

Decision No: 45/ON/2021/672

**IN THE MATTER OF** the Sale and Supply of  
Alcohol Act 2012

**AND**

**IN THE MATTER OF** An application by Duane  
Watt under Section 127  
of the Sale and Supply of  
Alcohol Act 2012 (the  
Act) for the renewal of  
an on-licence in respect  
of premises situated at  
284 Rangiuru Road,  
Ōtaki, known as The  
Telegraph Hotel.

BEFORE THE KAPITI COEAST DISTRICT LICENCING COMMITTEE

Chair: Rob McCann  
Members: Trevor Knowles  
Fraser McInnes

HEARING at PARAPARAUMU on 27 October 2021

**APPEARANCES**

Duane Watt – applicant

*Reporting Agencies*

Stephen Vega - Hutt Valley DHB, Regional Public Health  
Kathrine McLellan - Licensing Inspector  
Lance Moretto - Alcohol Harm Prevention Office - Police

## RESERVED DECISION OF THE COMMITTEE

### **Introduction**

1. This is a hearing for an application by Octopus Inc Limited under section 127 of the Sale and Supply of Alcohol Act 2012 (the Act) for the renewal of an on-licence in respect of premises situated at 284 Ranguru Road, Ōtaki and to be known as The Telegraph Hotel (The Tele).
2. The applicant is requesting a variation of conditions of the On Licence relating to Section 53, that food be available.
3. The Police, Public Health and the Inspector opposed the applicants' requested alterations to the on licence.
4. The application for renewal has with the agreement of all parties, been brought earlier than required to the Licencing Committee, so the issue of the provision of substantial food can be clarified with the applicant.
5. The Committee conducted a site visit on 22 October 2021.

### **The Application**

6. A copy of the application was forwarded to the reporting agencies and the Licensing Inspector. The Licencing Inspector, Police and Public Health opposed the renewal on the grounds that the provision of food does not meet statutory requirements.
7. All those appearing were sworn in.

### **Applicants Evidence**

8. The applicant Duane Watt outlined the history of the Telegraph Hotel (Tele). That he bought it in a mortgagee sale, and that he also owned the Punter's Corner across the road.
9. The applicant noted that functions had previously kept the hotel financially afloat and that when he moved the gaming machines from what was known as the Punter's Corner to the Tele, the nature of the venue changed from having a focus on events to that of a pub.
10. The Tele now has eight gaming machines and a number of TAB machines.
11. The applicant explained how this change in focus had led to a new income source, but believed the new focus had also led to a downturn in the demand for food.
12. The applicant allows food to be brought in from other operators such as takeaways and noted these food options were in close proximity to the Tele and open until 9:30pm or 10pm. The applicant believed this was something that has always taken place in Otaki.
13. The applicant explained that while he had provided traditional pub food in the past, this was not financially sustainable the Covid interruptions had provided the opportunity to research and then implement a new range of food.
14. The applicant spoke of the community focus, how this shaped events that he held such as tangis and 21st birthdays where customers expected to be able to bring their own food.
15. The applicant explained that heating up a frozen pie can take between 10-15 minutes, conversely the new range of food is instantaneous.
16. The applicant also noted the additional cost and wastage that occurs with traditional food offerings, and the cost of staff training to ensure equipment such as microwave ovens are heating to the correct temperature.
17. The applicant spoke to the new range of food Beef jerky, Biersticks, Beef steak bar and Rice cakes being tasty, meeting the requirement of the act, being instantly available and enjoyed by the customers.

### **Cross Examination of Applicant**

18. The applicant was questioned about the provision of food under the Act and he noted that when eating, customers slowed down their consumption. The applicant noted issues with suppliers and that he now used Gilmores for certainty and price.



