

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

[2025] NZARLA 405-406

IN THE MATTER

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

IN THE MATTER

of an appeal by Mandy Savage pursuant to s 154 against the decision dated 25 July 2025 of the Kapiti Coast District Licensing Committee to grant an off-licence to Mellow Spirits Limited for premises situated at 1B Parata Street, Waikanae to be known as the 'Waikanae Super Liquor'

AND

IN THE MATTER

of a cross-appeal by Mellow Spirits Limited pursuant to s 154 against the decision dated 25 July 2025 of the Kapiti Coast District Licensing Committee to impose certain conditions on the new off-licence

## BETWEEN

MANDY SAVAGE  
*First Appellant*

AND

MELLOW SPIRITS LIMITED  
*First Respondent and Second Appellant*

AND

KAPITI COAST DISTRICT LICENSING  
COMMITTEE  
*Second Respondent*

## BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY

Authority: Judge R L B Spear  
Dr D Raman  
Mr R J A Amohau

Hearing: 3 December 2025 at Wellington

Appearances: Ms L Gordon for the First Appellant, Ms Mandy Savage  
Mr J D Young for the First Respondent and Second Appellant,  
Mellow Spirits Limited

Mr G Hewison for the s 204 objector, Ms Janet Calder

Reporting Agencies      Ms A Bliss, Licensing Inspector for the Kapiti Coast Licensing District  
Dr S Palmer, the Medical Officer of Health for the Wellington Region

Judgment:                    23 December 2025

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### **RESERVED DECISION OF THE AUTHORITY**

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#### **Introduction**

- [1] On 25 July 2025, the Kapiti Coast District Licensing Committee (the 'DLC') granted a new off-licence to Mellow Spirits Limited ('MSL') for the premises located at 1B Parata Street, Waikanae to trade as 'Waikanae Super Liquor'.
- [2] An appeal was subsequently lodged pursuant to s 154 of the Sale and Supply of Alcohol Act 2012 ('the Act') by one the Objectors, Ms Mandy Savage, against the grant of the off-licence, **the first appeal**. The DLC's decision was also appealed by MSL with regards to the imposition of certain conditions on the licence, **the second appeal**.
- [3] These appeals were heard by this Authority on 3 December 2025 and was attended to by Ms Gordon for Ms Savage (objector), Mr Hewison for Ms Janet Calder (s 204 party), Dr S Palmer Medical Officer of Health (MOoH), Ms Antonette Bliss for the Licensing Inspectorate and Mr Young for MSL.

#### **Grounds of Appeal**

- [4] The first appeal as pursued by Ms Savage, and supported by Ms Calder, is on the grounds that the DLC:

- a) erred by not undertaking a proper evaluation of the s 105 criteria under the Act especially in accordance with the approach set out by the High Court in *Re Venus NZ Ltd*<sup>1</sup>;
- b) in particular by not undertaking an evaluation under:
  - i. s 105(1)(a) regarding the object of the Act;
  - ii. s 105(1)(d) regarding the proposed days and hours of trading to sell alcohol;
  - iii. s 105(1)(j) regarding appropriateness of systems, staff, and training to comply with the law; and
  - iv. s 105(1)(k) regarding any matters arising from the reporting agencies' reports;
- c) erred at paragraph 279 of its Decision by omitting to consider fully whether a breach of Clause 8 of another licence held by MSL had occurred and in concluding that Clause 8 was not relevant for consideration of the present application;

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<sup>1</sup> *Re Venus NZ Ltd* [2015] NZHC 1377.

- d) erred by finding the applicant was suitable to hold a licence;
- e) erred by finding the applicant had appropriate systems, staff, and training to comply with the law;
- f) generally erred by taking into account irrelevant considerations, failed to take into account relevant considerations, made mistakes about the facts, misinterpreted and/or misapplied the applicable law and/or made findings that were unreasonable. It is noted that this ground was not specifically addressed during the hearing and rightly so as a generic catch-all ground is not a ground for an appeal.

