any issues that have arisen in respect of the premises since 17 March 2005, when he understood that Mr Giles had voluntarily closed the premises at 1.00 am.

The Applications

[41] Mr S I Giles gave evidence at the resumed hearing. He stressed that the extra two hours of trading were important to the company as they allowed "Saints" to open for sporting events that take place late at night. In addition he stated that there were functions such as 50th birthday parties, and corporate Christmas functions. He disagreed with the allegations that intoxicated persons had been allowed in the premises, and he said that the business was equally firm with minors. Mr Giles disputed any suggestion that the closing hours had been pegged back in the New Year.

[42] Mr Giles stated that he had spoken with the proprietor of the Hanmer Motels on two occasions. He confirmed that there had been an occasion in 2004 when a noise complaint had been made, and he had agreed to take steps to prevent any re-occurrence. He stated that he had put marking on the noise mixer to show the levels of music that were not to be exceeded, and employed a sound technician to prevent the amplifiers from going above a reasonable level. He contended that from 2.00 am and the tempo of the music is slowed down. Mr Giles stated that he regularly walks around the premises to check the sound level, and check for bottles and other rubbish. In addition, he had received a quotation to install exterior security cameras. Finally, Mr Giles produced a number of letters of support.

[43] In the course of the hearing we received a number of letters. It seems clear that the community has become polarised over the issue of "Saints", and some of the material reflected this mentality. While the number of letters produced by Mr Giles was impressive, in the final analysis, we had to rely on the evidence which was given at the hearing, rather than the opinions of those who believe that Mr Giles is being unduly harassed, or whether witnesses had a secret agenda.

[44] Ms Melissa Sprott has been a duty manager at "Saints" since it opened. She refuted any suggestion that the style of operation had changed from focusing on food to liquor. On the other hand, she acknowledged that there was an electronic resident DJ which was operated on Friday and Saturday nights. She stated that she was always careful to ensure that the music is kept to a responsible level.

[45] Mr Scott Raumati is also one of the duty managers employed at "Saints". He contended that the type of clientele received at "Saints" were well behaved. He confirmed the strict policy on not allowing minors on the premises, and denied any suggestion that his checking of identification on the night of 27 November 2004 was done for Mr Shaw's benefit. Mr Raumati stated that since he had been duty manager, three individuals had been banned, and one served with a trespass notice.

The Authority's Decision and Reasons

[46] In any application for the renewal of a licence, the first point of reference must be the criteria to be considered. These criteria are contained in ss. 22 and 45 of the Act as follows:

- (a) *The suitability of the licensee;*
- (b) *The conditions attaching to the licence;*
- (c) *The manner in which the licensee has conducted the sale and supply (delivery for off-licences) of liquor pursuant to the licence; and*
- (d) *Any matters dealt with in any report made under s.20 of this Act. (Section 43 for off-licences)*

[47] In considering an application for the renewal of an on-licence, we are also governed by ss. 23 of the Act. That section reads:

(1) After considering an application for the renewal of an on-licence, the Licensing Authority shall –

- (a) Renew the licence on the conditions presently attaching to it; or*
- (b) Renew the licence on such different conditions (relating to any matters specified in section 14 (5) of this Act) as the Licensing Authority thinks fit; or*
- (c) Refuse to renew the licence.*

(2) The Licensing Authority shall not exercise its powers under paragraph (b) or paragraph (c) of subsection (1) of this subsection except in response to –

- (a) An objection duly made under section 19 of this Act; or*
- (b) A report duly submitted under section 20 of this Act; or*
- (c) A request by the applicant.*

[48] A similar rule is contained in s.46 of the Act relating to the renewal of an off-licence. It follows that on considering any renewal application, the Authority may in its discretion alter the trading hours in response to reports or objections. We are given the power to review the days on which, and the hours during which liquor may be sold. Decisions of the Auckland High Court in *Sheepys Limited AP77-SW01* and *Club Raro Limited AP86-SW01* both dated 10 December 2001, confirm the Authority's discretion to cut back a licensee's operating hours on a renewal. There are few fetters to the exercise of our discretion, although one of the most significant factors is that we are dealing with renewal applications following the first 'probationary' year of the two new licences.

[49] In addition we are accountable to the provisions of s.4 of the Act. These read:

The object of this Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse as far as that can be achieved by legislative means.

