

[2015] NZARLA PH 64-65

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an appeal pursuant to s.154 of
the Act against a decision of the
Christchurch District Licensing
Committee in respect of premises
situated at 551 Colombo Street,
Christchurch, known as "South
City New World"

AND

IN THE MATTER

of an appeal pursuant to s.154 of
the Act against a decision of the
Christchurch District Licensing
Committee in respect of premises
situated at 41 Bishopdale Court,
Christchurch, known as "New
World Bishopdale"

BETWEEN

J & C VAUDREY LIMITED

First Appellant

AND

BOND MARKETS LIMITED

Second Appellant

AND

**CHRISTCHURCH DISTRICT
LICENSING INSPECTOR**

First respondent

AND

**CHRISTCHURCH MEDICAL
OFFICER OF HEALTH**

Second Respondent

AND

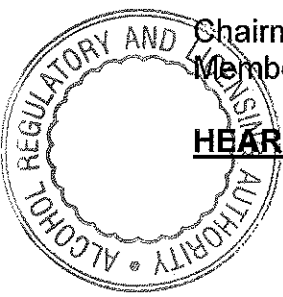
NEW ZEALAND POLICE

Third Respondent

BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY

Chairman: District Court Judge J D Hole
Member: Mr D E Major

HEARING at CHRISTCHURCH between 16 and 18 December 2014



APPEARANCES

Mr M B Couling – for the appellants
 Mr B M Stanaway and Dr H McKenzie – for first respondent
 Mr P J Egden – for second respondent
 Sergeant K Giddens – for third respondent

Section 205 parties:

Mr A W Braggins – for General Distributors Limited
 Mr I J Thain and Ms C D Herbert – for Foodstuffs North Island Limited

RESERVED DECISION OF THE AUTHORITY

Introduction

[1] J & C Vaudrey Limited operates a supermarket situated at 551 Colombo Street, Christchurch known as "South City New World". At the rear of the interior of the premises is a small area devoted to the display of alcohol. Against the rear wall there are the chillers containing beer and similar products. At a right angle to the rear wall three relatively small shelves are devoted to the display of wine. At the end of one of those shelves is a display cabinet which contains wine. The cabinet faces on to a thoroughfare which leads to the checkouts and the exit of the premises.

[2] Bond Markets Limited operates a supermarket situated at 41 Bishopdale Court, Christchurch known as "New World Bishopdale". Its alcohol is displayed in one line of shelves on one side of the premises that runs the entire length of the retail area. At the rear of the premises the shelves face chillers containing dairy products and milk. Closer to the checkouts the shelves containing the alcohol face bakery products and other food items.

[3] In each case the appellants applied to the Christchurch District Licensing Committee (the DLC) for a new on-licence.

[4] In a decision dated 9 June 2014 the DLC granted the application by J & C Vaudrey Limited on the papers. There had been no objections to the application and the reporting agencies did not oppose it. In accordance with s.112(2) of the Act the DLC imposed on the licence a condition describing a single area for the display and promotion of alcohol (the Single Alcohol Area). The Single Alcohol Area described by the DLC varied from that contained in the application and deleted the display cabinet at the end of the shelves containing the wine. As the condition imposed by the DLC was at variance with the application and the applicant had been given no opportunity to comment on the DLC variation, the applicant applied for a re-hearing. The DLC declined the re-hearing application.

[5] On 17 July 2014 the DLC granted the application brought by Bond Markets Limited after a public hearing. At that hearing, the DLC heard submissions from the reporting agencies which considered that the proposed Single Alcohol Area



(effectively where the alcohol is currently displayed) should be relocated to the rear of the premises. In its decision the DLC rejected not only the applicant's proposed Single Alcohol Area but also those proposed by the Inspector and the Medical Officer of Health. Without informing any of the parties of its intention, it imposed on the licence a condition which described a different Single Alcohol Area from any of those proposed by the parties.

Terminology

[6] In this decision "*the supermarkets*" include the appellants, General Distributors Limited and Foodstuffs North Island Limited. The "*reporting agencies*" include the Inspectors, Medical Officer of Health and the Police.

