

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

AND

IN THE MATTER of an application by SSA 2021
Limited for an off-licence pursuant
to s 100 of the Act in respect of
premises situated at 13 Main Road
TE KAUWHATA known as “Super
Liquor Te Kauwhata”.

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Commissioner: Dr Michael Cameron
Members: Dr Patsi Davies
Mr Jason Howarth

HELD at **NGAARUAWAAHIA** at 9.30am Wednesday 12 June 2024, and continued on Thursday
13 June 2024 commencing at 10.00am, and concluded on Friday 14 June 2024 commencing at 9.30am.

APPEARANCES:

All hearing dates:

Mr S (Sukhjinder) Singh, Director of the applicant company
Mr S (Simranjeet) Singh, Director of the applicant company
Ms C Sturzaker, Licensing Inspector
Ms A Adesanya, Medical Officer of Health delegate (MOH), in opposition
Dr L Gordon, Counsel for Objector (Patterson)
Ms B Fowler, Witness for Objector (Hāpai te Hauora)
Ms L Plant, Objector
Mr S McNab, Objector

12-13 June hearing dates:

Mr R Davies, Counsel for the applicant
Ms M Bradley, Counsel for the applicant

13-14 June hearing dates:

Mr S Middlemiss, Counsel for the applicant

12 June hearing date:

Sgt H Martin, NZ Police, in opposition (via audio-visual link)
Mr G Hoar, Witness for the applicant
Ms J Evans, Employee of the applicant company
Mr M Keehan, Witness for the Medical Officer of Health
Mr C Buckley, Counsel for Objector (Patterson)

Ms J Sedgwick, Objector (via audio-visual link)

Ms J White, Objector (via audio-visual link)

13 June hearing date:

Ms M Chester, Objector

Ms L Gronback, Objector

Mr J Marcon, Objector

Ms N Patterson, Objector

Ms J Sedgwick, Objector

Ms J White, Objector

Dr R Baird, Objector (via audio-visual link)

Ms L Hughes, Objector (via audio-visual link)

Ms J Maihi, Witness for Objector (Hāpai te Hauora) (via audio-visual link)

Ms A Van der Munckhof, Objector (via audio-visual link)

Mr J Cunningham, Witness for Objector (Ms J Sedgwick) (via audio-visual link)

14 June hearing date:

Mr M Balloch, Witness called by the Committee

Rev Dr T Hollis, Witness called by the Committee

Mr G Jackson, Objector

Ms L Herbert, Objector

Mr S Jefferis, Witness called by the Committee (via audio-visual link)

Mr M Keehan, Witness for the Medical Officer of Health (via audio-visual link)

Ms G Iwihora, Objector (via audio-visual link)

Ms J Kelly, Objector (via audio-visual link)

Ms N Patterson, Objector (via audio-visual link)

Mr C Plant, Objector (via audio-visual link)

Ms J White, Objector (via audio-visual link)

Ms D Hohneck, Witness for Objector (Mr C Plant) (via audio-visual link)

SITE VISIT:

A site visit was undertaken by the District Licensing Committee (the Committee) on the morning of Friday 7 June 2024. 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 13 Main Road TE KAUWHATA known as “Super Liquor Te Kauwhata” is refused.

INTRODUCTION:

[1] This is an application by SSA 2021 Limited for an off-licence in respect of premises situated at 13 Main Road TE KAUWHATA, to be known as “Super Liquor Te Kauwhata”. The application was filed with the Waikato District Council on 2 April 2023.

[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 located in the Te Kauwhata business zone. At the time the Inspector inquired into the application, the premises had an building certificate dated 27 October 2022, and a planning certificate dated 21 April 2023.

[3] The application was advertised in accordance with s 101. The application is opposed by the Medical Officer of Health and the Police, and 90 public objections were received within the prescribed time. All 90 public objectors (with numbers for ease of reference) are listed in the Annex to this Decision. Two letters of support were also received (from Mr J Denny and Ms J Scouler). The Inspector does not oppose the application. Given the opposition of the Medical Officer of Health and Police, and the public objections, the application was set down to be determined at a public hearing.

STATUS OF OBJECTORS:

[4] The status of objectors was determined prior to the hearing, with the determination communicated in a Minute of the Committee dated 13 May 2024. The Committee determined that the transitional provisions in Schedule IAA, Section 2 of the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023 apply to this application and hearing. We concluded that:

[6] 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) of the Act.

[7] 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.

[8] Another objector, Mr Scott Bovaird, is a trustee of the Te Kauwhata Licensing Trust. This was adduced during an earlier hearing, and is recorded in this Committee's decision in TK Spirits Limited LicApp20/2022 dated 26 April 2024.

[9] The Committee determines that all objectors listed in the Annex to this minute, being all objectors who submitted in-time objections except for Te Kauwhata Licensing Trust, and Mr S Bovaird, 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.

HEARING, DAY ONE (12 June 2024):

Preliminary Matters:

[5] The Minute of the Committee dated 13 May 2024 also recorded the Committee's determination in relation to the conduct of the hearing, noting that questioning of other parties and cross-examination of witnesses would not be allowed:

[11] As noted in paragraph [4], the Committee concludes that the transitional provisions in Schedule IAA, Section 2 of the Amendment Act apply to this application and hearing. Thus, the provisions in Section 16 of the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023 apply to this hearing. Parties to the hearing and their representatives will not be permitted to question other parties or witnesses of other parties, and cross-examination will not be permitted.

[6] The Committee also issued Directions on 13 May 2024, 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. Parties were also reminded that, although the Committee had recently heard a similar matter, this was a new hearing, and where the same, or similar, evidence is considered relevant to a party, it must be presented anew in relation to this application. This point was reiterated at the commencement of the first day of the hearing.

[7] On 20 May 2024, the Committee received a memorandum from Counsel for Nicola Patterson (an Objector), requesting an adjournment of the scheduled hearing. The Committee responded to the adjournment request in a Minute dated 23 May 2024. The grounds for the request for an adjournment are summarised in the Committee's Minute:

[5] The memorandum noted that "[a] Notice of Appeal was filed on 10 May 2024 by TK Spirits Ltd to the Alcohol Regulatory and Licensing Authority ('ARLA') in relation to the decision of Waikato District Licensing Committee to decline to issue a licence for the premises at 3 Main Road, Te Kauwhata, to be known as Bottle O Te Kauwhata..."

[6] The memorandum also noted that grounds for the appeal in TK Spirits Ltd overlap with issues that may be relevant to the current licence application, including amenity and good order and the Local Alcohol Policy. Also, in the Objector's view, the Committee cannot properly evaluate "the number of premises for which licences of the kind concerned are already held" as required by the criterion in Section 106 of the Act, as the outcome of the TK Spirits Ltd appeal is unknown.

[8] The Committee sought comment from all parties to the hearing, receiving responses from Mr A Pipe on behalf of the Inspector, and from the Medical Officer of Health. After considering the adjournment request, the Committee declined the application for an adjournment, giving the following reasons:

[11] As outlined in *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749 at [56], the Committee is required to undertake an evaluative exercise, "requiring the decision maker to make a merits-based determination on the application".

[12] In the Committee's view, the decision to grant this licence or not requires an evaluation of the merits of the application by SSA 2021 Ltd. The fact that there is another licence application subject to appeal to the Authority has little bearing on the merits of the application by SSA 2021 Ltd. The decision on the application by SSA 2021 Ltd must be based on the evidence before the Committee in relation to that application, evaluated against the criteria in ss. 105 and 106 of the Act.

[13] Moreover, the appeal by TK Spirits Ltd in respect of a refusal to grant their licence does not, in the Committee's view, raise points of law that are relevant to the application by SSA 2021 Ltd., that would justify the Committee pausing this application while those points are determined by the Authority.

[14] While cost to the applicant is not a relevant consideration for the Committee, we agree with Mr Pipe that there are natural justice issues that would arise from adjourning the hearing because of matters that may be decided on appeal in relation to a different licence application.

Opening Submissions – Applicant:

[9] Mr Davies summarised his opening submissions. He outlined the background to the application, then briefly summarised the applicant's case, and outlined the evaluative task that the Committee is required to take.

[10] Mr Davies then turned to the s 105 criteria. On suitability, Mr Davies submitted that "the available evidence demonstrates that the Te Kauwhata community is not a 'vulnerable' community for the purposes of alcohol licensing law". Mr Davies pointed to the finding of this Committee in the recent *TK Spirits Limited* decision that Te Kauwhata is not a vulnerable community, and submitted that "the DLC should make the same finding with this application because the evidence demonstrates that Te Kauwhata is a fast-growing and developing community, both residentially and commercially, whose residents are largely middle class". He further submitted that "the applicable suitability threshold for this application is the normal threshold, and not the extended suitability threshold as some parties have suggested".

[11] After summarising the relevant points to be heard in evidence, Mr Davies submitted that the applicant company "is clearly a suitable entity to hold an off-licence in respect of these premises" and expressed his opinion that "suitability is one of the strongest aspects of SSA's application".

[12] On the Local Alcohol Policy (LAP), Mr Davies agreed with this Committee's decision in the recent *TK Spirits Limited* decision that the Provisional Local Alcohol Policy does not apply. Turning to specific clauses in the LAP, Mr Davies submitted that the premises would be consistent with clause 5.2.1, as the premises "are situated in an area zoned under the Waikato District Plan to allow commercial activities as permitted activities, and in a location authorised by resource consent".

[13] In relation to clause 5.3.1 of the LAP, Mr Davies submitted that "this clause is effectively redundant, as the Act already requires the Committee to have regard to the number of premises in the locality for which licences of the kind concerned are already held when forming its opinion on amenity and good order".

[14] Mr Davies then submitted that clause 5.3.2 of the LAP "is inconsistent with the law, insofar as it places an onus of proof on SSA, and should be disregarded. However, it also requires SSA to prove negatives, which is incredibly difficult and procedurally unfair", also pointing to the Committee's recent *TK Spirits Limited* decision. Mr Davies further submitted that "even if the DLC were to assess this application in light of clause 5.3.2 of the LAP, there would be no evidence that the grant of the licence would lead to 'significant adverse effects' of the kind set out in that clause". Mr Davies submitted that significant adverse effects "means something more than just the ordinary effects associated with the establishment of a new bottle store, whether those effects come about by virtue of the receiving environment, or by the way the applicant intends to operate the store".

[15] Mr Davies noted that clause 5.4.1 "similarly appears to place an onus on SSA to prove certain things, which is inconsistent with the Committee's evaluative exercise".

[16] On days and hours, Mr Davies noted a change in the proposed hours of operation of the premises, being "Monday to Sunday (inclusive), 10am until 8pm, with the store also closed between 2.45pm and 3.15pm on week days when Te Kauwhata Primary School is operating with students".

[17] Mr Davies then turned to issues related to amenity and good order, noting that the applicant would offer a discretionary condition that "would see its staff inspect the area around the premises, as well as the Village Green, for litter and/or vandalism".

[18] Mr Davies then summarised the evidence that the applicant would provide on systems, staff and training, and noted that “The DLC can be confident, if it grants the application, that while SSA’s systems, staff, and training may not eliminate the risks of alcohol related harm from the sale of alcohol, those risks will be minimised”.

[19] Finally, on the Object of the Act, Mr Davies drew the Committee’s attention to the case of *Otautau Hotel 2017 Ltd v Grove* [2023] NZARLA 37, where the Authority found that a general aversion to the proliferation of alcohol outlets is a policy matter best dealt with in a LAP rather than as part of a DLC’s merits-based evaluation of an alcohol licensing application. Mr Davies submitted that “the object of the Act can be achieved with the grant of this application”.

Witness for the applicant – Mr Sukhjinder Singh:

[20] The witness for the applicant, Mr Hoar, was directed by the Committee to leave the room during the evidence of the applicant director.

[21] Mr Sukhjinder (Reuben) Singh, Director of the applicant company, then read his brief of evidence. He introduced himself and spoke of his background and experience in the liquor store industry since 2012, including owning Super Liquor Wellsford since 2015. Mr Singh noted that he had held a Manager’s Certificate for ten years. His co-director, Mr Simranjeet (Simran) Singh, has been working in the alcohol industry since 2012, and Mr Singh said his co-director had obtained his Manager’s Certificate in 2012.

[22] Mr Singh explained that, individually or together in partnership, the two directors own 13 stores, with 11 of those stores branded as Super Liquor, and two trading under the “Oasis Liquor” brand. Reuben takes care of the five North Island stores (and will take care of this premises, if the licence is granted), while Simran looks after the eight South Island stores. They each try to visit their stores weekly.

[23] Mr Singh noted that they have “a very good record of compliance”, that none of their stores had ever failed a Controlled Purchase Operation (CPO), and that they have never had an off-licence cancelled or suspended. He noted that “[t]his does not happened by accident” and “[w]e work hard and we have a great team of experienced staffs”.

[24] Mr Singh explained that stores with newer Store Managements also have a ‘Buddy Manager’ appointed, who “is a Store Manager at another one of our nearby stores and they support the newer Store Manager”.

[25] Mr Singh then outlined the applicants’ suitability and described their consultation with the community. He noted that neither of the directors had been convicted of any offence, and that they “work hard to run good businesses that minimise harm to earn the trust of the agencies and local community”.

[26] Mr Singh noted that they “have never received any complaints from locals (except during this Application), Police or community groups about how our stores are managed or operate” and that because of this, he is “confident that Simran and me will operate the store in Te Kauwhata safely and responsibly, as we do our other stores”.

[27] Mr Singh talked about supporting the local communities around their other stores, and about their Host Responsibility Policy, which “includes a “Customer Statement” which I often talk with

staffs about when I am running them through it – we talk about wanting to create a friendly, responsible and professional environment”.

[28] Mr Singh then turned to the comments in the Police report about the consultation with the community being misrepresented in their application. He “believe[d] what has happened is a genuine mistake and I am sorry for any upset that it caused.” Mr Singh explained that the consultations “included a representative from Super Liquor Holdings as well as our landlord Stu, his wife and me and Simran – 5 people in total”. They visited about nine businesses during consultation, and in their view most of the businesses approved of the application. However, he acknowledged that not all businesses and organisations approved.

[29] On the complaint about misrepresentation, Mr Singh explained that he understood that Ms Van der Munckhof felt that the statement “*She appeared comfortable with the Super Liquor approach*” made it seem like she supported the application. He expressed that he was sorry that Ms Van der Munckhof feels that way, and that “[i]t was never our intention to misrepresent her position. Our Consultation Notes also show that Angela was “worried about the negative impact that the proposed Premises could have in Te Kauwhata”. I believe we represented her concerns accurately. We did feel she was comfortable with the systems Super Liquor has”.

[30] Mr Singh provided written replies to the complaint, from Mr Stu Jefferis, and Mrs Rachel Jefferis.

[31] Mr Singh then discussed alcohol-related harm, and the limitations that owners of bottle stores face when it comes to minimising harm, noting that “[o]ur only chance to minimise harm occurs inside our stores – this is when we can make the most difference and why we are focussed on having good local staff and good systems”.

[32] Mr Singh did not agree with the MOH’s report that his store “will drive others to drop their prices”. He said that “[o]ur franchise rules mean we don’t engage in price cutting or loss leading and we have advertising and promotion guidelines and standards. Plus we would not be “competing” with others because our range will be much larger”.

[33] Mr Singh then explained why they operate their stores under the Super Liquor brand, noting that “[w]e chose the Super Liquor franchise because it is a responsible banner that looks after its franchisees and supports them by providing excellent training and support resources”.

[34] Mr Singh then discussed the application and the Inspector’s enquiries into the application, accepting that the Inspector had interacted more with the landlord than with the directors of the applicant company. However, he stressed that “me and Simran have always been involved in and directing SSA and this application”. Mr Singh noted that their due diligence began in 2020, and that they worked with Super Liquor’s Franchise Manager to identify the location.

[35] Mr Singh discussed the consultation that they had with Nicola Patterson from Te Kauwhata Community House and Brian Martin, the principal of Te Kauwhata Primary School, both on 31 October 2022. Mr Singh acknowledged that Ms Patterson “was not supportive our Application” (sic), but that he believed that Mr Martin “was satisfied by our proposals to limit the store’s exposure to the school, including by building a fence”.

[36] Mr Singh then discussed the design and layout of the premises, noting that the outside of the store would “not include alcohol advertising or promotions, only the “Super Liquor” branding and signage around trading hours”. He noted that they could still work with Super Liquor to change the proposed colour of the premises from blue to a grey or black instead.

[37] Mr Singh noted that they were mindful of their store layout, and that “[w]e’ll locate RTDs and other drinks so they are not visible from outside the building or in the car park. We’ll also make sure the outside of our store is well lit and it will include CCTV coverage and monitored security”. Mr Singh also drew attention to the range of resources provided by Super Liquor including an employee induction checklist, and Super Liquor’s eLearning system.

[38] Mr Singh then described the ‘locality’ of the premises, which in his view is “really the commercial area along Main Road, between Baird Ave in the north and Mahi Rd in the south”, an area of approximately 250 metres radius around the premises. He described the locality as “pleasant”.

[39] Mr Singh noted that the building has post boxes and a private ATM, and that the landlord “has offered to relocate both the Post Boxes and the Private ATM if our Application is granted and the Committee thinks relocating these would help minimise harm”. He agreed that the premises is close to Te Kauwhata Primary School, the pharmacy and health centre, and the Te Kauwhata Trust Tavern.

[40] Mr Singh then noted that his staff “would undertake regular checks of the areas immediately outside the store”, during the morning and afternoon school closures. This would be beyond the area immediately outside the premises, and “[s]taff could remove any litter and clean or report any vandalism or breaches of the Alcohol Ban they see during these checks”. Mr Singh said that he was happy for these checks to be made a condition of the licence.

[41] Mr Singh then talked about blocking the view of the store from Te Kauwhata Primary School, noting that “we have agreed to replace the existing fence between the Primary School and the rear of the store so that it is a 1.8m close boarded wooden fence instead”, and “[o]n the side of the fence facing the Primary School we are supporting a mural for the students to paint”. Mr Singh also noted that they would also support the Primary School as part of their commitment to the community.

[42] Next, Mr Singh briefly summarised the objections to the licence. He believed that many of the concerns had been addressed in his evidence. He further noted that “I believe we can minimise the risk of harm by employing local staff who know the local customers and having good systems in place. We are also happy to work alongside with Police, MOH and Community House to trespass or deny sale of alcohol to any individual. We have no interest in causing harm”.

[43] Mr Singh believed that the harm from litter could be minimised “by having conditions that require staffs to patrol and tidy up these areas twice daily whenever the store is open. I believe doing this will mean litter cannot “increase”... managing that future risk”.

[44] In relation to the visual impact of the store, Mr Singh said that “[w]e can also change our colour scheme and signage on Main Road to make it more discrete which I believe will address some concerns around the Health Centre. I note the Tavern already has alcohol advertising outside (Carlsberg and Woodstock)”.

[45] Mr Singh then discussed the criteria for the issue of an off-licence. This reiterated points from his Counsel’s opening submissions and Mr Singh’s earlier evidence, including an intention to seek days and hours of “Mondays to Sundays (inclusive), 10am until 8pm, except any day Te Kauwhata Primary School is operating with students, where the Premises shall also close between 2.45pm and 3.15pm”.

[46] On the sale of goods and services other than alcohol, Mr Singh confirmed that they proposed “also sell tobacco and vape products in addition to soft drinks/juices and snack foods like chips”.

[47] On the issue of twice-daily checks of the area around the premises, Mr Singh added that “[w]e will also hire a local cleaning company to perform more extensive clean up twice every week”. He noted that he had not seen alcohol-related litter himself, but that he had seen litter during some of his visits to Te Kauwhata.

[48] On amenity and good order, Mr Singh noted that this premises “is similar to our Woodville store, near Palmerston North. This store is also located on the town’s main road and is the only bottle store in Woodville. We have not experienced any drop in amenity and good order in Woodville because our store is run safely and responsibly”. He added that “Woodville has a similar population size to Te Kauwhata of about 1,600 people and is scored 9 for deprivation”.

