

22/OFF/8071/2022

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 ('the Act')

AND

IN THE MATTER

of an application by **ANGELIN ENTERPRISES LIMITED** for the grant of an off-licence pursuant to s.100 of the Act in respect of premises situated at 15c Minden Road, Te Puna now to be known as "Te Puna Wines & Spirits".

BEFORE THE WESTERN BAY OF PLENTY DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Bev Edlin
Member: Arthur Wilkinson

HEARING via Video Link on the 8th day of April 2022

FINAL SUBMISSIONS received in writing on 20 April 2022

APPEARANCES

Mr. John Young– for the applicant company
Mr. Barinderpal Singh for the applicant

Mr. Dougal Elvin – Alcohol Licensing Inspector – in opposition

Sergeant Dan Roser – Police Alcohol Harm Reduction Officer (AHRO) – in opposition

Tom Wilson -witness for Police

Donna Motutere- witness for the Police

Ms. Dawn Meertens- delegated officer for the Medical Officer of Health (MOoH)- to assist- no appearance -submission in absentia received.

Objectors

Birgitte Clark via video link



Scott Crook via video link
Robyn Mitchell no appearance
Joanne O'Keefe no appearance

RESERVED DECISION OF THE COMMITTEE

Introduction

1. This application was originally set down for hearing on the 3rd of February 2022. However, it was adjourned sine die following advice from counsel that his client had lost their lease for the property, but he said his client was in negotiations with the landlord to have it resurrected.
2. Some weeks later we were advised that those negotiations had been successful, and a new lease had been negotiated. We started afresh.
3. In an application dated the 27th of October 2020, Angelin Enterprises Limited applies for an off-licence for a bottle store in the township of Te Puna. The interior fit out has yet to be completed pending determination of this application.
4. The licensed hours sought were Monday to Sunday 9.00am to 10pm. These hours are within the default national maximum trading hours for off licences and within the (then) operative Tauranga and Western Bay of Plenty Local Alcohol Policy that came into force on the 16th of November 2015. During the course of the hearing, the hours sought were amended to 10.00am to 10.00pm.
5. We note that the LAP has been reviewed and adopted in April 2022 and comes in to force later this year. The reviewed LAP has a maximum closing time of 9.00pm for all off licences across the WBOP district.
6. The proposed premises is situated in the middle of a commercial complex on a busy intersection in the township of Te Puna, in the Western Bay of Plenty. The locality consists of large farms and life-style blocks and is known for its horticultural activity.
7. The commercial area has the Te Puna Liquor Centre and the Four Square across the road both holding off licences. The Te Puna Tavern, The White House Restaurant and Nourish Café all hold ON Licences for on-site consumption of alcohol.
8. Also located in and around Te Puna is a distillery with a remote off licence, a specialist importer of Belgium Beer with a remote off licence, The Cider Factorie that holds an ON & OFF Licence, the Persimmon Café and the Te Puna Rugby Club that holds a CLUB Licence.



9. Minden lies to the south-east of this commercial complex and is accessed from the same intersection. Residential homes are located mainly around the surrounding hill region. Two Marae are located in the wider area.
10. The application was duly advertised and was reported on by the agencies. Both the Police and the Inspector lodged reports with matters in opposition to the granting of the licence.
11. The MOoH lodged a report saying whilst there were “issues that were concerning there is no opposition.”
12. The Police opposed the application in their report of 19 January 2021 citing that the location of the premises was almost adjacent to another existing bottle store and that another alcohol outlet would inevitably result in more alcohol related harm in the community.
13. Four public objections were received. Generally, they all believed that an additional alcohol outlet would further damage the amenity and good order of the area and that there were sufficient alcohol outlets in the area and in the nearby Bethlehem Shopping Complex, 5-6 kilometers away.
14. The application was set down for a public hearing as the Committee needed to hear the concerns of the agencies and to properly evaluate the application as we are required to do.

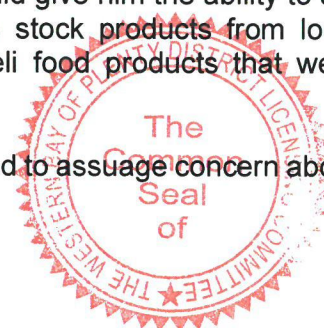
Applicant's Evidence

15. Mr. Young provided the Committee with a short opening and helpfully outlined the task for the DLC in that we must adopt an evaluative, merits-based assessment of the application.
16. He distilled the ‘opposition’ down to concerns about the amenity and good order of the area and the Object of the Act. i.e., that “the *sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*¹
17. He acknowledged that there was a full off licence already operating in the same complex just 50 metres away from the proposed premises.
18. He said that the application was commendable because it was carefully crafted and has been refined in response to identified concerns, contains bespoke conditions, and presents a modern and responsible style of alcohol retailing.