The Appeals

[7] Each appellant has appealed against that part of the respective DLC decisions describing the Single Alcohol Area. In each case, one of the grounds of appeal is that the DLC failed to comply with the rules of natural justice. In the case of the appeal affecting South City New World, the complaint was that the applicant was not given the opportunity of commenting on the DLC's proposal to delete the display cabinet from the Single Alcohol Area. In the case of New World Bishopdale, the appellant's complaint is that the appellant was not given an opportunity to comment on the DLC's decision to relocate the Single Alcohol Area to a place of its own choosing.

[8] In each case, the appellants have submitted that each DLC failed to correctly interpret ss.112 and 113 of the Act. These appeals are test cases as there is a significant divergence of opinion as to the meaning of ss.112 and 113 of the Act.

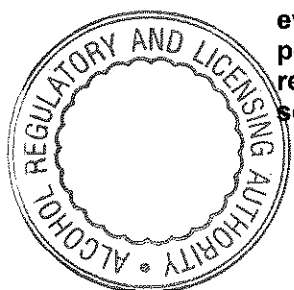
Natural Justice

[9] In each case, the reporting agencies as respondents did not oppose the appellants' submission that each decision contravened the rules of natural justice. Accordingly, on natural justice grounds alone, each appeal must be, and is, allowed.

[10] The Authority has recently briefly discussed natural justice issues in *Pak 'N Save Albany* [2014] NZARLA PH 847 and *Portage Licensing Trust* [2014] NZARLA PH 872. There is no necessity to repeat the comments made by the Authority in those decisions.

[11] It is useful, however, to note the comments made in the judgment of the Judicial Committee of the Privy Council in *Re Erebus Royal Commission; Air New Zealand Limited v Mahon* [1983] NZLR 662 at [671]:

"The rules of natural justice ... can ... be reduced to those two that were referred to by the Court of Appeal in England in *R v Deputy Industrial Injuries Commissioner*, ex parte Moore. The first rule is that the person making a finding in the exercise of such a jurisdiction must base his decision upon evidence that has some probative value in the sense described below. The second rule is that he must listen fairly to any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the enquiry, whose interests (including in that term career or reputation) may be adversely affected by it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made.



The technical rules of evidence applicable to civil or criminal litigation form no part of the rules of natural justice. What is required by the first rule is that the decision to make the finding must be based upon some material that tends logically to show the existence of facts consistent with the finding and that the reasoning supportive of the finding, if it be disclosed, is not logically self-contradictory.

The second rule requires that any person represented at the enquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to adduce additional material of probative value which, had it been placed before the decision-maker, might have deterred him from making the finding even though it cannot be predicated that it would inevitably have had that result."

[12] Both these rules of natural justice were breached by the DLC in each decision. In each case, the DLC made a decision that was not evidentially based. (In respect of New World Bishopdale, there was considerable debate over the location of the Single Alcohol Area but ultimately the DLC came up with its own proposal. It is acknowledged that the DLC's proposal came about as a result of evidence relating to other proposals at the hearing. Nevertheless, there was no specific evidence relative to the DLC's proposal).

[13] In each case, the DLC failed to give each appellant the opportunity of being heard in respect of a proposal that potentially adversely affected it. Had each appellant been given the opportunity to adduce additional material it is possible that each decision could have been different.

Single Alcohol Areas

[14] The allowing of each appeal is not sufficient to dispose of each matter. The Authority does not have the power to remit each matter back to the DLC. Section 158 of the Act states:

"On hearing an appeal, the Licensing Authority may confirm, modify, or reverse the decision under appeal."

The Authority is not entitled to take any other action.

[15] In terms of ss.112 and 113 of the Act, the Authority is obliged to describe the Single Alcohol Area in each case. If the Authority were to reverse each decision, the effect would be that no Single Alcohol Area would be described. If the Authority were to confirm each decision, then the Single Alcohol Areas appealed against would be reinstated. This would perpetuate the natural justice breaches. Accordingly, in determining each appeal the only avenue available to the Authority is to modify the decision appealed against. This involves an examination of the legislation pertaining to the Single Alcohol Areas.