[49] On systems, staff and training, Mr Singh said that “[t]hrough Super Liquor I can access excellent sales and training systems as well as practical supports. Joining Super Liquor means you’re part of a family of like-minded businesspeople who have industry-leading standards”. He offered that “[w]e are willing to offer a commitment that if our Application is granted we will not open the store until we have a minimum of 3 certified managers appointed to it”. He also noted that “[i]n addition to the training systems from Super Liquor we have engaged Pervinder Davies from Corcoran French to provide ongoing training to all our staffs. This training takes place current every Nine Months, and moving forward it will be every six months... At the end of training Pervinder issues staff with a Certificate. Training by Pervinder last took place with our staff on 14 May 2024”.

[50] Turning to the reports of the agencies, Mr Singh disagreed that granting the application “will or could result in “price wars””. He noted that “[o]ur franchise rules mean we cannot loss lead or cut prices”. He drew the distinction with the New World supermarket, which “has a different offering to ours and so it unlikely to compete on price”, and the Trust Tavern, which “has a very limited range”.

[51] Mr Singh finished by offering several discretionary conditions, should the licence be granted:

1. Alcohol may be sold under the licence only on the following days and during the following hours: Mondays to Sundays (inclusive), 10am until 8pm, except any day Te Kauwhata Primary School is operating with students, in which case the Premises shall also close between 2.45pm and 3.15pm;
2. Staff at the premises shall inspect the area around the premises, including the Village Green, for litter and/or vandalism. This area shall include Main Road, between Baird Ave in the north and Mahi Road in the south. Staff will collect any litter and report any vandalism to Waikato District Council. Local commercial cleaners will be hired also;
3. The premises will have at all times a minimum of three certificated managers appointed to supervise the sale and supply of alcohol. Where the premises cannot maintain this minimum, it will not be permitted to trade; and
4. Deliveries to the premises will only occur using vans (and not trucks, including light trucks) and will not take place when Te Kauwhata Primary School is operating with students.

[52] Mr Singh also offered several undertakings:

“6.2.1 We will construct a 1.8m tall close boarded wooden fence along the boundary between the premises and Te Kauwhata Primary School.

6.2.2 We will support Te Kauwhata Primary School by offering funding for students or a local artist to paint a mural on the school’s side of this wooden fence.

6.2.3 We will not open or operate the premises with fewer than three certified managers appointed to it.

6.2.4 For our Probationary Year we are willing to consult with Community House regularly to discuss concerns (and address them). We are also willing to work with the Community Patrol for the same reasons.”

[53] Mr Singh then answered questions from the Committee. When asked about why they intended to sell tobacco and vape products at the store, he replied that this was because they were “general restricted 18+ products”. Most of their other stores sell these products, with a limited range. When asked about the range of products, Mr Singh noted that they wouldn’t be building a “business inside a business” like some other stores do, and that they were not intending to be a specialised vape retailer.

[54] When asked whether he was concerned that selling tobacco and vape products would make it difficult for the premises to maintain 85 percent or more sales of alcohol, Mr Singh noted that because they would sell a limited range, this should be no problem. He explained that in their other stores, tobacco and vape products were about 7-8 percent of sales. He also pointed out that other retailers in Te Kauwhata already sell vape products. However, Mr Singh said that they would consider not selling tobacco or vape products if it was felt that it would contribute to harm.

[55] When asked whether he was worried that stocking tobacco and vapes would make the store a target for crime, Mr Singh replied that they would minimise the visibility of these products, and not promote them. However, he accepted that ram raids may be an issue.

[56] Responding to a further question about what crime prevention systems they would have in place, Mr Singh said that they would use layout and lighting, visibility from the road, security alarms, fog cannons, a panic alarm, and bollards if the council would allow them. Another one of their stores uses a security patrol firm. They had not considered controlled entry to the premises and did not use this at their other stores.

[57] At this point, the Committee paused questioning of Mr Singh, to hear the evidence from the Police, who due to operational requirements, had limited availability to attend the hearing.

New Zealand Police - in opposition (via audio-visual link):

[58] Sergeant Martin read his combined submissions and brief of evidence. He highlighted the demographic statistics for Te Kauwhata, showing steady population growth since 2006, with (as of the 2018 Census) a population of 1617 people, of which 23.0 percent were Maaori. The unemployment rate overall (as of the 2018 Census) was 2.6 percent, but was 7.9 percent for Maaori, with both rates slightly lower than for the Waikato District as a whole.

[59] Sgt Martin then talked about the location of the premises. He noted that there is an ATM and post office boxes at the front of the premises, and that these are “attractors to the site, in that members of the community use these facilities to go about their everyday business”.

[60] Sgt Martin noted that “Police are concerned with the proliferation of Licensed premises, specifically Off Licenses, price wars are certain to follow as competition ensues”, then pointed to the following from the Action Point website:¹

¹ https://www.actionpoint.org.nz/the_price_of_alcohol_case_for_change

“High liquor outlet density in a community may lead to competition, which drives prices down.

Increasing the price of alcohol is one of the strongest tools in our kete / basket to reduce harm. A large body of high-quality research suggests that a 10% increase in price reduces overall alcohol consumption by 5%. In fact, it is the most important strategy to reduce inequities in alcohol harm.”

[61] Sgt Martin then identified the licensed premises in Te Kauwhata and surrounding areas and submitted that “there are sufficient licensed premises to service the public. These include a mixture of On, Off and Club Licenses”.

[62] In relation to the LAP, Sgt Martin submitted that “paragraph 5.3.2 States that no new off license should be considered for certain criteria” and that “paragraph 5.3.2(ii) must also be considered as the conjunctive “and” is used. Amenity and good order must be upheld, or at least not reduced to more than a minor extent”.

[63] On evidence of harms, Sgt Martin noted that “[t]here is currently no evidence of excessive drinking or alcohol related litter. There is insufficient evidence for police to say that this will definitively occur. Adversely the applicant has failed to address these issues and offer assurance to the DLC that there is a clear plan to address or minimize these concerns”.

[64] Sgt Martin then discussed Te Kauwhata Primary School, noting that according to the 2022 Education Review Office report, the school roll is 305 and a little over one-third of students identify at Maaori.

[65] On days and hours, Sgt Martin submitted that “[i]n the interest of minimizing exposure to alcohol and meeting the requirements in paragraph 5.4.2(a) Police would request that the hours be amended to 1000hrs -1430hrs and then 1600hrs – 2200hrs Monday to Friday and 1000hrs – 2200hrs Saturday and Sundays. Police would also request minimal external advertising as agreed upon by the reporting agencies, the applicant and the DLC”.

[66] Turning to suitability of the applicant, Sgt Martin noted that “[t]here is no question that the applicants are experienced in the alcohol off License industry” but highlighted that “the 2 duty managers proposed to be employed would not cover the hours requested and allow appropriate coverage for breaks, sickness, leave or training”.

[67] Sgt Martin then noted that “[t]he training regime undertaken by the Superliquor franchises appears sufficient”.

[68] Sgt Martin identified that “[t]he Applicant makes several suggestions as to how they intend to minimize alcohol related harm in the community”. However, Sgt Martin submitted that many of the suggestions made by the applicant “are not specific to the application, merely compliance with the obligations of their license under the Act”. This included training of staff to recognise problem drinkers, declining service to minors and intoxicated persons, ensuring that water is available during tastings, providing posters on responsible drinking, ensuring that a Duty Manager is on site at all times, and adhering to licensed hours.

[69] Sgt Martin then discussed the community consultation undertaken by the applicant. Sgt Martin mentioned that Police had sent a questionnaire to the community on 9 May 2023 about the

consultation that had been undertaken. They received a response from the local pharmacist, Angela Van der Munckhof, who:

“...was accosted at her workplace, during work time by the landlord on a different day and invited to speak outside at the rear of her workplace. There she was introduced to the applicants and a representative from Superliquor. The member of the public again stated that she would not support the application.

This person was left by the landlords’ partner in the company of 4 men at the rear of her work address. She felt intimidated and uncomfortable. She felt ambushed but stood by her beliefs and is not sure how the applicant came away from the conversation with the idea that she supported the application”.

[70] Sgt Martin noted that the comments by the applicant in their application imply that Ms Van der Munckhof supports the application, but that “this is not the case and has been a public embarrassment to her”.

[71] Finally, Sgt Martin submitted that the applicant falls short in relation to the Object of the Act, the suitability of the applicant, the local alcohol policy, days and hours, design and layout, and systems, staff and training. Sgt Martin reiterated that Police oppose the application. He noted that Police feel that the applicant’s proposed discretionary conditions were “reactive”.

[72] In response to questions from the Committee, Sgt Martin noted that three staff work out of the Te Kauwhata Police Station, on response. The nearest 24/7 staffed police station is at Huntly. The ‘Priority One’ response time to Te Kauwhata is about ten to fifteen minutes. However, on a late-night shift, a single police vehicle may cover everywhere from Raglan to northern Waikato.

[73] When asked about the lack of data on crime or police callouts, Sgt Martin responded that the data on alcohol-related crime was of questionable validity. When asked whether the Committee should take that to mean that crime is not a concern in Te Kauwhata, Sgt Martin disagreed, and noted that it was simply a matter of the quality of the data.

[74] When asked whether this store would be an attractor of crime, Sgt Martin responded “certainly”, but noted that ram raids have been decreasing. Asked about what the main crime issues were in Te Kauwhata, Sgt Martin mentioned methamphetamine and drugs, shoplifting particularly at New World, and domestic burglaries. Responding to a follow-up question, Sgt Martin noted that there had been ram raids at the Mobil in Te Kauwhata, and burglaries at the Four Square supermarket (prior to the construction of the New World supermarket), but that these were burglaries and not ram raids. He explained that there is a ‘crime corridor’ between Waikato and South Auckland, which Te Kauwhata is in.

[75] On what crime prevention methods should be in place, Sgt Martin mentioned bollards, fog cannons, monitored alarms, and planter boxes in front of the store, as a means of “target hardening”.

[76] On the questionnaire that Police sent to the community about the applicant’s consultation, Sgt Martin confirmed that there had been six responses. Only Ms Van der Munckhof had responded negatively, with the other five being “ok with how their comments were presented”.

[77] In relation to how the application would change police resourcing, Sgt Martin responded that growth in Te Kauwhata and the Sleepyhead Estate would push resourcing further north. He noted that Police own the house behind the existing station in Te Kauwhata, and may redevelop this as a new larger station in the future.

[78] When asked about Objectors' evidence from the objections, Sgt Martin responded that he couldn't speak to property damage incidents. However, there had been a spate of graffiti in the town, in the last six months. He did not know whether alcohol had been involved in those incidents.

[79] Sgt Martin confirmed that Police remained opposed to the grant of the licence. The steps that the applicant proposed went some way to alleging some of the Police's fears. However, some are very reactive, "to get it [the application] across the line".

Recalled witness for the applicant – Mr Sukhjinder Singh:

[80] Mr Singh was recalled to answer further questions from the Committee. In relation to the 'buddy system', Mr Singh explained that the buddy manager would help the store manager with placing orders, stock management, and compliance. The buddy manager may visit the store if requested, but the help would mainly be through regular phone conversations, five to six times per day to start with, then one to two times per day as the store manager becomes more confident.

[81] When asked about how accessible he would be, given that the Inspector appeared to have some difficulty in contacting him, Mr Singh responded that he was available by phone or email, and that the store will have his contact details.

[82] When asked what systems were in place for ongoing consultation with the community, Mr Singh responded that he would share his personal details, and might meet monthly with the community if needed, to discuss issues.

[83] On the question of why Te Kauwhata was chosen as a local for the premises, Mr Singh responded that he had been travelling through Te Kauwhata for a number of years. He had been considering living in the area. He noted the general growth of the town, and he liked the small town and close community.

[84] Mr Singh confirmed that, in relation to consultation with the public, he had initial consultation with one or two people on the main street of Te Kauwhata, as they consulted with the local businesses. One or two people refused to participate in the consultation. They were members of the public. Mr Singh also confirmed that they did not consult with the local business association, the local board, the community patrol, or local iwi or marae. He noted that he thought that the Community House was appropriate to be consulted.

[85] When asked who decided on prices and promotions, Mr Singh responded that Super Liquor has national specials and super deals, but there are also 'store manager specials'. He confirmed that the recommended retail price was mainly followed at their stores.

[86] In relation to the range of products, Mr Singh explained that there was a 'core range' of products for Super Liquor stores, and that there were no restrictions on product range, other than a general prohibition on parallel imported products. In follow-up questions, Mr Singh explained that there were about 700 products in the 'core range', and that about 10-15 percent of those, or maybe less, were ready-to-drink products (RTDs).

[87] On the subject of vape products, Mr Singh confirmed that vape products were not required under the franchise agreement. He would consider a condition not to sell vape products. The target market for vape products was those aged 18 years and over. They were planning on selling vape

products with nicotine, although Mr Singh noted that new regulations were lowering nicotine content.

[88] In response to a further question from the Committee, Mr Singh confirmed that the lease agreement did not include any restrictions on product range or sales practices. He noted that he had a verbal agreement with the landlords on these matters.

[89] When asked whether Super Liquor would support a lower visual impact for the store, Mr Singh responded that Super Liquor would, and that the applicants had consulted with them. Mr Singh confirmed that all their other Super Liquor stores were painted blue and red, but that this one would remain branded Super Liquor even if it was painted black and grey.

[90] Mr Singh was then asked about how they proposed to locate RTDs, so that they would not be visible from outside the store. He responded that they would be located only in the chiller, in the last three chiller bays.

[91] On the question of what the deck area at the rear of the premises would be used for, Mr Singh noted that they would block that area off, and that it was not needed for getting to the storeroom. When asked about the shed at the bottom of the yard behind the premises, Mr Singh explained that this was for postage, couriers, and mail sorting, and that it was not part of their lease.

[92] If the post boxes and the ATMs were moved, Mr Singh noted that the additional space would have a similar black and grey frontage to the rest of the building.

[93] Asked about how often the checks for litter would be conducted, Mr Singh responded that they would still do these checks on weekends, not just on school days. They would be conducted three times per day, at the start, middle and end of a shift.

[94] Mr Singh confirmed that the fence at the rear of the property, bordering Te Kauwhata Primary School, would be built before the store opened, and that they would pay for the fence themselves.

[95] On the question of how employing local staff would minimise the risk of harm, Mr Singh responded that they would be more aware of the community and local customers. When asked about how local is local, Mr Singh responded that he considered anyone living in Te Kauwhata to be local. His priority would be for people in the local vicinity. He used the example of their Woodville store, which had one staff member from Woodville, and one from Pahiatua (about 10 to 15 minutes away).

[96] When asked which areas the local cleaning company would clean, Mr Singh responded that they would clean the frontage of the property, the rear of the property, and 20 metres either side of the property.

[97] Returning to the topic of Woodville, Mr Singh confirmed that there were four licensed premises in Woodville – a Four Square, two pubs, and their Super Liquor store. Their store was the only standalone bottle store. Mr Singh also confirmed that there was a 24/7 liquor ban on the main street of Woodville. He didn't know whether the Tararua District had a Local Alcohol Policy.

[98] Mr Singh confirmed that Woodville is at the intersection of two state highways, and he accepted that there was a lot more traffic in Woodville than in Te Kauwhata. The target market for the Woodville store was a mix of locals and through traffic, and the Te Kauwhata store would also have a mix. Mr Singh accepted though that Te Kauwhata doesn't have main highways and there is a different sort of travel. Mr Singh noted that they have operated the Woodville store for three to

four years, and that the Woodville store does not have similar discretionary conditions as they are proposing for this premises, as they had bought an existing store.

[99] Mr Singh then confirmed the period of time which the applicant directors had owned other stores: Super Liquor Wellsford (7 years); Super Liquor Pegasus (7 years); Super Liquor Woodend (2 years); Super Liquor Preston Park (three months, currently trading under a Temporary Authority); Super Liquor Lyttleton (ten months, since November 2023); Super Liquor Dargaville (2.5 years); Super Liquor Dannevirke (3 years); Super Liquor Woodville (4 years); Super Liquor Carterton (1 year, but just reopened 3 months ago); Super Liquor Kaikoura (3 years); Super Liquor Westport (4 years); Oasis Woodend (less than one year); and Oasis Westport (less than one year).

[100] When asked whether the three certificated managers mentioned in the proposed discretionary conditions included the company directors, Mr Singh confirmed that they did not. He agreed that they could be excluded from this condition.

[101] When asked about what specific support Super Liquor staff provide, Mr Singh explained that Greg Hoar assisted with compliance issues and advice. Cam Lock conducted compliance audits, checking staffing, training, and general cleanliness. These site visit checks were conducted every three months. Mr Lock also helped with data on product mix and sales.

[102] Asked to provide more detail about the role of Jude Evans, Mr Singh confirmed that she was HR and operations manager. She was employed to make sure that they are responsible operators, and that they are consistently working on it.

[103] In relation to staff training, Mr Singh confirmed that training is done one store at a time. He noted that the external trainer, Pervinder Singh, is aware of all the licence conditions for each store. He also noted that there are open-ended questions at the end of each training session. He confirmed that there is also on-site training, when the applicant directors are on-site.

[104] Asked to further clarify the staff requirements for training, Mr Singh responded that new staff do induction training, and that this must start within their joining week. These staff are expected to do one online module per day, and that these can be completed during working hours.

[105] Asked about the difference between a van and a light truck, as noted in the proposed discretionary conditions, Mr Singh responded that they have their own van for deliveries.

[106] In response to a question about whether they had had a ram raid in recent times, Mr Singh confirmed that they had a ram raid at their store in Kaikoura, around the start of this year.

[107] In relation to loss from their stores from theft, Mr Singh noted that these incidents were very rare.

[108] Mr Singh confirmed that they will not offer deliveries to individual customers, only to rugby clubs, etc.

[109] Mr Singh confirmed that the 'start-up phase' for the business was one year.

[110] Asked whether, as noted by one Objector, this application was 'being sneaked in before the [new LAP] rules', Mr Singh responded that they were not trying to 'sneak this in'. There was an opportunity, with a property available for lease.

[111] When asked what would happen if someone drinks immediately after exiting the premises, Mr Singh responded that they would contact the authorities, and deny service in the future. On how Super Liquor would respond to a breach of licence conditions, Mr Singh noted that they would cancel the franchise agreement.

[112] Finally, under redirect from Counsel, Mr Singh confirmed that they would not use a private company to deliver products to the store but would use their own van.

Witness for the applicant – Mr G Hoar:

[113] Greg Hoar is National Operations Manager for Super Liquor Holdings Limited, and has held that position for approximately 7.5 years in total, most recently since December 2020. He had over 30 years' experience in the liquor industry. His areas of responsibility include developing franchisee business relationships; oversight of franchisee obligations and compliance; leadership and participation in all regulatory changes, updates, and submissions; strategic network growth plan; and leadership of and participation in personnel processes and practices.

[114] Mr Hoar briefly outlined his involvement in the application, then described the Super Liquor business model. He then outlined the monitoring and compliance measures that Super Liquor has in place, including that "[a]ny store that fails an audit on franchisee standards does not qualify for their compliance rebate. In other words, there is a financial incentive to comply". This financial incentive amounted to \$1200+GST. They could also choose to terminate the franchise agreement.

[115] Mr Hoar then commented on the objections to the application, in relation to the s 105 criteria under the Act. He noted that "[t]here is no evidence that Super Liquor can find that demonstrates the sale, supply and consumption of alcohol will be undertaken any more safely and responsibly by differentiating between supermarkets, grocery stores, and bottle stores. Nor is there any evidence that demonstrates the harm caused by inappropriate consumption is minimised by licence type differentiation".

[116] On amenity and good order, Mr Hoar noted that "Super Liquor requires all its franchisees to keep their shop fronts clean and tidy to attract customers and to do our best to not decrease the amenity and good order in the community". In addition, in his experience, bottle stores do not generate a lot of noise.