¹ Sale and Supply of Alcohol Act 2012 Section 4



19. In his submission, the proposed opposition was generalised and unformulated and it could be used to oppose almost any off-licence in the district or region.
20. He said the application was otherwise unremarkable and would meet the provisions of Section 105 of the Act. He said there was none of the usual 'red flags' and that the local community could not be described as vulnerable.
21. He argued that the mitigations that would be put in place by his client would satisfy the concerns held and a licence could be granted.
22. We heard from Mr. Barinderpal Singh, who spoke to his application. He told us that although he lived in Te Puke he would be responsible for the day-to-day management of the business and that he had held a current manager's certificate for some time.
23. He said he had 8 years' experience in managing bottle stores and a sports bar and is the owner of a Pizza outlet in Te Puke.
24. He told us about two unsuccessful applications he has been involved in recently. He said he understood why the application for Brew Estate in the Tauranga CBD was refused and he withdrew the application for a bottle store on 15th Avenue when he became fully aware of the social issues in the area.
25. He outlined the reasons for his decision to try and open a bottle store in Te Puna. He believed it was a stable community where the risks of alcohol related harm could be minimised by a hybrid of the Brew Estate model he had earlier attempted to establish in Tauranga city.
26. He was aware of the other businesses in the area and the presence of the Te Puna Liquor Centre some 50 metres from his proposed store.
27. In regard to the stated opposition from the Police and the Inspector about the potential for a price war he said that in his view alcohol prices were about as low as they could go. He said the other store might put on some specials in competition to his offerings but as prices are set by the franchisor he doubted (somewhat naively in our view) that there would be a "noticeable drop" in alcohol prices in Te Puna.
28. He told us that he planned for the business to be an independent store and would not align with any of the current franchises. This would give him the ability to set his own prices and product choices. He hoped to stock products from local brewers and distillers and have a small line of deli food products that were complimentary to alcohol purchases.
29. He proffered a suite of conditions that he had designed to assuage concern about the style and operation of the premises.



30. Those conditions were:

We will not sell:

- (a) Spirit-based shots of any type;
- (b) Light spirits up to 13.9% abv of any type;
- (c) Cask wine of any type;
- (d) (no) Mainstream beers under \$25 per dozen

- (e) There will be no floor displays (all alcohol will be on shelves or display plinths/barrels etc.);

- (f) All RTDs will be stocked in the chiller;

- (g) There will be no RTD's in the fridges that face onto the retail floor area;

- (h) No specials on RTD's;

- (i) No alcohol brand or price promotions on the exterior of the premises.

- (j) Reduced trading hours of 10am to 10pm; and

- (k) No sale of single RTD's or mainstream beer under \$6.

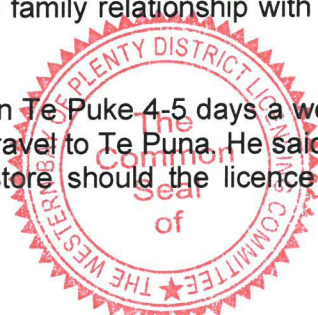
31. He commented on the objectors concerns around boy racers, traffic congestion and car parking. He said he was familiar with the area and had discussed these issues with a family member who operates the adjoining Sports bar. He said they had not expressed concerns about these issues although they acknowledge it is a busy intersection with SH 2.

32. Under cross-examination from the Police, he confirmed that the tavern was run by his brother, and he had a good relationship with him. Mr. Singh did not think it would be difficult to prevent off licence patrons from taking their purchases into the tavern to drink.

33. He conceded, however, that once the alcohol leaves the store, he would have little, to no, control over its consumption and any related harms. (As is the case with all alcohol sold from off-licensed premises).

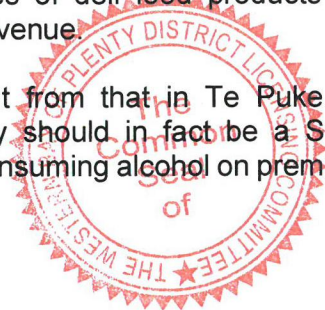
34. He confirmed, in sworn evidence, that there was no family relationship with the current operators of the Te Puna Liquor Centre.