The Process

[16] When an applicant seeks a licence or the renewal of a licence, pursuant to s.99 of the Act it must file with the DLC an application that conforms with s.100 of the Act. In the case of off-licences, Form 4 of the Sale and Supply of Alcohol Regulations 2013 requires the applicant to file a plan of the area where the alcohol is to be displayed (the Single Alcohol Area).



[17] After the application has been filed, in terms of s.101 of the Act it must be publicly notified. Objections may then be lodged and the reporting agencies, in accordance with s.103, must enquire into the application. The Inspector must file a report on the application; but the other reporting agencies only need to file a report if they oppose the application. However, if there are objections or there is opposition to the application, supplementary reports are often filed as suggested in the judgment of Heath J in *Otara – Papatoetoe Local Board v Joban Enterprises Limited* CIV 2011-404-007930; [2012] NZHC 1406 at [32] et seq.

[18] In terms of s.104 of the Act, the application is decided by a DLC or in some relatively rare cases by this Authority. For the purposes of this decision, the decision-maker is the DLC.

[19] Sections 105 and 106 set out the criteria to which the DLC “*must have regard to*”. These include (inter alia) the object of the Act and the design and layout of the proposed premises. Obviously the design and layout includes the proposed Single Alcohol Area. Whilst to date, the Authority has not refused an application on the grounds that the design and layout of the proposed premises failed to achieve the Act’s object, it has the power to do so. However, in practical terms, if this was an issue between an applicant and one or more of the reporting agencies, it is likely that the parties would try to resolve it prior to the hearing.

[20] Sections 187 and 188 set out the functions of DLCs and their powers. The first function of a DLC is to consider and determine applications for licences. In accordance with s.27 of the New Zealand Bill of Rights Act 1990 it must act in accordance with the principles of natural justice as explained earlier in this decision.

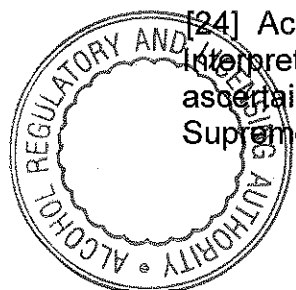
[21] As part of this exercise, in the case of supermarkets and groceries, the DLC must act in accordance with ss.112 to 115 of the Act. It is the interpretation of these sections that is the subject of these appeals.

The Issue

[22] The supermarkets have argued that the effect of the sections is that provided the proposed Single Alcohol Area constitutes a single area and is not situated on the most direct pedestrian route between either the entrance of the premises or its general point of sale (one the one hand) and the main body of the premises (on the other hand), the alcohol area may be located anywhere in the premises and no conditions pertaining to its location or displays, promotions or advertisements may be imposed.

[23] The reporting agencies say that a DLC may impose such conditions as to the location, displays and promotions in a Single Alcohol Area as will enable compliance with the purpose of the sections, viz the limitation of the exposure of shoppers to displays, promotions and advertisements of alcohol (s.112(1)) and as will achieve the purpose of the Act (s.3) and its object (s.4). The Police have submitted “*the main body of the premises*” can mean any part of the main body of the premises.

[24] Accordingly, an analysis of the sections is required. Section 5 of the Interpretation Act 1999 requires that the meaning of the statutory provisions must be ascertained from their text and in the light of their purpose (as explained by the Supreme Court in *Commerce Commission v Fonterra* [2007] 3NZLR 767 at [22]).



Further, this is not an opportunity for the Authority to rewrite the sections: *Oddballs Adventure Tours Company Limited v Ferguson* [2010] NZ AR 246 at [27].

