

# **SOUTH WAIRARAPA DISTRICT COUNCIL**

**20 SEPTEMBER 2017**

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## **AGENDA ITEM D5**

### **ANNUAL RETURN ON DISTRICT LICENSING COMMITTEE OPERATIONS FOR SOUTH WAIRARAPA**

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#### **Purpose of Report**

To inform Councillors of the content of the annual report on the operation of the District Licensing Committee (DLC) that has been submitted to the Alcohol Regulatory and Licensing Authority (ARLA).

#### **Recommendations**

Officers recommend that the Council:

- 1. Receive this report to ARLA covering the operational period from 1 July 2016 to 30 June 2017*

## **1. Executive Summary**

Under the Sale and Supply of Alcohol Act 2012, an annual report on the functions of a territorial authorities DLC must be provided to ARLA.

The general format of the report is outlined by ARLA in guidance notes. It includes commentary on operations and also a section to make comments on the effectiveness of the legislation. This late option was utilised this year to inform ARLA of the inconsistencies between how different DLCs view the requirement for alcohol licenses when unlicensed premises are used for the consumption of alcohol. Further guidance on this issue has been requested.

## **2. Discussion**

Under the Sale and Supply of Alcohol Act 2012 an annual report on the functions of the DLC must be provided to ARLA.

The annual report template that ARLA provides for this function consists of sections 1 through 6 and covers the following:

1. DLC workloads
2. DLC initiatives
3. Local Alcohol Policy

4. Legislation
5. Any other matters the TA wishes to draw to the attention of ARLA
6. Statistical information

The report covers the period ending 30 June 2017 and therefore the information provided in the Local Alcohol Policy (section 3) is now outdated. All appeals on the draft local alcohol policy have been settled and ARLA has given approval of the draft local alcohol policy. There are still however secondary processes to go through before it is finally able to be made operative. These are underway.

As already indicated, ARLA has been notified of "contentious" issues surrounding licenses for private functions and the widely varying approaches of different DLCs. A recent case before the SWDC DLC raised a complaint as to how a particular private function was handled. An independent legal view was sought and this verified the approach of the DLC. This matter is covered in further detail in the ARLA Annual Report (Appendix 1).

### **3. Conclusion**

The ARLA annual report has been submitted to ARLA and officers recommend that the Council receive this report.

### **4. Appendices**

Appendix 1 – ARLA Annual Report

Prepared by: Shane Sykes, Team Leader Environmental Services  
Reviewed by: Murray Buchanan, Group Manager Planning and Environment

# **Appendix 1 – ARLA Annual Report**



# **TERRITORIAL AUTHORITY ANNUAL REPORT**

## **South Wairarapa District Council**

For the period 1 July 2016 to 30 June 2017

### **INTRODUCTION**

Section 199 of the Sale and Supply of Alcohol Act 2012 requires that the territorial authority shall prepare and send to the licensing authority a report of the operations and proceedings and operations of its licensing committee during the year.

South Wairarapa District Council has one District Licensing Committee

### **1. OVERVIEW OF THE AGENCYS WORKLOAD**

#### **a) South Wairarapa DLC structure and personnel**

DLC Chairperson is Commissioner Julie Riddell

DLC Deputy Chairperson is Councillor Margaret Craig

The three Wairarapa Councils, Masterton, Carterton and South Wairarapa District Council have a combined list of seven persons jointly approved to be list members of each of the territorial authorities licensing committees.

List members of the DLC are:

Don Adams: Judicial JP, Farmer, Conservation Board

Greg Ariell: ALAC locally, regionally & nationally

Andrew Beck: Barrister specialising in civil litigation

Bruce Farley: ex NZ Police, former community constable and sergeant

Jessie Hunt: Barrister working in family law and mediation, acting for families

Damien Pivac: Lecturer, Bachelor of Youth Development at WELTEC

Catherine Rossiter-Stead: Former College Dean and trustee of Wellington Free Ambulance

Secretary: Paul Crimp Chief Executive Officer

Administration: One full-time employee provides part-time administration assistance for all administrative functions

Secretarial functions: One part-time committee secretary to assist with publishing decisions

Licensing Inspectors: Two inspectors: Environmental Health Officer (EHO) and Team Leader Environmental Services, who has been appointed as Chief Licensing Inspector.

The Council has passed a resolution to appoint Councillor Margaret Craig as the deputy chairperson. This appointment has been given for the same term as the extended appointment of the Chairperson (30 June 2018).

The appointments of the DLC List Members were also extended to 30 June 2018 to allow for the Provisional Local Alcohol Policy (PLAP) to be determined and finalised during their appointment period.

Council has delegated to the Manager Planning and Environment and Chief Licensing Inspector the powers under regulation 5 of the Sale and Supply of Alcohol (Fees) Regulations 2013 to reduce fees.

**b) Staff training undertaken relating to the Sale and Supply of Alcohol Act 2012**

The two licensing inspectors attended the NZILLI conference in September 2016. The EHO staff member who attended this conference has since moved on from employment with Council.

**c) Noticeable increase or decrease in the Agency's business**

The agency's business load has increased recently after the Chief Licensing Inspector became aware that alcohol was being consumed by people hiring Council's community buildings. The Inspector has instructed other staff that a licence is required for these people to consume alcohol at these sites. More detail on this is provided in section 4 of this report.

**d) Agency Meetings or hearings**

The DLC has had 2 meetings for deciding temporary authorities, with all of these decided on the papers.

**e) Noticeable trends or issues faced by the DLC**

- The DLC is seeing more community resistance to alcohol licensing since ensuring that all non-residential places are licensed for alcohol consumption if Council is aware of the event.
- Council is starting to collect more money from alcohol licensing due to more stringent enforcement of alcohol licensing fees.

