

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL
DISTRICT LICENSING COMMITTEE MEETING NO. DL22-1
HELD VIA ZOOM (AUDIO / VISUAL LINK) ONLY AND LIVESTREAMED
UNDER COVID TRAFFIC LIGHT RED
ON THURSDAY, 3 FEBRUARY 2022 AT 9.30AM**

1 PRESENT

Commissioners: M Clearwater (Chairperson), B Edlin and A Wilkinson

2 IN ATTENDANCE

A Curtis (District Licensing Secretary), D Elvin (Liquor Licensing Inspector), M Turner (Compliance Officer) K Bowyer (Compliance Officer) J Osborne (Governance Support Administrator) and C Irvin (Senior Governance Advisor).

OTHERS IN ATTENDANCE

As listed in the minutes

3 APOLOGIES

Nil

4 DECLARATIONS OF INTEREST

Nil

5 PUBLIC EXCLUDED ITEMS

Nil

6 PUBLIC FORUM

Nil

7 HEARINGS

7.1 DISTRICT LICENSING COMMITTEE HEARING :

APPLICATION NO. LL807: APPLICATION FOR AN OFF LICENCE PURSUANT TO SECTION 100 OF THE SALE AND SUPPLY OF ALCOHOL ACT 2012.

APPLICANT: ANGELIN ENTERPRISES LIMITED (TRADING AS TE PUNA LIQUOR STORE)

**IN RESPECT OF LICENSED PREMISES SITUATED AT 15C MINDEN ROAD, TE PUNA AND
KNOWN AS TE PUNA LIQUOR.**

1. Welcome and Introductions

Chairperson's Introduction:

The Chairperson noted the following:

- The Committee had been appointed to determine an application by Angelin Enterprises Limited for the grant of an Off Licence, premises situated at 15c Minden Road, Te Puna, to be known as 'Te Puna Liquor'.
- It had been expressed by the parties that the preference was to do the hearing face to face, but that it had not been possible due to COVID-19 circumstances
- The need to make it a fair and lawful process for all parties.
- The hearing was being livestreamed through Council's website.

Participating Party Introductions

Commissioner/Chairperson Murray Clearwater introduced himself and:

- Commissioner Arthur Wilkinson; and
- Commissioner Beverly Edlin.

John Young (Brookfields Lawyers – Applicant's Counsel) introduced himself and:

- Barinderpal Singh (Applicant – Angelin Enterprises Limited, 'Te Puna Liquor'); and
- Simranjit Singh (Operator/Director 'Te Puna Liquor').

The Chairperson introduced the following attendees:

- Tommy Wilson (Police Witness)
- Donna Motutere (Police Witness)
- Dawn Meertens (Medical Officer of Health (MOoH))
- Dougal Elvin (Western Bay of Plenty Liquor Licensing Inspector)
- Objectors:
 - The Senior Governance Advisor informed the Chairperson that one objector wished to speak to the application at the hearing, being Birgitte Clark. The two remaining objectors had been contacted via email and phone but had not responded/advised they wanted to speak at the hearing.

The Chairperson asked the following Western Bay of Plenty District Council employees to introduce themselves:

- Alison Curtis (District Licensing Secretary/Compliance and Monitoring Manager)
- Carolyn Irvin (Senior Governance Advisor)
- Jahneisha Osborne (Governance Support Administrator)
- Micaela Turner (Technical Support Officer Alcohol and Compliance)
- Katelin Bowyer (Acting Team Leader Compliance Support)

2. Preliminary Matters

The Chairperson confirmed with the Applicant and his Counsel that:

- They were aware of procedures
- This was to be treated as a commission of enquiry, and that this was an 'inquisitorial and evaluation' process.
- If the Commissioners asked the Applicant a question directly it was only the Applicant who could answer the question.
- The Senior Governance Advisor informed the Committee that Sergeant D Roser (New Zealand Police – Liquor Licensing Coordinator Western Bay of Plenty) was not able to communicate at this time due to a Zoom interruption.

