

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **TEDDY
TECHNOLOGIES LIMITED**
pursuant to ss.17, 32(1)(f) and
s.99 of the Act for an
application for a new off-
licence located at 8 Industrial
Place, Queenstown to be
known as 'Teddy'.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr G B Pay
Members: Mrs N Vyrenhoek
Mr C Cooney

HEARING at QUEENSTOWN on 9th September 2022

APPEARANCES

Ms T J Surrey – Lawyer for the applicant
Mr R J T Taiaroa, Mr D K Taiaroa, Mr A D E Earll, Mr C P Savage – representing
Teddy Technologies Limited – applicant
Ms L Grace – representing Medical Officer of Health – to assist
Mr N P Bates – Queenstown Lakes Licensing Inspector – to assist
Sergeant S J Matheson – NZ Police – to assist

RESERVED DECISION OF THE COMMITTEE

Introduction.

1. This is an application by Teddy Technologies Limited (the company), for a new off-licence in respect of premises situated at 8 Industrial Place, Queenstown known as "Teddy". The application was lodged on 24th May 2022.
2. The Applicant company consists of directors: Daniel Taiaroa, Richard Taiaroa and Chaz Savage. The three directors are among nine shareholders in the company.
3. The application stated the intended nature of the business is "grocery store" and "remote sales". The principal business of the operation was stated as being "grocery store". At the time of lodging the application the business was yet to trade. Trading hours of 10am until 10pm daily were sought for the sale and supply of alcohol.

4. The premises is located in a light industrial area and the proposed business meets the requirements of the Resource Management Act 1991. The report from the Licensing Inspector indicates that building code compliance has been obtained.
5. The application drew no opposition from the reporting agencies and no public objections were received.
6. The Committee noted the application was not accompanied by any documentation that satisfied Regulation 13 of the Sale and Supply of Alcohol Regulations 2013. This meant we were unable to consider all of the requirements placed on us by virtue of s33(2) of the Sale and Supply of Alcohol Act 2012 (the Act) –

33Determining whether premises are grocery store

(2) In forming for the purposes of this Act an opinion on whether any premises are a grocery store, the licensing authority or a licensing committee—

(a) must have regard to—

(i) the size, layout, and appearance of the premises; and

(ii) a statement of the annual sales revenues (or projected annual sales revenues) of the premises, produced in accordance with any regulations in force under this Act prescribing what information such statements must contain and how it must be set out; and

(iii) the number, range, and kinds of items on sale (or expected to be on sale) on the premises; and

(b) may have regard to any other matters it thinks relevant; and

(c) may determine that the premises do not have the characteristics normally associated with a shop of the kind commonly thought of as a grocery shop by virtue of characteristics that the premises and the items on sale there lack or will lack, characteristics that the premises and the items on sale there have or will have, or a combination of both.

7. The Committee also noted that host responsibility and staff training information accompanying the application made no reference to grocery store alcohol sales but referred almost exclusively to deliveries.
8. In 2021, the Queenstown Lakes District Licensing Committee heard an application for an off-licence for the same premises of 8 Industrial Place, Queenstown. The applicant in that case was Drinks on Q Limited. Mr Daniel Taiaroa was the sole director of that company. In that application, the intent was for alcohol to be delivered to customers on demand with no store-based sales at all. The committee declined that application on the grounds that the application was contrary to s.4(1) of the Act.
9. It was noted there was a marked similarity between the host responsibility and staff training documents accompanying this application and those adduced at the Drinks on Q hearing.