## **2. DLC INITIATIVES**

**a) New initiative adopted or tried by the DLC**

Externalised planning and building certificates are allowing for more streamlined licensing processes by only accepting applications that have a these certificates attached.

## **3. LOCAL ALCOHOL POLICY**

South Wairarapa District Council has developed a Local Alcohol Policy with Masterton and Carterton Councils.

The provisional LAP was released for public consultation and submissions heard in October 2014. The provisional LAP was publicly notified in June 2015 and has since been appealed by Foodstuffs NI Ltd, Hospitality NZ Inc. and Progressive Enterprises Ltd. Hearings were scheduled initially for November 2016. The three Councils have since advised the Authority that we would try to resolve the matters with the appellants. Hospitality NZ Inc. has since rescinded their appeal and matters with the supermarket companies are under discussion. The matters in these appeals have been resolved and approval for the PLAP is currently sought from ARLA.

## **4. LEGISLATION**

South Wairarapa District Council has received several complaints due to the way in which it applies the Act with regard to unlicensed premises being used for the consumption of alcohol. One particular case brought this matter to a head when a complaint was received and was followed up with a legal opinion as to how the legislation had been applied incorrectly. This matter is best understood by referring to the documents appended to this report. These documents cover the complaint, Council's view, and an independent legal opinion sought by Council.

For the sake of brevity, the approach taken by the DLC is that any unlicensed premises that are not where a person resides requires a licence if alcohol is to be sold, supplied or consumed at the premises.

This is an issue that is frequently encountered by the Council and is not well understood between different territorial authorities and the community. A quick review of various

Councils' websites will reveal the range of approaches utilised. Guidance from the Ministry or ARLA would be welcomed.

## **5. OTHER MATTERS**

The Territorial Authority has realised that it has not paid the monthly annual fees for the 2016-2017 financial year to the Authority. These fees will be paid immediately and be broken down for each month of the financial year.

## **6. STATISTICAL INFORMATION**

Lists attached at the end of this letter.

## **7. Appendix**

- 1) Legal view supplied by complainant
- 2) Council's interpretation
- 3) Independent legal opinion

Paul Crimp  
Secretary  
South Wairarapa District Licensing Committee



**TERRITORIAL AUTHORITY: South Wairarapa District Council  
ANNUAL RETURN FOR YEAR ENDING: 30 June 2017**

**On-licence, off-licence and club licence applications received:**

Application Type	Number received in Fee Category: Very Low	Number received in Fee Category: Low	Number received in Fee Category: Medium	Number received in Fee Category: High	Number received in Fee Category: Very High
On-licence new	1	4	2	0	0
On-licence renewal	3	7	2	0	0
Off-licence new	1	1	4	0	0
Off-licence renewal	8	4	1	0	0
Club licence new	1	0	0	0	0
Club licence renewal	0	0	0	0	0
<b>Total number</b>	<b>14</b>	<b>16</b>	<b>9</b>	<b>0</b>	<b>0</b>
<b>Total Fee paid to ARLA (GST incl)</b>	<b>\$241.50</b>	<b>\$552.00</b>	<b>\$465.75</b>	<b>\$0.00</b>	<b>\$0.00</b>

**Annual fees for existing licences received:**

Licence Type	Number received in fee category: Very Low	Number received in fee category: Low	Number received in fee category: Medium	Number received in fee category: High	Number received in fee category: Very High
On-licence	5	24	15	0	0
Off-licence	32	4	18	0	0
Club licence	11	0	0	0	0
<b>Total number</b>	<b>49</b>	<b>28</b>	<b>33</b>	<b>0</b>	<b>0</b>
<b>Total Fee paid to ARLA (GST incl)</b>	<b>\$845.25</b>	<b>\$966.00</b>	<b>\$1,707.75</b>	<b>\$0.00</b>	<b>\$0.00</b>

**Managers' certificate applications received:**

	Number received
Manager's certificate new	55
Manager's certificate renewal	78
<b>Total number</b>	<b>133</b>
<b>Total Fee paid to ARLA (GST incl)</b>	<b>\$3,823.75</b>

**Special licence applications received:**

	Number received in category: Class 1	Number received category: Class 2	in	Number received category: Class 3	in
Special licence	21	9		8	

**Temporary authority applications received:**

	Number received
Temporary authority	8

**Permanent club charter payments received:**

	Number received
Permanent club charter payments	0



**South Wairarapa District Council  
2016-2017 Annual Return**

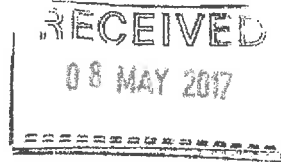
**Alcohol Regulatory and Licensing Authority**

**Appendix**

FEATHERSTON LAW

4  
The Chief Executive  
South Wairarapa District Council  
19 Kitchener Street, Martinborough 5711  
PO Box 6, Martinborough 5741

4 May 2017



CC: Her Worship the Mayor, Viv Napier

Dear Sir,

*Murray, Can we please discuss  
to Paul*

### **Interpretation of the Sale and Supply of Alcohol Act 2012: Private Functions**

I act for Mrs Lesley Wardle who has instructed me to bring to your attention the misapplication of the Sale and Supply of Alcohol Act 2012 (the Act), by your staff.

By way of background, Mrs Wardle is a member of the Jubilee Committee of St Teresa's and St Anthony's Catholic Parish of the Wairarapa. The Committee is organising a private function in the ANZAC Hall, Featherston, to celebrate the jubilee of Father Don Morrison's ordination on 22 July 2017. Only invited members of the combined parish will attend and will not be charged a fee to do so. A meal is provided and wine will be served with the meal. Alcohol will not be sold. Your environmental services staff (acting as a District Licensing Committee) have determined that this function requires a special licence under the Act, presumably because alcohol is being supplied. This is a misinterpretation of the legislation.