19. The applicant noted the change in offerings was an evolving idea, and confirmed during cross examination, that the purpose was to ensure supply and reduce costs and that the products had only recently become available. Currently only a couple per week were consumed.
20. Prior to the Covid lockdown pies were taken out of the freezer and heated in the microwave. There was no deep fryer and food was not prepared for the hotel residents. At one point there were pizzas heated in a pizza oven.
21. The applicant confirmed he had read the ARLA Manager's Guide on Food and case law provided by the inspector.
22. The applicant when questioned about the word 'substantial', acknowledged his offerings were not a full meal, but that he believed they were the equivalent to a pie.
23. The applicant was asked if he understood what the agencies had meant by a graduated response, and he replied that *"I imagined that it's just a stronger and stronger reaction to encourage me to comply... I think I do comply, but I think that a graduated response is stronger and stronger enforcement."*
24. The applicant was asked why he didn't take notice of what the District Licensing Inspector (had said about the food offerings). The applicants referred to his opening statement saying *"beef steak is as substantial as you get. If a pie is acceptable, I think that is round about there."*
25. The applicant noted that he had informed the Inspector before changing his offerings.
26. The applicant confirmed that while he thought his offerings were substantial and that they complied with the act, he could not answer why he could not accept the view of the Police or Inspector. The only reply of the applicant was that his offerings were new items.
27. The applicant suggested that *"he would put it to the committee, that was really the question"*
28. The applicant was questioned about the Handle Club where members pay a monthly fee and get a discount on their drinks. The money goes into a social fund activity. Because of Covid the funds have gone into a Jokers Wild, but it is their money. The cheapest drink for members was \$5, a Woodstock or one of the cheapest beers.
29. The applicant was asked about the breakdown of income. He stated that alcohol was probably half, and then the accommodation, gaming and TAB are pretty much evenly split through the other half.
30. The applicant noted the other actions he was taking to reduce expenses. Sky TV were charging \$1380 a month, where as now Trackside 1 and 2 are being shown for free from a laptop for free. Using the Covid loans the applicant has bought solar panels which have yet to be installed. The applicant will apply for his security certificate.
31. The applicant believed the business was still viable, but that big functions are not occurring.
32. The committee asked about the suitability of the applicant to hold a licence. The applicant has no doubts about his suitability and pointed to the newness of the products as to why he was asking the committee to resolve the issue.
33. The applicant acknowledged that should the committee find that the offerings were not substantial he would need to register again for the preparation of foods such as pies and that there was a cost associated with this. He noted that the cleaning and temperature checks associated with the food control plan was still in operation, regardless of the registration.
34. The applicant was asked whether additional promotion for food might actually encourage the sale of food. The applicant did not believe it would and that it was lack of demand.
35. The applicant noted he has a toasted sandwich machine maker, a benchtop oven, a microwave. The applicant does not believe a chip fryer is safe.
36. The Applicant noted he would like some direction of what food is substantial and acceptable from the committee.
37. The Applicant noted he would follow the decision of the committee.

### **Licensing Inspector**

38. The Inspector noted that there was a long-term licensee until the premises was sold in August 2002. Between 2002 and 2011, the premises changed operators four times. In June 2011 the premises closed and the owner allowed the alcohol and gaming machine licences to lapse, and converted the building to a boarding house.