10. Taking into account the following factors: that the application was deficient in information, the principal business could not be ascertained and appeared to be a delivery-based operation as opposed to a grocery store, as well as the similarities with the Drinks on Q application – the Committee took the view that a public hearing was the most appropriate way for us to determine the application.
11. On 7th September 2022, the Committee visited the premises at 8 Industrial Place, Queenstown. A relatively small sign on the outside of the building identified it as “Teddy” but no other signage or advertising was present. We found the premises set up as a store with drygoods, food items and household products on shelving. Chillers were largely empty and freezers contained frozen foodstuffs and an amount of icecreams and frozen confectionary. There were only several items of fresh vegetables and several loaves of fresh bread. The store area was about 75m². However, the premises certainly gave us the impression it was a grocery store as opposed to a dairy-type operation. There was yet no till or checkout nor was there a store area for bulk goods. Through an adjoining door was access to an area operated by “Food on Q” which contained several scooter motorbikes, two of which displayed signage with the word “Teddy”. Also in the room were several people who we were told were employed by “Food on Q”. A computer and screen were in the same area. We were told the computer was used for monitoring operations in both “Food on Q” and “Teddy”.

The Application

12. Mr Chaz Savage gave evidence. He stated he resides in Auckland and gave us brief rundown of his experience in business which is largely corporate of nature and not experience in the sale of alcohol. He told us he is in the process of establishing a “Teddy” grocery store in central Auckland. Mr Savage said there is no intention to operate Teddy as a “price lead” business and said alcohol will not be discounted. He did go on to say they intended to offer “competitive pricing on our groceries” and that they will have over 600 products available “at launch” including fresh meat and vegetables. This, he said, is forecast to grow to a range of 1200-1500 products within six months of operation. Mr Savage went on to say “*The intention is to market Teddy as a grocery store to call into during the day or on the way home from work, or to have groceries delivered without needing to drive to the supermarket*”. He further stated that the business model is based on “*...time poor professionals that prefer not to shop.*”
13. Mr Savage produced a product list of alcohol products which he said is indicative of the range and price of alcohol products they intend to sell. He said they would like to offer approximately 20 varieties of beer, two varieties of cider and a range of twenty choices of wine. He referred by way of context us to the extent of range of alcohol products offered for delivery by the Countdown supermarket. It is clear to the Committee that the alcohol prices produced by Mr Savage are higher than other outlets – in some cases over twice the retail price. He told us that alcohol sales will be limited to a maximum of 26 units – eg: two dozen units of beer and two of wine.

14. Mr Alex David Earll gave evidence that he is employed as the manager of Teddy. He resides in Queenstown. Mr Earll is the holder of a current manager's certificate and has experience managing a late night bar owned by My Daniel Taiaroa in Wanaka. There is no question over Mr Earll's suitability to manage a licensed premises. Mr Earll stated he will be in charge of all staff training and ensuring the guidelines of the Company are adhered to and that he intends employing at least three staff with manager's certificates. He told us he will check the correct delivery process has been followed after each delivery and will ensure the duty manager authorises all in-store sales. The store till will have an alert informing the sales person must check identification whenever an alcohol product is scanned.
15. When questioned by Sergeant Matheson, Mr Earll told us that delivery staff will be trained not to deliver alcohol products to addresses where there is a "visible house party" indicated by such things as loud noises and "lots" of people on site. Mr Earll also said there would be no delivery orders taken after 9pm. Mr Earll also was able to confirm the location of the single alcohol area in the store as that depicted in a plan contained in the Inspector's report.
16. Mr Richard James Taiaroa gave evidence. He is a director of the applicant company and described himself as leading the "*digital product, technology and business operations*". He resides in Auckland. He presented his CV that includes a Masters of Business Administration. He also gave a brief rundown of his corporate experience. Mr Taiaroa produced a projected profit and loss statement which had been prepared to meet the requirements of Regulation 13. Accompanying the statement was a letter from Lindsay McLean of McClean & Co Chartered Accountants stating he had reviewed the projected annual sales revenue and finds the assumptions are reasonable in terms of Regulation 7(1) and 13(1). He lists a product split of -
- a) Food Products: 50% of 12 month revenue
 - b) Other revenue (incl Household items): 20%
 - c) Convenience Foods: 20%
 - d) Alcohol: 10%
- Mr McLean in his letter states these product splits are reasonable. Mr Taiaroa confirmed the business will not be selling tobacco, Lotto, Keno, Instant Kiwi or any other lottery product. He confirmed the product breakdown as listed above as being what the company is projecting in sales. He further stated alcohol would be priced 20% higher than that in large supermarkets and that there would be no discounting of alcohol products.
17. Mr Taiaroa gave evidence that Teddy had been operating on a trial basis for several weeks. The trial had resulted in lower than expected sales of fresh produce and in order to prevent wastage, only small amounts of items like milk, meat, fruit and vegetables are being stocked. This explains the meagre amounts we observed in our site visit. He told us that there will be more fresh produce on offer when the business is fully open.
18. Mr Taiaroa confirmed a point of difference with Teddy will be sales via an app where customers make their order and the payment transaction is completed. He