[117] On systems, staff and training, Mr Hoar noted that "Super Liquor is committed to minimizing risk to our franchisees and alcohol related harm in the communities we operate in. Extensive training and compliance resources, systems and processes have been developed by Super Liquor for its franchisees". He believed that Super Liquor "has one of the best alcohol training systems in the New Zealand retail market". He demonstrated the system by way of screenshots of the cloud-based training system, the Super Liquor Academy.

[118] Responding to questions from the Committee, Mr Hoar confirmed that the everyday price at Super Liquor stores is the store's responsibility, but 'core products' are on national promotion. He noted that the average store has 2000 products in stock, and the proposed premises may have 1600 products. Of these, about 450 are 'core products' and the rest of the products are the stores own choice.

[119] When asked whether Super Liquor would support a colour scheme with lower visual impact for this store, Mr Hoar responded that they would, and would work with the landlord, the licensee

and the council. He noted that not many other Super Liquor stores have alternative colours – maybe 12 to 15 stores nationwide.

[120] In response to a question about whether Super Liquor prohibits any products through their franchise agreement, Mr Hoar said that there was a banned product list. It included boxed premixed cocktails and parallel imported products.

[121] When asked about his comments comparing bottle stores and supermarkets and whether the Committee should not distinguish between the two types of off-licences, Mr Hoar responded that the supermarket offering is different from a bottle store.

[122] When asked if there is an expectation by Super Liquor that franchisees keep the area around the store clean and tidy, Mr Hoar responded that there was. Responding to a follow-up question, he confirmed that the expectation was cleaning up twice per day, first thing in the morning and at dusk.

[123] When asked about ‘minimum performance standards’, Mr Hoar noted that these were assessed in the compliance audit, and that each audit took between three and four hours. There were no financial performance standards. On the cost to become a franchisee, Mr Hoar responded that the cost was \$5000 on application plus a \$4000 bond. There was also a \$15,000 per year franchise fee, with a rebate of \$4800 for successful audits.

[124] In response to a question about whether Super Liquor had a national loyalty programme, Mr Hoar said that they did not. However, two stores had their own individual loyalty programmes.

[125] On why Super Liquor was interested in Te Kauwhata, Mr Hoar responded that he had identified this opportunity, as it was a growing area. When asked whether the impending provisional LAP was a factor in the timing of the application, Mr Hoar responded that he had originally put together a proposal in 2017, and the directors of the applicant company looked at it in 2020.

[126] When asked what the broader range of alcohol might mean for this community, Mr Hoar responded that supermarkets sell high alcohol wine and beers, and “it’s about moderation”. He noted that the price per litre is cheapest in supermarkets.

[127] Finally, when asked how a standalone bottle store would benefit the community, Mr Hoar identified community engagement, choice, a good shopping environment, employment opportunities, and good operators.

HEARING, DAY TWO (13 June 2024):

Witness for Hāpai te Hauora (Objector) – Ms J Maihi (via audio-visual link):

[128] Ms Jenay Maihi read her brief of evidence. She is a Māori Public Health Advisor at Hāpai te Hauora Māori Public Health. Hāpai te Hauora is the largest Indigenous health organisation in New Zealand, with a vision of “Healthy lives sustained by Healthy environments”.

[129] Ms Maihi discussed the work of Hāpai te Hauora, and explained that they hold “a contract with Te Whatu Ora as one of the co-leads of the roopuu Te Wai Ora. Te Wai Ora is a funded kaupapa Māori social movement, dedicated to addressing alcohol-related harm”. She also explained that “Hāpai actively partners with Communities Against Alcohol Harm, Inc. and Turehou Māori

Wardens ki Ōtara Charitable Trust work in concerted efforts to oppose the granting of alcohol licences”.

[130] Ms Maihi then explained that “[a]t a population level, Māori experience poorer health outcomes than the general New Zealand population. This is reflected in overall Māori mortality rates which have seen the least improvement out of all other ethnic groups in New Zealand”.

[131] Ms Maihi noted that Hāpai te Hauora believes “the addition of a stand-alone alcohol outlet to this community will make alcohol more accessible and therefore increase the alcohol-related harm to the Māori families and communities who live there”. She submitted that the issue of this licence “would therefore breach the purpose and object of the Act: to work for the benefit of the community as a whole and to minimise alcohol related harm”.

[132] Responding to questions from the Committee, Ms Maihi noted that she had studied sport and recreation at AUT, and had been working at Hāpai te Hauora for two years.

[133] Asked about examples of burdens of alcohol-related harms to Māori in the Waikato and especially in Te Kauwhata, Ms Maihi responded that she doesn’t directly work in Te Kauwhata. However, alcohol affects people’s Hauora, wairua, and tinana. It comes back to how it affects whānau as a whole. It affects community. It affects their upbringing. People have grown up in a pub, and alcohol creates generational trauma.

[134] When asked whether the applicant had engaged with Hāpai te Hauora, Ms Maihi responded that they had not. On who she had engaged with, she only mentioned Ms Belinda Fowler.

[135] Finally, on what the impacts of alcohol are on family and whānau, Ms Maihi noted that these are a result of what alcohol does to people and its effect on others.

Witness for Hāpai te Hauora (Objector) – Ms B Fowler:

[136] Ms Belinda Fowler read her brief of evidence. She works for Communities Against Alcohol Harm and is also a trainee Māori warden. She noted that she assisted some of the objectors to the application, which involved “reading the application, conducting desktop research, and creating Jotform and Microsoft Word templates which objectors customised to produce their own objections”.

[137] Ms Fowler drew attention to the income data in Super Liquor’s demographic report, produced in evidence by Mr Hoar, which showed income in Te Kauwhata lower than the national average, and spending on packaged liquor higher than the New Zealand average.

[138] Ms Fowler then questioned whether the proposed 1.8-metre-high fence would prevent any view of the premises from the school. She also questioned the position of the fence, as to whether it would be on the rear boundary only, or on the side boundary as well. She questioned whether the fence would block out the sun from the garden at the rear of the school.

[139] Finally, Ms Fowler noted that some of the applicant’s companies are accredited employers for work visas, and she questioned how committed they are to employing local people.

[140] Responding to questions from the Committee, Ms Fowler confirmed that she had a fine arts degree, and had worked for Communities Against Alcohol Harm for three years. She had written most of the objection for Hāpai te Hauora, providing most of the information and the first draft.

She had been to Te Kauwhata for the first time the day before. She had visited the premises and had been down behind to premises.

[141] When asked about what can be seen from the boundary with the school, Ms Fowler responded that she didn't really focus on what you could see from the school. However, she believed that children would be able to see people parking, vaping, smoking, as well as deliveries and people drinking in the carpark.

Objector – Ms J White:

[142] Ms Janis White read her brief of evidence. She is a resident of Te Kauwhata, and previously served as Secretary and a member of 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.

[143] Ms White spoke of vulnerable groups in the community, including young families with children, and residents of the retirement village. She 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". Ms White supported her statements with photographs of school children walking through the town and past the proposed premises, noting that secondary school students arrive in town later than 3:15pm, when the store would be open. She also noted that Te Kauwhata is usually very quiet after 8pm.

[144] Ms White expressed her concern that the liquor store "is likely to be a target for those coming from outside areas" and noted that "[t]he expressway is very close and the last thing we would want is intoxicated people behind the wheel on the expressway, drinking in the village playground and/or increased crime in the district". She also pointed out that "[r]ight now there are always alcohol bottles smashed in the playground and skate park".

[145] Finally, Ms White noted that she had patrolled at least once every two weeks as part of the Community Patrol, "initially from 9pm to midnight, but that was later changed to more flexible hours at any time", and that "[s]ometimes I did not see anything happening while patrol. At other times, I would see people wandering around, or youths in the park".

[146] Asked by the Committee to elaborate on the things she had seen while on Community Patrol, Ms White responded that she would see people "hanging around, looking for something interesting to do", or people drinking outside the rugby club. Asked about her comment on smashed bottles in the playground, Ms White responded that she had seen it occasionally herself, but that she doesn't walk through there on a regular basis.

[147] In response to a question from the Committee, Ms White noted that she had not made a submission on the LAP, because she didn't realise that it was happening.

[148] Asked about what, in her view, the school close-down period for the premises should be, Ms White noted that students arrive about 3:15pm, maybe 3:30pm. In relation to the change of colour of the premises, Ms White noted that it didn't change her views of the application, although no external advertising "would be an improvement". She wasn't aware of alcohol advertising in front of the tavern and noted that the tavern is set back from the street.

[149] Finally, when asked about alcohol-related harm that she had seen in Te Kauwhata, Ms White responded that she had seen people staggering around in the streets, most Saturday nights,

occasionally in Main Street, but more often around the rugby club, and occasionally around the tavern, although it runs a courtesy van.

Objector – Ms A Van der Munckhof (via audio-visual link):

[150] Ms Angela Van der Munckhof read her brief of evidence. She is the owner of Te Kauwhata Pharmacy.

[151] Ms Van der Munckhof reiterated the reasons for her objection, which related to the 2022 Provisional LAP. She added that there were safety issues because “[t]he site for the liquor store is close to the ATM for Te Kauwhata as well as the post boxes”. She noted that she was also concerned for her personal safety, being a pharmacy with drugs on hand, and “concerned at not being able to stop people lurking or even 'charging' the store as such”. She noted that “[t]he area is currently very quiet at night time which is great for town safety, but I fear a bottle store will change this”.

[152] Ms Van der Munckhof also noted that she had made a complaint to the Waikato District Council about the applicant, and included a copy of her complaint in her evidence.

[153] In response to a question from the Committee, Ms Van der Munckhof noted that she had operated the pharmacy since September 2017, and before that she had been a locum for fifteen years. The customers of the pharmacy were various ethnicities and ages.

[154] When asked to elaborate further on how a bottle store will change the area at night, Ms Van der Munckhof replied that she feels safe at night. The store would bring more people in town, including people who don't make good decisions. She noted that “[a]lcohol and drugs tend to go together”.

[155] When asked if she had had any further interactions in relation to her complaint, Ms Van der Munckhof responded that she had seen letters from the landlords at the hearing that she hadn't seen before, but nothing else. She hadn't spoken to the landlords about this and hadn't spoken to the applicants.

[156] When asked for examples of alcohol-related harm, Ms Van der Munckhof said that she had had people collapse in her store from alcohol. She has had to confiscate keys to stop people driving away. However, she noted that this was infrequent.

Opening Submissions – Objector (Ms N Patterson):

[157] Counsel for the objector Ms Nicola Patterson, Dr Liz Gordon, provided written opening submissions. These submissions covered the statutory criteria and relevant case law, 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.

[158] On extended suitability, Dr Gordon outlined the vulnerability of the area, and submitted that “the standard of extended suitability applies”, noting that “[t]his standard requires the Applicant to operate at a higher level of suitability”. After outlining the requirements to meet extended suitability from *Westlaw Commentary* (SA104.4(2)), Dr Gordon submitted that “[t]he evidence before the DLC is that the Applicant has failed to reach the standard required of extended suitability”.

[159] On suitability more generally, Dr Gordon submitted that “[w]ith two directors and operating in such widespread locations, it is hard to see how they can meet the general requirements of suitability”, and 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”.

[160] On the local alcohol policy, Dr Gordon submitted that clause 5.3.2 is 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”. She further submitted that “the issue of the licence, or the consequences, will be inconsistent with the 2017 LAP”, noting that the Committee may refuse to issue a licence “if the issue of the licence, or the consequences, would be inconsistent with a local alcohol policy”.

[161] On amenity and good order, Dr Gordon first reiterated her points from the memorandum dated 20 May 2024 in relation to an appeal by *TK Spirits Limited* of a refusal to grant a licence for a bottle store in Te Kauwhata, submitting that “the DLC will need to evaluate the application as if that appeal is successful and the store at 3 Main Road is to open – and also at the same time evaluate the current case”. She then submitted that “[t]he evidence before the DLC from the objectors is that there is nuisance and vandalism in the locality”, and that “[t]he proposed premises will occupy a prominent site on Main Road in an area frequented by families and children”. 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”.

[162] On design and layout, Dr Gordon submitted that “[l]ittle information is yet available on the design and layout, beyond the sketch plan in the application”, and that “[t]he colour scheme of the Super Liquor franchise, which is bright and made to stand out, is particularly inappropriate in the setting of Main Road, Te Kauwhata”.

[163] On systems, staff and training, Dr Gordon submitted that “[t]he Directors will be absentee owners and will rely on staff hired specifically for the new store. There will be limited oversight. While that issue can be partially mitigated by hiring experienced staff and having good training and systems, the application, while including a lot of material from Super Liquor and other businesses, does not provide a comprehensive plan for the store”.

[164] Finally, Dr Gordon submitted that “[t]he the Applicant has not demonstrated that it will be able to meet the object of the Act”, and that the recent Supreme Court decision in *Woolworths*, together with previous superior court decisions, emphasise the importance of reducing alcohol harm for the community as a whole.² Dr Gordon also submitted that “the DLC ought to decide that granting the licence will likely increase alcohol-related harm in the area, and decline the licence”, and “the issue of the licence would increase what is already an unacceptably high level of alcohol-related harm in the area around the proposed premises”.

Objector – Ms N Patterson:

[165] Ms Nicola Patterson then read her pre-circulated brief of evidence, followed by an additional statement. 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”.

² *Woolworths v Auckland Council* [2023] NZSC 45 (5/5/23) at [84].

[166] 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 220 metres from the proposed premises, and that “[t]his area, ‘Main Road’, is a place the community comes to eat, shop, visit the health services, go to the library and play in the park. The primary school is located behind the premises and children will generally pass the proposed liquor store to go to the library or park”. She noted that “[a] liquor store in the location will disrupt the use of the area, especially by children and families”.

[167] Ms Patterson noted that she owns the building at 5 Main Road, Te Kauwhata, and 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”. She further noted that “[a]s 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”.

[168] Ms Patterson expressed her concern for the area, saying that “I am very worried about the possibility that not one, but two liquor stores may open on Main Road, if the appeal of the Bottle O succeeds along with Super Liquor getting a licence. This would completely and permanently transform the nature of the area into alcohol central”. She attached several photographs of various Super Liquor storefronts to her evidence.

[169] Ms Patterson 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 “[i]t can take the police a significant amount of time to respond to incidents in the town”, and 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”.

[170] In her further statement, Ms Patterson state that she “would estimate that 90% of my budgeting clients have addiction issues. That may be alcohol, smoking, vaping, gambling or drugs. Its very hard to balance a family budget when addicted”. Addressing the applicants, she said that “I believe I saw that the applicants were considering selling vapes. Please don’t”.

[171] Ms Patterson also said that “[a]lcohol is consistently the most common drug that my clients use. Alcohol is easily accessible in Te Kauwhata. My clients have no problem getting it at all”. She also stated that “I see damage that alcohol does to our families. Drinking is often prioritised over food, utilities, car payments and school costs. This is often when food support is needed from the community house”, and “[o]ur decision making while drinking can be impaired. Its easy while drunk to spend money that was earmarked for supporting the family”.

[172] Ms Patterson noted that they have “a dedicated alcohol and drug specialist counsellor that comes to the community house weekly. I hear first hand the ongoing issues that people face while trying to sober up. Its not easy at all”. She also talked about the children who are affected by their parents’ drinking, as well as attending motor vehicle crashes where the drivers were impaired by alcohol, as a member of the volunteer fire brigade. She noted that “I see my fellow firefighters dealing with the emotional affects of the crashes. Its tough. We are volunteers dealing with sights that are often horrific”.

[173] Turning back to amenity and good order, Ms Patterson stated that “I already note in town tagging and alcohol related rubbish”, and that “[t]he building I own in the main road has been tagged this year”. She also noted that “drinking in the liquor ban areas in Te Kauwhata already happens”.

[174] Responding to a question from the Committee about the response time for police to Te Kauwhata, Ms Patterson noted that a quite serious incident a few years ago took about three hours for police to respond to, and she has heard from other people that the response time is between half an hour and an hour.

[175] Asked about vandalism and rubbish, Ms Patterson responded that these were quite regular, about every week, on her building at 5 Main Road, the New World supermarket, and the high school. Some community members clean up tagging. The person who tagged her building was caught. They were a local 16-year-old boy. Ms Patterson was uncertain whether alcohol was involved.

[176] On rubbish, Ms Patterson noted that this was quite often, and made up of rubbish and bottles, including alcohol bottles and energy drink bottles. A local person goes around early picking up rubbish. This issue is talked about a lot in the community. Areas where rubbish is worst include outside the New World supermarket, in the alleyway between 3 and 5 Main Road, and at the Village Green.

[177] When asked how often there are breaches of the liquor ban, Ms Patterson responded at least once a week. People are drinking on Main Road, and at the petrol station. She noted that “people pay no mind to the liquor ban as there are no police around to enforce it”. These people were locals, and a mix of ages. It was at all times of the day, with no times worse than others.

[178] Asked how many clients the addictions counsellor has, Ms Patterson responded that last week, she saw four people in a day, and usually sees four or five people per day. Most of the court-directed appointments are to do with alcohol, because of drink driving or family violence. Ms Patterson noted a stronger prevalence of Māori among these clients.

[179] Asked about the food bank, Ms Patterson noted that one person per day uses the food bank.

[180] Asked how she defines ‘a local’, she responded Te Kauwhata, Meremere, Rangiriri, and Waerenga, and that this is their client base.

[181] Asked where the extra harm is from having a bottle store, given that her clients are able to readily access alcohol now, Ms Patterson responded that the harm came from the opening hours, and that the more accessibility there is the more ok it is to drink. This would allow people to drink more often. When asked about whether the new proposed hours allayed her concerns, Ms Patterson responded that shutting the store doesn’t stop the children from walking past. She noted that while 8pm is more acceptable, it is not acceptable overall. She further noted that there is no one around to make sure that the rules are adhered to.

[182] Asked to identify the stores in her supplied photographs, Ms Patterson could not. However, she noted that the paint colour doesn’t reduce problems, but wanted to highlight that the mockup provided by the applicant didn’t allay her concerns.

[183] Asked about whether staff from the store picking up litter and notifying the council about vandalism went any way towards allaying her concerns, Ms Patterson responded that this was “a lovely community service”, but noted that “this is just being a good human”.

Witness for N Patterson (Objector) – Ms L Gronback:

[184] Ms Lynne Gronback read her pre-circulated brief of evidence. She recently moved from Hamilton to Te Kauwhata to live closer to her family. Her granddaughter attends Te Kauwhata Primary School. Ms Gronback was “concerned about the impact of additional availability of alcohol on sites my young granddaughters will need to access, day care, primary school, library, playground, Health Centre, Pharmacy local shops and markets”.

[185] Ms Gronback noted her concern that “the presence of a bottle shop will increase the risk of ram raids. The proximity to Waikato expressway and the fact Te Kauwhata police station is not constantly manned may make a bottle store appear to be an ‘easy target’ for ram raiding”, and that “[b]ottle store owners/operators routinely install bollards to discourage ram raids, which indicates they accept the nature of their business increases the risk to amenity and good order”.

[186] Repsonding to questions from the Committee, Ms Gronback confirmed that she had lived in Te Kauwhata for eight weeks, and that she thought that Te Kauwhata was “a great little town” with good amenities.

[187] Asked about her concerns about the impact of increased availability of alcohol, Ms Gronback noted traffic, parking, people drinking in cars, traffic accidents, other damage, and ram raids.

Objector – Ms M Chester:

[188] Ms Marie Chester read her brief of evidence. She has been a resident of Te Kauwhata for 14 years, and holds a Masters of Occupational Therapy and is a Doctor of Health Science.

[189] Ms Chester noted that Te Kauwhata is “a small town with a predominance of elderly people and youngsters”. She noted the social problems that accompany excessive drinking, including increased litter and risks to physical safety. She mentioned that she was not worried about the primary school students, but the high school students.