Section 112

[25] Section 112 reads (inter alia):

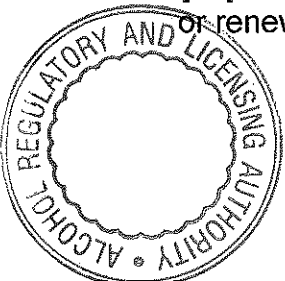
"Compulsory conditions relating to display and promotion of alcohol in single area in supermarkets and grocery stores

- (1) The purpose of this section and sections 113 and 114 is to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol.
- (2) The licensing authority or licensing committee concerned must ensure that, when it issues or renews an off-licence for premises that are a supermarket or grocery store, it imposes on the licence a condition describing one area within the premises as a permitted area for the display and promotion of alcohol."

[26] Section 112(1) describes the purpose of ss.112 to 114 of the Act. It is "*to limit (so far as reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol and advertisements, for alcohol*". The subsection explains the rationale behind ss.112 to 114. It recognises that the exposure to displays and promotions of alcohol and advertisements for alcohol may ultimately result in alcohol-related harm. It seeks to limit such exposure but only so far as is reasonably practicable. Thus, the purpose of the sections is to achieve the limitation of one of the causes of alcohol-related harm which in terms of s.4 of the Act is to be minimised. It recognises that in this instance minimisation of alcohol-related harm will result from the reasonably practicable limitation (but not the minimisation) of exposure to displays, promotions and advertisements. In itself, the section does no more than explain the purpose of the following sections. It is not an operative provision.

[27] The comments in paragraph [25] are at variance with the submissions for the reporting agencies which are not accepted. They argued that while s.112(1) of the Act informed the interpretation of ss.112,113 and 114 of the Act, it did not override the s.4 of the Act object; and as a result a DLC can impose conditions or restrictions if they accord with ss.112(1), 113(1), 117, 3 and 4 of the Act. The answer to this submission is that the conditions which may be imposed under ss.112 and 113 are solely about the location of the single alcohol area and its composition. Section 114 relates to displays, promotions and advertisements. However, it is very specific: and in effect prohibits displays, promotions and advertisements for alcohol outside the Single Alcohol Area. There is nothing in ss.112, 113 or 114 of the Act authorising the imposition of conditions not specifically mentioned in the sections. If the interpretation of the reporting agencies is correct, then, for example, instead of containing the specific prohibitions as to the location of Single Alcohol Areas in s.113(5) of the Act, the section would simply have prevented the location of Single Alcohol Areas in any place that contravened s.112(1) of the Act.

[28] Section 112(2) requires a DLC to impose a single area condition when issuing or renewing a licence.



Section 113

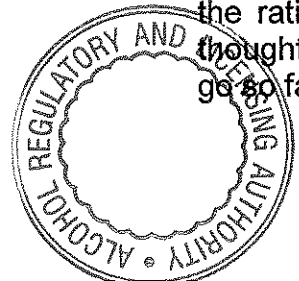
Section 113 reads :

"113 Describing alcohol areas

- (1) The licensing authority or licensing committee concerned must have regard to section 112(1)—
 - (a) when describing an alcohol area; and
 - (b) when taking any other action under this section; and
 - (c) when forming any opinion for the purposes of this section.
- (2) An alcohol area must be described by means of a plan of the footprint of the premises concerned (or, in the case of premises on more than one level, a plan of the footprint of the level on which the area is or is to be located) showing—
 - (a) the proposed configuration and arrangement (or, in the case of the renewal of a licence, the existing or any proposed new configuration and arrangement) of the premises or level; and
 - (b) the perimeter of the area.
- (3) The area may be so described that it is divided into 2 or 3 sub-areas; and in that case,—
 - (a) the perimeter of each sub-area must be separately described; and
 - (b) the licensing authority or licensing committee concerned must designate one sub-area as the core area and one sub-area as the secondary area, and (if the area is divided into 3 sub-areas) must designate one sub-area as the overflow area.
- (4) The perimeter of the area or any sub-area may pass through the proposed locations (or, in the case of the renewal of a licence, any existing or proposed new locations) of any display units.
- (5) The authority or committee must describe an alcohol area within the premises only if, in its opinion,—
 - (a) it is a single area; and
 - (b) the premises are (or will be) so configured and arranged that the area does not contain any part of (or all of)—
 - (i) any area of the premises through which the most direct pedestrian route between any entrance to the premises and the main body of the premises passes; or
 - (ii) any area of the premises through which the most direct pedestrian route between the main body of the premises and any general point of sale passes.
- (6) For the purposes of this section and section 114, general point of sale means anything that is—
 - (a) a checkout, till, or cashbox where goods other than alcohol (or alcohol and goods other than alcohol) may be bought; or
 - (b) a device by which goods other than alcohol (or alcohol and goods other than alcohol) may be paid for without the involvement of any person other than the buyer."

