

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

AND

IN THE MATTER of an application by Telfords Yard Limited
in respect of an application to renew an off- licence
for premises situated at 41 Main Road Katikati,
trading as Super Liquor Katikati

Hearing Date: 27 November 2017

Committee: Mr Michael Jones (Commissioner/Chair)
Mr James Davison (Member)
Mr Don Thwaites (Member/Councillor)

Appearances: Mr Dipan Jamnadas Director, Telfords Yard Limited (Applicant)
Mr Mahesh Jamnadas Director, Telfords Yard Limited (Applicant)
Mr Sandy Watkins, Franchise Manager, Super Liquor Holdings (in support for the Applicant)
Mr Steve McDowell (representing the Applicant)
Mr Dougal Elvin (Licensing Inspector) – to assist
Sgt Trevor Brown (NZ Police) – to assist
Ms Dawn Meertens (representing Medical Officer of Health) – in opposition
Mr James Scarfe (in support for the Medical Officer of Health)

DECISION BEFORE THE WESTERN BAY OF PLENTY DISTRICT LICENSING COMMITTEE

The application for a new off-licence is granted, subject to the conditions set out below. The Applicant may sell and deliver alcohol for consumption off the premises, or to provide samples of alcohol to persons on the premises.

The licence will expire one year from the date of issue, unless renewed

CONDITIONS

The licence is subject to the following 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 7:00am 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. A properly appointed certificated or acting or Temporary Manager must be on duty, at or nearby the point of sale, at all times when the premises are open for the sale and supply of alcohol.
5. The Licensee must display signage as follows:
 - a. At every point of sale detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. A copy of the licence attached to the inside of the premises so as to be easily read by people entering each principle entrance to the premises; and
 - c. A sign prominently displayed at the premises, which identifies by name the manager for the time being on duty.
6. The whole of the premises is designated as a supervised area
7. That single serves of mainstream beer in 330ml size or RTD's are not to be displayed for sale within the store apart from in the chiller.

BACKGROUND TO DECISION

The Committee must consider an application by Telfords Yard Limited (the Applicant) for a new off-licence to sell and supply alcohol for premises which trade as a bottle store, under the trading name of Super Liquor Katikati.

The application was publicly notified on the following dates; August 17, 2017, and August 24, 2017 and public objections were received from the following members of the public:

- D & J Logan
- W.G Gamble
- J Torrie

No objectors were present at the hearing.

All reporting agencies received copies of the application. No opposition was received from the Licensing Inspector or the Police. Opposition to the licence application was received from the Medical Officer of Health.

Due to the public objections and opposition from the Medical Officer of Health the matter came before the Licensing Committee to consider by way of public hearing.



POSITION OF THE REPORTING AGENCIES

Inspectors Position

The Committee has received a detailed report on the application from Licensing Inspector Mr Elvin. Mr Elvin raised no matters in opposition to the application.

Medical Officer of Health Position

The Alcohol Regulatory Officer, Ms Meertens, is in opposition to the application. Her opposition is in relation to section 105 (1)(a) and (h) and section 106.

The Medical Officer of Health concerns were the following:

- a) Single sales may be harmful to the community in general.
- b) An additional off-licensed premises increased accessibility to alcohol leading to increased harm.
- c) The proposed "new" licence moving further down the road may affect the amenity and good order of the community and users of the surrounding areas.
- d) The location of the premises was in a high deprivation decile area.

NZ Police Position

Sergeant Brown of the NZ Police raised no matters in opposition to the application

APPLICANTS CASE

Applicants evidence

Evidence of Mr McDowell:

This application was for a new licence, the tenancy currently occupied by Super Liquor Katikati was about to expire and the current operators wished to relocate within the township. All the existing conditions that currently sat with the license for the existing store had been applied for and essentially transferred over to the new store.

The applicant noted that no opposition had been raised by the Licensing Inspector and the Police. It was relevant to note that if there were specific issues around amenity and good order Police would have reported on this.

Mr McDowell raised some concerns about the process in which the Medical Officer of Health report. The email from the Medical Officer of Health dated 28 August 2017 did not sufficiently provide information on what the problem was with amenity and did not address the hours or other evidence. The Medical Officer of Health referred to single sale RTD's and beers, the evidence provided by the Medical Officer of Health in their final submission but only gave national and international evidence.

The Medical Officer of Health's subsequent report dated the 31 October 2017 did not directly address any specific elements of harm being generated by the current operation of the bottle store. By the Applicant moving two doors up the road, it was

difficult to see where the link was between any local related harm, what the current operation was doing, and how that was going to change.

The Medical Officer of Health had raised in evidence in opposition, the matters of limiting hours of availability and limiting advertising promotions. In terms of process, neither of these issues were raised in the first two of their reports and the Applicant was only made aware of them once the evidence was circulated. In terms of fairness and natural justice, those matters should have been set out in the initial report and they were not.