[190] Ms Chester referenced the applicant’s commitment to supporting the community with a monthly contribution to the food bank, noting that “[t]his is tokenistic, and too vague to take seriously”. She then noted that “[t]he only people to benefit from Super Liquor’s application for an off-licence outlet in Te Kauwhata will be the franchise holders”. She also supplied several photographs of litter taken from the areas around Te Kauwhata.

[191] Asked about the photographs, Ms Chester responded that they were taken in May this year. She described to the Committee where each photo had been taken. When asked how often she saw rubbish, she said every time that she went out, a couple of times a week. The rubbish would be scattered along the road and footpaths.

Objector – Mr J Marcon:

[192] Mr John Marcon read his pre-circulated brief of evidence. He has been a resident of Te Kauwhata since 2015, and a member and Vice-President of Te Kauwhata and Districts Lions Club, a volunteer at the Te Kauwhata Community House, and an Anglican priest working with the congregation of the Parish of St Margaret in Te Kauwhata.

[193] Mr Marcon noted that he has “worked since the 1960's with people of all ages whose lives were adversely affected by excessive alcohol consumption either themselves or as the consequences of parental or others' drinking”. Mr Marcon noted that “[e]xcessive liquor consumption is a major driver of crime, poor health, road crashes, and violent abuse, especially domestic abuse against women and children. It is a major source of trauma in children and a significant contributor to poverty”.

[194] Mr Marcon mentioned that he has “seen too many marriages broken, too many traumatised children, too many abused women through excessive liquor consumption. I've buried too many people who would be alive today had they not been adversely affected by alcohol or whose excessive liquor consumption contributed to the death others”. He then talked about some specific cases of negative impacts of alcohol on people.

[195] Asked to elaborate on the negative effects he mentioned, Mr Marcon described people struggling with alcohol, some with additions, and some who drank to excess on occasions. Asked about the specific cases he had described, Mr Marcon responded that none of those cases were in Te Kauwhata. Asked further about examples of alcohol-related harms in Te Kauwhata, Mr Marcon mentioned seeing a case of dangerous driving two or three years ago, people not being able to walk straight (more recently), and young people shouting (about one year ago).

Objector – Dr R Baird (via audio-visual link):

[196] Dr Robin Baird read his pre-circulated brief of evidence. He is a registered GP has been the director and GP Principal of Te Kauwhata Health Centre for the past eight years.

[197] Dr Baird noted that “[t]he harms caused by alcohol across physical, family and social, mental and emotional and spiritual domains are well documented”. He then noted that “[i]n Te Kauwhata Health Centre we see victims of domestic violence, we see the effects of living with addiction issues and the effect of poverty, we see people with chronic heart and liver disease attributable to alcohol excess. We understand alcohol has a strong social and cultural role however we do not see how a dedicated liquor outlet will improve the health and wellbeing of persons, families and the community at large. It will make things worse”.

[198] Dr Baird noted that the proposed premises is across the road from the pharmacy and the health centre, and that “this juxtaposition is at complete odds with what these organisations stand for and deliver” and “[o]n one side of the street will be a store selling alcohol and on the other side a GP and pharmacy working hard to overcome the harmful effects of the same substances”.

[199] Dr Baird expressed concerns about the branding and bright colour of Super Liquor stores, the small number of carparks, and the safety of pedestrians. In relation to the branding, he modified his view on the branding and visuals, but said that it is about the symbol so is still an issue. He then noted that “I am very concerned that an Off-Licence opening late in the evening will increase the numbers of persons on the streets, with an increased threat to local properties including our premises”.

[200] Responding to questions from the committee about increased traffic, Dr Baird responded that parking is an issue that Te Kauwhata is grappling with, and that he still has safety concerns around the pedestrian crossing.

[201] Asked about levels of alcohol-related harms in this community, Dr Baird responded that harms are very pervasive. He said that “[e]very day we are dealing with people where alcohol is part of the

wider picture of their health”. Dr Baird couldn’t comment on the difference with other countries. He mentioned that it was in line with a typical rural practice, and if anything, Te Kauwhata has lesser harms. However, he noted, this may be because of the absence of a bottle store. Dr Baird added that binge drinking on beer or vodka is a problem, and that there are certain risks with ‘alcopops’ and spirits.

[202] Asked about his clients, Dr Baird explained that the health centre had patients from Te Kauwhata, Waerenga, and Rangiriri, about 4000 in total.

[203] Asked whether the presence of a bottle store opposite the medical centre would be a trigger for people in recovery to start drinking again, Dr Baird responded "Yes, I do think it would be, if you were struggling with alcohol addiction and walk out of our surgery or walk up to the Community House to meet your Waahi Whanui drug and alcohol counsellor and you pass the liquor store as you cross the zebra crossing and I do think at a compassionate level that is tricky”.

Witness for J Sedgwick (Objector) – Mr J Cunningham (via audio-visual link):

[204] Mr John Cunningham spoke to his pre-circulated brief of evidence. He lives in the community, and is Chairman of the Te Kauwhata Community Committee, Chairman of the Te Kauwhata Retirement Village Trust Board, and a Justice of the Peace. His evidence was submitted on his own account and on behalf of the Te Kauwhata Community Committee. He noted that the Te Kauwhata Community Committee “unanimously oppose the granting of the licence”.

[205] Mr Cunningham noted that many retirement village residents have mobility issues, and use the ATM currently housed in the premises. He questioned who would host the post boxes and ATM if they were to move. Mr Cunningham also noted that children and older people were in the vicinity and noted that “[t]hese are vulnerable people and will be at risk of anyone loitering outside the store”. Mr Cunningham expressed concern about people begging, and noted that “[t]his is a real risk with the proximity of the ATM and the licence premises”.

[206] Mr Cunningham discussed a security camera that the Community Committee had paid for, at the request of police, “so they could observe the area in Main Rd in the vicinity of the library due to the activities that occur there after dark”. He also noted that Tim Hinton, the Deputy Chair of the Community Committee, maintains the children’s park and the skate park under contract to Council”, and that Mr Hinton “regularly removes beer bottles, drink cans and other rubbish from the area”. Finally, Mr Cunningham noted that the applicants did not ask to meet with anyone on the Te Kauwhata Community Committee.

[207] In response to questions from the Committee, Mr Cunningham confirmed that the Te Kauwhata Community Committee had passed a resolution supporting an objection to the licence at their last meeting in June 2024. He confirmed that they had not filed an objection to the licence in 2023, due to timing – they didn’t have time to lodge the objection.

[208] Asked to elaborate about ‘activities after dark’ mentioned in his brief of evidence, Mr Cunningham explained that there were cars coming into down and drifting around, and young people hanging around. This occurred probably once a month. Police attend some of the time. Also, there were people loitering in the area.

[209] Asked whether the ATM might be more secure in its current location given the crime prevention measures that a bottle store would have in place, Mr Cunningham responded that people may be more vulnerable when withdrawing money.

[210] Asked about removing litter from the park, Mr Cunningham explained that Tim Hinton's company does this weekly. Asked about people begging in Te Kauwhata, Mr Cunningham responded that he hasn't seen this himself, and that he didn't know what the money gained from begging would be used for.

Objector – Ms L Hughes (via audio-visual link):

[211] Ms Lauren Hughes read her pre-circulated brief of evidence. He had lived in Te Kauwhata for over 18 years, and is currently General Manager of Te Kauwhata Community House, Manager of Toi Ako, the community artspace, and a clinical creative arts therapist.

[212] Ms Hughes noted that "[e]very month I work directly with hundreds of community members of all ages and backgrounds. Some come to me for individual mental health support and others participate in arts programmes and events that I facilitate". She mentioned that "[w]e see the impact of alcohol in the community every day at the Community House. We host a Drug and Alcohol Counsellor from Waahi Whaanui in Te Kauwhata each week. Family members of people dependent on alcohol come in for food bank support, legal or budgeting support to make ends meet with addiction in the home. Recently we had a request for hospice equipment for a man at end of life due exclusively to a life of alcohol abuse".

[213] Ms Hughes also noted that "[a]buse of alcohol is also a recurrent theme in therapy. I am not an addictions specialist. I seldom see clients who are struggling with their own alcoholism. I see their children who present with a myriad of other symptoms directly and indirectly connected to growing up in an environment where alcohol is abused". Ms Hughes talked about a range of harms that children face, including foetal alcohol spectrum disorder, physical or sexual assault, abandonment, betrayal, neglect, and noted that "[m]any have witnessed adults using alcohol as a coping measure for their own pain and adopt similar coping strategies (self harm, eating disorders, alcohol and substance abuse) as their role models". She said that there is "a real presence of intergenerational trauma in our town".

[214] Turning to amenity and good order, Ms Hughes noted that "[a]lready we find litter and broken glass in these locations [the Village Green] from time to time and we anticipate that another alcohol retailer will exacerbate this problem". She also talked about the highly visual branding of the store, and the potential for harm from selling vape products and cigarettes. Finally, she noted that another outlet would add to the burden on their services.

[215] Asked about how often they found litter and broken glass, Ms Hughes responded that she is only in that space when they hold an event there.

[216] Asked who the vulnerable people are in Te Kauwhata, Ms Hughes responded that many of her clients were, as well as young people whose parents lack resources, and people with fragile mental health. She noted that about three-quarters of her clients were in that most vulnerable group, and that the age distribution is random, from eight to fifteen years old. She also noted that there was more alcohol harm among Maaori whaanau.

Objector – Ms J Sedgwick:

[217] 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 Whangamarino 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 several community groups, police and service organisations, as well as businesses, in the village.

[218] 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.

[219] Ms Sedgwick referred to speaking to community members and said that “I am under no illusion about the opinions of this community, which is that easy access to alcohol and RTD is harmful to the youth, and particularly Māori youth, in the community”.

[220] Ms Sedgwick noted the contribution of alcohol to criminal harm, including:

- theft of vehicles, particularly in Lakeside subdivision;
- brawling and fights in the Main Road – she “called the police when witnessing one about 9pm one night outside the tavern”;
- aggressive walk-offs with alcohol from the New World supermarket – she had “witnessed this and assisted staff in trying to prevent a walk off, with a trolley of alcohol, by a young woman”;
- intimidating behaviour to locals on the main street, particularly in the evening, “to the point where I would not get out of my car”; and
- three ram raids and theft from the local post office depot since October 2023, on the same site as the proposed premises.

[221] Ms Sedgwick noted her concerns that “[d]eliveries to the store will cause significant traffic and corresponding safety issues in the Main Rd”. She mentioned the challenges with visibility for vehicles existing from the driveway next to the premises that delivery vehicles would need to use.

[222] Ms Sedgwick noted that the premises is directly opposite a vulnerable site, the local pharmacy, which is “staffed by three women” and where “there is no additional security to ensure their safety”.

[223] Ms Sedgwick noted that “[t]he livery of a Super Liquor store is not in character with a rural village with muted earth colours. It will dominate the main street with a single message “drink alcohol””. She expressed her concern that “[t]he applicants are neither local, nor within driving distance of Te Kauwhata” and “cannot be seen to be providing appropriate oversight to yet another outlet”.

[224] Ms Sedgwick noted that the information in the application “misrepresented business owners and tailored opposition into positive support”. She noted that community consultation did not occur with the Te Kauwhata Community Committee, or any other community-focused organisation with the exception of Te Kauwhata Community House.

[225] Ms Sedgwick expressed concern about the proposed trading hours, noting that this would be the only retail store open that late, “encouraging gatherings directly opposite the tavern, where intoxicated patrons would be leaving”. She also noted her concern about vulnerable schoolchildren walking home from school past the store, which is proposing to sell cigarettes, vape products, and RTDs.

[226] Ms Sedgwick noted that “[w]e already see evidence of RTDs in the litter tossed on to the roadsides on both entrances to the village. I have personally picked up black rubbish sacks of litter which comprise mainly alcohol litter on the Te Kauwhata Rd into the village”. She mentioned that the road between her house and town is “littered with bottles and cans”.

[227] Finally, Ms Sedgwick 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.”

[228] Ms Sedgwick then gave evidence that she had “personally observed alcohol bottles and cans left lying around the skate park”. She finished by reiterating her opposition, and that of local residents, to additional alcohol outlets in the village.

[229] The Committee asked Ms Sedgwick several questions about the development of the LAPs, and why clause 5.3.2 of the 2017 LAP, but not the 2022 Provisional LAP, allowed bottle stores in Te Kauwhata. Ms Sedgwick explained that more people objected in the 2022 LAP process, and the most were from Te Kauwhata. The Councillors felt they had overlooked it in the first instance, and the town had not grown as projected. Ms Sedgwick would not agree that there were a range of views recorded in the LAP submissions and pointed to submission #4673 in particular. She explained that many submitters submitted in person, and that indicated the depth of feeling. The Council took that into account in deciding the 2022 LAP provisions. She further noted that it was a unanimous decision of Council to put a cap on the number of licences in Te Kauwhata. Submitters were concerned that more outlets meant more harm, and that there were more than enough outlets.

[230] Asked to elaborate on the brawling and fights in Main Road, Ms Sedgwick described a “rolling maul” coming out of the pub, involving two or three men, attacking each other, breaking the doors of the tavern, smashing windows, and using weapons. Police came from Huntly and took 15 minutes to attend. This was in 2018 or 2019. Ms Sedgwick said that she felt scared, sitting in her car.

[231] When asked about the aggressive walk-offs with alcohol, Ms Sedgwick described an incident earlier this year, where she became aware of a quiet altercation between staff and a woman. Ms Sedgwick blocked the door and was accosted by the woman outside the store.

[232] Asked to elaborate on intimidating behaviours to locals, Ms Sedgwick responded that groups of youths, both male and female, would act quite intimidatingly, and gather around when people got out of their car. This was not a regular problem, as Ms Sedgwick doesn’t need to be there in the evenings.

[233] Asked about the ram raids, Ms Sedgwick noted that they were directed at the post office depot at the rear of the proposed premises. The incidents were posted to the community Facebook page. Ram raids had happened three times in the last eight or nine months, and over that time no other businesses had been targeted, that she is aware of. Ms Sedgwick agreed that CCTV at the proposed premises would certainly make it easier to catch those people.

[234] Asked whether changing the licensed hours to 10am-8pm allayed her concerns at all, Ms Sedgwick responded that it was a generous offer, but it didn't take away from the central point that they are offering products that may be attractive to children.

[235] Asked whether crime in Te Kauwhata had increased in the last two years, or five years, Ms Sedgwick responded that car theft had increased. The Lakeside development has no garages, so people park on the road. There had been spates of burglaries, but "it goes up and down".

[236] Asked whether there were any benefits at all of having a bottle store, Ms Sedgwick responded "no", and said that if people wanted something special, the tavern can get it for them.

Licensing Inspector – Ms C Sturzaker:

[237] Ms Sturzaker's report was taken as read. She answered questions from the Committee.

[238] Asked about whether she had any concerns about the post office boxes or ATM, Ms Sturzaker responded that she was concerned about children going with their parents to the post boxes and ATM, and being exposed to alcohol.

[239] Asked about comment in her report about disabled carparks, Ms Sturzaker noted that she hadn't seen many disabled carparks outside other bottle stores.

[240] In relation to interactions with the applicant, Ms Sturzaker explained that she had only interacted with them once, in June last year. She had dealt with the landlord prior to the application being filed, and the applicant's consultant more recently.

[241] Asked about the discretionary conditions offered by the applicant in their evidence, Ms Sturzaker noted that the days and hours condition would work, but also noted that high school students go past the store up to 4pm, and that the bakery is very popular with high school students. She expressed a preference for school closure up to 4pm.

[242] On the proposed condition on picking up litter, Ms Sturzaker responded that it couldn't be monitored. She said, "how do I know that any litter was being picked up". She noted that the proposed condition could not be enforced.

[243] On the proposed condition in relation to certificated managers, Ms Sturzaker responded that it could be enforced. However, on the condition related to deliveries, she was unsure how to monitor this, and ensure compliance.

[244] Asked whether she had any concerns about the applicant selling tobacco and vape products, Ms Sturzaker replied that she did, based on her compliance visits to Te Kauwhata New World. There had been six ram raids recently, targeting vape products and tobacco. She agreed that she was worried that this store would be a target for crime, and mentioned that it was easy for stolen goods to be moved. Ms Sturzaker did not know if the risk would be lower, if they didn't sell tobacco or vape products.

[245] Given her comments at the hearing and in her report, Ms Sturzaker was asked why she did not oppose the licence. She responded that she had more concerns now. In particular, she had concerns about training. In her view, the criterion in the Act on training is whether ‘the applicant’ has systems, staff and training in place, but in this case, it is Super Liquor Holdings that has the training package. Ms Sturzaker also had concerns about how the ‘buddy system’ would work, with the closest buddy located in Wellsford. She would like to see the applicant take responsibility for their own training. She also noted that there was no staff training register included in the Super Liquor Holdings materials, and that most licensees would do on-site training in addition to having an online provider such as Servewise. Finally, she noted a preference for licensee’s maintaining a ‘communications log’ rather than an incident book.

[246] Asked whether any of her other views about the application had change, Ms Sturzaker questioned the quality time that the applicant would spend in each store, given how many stores they have and their locations.

[247] Asked about licensed hours at the Rangiriri Hotel, Ms Sturzaker responded that it has an off-licence from 7am, but usually opens at 9am.

[248] Ms Sturzaker noted that she hadn’t received a copy of the landlords’ responses to the complaint by Ms Van der Munckhof. She also hadn’t received training materials that she had requested from the applicant.

[249] Asked if she had any suitability concerns, Ms Sturzaker supported the Medical Officer of Health’s request that the Committee pose questions about the source of finance for the premises.

[250] Finally, asked whether she had undertaken any consultation with local iwi, Ms Sturzaker responded that she hadn’t, and preferred to stay impartial in her report.

HEARING, DAY THREE (14 June 2024):

Preliminary matters:

[251] Counsel for the Applicant, Mr Middlemiss, introduced several documents at the resumption of the hearing, including records of training on Controlled Purchase Operations conducted at the applicant directors’ other stores, a letter confirming a passed Controlled Purchase Operation conducted at Oasis Liquor in Westport on 10 February 2024, and example ‘Certificates of Completion’ issued by Super Liquor and by Corcoran French, for employees completing training modules.

Objector – Ms J Kelly (via audio-visual link):

[252] Ms Jo Kelly read her pre-circulated brief of evidence. She works as a careers advisor, and previously as Deputy Principal, at Te Kauwhata College, but stressed that she was not speaking on behalf of the school.

[253] Ms Kelly expressed her concerns about the welfare of students and whaanau “if they were to have more and cheaper access to alcohol”. She noted that “[t]he College already gets people coming into our grounds at night drinking and vandalising our Kura”.

[254] Ms Kelly also noted that “[t]he last time that a Vape shop was opened in the town ship our problems at school escalated”, adding that “[g]iving parents access gives students access for many of our whanau”.

[255] Asked to elaborate on people drinking at night and vandalising the school, Ms Kelly noted that since the school installed cameras three years ago, it has been less of a problem. About four months ago, some kids climbed up onto a building and sprayed the windows black. Alcohol bottles were left behind. Ms Kelly explained that she has had to pick up Woodstock bottles three or four times, before the CCTV was installed.

[256] Asked to explain what she meant by “making things a lot worse for many of our whanau”, Ms Kelly reiterated that if parents have access, then children have access. She noted that she was concerned about both vape products and alcohol.

[257] In response to further questions, Ms Kelly noted that school children are getting access to ‘alcopops’, and that three or four times a week she hears about her students underage drinking. In those cases, the alcohol is coming from whaanau, or from someone they know.

[258] Asked about the school, Ms Kelly noted that the school roll is 460, from Year 7 to Year 13. The school have five students that have fetal alcohol spectrum disorder.

[259] Asked about students vaping, Ms Kelly noted that students are vaping several times a day, because they are addicted. This is a “regular thing” for six to eight students but hasn’t been as bad since the vape shop in Te Kauwhata closed. However, it was a problem all the way through from Year 7 to Year 12, while the Year 13 students “are more focused”. When asked about what she would say to the applicant about selling vape products, she responded “don’t do it”.

