

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by TK Spirits
Limited for an off-licence
pursuant to s 100 of the Act in
respect of premises situated at 3
Main Road TE KAUWHATA
known as "The Bottle-O Te
Kauwhata".

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Commissioner: Dr Michael Cameron

Members: Dr Patsi Davies
Mr Barry Smedts

HELD at NGAARUAWAAHIA at 9.00am Thursday 8 February 2024, and continued on Friday 9 February 2024 commencing at 9.00am, and concluded by way of an audiovisual link, pursuant to s 202(5) of the Act, commencing at 10.00am on Thursday 29 February 2024.

APPEARANCES:

All hearing dates:

Mr N Laing, Counsel for the applicant
Mr M Thakkar, Director of the applicant company
Mr R Patel, Director of the applicant company
Ms C Sturzaker, Licensing Inspector
Sgt H Martin, NZ Police, to assist
Ms D Meertens, Medical Officer of Health delegate (MOH), in opposition
Dr L Gordon, Counsel for Objector (Patterson)
Ms N Patterson, Objector
Ms L Plant, Objector
Mr G Tupuhi, Objector
Mr S Bovaird, Objector (via audio-visual link)
Ms B Fowler, Witness for Objector (Ms N Patterson)

8 February hearing date:

Ms G Iwihora, Objector
Mr G Jackson, Objector
Ms J Kelly, Objector

9 February hearing date:

Mr J Cunningham, Objector
Ms J Kelly, Objector
Ms J Sedgwick, Objector
Ms J White, Objector
Ms M Hohepa, Objector (via audio-visual link)
Mr M Keehan, Witness for the Medical Officer of Health
Ms M Brown, Witness called by the Committee

29 February hearing date:

Mr J Cunningham, Objector
Ms L Gronback, Objector
Mr S McNab, Objector
Ms J Sedgwick, Objector
Mr C Buckley, Witness for Objector (Ms N Patterson)

SITE VISIT:

A site visit was undertaken by the District Licensing Committee (the Committee) on the morning of Tuesday 5 December 2023. The Directors of the applicant company were present for the site visit.

DECISION

The application for an off-licence in respect of premises situated at 3 Main Road TE KAUWHATA known as “The Bottle-O Te Kauwhata” is refused.

INTRODUCTION:

[1] This is an application by TK Spirits Limited for an off-licence in respect of premises situated at 3 Main Road TE KAUWHATA, to be known as “The Bottle-O Te Kauwhata”. The application was filed with the Waikato District Council on 19 December 2022.

[2] The general nature of the business to be undertaken is that of a bottle store. The premises has not previously been licensed. The building is newly constructed and located in the Te Kauwhata business zone. At the time the Inspector inquired into the application, the premises had an interim building certificate dated 7 December 2022.

[3] The application was advertised in accordance with s 101. The application is opposed by the Medical Officer of Health, and 79 public objections were received within the prescribed time, with two public objections received outside of the prescribed time. All 81 public objectors (with numbers for ease of reference) are listed in the Annex to this Decision. One letter of support was also received (from Mr B Grimmer). The Police and Inspector do not oppose the application. Given the opposition of the Medical Officer of Health and the public objections, the application was set down to be determined at a public hearing.

[4] The status of objectors was dealt with in a preliminary public hearing held on 7 December 2023. The Committee's determination was issued in writing, to all parties, on 21 December 2023, and is attached as an appendix to this decision.

HEARING, DAY ONE (8 February 2024):

Preliminary Matters:

- [5] The Committee issued Directions on 21 December 2023, directing all parties to file written submissions and briefs of evidence prior to the hearing, except for public objectors who were not represented by Counsel.
- [6] In addition to submissions received from parties to the hearing, the Committee received a submission from Mr J Cotman, who was also present in person at the hearing on 8 February 2024. As Mr Cotman had not objected to the licence within the prescribed time, his submissions were disregarded by the Committee.
- [7] The Commissioner reiterated that the Committee had noted many objectors' written submissions referred to the Waikato District Council (WDC) Provisional Local Alcohol Policy (PLAP), that a PLAP is currently not in force, and therefore the PLAP does not apply. However, the WDC has a current Local Alcohol Policy (LAP), which came into force on 1 January 2017.
- [8] The Commissioner also addressed why the hearing was held in Ngaaruawaahia, rather than in Te Kauwhata. This was due to pragmatic reasons, primarily the unavailability of a cost-effective audio-visual setup for remote locations. However, as an audio-visual link was available for the hearing held in Ngaaruawaahia, the Committee's view is that this would not adversely affect any party to the hearing.
- [9] Although not strictly a preliminary matter, we address the status of the objector, Mr S Bovaird, here. During the introductions on the second day of the hearing, it became clear to the Committee that Mr Bovaird was now a trustee of the Te Kauwhata Licensing Trust. The Trust operates the Te Kauwhata Tavern, located on the same street as the proposed premises.
- [10] Section 102(1) of the Act, as amended by s 10 of the Amendment Act, affords all objectors, other than trade competitors, status as objectors, provided that their objection meets the condition in s 102(3). In the Committee's earlier decision on the status of the objectors (attached as an Appendix to this decision), we determined that the Trust did not have status as an objector, as it operates the tavern, which is clearly a trade competitor of the proposed premises.
- [11] As Trustee of the Te Kauwhata Licensing Trust, Mr Bovaird is similarly tainted in the view of the Committee. We find that Mr Bovaird no longer has status as an objector in this matter. Accordingly, the Committee has disregarded any evidence produced by Mr Bovaird, any questions he asked or the responses to those questions, and any submissions he has made, as he is not a party to the proceedings.

Opening Submissions – Applicant:

[12] The opening submissions of counsel for the applicant were taken as read. Mr Laing outlined the applicant's position that Te Kauwhata is a growing town, summarised the objections that had been received, and outlined the evaluative approach that the Committee is required to take and the criteria that must be considered.

[13] On the criteria, Mr Laing submitted that "the matters raised in opposition as to suitability, and to systems staff and training, relate to former directors who are no longer involved in the company. Accordingly, they must fall away". On suitability, he also submitted that "[i]t is not accepted that it is automatic that the Committee should consider the locality to be a vulnerable one, such that an enhanced suitability requirement would apply".

[14] On days and hours, Mr Laing submitted that "hours of 10am to 10pm Monday to Saturday [sic] are appropriate for the Bottle-O. They are within the national default hours and not inconsistent with the LAP". Relying on case law, he submitted that whether the amenity and good order of the locality would be reduced by more than a minor extent "is in terms of a *"real and substantial risk that the stated consequences would happen."*"¹

[15] Turning to specific issues related to amenity and good order, Mr Laing submitted that "there is no appreciable risk that an increase in the amount of nuisance and vandalism would occur if another licensed premise was introduced in the area". He also submitted that "there is no reasonable basis to suggest, given the current and projected population growth in Te Kauwhata, that the proliferation of off-licences is an issue. In *Townill* a similar suggestion was made, and rejected on appeal by the Licensing Authority".²

[16] On the Object of the Act, Mr Laing submitted that the applicant was "open to considering a number of discretionary conditions to help ensure the object of the Act is met:

56.1 No single sales of RTDs / broken down four or six packs.

56.2 No vape products at the store.

56.3 No sales of single beers 499ml and less in size.

56.4 Limited external advertising on the front of the store.

56.5 No large pallets of alcohol displayed for sale on the shop floor."

[17] In relation to the Local Alcohol Policy, Mr Laing submitted that "under the current LAP, the location of the proposed premises is appropriate" and that "the Committee can allow the proposed premises to obtain an off-licence being that it is located within the business zone in the urban area of Te Kauwhata, and the Applicant is able to demonstrate that granting its licence would not result in significant adverse effects". He also submitted that "Counsel for Ms Patterson submits that the site frontage "at the rear of the premises" borders the Te Kauwhata Primary School. That is fallacious. It is submitted that frontage means a store front, which faces a public place, such as a public road. This would not include the back of the store." He finally submitted that "the Committee only needs to have regard to the LAP, it need not to follow it" and that "a District Licensing Committee would fall into error if it chose to disregard the currently in force LAP in favour of a draft LAP... It is submitted this Committee cannot apply any proposed LAP that has not come into force".

¹ *Port Nelson Ltd v Commerce Commission* [1996] 3 NZLR 554 (CA) at [562–563].

² *Re Townill Limited* [2021] NZARLA 50, at [161].

[18] Mr Laing's submissions also opposed the introduction of evidence from Mr Buckley, witness for the objector Ms Patterson, submitting that this was "plainly opinion evidence, not one of an expert, and should therefore not be admitted into evidence". Mr Laing also submitted that "The same could also be said for Ms Fowler" (witness for the objector, Ms Patterson). The Committee considered these submissions, but determined that we would hear the evidence of Mr Buckley and Ms Fowler, and later determine how much weight would be attached to their evidence.

Witness for the applicant – Mr M Thakkar:

[19] Mr Manish Thakkar, Director of the applicant company, read his brief of evidence. He spoke of his background and experience in the retail industry, including licensed retail operations at Parkwood Supervalu (Hamilton) from 2016 to date, Borman Road Supervalu (Hamilton) from 2017 to 2018, and Cambridge Supervalu from 2019 to date, and a future supermarket (FIFO Supermarket) in Nawton, Hamilton. He noted that he had "not had any licensing issues with the stores I have owned and operated, nor with my managers certificate".

[20] Mr Thakkar outlined how the opportunity to open Bottle-O Te Kauwhata came about, and his and Mr Patel's roles within the company, as well as Mr Patel's previous retail experience. He noted that the former directors of the company, who made the original licence application, "chose to move away into their other businesses and we purchased the company from them".

[21] Mr Thakkar described the proposed operations at the premises, including systems, staff, and training. He noted that they would have two duty managers to cover all shifts, along with himself. Mr Thakkar pointed the Committee to the training resources provided by Allied Retail Group Training Academy, which they would use. All staff would also be required to complete Servewise courses. The store will have CCTV, which can be monitored remotely by Mr Thakkar, and a local security company will assist in monitoring the store.

[22] Mr Thakkar outlined the sales and pricing at the store, noting that their pricing would be set by the franchisor. He also noted that one of the directors (himself or Mr Patel) will always be available at the store.

[23] Mr Thakkar then addressed the directors' knowledge of the area. He noted that it was "a great opportunity" and that "Te Kauwhata is a growing community with recent developments so the demand would increase". He stated that "[w]e had a conversation with the local people and heard that they needed a liquor store in town". Mr Thakkar said that "We spent quite a long-time visiting Te Kauwhata frequently. Once we realised that it could be a right place for the store, we had a positive response from the community and decided to go ahead".

[24] Mr Thakkar then returned to discussion how the store will be operated, including exterior signage and advertising, and deliveries. Mr Thakkar also stated that "we definitely will keep it nice and tidy all the time and arrange for tidying up if there is rubbish or litter outside the store".

[25] Turning to days and hours, Mr Thakkar stated that "We chose the opening time of 10 am because we didn't think liquor should be sold any earlier", and that the primary school was a consideration in this decision. He also stated that "We also chose 10pm closing because most

Bottle O closes at that time. We thought that once we have an idea of how our customers shop and what time they come in we would consider changing the hours”.

[26] Mr Thakkar then spoke of the objections to the licence application. He noted that he understood the concerns and that “We are focussed on addressing these issues”. He offered a further list of things that they would do:

- “52.1 Our deliveries of product will be as discreet as possible out the back of the store. They only take about 5 or 10 minutes to deliver so this should not disrupt people reading or studying in the library for example.
- 52.2 Our store opens after children have gone to school to minimise any foot traffic of children by the store when it is open.
- 52.3 No single sales of RTDs / broken down four or six packs.
- 52.4 No vape products at the store.
- 52.5 No sales of single beers 499ml and less in size.
- 52.6 Limited external advertising on the front of the store.
- 52.7 No large pallets of alcohol displayed for sale on the shop floor.
- 52.8 Rakesh and I have a lot of experience running businesses. We are committed to the rules and obligations around selling alcohol.
- 52.9 Rakesh or I will always be available to address any other concerns the community might wish to raise with us.”

[27] Mr Thakkar also drew attention to the ‘set-back’ of the storefront from the road and the footpath, noting that “you can’t actually see much of the front of the building unless you are standing right in front of it’. In his view, “[t]his will help with those concerns that children or other members of the public will see the products and advertising from the park or library”.

[28] In response to questions from his Counsel, Mr Thakkar noted that his existing businesses are mature (more than six years old), and have trained staff, so his responsibility will be to nurture this new business. He did not accept that he would be stretched very thin.

[29] Counsel asked Mr Thakkar for further clarification about the setup of the business. Mr Thakkar responded that he had been in negotiation to open a SuperValue supermarket at the Lakeside development in Te Kauwhata, but the site was too small to meet the franchisor’s requirement of 400 square metres. At this time, he talked to local people about the growing community.

[30] In relation to deliveries, Mr Thakkar clarified that deliveries would be received at the back of the store, and that the delivery truck would drive inside the roller door into the building, where it would not be seen from outside.

[31] Mr Thakkar noted that the Bottle-O policies were “stricter than Council regulations”, for example checking ID for anyone who looks under 30 years old. He also confirmed that he would not sell alcohol to students in school uniform.

[32] Mr Laing took Mr Thakkar to a map of the location. Mr Thakkar identified a service lane at the rear of the premises, and noted that it was owned by the Waikato District Council. He was unable, however, to identify that the building next to the proposed premises was the library. He also had difficulty recognising businesses in a photo taken from across the rail crossing.

[33] In response to questions from the Committee, Mr Thakkar noted that staff training would cover health and safety, host responsibility, and age restrictions. Training would be conducted by the owner or the store manager. The training plan was to provide new staff with two days training, for staff to complete Servewise training every six months, and be trained every three months otherwise.

[34] When questioned about whether two duty managers were enough to cover twelve hours per day for seven days (84 hours per week in total), Mr Thakkar responded that the two duty managers did not include the store manager, who would also have a Manager's Certificate.

[35] Mr Thakkar said he anticipated being at the store five days per week, 30 to 40 hours per week. His duties would include managing the store properly, stock management, staff rosters, and accounting. The rosters would be decided by the owners and would be managed by Krystal Payroll software.

[36] When asked about pricing policy, Mr Thakkar responded that Bottle-0 sets the pricing and that they would strictly follow the Bottle-0 pricing policy.

[37] In relation to consultation with the community, Mr Thakkar confirmed initially, these conversations occurred at the local supermarket. Someone told him that there was no liquor store in Te Kauwhata. Then, he started talking to people about having a liquor store in the community. He initiated conversations with 35-40 people, having a coffee with them.

[38] When asked about specific groups in the community, Mr Thakkar confirmed that he had not consulted with the Te Kauwhata Business Association, the Te Kauwhata Community Board, the local board, other business owners, the school, or the community house. He noted that he had had a bad experience with business organisations when consulting with them about a business opportunity in Otorohanga in 2005.

[39] Mr Thakkar accepted that other Bottle-0 stores in the region may closer earlier than 10pm, but he wanted licensed hours to 10pm for flexibility to stay open later, particularly around Christmas.

[40] Mr Thakkar confirmed that he was open to licence conditions to formalise the list of things that he would do, noted at paragraphs 52.3 to 52.7 of his brief of evidence (and noted in paragraph [26] of this decision).

[41] In response to a question from the Inspector, Mr Thakkar said that they would hire one uncertificated staff member to handle stock management, in addition to the store manager and two duty managers.

[42] Responding to questions from the Police and the Committee, Mr Thakkar confirmed the retail premises that he was associated with that held alcohol licences, and that other premises were unlicensed. He noted that the FIFO Supermarket in Hamilton that he is associated with would apply for an off-licence.

[43] Mr Thakkar agreed that the premises could be seen from the skate park, war memorial, basketball courts, and public toilets, but noted that the main entrance cannot be seen.

[44] When asked what crime prevention measures would be in place, Mr Thakkar responded that CCTV and a fog cannon would be installed, and that the owners were in conversation with

a security services company. He also noted that robbery and aggravated robbery were included within the health and safety training. In relation to prevention of ram raids, he noted that they could have restricted entry to the store, if required. This would be decided by the owners.

[45] When asked about prevention of drink driving, Mr Thakkar responded that they would not serve intoxicated customers.

[46] In response to further questions from the Police, Mr Thakkar was aware of the liquor ban and noted that they would call the Police as a prevention measure in relation to the ban. On truancy, Mr Thakkar responded that they would not sell to students in school uniform, regardless of whether those students had valid ID.

