

**IN THE ALCOHOL REGULATORY AND LICENSING AUTHORITY
TE MANA WAETURE TAKE WAIPIRO**

[2020] NZARLA 210

UNDER the Sale and Supply of Alcohol Act 2012
AND
IN THE MATTER of an appeal pursuant to s 154 of the Act
relating to the grant of an application for
an off-licence for premises situated at 4
Arthur Street, Ōtaki, to be known as
'Super Liquor Otaki'
BETWEEN MEREANA SELBY
(on behalf of Te Wānanga o Raukawa)
Appellant
AND KIW-E OTAKI LIMITED
Respondent

Hearing: 18 December 2020
at Levin
Authority: Judge K D Kelly
Mr R S Miller
Counsel: Mr D MacKenzie and
Miss K Walker-Clements – for Appellant
Mr J D Young – for Respondent
Ms A Bliss, Licensing Inspector – to assist
Judgment: 22 December 2020

DECISION OF THE AUTHORITY



Introduction

[1] On 8 September 2020, following a hearing at Levin on 22 July 2020, the Kāpiti District Licensing Committee (DLC) granted an application for a new off-licence to Kiw-E Otaki Limited.

[2] Ms Mereana Selby, Tumuaki for Te Wānanga o Raukawa objected to the application being granted and now appeals the decision of the DLC to the Authority.

[3] By way of a decision dated 19 November 2020, the Authority declined an application by Te Wānanga o Raukawa to adduce new evidence on appeal.¹

[4] This decision determines the substantive appeal.

Summary of result

[5] The appeal is dismissed and the decision of the DLC is confirmed.

The application and location of premises

[6] Pursuant to s 100 of the Act, Kiw-E Otaki Limited has applied for a new off-licence to be located at 4 Arthur Street, Ōtaki, to be known as ‘Super Liquor Otaki’.

[7] The proposed premises are two of four units in an existing commercial building which have been vacant for some time.² On one side of the premises is a *Subway* and a *Bay Audiology* shop, and on the other is *Antonio’s* restaurant. Across the street is the *Railway Hotel*. Both Antonio’s and the Railway Hotel hold on-licences.

[8] In terms of the location, the Licensing Inspector Ms Antoinette Bliss, reported:³

The proposed premises are situated on land zoned Town Commercial Centre under the [District Plan]. ... Resource consent was not required for the land use as it is a permitted activity.

¹ [2020] NZARLA 193

² s 103 report of Antoinette Bliss, Licensing Inspector, dated 19 February 2020 at [1]-[5]

³ Above n 2, at [10]–[15]



The premises are accessed from Arthur Street, which is an access road between the railway station and State Highway One.

The premises are located within the commercial/retail centre of the Otaki Highway township. The premises are visible from the State Highway, and are situated adjacent to a service lane and car park that are used by both train passengers and shoppers

The surrounding locality includes land zoned as Town Centre and Rural Plains, with the wider area also including some Residential zoned land beyond the commercial area to the north and west.

Neighbouring activities and uses within the immediate vicinity include other commercial/retail businesses (Antonio's Restaurant, Subway and the Railway Hotel in Arthur Street) and the railway station.

The premises are situated within an alcohol free zone (Otaki main streets) that is in effect Monday to Sunday, 24 hours a day.

[9] Immediately prior to the hearing, the Authority made a site visit to the location of the proposed premises. The Authority considers the Licensing Inspector's description of the locality to be a fair representation of it. For completeness, we note that a new highway for regional and through traffic is being constructed on the eastern side of the railway tracks between Ōtaki and Levin.

[10] Relevant to this appeal, the Authority also notes that there is only one other full service bottle store in Ōtaki – *Big Barrel* – which is located over 2 km away from the proposed premises. There are three other off-licences in Ōtaki namely the *New World Ōtaki* and *Countdown* supermarkets which are limited to the sale of wine, mead and beer, and *The Tele* which is a tavern with an off-licence.⁴

[11] There are twelve other alcohol outlets in Ōtaki which have licences and operate as either clubs, restaurants or taverns.

Objections

[12] As the Licensing Inspector noted,⁵ five objections to the application were received from Global Wines and Spirits Limited; Ms Shelly Warwick, Ms Leigh Rau, and Ms Angela Taylor (jointly); Donovan Joyce (Hapū Chairman) for Ngāti Maiōtaki Hapū; Ms Mereana Selby for Te Wānanga o Raukawa (the Appellant); and Mr P Campbell.

⁴ Above n 2, at [64] – [66]

⁵ Above n 2, at [22] – [25]



[13] The objection from Global Wines and Spirits Limited was subsequently withdrawn on 3 July 2020, prior to the DLC hearing.

[14] The objection from Ms Shelly Warwick, Ms Leigh Rau, and Ms Angela Taylor states that they do not believe Ōtaki needs more liquor outlets and that Ōtaki has a record of high alcohol-related violence and youth suicide. As a preliminary procedural point, the DLC found that Ms Warwick and Ms Rau did not have a greater interest in the application for the licence than the public generally (per s 102(1)). Ms Warwick and Ms Rau, however, gave evidence for Te Wānanga o Raukawa. Ms Taylor did not appear before the DLC.

[15] The objection from Mr Campbell states that it would be disgraceful to allow another bottle store to open in Ōtaki and another outlet is not needed in Ōtaki. Mr Campbell says that the premises in Arthur Street, opposite a hotel, will attract young people and that is not needed. Mr Campbell did not appear before the DLC.

Ngāti Maiōtaki Hapū

[16] Mr Donovan for Ngāti Maiōtaki Hapū objected to the application stating:⁶

... we are now signalling our vehement opposition to this latest application under Section 105 of the Sale and Supply of Liquor Act 2012 and again from a non-resident of our community, for the purposes of establishing a bottle store, which will be open 11 hours per day, 7 days per week with the purpose of making a profit.

It is well known that the introduction of alcohol to our people has been detrimental, impacting negatively, and contributing to the poor state of our people, including our mental health. Mental health issues are contributing factors in suicide. The increasing numbers of suicides occurring amongst rangatahi in Ōtaki is alarming.

We are particularly concerned about the proximity of the proposed outlet to Ōtaki College, where many of our rangatahi are educated.

We would welcome your committee, our Ōtaki Community Board and our elected Kāpiti Coast District Councillors prioritising taking steps to reduce the influence and presence of alcohol in our community, including changing the laws which currently allow applications such as this to be considered.

Approval of another liquor outlet in our town, alongside those other premises where people can already purchase and partake of alcohol has no positive benefit to our community. Indeed the application itself is on behalf of a business located in Auckland. How can such an applicant appreciate and understand the values of a community they have not been closely engaged in.

As tangata whenua, as mana whenua, as ahi kā roa, as a treaty partner hapū we urge that you to allow for our full participation in the decision making process, and urge you to

⁶ Letter dated 4 February 2020



work to ensure that you decline this application in order to protect our health and safeguard our cultural concepts, values and practices.

...

Te Wānanga o Raukawa

[17] Te Wānanga-o-Raukawa objects to the application on the basis that another liquor outlet in Ōtaki will ‘help solidify’ the profile of Ōtaki as a town of fast food and liquor outlets, that does not value the health and well-being of its residents.⁷ Ms Selby says that Te Wānanga o Raukawa is an alcohol-free campus and wishes to present an environment and lifestyle that supports and promotes well-being, and that the health statistics for Maori are a great concern for which the Wānanga is trying to play a part in changing. Ms Selby says that Te Wānanga o Raukawa is particularly concerned about the proximity of the proposed outlet to Ōtaki College, where youth are educated. Ms Selby says that most people are aware of the severely harmful effects of alcohol on young people.

[18] Amongst other things, the objection from Te Wānanga o Raukawa says:

Approval of another liquor outlet in our town, alongside the several other premises, that include cafes, clubs, hotels, supermarkets, restaurants and bottle stores where people can purchase and/or partake of alcohol in Ōtaki, potentially opens the door for more services and products that will counter our efforts. The case for demand for such a business is hard to substantiate with what appears already to be a ridiculous over supply of alcohol. We note that the application is made on behalf of a business located in Auckland. Therefore, we can see no benefit at all to the local economy.

Attitude of reporting agencies

New Zealand Police

[19] By way of an email dated 16 January 2020, Sergeant Grimstone, Officer in Charge – Ōtaki Police, advised the DLC that the Police have no concerns with the proposed Super Liquor store. The Police sought further information, however, on whether the applicant proposes to sell cigarettes; who the on-site managers will be; and about the need for consultation with the Police about security proposals to reduce the risk of shoplifting, robbery and burglary.

⁷ Letter dated 28 January 2020



Medical Officer of Health

[20] By way of a letter dated 10 January 2020, Dr Stephen Palmer, the Medical Officer of Health for the Hutt Valley District Health Board, opposed the application. The bases of Dr Palmer's opposition were:

- (a) s 105(1)(a) (object of the Act): the application is unlikely to be in harmony with the object of the Act as there are existing higher levels of health harm caused by excessive or inappropriate consumption of alcohol in the area and additional premises will not minimise this harm;
- (b) s 105(1)(b) (suitability of the applicant): the applicant may not be suitable to operate a liquor store in a high-risk locality;
- (c) s 105(1)(h) (amenity and good order of the locality): the amenity and good order of the locality would likely to be reduced, to more than a minor extent, by the effects of the issue of the licence; and
- (d) s 105(1)(j) (systems, staff and training): the systems proposed by the applicant may not be adequate as the applicant is not familiar with the high-risk profile of the Ōtaki area and has not tailored his systems to mitigate possible risks.

[21] Dr Palmer said:

The Medical Officer of Health is concerned about the future risk of alcohol-related harm for Otaki. Otaki is one of the highest Census Area Units for alcohol-related hospital admissions (acute and chronic alcohol related conditions) for the whole of the greater Wellington region. Given the high risk the Medical Officer of Health recommends a precautionary approach is taken and not to approve the licence.