explained the different digital platforms being used by the company and how they work. With regard to age verification, Mr Taiaroa said the Teddy app system will require an age declaration then inform customers who purchase alcohol that they must have photo ID available to produce at the time of delivery. Delivery drivers will be required to capture an image of this identification on their portion of the app before the sale transaction can be shown as complete. Furthermore, every customer who has ordered alcohol will be rung prior to delivery so an assessment can be made of their sobriety and whether they are in a “*high risk environment*”. Mr Taiaroa told us that no alcohol sales will be made within two hours of the order being made. In cross-examination, Ms Grace on behalf of the MOH asked if he had considered how intoxication levels may have changed during the two hours since the phone assessment was made. Mr Taiaroa insomuch admitted that he hadn’t. In response to a question from the Committee, Mr Taiaroa reiterated that “Food on Q” is a separate business and there would be no links to each other in their respective apps.

19. Finally we heard evidence from Mr Daniel Kerei Taiaroa. He is a director of the applicant company and also presented us with a rundown of his tertiary education and business experience. He is the holder of a current manager’s certificate and has worked in the hospitality industry for over twenty years, fifteen of those as the holder of a manager’s certificate. He resides in Christchurch but owns and operates three licensed premises in the Queenstown Lakes District as well as another one in Christchurch. Mr Taiaroa presented the staff training manual and host responsibility policy for the company.
20. Mr Taiaroa drew the Committee’s attention to various other companies who were delivering alcohol in the Queenstown area. Not all were supermarket or branded liquor chain operations. Mr Taiaroa stated he did some comparisons of the Teddy delivery system with several other companies. He presented evidence of alcohol being delivered and left outside his address within twenty to thirty minutes of being ordered. Mr Taiaroa states his company will be more conscientious. Mr Taiaroa informed us that furthermore, no deliveries will be made to public places or those that have no street address.
21. The Committee was struck by the number of businesses delivering what amounts to “on-demand” alcohol in the Queenstown area but who were licenced in another part of the country.
22. Under cross-examination, Mr Taiaroa was questioned about the synergies between “Food on Q” and Teddy. After a short adjournment, he reiterated that “Food on Q” is a separate business and there will be no sharing of staff, including delivery staff. He said that the plan is for the “Food on Q” base to be relocated and only have Teddy delivery staff in the Industrial Place premises. He also stated there will be a requirement that there will be no alcohol sales allowed after 8pm daily and no deliveries to be made after 10pm.

The Applicant’s Submissions

23. Ms Surrey provided written closing submissions after the hearing had adjourned. She helpfully summarised the witnessed evidence and clarified points raised

during the course of the hearing. Among those points was clarification that Teddy and “Food on Q” have separate accounting, ordering and delivery software systems. She confirms that only Teddy employees will sell or deliver alcohol, that no orders involving alcohol will be taken after 8pm daily and no deliveries involving alcohol will be made after 10pm daily. She also clarified the maximum amounts of alcoholic product that the Applicant is willing to sell by way of delivery. There is no corresponding restriction for in-store sales.