#### ***The Purpose of the Act***

The main difference between the Act and its predecessor, the Sale of Liquor Act 1989, is that the current Act is stated purposively with the object that "...the sale, supply and consumption of alcohol is undertaken safely and responsibly." The previous legislation sought 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, so far as that can be achieved by legislative means."<sup>1</sup>

While the current Act is couched in outcome-focused terms, it retains in many respects the wording and tenor of the earlier legislation. The main changes brought about by the new Act are: parental consent for minors to be supplied with alcohol; dairies and convenience stores no longer able to sell alcohol; permitted hours of trading for on and off-licence premises restricted; and local authority discretion to make policies on opening hours.

In both Acts, the term "sale and supply" is used conjunctively in the context of a commercial transaction between a licensee and a customer. It does not refer to two separate activities which may be severally regulated by local authorities. A person may serve alcohol to a friend while entertaining in their own home; there is no "sale" but there is a "supply" of alcohol. No reasonable

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<sup>1</sup> Section 4 Sale of Liquor Act 1989

person would seriously suggest that such generosity is an action requiring the issue of a special licence under s 22 of the Act.

Section 22 itself shines light on the distinction between “sell” and “supply” when used together and when used separately. In subsection (2) a “licensee can *sell and supply* alcohol, for consumption there, to people attending an event described in it.” This compound term is repeated in subsection (3) also in the context of supplying alcohol by way of sale for consumption on the premises. Where the words are to be interpreted separately, the Act is clear about it; in subsection (5) an off-site special licensee can “sell” alcohol for consumption elsewhere, and in subsection (6) the licensee can “supply” alcohol free, as a sample, for consumption on the premises. Used together, the words “sell and supply” mean the sale of alcohol for consumption on licensed premises. This definition is consistent with the scheme and purpose of the Act and avoids absurd outcomes when components of the term are interpreted disjunctively.

The Act is also clear about situations where “supply” of alcohol may be considered separately by use of the term “sale or supply”. There are 68 references in the Act to “sale or supply” of alcohol, and these are in contexts where a sale or supply is exempted from the Act, or in the rules applicable to clubs, messes and canteens where alcohol could be supplied otherwise than by sale. Supply alone is an offence if made to an intoxicated person or a minor. These exceptions quite clearly set out the circumstances in which the Act regulates the “supply” of alcohol in isolation. However, the word “or” is not found in the provisions of the Act relating to the *requirement* for special licences.

The Provisional Wairarapa Local Alcohol Policy (the LAP), when defining an on-site special licence states that “... the licensee can sell or supply alcohol there to people attending an event...”. This, in my view, is a misreading of s 22 of the Act. Under s 22(3), the holder of a special licence may indeed simply supply alcohol but it is a misinterpretation of the section to reason that any person who supplies alcohol requires a licence to do so. The purpose of the Act is to establish a system of control over the “sale and supply” of alcohol. The control is by way of licence and these are applicable only to persons who “sell and supply” alcohol. This is clear from s 3 of the Act:

### 3 Purpose

- (1) The purpose of Parts 1 to 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.

[Emphasis added]

The Act does not require a person who is simply going to supply alcohol to guests at a private function to hold any sort of licence. Once equipped with a special licence, the licensee may indeed sell or supply alcohol, but supply is a feature of the licence, not a function that requires a licence of itself.

### ***Application of the Law to Father Don's Jubilee Celebration***

Father Don's Jubilee Committee is an ad hoc group formed for the purpose of celebrating the 60<sup>th</sup> anniversary of a much-loved and respected parish priest's ordination. The committee is part of an ecclesiastical grouping known as St Teresa's and St Anthony's Faith Community of the Catholic Parish of the Wairarapa. It is not a body corporate, neither is it a club as defined in s 5 of the Act. Alcohol is not for sale at the event, nor is any entry fee required nor koha or donation invited expressly or by inference. Attendance is by invitation only and these have been extended to two Roman Catholic Cardinals, three Bishops and various ministers from a range of faiths in addition to Father Don's family, friends and adult parishioners. It is clearly a private function.

To require a special licence to be held in order for the event to go ahead is no different from requiring every householder to have such a licence before offering alcohol to guests in their own home. Your staff may think that this is what the Act requires, or that it is in their powers to exercise such discretion. The Act does no such thing and does not confer such wide powers on a District Licensing Committee. If the Licensing Committee have taken guidance from the LAP alone then this has led to an outcome which is both unreasonable and inconsistent with the Act insofar as it extends the licensing requirement beyond the legislative framework.

This misconception (that supply alone, regardless of whether a function is private, requires a licence) has been repeated in the terms and conditions set by the Council for the hire of the ANZAC Hall:

- 6.1 Any use of this facility requires an application for a special licence if alcohol is to be *sold, supplied or consumed* on the premises. A special license (sic) application must be received by the South Wairarapa District Licensing Committee at least 20 working days prior to the day of use for the facility.