[260] When asked whether she was concerned, Ms Kelly noted that children aged 10-12 years were coming to school saying they had been drinking on the weekend. She noted that the school has a ‘wellbeing register’ which had about 138 students, with a variety of problems, categorised from ‘hot’ to ‘cold’.³

Objector – Ms L Herbert:

[261] Ms Lynne Herbert read her pre-circulated brief of evidence. She works at Te Kauwhata Community House, and lives in the town.

[262] Ms Herbert spoke of her concern for vulnerable people, as the proposed premises is “in the middle of the main street and directly opposite the pharmacy and doctors”. She was concerned that the proposed premises will “negatively impact the culture of our town”. Ms Herbert spoke of her giving a home to a boy with Fetal Alcohol Spectrum Disorder, who attends the primary school behind the premises. She presented some photos showing the view of the premises from the school.

[263] Asked whether a 1.8-metre fence with a painted mural went any way towards allaying her concerns, Ms Herbert responded that the children would still be able to see the store from the front. They would see people hanging out and going into the store. Asked whether re-painting the building would allay her concerns, Ms Herbert responded that it would not. Asked whether closing the store from 2:45-3:15pm allayed her concerns, Ms Herberts said no. When asked what the

³ In an email to the Secretary after the hearing was adjourned, Ms Kelly corrected this statement. The wellbeing register has only 40 to 50 students. The figure of 138 is for all students with some form of learning disability.

problem was with children seeing the store, she replied that it was the normalisation of alcohol. Asked if she saw any benefits of having a bottle store on that site, she responded that she did not.

Objector – Mr G Jackson:

[264] Mr Gerald Jackson read his pre-circulated brief of evidence. He lives in Te Kauwhata and is the people's warden at St Margaret's Anglican Church. Mr Jackson noted that he is an engineer, and has concerns about the building. He said, "I know it has been issued a compliance certificate but it was not engineered to withstand the weight a bottle store will put on the foundation. If it collapses, someone will be killed. It is over 2m high at the back".

[265] Asked to outline his engineering experience and training, Mr Jackson explained that he was a fitter/welder by trade, since he was 15 years old. He had experience in structural engineering, and worked for Fonterra for 15 years.

[266] In response to a question from the Committee, Mr Jackson accepted that he had not conducted a formal engineering assessment of the building. He noted that it is a wooden pile building, that in his view could have up to ten tonnes on it. He further noted that a pallet of alcohol could weight 1200 kgs. Asked whether in issuing a compliance certificate, the Council would have conducted an engineering assessment, Mr Jackson responded that they would not.

[267] Asked what harm could result from this premises, Mr Jackson responded that for every child the school deals with, alcohol is involved. He got that from a person on the school's disciplinary committee. Mr Jackson also noted that there had been vandalism and damage in the Village Green, although that was "a while ago".

[268] Asked what changes had occurred in the community, Mr Jackson responded that originally there was only one outlet, and then the tavern came. He noted that the applicants want to make alcohol so convenient. Mr Jackson said that the retirement community Aparangi have had to put up a fence and gate, and that it has become to feel less safe over the last ten years.

[269] Asked whether he saw any benefits from the bottle store, Mr Jackson responded that he did not. He noted that, even with a 1.8-metre-high fence, the premises could still be seen from the school.

Witness for the Committee – Rev Dr T Hollis:

[270] The Committee noted that Rev Dr Turi Hollis was present at the hearing. The Committee asked Rev Dr Hollis to provide evidence. Rev Dr Hollis is the vicar of St Margaret's Church in Te Kauwhata.

[271] Asked why the church had not put in an objection, Rev Dr Hollis responded that this was because the parishioners were putting in their own objections. He noted that he only arrived in Te Kauwhata in February 2024.

[272] Asked about his connection to the area, Rev Dr Hollis responded that he had no tribal connection, as he was originally from the East Coast. One of the reasons he went into the ministry was violence in his family, connected to alcohol. He explained that the church was not against alcohol but recognised that there is harm. He mentioned mental impacts, loss of memory, and confusion, as well as physical impacts. On wairua (spirituality) impact, Rev Dr Hollis noted that people may suffer

confusion about themselves, about who they are, self-esteem issues, and that they feel not worthy of what the church is about.

[273] In response to a question about the impacts of alcohol on whaanau, Rev Dr Hollis noted the loss of personal esteem, and that this continues generationally. He said that alcohol is a way of escaping from past and present trauma. In whaanau, the relationships are very close. Some whaanau rely on alcohol to ameliorate the situation that they are in.

[274] Asked to provide any observations on alcohol-related harm in Te Kauwhata, Rev Dr Hollis reiterated the harm to relationships between whaanau. Asked about the impact of alcohol-related mortality on whakapapa, Rev Dr Hollis explained that the family has a constant fear of dying out, that knowledge and understanding of tikanga is faded, and that self-esteem and mana are undermined.

[275] On the relationship between Maaori and alcohol, Rev Dr Hollis explained that, along with muskets, alcohol had an impact on the history of Maaori. Maaori had been moved, slaughtered, not just by paakehaa, but by Maaori. Maaori whaanau have been torn apart.

Objector – Mr S McNab:

[276] Mr Stuart McNab read his brief of evidence. Mr McNab is session clerk at St Andrew's Presbyterian Church in Te Kauwhata.

[277] Mr McNab pointed to a concern "about the logistics for access of stock loading into this proposed shop". In particular, Mr McNab observed that "the premises is not fit for purpose for handling the movement of the volumes of stock required by this business, by using the rear entrance to the proposed shop..."

[278] Mr McNab spoke to photos attached to his brief of evidence. He spoke of the engineering of the deck at the rear of the premises being unsuitable for palletted stock, as well as the side entrance, where "delivery vehicles would be delivering in the driveway, and parked on a slope, another health and safety issue". Mr McNab also noted that making deliveries through the front doors would be "completely unacceptable, many of the reasons have already been well aired by other objectors as social impacts".

[279] Mr McNab also questioned whether customers would use the rear yard for parking, noting that would lead to a "problem with safety and security".

[280] Finally, Mr McNab spoke of his daughter, who has an addiction problem, with cigarettes and vape products. She also had an abusive partner with alcohol problems. Mr McNab noted that he doesn't want to see any more addictive products available, other than what is available already.

[281] Asked why he didn't raise engineering objections in his original objection, Mr McNab responded that the objection was back in 2023, and he didn't really know at that time. He only saw the plans for the premises two days ago.

[282] Asked about the applicant's evidence that a van would be used for deliveries and whether that meant that pallets would not be used, Mr McNab noted that large vans can hold pallets. Asked whether a sack trolley or the like could be used to move stock from a van to the premises, Mr McNab responded that it wouldn't, because the stock needs to be lifted 1.7 to 1.8m into the premises. It would require a lift truck or the like or demolishing the deck.

Objector – Ms L Plant:

[283] Ms Linda Plant made a personal statement, then read her brief of evidence. She is Minister of St Andrew's Presbyterian Church in Te Kauwhata.

[284] Ms Plant explained that the assumption in the community was that there would be no outlets, through the LAP process. It seemed to her like a sneakiness, a loophole being used, when the first application (TK Spirits Ltd) came in. When the second application (SSA 2021 Ltd) came in, "it was like a shockwave". Ms Plant noted that some people are wary of speaking at the hearing, after their experience at the previous hearing.

[285] Ms Plant works in the 'op shop', so knows the business people. They want the businesses filled. She noted that the only tourists in Te Kauwhata are campervans, as Te Kauwhata is not on the main road.

[286] Ms Plant pointed out that there are some very vulnerable people living in the Aparangi retirement community.

[287] Ms Plant then noted that she parks behind the 'op shop' at least once a week. When she drives out, she can't see people coming down the street. She noted that "the driveway is a really big issue for me". She spoke of one instance next to the 'op shop', where a child was nearly hit by a truck exiting the driveway.

[288] Ms Plant further noted that the premises was a "wolf in sheep's clothing", and that it doesn't matter what it looks like from the outside. She also noted that there are more children on the street during the school holidays than during school times.

[289] In her brief of evidence, Ms Plant noted that the church congregation "has faithfully served Te Kauwhata for more than seventy years. As a fellowship, we have always been an active part of the social fabric of Te Kauwhata, and have been witness to the damage that excessive alcohol consumption, aided by cheaper pricing and wider availability, have done to the more vulnerable in our community". She noted that the premises "will certainly provide no benefits for our community whatsoever".

[290] Ms Plant then noted that "[t]here also needs to be consideration of the consequences of having this outlet in town. Already 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 increasing crime of ram-raiding and daylight robberies that put citizens in danger". She also noted that "[t]he 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..."

[291] Ms Plant stated that there were isolated and lonely people at the Lakeside development and many of these were women who would come into the 'op-shop' for personal interaction, as their partners would use the family car to go to work. She then talked about litter, noting that "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", 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". Finally, she expressed her "wish for a safer, and more peaceful village".

[292] Asked about the more vulnerable in the community, Ms Plant noted that within the church, at one stage they had two families each with two children with Fetal Alcohol Spectrum Disorder. These children have a life sentence placed on them, and the community is having difficult supporting them. She mentioned being aware of alcoholics in the parish, noting that "the addictive spirit is just so hard to work with".

[293] Asked to elaborate on the problems of litter, Ms Plant noted that she had seen beer bottles and cans. She has seen these up by the roundabout by Wayside Road, which is "a congregation point".

[294] In response to a question about helping people with their alcohol journey, Ms Plant responded that the church site is dry. Some help is one-on-one, and there is some group support as well.

[295] Asked whether, if a local had applied for the licence, her opposition would be different, Ms Plant said no, and reiterated that the premises was "a wolf in sheep's clothing". The difference with a local is that they know the community. When asked if employing locals went anyway to alleviating these concerns, Ms Plant responded "no, because the 'wolf' hasn't changed".

[296] Asked to elaborate on the vulnerability of people in the Aparangi retirement community, Ms Plant mentioned loneliness, stating "they sit in their houses all alone", and "some of them have been known to use the bottle".

[297] Asked about her concern about money spent on alcohol, Ms Plant responded that it was about what the money is not being spent on. She cited the example of school lunches.

[298] Asked whether the applicant had engaged with her, Ms Plant responded that they had not. Asked if the applicant had engaged with the church, Ms Plant said "not that I know". Finally, Ms Plant clarified that when she referred to the 'wolf', she was referring to the alcohol, not the people.

Witness for the Committee – Mr S Jefferis (via audio-visual link):

[299] The Committee called Mr Stu Jefferis to give evidence. Mr Jefferis is the landlord for the premises.

[300] Asked about the applicant's consultations with business, Mr Jefferis confirmed that he was involved, including the consultation with Ms Van der Munckhof. He confirmed that he was aware of the complaint by Ms Van der Munckhof, and confirmed that he wrote a response to the complaint. When asked if he sent the response to the Council, Mr Jefferis responded that he had sent it to the applicant, Reuben Singh. Mr Jefferis confirmed that the response was written on 27 June 2023.

[301] Asked about the lease, Mr Jefferis confirmed that the lease was first signed on 16 September 2022, and then a second lease was signed on 18 March 2024, as he had been advised by a lawyer to update the lease and add a sunset clause. Asked about Clause 9 and Clause 11 of the more recent lease agreement, Mr Jefferis accepted that a plain reading of those clauses would mean that the agreement has not commenced. However, Mr Jefferis noted that he has not signed that agreement as yet.

[302] Asked about rent for the premises, Mr Jefferis noted that they provided a rent holiday for six months from September 2022. Asked whether the applicant had requested any works be undertaken, Mr Jefferis responded that they had not. Finally, when asked if he had any concerns around structural integrity of the building, Mr Jefferis responded that he had engaged an engineer, GDC Consultants, and had replaced some pilings on the deck.

Witness for the Committee – Mr B Martin (via audio-visual link):

[303] The Committee called Mr Bryan Martin to give evidence. Mr Martin is the Principal of Te Kauwhata Primary School, which borders the site to the rear of the premises. Mr Martin first noted that the school roll was 314 students, with an ethnic mix of 39 percent New Zealand European, 40 percent Maaori.

[304] Asked whether the school had objected to the licence, Mr Martin confirmed that they had not. He had no problem at the time, as the school was due to be relocated. However, now the relocation had been delayed until 2028.

[305] Responding to questions from the Committee, Mr Martin noted that the school's children use Main Road to go through town. When asked what the particular problem is with students seeing a bottle store, Mr Martin responded that it was signage, promotion, and visibility of the storefront. Mr Martin also noted that they have children with Fetal Alcohol Spectrum Disorder in the school, and have seen a growing number of children with learning difficulties, or who are neurodivergent. He noted that the school used to be a decile 5 school, but is now approximately decile 3 (or 473 on the new EQI Index). The Committee asked Mr Martin to explain the EQI index. He said that the scale was between 344-564 and the higher the number, the lower the socioeconomic environment of the area.

Objector – Ms G Iwihora (via audio-visual link):

[306] Ms Girlie Iwihora is a trustee of Maurea Marae. She made a verbal statement separate from her pre-circulated brief of evidence. Her brief of evidence discussed cultural harm to Maaori, hazardous drinking among Maaori, and the number of outlets in the locality.

[307] In her verbal evidence, Ms Iwihora explained that she works directly with families impacted by alcohol, and how alcohol impacts on family budgets. She said, "Maaori families are more likely than other cultures to experience alcohol-related harm such as the family unit, work, financial, exposure, children, health issues, reduced living standards, legal problems because of consumption or harm of alcohol". She explained that she works directly with families impacted by alcohol, and how alcohol impacts on family budgets, stating that "I am aware of people within the area who have become addicted to alcohol and youth who are facing a cycle of alcohol-related harm". Ms Iwihora noted that the health centre is understaffed and under-funded, and a bottle store will contribute to these problems. She couldn't see how the bottle store will contribute to this community, except through harm, and in her view it was not sustainable for the wellbeing of the community.

[308] Responding to a question from the Committee, Ms Iwihora noted that she works with 150 tamariki. Asked about the impacts on tamariki Maaori, Ms Iwihora responded that there was family harm, contributed to by alcohol, and that it was preventing the children from engaging in their education. Asked about the impacts on whaanau, Ms Iwihora responded that there was physical harm, and mental harm, and that it's not just alcohol.

[309] Asked whether the licensee's proposed licensed hours, being less than the New World supermarket, went any way to allaying her concerns, Ms Iwihora responded that it did not. It decreased the harm, but it still causes harm. Asked about whether the applicant's offer to support the community food bank went any way to allaying her concerns, Ms Iwihora responded that it did. That supports all families, not just those affected by alcohol.

[310] In response to a question from the Committee about whether the applicant had engaged with the marae, Ms Iwihora said, "No, they didn't come and speak to our marae. I feel they should have come and consulted our marae, not just my marae but there are other marae in the district. We would have made them aware of our concerns regarding the impact on Maaori. No one approached any one of our [five] marae or myself".

Witness for the Committee – Mr M Balloch:

[311] The Committee called Mr Mervyn Balloch to give evidence. Mr Balloch is Building Quality Manager at Waikato District Council. The Committee asked Mr Balloch was engineering assessment, if any, is conducted as part of a code compliance check. Mr Balloch responded that there is none. An engineering assessment is done at the time of construction.

[312] Asked if there could be safety issues with a building that has a code compliance certificate, Mr Balloch responded that there could. However, if a code compliance certificate has been issued, there should be no problems. Finally, asked who is liable in the event of a safety incident at a building with a code compliance certificate, Mr Balloch responded that this would typically be the building owner.

Objector – Mr C Plant (via audio-visual link):

[313] Mr Chris Plant gave verbal evidence to the Committee. He is the Special Needs Coordinator at Te Kauwhata College, and has worked there for five years. He expressed his concern about how alcohol affects students' learning.

[314] Asked to elaborate on how students' learning is affected, Mr Plant mentioned Fetal Alcohol Spectrum Disorder. Asked if there were any other effects, he responded that there were issues with alcohol and parents, fighting, students coming to school tired, lateness, and truancy.

[315] Responding to further questions from the Committee, Mr Plant confirmed that he had 17 years experience in secondary schools, and had previously been in Takanini. He noted that Takanini wasn't the same type of school as Te Kauwhata College.

[316] Asked if he had concerns about students walking past the store, Mr Plant responded that there was temptation, especially for older students. He noted that the store would make vaping more accessible to students, and the real problem is addiction.

[317] Asked if he was aware of Year 7-8 students drinking alcohol, Mr Plant responded that he was. Asked where those students would get their alcohol from, he responded from home, or family friends.

Witness for Mr C Plant (Objector) – Ms D Hohneck (via audio-visual link):

[318] Mr Plant called Ms Deborah Hohneck as a witness. She has been the Principal of Te Kauwhata College for nearly ten years. She answered questions from the Committee.

[319] Asked why she didn't put in an objection to the application, Ms Hohneck responded that she wanted it to come from the Board of Trustees, but they couldn't get it the objection in time.

[320] Asked about alcohol harm to students, Ms Hohneck noted that there were occasional incidents of children coming to school inebriated, and students coming to school tired. She explained that there were 34 to 40 students on the wellbeing register, who are high risk. Asked how often there were problems with intoxicated students, Ms Hohneck responded two or three times per term, and it was usually groups of students.

[321] In response to a question about effects on school property, Ms Hohneck noted that there would be people in the grounds during holidays, weekends, and after hours, drinking. The staff find the remnants, made up of cans and bottles. Some are just thrown over the wall. There have been incidents of vandalism, including graffiti, broken windows and smashing of security cameras.

[322] Asked about harms from the proposed store, Ms Hohneck responded that there would be subliminal messaging while students are walking past the store. She noted that young people are drinking less than older people, but harm comes from the people around them.

[323] Asked whether the school has an alcohol policy, Ms Hohneck explained that they do, and they don't support alcohol use on site, except for events for adults. The policy also applies to the staff.

[324] Asked whether she had any concerns about vape products, Ms Hohneck responded that this was one of her biggest concerns. The problem is that they are highly addictive, and we have no idea about the harm. She noted that the availability of vapes in town "would make things very difficult". In response to a question about the effect of vape products on learning, Ms Hohneck noted that we do not know the long-term effects. Students cannot concentrate after some time, and addiction gets in the way of learning.

[325] Finally, asked if the applicant had talked to the school or the Board of Trustees, Ms Hohneck responded that to her knowledge they had not.

Medical Officer of Health - in opposition:

[326] Ms Ayobami Adesanya 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

[327] Ms Adesanya summarised the demographics of Te Kauwhata, and then addressed each of the criteria under which the MoH opposed the application. She listed the other licensed premises in the vicinity of the proposed premises, noting that "[t]his will be the fourth or fifth (dependent on the TK Spirits Limited ARLA decision) and third or fourth bottle store on the main street". She then listed the sensitive sites in the vicinity of the proposed premises.

[328] Ms Adesanya noted that “[m]any of the public objectors have raised concerns around the intent of the applicant to sell cigarettes and vaping products... These concerns have been around the attractiveness of vaping to young people and how the sale of these products is often targeted in burglaries and ram-raids”.

[329] Ms Adesanya noted that “[a]dding off licence could increase accessibility to alcohol in this area, potentially also to minors, thereby increasing unfriendly and risky behaviours on these sites”, and expressed a view that “increasing access and exposure to alcohol in the areas being used by the public, and in this instance, minors, the amenity and good order of the locality will be reduced by more than a minor extent for this community”.

[330] On suitability, Ms Adesanya noted that the two directors of the applicant company “live in Auckland and Christchurch and may therefore not understand the local community they are proposing to set up premises”.

[331] Finally, on the Object of the Act, Ms Adesanya submitted that given “increasing density and access to alcohol in this area given the sensitive sites, public space in this area and the intent of the provisional local alcohol policy and issues on the suitability of the applicant, the object of the Act cannot be met by the grant of this licence”.

[332] Prior to the commencement of the hearing, Ms Adesanya had also filed a supplementary brief, requesting the Committee enquire into the financial arrangements for the premises.