[5] The second appeal by MSL, appeals two conditions imposed on the licence, namely:

- a) Condition 4: “That vapes or vaping products, cigarettes and tobacco products not be sold from the premises”; and
- b) Condition 5: “That single units of beer, craft beer, cider, shots or ready to drink spirits (RTD’s) are not sold from the premises”.

### **The Off License Application**

[6] The proposed new license application is brought by MSL, the director of which is Sukhjinder Singh. The premises is to trade as ‘Waikanae Super Liquor’ at 1B Parata Street, in the Waikanae town centre. Mr Singh is also a director of another off-licenced alcohol outlet; Super Liquor Otaki owned by Kiw-E Otaki Limited, obtained in August 2024. Both outlets, in Ōtaki and Waikanae are situated along the Kapiti Coast.

[7] Waikanae town centre has a deprivation score of decile 6 and is subject to an overnight liquor ban in the area from 9pm to 6am of which the Licensing Inspectorate has an oversight.

[8] Next to the premises is a restaurant and other nearby businesses comprise of a health and fitness centre, a hair clinic, a physiotherapy clinic, and several auto businesses. There is also a Railway Station nearby as well as residential buildings and bus stops.

[9] The proposed premises is a block away and around the corner from another existing alcohol outlet; Barrel 2 Bottle Waikanae and there are also two supermarkets with off-licences; New World and Woolworths.

[10] MSL relied before the DLC on a list which showed 13 sensitive sites including the Waikanae School, pre-schools and churches and with which it sought to engage.

### **The Reporting Agency’s Position**

[11] The Licensing Inspector, Ms Bliss, reported on the application on 19 September 2024. Ms Bliss supported the MOoH’s opposition but sought to have the single sales condition imposed if the license was granted.

[12] The Police did not oppose the application but supported a single sales condition. The Police did not raise any issues with regards to existing licensed premises, public disorder or loss of amenity and good order in the vicinity of the proposed premises. The Police were also unaware of any arrests during the overnight liquor ban in the area.

[13] Ms Bradley, delegate for the MOoH before the DLC, filed a report on 11 October 2024 opposing the application on the basis of s 105(1)(a) object of the Act, s 105(1)(b) suitability of the applicant and the s 105(1)(k) matters dealt with in its report, which are with regards to the object

of the Act and suitability. Ms Bradley gave a lot of generic evidence of alcohol related harm. She also gave evidence of alcohol related harm at the local level which focused on hospital admissions of local residents of 65 years and over, including falls related to alcohol use (16%).

[14] Ms Bradley also gave evidence that there were already three off-licences in close proximity to the location proposed for Super Liquor Waikanae; Barrel 2 Bottle Waikanae (210 metres), New World (190 metres) and a Woolworths (220 metres). She noted 19 sensitive sites within 1,100 metres including a primary school, two pre-schools, two health centres, two retirement villages, and churches. Thus, she supported the objectors' aspirations to reduce alcohol related harm in the area by capping proliferation.

[15] Ms Bradley also gave evidence pertaining to the single sales strategy. The strategy, reflected in a memorandum of understanding ('MoU') is with regards to the single sales condition which is being developed by the Tri-Agencies in the Greater Wellington region; that is, the MOoH or Te Whatu Ora/Health New Zealand, the Licensing Inspectorate and the Police. This initiative is undertaken pursuant to the Tri-Agencies' duty to collaborate efforts pursuant to s 295(b) of the Act which provides that:

### **295 Duty to collaborate**

The Police, inspectors, and Medical Officers of Health within each territorial authority's district must—

...

(b) work together to develop and implement strategies for the reduction of alcohol-related harm.

[16] Given that this is a single strategy applicable generally, it is not developed based on evidence of alcohol-related harm stemming from single sales pertaining to any particular locality or licensed premises. Rather it aims to reduce alcohol related harm in the communities generally in the Greater Wellington area.

[17] Ms Bradley argued that should the licence be granted then the proposed single sales condition ought to be imposed.