### ***Administrative Matters***

My client has endeavoured to cooperate with your staff to date and has submitted several draft applications for a special licence. What has precipitated her instructions to me however, is the difficulty she has encountered in complying with their requirements:

- The fee of \$207 and a \$300 bond,
- The stated inability of the Council to deduct from the fee an amount of \$37.50 held by the Council to the credit of Mrs Wardle,
- The reaction of staff to information provided under Section 6 of the Application form:  

**Describe any steps that will be taken to promote the responsible consumption of alcohol. "Wine will be distributed by servers – not self-help – standard measures. Guest list and nature of the celebration should encourage moderation and respect."**

However, SWDC staff found the second sentence of this information "unhelpful" and it was removed,

- Information said to be sufficient and acceptable when the application was first submitted in relation to the Menu and Beverage List included a copy of a letter to parishioners included with their invitations. This was later held to be unacceptable at the second submission and referred to as "Promotional Material",
- With the application form Mrs Wardle attached a floor plan of the ANZAC Hall downloaded from the SWDC website. She has been asked by your staff to "provide a site plan that includes a scale/measurements". Mrs Wardle has requested this information from the Amenities section of SWDC but it has not yet been provided, and
- Mrs Wardle has also been asked to "... provide a map showing the street address/location of the premises". This, for the ANZAC Hall which is SWDC property!

While your staff have been courteous and as helpful as they can within their governing policies, Mrs Wardle has been frustrated by the imposition of an unreasonable requirement for what is clearly a private function, and the inflexible administration of the application process. The interpretation adopted by the District Licensing Committee (and the LAP, to the extent that it is the source of this approach) is, in my view, unreasonable in the light of the Act. The LAP itself states:

For the purposes of this Local Alcohol Policy, reasonable is defined as a position that the average Wairarapa resident would perceive to be fair, sensible and balanced.

***Outcome sought***

My client asks that:

- The Council and its District Licensing Committee adopts a fair, sensible and balanced approach to Father Don's Jubilee and confirm that a special licence is not required.
- In the alternative, and without prejudice to the foregoing, the immediate issue of a special licence for Father Don's Jubilee function or an undertaking that resubmission of her application will be accepted.
- An apology be given for the stress and anxiety that she has suffered because of the District Licensing Committee's approach to such events.

May I have your reply at your earliest convenience.

Yours faithfully



Ross Vickery

Principal



12 May 2017

Mark Holland  
Hazelton Law  
Level 29 Plimmer Towers  
2-6 Gilmer Terrace  
Wellington 6145

**Opinion on the Sale and Supply of Alcohol Act 2012: Private functions**

Dear Mark,

We have received a complaint from a member of the public who has sought a legal opinion on a situation where Council has advised that a special licence is required. This opinion is different to Council's current understanding of the Act and we ask for legal guidance on this matter.

There does not appear to be a clear understanding of this matter across territorial authorities or guidance issued by the Alcohol Regulatory and Licensing Authority or via case law that we have uncovered.

We ask that you look into these matters taking into consideration the legal opinion provided to us from the complainant, Council's interpretation and any other relevant matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shane Sykes', written over a light blue horizontal line.

Dr Shane Sykes  
Team Leader Environmental Services

Questions in point:

- 1) Do private functions where alcohol is **supplied** require licensing?
- 2) Does the above also apply to Council-owned buildings available for the public to hire?

The Sale and Supply of Alcohol Act 2012 states that the purpose of the Act is to place a new system of control over the sale and supply of alcohol that is reasonable and administered in a manner that helps achieve the object of the Act. Furthermore the purpose is to reform the law relating to the sale, supply and consumption of alcohol so that it achieves the object of the Act.

The object of the Act is to:

- The sale, supply, and consumption of alcohol should be undertaken safely and responsibly.
- Additionally, the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- The harm caused by inappropriate or excessive consumption of alcohol includes crime, damage, death, disease, disorderly behaviour, illness, or injury to individuals, society in general, or the community.

Sections 14 through 22 of the Act, describe the types of licences that exist and what these licences allow to occur on the premises they are issued for.

Section 22 is of particular interest as this discusses special licences, which may be either an on-site or off-site special licence. The difference between the two being whether alcohol can be consumed on the same premises from which the alcohol was obtained (sold or supplied) or whether it must be consumed somewhere else.

Section 22(2) states that on the premises at which an on-site special licence is held for, the licensee can sell and supply alcohol, for consumption on those premises, to people attending an event described in it. This section was amended in December 2016 from "sell or supply" alcohol to "sell and supply". It is not clear why the amendment happened and whether it was addressing our concerns. Our principal concern with this section is whether "sell and supply" is to be applied conjunctively or separately. That is, does supply only happen once a "sale" has occurred or can supply occur without sale.

"Sell" is defined in the Act as:

*sell, in relation to alcohol, includes—*

- (a) charge a fee (however described, and whether an entry fee, a ticket price, or a payment of any other kind) for an alcohol-inclusive matter; and*
- (b) require, ask for, or (expressly or by implication) suggest the making of a koha or other donation (whether to be made before, after, or during the entry event, activity, or function concerned) in relation to an alcohol-inclusive matter.*

"Alcohol-inclusive matter" is defined in the Act as:

*alcohol-inclusive matter means any of the following:*

- (a) entry into any premises where alcohol is or is to be supplied free:*
- (b) participation in or presence at or during any event, activity, or function held or to be held on any premises where alcohol is or is to be supplied free:*
- (c) carriage on, or participation in or presence at or during any event, activity, or function held or to be held on, a conveyance where alcohol is or is to be supplied free*

While Council believes that Father Don's Jubilee Celebration is an alcohol-inclusive matter, we do not believe that a sale is occurring.

Council notes that a "sale" typically results in transfer of currency for the provision of a good or service. As such, common understanding of the word is that supply is part of sale. We consider supply to be a separate action and thus our interpretation of section 22(2) is that sale and supply are separate actions both of which are regulated under a special licence. We note the licensee must do the supply of alcohol under our interpretation of section 22(2) and not under a BYO arrangement. The arrangements for Father Don's Jubilee celebration are that alcohol is supplied by the event organiser, which we believe meets the requirements of s.22(2).

