

Decision No. **544/2014**

IN THE MATTER

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

AND

IN THE MATTER

of an application by **Akos Acquisitions
Partnership** pursuant to section 32(1)(b)
of the Act in respect of premises at 126
Onerahi Road, Onerahi, Whangarei

BEFORE THE WHANGAREI DISTRICT LICENSING COMMITTEE

Chairman: Councillor John Williamson
Member: Paul Dimery
Member: Lee Andrewes

HEARING at WHANGAREI on 10th November 2014.

IN ATTENDANCE

Mr Grant Couchman — Whangarei District Regulatory Services Manager
Mr Julian Dawson — Barrister - for the Committee.
M/s Nina Darling — Committee Administrator
M/s Diane Tyler – Whiteman — Regulatory Services Administrator
M/s Ashlee Teal — Licensing Inspector

APPEARANCES

Appearances

Mr Edward Jones — Applicant
Mr Reiner Mussle — Whangarei District Licensing Inspector— to assist
Dr Clair Mills — Medical Officer of Health – in opposition
Constable Aaron Furze — NZ Police — to assist Medical Officer of Health
Sergeant Howard Clement— NZ Police — to assist Medical Officer of Health

Objectors

M/s Hilary Noall	M/s Sue Glen
Mr Les Birch	M/s Rebecca George
M/s Lois Slattery	M/s Glenys Currie
M/s Mariameno Kapa-Kingi	Mr Brian Kidd
Mr Ron Brewer	Mr Nicholas Connop
M/s Valerie Green-Moss	M/s Sherry Carne

RESERVED DECISION OF THE COMMITTEE

Introduction

- (1) In an application dated 10th July 2014, the applicant applied for a new off licence under Section 28 (1) (f) of the Act in respect of a previously unlicensed premises at 126 Onerahi Road, Onerahi, Whangarei. The premises are to be known as "Onerahi Liquor Centre". The applicant applied for an off licence in terms of Section 32(1)(b) of the Act where at

least 85 percent of the annual sales revenue is expected to be earned from the sale of alcohol for consumption somewhere else-commonly known as a stand-alone liquor or bottle store.

- (2) The application attracted considerable public interest and a total of 570 public objections were received. These were in three categories: Six were individualised letters; signatories to a standard letter highlighting three reasons for objection; and signatories to a petition. Twelve of these objectors appeared at the hearing, three of these identifying themselves as representing a wider grouping.
- (3) The Police did not formally oppose the application. A letter in support of the local objections was provided by the local Community Constable and at the hearing he was joined by the District Alcohol Harm Prevention Officer in support of the Medical Officer of Health, who opposed the application. In his report the District Licensing Inspector took a neutral stance and at the hearing, under questioning, he indicated he was inclined to support the application.

The Application

- (4) The proposed premises are located at the eastern end of the Onerahi Shopping Centre. The centre is on an elongated T shape of single storey with the north facing top of the T being a mix of retail, with a medical centre and local WINZ office emerging from the middle of the complex. The premises has been untenanted for some time but was previously occupied by a real estate office and prior to that, a bank. An ATM machine owned by that bank occupies part of the premises frontage. The centre fronts to Onerahi Road, which is the main access to Whangarei CBD and to the Whangarei Heads coastal settlements.
- (5) The premises are situated next to a Lotto/ Bookshop. The rest of the complex is made up of two bakeries, two takeaway shops, two dairies, two hairdressing salons, a video shop, a pharmacy, a discount store with Kiwibank/ Postshop at the western end of the complex. There are four ATM machines within the retail section of the complex. The complex is bounded by Waverly Street to the east and Raumati Crescent to the west. On the eastern side of Waverly Street is the New World supermarket with an established supermarket off licence. On the western side of Raumati Crescent is the Onerahi hotel complex comprising Onerahi Tavern on licence and bar type off licence, and Onerahi Super Liquor a bottle store off licence. The whole complex is Onerahi's principal shopping environment with an overall length of approximately 200 metres.
- (6) The shopping environment could be characterised as a "short term stay convenience type" rather than a "spend time browsing and shopping " environment. The medical centre and WINZ offices are behind the retail complex but accessed through it. Parking is available both in front of the complex and behind it. Behind the Onerahi Tavern and incorporated with it is the Flames International Hotel, which holds a hotel type on licence. The hotel has had a chequered ownership history in recent times. The whole hotel, tavern and bottle store was developed as DB Onerahi with brewery company ownership some 40 years ago.
- (7) Next to the New World supermarket is a park which includes playground, skate ramp, Onerahi Community Hall (a publicly owned hall complex administered by Onerahi Community Assn) and Onerahi Community House (administered by Onerahi Resources Trust). The public buildings and open space are well used by the community. Some 280 metres east of the shopping complex boundary is the Onerahi Primary School. School children walk to and from the school through the Onerahi Shopping Centre. The entire