39. In August 2012, the property was purchased by Duane Watt (the applicant) in the name of his company "Telegraph Hotel Limited" and, following a major refurbishment, the premises re-opened in May 2013 under the new name of "The Tele". Like the historical Telegraph Hotel, the premises have been operating as a tavern with accommodation since that date.
40. In 2016, Mr Watt purchased The Punters Corner, another tavern located across the road from The Tele, in the name of "Octopus Inc Limited", with the intention of relocating the gaming machines from The Punters Corner to The Tele.
41. On 18 September 2017, Mr Watt transferred ownership of the business from Telegraph Hotel Limited to Octopus Inc Limited, of which he is the sole director/shareholder. Alcohol was sold under Temporary Authority until a new licence was issued on 19 December 2017, and renewed after 12 months.
42. The general nature of the business is that of a hotel/tavern. The principal business is the provision of accommodation and the sale and supply of alcohol to the public.
43. The applicant also holds an Off licence for the premises.
44. The layout of the premises was altered in early 2018 to accommodate the gaming machines and TAB facility. A plan of the current licensed area, approved on 15 December 2017, was submitted with the Inspectors report.
45. On the On 16 June 2021 an inspection took place and it was found the food was not considered substantial.
46. Signage at the bars indicates that the food available for purchase on the premises currently consists of beef jerky, biersticks, beef steak bar, and glutinous rice cakes.
47. The Inspector noted that previously pies, toasted sandwiches and sausage rolls were available on the premises.
48. The applicant has advised that the majority of customers purchase food from the neighbouring takeaways which they are allowed to consume on the premises, however these takeaways close between 9:30pm and 10:00pm while the bars license enables it to trade until 1am Monday to Saturday and 10pm on Sundays.
49. The applicant notes the bar usually trades after 10:30pm on Thursday, Friday and Saturday nights.
50. Functions – substantial food is usually provided by the function organiser and/or guests.
51. The Inspector noted that up until the first Covid 19 lockdown, starting in March 2020, Mr Watt had pies, sausage rolls and toasted sandwiches available for purchase on the premises.
52. These items were promoted via signage at the bar but the applicant said they were very rarely purchased by patrons.
53. The business held the appropriate registration under the Food Act 2014 for the preparation and sale of these items, which meant registration and verification fees were incurred.
54. During the March/April 2020 lockdown, Mr Watt contacted the Inspector to discuss the situation facing his business with regard to lost revenue from the lockdown and the additional costs of being registered for the sale of food.
55. The Inspector explained the requirement of section 53 of the Act and provided the relevant excerpts from *Marsh v Sharma and Sons (2009) Ltd [2018] NZARLA 137*.
56. Once The Tele was able to operate again under Level 2 (in May 2020), Mr Watt had a variety of shelf stable food items available for sale and immediate consumption on the premises, doing away with the requirement for registration under the Food Act.
57. At that time the applicant was advised that his food offering would be reviewed at the time of renewal of the licence. However, if there was evidence of patrons becoming intoxicated on the premises, which could be attributed to a lack of substantial food availability, the situation would be addressed sooner.
58. The Inspector noted there was no evidence of customers on the premises displaying signs of being observably adversely affected by alcohol. There is an incident log on the premises with no record of incidents of intoxication.
59. The on licence and off-licence were due to expire on 19 December 2021, and on the advice of the Inspector, the applicant applied a few months prior to the expiry date in order to have a decision on the proposed variation of conditions for the on licence.
60. The applicant has proposed to change the condition relating to the type of food to be available when the premises are open for business.

**Proposed variation of licence condition:**

61. The current condition states:

*Meals such as those described on the menu provided with the application, or variations of that menu of a similar range and standard, must be available at all times the premises are open for business.*

62. The Inspector noted that the relevant standard condition on Form 9 of the Regulations (On-licence) is:

*(c)The following steps must be taken to promote the responsible consumption of alcohol: [state]*

63. The applicant proposes to no longer have “meals” available and states the following in the application:

*“Food has been economically unviable for my business for a long time. I have new offerings that last, are cheap and instantly available.”*

64. The range of food items proposed under this application is as follows:

Shelf stable	Energy (kj)	Protein (grams)	Carbs (grams)	Price
Beef jerky	600	17	15	\$5
Biersticks	655	9.4	1.6	\$5
Beef steak bar	360	6.6	7	\$5
Rice cakes	2922	3	167	\$5

65. The Inspector provided a breakdown of more traditional substantial food offerings.

Frozen	Energy (kj)	Protein (grams)	Carbs (grams)	Supermarket Price
Big Ben mince & cheese pie	1910	15.1	41.9	\$1.80
Watties Sweet & Sour Pork	1190	8	58	\$4.50
Super Snack Macaroni Cheese	1550	14.8	42	\$3

66. The Inspector noted that the applicant is a very responsible operator, always has lots of duty managers and provides transport options as part of host responsibility.

67. The Inspector noted that it is the operators responsibility to provide food, regardless of the fact they had just come out of a Covid lock-down.

68. The inspector noted that there was no evidence of intoxication of patrons on the premises because of the lack of food.

**Cross Examination of the Inspector**

69. The Inspector noted she was somewhat conflicted as to whether the food offerings met the requirements of the Act and that this influenced her decision not to take enforcement action last year.

70. The Inspector confirmed she did not agree with the offerings being suggested.



71. The Inspector could not provide any further information of ongoing training of staff, new staff are training by Mr Watt and Ms Climo who has been a duty manager in pubs in Otaki for many years.
72. The Inspector has confidence the applicant would follow the decision of the committee.
73. The Inspector noted it should be a condition on the licence, that food and the type of food be specified and that this should not be an undertaking.