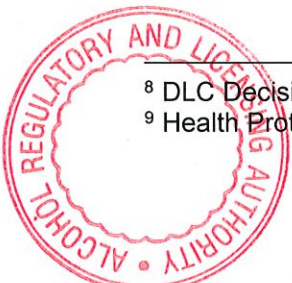
If the off-licence is to be issued then the Medical Officer of Health recommends that the trading be reduced from the 9pm being applied for to 6pm.

[22] Prior to the application being heard by the DLC, however, the Medical Officer of Health withdrew his opposition to the application. The decision of the DLC records that:⁸

The Medical Officer of Health, Dr Palmer, met with the Applicant together with the Police prior to the hearing. Ms Young⁹ advised she was present. Dr Palmer had suggested to the Applicant that he initiate a forum for agencies, licence holders and local representatives to meet to discuss alcohol issues at a local level and look at ways of reducing these. Following this meeting, the Medical Officer of Health withdrew his opposition to the application.

⁸ DLC Decision at [53] – [54]

⁹ Health Protection Officer for Regional Public Health and Medical Officer of Health delegate



[23] This withdrawal of opposition is set out in an email dated 25 March 2020 from Ms Vanessa Young¹⁰ to the DLC which reads:

The Medical Officer of Health has been in discussions with the applicant and the Super Liquor Franchise Manager around this application. The applicant has agreed to work with the Medical Officer of Health to look at ways of reducing alcohol related harm in the Otaki area. The applicant has also detailed to the Medical Officer of Health the systems they will be using to operate the store.

As such the Medical Officer of Health now wishes to withdraw his opposition to this application.

[24] As the DLC decision records, in response to a question before the DLC, Ms Young advised that while the Medical Officer of Health is not opposing the application, this does not mean that Medical Officer of Health supports the application.¹¹

Attitude of Licensing Inspector

[25] In her s 103 report on the application Ms Bliss, Licensing Inspector for the Kāpiti Coast District Council, reported that Mr Peter Joseph, the Super Liquor Franchise Manager:¹²

- (a) spoke to Ms Selby but she would not have a meeting with him because as far as she was concerned Mr Joseph was just ‘ticking a box’;
- (b) met with Ngāti Maiōtaki Hapū on 15 March 2020 who while appreciative of the discussion, decided to continue with their objection;
- (c) sought a meeting with Ms Warwick, Ms Rau and Ms Taylor but on 25 February 2020 he received an email from Ms Taylor saying the three of them had met and decided not to meet with Mr Joseph;
- (d) met with Dr Palmer and Ms Young during which Dr Palmer indicated that he would withdraw his objection if Mr Joseph was able to speak to the Police regarding organising regular catch-ups with all concerned community groups; and
- (e) he has tried to contract Mr Campbell to no avail.

[26] The Licensing Inspector says further than Mr Joseph advised her that he and the franchise owners:

¹⁰ Above n 9

¹¹ DLC Decision at [53] – [54]

¹² Above n 2, at [25]



- (a) had visited:¹³
 - (i) the Railway Hotel which was supportive of the application;
 - (ii) Subway: as the manager was not there a business card was left in the event there were any concerns;
 - (iii) [Antonio's] Restaurant, where the owner is very supportive;
 - (iv) the Ōtaki RSA, whose Secretary said they had no issues; and
- (b) would be visiting Bay Audiology when open.

[27] The Licensing Inspector also says that:

- (a) the applicant has signed a voluntary undertaking not to sell single units of RTDs or mainstream beer in accordance with a district-wide initiative that the Inspectorate has been implementing since April 2014 with the support of the Police;¹⁴
- (b) the applicant has provided adequate information to demonstrate that suitable measures will be undertaken to ensure the responsible sale of alcohol, and that harm will be minimised;¹⁵
- (c) the applicant is aware of its responsibilities under the Act, and is suitable to operate the licensed premises;¹⁶
- (d) the days and hours sought comply with the default national maximum trading hours in s 43(1)(b) of the Act;¹⁷
- (e) the proposed design and layout of the premises, in conjunction with applicant's operational procedures, is adequate to fulfil the object of the Act in terms of minimising potential harm and ensuring a safe environment for patrons;¹⁸
- (f) there is little potential for noise nuisance;¹⁹
- (g) Sergeant Grimstone advises that there are no current issues at the railway station;²⁰

¹³ Above n 2, at [25]

¹⁴ Above n 2, at [31]

¹⁵ Above n 2, at [35]

¹⁶ Above n 2, at [44]

¹⁷ Above n 2, at [47]

¹⁸ Above n 2, at [52]

¹⁹ Above n 2, at [58]

²⁰ Above n 2, at [62]



- (h) Mr Woods, the licensee of the Railway Hotel has advised that in his 13 years at the hotel he has never experienced any issues with persons gathering around the railway station or drinking there;²¹
- (i) there is one off-licence (the New World Ōtaki), within a 500 m radius of the proposed premises, and three other off-licences located over 2 km away;²²
- (j) the proposed premises are compatible with the surrounding land use;²³ and
- (k) a review of the supporting information demonstrates that the applicant has appropriate systems, staff and training to meet the requirements of the Act.²⁴

[28] The Licensing Inspector said that in her opinion, it is difficult to say whether the amenity and good order of the locality is likely to be reduced, by more than a minor extent, by the granting of the licence. The Licensing Inspector believes, however, that management systems of the individual premises play a major role in minimising the impact of the licensed premises.²⁵

[29] The Licensing Inspector concluded:²⁶

Having regard to the particulars of the application and the relevant statutory criteria under the Act, and without the direction of a Local Alcohol Policy or evidence of specific incidences of alcohol related harm in the area, I do not have any grounds on which to oppose the application.

DLC Decision

[30] As we summarised in our decision in relation to the application to adduce new evidence,²⁷ the DLC held that:

- (a) the applicants, Mr Pragnesh Patel and Mr Hitesh Patel have a number of years' experience owning and operating licensed premises with no issues in the last ten years, such that the applicant company is suitable to hold a licence;²⁸

²¹ Above n 2, at [63]

²² Above n 2, at [64] - [66]

²³ Above n 2, at [68]

²⁴ Above n 2, at [89]

²⁵ Above n 2, at [75]

²⁶ Above n 2, at [94]

²⁷ Above n 1, at [16] - [17]

²⁸ DLC Decision at [62] - [63]



- (b) there is no suggestion that the proposed licence will impact on the amenity and good order of the locality, and the applicant has considered issues relating to the location and will trespass anyone seen consuming alcohol in alcohol free areas;²⁹ and
- (c) there is no evidence that the amenity and good order of the locality is badly affected by existing licences.³⁰

[31] The DLC concluded:³¹

The Act does not prohibit the sale of alcohol nor prohibit the opening of further licensed premises. It seeks to balance responsible alcohol consumption with the minimisation of alcohol related harm.

The Committee acknowledges the concerns raised by the objectors and their objection to the opening of a new off-license in Ōtaki. These objections all stated that there should be no more alcohol licenses granted in Ōtaki. Some were of the view that there should be less alcohol available.

The main concern that was specific to his application was that the Applicant is not local and does not have knowledge of the local community. However, the objectors and witnesses all acknowledged that the Applicant contacted them seeking to meet and learn about any specific issues that they wished to raise. None took up this offer.

The Committee is bound by the Act and must assess all applications against the criteria set out in it. None of the objections provided any evidence of how the application did not satisfy the requirements of the Act. While it has sympathy for the positions of the objectors it cannot simply decline all new applications for alcohol licenses. The Committee does not have the power to cap the number of licenses in a given area. This is an area that can be addressed through a Local Alcohol Policy which the Kāpiti Coast District Council can put in place.

There was no evidence provided to the Committee that granting the proposed licence would be contrary to the object of the Act.

Grounds of Appeal

[32] The grounds of appeal are that the DLC:³²

- (a) failed to give any meaningful consideration at all to s 105(1)(i) of the Act, when assessed against both the purpose (s 3) and object (s 4) of the Act; and
- (b) did not assess Kiw-E Otaki's suitability under s 105(1)(b) in this context.

²⁹ DLC Decision at [70] – [71]

³⁰ DLC Decision at [72]

³¹ DLC Decision at [75] – [79]

³² Synopsis of submissions by Appellant dated 13 November 2020 at [2] – [5]



[33] In relation to the former, s 105(1)(i) reads:

In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

...

- (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: (emphasis added)*

[34] It is submitted by the appellant, Te Wānanga o Raukawa, that the DLC did not consider the ‘nevertheless desirable’ exception in s 105(1)(i), nor did it consider the suitability of Kiw-E Otaki Ltd in the context of a vulnerable community. It is submitted that the evidence makes it abundantly clear that Ōtaki is a vulnerable community with high levels of social deprivation and alcohol-related harm, and that a new licence in Ōtaki is far from desirable and that Ōtaki is not a suitable location for Kiw-E Otaki Ltd to seek to expand its operations outside of Auckland.

[35] It is submitted that the DLC’s failure to engage with the objection from Te Wānanga o Raukawa was a complete abdication of its inquisitorial function. It is submitted that before the DLC the objectors were not legally represented and that the DLC “was sweepingly dismissive of the objector’s concerns noting that ‘while it has sympathy for the positions of the objectors it cannot simply decline all new applications for alcohol licenses’.”

[36] In relation to the second ground of appeal about Kiw-E Otaki’s suitability under s 105(1)(b), before the Authority Mr MacKenzie for Te Wānanga o Raukawa confirmed that the only issue in relation to suitability is that the applicant’s directors reside outside of Ōtaki.

