

20/OFF/0115/2022

IN THE MATTER

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

AND

IN THE MATTER

of an application by **Anand & Usha Sharma Limited** for the grant of an off-licence pursuant to s.100 of the Act in respect of premises situated at 71 Rangatira Drive, Mangakino to be known as "Mangakino liquor Store

HEARING BEFORE THE TAUPO DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Jane Arnott
Member: Graeme Cushing

HEARING at Taupo on the 18th day of October 2022

APPEARANCES

Mr. Anand Sharma– for the applicant
Mr. Grant Singer – Alcohol Licensing Inspector ("the Inspector") – in opposition
Sergeant Chris Turnbull – Police Alcohol Harm Reduction Officer (AHRO) – to assist
Ms. Dawn Meertens- delegated officer for the Medical Officer of Health (MOoH)- In opposition
Dr Louis Andrews-Smith witness for the MOoH.

RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application dated the 20th of January 2022, Anand & Usha Sharma Limited applied for an off-licence for a proposed bottle store in Mangakino.
2. The Sharma's already operate a successful Four Square grocery store selling beer and wine in additional to the normal grocery lines and hardware, adjacent to the proposed store.

3. They now seek, due to requests from customers, to sell a range of full strength spirits via a standard bottle store. The application contains a number of unique features.
4. Firstly, the licensed hours sought are Monday to Sunday 10.00am to 6.00pm. These hours were within the default national maximum trading hours for off licences and were later refined by Mr. Sharma during the hearing to **Tuesday to Sunday 10.00am to 5.00pm.**
5. Secondly, following discussions with the Police and the Inspector he has agreed to not sell single serves of beers RTDs or shots or display signage relating to RTDs outside the store. This was further refined to only sell standard bottles of Spirits. No RTDs, no miniatures or shots or light spirits will be stocked or sold.
6. It was duly advertised and was reported on by the agencies. Both the Inspector and the Medical Officer of Health lodged reports containing matters in opposition to the granting of the licence.
7. One public objection was received 3 days after the statutory period containing a one line statement and no waiver was sought for its inclusion.
8. The application was set down for a formal hearing as the Committee needed to hear the concerns of the MOoH and the Inspector.

Applicant's Evidence

9. Mr. Sharma had not prepared a Statement of Evidence but spoke well as we 'walked' him through his application.
10. He said his family had been in Mangakino for 22 years operating the Four Square grocery store and there had been huge changes in the population demographics over that time. There are now lots of holiday homes on Bookabach, and similar booking sites, and the population swells over long weekends and during the summer holidays.
11. He said his customer base was mainly local farmers and workers, the retired and semi-retired, and holiday makers. His current alcohol sales from the Four Square are roughly 40% beer, 60% wine.
12. He said he does have local gang members as customers, but they show him respect and there have been no confrontations with them.
13. The application was only for standard bottles of spirits, beer and wine and he believed he could operate the business safely and responsibly. He would not stock crate beer and he had 7 staff currently with manager's certificates.

14. He was cross examined by the agencies. He said the resident population of Mangakino was about 850 but swells significantly during the holiday periods.
15. He said the store will be fully secured with mesh screens, bollards and CCTV. It would be fully alarmed and as he lives less than one minute away he can respond quickly.
16. He had been talking with Foodstuffs and their sister company, the Liquorland Group, so he may go with that franchise. If they push him to stock products that he does not want to sell he will operate as an independent.
17. He was asked by Ms. Meertens if Mangakino needed spirits. He said he is being asked every week by residents and holiday makers why can't they get spirits. The nearest outlet is in Tokoroa some 33 kilometers away.
18. He said the demographics of his customers is changing. Poorer families, including many Māori, were being 'pushed' out of their houses due to increasing rents and were going to live in Tokoroa.
19. Houses are being turned from rentals into casual holiday homes and Bookabach homes.
20. He has regular contact with the local police staff, of which there are two, and he has not failed any CPOs at his Four Square nor any of the regular internal stings that Foodstuffs conduct.
21. The RSA is the only other entity selling alcohol in Mangakino as the Pub closed down 5-6 years ago.

Inspector's Evidence

22. The Inspector's report was taken as read. He confirmed his dealings with Mr. Sharma and told us that he was very co-operative and had made considerable concessions in his application.

Police Evidence

23. We asked the Police to tell us about the 'crime footprint' in Mangakino. Sergeant Turnbull said he had discussed the application with the local Police, and they had no concerns with Mr. Sharma and his current business. The Sergeant told us there were 30-40 patch gang members in the Mangakino area. No other gang had a presence in the area and therefore they had a reasonably low profile.
24. He did not anticipate any significant increase in gang activity or interactions should spirits become available in the township.

Medical Officer of Health Evidence

25. Ms. Dawn Meertens appeared as delegated officer for the Medical Officer of Health. She had prepared a lengthy opening covering off the law as it pertains to this application and introduced a number of decisions from higher authorities that she believed should shape the Committee determination of the application.
26. Her Brief of Evidence was largely referencing national research and other decisions that should be introduced in closing submissions, not as evidence in chief.
27. Case Law and research findings are not direct evidence that the deponent can personally attest and should not be in a Brief of Evidence.
28. Nevertheless, she did provide the Committee with some pertinent statistics around the demographics and ethnic base of the Mangakino population.
29. Ms. Meertens called Dr Louis Andrews Smith, a Senior House Officer with Te Whatu Ora - Toi Te Ora Public Health to present his brief on what he perceived was an elevated health risk that potentially could be created should this application be granted.
30. He produced a series of graphs and figures much of which related to research around the effects of COVID isolation, lockdowns and unemployment etc.
31. It was interesting but New Zealand is no longer gripped by a pandemic. Covid is here with us for the long term.
32. More valuable was the statistics around the high deprivation indices for the Lakes and Mangakino districts. However, those figures were based on the flawed national census of 2018 and may not be an accurate portrayal of the current demographics.
33. The Committee is familiar with, and accepts, the theory that greater availability can create greater opportunity for harms to occur.