#### **Evidence of the Police**

74. Police have made the required enquiries under section 129 of the Act and are in opposition.
75. Under section 131 (criteria for renewal) of the Act, Police note the committee must have regard for any matters dealt with in section 105 and any report from the reporting agencies.
76. The pertinent issue is that the food requirements for host responsibility under section 53 of the Act have been codified in Liquor Licensing decisions and directives such as Empire Hotel, NZLLA 1652/2008 and Spang v Iconic 2007 NZLLA 242/2010.
77. That the applicant was given advice regarding his food offerings based on these decisions.
78. That the decision Paulin v PC Bar Ltd [2018] NZARLA 200: at [104], [105] the authority held that three types of pies would not suffice, five heat and eat meals and some frozen crumbed fish was inadequate.
79. That the decision Stevens v Surreal Bar Limited [2016] NZARLA 82 shows the attitude of the Authority in relation to adhering to the requirements of s.53 regarding the availability of food on the premises.
80. The Police also noted Marsh v Sharma and Sons (2009) Ltd [2018] NZARLA 137: [52, 53] (see also [54] for food types), that the authority went on that it was not enough to rely on there being a takeaway bar in the vicinity.
81. Police noted that the applicant was also advised that the menu was not being promoted well enough with only a small list of foods and prices placed in a corner behind the bar.
82. Police noted that as part of a graduated response model, the applicant was further advised in more detail on June 30th, 2021 via return email. This email outlined the requirements of Section 53 along with further definition of what is considered "substantial food".
83. Police noted that the suitability under section 105 was now being called into question given the breaches in regard to what they perceived to be a snack food offering.
84. Police submit that the applicant is not meeting the requirements of section 53 'Food to be available', and that this appears to be a cost-saving exercise as evidenced in the applicants' emails and application.
85. Police noted they seek a clear steer regarding section 53 for the applicant by the Licencing Committee, and an undertaking the applicant will abide by the committee's decision.
86. Police could not say whether they have confidence that the applicant could put a menu together independent of the committee.

#### **Cross examination of Police**

87. Police were asked if they have any other concerns about suitability, which they had referred to in their report.
88. Police noted that the business appeared to be struggling and commented upon the security and training which the committee had discussed with the applicant. Police had asked the applicant about training and were informed that all staff are duty managers. This was incorrect and a future hearing with the committee has been scheduled for the staff member.
89. Police asked for any training policies, training records, records of any training and Mr Watt was unable to supply any documentation, saying he trains the staff.
90. Police confirmed that the training of staff does concern them, and that there were some concerns he's not going to be able to meet the objective of the act and they would like to see documentation.
91. Police confirmed that relatively, the Tele did not have many incidents, but the reference for that was via Police National Intelligence as he has only been responsible for alcohol licencing for four months.
92. Police explained the graduated response is to engage, educate, warn and enforce. Officer Moretto explained;



“So in this instance, the first step would have been when we did the inspection with the licensing officer and we spoke about his food, advised him that it was breaching his current licence and menu he was supposed to be offering – so we had a discussion around it and it’s outlined in the email between us and I advised that he needed to go back to what he was doing and that these were snack foods and that the sign tucked away behind the bar wasn’t promoting food. The next step was the email which was more formal with clear direction in it and the graduated response model was referred to. Following that, had he still not complied then it would have been looking at some sort of infringement or action. That’s when the licensing inspector had a discussion with Mr Watt and the solution was to bring his renewal forward to the stage we are at now.”

93. Police noted they expected a condition that clearly outlines the food that the applicant is going to make available, and a clear indication from the applicant that the condition would be followed.
94. Police indicated they did not have confidence the applicant would be able to develop a suitable menu and they hoped the food issue could be resolved and a clear direction and condition in that that the applicant will abide by and everything should follow after that hopefully.