[37] Te Wānanga o Raukawa submits that the decision of the DLC is “a woefully inadequate decision and assessment by the DLC of the criteria under s 105(1) of the Act” and accordingly, the decision of the DLC should be reversed. If there is any doubt about this, however, it is submitted that the Authority should err on the side of caution and remit the decision back to the DLC “for further (and actual) consideration”. Before the Authority, however, Te Wānanga o Raukawa confirmed that there is sufficient evidence for the Authority to determine the appeal without remitting it back to the DLC.



Relevant statutory provisions

[38] Section 105 sets out the criteria to which a DLC (and the Authority on appeal) must have regard when deciding whether to issue a licence:

- (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.

[39] In respect of s 105(1)(h), s 106(1) provides a 'legislative aid, detailing the factors to which decision makers must have regard in forming an opinion as to the amenity and good order of the locality':³³

- (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:

³³ per *Lower Hutt Liquormart Ltd v Shady Lady Lighting* [2018] NZHC 3100 [28 November 2018] at [66]



- (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.

[40] Section 3 of the Act sets out the Act's purpose:

- (1) The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole,—
 - (a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and
 - (b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.
- (2) The characteristics of the new system are that—
 - (a) it is reasonable; and
 - (b) its administration helps to achieve the object of this Act.

[41] Relevant to s 3 and s 105(1)(a), the object of the Act in s 4 is:

- (1) The object of this Act is that—
 - (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
 - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
 - (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
 - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

Decision of the Authority

Section 105 criteria

[42] The issues in this appeal relate to only two criteria in s 105(1) of the Act namely s 105(1)(b) (suitability of the applicant), and s 105(1)(i) (amenity and good order of the locality).

[43] As the Licensing Inspector has reported:

(a) there is no relevant local alcohol policy (s 105(1)(c));



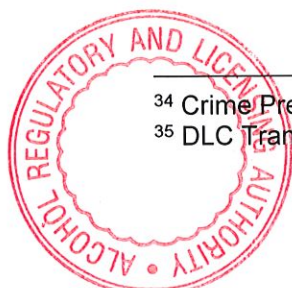
- (b) the days on which and the hours during which the applicant proposes to sell alcohol (i.e. Monday to Sunday 10.00 am to 9.00 pm) are within the default national maximum trading hours set out in s 43(1)(b) of the Act of 7.00 am to 11.00 pm (s 105(1)(d));
- (c) there are no issues with the design and layout of any proposed premises (s 105(1)(e)): the Authority notes that the applicant has provided a CPTED³⁴ assessment of the premises demonstrating that the proposed design and layout seeks to minimise potential harm and to ensure a safe environment for patrons;
- (d) the only other goods or services that the applicant proposes to sell other than alcohol, low-alcohol refreshments, and non-alcoholic refreshments and food (s 105(1)(f) and (g)) are cigarettes, tobacco, and sundry alcohol-related items which are acceptable for the nature of the licence sought;
- (e) the applicant has appropriate systems, staff, and training to comply with the law (s 105(1)(j)) and, in particular, has the support of the Super Liquor franchise systems, procedures, and training to promote the safe and responsible sale of alcohol which the Licensing Inspector says are some of the most comprehensive she has seen;³⁵ and
- (f) there are no other matters in any report from the Police or the Medical Officer of Health made under section 103.

[44] The Authority has no reason to disagree with this assessment based on the record before it.

[45] In terms of the object of the Act, this remains an overarching consideration because of the challenge to s 105(1)(b) and s 105(1)(i), and given the evaluative function the Authority is required to undertake (which we discuss further below).

³⁴ Crime Prevention Through Environmental Design

³⁵ DLC Transcript at page 71 of 127



First Ground of Appeal: the ‘nevertheless desirable’ exception in s 105(1)(i)

Submissions for Te Wānanga o Raukawa

[46] Before the Authority Mr MacKenzie, counsel for Te Wānanga o Raukawa confirmed that the fundamental error the DLC made in relation to s 105(1)(i) was in finding that “there was no evidence that the amenity and good order of the locality is badly affected.”³⁶ Te Wānanga o Raukawa confirmed that the nub of the appeal is evidential.

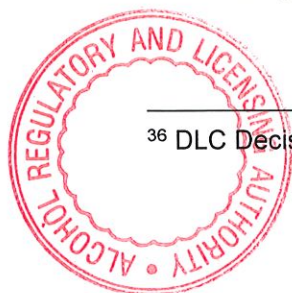
[47] Mr MacKenzie for Te Wānanga o Raukawa submits that there was evidence before the DLC that was targeted at the exception in s 105(1)(i) and that the DLC did not even consider whether that exception applied. It is submitted that the evidence in opposition to the application was about the vulnerability of the local community and the high incidences of alcohol-related harm.

[48] It is submitted that as Otāki is badly affected by the effects of existing licences, the ‘nevertheless desirable’ exception comes into play and as the objectors were imploring the DLC to do something about it, the DLC should have used its inquisitorial function to probe the point further and engage with that when undertaking its evaluation of the criteria in s 105(1) of the Act.

[49] It is submitted that s 105(1)(i) allows the community to oppose an application for a licence when it will impact on their community, and that this community focus is consistent with the purpose of the Act. It is submitted that where a community is so badly affected by the effects of existing licences such that another will not further adversely affect it, the DLC has a discretion to decline the licence if it would be ‘nevertheless desirable’ to do so, and communities that are already badly affected by the effects of alcohol have the ability to say: ‘enough is enough’.

[50] It is submitted that despite the DLC finding that there was a lack of direct evidence in relation to the amenity and good order of the locality, the objections from Ngāti Maiōtaki Hapū, Te Wānanga o Raukawa, Ms Rau, and Ms Warwick directly engage s 105(1)(i).

³⁶ DLC Decision at [72]



[51] It is submitted that Kiw-E Otaki Ltd itself recognises that minimising alcohol-related harm in Otāki is particularly important. It is submitted that Ōtaki is a community with high levels of social deprivation and alcohol-related harm and that there are already four licences within a 500 m radius of the proposed premises, with a further 12 licences within a 2 km radius. It is submitted that the community has expressed its opposition to the application on the basis that enough is enough, and that there are more than enough outlets from which to purchase alcohol in Ōtaki. This opposition, it is submitted, was well made and should have been listened to.

[52] It is also submitted that given there is another liquor store already in Ōtaki that will compete directly with Super Liquor at 4 Arthur Street, the possibility of a price war is something that the DLC ought to have been mindful of and that this will exacerbate existing issues raised by the objectors.

Submissions for Kiw-E Otaki Ltd

[53] Mr John Young, counsel for Kiw-E Otaki Limited submits that:

- (a) s 3 of the Act is not a relevant matter under s 105;
- (b) the evaluation under s 105(1)(h) and (i) is limited to the ‘locality’;
- (c) where no adverse comments are made by the reporting agencies, it is unlikely that an objector will satisfy the Authority that the amenity and good order of the locality will likely be impacted by more than a minor extent;
- (d) generalised evidence is of little assistance; and
- (e) proliferation is not a ground for objection without discussion or linkage to the effects on amenity and good order.

[54] Kiw-E Otaki Limited submits that the application was not opposed by any reporting agency and that there was no evidence before the DLC of incidents (such as nuisance, noise or vandalism) near the proposed premises.



[55] It is submitted that the objection from Te Wānanga o Raukawa does not refer to any specific sections of the Act, and there is no reference to the amenity and good order of the locality. Further, neither Ms Selby nor the witnesses in support of the objection by Te Wānanga o Raukawa referred to amenity or good order during the hearing before the DLC.

[56] In relation to community engagement, it is submitted that Mr Joseph gave evidence that he or the directors of Kiw-E Otaki Ltd engaged with Ngāti Maiōtaki Hapū, the Medical Officer of Health, the Licensing Inspector and nearby businesses. Kiw-E Otaki Ltd submits that Mr Joseph sought to engage with Ms Selby, Ms Warwick, Ms Rau, and Ms Taylor but they refused to meet.

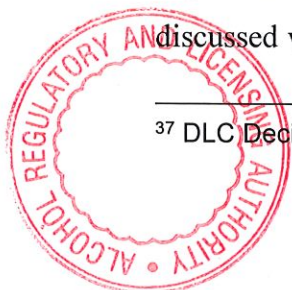
[57] It is submitted that before the DLC, Te Wānanga o Raukawa was advancing a policy position that there should be no more off-licences in Otāki which led the DLC to observe that it could not ‘cap the number of licences in a given area’.³⁷ While such a policy might form part of a local alcohol policy under Subpart 2 of the Act, it is submitted it does not assist in respect of a site-specific application.

[58] It is also submitted that if the DLC agreed that there was sufficient evidence that it should effectively cap the number of alcohol outlets as Te Wānanga o Raukawa suggests by its submission that ‘enough is enough,’ then no other restaurants or sports clubs would be able to be licensed in Ōtaki and to say that Maori are affected would operate a ‘dead hand’. It is agreed that a local alcohol policy would be nice to have in Ōtaki, but in the absence of one, the DLC was right to say it cannot cap the number of licences issued and needs to evaluate the merits of each application, as it has done in this case.

[59] It is also submitted that the various statements made by the objectors are very generalised and do not target amenity and good order matters. There is no reference, for example, to crime or vandalism generally let alone any suggestion that the locality around the premises is a particular hot spot for such behaviour.

[60] It is submitted that Mr Patel listed the various factors that address the risk posed by the deprivation score for the area and offered to enable an alcohol forum to be established (as discussed with the Medical Officer of Health). Mr Joseph and Mr Patel also gave evidence of

³⁷ DLC Decision at [78]



the systems, staff and training within the Super Liquor Group, both of whom were subject to extensive questioning by the DLC and objectors.

[61] Kiw-E Otaki Ltd submits that the High Court has previously upheld the previous finding of the Authority that s 3 is not a mandatory consideration under s 105 of the Act.³⁸ It is submitted that the desire by Te Wānanga o Raukawa to incorporate a ‘community benefit’ criterion into s 105 has led it to substitute the word ‘community’ for the word ‘locality’ in relation to amenity and good order. The term ‘locality’, however, has been the subject of judicial comment and the word ‘community’, it is submitted, introduces a wider range of considerations than the word ‘locality’.

