

**IN THE ALCOHOL REGULATORY AND LICENSING AUTHORITY  
TE MANA WAETURE TAKE WAIPIRO**

[2023] NZARLA 95

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

**AND**

**IN THE MATTER** of an appeal pursuant to s 154 of the Act  
against a decision of the **AUCKLAND  
DISTRICT LICENSING COMMITTEE**  
regarding the granting of an off-licence for  
the premises located at 70 Russell Road  
Manurewa Auckland known as  
"BLACKBULL MANUREWA"

**BETWEEN** **SAHOTA LIMITED**  
Appellant

**AND** **ARENA WILLIAMS MP and TUREHOU  
MAORI WARDENS KI OTARA  
CHARITABLE TRUST**  
Respondents

**BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY**

Deputy Chairperson: District Court Judge A S Menzies  
Members: Ms J D Moorhead  
Mr R S Miller

**HEARING** at AUCKLAND on 21 June 2023

**APPEARANCES**

Mr S Sahota – for Appellant  
Dr G Hewison for Respondents (by AVL)  
Miss S Alicious – Senior Licensing Inspector – to assist

**DECISION OF THE AUTHORITY**

**Introduction**

[1] In a written decision dated 25 May 2022 the Auckland District Licensing Committee granted the renewal of off-licence 007/OFF/3161/2018 issued to the appellant company Sahota Limited in respect of premises situated at 70 Russell Road Manurewa Auckland known as BlackBull Liquor Manurewa.

[2] When renewing the licence, the DLC changed the conditions relating to closing hours from 11.00pm to 10.00pm. Specifically, the condition now provides:

(b) Alcohol may be sold on the premises only on the following days and during the following hours:

Monday to Sunday 9.00am to 10.00pm

[3] The appellant has filed an appeal relating to that alteration, seeking by way of remedy reinstatement of the later closing time of 11.00pm.

[4] The respondents oppose the appeal and seek by way of remedy dismissal of the appeal.

### **Legal Issues**

[5] By virtue of ss 157 and 158 of the Act, every appeal is by way of rehearing and the Authority may confirm, modify, or reverse the decision under appeal.

[6] The statutory framework for the consideration of the appeal focuses on s 131 which outlines the criteria for renewal, adopting a number of the specific provisions in s 105 which outline the criteria for the issue of licences. Of particular relevance are the criteria identified in s 105(1)(d) which discusses the days and hours of sale and s 131(1)(b) which requires the Authority to have regard to:

(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.

[7] While that criterion applies to the renewal of the licence, the same considerations are relevant to the assessment required in this appeal of the closing hours.

### **Appellant's case**

[8] The appeal attached a written outline of the grounds for the appeal. Mr Sahota appeared at the appeal hearing with the assistance of an interpreter and outlined the concerns of the appellant as reflected in that appeal with some additional comments. The grounds for the appeal can be summarised in the following arguments:

- (a) The DLC failed to explain the reason for the reduction in closing hours from 11.00pm to 10.00pm.
- (b) The later hour in question (between 10.00pm – 11.00pm) is important to the appellant’s customer base because many of those customers work shifts and do not have access to licensed premises earlier in the day and they are inconvenienced by the earlier closing time.
- (c) It is unfair to the appellant to require earlier closing hours when other licensed outlets in the area have later closing hours.
- (d) The appellant has no problem with the earlier proposed time of 10.00pm, or even 9.00pm, if the same rules are applied across the board as contemplated by the Auckland Council’s Provisional Local Alcohol Policy (PLAP).
- (e) There have been no problems with the operation of the licensed premises (such as police, health, or neighbourhood issues) and the change to the earlier closing time is therefore not warranted.

### **Respondents’ case**

[9] Dr Hewison appeared for the respondents. He provided in advance of the hearing written submissions and spoke to those submissions.

[10] The respondents’ position can be summarised with the following arguments:

- (a) While it is recognised that the Act provides for default hours for off-licences under s 43(1)(b), there is no presumption in favour of these hours.<sup>1</sup>
- (b) Both objectors raised a variety of issues in relation to the renewal application and of relevance to the appeal, sought closing hours of 10.00pm.
- (c) The respondents referred to the comments by the DLC in its decision noting at paragraph [33] that the Committee took the view that it is for the applicant to prove the necessity for trading hours and the maintenance of those, rather than any onus on the objectors to provide reasons to shorten the hours. The more

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<sup>1</sup> *Westlaw Commentary SA 43.06 and Auckland Council v Woolworths New Zealand Limited* [2021] NZCA 484 at [25].

detailed comments in relation to the reasons for shortening the hours are then set out in paragraph [34] which provides:

Given that the area is residential and that whilst Russell Road might be considered a thoroughfare road, the premises are actually located on McKean Avenue and not immediately visible from Russell Road. It is our opinion, that they would predominantly service the residential neighbourhood in which they are located. Other than the major supply brand that they are aligned to, there seems to be no other attractant that these premises have over similar premises. We are unable to see any particular reason that the premises should be permitted to operate to the s 43 maximum, given its environment and we intend to intrude on those hours.