[333] The Committee asked Ms Adesanya about Mr Hoar’s suggestion that there was no differentiation between supermarkets and grocery stores, and bottle stores, in terms of the safe and responsible sale, supply and consumption of alcohol. She responded that there is evidence that most harm comes from bottle stores. She noted that they are higher risk because they have a greater range of products, and she has noticed a lot of issues when it comes to renewals, particularly with staffing and staff training.

[334] Asked to clarify the number of bottle stores on Main Road, Ms Adesanya accepted that it would be only one or two now but noted that this didn’t change her view.

[335] Asked to explain what she meant by “unfriendly and risky behaviours”, Ms Adesanya responded that alcohol influences people’s behaviour. She noted that people may be accosted when getting money from the ATM. There would also be risks to children walking on the streets. In response to a follow-up question, she noted that she hadn’t observed these things happening on her site visits.

[336] On whether the proposed discretionary condition on managers went any way to allay her concerns, Ms Adesanya said that it does to some extent, but she would need to consider how the managers understand the community they are in. Asked why managers need to understand the community, she responded that “people in the community respond differently to local managers”. Asked if that meant that they were more likely to comply, Ms Adesanya said “yes and no”, noting that “when you know someone you don’t always do what you’re supposed to do”.

[337] Asked if she had any concerns in relation to staff training, Ms Adesanya questioned what training the directors will do themselves.

[338] Asked whether she had concerns about particular types of vape products, Ms Adesanya responded that “it goes beyond the packaging”, and “it’s become cool”.

[339] Finally, asked if there were any ways in which her views of the application had changed, Ms Adesanya responded “not really”. She noted that the logo may stick out even more with the new building colours. She remained opposed to the granting of the licence.

Witness for the Medical Officer of Health – Mr M Keenan (via audio-visual link):

[340] 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.

[341] 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”.

[342] 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 19.56 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”.

[343] Mr Keehan then gave evidence that for the area within two kilometres of the premises, “[c]ompared to the average of the Waikato it can be seen that Te Kauwhata is enriched for people living in the middle ranked deciles of socio-economic deprivation i.e. neither rich nor poor”.

[344] Mr Keehan noted that “[m]oving from three off-licenses in the area to four is a 33% increase in the local off-license density” and concluded that “[a]s the area currently has a low rate of harm from alcohol we ask you to protect the health of these people by not subjecting them to a 33% increase in off-license density”.

[345] Responding to questions from the committee, Mr Keehan noted that the data included emergency department, inpatient, and outpatient admissions for five hospitals in the former Waikato District Health Board area. General practice visits are not included, and urgent care is not included. When asked if mental health presentations are included, Mr Keehan responded that he thought they were. Mr Keehan agreed that the data are more likely to pick up acute events, and that the data would underestimate harm. He had no sense if it would underestimate harm more for Te Kauwhata than for the Waikato Region as a whole.

[346] When asked about whether the data in Table 2 of his evidence should be interpreted as harm getting worse over time in Te Kauwhata relative to the Waikato Region as a whole, Mr Keehan responded that you could, although he didn’t believe that the data should be interpreted that way as “there is too much noise”.

[347] Finally, Mr Keehan agreed that “that the policy settings are very good” and when asked whether the Committee “ought to err on the side of the status quo”, Mr Keehan responded with “yes, that is what I am saying. I am saying it is good... don’t fix it by breaking it. It’s a good result at the moment”.

Witness for the applicant – Mr Sukhjinder Singh (recalled):

[348] Finally, Mr Singh was recalled to answer further questions arising from the evidence presented to the Committee. Asked about whether he had secure tenure based on the lease agreement, Mr Singh responded that the usual approach is to get a letter from the landlord, and then negotiate a deed of lease later. He noted that they are currently paying partial rent, in order to be fair to the landlord, as the premises is being kept vacant.

[349] Asked how the business is being financed, particularly given the number of other stores that they have started up in the last year or so, Mr Singh responded that they are using different terms of loan, with Lion Finance, Prosper Finance, and ASB Bank. In response to a follow-up question, he noted that he doesn't own any of the properties that he operates businesses from.

[350] Asked to explain further how deliveries will be handled at the premises, Mr Singh explained that the store at Wellsford has a large storeroom. They will load up their van in Wellsford, and the van will arrive in Te Kauwhata after school hours. Staff will park the van in the alleyway next to the premises, and staff will use a battery-powered trolley, that holds three to four boxes, to take stock into the store through the side ramp.

[351] At this point, it became clear that the plan submitted with the application was inaccurate, as there was no side ramp or entrance into the premises showing on the plan. Some discussion ensued, in which it was established that a new plan would be required.

[352] Asked if he had any concerns about the safety of his staff or customers, in relation to the structural engineering of the building, Mr Singh noted that they had consulted with the landlord, and the landlord had confirmed that the building "is on solid ground".

[353] Asked to elaborate on the plan for staff training, Mr Singh explained that their development of their own 'app' for training was discontinued because it was similar to Super Liquor training, and they also thought that Corcoran French was a better option. Mr Singh noted that "specialists offer an objective viewpoint". He further noted that they had already implemented the 'communication log' that the Inspector had recommended. Mr Singh then went on to explain that he checks the training is being conducted. The training certificates are available. He also asks random questions to his staff. Finally, Mr Singh accepted that ultimately, he is responsible for training as director of the company.

Other evidence:

[354] The Committee received written briefs of evidence from Mr Rhett Boivin (Objector), Ms Jennie Gore (Objector), Ms Jennifer Human (Objector), Ms Jennifer Kelly (Objector), Ms Connie Milroy (Objector), and Ms Debbie Tonks (Objector)). As none of these objectors was available to the Committee, their evidence was not considered.

[355] In an email to the Secretary dated 7 June 2024, the Committee requested:

1. A copy of the Waikato District Council Alcohol Control Bylaw 2020; and
2. Specific numbered submissions on the 2023 Provisional LAP, referred to by Ms J Sedwick in her objection.

[356] These documents were provided to the Committee on 11 June 2024.

[357] 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.

CLOSING SUBMISSIONS:

Applicant:

[358] As requested by the Committee in Directions dated 18 June 2024 the applicant, through their counsel, provided a copy of the engineering report for the premises, and an updated plan for the premises.

[359] The closing submissions by counsel for the applicant, Mr Davies, first provided some background and outlined the Committee’s task. Mr Davies highlighted the High Court decision in *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123, noting that “the essential question for the DLC to answer, after having regard to the statutory criteria, is *whether there is an evidential foundation enabling a link between a real risk of alcohol-related harm and the grant or renewal of a licence*. If that link can be drawn, the harm must be minimised not ignored or condoned”.

[360] Turning to the evidence before the Committee, Mr Davies submitted that “a not insignificant amount of the evidence led at the hearing, by both the tri-agencies and the objectors (and the objectors’ witnesses) was irrelevant to the Committee’s evaluative task and must be ignored”. He noted that “[s]pecifically, a recurring and prevalent theme throughout the three days of hearing was that the objectors, their witnesses, the Police, and the Medical Officer of Health delegate each exhibited a general aversion to the establishment of a new bottle store in Te Kauwhata”. Mr Davies pointed out that:

“[t]he following interaction played out several times at the hearing:

- (a) A person would give evidence which identifies a range of concerns about the application.
- (b) The Committee would refer the person to the proposed steps SSA 2021 Limited had offered to take in relation to the design of the exterior of the premises, litter collection in the area surrounding the store, and closing the store between 2:45pm and 3:15pm on days the Te Kauwhata Primary School is open.
- (c) The Committee would then ask the person if those steps ameliorated their concerns in any way.
- (d) Time and again, the person would respond with words to the effect of, “No, because there would still be a bottle store.””

[361] Mr Davies also drew attention to instances from the evidence of the Medical Officer of Health and the Police and submitted that “the kind of language set out above is attributable to a general aversion to a new bottle store”.

[362] Mr Davies reiterated points from his opening submissions that “ARLA has previously held that the issue of proliferation of licensed premises, and general aversions to new bottle stores, are

matters of policy which are best dealt with via a Local Alcohol Policy – and not by a district licensing committee when considering an application for a licence”, pointing to the Authority’s decision in *Otautau Hotel 2017 Limited v Grove* [2023] NZARLA 37. Mr Davies submitted that “[t]o the extent that objectors and the agencies gave evidence about a general aversion to a new bottle store... the Committee must ignore that evidence”. Mr Davies also submitted that “the Committee is not judging a popularity contest. It should not allow itself to be swayed by the number of objectors and witnesses that gave evidence in opposition to the application”, noting that “[w]hat matters is the content of their evidence”. Mr Davies submitted that “where that evidence is a matter of policy, the Committee must not have regard to it”.

[363] Turning to the locality, Mr Davies submitted that “Te Kauwhata is not a ‘vulnerable community’ in the alcohol licensing sense, nor in the more general sense”, noting that “[i]f it is, the evidence of Mr Keehan shows that half of the country would also qualify as being ‘vulnerable’, which cannot be correct”.

[364] Mr Davies submitted that “the data presented by Mr Keehan is the best available evidence before the Committee about the actual extent of alcoholic health harm in Te Kauwhata”. Mr Davies drew attention to where Mr Keehan gave evidence that “[t]he area suffered Alcoholic health harm at a rate less than the Waikato average for the years from 2020 to 2023”, “[c]ompared to the average of the Waikato, it can be seen that Te Kauwhata is enriched for people living in the middle ranked deciles of socio-economic deprivation i.e. neither rich nor poor”, and “[t]he available evidence shows that Te Kauwhata is currently meeting the objectives of the act [sic] with minimal harm from excessive or inappropriate consumption of alcohol.”

[365] Mr Davies submitted that “Mr Keehan’s evidence is extremely relevant to the Committee’s evaluative task and it is cogent and well-researched” and that “the Committee should be slow to prefer inconsistent anecdotal evidence”. Mr Davies noted the consistency with the evidence of Dr Baird who, when asked if he experiences an irregular amount of alcohol-related harm presentations at his clinic, said that “he did not, and that he expected his clinic instead experienced a typical amount of those presentations for a clinic in a rural town in New Zealand – but possibly less than average”.

[366] Mr Davies then noted that “[w]hile the objectors and their witnesses gave evidence about alcohol related harm in Te Kauwhata, that evidence was largely anecdotal and goes against the empirical statistical evidence of Mr Keehan”, and went on to point out that “it is very possible that the Te Kauwhata Community House sees a disproportionately high amount of alcohol related harm due to the nature of the services it provides”.

[367] Mr Davies submitted that “what the Committee instead needs is empirical statistical evidence which assists it to understand Te Kauwhata’s level of alcohol related harm relative to the region generally”, noting that “is exactly what Mr Keehan’s evidence does, and it is invaluable to the Committee’s evaluative exercise”. Mr Davies submitted that “the Committee ought to prefer Mr Keehan’s evidence, along with the anecdotal evidence of Dr Baird that supports his evidence, over the anecdotal evidence of the objectors and their witnesses, which is inconsistent with the empirical statistical evidence”.

[368] Mr Davies then discussed School Equity Index (EQI) numbers, submitting that “[w]hile Te Kauwhata College’s EQI Number is higher than the average for New Zealand, it is only moderately higher than the average” and “Te Kauwhata Primary School’s EQI Number shows that its students face average socio-economic barriers relative to other schools in New Zealand”. Mr Davies submitted that “these EQI Numbers are further empirical statistical evidence that would support a finding by the Committee that Te Kauwhata is not a vulnerable community”.

[369] Overall, Mr Davies submitted that “Te Kauwhata is not a vulnerable community for the purposes of alcohol licensing law”.

[370] Turning to litter, Mr Davies submitted that “[e]very town in New Zealand experiences problems with litter, and Te Kauwhata is no different”, and noted that “the extent of the litter issue in Te Kauwhata remains unknown”. In relation to the Inspector’s report of alcohol bottles in a rubbish bin, Mr Davies submitted that “discarded alcoholic beverage vessels placed in rubbish bins are not evidence of ‘litter’ – they are evidence of ‘rubbish’”.

[371] Mr Davies pointed to multiple witnesses noting that “there is a person contracted to clean up the litter in certain parts of the Te Kauwhata town centre” and that “that person was not called as a witness”. Mr Davies submitted that “this person would have been best placed to give relevant evidence on the extent of Te Kauwhata’s litter problem (if any)”.

[372] Mr Davies pointed to the Authority’s decision in *Townhill Limited v Alcohol Wise Hurunui Incorporated & Ors* [2021] NZARLA 50, where the Authority preferred evidence from a maintenance and gardening officer over anecdotal evidence from objectors. Mr Davies submitted that “the *Townhill Limited* decision is very analogous to the present application, and many of ARLA’s comments will provide useful guidance to the Committee in this application”.

[373] Mr Davies then pointed to the discretionary condition offered by the applicant in relation to cleaning up of litter, but noted that “this would perhaps be best achieved via an undertaking”, worded as follows:

“Staff at the premises shall inspect the area around the premises, including the Village Green, for litter and/or vandalism. This area shall include Main Road, between Baird Ave in the north and Mahi Road in the south. Staff will collect any litter and report any vandalism to Waikato District Council. Local commercial cleaners will be hired also”.

[374] Mr Davies submitted that “whatever the actual extent of the litter “problem” is in Te Kauwhata, the above condition/undertaking will work to improve the amenity and good order of the immediate locality from its current level”. He further submitted that there is “[i]nsufficient evidence of any litter problem in Te Kauwhata for the Committee to form an opinion that the amenity and good order of the locality would be reduced by a more than minor extent by the effects of the grant of the licence” and that “[e]vidence from SSA 2021 Limited which supports the possibility that the amenity and good order of the locality will be increased by the effects of the grant of the licence”.

[375] On suitability, Mr Davies summarised the evidence of the experience and past operation of premises of the applicant directors. He challenged the concerns in relation to ‘absentee licensees’, noting that “[i]f a licensee is able to find competent and trusted staff who enable the licensee to become less involved in the day-to-day operations of the premises, that is a positive outcome for all involved”.

[376] Turning to systems, staff and training, Mr Davies challenged the Inspector’s contention that training must be undertaken by the licensee themselves. Mr Davies noted that “[t]he purpose of requiring an applicant to demonstrate how it will train its staff is to ensure that the particular applicant has a staff training plan in place, and to test the quality and frequency of the staff training to be provided” and that “[t]he identity of the training provider is only relevant insofar as it indicates the quality of the training to be provided, as some providers will be better than others”.

[377] Mr Davies submitted that “the Committee’s task is to determine whether the applicant has in place a suitable staff training plan – irrespective of who actually provides that training”, Mr Davies then summarised the evidence from the applicant on training, and submitted that “[t]he Committee can be confident, if it grants the application, that while SSA 2021 Limited’s systems, staff and training may not eliminate the risks of alcohol related harm from the sale of alcohol, those risks will be minimised”.

[378] On the LAP, Mr Davies pointed out that the Provisional LAP is not yet in force, and submitted that “[a]ny evidence the Committee heard in relation to either LAP, including the evidence of Jan Sedgwick about the formulation and consultation on the Provisional LAP, is therefore irrelevant and must be ignored”.

[379] The Committee Directions dated 18 June 2024 asked whether a lease agreement that is contingent on a licence being in place constitutes tenure sufficient for a licence to be issued. Mr Davies responded to that by noting that “SSA 2021 Limited is a party to an agreement to lease the premises which is conditional on it obtaining an off-licence”. He submitted that “amounts to a conditional interest in the premises, which is sufficient tenure for the purposes of the Act”.

[380] Turning to design and layout, Mr Davies submitted that “the engineering of the building is irrelevant to the Committee’s evaluative task”, noting that “[a]ll that is required is a s 100(f) certificate confirming that the building meets the requirements of the building code”.

[381] Mr Davies then noted that the applicant had “reflected on the evidence given at the hearing and has agreed to the following further measures to resolve or mitigate the objectors’ and agencies’ concerns:

- (a) The store will not sell any vapes as part of its business.
- (b) The store will be closed from 2:45pm to 4:00pm on days when students are attending the Te Kauwhata Primary School.
- (c) Reuben will join the local business association.
- (d) Reuben will display his contact details so they are visible from outside the premises and will invite members of the community with questions or concerns to contact him directly”.

[382] Mr Davies then noted that “other parties to the hearing may consider that these types of steps are ‘reactive’ and not deserving of any credit”, and he submitted that “the opposite is true: an applicant who hears evidence of potential issues in the community where it is looking to establish a licensed premises, and who then takes action to mitigate or resolve those concerns, is exhibiting the signs of a suitable licensee”.

[383] Finally, Mr Davies summarised the position of the applicant, that the licence should be granted. In particular, he submitted that “the evidence before the Committee does not provide an evidential foundation for a link between a real risk of alcohol-related harm and the grant of the licence”, and that “the Committee should be confident that the grant of this application will achieve the object of the Act, and that SSA 2021 Limited’s application otherwise fulfils the criteria set out in s 105(1) and 106(1) of the Act”.

Medical Officer of Health:

[384] Ms Adesanya began her submissions with a focus on the Purpose of the Act (Section 3), referring to the Supreme Court decision *Woolworths v Auckland Council* [2023] NZSC 45, specifically at [84] where the Court wrote that: “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”. Ms Adesanya then summarised the law relevant to the Committee’s decision-making.

[385] Ms Adesanya submitted that “issuing the licence will affect the amenity and good order of the community with the tendency to increase to the number of alcohol outlets in the area” and that “the applicant is not suitable to operate in the locality”.

[386] On suitability, Ms Adesanya defined vulnerability following the World Health Organization as “the conditions determined by physical, social, economic and environmental factors or processes, which increase the susceptibility of an individual, a community, assets or systems to impacts of hazards”, and defined vulnerable persons (children, young people and adults) as “a sector of the population who experience the impact of inequitable distribution of the social determinants of health, e.g. income, employment, education, housing, health care and social support”.

[387] Ms Adesanya noted that “[w]here a community is vulnerable, the threshold for suitability is higher”, referring the Committee to the Authority’s decision in *Shady Lady Lighting Limited v Lower Hutt Liquormart Limited - Blackbull Liquor* [2018] NZARLA 198. Ms Adesanya noted that “[t]he 2018 census shows that community has a high number of young people and older adults. These two categories fall under the sector of the vulnerable population”, and submitted that “the issue of this licence will increase exposure the potential of alcohol harm within a vulnerable community”.

[388] Ms Adesanya then discussed the evidence before the Committee. She noted that “[t]he applicant proposes spending a day in each store. The Medical Officer of Health cannot understand how this is possible considering the amount of time that will be required to travel between stores”. She also noted that “[t]he applicant proposes to use a “buddy system” to help with train and assist at the start up stage. The buddy is proposed to be available via phone call multiple times daily. The Medical Officer of Health does not believe this is possible without a risk of distraction or misjudgement from the distractions multiple phone calls during operating hours will cause to the premises involved in the buddy training”.

[389] Turning to the proposed discretionary conditions, Ms Adesanya noted of the closure of the premises at the end of the school day that “is ineffective because evidence by objectors stated students would still be exposed as the school closing hours could extend until 4 pm. It is uncertain what the applicant proposes to do during school holidays and other after hour school activities”.

[390] On amenity and good order and the discretionary condition regarding cleanup of litter, Ms Adesanya noted that “the vulnerable community uses the ATM machine beside the premises as well as the bakery and likelihood of loitering and an increase in unsavoury behaviour, should the licence be granted”.

[391] On the discretionary condition related to the number of certificated managers, Ms Adesanya agreed that “this number is a good attempt for the premises. We are however uncertain of these managers experience in the community they intend to service, how the applicant consolidates these training and uses it to drive training and services specific to the community it services”.

[392] Ms Adesanya then submitted that “[d]efects found in an application cannot be cured by conditions”, pointing the Committee to the Authority’s decision in *Lyger Investments Limited* [2018] NZARLA 299-300.