### **Public Objections**

[18] Although the application attracted 77 public objections, only seven appeared before the DLC. Ms Savage was represented by Ms Gordan with Ms Sonya Sloan, Mr Ron Tustin and Ms Belinda Fowler appearing as witnesses for Ms Savage. Mr Steve Botica, Mr Doug Miller, Ms Janet Calder with Te Atiawa were also represented.

[19] Ms Savage is employed by the Cancer Society of New Zealand. It is unclear whether her objection was given on the society's behalf. That notwithstanding, Ms Savage explained that she lives less than one kilometre from the proposed premises. Her objection was directed towards:

- a) the proliferation of alcohol licensed premises, both on and off licences;
- b) the advertising and promotion of alcohol and its exposure especially to school children;
- c) the cost of alcohol related harm nationally;
- d) alcohol as a cause of cancer, with increased risk of cancer from related cigarette sales as well; and

- e) that the applicant was unsuitable because its directors did not live in the area, had made no effort to engage with the community, and was not experienced enough all creating or enhancing the risk of alcohol related harm.

[20] Ms Sloan is a retired police officer who worked in the Kapiti/Manawatu policing districts. She gave evidence regarding alcohol related harm, especially when dealing with domestic violence, on youth and drink driving issues.

[21] Mr Tustin gave evidence of his purchase of a single kingfisher beer can, which raised an issue with regards to a potential breach of a licence condition by associated entity Otaki Super Liquor Store with this sale.

[22] Ms Fowler questioned the suitability and experience of the applicant and the impact of these premises on the amenity and good order of the locality.

[23] Mr Botica objected on the basis of the object of the Act and the amenity and good order of the locality. His evidence was regarding the proliferation of alcohol outlets in the area as there were three within a radius of 250 metres. Additionally, the increased risk of the sale of alcohol to minors and its impact on them based on his personal experience of having coached a senior boys' basketball team. Finally, the risk of alcohol related harm generally.

[24] Likewise, Ms Calder also objected on the basis of the object of the Act and amenity and good order of the locality. She is from Te Wananga o Aotearoa and is involved in both Alcohol and a youth social work programme and lives within one kilometre of the premises. Her concerns were also with regards to the number of on and off-licensed premises in the locality and alcohol related harm generally, as well as traffic. She was particularly concerned about the exposure of alcohol to students using the bus stops and stated that should the license be granted then she asked for a requirement for closure from 3-4pm, a single sales condition banning the sale of RTDs and beer, that no RTDs are displayed near the entrance of the store, that external advertising be minimised and that there be no sales to anyone in school uniform.

[25] Mr Miller's objection was concentrated around availability of alcohol in the community and local traffic.

### **The DLC's Decision**

[26] The DLC's decision is laid out in three major parts. The first part dealt with matters that were raised at the hearing and the evidence offered in support. The second part recorded its consideration of the issues raised at the hearing. The third and final part recorded its findings that were essentially an assessment of the s 105 criteria albeit covered in three very short paragraphs.

[27] The consideration is summarised as follows:

- a) Reference was made to the Authority's decision in *Sahota*<sup>2</sup> which supported the imposition of a condition related to single sales on a case-by-case basis but the DLC did not record any reason for its decision especially given that inclusion of craft beer and cider were not consented to.
- b) The DLC noted that Mr Singh's manager's certificate had been renewed.
- c) It considered the exposure to minors and college students to alcohol advertising and that there was another alcohol outlet in the same carpark and bus stop area but the proposed

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<sup>2</sup> *Police (Pillay) v Sahota* [2024] NZARLA 168.

outlet was a block away and around a corner so not in direct line of sight and “could also be further hidden by the inclusion of a mural on the large featureless Ngaio [R]oad facing wall seen from passing buses.”

