

Decision No: 45/011/2020

IN THE MATTER OF the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER OF an application by **KIW-E
OTAKI LIMITED** pursuant
to section 100 of the Act
for a new Off Licence in
respect of premises
situated at 4 Arthur
Street, Ōtaki, to be
known as 'Super Liquor
Ōtaki'

BEFORE THE KĀPITI COAST DISTRICT LICENSING COMMITTEE

Chair: Ms F M Vining

Members: Mr P Parkinson

Mr F McInnes

HEARING at ŌTAKI on 22 July 2020

APPEARANCES

Mr John Young (Counsel for the applicant)

Mr Pragnesh Patel (on behalf of Applicant)

Mr Peter Joseph (Regional Manager Super Liquor)

Objectors

Mr Donovan Joyce (Ngāti Maiotaki hapū)

Ms Mereana Selby (Te Wānanga o Raukawa)

Mrs Shelley Warwick

Ms Leigh Rau

Reporting agencies

Ms Vanessa Young (Regional Public Health representing Medical Officer of Health)

Mr Gene McCarten (in support of Medical Officer of Health)

Ms Antoinette Bliss (Licensing Inspector)

RESERVED DECISION OF THE COMMITTEE

Introduction

1. Kiw-E Otaki Limited has applied for a new off licence in respect of premises situated at 4 Arthur Street, Ōtaki, to be known as 'Super Liquor Otaki'.

Preliminary procedural matter

2. There were five objections filed in respect of the application (including a joint objection by three individuals). Prior to the hearing the Committee offered the Applicant the opportunity to make submissions on whether those objections were filed by people who do not meet the criteria in section 102(1) of the Sale and Supply of Alcohol Act 2012 ("the Act") in that they did not have a "greater interest in the application for the licence than the public generally". The Committee then offered the opportunity to respond.
3. Prior to the hearing Global Wines and Spirits Limited, advised through counsel, that it was withdrawing its objection to the application following consideration of the evidence proposed to be given and the responses of the reporting agencies.
4. The Committee heard further oral submissions on this issue at the beginning of the hearing.
5. Mr Young outlined the case law on this issue, with reference to *Gisborne Liquormart v Ka Pai Trust*¹ and other authorities. He submitted that the onus is on the objectors to establish standing by showing a greater interest than the public generally. He observed that when the objections were filed, neither Mrs Warwick nor Ms Rau indicated that they were objecting on behalf of any group or organisation. He submitted that it would be against natural justice for the basis of the objections to be changed at a later stage.
6. Both Mrs Warwick and Ms Rau stated that they were unaware that there was a requirement to show a special interest. They noted that this issue was not raised at previous hearings for licenses in a similar location and therefore they did not know of this requirement.
7. Mrs Warwick noted that she is an elected member of the Ōtaki Community Board and submitted that as this is an advocacy role, it means that she has a greater interest than the public in general. She is a member of the Ōtaki College Board of Trustees. She stated that she had a letter from Andy Fraser, who is the principal of Ōtaki College asking her to represent the college at the hearing. She stated that Mr Fraser understood that the college had lodged an objection. The Committee confirmed that no objection was received from the college.
8. Ms Rau stated that in her view she should have a right to have a say as a member of the community and that she lives within 2km of the proposed premises which is the distance noted in material she was provided regarding the ability to object.
9. Mr Young observed that his client did not want to prevent anyone having a say and observed that to allow this to happen, Ms Warwick and Ms Rau could be called as witnesses for the Wānanga or Hapū.

¹ *Gisborne Liquormart v Ka Pai Trust* [2018] NZARLA 316

10. The Committee adjourned briefly to consider this issue.
11. The Applicant did not raise any issues in respect of Te Wānanga o Raukawa nor Ngāti Maiotaki hapū. The Committee was satisfied that these organisations have standing under section 102(1) of the Act.
12. The remaining objector did not attend the hearing and did not provide further information on this issue. The Committee was not satisfied that this objection met the necessary criteria and did not take this objection into account.
13. The Committee is sympathetic to both Mrs Warwick and Ms Rau who have taken the time to provide written objections and to attend the hearing. However, it is correct that case law has clarified the issue of standing and the requirement to have a greater interest than the community in general. The Committee is not satisfied that this requirement is met for either Mrs Warwick or Ms Rau.

The Application

14. The Applicant's evidence was provided by Mr Pragnesh Patel, who is one of the directors of the applicant company, Kiw-E Otaki Limited and Mr Peter Joseph who is a Regional Manager for Super Liquor. The proposed licence would be operated as a Super Liquor franchise store.

