

**OFF-LICENCE**

Sections 17 and 64, Sale and Supply of Alcohol Act 2012

**PURSUANT** to the Sale and Supply of Alcohol Act 2012, Ampt Entertainment Limited is authorised to sell or deliver alcohol on or from the premises situated at 153 Stuart Street, Dunedin, and known as "Biggies Pizza & Suburbia", to any person for consumption off the premises.

The licensee is also authorised to sell alcohol on or from the premises and deliver it somewhere else.

The authority conferred by this licence must be exercised through a manager or managers appointed by the licensee in accordance with Subpart 7 of Part 2 of the Act.

**CONDITIONS**

This licence is subject to the following conditions:

- (a) No alcohol shall be delivered on Good Friday, Easter Sunday, Christmas Day or before 1.00 pm on Anzac Day.
- (b) Alcohol may be sold from the premises at any time on any day, and delivered somewhere else for consumption off the premises, only on the following days and during the following hours:  
**Monday to Sunday 5.00 pm to 10.00 pm (deliveries can be made after this time)**
- (c) The types of alcohol to be sold/supplied are detailed in the policies submitted to the DLC.
- (d) The licensee shall ensure that the provisions of regulation 14 of the Sale and Supply of Alcohol Regulations 2013 relating to the sale and supply of liquor to prohibited persons are observed and shall display appropriate signs on the Internet web page detailing the statutory restriction on the supply of alcohol to minors.
- (e) The Licensee must display on its website and in its catalogue and on every receipt issued for alcohol sold remotely:
  - i) The licence holder's name and licence number;
  - ii) The date on which the licence expires;
  - iii) A legible image of the licence, or a clearly identified link to such image, to be displayed in a prominent place on the website.

**DISPLAY OF LICENCE AND PRINCIPAL ENTRANCE/S**

A copy of this licence must be displayed on the website for the company as well as at the principal entrance(s) to the premises as outlined in the plan received by the Dunedin District Licensing Committee on 27 April 2020. The entrance from Stuart Street is designated as the principal entrance.

**DURATION**

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force -

- (a) either –
  - (i) until the close of the period for which it was last renewed; or
  - (ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but
- (b) if an application for the renewal of the certificate is duly made before the certificate would otherwise expire, either –
  - (i) until the close of the period of 3 years after the period for which it was last renewed; or
  - (ii) if it has never been renewed, until the close of the period 4 years after the day it was issued.

**DATED** at Dunedin this 21<sup>st</sup> day of August 2020



*Kevin Mechen*  
Kevin Mechen  
Secretary

**DUNEDIN DISTRICT LICENSING COMMITTEE**

**NOTE: This licence expires on the 21<sup>st</sup> day of August 2021**

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by Ampt Entertainment Limited for an off-licence pursuant to s.99 of the Act in respect of premises situated at 153 Stuart Street, Dunedin, and known as "Biggies Pizza and Suburbia"

**BEFORE THE DUNEDIN DISTRICT LICENSING COMMITTEE**

Chairperson: Mr C Weatherall  
Members: Mr A Noone  
Mr M Lord

**HEARING** at Dunedin on 10 July 2020

**Appearances:** Ms Tacey Millard – for the applicant  
Mr Ian Lindsay – for the applicant  
  
Mr T Mole – Licensing Inspector  
Ms T Paterson – for Medical Officer of Health  
Sgt I Paulin – Police Alcohol Harm Prevention Officer  
Mr S Lanauze – Fire and Emergency New Zealand  
  
Mr K Mechen –Secretary to DLC  
Mrs L Adamson – Governance Support Officer

**INTRODUCTION**

- [1] This is an application by Ampt Entertainment Limited for an off-licence for their premises situated at 153 Stuart Street, Dunedin, and known as "Biggies Pizza and Suburbia". They propose to call themselves "Biggies Pizza, Suburbia, Nugg Life, I'm Nacho Daddy & All Gravy Baby".
- [2] Ms Millard and Mr Lindsay are the two directors of the applicant company.
- [3] The premises operates as a café and pizza restaurant through the day and in the evening the night-time activities take over with their downstairs nightclub area.
- [4] The applicant is seeking to trade with off-licence hours between 5pm and 10pm

**Ms Millard**

- [5] During the Covid-19 pandemic lockdown Ms Millard has estimated they have lost 70% of their income. Since they have been able to reopen, they are recovering but are looking at

improvements to their business model to generate additional income and to future-proof their business.