[62] In this regard, the behaviours which give rise to amenity and good order impacts are set out in s 106, namely current and possible future levels of noise, nuisance and vandalism. Section 106 also directs that consideration be given to the number of premises for which licences of the kind concerned are currently held and the extent of the compatibility with purposes for which the land nearby is used. It is submitted that these matters also inform the evaluation under s 105(1)(i) but, in the present case, there is no evidence of disorderly behaviour in the locality. Nor, it is submitted, are there any adverse comments by the reporting agencies in relation to the amenity and good order of the locality.

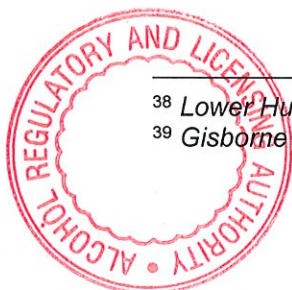
[63] Unlike the evidence of the objectors, it is submitted that the evidence of Kiw-E Otaki Ltd is specific to the locality including that local businesses spoken to (including the Railway Hotel) raised no concerns.

[64] In terms of the proliferation of outlets, it is submitted that the comments of the Authority in *Gisborne Liquormart v Ka Pai Kaiti Trust*³⁹ that proliferation is not a ground of objection without some discussion of the effects of the issue of the licence on the amenity and good order of the locality, applies equally to s 105(1)(h) and s 105(1)(i).

[65] In short, it is submitted that in the absence of any evidence of amenity and good order impacts (existing or future), there is no need to engage the ‘nevertheless desirable’ exception.

³⁸ *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited*, above n 33 at [76] –[80]

³⁹ *Gisborne Liquormart v Ka Pai Kaiti Trust* [2018] NZARLA 316 at [89]



It is submitted that there was no evidence to establish that the amenity and good order of the locality is already so badly affected by the effects of the issue of existing licences.

[66] Kiw-E Otaki Ltd says that there is nothing to establish an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant of the application, other than in general availability terms which is insufficient.

[67] A further difficulty in this appeal, it is submitted, is that it bears no resemblance to the case advanced before the DLC. The issues before the DLC, it is submitted, did not relate to amenity and good order of the locality and suitability of the applicant, but instead related to concerns about alcohol per se.

Analysis

Approach on appeal

[68] An appeal brought pursuant to s 154 of the Act is by way of rehearing.⁴⁰ As the Authority said in *Mangere-Otahuhu Local Board v Level Eighteen Limited*,⁴¹ the onus is on the appellant before the Authority to satisfy the Authority that the decision in the original hearing before the DLC was wrong. *Mangere-Otahuhu Local Board v Level Eighteen Limited* reflects what the Supreme Court said in *Austin, Nichols & Co Inc v Stichting Lodestar*:⁴² “... the appellant bears an onus of satisfying the appeal court that it should differ from the decision under appeal. It is only if the appellate court considers that the appealed decision is wrong that it is justified in interfering with it.”

[69] In *Mangere-Otahuhu Local Board v Level Eighteen Limited* the Authority said that it will be slow to draw different factual conclusions from a DLC as the DLC will have had the advantage of hearing the evidence at first instance.⁴³ As Davison J said in *Rainger v General Distributors Limited*, however, there is less need for the Authority to hesitate in the circumstances as the Authority is as much a specialist body as the DLC in the field of alcohol regulation.⁴⁴ The central point is that what the Authority is required to do on appeal is to make

⁴⁰ s 157

⁴¹ *Mangere-Otahuhu Local Board v Level Eighteen Limited* [2014] NZARLA PH 627-228 at [15]

⁴² *Austin, Nichols & Co Inc v Stichting Lodestar* [2008] 2 NZLR 141 at [146]

⁴³ *Mangere-Otahuhu Local Board v Level Eighteen Limited*, above n 41 at [17]

⁴⁴ *Rainger v General Distributors Limited* [2019] NZHC 3483 at [58]



its own assessment of the merits of the application. It is not sufficient for the Authority to simply decide that the DLC's decision was one which was open to it on the evidence. Instead what the Authority is required to do is to independently assess the evidence and the merits of the application and to reach its own conclusion.

[70] The approach to be taken by the Authority when determining whether to grant an application for a licence has otherwise been well traversed by the superior courts.

[71] As Heath J said in *Re Venus NZ Ltd*,⁴⁵ the Act does not articulate a specific test for the Authority to apply when determining whether to grant an off-licence application. Rather, a series of criteria are identified in s 105(1) that the Authority must take into account in determining whether to issue a licence. In any given application, one or more of these criteria may assume prominence.

[72] In the present application, questions are posed about s 105(1)(a) (the suitability of the applicant) and s 105(1)(i) (the amenity and good order of the locality), such that they become prominent.

[73] As Gendall J said in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*,⁴⁶ the role of the DLC or the Authority in considering the relevant factors in s 105 of the Act is an evaluative one:⁴⁷

Thus, when the relevant body receives an application, they must consider it against s 105 in deciding "whether to issue a licence". There is no presumptive position, and certainly no foregone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

So, in my view, the position can be summarised as follows:

(a) The role of the relevant body upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination on the application.

(b) In considering an application, the relevant body is fundamentally required to assess whether a licence ought to issue. In so doing, it must:

⁴⁵ *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315

⁴⁶ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382

⁴⁷ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 46 at [54]–[56]



(i) consider any objections made by persons who have a greater interest in the application than the public generally;

(ii) consider any opposition filed by the constable in charge of the Police station nearest to where the application is filed, a Licensing Inspector, and the Medical Officer of Health;

(iii) have regard to the criteria stipulated in s 105 of the Act ...; and

(c) The relevant body must finally cross-check whether the application is capable of meeting the object of the Act.

(d) ...”

[74] In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*⁴⁸ Clark J summarised the applicable principles in respect of the renewal of a licence.⁴⁹ These principles include that a DLC, and the Authority, after having regard to the criteria in the Act, is then to step back and consider whether there is any evidence indicating that granting the application will be contrary to statutory object in s 4. Or as Heath J articulated a “test”:⁵⁰

Although the “Object” of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the “object” of the legislation. It seems to me that the test may be articulated as follows: is the Authority satisfied, having considered all relevant factors set out in s 105(1)(b)–(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act?

[75] This evaluative function of the Authority is an assessment of risk:⁵¹

The factors to be considered in the course of assessing an application for a licence or for renewal, as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm.

[76] A causal nexus is required between the evidence to suggest that the grant of the application, contrary to the object of the Act, will increase the risk of alcohol abuse and the relevant risk.⁵² However, as the evaluative function is an assessment of risk and it is the risk

⁴⁸ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123

⁴⁹ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 48 at [46]

⁵⁰ *Re Venus NZ Ltd*, above n 45 at [20]

⁵¹ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 48 at [43] and [47].

⁵² *Otara-Papatoetoe Local Board v John Enterprises Ltd* [2012] NZHC 1406, [2012] NZAR 717 at [31], *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 22 at [50] and *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 48 at [60]



profile which is relevant, there is no requirement to link specific alcohol-related harm to specific off-licences, or as Clark J said in *Lion Liquor*, ‘for the premises to be at the centre of the harm’.⁵³

[77] While *Lion Liquor* involved a renewal of an off-licence, the same reasoning is applicable to the initial grant of an off-licence. As Clark J put it:⁵⁴

The Act looks to minimise alcohol-related harm. Where there is an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant or renewal of a licence, the harm must be minimised not ignored or condoned.

[78] The weight to be applied to each of the criteria in s 105 is a matter for the DLC or the Authority. As Gendall J said in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*,⁵⁵ the principles relating to the requirement to ‘have regard to’ can be summarised as these:

- (a) the phrase “have regard to” bears its ordinary meaning;
- (b) the decision maker must actively and thoughtfully consider the relevant matters;
- (c) to do so requires the decision maker to correctly understand the matters to which he or she is having regard;
- (d) the weight to be given to such matters is generally within the discretion of the decision maker;
- (e) there will be cases where the matter(s) to which the decision maker is required to have regard are so fundamental or critical that they assume an elevated mantle.

Purpose of the Act

[79] As Mr Young for Kiw-E Otaki Ltd has rightly said, in *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited*⁵⁶ the High court confirmed a decision of the Authority in relation to the purpose of the Act. In our decision, we said:⁵⁷

While the criteria for the issue of licences are not to be interpreted in any narrow or exhaustive sense, it would not be correct to take this to mean that the words ‘for the benefit of the community as a whole’ are to be imported from s 3 into the list of matters in s 105 of the Act to which a DLC or the Authority must have regard.

As Tipping J said in *Waitakere City Council v Khouri*, it is elementary that statutes are to be given their literal meaning unless there is no such meaning, or the Court is satisfied that there is another meaning properly available on the words used which would better fulfil the policy and purpose of the legislation. Section 105(1) specifically makes the

⁵³ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 48 at [64]

⁵⁴ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 48 at [67]

⁵⁵ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 46

⁵⁶ *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited*, above n 33

⁵⁷ *Shady Lady Lighting Limited v Patel and Lower Hutt Liquormart Limited* [2018] NZARLA 198-199 at [72]-[73]



object of the Act a mandatory consideration but does not do the same in respect of the purpose of the Act.

[80] In relation to this, on appeal to the High Court, Churchman J said:⁵⁸

The Act sets out the criteria which are mandatory considerations under s 105(1) of the Act, including the object of the Act at s 105(1)(a). Those mandatory considerations do not include the purpose of the Act. To import an additional requirement to stand back and consider whether the licence would benefit the community as a whole would be contrary to s 5 of the Interpretation Act 1999. It is my view that the Authority was correct to determine that this was unnecessary.