35. To the Inspector he confirmed he currently worked in Te Puke 4-5 days a week in his Pizza business, and it was about 45 minutes travel to Te Puna. He said 3-4 certificated managers will be appointed to the store should the licence be



granted.

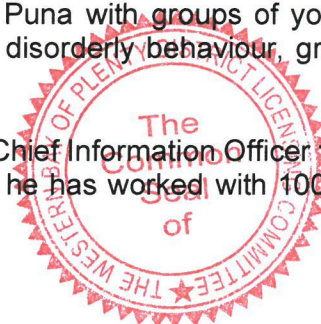
36. In regard to pricing, he confirmed that there is little room in alcohol prices for discounting and the mark up on most products was around 25%. In his store there would be no RTDs on the shop floor and they will be displayed only within the chiller.
37. He had no intentions of entering a price war with the other store and intended to compete on service and product selection. He would not stock or sell cheap alcohol.
38. When asked if he had consulted with the community, and in particular the Māori community in Te Puna, he said he did ask around the patrons in the tavern. He confirmed he had not spoken with other business owners in the immediate area, nor had he spoken with the objectors. He said he did email them but had had no response.
39. In response to questions from the Committee members he confirmed that there had been no enforcement actions taken against him and he understood that he could not loss lead alcohol products.
40. When asked how he had researched the demographics of the community he said he had looked online and read census data and had made an information request from council. He argued that the Te Puna community was growing, and that growth was expected to continue. (However, that was not borne out in the data he presented to us. It appears the population is stable and very little increase is forecasted.)
41. He believed that his proposed modern and attractive store will give him a competitive edge over the existing store.
42. To the Chair he confirmed his most recent experience was in a bottle store in 2021. He believed the proposed clientele would be local residents, wealthy farmers and local business owners and workers.
43. He anticipated that the store would turnover up to \$20,000 a week initially and that they would take market share from the other bottle stores rather than generate 'new' money. He believed they would take some market share from Bethlehem and Omokoroa and 'new' money would be spent on the new and exclusive products he would stock. His side lines of deli food products and glassware would amount to no more than 5% of revenue.
44. He said the community and clientele is different from that in Te Puke. He acknowledged that his Host Responsibility Policy should in fact be a Social Responsibility Policy as they do not host patrons consuming alcohol on premises.



45. He confirmed that he has no previous, or current interactions, with the Department of Labour or MBIE.

Police Evidence

46. Sergeant Dan Roser is the Alcohol Harm Reduction Officer for the Tauranga and Western Bay of Plenty Area. He has been with the Police for 21 years and has an intimate knowledge of the district.
47. In his opening he said there would be real risks to the community if another bottle store was opened in Te Puna. He gave us a rundown of the locality and the businesses contained in the complex and introduced a series of graphs and pictorials of the deprivation indices of the area, the ethnicities of the community and the presence of Māori owned land and settlements down towards the coast.
48. Sergeant Roser introduced victimisation data that he said showed Te Puna and Minden were already adversely represented in victimisations related to the use (and abuse) of alcohol.
49. The statistics were for the unusual period of 21 months and were difficult to assimilate and to draw inferences from. Sergeant Roser submitted that the greatest proportion of the incidents and offences were family harm incidents or assaults and 40 of the 360 reported incidents, were tagged as having alcohol involvement.
50. He made a point of saying that it was a well-known fact that alcohol related harm was under reported (we agree and accept that) and he also conceded that the empirical data that he was trying to present was not as 'user-friendly' as it should be and that the Police currently had a project underway to make the data more useful and relevant.
51. Sergeant Roser then attempted to convince the Committee that the competition that he believes will occur between the two stores can be explained by a "five forces analysis" devised by Michael Porter of Harvard University.
52. Under cross-examination he confirmed that he was more concerned about the closeness of the two stores rather than the general proliferation of premises. He accepted that the 'bespoke' conditions offered by the applicant would possibly assist in reducing the potential for alcohol related harm.
53. He agreed that there was no particular issue in Te Puna with groups of youths drinking in the streets or the associated offences of disorderly behaviour, graffiti and vandalism.
54. Then we heard from Tommy Kapai Wilson. He is the Chief Information Officer for a local social service agency and for the last 10 years he has worked with 100s of

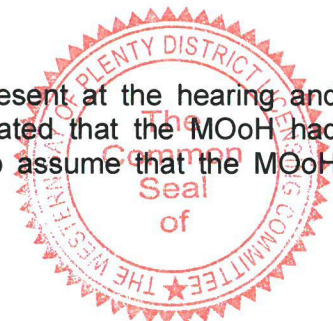


families in transition housing right across the Tauranga area. His work involves engaging with local gang members and their reintegration back into the community.

