



**Western
Bay of Plenty**
District Council

MINUTE ATTACHMENTS

District Licensing Committee
Meeting

Thursday, 3 February 2022

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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.