‘Locality’

[81] In terms of the what constitutes ‘the locality’ for the purposes of s 105(1)(h) and (i), in *Re A Karambayev Limited* the Licensing Inspector sought clarification on some legal issues including the meaning of the expression ‘the locality’:⁵⁹

He also inquired as to the meaning of “the locality” referred to in s 105(1)(h) and (i) of the Act. In the context of this application, was the locality restricted to that portion of Albert Street which might be affected by the granting of the application; or did it encompass the wider central business district of Auckland? In this regard, the applicant submitted that “the locality” equated with the area where persons live if they had the status to object to an application in terms of s 102 of the Act. While status to object is not entirely dependent upon the location of an objector, normally this is the case. A person usually has a greater interest in the application than the public generally because that person will be affected in some way by the granting of the application. The Authority agrees with the applicant’s submissions in this regard and is inclined to give the expression “the locality” the more restricted meaning.

[82] In *Liquor World Limited*, a decision under the 1989 Act, a circle with a radius of one kilometre within which an objector must reside or have a business that could be affected was considered a ‘fair and realistic’ suggestion for determining whether persons have status to object to an application in terms of s 102 of the Act. *Liquor World Limited* was applied by the Authority more recently in *Gisborne Liquormart Limited v Ka Pai Kaiti Trust*.⁶⁰

[83] Notwithstanding that *Liquor World Limited* and *Gisborne Liquormart Limited* relate to the determination of the status of an objector, as was the case in *Re A Karambayev Limited*, the two concepts have a certain mutuality such that the Authority remains inclined to give the

⁵⁸ *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited*, above n 33 at [80]; see also *Gisborne Liquormart Limited v Ka Pai Kaiti Trust*, above n 39 at [154] – [157]

⁵⁹ *Re A Karambayev Limited* [2013] NZARLA PH 1214-1215 at [33]

⁶⁰ *Gisborne Liquormart Limited v Ka Pai Kaiti Trust*, above n 398 at [78]



expression 'the locality' a restricted meaning parallel to the area used for determining an objector's status for the purposes of s 102(1). In saying this, we acknowledge that what constitutes a locality for amenity and good order purposes should not be defined by reference to an overly prescriptive rule, but nor ought the locality be subjectively defined based on the nature of the objections raised. The benchmark for determining locality for assessing amenity and good order is that part of some place which will proximately be affected by the grant of the application. In the present case that is not all of Ōtaki simply by virtue of Otaki being a vulnerable town but is the area within a radius of about one kilometre around the premises.

Proliferation

[84] In terms of proliferation, as Mr Young has also rightly submitted, in *Gisborne Liquormart Limited* this Authority said:⁶¹

While the number of premises of the kind concerned in a locality is a matter which goes to the DLC's opinion of amenity and good order of the locality, an objection must relate to a matter in s 105 of the Act. The Trust's objection relates to proliferation of alcohol outlets in Gisborne and the harm that alcohol creates in Gisborne as a result. The proliferation of outlets is a legislative aid for the DLC when forming an opinion on s 105(1)(h) and (i). In itself, proliferation is not a ground of objection without some discussion of the effects of the issue of the licence on amenity and good order which is the s 105 criterion against which the application is being evaluated.

The Evidence

[85] The objection from Ngāti Maiōtaki Hapū says:⁶²

It is well known that the introduction of alcohol to our people has been detrimental, impacting negatively, and contributing to the poor state of our people, including our mental health. Mental health issues are contributing factors in suicide. The increasing numbers of suicides occurring amongst rangatahi in Ōtaki is alarming.

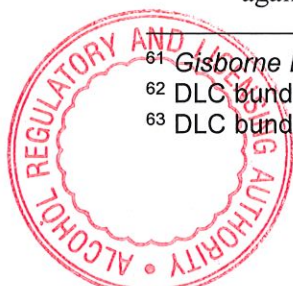
[86] The objection from Te Wānanga o Raukawa, in turn, says:⁶³

Health statistics for our people are of great concern to us so we try to play our part in changing that. We believe you have a responsibility an obligation to support efforts to improve the health and well-being of your constituents, particularly where efforts are in place to address problems. We most certainly do not wish the Council to be working against us.

⁶¹ *Gisborne Liquormart Limited v Ka Pai Kaiti Trust*, above n 39 at [89]

⁶² DLC bundle at pages 49-50

⁶³ DLC bundle at pages 51-52



[87] The initial objection from the Medical Officer of Health was that:⁶⁴

The Medical Officer of Health is concerned about the suitability of the applicant as the applicant is proposing to open a bottle store in Otaki which has a very high risk profile for alcohol-related harm linked to off-licence alcohol. The applicant has an apparent lack of understanding of existing alcohol health harms within the community, and there is limited evidence of effective community consultation.

[88] Ms Rau in her objection said:⁶⁵

Our resources, money, Police, Social Services, Woman's Refugee Services, ambulance staff, emergency rooms just to name a few, are all over extended with a huge percentage of that due to alcohol and substance abuse related instances.

I am concerned about the amount of harm that alcohol has caused in this community, with alcohol outlets in Supermarkets, existing off license and hotels. Otaki has enough liquor outlets, we do not need any more. ...

[89] Further, Ms Warwick's objection is that:⁶⁶

There is Objection from our Iwi representatives, whose Whanau are unfortunately in the demographic most at risk of harm from alcohol related incidence....

[90] These objections, Te Wānanga o Raukawa says, show that the community is so badly affected by the effects of existing licences that the DLC should have declined the application as being undesirable. Before the Authority, Mr MacKenzie for Te Wānanga o Raukawa said that while the evidence does not 'hone down' to the level of specific statistics about alcohol-related harm, these are high-level statements about deprivation which show that the community is badly affected by alcohol.

[91] The Authority has also considered the other objections and evidence before the DLC.

[92] The objection from Mr Campbell says:⁶⁷

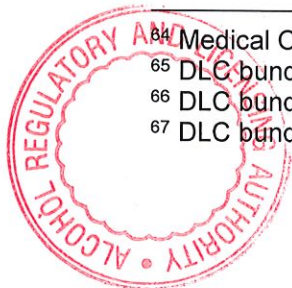
I think it would be disgraceful to allow another Bottle store to open in Otaki. We already have a long service business in the main township, plus the New World and Countdown Supermarkets, and another outlet is definitely not needed in Otaki.

⁶⁴ Medical Officer of Health s 103 report dated 10 January 2020

⁶⁵ DLC bundle at page 249

⁶⁶ DLC bundle at page 250

⁶⁷ DLC bundle at page 53



The premises in Arthur Street, are right opposite a Hotel and not needed.

This place would attract young people and we don't need that to take place.

[93] Before the DLC Mr Joyce for Ngāti Maiōtaki Hapū said:⁶⁸

...I'm just speaking today to reinforce our position, our historical position, even though the horse has bolted with prohibition and, you know, that, and we realise alcohol is here to stay but we think this process, within this framework there are areas that we can use to maybe cap the numbers, limit the shops, limit the applications, and that is through that local alcohol policy. In the limited research I have done on it, I see that most of the times they have no teeth. The alcohol policies. They're pretty limited to what they can achieve. But I think we, we can all see now the process we're going through, it just moves forward. It's very limited in scope.

And these people who are talking about the harm and the damage, I understand why the health people don't put up an objection now because we all know the harm, we all know the damage. What this is about is the licence, pure and simple, the licence. And all they're caring about is the benefit, the economic benefit that'll come to them. So, everything that's to do with harm and disruption to the community, it's [inaudible] the Committee's shoulders I believe. They're only concerned about the licence. But I'm here to tell you that [inaudible] wānanga we strive to better ourselves, we've had years and years at the bottom of every statistic. And in conjunction with the wānanga our people of our hapū, I only speak for one of our five hapū in this town but I'm pretty sure they all feel the same, we all drink, we all don't drink but the majority, the majority drink, the majority smoke, the majority do all those things but at the base of it all we want to better ourselves and we find it hard to do that with these things constantly coming at us. Aye. It's all very well having freedom of choice and making those decisions, but when it's being thrown at you and you're not being engaged or consulted just makes the job a whole lot more harder for us. So, we just, as hapū, we say we are totally, we are totally object to this licence. There's no need for any more and if possible, we'd like to cap what's already here within that. Thank you very much.

[94] In response to a question from Mr Young for Kiw-E Otaki Ltd about a forum being established, Mr Joyce replied:⁶⁹

I think if your client is calling for it and, and proposing it I would object to that. I think if it's coming from the Council or the community and it's community driven, then yeah, more than definitely I'll be part of that.

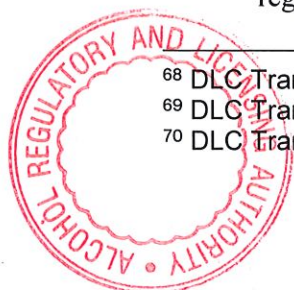
[95] Further:⁷⁰

... We, we're expecting some kind of forum to come out of this regardless if he gets it or not. Also the local alcohol policy we we're expecting a policy to come out of this regardless or not of if he gets his licence.

⁶⁸ DLC Transcript at page 97 of 127

⁶⁹ DLC Transcript at page 97 of 127

⁷⁰ DLC Transcript at page 98 of 127



[96] Mr Joyce and accepted that Mr Joseph did meet with the hapū and did try to engage.⁷¹

[97] In turn, before the DLC Ms Selby for Te Wānanga o Raukawa said:⁷²

I have heard you, Mr McKinnes, that I should be concerned about the other 60%. Well, I can tell you that the 40% ... are not equal with regard to health status, you would know that very well. Economic housing, incarceration, I could go on and on, education results, blah, blah, blah. So our organisation was set up to address, we do, actually we say our purpose [is] to maximise our contribution to supply wellbeing of Māori as people. So, that's my point of view for point of reference, that's where I'm coming from and why you're going to hear a bit of passion if you haven't already in the way that I say things today. That is my point of reference, that's the purposes, that's our reason to be.