[47] Responding to questions from Mr G Jackson (Objector), Mr Thakkar reiterated that the original directors were no longer involved in the company. Mr Thakkar had never been to the Te Kauwhata Tavern, nor the Rangiriri Tavern. He had only once or twice driven to Huntly from Te Kauwhata.

Objector – Mr G Jackson:

[48] As Mr Gerald Jackson was only available for part of the first day, he was called next to give evidence. According to his written objection, Mr Jackson is the people's warden at St Margaret's Anglican Church and has been a member of the community for over 70 years. He had "grave concerns for the harm that could result from this extra outlet. Not only does it make liquor more readily available but could potentially bring more criminal activity into our community".

[49] Mr Jackson spoke of a survey that he and his wife conducted six years prior, where they visited every house in Te Kauwhata. At the time, the Four Square supermarket was applying for an off-licence. In the survey, over 80 percent of respondents were opposed to the licence, and only two were in favour. The survey was given to the local councillor. The licence application was ultimately withdrawn.

[50] Mr Jackson noted that the applicant could have approached other groups but did not do so.

[51] In response to questions from the Committee, Mr Jackson confirmed that the councillor who was provided with his survey was Jan Sedgwick. He suggested that other groups the applicant could have approached included the local Lions Club, the rugby club, and the committee of the Community House.

[52] Mr Jackson noted that the current off-licences are working. On community patrol, he had not seen any issues with those off-licences.

[53] Responding to questions from the Medical Officer of Health, Mr Jackson noted that there were already enough off-licences to accommodate the population of the town. However, he would accept that the dynamics of the community would change.

Witness for the applicant – Mr M Thakkar (recalled):

[54] Mr Thakkar was recalled to answer further questions. Responding to the Medical Officer of Health, Mr Thakkar noted that the staff will live in Te Kauwhata, but currently live in Auckland. In relation to community links, Mr Thakkar explained that he volunteers and spends time and gives gifts at a retirement village in Borman Road, Hamilton (near Borman Road Supervalu), and with mentally disabled children near Parkwood Supervalu, Hamilton.

[55] Mr Thakkar explained that this was a promising location, meaning that it is the only main street for Te Kauwhata, with lots of traffic passing through. He meant that it was promising from a business point of view.

[56] In response to the Medical Officer of Health, he noted that Bottle-O signage was required, but that the colour of the building is not compulsory. He agreed that he would consider a licence condition related to the colour of the building. Mr Thakkar also noted that there would be no sandwich boards or bollard advertising.

[57] When questioned about what he meant by a “great opportunity” in his brief of evidence, Mr Thakkar responded that this was because Te Kauwhata is growing. People are investing and spending money, and there is no other liquor store there.

[58] The Medical Officer of Health asked Mr Thakkar how convenience (from his brief of evidence) was in keeping with the Object of the Act. He responded that like any other store, this involved following the rules and regulations. He noted that he was not doing anything wrong.

[59] Following further questions from the Medical Officer of Health, Mr Thakkar responded that they were not thinking about deliveries at this stage, and they would not be doing online sales. In relation to Kingfisher beer, he responded that “because I’m legally allowed to sell it, I’m selling it”. He accepted that it is more enabling for someone who buys a single can to open it in the liquor ban area.

[60] Mr Thakkar next responded to questions from Dr L Gordon, Counsel for Ms N Patterson (Objector). He noted that there had been Controlled Purchase Operations at his premises, and that none had ever been failed. When at Parkwood Supervalu, he spent 50 percent of his time serving customers. He had worked there this week, more than five hours per day.

[61] Mr Thakkar confirmed that the lease on the premises is not dependent on the off-licence being granted, and that he had not leased the small shop next door to the premises. He had not talked to the library during his consultations and had not considered holding a public meeting. He just spoke to random people.

[62] Mr Thakkar then confirmed the operating hours at Parkwood Supervalu were 7am-10pm, and the proposed hours at FIFO Supermarket would also be 7am-10pm. When asked why he was proposing opening only at 10am for this store, he replied this was because at grocery stores it is usual to open from 7am. In relation to closing times, he replied that if town is quiet after 8pm they would close then. However, they want to be able to stay open until 10pm for special days.

[63] Mr Thakkar confirmed that he is looking to put bollards out the front of the store. He will check with the Council as to where bollards are allowed to be.

[64] Responding to a question from Ms J Kelly (Objector), Mr Thakkar noted that training would include first aid, and that the store manager would have a first aid certificate.

[65] In response to questions from Mr G Tupuhi (Objector), Mr Thakkar was unaware that the Ministry of Education had given no indication of releasing the school land. He was not aware of the Maaori population of the school, and not aware of the number of children coming to Te Kauwhata from Huntly each day for school.

[66] Responding to questions from Ms L Plant (Objector), Mr Thakkar accepted that alcohol is not necessary for life. He said that he was intending to keep the store for more than three years, and that he needed to keep it for 15 years to recoup his investment. He did not have much knowledge about the educational activities in Te Kauwhata other than the school.

[67] In response to further questions from the Committee, Mr Thakkar said that he visited Te Kauwhata seven to eight times while considering investments there. He had visited more than ten times since taking over TK Spirits Ltd. He had only been to Te Kauwhata once at night, between 5pm and 7pm, and never late at night. He had seen people in the park, playing with children, and with their family. He had seen people in the skate park, hanging around and talking. He had never seen people drinking in either of those areas.

[68] When asked what he, or a staff member, would do if a customer left their store and immediately started drinking, Mr Thakkar replied that they would go and tell the customer that they are not allowed, and then call the police.

[69] Under redirection from counsel, Mr Thakkar confirmed that Allied Retail Group would provide the training for the store. He also noted that the franchise agreement with Bottle-O was committed to but had not been signed. They were verbally committed, however, and would go ahead with it.

Objector – Ms G Iwihora:

[70] As Ms Girlie Iwihora was only available for the first day of the hearing, she gave evidence next. Ms Iwihora is a resident of Te Kauwhata and a trustee of Maurea Marae. She spoke to her written brief of evidence, which noted that “Māori are more likely to experience alcohol related harmful effects on areas such as family unit: employment, financial position, work, exposure to school children’s, health issues, reduced economic living standards and legal problems because of the consumption of alcohol compared to any other cultures”. She noted that “increased availability of alcohol and longer opening hours plays a key role in Māori suffering more alcohol related harm”. She also listed a range of facilities that were in close proximity to the premises.

[71] When asked by the Committee for specific examples of cultural harm, Ms Iwihora responded that families and men have become addicted, and that youth are facing a cycle of alcohol.

[72] Responding to questions from the Police, Ms Iwihora noted that the marae offers services to the community, but not drug or alcohol counselling. For that, the marae must refer people to Hamilton.

[73] When asked by L Plant (Objector) about how she sees alcohol affecting people, the work of the college and education, Ms Iwihora responded that it impacts the wellbeing of young people.

HEARING, DAY TWO (9 February 2024):

Witness – Ms M Brown:

[74] The Committee called Ms Michelle Brown, Strategic Property Manager for Waikato District Council, to give evidence in relation to the service lane at the rear of the property. Ms Brown confirmed that the service lane was owned by Waikato District Council and pointed the Committee to the Local Government Act 1975 definition of a service lane (in s 315 of that Act).

[75] Responding to questions from counsel for the applicant, Ms Brown noted that the owner of 3 Main Road had no obligations in relation to the service lane. She also accepted that Te Kauwhata is experiencing growth.

Witness – Mr R Patel:

[74] The Committee called Mr Rakeshbhai Patel, director of the applicant company, to answer questions about his experience and the operation of the premises. Mr Patel responded that he has owned a supermarket in Omahau since 2017, and it holds an off-licence. That store had never failed a Controlled Purchase Operation. He expected to spend 20 to 40 hours per week at these premises, looking after the staff side of the business, including payroll, as well as stock management and invoicing. The store manager would report to Mr Thakkar. Mr Patel noted that he intends to complete a Licence Controller Qualification and apply for his own Manager's Certificate.

[75] In response to a question from counsel for Ms Patterson (Objector), Mr Patel confirmed that he had not taken the lease on the store next door to the premises, and that Mr Thakkar is also listed as a Duty Manager on the FIFO Supermarket licence application.

Licensing Inspector – Ms C Sturzaker:

[76] Ms Sturzaker's report was taken as read. In response to questions from the Committee, Ms Sturzaker confirmed that the designation of the premises should be supervised. She also confirmed that the liquor ban in Te Kauwhata is 24 hours every day for most of the village, but only applies to the Village Green from 9pm to 9am.

[77] Mr Sturzaker confirmed that she had observed the public notice about the application on the building, and in her view, it was readable to the public.

[78] When presented with other examples of Bottle-O stores operating in Waikato District, Ms Sturzaker confirmed that they were all licensed to 10pm, but that in all cases, they do not always open to 10pm. She also noted that the Huntly store had 'controlled entry' to the premises. She confirmed that the licensed hours for New World Te Kauwhata were 7am to 8:30pm, and that the Te Kauwhata Tavern off-licence allowed them to open until 10pm.

[79] When asked about the definition of 'frontage', Ms Sturzaker responded that it was from the front of the building. She agreed that frontage was not defined in the Waikato District LAP, and was unsure of whether it was defined in the Waikato District Plan. She would not accept the Wikipedia definition of frontage, being "the boundary between a plot of land or a building and the road onto which the plot or building fronts".

[80] The Committee asked Ms Sturzaker about her conclusions in relation to the LAP provisions and how they applied to the application. Ms Sturzaker responded that she would need to re-familiarise herself with the application. The Committee requested that she do so, and that she would be recalled on the next hearing day. Finally, Ms Sturzaker said that she had not heard anything so far that would change her position on the application.

[81] Responding to questions from counsel for the applicant, Ms Sturzaker agreed that issues related to suitability fell away with the appointment of the new directors. She also agreed that the principal entrance cannot be seen from the Village Green because of the recessing, and that this does limit exposure to advertising. She also agreed that the roller door at the rear of the building cannot be seen from the school, as it is on the side of the building, not the rear. Also, as delivery pallets would be shrink-wrapped, and trucks can drive into the roller door, Ms Sturzaker noted that this would limit exposure to alcohol.

[82] Ms Sturzaker said that a licensed closing time of 10pm would be consistent with other Bottle-O stores in the district, and that 10am opening is later than other stores. She agreed that the 'ID30' approach is appropriate, and that it is used by Countdown and Woolworths supermarkets, and others. She had no concerns with the density of standalone bottle stores in Te Kauwhata.

[83] In response to a question from the Medical Officer of Health, Ms Sturzaker noted that there was no indication of whether the applicants would do deliveries.

[84] Responding to a question from counsel for Ms N Patterson (Objector), Ms Sturzaker said that she had assessed CPTED (Crime Prevention Through Environmental Design) standards based on what had been provided by the applicant. Responding to Mr G Tupuhi (Objector), Ms Sturzaker confirmed that she had carried out her assessment of the application based on the criteria in s 105 of the Act.

[85] In response to a question from Ms L Plant (Objector), Ms Sturzaker said that she had not consulted the school or the Community House about the application. Responding to Ms J Sedgwick (Objector), Ms Sturzaker noted that if rubbish involves alcohol, she might be notified by the Council, but not always. She confirmed that there is an alcohol ban on the urban area of Te Kauwhata.

Objector – Ms M Hohepa:

[86] As Ms Michelle Hohepa was only available for the second day of the hearing, she was called to give evidence next. Ms Hohepa is the area coordinator for Neighbourhood Support and a patroller for the Community Patrol in Te Kauwhata. Ms Hohepa read her written brief of evidence. She noted that during community patrols, the town is "pretty much dead by around 8pm and the supermarket closes at 8.30pm. After that it's pretty much a ghost town and having a full service alcohol store until 10pm will have negative effects on the community".

[87] Ms Hohepa noted that there are “always alcohol bottles smashed or littered in the playground and skate park”. She supported this evidence with photos of alcohol litter in these areas, which were taken on Saturday 20 January at 5:30pm. She mentioned that on patrols, she had seen youths hanging around at the skate park.

[88] Ms Hohepa noted that “You will get more traffic to the store with the potential driving under the influence to get more alcohol later at night which can lead to more motor vehicle crashes”, and “[t]here might be more anti social behaviour at the playground and residents have already contacted me about the anti social behaviour at the playground after dark”. Ms Hohepa also stated that “[f]amily harm makes up around 60% of police calls out and having an alcohol store open so late will increase calls out and put a burden on police, fire, ambulance etc.” Ms Hohepa mentioned that police units have to come from Huntly.

[89] In response to questions from the Committee, Ms Hohepa noted that on one occasion she had observed youths hanging around at the playground at 1am and damaging the playground. She was unsure if alcohol was involved.

[90] Ms Hohepa explained that she went on community patrols about twice per month, and that these covered Te Kauwhata, Ragiriri, and Meremere. When there was a problem, police would generally attend. When asked about the types of problems, she responded that there were a lot of car thefts, and that she would see something suspicious on every shift. However, she had not seen people drinking in the Village Green of the skate park.

[91] In response to questions from counsel for the applicant, Ms Hohepa further elaborated on the antisocial behaviour she had witnessed at the skate park. She noted that there was no alcohol, and the youths were about twelve years old. She also clarified that the statistic in her evidence of 60% of police callouts relating to family harm was for New Zealand nationwide.

[92] Responding to questions from Mr G Tupuhi (Objector), Ms Hohepa confirmed that they had callouts to an abandoned railway shed at the Village Green. Those callouts involved property damage and youths congregating.

[93] When asked by counsel for Ms N Patterson (Objector) about how many times she needed go to the park to take the photos of alcohol litter, Ms Hohepa responded that she had not been out doing much looking, and that there is often rubbish in the park. When asked whether town would be less safe because of the licence, Ms Hohepa responded “100%. I have no doubt”. She also confirmed that people sometimes congregate on the platform outside the New World supermarket.

Medical Officer of Health - in opposition:

[94] Ms Dawn Meertens read her pre-circulated brief of evidence, which combined evidence and submissions. She first noted that the application was opposed under:

- Section 105(1)(a) Object of the Act
- Section 105(1)(b) Suitability of the applicant
- Section 105(1)(c) Local Alcohol Policy
- Section 105(1)(d) Hours applicant proposes to sell alcohol
- Section 105(1)(h) Amenity and good order
- Section 105(1)(j) Appropriate systems, staff and training to comply with the law

[95] Ms Meertens then discussed the locality. She started by listing the other licensed premises in the vicinity of the proposed premises, noting that “[t]his will be the fourth off licence in this locality and 5th should the Super Liquor Te Kauwhata be successful in their application for an off licence. An alcogenic environment”. She noted that “[w]hilst this applicant might not seek to enter into price wars, the existence of a new bottle store (potentially two) into the area might drive the other established store to drop their prices. The proximity of the proposed premises to existing off-licensed premises increases availability and probable competitive pricing”.

[96] Ms Meertens gave evidence that the premises would be “located in an area of high deprivation” and listed a number of sensitive sites within the locality, including Te Kauwhata Primary School, St Andrew’s Presbyterian Church, Te Kauwhata Playcentre, Te Kauwhata Community Garden, Te Kauwhata Village Green Garden, Te Kauwhata College, public toilets, and Te Kauwhata library and Council office. Ms Meertens noted that “adding another off licence will increase accessibility to alcohol in this area, potentially also to minors, thereby increasing unfriendly and risky behaviours in these sites”.

[97] Ms Meertens described a site visit undertaken on 2 February 2023 by regulatory officers Ayobami Adesanya and Nicole Zeier, where “there was evidence of litter, including alcohol bottle caps” in the areas around the public toilets and near the playground. This was supported by photos of the litter.

[98] Ms Meertens noted that the Medical Officer of Health was opposed to “the 10pm licence sought because of the proximity of the premise to the skate park and playground and the alcohol ban hours however to confirm the Medical Officer of Health opposes the application for a new licence regardless of the hours”.

[99] In relation to the public notice, Ms Meertens noted that “the public notice was located behind temporary fencing making reading the notice difficult for the public”.

[100] Ms Meertens submitted that “[e]ven though still provisional, the Medical Officer of Health is of the mind that the following LAP provisions apply to this application, the intent is to minimise alcohol related harm in my view”, then listed several clauses from the Waikato District Provisional Local Alcohol Policy (PLAP). She submitted that “[a]lthough the LAP was appealed, the intent of the LAP in our view is clear, the community outside of Te Kauwhata, Pokeno, and Tuakau, did not want huge numbers of bottle stores clustered next to other off licences or in close proximity to sensitive sites without mitigation in place to ensure they do not impact the sites”. She added that the Committee should consider that the community has been consulted on, and their views have been heard, in relation to the 2023 PLAP.