[393] Ms Adesanya concluded by submitting that “adding another off licence will increase accessibility, exposure and density of alcohol outlets in this area. This could potentially to minors and the older population within the community, thereby increasing unfriendly and risky behaviours in these sites” and that “[t]he Object of the Act cannot be achieved by granting this licence and therefore the DLC should refuse this licence”.

Ms N Patterson (Objector):

[394] Dr Gordon began her closing submissions by summarising key parts of the evidence before the Committee. She noted that “[i]t was argued by the Inspector that the Applicant relied too heavily on services expected to be provided by the franchise especially in the area of training while, from documents produced by the Applicant, only a patchy picture of actual training emerged. Much of the training is low level and directed at staff rather than licenced managers”. Dr Gordon also noted that “[w]hile case law encourages applicants to put their best foot forward, this is not to the extent that the best foot which is presented fails to reflect a true representation of the Applicant’s abilities”.

[395] Dr Gordon then reiterated her points from opening submissions in relation to the pending appeal to the Authority by *TK Spirits Limited*, noting that “[t]he question of how to treat a pending appeal against a decision to decline a licence has not, as far as we have been able to find, been addressed in case law” and that “[t]he only safe option is for the Committee to assume that ARLA will, in fact, issue the licence for Bottle O, and act on that basis, considering this (alongside other evidence) as part of the assessment of amenity and good order”.

[396] On suitability, Dr Gordon submitted that “[d]ue to the nature of the area and the population, it is submitted that the standard of extended suitability applies. This standard requires the Applicant to operate at a higher level of suitability. There are areas of high deprivation and significant vulnerability within the area, and Te Kauwhata meets the Shady Lady test”.

[397] Dr Gordon submitted that “[t]he evidence before the DLC is that the Applicant has failed to reach the standard required of extended suitability”, noting that:

- “a. Instead of consulting with the local community, approached a number of key businesses and, in some cases, provided inaccurate reports on the results of that consultation;
- b. Used the consultation process in at least one instance to impress a positive message on a woman business owner, in an approach that involved four males asking her to step outside her business in a way she experienced as heavy-handed and bullying, and which led to a complaint to the Inspector;
- c. Included a mock-up of the outside of the store that showed a paint scheme that is far more muted than the actual colour scheme of Super Liquor stores, thus misrepresenting the potential impact of that colour scheme on the area;
- d. Then suggesting a dark grey colour scheme which would enhance the Super Liquor signage by contrast, especially if multiple signs were to be erected as in the new Christchurch development with six signs on a single frontage;

e. While noting that neither director lived near the premises, and both were busy with their other stores, indicated in writing that both directors would be involved in running the store for up to 40 hours per week, a claim not repeated fully at the hearing; and

f. Having, in the words of the Police, put too much weight on putting their best foot forward in the application and therefore not balancing their application...”

[398] Dr Gordon then pointed to the test of suitability in *Nishchay's Enterprises Limited* [2013] NZARLA PH 837 and submitted that “to meet the standard of the above test, the Directors must have an active physical presence in the management of their liquor stores in order to demonstrate suitability. In evidence it became clear that the model adopted by the Applicant is one of hands off, with regular visits. There is only one administrative staff member in addition to the two directors, so oversight is fairly sparse over 13 stores”. Dr Gordon 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”.

[399] On amenity and good order, Dr Gordon submitted that “the risk to amenity is also linked to the suitability of the applicant, given the hands-off business model the applicant revealed which would give inadequate time for monitoring of the effects by the directors”.

[400] Dr Gordon also submitted that “[a]lthough the 2022 Waikato District Council Provisional Local Alcohol Policy is yet to come into force, it is submitted that the research, submissions, hearings and deliberations materials, and the text of the Provisional Local Alcohol Policy is relevant to the DLC forming an opinion in accordance with section 105(1)(h). Of note is that the Provisional Local Alcohol Policy provides that there are to be no new standalone bottle stores in Te Kauwhata”. She submitted that “the DLC should, on the evidence, find 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”.

[401] On design and layout, Dr Gordon noted a number of questions left partially unanswered, including:

“a. How will the premises be presented, and what sort of colouring and signage will be used?

b. Will the ATM and post boxes stay or go? If they go, where will they go to? Will they be lost from the town completely?

c. Is the building strong enough to bear the weight of alcohol goods, which tend to be very heavy?

d. What kind of fencing will be put up and will that screen the primary school from the premises?”

[402] On systems, staff and training, Dr Gordon noted that “[t]he Directors will be absentee owners and will rely on staff hired specifically for the new store”, and that “the application, while including a lot of material from Super Liquor and other businesses, does not provide a comprehensive plan for the store”.

[403] Finally, on the Object of the Act, Dr Gordon noted that “[t]he objectors heard at the hearing were people who live and work in the community and many of them are in the business of reducing the harms in society, including alcohol related harm”, and submitted that “the issue of the licence would increase what is already an unacceptably high level of alcohol-related harm in the area around the proposed premises”. Dr Gordon concluded by submitting that “the DLC ought to decide that

granting the licence will likely increase alcohol-related harm in the area and decline to grant the licence”.

Other closing submissions:

[404] The Committee also received closing submissions from Ms Linda Plant (Objector) and Mr Stuart McNab (Objector). Ms Plant reiterated the key points from her evidence before the Committee. Mr McNab’s submission attempted to introduce new evidence, and this new evidence, having not been heard or examined during the hearing, was given no weight by the Committee.

Criteria for determining the application:

[405] 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.

[406] In the Committee’s view, s 105(1)(a), (b), (c), (d), (e), (f), (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)(g) and (i), and is satisfied regarding those criteria.

Reasons and Decision:

S105(1)(b) Suitability

[407] The reports of the MOH and Police 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.

[408] 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.

[409] 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.

[410] Although the case law cited above relates to the Sale of Liquor Act 1989, it remains current, and was recently affirmed 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.

[411] 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.

[412] Where the threshold of suitability is raised, additional aspects must be assessed in relation to suitability. In *Re Dhillon* [2013] NZARLA 920, the Authority wrote:

[49] The fact that the applicant seemed to have no knowledge of the locality or the potential problems associated with it goes to its lack of suitability. If the applicant had indicated some knowledge of the environment in which it proposes to set up a bottle store, then it follows that it would have discussed the measures necessary to assist in the minimisation of harm caused by excessive or inappropriate consumption of alcohol purchased at its premises. Those measures it did discuss were the ineffectual external camera and the discarded suggestion that a staff member would patrol the Reserve at night from time to time: a totally impractical suggestion for a business employing only two staff. More sensibly, it would have given greater thought to the hours it wishes to be open for the sale of alcohol in this area.

[413] The importance of vulnerability of the area in establishing whether a higher threshold for suitability is needed, was subsequently affirmed in *Churchman J in Lower Hutt Liquormart v Shady Lady Lighting Limited* [2018] NZHC 3100. A first step for the Committee, then, is to determine the vulnerability of the area, and whether the threshold of suitability is consequently raised.

[414] 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. There appeared to be no objection to this interpretation by parties to the hearing. 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.

[415] The Committee has been unable to locate case-law that includes a list of characteristics to consider when assessing the vulnerability of an area: a concept not defined in the Act. We

acknowledge that what characterises ‘vulnerability’ will differ according to context. The *Oxford English Dictionary* defines ‘vulnerability’ as “[t]he quality or state of being vulnerable, in various senses”, and defines ‘vulnerable’ as, inter alia, “[d]esignating a person in need of special care, support, or protection (esp. provided as a social service) because of age, disability, risk of abuse or neglect, etc”. These definitions are not particularly helpful in the context of the vulnerability of an area and minimising excessive or inappropriate consumption of alcohol.

[416] In closing submissions, the Medical Officer of Health provided a definition of vulnerability, being “the conditions determined by physical, social, economic and environmental factors or processes, which increase the susceptibility of an individual, a community, assets or systems to impacts of hazards”. This definition comes from the *United Nations Office for Disaster Risk Reduction*,⁴ and has been employed by the World Bank and the World Health Organization. The Medical Officer of Health also provided the following definition of vulnerable persons (children, young people and adults) as “a sector of the population who experience the impact of inequitable distribution of the social determinants of health, e.g. income, employment, education, housing, health care and social support”. The Committee notes that although these definitions arise in the context of disaster and climate risk, they are more useful to our purpose than the dictionary definition, and that vulnerability under this definition extends beyond a narrow consideration of the social deprivation of the locality, although social deprivation will still be a key indicator of vulnerability.

[417] In closing submissions, Dr Gordon suggested several 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 Maaori in the population, nearby sensitive sites including community centres, early childhood facilities, churches and schools. The Committee agrees that these are relevant to a consideration of vulnerability of the locality.

[418] In terms of social deprivation, Mr Keehan gave evidence that “[c]ompared to the average of the Waikato it can be seen that Te Kauwhata is enriched for people living in the middle ranked deciles of socio-economic deprivation i.e. neither rich nor poor”. His evidence on alcohol-related healthcare events also indicated that Te Kauwhata was not affected by health harm to a greater extent than the Waikato region generally. Similarly, Dr Baird expressed the view that the alcohol related harms that he was seeing were in line with a typical rural practice, and if anything, Te Kauwhata has lesser harms.

[419] In contrast, as Ms Fowler pointed out in her evidence, the demographic report that Super Liquor produced shows that income in Te Kauwhata is lower than the national average, and spending on packaged liquor is higher than the national average. This suggests a greater proportion of income being spent on packaged alcohol in Te Kauwhata than in the country generally.

[420] The Committee received evidence from several objectors about vulnerable populations in the community. Ms Iwihora talked about the impact of alcohol on tamariki Maaori. Ms White pointed to young families with children, and residents of the retirement village. Ms Plant made note of the vulnerable people living in the Aparangi retirement community, and Mr Cunningham also mentioned retirement village resident, noting that they may have mobility issues. Mr Cunningham also had concerns for children around the premises, as did Ms Sedgwick. The Inspector likewise raised concerns about children being exposed to alcohol while going with their parents to the post boxes or ATM.

[421] Ms Hughes, General Manager of the Community House, noted the particular vulnerability of her clients, as well as young people whose parents lack resources, and people with fragile mental health. Ms Kelly expressed concerns for the welfare of students and whaanau, and noted that if

⁴ <https://www.undrr.org/terminology/vulnerability>

parents have access to vape products and alcohol, then children have access. Ms Plant talked about families with children suffering from Fetal Alcohol Spectrum Disorder in the church community and described lonely and isolated people in the community as vulnerable.

[422] In her evidence, Ms Van der Munckhof expressed concern for her personal safety at the pharmacy, should the bottle store licence be granted. Ms Sedgwick likewise expressed concern for the safety of staff at the pharmacy.

[423] Police gave evidence that a high proportion (23.0 percent) of the population of Te Kauwhata is Maaori, and that over one-third of the roll of Te Kauwhata Primary School is Maaori. Ms Maihi gave evidence that Maaori “experience poorer health outcomes than the general New Zealand population”. Ms Iwihora talked about the cultural harm to Maaori, which was also discussed by Rev Dr Hollis.

[424] A particular aspect of this premises is its location and the potential for harm. The premises is located directly across Main Road from the pharmacy and medical centre. The Committee heard evidence from Dr Baird, noting that “[o]n one side of the street will be a store selling alcohol and on the other side a GP and pharmacy working hard to overcome the harmful effects of the same substances”. In his evidence, he noted that this would not be helpful for people who are being treated for addiction issues. Ms Herbert also raised this site location as an issue.

[425] Mr Davies submitted that Te Kauwhata is not a vulnerable community, pointing to the quantitative evidence in the form of social deprivation statistics and health statistics from Mr Keehan. Mr Davies also pointed to the Committee’s decision in the application for an off-licence by *TK Spirits Limited*, in which the Committee concluded that “[t]he 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”, and submitted that the Committee should find the same in respect of this application.

[426] The Committee is of the view that the quantitative data are relevant, but not solely determinative of the vulnerability of the community. In this application, there is a context that matters in relation to the specific location in which the bottle store is situated.

[427] Turning back to the definition of vulnerability, being “the conditions determined by physical, social, economic and environmental factors or processes, which increase the susceptibility of an individual, a community, assets or systems to impacts of hazards”, there are characteristics of the location that appear to increase the susceptibility of individuals and whaanau to impacts, not all of which were present for the *TK Spirits* application.

[428] From the evidence before the Committee, the following characteristics can be identified as important to the assessment of vulnerability:

- (i) The location of the sole medical centre in Te Kauwhata being directly opposite the proposed premises and the vulnerability of the medical centre’s clients, particularly those with alcohol and drug dependency;
- (ii) The location of the sole pharmacy in Te Kauwhata being directly opposite the proposed premises and the vulnerability of the pharmacy’s clients, particularly those with alcohol and drug dependency;
- (iii) The presence of nearby alcohol and drug counselling services at the Community Centre;
- (iv) A moderate level of social deprivation in Te Kauwhata, with some pockets of high deprivation, and an average income that is lower than that of New Zealand generally;
- (v) A level of packaged alcohol purchasing that is higher than that of New Zealand generally;
- (vi) A Maaori population in Te Kauwhata that is higher than that of New Zealand generally;

- (vii) A substantial elderly population in Te Kauwhata, who regularly use the ATM at the proposed premises;
- (viii) Nearby sensitive sites including schools and churches, and the vulnerability of school students in particular to the negative impacts of alcohol through their own drinking and the drinking of others; and
- (ix) The intergenerational effects of alcohol consumption.

[429] These characteristics must then be viewed in light of the mitigations offered by the applicant, including reducing the visual impact of the store, reducing trading hours when Te Kauwhata Primary School is in operation, and the applicant's assertion that they want to contribute positively to the community.

[430] Among the above characteristics, the Committee views the location of the proposed premises directly opposite the pharmacy and medical centre as leading to a real risk that vulnerable community members with alcohol and drug dependency and/or addiction issues generally are negatively affected by the licence. There is little in the way of mitigation for these vulnerable people.

[431] Given this context, the Committee concludes that the community is vulnerable in respect of this licence application, and is high risk regarding harm from the inappropriate consumption of alcohol. The area meets the higher threshold for the extended suitability test set out in the Authority's decision in *Shady Lady Lighting*.

[432] In her opening and closing submissions, Dr Gordon referred the Committee to Westlaw Commentary on the extended suitability test. In *Patels Superette 2000 Ltd* [2019] NZARLA 75, the Authority, citing *Shady Lady Lighting*, wrote:

[212] The Authority agrees with the DLC that Mr Hira has made little effort to research and understand the make-up of the community and how they might be impacted by alcohol or how his application might address those concerns. It was only when at the hearing before the DLC that Mr Hira indicated that the appellant would be willing to close the store when children are likely to walk by, particularly around 9.00am and 3.00pm weekdays to allay any concerns of the community. Further, it is only when appearing before the Authority that the proposed hours were modified to 9.00am to 9.00pm. Rather than this demonstrating a sensitivity toward the needs of the community, this demonstrates a failure to take steps to understand the concerns of the community in advance, and is 'too little, too late'. This lack of engagement is a factor to which the DLC was properly entitled to have regard when assessing the applicant's suitability to hold an off-licence.⁹⁷

[433] Drawing on *Patels Superette*, the Committee infers that the extended suitability test requires the applicant to make an effort to research and understand the make-up of the community and how they might be impacted by alcohol or how this application might address those concerns. In the Committee's view, the ideal time for this community engagement to occur is before the application is submitted. This accords with the Authority's view in *Nishchay's Enterprises Limited* [2013] NZARLA PH 837 at [58]:

[58] The applicant's failure to engage with the objectors and other persons in the community before filing the application does not assist its case.

[434] Evidence before the Committee clearly indicates that the applicants had not extensively engaged 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.

Dr Gordon submitted that because the applicant had not consulted extensively with the community, this demonstrated that they had little knowledge of the locality.

[435] Mr Hoar told the Committee that he identified the market opportunity for a bottle store in 2017, and that the applicants saw this in 2020. Super Liquor prepared extensive catchment reports for the locality (provided as appendices to Mr Hoar's brief of evidence), that included extensive demographic details on areas within a 1km and 2km radius of the proposed bottle store. While the reports in evidence were dated May 2024, it is likely that similar reports were available to the applicant prior to their application. Indeed, Mr Singh gave evidence that the applicant directors did due diligence in 2020, and saw that the community was projected to grow. Their application also included a 'locality assessment report', which demonstrated that the applicants had some knowledge of the locality in which the proposed premises are situated. Mr Singh said that they consulted with about nine businesses.

[436] In the Committee's view, the applicant's activities prior to making their application do indicate an effort to research and understand the economic and business opportunities. Engagement with wider community, however, appears to be cursory.

[437] Engagement involved a meeting the Community House manager, the Primary School principal, and the local pharmacist. In the context of a vulnerable locality, the Committee views this engagement as a very limited attempt to engage with the community and understand how the community is impacted by alcohol. We note, for example, that the applicants did not engage with the local Iwi and marae, the Medical Centre, the Te Kauwhata Community Committee, the local business association, representatives of the churches, the Secondary School principal, the community patrol or individual members of the community.

[438] The Committee observes that it is perhaps not surprising that during the hearing, Mr Singh said, "We are willing to offer discretionary conditions to address as many concerns of objectors as possible". Had they undertaken a more extensive community engagement prior to its application, the applicant would have been well positioned to present solutions to identified community concerns in its application, rather than offering up conditions and undertakings during the hearing process. The Committee considers that the applicants' approach to community engagement in a vulnerable locality does not illustrate 'putting its best foot forward'.

[439] To elaborate, prior to the hearing, and during and after the hearing, the applicants clearly became aware, or more aware, of potential problems associated with the proposed premises, and the extent of feeling within the community about the potential problems. The applicants offered discretionary conditions or undertakings to counter those potential problems, including restricting licensed hours (later opening, earlier closing, and a school-day closing period in the afternoon), cleaning up litter and advising the Council of vandalism in the area, having a minimum of three certificated managers (excluding the directors), and restrictions related to deliveries. Following the hearing, the applicants also agreed not to sell vape products or tobacco.

[440] The Police labelled these steps reactive, and noted that many of the steps were "merely compliance with the obligations of their license under the Act". In closing submissions, Mr Davies noted that "an applicant who hears evidence of potential issues in the community where it is looking to establish a licensed premises, and who then takes action to mitigate or resolve those concerns, is exhibiting the signs of a suitable licensee".

[441] In the Committee's view, this demonstrates a limited effort by the application to consider how this application might address concerns of how the community was impacted by alcohol. Concerns raised during the hearing, such as alcohol-related litter, the selling of cigarettes and vape products,

and the visual impact of the store, were known to the applicant prior to the hearing, and they could have been more proactive, rather than reactive, in addressing them. This also comes back to the lack of community engagement. A more fulsome attempt at community engagement is likely to have highlighted the key issues to the applicant, and they could have attempted to address those issues in their application, rather than waiting until the hearing to do so.

[442] The Committee concludes that the applicants have not made sufficient effort to research and understand the make-up of the community and how they might be impacted by alcohol or how this application might address those concerns. Therefore, the applicants have not met the test of extended suitability set out in the Authority's decision in *Shady Lady Lighting*.

[443] We next turn to the 'conventional' test of suitability, as outlined in *Re Sheard*, that 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".

[444] 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. They have extensive experience operating a large (and growing) number of other licensed premises, and there have been no problems with those premises.

[445] The Committee is satisfied that the application form itself contains no misleading information. However, the 'Locality Assessment Report' attached to the application form included details of community consultation undertaken by the applicant and summarised the applicant's impressions of those consultations. A complaint was subsequently made to the Council by Ms Van der Munckhof, who felt that her position was misrepresented in the report. She gave evidence to the Committee of feeling bullied at the meeting with the applicant, landlords, and others.

[446] In contrast, the landlords each wrote a response to the complaint, challenging Ms Van der Munckhof's interpretation. Mr Singh gave evidence that he was sorry and that "[i]t was never our intention to misrepresent her position". The Police followed up with the businesses that had been consulted, and other than Ms Van der Munckhof, none of the businesses that Police contacted felt that their comments had not been misrepresented.