- d) The DLC referred to the issue of a potential breach of Clause 8 but then determined that it was not relevant to the present application.
- e) In terms of suitability, the DLC erroneously recorded the length of experience of 3 years and 3 months as opposed to almost 2 years at the time of the hearing, noted that it had not failed any CPOs and that the applicant would continue to reside locally.
- f) The DLC did not see the applicant’s reliance on the ongoing support from Super Liquor Social Responsibility plan for support, training and internal auditing as inappropriate and also noted comments made by the Licensing Inspectorate.
- g) It noted that having heard from objectors, the applicant decided not to sell vapes and vape products, which the DLC recorded as a condition.
- h) It further commented that its hearings presented an opportunity to applicants to hear from the objectors, their concerns and be able to respond with solutions to identified risks.
- i) The DLC accepted the concerns around single sales of ‘craft beer’ but that the applicant was open to a condition regarding single sales that was understandable and clear but which excluded ‘craft beers’.
- j) The DLC expressed concern regarding the emerging trends around artwork and names for beers, craft beers and ciders which are designed to appeal to young people such as ‘Lollies before dinner’ and thus its desire to be active in avoiding single unit sales.
- k) The DLC expressed the difficulty with defining ‘craft beer’ in the absence of an industry adoption of a common definition, noting that its definition can be based on a number of things such as origin (by country or locality), source of brewery, special reserve produced releases, container size, alcohol strength or type/flavour of the product.
- l) The DLC found the wording of the Tri-Agency’s MoU unhelpful as beer cans of up to and over 1 litre is sold cheaply as single sales, which may be in response to the ‘500ml or less limit’ in the MoU wording.
- m) It noted the availability of single serve units through off-licensed premises and remote sales. Being mindful that s 59 of the Act covers obligations to verify entitlement to purchase, but does not mention the receiver, it thus imposed a condition regarding age verification and intoxication assessments upon delivery of remote sales to customers.
- n) The DLC was mindful of upholding the amenity and good order of the locality as a matter of high priority to the objectors who objected to the application and pointed to/demonstrated the general effects of alcohol on the community but noted that their evidence was “broad/ general and could be applied to any site”.
- o) Finally, it concluded that its decision must decide whether the granting of the licence will be contrary to the Act.

### *Findings*

[28] After the conclusions noted above, the DLC then listed its findings. The DLC initially stated that the application meets “all other requirements of s 105(1) of the Act” and, in particular it found:

- a) The applicant was a suitable person to hold a liquor licence;
- b) There was no operative local alcohol policy;
- c) The hours in which sales are proposed were reasonable;
- d) The design and layout of the premises would be appropriate;
- e) The other goods sold by the Applicant were appropriate;

- f) Taking into account the matters described at section 106(1), the amenity and good order of the locality would not be reduced by more than a minor amount by the granting of this licence.

[29] There was no detailed evaluation of the s 105 criteria as would be expected in accordance with the approach set out by the High Court in *Re Venus NZ Ltd*.<sup>3</sup>

[30] The decision concluded:

*"The application is hereby granted subject to the conditions set out below [including conditions 4 and 5 noted above]. Subject to appeal, the licence may be issued on approval by the license inspector upon satisfactory completion of all works as stated by the applicant and recorded at the hearing."*

*"The [DLC] hereby grants the application for an Off licence with the reason being that the applicant meets the criteria of the [Act]."*

[31] Whilst the DLC thoroughly considered the evidence before it, it did not properly or sufficiently assess the application for an off-licence against the s 105 criteria.

### **Approach on Appeal**

[32] Section 157 of the Act provides that an appeal is by way of a rehearing. Davison J in *Rainger v General Distributors Ltd*<sup>4</sup> stated:

*"On appeal the Authority is required to undertake 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."*

[33] It is always important to have the purpose and object of the Act clearly in mind when considering issues that arise under it such as this appeal. The purpose of the Act as stated in s 3 is that it is for the benefit of the community as a whole by putting in place a new system of control of the sale and supply of alcohol towards the overarching objective stated in s 4 that the sale and supply of alcohol should be undertaken safely and responsibly and that the risk of any alcohol-related harm should be minimised.

[34] In determining whether or not to grant an off-licence, the Authority is required to undertake an evaluative exercise of the s 105 criteria and any public objections raised under s 204.

