

LIQ-10259-ONO

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

AND

IN THE MATTER of an application
by **Saltwater Corporation
Limited**
pursuant to s.127 of
the Act for the renewal
of the ON Licence
for premises situated at 12-14 Kings Road, Paihia
known as "**Saltwater Cafe & Bar.**"

HEARING BEFORE THE FAR NORTH DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: John Thorne
Member: Graeme Wright

HEARING at Paihia on 3 June 2025.

APPEARANCES

Mr. Jon Wiles– counsel for the applicant, **Saltwater Corporation Limited**
Ms. Ruth Wernli- for the applicant
Ms. Louise McKean- for the applicant
Mr. Matthew Michael Lovich- for the applicant
Mr. John Maurice- for the applicant

Ms. Natasha Thompson– Alcohol Licensing Inspector – in opposition
Sergeant Michelle Row – Police Alcohol Harm Prevention Officer (AHPO)– in
opposition
The MOoH were unopposed and were excused from attending the hearing

Objectors

- 1.Shelley and Chris ASH - No appearance
- 2.Tracey and Murdoch PHILIPS - No appearance
- 3.Mr. Terry Smith- adjacent business and property owner.

RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application dated the 22nd of October 2024, **Saltwater Corporation Limited** applied for the renewal of the On Licence that was set to expire on the 21st of November 2024. It was duly advertised, and three public objections were received within the prescribed time.
2. The applicant sought the rollover of the existing conditions including the licensed hours of **Monday to Sunday 8.00am to 1.00am the following day**. These hours are within the default national maximum trading hours for an On Licence.
3. The business is a small “karaoke style bar” with a maximum occupancy of 80 inside and another 30 in the outdoor smokers area. The whole of the premises is designated as a Supervised Area. Of direct relevance to many of the concerns held about this premises was the fact that it opened directly onto the footpath and into an Alcohol Ban Area.
4. They have a large pizza oven that operates at all times when the business is open.
5. The MOoH did not raise any final matters in opposition in their report but intimated that they did hold concerns earlier in the process about lack of training documents and lack of detail in the application.
6. The final Police report contained matters in opposition around violence in and around the premises and a belief that the on-site management took a blasé view on the issues when they were raised.
7. The Inspector reported on the application in opposition largely in support of the Police case.
8. The application was set down for hearing by the Committee as we were concerned about the nature of the allegations, given the history of Kings Road, and the alleged lack of acknowledgement of responsibility by the applicant.
9. We said at the outset of the hearing that our expectations of applicants in remote locations was that the need to operate compliantly had an elevated mantle. They don't have the regular oversight from the Police and other agencies that occur in the bigger towns and cities. The responsibility lies firmly

with Saltwater Corporation Limited and its staff. It is the applicant who must create a positive finding in the eyes of the Committee at renewal time.

10. We also expect the agencies to report to us with any concerns that they hold relating to the operation of businesses, against the criteria for renewal found in Section 131 of the Act. Indeed, they would be remiss to not advise the Committee of any adverse occurrences, incidents and offences recorded during the renewal period.
11. We are also keen to hear the views of the community and it is disappointing when objectors fail to appear to support their written objections.
12. Section 131(1)(d) says, at renewal time, we (the Committee) **must** have regard to the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

Applicant's Evidence

13. John Wiles appeared as counsel for the applicant and provided a somewhat dismissive opening, intimating that his client should not be held responsible for the actions of people who congregate outside the bar to drink in their cars and create 'trouble' for clients of 'Saltwater.'
14. As we will discuss later in this decision, the issues raised by Mr. Wiles are far from unusual and occur outside many bars elsewhere in the country. On-site managers must do what is required of them regardless of the circumstances.
15. The first witness for the applicant was Ms. Ruth Wernli, the sole director of the licensee company. She told us she had been running the Bar since 2004 and had held a Managers Certificate since 1996.
16. She said her perceived 'attitude' at the tri-agencies meeting on 9 December was misinterpreted by the agencies.
17. She accepted that the COVID period and problems with emergency housing clientele in 2021-2022 were difficult times and she believed that things have improved "quite a lot" in 2025.
18. She believed that the lighting out on the street was poor and that the Police did not proactively police the alcohol ban in the area. She said "there had been talk" about the issues but she conceded that she had not approached Council or Police senior management to discuss the issues.
19. She believed that she and her staff did a good job refusing entry to the street drinkers and taking firm action when there had been problems. She was asked how many patrons had been issued Trespass Notices in the renewal period. She couldn't put a number on it because "you don't know their names."

Again, she conceded she had not spoken to the Police directly asking for their assistance to identify repeat offenders and get them banned from the premises.