[101] Ms Meertens then submitted that “[t]he applicant has not and does not live in Te Kauwhata, he neither is a part of the community nor demonstrates any knowledge of the community, its people, locality, or alcohol related harm within a local context. Based on this, the applicant has a lack of experience in operating an off-license liquor store in the area”. Ms Meertens raised concerns about the applicant’s “ability to have appropriate systems, staff and training for this specific premises and the higher risk associated with decile 8 communities”, who will conduct the training and what it will cover, and the experience of the applicants operating a liquor store in a high decile area. She also drew attention to the applicant’s proposal to only have “two managers to run the store while operating 7 days a week 10AM-10PM”.

[102] Ms Meertens concluded that “[g]iven the matters we have raised above, increasing access to alcohol in this location used by the public, and in this instance, minors, the deprivation of the locality, the provisional local alcohol policy and suitability of the applicant, the object of the Act cannot be met by the grant of this licence”.

[103] Responding to questions from the Committee, Ms Meertens defined an ‘alcogenic environment’ as “an environment that has a lot of licensed premises, on/off, for a small community”. She noted that, even without Super Liquor, there would still be a lot more access to and more availability of alcohol.

[104] When asked about defining an area of high deprivation, Ms Meertens responded that this included deciles 7 to 10. She accepted that would mean that 40 percent of the country is in areas that meet the definition of high deprivation. Ms Meertens note that areas with higher deprivation have more problems, and that high Maaori and Pacific populations are in these areas.

[105] The Committee asked if Ms Meertens had changed her views in relation to any of the s 105 criteria, given that she had had an opportunity to hear from the applicant. She responded that suitability had been answered, but was not completely clear on systems, staff and training.

[106] In response to questions from counsel for the applicant, Ms Meertens accepted that “to an extent”, the applicant is taking steps to minimise exposure to alcohol and advertising. When asked about the locality, she replied that “community within that locality is what we look at”.

[107] Responding to questions from counsel for N Patterson (Objector), Ms Meertens noted that her concerns around schools and parks related to exposure to alcohol.

Witness for the Medical Officer of Health – Mr M Keenan:

[108] Mr Michael Keehan spoke to his pre-circulated brief of evidence. He is a Senior Public Health Data Analyst at Te Whatu Ora, with a Masters degree in operations research and a Postgraduate Diploma in Science, both from Massey University.

[109] Mr Keehan presented a ‘rate ratio analysis’ that compared alcohol harm events within a two kilometre radius of the premises with those across the whole Waikato region. He noted that “[t]he area suffered Alcoholic Health harm at a rate less than the Waikato average for the years from 2020 to 2023”.

[110] Mr Keehan then presented monthly time series analysis of alcohol harm events within two kilometres of the premises, showing that “[d]uring the time period 2020 to 2023, an estimated 19 years of life were lost from patients, residing in the 2 km radius, who were admitted to a Waikato hospital for a fully attributable ICD10 alcoholic harm condition and were recorded as dying within 30 days of discharge”.

[111] Mr Keehan then gave evidence that the area within two kilometres of the premises has “a mean NZDep2018 rating of 6.9 and a standard deviation of 1.2”, and pointed to research that shows “harm from alcohol increases as density of off-licenses increases”.

[112] Mr Keehan concluded that “given that the area is currently suffering alcoholic harm at a rate less than the Waikato average I ask you to not to increase the density of alcohol outlets in the Te Kauwhata community”.

[113] Responding to questions from the committee, Mr Keehan noted that the data included public inpatient, outpatient, and emergency department admissions, but not private health care. He accepted that the Costpro BI data codes addresses of health events to the home address, and not to the address of an acute health event and could not answer a question of what impact that might have on the analysis.

[114] Mr Keehan further explained the rate ratio analysis, which shows that there was 26 percent less risk of alcohol harm in Te Kauwhata than in the Waikato region generally. He also clarified that there were eleven alcohol-related events in Te Kauwhata per year between 2020 and 2023. When asked about the deprivation data being from the 2018 Census, Mr Keehan could not explain how stable the socioeconomic deprivation data would be for a growing community.

[115] Responding to questions from counsel for the applicant, Mr Keehan noted that he had no experience as a witness before the courts. He accepted that the risk ratio would be lower if the population was higher.

[116] In response to a question from Mr J Cunningham (Objector), Mr Keehan, notes that areas with high risk ratios included Bader in Hamilton, and towns in South Waikato. Thames-Coromandel towns have low ratios, as well as Temple View in Hamilton.

[117] In response to questions from the Committee, Mr Keehan noted that Te Kauwhata is a model for low risk. He would not, however, accept that if the risk ratio was high rather than low, it would be all right to add more bottle stores to a locality.

Objector – Ms J Sedgwick:

[118] Ms Jan Sedgwick spoke to her pre-circulated brief of evidence. She lives in the community and was a Waikato District Councillor from 2010 until 2022 for the Whagamarino Ward, which includes Te Kauwhata. She chaired the Policy and Regulatory Committee, which had responsibility for development and consultation on policies, including the LAPs in 2016 and 2022. She was heavily involved in overseeing the development of both LAP policies’ development and chaired both hearings. She served on the local Community Committee from 2010 to 2022 and is extensively involved with a number of community groups, police and service organisations, as well as businesses, in the village.

[119] Ms Sedgwick spoke of “many conversations and approaches from the community, concerned at the impact alcohol was having on the village and wanting to contain the alcohol supply to a manageable level suitable to the ethnicity and deprivation index of the village”. She pointed to significant opposition to an earlier application for an off-licence for Four Square Te Kauwhata in 2008.

[120] Ms Sedgwick referred to speaking to community members and said that “I am under no illusion about the opinions of this community: a handful for, but by far outweighed by the majority against the proposal”. She presented hearsay comments from community members in support of this statement, including from the NZ Police Area Commander-West.

[121] Ms Sedgwick then summarised her original objection, which pointed to the PLAP adopted in 2022 and the consultations around the development of the PLAP. She noted that in 2022, 42 percent of the community believed “that the current number at time of consultation was too many, or far too many” and that 46 percent believed “that the existing number was about right”. She also summarised views of members of the Te Kauwhata community who submitted on the LAP:

- a. There are more than enough bottle off-licences in the town.
- b. It’s socially responsible to impose more restrictions.
- c. The Te Kauwhata Trust sells alcohol and gives back to the community by way of grants.
- d. The town’s population is too small to support more bottle stores.
- e. Not family friendly to allow more bottle stores.
- f. Bottle stores fuel crime such as family violence and unruly behaviour.
- g. Exacerbates the lives of people who live in poverty leading to poor outcomes in life.
- h. Te Kauwhata will lose its natural beauty with more bottle stores; and
- i. Health implications of making alcohol more available in the community.”

[122] Ms Sedgwick then gave evidence that she had “personally observed alcohol bottles and cans left lying around the skate park”. She also spoke of an incident the prior Sunday at 1:30pm, when she was shopping at the New World supermarket. There was an altercation in front of her, where a young Maaori woman tried to abscond with a trolley full of groceries, half of which was alcohol. It took four people to restrain the woman. A staff member told Ms Sedgwick that this happens every week. Ms Sedgwick also noted that on another occasion, a fight had erupted outside the tavern, and proceeded down the street.

[123] Ms Sedgwick also stated that she found it odd that the applicants did not consult with her, her successor as councillor, or others in the community.

[124] In response to questions from the Committee, Ms Sedgwick confirmed that she had received a petition from Gerald Jackson five to six years prior. She accepted that, despite any comments made to her, Police had not reported on this application.

[125] Ms Sedgwick confirmed that the figures in her evidence about the LAP consultations related to Te Kauwhata only, and she noted that her feeling is that those numbers were higher for Te Kauwhata than for the rest of the district.

[126] Responding to questions from the Committee, Ms Sedgwick said that she had observed people drinking in the skate park at about 5pm. She noted that the basketball court attracts an older group, but she had not observed drinking there. However, she had noted antisocial behaviour in the area, including older children (15-16 years old) bullying younger children off the playground equipment, pushing and shoving, and playing aggressively.

[127] Ms Sedgwick could not recall why the liquor ban had been introduced, but noted that when it was widened in 2020, that was because the urban area had increased in size.

[128] Responding to questions from counsel for the applicant, Ms Sedgwick accepted that the people whose comments she referred to in her brief of evidence had not objected to the licence. She accepted that population projections had informed the LAP decisions, and

accepted that if there was one bottle store in Te Kauwhata, the density would be one per 3145 people (referring to a table in the LAP Review Research Report 2022).

Objector – Mr J Cunningham:

[129] Mr John Cunningham spoke to his pre-circulated brief of evidence. He lives in the community, and is, among other positions, Chairman of the Te Kauwhata Community Committee. Mr Cunningham spoke of the sensitive sites in the area, and vulnerable people including children and retired people using the area around the premises. Mr Cunningham then discussed a security camera that the Community Committee paid for. He also noted that Tim Hinton maintains the park and skate park, and “regularly removes beer bottles, drink cans and other rubbish from the area”.

[130] In response to questions from the Committee about ‘activities after dark’ mentioned in his brief of evidence, Mr Cunningham explained that people from outside of town would ‘be delinquent’ around the Village Green, stealing cars. He mentioned that three had been taken recently. He had not observed these people personally, but these events had been reported to him the day afterwards. Mr Cunningham clarified that litter included McDonalds, beer bottles, and cans. This tended to happen in the evening and gets picked up twice per week.

[131] Responding to questions from counsel for the applicant, Mr Cunningham proposed conditions on the licence of licensed hours 10am to 8pm, no single serves, no vapes, and that only the name of the store appear on the outside of the store. Clarifying this to the Committee, Mr Cunningham stated that these conditions would be acceptable if the licence were granted, and not that if those conditions were in place, his objection would be withdrawn.

Objector – Ms J White:

[132] Ms Janis White read her brief of evidence. She is a resident of Te Kauwhata, and previously served on the Community Patrol from 2019 to 2023. She now acts as a volunteer driver for the Community House, taking residents to hospital and medical appointments. Ms White spoke of vulnerable groups in the community and noted that “[i]ncreased traffic generated by the proposed liquor store will pose additional hazards and potential harm to these people”. She spoke of school children and how “[e]ven if they are not intending to purchase, the advertising and branding will be an influence on these young people at an impressionable age”. She spoke of her concern about “drinking in the village playground and/or increased crime in the district”.

[133] Responding to questions from the Committee, Ms White elaborated on her experience on the Community Patrol. She patrolled at least once every two weeks, initially 9pm to Midnight but that was later extended. Sometimes on patrols there was nothing happening. Sometimes there would be people wandering around, or youths in the park. Most of the suspicious activity was drug dealing. She had not observed people drinking in the liquor ban area during her patrols.

[134] Responding to a question from counsel for N Patterson (Objector), Ms White said that she had not usually seen alcohol rubbish around. She noted that the community patrol members are not supposed to get out of the car when on patrol.

HEARING, DAYTHREE (29 February 2024, by audio-visual link):

Licensing Inspector – Ms C Sturzaker (recalled):

[135] Ms Sturzaker read a written brief of evidence provided prior to the re-convened hearing. She outlined her reasoning behind her conclusions in relation to the LAP provisions and how they applied to the application.

[136] On amenity and good order, Ms Sturzaker noted that she was “satisfied based on my own gathered evidence that it would not be reduced to more than a minor extent”.

[137] On systems of control at the premises, Ms Sturzaker noted that “the applicant has shown in their application and from a further email received on the 16 October 2023, through their consultant, that they have identified systems of control that they will be initiating and conducting at the premises should a licence be granted by the DLC”. She elaborated that this included staff training, a Host and Social Responsibility Policy produced by Liquorland, and the commitments within that policy. She noted that “having the systems highlighted within the applicant’s application with the evidence of training modules included in the email of 16 October 2023 and the evidence that the applicant has given throughout the hearing I believe that they are doing everything that is practicably reasonable”.

[138] Ms Sturzaker concluded her evidence by noting that every new alcohol licence (except for a special licence) is issued for a probationary period of one year.

[139] In response to questions from the Committee, Ms Sturzaker noted that she had not seen the Bottle-O Host Responsibility Policy.

[140] In response to a question from Ms J Sedgwick (Objector), Ms Sturzaker reiterated that there is alcohol related litter already in the area. She did not know if one more bottle store would increase this by more than a minor extent.

[141] Responding to counsel for N Patterson (Objector), Ms Sturzaker was not aware of the precautionary principle.

Objector – Ms N Patterson:

[142] Counsel for the objector Ms Nicola Patterson, Dr Liz Gordon, provided written opening submissions. These submissions covered the extended standard of suitability from *Shady Lady Lighting Ltd* [2018] NZARLA 198-199, suitability of the applicant, the LAP, amenity and good order, design and layout, systems, staff and training, and the object and purpose of the Act.

[143] On suitability, Dr Gordon submitted that the applicant is not suitable because it appears that the applicants “own multiple businesses and are stretched very thin” and that “[t]hey have no experience operating a bottle store”. She submitted that “[t]he application in its current form does not demonstrate either the ordinary or the extended standard of suitability required for a new liquor store at Te Kauwhata”.

[144] On the local alcohol policy, Dr Gordon submitted that clauses 5.3.2, 5.4.1, 5.7.1(g) and 5.7.1(h) are relevant to the application. In relation to clause 5.3.2, she submitted that the applicant has not demonstrated “to the DLC that the proximity of the proposed new premises to New World Te Kauwhata will not result in any significant adverse effects”. In relation to clause 5.4.1, she submitted that “[t]he applicant has not demonstrated to the DLC that the hours, signage or operation of the premises will have no significant impact on this ‘public park’”, and that “it has not been demonstrated to the DLC (by the applicant or otherwise) that the hours, signage or operation of the premises will have no significant impact on the Te Kauwhata Primary School and/or persons using the school”. Dr Gordon also submitted that this is a premises with two frontages, one at the front and one at the rear of the building.

[145] On amenity and good order, Dr Gordon submitted that “[t]he evidence before the DLC from the objectors is that there is nuisance and vandalism in the locality”, and that “the proposed bottle store is clearly incompatible with the public library/Council offices immediately adjacent (used by children and families)”. She submitted that “the amenity and good order of the locality will likely be reduced, to more than a minor extent, by the effects of the issue of the licence”.

[146] On design and layout, Dr Gordon submitted that “[s]ome elements of the design and layout may not comply with CPTED guidelines”. On systems, staff, and training, Dr Gordon submitted that “[t]here are no details about staffing levels or training procedures” in the application.

[147] Finally, Dr Gordon submitted that “[t]he owners have also made no attempt to demonstrate that the licence, if issued, will be for the ‘benefit of the community as a whole’ under s. 3, the purpose of the Act. In the Supreme Court decision in *Woolworths*, it is noted that “a precautionary approach is open and that, in any event, a restriction may be justified on the basis of there being a reasonable likelihood that it will reduce alcohol-related harm”³.

[148] Ms Nicola Patterson then read her brief of evidence. She is a resident of Te Kauwhata and is Manager of the Te Kauwhata Community House. The Community House provides a “wide range of social and community services to the people of Te Kauwhata”, including “budgeting services, legal clinics, counselling, Plunket, emergency support, a foodbank, services for the elderly and disabled”.

[149] Ms Patterson noted that “[a]s the Manager of the Te Kauwhata Community House, I am acutely aware of the impact of addiction on whaanau/families. We provide a whaanau/family food support and offer addiction counselling with the contract counsellor in our workplace”. She noted that the Community House is located around 250 metres from the proposed premises.

[150] Ms Patterson also owns the building next door, at 5 Main Road. She noted that “[a]s a building owner, I am concerned about anti social behaviour impacting my building e.g. urination, vomiting, loitering, vandalism (including tagging), and alcohol related rubbish. The tenants have expressed concerns regarding the same issues. As the applicant hopes to be open until 10pm, it is the only business to be open at that time with less public eyes on behaviour in the area”.

³ *Woolworths v Auckland Council* [2023] NZSC 45 (5/5/23) at [84].

[151] Ms Patterson also noted that “[t]here is already significant alcohol-related harm in the area, signalled by the 24/7 alcohol ban in much of the town. That ban was imposed because of high levels of alcohol-related harm, including crime and disorder, in the area”. She also noted that “[a]s well as crime, there is vandalism and rubbish associated with alcohol use in the town. I know that some other objectors are including pictures of bottles left in the park. I have seen these too”.