area from the Onerahi Primary school to west of the Flames International Hotel is situated in an existing Council designated "Liquor Ban" which is well sign posted. This means that any public consumption of alcohol in this area is controlled by police.

- (8) The principal entrance to the applicants proposed bottle store is from the shopping centre frontage, down a short alcove next to the ATM machine through a single sliding door. Car parking is available in the public park in front of the premises and there are three dedicated parks at the rear.
- (9) Hours sought for the proposed premises are 10.00am to 10.00pm Monday to Sunday. The applicant indicated at the hearing an intention to close 30 minutes after the New World supermarket at 8.30pm. The applicant also indicated a willingness to close for a period in the afternoon on school days when school children might be moving past. The time 3pm to 4pm was suggested. The applicant indicated the likely opening hours are 10am to 8.30pm Sunday to Thursday and 10.00am to 10.00pm on Friday and Saturday. Permitted opening hours for other licenced premises in the immediate vicinity are Onerahi New World Monday to Sunday 8.00am to 10.00pm, Onerahi Tavern Off licence Monday to Sunday 9.00am to 10.00pm. Onerahi Super Liquor Monday to Sunday 9.00am to 10.00pm. It is proposed that the whole premises be designated.
- (10) Edward Martin Jones and Eva Christine Hizsnyai are 50 percent partners respectively in Akos Acquisitions Partnership - the applicant. The managing partner is Edward Jones. He does not hold a general manager's certificate although he has held such in the past in his role as restaurant manager within the Pizza Hut chain. He has completed his LCQ qualification. He has named two accredited managers who will be employed during the time he completes his own accreditation. The applicant indicated he has significant hospitality and retail experience both in the United States at Ballenslies Country Club and subsequently in New Zealand as owner/ operator of Whangarei Esquires Coffee House (a café franchise) and the Brew Store (retailing brewing supplies and legal highs) in Whangarei. He holds a Bachelor of Management Studies qualification from Waikato University.
- (11) The applicant has identified Benjamin Mark Atherton (002/GM/11/2012) and Colin Grenville Wayne Cook (002/GM/92/2008) as accredited general managers who he will work with. The premises are leased from Chrisue Properties Ltd who have given their written consent for the retail sale of liquor.
- (12) If the application is granted, the applicant has stated that it will not sell any additional liquor than is being sold in the Onerahi area now. The committee was told that the applicant proposes to differentiate itself by service and ambiance, taking sales from existing licensees. The contention was of an inability to initiate or sustain aggressive pricing because of smaller size and buying power and being constrained by national pricing strategies and promotion strategies. A number of objectors considered that it was an improbable outcome that total sales would not increase.
- (13) The applicant, both in the application and at the hearing indicated a willingness to limit external display and visible promotion material as well as limit visibility through the shop from the outside. He stated that he did not expect to enter a price war and proposed internal and external security cameras to assist in monitoring both the store and the external environment. The shop would be appropriately presented as an enhancement to the amenity of the area. He sought to have a modern tasteful appearance which was well lit and good visibility which would change it from its current vacant appearance.