- [6] Ms Millard said the off-licences closest to them, “Countdown Central” and “Super Liquor Octagon”, offer alcohol for sale substantially cheaper than what they would if they get their off-licence. She said they do not approve of alcohol consumption in the street. Recently she noticed some ‘rip off top’ shot containers lying on the ground outside the Municipal Chambers.
- [7] They are not looking at providing bulk sales of alcohol. They would just like it as an add-on to their business.
- [8] When asked, Ms Millard told the Committee that the off-licence part of the business would only operate when “Biggies Pizza” was trading. Their usual customers in the pizza area include travellers to the city, families and they have a number of birthday parties. The area is set up for family dining, not the “Suburbia” nightlife seen later at night.
- [9] The Committee asked if they have considered the potential effects of an off-licence beyond the premises itself; if they have identified any ‘negatives’ to their proposal? Ms Millard explained that the duty manager will be actively involved with the supply of alcohol, be it on their webpage, over the telephone or over the bar. It is their responsibility to assess each sale, discuss the alcohol ban and to ask where they will be consuming the alcohol. They take the supply of alcohol seriously.
- [10] When asked if there were any limitations they would consider, they replied that, for the sake of good order in the inner city, they would consider no takeaways from the premises, only deliveries. They have the ability to block areas on their website so that orders will not be possible from selected areas, for example, North Dunedin. This would lower the risks by not making deliveries to high risk areas. They could also put a limit on the amount of alcohol per transaction. They would do what they can to limit harm but there is always a risk with alcohol.
- [11] The Committee asked if they would consider selling by ‘order’ only, rather than over the bar to anyone coming in to the premises? Ms Millard said they were aware that Countdown only did deliveries up to 8.00 pm but they would deliver everywhere. The applicant’s proposal is to consider levels of intoxication, the location of the delivery and the volume ordered. They would look at blocking out high risk areas like North Dunedin, including the Halls of Residence.
- [12] Ms Millard said that people in the North Dunedin area would still be able to order pizzas but not alcohol. When asked, she said that every sale is logged on the computer so it can be audited if required.
- [13] The Committee raised the point that there would be a lot of pressure on the duty manager at busy times. Ms Millard said that there were several duty managers working at any one time but only one has their name displayed. They all know the requirements of the Act. At 9.00 pm staff begin to pack up the tables in the “Biggies” restaurant and any diners still present are advised of the changes. If there are young children present, they are asked if they would like their meals in takeaway containers. Deliveries may also be stopped early if the premises is busy.
- [14] On busy nights, both in the premises and in town, security staff actively move through the crowds monitoring intoxication levels and behaviour. If there is a concern the person(s) are asked to leave.
- [15] In response to a question, they said the cheapest they would sell a bottle of wine is \$19 compared to the \$7 – 12 bottles from the supermarket. Deliveries in town are free for orders

over \$30 while it is \$45 minimum for areas such as Corstorphine. The minimum delivery value is on a sliding scale – the further away the greater the minimum order. Deliveries are made to Brighton, Mosgiel, East Taieri, Port Chalmers and delivery times vary from 20 minutes to 90 minutes, depending on the location.