### **105 Criteria for issue of licences**

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

- (a) the object of this Act;
- (b) the suitability of the applicant;
- (c) any relevant local alcohol policy;

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<sup>3</sup> *Re Venus NZ Ltd*, above n 1.

<sup>4</sup> *Rainger v General Distributors Ltd* [2019] NZHC 3483 at [58].

- (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.

[35] Pursuant to s 106 and for the purpose of evaluation under s 105(1)(h), the Authority must also have regard to the effects of issuing a licence on amenity and good order of the public in terms of noise levels, nuisance and vandalism and the number of licensed premises in existence having the same adverse effects.

#### *Reassessment under the s 105 Criteria*

[36] The general approach is to undertake the assessment for each of the factors under s 105(1) except for subs (1)(a) regarding the object of the Act, which is useful to consider after all other factors have been considered.

#### *Suitability of the Applicant*

[37] The Authority in its earlier decision of *Nishchay's Enterprises Ltd* held at para [53] that:<sup>5</sup>

*“... suitability is a broad concept and that the assessment of it includes the character and reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also includes matters raised in reports filed under s 33 of the Act and those reports may raise issues pertaining to the object of the Act as set out in s 4.”*

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<sup>5</sup> *Nishchay's Enterprises Ltd* [2013] NZARLA 837.

[38] Ms Gordon raised issues around the MSL's suitability of the basis of its sole director's (Mr Singh) limited experience as he only obtained his first manager's certificate in November 2023 with seven months' part-time experience at Black Bull Liquor Richmond and that he had effectively been a licensee of Kiw-E Otaki Limited only since August 2024. An issue was also raised with regards to taking over the ownership of Kiw-E Otaki Limited rather than applying for a new licence. These points were argued to amount to a very short period of experience to demonstrate compliance with the Act and responsible management. That is, there was no proven track record.

[39] It was further submitted that the applicant failed to consult with the local marae and that all he had done was to drop off letters at reception desks of sensitive sites which did not demonstrate proper engagement with the local community.

[40] An issue was also taken with Mr Singh being the only certified manager currently involved in the proposed business which was argued to indicate insufficient operational readiness. That his "heavy reliance" on Super Liquor's systems, audits and training programmes when a large number of Super Liquor outlets had failed controlled purchase operations ('CPO's) - reference was made to 27 cases of failed operations since 2017.

[41] Reference was also made by Ms Gordon with regards to a potential breach of Clause 8 of Kiw-E Otaki Limited's licence which it was submitted is relevant to the assessment of suitability.

[42] Mr Young for MSL submitted that Mr Singh passed the one CPO to date he had been subjected to, that he had never been subjected to enforcement action nor did he have any convictions. He had almost 2 years' experience working in licenced premises by the time of the DLC hearing and now had around 2 years and 10 months' of experience as of December 2025.

[43] Mr Young further submitted that there was no evidence to suggest that Waikanae was particularly diverse or of high risk and that, whilst there was no obligation to consult, Mr Singh had engaged with a number of sensitive sites of which only one objected. Mr Singh apologised for not meeting with the local marae and that he intended to do so if the licence is granted.

[44] Mr Young also submitted that staff had not yet been employed as MSL did not yet have the security of a licence. Furthermore, finding suitable staff at Kiw-E Otaki Limited had not been a cause for concern nor had the training provided by Super Liquor.

[45] As to the alleged breach of Clause 8, Mr Young pointed out that that issue was not established through evidence at the DLC, a point accepted by Ms Gordon before the Authority. Without resolution through evidence, the Authority should not take it into account.

[46] The Authority notes that there is nothing to suggest that Mr Singh's operation of Kiw-E Otaki Limited presents any issues around non-compliance of the Act. The change in ownership was done under s 69 of the Act and was accordingly subject to the scrutiny of the district licensing inspectorate as well as the Police pursuant to s 71 of the Act. The Authority did not hear any evidence regarding change of ownership that would impact on an assessment of Mr Singh's suitability.

[47] The Authority accepts Mr Young's submission that the deprivation index of this locality is 6 and there is no evidence to suggest that this particular locality is vulnerable. Therefore, this application does not engage the heightened suitability test.