### **Public Health**

95. Regional Public Health received an application for the renewal of the Tele on-licence on 28 August 2021.
96. It is the view of Public Health that the application did not meet the object of the Act relating to the manner in which alcohol is sold, noting the lack of food available.
97. Following the application, the Medical Officer of Health visited the Tele on 29 September 2021 and interviewed the applicant with the aim of having “a discussion regarding these food options and see if Duane could be guided toward supplying food that is more substantial.”
  - a. It was explained that the food options being offered may not have the carbohydrate content needed to slow alcohol absorption.
  - b. The applicant pointed out that patrons do slow their drinking when eating the snacks.
  - c. The Medical Officer agreed ‘that putting food into your mouth may slow down drinking, but that the type of food offered, beer sticks and beef jerky, probably would not slow intoxication’.
  - d. It was suggested that if he wanted to, he could bring the menus and phone number from the take-away into the bar and place them on the tables and bar, however as the take-away wasn’t open as late as the bar, the applicant would still have to get food in, which would come at a cost.
  - e. It was suggested the applicant could keep a small supply of frozen pizzas, pies etc. which can be quickly microwaved for those situations and are not that costly.
98. Following the site visit, a letter of opposition was submitted on the 30 September 2021 because;
  - f. Section 131(1)(d) –the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed advertised, or promoted alcohol
  - g. Section 53 (must ensure) Food to be available
99. Public Health submit the application is not in harmony with the object of the Act and the manner in which alcohol is sold and the prevention of intoxication, via the sale of substantial food.
100. Public Health recommend that the committee decline the application, or alternatively, at the very minimum consider placing conditions on the license to enforce the sale of substantial food, which they believe is not currently on offer at the premises.
101. Mr Vega provided an explanation of why he believed the food suggested by the applicant was not appropriate.

I am not an expert on food, but I work in the field of health, and I do know that what you have there is a food that is protein over carbohydrate content. And the issue is that with that you don’t have complex carbohydrates, you have simple carbohydrates. In other words, the carbohydrates that you have say in a pie – there is a couple of them say in the flour of the gravy that’s in a pie, and then the flour that goes into the casing of a pie – there’s complex carbohydrates in that, and that’s the reason it absorbs alcohol as things expand in the

stomach it absorbs fluid. So, you need food that is substantial, and I think that is the key. That's why when you see these decisions around food, they are talking about substantial food that suggests bread, potatoes, other complex carbohydrates. We take that point of view that we want to reduce as much harm as we can. We're not opposed to alcohol and the sale of alcohol, but we do want to make sure that people are trying at least to drink safely, and food does help in that situation. And I guess the other thing is we see a lot of licences and we do see that most licensees will have substantial food, and this type doesn't look so substantial.

### Cross Examination of Public Health

102. Mr Vega noted the reference to s131(1)(d) was in relation to the lack of harm reduction in the food offerings.
103. Mr Vega noted that in some establishments, menus from cafes or takeaways would be available on tables, but when those providers closed, a venue would still have substantial food offering.
104. Mr Vega noted he was in agreement with the other agencies that s.53 of the act is not being met with the sale and supply of substantial food at The Telegraph, and we believe there need to be conditions in place for the licensee to meet those requirements effectively

### Committee's Decision

105. When considering a licence renewal, the committee must assess the criteria for renewal as set out in Section 131 of the Act.

- (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.*

106. The reporting agencies in a unified voice, all raised one specific issue in their reports made under section 129; that the food available at the Tele is not sufficient to meet the requirements of the act.
107. The specific requirements are outlined in section 53.

#### *53 Food to be available*

*The holder of an on-licence or club licence must ensure that, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of food is available for sale and consumption on the premises, in portions suitable for a single customer,—*

- (a) at reasonable prices; and*
- (b) within a reasonable time of being ordered.*

108. Section 53 has been applied in multiple instances. There is a body of case law that the Authority has referred to when assessing the meaning of the phrase 'reasonable' range of food.

**Empire Hotel, NZLLA 1652/2008 and Spang v Iconic 2007 NZLLA 242/2010** which set out the expectations regarding food availability on licensed premises.

[38] We deal with the issue of the supply and promotion of food. We accept that the company may finally be (after more than six months), in a position to provide good quality food. However, we expect there to be more promotion. We believe that it is time to introduce minimum food standards for licensed premises (other than



restaurant style licences), along the following lines:

- The range of food must be readily available at all times that the premises are open.
- Menus must be highly visible and food should be actively promoted using a variety of mediums, e.g menus on the tables, a board, or food on display. Food should also be advertised in any outdoor areas.
- Bar staff are expected to actively promote the range of food options.
- A minimum of three types of food should be available. e.g paninis, pizzas, lasagne, pies, toasted or fresh sandwiches, wedges, filled rolls, and/or salads. (This does not mean three types of pie.)
- It is acceptable to have a menu from neighbouring premises to provide for one or two of these options, however, there must be a back up option that could be produced on site.
- A minimum standard to be accepted on site would be a microwave or fryer and utensils, and a supply of a variety of 'long life' meals that do not require temperature control, or tins of soup and rolls. There should be an area for preparation of food and utensils for service of the food.