[98] Further:⁷³

...I'm going to say to you that the interests of Maori are very, need to be taken extremely seriously because we don't, it's like all the work that's been done over the years, we still have got a heck of a long way to go before you can even begin to talk to, to use the word equity, in any way, shape, or form. What we don't want in Te Wānanga o Raukawa is other forces within this town working against what we're trying to do. And we see this as yet another one of those coming to this town. So, we strongly object to that. We object to the fact that this is a business is coming to, to extract money out of this town but not bring money to it, and that's, it would appear that is, that that is what it is.

[99] In reply to a question from Mr Young about Kiw-E Otaki Ltd reaching out to consult, Ms Selby said:⁷⁴

They did and I made the point [inaudible] exactly at the end of the day that I would, that we would come to a hearing and they would say 'tick that box, consulted' and that's exactly what you did this morning. They did go to the wānanga and they did consult. I said there really is no point in going any further with this because I understand what the process is, you're wanting to say you came here, but there's absolutely no way that we're going to be on the same page.

[100] And:

We're just miles and miles apart, so there's really no point in progressing this.

[101] Ms Warwick in her written evidence for Te Wānanga o Raukawa said:⁷⁵

There is Objection from our Iwi representatives, whose Whanau are unfortunately in the

⁷¹ DLC Transcript at page 99 of 127

⁷² DLC Transcript at page 75 of 127

⁷³ DLC Transcript at page 76 - 77 of 127

⁷⁴ DLC Transcript at page 82 of 127

⁷⁵ DLC bundle at page 250



demographic most at risk of harm from alcohol related incidence, but to be honest being non Maori myself, I have seen first hand the effect of alcohol and the destruction it has on family's. Alcohol problems are not based on ethnicity.

[102] Before the DLC Ms Warwick said:⁷⁶

... I'll go back to the [inaudible] which he said that I'm, he was happy for me to speak as a Board of Trustees member, I take that, that role seriously because I am speaking for the children. He's worried about the fact that the College kids can walk to this bottle store. As they can down here but regardless of that, gives more options. The Board of Trustees meetings, we have a teacher rep who often brings to the table the stories of kids and their struggles with addiction, alcohol, just terrible, terrible things these kids are dealing with and we don't need more of it. So, we don't we don't want you here. Sorry go back to Auckland, we don't need you here...

[103] Before the DLC Ms Rau said:⁷⁷

Now people buy alcohol and they take it home. I would be incredibly surprised if there are complaints based around where the premises are, I'm sure there are but I don't know. It's the harm that it does in our whares and in our community, with our young minds and so we already have ample places to purchase alcohol. So what I'm saying, or begging as a mum, do not come into our community and use it as a cash cow for money, you know. We're raising our babies, I've got a group of, in our whare we've got 11 children that we're trying to shepherd towards adulthood. No smoking. I hear that you're going to be selling tobacco. Limited alcohol. We are, we are teaching our children the, the, minimising the damage of alcohol. You know, you can help us to do that by not bringing yet another liquor outlet to our, into our town. And that's as a mother. I'm not a legal speaker, I'm not anything but I just, we do not want you, we do not need you, and we have enough liquor in our community that we have to fight and instil in our children and that the best way that you can minimise the effect of alcohol and tobacco on our community, put another pin in the map and go somewhere else with your alcohol outlets. We wouldn't have seen you here if you didn't think you could make money out of our children, out of our families.

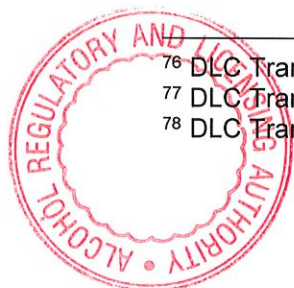
So, I'll just double check my jottings. Because it's about people. It's not about systems, you know you talk about your online programs and stuff, and that's great that you've got that stuff. But it's the effect at the grassroots level, it's not the fact that you can sit there and do all this online stuff or trading, and that's admirable that you put all that effort in. But we're actually talking about daily lives, you know, the fighting of the alcohol dependency, the beating up of our women, the beating up of our children, children not going to kuras because of the alcohol. Help us minimize that damage, please go somewhere else.

[104] Under cross-examination by Mr Young for Kiw-E Otaki Ltd, Ms Rau acknowledged that she did not have data about resources, or emergency rooms being overextended in part due to alcohol and said:⁷⁸

⁷⁶ DLC Transcript at page 90 of 127

⁷⁷ DLC Transcript at page 86 of 127

⁷⁸ DLC Transcript at page 88 of 127



... I mean as a mum have got no, I don't have that data but I mean I expect that people that are at that level, I mean we obviously are at this level, that that data is available if people access that. I wouldn't be able to find any more than what the committee would have access to.

[105] In response a further question from Mr Young, Ms Rau said it was her understanding that she did not need to provide any data or material that might support her position.⁷⁹ Also in response to a question from Mr Young about whether she knew whether children congregate behind the proposed location of the premises, Ms Rau confirmed that she had “no idea where the school children congregate”.⁸⁰

[106] Ms Rau also stated that she did not meet the applicant because “I didn't see any point because there was no, there's no convincing them that this is [not] a good thing for our town.”⁸¹ Ms Rau indicated that she would be supportive of a forum, but only to “tackle alcohol-related issues in Ōtaki but not to get another liquor out[sic] store, outlet. At all.”

[107] As noted, the Police have no concerns with the proposed Super Liquor store. While the Medical Officer of Health was initially opposed to the application on the basis of s 105(1)(h) (amenity and good order of the locality) he did not oppose the application on the basis that the locality was so badly affected by other licences (per s 105(1)(i)) and, in any event, he withdrew his objection based on discussions with Kiw-E Otaki Ltd and the Police prior to the hearing.

[108] For her part, the Licensing Inspector says there is little potential for noise nuisance, there are no current issues at the railway station; the Railway Hotel has not experienced any issues with persons gathering around the railway station or drinking there; and there is only one other off-licence (the New World Ōtaki) within a 500 m radius of the proposed premises (the other off-licences being over 2 km away). While the Licensing Inspector says that it is difficult to say whether the amenity and good order of the locality is likely to be reduced by more than a minor extent by the grant of the licence, she believes that the management systems of Kiw-E Otaki Ltd will help minimise the impact of the licensed premises. In any event, like the Medical Officer of Health, the Licensing Inspector does not say that the area is already badly affected by the effects of existing licences. To the contrary, the Licensing Inspector says that she does not have any grounds on which to oppose the application.

⁷⁹ DLC Transcript at page 92 of 127

⁸⁰ DLC Transcript at page 92 of 127

⁸¹ DLC Transcript at page 93 of 127



[109] As this Authority said in *Ponda Holdings Limited*,⁸²

British Isles Inn Limited NZLLA PH 406/2006 is applicable. At paragraph [39] the Authority stated:

Although the onus is on the company to establish its suitability, there is a reasonably high threshold to be met by the objectors in order to displace the absence of concerns by the reporting agencies. We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an applicant is unsuitable.

The same principle applies to the new criteria contained in ss 131 and 105 of the Act. Thus, when considering s 131(1)(b) of the Sale and Supply of Alcohol Act 2012, where there are no adverse comments by the reporting agencies it is unlikely that an objector will satisfy the Authority that “the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence”.

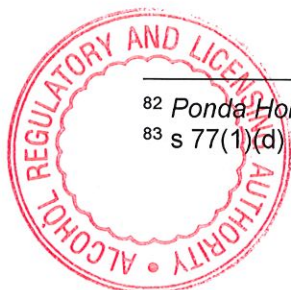
[110] The evidence for Te Wānanga o Raukawa is about the impact of alcohol on people, particularly Māori in the wider Ōtaki area, and the students of the wānanga, and the need to provide those students a ‘safe haven’. Ms Selby spoke of Ōtaki becoming known for alcohol and fast food. Ms Rau spoke of work going on in the wider Ōtaki community and about a further licence being unnecessary in Ōtaki. Ms Warwick similarly spoke of the impact of alcohol generally on services within the community, including emergency services and mental health services.

[111] Mr Joyce for Ngāti Maiōtaki Hapū spoke to the detrimental effect of alcohol on his hapū particularly in respect of mental health and the effects of alcohol on the rangatahi of his hapū (but also more widely).

[112] These are all legitimate concerns. As the DLC said, however, s 105 sets out the criteria which the Parliament has said must be considered by both the DLC, and the Authority on appeal, in considering an application for a licence. The scheme of the Act is that concerns about whether further licences (or licences of a particular kind or kinds) should be issued for premises in a particular district or part of a district,⁸³ is more properly the subject of a local alcohol policy under subpart 2 of the Act. In the absence of such a policy dealing with this, and any of the

⁸² *Ponda Holdings Limited* [2014] NZARLA PH 558 at [11]-[12]

⁸³ s 77(1)(d)



other kinds of matters in s 77 of the Act, the DLC is required to assess an application against the criteria in s 105 of the Act, which it has done.

[113] The DLC said in relation to amenity and good order of the locality that:⁸⁴

There was no suggestion raised that the proposed licence would impact on the amenity and good order of the locality. The Applicant provided evidence that it had considered issues relating to location and would trespass anyone seen consuming alcohol in alcohol free areas.

The Committee is satisfied that the issue of the licence would not reduce the amenity and good order of the locality.

[114] Further:⁸⁵

There was no evidence that the amenity and good order of the locality is badly affected.

[115] Having considered the evidence, the Authority agrees with this assessment. The evidence is at best general in nature about limiting or capping the availability of alcohol in Ōtaki because ‘enough is enough.’ Such an objection is not about the amenity and good order of the locality of the proposed premises in Arthur Street. While Arthur Street is a part of Ōtaki, the focus of s 105(1)(h) and (i) is narrower in scope than the availability of alcohol in Ōtaki as a whole.