[152] In response to questions from the Committee, Ms Patterson explained that the Community House has a contract counsellor, who sees 3-4 clients per week. They also have three counsellors who see up to five clients per day, about half of which are related to addiction. These clients from Te Kauwhata, Meremere, Waerenga, Rangiriri, and as far away as Ohinewai.

[153] When asked whether earlier closing would go some way towards addressing her concerns as an owner of the neighbouring building, Ms Patterson responded that it would help somewhat. It would be preferable to have earlier closing if it was to go ahead.

[154] When asked about drinking in town or in the park or skate park, Ms Patterson responded that she had seen this, in the recessed area outside New World supermarket. Most recently, this was about two months ago. She also mentioned that her building had been ‘tagged’ two weeks ago. A 16-year-old youth was caught. She did not know if alcohol had been involved.

[155] In response to further questions from the Committee, Ms Patterson confirmed that she went to high school in Te Kauwhata and returned there 13 years ago. She has been manager at the Community House for 3.5 years and involved in the Community House since 2013. She confirmed that the counsellors are present Monday, Wednesday and Friday from 9am to 2:30pm, and that the contract counsellor is there on Thursdays. The contract counsellor is from Waahi Whaanui, a health service provider in Huntly. Ms Patterson had a sense that the addiction counselling has been getting busier. The Community House does not keep statistics on ethnicity, so she could not break down utilisation of the service by ethnicity. When asked about types of alcohol-related harm, she mentioned family violence and food insecurity as concerns.

[156] When asked to elaborate on drinking in town, Ms Patterson mentioned that she had observed drinking mostly around 6pm, and most normally on weekends. She had seen this twice in the skate bowl within the last six months. The drinking outside New World supermarket that she mentioned was perhaps eight months ago. She noted that New World had closed off one of the exits to the supermarket to prevent run-offs with alcohol and groceries. This change was made about two months ago.

[157] In response to questions from counsel for the applicant, Ms Patterson confirmed that she had made two objections to the licence – one in her own name, and one on behalf of Te Kauwhata Community House. She confirmed that she had not previously met her witness Mr Buckley and had met her other witness Ms Fowler only on Zoom. She noted that there is not a contract for services for Mr Buckley, and that she is not paying him. She confirmed that Ms Fowler and Dr Gordon worked on her brief of evidence.

[158] Ms Patterson confirmed that the contract counsellor is a registered counsellor, and of the other three counsellors, one is a student at Manukau Institute of Technology, and the other two are registered counsellors.

[159] In response to a question from the Inspector, Ms Patterson accepted that drinking in the Village Green is allowed up to 9pm.

Witness for Ms N Patterson (Objector) – Ms B Fowler:

[160] Ms Belinda Fowler spoke to her pre-circulated brief of evidence, and supplementary brief of evidence (both dates 26 January 2024). She works for Communities Against Alcohol Harm, and as part of her work, she assists objectors with their objections. This includes “reading the application, conducting a desktop review of the locality, and creating Jotform and Microsoft Word templates which members of the community customised to produce their own objections”.

[161] Ms Fowler presented evidence on the social deprivation of the area, based on the New Zealand Index of Deprivation 2018, noting that “[o]verall, the area has an NZDep2018 rating of decile 7... a rating of 7 indicates significant socioeconomic deprivation”.

[162] Ms Fowler also presented demographic information on Te Kauwhata (based on 2018 Census data at the SA2 level), noting that “almost a quarter (23.0%) of the residents of SA2 Te Kauwhata identified as Maaori...compared to 16.5% nationwide”.

[163] Ms Fowler then noted several changes that had been made to the application, as well as what, in her view, were missing and incomplete information in the application.

[164] In response to questions from the Committee, Ms Fowler accepted that 40 percent of all areas must have social deprivation of decile 7 or higher. She agreed that would mean that 40 percent of all areas have ‘significant socioeconomic deprivation’. When asked about some data she presented about very disaggregated data at the SA1 level in her brief of evidence, Ms Fowler did not accept that this was irrelevant because the SA1 did not include the school, the skate park, or the Village Green, or the other two off-licences in Te Kauwhata.

[165] Ms Fowler clarified that Communities Against Alcohol Harm exists to help communities with their concerns about alcohol-related harm, and to help with hearings as it is a legal process.

[166] In response to questions from counsel for the applicant, Ms Fowler confirmed that she has no qualifications in economics, population studies, or mathematics, and that she had never been to Te Kauwhata. She confirmed that she is paid by Communities Against Alcohol Harm, but not to come to hearings. When asked about whether she stood by her evidence about changes to the application, Ms Fowler responded that the directors had addressed some of the things in her evidence. She also accepted that there had been a reason provided for the change of directors.

[167] In response to a question from Mr G Tupuhi (Objector), Ms Fowler did not know how many overcrowded Maaori homes there were in Te Kauwhata, but she noted that overcrowding was one factor that feeds into the measurement of social deprivation.

Witness for Ms N Patterson (Objector) – Mr C Buckley:

[168] Mr Buckley spoke to his pre-circulated brief of evidence. However, due to time constraints, he was not available for full cross-examination. Counsel for the applicant objected to Mr Buckley's evidence being heard. The Committee resolved to hear from Mr Buckley, but consider how much weight his evidence could be accorded, given that it could not be fully examined.

[169] Mr Buckley stressed that he is not an expert, and that he is not a lawyer. His brief of evidence consisted of a close reading of the LAP provisions, and his opinion on their application to this premises. Mr Buckley's evidence also covered the Waikato District 2022 PLAP, and the deliberations on that policy.

[170] Mr Buckley's evidence noted that "the term "frontage" is not defined in the 2017 LAP. My understanding is that the term 'frontage' generally means that portion of land which secures legal access to a lot from an existing road... As set out in the application, the site adjoins two roads: Main Road and the small service road that adjoins Mahi Road" and "[i]n my view, the proposed premises also has a site frontage that borders the legal site boundary of the Te Kauwhata Primary School across the small service road that adjoins Mahi Road, which is at the rear of the premises".

[171] On the PLAP deliberations, Mr Buckley noted that he wished to "emphasise the conclusions of the Deliberations Report that the presumption against issuing new off-licences in localities where the deprivation level is 7 or higher be retained with its focus on more deprived areas in the district to help prevent further harm caused by alcohol and that "Research shows adults living in more deprived areas are more likely to live near alcohol outlets and it is evident that Māori and youth are disproportionately impacted by alcohol harm"".

[172] In response to a question from the Committee, Mr Buckley confirmed that he was not aware of the High Court Code of Conduct for expert witnesses.

Objector – Mr G Tupuhi:

[173] Mr Glen Tupuhi spoke to his pre-circulated brief of evidence, and the objection by Nga Muka Development Trust. Mr Tupuhi was chair of Nga Muka Development Trust for five years until December 2023, and remains as secretary of the trust. He also had previous roles as a probation officer, manager of a Corrections residential facility, cultural liaison to Waikato District Health Board, manager of the Hauora Waikato psychiatric assessment unit, member of the Waikato District Health Boards WDHB Iwi Māori Council for ten years, and a variety of leadership roles at iwi, hapū, whānau, and marae levels.

[174] Mr Tupuhi explained that "Nga Muka is a cluster of five marae in the Rangiriri, Te Kauwhata, Waerenga, Waiterimu area. The Nga Muka cluster operates as a mana whenua representative collective protecting and advancing the localised interests of marae, hapuu, whanau under the 68 marae that make up the Waikato Tainui tribal parliament". He noted that "Te Kauwhata is a more bi-cultural community with Maori Pakeha and recent ethnicities living together in its centre an identity that Nga Muka is attempting to preserve in light of the growth that is occurring".

[175] Mr Tupuhi noted that "[t]he stressors of the cost of living rise will have socio economic and societal impact with evidence that alcohol fuels the family/whanau harm statistics".

[176] The objection by Nga Muka Development Trust provided extensive background on alcohol and Maaori communities and noted that “[t]he proposed location is adjacent to the library, close to the school, children’s park and skate park. This is the wrong place to encourage advertising on the drinking of alcohol and sale of alcohol”, and that “[t]here is evidence of drinking in these areas, from empty bottles on the ground and drinking in these alcohol prohibited areas. This also puts pressure on our police to reduce this illegal behaviour”.

[177] In response to questions from the Committee, Mr Tupuhi noted that a lot of young Maaori are spilling out of high deprivation areas in the town. He noted that his own nieces and nephews were the young people drinking outside the New World supermarket. He lamented that “our young people are out of control now”, by which he clarified that this was due to methamphetamines, and intergenerational deprivation. Mr Tupuhi noted that the consequences of drinking included intimidation on the streets. Mr Tupuhi mentioned that he had concerns over the resources available to the Inspector to adequately monitor the premises if the licence was granted.

[178] Responding to questions from counsel for the applicant, Mr Tupuhi acknowledged that there was significant growth around Te Kauwhata. He agreed that operating a business requires assessment of risk, and that the applicants were putting in controls to reduce the risk of alcohol-related harm.

[179] Responding to a question from Mr J Cunningham (Objector), Mr Tupuhi agreed that a big Bottle-O sign would be an unfortunate outcome.

Objector – Ms L Gronback:

[180] Ms Lynne Gronback spoke to her pre-circulated brief of evidence. She lives in Hamilton, but visited her daughter, son-in-law, and granddaughter, who live in Te Kauwhata. Ms Gronback noted that her granddaughter attends Te Kauwhata Primary School. Ms Gronback was “concerned about the impact of additional availability of alcohol on my young granddaughters when accessing the primary school, library, park and local shops”. She mentioned that it was introducing additional risk and that otherwise, bollards would not be necessary.

Objector – Mr S McNAB:

[181] Mr Stuart McNab spoke to his joint objection with Ms Linda Plant. Mr McNab is session clerk at St Andrew’s Presbyterian Church in Te Kauwhata. Mr McNab pointed to a Health Promotion Agency report⁴ that stated that an average bottle store introduces 146 litres of alcohol into the community. Mr McNab also noted the problems with alcohol litter in the area.

[182] The written objection noted that “[a]lready stretched policing will be needed to deal with the extra drink issues. There will be strains on council in cleaning up and dealing with the extra trash, costs that will be borne by the ratepayers. There is also a heightened risk to the

⁴ M.E Consulting. (2018). *New Zealand alcohol supply and demand structures: Research report*. Wellington: Health Promotion Agency.

increasing crime of ram-raiding and daylight robberies that put citizens in danger. The isolation of Te Kauwhata, along with the ease of access to the main highway motorway will likely increase the incidents of drink driving, and accidents that are attended by the volunteer Fire Brigade, and St John's Ambulance". The objection also noted that "[c]urrently, some of our parishioners spend time on Sunday mornings picking up alcohol bottles and cans from outside the Tavern and along the village street to put them in the rubbish bins, often having to empty alcohol remnants out of them before doing so. We can visualise similar problems occurring with drinking in the local playground as this off-licence is in such close proximity" and "[t]he likely possibility that bottles with alcohol left in them, could be left in a child friendly area is most disturbing, as well, the potential for broken glass around play equipment is also of great concern".

[183] When asked by the Committee about whether he had participated in picking up rubbish himself, Mr McNab responded that his comments about litter were based on comments by other objectors.

Objector – Ms L PLANT:

[184] Ms Linda Plant spoke to her joint objection with Mr Stuart McNab. Ms Plant is Minister of St Andrew's Presbyterian Church in Te Kauwhata. She noted that the church is 200 metres from the premises. Ms Plant explained that the community went into shock when this application came in, as they thought that the new LAP applied and that there would be no bottle stores in their community.

[185] In response to questions from the Committee, Ms Plant noted that she had picked up broken glass at the playground several times, including at least once over the last six months. She often goes to the park with her grandchildren, during the school holidays, and that there are often beer bottles at the roundabout coming into town. She noted that often, early morning walkers are picking up rubbish, which is why more is not seen.

Other evidence:

[186] The Committee received written briefs of evidence from Ms Debbie Tonks (Objector), Ms Lauren Hughes (Objector), and Ms Jessikha Leatham-Vlasic (witness for Mr G Tupuhi). As none of these objectors or witnesses were available to the Committee, their evidence was not considered.

[187] A written brief of evidence was also received from Ms Jenny Kelly (Objector). Ms Kelly was available at the first two days of the hearing but was not able to be heard due to time constraints. Ms Kelly is a local resident of Te Kauwhata. Her brief of evidence noted that "alcohol can also be addictive and consequently produces health and, many negative, social problems" and that "[o]pening hours being from 10am until 10pm, seven days a week are unlikely be helpful for addicted individuals, or the community in general". Ms Kelly drew a distinction between the proposed premises and the Trust Tavern, which "puts money back into the community through grants".

[188] In a Direction issued on 5 March 2024, the Committee directed the Waikato District Council to provide:

1. A copy of the Waikato District Council Alcohol Control Bylaw 2020;

2. A copy of any Council minutes recording discussion of the original introduction of the Alcohol Control Bylaw ban area in Te Kauwhata; and
3. A copy of any Council minutes recording discussion of the extension of the recent extension of the Alcohol Control Bylaw ban area in Te Kauwhata (in 2020) that was mentioned at the hearing.

[189] These documents were provided to the Committee, and circulated to all parties, on 12 March 2024.

[190] The Waikato District Council Alcohol Control Bylaw 2020 confirmed that the urban area of Te Kauwhata is covered by a prohibition on “consumption of alcohol, possession of alcohol and use of a vehicle in conjunction with alcohol” at all times, except for some parts of the town including the Village Green, where the prohibition applies from 9pm to 9am.

[191] The other documents provided some clarity on the criteria that must be satisfied in order to implement a permanent liquor ban in an area.

CLOSING SUBMISSIONS:

Applicant:

[192] As requested by the Committee in Directions dated 5 March 2024 the applicant, through their counsel, provided a copy of their Host and Responsibility Policy, an exemplar staff roster, and directed the Committee to the staff training as described in their evidence. They noted that “a franchise agreement with the Bottle-O group has not yet been executed”, but that the company “had been accepted into the Bottle-O and is completing additional onboarding and checks”.

[193] The closing submissions by counsel for the applicant, Mr Laing, first summarised key parts of the evidence before the Committee. He then submitted “that the growing town of Te Kauwhata is a suitable place for a premises of this kind”. Mr Laing referenced the population projections “that Ms Sedgwick accepted she relied upon when she was Chair of the Committee dealing with the LAP review”, and that they “incontrovertibly show a town that experiencing significant growth”. He submitted that “the relative density of population to standalone bottlestore would be 1:3145” and that “[i]n the context of further population growth, that density does not pose any issues and when compared to the other towns in Waikato cited in the [Local Alcohol Policy Review] Research report, it would be number 4 out of 7”. He further submitted that “the exponential growth that Te Kauwhata is experiencing demonstrates the need for a premises of this kind in the area”.

[194] Mr Laing drew attention to Mr Tupuhi’s agreement under cross-examination that “the operation by the Applicant of its bottlestore requires the monitoring and assessment of risk and putting in place a series of controls to minimise that risk”. He submitted that “the Applicant is open to controls being put in place by way of conditions to help reduce any risk of harm from the operation of its store”.

[195] Mr Laing submitted that “Mr Keehan was the only credible witness who was qualified to speak to” the relative deprivation of the area, and that “[t]he evidence of Ms Fowler on these matters should be disregarded, as she has no qualifications or expertise to speak to these

matters". He also noted that Ms Fowler had "already been criticised by the Licensing Authority in other cases".⁵ Mr Laing submitted that Mr Keehan's evidence "demonstrates that admissions fully attributable to alcohol in the community are extremely low".

[196] In relation to amenity and good order, Mr Laing submitted that "[a]t every instance of the hearing, it is submitted that when asked by the Committee, the response of objectors was to the effect that they were unable to articulate precisely when alleged incidents occurred. It stands that there is no particular difficulty in the area at the moment. It cannot be said that Te Kauwhata experiences adverse impacts on the amenity and good order of this locality".

[197] Mr Laing submitted that the lack of specificity in the evidence from the objectors "reflects that there is a perception, worry or concern from the community but that this is not a currently badly affected by nuisance, noise or vandalism". He referred to the probationary period of one year should the licence be granted and submitted that the "applicant is open to working within and with the community to address any issues that may arise, particularly given the Directors will be present at the store very regularly".