Furthermore, section 24(1)(a) states that a licensee does not have an obligation "to deliver, sell, or supply alcohol at any time to any person". We believe that if section 22(2) required sale and supply to be conjunctively, then the application of 24(1)(a) would become nonsensical. That is, if a sale occurred then supply must also occur, which would render section 24(1)(a) meaningless in relation to the supply of alcohol.

Council further considers that a special licence is required for private functions due to the offence provisions in the Act. Specifically section 235, which creates an offence for unlicensed premises being used as a place of resort for the consumption of alcohol:

*(1) A person who is the occupier, or has or takes part in the care, management, or control, of any unlicensed premises commits an offence if that person allows those premises to be kept or used as a place of resort for the consumption of alcohol.*

*(2) A person who commits an offence against subsection (1) is liable on conviction to a fine of not more than \$20,000.*

*(3) Subsections (1) and (2) do not apply to the consumption of alcohol—*

*(a) by any person on any premises on which that person resides, whether that person is the occupier of the premises or not; or*

*(b) supplied to any person by way of gift by any person who resides on the premises on which the alcohol is consumed.*

*(4) A person who acts as, or as if he or she were, an occupier or a person having any part in the care, management, or control of any premises is to be treated as an occupier of the premises, but without affecting the liability of any other person.*

*(5) Premises may be treated as being kept or used as a place of resort for the consumption of alcohol even though they are open only for the use of particular people or particular classes of person, and not to all people who wish to use them.*

The property at which Father Don's Jubilee Celebration are to occur on are the ANZAC Hall, owned by SWDC. This is not a property at which people reside and Council therefore considers that subsection one may apply to the event. If this event is licensed for supply and consumption to occur on the premises, then section 235 cannot apply. Council interprets section 235 to be quite clear. That is, any event that includes alcohol and does not occur at premises where people reside, requires an alcohol licence or an offence is committed.

Council believes that sections 22 and section 235, when read in concert show that alcohol supply at functions occurring on properties where people do not reside are required to have an alcohol licence. By extension, this must therefore apply to Council-owned properties where people do not reside, such as community halls like ANZAC hall.



18 May, 2017

Shane Sykes  
South Wairarapa District Council

Dear Shane,

**Sale and Supply of Alcohol Act 2012**

1. You have asked us two questions in relation to the Sale and Supply of Alcohol Act 2012 (“the Act”):
  - (a) Do private functions where alcohol is supplied require licencing; and
  - (b) Does the above apply to Council-owned buildings available for the public to hire?

**Background**

2. The Jubilee Committee of St. Teresa’s and St. Anthony’s Parish of the Wairarapa are organising a private function to celebrate the jubilee of Father Don Morrison’s ordination (“the Event”). The Event is to take place in the ANZAC Hall, Featherston (“the Hall”). The Hall is owned by South Wairarapa District Council (“the Council”) and will be hired for the Event.
3. Only invited members of the parish will attend the Event along with invited guests from the clergy. The Event will involve a meal with wine being served to accompany.
4. The solicitor for one of the members of the jubilee committee wrote to the Council. This letter suggests that the Event does not require a special licence based on an analysis of section 22 of the Act.

**Comment on section 22**

5. Determining whether the Event requires a special licence by analysing section 22 of the Act is not the correct approach. Section 22 provides what is permitted under a special licence. It has no provisions or information as to when a special licence is required.

**Section 235 of the Act**

6. For the reasons set out below, our opinion is:
  - (a) “Private functions”, including those held in Council owned buildings available for hire, are within the ambit of the Act because it is purpose and location of the function which is determinative irrespective of the fact that the function is private; and

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2-6 Gilmer Terrace  
PO Box 5639  
Wellington 6145  
+64 4 472 7570  
hazelton.co.nz  
swdc1

- (b) The Event requires a special licence because if it does not have one, the organisers commit an offence under section 235(1) of the Act. For your reference, section 235 is set out in full at the end of this letter.
7. We consider the elements of the offence in turn below, but in summary an offence would be committed because:
- (a) The organisers of the Event will be occupiers of the Hall;
  - (b) The Hall is an unlicensed premises; and
  - (c) The Hall will be used as a place of resort for the consumption of alcohol because:
    - (i) The consumption of alcohol will be a substantial purpose of the Event; and
    - (ii) A building hired for such a purpose, even on a one-off basis, will still qualify as a place of resort for that purpose.

#### Are the organisers of the Event occupiers?

8. The organisers of the Event are hiring the Hall. Although there is no definition of occupier in the Act, there is little doubt that, under section 235, the organisers of the Event are occupiers of the Hall during the period of hire.
9. If there is any doubt on this point, the matter of *Police v MacDonald*<sup>1</sup> further considered this element of the offence. The defendant “*was not an occupier of the property in the sense that he was not the owner or tenant of it*”. Notwithstanding this, the defendant was found to be the occupier in accordance with section 235(4) of the Act. This subsection provides that “*if a person acts as if they are an occupier or having any part in the care, management, or control of the premises then they are to be treated as an occupier of the premises*”.
10. The organisers of the Event involves catering a meal on an invitation only basis. Therefore, for the duration of the hire, they will have control of the premises and will be occupiers under section 235 (4).

#### Unlicensed premises

11. There is no doubt that the Hall is unlicensed.

#### Kept or used as a place of resort for the consumption of alcohol

12. It is immaterial that the consumption of alcohol is not the main purpose of the event. “*Premises are used for the consumption of (intoxicating liquor) if it is a substantial*

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<sup>1</sup> *Police v MacDonald* [2016] NZDC 2371

*although not necessarily the main purpose of the persons resorting thereto and such purpose as actively encouraged or facilitated by the occupier*<sup>2</sup>.