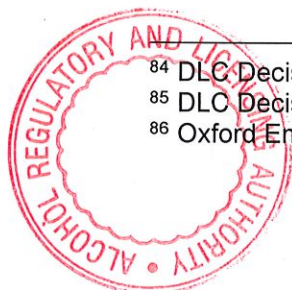
[116] As Te Wānanga o Raukawa has acknowledged, the evidence of the objectors comprises high-level statements about deprivation. While the Authority has heard that Te Wānanga o Raukawa does not want Ōtaki to become ‘another Flaxmere’, the focus of the inquiry relating to amenity and good order is about “the extent to which, and ways in which, the locality in which the premises concerned are situated is pleasant and agreeable” as is evident from the definition of that expression in s 5 of the Act.

[117] The etymology of the word ‘amenity’ is from the French word *aménité* which relates to ‘pleasantness’ or ‘a pleasant spot’ and is defined as meaning with reference to a place or location:⁸⁶

⁸⁴ DLC Decision at [70] – [71]

⁸⁵ DLC Decision at [72]

⁸⁶ Oxford English Dictionary <https://www.oed.com>



the quality of being pleasant, appealing, agreeable, or advantageous in terms of situation, aspect, appearance, climate, etc.

[118] As the Law Commission noted when calling for reform of the 1989 Act, in the Resource Management Act 1991 ‘amenity values’ is defined as ‘those natural of physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes’. The expression ‘good order’ has a similar meaning in this context. That is, the focus of the expression ‘amenity and good order of the locality’ is on some outward manifestation or characteristic of the locality in that the premises concerned are situated. This is reinforced by s 106(1) and (2) which refers to matters of noise, nuisance, vandalism, proliferation and the compatibility or coherence of land use (which, in turn, reflects the proposals of the Law Commission).⁸⁷

[119] In the absence of unfavourable comments from the reporting agencies about the effects of the issue of the licence on the amenity and good order of the locality (as opposed to all of Ōtaki), and in the absence of any evidence that might displace the absence of concerns by the reporting agencies, the Authority is not satisfied that this ground of appeal has been made out.

[120] For completeness, the Authority is not persuaded by the argument for Te Wānanga o Raukawa that the matters in s 106 have no bearing on a decision maker’s consideration under s 105(1)(i). As s 105(1)(i) works in conjunction with s 105(1)(h) as part of an overall assessment of the effect of the issue of a licence on the amenity and good order of the locality, to understand the current situation a decision-maker will already have had regard to have the matters set out in s 106 for the purposes of s 105(1)(h). It is artificial to isolate consideration of the amenity and good order of the locality for the purposes of s 105(1)(i) from the consideration under s 105(1)(h) given it entails the same overall assessment.

Conclusion

[121] We find no error in the assessment undertaken by the DLC and on our independent assessment of the evidence against those criteria, it is one with which we agree. Accordingly, this ground of appeal is not made out.

⁸⁷ Law Commission Report: *Alcohol in our lives: curbing the harm*, NZLC R 114, at [7.61] – [7.66]



Second Ground of Appeal: suitability (s 105(1)(b))

Submissions for Te Wānanga o Raukawa

[122] Mr MacKenzie for Te Wānanga o Raukawa submits that the DLC failed to consider the applicant's suitability under s 105(1)(b) in the relevant context, namely the vulnerability of the community, and that the heightened threshold that Kiwi-E Otaki Ltd was required to overcome did not rate a mention.

[123] Given the high levels of deprivation in Ōtaki, it is submitted that the assessment undertaken by the DLC of the suitability of the applicant, takes a different form and assumes 'a greater mantle'. The assessment of the history of the directors of Kiwi-E Otaki Ltd in the industry, it is submitted, is not sufficient because vulnerability is an important consideration when assessing suitability.

[124] The vulnerability of the Ōtaki community, it is submitted, is compounded by the fact that the applicant is based in Auckland, as are its two directors. This point, it is submitted, did not feature before the DLC but is a relevant consideration. Before the Authority, Mr MacKenzie confirmed that this is the gist to the concern of Te Wānanga o Raukawa about the applicant's suitability. The purpose of the Act is community focused, it is submitted, yet the application is from someone outside the community.

[125] While not a separate ground of appeal, Te Wānanga o Raukawa also submits that standing back, when assessing the application against the object of the Act, a new off licence in the vulnerable socially deprived community of Ōtaki does not meet the object of the Act. Moreover, it is submitted that it may well be impossible for a new off-licence to be granted in Ōtaki given its vulnerability.

Submissions for Kiwi-E Otaki Ltd

[126] Kiwi-E Otaki Limited submits that in the absence of unfavourable reports from reporting agencies, a decision-maker is unlikely to find an applicant unsuitable.

[127] As already stated, it is also submitted that the objection from Te Wānanga o Raukawa did not refer to any specific sections of the Act, and there was no reference to the applicant's



suitability. Again, it is also submitted that neither Ms Selby nor the witnesses in support of the objection by Te Wānanga o Raukawa referred to suitability during the hearing before the DLC other than to criticise the fact that the applicant did not live locally. That is, there was no direct challenge to the suitability of Kiw-E Otaki Ltd.

[128] It is submitted that although not advanced in any detail, a key theme in the submissions of Te Wānanga o Raukawa appears to be that the DLC should have made its own inquiries and obtained its own evidence. It is submitted that such an approach was rejected in *Smith v Kiwano*,⁸⁸ and the Court of Appeal and the Authority have taken a dim view of a DLC obtaining information and not providing the opportunity for any party to consider and respond to that information.⁸⁹

[129] It is submitted that the decision of the DLC carefully and accurately traverses the evidence and that it is not surprising that the suitability of the applicant is only addressed in three paragraphs⁹⁰ given that no party challenged the suitability of Kiw-E Otaki Ltd.

Analysis

[130] As the Authority said in *Nishchay's Enterprises Ltd*,⁹¹ suitability encompasses considerations of the character and reputation of the applicant, its honesty, and its previous convictions. It is, however, wider than that given that the responsibilities that go with the holding of a licence include considerations of whether or not liquor abuse issues are likely to arise. Thus, the concept of suitability includes more generalised factors such as the applicant's proposals as to how the premises will operate, matters raised in reports from reporting agencies and how a licensee will deal with liquor abuse issues that may arise from the establishment of the business.

[131] While suitability is a broad concept, these various factors are not concerns which have been raised in respect of this applicant beyond the concern that the applicant does not live in Otāki.

⁸⁸ *Smith v Kiwano* [2016] NZARLA PH 497 at [46] – [47]

⁸⁹ *Meads Brothers Ltd v Rotorua District Licensing Agency* [2002] NZAR 308 at [46]; see also *Qing*

Qing Trading Company Ltd v Wilson [2019] NZARLA 241 at [157]

⁹⁰ DLC Decision at [61] – [63]

⁹¹ *Nishchay's Enterprises Limited* [2013] NZARLA PH 837 at [54]



The Evidence

[132] The objection from Ngāti Maiōtaki Hapū makes no mention of the applicant's suitability other than to say: "...the application itself is on behalf of a business located in Auckland. How can such an applicant appreciate and understand the values of a community they have not been closely engaged in."

[133] Similarly, the objection from Te Wānanga o Raukawa makes no mention of the applicant's suitability other than to say: "We note that the application is made on behalf of a business located in Auckland."

[134] Before the DLC Mr Joyce for Ngāti Maiōtaki Hapū made no mention of the applicant's suitability.

[135] As already noted, under cross-examination by Mr Young, counsel for Kiw-E Otaki Ltd, Mr Joyce acknowledged that Mr Joseph did try to engage with, and get a sense of the hapū's concerns,⁹² and in relation to the idea of participating in an alcohol forum, Mr Joyce said:⁹³

...if it was instigated and run by the Council or community, then yeah, we're more than likely to be involved in it. We don't want to see our acknowledgement or our confirmation that we'll be involved as possibly, a, an advantage for him getting his licence.

[136] Otherwise, as stated, Mr Joyce's concern is to see a cap put on the number of alcohol outlets in Ōtaki and acknowledged this might be achieved through a local alcohol policy.⁹⁴

[137] Before the DLC Ms Selby for Te Wānanga o Raukawa, in turn, made no mention of the applicant's suitability. Instead her concern is that there is already too much alcohol in Ōtaki.⁹⁵

[138] In her objection, Ms Warwick makes no mention of the suitability of the applicant. At best, Ms Warwick said:⁹⁶

The applicant has not indicated at all how any of the money made by them, from our community at this premises, will be put back into our community. It seems that these

⁹² DLC Transcript at page 99 of 127

⁹³ DLC Transcript at page 98 of 127

⁹⁴ DLC Transcript at pages 97 and 99 of 127

⁹⁵ DLC Transcript at page 76 of 127

⁹⁶ DLC bundle at page 250



persons from out of town just want to make money from Otaki out of our town without putting anything back in.

[139] Before the DLC Ms Warwick made no reference to the suitability of the applicant.

[140] Ms Rau in giving evidence for Te Wānanga o Raukawa challenged how well the applicant and Mr Joseph know the community. Ms Rau said:⁹⁷

Apologies, but I have never seen you in Ōtaki before. You're not from Ōtaki and both of you, Mr Joseph, were asked about our community you gave no answer about what the makeup of our community is. We don't have two alcohol outlets, we have more than two. We have something in the region of 9 kura, not 5 or how-, whatever the number that you do. So, for me as a mum, you do not know our community. I'm not sure why you picked Otaki as a way to come because the only thing that I can take from today, with listening to both of you, is the fact that it's about money. It's about profit. ...

[141] In response to questions from Mr Young about Kiw-E Otaki Ltd seeking to have a meeting with Ms Rau to discuss the application, Ms Rau replied:⁹⁸

I would have no interest in-, I mean like you, it would be a very short, sharp meeting because there, there is no, there would have been no point because I think it's important that people, that Council hear our voices.