[29] Section 113's heading explains that the section is intended to describe the Single Alcohol Areas. "Describe" is defined in the Concise Oxford Dictionary as to "set forth in words, recite the characteristics of".

[30] Section 113(1) of the Act requires a DLC to "have regard to s.112(1) when describing a single alcohol area, taking any other action under the section and when forming an opinion for the purposes of the section". This does not mean that the DLC is required to give effect to the purpose stated in s.112(1): rather it must give genuine attention and thought to that purpose: see *Foodstuffs South island Ltd v Christchurch City Council* (1999) 5 ELRNZ 308; [1999] NZRMA 481 (HC). However, s.113(1) does expand the role of s.112(1) of the Act. Section 112(1) is not solely an explanation of the rationale behind ss.112-114 of the Act as in acting under s.113 attention and thought to the purpose in s.112(1) of the Act is required. However, s.113(1) does not go so far as to authorise conditions outside the specific provisions of the sections.



[31] Section 113(2) states how a Single Alcohol Area must be described (which expands the Dictionary definition of "describe"). Section 113(3) explains that an area may be divided into two or three sub areas. Section 113(4) says that the perimeter of an area or sub area may pass through the proposed locations of any display units. This could have the effect of a display unit being adjacent to non-alcoholic products; but the alcohol must be within the Single Alcohol Area and the non-alcoholic goods must be outside that area.

Section 113(5)

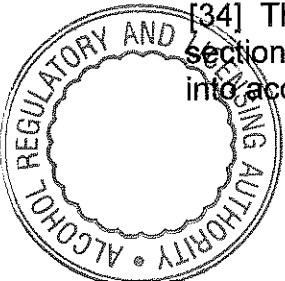
[32] It is s.113(5) that has created most of the debate. It provides that the DLC can only describe an alcohol area if it is a single area. Further, that area may not contain all or part of the most direct pedestrian route between an entrance and the main body of the premises; nor may it be on the most direct pedestrian route between the main body of the premises and any general point of sale. The suggestion that the area may not be anywhere between an entrance (or general point of sale) and a *part* of the main body of the premises is incorrect; that definition imports words into the section that are not there ("a part"). The submission, if adopted, could have the effect of prohibiting a Single Alcohol Area completely which, clearly, is not the intent of the section.

[33] There was some divergence of opinion over the meaning of "*the main body of the premises*". Any attempt to describe it by alternative words is unhelpful. However, included in the phrase is "*main*". According to the New Shorter Oxford English Dictionary (Thumb Index Edition) "*main*" means inter alia:

"The chief or principal path of; the most important part of some business, subject argument etc; designating a considerable uninterrupted stretch of land, water, space etc; chief in size or extent; constituting the bulk or principal part; designating the chief part of the thing specified."

What can be gleaned from this definition is that the main body of the premises does not necessarily mean the whole of the retail or shopping area where product is displayed. Often this will be the case (except for small displays adjacent points of sale). However, for example, if taking a direct pedestrian route from the entrance to the Single Alcohol Area involved passing a small retail area containing non-alcoholic product, the main body of the premises could mean the balance of the shopping or retail area excluding that small shopping or retail area situated between the Single Alcohol Area and the entrance. It is a matter of degree and involves the sort of judgement that a DLC must exercise when forming an opinion in terms of s.113(5) and having regard to the purpose as expressed in s.112(1). Regard to the purpose of the section will assist a DLC in forming an opinion not only as to whether it is a Single Alcohol Area that is being described but also whether that Single Alcohol Area is in one of the places prohibited by s.113(5)(b) of the Act. In these circumstances, this is not necessarily a "rubber stamping exercise" as the reporting agencies claimed. Nevertheless, the effect of s.113(5) is that a Single Alcohol Area can be anywhere in the premises except in the prohibited areas.