Relevant legislation

34. 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.**

35. 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).**

36. 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

37. 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.

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

38. 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.

39. 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, to control the later on-supply and consumption of alcohol as it occurs away from the seller's premises and their sphere of control.

40. We will discuss the other criteria of which we must have regard before we measure them against the Object of the Act.

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

41. The applicant must be a suitable entity to hold an off-licence. In this regard the suitability of the applicant is not challenged by any party.

42. Indeed, he was an impressive advocate and a proven long term licensee. He has been selling wine and beer for many years without incident in an isolated community. Expectations are a lot greater where there is not ready access to the usual support mechanisms and the Police.

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

43. There is no Local Alcohol Policy in this district.

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

44. The proposed operating hours are **Tuesday to Sunday 10.00am to 5.00pm** and are well within the default national maximum trading hours for off licences.

45. The days and hours requested are truly remarkable and will minimise the availability of spirits to daytime shoppers only. This illustrates an intention to provide a genuine service and not just a straight out attempt to gain financially from the sale of spirits

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

46. The applicant has indicated that full security measures will be in place before the business opens. This will include alarms, CCTV, mesh screens and bollards. The final internal layout, and required signage, cannot be commented on as the fit out is yet to be undertaken.

47. However, as the application is effectively for the sale of standard spirits only, there will be no RTDs or signage relating to them displayed on the store front.

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

48. The applicant advised they will sell a small amount of chips and peanuts and the like but **no** 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.

49. No other services are 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.

50. 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.

51. Regarding the current, and possible future, levels of nuisance and vandalism we note that there was no evidence adduced around these issues in the immediate area, nor should the limited window for spirit sales only, generate any changes.
52. We are further obliged to consider the number of premises for which licences of the kind concerned are already held. There is the grocery store selling beer and wine linked to these premises. The next closest outlet for the public is 33 kilometers away in Tokoroa.
53. We are required to take into account “the purposes for which land near the premises concerned is used.” This is a small town and facilities can’t help but be grouped together. None of the local support services, or the school, lodged an objection. It is clear, that the Sharma’s are respected members of the Mangakino community.

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

54. The applicant advised us he has 7 certificated managers attached to his current business and if they need more he will get them. It assured the Committee that this store will have dedicated certificated managers in the store whenever it is open.
55. The Inspector reports that the applicant appears to have robust systems and training that will be sufficient to comply with the law.
56. The applicant advised us that he had passed all of the rigorous CPOs conducted by Foodstuffs and the Police.

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

57. The Police have enquired into the application and do not oppose it.
58. The Inspector reports that whilst the application appears to meet the criteria for issue he is concerned about the potential effects of introducing spirits in to the Mangakino area.
59. As we have indicated elsewhere that the MOoH has produced quantities of research and statistics on the dangers around the abuse of alcohol. We agree with theories presented but there was little hard data on the potential direct effects on the residents of Mangakino and the holiday makers.
60. There may well be benefits for the public to obtain their spirits in Mangakino rather

than take a 60+ kilometre round trip elsewhere to obtain their supplies.

61. We allowed the late introduction of the evidence from Dr. Andrews Smith when in fact we should have rejected it as lodged out of the direction for disclosure by the DLC. We understand there have been trying times for the MOoH, but we are through the worst we hope.

Reasons for the Decision

62. 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 to the Object of the Act.
63. This is somewhat of a unique application. Effectively the applicant seeks to be permitted to sell the large 700-1100ml bottles of spirits only. And only Tuesday to Sunday 10.00am to 5.00pm. He already sells beer and wine from his adjacent Grocery Store.
64. We are persuaded, on balance, that the licence should be granted. We give credit to the applicant's good operating history in the district. They have not failed a CPO at their stores and have been in business for many years. The new store will not significantly increase the availability of alcohol in Mangakino. If he was wanting to sell shots and RTDs our thoughts might be different.
65. Several concessions were made by the applicant, and we are confident that he has the skills to be forceful and comply with the law.
66. The onus is now, of course, for the applicant to turn words in to actions. It is often said that the first year is the 'probationary period' for licensees to prove themselves as competent and responsible operators. The ball is firmly in the hands of Mr. Sharma and his managers.
67. Should issues arise in the vicinity of this premises we would expect to see firm enforcement action undertaken swiftly by the agencies.
68. The business is not to open until all security measures as advised during the hearing are in place.

The Decision

The Licence will be granted for 12 months from the date of issue on standard conditions and a number of discretionary conditions as negotiated with the applicant at the hearing.

The following conditions are to apply:

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: **Tuesday to Sunday 10.00am to 5.00pm;**
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 off 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. **Only beer, cider and wine, and standard size, 700ml to 1150ml bottles of spirits can be sold under this licence.**
8. **No shots, RTDs, spirit miniatures or crated 'quart bottles' of beer are to be sold;**
9. 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 by people entering each principal entrance.

DATED at TAUPO this 28th day of October 2022

A handwritten signature in black ink, appearing to read 'Murray Clearwater', enclosed in a thin black rectangular border.

Murray Clearwater
Commissioner
For the Taupo District Licensing Committee

NOTE

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

This decision is suspended until 10 working days after the date on which notice of this decision is given to the parties.