- [16] The Police highlighted their concern at over-counter sales in the centre of town. Ms Millard said they were open to discussion on the finer detail of their application.
- [17] Sgt Paulin made the comment that the only sensitive location near the premises was recorded as the Regent Theatre. the applicant comment that Bath Street was a risk area with the consumption of alcohol and other substances in the area. However, most of the risky behaviours happen after their proposed closing time.
- [18] When asked, the applicant said there up to three duty managers working up until 10pm and then three from that time. Ms Millard said there would be no off-licence alcohol sales from the premises once the queues start to form. The premises becomes a higher risk once that number of people are present and staff have more to worry about than making off-licence sales.
- [19] Sgt Paulin asked about how much alcohol they would supply on order. Ms Millard said that detail needs to be discussed and was aware this would likely be raised so they would develop policies to cover all matters raised at this hearing. However, she assured the Committee they were not going to be supplying alcohol for parties.
- [20] Ms Paterson asked if they would be competing with the other off-licensed premises in town. Mr Lindsay replied that they would make a loss if they tried to compete on price. They do not and would not be offering any discounts or deals either off-licence or in their nightclub, even if their competitors do.
- [21] Ms Paterson also pointed out that if the delivery is done quickly it allows people to place orders before the effects of their consumption is noticeable. Ms Millard said that this was possible and if it does happen, they are willing to refund the alcohol portion of an order. Ms Paterson commented this could place the person making the delivery under a lot of stress and risk and asked if they have undertaken mental health and stress training. Ms Millard said the people making the deliveries have all received training but would be interested in any training recommended by the Medical Officer of Health.
- [22] Mr Mole asked what would stop the applicant from joining a large franchise. Ms Millard said they would not make such a move. They are owner-operators and not interested in sharing their business with others.
- [23] The Inspector commented that the granting of this licence would possibly go against the object of the Act. Ms Millard replied that they do supply alcohol, but it is not their intention to increase alcohol-related harm. Since the lockdown people are enjoying their time at home and they, the applicant, want to be in a position to help this by delivering food and drinks.
- [24] In response to a question the applicant said deliveries will be cashless, that is, payment would be made at the time the order is taken. Before an order is left at an address, the driver must sight official identification to verify the age of the person making and receiving the order. Ms Millard commented on an alcohol delivery to her private address where this was not done – the alcohol was left at the door.
- [25] During a brief adjournment the reporting agencies and applicant met to discuss more detail regarding what would be considered acceptable by the applicant. The ‘concessions’ are:

- a. Limit the amount of alcohol per order – this would be developed as a matrix with the assistance of Ms Paterson
- b. Last orders would be taken at 9pm but deliveries of those orders can be made
- c. No discounts or special deals would be offered
- d. Staff will receive ‘mental health’ training
- e. No spirits will be sold off-licence
- f. Alcohol will only be delivered with food to a residence
- g. There would be no over the counter off-licence sales but is considering alcohol pick-up with food if pre-ordered and prepaid.

[26] The Committee asked if there would be a location limit on the deliveries. Ms Millard said the consensus was that this would not be required if the alcohol is an accompaniment to food delivery.

#### **Sgt Paulin**

[27] Sgt Paulin is the Alcohol Harm Prevention Officer for the Dunedin Police District. He asked if his evidence could be taken as read. However, he said if the over the counter sales is withdrawn then the Police does not have an issue. He commented that it was not practical to ‘eliminate’ areas but delivery with food makes it more acceptable.

[28] When asked about a minimum distance for the delivery Sgt Paulin said so long as the delivery was to a residence there wasn’t an issue.

[29] The Committee asked Sgt Paulin about the suitability of the applicant. He replied that an off-licence would be a challenge for them, there are no suitability issues with them. If they say they will do something it would be done.

#### **Ms Paterson**

[30] Ms Paterson has been delegated to take the role of the Medical Officer of Health with regards to alcohol licensing matters. She tabled her evidence.

[31] After discussions with the applicant, Ms Paterson said she would not need to appeal any decision so long as there were limits on the amount of alcohol delivered and there was a limited range of alcohol available. While she does not like the idea of people being able to pick up alcohol, even with food, because it still would allow someone to consume the alcohol in the risky area in the centre of town.

#### **Mr Mole**

[32] Mr Mole is a Licensing Inspector employed by the Dunedin City Council. He said he reiterates the views of the other agencies in this matter. He commented that the Health Promotion Agency (HPA) is concerned at alcohol deliveries and are drafting a document for the Ministry of Justice detailing their concerns. However, delivery of alcohol with food, goes some way to mitigate those concerns.

[33] When asked by the Committee about the fear of a franchise picking up on this concept, Mr Mole said he would be surprised. There were other ways of being able to deliver alcohol with food, for example, “Hells Pizza” has an arrangement with “Big Barrel” so they can take alcohol with pizza deliveries.