[34] This conclusion is reached not only as a result of the interpretation of the sections, taking both the text and the purpose (especially as described in s.112(1)) into account, but also for additional reasons:

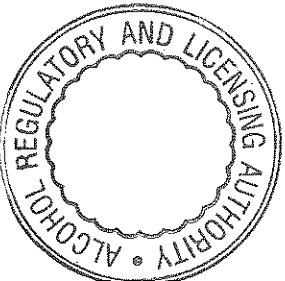


- [a] The role of the DLC is to decide the application before it. Part of the application relates to the location of the Single Alcohol Area. If the DLC considers that the location of the proposed Single Alcohol Area is contrary s.113(5) of the Act then it must refuse the application. It cannot grant it subject to conditions that authorise a different Single Alcohol Area from that contained in the plans accompanying the application. To do so would involve granting what is in effect an entirely different application from that in respect of which the reporting agencies will have enquired into. More importantly, objectors who might have objected to the amended design and layout will have been denied the opportunity of doing so.
- [b] In terms of s.113(5), the DLC must describe the Single Alcohol Area "*only if*" it is a single area and not in a prohibited area. Otherwise it cannot describe a Single Alcohol Area. If it cannot describe a Single Alcohol Area, it cannot grant the application as it cannot comply with s.112(2).
- [c] Section 112(1) only requires the exposure of shoppers to be limited "*so far as is reasonably practicable*". What is "*reasonably practicable*" is not the same as "*taking all practicable steps*" as counsel for the Inspector argued. The expression imports into it not only what might be practicable in any particular circumstances but also what is practicable is qualified by "*reasonably*". In addition, to the limitation of exposure being so far as is reasonably practicable, there remains the general obligation to act reasonably. As the Court of Appeal in *Meads Brothers Limited v Rotorua District Licensing Agency* [2002] NZARLA 308 (CA) at [53] stated:

*"It is to be remembered that the statutory object is to establish a **reasonable** system of control. This envisages that at a certain point, at the extreme end of the scale, the administration of the licensing may become unreasonable in its pursuit of the aim of reducing liquor abuse."*

That comment was reiterated in *Christchurch District Licensing Agency v Karara Holdings Limited* [2003] NZAR 752 (CA) at [26]. The Authority confirmed in *New Zealand Police v Absolute Caterers Limited* [2013] NZARLA 946 at paragraph [12] that the duty to act reasonably in accordance with *Meads* and *Karara* applies to the Sale and Supply of Alcohol Act 2012. The wholesale redesign of an applicant's premises by a DLC is not acting reasonably. It does not constitute a reasonably practicable means of limiting shoppers' exposure to the display of alcohol.

- [d] Counsel for the Medical Officer of Health submitted that when describing a Single Alcohol Area a DLC was not confined to only the plans submitted by the applicant. He argued that in s.113(2)(a) that "*the proposed*" does not simply mean "*proposed by the applicant*" as that imports additional words into the subsection. He suggested that the plans could be those submitted by one or more of the reporting agencies. This cannot be correct. None of the reporting agencies has the professional ability to draw up plans. Only the licensee and its advisers have this sort of expertise. Further, a reporting agency would have difficulty in establishing that its substituted plan not only achieved the s.112(1) purpose but also that it was "*reasonably practicable*".



Legislative History

[35] The conclusions reached by the Authority are supported, at least to some extent, by the legislative history of the sections. The Authority accepts that the legislative history is not conclusive.