[198] In relation to the LAP, Mr Laing submitted that clause 5.4.1 does not restrict the grant of the licence, because the store is located in the business zone of Te Kauwhata, the premises site frontage does not directly border the primary school, and the premises site frontage does not directly border a public park". On the definition of 'frontage', Mr Laing submitted that "the plain meaning of the noun 'frontage' from the Oxford English Dictionary is as follows:

1 the facade of a building.

2 a strip or extent of land abutting on a street or waterway"

and that "it is fictitious to suggest that the definition of a 'frontage' may include the rear of the store". He also submitted that frontage in clause 4.4 of the LAP, which clause 5.4.1 refers back to "means the front of the Applicant's store facing, or fronting onto, Main Road... [not] the service lane at the rear of the building that the Applicant does not own, and which cannot be reasonably considered to be a road for the purposes of clause 5.4.1".

[199] Mr Laing further submitted that "the evidence clearly demonstrates that the Applicant will have systems and processes in place to ensure that there will be no significant adverse effects, particularly in light of the school nearby", and that the Inspector also considers that the steps taken by the Applicant are satisfactory". He also submitted that "the rear of the store does not look into the store itself".

[200] Mr Laing submitted that "the evidence before this Committee confirms that not only are the Directors of the premises committed and determined to minimise alcohol related harm, the town of Te Kauwhata is a growing one, that would not suffer from having a premises of this kind".

[201] On the other witnesses, Mr Laing submitted that "the discourteous manner in which Ms Patterson's witness Mr Buckley refused to be available for cross-examination or for any questioning by the Committee means his unqualified evidence about the LAP must be completely disregarded, or at the very least given no weight", and that "the Committee should be cognisant of the fact that the evidence called for Ms Fowler came from persons who were engaged by Communities Against Alcohol Harm, and it is submitted they cannot be considered to be independent or objective witnesses".

⁵ *Duncraft v GKD Limited* [2023] NZARLA 78.

[202] On conditions of the licence, Mr Laing noted that the applicant was content with the proposals made in paragraphs 52.3 to 52.7 of his brief of evidence (and noted in paragraph [26] of this decision) being made conditions of the licence. He submitted that “while the hours of 10am to 10pm are still sought, it would be open to licensed trading hours of Monday to Sunday 10am to 8:30pm to align with other premises in the area”. However, he also submitted that “a 10pm closing would not be adverse to the community of Te Kauwhata”, noting that “the off-licence for Te Kauwhata Tavern is licenced until and has a closing time of 10pm” and that other Bottle-O stores have a 10pm closing time. Mr Laing noted that the applicant “would agree to a condition that there would be no external advertising on sandwich boards or on bollards”.

[203] Finally, Mr Laing submitted that “granting the application will accord with ss 105 and 106 of the Act, and meet the object of the Act”, and that “the Directors have a reputation of managing successful licensed premises and are dedicated to the operation of this premises in a safe and responsible way”.

Medical Officer of Health:

[204] Ms Meertens began her submissions with a focus on the Purpose of the Act (Section 3), submitting that “the recent Supreme Court decision in *Woolworths*, together with previous superior court decisions, emphasise the importance of reducing alcohol harm for the purpose of the community as a whole, and allowing decision-making bodies to adopt a precautionary approach in order to prevent future or further harm. It is submitted that these views of the Courts apply to the alcohol licensing regime in the Act”, drawing attention to *Woolworths v Auckland Council* [2023] NZSC 45.

[205] Ms Meertens submitted that “the issue of the licence will increase what is already an unacceptably high level of alcohol-related harm in the area around the proposed premises, despite the imposition of a liquor ban which appears ineffectual in reducing alcohol-related harm”.

[206] Ms Meertens discussed the evaluative approach to be undertaken by the Committee. She then turned to the suitability of the applicant, submitting that “the threshold for suitability to hold and retain a licence is increased in a vulnerable area”.

[207] Ms Meertens then summarised key parts of the evidence before the Committee, noting that “[t]he applicant did not provide evidence that there is currently no issues with ARH in the community and that the sale of alcohol close to the school, playground, skate park and public toilet will have no effect on the locality” and that “[t]he applicant failed to provide evidence that the users of the library next door, where young people park their bikes and use the library, will not be exposed to alcohol, simply being recessed into the building does not minimise exposure in my view”.

[208] In relation to the meaning of ‘frontage’, Ms Meertens pointed to Cambridge Advanced Learner’s Dictionary and Thesaurus, which defines frontage as “the front part of a building that faces a road or river, or land near a road or river”.

[209] Ms Meertens concluded by submitting that “adding another off licence will increase accessibility to alcohol in this area, potentially also to minors, thereby increasing unfriendly and risky behaviours in these sites”. The Medical Officer of Health remained opposed to the granting of the licence.

Ms N Patterson (Objector):

[210] Dr Gordon also began her closing submissions by noting the Purpose of the Act and drawing attention to the Supreme Court decision in *Woolworths v Auckland Council* [2023] NZSC 45.

[211] On suitability, Dr Gordon submitted that “[t]he standard of suitability that applies in this case is that of ‘extended suitability’, where the Applicant must meet a higher standard because of vulnerabilities in the community”. Dr Gordon noted several factors supporting why the community is vulnerable:

- “Areas of high deprivation in the locality;

- A high percentage of Māori in the population and the vulnerabilities of that Māori population;

- A wide range of concerns expressed about the community; and

- A large number of uncertainties about the applicant and its proposals that did not address the vulnerabilities or concerns”.

[212] Dr Gordon submitted that “[t]he licence should be declined because the Applicant has not met the standard of extended suitability required in this vulnerable location”.

[213] On amenity and good order, Dr Gordon summarised the evidence before the Committee, and submitted that “[t]he licence should be declined because the amenity and good order of the locality will likely be reduced, to more than a minor extent, by the effects of the issue of the licence”.

[214] On the Object of the Act, Dr Gordon submitted that “[t]he best way to minimise alcohol-related harm in Te Kauwhata, and in this particular location, is to decline the licence”.

[215] Turning to the definition of ‘frontage’, Dr Gordon submitted that “the term frontage means a portion of land which secures legal access from that land to a road. Properties may have more than one legal frontage”. She pointed to decisions in the High Court and the Court of Appeal which addressed the issue of frontages, being *Wright v Tan* [2001] NZHC 687 and *Wright v Tan* [2002] NZCA 208/02. Specifically, “[i]n the High Court decision “frontage” in its usual dictionary meaning is “land abutting on street””.

[216] Dr Gordon further submitted that “the applicant has not demonstrated (as required by clause 5.4.1) how the outcomes listed in clauses 5.7.1(g) and (h) will be achieved”.

Other closing submissions:

[217] The Committee also received closing submissions from the objectors Ms Jan Sedgwick, Mr Gerald Jackson, Ms Jenny Kelly, Ms Linda Plant, Ms Girlie Iwihora, Ms Janis White, and Mr John Cunningham. These submissions mostly reiterated points already raised in the objectors’ evidence or written objections or attempted to introduce new evidence. New evidence introduced through closing submissions was given no weight by the Committee.

[218] The Committee also received late closing submissions from Mr Stuart McNab, who had submitted his closing submissions to Ms Belinda Fowler, rather than to the Committee

Secretary. The Committee considered the lateness of this submission, being received later the same day, and that the late submission was not wilful. The Committee determined to grant a waiver under s 208 for the late submission. Nevertheless, as with the other closing submissions of objectors, the submissions by Mr McNab reiterated points already raised in the objectors' evidence.

Criteria for determining the application:

[219] In deciding whether to issue an off-licence, the Committee must have regard to the matters detailed in s 105(1) of the Act. These are:

- (a) The object of the 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 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 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 by the effects of the licence but 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, the Medical Officer of Health or an Inspector made under section 103.

[220] In the Committee's view, s 105(1)(a), (b), (c), (d), (e), (h), (j), and (k) are most relevant when considering this application, along with the provisions of s 106. The Committee has considered the other criteria in s 105(1)(f), (g), and (i), and is satisfied regarding those criteria.

Reasons and Decision:

S105(1)(b) Suitability

[221] The report of the MOH raised opposition to the application on the basis of suitability. Suitability of the applicants was also raised in many of the written objections to the application.

[222] Much of this opposition related to the original directors of the applicant company. Two new directors took over the applicant company prior to the hearing. In the Inspector's view, as noted in her response under cross-examination, issues related to suitability fell away.

[223] It was clear from the evidence before the Committee that the applicants had not extensively consulted with the community prior to making the application for a licence. For many of the objectors, this was an important issue, and possibly contributed to their filing of an objection to the licence.

[224] Mr Thakkar gave evidence that he spoke to some members of the community, but that can hardly be considered a fulsome consultation. However, the Act does not impose an obligation on an applicant to consult with the community, and a failure to consult widely does not in isolation make an applicant unsuitable to hold a licence.

[225] In relation to suitability, in *Nishchay's Enterprises Limited* [2013] NZARLA PH 837, the Authority summarised the previous case law at [53-54]:

[53] The applicant sought to establish its suitability by adopting a narrow assessment of the meaning of that term. This approach was criticised in *New Zealand Police v Casino Bar No 3 Ltd* (CIV 2012-485-1491; [2013] NZHC 44). The High Court rejected the proposition that it was the manner in which the business would be operated as the determinate factor. Rather, suitability is a broad concept and 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. Thus, whether or not the grant of the licence will result in the reduction or an increase in liquor abuse is a relevant issue.

[54] *Casino Bar No 3 Ltd* did not specifically refer to the test for suitability contained in *Sheard* [1996] 1 NZLR 751 where Holland J said at 758: "*The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence.*" However, the judgement inferred that the test applied when the learned Judge referred with approval to Holland J's statement in *Sheard*: "*Suitability is a relatively broad concept and, in the context of an assessment of an application under s 13 of the Act, it relates to the suitability of the applicant to be granted the privilege of an on-licence to dispense liquor*". Traditionally, that test has been interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus, it includes the object of the Act as set out in s 4. The *Sheard* test is not simply about how a business is likely to operate in the future. It is dependent on an assessment of the more generalised factors referred to in the previous paragraph. It includes how a licensee will deal with liquor abuse issues that may arise from the establishment of the business. The usefulness of the *Sheard* test is that it gives a focus to the wider exercise contemplated in the *Casino Bar No 3 Ltd* decision by reminding one of the reason for the exercise.

[226] In *New Zealand Police v Casino Bar No 3 Ltd* (CIV 2012-485-1491; [2013] NZHC 44, Dobson J wrote in relation to assessing suitability:

[34] In criticising this approach as unduly narrow, submissions for the Police cited a checklist of matters likely to be relevant to an assessment of suitability from the text *Dormer & Sheriff Sale of Liquor...* The list is as follows:

- (a) previous convictions, especially those involving liquor or those raising questions as to honesty or propensity for violence;
- (b) character, reputation;
- (c) matters raised in reports filed under s 11;
- (d) previous unlawful operation of premises;
- (e) any of the above in relation to a person other than the applicant who is involved in the application (as a director, manager, etc) or is intended to be employed by the applicant;
- (f) breach of an undertaking; and
- (g) misleading information in an application and/or misleading public notice.

[35] Not all of the criteria from *Dormer & Sheriff* will be relevant in every application where objection is raised to the suitability of an applicant. However, it is an appropriate starting point for the range of matters that the LLA would need to traverse in assessing whether the onus on an applicant to establish suitability, where it is challenged, has been discharged. These matters are significantly wider than the applicant's proposal as to how the business will operate.

[227] Although the case law cited above relates to the Sale of Liquor Act 1989, it remains current, and was recently expanded on by the Authority in *Two Brothers Wholesale Limited v Medical Officer of Health Waikato District Health Board* [2021] NZARLA 32 at [103]:

[103] While *Two Brothers* is correct in saying that suitability is not to be considered in a vacuum, it is not correct that suitability must only be considered in the context of the operation of licensed premises as regards the safe and responsible sale and supply and consumption of alcohol. As is clear from *Nishchay's* an assessment of suitability is much wider and includes considerations of the character and reputation of the applicant and its honesty as well as considerations of the operation of premises. Whether or not the grant of the licence will result in the reduction or an increase in liquor abuse is a relevant issue as are considerations about how a licensee will deal with liquor abuse issues that may arise from the establishment of the business, but suitability is not restricted to these matters.

[228] Moreover, as the Authority noted in *Shady Lady Lighting Limited v Lower Hutt Liquormart Limited - Blackbull Liquor* [2018] NZARLA 198 at [127]:

[127] The vulnerability of the area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol-related harm.

[229] The Committee received little evidence about which area comprises the relevant locality, but considers the relevant area to be the Te Kauwhata urban area and surrounds, referred to by Mr Keehan in his evidence using a two-kilometre radius around the premises. However, we note that a narrower interpretation of the relevant locality would have little impact on the assessment of the vulnerability of the area, because most of the evidence before the Committee related to the area immediately surrounding the premises.

[230] In closing submissions, Dr Gordon provided a number of factors that, in her submission, provided evidence of the vulnerability of the community, including areas of high deprivation in the locality; a high percentage of Māori in the population and the vulnerabilities of that Māori population; a wide range of concerns expressed about the community; and a large number of

uncertainties about the applicant and its proposals that did not address the vulnerabilities or concerns.

[231] The Committee heard from Ms Fowler about the social deprivation of the area. However, Ms Fowler's evidence, as previously found by the Authority in *Duncraft v GKD Limited* [2023] NZARLA 78, is opinion evidence not offered by an expert witness. The Committee disregarded Ms Fowler's evidence.

[232] The Medical Officer of Health and Mr Keehan also gave evidence that the social deprivation of the locality was in 'decile 7'. Ms Meertens conceded that 40 percent of all communities would be in decile 7 or higher. Aside from the submissions of the Medical Officer of Health, no evidence was provided on an appropriate threshold for the level of social deprivation that defines a 'vulnerable' locality. There is no case law establishing a threshold that we are aware of. In the Committee's view, a threshold that leads to 40 percent of the population being in a vulnerable locality seems to be too low.

[233] It is clear from the evidence from Ms Iwihora and Mr Tupuhi that the community has a high proportion of Maaori, and that Maaori are disproportionately affected by alcohol-related harm. The range of concerns expressed by the community are not in themselves persuasive in demonstrating the vulnerability of the community, but are instead relevant to amenity and good order. In the Committee's view, the uncertainties related to the applicant and its proposals were addressed through the hearing process.

[234] The evidence presented does not persuade the Committee the area where the premises is proposed to be located is in the high-risk category regarding harm from the inappropriate consumption of alcohol. It does not meet the higher threshold for the extended suitability test set out in the Authority's decision in *Shady Lady Lighting*.

[235] The relevant test of suitability is that outlined in *Re Sheard*, whether "the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence".

[236] Considering the checklist provided in *New Zealand Police v Casino Bar No 3 Ltd*, the applicants have no previous convictions, and the Committee received no evidence the applicants have previously operated premises unlawfully. There is no reason to doubt the applicants' character and reputation. As noted above, there is no requirement to consult. Mr Thakkar has extensive experience in operating multiple licensed premises, and there have been no problems with those premises.

[237] There is no misleading information in the application. The change of directors was made clear prior to the hearing. The Committee does not infer anything misleading arose from the change of company directors.

[238] Ms Meertens gave evidence that "the public notice was located behind temporary fencing making reading the notice difficult for the public". The Inspector, who viewed the notice herself on a site visit, gave evidence that the public notice was readable. We accept the Inspector's evidence, and there is no evidence that the public notice was in any way misleading.

[239] Given that the applicant satisfies each element in the checklist in *New Zealand Police v Casino Bar No 3 Ltd*, the Committee is satisfied that the applicant is suitable to hold this off-licence.

S105(1)(c) Local Alcohol Policy (LAP)

[240] Waikato District has a Local Alcohol Policy (LAP) that came into effect on 1 January 2017 (except for clauses 4.6, 5.6 and 6.6, which came into force on 1 April 2017). According to clause 2.1 of the LAP, the objectives of the LAP are to:

- *“Reflect the views of local communities as to the appropriate location, number, hours and conditions that should be applied to licensed premises within their communities;”*
- *“Balance the views of local communities regarding the sale, supply and consumption of alcohol, while addressing the statutory requirements of the Sale and Supply of Alcohol Act 2012, including the object of the Act, to minimise the harm caused by excessive or inappropriate consumption of alcohol;”*
- *“Provide certainty and clarity for applicants and the public as to whether a proposed licence application will meet the criteria of the LAP;”*
- *“Provide effective guidance to the District Licensing Committee and Alcohol Regulatory and Licensing Authority when making decisions.”*

[241] In relation to the issue of an off-licence, the relevant clauses of the LAP are in Section 5. Specifically, Sections 5.2, 5.3, and 5.4.