20. In regard to noise complaints, she accepted that she had received two Excessive Noise Directions (END) in 2024. We note that she was the named Duty manager on both occasions.
21. She said that the door to the outside area is now closed by 10.00pm and the outdoor speakers turned off at the same time. They have also recently installed a noise limiter device that sets the maximum volume for the DJ and karaoke music. Whether these changes will be effective, only time will tell.
22. In regard to regular staff training, she acknowledged that they didn't have records of training covering the renewal period. She handed up Certificates of Achievement that her staff have obtained from the online Servewise Course. We note that they were all completed during the two weeks prior to the hearing.
23. She said they used the SCAB test to assess intoxication, and they had never been charged with serving an intoxicated person or a minor. As we explained to Ms. Wernli 'The absence of evidence is NOT evidence of absence.'
24. We asked Ms. Wernli to list the offences that could be committed in an on-licensed environment. She was unable to name more than a couple, even basic ones that everyone in hospitality should know, like you must have a certificated manager on duty, and it is an offence to allow a person to become intoxicated on licensed premises.
25. Ms. Wernli took us through the list of incidents referred to by the Police and asked us to accept many of the incidents were caused by the street drinkers, not her patrons. But there had been fights in the premises initiated by her locals as well.
26. On several occasions they had to seek the assistance of Terry Smith who is a certified security trainer and the owner of The Hideout next door. Mr. Smith previously operated the Sandpit bar that shut down in August 2024 leaving The Saltwater as the last remaining 'late night ' bar in the Kings Road area.
27. We then heard from Louise McKean who has been employed as a duty manager at Saltwater since May 2024. She also holds a COA and works with the door staff employed at the premises.
28. She said there were more challenges in 2024 when Sandpit was still operating but they now have a different crowd, and they have karaoke 3 nights a week. She and Ruth share the manager duties, and they have 2 door staff on Friday and Saturday and an extra one on event nights. DJ Mike Winters-Sanft also

holds a COA and brings additional security expertise to the team. They also operate a voluntary One Way Door (OWD) from 12 midnight. She said they would be happy for that to be a condition of their licence.

29. She said they limit the number of drinks per sale and cut off shot sales when they think patrons have had enough. They have recently obtained a noise meter and take readings from the outside and have installed a sound limiter of the sound system to avoid generating excessive noise for neighbours.
30. She asked that we take into account the improvements that have been achieved in the last 6-9 months and not focus on the deficiencies in the first two years of the renewal period.
31. Mr. John Maurice .is the president of Hospitality NZ Northland Branch. He told us that Ruth Wernli is a hard working conscientious operator of twenty years standing.
32. He believed much of the problems on Kings Road related to poor street lighting, the lack of Police patrols and enforcement of the Alcohol Ban on the street.
33. He queried whether the negative issues over the last few years could all be laid at the feet of Saltwater. We say the reality of it now is that Saltwater is the last tavern style premises in the area and it is the attractor for those persons who want to sit in their cars and drink and cause problems. If Saltwater wasn't there, no doubt the street dwellers would move elsewhere.
34. The last witness for the applicant was Matthew Michael Lovich who told us he was the Mid North Operations Manager for Northern Districts Security Limited.
35. He told us that his company provided security services for Saltwater Corporation Limited. He produced a number of documents including the Conditions of Entry and the Security Plan for Saltwater.
36. In the Conditions of Entry Document, it stated "Anyone showing signs of **severe intoxication** ...would not be permitted (entry) "
37. Mr. Lovich was asked to show the Committee where in the Intoxication Assessment Tool it talks about severe intoxication. He was unable to do so and immediately acknowledged that it was an error to have the word 'severe' in that assessment and document.
38. Similarly in the Security Plan it outlines the duties of the Head Bouncer . The committee advised Mr. Lovich that the term 'bouncer' should not be featuring in any form of security type documents. He agreed and said both documents would be updated.

39. Letters of support were handed up from several locals. We comment on them later in this decision.

Police Evidence

40. Sergeant Michelle Row is an experienced Police Officer who is also the Alcohol Harm Prevention Officer for Te Tai Tokerau and appeared in opposition at this hearing.
41. She said the Police do experience challenges policing the Paihia Area. Alcohol is a significant contributor to the offences they have to deal with from domestic violence, drink driving and assaults. She acknowledged that the alcohol ban is not actively policed but did say frontline staff do patrol the area and attend incidents as required.
42. The Police are a lot more present in the summertime when the population swells.
43. By consent she handed up the Brief of Evidence of Sergeant Daniel Leigh. His evidence related to a fight he attended outside the Saltwater at 1.30am on the 8th of June 2024.
44. He spoke to two females who claimed they were assaulted both in the Saltwater and on the street. When he spoke to Ruth Wernli, she said that one of the girls had allegedly thrown a bottle at someone and it escalated from there. We note that she said the 'Jodi' was a local and "she usually doesn't cause any problems."