55. He believed alcohol caused more problems locally than methamphetamine. He said it (alcohol) was the worst drug in NZ and an additional bottle store would provide an increased opportunity for vulnerable groups, such as Māori, to access cheap alcohol. He said more than 80% of the interventions they undertook involved the use and abuse of alcohol.
56. When cross-examined he said those abuses included alcohol related car crashes and domestic violence.
57. Next we heard from Donna Motutere who is the manager of Pirirakau Hauora Charitable Trust, a Kaupapa Māori Health Provider. For the last 25 years she has worked with whanau and is intimately familiar with the living standards and the effects alcohol has on her clients wellbeing.
58. She outlined the circumstances around several drink drive crashes and deaths on the roads and highways around Te Puna. She said that alcohol also has a “massive impact” on the mental health of local whanau to the point where medical and clinical interventions are necessary. (However, we note that there was no evidence to link the drink drive crashes to the purchase of alcohol from any of the Te Puna outlets.)
59. She believed there was already more than enough alcohol outlets in Te Puna and nearby shops in Bethlehem. She said local young people already get access to alcohol and drink it up on the hill or down at the beach. She too, thought there would be a price war between the two stores if a licence was granted.
60. She said: *“We are into building whanau resilience, and this (the new bottle store) is not conducive with our goals.”*
61. During questioning she was asked about the prevalence of street drinkers and homeless persons in the area. She said much of the harm occurs behind closed doors. To Mr. Young she said she would be reluctant to have a working relationship with the applicant to promote their social services as she saw them as the creators of the problems her organisation has to deal with.

Medical Officer of Health Evidence

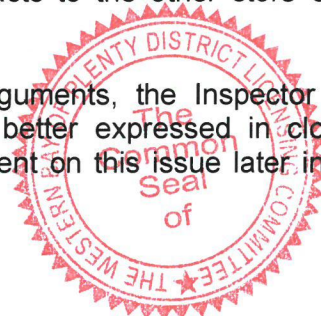
62. Dawn Meertens, on behalf of the MOoH, was not present at the hearing and submitted a ‘submission in absentia’ in which she stated that the MOoH had withdrawn its opposition and did not want the DLC to assume that the MOoH supported the application.



63. In fact, the MOoH had reported on the application on 28 June 2021 and no opposition was lodged.
64. In the applicants closing submissions they are critical of the statements and motivations of the MOoH.
65. However, we agree that a non-opposition stance from a reporting agency does not create a perception of tacit approval of the application.
66. We also have significant sympathy for Ms. Meertens as we know she is basically unsupported in the alcohol role and she has been, up until recently, heavily involved in the COVID-19 response.

Inspector's Evidence

67. Dougal Elvin is a warranted alcohol licensing inspector for the Western Bay of Plenty.
68. In his brief of evidence, he outlined the prolonged history of the application spanning back to October 2020, some 18 months ago, to the present day.
69. His initial concerns were about the immediate proximity of the other store and the potential for price cutting and competition.
70. The applicant alleges he was told by Mr. Elvin at their first meeting that the Inspector would not oppose the application.
71. In his evidence before us, Inspector Elvin's evidence was that when reflecting after that meeting, he decided to oppose the application.
72. In any case, the determination of this application does not hinge on this alleged inconsistency and given the passage of time we accept the assertion of Inspector Elvin that he does not recall making that statement to Mr. Singh.
73. He outlined his theories on competitive edges and why he thought that a bottle store selling a large range of similar generic products to the other store could possibly compete on service, and not on price.
74. As Mr. Young has pointed out in his closing arguments, the Inspector has submitted several theories and opinions that are better expressed in closing submissions, not in a brief of evidence. (We comment on this issue later in our discussions.)



75. The Inspector was critical of what he perceived was a lack of genuine community engagement by the applicant.
76. Under cross-examination he conceded that he had not raised the Object of the Act or Amenity and Good Order in his initial report. He was asked if he had a better understanding of the applicant's proposal now including the bespoke conditions offered. He said he accepted that he (Mr. Singh) was trying to do better.

Objectors Evidence

77. Four persons lodged objections within the required timeframe.
78. Two of the objectors did not attend the hearing and we put little, to no, weight on their stated concerns of the potential for traffic related issues in the area and the wisdom of having another bottle store so close to the existing one.
79. We did hear from Birgitte Clark who is a local resident of Te Puna. She told us that the village does not need another outlet and that SH2 is very busy and that boy racers already use Minden Road to do their burnouts and races.
80. She also had concerns about the effects of alcohol on families and alcohol related harm generally.
81. Next we heard from Scott Crook who is a local businessman who has "*watched Te Puna grow over the last 8 years*". He said it was "madness" to have another bottle store in a little village.