[242] Section 5.2 of the LAP states that:

“5.2.1 New off-licence premises being licensed for the first time (excluding auctioneers and remote sellers endorsed under sections 39 and 40 of the Act respectively) shall be limited to:

- (i) Areas zoned under the Waikato District Plan to allow commercial activities as permitted activities; or*
- (ii) Locations authorised by resource consent.”*

[243] Section 5.3 of the LAP states that:

“5.3.1 When considering any new off-licence application in respect of new premises being licensed for the first time, the District Licensing Committee or Alcohol Regulatory and Licensing Authority shall have regard to the proximity of the proposed premises to other licensed premises where this is considered relevant.

5.3.2 No new off-licence in respect of a bottle store shall be issued for any premises located within one (1) kilometre of the legal site boundary of any existing bottle store, licensed supermarket or grocery store unless:

- (i) the premises are located within the business zone in the urban areas of Te Kauwhata, Tuakau or Pokeno; and*
- (ii) it is demonstrated to the District Licensing Committee that the proximity to the existing premises does not result in significant adverse effects including:*
 - the amenity and good order of the locality being reduced to more than a minor extent*
 - any other potential adverse effect which may give rise to alcohol-related harm.”*

[244] Section 5.4 of the LAP states that:

“5.4.1 No new off-licences in respect of a bottle store shall be issued for any premises located within the business zone in the urban areas of Te Kauwhata, Tuakau or Pokeno

where the site frontage directly borders the legal site boundary of any school, early childcare facility, place of worship or public park existing at the time the licence application is made unless it can be demonstrated to the District Licensing Committee that the hours, signage or operation of the premises will have no significant impact on those facilities and/or persons using those facilities. "Directly borders" includes across any road from such facility as shown in figure one. Provided the applicant demonstrates how the outcomes listed in clauses 5.7.1 (g) and (h) will be achieved, the following shall be considered to have no significant impact:

- (a) the hours of an off-licence where there is no external display of alcohol-related advertising; and*
- (b) the operation of an off-licence where the licensee implements an ID 25 policy.*

5.4.1.1 Renewal of a licence shall be unaffected should such a facility later establish at a site which borders the premises.

5.4.2 Except as set out in clause 5.4.1 above, no new off-licences in respect of a bottle store shall be issued for any premises located within 100 metres of the legal site boundary of any school, early childcare facility, place of worship or public park existing at the time the licence application is made unless:

- (a) it can be demonstrated to the District Licensing Committee that the hours, external alcohol-related signage or operation of the premises will have no significant impact on those facilities and/or persons using those facilities; and*
- (b) the applicant demonstrates how the outcomes listed in clauses 5.7.1 (g) and (h) will be achieved*

5.4.2.1 Renewal of a licence shall be unaffected should such a facility later establish at a site within 100 metres of the premises."

[245] Clause 5.2.1 of the LAP limits new off-licensed premises to areas that are zoned as commercial under the Waikato District Plan. The premises is located in the commercial zone in Te Kauwhata, and so the proposed premises is within the allowed area.

[246] Clause 5.3.1 of the LAP directs the Committee to have regard to the proximity of premises to other licensed premises where this is considered relevant. New World Te Kauwhata is located approximately 50 metres away, and Te Kauwhata Trust Tavern is located approximately 150 metres away.

[247] Clause 5.3.2 of the LAP prohibits new off-licences within one kilometre of the legal site boundary of any existing bottle store, licensed supermarket or grocery store. Both New World Te Kauwhata and Te Kauwhata Trust Tavern are within one kilometre of the premises.

[248] However, this clause does not apply if the premises are located in the business zone of the urban area of Te Kauwhata, which it is, and it is demonstrated to the District Licensing Committee that the proximity to the existing premises does not result in significant adverse effects.

[249] The wording of clause 5.3.2 appears to place an onus of proof on the applicant to demonstrate to the Committee that the premises does not result in significant adverse effects. However, this would be at odds with the evaluative exercise that the Committee is required to undertake, as outlined in *Christchurch Medical Officer of Health v J & G Vaudrey*

Limited [2015] NZHC 2749. As the Authority noted in *Kaiti Club Hotel Limited (Kaiti Sports Bar) v Ka Pai Kaiti Trust* [2018] NZARLA 225:

[74] Moreover, concepts relating to the onus of proof are inappropriate as they do not sit well with the task of evaluation. It follows then that concepts of ‘standard of proof’ are also inappropriate. As Gendall J said *J & G Vaudrey Ltd*, a decision-maker must actively and thoughtfully consider the relevant matters and to do so means the decision-maker must correctly understand the matters to which he or she is having regard. The weight given to such matters is for the decision-maker although some matters may be more fundamental or critical than others. The degree to which a decision-maker is persuaded by a matter is inherent in the concept of ‘weight’.

[250] It has not been demonstrated to the Committee that the proximity of the proposed premises to the existing premises does not result in significant adverse effects. However, it is unclear whether the Committee could find that the grant of this licence would be inconsistent with the LAP, as that would have the effect of establishing that there was an onus of proof on the applicant.

[251] Clause 5.4.1 of the LAP prohibits new off-licences for bottle stores within the urban area of Te Kauwhata where the site frontage directly borders the legal site boundary of any school, early childcare facility, place of worship or public park existing at the time the licence application is made, unless certain conditions are met.

[252] Te Kauwhata Primary School is sited on the opposite side of a service lane at the rear of the premises.

[253] The Committee received submissions on the definition of frontage, which is not defined in either the LAP or the Waikato District Plan. There are several definitions of frontage that may be applied. However, the Court of Appeal addressed the term ‘frontage’ in *Wright v Tan* [2002] NZCA 208/02:

[22] “Frontage”, according to the Oxford English Dictionary (2ed) means land which abuts on a river or piece of water or a road; the land between the front of a building and the road; and the front face or part of a building. Black’s Law Dictionary (7ed) defines the word to mean the part of land abutting a street or highway or lying between a building’s front and a street or highway.

[23] What then does “frontage” mean in a condition that “no buildings be erected having a frontage wholly to the right of way”? Three points can be made immediately. On a literal reading the word is related to buildings. Secondly, the condition speaks of “a” frontage, not “the” or “its” frontage. This suggests that the condition is contemplating the existence of more than one frontage, namely a frontage to the right of way and a frontage elsewhere. That situation in fact existed in 1939 when Lot 2 was bounded by a road. Thirdly, the word “wholly” seems to be synonymous with “only”, for it would make no sense to read it as meaning “entirely”.

[254] The Committee heard from Ms Brown that there is a service lane at the rear of the premises. Ms Brown pointed the Committee to the Local Government Act 1974, which in s 315 defines a service lane as “any lane laid out or constructed either by the authority of the council or the Minister of Works and Development or, on or after 1 April 1988, the Minister of Lands for the purpose of providing the public with a side or rear access for vehicular traffic to any land”.

[255] Section 315 of the Local Government Act 1974 also defines a road as:

road means the whole of any land which is within a district, and which—

- (f) except where elsewhere provided in this Part, any access way or service lane which before the commencement of this Part was under the control of any council or is laid out or constructed by or vested in any council as an access way or service lane or is declared by the Minister of Works and Development as an access way or service lane after the commencement of this Part or is declared by the Minister of Lands as an access way or service lane on or after 1 April 1988:

[256] It is clear from the Local Government Act 1974 that the service lane at the rear of the premises is a road. Moreover, the service lane abuts the land on which the premises sits. Thus, there is a frontage at the rear of the building.

[257] However, paragraph [23] of *Wright v Tan* [2002] NZCA 208/02 draws a distinction between “a frontage” and “the frontage”. In that decision, the Court of Appeal determined that the use of “a frontage” contemplated the existence of more than one frontage. The Committee believes that a similar distinction is necessary here. The wording in the LAP is “the frontage”, not “a frontage” or “any frontage”, which suggests to the Committee that the LAP clause does not contemplate that a site may have more than one frontage. That being the case, the only frontage to which clause 5.3.2 of the LAP must apply is the frontage at the front of the building, being the frontage facing Main Road.

[258] If there is no frontage facing the school, clause 5.4.1 of the LAP does not apply. However, for completeness the Committee notes that this clause of the LAP also appears to place an onus on the applicant.

[259] Nevertheless, during the hearing the Committee heard evidence that the store would not open until after the school day had begun, and that no signage would face the school. The applicant gave evidence that they would apply an ‘ID30’ policy and would not sell to students in school uniform. Delivery trucks would drive into the roller doors and could not be seen from the school while inside the building. Moreover, the products being delivered would be shrink-wrapped. The Committee is satisfied that it has been demonstrated that the hours, signage and operation of the premises will have no significant impact on the school and/or school children or others at the school.

[260] Clause 5.4.2 of the LAP prohibits new off-licences within 100 metres of the legal site boundary of any school, early childcare facility, place of worship or public park, unless certain conditions are met. The legal site boundary of Te Kauwhata Primary School is clearly within 100 metres of the premises. The Village Green, which includes the playground and skate park, is also within 100 metres of the proposed premises.

[261] Clause 5.4.2 of the LAP does not apply where it can be demonstrated that the hours, external alcohol-related signage, or operation of the premises will have no significant impact on those facilities and/or persons using those facilities, and the applicant demonstrates how the outcomes listed in clauses 5.7.1(g), being the application of CPTED, and 5.7.1(h), restricting external signage and promotion, are met.

[262] The Committee accepts that the applicant has demonstrated suitable implementation of CPTED principles, as prescribed by clause 5.7.1(g) of the LAP, and that the external signage and promotion on the premises will be limited as prescribed by clause 5.7.1(h) of the LAP. In relation to the latter, the applicant agreed to conditions on their licence limiting the extent of external signage and prohibiting advertising on bollards or sandwich boards.

[263] As noted in paragraph [249], the Committee is satisfied that it has been demonstrated that the hours, signage and operation of the premises will have no significant impact on the school.

[264] The principal entrance to the building is recessed, making it less visible from the Village Green, the playground and skate park. Mr Thakkar gave evidence that the premises could be seen from the skate park and other areas but noted that the main entrance cannot be seen. This evidence was not challenged by other parties to the hearing. The external signage and promotion on the premises is to be limited, with no advertising on bollards or sandwich boards at the front of the premises. The Committee is satisfied that the hours, signage and operation of the premises will have no significant impact on the Village Green or persons using the Village Green.

[265] Overall, the Committee is satisfied that the off-licence application is consistent with the LAP.

S105(1)(d) Days and Hours

[266] The applicant initially sought hours of Monday to Sunday, 10am to 10pm.

[267] Te Kauwhata currently has a New World supermarket, licensed from 7am to 8:30pm Monday to Sunday, and that the Te Kauwhata Tavern off-licence is licensed to 10pm, although it often closes earlier.

[268] The Committee views that the hours sought for the issue of an off-licence would significantly increase the availability of alcohol in the community, both in terms of the range of products, and the hours of sale.

[269] In closing submissions, the applicant stated that it would be open to licensed trading hours of Monday to Sunday 10am to 8:30pm to align with other premises in the area. If the Committee had been minded to grant the application, the Committee would have accepted this offer, and set the licensed hours as Monday to Sunday 10am to 8:30pm. This would align with the closing time of the New World supermarket, and not extend alcohol availability later into the evening on days when the Te Kauwhata Tavern was not open late.

S105(1)(e) Design and layout

[270] The premises are located in a retail building within the Te Kauwhata business zone. The applicant had completed a CPTED checklist, and the Inspector was satisfied with the proposed design and layout of the premises. The Committee undertook a site visit on 5 December 2023, and while the internal fit-out of the building had not yet begun, the Committee was able to observe the design and layout of the exterior of the building.

[271] Concerns were raised during the hearing about the visual impact of the premises. However, this is reduced by the recessed entrance on Main Road, as well as agreement by the applicant to conditions limiting external signage and promotion, as well as prohibiting advertising on bollards or sandwich boards at the front of the premises.

[272] The Committee is satisfied that the design and layout of the premises is appropriate.

S105(1)(h) and S106(1) Amenity and Good Order

[273] Section 106(1) of the Act outlines the matters that the Committee must have regard to, in forming an opinion for the purposes of s 105(1)(h), including:

- “(a) the following matters (as they relate to the locality):*
 - (i) current, and possible future, noise levels:*
 - (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.”*

[274] The Committee is satisfied that the premises will not significantly contribute to noise, and there is no evidence before the Committee to the contrary.

[275] The Committee has seen evidence that litter, including alcohol-related litter, is already a problem at some times. This evidence was in the form of photos provided by the MOH and Ms Hohepa, as well as in the oral and written evidence from the objectors Mr Cunningham, Ms Patterson, Mr McNab, and Ms Plant. Mr Cunningham and Ms Plant both noted in their evidence how rubbish and litter was often picked up in the area, by Mr Hinton and by walkers respectively.

[276] The Inspector’s report notes that “[t]here is no visual evidence of anti-social behaviour such as discarded beer or RTD bottles, cans, or alcohol-related litter”. This was based on four separate site visits on 3 March 2023 (twice), 15 March 2023, and 29 March 2023. The Committee notes that none of those site visits occurred on a weekend (although 3 March 2023 was a Friday), and the absence of litter could be explained by the frequent clean-up of litter mentioned by Mr Cunningham and Ms Plant. Moreover, absence of evidence of litter is not the same as evidence of the absence of litter. It is clear there is alcohol-related litter in the area, and photographic evidence supports this.

[277] The Committee has concerns about the purposes for which land near the premises concerned is used (s106(1)(b)(i)). The proposed premises is located close to the Village Green, which includes a playground, skate park, and basketball courts. The Committee heard that those areas are used by families and young children, as well as being a space where youths congregate. Ms Plant gave evidence of picking up broken glass in the area. Ms Hohepa gave evidence that she had observed youths hanging around at the playground at 1am and damaging the playground. In contrast, Ms White gave evidence that, on her community patrols, most of the suspicious activity was drug dealing.

[278] The Committee considers that the existence of the permanent liquor ban in Te Kauwhata, under the Waikato District Alcohol Control Bylaw 2020, also speaks to the community's long-standing concerns about alcohol-related crime and disorder in Te Kauwhata. As the Bylaw notes,⁶ prior to implementing a permanent alcohol ban in an area, the Council is required to meet the criteria in s 147B of the Local Government Act 2002:

147B Criteria for making resolutions relating to bylaws

Before making under section 151 a resolution relating to a bylaw under section 147, a territorial authority must be satisfied that—

- (a) there is evidence that the area to which the bylaw applies (or will apply by virtue of the resolution) has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and
- (b) the bylaw, as applied by the resolution,—
 - (i) is appropriate and proportionate in the light of the evidence; and
 - (ii) can be justified as a reasonable limitation on people's rights and freedoms.

[279] There is no substantiated evidence before the Committee that drinking in the area of the Village Green has involved a breach of the liquor ban. Of the objectors, only Ms Patterson pointed to observing people drinking in apparent breach of the liquor ban. Neither Ms Hohepa nor Ms White had observed people drinking late at night during their community patrols. The litter observed in the Village Green and park areas could have been left by people legally drinking in those areas. Nevertheless, whether the drinking is in accordance with the liquor ban or not is not part of the consideration of whether there is evidence that litter may increase, to more than a minor extent, if this licence were to be granted.

[280] When questioned specifically about litter, the Inspector did not know if one more bottle store would increase problems of litter by more than a minor extent. This highlights the key issue in relation to whether the amenity and good order of the area is likely to be reduced, by more than a minor extent, by the grant of the licence. This requires an assessment of future risk.

[281] Future risk was addressed as follows by the Authority in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123:

[68] In the face of such evidence the Act does not countenance the continuation of high levels of alcohol-related harm. The Act requires minimisation of the alcohol-related harm. The task of the DLC was to respond to the risk and it did so. It is not necessary to establish, as the Authority required, that the proposed operation "would be likely to lead to" alcohol-related harm... To require demonstration of a link to this degree of specificity is not much different from requiring proof. Requiring proof of "a causative link is not only unrealistic but is contrary to the correct legal position"...

[69] I accept the submissions on behalf of the appellants. The Authority consistently emphasised what the evidence did not show or did not prove at the expense of what the evidence demonstrated.