The Applicant was prepared to make an undertaking in relation to display of any single sale serves of mainstream beer or RTD's.

Mr Dipan Jamnadas, (Director, Telfords Yard Limited) evidence:

Mr Jamnadas's tabled his submission. His submission concluded that the company had operated in Katikati for six years with no negative effects to the community.

Cross Examination of applicant

Mr Jamnadas responded to questions from the Panel as follows:

Carparking: there were six carpark, he felt there were sufficient carpark to support both the business.

Mr McDowell addressed the panel, noting that the Applicant had been required to obtain a Planning Certificate from the Western Bay of Plenty District Council, which certified that the car parking provided was sufficient for this type of use under the provisions of the District Plan.

Signage: Mr Jamnadas tabled a photograph of the AO signage. Apart from one 'AO' sign, there would be no product advertising on the outside of the building.

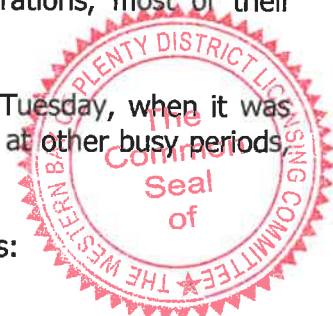
Single Sales: They did not specifically have a percentage of their turnover identified for single serve sales, but considered it was minimal, probably less than 5% of total turnover.

Public Place drinking in liquor ban area: They were not aware of people drinking alcohol at the back of the Katikati Hall, and that issue had never been raised with them by any locals or the Police. In relation to a reference made regarding a decision by the Authority in 2013, to the effect that single sales of alcohol around a liquor ban area would be inappropriate, he did not agree with that statement. Again, they had not had any local problem.

Incidents: They had an incident book as part of their operations, most of their incidents were related to ID checks (minors).

Staff numbers: they had one person on duty on Sunday to Tuesday, when it was quieter. Wednesday through to Saturday, they had two staff, at other busy periods they had three people on duty.

Mr Jamnadas responded to questions from the Police as follows:



Trading Hours: In relation to the percentage of sales or the percentage of customers between 9.00pm and 10.00pm, they currently did not open their shop after 9.00pm. They only opened later during the Christmas and New Year periods, but every other times closed the shop at 9.00pm.

Public place drinking: If they believed a customer was going to drink on the street, they would advise them there was a liquor ban.

Mr Jamnadas responded to questions from the Medical Officer of Health as follows:

Hours: In terms of alcohol causing less issues the less hours it was available, he agreed.

RTD's: He did not agree that RTD's targeted young people, their RTD's were sold to different age groups, locally they sold more RTD's to people 25 years and above than to younger people.

Trading Hours: He would prefer to keep his hours as they were and to have that flexibility to stay open a bit later if they needed to.

Single sales: They did not actively promote single sales. They did not have local evidence to prove there was no harm from these single sales, or that amenity and good order was not effected by them.

Mr Jamnadas responded to questions from the Liquor Licensing Inspector as follows:

Identification of Intoxication: They did have a couple of incidents of intoxication over the past year written in their incident book. Staff used the speech- coordination method to identify intoxication, (e.g. if a person was displaying slurred speech).

INSPECTORS EVIDENCE:

The Liquor Licensing Inspector advised that he had no additional evidence to provide and his report was taken as read.

Cross examination of Inspector:

Mr Elvin responded to questions from the Panel as follows:

Incidents: He had no concerns with the premises, and was familiar with the applicants incident reporting.

Premises in liquor ban area: he had no evidence to indicate that the premises had made sales that would breach the liquor ban.

Mr Elvin responded to questions from the applicant as follows:

Amenity and good order: he had no specific concerns about the amenity and good order in the premises vicinity, or the Katikati township.

POLICE EVIDENCE



Seargent Brown advised that he had no additional evidence to provide, and his report was taken as read.

MOH EVIDENCE

Ms Meertens read her submission in full to the hearing. The submission focussed on information provided in research studies and decisions applicable to the application.

Ms Meertens introduced James Scarfe (Analyst for Medical Officer of Health), who would be speaking to submissions in support of her case

In summary, Ms Meertens recommended, in the first instance, that this application be refused. However, that the following conditions be imposed if a licence was issued:

- a) That the Panel use its discretion under Section 117 of the Act to exclude single sales of mainstream imported and local beers that were 500ml and under, including those with high alcohol content (over 7%), ciders and RTD's; except for wines over 375ml and craft beers.
- b) That alcohol that may appeal to young people/minors was not advertised externally.
- c) That the hours for the sale of alcohol be from 9.00am to 9.00pm.