Inspector's Evidence

- (14) Mr Mussle compared the alcohol density with other areas in Whangarei. His evidence was based on 2013 census figures and indicated that Kamo with a population of 7038 residents had four off licences including a grocery store, a club and two bottle stores, with a ratio of 1 off licence to 1759 residents. Tikipunga has 5931 residents with four off licences including a supermarket, grocery store and two bottle stores, with a 1:1482 outlet: resident ratio. Kensington, Regent and Mairtown with a combined population of 5253 had five off licences including two supermarkets, a tavern, and two bottle stores and a 1:1050 ratio. The Onerahi, Sherwood Rise area-generally serviced by the Onerahi Shopping Centre has three off licences, a supermarket, tavern and bottle store has 5787 residents and a 1:1929 ratio of off licence to resident population. Further information provided to the hearing indicated that Whangarei District, based on 2013 census data, has a population of 76995 residents and a total of all off licences of sixty one. A ratio of 1:1262 or if licensed clubs were excluded 1:1375. The total number of licensed premises in the District is 206 comprising 89 on licences, 61 off licences and 56 club licenses. The Onerahi ratio of 1:1929 has a significantly lower density than the rest of Whangarei District. If this licence granted the new ratio for Onerahi would be 1:1447.
- (15) Mr Mussle's evidence dealt with the public notification process and the basis by which the 570 people identified as objectors were analysed and dealt with. The objectors were categorised based on form of objection, then subject to analysis based on residential address within two km of the applicant site. Most objectors signed a form of standard letter or petition and all were considered. This process identified 367 objectors with "standing", as having greater interest than that in common with the public. All these were written to as to whether or not they wished to be heard. In the event 20 people indicated such with 12 objectors presenting to be heard at the hearing.
- (16) The large number of objections submitted including a petition indicated widespread opposition to the establishment of an additional off licence premises in Onerahi. All objectors questioned the impact of an additional off licence on the area in relation to "The Object of the Act" and "Amenity and Good order" provisions.
- (17) The inspector commented that while no objectors mentioned hours of operation he indicated that the effect on the nearby school could be considered and ventured a possible closing for a period in the afternoon while school children might be walking past.
- (18) The balance of Mr Mussle's report addressed matters the committee must consider under Section 105 of the Act and which will be addressed in a later section of this decision.

The Objectors

- (19) Dr Clair Mills, the Medical Officer of Health (MOH), opposed the application. She called as a witness Constable Aaron Furze, Community Constable in the Onerahi area. She was assisted by Sergeant Howard Clement, Whangarei Alcohol Harm Prevention Officer. Dr Mills identified Onerahi as socio-economically deprived and cited the public concern about a further off licence was being reflected in the number of objections, the public meeting attendance, the public march and media reports. Her concern was with the additional spirits and RTD's which would be available with the new off licence. Her evidence related the harm alcohol can cause especially amongst young people. She cited a Northland DHB led study amongst young people in 2010 indicating 80 percent of 16 year olds drank 1-3 times a week and 47 percent of 13-14 year olds. She did indicate however, that a subsequent 2012 study suggested that this drinking behaviour was reducing.
- (20) Dr Mills identified that Northland has a higher number of off licences (15.2/100,000 people) than the North Island average (8.2/100,000 people). She cited a Manukau City study which suggested an association between density of licenced outlets and alcohol related harm and density and price discounting. This evidence, she contended, identified higher density of off licences have greater competition, leading to lower prices, longer operating hours and later weekend closing times. High volume, low margin and "loss

leading” promotions are common. She suggested that the Onerahi community should be concerned about the effect of alcohol outlets on vulnerable populations and socio-economically deprived populations. She suggested that Police data indicated the highest rates of alcohol related family violence incidents and suggested that this was common in Onerahi.