Relevant legislation

82. Section 3 of the Sale and Supply of Alcohol Act 2012 ("the Act") states the purpose of the Act as follows:
 - (1) *The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –*
 - (a) *to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and*
 - (b) *to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*
 - (2) *The characteristics of the new system are that–*
 - (a) *It is reasonable; and*
 - (b) *Its administration helps to achieve the object of this Act.*
83. Section 4 states the object of the Act as follows:



- (1) *The object of this Act is that –*
- (a) *The sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
 - (b) *The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*
- (2) *For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –*
- (a) *Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
 - (b) *Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*

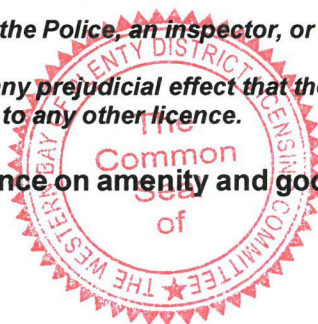
84. Section 105 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to grant a licence as follows:

105 Criteria for issue of licences

- (1) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - (a) *the object of this Act:*
 - (b) *the suitability of the applicant:*
 - (c) *any relevant local alcohol policy:*
 - (d) *the days on which and the hours during which the applicant proposes to sell alcohol:*
 - (e) *the design and layout of any proposed premises:*
 - (f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
 - (g) *whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
 - (h) *whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
 - (i) *whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*
 - (i) *they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
 - (ii) *it is nevertheless desirable not to issue any further licences:*
 - (j) *whether the applicant has appropriate systems, staff, and training to comply with the law:*
 - (k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).*

(2) *The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*

106 Considering effects of issue or renewal of licence on amenity and good order of locality



(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—

(a) the following matters (as they relate to the locality):

(i) current, and possible future, noise levels:

(ii) current, and possible future, levels of nuisance and vandalism:

(iii) the number of premises for which licences of the kind concerned are already held; and

(b) the extent to which the following purposes are compatible:

(i) the purposes for which land near the premises concerned is used:

(ii) the purposes for which those premises will be used if the licence is issued.

Other criteria to be considered

85. The Act provides that in deciding whether to grant a licence, the licensing committee **must have regard** to the matters contained in section 105 and 106 of the Act. As the determination of this application is finely balanced, we intend to go through the criteria and give genuine attention to each one.

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

86. Section 105(1)(a) of the Act requires the licensing committee to have regard to the object of the Act and in particular that the **sale, supply and consumption** of alcohol should be undertaken safely and responsibly.

87. As we have said before, it is not hard for off licence operators to argue that they sell and supply alcohol safely and responsibly. Off-licensed sellers may exercise some influence over the **sale and supply of alcohol**, but they **can do little, if anything at all, to control the later on-supply and consumption of alcohol as it occurs away from the seller's premises and out of their sphere of control.**

88. **We will return to this criterion once we have evaluated the others and then measure them collectively against the Object of the Act.**

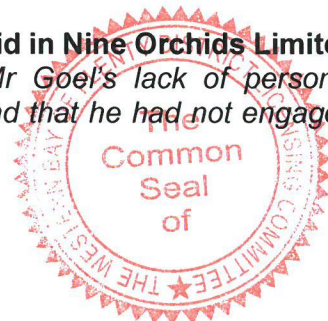
Section 105(1)(b) Suitability of the Applicant

89. The applicant must be a suitable entity to hold an off-licence. We heard that the applicant company and its alter egos, are experienced operators in off-licensed premises.

90. Mr. Barinderpal Singh appeared before us for the company and impressed us a genuine person who has thought this application through.

91. **As the Tauranga District Licensing Committee said in *Nine Orchids Limited September 2014*² "We were disappointed with Mr Goel's lack of personal knowledge of the community he hoped to go into and that he had not engaged**

² Tauranga DLC Nine Orchids Limited September 2014



with the business community, schools and other organisation's operating in the Bethlehem area.

92. ***We signal to this applicant, and to future applicants, that we expect applications to include evidence of consultation and an in-depth knowledge of the community in which they wish to open off-licensed premises.***
93. That case was for a bottle store in Bethlehem and was declined. In the case before us today Mr. Singh has a better knowledge of the locality but has not engaged with local residents and organisations at the level we think is desirable.
94. During the course of the application process, and at the hearing, the applicant has amended the application to include a suite of bespoke conditions that **he says** will set the business apart from the nearby opposition. The applicant has also adjusted the proposed opening time from 9.00am to 10.00am.
95. Other than his decision to want to set up a bottle store 50 metres from an existing store the suitability of the applicant was not challenged by the agencies.