Cross Examination of applicant

Mr Scarfe responded to questions from the Panel as follows:

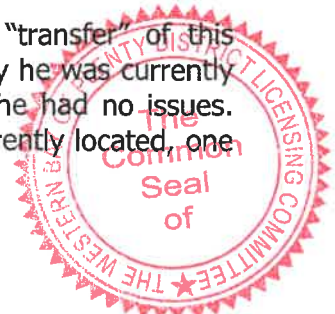
Deprivation level in Katikati: Katikati had seven off-licences with a population of 4,000, which was one per 571 people, so Katikati did appear to have more off-licence premises than the average in New Zealand. The Ministry of Health defined the boundary by the census area, however he did not have information defining the boundary, and the data did not consider if the township serviced a wider community. He accepted that there were different types of off licences, and that the research did not pick and choose which types of off-licences were included in the data. It was noted that deprivation area indicators include a number of factors and it is not a measure of poverty.

Ms Meertens responded to questions from the panel as follows:

Advertising & RTD's: Super Liquor and Liquor Land no longer put RTD's in their window advertising and nationally there was a problem with external marketing.

New business vs existing business: In relation to the existing "transfer" of this business to a new site, the character of the Applicant, and the way he was currently operating his business and its impact on the local community, she had no issues. However, because another off licence is going where they are currently located, one of them was considered a new, additional licenced premises.

Ms Meertens responded to questions from the applicant as follows:



Hours of operation: She was aware that the joint Tauranga and Western Bay of Plenty District Local Alcohol Policy limited hours of operation to 10.00pm. It was her submission that the less hours of availability to alcohol the better the result for the community.

Advertising: In her experience bottle stores with large advertising externally exposed children walking to school to the marketing of alcohol. The Medical Officer of Health was trying to minimise harm by exposure.

History of applicant: She had not opposed the existing bottle store licence being renewed two years ago. There was case law available now around single sales, and she had opposed single sales since 2012, particularly in high deprivation areas, and she was now raising opposition.

CLOSING COMMENTS

The Licensing Inspector and NZ Police raised no further issues in closing comments, and reiterated that they had no opposition to the application.

Ms Meertens on behalf of the Medical Officer of Health addressed the applicants comments about the nature of the opposition reports, and detailed that the "West" decision stated that the MOH opposition did not need to state everything in relation to the opposition.

Ms Meertens also stated that if there was not another off licence application being considered for Katikati that this application would not be opposed. It was a question of one premises too many.

Mr McDowell addressed the issue of hours, and advised that the Local Alcohol Policy set hours and his client operated within those hours.

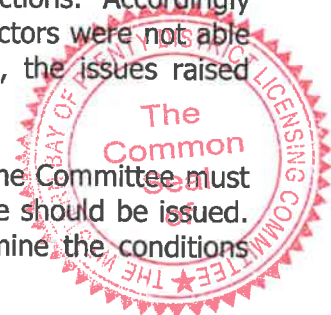
Mr McDowell discussed the evidence produced by the MOH and the limitations of national evidence and the census data.

Mr McDowell reiterated the applicants offer of an undertaking in relation to single sales.

DISCUSSION

The Chairperson addressed the matter of the public objectors at the introduction to the hearing and noted that the Authority stated that if objectors were not in attendance then "little or no weight" could be given to their objections. Accordingly the Committee has made note of the objections, but as the objectors were not able to present evidence or be questioned regarding their concerns, the issues raised have not been considered by the Committee.

As indicated at the hearing there are a number of matters that the Committee must determine. The primary issue to determine is whether the licence should be issued. If the licence is to be issued, then the Committee must determine the conditions which are to attach to the licence.



Relevant legislation:

Section 3 of the Sale and Supply of Alcohol Act 2012-

(1) The purpose of Parts 1 to 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.

Section 4 of the Sale and Supply of Alcohol Act 2012-

(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 or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

Section 105 of the Sale and Supply of Alcohol Act 2012-

(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:

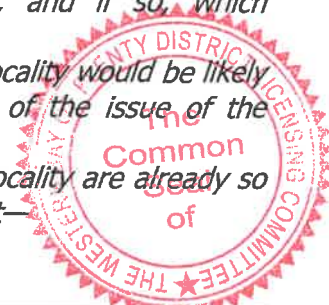
(e) the design and layout of any proposed premises:

(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.*

Considerations

In deciding whether to issue the licence, the District Licensing Committee must have regard to the criteria in section 105.

This requires the Committee to consider the following questions:

a) Does the grant of the licence ensure the safe and responsible supply of alcohol and the minimisation of harm caused by excessive or inappropriate use of alcohol?

The Committee heard evidence that the existing business and operator had been selling alcohol in a safe and responsible manner

b) Is the applicant suitable?