[48] The Authority further accepts that there is no obligation to consult with the local community under the Act but doing so demonstrates awareness and the taking of a responsible approach to address any particular alcohol related harm that might stem from the proposed premises in the locality. The Authority notes MSL's explanation that the list it relied on to undertake

engagement had 13 sensitive sites but which did not include the local marae. It consulted with them all except the marae. It intends to consult the marae if the licence is granted. Of significance, there was no objection by or on behalf of the marae before the Authority.

[49] There is no expectation on licensees to hire employees before a licence is issued as that would not make any economic sense especially for a new proposed premises which would still need to be set up if a licence is granted. As did the DLC, the Authority takes no issues with MSL relying on Super Liquor for support, systems, audits and training programmes. It would rather the applicant did that than not. As for failed CPOs by other Super Liquor outlets, the Authority will not unfairly impute the experiences of those on the applicant. The fact that Mr Singh's operation of Kiw-E Otaki Limited has presented no issues and the positive result of one CPO on 26 June 2024 is a better indication for assessment of suitability.

[50] The Authority also notes MSL's willingness to address the concerns of the objectors, including Ms Calder's in particular, which is reflected in its decision not to place RTDs and other drinks to which youth are attracted near the front of the store, not to serve anyone in uniform, to ask for ID, not to sell vapes or vaping products, to have CCTV, security doors, an alarm system and good lighting both inside and outside. Mr Singh also spoke of alerting customers to the local alcohol ban through signage and also spoke of his intention to keep the area outside the store clean, tidy and graffiti free. Overall, Mr Singh's evidence demonstrates that he is aware of his obligations under the Act and that he would operate these premises responsibly.

[51] Taking these matters into account, the Authority finds the applicant suitable to hold a licence.

*Relevant alcohol policy*

[52] No local alcohol policy is available.

*Proposed days and hours of trade*

[53] The proposed days and hours are Monday to Sunday 10.00am to 9.00pm. As the DLC noted, these are outside the applicable overnight liquor ban and are reasonable. The Authority also notes from the Police report to the DLC that there were no issues of concern for the Police around the liquor ban or the proposed hours in relation to public disorder, reduced amenity and/or arrests.

*Design and layout of proposed premises*

[54] No issues or objections have been raised regarding the proposed design and layout of the proposed premises.

*Sale of other goods alcohol and non-alcohol drinks, and food*

[55] MSL had initially proposed to sell vapes, cigarettes and tobacco. During the DLC hearing, and after having heard from the objectors, it offered not to sell vapes and vape products. The Authority appreciates the offer made and like the DLC considers that this should be reflected as a condition on the licence. At this hearing, Counsel for MSL reaffirmed MSL's commitment not to sell vapes and vaping products but sought to have the prohibition on selling cigarettes and associated tobacco products to be lifted.

*Provision of any services*

[56] None proposed.

*Amenity and good order of the locality*

[57] As the DLC noted, all the evidence relating to the amenity and good order of the locality was very broad and general. Whilst evidence was given as to the harmful effects of alcohol and the three off-licenced premises in the locality, there was no evidence before the Authority which indicated that the *amenity and good order of this locality* would be likely to be reduced, to more than a minor extent, by the effects of the issue of this licence.

*Effects of existing licences on the amenity and good order of the locality*

[58] This is a three-part test which requires an assessment of:

- whether in our opinion, the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that-
- 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
- it is nevertheless desirable not to issue any further licences: ...

[59] The first part requires that there be evidence which shows that the amenity and good order of the locality are *already so badly affected by the effects of the issue of existing licences*. No such evidence has been presented to either the DLC or the Authority. Accordingly, the subsequent steps are not evaluated.

*Systems, staff, and training*

[60] MSL will rely on the support of Super Liquor for systems, staff and training. The Authority notes from the lengthy evidence of Mr Peter Joseph, the franchise manager from Super Liquor Holdings Limited, that all Super Liquor stores are required to install SLH point-of-sale (POS) systems. All customers who appear under the age of 25 years are required to produce their IDs and the POS system prompts the staff member to ask for the customer's date of birth. MSL will also rely on the Super Liquor's comprehensive Host Responsibility Plan. There is also a Super Liquor quarterly audit based on the 9-step compliance system with regards to systems and training. The Authority does not see any issues in so far as systems, staff and training are concerned.