24. Ms Surrey submits that should the licence be granted, the Applicant has “offered” the following conditions –

- a) *All sales of alcohol in-store must be authorised by the duty manager;*
- b) *Only staff directly employed by Teddy Technologies Limited will deliver alcohol;*
- c) *No staff member employed by Food on Q Limited will deliver alcohol for Teddy Technologies Limited;*
- d) *All deliveries will require photo identification to be sighted by the driver regardless of the purchaser’s age;*
- e) *No on-line order can exceed the following quantities:*
 - [i] Two bottles of wine and two dozen beers or ciders;*
- f) *No sales of single serve single units of alcohol (eg one stubbie);*
- g) *Trading hours of Monday to Sunday 10.00am to 10.00pm;*
- h) *Orders for the sale and delivery of alcohol will not be accepted by the Applicant after 8.00pm; and*
- i) *No deliveries of alcohol shall be carried out after 10.00pm.*

25. Ms Surrey submits that the Applicant is willing to give an undertaking in respect of “*any of the above conditions recognising that any breach of an undertaking impacts on a licensee’s suitability*”.

26. An appendix was submitted along with the written copy of the closing submissions. The appendix is a full-page article about Teddy in the September 2022 (issue 23) of the local QT Magazine. In the article, which according to the submission was written prior to the hearing, there is reference to using delivery drivers from “Food on Q”. Ms Surrey submits this will not be the case and that only Teddy employees will be used as per the evidenced of Mr Daniel Taiaroa.

27. There is also a quote in the QT Magazine article which appears to be attributed to Mr Savage: “*Obviously we’re not directly competing with bricks and mortar outlets such as Foodstuffs or Woolworths YET (sic) – it’s more about offering consumers an alternative option.*” This, along with Mr Savage’s evidence regarding “time-poor professionals” seems to confirm the suspicion of the Committee that store sales are not any sort of priority for the Applicant.

The Committee's Decision and Reasons

28. At the commencement of the hearing we made the statement that the suitability of the Applicant is not in issue. We also said that the matters we wished to ascertain at the hearing were: the nature of the business and the synergies with "Food on Q" due to the similarities with the "Drinks on Q" application. The quality of information supplied with the application for Teddy was nowhere near the standard required for a new grocery operation. A product list from a supplier was the only information about what may or may not have been offered for sale and nowhere in the application's supporting information was there reference to store sales let alone a single alcohol area. In short, it was impossible to ascertain what kind of business was seeking a licence to sell and supply alcohol.
29. The Committee is appreciative to Ms Surrey for the quality of evidence and subsequent submissions she has made on behalf of the Applicant. The projected trading figures presented at the hearing clearly indicate the business intends to operate as a grocery business as opposed to a dairy-type operation. The site visit helped us form firm views about the nature of the business and the Applicant is thanked for their assistance.
30. After hearing the evidence and considering the statements of the directors and manager, we do question the Applicant's intended use of the physical store portion of the business. The vast bulk of the evidence we heard was about deliveries. The single alcohol area was not even mentioned in evidence until a question was asked by the Committee. There is no store area for spare or bulk goods. Mr Richard Taiaroa, when questioned about this, told us that they are planning to have goods replenished from suppliers as required. After an adjournment, Mr Daniel Taiaroa then gave evidence that a lock-up storage unit in another part of Queenstown was to be used a store. We see this a reactive answer to a line of questioning by the Committee and place little weight on it.
31. The "delivery-centric" nature of the proposed business has caused us to ponder what the Act requires us to consider before granting or declining this application. The use of a bricks and mortar store appears to be secondary to deliveries of grocery items, including alcohol. We have considered this in respect of the Act and can find no particular guidance except for the ability for delivery and sales at a distance given by s.18 –

18Off-licences: sale for delivery and sales at distance

- (1)The holder of an off-licence not endorsed under [section 40](#) can sell alcohol on or from the premises the licence is issued for and deliver it somewhere else.*
- (2)The holder of an off-licence endorsed under [section 40](#) can sell alcohol from the premises the licence is issued for and deliver it somewhere else.*

The Act does make a distinction between "sales at a distance" in s.18 and "Remote sales" in s.40. We believe Parliament had in mind that an off-licence premises may sell and deliver to a localised area pursuant to s.18 but any

intention to sell to an unlimited geographical zone would require the holder of a licence to have a s.40 endorsement. S.5 of the Act tell us –

Remote sale, in relation to alcohol, means a sale pursuant to a contract that—

(a) has been entered into (using the Internet, by telephone or mail order, or in any other way) between—

(i) a seller who holds an off-licence; and

(ii) a person (whether the buyer or a person acting on the buyer's behalf) who is at a distance from the premises where the seller entered into the contract; and

(b) contains a term providing for the alcohol to be delivered to the buyer (or to a person or place nominated by the buyer) by or on behalf of the seller

We have not considered S40 of the Act as the Applicant has not requested us to.