- (d) The respondents point to the evidence before the DLC of some difficulties in the appearance of the premises including a large dumping area for cardboard boxing and general rubbish. The allegation was made that the area appears generally unkempt, likely to be a haven for vermin. There is a further argument that the exterior of the premises is relatively unattractive given the presence of bollards and signage.
- (e) The respondents argue that the onus is on the appellant to satisfy the Authority that the decision of the DLC is wrong.<sup>2</sup> The respondents argue that the grounds have not been made out to justify the appeal succeeding. Specifically, there was evidence to support the DLC decision in the form of the objectors' concerns relating to alcohol-related harm in maintaining 11.00pm closing, the nature of the premises (being small, suburban based and serving a residential neighbourhood) and the reasons advanced by the appellant that there needed to be a level playing field amongst operators and maintenance of proper margins, did not justify maintaining the closing hours of 11.00pm.
- (f) There was accordingly no error in the DLC's reasoning to decide to reduce the closing hours to 10.00pm.

## **Reporting Agencies**

[11] None of the reporting agencies opposed the renewal application with the existing hours.

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<sup>2</sup> *Austin, Nichols and Co Inc v Stichting Lodestar* [2008] 2 NZLR 141 at [146].

## Decision and Reasons

[12] The Authority is required to undertake its own assessment of the evidence and the merits of the application to reach its own conclusion.<sup>3</sup> The onus is on the appellant to satisfy us the DLC decision is wrong, and we have an evaluative role requiring an assessment of risk of alcohol-related harm.

[13] The scope of the appeal is confined to a determination as to whether or not the DLC was justified in reducing the hours by altering the closing time from 11.00pm to 10.00pm.

[14] Turning to the matters raised by the appellant, the main argument appeared to be the “level playing field” argument which proposes the same treatment of all licensed outlets in terms of hours. Otherwise, the appellant argues, it is unfair to the appellant if competitors have an advantage by way of later opening hours. We are not persuaded by this argument. The issue of uniform hours may well be addressed in the area by the PLAP. Otherwise, the Authority is required to have regard to the specific circumstances of each individual outlet. Because of a range of factors that might differ, including the character of the area (for example residential or predominantly commercial) the degree of vulnerability of the area and other such factors, different conditions may be imposed. We are therefore not satisfied that imposing hours that may differ from the hours of other licensed outlets in the area is a valid argument to suggest the DLC decision in this context was wrong. Indeed, the Authority is aware of other licensed outlets in the same general area that have earlier closing times.

[15] A further issue raised by the appellant is the inconvenience to customers, many of whom work shift hours and are thereby limited in times of access. Again, the Authority is not persuaded by this argument. Most customers will adjust their buying habits to the hours available and this is again not a ground that the Authority accepts to suggest the DLC was wrong.

[16] The appellant has also presented material to suggest that there is a volume of trading in the hour in question (between 10.00pm and 11.00pm). That material suggests trading levels at around 5 to 7 per cent which would not appear significant particularly as the Authority considers that a proportion of that would be captured by the customer base adjusting to the earlier closing time. In any event, the Authority is not persuaded that the

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<sup>3</sup> *Riccarton Beer & Wines* [2023] NZARLA 18 (15 March 2023) paragraph [52].

economic impacts of imposing certain hours would not prevent the imposition of a closing time regarded as appropriate in terms of the object of the Act.

[17] In our own assessment, we agree with the concerns expressed by the DLC at paragraphs [33] of its decision relating to later operating hours in suburban areas and the view "...there seems to be no other reason for such late operating hours, other than those permitted by s.43 (1) (b) of the Act or, the lack of a Local Alcohol Policy (LAP)." We also agree with the description of the area and the rationale set out in paragraph [34] of the DLC decision referred to previously. The circumstances of this environment persuade us the later hours increase the risk of alcohol-related harm.

[18] We consider the appellant has not met the onus upon it and we are not persuaded by the appeal. In our own assessment of the overall position, we consider that the appropriate closing time for the appellant's premises should be 10.00pm. We therefore dismiss the appeal and confirm the decision of the DLC.

**DATED** at WELLINGTON this 26<sup>th</sup> day of June 2023.

District Court Judge A S Menzies  
Deputy Chairperson  
Alcohol Regulatory and Licensing Authority