The Committee heard evidence that the applicant being an existing business operator was a responsible and experienced operator

c) Are the days and hours during which the applicant proposes to sell alcohol suitable?

The applied hours comply with the Tauranga and Western Bay of Plenty Local Alcohol Policy. The applicant operates within these hours, and there is no evidence to support a further reduction in operating hours

d) Is the design and layout of the premises suitable?

The design and layout of the premises is acceptable

e) Does the applicant propose to sell goods other than alcohol such as low-alcohol refreshments, non-alcoholic refreshments and food?

No goods other than alcohol, low and non alcohol refreshments, tobacco and food are to be sold

f) Does the applicant propose to provide services other than those related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?

No other services are offered

g) Will the amenity and good order of the locality be reduced to more than a minor extent by the issue of the license?

No evidence was produced that the issue of the licence would adversely affect the amenity and good order of the area. It was noted that the business has operated in Katikati for over 6 years and there have been no issues raised by the Inspector or Police.



h) Does the applicant have appropriate systems, staff and training to comply with the law?

The applicant provided details of the systems, and staff involved in the operation of the business. There are no issues with the current operations and it is anticipated that this will be consistent with the operation in the new premises.

i) Have the Police or Medical Officer of Health raised any concerns?

The Police have raised no matters in opposition

The Medical Officer of Health has raised matters in opposition relating to:

- The number of licensed premises in Katikati
- Sales of RTD's and single bottle sales
- Hours of operation
- Amenity and good order.

The evidential basis for the Medical Officer of Health opposition has been supplied in research documents, specifically the 2010 paper "Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study"; 2017 paper, "The relationship between alcohol outlets and harm. A spatial analysis for New Zealand"; the 2008 paper "Ready to Drink are associated with heavier drinking patterns among young females", and Ministry of Health 2015, "Alcohol use 2012/13: New Zealand Health Survey". All the research provided is published academic research.

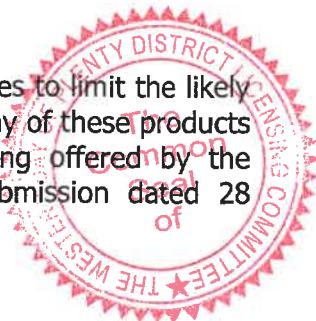
The concern from the Committee is that the research is generic and a degree of interpretation is required in considering the applicability of the research to the application before the Committee.

The Committee is as aware as the reporting bodies are that alcohol harm does occur in our communities. What the Committee has to consider is whether it is appropriate to apply generic research and data in the absence of any locality or premises specific information to the considerations applicable under section 105, for this licence application.

Evidence locally suggests that the premises is well managed, and that the operation of the business is in accordance with the Act.

There is no local evidence that supports that sales of RTD's and single bottle sales of mainstream beer is an issue either in terms of sales to local youth or that persons purchasing single bottles from the premises are likely to consume the alcohol whilst in the vicinity of the town centre, and accordingly breach Council's Liquor Control Bylaw. The Committee however does acknowledge that the national research does highlight single bottle sales, including RTD's as having the potential to lead to more risky drinking behaviour, particularly in a liquor ban area.

The applicant has offered to the Committee to undertake measures to limit the likely sales of single RTD's and mainstream beer, through limiting display of these products for sale. Following the hearing confirmation of the undertaking offered by the applicant at the hearing was provided by way of closing submission dated 28 November 2017.



The Committee has advised by way of minute it's preference to include a condition on the licence in preference to an undertaking regarding display of RTD's and single bottle sales of mainstream beer.

The applicant's preference is for an undertaking, however based on the Committees preference for a condition, a proposed condition has been provided by the applicant in relation to display of single bottle sales as follows, "That single serves of mainstream beer in 330ml size or RTD's are not to be displayed for sale within the store apart from in the chiller."

The Committee are satisfied with the proposed condition and that the considerations fall in favour of the application being granted. There is no evidence from the reporting agencies or on the application file which would suggest the applicant would sell or supply alcohol in any way contrary to the Act.

HEARING ADJOURNMENT

It is noted that this decision has been pending by the Committee.

At the conclusion of the hearing date 27 November 2017, the Committee sought written closing submissions in relation to matters outstanding at the hearing.

Following receipt of the written closing submission and subsequent deliberations in which the Committee was in favour of a condition being applied to the licence regarding the display of single sale RTD's and mainstream beer, a further Minute was sent by the Committee. A response to the minute was received on 21 December 2017.

CONCLUSION

Having regard to the relevant provisions of the Sale and Supply of Alcohol Act 2012, the Committee is satisfied that a new off-licence should be granted, pursuant to the conditions set out above.

DATED this 18th day of January 2018



Michael Jones
Chairperson/Commissioner