All of the evidence we heard indicated there is no intention by the Applicant to sell alcohol outside of a “local” zone, although no evidence was heard about definitive thresholds. We have not put our mind to what is an acceptable delivery radius and will leave it to the Applicant to decide what is financially viable.

32. As stated earlier, we are satisfied the premises meet the definition of a grocery store as set out in s.33 therefore in our view, s.32(1)(f) is met. We also deem the Applicant to be suitable. After due consideration, we believe the unusual nature of the business model alone does not give us sufficient concern to decline the application.
33. We are required to consider s.105 of the Act, and the first matter is the Object of the Act found in s.4. The evidence we heard has convinced us that the Applicant has a number of safeguards to prevent minors and intoxicated people being sold alcohol. We also note the pricing structure of alcohol, the restrictions on delivery times and the limit on the amount of alcohol able to be purchased. Also, we note that the Applicant projects alcohol sales will be only 10% of income. Thus, we are satisfied that granting the licence will not be contrary to s.4 of the Act. We are also required to consider s.3 of the Act and ensure we are acting for the benefit of the Queenstown Lakes community as a whole. Again we are swayed by the Applicant's projected earnings from the sale of alcohol.

We have previously stated we believe the Applicant is suitable. There is no relevant alcohol policy for us to consider. The days and hours of trade were well canvassed at the hearing and the Applicant made undertakings during the hearing that orders of alcohol and subsequent deliveries will not be past the licenced hours.

The design and layout of the premises meet what we would call minimum requirements for a grocery store and the lack of bulk storage is a concern for us. Also, the Applicant and it's management team would also be well advised to make themselves aware of the requirements around their single alcohol area.

We have considered the other goods to be sold on the premises are satisfied with what we have been told.

We have no concerns with the effect of the premises on the amenity of the neighbourhood.

We believe the evidence we have seen and heard shows the Applicant has appropriate systems, staff and training to comply with the law.

No matters were raised with us by the Reporting agencies.

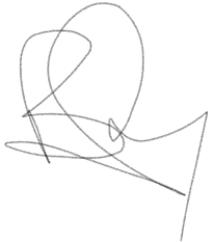
34. We therefore grant the issue of the licence with the following conditions –

- (a) Alcohol may be sold and supplied while the premises is trading as a grocery store and between the following hours: Monday to Sunday 10.00am to 10.00pm;
- (b) Orders for the sale and delivery of alcohol for the same day will not be accepted after 8.00pm.
- (c) No deliveries of alcohol shall be carried out after 10.00pm.
- (d) No alcohol is to be sold on or delivered from the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day.
- (e) The single alcohol area is defined in the plan agreed to in the hearing.
- (f) Deliveries must be made to a verifiable address.
- (g) All sales of alcohol in-store must be authorised by the duty manager.
- (h) Only staff directly employed by Teddy Technologies Limited will deliver alcohol using vehicles branded for Teddy Technologies Limited.
- (i) All deliveries of alcohol will require photo identification to be sighted by the driver.
- (j) No delivery order can exceed the following quantities-
 - (i) Two bottles of wine and/or two dozen beers or ciders.
- (l) No split-packs of beer or cider are to be sold.

35. We have decided that no undertaking by the Applicant is required as the conditions imposed are already more restrictive than on similar licences. The Applicant is advised that the statement of annual sales revenue as described in Regulation 6 of the Sale and Supply of Alcohol Regulations 2013 will be sought at renewal.

36. The licence shall take effect one day after the date on this decision.

DATED at QUEENSTOWN *this 28th day of September 2022*

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

G B Pay, Chairman