13. The consumption of alcohol at the Event is a substantial purpose of the Event.
14. There is no “*reason a why a building cannot be hired for a single day or a single night for some social purpose involving the consumption of liquor and still qualify as being used on that occasion as a place of resort for that purpose*”<sup>3</sup>. Applying this, *Police v MacDonald* found that a “one off party” can establish the premises are being used as a place of resort.
15. We conclude that the Hall will be used as a place of resort for the consumption of alcohol because:
  - (a) The consumption of alcohol will be a substantial purpose of the Event; and
  - (b) A building hired for such a purpose, even on a one-off basis, will still qualify as a place of resort for that purpose.

**Does the Event fall under any exceptions?**

16. Subsection 235(3) of the Act provides exceptions to this section for residents and supply by gift by residents on unlicensed premises. This exception covers entertaining guests at home (a person supplying alcohol at a dinner party or barbeque at their home does not commit an offence). This exception has also been held to extend Motel guests.
17. Neither the organisers nor the attendees of the Event reside in the Hall, therefore the exception at subsection 235(3) of the Act does not apply.

Yours sincerely,



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<sup>2</sup> *Browne v Police* [1962] NZLR 801 (SC)

<sup>3</sup> *Police v Clarke* [1977] 1 NZLR 621 (SC)

**Sale and Supply of Alcohol Act 2012****235 Use of unlicensed premises as place of resort for consumption of alcohol**

1. A person who is the occupier, or has or takes part in the care, management, or control, of any unlicensed premises commits an offence if that person allows those premises to be kept or used as a place of resort for the consumption of alcohol.
2. A person who commits an offence against subsection (1) is liable on conviction to a fine of not more than \$20,000.
3. Subsections (1) and (2) do not apply to the consumption of alcohol—
  - (a) by any person on any premises on which that person resides, whether that person is the occupier of the premises or not; or
  - (b) supplied to any person by way of gift by any person who resides on the premises on which the alcohol is consumed.
4. A person who acts as, or as if he or she were, an occupier or a person having any part in the care, management, or control of any premises is to be treated as an occupier of the premises, but without affecting the liability of any other person.
5. Premises may be treated as being kept or used as a place of resort for the consumption of alcohol even though they are open only for the use of particular people or particular classes of person, and not to all people who wish to use them.

License No	Licensee Name	Business Name	Business Address 1	Business Address 2	Expiry Date
TA0025	2 Short Whites 2017 Limited	2 Short Whites	74 Main Street	Greytown	temporary on
ON1145	Wairarapa Vintners Limited	Alana Wines	50 Kitchener Street	Martinborough	25/11/17
OF1145	Wairarapa Vinters Limited	Alana Wines	50 Kitchener Street	Martinborough	9/12/17
OF1127	Alexander and Finucane Vineyards Limited	Alexander Vineyard	101 Hinakura Road	Martinborough 5784	26/11/19
ON1146	Ant North Limited	Ant North Limited	19 Fitzherbert Street	Featherston	13/01/18
ON1128	David and Gaz Investments Ltd	Aroma India	74 Main Street	Greytown	30/07/19
OF0794	John Phipps Trustee of Phipps Family Trust	Ashwell Vineyards	23 Dublin Street West	Martinborough	31/11/19
OF0143	Ata Rangi Ltd	Ata Rangi Ltd	Puruatanga Road	Martinborough	12/03/20
OF1120	Huangarua Terrace Vineyard Ltd	Big Sky Wines	415 Te Muna Road	Martinborough 5781	18/06/19
ON1151	Brac and Bow Partnership	Brac and Bow	29 Fitzherbert Street	Featherston	under application
OF1130	Telfer Properties (Bracknridge)	Bracknridge	62 White Rock Road	Martinborough	9/09/17
ON1141	Telfer Properties Martinborough	Bracknridge	62 White Rock Road	Martinborough 5782	12/08/20
OF0785	James Brodie & Catherine Brodie	Brodie Estate	142 Dublin Street	Martinborough	12/03/19
ON1130	James Sheldon Brodie & Catherine Ann Mackay Brodie	Brodie Estate	142 Dublin Street	Martinborough 5711	8/10/19
ON0711	Malia Ltd	Cafe Medici	9 Kitchener Street	Martinborough	18/09/18
ON1104	Old Vine Investments Limited	Cambridge Road Vineyard	32-34 Cambridge Road	Martinborough	22/08/17
OF0876	Old Vine Investments Limited	Cambridge Road Vineyard	32 Cambridge Road	Martinborough	5/10/17
ON1136	Feed Up Too Ltd T/A Careme Cooking Classes	Careme Cooking Classes	96 Kitchener Street	Martinborough 5711	21/01/19
ON0518	Jellicoe Enterprises Ltd	Circus	PO Box 300	Martinborough 5741	30/09/18
OF1114	Baptist Sieber	Colombo Winegrowers	107 Todds Road	Martinborough	19/12/18
ON1119	Baptist Sieber	Colombo Winegrowers	107 Todds Road	Martinborough	19/12/18
OF0387	Coney Wines Limited	Coney Wines	107 Dry River Road	Martinborough	17/11/19
ON0387	Coney Wines Ltd	Coney Wines	107 Dry River Road	Martinborough	17/11/19
ON0941	Zoom No 56 Limited	Cool Change Bar & Eatery	Memorial Square	Martinborough 5711	15/11/18
OF0563	Pirinoa Vineyard Limited	Croft Wines	59 Kitchener Street	Martinborough	21/12/17
ON1109	Slow Burner Ltd	Cuckoo Cafe	128 Main Street	Greytown	9/05/18
OF1117	DV and Company Ltd	Devotus Vineyard	210 Regent Street	Martinborough	5/05/19
OF1126	D R Wines Limited	Dry River Wines	90 Puruatanga Road	Martinborough	29/09/19
TA0024	Empire Hotel Featherston Limited	Empire Hotel	35-37 Johnston Street	Featherston	10/10/2017
TA0023	Empire Hotel Featherston Limited	Empire Hotel	35-37 Johnston Street	Featherston	10/10/17
OF1109	The Escarpment Vineyard	Escarpment Vineyard	275 Te Muna Road	Martinborough	13/08/18
ON1125	H & L Trading Limited	Everest Cafe and Bistro	17 Fitzherbert Street	Featherston	17/12/19
CL1002	Featherston Bowling Club Inc	Featherston Bowling Club Incorporated	66 Fox Street	Featherston	5/06/19
CL0194	Featherston Golf Club Inc	Featherston Golf Club	PO Box 76	Featherston	25/07/18
CL1001	Featherston Rugby Football Club	Featherston Rugby Football Club	Johnson Street	Featherston 5710	31/03/19
OF0994	Open All Hours (Greytown) Ltd	Freshchoice Greytown	P O Box 54	Greytown 5742	20/06/19
OF1129	Grava Wines Limited	Grava Wines Limited	815 Lake Ferry Road	Martinborough 5781	18/03/20
CL0105	Greytown Bowling Club	Greytown Bowling Club	55 East Street	Greytown 5712	26/09/17
CL0023	Greytown Rugby Football Club	Greytown Rugby Football Club	PO Box 79	Greytown	19/02/18
ON1135	Trust House Limited	Gusto Bakery and Cafe	Corner Fitzherbert and Daniell Street	Featherston	16/12/19
OF0817	Hamden Estate Limited	Hamden Estate	214 Dry River Road	Martinborough	28/04/20
OF0286	M M Haythornthwaite	Haythornthwaite Wines	PO Box 7	Martinborough 5741	4/12/17
OF0758	Hirankumar & Hemlata Patel Partnership	Jellicoe St Four Square	27 Jellicoe Street	Martinborough	26/08/18
OF0584	Julicher Estate	Julicher Estate	301 Te Muna Road	Martinborough	27/06/19
OF1113	Murdoch James Estate Wines Limited	Luna Estate	133 Puruatanga Road	Martinborough	5/12/17
ON1118	Murdoch James Trustees Limited	Luna Estate	179 Puruatanga Road	Martinborough	5/12/17
ON1127	Milu Limited	Main Street Deli	88 Main Street	Greytown	30/10/19
ON0052	Margrain Vineyards Ltd	Margrain Vineyard	P O Box 97	Martinborough 5741	21/10/17
OF1103	Margrain Vineyards Ltd	Margrain Vineyard	Cnr Ponatahi & Huangarua Road	Martinborough	2/09/19