[142] In response to a further question from Mr Young, Ms Rau replied as follows:⁹⁹

JY Sorry, my question, no, my question is though, in terms of understanding your concerns and your place in this community, there's nothing more my client can do but to try and meet with you to listen to what you've got to say and understand it, isn't there? He can't get information any other way.

LR Well I'm. I'm just a mum and if it had been up to this side I wouldn't' even have a voice to speak at this objection, so, probably not.

[143] In relation to the idea of an alcohol forum, Ms Rau said: "I do see the benefit but I also see the benefit of putting a submission through Council to actually have those liquor laws changed as well."¹⁰⁰

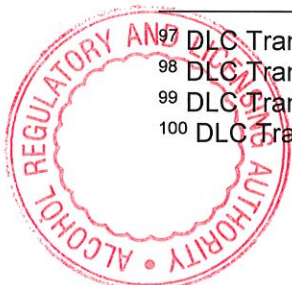
[144] The objection from Mr Campbell is silent on the issue of suitability and as already noted, he did not appear before the DLC.

⁹⁷ DLC Transcript at page 86 of 127

⁹⁸ DLC Transcript at page 87 of 127

⁹⁹ DLC Transcript at page 88 of 127

¹⁰⁰ DLC Transcript at page 88 of 127



[145] The evidence of Mr Joseph for the applicant, on the other hand, is that Super Liquor has a comprehensive training programme and a 'Super Liquorpedia' which is the franchise's entire operations manual including in relation to business management, licensing law, training, health and safety, and human resources.¹⁰¹

[146] In relation to suitability in particular, Mr Joseph said:¹⁰²

...the only other thing I do have is our franchise application form, again if anybody wanted to see it, and that it is more around the suitability that the franchisees that we take on, so an extremely comprehensive franchise application. Which again, is only done by one other banner that we understand, a lot of banners are more around just hanging signing up so they can get, clip the ticket on all the product range items from suppliers. Our franchise application form is 19 pages, they have to provide business plans, P&L's, etcetera. There's a massive questionnaire on workplace law that they have to fill out before they start, because as you've seen in the papers recently there has been a number of stores that are not compliant with workplace law and, then you may have heard that we have exited over 28 stores in the last six months through a lack of standards and not treating their people properly through workplace law. So, we've taken it extremely seriously what has been going on and when we look at the suitable applicants like Mr Patel, they have to jump through hoops. And even reapplying for a new store – because they have got a few with us already – they've still got to go through the same process to make sure that they are suitable. Again, if anybody wanted to see that.

[147] In relation to this, Ms Selby asked Mr Joseph what he knows about the Ōtaki community, its history, whakapapa, makeup, demographics, and socioeconomic levels, to which Mr Joseph replied he did not have statistics but said:¹⁰³

So, when you say, "What are we bringing", we're going to bring an offering that's hopefully going to educate, and educate Maori as well as European and everybody else, to actually drink better, not more. And we're seeing around the world volumes actually going down and, you know, we've seen all the statistics, even the HPA are saying volume is actually dropping, value is going up. We are not going to be another banner that just has people sitting behind the counter pushing mainstream beer - and I know you hear this at every hearing, it's all about [inaudible]. The fact is, we want to be on that journey and that's what we're going to bring to Ōtaki.

[148] When Ms Selby similarly asked Mr Patel what he knew about the Ōtaki community, Mr Patel replied:¹⁰⁴

Look, I did some research, I know what decile Ōtaki's been in, I know how many, like 36% population is Māori, give or take, how many schools are in the town, Ōtaki College,

¹⁰¹ DLC Transcript at page 54 of 127

¹⁰² DLC Transcript at page 55 of 127

¹⁰³ DLC Transcript at pages 57-58 of 127

¹⁰⁴ DLC Transcript at page 57-58 of 127



primary, all the distance from the shop, that's why we choose [inaudible] instead of coming to the town because that's outside the school area, where the school kids are going to walk they're most likely to walk this side, not that side.

[149] In terms of Mr Patel residing in Ōtaki, the following dialogue was had before the DLC:¹⁰⁵

APP Not going to be residing. If this licence is granted, I'm planning to buy a holiday house in Ōtaki because at the moment I have a house in Palmerston North, I come every two weeks. If this licence is granted, I will stay here more often as well, so I'm planning to have a property next year too, in Ōtaki.

MS It isn't an investment opportunity. It —.

APP Yeah, but I will be staying —.

[inaudible – more than one voice]

APP Not permanently my family [inaudible]

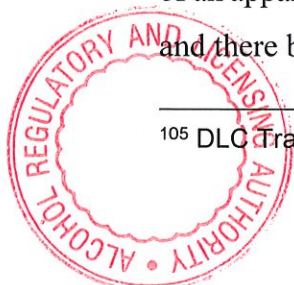
MS Okay. I just wanted to make the point, my family's been for 200 years. Okay. So I'm very interested in investment and what's happening in this community, that's why I ask the question, if you're going to bring something to this community that is potentially harm on people, I'm concerned and I'm also concerned that those people are going to sit outside of that and not be part of that community that they're bringing harm to as mentioned. That, that, unless you can convince me that that's, that's an, an unreasonable concern ?

APP No, no, see, that's why we're initiating this open community forum where we will have opportunity to discuss all of you and if there's any issue we are more than happy to resolve it. And like she said, we are here to take all the money out of the community, that's not correct. Local jobs, local everything, it will stay in the community. I'll be [inaudible] store as [inaudible] do the local sponsor [inaudible] and I'm more than happy to do that in Ōtaki. So, it's not that all the profits goes back. Yes, I need to run the business but we do care about community and we will be part of, as much as we can, for the time being.

MS I think you're getting my point. My concerns, I'm sharing my concern. Very happy to welcome you to this town that will bring something that will enhance the wellbeing of our people.

[150] As with the first ground of appeal, the Police have no concerns with the application. While the Medical Officer of Health was initially opposed to the application including because of an apparent lack of understanding of the existing alcohol health harms within the community and there being little evidence of community consultation, he withdrew his objection based on

¹⁰⁵ DLC Transcript at page 66 of 127



discussions with Kiw-E Otaki Ltd and the Police prior to the hearing. The Licensing Inspector said it was her “opinion that the applicant is aware of their responsibilities under the Act, and is suitable to operate the licensed premises”.¹⁰⁶

[151] As we have already said, where there are no objections from reporting agencies the DLC is entitled to use that in its evaluative function, to draw support for any inferences it makes from the facts.¹⁰⁷

[152] Having considered the evidence before the DLC, aside from the issue of the applicant’s place of residence, there are no issues going to the suitability of the applicant. Instead, the evidence is about there being more alcohol in Ōtaki. As Ms Selby put it:¹⁰⁸

So, we don’t want any more alcohol in this town. There is already way too much alcohol opportunity. It’s not like we’re saying no alcohol to this town, this is not, because there’s plenty here already. There are bars, there are pubs, there’s an RSA, there are cafes, there are supermarkets all selling alcohol. Our position is we don’t need anymore. We don’t want this town to become defined as a fast-food and alcohol outlet town, and that is what it is becoming.

[153] The Authority does not consider that the applicant’s place of residence is itself sufficient to disqualify the applicant from opening premises in Ōtaki especially given that the potential impact on the amenity and good order of the locality has not been established.

Conclusion

[154] In relation to suitability the DLC said:¹⁰⁹

The Applicant is a limited liability company. It can only act through its agents. Therefore, the committee is required to consider the suitability of that agent or agents.

Both Mr P Patel and Mr H Patel have a number of years’ experience owning and operating licensed premises with no issues arising in the last ten years.

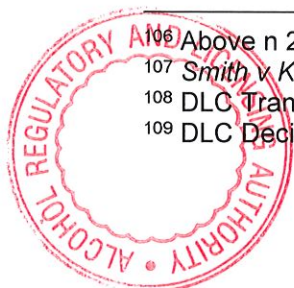
The Committee is satisfied as to the suitability of the Applicant to hold a licence.

¹⁰⁶ Above n 2, at [44]

¹⁰⁷ *Smith v Kiwano*, above n 88 at [52]

¹⁰⁸ DLC Transcript at page 76 of 127

¹⁰⁹ DLC Decision at [61]- [63]



[155] Once again, in the absence of unfavourable comments from the reporting agencies, and in the absence of any evidence that might displace that absence of concerns by the reporting agencies, the Authority finds no error in the finding of the DLC. That finding is one with which the Authority agrees based on our own assessment of the evidence.

[156] Accordingly, this ground of appeal is not made out.

Summary

[157] By way of summary in relation to the grounds of appeal:

- (a) *Has the DLC failed to give any meaningful consideration at all to s 105(1)(i) of the Act, when assessed against both the purpose and object of the Act?*

No, the evidence does not support the amenity and good order of the locality being so badly affected by the effects of the issue of other licences that it may be nevertheless undesirable not to issue any further licences.

- (b) *Did the DLC fail to assess Kiw-E Otaki's suitability under s 105(1)(b) in the context of the amenity and good order of the locality?*

No.

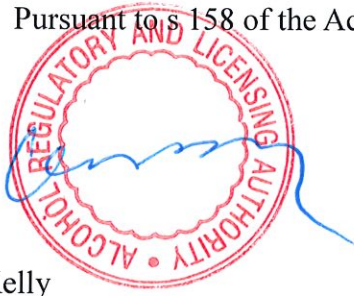
[158] Standing back, the Authority is not satisfied that the evidence establishes a causal nexus suggesting that the grant of the application, contrary to the object of the Act, will increase the risk of alcohol-related harm.

Result

[159] For the reasons stated, the appeal is dismissed.



[160] Pursuant to s 158 of the Act, the decision of the DLC is confirmed.



K D Kelly
District Court Judge
Chairperson, Alcohol Regulatory and Licensing Authority