[70] It was sufficient to engage the requirement to minimise alcohol-related harm that the evidence implicates the premises. The Authority erred in requiring evidence of demonstrable historical harm. Rather, it was required to assess risk which by definition

⁶ Waikato District Council Alcohol Control Bylaw 2020, clause 5.3(c).

is future risk. In that regard, there was extensive evidence of the alcohol-related harm associated with this locality on Friday and Saturday nights. In fact, the DLC in its decision described the evidence as compelling. Having read the evidence I agree with that assessment.

[282] The evidentiary standard required for s 105(1)(h) was set out by the Authority in *Shady Lady Lighting Limited* [2018] NZARLA198-199 at paragraph [68]:

“Contrary to the submission by counsel for the respondent, however, as already stated by Heath J, in considering the evidence when forming this opinion, objectors do not need to provide evidence at close to the criminal standard or even on the balance of probabilities...”

[283] As this is an application for a new off-licence, there cannot be historical evidence to implicate the premise. The Committee instead must assess future risk, and the Committee is satisfied that the evidence produced by the MOH and objectors meets the standard specified in *Shady Lady Lighting*, and demonstrates real future risk of nuisance and litter. Ms Hohepa gave evidence that police units have to come from Huntly, which is over 15 minutes away by car, and this delay exacerbates the level of risk.

[284] The real risk of alcohol-related harm, in terms of reductions in amenity and good order, would not be minimised were this application to be granted. The Committee notes that in *Lion Liquor Retail Limited* [2018] NZHC 1123, Clark J wrote at [67]:

“...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...”

[285] Taking into account all the matters to which the committee must have regard in s 106(1) of the Act, it is the Committee’s opinion there is sufficient evidence that the amenity and good order of the locality would be reduced by more than a minor extent, if the licence were to be granted.

S105 (1)(j) Systems, Staff, and Training

[286] Several concerns were raised about the applicant’s systems, staff, and training. Most of these concerns related to a lack of detail in the original application, exacerbated by the change of directors.

[287] The applicants addressed most of these issues in their evidence, pointing to the systems that would be in place, and clarifying the number of staff that would be working in the premises. This was further supported by an exemplar roster provided alongside closing submissions. In the Committee’s view, they have appropriate systems in place, and adequate staffing to comply with the law.

[288] On the issue of training, Mr Thakkar pointed to the resources that would be used. He gave evidence that training would be undertaken by Allied Retail Group Training Academy, and that all staff would also be required to complete Servewise courses.

[289] The Committee had asked for a training plan to be provided alongside closing submissions. The applicant did not provide such a plan, instead pointing to their earlier

evidence and materials supplied in their application. The Committee notes that, had we been minded to grant this application, we would have first wanted to sight a written training plan, outlining how often training would be conducted, what materials would be used, and who would be responsible for conducting and certifying that training was conducted.

Section 105(1)(k) Reports from the Police, Medical Officer of Health, and Inspector

[290] The report of the Medical Officer of Health raised matters in opposition to the application. The Police and the Inspector did not oppose the application. The issues in the report of the Medical Officer of Health have been discussed earlier in this decision.

Section 105(1)(a) The Object of the Act

[291] The Committee is required to undertake the evaluative exercise as outlined in *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749. The steps in this exercise are outlined in paragraph [56] of *Vaudrey*.

"[56] 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:*
 - (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 (for present purposes including the design and layout of the premises); and*
- (c) The relevant body must finally cross-check whether the application is capable of meeting the object of the Act.*
- (d) It must impose the conditions required by s 116(2) and in the case of a supermarket or grocery store, the single area condition (which I discuss in more detail below).*
- (e) It may impose further conditions in accordance with ss 116(1) and 117 (which I discuss in more detail below)."*

[292] Having inquired into the application, and having received evidence and submissions from all parties, the Committee has evaluated the application against the criteria in s 105 of the Act. As outlined earlier in the decision, the Committee has determined that the application does not satisfy all of the criteria. In particular, the Committee believes that the granting the licence would reduce the amenity and good order of the locality by more than a minor extent.

[293] The Committee now turns its attention to cross-checking whether the application is capable of meeting the object of the Act. The object of the Act is that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

[294] As noted by the Authority in *Rockaway Beach Limited* [2017] NZARLA 445:

[94] The purpose of the Act is designed so that its effect and administration helps to achieve the object of the Act which is that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, and that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised. The object of the Act has two limbs. The first limb, that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, is wide and is not constrained by the definition of harm caused by the excessive or inappropriate consumption of alcohol.

[295] In her submissions, Dr Gordon pointed to the recent Supreme Court decision in *Woolworths v Auckland Council* [2023] NZSC 45. She submitted that “[t]he owners have also made no attempt to demonstrate that the licence, if issued, will be for the ‘benefit of the community as a whole’ under s. 3, the purpose of the Act”. We disagree that the applicant must demonstrate anything, as this would place an onus on the applicant, which is inconsistent with the evaluative exercise that the Committee is required to undertake, as outlined in *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749.

[296] In its decision in *Woolworths v Auckland Council* [2023] NZSC 45, the Supreme Court wrote that:

[83] When applying the statutory test, the Licensing Authority must address s 4 which sets out the object of the 2012 Act. We do not, however, see that as excluding s 3 which explains the purpose of the Act. We read these sections together. The Act introduces a reasonable system of control on the sale and supply of alcohol that seeks to achieve closely related outcomes; that alcohol is sold, supplied and consumed safely and responsibly and harm from excessive and inappropriate drinking is minimised. The word “reasonable” is in s 3 and it is sensible to treat “unreasonable” for the purposes of ss 4 and 81(4) as being, in effect, the obverse of that. As well, the objects of safe and responsible “sale, supply, and consumption of alcohol” and minimisation of “the harm caused by the excessive or inappropriate consumption of alcohol” referred to in s 4(1)(a) and (b) are not opposites to be balanced against each other. Rather they pull in the same direction. This is because supply and sale of alcohol that is safe and responsible will tend to minimise alcohol-related harm.

[297] The Supreme Court’s decision is clear that ss 3 and 4 of the Act must be read together. Although that decision relates to Local Alcohol Policies and not directly to the decision-making in relation to an off-licence, we believe that the same approach applies here.

[298] We do not agree with Dr Gordon, who submitted that “[t]he owners have also made no attempt to demonstrate that the licence, if issued, will be for the ‘benefit of the community as a whole’ under s. 3”. Dr Gordon’s submission would add an additional criterion that must be satisfied for an application to be capable of meeting the Object of the Act outlined in s 4, being that the licence must be operated for the benefit of the community as a whole.

[299] Section 3 of the Act is:

3 Purpose

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.

[300] A plain reading of s 3 is that it is the Act itself, being Parts 1 to 3 and the schedules, that is for the benefit of the community as a whole. In the Committee's view, s 3 is not meant to be interpreted such that every licenced premises individually must be operated for the benefit of the community as a whole.

[301] The Inspector and the applicant both pointed to the probationary period of one year that occurs if the licence is granted. In our view, if there is real future risk of alcohol-related harm occurring as a result of granting the licence, then that future risk exists within the one-year probationary period as well as beyond. It would not be consistent with the Object of the Act to grant a licence for a one-year probationary period, if there is real future risk that the harm caused by the excessive or inappropriate consumption of alcohol would not be minimised.

[302] The Supreme Court's decision in *Woolworths v Auckland Council* [2023] NZSC 45 provides for a precautionary approach to be taken:

[84] We agree with the Court of Appeal (and with the Licensing Authority) that a precautionary approach is open and that, in any event, a restriction may be justified on the basis of there being a reasonable likelihood that it will reduce alcohol-related harm, a point that we discuss in greater depth shortly. This is consistent with a line of cases that starts with the judgment of the Court of Appeal in *My Noodle Ltd v Queenstown Lakes District Council* under the 1989 Act and carries on through decisions issued under the 2012 Act... It is, as well, consistent with our reading of ss 3 and 4.

[303] The Committee concludes that there is evidence that the amenity and good order of the locality is likely to be reduced by more than a minor extent by the granting of this licence. Granting this licence would be inconsistent with the Object of the Act, as the harm caused by the excessive or inappropriate consumption of alcohol would not be minimised.

[304] Overall, and as outlined in paragraphs [221] to [303] above, the Committee is not satisfied that the application is capable of meeting the object of the Act.

Conclusion:

[305] The application for an off-licence, for the premises at situated at 3 Main Road TE KAUWHATA known as "The Bottle-O Te Kauwhata" is refused.

DATED at Ngaaruawaahia on 26 April 2024



Michael Cameron
Commissioner
Waikato District Licensing Committee

Appendix One: Interim Decision dated 21 December 2023

APPENDIX ONE



Decision No. LicApp20/2022

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by TK Spirits
Limited for an off-licence
pursuant to s.100 of the Act in
respect of premises situated at 3
Main Road TE KAUWHATA
known as "The Bottle-O Te
Kauwhata".

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Commissioner: Dr Michael Cameron

Members: Dr Patsi Davies
Mr Barry Smedts

HELD at NGARUAWAHIA and by way of an **AUDIO VISUAL LINK** at 9.00am Thursday 7
December 2023.

APPEARANCES:

Mr N Laing, Counsel for applicant
Mr M Takhar, Director of the applicant company
Mr R Patel, Director of the applicant company
Ms C Sturzaker, Licensing Inspector
Sgt H Martin, NZ Police, to assist
Ms A Adesanya, Medical Officer of Health delegate (MOH), in opposition
Dr G Hewison, Counsel for Objector (Patterson)
Ms N Patterson, Objector
Mr G Jackson, Objector
Ms J Kelly, Objector
Mr S Bovaird, Objector (by AV Link)
Ms M Hohepa, Objector (by AV Link)
Ms A Knaggs, Objector (by AV Link)

SITE VISIT:

A site visit was undertaken by the District Licensing Committee (the Committee) on the morning of Tuesday 5 December 2023. The Directors of the applicant company were present for the site visit.

INTERIM DECISION

The Committee determines that all objectors listed in the Annex to this decision, except for Te Kauwhata Licensing Trust, BG Calloway, and A Holtom, have status as objectors pursuant to section 102(1) of the Act, as amended by section 10 of the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023.

INTRODUCTION

[1] This is an application by TK Spirits Limited for an off-licence in respect of premises situated at 3 Main Road TE KAUWHATA, to be known as “The Bottle-O Te Kauwhata”. The application was filed with the Waikato District Council on 19 December 2022.

[2] The general nature of the business to be undertaken is that of a bottle store. The premises has not previously been licensed. The building is newly constructed and located in the Te Kauwhata business zone. At the time the Inspector inquired into the application, the premises had an interim building certificate dated 7 December 2022.

[3] The application was advertised in accordance with section 101. The application is opposed by the Medical Officer of Health, and 79 public objections were received within the prescribed time, with two public objections received outside of the prescribed time. All 81 public objectors (with numbers for ease of reference) are listed in the Annex to this Decision. One letter of support was also received (from Mr B Grimmer). The Police and Inspector do not oppose the application. Given the opposition of the Medical Officer of Health and the public objections, the application was set down to be determined at a public hearing.

[4] The Commissioner issued a direction, dated 24 November 2023, noting that the status of the objectors would be heard at a preliminary hearing. All parties were directed to file written submissions prior to the pre-hearing, except for objectors, who could choose to file written submissions, or to make oral submissions at the pre-hearing.

[5] The Committee received written submissions from Counsel for the applicant, Counsel for an objector (Ms Patterson; #2), and several objectors.

PRE-HEARING

Preliminary matters:

[6] A pre-hearing into the status of objectors was held at Ngaruawahia, and by audio-visual link, on 7 December 2023.

[7] At the commencement of the pre-hearing, the Committee raised two potential conflicts of interest: (1) between the Commissioner Dr Michael Cameron and Counsel for an Objector, Dr Grant Hewison; and (2) between Committee Member Mr Barry Smedts and Dr Hewison. Both potential conflicts related to historic professional relationships which occurred eight or more years prior to the current matter. No parties raised objections, and the pre-hearing proceeded with the original Committee members.

[8] The Committee noted that many objector's written submissions referred to the Waikato District Council (WDC) Provisional Local Alcohol Policy (PLAP). For clarification, a PLAP is currently not in force, and therefore does not apply. However, the WDC has a current Local Alcohol Policy, which came into force on 1 January 2017.

[9] One objector (Ms Hohepa; #61) raised concerns with the Committee via the Committee Secretary, about the publication of their address. Ms Hohepa is on the unpublished electoral roll. Accordingly, the Committee orders that the publication of the residential address of Michele Hohepa is prohibited, pursuant to section 203(5) of the Act. This is a permanent order until advised otherwise by Ms Hohepa.

Transitional provisions of the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023:

[10] At the outset of the pre-hearing, Counsel for the applicant, Mr Laing, drew the Committee's attention to the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023 (**Amendment Act**), and the transitional provisions in Schedule 1AA of the Amendment Act. A key point is the determination of when proceedings commence, as that determines which of the transitional provisions apply. Mr Laing submitted that the proceedings began when the application was lodged, relying on the definition of a 'proceeding' in the Legislation Act 2019.

[11] In contrast, Dr Hewison, Counsel for Ms Patterson (an objector; #2), submitted that proceedings begin when the substantive hearing commences. In his submissions, Dr Hewison relied on a Minute of the Auckland District Licensing Committee, and the Westlaw commentary on the Act.

[12] The Committee addresses these transitional provisions further from paragraph [38].

Status of the objectors:

[13] The pre-hearing proceeded based on provisions in the Sale and Supply of Alcohol Act 2012 and considered the submissions on objectors' status.

[14] Counsel for the applicant referred the Committee to relevant case law on the 'notional distance',⁷ within which an objector is likely to have a greater interest in the application than the public generally.

⁷ *I S Dhillon & Sons Limited* [2013] NZARLA PH 256; *Janhurst Holdings Limited* [2013] NZARLA PH 826; *Re Masonic Hotel* [2011] NZLLA 91.

[15] He then outlined the applicant's position on the status of each objector, indicating generally that the applicant did not oppose status of the objectors for those living within one kilometre of the premises, or for Mr John Cunningham (Chair of the Te Kauwhata Community Committee). The applicant was opposed to the status of other objectors, including Te Kauwhata Licensing Trust, which although located within one kilometre, is a trade competitor of the proposed premises.

[16] Dr Hewison submitted that the geographical proximity test was "now normally interpreted to apply when an objector is residing or doing business within a one to two kilometre radius of the premises", relying on the Authority's decision in *Flaxmere Liquor* [2019] NZARLA 94.

[17] He submitted that Ms Patterson has status as an objector under this wider two-kilometre radius, and further submitted that other objectors within that radius should likewise have status.

[18] The Medical Officer of Health submitted that "objections from the local community living or working within one to two kilometers of the proposed premises and filed within the timeframe be given objectors status" (sic).

[19] The Committee received written submissions from several objectors, including Ms J Sedgwick (#1), Ms D Tonks (#3), Te Kauwhata Community Committee (#4), Ms A Knaggs (#7), Ms G Iwihora for Maurea Marae (#10), Ms K Whitaker (#13), Mr M Peters (#14), Mr S McNab (#26), Mr D Holmes (#56), Ms M Hohepa (#61), Mr P Cronin (#72), and Mr S Bovaird (#78).

[20] These objector submissions mostly reiterated the points raised in the written objections, and asserted that the objector had status. The written submission of Ms Sedgwick provided her address, which was omitted from her objection, and was within two kilometres of the premises.

[21] The Committee also received a written submission from Nga Muka Development Trust (#81), which had filed an objection that was after the deadline for objections. This submission noted that Nga Muka Development Trust is one of several marae sub-clusters of Waikato-Tainui, and that the marae of the trust "are tangata whenua and hold mana (power and authority derived from whakapapa, continued occupation and use) for the area covering Rangiriri, Te Kauwhata, Waerenga, Waiterimu". In relation to the late filing of the objection, the submission noted that "The late submission and delay in providing this letter is a manifestation of too few under resourced people attempting to cover too much".

[22] At the pre-hearing, the Committee heard from each of the objectors present, either in person or via audio-visual link.

[23] Ms Patterson (#2) gave evidence that she lives within two kilometres of the premises and has lived in Te Kauwhata for 13 years.

[24] Mr Jackson (#9) gave evidence of his long association with and involvement in the Te Kauwhata community. He also noted that he believed that the areas of Waerenga, Rangiriri, and Meremere all belong to the Te Kauwhata community, as they have no shops, petrol station, or schools. In response to a question from Counsel for the applicant, Mr Jackson noted that it would take 25 minutes to walk from his house to the Te Kauwhata town centre.