The Licensing Authority, every District Licensing Agency, and any Court hearing any appeal against any decision of the Licensing Authority, shall exercise its jurisdiction, powers and discretions under this Act in the manner that is most likely to promote the object of the Act.

[50] In any renewal application the onus is on the applicant to show that it is suitable to continue to hold the licence, and that the manner in which it has conducted the sale and supply of liquor pursuant to the licence has been satisfactory. In this case,

the applicant company has failed the test. It is our view that there have clearly been problems from the time that the premises opened for business. Although the evidence was general in nature, it was clear that a number of issues began to appear as soon as the premises opened for business. Once the objections were received, the applicant began to address those issues.

[51] One of the crucial aspects of the evidence is whether the closing hour has been pegged back since early 2005, in order to reduce the level of disorder and consequential complaints. Despite the evidence from Mr Giles and his witnesses, we are satisfied that this was the case. The evidence shows that a reduction in the hours of trading has led to a reduction in complaints of disorder and intoxication.

[52] Any licence is a privilege, and there is no guarantee that it will be continued indefinitely, or that the hours will remain the same, particularly if the privilege is ignored or abused. In our judgement, this is what happened. Mr Giles saw a market which he was happy to exploit at the risk of raising noise levels and bringing about misbehaving patrons. In *Buzz & Bear Ltd v Woodroffe* [1996] NZAR 404, McGechan J said:

“Times change. Communities and environments change. Social habits and levels of tolerance change. Obviously it would have been seen by the legislature to be wise to keep conditions imposed under review in light of potential social change. The licensee’s submissions would have licence conditions frozen in some time warp while the world marches on; not, even in the arcane world of liquor licensing, a likely legislative intention. Section 4 interpretation directives align with common sense to point towards allowing the Authority to engage in a wider perspective. It can keep its eye on wider trends and needs in a specialist area where it has unique, and uniquely current, expertise. Any licence 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.”

[53] Limiting the hours of operation has become established as an important tool in addressing the growing social and economic cost of alcohol-related crime, disorder, and anti-social behaviour. Although it has been said that the issue is not so much about the hours of trading, as the way that the premises are managed, it is our experience, that the longer the hours, the greater the potential exists for liquor abuse, or breaches of the Act. In our view, the liberal hours that have been granted in the past have not been universally respected.

[54] The Authority has considered the impact of noise in the past. In *L C Driver* LLA 1101-1102/96 we confirmed that in considering any renewal, we are required to consider the manner in which the licensee has conducted the sale and supply of liquor. If the business has been conducted in such a way as to cause annoyance to neighbours then that is a matter to be addressed by the Authority. We have also held that the inability to control noise can reflect on the suitability of a licensee to retain his licence. In *Paihia Saltwater (2001) Limited* LLA PH 391/2001 it was said:

“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.”

We have already heard from licence holders who have either installed air conditioning so they can keep doors and windows closed, or have employed security people to monitor outside noise, or they have installed automatic sound control systems. We will always give full credit to those holders who acknowledge any existing noise problem and try and do something about it. In our view the term 'host responsibility' does not exclude the people who live nearby.

Many licensed premises have shown that they can operate in harmony with their residential neighbours. It is no coincidence that the managers and owners of such premises also show a commitment to the reduction of liquor."

[55] In his submissions, Mr Giles quoted from *K R & C A Burton LLA 2020-2025/95* in which the Authority set out its general approach to closing hours. We accept that there are a limited number of residential neighbours in this business zone. Nevertheless, the evidence has demonstrated that the licensee has conducted the sale and supply of liquor in a manner which has had a detrimental impact on the community in terms of noise and behaviour.

[56] Under the Sale of Liquor Act 1989, it is no longer necessary to show that a licence is necessary or desirable before a new licence may be granted. There is no requirement to show that there is a need for the sale and supply of liquor to 3.00 am. The hours which are granted are a matter for the discretion of the Agency or the Authority. In this case, the Agency saw fit to grant hours to 3.00 am. If on renewal there is evidence of liquor abuse or management issues, particularly during the first 'probationary' year, then we have a duty to respond.

[57] We are conscious that the evidence was more general than specific, and that the licence falls due for renewal again on 24 December 2007. Accordingly, and for the reasons stated, both applications for the renewal of the on and off-licence will be granted with reduced a reduced closing hour of 1.30 am.

DATED at WELLINGTON this 6th day of September 2005

Judge E W Unwin
Chairman

Mr J C Crookston
Member