- (21) Dr Mills presented as evidence a Whangarei map entitled” Alcohol Attributed Hospital Admissions- Whangarei District 2009-2012.” This indicated that Onerahi had 31-45 admissions of this type in that period. This was on a par with much of Kensington, Regent, Mairtown and Kamo West and Tikipunga West which are recognised as more economically advantaged areas and rated better (less) than Kamo East and Tikipunga East and Raumunga West which are rated economically similar. Otangarei had 61-75 admissions and there is no off licence in that area. The committee concluded that this map indicated little relationship between alcohol attributable admissions, off licence density or locality of sales. Dr Mills conceded that data gathering and interpretation of it was a problem at this stage.
- (22) Dr Mills cited the Hori Om (2013) Limited 2014 case decision whereby the Authority declined an off licence application. She identified Judge Holes’s comment as “It is not so much the number of licences that creates the concern rather the harm caused by them” and “The evidence from previous cases suggests that price cutting, not necessarily by the applicant would result in more liquor available in the area where liquor problems are rife” and that “The market for alcohol in the town and surrounding area is static, if not reducing. Inevitably a new entrant into this market place must have an effect on other off licences in the area.” Dr Mills suggested that these comments from the Judge were particularly relevant in this case. Upon cross examination by the applicant Dr Mills identified that she opposes licence applications and renewals, based on Northland DHB position statement and criteria for assessing risk.
- (23) Constable Furze, as witness for MOH, presented his evidence as supporting the objectors. He indicated that he attended multiple calls for disorder and intoxication incidents due to the proximity of the tavern and the shopping centre. His view was that intoxicated patrons moved from the tavern to the takeaway shops and maybe the supermarket. He advised that he attended many calls for alcohol fuelled incidents, parties and disorder during the day. On cross examination, he was not able to recall an average number per day or day of the week and stated that many incidents were not recorded but considered that alcohol fuelled incidents, fights and domestic incidents were 80 percent of his calls. Further questioned, Constable Furze indicated that the police uphold the liquor ban and that a security camera monitored to 8.30pm would assist in that activity.
- (24) Sergeant Clement, identified as assisting MOH, and read a police intelligence report. This report indicated that over a 12 month period from 1st July 2013 to 30th June 2014, there were 116 alcohol related incidents occurring within 1 km of the applicant site. The vast majority of these were disorder followed by intimidation/threat. 75 percent of these were between 10am and 10pm with the “hotspot” being Onerahi Tavern. The report identified that there 18 alcohol licenced venues within the 1km area. This number is clearly incorrect and did raise questions about the veracity of the report. The Licensing Inspector later provided information indicating that there were 7 licences within the 1 km radius. Under cross examination Sergeant Clement was not able to clarify some aspects of the report nor was it able to be established the actual numbers relating to truancy, police aid referrals or last drink survey outcomes.
- (25) The committee expressed frustration to the MOH and Police officers that the data, as presented, was not specific and gave no real guidance as to the subject of this application. Namely, what level of harm exists now within Onerahi, how is that manifest in community action and how might an additional licence impact on these.

Community Opposition

- (26) The application generated a great deal of interest within the Onerahi community. A total of 570 objections were received, most of which were in the form of a standard letter and/or petition. Of these 367 objections were deemed to have “greater interest than the ordinary public” determined by whether they lived within 2km of the applicant site. All were written to and 20 indicated a wish to be heard. In the event 11 objectors were heard with one further being unable to be present but having her objection read by another who had status. Of the written objections six were in other than a standard letter form. One of these was from St James Church. Another from Ngatahine Health Trust and another from a competing licensee.
- (27) Concerns were raised about the manner in which the public notification was displayed in the window of the proposed premises because the notice did not show the publication date and closing date for submissions. This was explained by the applicant as a misunderstanding and confirmed by the Inspector as not contrary to the Act. We address this further below.
- (28) Submitters Sue Glen and Hilary Noall submitted that there were already sufficient liquor outlets in Onerahi and an additional one would be harmful. Both indicated that they had seen and heard abuse, which, in their view was a consequence of alcohol abuse. M/s Noall was concerned about the lack of knowledge of the application within the community.
- (29) Submitter Les Birch’s principal concern was the level of health and safety in the community and the effect of alcohol on that.
- (30) Submitter Lois Slattery described her experiences of living in various localities in Onerahi, her involvement in establishing the Onerahi Community Resources Trust and her observations of various people’s experiences with alcohol. She speculated about a price war with a further outlet, the increased availability of alcohol and its potential effect on children and families.
- (31) Submitter Mariameno Kapa-Kingi gave her extensive credentials in social work and indicated that she and her organisation worked with 180 families in Family Start, and that more than half of these are in the Onerahi area and have some alcohol involvement. The submitter identified that data that would help the Committee was available, yet despite persistent questioning from the Committee was not able to identify the nature or detail about interventions which might help the Committee.
- (32) Submitter Ron Brewer identified as a local church pastor. He described many of the social problems he and his members deal with. He stated that money for children’s food was being spent on alcohol and that when he visited homes in the area with food parcels, nine times out of ten there were stacks of beer and spirit bottles outside. He expressed the view that another liquor store would make things more difficult and despite an expectation of not creating more sales, a price war would ensure that.
- (33) Submitter Sherry Carne expressed the view that there were enough off licences and that the premises wide windows and the location would enhance the visibility of the displayed products to school children as compared to other licenced premises. She was also concerned about the ATM machine’s locality in relation to the premises entry.
- (34) Submitter Valerie Green-Moss addressed the issue of loitering and the walking environment around the proposed premises. She had surveyed a number of outlets who had identified loitering as an issue, particularly in respect to the ATM machine. In response to the applicant’s questions, she agreed that the area being well lit and a monitored CCTV would be beneficial to the area. The Committee asked for more detail about how loitering occurred and she described how three other licensees deal with the issue. M/s Green-Moss impressed as someone who had done her own research and conveyed some objectivity about the issue.

