

Decision N° **OF0063-2017**

In the Matter

of the Sale and Supply of Alcohol Act 2012

And

In the Matter

of an application by **DWD Investments Limited** for an Off licence pursuant to s.100 of the Act in respect of premises situated at **70 Victoria Street, Dargaville, Kaipara District** known as "**Northern Wairoa Wholesalers**".

Before the Kaipara District Licensing Committee

- Chair: Mr Mark Farnsworth
- Members: Mr Mark Vincent, Mr Gordon Lambeth.
- In Attendance: Democratic Services Manager: Sean Mahoney
Chief Licensing Inspector: Rachel Sheppard
Regulatory Technical Support Officer: Fiona Poyner
- Parties: John H Wiles (for the applicant)
Senior Sgt John Fagan (for the Police)
Dr Virginia McLaughlin (Medical Officer of Health)
Jason Sheehan (District Licensing Inspector)

Introduction

This is an application for an Off licence by DWD Investments Limited, situated at 70 Victoria Street, Dargaville, Kaipara District and known as "Northern Wairoa Wholesalers". The application was made under s.100 of the Sale and Supply of Alcohol Act 2012 and determined by the District Licensing Committee under s.104 of the Act.

The application was filed with the Territorial Authority on 10 November 2016 with public notification in the Kaipara Lifestyler on 22 November and 29 November 2016 which satisfies s. 101(b) of the Act. A total of six public objections were received during the fifteen working days period which ended on Tuesday 13 December 2016.



Reports from the Licensing Inspector and the Medical Officer of Health opposed the application as follows:

- The Inspector raised one matter in opposition, that being the failure of the applicant to provide a floor plan for the purpose of confirming the design and layout of the premises.
- The Medical Officer of Health opposed the application on the grounds that there were significant levels of alcohol related harm already happening in Dargaville and that the issuing of a further Off licence for a bottle store in this location would contribute to increased community alcohol related harm in Dargaville.

No matters of opposition were received from the Police.

Hearing

The chairman opened the hearing introduced the committee and asked the parties present to identify themselves. He then outlined the procedure to be followed.

The applicant

Mr Wilson was sworn in, and he then read out his statement of evidence. As a result of questions from the committee, Mr Wilson clarified that his company owns the freehold of the subject building, and that at the time of purchase, no off licence was operating. In response to a question from the Inspector he confirmed it was not his intention to sell RTD's or single bottles of beer.

There were no questions from the Police.

The objectors

None of the objectors was present. The Inspector had assessed each of the objectors as not having "a greater interest in the application for it than the public generally" as required by s 102(1) of the Act. The committee did not reach a conclusion on this, but given that none were present to answer questions from any of the parties or the committee itself, the committee concluded that it could attach little weight to these objections in any event.

The Medical Officer of Health

After being sworn in, Dr McLaughlin spoke to the evidence which had been prepared by her predecessor, Dr Mills. Upon questioning from the committee she conceded that it was difficult to apply the statistical information in the report to measure the impact of increasing the number of bottle stores in Dargaville by one. Mr Wiles cross-examined her on the question of what occurred to him as a nation-wide approach by MOH's in opposing new licenced premises. Dr McLaughlin, being very new to her role, was unaware of this approach.



The District Licensing Inspector

The sole point of opposition from the Inspector had been the lack of a floor plan. Now that this had been provided, the committee asked him if the plan was satisfactory. He answered in the affirmative. He was then asked for his professional opinion on whether or not the application should be granted, in light of what he had heard at the hearing. He answered again in the affirmative.

The applicant – closing submissions

Mr Wiles read a prepared statement, appended to which was the recent *Rapira-Davies v Patel* [2017] NZARLA 52 decision, and he referred to this in his submissions. At stake here was the question of the opening hours for an off licence upon renewal. This highlighted the committee's responsibility to have regard to the various matters set out in s131 (renewal criteria). It also made it clear that the onus was on an objector to provide evidence for the committee to consider so it could reach an informed opinion on whether ... *"the amenity and good order of the locality would likely be increased, by more than a minor extent, by the effects of a refusal to renew the licence"* rather than on the applicant to prove the opposite. This provision is the same for renewals - s131(1)(b) as for new licences – s105(1)(h).

The chairman closed the hearing, advising that the committee would reserve its decision.

Decision

Pursuant to ss105 and 211 the committee decided to grant consent subject to conditions.

Reasons

The committee took into account the contents of the application, the objections, the MOH report, the staff reports as well as the evidence presented at the hearing. The floor plan submitted with Mr Wilson's evidence was deemed to be part of the application.

1. The committee acknowledges the harm caused by excessive consumption of alcohol in this community through accidents, injuries and violence, but still was not able to discern from the evidence presented a connection between such harm and the consequences of allowing this specific application to proceed. In particular, the evidence contained in the MOH's report and submission came up short in this respect.
2. None of the objectors was present to give their evidence and so be asked questions about it, or indeed their standing in relation to the application.
3. The recent ARLA decision, *Rapira-Davies v Patel* [2017] NZARLA 52 we found to be of great assistance in addressing the 'amenity and good order' issue, in favour of the applicant.
4. The offer by the applicant not to sell RTDs or mainstream beers individually help to mitigate against the risk of alcohol related harm.



Condition

- (i) *There shall be no single sale of any RTD (premix) or mainstream beer.*

The licensee's attention is drawn to the condition of licence 03/OFF/004/2017 to ensure that potable drinking water is readily available and free of charge to customers at all times that the premises are offering complimentary tastings of alcohol. Signage directing people to drinking water must be prominently displayed on the premises at that time.

The licensee is reminded of their responsibilities with regard to the object of the Sale and Supply of Alcohol Act 2012.

DATED at Dargaville this 02nd day of May 2017



Mark Farnsworth MNZM

Chair

Kaipara District Licensing Committee