[34] Mr Mole said he would not consider an appeal, especially if a matrix is developed to determine maximum amounts of alcohol that can be ordered with the food.

### **Adjournment**

[35] The Committee adjourned the hearing to allow the applicant 10 working days to 'firm up' their application and to submit the documents for the Committee to consider.

[36] The applicant submitted three documents during the adjournment: 'Biggies Delivery Drinks Menu', 'Biggies Policy for Alcohol Delivery' and 'Proposal for Acceptable Conditions for an Off-licence'. These documents were circulated to the agencies for comment and they have confirmed they are in accordance with the discussions held with the applicant.

[37] The 'acceptable conditions', after discussion with the agencies are:

- a. Agreed limits on the amount of alcohol per order – one alcohol item per \$10 order
- b. Last orders taken will be 10pm but acknowledging delivery will take place after this time
- c. No discounts or specials
- d. Beer, wine and RTDs (5% or less) only. There will be no unmixed spirits
- e. Delivery will be to a physical address, not a street, park bench, paddock, etc
- f. Only accept delivery sales of alcohol. No over the counter sales (but the applicant reserves the right to readdress this after 12 months)
- g. Mental health training to be arranged on advice from the MOH.

### **DECISION**

[38] This application for an off-licence is from an established on-licensee in Dunedin. The agencies have agreed there are no suitability issues, but concern was expressed at the thought of another off-licence in the central city.

[39] Midway through the hearing it became apparent that the applicant and agencies were willing to discuss the application and between them, and to agree on what would be acceptable to all parties. The list at [37] above has been accepted by the reporting agencies.

[40] One of the documents circulated by the applicant, 'Biggies Policy for Alcohol Delivery', adds more details for the above-mentioned list. The main points in this document is that alcohol can only be ordered after an order for food has been placed and that the order must be paid online so the person making the purchase can be identified. The identity of the purchaser will be verified at the time of delivery.

[41] In addition to the 'acceptable conditions' listed above, the Committee would also like to see a 'no delivery' zone that takes in the area bound by Moray Place. While there are few residences in this area, and we are mindful that there is one off-licence already in the area named, we believe it will help limit opportunities for people to access alcohol away from premises, and in particular the Bath Street area.

[42] In deciding whether to issue this licence, the Committee must have regard to the matters listed in s.105(1) of the Act:

- a. The object of the Act – we believe this application, with the 'acceptable conditions', does treat the sale and supply of alcohol responsibly and any potential harm will be

minimised. Alcohol can only be purchased with food and it must be delivered to a physical address.

- b. The suitability of the applicant has not been raised.
- c. The Dunedin Local Alcohol Policy (LAP) is not an impediment to this application.
- d. The days and hours requested are within the hours set by the LAP.
- e. The design and layout of the premises is not an issue – alcohol will be delivered from the premises.
- f. The applicant will not be involved with the sale or supply of any other goods.
- g. The applicant will not be involved with the provision of any services other than those related to the sale of alcohol, etc.
- h. The Committee does not believe the amenity and good order of the area will be reduced by the effects of this licence. The food and alcohol will be delivered away from the area.
- i. The issue of this licence will not further reduce the amenity and good order of the area.
- j. The applicant does have appropriate systems, staff and training in place to comply with the law.
- k. Matters raised in the reports from the have been dealt with during the hearing.

[43] We are satisfied as to the matters to which we must have regard as set out in s.105 of the Act and we grant the applicant an off-licence authorising the sale and supply of alcohol for consumption off the premises.

[44] The style of operation for this licence will be more in keeping of a remote seller so there will be added requirements regarding the display of licence on the applicant's website. The first is in response to the fact the buyer is not 'confronted' at the time of purchase and to this end, regulation 14 of the Sale and Supply of Alcohol Regulations 2013 details the requirements imposed on licensees to ensure prohibited people do not purchase alcohol. This regulation is reproduced here for clarity:

***"14 Reasonable steps to verify that people not under purchase age***

*(1) The procedures described in subclauses (2) to (4) are reasonable procedures for the purposes of complying with [section 59\(3\)](#) of the Act (which requires the holder of an off-licence to take reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale (and, if a person other than the buyer is to receive it, to verify that the receiver) is not under the purchase age).*