Inspectors Evidence

45. Inspector Thompson stood by the contents of her report and believed that Ruth Wernli was quite clear at the December meeting that the problems on the street were for the Police to fix, not her.
46. She confirmed that two ENDS had been served on Saltwater in 2024 but nothing more in recent times.

Objector Evidence

47. Terry Smith appears as an objector, and we were told he used to regularly help out the staff at Saltwater when there were fights both in and outside of the premises. He said he sees people walking out of Saltwater with alcohol containers "every weekend."
48. We were mindful that Mr. Smith's status was questioned by Matthew Lovich, witness for the applicant, as to whether we should declare him a 'trade

objector.’ As we explained at the hearing, we would receive his testimony, but it would be a matter of weighting when we considered his evidence.

49. As stated earlier it was disappointing that the two other objectors failed to appear to support their objections. Objectors are not able to be cross-examined since the May 2024 amendments came into force but they should appear even if only to swear that their statements are true and correct.
50. The **Liquor Licensing Authority said in GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03** ¹*“The objections will have little probative value if those making the allegations in the objection are not able, or prepared, to appear at the hearing to affirm, or swear, to the truth of what they are saying. By not appearing, their opinions and concerns cannot be tested by cross-examination by the applicant or questioned by members of the Authority.”*
51. Consequently, we place little weight on the two objections that were not supported in person.

The Law

52. Section 3 of 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.***

53. 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,***

¹ GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03

death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

54. Sections 131/132 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to approve a renewal of a 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.

The clauses in 105 that we must consider are:

105 Criteria for issue of licences

*(1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned **must have regard** to the following matters:*

(a) the object of this Act:

(b) the suitability of the applicant:

(c) any relevant local alcohol policy:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(e) the design and layout of any proposed premises:

(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:

(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, non-alcoholic refreshments, and food, and if so, which services:

(h).....

(i).....

(j) whether the applicant has appropriate systems, staff, and training to comply with the law:

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).

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

55. Section 105(1)(a) of the Act 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.

56. Similarly, we must ensure that our administration of the Act is reasonable and contributes to the achievement of the Object of the Act **and** benefits the community as a whole.
57. We will assess the other criteria before returning to decide whether the Object of the Act can be achieved by the renewal of this licence.

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

58. The applicant must be a suitable entity to hold an ON Licence. Suitability is not established in a vacuum; it is based on proven performance and properly dealing with challenges that occur from time to time especially in late night taverns and hotels.
59. Ruth Wernli engaged Mr. Wiles to appear for her company very late in the piece and he did well in putting the applicant's case to the Committee.
60. This late engagement is symptomatic of some of the concerns that we hold. The noise limiter should have been in place from day one when they started doing karaoke. There are residential properties nearby and it is no surprise that ENDS were issued on two occasions in 2024.
61. The glaring error in the Conditions of Entry document should have been spotted by Ms. Wernli and rejected.
62. In our view direction comes from the top. Ruth Wernli appeared to us as someone who has been slow to move with the times. As she conceded to the Committee earlier in the hearing, even though she has been critical of the Police and the local Council she has not formally approached either entity to discuss the street lighting and the policing of the alcohol ban.
63. Nothing will change if the issues aren't escalated to higher levels of authority.
64. We quizzed Ms. Wernli on the offences that could be committed in an on-licensed premises. She struggled to list more than a few and did not get the one we were hoping for, that being, it is an offence to allow a person to become intoxicated on licensed premises.
65. She was asked why she sold 'shots' at the premises. She acknowledged that punters drink shots to get intoxicated rapidly. She quickly added that if the Committee thought it necessary, she was happy to see the sale of shots discontinued.

66. In a rear guard action, the applicant submitted several letters of support from clientele and suppliers. It is clear that the business is appreciated and enjoyed by many, but some comments did more harm than good. One writer stated that **“rides are offered home if we are intoxicated”** and stated **“that the area is incredibly well lit”**
67. These comments flew in the face to the evidence adduced by the applicant at the hearing.

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

68. There is no Local Alcohol Policy (LAP) in the Far North. There is nothing for us to consider.

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

69. The current operating days and hours are **Monday to Sunday 8.00am to 1.00am** and are within the default national maximum trading hours for ON licences. **The actual hours of trading are generally 5-6pm to 1.00am Tuesday to Sunday.**
70. The agencies asked the applicant to agree to a 12.00 midnight close in the December 2024 meeting. Ms. Wernli refused, as clearly their clientele are a late night crowd. The Committee invited the applicant to comment on the closing time, and the length of the renewal in their final submissions.
71. Mr. Wiles said his client was firm of the view that a reduction of hours and a truncated renewal were not warranted based on the evidence adduced.