3. Evidence for the Applicant

The Applicant's Counsel advised that:

- His client had received correspondence from their landlord late yesterday afternoon purporting to cancel the lease. This was being disputed.
- It had been understood by the Applicant that the lease would be extended, and that this was agreed and understood when the hearing was taking place.
- This meant that, at this point in time, there was a dispute as to tenure. There were two options available to the Committee:
 - The first option was to proceed with hearing. The Committee could hear all the evidence but reserve its decision until the lease was confirmed. A timeline may have to be put on this or, the lease would not be confirmed, at which time no decision would be issued and the application would be withdrawn; or
 - The second option, the client's preference, was that the hearing be adjourned so that they could take steps to confirm the lease or resolve the lease issues.
- Counsel was therefore seeking an adjournment to the hearing. If the Committee was minded to proceed then Counsel and his clients were ready to proceed and would. However, Counsel did not know where they would land in a week or two weeks' time on this issue.

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- Counsel offered to seek instructions from his client to provide the Committee with email correspondence regarding this issue.

4. Reply and Questions from Chairperson Clearwater:

The Chairperson confirmed that:

- The Commissioners would take a short recess.
- Police Sergeant Roser had confirmed that he had understood what Mr Young had said about a lease being cancelled, seeking an adjournment.
- Police Sergeant Roser advised he was happy to proceed.
- Inspector Elvin was happy to proceed but would follow the Chairpersons direction, and he was not calling any witnesses.
- The MOoH replied she was happy to proceed or have the hearing adjourned.

9.52am The Commissioners retired to the Zoom break-out room to deliberate.

9.59am The Commissioners returned to the open Zoom hearing.

5. Commissioners Decision

- The Chairperson advised the Committee had considered Counsel's suggestion and that an adjournment was the correct response.
- Tenure was a 'must' for an application for an Off Licence and the matter had to be resolved before the Committee could continue.
- Therefore, the hearing was adjourned, sine die.

The Chairperson thanked everyone.

8 REPORTS

Nil

9 OTHER ITEMS

Nil

10 STAFF UPDATE TO THE DISTRICT LICENSING COMMITTEE – FEBRUARY 2022

Nil

The Hearing adjourned at 10.03am.

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL
RECONVENED DISTRICT LICENSING COMMITTEE MEETING NO. DL22-1
HELD VIA ZOOM (AUDIO / VISUAL LINK) ONLY AND LIVESTREAMED
UNDER COVID TRAFFIC LIGHT RED
ON FRIDAY, 8 APRIL 2022 AT 9.30AM**

11 PRESENT

M Clearwater (Chairperson), B Edlin and A Wilkinson

12 IN ATTENDANCE

A Curtis (District Licensing Secretary), D Elvin (Liquor Licensing Inspector), M Turner (Compliance Officer) K Bowyer (Compliance Officer) J Osborne (Governance Support Administrator) and C Irvin (Senior Governance Advisor).

OTHERS IN ATTENDANCE

As listed in the minutes

13 APOLOGIES

Nil

14 DECLARATIONS OF INTEREST

Nil

15 PUBLIC EXCLUDED ITEMS

Nil

16 PUBLIC FORUM

Nil

17 HEARINGS

17.1 DISTRICT LICENSING COMMITTEE HEARING :

APPLICATION NO. LL807: APPLICATION FOR AN OFF LICENCE PURSUANT TO SECTION 100 OF THE SALE AND SUPPLY OF ALCOHOL ACT 2012.

APPLICANT: ANGELIN ENTERPRISES LIMITED (TRADING AS TE PUNA LIQUOR STORE)

IN RESPECT OF LICENSED PREMISES SITUATED AT 15C MINDEN ROAD, TE PUNA AND KNOWN AS TE PUNA LIQUOR.

1. Welcome and Introductions

The Chairperson welcomed everyone present on Zoom and recorded appearances as follows:

- The Parties:
 - Barinderpal Singh (Applicant – Director Angelin Enterprises Limited)
 - John Young (Counsel for the Applicant)
 - Sergeant Roser (New Zealand Police – Liquor Licensing Coordinator Western Bay of Plenty)
 - Dougal Elvin (WBOPDC Liquor Licensing Inspector)
- The Commissioner confirmed the following objectors would speak at the hearing:
 - Birgitte Clark
 - Joanne O’Keefe
 - Scott Crook
- The following Western Bay of Plenty District Council (WBOPDC) Staff introduced themselves:
 - Alison Curtis (District Licencing Secretary)
 - Jahneisha Osborne (Governance Support Administrator)
 - Carolyn Irvin (Senior Governance Advisor for District Licencing Committee)
 - Micaela Turner (Technical Support Officer Alcohol and Compliance)

The Chairperson advised the hearing had to be treated as a commission of enquiry. It was incumbent on the parties to put their best foot forward. The Applicant’s Counsel confirmed they would not be calling on evidence from Simranjit Singh (Operator/Director ‘Te Puna Liquor’).