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

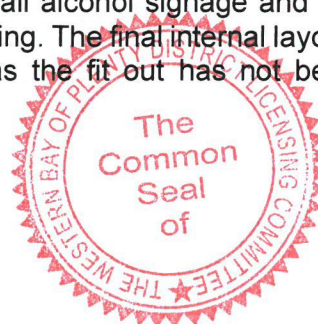
96. The application complies with the **old** Tauranga and Western Bay of Plenty Local Alcohol Policy (LAP) that came into force on the 16th of November 2015 as to the hours sought.
97. However, the new Western Bay of Plenty Local Alcohol Policy was recently adopted and comes in to force later in 2022. It contains a universal closing time of 9.00pm for all OFF Licences. It is unsure at this stage whether this will be imposed retrospectively or at renewal time. That is a matter for the future.

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

98. The proposed operating hours are **Monday to Sunday 10.00am to 10.00pm** and are within the default national maximum trading hours for off licences and the recently expired Tauranga and Western Bay of Plenty LAP.
99. As above it is unknown at this stage if the 9.00pm finish for bottle stores will apply to this application, if granted.

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

100. The applicant agreed to keep the frontage clear of all alcohol signage and will have sound enabled CCTV fitted throughout the building. The final internal layout, and required signage, cannot be commented on as the fit out has not been undertaken.



101. The applicant indicates that the store will be bright and modern, and no alcohol brand or price signage will be displayed on the external surfaces of the building.

Section 105(1)(f) Whether the applicant is engaged in or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods

102. The applicant advises that the business would sell a range of snack food items such as chips and peanuts, deli items, giftware and the like, and also tobacco products.

Section 105(1)(g) Whether the applicant is engaged in or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, and good, and if so, which services.

103. No other services are to be offered.

Section 105(1)(h) Whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence.

104. We are directed to the parameters of s.106(1) and to have regard to a series of matters (as they relate to the locality). Firstly, we consider current, and possible future, noise levels. The issue of noise was not raised by any of the parties, and we do not see this as a determining factor.

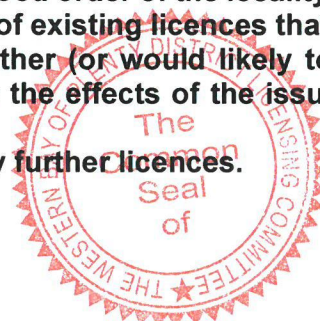
105. In regard to the current, and possible future, levels of nuisance and vandalism we note that the current levels of anti-social behaviour and victimisations recorded by the Police range from medium in Te Puna to 'high' in the Minden area.

106. As we have commented previously, we express the same frustrations as did Sergeant Roser on the 'usability' of the Police databases. We have taken from the information provided that the amenity and good order of the immediate locality is not already badly affected.

107. We are required to consider "the purposes for which land near the premises concerned is used." The location is compatible with other commercial users barring the glaringly obvious presence of another bottle store nearby.

Section 105(1)(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that-

- (i) They would be unlikely to be reduced further (or would likely to be reduced further to only a minor extent) by the effects of the issue of the licence: but
- (ii) It is nevertheless desirable not to issue any further licences.



108. This maybe the turning point for this Committee. We received very little compelling data from the agencies sufficient for us to place an elevated mantle on this criteria.
109. However, the evidence from Tommy Wilson and Donna Motutere was relevant and cogent, but both witnesses work across the district, not just in Te Puna and Minden. The issues they spoke of were district wide and not specific to Te Puna.
110. We did not receive evidence that the amenity and good order is already badly affected. To the contrary it appears the village enjoys a pleasant and agreeable environment.
111. On that basis we have determined that the amenity and good order of the area is not badly affected by the effects of the issue of existing licences.

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

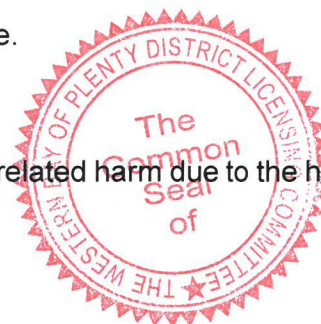
112. The applicant advised us that two certificated managers would on duty at busy times and additional managers would be employed should the licence be granted.
113. He stated, on oath, that he would not compete on price with the other store should the licence be granted.
114. He produced his training policy and outlined the systems he would put in place to run this business to comply with the law.
115. But as we stated earlier in this decision it is very difficult for off-licensed premises to prevent the sale of alcohol to persons who may then on-supply it to those who choose to act inappropriately and/or drink to excess.

Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129

116. The Police oppose on the grounds of proximity, a potential price war and that there are vulnerable populations in the Te Puna and Minden areas.
117. The Inspector opposes on the grounds that there will be a price war between the two stores and that the applicant has not undertaken sufficient public consultation on this proposal.
118. The Medical Officer of Health is deemed to not oppose.

Closing Submissions were received post hearing in writing

119. The Police said there is a real risk of increased alcohol related harm due to the high

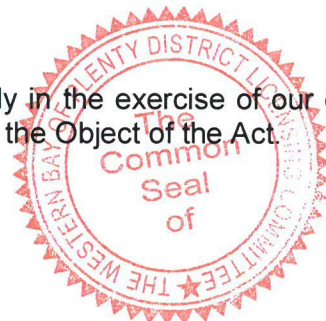


proportion of Māori residents who already experience high levels of ARH.

120. He said the evidence of the Police witnesses must not be disregarded and the town is already well serviced with alcohol outlets.
121. He said the Police hold concerns about pre and side loading of alcohol from the store and the likelihood of patrons taking that alcohol in to the tavern.
122. He believed the other store will retaliate and prices will be reduced, and the community has no desire for another store.
123. Sergeant Roser encouraged us to take a precautionary response and refuse the application.
124. Inspector Elvin said the proposed store was too close to the existing one and the other store will respond, price wise, to having a new player on the block.
125. He said the consultation with the community was inadequate and the community will suffer as they will gravitate to the cheapest store whether it be this one or the other.
126. Mr. Young, on behalf of AEL, delivered a scathing closing submission labelling the agency submissions as misconceived and in breach of natural justice.
127. He challenges their decision to raise the issues at the other store and then promptly including the circumstances around the other store in his own submissions.
128. We suspect that he was expressing his frustrations, as did we, that the 'opposition' from the Police and the Inspector was largely anecdotal and theoretical. Evidentially they did not 'put their best foot forward.'
129. We accept that it is difficult to predict what might happen in the future. We can only look at the present and apply our own skills and life experiences to the factors present, and the material presented to us.
130. The closing submissions, albeit emotive in places, were helpful to the Committee, and we applied that information to our deliberations.

Discussion

131. Section 3 of the Act requires us to act reasonably in the exercise of our duties and to regulate with the aim of helping to achieve the Object of the Act.



132. As Gendall J said in Christchurch Medical Officer of Health v J & G Vaudrey Ltd³, the principles relating to the requirement to 'have regard to' can be summarised as these:
- a. *the phrase "have regard to" bears its ordinary meaning;*
 - b. *the decision maker must actively and thoughtfully consider the relevant matters;*
 - c. *to do so requires the decision maker to correctly understand the matters to which he or she is having regard;*
 - d. *the weight to be given to such matters is generally within the discretion of the decision maker;*
 - e. ***there will be cases where the matter(s) to which the decision maker is required to have regard are so fundamental or critical that they assume an elevated mantle.***
133. At paragraph [31] of Otara-Papatoetoe Local Board v Joban Enterprises Ltd CIV-2011-404-7930; [2012] NZHC 1406⁴ Heath J considered how the Authority should determine whether to grant an off-licence or not. His suggestions, with minor changes, are appropriate to the determination of all applications for licences by DLCs.
134. Justice Heath said: *An appropriate framework could involve a consideration of:*
- (a) *The criteria set out in ss.105 and 106 of the Act;*
 - (b) *The reports of the reporting agencies directed to the ss.105 and 106 criteria.*
- and (c) The public objections that fulfil the statutory criteria set out in s.102(3)*
135. *Then the DLC, mindful of the statutory object of the Act, should weigh all the evidence and submissions to determine whether the application should be granted or not. This would involve forming a view on whether there is evidence to suggest that the grant of the application would achieve the safe and responsible sale, supply and consumption of alcohol and that any harm caused by the excessive or inappropriate consumption of alcohol would be minimised.*
136. Whilst there is no 'onus of proof' on any of the parties it is incumbent on each to 'put their best foot forward'.
137. Largely the applicant did just that, although we too, agree with agencies and the higher authorities, that applicants must do more than find an empty tenancy and apply for an OFF Licence to establish a bottle store. Mr. Singh should have done more than to ask a few of the locals at the adjacent pub.
138. In small communities such as this we would expect that they would develop a

³ Christchurch Medical Officer of Health v J & G Vaudrey Ltd

⁴ Otara-Papatoetoe Local Board v Joban Enterprises Ltd CIV-2011-404-7930; [2012] NZHC 1406



sound knowledge of the community and its members. A visit to local businesses and social service providers would be appropriate. The calling of a town meeting to discuss the proposal could be considered though the applicant might get a response that they would not like.