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

72. There are some issues with the design and layout of the premises in that it opens directly on to the footpath and is a very old building and most likely, of dubious noise attenuation qualities.
73. This does put an onus on the applicant to mitigate any problems that arise from the design issues.
74. In regard to noise there appears to be some mitigation in place, but it must be implemented consistently.
75. In regard to opening on to the footpath that applicant must ensure that the area is adequately lit and that no alcohol is permitted to leave the premises with patrons.

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;

76. No 'other' goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food 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.

77. Karaoke evenings and DJ parties are held at the premises.

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

78. The applicant advises that there are two staff with manager's certificates attached to the business and all staff have undergone the Servewise course, albeit recently.
79. They must have sufficient well identified security staff to interact and manage the interface between their patrons and the street drinkers.
80. The ball is firmly in the court of Ms. Wernli and her advisers to ensure that their policies and training documents are fit for purpose, and up to date, so that the business is equipped to deal with the challenges that do come to all late-night licensed premises.
81. The Host Responsibility Policy still refers to the Sale of Liquor Act 1989 and the errors in the security documents and Conditions of Entry are simply unacceptable. They do the applicant no credit.
82. Well prepared systems, staff and training are integral components of late night trading in alcohol.

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

83. The Police opposed the renewal citing ongoing but relatively historical violence and behavioural issues.
84. The Medical Officer of Health has no matters in opposition.

85. The Inspector remained opposed based on the perception that she believed that Ms. Wernli was not fully engaged with the issues and was not looking for lasting solutions.

Reasons for the Decision

86. Section 3 of the Act requires us to act reasonably in the exercising of our duties with the aim of helping to achieve the Object of the Act.
87. Pursuant to Section 131 (1)(b) the Committee must have regard as to whether the operation of this licence has reduced the amenity and good order of the area by more than a minor extent, and, whether in our opinion, the amenity and good order of the area would be increased by more than a minor extent by refusing the renewal.
88. As we have stated in the introduction to this decision it is the task of the DLC to review the previous three years of operation at renewal time. There is no guaranteed right of renewal. To hold an alcohol licence is a privilege not a right. A fresh assessment of suitability and being 'fit for purpose' is required at every renewal.
89. After standing back and examining the totality of the evidence before us, we find that Saltwater Corporation Limited is, by a slim margin, still a suitable entity to hold an ON Licence but will require some clear direction from the Committee as to our expectations going forward.
90. On balance, **in recent times**, we do not find that the amenity and good order of the area has been reduced by more than a minor extent.
91. We believe that the applicant has been slow to tackle the problems that have arisen from time to time. We believe that a truncated renewal is required for the applicant to show to the Committee that it has put the necessary measures in place and conducted formal dialogues with the Police and the Council over the Alcohol Ban enforcement and street lighting.
92. Again, by a slim margin, we will allow the current hours to be retained. One member was of the view that as there was now no competition for the applicant premises on Kings Road, the licensed closing hour should be reduced to 12.00 midnight.
93. We have decided that the Object of the Act can be met, and we approve a renewal of the licence on a suite of mandatory and discretionary conditions several of which will be imposed by consent. .

The Decision

The Far North District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, approves an application by **SALTWATER CORPORATION LIMITED** for the renewal of an ON Licence in respect of premises situated at 12-14 Kings Road Paihia known as the “**Saltwater Cafe & Bar**” on refreshed conditions.

The Licence is renewed for 18 months from 21st of November 2024 subject to the following conditions and a replacement licence is to be issued.

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours **Monday to Sunday 8.00am to 1.00am the following day;**
2. No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is present on the premises to dine or is residing or lodging on the premises.
3. The whole the premises is designated as a **Supervised Area.**
4. Drinking water is to be provided to patrons, free of charge, from a water supply prominently situated on the premises;
5. **No shots are to be served at any time at this premises.**
6. **A One Way Door (OWD) apply from 12.00 midnight. No Entry from that time, Exit only.**
7. The Licensee must have available for consumption on 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,
8. Food must be available for consumption on the premises at all times and the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted,

9. A properly appointed certificated or Acting or Temporary Manager must be on duty at all times 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,
- 10. A minimum to two COA qualified, and clearly uniformed, Security personnel, must be duty from 10.00pm to close every Friday and Saturday night and other busy nights.**
11. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises,
12. The Licensee must display:
- At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - 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;
 - A copy of the licence attached to the premises so as to be easily read by persons attending the premises.

DATED at Paihia this 11th of June 2025



Murray Clearwater
Commissioner
For the Far North District Licensing Committee

NOTE

Sections 152 to 155 of the Act relating to the right to appeal this decision are in effect. This decision has no effect for 10 working days from the date on which a copy this decision is given to the applicant and the other parties.