- (35) Submitter Rebecca George expressed her view that a new liquor store, open late or more accessible or with cheaper alcohol would be a temptation to those struggling with alcohol issues and that these people should be supported by not allowing extra access.
- (36) Submitter Glenys Currie described her experiences as a foster parent over 27 years and how many of these children had come into her care because of alcohol issues. She was concerned about the increased availability of alcohol from the proposed premises would have on those purchasing on impulse.
- (37) Submitter Brian Kidd, described his many years as a police officer and his experiences with alcohol initiated crime and that he was against another outlet.
- (38) Overall the Committee was impressed by the level of understanding and quality of the submitters' presentations. The alcohol related issues within the community and the effect on impacted families, as presented by the objectors were well articulated. There was though, a frustration with the lack of evidence of formal interventions by established agencies in Onerahi alcohol issues. As well the Committee was not presented with evidence that Onerahi had particular issues which could be identified in extraordinary crime, hospitalisation statistics or the like.

The Committee Deliberation Process

- (39) The criteria contained in Section 105 and Section 106 of the Act applies to this application. Section 3 as to the Acts purpose and Section 4 as to the Acts object must be met. The Alcohol Regulatory and Licencing Authority (ARLA) confirmed in Hori Om (2013) Limited (2014) NZARLA p 159, there is an onus on the applicant to prove its case.
- (40) Accordingly an applicant must demonstrate that its application measures up against the criteria set out in Sections 105 and 106 of the Act.

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

The Object of the Act is set out in Section 4. This identifies:

- (1) (a) The sale, supply and consumption of alcohol should be undertaken safely and responsibly.
- (b) The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purpose of subsection (1) the harm caused by the excessive or inappropriate consumption includes-
 - (a) Any crime, damage death disease disorderly behaviour illness or injury directly or indirectly contributed to by the excessive or inappropriate consumption of alcohol; and
 - (b) any harm to society generally or in 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)

Thus, the applicant has to satisfy the Committee that if the application were granted, the harm caused by the excessive or inappropriate consumption of alcohol should be minimised. Minimised here, means, to reduce to the smallest amount as a consequence of granting the licence.

- (41) The Committee has sought to answer whether aspects of this application might cause harm to increase and what steps had the applicant taken to minimise that harm? In this

case the Onerahi community has an off licence density of 1:1929 residents compared to Kamo 1:1759, Tikipunga 1:1482 and Kensington 1:1050. Granting this application would give an Onerahi ratio of 1:1447 around the same as Tikipunga and less than Kensington. MOH evidence relating to Alcohol Attributable Hospital Admissions indicated a lack of a strong relationship between those areas with a higher density of off licences with alcohol related admissions. In fact Otangarei with the highest admissions has no off licence. Reference was made at the hearing by Dr Mills to a study indicating a positive and large relationship of off licence density to a range of police events in Manukau City (Cameron et al 2012). It was acknowledged at the hearing that this was a city of 330,000 people and 447 off licences. A subsequent study commissioned by the Health Promotion Agency (Cameron et al 2013) entitled "The Locally Specific Impacts of Alcohol Outlet Density in the North Island of New Zealand 2006-2011" however concluded (pg 44) "The absence of a significant positive relationship between off licence density and police events may have been due to the location of drinking (and any resulting harm) being separated from the location of the purchase. Since drinkers can purchase alcohol in one location but consume in another, we might not expect to see a strong relationship between off licence density and alcohol related harm". There was no evidence presented at the hearing that gives any compelling reason to conclude that there will be a relationship between the sale of alcohol and alcohol related harm; rather the research that was produced shows only a general relationship and there was nothing specific to this locality.