109. Spang v Iconic 2007 [2010] NZLLA 242 (23 March 2010) affirmed the minimum standard where the venue kitchen was closed, noting that the available potato chips and peanuts did not meet the standard affirmed by the Authority in *The Empire Hotel Petone Limited*.

110. Paulin v PC Bar Ltd [2018] NZARLA 200 affirmed the decision in *Marsh v Sharma and Sons (2009) Ltd*, affirmed that the Authority does not accept that it is sufficient for the purposes of s 53 that food is available from other premises.

*The holder of the licence must ensure food is available. It is implicit in this that the licensee has a degree of control over the provision of food such that it can be made available within a reasonable time of being ordered. This implies some degree of certainty of supply on the premises, rather than having the availability of food depend on a third party. Put another way, it cannot be said that the holder of the licence is able to 'ensure' that food is available for sale and consumption on the premises unless it is on the premises and able to be served within a reasonable space of time.*

*The food must be available for sale on the premises. Despite the fact that takeaways may be consumed on the premises, the food was not sold on the premises. The food is paid for by the patron at the takeaway shop; patrons do not pay the licensee at the premises.*

111. Stevens v Surreal Bar Limited [2016] NZARLA 82 found that supplying just one type of food, in this case dumplings, was not sufficient. A range of substantial foods were required.

*The only food that was available on each of those occasions was dumplings. Admittedly, there were various types of dumplings available. The Authority accepts that the licensee was endeavouring to be innovative in the sort of food supplied: however, merely to supply dumplings (and nothing else) was in breach of s.53 (requiring "a reasonable range of food") and the licence condition.*

112. Marsh v Sharma and Sons (2009) Ltd [2018] NZARLA 137 emphasised the range of food required. *In addition to food being available for sale and consumption on the premises, there must be a reasonable range of food available. The evidence establishes that on 12 August 2017, the fridge freezer was empty and there was at best 1/3 bag of fries available for sale and consumption on the premises. This does not constitute a reasonable range of food being available for sale or consumption on the premises. Consistent with what we said in *Empire Hotel Petone Limited NZLLA PH 1652/2008* albeit in the context of the grant of an application for a licence, the Authority considers that a reasonable range of food is a*



*minimum of three types of food such as paninis, pizzas, lasagne, pies, toasted or fresh sandwiches, wedges, filled rolls, or salads.*

113. The applicant contests that his offerings Beef jerky, Biersticks, Beef steak bar and Rice cakes meet the requirements under the act and was given an opportunity to demonstrate how they met the criteria at a hearing.
114. While a comparison with the types of food outlined in the case law clearly indicate food of a more substantial offering, it is worth repeating the evidence provided by Stephen Vega - Hutt Valley DHB, Regional Public Health which explains the concept behind the requirement for 'substantial food'.  
*I am not an expert on food, but I work in the field of health, and I do know that what you have there is a food that is protein over carbohydrate content. And the issue is that with that you don't have complex carbohydrates, you have simple carbohydrates. In other words, the carbohydrates that you have say in a pie – there is a couple of them say in the flour of the gravy that's in a pie, and then the flour that goes into the casing of a pie – there's complex carbohydrates in that, and that's the reason it absorbs alcohol as things expand in the stomach it absorbs fluid. So, you need food that is substantial, and I think that is the key. That's why when you see these decisions around food, they are talking about substantial food that suggests bread, potatoes, other complex carbohydrates. We take that point of view that we want to reduce as much harm as we can. We're not opposed to alcohol and the sale of alcohol, but we do want to make sure that people are trying at least to drink safely, and food does help in that situation. And I guess the other thing is we see a lot of licences and we do see that most licensees will have substantial food, and this type doesn't look so substantial.*
115. It is the view of the Committee that the offerings by the applicant do not meet the criteria set out in the case law, the explanation by Stephen Vega from Regional Public Health, nor do the offerings meet the intent of the law.
116. The reasoning presented by the applicant that Otaki residents will not eat higher cost offerings is not relevant to this decision, and further, was challenged by the evidence from Police pointing to the Family Hotel and the Railway Hotel both selling meals that were very popular.
117. The intent of the law is clear, that substantial food can mitigate some of the effects of the consumption of alcohol. The committee does not accept the applicant's suggestion that food fulfils the purpose under the act by simply slowing down the consumption of alcohol while a patron is physically eating. That position would also undermine the need for a reasonable range of food which is stated in a range of decisions including Marsh v Sharma and Sons.
118. In drawing these conclusions, the committee does not agree to any variation of conditions on the On-Licence.