Submissions of Mr Young

15. Mr Young submitted that the Authority has commented on the object of the Act and submitted that for the law to remain a good law system it must be reasonable, not suppressive or excessive. He submitted that the Act provides a balance between the right to consume alcohol and the minimisation of harm. He submitted that a decision maker must not simply assume that all alcohol consumption is harmful.
16. In respect of the issue of amenity and good order, Mr Young submitted that the evidence provided was too generalised to assist the Committee. He referred to *Gisborne Liquormart* to support this submission.
17. Mr Young noted that this Committee has previously considered applications for an off-license in this general location and had made it clear that it would expect an applicant to fully engage with the community to understand any local issues and concerns. He submitted that the applicant in this case has had discussions with Police and the Medical Officer of Health about advancing a regular forum to discuss issues regarding alcohol use in the local community.

Evidence of Mr Joseph

18. Mr Joseph is a Franchise Manager for Super Liquor for the Lower North Island, Otago and Southland.
19. In his written and oral evidence, Mr Joseph gave evidence as to how Super Liquor franchises are run, including detailed information about training programmes and inspections undertaken to ensure compliance with both Super Liquor standards and the Act. He noted that stores that fail

to comply with Super Liquor requirements are exited from the franchise which has a financial cost to the store. He gave an example of stores being exited for failing to comply with employment law requirements.

20. Mr Joseph provided detailed documentation regarding Super Liquor processes on the basis as Super Liquor's intellectual property, the information in those documents would be kept confidential and be subject to a non-publication order. The Committee agrees that this is appropriate and orders that in respect of the 8 page audit document titled "Business Partnering January – March 2020 (incl. Audit) and the 1 page screen shot of the "SuperLiquorpedia" internal website ("the materials") the following orders shall apply:
 - a. All persons present at the DLC hearing do not discuss the material with any other persons;
 - b. The Council and/or the reporting agents will not permit the material to be inspected, disseminated or published without the Applicant's written consent; and
 - c. The Council and reporting agent files be stamped or marked with "This material is subject to non-publication and suppression orders from the Kāpiti Coast District Licensing Committee".
21. The audit reports provided by Mr Joseph set out the results of the audits undertaken in the January to March 2020 quarter on stores run by either director of the Applicant. These provided results which showed the only issue was a new staff member not having completed "the SSAA training module". He stated that a shortened audit was undertaken for the April to June quarter for which all these stores achieved a result of 100%.
22. In Mr Joseph's view, Mr P Patel and Mr H Patel have consistently operated their stores in accordance with the conditions of their off-licences and the Act.
23. Mr Joseph arranged to meet with Ngāti Maiotaki hapū to discuss the proposed new store. He also contacted Ms Selby, Mrs Warwick, Ms Rau and Ms Taylor to offer to meet. This offer was declined. Mr Joseph could not provide such an offer to P Campbell as he did not have a phone number or email address for this objector. He did not contact Global Wines and Spirits as he did not think it was appropriate to contact a trade competitor about the proposed licence.
24. Mr Joseph met with Vanessa Young and Dr Stephen Palmer from Regional Public Health. He provided information about the policies and procedures of Super Liquor and the Applicant's experience owning and managing a liquor store in a low decile location. At that meeting Dr Palmer suggested that it would be good if police could organise regular catchups with licenced premises and community groups. This suggestion was supported by Mr Joseph.
25. Mr Joseph then met with Sergeant Grimstone from the Police and the Licensing Inspector. He raised the possibility of regular meetings with licensed premises and was advised by Sgt Grimstone that Police didn't have the resources to do this. However, Mr Joseph, Mr P Patel and Mr H Patel would still like to explore options to do this.

Evidence of Mr Patel

26. Mr P Patel is one of two directors of the Applicant, Kiw-E Otaki Limited. The other director, Mr Hitesh Patel, was present at the hearing but did not give evidence. Mr P Patel and Mr H Patel are the sole directors and shareholders of the company that owns Super Liquor Palmerston North. Mr P Patel has owned and operated Super Liquor Helensville for seven years and has held a manager's certificate since 2008. Mr H Patel has owned and operated Super Liquor Hilltop in Orewa for fourteen years and Super Liquor Red Beach for twelve years. He has held a manager's certificate since 2006.
27. He states that none of his stores have ever failed a Controlled Purchase Operation ("CPO") or had its licence suspended. He acknowledged that Mr H Patel failed a CPO in one of his stores in 2007 and that one of the duty managers working for Mr H Patel failed a CPO in 2010. Mr H Patel has not had any compliance issues since then.
28. Mr P Patel's written evidence set out his understanding of the Ōtaki area and the locality. It also set out the steps that he took to consult with the local community, including endeavouring to meet with the objectors and discuss the proposed liquor store with local businesses.
29. He confirmed that Mr Joseph had assisted with his local knowledge and that they would continue to work with Mr Joseph and Super Liquor.
30. Mr P Patel's evidence stated that he takes his responsibilities under the Act to sell alcohol safely and responsibly and minimise alcohol related harm very seriously. He stated that this is particularly important in a community such as Ōtaki with a high deprivation score. He set out a number of steps that would be taken to ensure that the proposed store would be operated appropriately, including offering conditions regarding limitations on the sale of certain RTDs and light spirits.
31. Mr P Patel's written evidence stated that either he or Mr H Patel would be present at the premises for the first six weeks with regular visits after that. In response to questions, Mr P Patel advised that he would take responsibility for managing the store until he was able to appoint the right manager. He advised that he would be prepared to train staff if he could not find suitable staff. The Committee asked Mr P Patel to consider whether the applicant would agree to a condition to not appoint an Acting Manager nor a new manager whose application for a Manager's Certificate has not yet been determined.
32. He advised that he had had a discussion with police about security issues and made some changes to the proposed layout of the store following those discussions.