[36] In his cabinet paper dated 5 August 2010 the then Minister of Justice Simon Power expressed a concern that a Single Alcohol Area restriction could unduly impede the right of supermarkets to manage their own business. At that stage he did not recommend introducing a Single Alcohol Area restriction for supermarkets. However, in his cabinet paper of 30 June 2011 the Minister's views changed and he supported such a restriction. On 15 May 2012 the then Minister of Justice, Judith Collins, commented on how the Bill had been amended as a result of representations by the supermarkets. In particular she noted that the Single Alcohol Area provisions had been altered so that there were only two areas of a store where a Single Alcohol Area could not be: viz at the entrance of the store or at a checkout. Thus, it was certainly not the intention of the Minister at that time of permitting anyone other than an applicant for a licence to determine the location of the Single Alcohol Area.

[37] Comments by some Members of Parliament during the third reading of the Bill resulting in the Act disclose disappointment at changes to it that favoured the supermarket's arguments in this case. For example, Te Ururora Flavell commented: *"We wanted to limit the visibility of advertising in grocery stores and grocery shops, so that the products are not visible in the store but that they are able to be sold.....so those are some of the amendments we put up. Unfortunately, most of them got slammed down....."*

Section 107

[38] Section 107 of the Act permits a DLC, after considering the statutory criteria, to refuse a licence application where there are no objections and the application is not opposed. The DLC purported to do this in respect of the South City application although it did not actually refuse the application but merely imposed gratuitously a condition that altered the plan accompanying the application. Section 107 needs to be treated very cautiously by DLCs. It is not an invitation to depart from the statutory role of deciding applications. A DLC, like any other judicial body can only decide an application on the evidence before it (see *Erebus* supra). It is not entitled to provide its own evidence or use its own personal opinions to justify the use of s.107. Usually, where an application is not objected to and not opposed the application will be determined on the papers in accordance with s.202 of the Act. However, for example, if a DLC is concerned that some matter relevant to the statutory criteria may have been overlooked, it may convene a public hearing. It would only be after a public hearing has been convened, that a s.107 decision could be justified.

South City New World Appeal

[39] The deletion of the display unit is not sort of condition that can be imposed in terms of ss.112-114 of the Act for the reasons expressed in paragraph [26]. However, ss.117 and 118 of the Act gives a DLC a discretionary power to impose conditions generally. In acting under ss.117 and 118 regard must be had to the general comments as to the requirement to act reasonably as stated in *Meads* and *Karara Holdings* (paragraph [33c]) and the need for an evidential basis for the proposed condition.



[40] When reaching its decision, the DLC, having taken a view of the premises, reached its own conclusion. There was no evidence supporting this. Interestingly, the Authority also took a view. It reached a completely different opinion to that of the DLC. It doubted that any more exposure to alcohol would have been created by the deleted display unit than by persons walking along the thoroughfare and looking down the aisles containing the wine. The proposed display unit is relatively insignificant. In reaching this view, the Authority recognises that at the time of the view the display unit contained bottles of wine wrapped in Christmas decoration. It might not always look quite so innocuous. Nevertheless, the display unit is relatively small and in the overall scheme of the supermarket does little to expose shoppers to the display of alcohol. It follows, that in the Authority's opinion, there is very little exposure to limit.

[41] In short, there was no evidential basis for the condition and, given the very small level of exposure to alcohol provided by the display unit, the DLC's amendment to the applicant's Single Alcohol Area is a disproportionate response and unreasonable. Accordingly, in allowing the appeal the Authority modifies the decision by confirming that the Single Alcohol Area that is to be described in accordance with s.113(2) of the Act is that submitted with the application referred to in the plan submitted with the original application.

New World Bishopdale Appeal

[42] Like the DLC, the Authority also viewed the premises. For the reasons mentioned earlier in this decision the Authority considers that the DLC erred in law when describing its own Single Alcohol Area rather than that of the applicant's. (As an aside, the reduction of the alcohol display area as envisaged by the DLC would have reduced the entire alcohol area in the supermarket by approximately 25%. The Authority has no hesitation in concluding that such a reduction in area is unreasonable in the *Meads* sense). In these circumstances, the only determination possible is that the DLC's decision must be modified and that the Single Alcohol Area in the premises is to be that as described in the plan submitted by the applicant.

DATED at WELLINGTON this 30th day of January 2015

A E Cannell

A E Cannell
Deputy Secretary