[25] Ms Kelly (#24) also gave evidence of her long association with the Te Kauwhata community. She worked at the Te Kauwhata library for eleven years, and currently lives in Waerenga, eight kilometres from the premises. She belongs to several committees and organisations, that are mostly based in Waerenga, but goes to Te Kauwhata for groceries, to visit the library, and to meet with friends and socialise. In response to questions from the Committee, Ms Kelly noted that she goes to Te Kauwhata one a week, and that her mail is delivered to a PO Box there. Responding to a question from Counsel for the applicant, Ms Kelly noted that she has no family living in Te Kauwhata.

[26] Mr Bovaird (#78) gave evidence that he lives within one kilometre of the premises, and frequently uses the library next door for business meetings, as well as having a daughter who will attend the school from next year.

[27] Ms Hohepa (#61) gave evidence that she is the area coordinator of neighbourhood support, and participates in the community patrol for Meremere, Rangiriri, and Te Kauwhata. She lives more than two kilometres from Te Kauwhata. In response to questions from Counsel for the applicant, Ms Hohepa noted that she has community patrol shifts ever second week, and the shifts generally last for four hours.

[28] Ms Knaggs (#7) gave evidence of her address in Te Kauwhata, and that she works at the Te Kauwhata Library.

Further submissions:

[29] Following the hearing, the Committee directed parties to file further submissions, if they wished, focusing on four questions:

1. Should the determination of objector status be based on the facts and law at the time the objection is submitted, or at the time of determination by the relevant body?
2. If the latter, then does the Amendment Act change the applicable law for objections that were submitted prior to the commencement date of the Amendment Act
3. Is the notional 1-2 kilometre radius established in case law appropriate for objectors to an application in a rural service town such as Te Kauwhata?
4. If the notional 1-2 kilometre radius is not appropriate, what alternative threshold (if any), or what alternative test, should be applied?

[30] The Committee received written submissions on these points and others from Counsel for the applicant, Counsel for Ms Patterson (#2), and the Medical Officer of Health. The Committee also received written submissions from several objectors, including Ms J Sedgwick (#1), Mr G Jackson (#9), Mr M Peters (#14), Ms J Gore (#16), Ms J Kelly (#24), and Ms M Hohepa (#61). The Committee also received a submission from Mr J Cotman, who was not a party to the pre-hearing. Mr Cotman's submission was disregarded.

[31] Counsel for the applicant drew the Committee's attention to the Authority's decision in *Rivers Hospitality Limited v New Zealand Police* [2023] NZARLA 177 in relation to what constitutes a proceeding. In that decision, the Authority referenced an earlier decision (*Sinclair v Queenstown Lakes District Licensing Committee* [2017] NZARLA 478), where it found that "a decision by a DLC to decline to grant a waiver under s 208 of the Act is not a

proceeding for the purposes of s 154 of the Act” (at [26]). Mr Laing reiterated his earlier submission that “a proceeding commences at the time of filing” an application.

[32] In relation to the geographical proximity test for the status of objectors, Mr Laing submitted that “objectors who reside further than 1km away, and particularly those who without reasonable excuse did not attend the pre-hearing either in person or online to assist the Committee to determine their status (or to answer questions from the applicant), should not be granted objector status. Mr Laing supported this submission by referring the Committee to the decision of the Liquor Licensing Authority in *Re Masonic Hotel* [2011] NZLLA 91.

[33] Counsel for Ms Patterson (#2), Dr Hewison, reiterated his earlier submission that “the proceedings in this case have not yet begun, but will do so when the substantive determination of the application is heard”.

[34] Dr Hewison also submitted that the “If the proceedings began prior to 31 August 2023, then the determination of objector status must be based on the facts and law at the time of determination objector status by the relevant body. Counsel is aware, for example, of situations where objections have moved their residence outside the 2km radius between the date of objection and date of determination and had their standing refused”.

[35] On the geographical proximity test, Dr Hewison submitted that “with regard to an application in a rural service town such as Te Kauwhata, the notional 1-2 kilometre radius is not appropriate, and the alternative test to be applied is whether the objectors use services in the rural service town as their main service centre (for example, for shopping, schooling, recreation and/or socialising)”.

[36] The Medical Officer of Health submitted that “objector status should be based on the time proceedings begin and the intention of its amendment, which is to promote community participation in alcohol licensing”.

[37] Written submissions from the objectors mostly provided their personal view that the 1-2km geographical radius was not suitable, and that they believed that they had status.

REASONS AND DECISION:

Commencement of proceedings

[38] The Sale and Supply of Alcohol (Community Participation) Amendment Act 2023 received royal assent on 30 August 2023. Section 2 of the Amendment Act notes that:

2 Commencement

(1) This Act comes into force on the day after Royal assent.

(2) However, sections 15 to 18 come into force 9 months after Royal assent.

[39] The Amendment Act came into force on 31 August 2023. Schedule 1AA, Section 2 of the Amendment Act contains the transitional provisions:

(1) This clause applies to an application for a licence that is lodged before the commencement of this clause but not determined before that commencement.

(2) If this clause applies,—

- (a) in the case of proceedings begun before the commencement of this clause, the procedures specified in this Act immediately before the commencement of this clause continue to apply as if the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023 had not been enacted;
- (b) in the case of proceedings not begun before the commencement of this clause, the procedures specified in this Act immediately after the commencement of this clause (as amended by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023) apply.

[40] The licence application by TK Spirits Limited was filed on 19 December 2022, which was before the commencement of the clause (31 August 2023). Whether clause 2(a) or 2(b) of the section applies to this application depends on whether the proceedings had begun before or after 31 August 2023.

[41] The Committee notes that the Sale and Supply of Alcohol Act does not define what a proceeding is. The Committee were referred to Section 13 of the Legislation Act 2019, which states:

proceeding means a proceeding (whether civil, criminal, disciplinary, or other, at any stage, and interlocutory or main)—

- (a) in or before a court or tribunal, or before a person acting judicially; or
- (b) of a person or body performing administrative functions, investigative functions, or both

[42] The Authority, in *Rivers Hospitality Limited v New Zealand Police* [2023] NZARLA 177, determined that the Legislation Act was unhelpful in defining proceedings under the Sale and Supply of Alcohol Act:

[32] Prior to the Legislation Act, there was no definition of a proceeding for the purposes of the Sale and Supply of Alcohol Act. A meaning was developed by the Authority through a number of decisions already discussed. That position was settled before the Authority. The commencement of the Legislation Act is a general provision directed at all legislation and not at the Sale and Supply of Alcohol Act specifically. The Authority is not persuaded that the wording of the Legislation Act is sufficiently clear to depart from the position that was established, particularly having regard to the consequences of doing so. The Authority's functions are set out in s.170 and the Authority is charged under s.179B with the obligation to make arrangements that are practicable to ensure that the Authority members perform their functions in an orderly and efficient manner and in a way that achieves the purposes of the Act. The prompt and efficient determination of applications before a DLC would be severely compromised by the ability to appeal to this Authority against every DLC decision made

ahead of the substantive determination of applications relating to such matters as waivers under s 208 and the many other preliminary issues that may arise.

[43] The “decisions already discussed” that the Authority referred to in *Rivers* are *Sinclair v Queenstown Lakes District Licensing Committee* [2017] NZARLA 478 and *O’Flannigan v JAAT Hospitality Limited* [2019] NZARLA 128. Both the earlier decisions, and *Rivers*, relate to section 154 of the Act and whether a waiver constitutes a “proceeding” for the purposes of an appeal. The Committee notes that it is not dealing with a waiver.

[44] In *O’Flannigan*, the Authority noted at [55] that “*As this Authority said in Sinclair, Calvert & ors v Queenstown Lakes District Licensing Committee what constitutes ‘proceedings’ for the purpose of section 154 of the Act are those matters which are set out in ss 204-206 of the Act*”.

[45] Section 204 of the Act provides a list of proceedings:

204 Right of certain persons to appear in proceedings

(1) This section applies to the following proceedings:

- (a) an application for a licence under section 99:
- (b) an application for variation of the conditions of a licence under section 120:
- (c) an application for the renewal of a licence under section 127:
- (d) an application for a temporary authority under section 136:
- (e) an application for a special licence under section 137:
- (f) an appeal against a decision of a licensing committee to the licensing authority under section 154.

[46] Section 203 also provides some guidance about is considered a proceeding under the Act:

203 Proceedings of licensing authority and licensing committees

- (1) Whenever the licensing authority meets for the purpose of hearing any appeal, or the authority or any licensing committee meets for the purposes of exercising or performing any power or function that it is required by this Act to exercise or perform at a public hearing, the meeting must, except in a case to which section 202(1) applies and subject to the provisions of subsections (3) and (4), be held in public.
- (2) Any other meeting of the authority or of any licensing committee may, in the discretion of the authority or committee, be held in public or in private.

[47] Taken together, sections 203 and 204 of the Act appear to frame “proceedings” as meetings of the decision-making body for the purposes of exercising a power or function under the Act. They do not include a mere administrative act such as the filing or lodging of an application.

[48] Mr Laing submitted that the proceedings began when the licence application was lodged. We are not persuaded by this view. If the proceedings of the Committee are those listed in section 204(1) of the Act and involve a meeting of the decision-making body as noted in section 203, then the proceedings in this case did not commence until the first time that the Committee dealt with this application. That would be 24 November 2023, when the Commissioner first issued Directions to all parties.

[49] Mr Laing also referred the Committee to the meaning of “proceeding” under the District Court and High Court Rules. We are not persuaded that the definition under those rules applies, as a District Licensing Committee is established under the Sale and Supply of Alcohol Act and exercises its powers within the SSAA provisions. It does not have jurisdiction under either the District Court or High Court Rules.

[50] We conclude that the proceedings in this matter commenced on 24 November 2023, which is after the commencement date of the Amendment Act, and that the transitional provisions in Schedule 1AA, Section 2 of the Amendment Act apply.

Objector Status:

[51] Turning to the status of the objectors, a question arises as to the point in time at which an objector’s status is determined. In particular, it matters whether the determination of objector status is based on the facts and law at the time of the objection, or at the time of the determination of status.

[52] Dr Hewison submitted that the determination should be based on the facts and law at the time of the determination. Although to our knowledge there is no case law that supports this position, we are persuaded of this view. It is plain to the Committee that, as Dr Hewison noted, an objector who moved outside of the locality would not have had status under section 102(1) of the Act, prior to the commencement of the Amendment Act.

[53] Therefore, we apply the provisions of the Amendment Act to the determination of objector status.

[54] Section 10 of the Amendment Act states:

10 Section 102 amended (Objections to applications)

(1) Replace section 102(1) with:

- (1) Any person may object to an application for the grant of a licence, whether as an individual or as a representative of a group or an organisation.
- (1A) However,—
 - (a) a trade competitor may object to an application only if the trade competitor is directly affected by the application in a way that does not relate to—
 - (i) trade competition; or
 - (ii) the effects of trade competition; and
 - (b) a person may not object to an application if the person receives, or is likely to receive, direct or indirect help from a trade competitor to object to the application.

(2) In section 102(2), replace “15” with “25”.

[55] Section 102(1) of the Act, as amended by section 10 of the Amendment Act, affords all objectors, other than trade competitors, status as objectors, provided that their objection meets the condition in section 102(3).

[56] One objector, Te Kauwhata Licensing Trust, is a trade competitor of the applicant. The Trust operates the Te Kauwhata Tavern, located on the same street as the proposed premises.

[57] Although the Trust itself may have objectives separate from the operation of a licensed premises, the Committee notes that the objection was submitted on the letterhead of Te Kauwhata Tavern. The Trust did not appear at the pre-hearing and did not provide a written submission on its status. The Committee therefore had no opportunity to hear from the Trust about how it may be directly affected by the application in a way that does not relate to trade competition.

[58] The late objection by Nga Muka Development Trust (#81) was filed with the WDC on 6 February 2023. Similarly, an objection by R&L Jeffris (#80) was filed with the WDC on 7 February 2023. Under Section 102(1) of the Act, as amended by section 10 of the Amendment Act, objectors have 25 days to submit an objection.

[59] Section 5 of the Act defines a working day:

working day means a day that is not—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, or Labour Day; or
- (b) a day in the period commencing on 20 December in one year and ending with 15 January in the next year.

[60] The licence application was filed on 19 December 2022. The extended 25-day period for objections expired on 18 February 2024. The objections by Nga Muka Development Trust and R&L Jeffris were therefore filed in time. The waiver under section 208 for late filing that was sought by Nga Muka Development Trust is not required. The Committee determines that Nga Muka Development Trust and R&L Jeffris have status as objectors.

[61] Section 102(3) of the Act states:

- (3) No objection may be made in relation to a matter other than a matter specified in section 105.

[62] Nearly all of the written objections were made in relation to one or more matters specified in section 105 of the Act. Many of the objections used a ‘JotForm’ that allowed the objector to select one or more of the section 105 criteria for their objection. There were two objections that did not specify any of the matters in section 105 of the Act: (1) BG Calloway (#5); and (2) A Holtom (#54). Those two objectors are determined not to have status as objectors.

[63] Finally, the Committee notes that the meaning of legislation must be ascertained from the text of the Act and in light of its purpose. The Amendment Act does not explicitly state a purpose separate from the purpose of the Sale and Supply of Alcohol Act. However, in the

second reading of the bill before the House on 20 July 2023, the Honourable Kiritapu Allan stated:

"I know, also, that the committee carefully considered how to extend the eligibility for who can object to an application to best enable and protect community participation in licensing processes. Ultimately, allowing anyone to object means that no person or group is excluded from that process." (20 July 2023) 769 NZPD (Sale and Supply of Alcohol (Community Participation) Amendment Bill – Second Reading)

[64] If the purpose of the Amendment Act is to allow anyone to object and not to exclude anyone from that process, then a determination by the Committee that all objectors whose objection meets the condition in section 102(3) have status is consistent with the purpose of the Amendment Act.

[65] The Committee determines that all objectors listed in the Annex to this decision, except for Te Kauwhata Licensing Trust, BG Calloway, and A Holtom, have status as objectors under section 102(1) of the Act, as amended by section 10 of the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023.

DATED at Ngaruawahia on 21 December 2023



A handwritten signature in blue ink, appearing to read "Michael Cameron".

Michael Cameron
Commissioner
Waikato District Licensing Committee

ANNEX: LIST OF PUBLIC OBJECTORS

Ref. No.	Objector Surname	Ref. No.	Objector Surname
#1	J Sedgwick	#42	M Korver
#2	N Patterson (Te Kauwhata Community House)	#43	D Korver
#3	G&D Tonks	#44	B Rochester
#4	J Cunningham (Te Kauwhata Community Committee)	#45	B Orr
#5	BG Calloway	#46	C Drabble
#6	J Smith	#47	R Jones
#7	A Knaggs (Budd)	#48	C Munro
#8	G Bullock	#49	C Spencer
#9	G Jackson	#50	J Ruaporo
#10	G Iwihora (Maurea Marae)	#51	R Wrigley
#11	A Van de Munckhof	#52	T Kirikau
#12	Te Kauwhata Licensing Trust	#53	J Kostiuik-Warren
#13	K Whitaker	#54	A Holtom
#14	M Peters	#55	G McKenzie
#15	K O'Sullivan	#56	D Holmes
#16	J Gore	#57	M Duffy
#17	D Arnold	#58	S Williams
#18	C Hooton	#59	J White
#19	N Patterson	#60	A Riesterer
#20	T Pullum	#61	M Hohepa
#21	C Gouwland	#62	A Mischewski
#22	J Garrick	#63	K Scown
#23	K Hooton	#64	P Derbyshire
#24	J Kelly	#65	O Attwell
#25	J Tumai	#66	A Andrews
#26	S McNab	#67	K Harris
#27	K O'Regan Bush	#68	N Siebert
#28	L Hughes	#69	D Stratford
#29	R Alexander	#70	J Masters
#30	S Laing	#71	J Ahkew
#31	M Breckon	#72	P Cronin
#32	M Griffin	#73	K Peach
#33	C Blank	#74	L Forde
#34	J Wetere	#75	M Watson
#35	C Garside	#76	S Blank
#36	AM Rowe	#77	E Mullan
#37	J Kelly	#78	S Bovaird
#38	B Weaver	#79	L Gronback
#39	V Foster	#80	R&L Jeffris
#40	S Padfield	#81	Nga Muka Development Trust
#41	C Carter		