Objectors

Ms Mereana Selby

33. Ms Selby appeared on behalf of Te Wānanga o Raukawa. Te Wānanga is a tertiary institution initiated by local iwi around forty years ago. It is smoke free and alcohol free.

34. Ms Selby stated that the proposed license is a breach of kaupapa.
35. She stated that they are not proposing prohibition, but that Ōtaki already has sufficient access to alcohol. She was concerned that Ōtaki would become known as an alcohol and fast food place.
36. She was particularly concerned of the impact of the sale of alcohol on Māori. She stated that Te Wānanga acts as a “safe haven” for some students.
37. In response to questions, she acknowledged that the Applicant had attempted to engage with Te Wānanga, but was concerned that this was just a “box ticking” exercise.
38. Te Wānanga sought for Kāpiti Coast District Council to consider “an approval framework based on kaupapa whereby contribution to community health and well-being is a requirement for any business seeking approval to open in our district”.
39. As stated in the hearing, the District Licensing Committee is not the appropriate body to consider development of a policy of this nature. The Committee has previously encouraged the Kāpiti Coast District Council to undertake the development of a Local Alcohol Policy to allow for community engagement. It remains the Committee's view that development of such a policy would be appropriate.

Ms Leigh Rau

40. Ms Leigh Rau appeared as a witness for Te Wānanga o Raukawa. She stated that the Applicant is from out of town and does not know about the local community. She did acknowledge that the Applicant had offered to meet with her following her objection to the license application. Her evidence was that there is a lot of work going on to improve the community and that another licensed premise is not necessary.
41. Ms Rau stated that she is concerned about the amount of harm that alcohol has caused in her community and that there was no need for another liquor outlet “selling alcohol at reduced prices”.

Mrs Shelley Warwick

42. Mrs Warwick appeared as a witness for Te Wānanga o Raukawa. She stated that in her view there had not been enough effort made to engage with local schools. She was concerned that the proposed premises are within walking distance of schools. In her view, there should be no more licenses in Ōtaki.
43. Mrs Warwick stated that there were limited services within the community to deal with the mental health effects of alcohol as health services are provided by Mid Central DHB to the north and there is no public transport to the north.
44. She also raised a concern that profits from the proposed store would not be put back into the community but rather would be taken away. She stated that there was very little benefit to the community from an additional off licence.

Mr Donovan Joyce

45. Mr Joyce appeared on behalf of Ngāti Maiotaki hapū. Ngāti Maiotaki hapū is one of the three hapū of Ngāti Raukawa who hold the ahi ka at Raukawa Marae.
46. The hapū opposed the application based on the detrimental impact of alcohol on their people, particularly in respect of mental health. A concern was also raised of the proximity between the proposed licence and Ōtaki college where many of their rangatahi are educated. Of particular concern is the impact on the mental health of rangatahi and the increasing number of suicides.
47. Mr Joyce began his oral evidence, by referring to a newspaper clipping dated 1872 which referred to problems with alcohol and stated that the opinion of the problems of alcohol remains the same.
48. He acknowledged that alcohol is here to stay, but was of the view that there should be a cap placed on the number of outlets selling alcohol with no more licenses granted. He stated that the hapū would consider engaging with a forum to address alcohol harm, but not if it was run by the applicant, as they did not support the applicant's application.
49. The hapū requested further engagement with Kāpiti Coast District Council to prioritise taking steps to "reduce the influence and presence of alcohol in our community". As stated above, the Committee would encourage the Kāpiti Coast District Council to consider developing and adopting a Local Alcohol Policy.