OF0052	Margrain Vineyards Ltd	Margrain Vineyard	Huangarua Road	Martinborough	21/06/20
CLO022	Martinborough Bowling Club	Martinborough Bowling Club	PO Box 62	Martinborough 5741	6/03/19
ON1112	Martinborough Brewery Ltd	Martinborough Brewery	10 Ohio Street	Martinborough	8/01/19
OF1110	Martinborough Brewery Limited	Martinborough Brewery (Ohio Street)	10 Ohio Street	Martinborough	8/01/19
CLO289	Martinborough Golf Club Inc	Martinborough Golf Club	Hinakura Road	Martinborough	8/08/18
CLO074	Martinborough Lawn Tennis Club Incorporated	Martinborough Lawn Tennis Club	Oxford Street	Martinborough	16/12/18
CLO069	Martinborough Rugby Football Club	Martinborough Rugby Football Club	PO Box 35	Martinborough 5741	30/05/19
CL1003	Martinborough Squash Club Inc	Martinborough Squash Club Inc	Todds Road,	Martinborough	18/03/20
OF0151	Foley Family Wines Ltd	Martinborough Wine Merchants	6 Kitchener Street	Martinborough	10/10/18
OF1112	Cowen Davis Limited	MBJ Trading Limited	57 Fox Street	Featherston	11/09/18
ON1137	Messines Bar and Restaurant	Micro Bar	14C Ohio Street	Martinborough	13/06/20
ON1121	Perrinwood Partnership	Murlea Rise	50 Princess Street	Martinborough 5711	11/02/19
OF0051	W B & S A Brown Limited	Murdoch James Estate	284 Dry River Road	Martinborough	9/05/20
OF0026	Murdoch James Estate Wines Limited	Murdoch James Estate	86-86a Puruhanga Road	Martinborough	28/03/18
ON1123	Tirohana Country Estate Limited	Muskoka New Zealand Limited	41 New York Street	Martinborough	11/03/18
OF1119	Canoe Wines Management Limited	Nga Waka	3109 Cape Palliser Road	Martinborough	8/05/19
CL1004	Ngawi Ratepayers Association	Ngawi Ratepayers Association	1/8 Kitchener Street	Ngawi	2/12/17
ON1132	Oh My Goodness Limited	Oh My Goodness	Jellicoe Street	Martinborough	21/10/19
OF1118	Martinborough Grocery Limited	Pain and Kershaw Grocery	PO Box 121	Martinborough	1/04/18
OF0056	Palliser Estate Wines of Martinborough Ltd	Palliser Estate Wines of Martinborough	96 Kitchener Street	Martinborough	16/06/20
ON1144	Palliser Estate Wines of Martinborough Ltd	Palliser Estate Wines of Martinborough Limited	52 New York Street West	Martinborough	14/10/17
ON0557	Parehua (Martinborough) Holdings Limited	Parehua Martinborough Country Estate	3 Kitchener Street	Martinborough	6/08/20
ON1117	Division Ltd	Pinocchio	2774 Lake Ferry Road	Martinborough	20/10/18
OF0500	Pirinoa Country Store Limited	Pirinoa Country Store Limited	91 Puruatanga Road	Featherston 5772	22/04/18
OF1001	Poppies Martinborough Limited	Poppies Martinborough	91 Puruatanga Road	Martinborough	7/11/19
ON1001	Poppies Martinborough Limited	Poppies Martinborough	47 Kitchener Street	Martinborough	7/11/19
OF0374	J A Porter	Porters Pinot	Memorial Square	Martinborough	23/09/18
OF0485	Trust House Ltd	Pukemanu Tavern	Memorial Square	Martinborough	22/04/18
ON0485	Trust House Ltd	Pukemanu Tavern	Memorial Square	Martinborough	22/04/18
TA0026	Salute Restaurant 2017 Limited	Salute	83 Main Street	Greytown	temporary on
OF0291	Schubert Wines Limited	Schubert Wines	57 Cambridge Road	Martinborough	23/12/18
OF1125	Hygge Limited	Stonescutter	139 Todd's Road	Martinborough	5/08/19
ON1142	Hygge Limited	StoneCutter Vineyard	139 Todds Road	Martinborough	19/09/17
OF1132	Open All Hours (Featherston) Limited	Super Value Featherston	43 Fitzherbert Street	Featherston	29/06/18
OF0948	Foley Family Wines NZ Limited	Te Kairanga Wines	PO Box 52	Martinborough 5741	12/12/18
OF1004	Judy Dell & Griff Page Partnership	Te Maire Rise	PO Box 70	Martinborough 5741	13/09/19
OF1122	Redbank Estate Ltd	Te Muna Valley Wines	224 Te Muna Road	Martinborough	6/08/19
OF0375	John Douglas & Katherine Gouldstone	TeHera Estate	226 Te Muna Road	Martinborough	26/09/19
OF1131	Open All Hours Featherston Limited	The Bottle-O Featherston	43 Fitzherbert Street	Featherston	29/06/18
ON0318	South Wairarapa Wines Limited	The Cabbage Tree Vineyard	52 Kitchener Street	Martinborough	13/10/18
OF1102	South Wairarapa Wines Limited	The Cabbage Tree Vineyard	52 Kitchener Street	Martinborough	13/08/20
ON1150	The Dragon In(n) Partnership	The Dragon In(n) Featherston	43 Fitzherbert Street	Featherston	under application
OF1124	The Quiet Man Limited	The Greytown Hotel	33 Main Street	Greytown	21/08/19
ON1133	The Grove Limited	The Grove Deli & JT's BBQ and Smokehouse	2477 State Highway 2	Greytown 5794	23/10/19
ON1131	The Ferry Limited	The Lake Ferry Hotel	2 Lake Ferry Road	Featherston 5772	30/10/19
ON1143	The Land Girl Limited	The Land Girl Limited	2779 Lake Ferry Road	Featherston	14/10/17
ON1138	Citterio Leases Limited	The Martinborough Hotel	10-12 Memorial Square	Martinborough 5711	24/06/20
ON1126	The Quiet Man Limited	The Greytown Hotel	33 Main Street	Greytown	15/07/19
ON1129	Siam Kitchen Limited	The Siam Kitchen	2-4 Memorial Square	Martinborough	12/10/19
ON1140	Catherine Elizabeth Sullivan	The Tin Hut - Country Local	1512 State Highway 2	Featherston	12/08/17