*Any matters stemming from the tri-agency reports*

[61] The application is not opposed by the Police and the Licensing Inspector but both supported the imposition of a condition on the licence regarding single sales as developed through the Tri-Agency's MoU. The Authority notes that this MoU is a work in progress and is commented on further below.

[62] The MOoH opposed the application before the DLC on the basis of suitability and the object of the Act but largely focused on the condition regarding single sales. This issue is addressed below.

[63] It became clearly apparent to the Authority, having particular regard to evidence before the DLC, that there was no proper evidential basis for the refusal of the licence. Whilst experience is an important indicator of suitability, here the Authority is comforted by the fact that MSL has been running another alcohol outlet without any issues or concerns around not meeting their obligations under the Act.

[64] As to the proposed premises within this locality, again there was no evidence before the Authority which demonstrated that the locality was vulnerable to alcohol related harm or that the potential risk profile of this outlet is such that the object of the safe and responsible sale and

supply of alcohol will not be met. Instead, the applicant has given insight as to what measures it will take to ensure the safe and responsible supply of alcohol in this locality.

[65] For these reasons, the Authority dismisses the first appeal by Ms Savage and confirms the DLC's decision to grant the off-licence subject only to an amendment to certain conditions.

*Assessment of Conditions 4 and 5 imposed by the DLC*

[66] As mentioned earlier, the off-licence is subject to two conditions that require attention:

Condition 4:

*(4) That vapes or vaping products, cigarettes and tobacco products not be sold from the premises; and*

Condition 5:

*(5) That single units of beer, craft beer, cider, shots or ready to drink spirits (RTD's) are not sold from the premises.*

[67] Counsel for MSL submitted that imposing conditions without a proper evidential basis raises questions around natural justice. Whilst there was no evidential basis established before the DLC for banning vapes and vaping products, MSL accepted a prohibition relating to vapes and vaping products having heard the concerns of the objectors. However, MSL did not accept the inclusion of cigarettes and tobacco in the prohibition and we note that there was no evidential basis for its inclusion. Even though there was a suggestion during the hearing that alcohol combined with cigarettes can lead to cancer, that is a very broad if not generic statement that is unsupported by evidence notwithstanding that it might well be correct.

[68] Therefore, the Authority modifies Condition 4 to read:

*(4) That vapes or vaping products are not to be sold from the premises.*

[69] MSL does not, however, accept Condition 5 on single sales to the extent imposed by the DLC. However, it has indicated that it will accept the condition if modified to exclude craft beer and cider as was its position before the DLC. Condition 5 is tailored to the condition developed by the Tri-Agencies in their MoU which reads as:

*(5) No single sales of beer, or ready to drink (RTD) spirits in containers of 500mls or less in volume, except for craft beer. No single sales of shots or premixed shots.*

[70] At the hearing, Dr Palmer only addressed the licence condition relating to single sales on the basis of the MoU. There has been no evidence adduced that demonstrated why a condition on single sales was warranted for this specific licenced premises. Of course, the MoU is a product of work primarily by the reporting agencies and they are to be commended for taking this initiative. However, it is still necessary for any condition to be based on evidence and reasonable in its relevance to furthering or supporting the purpose and object of the Act.

[71] Mr Young also raised a concern that the definition of what is *craft beer* was problematic as there was no industry wide definition and so it was a "solution looking for a problem". He also challenged the suggestion that the prohibition includes cider as there were no concerns expressed specifically with regards to cider in this context before the DLC.