Reporting Agencies

Evidence of the Licensing Inspector

50. The Inspector's report noted that as objections had been received under section 102 of the Act a public hearing would be required to determine the application, but that having considered the application and the statutory criteria, she did not have any grounds to oppose the application.
51. In response to questions, the Inspector confirmed that the Super Liquor training material and policies were the most extensive that she had seen. She confirmed that there were no issues of noise or nuisance in or around the proposed location.

Evidence of the Medical Officer of Health

52. The evidence for the Medical Officer of Health was provided by Vanessa Young. The Medical Officer of Health initially opposed the application.
53. The Medical Officer of Health, Dr Palmer, met with the Applicant together with the Police prior to the hearing. Ms Young advised that she was present. Dr Palmer had suggested to the Applicant that he initiate a forum for agencies, license 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.

54. In response to a question, Ms Young advised that while the Medical Officer of Health is not opposing the application, this does not mean that there is support for the application.

Written submissions on conditions

55. During the hearing the possibility of certain conditions was raised with the Applicant. The Committee asked the Applicant to provide confirmation of what conditions the Applicant would consent to.

56. The Applicant confirmed that in written evidence, the Applicant had offered the following additional conditions:

- a. No sales of RTD's in containers over 500ml with an ABV of 6% or more
- b. No sales of light spirits up to 13.9% abv of any kind

57. The Applicant would also agree to the following conditions:

- c. The licence holder will take reasonable steps to establish an Ōtaki alcohol forum. It will do so in collaboration with the reporting agencies. Such reasonable steps may include undertaking the administrative tasks of coordinating the reporting agencies, emailing invitees, and arranging a venue.
- d. The premises will remain a Super Liquor franchise store for the period of the licence.
- e. The licence holder will not appoint temporary or acting managers under sections 229 and 230 of the Sale and Supply of Alcohol Act 2012.

The Law

58. Section 105 of the Act sets out the criteria that the committee must consider when deciding whether to issue a licence.

59. The object of the Act is the overarching principle, or touchstone for determining off-licence applications. As Heath J put it in *Re Venus* [2015] NZHC 1377:

[20] 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 s105(1)(b)–(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act?

60. On this basis, the Committee considered the various criteria set out in section 105, with the final consideration being the object of the Act.

Suitability of the Applicant

61. 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.

62. 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.

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

Days and hours of trading

64. The Applicant has applied for opening hours of 10am to 9pm.

65. The Committee regards these hours as reasonable.

Whether the applicant's appropriate systems, staff and training comply with the law

66. The Applicant is a member of the Super Liquor Franchise which has provided evidence setting out the requirements that they place on their franchise holders and the consequences of non-compliance. Super Liquor has a number of policies in place to ensure compliance with the Act and provides extensive training materials to franchisees for them and their staff.

67. The Applicant has agreed to a condition that the store will operate as a Super Liquor franchise under the license.

68. The directors of the Applicant company intend for one of them to be personally present for the first six weeks of the operation of the store. During this time, they intend to employ suitability qualified staff and work with them until they are satisfied that they will undertake their duties appropriately. If they are unable to hire suitably qualified staff, they are prepared to train them and continue working in the business until the staff are able to work unsupervised. The Applicant has agreed to an undertaking that it will not rely on appointing Acting or Temporary Managers to run the store.

69. The Committee is satisfied with the Applicant's systems, staff and training.

Whether the amenity and good order of the locality would be likely be reduced, to more than a minor extent, by the issue of the licence

70. There was no suggestion raised that 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.

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

Whether the amenity and good order of the locality is already so badly affected by the issue of the licence, that the grant of a further licence would be unlikely to reduce the situation further, but nevertheless it would be desirable not to grant a further licence

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

Any matters dealt with in the report provided by the Police, Inspector, or Medical Officer of Health

73. There were no additional matters raised by the reporting agencies.

The object of the Act

74. The object of the Act is expressed in section 4 of the Act which states:

(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).

75. 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.

76. 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.

77. The main concern that was specific to this 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.

78. 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.

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

Decision

80. The District Licensing Committee hereby grants the Application on the following conditions:

- a. The license will be from 10am to 9pm seven days a week
- b. There will be no sales of RTD's in containers over 500ml with an ABV of 6% or more
- c. There will be no sales of light spirits up to 13.9% abv of any kind
- d. The licence holder will take reasonable steps to establish an Ōtaki alcohol forum. It will do so in collaboration with the reporting agencies. Such reasonable steps may include undertaking the administrative tasks of coordinating the reporting agencies, emailing invitees, and arranging a venue.
- e. The premises will remain a Super Liquor franchise store for the period of the licence.
- f. The licence holder will not appoint temporary or acting managers under sections 229 and 230 of the Sale and Supply of Alcohol Act 2012.

DATED at Paraparaumu 8 September 2020



Fiona Vining
Commissioner
Kāpiti Coast District Licensing Committee