2. Applicant’s Counsel Opening Submission

- The Chairperson asked Mr Young if he accepted the Medical Officer of Health’s (MOoH) submission that had been received.
- Mr Young replied that the MOoH never objected to, or opposed, the application. He understood and had no objection to her not being present at the hearing. He also understood that there would be objectors speaking at the hearing today. Mr Young spoke to his opening submissions providing the following main points:
- The amenity and good order of the area; price wars; suitability; ‘fit for purpose’; proliferation; application bespoke conditions; local community opposition;

applicant engagement with the community; the existing liquor store in Te Puna; possible price wars; and case law.

3. Evidence from Applicant

The Applicant was sworn in and provided information on the following matters:

- His business and working background; Te Puna businesses; the existing liquor store in Te Puna; types of products for sale; store outlay, delicatessen and gift items; Te Puna growth statistics, relationships with neighbouring businesses, his request for official information from WBOPDC and initial meeting with the WBOPDC Inspector.

A. Cross from Police

Mr Singh was cross-examined by Sergeant Roser on the following matters:

- Ownership of the Te Puna Tavern; preventing alcohol bought from the liquor store being taken into the Te Puna Tavern; CCTV cameras installed in store and in the car park for customer surveillance; any connections with the owners of the existing liquor store at Te Puna.

B. Cross from WBOPDC Liquor Licensing Inspector

Mr Singh was cross-examined by WBOPDC Inspector Elvin on the following matters:

- His off licence application, academic qualifications and other businesses; a business plan; his engagement with the local community; franchises; pricing competition; the variety of alcohol he intended to sell; his communications with the objectors; and where he felt his responsibilities lay as the seller of alcohol.

C. Questions from Commissioner Wilkinson

Mr Singh answered questions from Commissioner Wilkinson on the following matters:

- Any issues or actions taken by police arising from previous positions he had held at liquor stores; evidence given at a previous hearing; how this liquor store would be financed; the main focus on the type of alcohol sold; the advantage of being an independent store owner and the pricing of alcohol.

D. Questions from Commissioner Edlin

Mr Singh answered questions from Commissioner Edlin on the following matters:

- The number of liquor outlets he had worked in and what his positions were; the research he carried out before applying for the liquor licence; his management skills and experience; his staff training approach; and what risk analysis he had done.

E. Questions from Chairperson Clearwater

Mr Singh answered questions from Chairperson Clearwater on the following matters:

- When he last worked as a duty manager in a bottle store; his business plan; what due diligence meant to him; population growth in the area; his relationship with the Te Puna Tavern owners; emergency housing provided by Minden Backpackers; his business plan projections for the first six months; the market share from other outlets; the selling of delicatessen foods and small gifts from the liquor outlet; not serving intoxicated people; some problems the Te Puna Tavern had with intoxicated people; his social responsibility when selling alcohol and the liquor store in Te Puna under investigation by the Labour Department and the Ministry of Business, Innovation and Employment.

F. Reply from Applicant's Counsel

The Applicant's Counsel provided responses on the following matters:

- His decision not to include Mr Singh's business plan in his hearing submissions; conditions of the sale of single can beer; pricing at the Tauriko Bottle Store alcohol related harm data and the lease for the store being signed on the condition of the licence being granted.

4. Police Comment and Witness Statements

Sergeant Roser provided commentary on the purpose of the Act, that this was an evaluative process and that this particular case was about proximity.

Witness Statement – Mr Tommy Wilson

Mr Wilson was sworn in and outlined who he was, what he did and provided information on the following matters:

- His involvement in the community, alcohol harm in the community; area demographics; Māori vulnerability; and what 'Te Puna' meant in Te Reo.

A. Questions from WBOPDC Inspector

Mr Wilson provided responses on the following matters:

- Traffic accidents involving alcohol; domestic violence and general harm caused by alcohol consumption; and COVID-19 related issues involving alcohol.

B. Questions from Commissioner Edlin

Mr Wilson provided a response on the following matter:

- Where the people of Te Puna currently bought their alcohol.

C. Questions from Chairperson Clearwater

Mr Wilson provided responses on the following matters:

- Transitional housing; 'wrap around' services; stable housing for Whanau; gangs; homeless people; the average age of people who had interventions and the case against having a second liquor store in Te Puna.