- [72] Mr Hewison referred to a number of cases where a single sales prohibition has been imposed and suggested that for craft beer, the restriction could be centred around the price and volume so that it did not matter whether it was beer or craft beer.
- [73] As this Authority has stated earlier, discretionary conditions imposed under s 117 of the Act need to be reasonable and are not to be imposed unless there is a proper evidential basis for it. This is the principled approach that the Authority and the DLC are required to take except where the licensee (or applicant licensee) agrees to a single sales' condition, as is the case here.
- [74] There is apparently no industry-wide accepted definition of what constitutes *craft beer*. The range of matters which can inform such a definition was considered by the DLC and thus the challenges associated with it. The Authority is not the appropriate body to devise a working definition of craft beer absent careful and full assistance from the wider alcohol industry on this point.
- [75] Regardless, this Authority welcomes voluntary conditions as it contributes towards the statutory objective of the minimisation of alcohol related harm. However, where it is not voluntary, as we held in *Huntly Grocer*<sup>6</sup>, any party seeking to have such a condition imposed will need to present evidence as to why such a condition is warranted. That evidence would need to demonstrate that single sales is a cause of alcohol related harm within the particular locality where the licence is sought and that the imposition of a tailored single sales condition is reasonable in order to minimise the risk of alcohol related harm arising from the sale of single units of alcohol.
- [76] Given the voluntary acceptance by MSL, a single sales condition will be imposed on the licence but only to the extent accepted. As for the problematic definition of craft beer, the Authority is of the view that those who sell and purchase craft beer understand what craft beer means and hence will form part of the condition as has been in other cases<sup>7</sup> which has not presented any problems to date. As for cider, this was not addressed as a matter of concern by any party before the DLC and thus will also be excluded from single sales. Therefore, the Authority modifies Condition 5 to read:
 

*(5) Beer and ready-to-drink spirits (RTDs) in cans/containers of 500mls or less as well as shots or premixed shots, are not to be sold from the premises. This condition does not include craft beer or cider*

#### **Comments on the Memorandum of Understanding**

- [77] The idea behind the MoU is to encourage licensees to consider adopting the “*discretionary conditions and undertakings*” on single sales contained in the MoU when it is finalised (as it is still a work in progress).
- [78] A concern expressed by Mr Young was a comment in the MoU that states, “*the MOoH will take the lead on this strategy should the applicant not agree to the condition and the application proceeds to a DLC hearing for determination.*”
- [79] The Authority agrees with Mr Young that if this is indicative of the stance that will be adopted by the Tri-Agencies then that is likely to be problematic. The imposition of conditions such as those relating to single sales can only be imposed as a matter of discretion by the DLC or this

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<sup>6</sup> *Huntly Grocer Limited v Waikato District Council* [2025] NZARLA 167.

<sup>7</sup> Such as in *Reed v Kaloti NZ Limited* [2019] NZARLA 270 at [35] and *St Joseph's School Pleasant Point/ Te Kura O Hato Hohepa v Singh Trading (2016) Limited* [2021] NZARLA 123 at [152].

Authority under s 117. For such a condition to be imposed, either it is accepted voluntarily by the applicant or there must be a proper evidential basis for it that demonstrates that it is reasonable for it to be imposed.

[80] This is not to suggest that the efforts of the Tri-Agencies are not appreciated. Indeed, they are. However, the Authority is mindful that there is a power imbalance between the Tri-Agencies and the licensees. Therefore, what would be helpful would be for the MoU to give options to the licensee as to what could be included in the undertaking. For example, it could offer a checklist of the different types of alcohol, the volume and/or the minimum price of the single unit that would be acceptable to the applicant. This could then be used to inform any single sales condition to be imposed by the DLC or this Authority.

### Outcome

[81] For these reasons, and based on its own evaluation of the s 105 assessment above, the first appeal by Ms Savage is lost and the second appeal by MSL succeeds. In effect, the Authority agrees with the DLC's decision to grant the new off-licence and confirms that decision subject only to modification of conditions 4 and 5 as follows:

(4) *That vapes or vaping products are not to be sold from the premises.*

(5) *That single sale units of beer and ready to drink spirits (RTDs) in cans/containers of 500mls or less shots or premixed shots are not to be sold from the premises. This does not include craft beer or cider*