Therefore, the Committee concludes that the granting of this application will not as a consequence of that cause alcohol related harm to increase in the Onerahi area.

- (42) Our next question asked are there any "hotspots" or "magnets" for young people to congregate in association with the applicant premises which might cause an increase in alcohol related disorderly behaviour? Evidence was presented relating to drinkers leaving the tavern and going to take away outlets. The premises are located on the other end of the shopping centre from the tavern within a liquor ban area where public drinking is controlled. The takeaway outlets are in the middle of the shopping centre. The area just outside the premises is to be monitored by CCTV security. Therefore, considering the evidence and the characteristics of the locality, the Committee saw no reason why the premises, in this specific locality would cause an increase in alcohol related disorderly behaviour.
- (43) We further questioned what measures the applicant was planning to minimise alcohol related harm. It was conceded at the hearing that the applicant's provision of a monitored external CCTV security covering the entrance and pointed towards the ATM machine would assist with managing the liquor ban and the security of the area. Further, recognising school children as a vulnerable group, the applicant undertook to close between 3pm and 4pm on school days when school children might be passing on their way to school. Against that the street railing outside the premises means that pedestrians cannot avoid walking past the premises.
- (44) The applicant stated that he was not setting out to sell more liquor in the area but that he was expecting to take sales from existing outlets. He undertook to limit price related promotions and aggressive advertising. However, we recognise that these intentions are not enforceable. Realistically the Committee considered the likelihood of not increasing overall sales was a little improbable.
- (45) On balance the Committee concludes that the Applicant will take measures that are within his control (and that can be provided in conditions) to minimise potential harm, such as the use of CCTV and a restriction on opening hours in the after-school period. Furthermore, the evidence from objectors as to alcohol related harm, whilst no doubt well intentioned, was general and non-specific in that there was no evidence linking this premises to the possibility of increasing alcohol related harm within the community.

Criteria under Section 105 for Granting of an Off Licence

- (46) This criteria is identified in the Act and in the Inspectors report and each will now be considered in the context of this application.

Suitability of the Applicant

- (47) The applicant presented as a person who has had considerable experience, both as an employed manager in the hospitality industry and as an owner/operator in the local retail industry. He is locally born and bred, degree qualified in business, has international experience and returned to open and run his retail businesses. He has been a certificated manager within the liquor industry but is not currently certificated. He has LCQ qualification and is undertaking the full certification process while employing two certificated managers to assist him should this application be granted.
- (48) The applicant has operated the "Brew Store" which has been licenced under the Psychoactive Substances Act (2013) as a retailer of psychoactive substances (legal highs). He was one of four retailers in Whangarei licenced by the Ministry of Health, had no criminal convictions and assisted police with CCTV footage when requested. In May 2014 psychoactive substances ceased to be legally available in Whangarei and nationwide. Some criticism has been levelled at the applicant by opposers to this application because of this involvement. However this was a legitimate licenced business requiring experience in restricted sales and ID identification as is the requirement of this application.
- (49) The applicant has no experience in operating a bottle store. This application identifies as being part of the "Liquor Centre" franchise which provides training and operating systems as well as acting as a buying group. The applicant considered that he was sufficiently qualified and experienced to be able to successfully operate the business should this application be granted. The applicant identified as a volunteer fireman.
- (50) The applicant presented as intelligent, circumspect, articulate and "street wise". He was candid and able to respond to the issues surrounding this application. As Dobson J. confirmed in NZ Police v Casino Br (No3) Limited and Ors CIV 2012-485-491(2013) NZHC 44 at para 36 "the requisite approach to suitability will inevitably be context specific." In this case the context is the operation of a bottle store albeit in a strong community which has expressed significant opposition to the application. It is the Committee's view that the applicant has demonstrated his suitability.