139. At the end of the day, as we are often told, "Alcohol is no Ordinary Commodity."
140. As we have stated above, the role of the DLC, after receiving the evidence from all parties, is to stand back, and evaluate the evidence put before them.
141. Both the Police and the Inspector strayed into legal submissions and their own personal views and opinions when presenting their '**evidence.**' There is a time for those thoughts and theories but that is during closing submissions not during the adducing of evidence.
142. Evidence of current or potential future alcohol related harm, general victimisations and deprivation indices etc. must be presented in a clear logical form. It should not be left to counsel, or the DLC, to question data or seek to fill obvious gaps.
143. We apply added weight to the evidence of Tommy Wilson and Donna Motutere because as they said, they work at the 'coal face' and deal with alcohol related harm issues on a daily basis albeit district wide and not just in the immediate locality.

The Decision

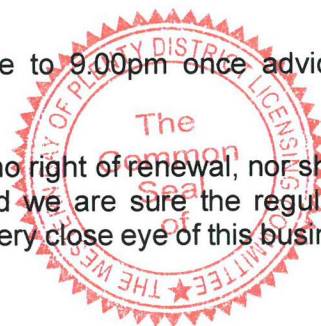
After standing back and evaluating the totality of the evidence before us, we have come to the conclusion, **by a very slim margin**, that a boutique wine and spirits store operating under bespoke conditions, as proposed, can be granted and will not offend against the Object of the Act.

Had this application been for a standard franchised bottle store the result would most likely be very different.

The ball will be firmly in the court of Mr. Singh to set up and operate as he has sworn to do, and not engage in retaliatory pricing as his competitor is sure to do if his market share is attacked.

We also forecast that the closing time may have to 9.00pm once advice is received on the effects of the newly adopted LAP.

The licence is issued for 12 months only. There is no right of renewal, nor should there be any forgone expectation of renewal, and we are sure the regulatory agencies and the local residents will be keeping a very close eye of this business.



Should they detect any breaches of the conditions that have been set, we would expect a very prompt request to the DLC to rehear the application, as we are able to do under Section 201(4).

The Licence is granted for 12 months from the date of issue.

The licence is subject to the following mandatory and discretionary conditions.

1. Alcohol may be sold on, or delivered from, the premises for consumption off the premises, or supplied free as a sample for consumption on the premises, only on the following days and hours: **Monday to Sunday 10:00am to 10:00pm**.
2. No alcohol is to be sold on, or delivered from, the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day;
3. While alcohol is being supplied free as a sample, water is to be provided to patrons free of charge at the place where the samples are being supplied;
4. The whole of the premises is designated as a **Supervised Area**;
5. The Licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages;
6. A properly appointed Certificated, or Acting or Temporary, Manager must be on duty at all times, within the licensed area, when the premises are open for the sale and supply of alcohol and their full name must be on a sign prominently displayed in the premises.
7. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol;
 - c. A copy of the licence attached to the inside of the premises so as to be easily read
8. No alcohol of the following types are to be sold under this licence:
 - a. Spirit-based shots of any type;
 - b. Light spirits up to 13.9% abv of any type;



- c. Cask wine of any type;
- d. No mainstream beers are to be sold under \$25 per dozen
- e. There must be no floor displays (all alcohol will be on shelves or display plinths/barrels etc);
- f. All RTDs must be stocked in the chiller;
- g. There must be no RTD's in the fridges that face onto the retail floor area;
- h. No specials on RTD's;
- i. No alcohol brand or price promotions on the exterior of the premises.
- j. No single sales of RTD's or mainstream beers under \$6.

DATED at TAURANGA this 30th day of April 2022



Murray Clearwater
Commissioner
For the Western Bay of Plenty District Licensing Committee



NOTE

Sections 152 to 155 relating to the right to appeal this decision are in effect.

An appellant has 10 working days after the date on which notice of this decision is given to the parties to lodge an appeal with the Alcohol Regulatory Licensing Authority.

This decision shall have no effect during the appeal period.