ON0869	Walhalla 2007 Ltd	The Village Cafe	6 Kitchener Street	Martinborough	13/09/17
OF1134	YGNZ Investment Limited	The White Swan	109 Main Street	Greytown	under application
ON1124	YGNZ Investment Limited	The White Swan	109 Main Street	Greytown	1/05/19
OF1133	Jala Sai Enterprises Limited	Thirsty Liquor Featherston	21 Fitzherbert Street	Featherston	29/06/18
OF1115	Tirohana Country Estate Limited	Tirohana Estate	42 Puruahanga Road	Martinborough 5741	17/12/17
OF0477	Muskoka New Zealand Limited	Tirohana Estate Vineyard	P O Box 233	Martinborough 5741	17/12/17
CL0024	Tuhirangi Rugby Football Club	Tuhirangi Rugby Football Club	289 Yeronga Road, R D 2	Featherston	19/03/19
ON0866	Black Sheep Company (2010) Limited	Turkey Red	53 Main Street	Greytown 5712	8/10/17
OF1105	McBell Holdings Ltd	Vynfields	22 Omarere Road	Martinborough	5/03/18
ON1108	McBell Holdings Ltd	Vynfields	22 Omarere Road	Martinborough	5/03/18
ON1149	Tauherenikau Events Ltd	Wairarapa Racing Club Inc	1496 State Highway 2	Featherston 5773	16/12/17
ON0576	Heldave Limited	Wakelin House	PO Box 102	Greytown	20/03/19
OF0962	Wharekauhau Country Estate Ltd	Wharekauhau Country Estate	Western Lake Road	RD 3	14/12/17
ON0962	Wharekauhau Country Estate Ltd	Wharekauhau Country Estate	Western Lake Road	Featherston 5773	14/12/18
OF1108	William Grace Limited	William Grace	35a New York Street	Martinborough	6/08/18