Any relevant Local Alcohol Policy

- (51) In 2010 Whangarei District Council adopted the Whangarei District Licencing Agency's Liquor Licensing Policy. This provided for uniform licencing hours across the District effective from January 2013. This has been tested by ARLA. The policy stipulates the maximum operating hours for off licence premises as Monday to Sunday 9.00am to 10.00 pm. This application is for 10.00am to 10.00pm Monday to Sunday and meets the hours of the policy. It also complies with the Whangarei District Plan as developed under the Resource Management Act 1991. The applicant has indicated that he will most likely operate the following reduced hours; Sunday to Thursday 10.00am to 8.30pm and Friday and Saturday 10.00am to 1.00pm. As well the applicant has expressed a willingness to close between 3pm and 4pm on school days to minimise the potential effect on school children walking home from school.

The Design and Layout of the Premises

- (52) The applicant has provided a floor plan for the 140m² premises. Approximately 100m² would be sales area. This is to include a walk in chiller. The entrance is quite confined and with the proposed shop counter allows good visibility through the premises, towards the entrance and potentially with CCTV monitors outside towards the ATM machine next to the entrance. The CCTV system would be connected to a monitoring and security company. The applicant indicates expectation to comply to CPTED requirements with internal and external displays being subdued rather than aggressively promotional. The design and layout were determined to be relatively unexceptional.

Sale of Other Products

- (53) The applicant advised that complementary products such as tobacco, tobacco accessories, chips and nuts would be sold. He emphasised at the hearing that low alcohol products would be part of his display and promotional approach. The applicant advised the hearing that he would not be selling single serve drinks.

Provision of Services

- (54) There was no evidence of other services to be provided.

Amenity and Good Order of the Locality

- (55) The question here is twofold. Section 105(1) (h) asks whether the amenity and good order would likely be reduced, to more than a minor extent, by the effects of the issue of the off licence and, Section 105(1) (l) asks about whether the amenity and good order is already so badly affected by the existing licences that either, an addition would make no difference or, that further licence issue is undesirable.
- (56) Section 105(1) (h) is most relevant. The Onerahi Shopping Centre has no off licence in the Centre itself, but at either end and across a street are a supermarket and a tavern plus a bottle store. The shopping centre itself has two bakeries/hot bread shops, two dairies, two food takeaway shops plus four ATM machines plus six other more specialty shops spread within including video hire, pharmacy, discount store, two hairdressers , Kiwibank/Post shop and Lotto/bookstore. Multiple shops in the same business seem to survive but the emphasis is on convenience fast shopping rather than specialty browsing shopping. There is no particular shopping, loitering magnet type shop, or other attraction near the proposed premises. It seems unlikely therefore, that the applicant premises would create any multiplier effect relating to a particular type of person "hanging around". A Council liquor ban operates in the area.
- (57) There is reasonable visibility right along the shopping centre frontage. The ATM machines may create a focus of insecurity but they are there anyway, and the applicant proposes monitored CCTV coverage over the one outside the proposed premises entrance. It was agreed by police and an objector that this would assist the security of the area. The visibility of the applicant's premises would meet CPTED requirements but the applicant expressed a wish that he wanted product visibility and promotional material to be less intrusive. There was no evidence presented to the hearing which would indicate the likelihood of increased noise, vandalism and nuisance generated from the applicant premises.
- (58) The police intelligence report indicated that the on licence at the tavern at the other end of Onerahi Shopping Centre was a relative "hotspot" and that there was some evidence of disorder moving from there to the takeaways shops. It is surmised that bottle store patrons and tavern patrons shop differently and there is no evidence to suggest that a

“hotspot” could develop at the applicant premises and move towards the takeaways shop in the same way.

- (59) Accordingly, based on existing evidence and the difficulty of predicting future events, the Committee believes it is unlikely that the proposed premises will negatively impact on the existing amenity and good order in the locality by more than a minor extent.