D. Cross from Applicant's Counsel

Mr Wilson provided responses on the following matters:

- Mr Singh's Brief of Evidence; impulse purchasing; the existing liquor store in Te Puna; opposition to working together with people selling alcohol and perpetuating alcohol problems; support pamphlets distributed in the community; the damage done to communities from alcohol consumption and his working relationships with other Trusts.

Witness Statement – Ms Donna Motutere

Ms Moutete was sworn in, outlined who she was and what she did and read her Brief of Evidence.

A. Questions from Applicant's Counsel

Ms Moutete provided responses on the following matters:

- The selling of alcohol to minors by the existing liquor store; putting pamphlets in the liquor store; and having a duty to oppose any (new) liquor store in the area.

B. Questions from WBOPDC Inspector

Ms Moutete provided a response on the following matter:

- The increase in alcohol related harm over the last few years.

C. Questions from Chairperson Clearwater

Ms Moutete provided responses on the following matters:

- Alcohol related harm happening behind closed doors and at the beach in Te Puna; and the shocking living situations of some vulnerable and homeless people in Te Puna.

D. Questions from Chairperson Clearwater

Ms Moutete provided a response on the following matter:

- Pamphlets being placed in the liquor store; alcohol ending up in the hands of children.

5. New Zealand Police Report

Sergeant Roser was sworn in and read his brief of evidence.

A. Cross from Applicant's Counsel

Sergeant Roser provided responses on the following matters:

- The Applicant's suitability and proposal; the location proximity to the already existing liquor store; product pricing; the 'Deprivation Map' provided by New Zealand Police; and crime statistics.

B. Questions from Commissioner Wilkinson

Sergeant Roser provided responses on the following matters:

- Police data evidence.

C. Questions from Commissioner Edlin

Sergeant Roser provided responses on the following matters:

- The impacts of COVID-19.

D. Questions from Chairperson Clearwater

Sergeant Roser provided responses on the following matters:

- Police data evidence and timelines; gang presence in Te Puna; the crime footprint in Te Puna; the absence of a Police Station at Bethlehem.

6. Objectors

A. Birgitte Clark

Ms Clark was sworn in and spoke on the following matters:

- Proliferation impacting all groups; a second alcohol outlet not being needed in Te Puna; the mental and emotional harm caused by alcohol; boy racers in the Minden area; and product pricing.

I. **Questions from Applicant's Counsel**

Ms Clarke provided responses on the following matters:

- The Liquor licence application and buying alcohol from Te Puna.

II. **Questions from Chairperson Clearwater**

Ms Clarke provided responses on the following matters:

- Which shops she used in Te Puna.

B. Scott Crook

Mr Crook was sworn in and spoke on the following matters:

- Being a Te Puna resident/business owner for over ten years and the shock at hearing of another liquor store opening in Te Puna that was not needed.

I. **Questions from Applicant's Counsel**

Mr Crook provided responses on the following matters:

- The Liquor Licence application.

II. **Questions from WBOPDC's Inspector**

Mr Crook provided responses on the following matters:

- The constant alcohol related events that happened in Te Puna and any contact with the Applicant.

7. WBOPDC Inspector's Report

Inspector Elvin was sworn in and read his Brief of Evidence.

A. Cross from Applicant's Counsel

Inspector Elvin provided responses on the following matters:

- Considering benefits to the community; the purpose/object of the Act; the initial meeting with the Applicant; the conditions for operating provided by the Applicant; product pricing and possible price competition with the existing liquor store; product range; other case law; the Applicant's suitability and reaching out to the Te Puna community and the case of the existing liquor store in Te Puna.

B. Questions from Commissioner Wilkinson

Inspector Elvin provided responses on the following matters:

- The concern of the reaction by the existing liquor store if a second store was opened.

8. Closing Submissions – Chairperson’s Instructions

The Chairperson instructed that closing submissions were to be submitted in writing as follows:

- Police and WBOPDC Liquor Licensing Inspector closing submissions due Wednesday 13 April 2022.
- Applicant’s Counsel’s closing submissions due on Monday 18 April 2022.

The Chairperson thanked all parties for their attendance.

The hearing concluded at 4.31pm.

ATTACHMENTS

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| 1 | LL8071 Te Puna Liquor – Decision Minute – 30 April 2022 |
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Confirmed as a true and correct record at the Council meeting held 11 August 2022.