*(2) In the case of an order made using an internet site, the procedure is to—*

- (a) ask the prospective buyer to declare, by ticking an on-screen box, that he or she is 18 years of age or over (and, where a prospective receiver is involved, that the prospective receiver is also 18 years of age or over)—*
  - (i) once when the prospective buyer first enters the internet site; and*
  - (ii) again, immediately before the sale of any alcohol is completed; and*
- (b) refuse to sell alcohol to the prospective buyer unless, on both occasions, he or she declares that he or she is 18 years of age or over (and, where a prospective receiver is involved, also declares that the prospective receiver is 18 years of age or over).*

*(3) In the case of a telephone order, the procedure is to—*



- (a) *ask the prospective buyer to declare, orally, that he or she is 18 years of age or over (and, where a prospective receiver is involved, that the prospective receiver is also 18 years of age or over)—*
    - (i) *once when the conversation concerned begins; and*
    - (ii) *again, immediately before the conversation is completed; and*
  - (a) *refuse to sell alcohol to the prospective buyer unless, on both occasions, he or she declares that he or she is 18 years of age or over (and, where a prospective receiver is involved, also declares that the prospective receiver is 18 years of age or over).*
- (4) *In the case of an order made on a physical order form, the procedure is to—*
- (a) *ensure that the form—*
    - (i) *requires the prospective buyer to sign the form at a place at or near its end; and*
    - (ii) *contains 2 requests for the prospective buyer to declare, by ticking a box, that he or she is 18 years of age or over (and, where a prospective receiver is involved, that the prospective receiver is also 18 years of age or over)—*
      - (A) *one at the beginning of the form; and*
      - (B) *the other, immediately before the place on the form where the prospective buyer is required to sign it; and*
  - (b) *refuse to sell alcohol to the prospective buyer unless he or she has ticked both boxes and signed the form.”*

[45] Regulation 15 describes the information to be provided by remote sellers. When using an internet website, the licence holder must display prominently on the website the licence holders name, licence number and when the licence expires and a legible copy of the licence or a link to the licence. Any catalogue produced and any receipt issued for alcohol sold must include the licence holders name, licence number and expiry date.

[46] The licence is issued subject to the following undertakings:

- a. Alcohol can only be ordered alongside an order for food.
- b. There will be agreed limits on the amount of alcohol sold depending on the size of the food order. A matrix detailing this will be developed in collaboration with the MOH Delegate.
- c. No discounts or special alcohol deals will be used.
- d. The only alcohol offered for sale will be beer, wine and RTDs of 5% alcohol or less.
- e. Orders with alcohol will only be delivered to physical addresses outside the area bound by Moray Place.
- f. No alcohol will be supplied over the counter, even as part of a pick-up order – this can be reviewed at the first renewal of the licence.
- g. Mental health training will be undertaken as suggested by the MOH delegate.

[47] The licence issued will be subject to the following conditions:

- (a) No alcohol shall be delivered on Good Friday, Easter Sunday, Christmas Day or before 1.00 pm on Anzac Day.



- (b) Alcohol may be sold from the premises at any time on any day, and delivered somewhere else for consumption off the premises, only on the following days and during the following hours:

**Monday to Sunday 5.00 pm to 10.00 pm (deliveries can be made after this time)**

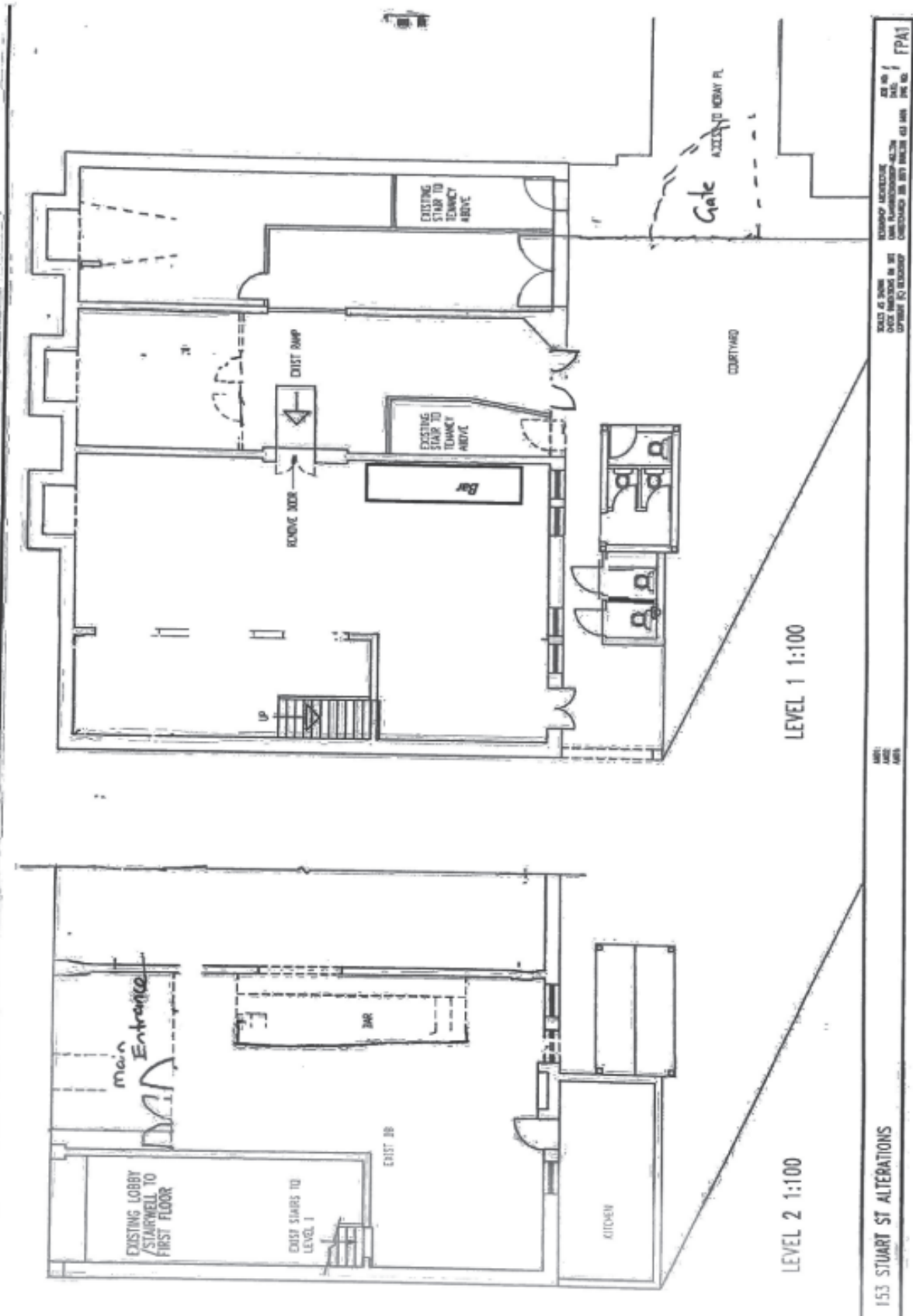
- (c) The licensee shall ensure that the provisions of regulation 14 of the Sale and Supply of Alcohol Regulations 2013 relating to the sale and supply of liquor to prohibited persons are observed and shall display appropriate signs on the Internet web page detailing the statutory restriction on the supply of alcohol to minors.
- (d) The Licensee must display on its website and in its catalogue and on every receipt issued for alcohol sold remotely:
- i) The licence holder's name and licence number;
  - ii) The date on which the licence expires;
  - iii) A legible image of the licence, or a clearly identified link to such image, to be displayed in a prominent place on the website.

[48] A copy of this licence must be displayed in a prominent position on the website or, as an alternative, a clearly identified link to such an image to be displayed.

**DATED** at Dunedin this 21<sup>st</sup> day of August 2020

  
Kevin Mechen  
Secretary  
**DUNEDIN DISTRICT LICENSING COMMITTEE**





Dunedin District Licensing Committee  
 Plans Dated: 27 April 2020  
 DLC Reg. No. 069/OFF/04/2020