Appropriate Systems, Staff and Training

- (60) Staffing matters have been referred to in para 49. The Whangarei District Licensing Policy identifies that a minimum of at least two accredited managers are on the premises when the premises are open for 84 hours in the week worked. The applicant has identified two such managers and has indicated that he expects to be the owner / operator once he is fully certificated. The application identifies in its business plan how the premises will operate and how staff will be trained. At the hearing the applicant indicated that some training is done under the auspices of the franchisor and according to the operating manuals provided with the franchise. The staff training and operating systems appear adequate. The applicant has operated within a franchised and a licenced environment and is familiar with sales restrictions and ID identification requirements. Proposed signage is consistent with the type of licence applied for.

Reporting Agencies

- (61) The Committee has already dealt with the various matters raised in such reports.

Conclusion

- (62) We conclude that:
- a) The application meets the requirements of the Act.
 - b) There is no evidence that the applicant is not a suitable person to hold a liquor licence.
 - c) The proposed operating hours are compliant with the local liquor licensing policy
 - d) The design and layout are appropriate.
 - e) The other goods to be sold by the applicant are appropriate.
 - f) We do not consider the amenity and good order of the locality will be reduced by more than a minor extent by the effects of the issue of the licence.
 - g) The applicant appears to have appropriate systems, staff and training to comply with the law.
- (63) In applications of this type, the applicant is obliged to make its case. In this case, the Committee is satisfied that the application and the evidence presented has met the criteria, that the Committee is obliged to consider under the Act.
- (64) Whilst, the undertakings the applicant has given regarding operation, display and promotion are not enforceable by condition, non-compliance with these intentions may be a matter to consider when the license is renewed. However, the Committee is satisfied, on the evidence before it, that the application stands scrutiny irrespective of these undertakings. Any instance of non-compliance should be addressed at the very least, when the licence is renewed.
- (65) The matters provided for in Section 105 of the Act have been considered by the Committee. We are satisfied as to the matters that we must have regard to under Section 105 of the Act and we are satisfied that this application meets the purpose and object of the Act. Accordingly we **grant** the licence.
- (66) We refer any party who wishes to appeal this decision or part of this decision to Section 155 of the Act.

Conditions

- (67) The conditions of this licence are:
- (a) No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac day.
 - (b) Liquor may be sold or delivered only on the following days and during the following hours Monday to Sunday 10am to 10pm.
 - (c) The premises will close between 3pm and 4pm during school days and the term of Onerahi Primary School.
 - (d) Drinking water is to be freely available to customers while alcohol is being supplied free as a sample on the premises and signage directing people to drinking water must be prominently displayed on the premises at that time.
 - (e) The following steps must be taken to ensure that the provisions of the Act relating to sale of alcohol to prohibited persons are observed:
 - (1) Ensure that no intoxicated persons are allowed to enter or remain on the premises.
 - (2) Ensure that appropriate signs are prominently displayed detailing the statutory restrictions on the supply of liquor to minors and intoxicated persons at the entry and adjacent to each point of sale.
 - (3) Persons in school uniform will not be permitted to enter the premises.
 - (f) No single sales of:
 - (1) Beer or Ready to drink spirits (RTD's) in bottles, cans or containers of less than 440mls in volume except for craft beer.
 - (2) Shots or pre-mixed shots.
 - (g) That at least 10(ten) percent of the beer shelf spacing will be of a low alcohol type at all times, and that a competitively priced low alcohol beer, priced equivalent to the cheapest regular beer, is always displayed for sale.
 - (h) There will be no display of RTD products on the shop floor within the premises.
 - (i) That the external CCTV camera is positioned such that it supervises the ATM machine adjacent to the premises entrance and that it is practically accessible on request by enforcement agencies.
 - (j) External advertising of alcohol is limited to no more than 30(thirty) percent of the shop frontage window area.
 - (k) There will be no advertising of alcohol products or brands outside the premises (apart from the trading name of the premises), such as (but not limited to) sandwich boards, billboards, signs or similar forms of advertising.
 - (l) The whole premises is designated a supervised area.

- (68) The licence will not issue until the expiry of ten working days from the date of this decision and only once the final building code certificate is issued. That period of time is the time provided in Section 155 (1) of the Act for the lodging of notice of appeal.

DATED at **Whangarei** this **10th** day of December **2014**

Councillor John Williamson
Chairman
Whangarei District Licensing Committee

TRIM 14/113750