### **Suitability**

119. Under the previous legislation, the High Court has stated in Re Sheard [1996] 1 NZLR 751 at 758

*The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that are to go with the holding of a license.*

120. The Liquor Licensing Authority has noted in DeeJay Enterprises Limited (LLA Decisions 531/97-532/97) :

*Each application is dealt with on a case by case basis. In determining suitability we assess the likelihood of a potential licensee or manager upholding the law in light of the evidence provided.*

And

*The guiding hand or hands-on operator of any company or the potential holder of a general manager's certificate now receive greater scrutiny from both the Police and other reporting agencies. The character and reputation are closely examined. The law and human desire of the patrons frequently tug in different directions. The Police cannot be*



*everywhere. Little but a licensee's or manager's character and suitability may stand between upholding the law and turning a blind eye. Self imposed standards in accordance with the law must be set by licensees and holders of general manager's certificates who control and manage licensed premises.*

121. The Committee heard that the applicant is community minded and has been a competent manager, but that the failure to comply with Section 53 raised concerns regarding suitability.
122. The Committee heard repeated evidence that the business is under stress and that cost cutting is occurring to keep the business profitable.
123. The 'substantial food' issue is linked to cost cutting by the applicant's own admission.
124. The Committee hold concerns that this cost cutting might have the potential to jeopardise the applicant's ability to meet the object of the act.
125. The Committee also heard evidence that indicated that staff training needed to be documented to ensure that a suitable standard of training is occurring.
126. The applicant had incorrectly stated that all staff were managers to Police, and again in the licence renewal. A further hearing has been scheduled for the application of a manager's certificate by a member of the Tele's staff which is opposed by the agencies but supported by the applicant.
127. The Committee remained concerned, that despite all three reporting agencies speaking to the applicant about the need for substantial food, the applicant chose to ignore that advice and seek a final clarification from the committee.
128. After careful deliberation and weighing the applicant's history, the committee found that on balance, the applicant was suitable, however any future incident where the applicant did not follow the advice of the reporting agencies would be viewed with significant concern when weighing suitability.

### **Conclusion**

129. Accordingly, the District Licensing Committee, having read the application and the submissions and reports filed by the parties, and having listened to the capable submissions which were made by all parties, and considering section 131 and 105, with specific reference to section 53 makes the following decision on the issue of renewal under Section 135.:

### **Decision**

130. The District Licensing Committee hereby:
  - (a) Approve the application by Duane Watt on behalf of Octopus Inc Limited for the renewal of an On-licence for the Telegraph Hotel for one year subject to conditions (c) which must be included on the licence, and condition (d).
  - (b) The Committee does not approve a variation of the licence under Section 120 requested by the applicant, and the provision of 'substantial food' is now a condition of this licence being issued.
  - (c) The Committee makes the following conditions regarding food;
    - I. A range of substantial food, consisting of at least five of the following items, must be available on the premises at all times the premises are open for business: toasties, pork pie, lasagne, rice cakes, peri peri tuna, beef jerky, chorizos. (The menu agreed by the agencies is attached for reference).
    - II. Menus must be visible.
    - III. Food needs to be actively promoted.
  - (d) The applicant will ensure the appropriate kitchen facilities and legal certificates are in place to deliver the menu options.
  - (e) The applicant will need to provide written documentation of staff training on the HPA On licence toolkit over the next year prior to any licence renewal.

Dated at Paraparaumu on 14<sup>th</sup> day of March 2022



Commissioner Rob McCann  
Chair  
Kāpiti Coast District Licensing Committee





## Menu

Toasties	\$5.00
Meat, cheese, meat and cheese	
Pork Pie	\$10.00
Lasagne	\$5.00
Rice Cakes	\$5.00
Peri Peri Tuna	\$5.00
Beef Jerky	\$5.00
Chorizos	\$5.00
Chippies	.50