[447] The Committee is satisfied that there was not an intent on the applicant's part to mislead the Committee or misrepresent Ms Van der Munckhof's position. This appears to have been a case where two parties to a conversation had differing interpretations of the outcome of that conversation. Ms Van Der Munckhof was clear that she had always remained opposed to the bottle store. The Committee is therefore satisfied that there was no misleading information in the application, and that the character and reputation of the applicants remains positive.

[448] In the Committee's view, the applicant satisfies each element in the checklist in *New Zealand Police v Casino Bar No 3 Ltd*. However, the applicant has not met the test of extended suitability. Overall, the Committee is not satisfied that the applicant is suitable to hold this off-licence.

SI05(I)(c) Local Alcohol Policy (LAP)

[449] 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.”*

[450] 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.

[451] 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.”*

[452] 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.”*

[453] 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.”

[454] 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.

[455] 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 80 metres away, and Te Kauwhata Trust Tavern is located approximately 50 metres away.

[456] 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.

[457] 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.

[458] 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’.

[459] 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.

[460] 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.

[461] The site frontage of the proposed premises does not directly border the legal site boundary of any school, early childcare facility, place of worship or public park. Te Kauwhata Primary School does border the site, but to the rear of the premises.

[462] 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.

[463] 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.

[464] 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 gave evidence that the outside of the proposed store would “not include alcohol advertising or promotions, only the Super Liquor branding and signage around trading hours”. Moreover, the applicant has agreed to a colour scheme for the building that goes some way towards limiting the visual impact of the store.

[465] In terms of the hours, the applicant sought to amend the hours so that the store would close during the period at the end of the school day. In closing submissions, the applicant through Mr Davies offered a condition where the store would close from 2:45pm to 4:00pm on days when students are attending Te Kauwhata Primary School.

[466] The Committee is satisfied that the final proposed hours, the limited signage, and the operation of the premises will have no significant impact on the primary school or persons using the primary school. However, the Committee notes that clause 5.4.2, like clause 5.3.2, appears to place an onus on the applicant, and accordingly it is unclear whether the Committee could find that the grant of this licence would be inconsistent with the LAP.

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

SI05(1)(d) Days and Hours

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

[469] 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.

[470] The Committee views that the hours originally 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.

[471] In his evidence Mr Singh revised the licensed hours that were sought to Monday to Sunday (inclusive), 10am to 8pm, with the store also closed between 2.45pm and 3.15pm on weekdays when

Te Kauwhata Primary School is operating with students. In closing submissions, the applicant further revised the closing time during school to 2:45pm to 4pm. If the Committee is minded to grant the application, the Committee will accept these proposed hours, and set the licensed hours as Monday to Sunday 10am to 8pm, with the store to be closed from 2:45pm to 4pm on days when Te Kauwhata Primary School is in operation.

S105(1)(e) Design and layout

[472] The premises are located in a retail building within the Te Kauwhata business zone. The applicant had completed a CPTED checklist. In her report, the Inspector noted no issues regarding 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.

[473] Several areas of concern were raised by objectors at the hearing, including the visual impact of the premises, the rear boundary with Te Kauwhata Primary School, how deliveries to the premises will be handled, and the structural engineering of the building. In addition, issues were identified with the accuracy of the site plan submitted with the application.

[474] Mr Singh gave evidence that they could still work with Super Liquor to change the proposed colour of the premises from blue to grey or black. Mr Hoar gave evidence that Super Liquor would support a colour scheme with lower visual impact for this store, and they would work with the landlord, the licensee, and the council to ensure this outcome. Mr Singh also gave evidence that the exterior of the building would “not include alcohol advertising or promotions, only the “Super Liquor” branding and signage around trading hours”.

[475] Given these proposed measures by the applicant, the Committee is satisfied that the visual impact of the premises is being limited as far as is reasonably practicable.

[476] In relation to the rear boundary, Mr Singh gave evidence that the applicants were willing to construct “a 1.8m close boarded wooden fence” that could be painted with a mural and would shield views of the store from Te Kauwhata Primary School. Objectors raised concerns that the premises would still be able to be seen from the school, even with the fence.

[477] At its visit, the Committee spent some time at the rear of the premises and observed the view from the school boundary to the premises. Given the large deck area at the rear of the building, and that there will be no signage at the rear of the premises, along with the applicant’s agreement to a grey or black colour scheme, the Committee is satisfied that the exposure to children in the Te Kauwhata Primary School grounds is limited.

[478] Several objectors raised concerns about deliveries. In particular, Mr McNab discussed the difficult logistics involved in deliveries to the store. After being recalled, Mr Singh carefully explained step-by-step how deliveries will be handled. The Committee is satisfied that there are appropriate systems for handling deliveries, and that the design and layout of the premises is suitable for the handling of deliveries.

[479] Both Mr McNab and Mr Jackson raised concerns about the engineering of the building. While both Mr McNab and Mr Jackson have relevant experience, neither had conducted a formal engineering assessment of the site.

[480] Mr Singh gave evidence that he had no concerns about the safety of his staff or customers in the building. The landlord of the building, Mr Jefferis, gave evidence that he was satisfied with the structural integrity of the building, and that he had engaged an engineer, GDC Consultants, and had replaced some pilings on the deck. The Committee received an engineering report as part of closing submissions for the applicant, but that report appeared to only address the engineering of the deck and not the building itself.

[481] The Committee also received evidence from Mr Balloch, the Building Quality Manager at Waikato District Council. While he agreed that there could be safety issues with a building that has a code compliance certificate, he noted that if a code compliance certificate has been issued, there should be no problems.

[482] Mr Davies submitted that “the engineering of the building is irrelevant to the Committee’s evaluative task”, noting that “[a]ll that is required is a s 100(f) certificate confirming that the building meets the requirements of the building code”. While we disagree that the engineering of the building is irrelevant to the Committee’s evaluative task, we do agree that the building has the appropriate certificate, and despite the objectors’ comments on engineering, the Committee can be satisfied that the Council had done appropriate due diligence in respect of the issuing of the building code compliance certificate.

[483] The Committee received an updated site plan from the applicants as part of closing submissions.

[484] Overall, the Committee is satisfied that the design and layout of the premises is appropriate.

S105(1)(h) The Sale of Goods Other than Alcohol, Refreshments, and Food

[485] The applicant initially intended to sell vape products and tobacco, soft drinks, and snack foods, in addition to alcohol.

[486] This aspect of the application created a lot of concern for the objectors and for the Medical Officer of Health. The Committee also noted that the sale of these products may make it difficult for the licensee to maintain sales of 85 percent or more alcohol. In relation to the latter point, Mr Singh noted that because they would sell a limited range, and that this should be no problem.

[487] In closing submissions, the applicant noted that they no longer intended to sell vape products or tobacco. In the Committee’s view, this eliminates any concerns in relation this criterion.

[488] The Committee is satisfied in relation to the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food.

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

[489] 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.”*

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

[491] Many of the objectors gave evidence about litter, including alcohol-related litter, vandalism, and nuisance. The objectors both cited past occurrences of these problems, and their concerns about future increases in these problems.

[492] Ms White discussed occasionally seeing smashed bottles in the playground but noted that she doesn't go there on a regular basis. Ms Chester noted problems of litter, and provided supporting evidence in the form of photographs. She stated that she saw rubbish every time that she went out, a couple of times each week. Ms Hughes talked of finding litter and broken glass in the Village Green when they use that space for events.

[493] Ms Patterson noted her concern about antisocial behaviour impacting her own building on Main Road, including urination, vomiting, loitering, vandalism (including tagging), and alcohol-related rubbish. She cited current problems with vandalism and rubbish in the town, including an incident of tagging at her building. In her view, the rubbish was worst outside New World supermarket, in an alleyway between 3 and 5 Main Road, and at the Village Green.

[494] Several objectors talked about locals picking up rubbish. Mr Cunningham pointed to the work of Tim Hinton, cleaning up litter in the playground and skate park, under contract to the Council. Ms Plant also spoke of her parishioners picking up alcohol bottles and cans from outside the tavern and along the street. Ms Sedgwick talked of picking up rubbish bags full of litter, made up mostly of alcohol litter. She noted that the road between her house and town is “littered with bottles and cans”, and she had personally observed alcohol-related litter left around the skate park.

[495] Ms Kelly talked of vandalism and people drinking at night on the grounds of Te Kauwhata College, citing specific incidents of damage to the school. Ms Hohneck corroborated this evidence, and spoke of incidents of vandalism, including graffiti, broken windows and smashing of security cameras.

[496] In contrast, Sgt Martin noted that “[t]here is currently no evidence of excessive drinking or alcohol related litter. There is insufficient evidence for police to say that this will definitively occur”. He did note that there had been a spate of graffiti in Te Kauwhata over the last six months, although he didn't know if alcohol was involved. In her report, the Inspector didn't cite problems of litter, although she did note alcohol bottles in rubbish bins. As Mr Davies submitted, this is evidence of ‘rubbish’, rather than ‘litter’.

[497] In addition, Ms Sedgwick spoke of brawling and fights on Main Road. The Committee considers that to be more likely associated with the tavern and drinking at on-licences, than the problems associated with an off-licence. However, the Committee does consider this evidence as relevant to the alcohol-related harm present in the community.

[498] 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,⁵ 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:

⁵ Waikato District Council Alcohol Control Bylaw 2020, clause 5.3(c).

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.

[499] Thus, through the process of deliberating the Alcohol Control Bylaw, the Council must have determined that the area 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”.

[500] Mr Singh offered a condition on the licence that their staff would clean up litter in the area and report any instances of vandalism or breaches of the liquor ban to the Council to be addressed. This cleanup would happen at the beginning and end of the day, as well as during the school closing time. Mr Singh also noted that they would hire a local cleaning company to do a more extensive clean-up twice a week, but this was limited to the area immediately around the premises. Overall, Mr Singh believed that these measures would minimise the harm from litter, and manage that future risk.

[501] Ms Sturzaker was asked about the feasibility of the proposed discretionary condition. She noted that it couldn't be monitored, and therefore could not be enforced. In the Committee's view, a condition that is not able to be monitored and enforced is ineffective in addressing the problem. Mr Davies submitted that this might best be achieved through an undertaking, rather than a licence conditions. However, the Committee is concerned that an undertaking is also unable to be enforced.

[502] In relation to the number of premises for which licences of the kind concerned are already held, Dr Gordon submitted that the Committee should consider the pending appeal to the Authority of the Committee's decision not to grant an off-licence to TK Spirits Limited.

[503] Section 106(1)(a)(iii) clearly refers to “the number of premises for which licences of the kind concerned are already held”. The Committee notes that TK Spirits does not currently hold an off-licence. The Act is very clear on this point, and the pending appeal has no bearing on the Committee forming a view on amenity and good order.

[504] In summary, it is clear to the Committee that Te Kauwhata experiences problems with litter, including alcohol-related litter. It is also clear to the Committee that Te Kauwhata experiences occasional problems of vandalism, including graffiti and property damage, and that at least some of those problems are related to alcohol consumption. These problems are present in the absence of a bottle store in the town.

[505] Mr Davies submitted that “every town in New Zealand experiences problems with litter”, and the Committee accepts that. He submitted that there was “insufficient evidence of any litter problem in Te Kauwhata for the Committee to form an opinion that the amenity and good order of the locality would be reduced by a more than minor extent by the effects of the grant of the licence”. On that point, the Committee respectfully disagrees.

[506] However, the key issue for the Committee to determine is 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.

[507] 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 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.

[508] 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...”

[509] 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 objectors meets the standard specified in *Shady Lady Lighting*, and demonstrates real future risk of litter, including alcohol-related litter, and nuisance and vandalism. This is exacerbated by the distance that police must travel to attend incidents in Te Kauwhata, as detailed in the evidence from Sgt Martin, Ms Patterson, and Ms Sedgwick.

[510] 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...”

[511] The applicant sought to minimise the harm associated with litter through adding a condition to their licence, later revising it to an undertaking. In offering such a condition or undertaking, the applicant is recognising that there is a real risk of alcohol-related harm. Indeed, Mr Singh’s own evidence says that the offer of this condition was intended as a way of “managing that future risk”.

[512] The MoH submitted that licence conditions could not be used to cure defects in an application, referring to the Authority's decision in *Lyger Investments Limited* [2018] NZARLA 299-300. The Committee considers the circumstances *Lyger* can be distinguished from those in this application. In *Lyger*, the Tauranga District Licensing Committee granted a licence renewal even after finding that the application was inconsistent with the Object of the Act. That is not the case in this application. In any case, the Committee considers that a condition on cleaning up litter would be both insufficient to address the problems of amenity and good order and unenforceable.

[513] Taking into account all the matters to which the Committee must have regard in s 106(1) of the Act, the Committee concludes 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

[514] While there was little concern about the applicant's systems, several concerns were raised about the applicant's staff and training.

[515] In relation to staff, Dr Gordon submitted that "[t]he Directors will be absentee owners and will rely on staff hired specifically for the new store. There will be limited oversight. While that issue can be partially mitigated by hiring experienced staff and having good training and systems, the application, while including a lot of material from Super Liquor and other businesses, does not provide a comprehensive plan for the store". In contrast, Mr Davies submitted that "[i]f a licensee is able to find competent and trusted staff who enable the licensee to become less involved in the day-to-day operations of the premises, that is a positive outcome for all involved".

[516] The Committee finds that general concerns about absentee owners are unsupported by evidence or case law. The real question is how the premises will be operated, and whether as a result the harm caused by the excessive or inappropriate consumption of alcohol would not be minimised. Where the applicant proposes to have experienced staff in place, with appropriate systems for those staff to follow, and appropriate training to ensure that they comply with the Act and licence conditions, then it should not matter if the directors of the company are present on-site.

[517] Specific concerns on staff in relation to this application were addressed by the applicant offering a condition of the licence that "the premises will have at all times a minimum of three certificated managers appointed to supervise the sale and supply of alcohol. Where the premises cannot maintain this minimum, it will not be permitted to trade". The Committee accepts that this is an appropriate condition, as it ensures that the premises is not relying on the applicant directors as certificated managers when they have many premises to oversee.

[518] On the issue of training, Mr Singh noted the extensive resources available to the applicant company, and used at their other premises. This included the online training offered by Super Liquor, and more specific training offered by Corcoran French. This training is comprehensive, and staff completion of training appears to be well-documented. Mr Singh also discussed induction training for new staff, and a 'buddy system' for new managers.

[519] The Inspector raised concerns about how much direct input the applicant directors have into training. The Committee agrees that this is a concern. When asked about training on the specific conditions of each licence, Mr Singh responded that the external trainer, Pervinder Singh, is aware of all the licence conditions for each store. He also noted that there are open-ended questions at the end of each training session. Mr Singh also confirmed that there is also on-site training when the

applicant directors are on-site. He also mentioned running staff through the Host Responsibility Policy, and in particular a 'Customer Statement', which implies that he does discuss important training with staff.

[520] The Committee notes that there is no statutory requirement for the licensee to conduct training themselves. As Mr Davies submitted, "the Committee's task is to determine whether the applicant has in place a suitable staff training plan – irrespective of who actually provides that training". This is clear in the wording on s 105(1)(j): "whether the applicant has appropriate systems, staff and training to comply with the law". This criterion only states that the applicant must have appropriate training to comply with the law, not that they must provide that training themselves.

[521] While the Committee would have appreciated greater clarity on the specific elements of training that would be conducted on-site, the Committee is satisfied that applicant has appropriate systems, staff, and training to comply with the law.

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

[522] 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

[523] 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)."*

[524] Mr Davies submitted that the objectors' concerns, as well as concerns raised by the Police and the Medical Officer of Health, displayed a general aversion to the proliferation of off-licences.

Mr Davies pointed the Committee to the Authority's decision in *Otautau Hotel 2017 Ltd v Grove* [2023] NZARLA 37, where the Authority wrote:

[40] The Authority accepts the Appellant's submission that the issue of proliferation must be linked to the object of the Act and a general aversion to proliferation should not be determinative as it is a general policy matter for the LAP.

[41] It is further submitted that one of the clearest indications of policy-based reasoning as opposed to merits-based assessment has been the DLC's concern with proliferation of liquor licences which will increase the availability of alcohol in Riverton.

[42] The Authority agrees that taking this approach, given that other aspects of s 105 had been satisfied, the DLC has attempted to introduce policy concerns into the Act, effectively setting a cap on off-licences and has failed to assess the application on its merits.

[525] The Committee agrees that some of the comments made by objectors, Police, and the Medical Officer of Health demonstrate an aversion to bottle stores generally. However, those comments do not serve to disqualify or discount the evidence before the Committee. The Committee did not consider comments related to proliferation of off-licences in evaluating this application against the criteria in s 105 of the Act.

[526] Mr Davies also submitted that "the Committee is not judging a popularity contest. It should not allow itself to be swayed by the number of objectors and witnesses that gave evidence in opposition to the application". The Committee agrees with Mr Davies on this point. The number of objectors did not factor into the Committee's evaluative process, although the Committee did note the broad nature of the objectors and where several parties independently gave evidence that corroborated instances of harm.

[527] 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 the criteria. In particular, the Committee believes that the applicant is not suitable to hold this licence, and that the granting the licence would reduce the amenity and good order of the locality by more than a minor extent.

[528] 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.

[529] 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.

[530] The Committee is tasked with evaluating whether risk will occur in the future, and any such assessment of future risk comes with some uncertainty. 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.

[531] The Committee concludes that there is evidence that the applicant is not suitable to hold this licence, and 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.

[532] Overall, and as outlined in paragraphs [405] to [531] above, the Committee is not satisfied that the application is capable of meeting the object of the Act.

Conclusion:

[533] The application for an off-licence, for the premises at situated at 13 Main Road Te Kauwhata known as "Super Liquor Te Kauwhata" is refused.

DATED at Ngaaruawaahia on 30 August 2024



Michael Cameron
Commissioner
Waikato District Licensing Committee

ANNEX: LIST OF PUBLIC OBJECTORS

Ref. No.	Objector	Ref. No.	Objector
#1	J Sedgwick	#46	M Maunder
#2	S Hansen	#47	J William
#3	G&D Tonks	#48	D Stewart
#4	Te Kauwhata Community House	#49	A Cotterill
#5	N Patterson	#50	T Dale
#6	K Harris	#51	M Jex
#7	A Austin	#52	K Drayton
#8	M Chester	#53	S Soppet
#9	A Mischewski	#54	L Johns
#10	J Kelly	#55	L Hughes
#11	F Lagie	#56	T Ngataki
#12	C Hooton	#57	A Cottie
#13	G Mako	#58	E Mullan
#14	K Laing	#59	M Wilson
#15	S Koppers	#60	S Williams
#16	S Knaggs	#61	R Verheyen
#17	A Brown	#62	N Siebert
#18	L Herbert	#63	L Andrews
#19	P Derbyshire	#64	J Capner
#20	M Cooper-Levin	#65	R Patterson
#21	P Derbyshire	#66	Te Kauwhata Licensing Trust
#22	M Croucher	#67	J Epiha
#23	C Carter	#68	G Jackson
#24	C Milroy	#69	C Plant
#25	S Roskam	#70	K Dawson
#26	C Munro	#71	R Boivin
#27	J Knight	#72	S Noble-Campbell
#28	C Venimore	#73	M Korver
#29	D Whiu	#74	J Human
#30	B Orr	#75	C Magee
#31	D Kemp	#76	J Kelly
#32	R Groves	#77	J Kelly
#33	V Foster	#78	St Andrews Presbyterian Church Te Kauwhata (L Plant and S McNab)
#34	P Bithma	#79	M Thomas
#35	M Peters	#80	C Player
#36	B Philpott	#81	L Forde
#37	J Sa'o	#82	J Epiha
#38	D Locke	#83	N Guy
#39	K O'Regan Rush	#84	E Mako
#40	B Milroy	#85	B Weaver
#41	S Young	#86	J White
#42	W Chester	#87	R Baird
#43	H Marcon	#88	S Bovaird
#44	E McLeod	#89	St Margaret's Anglican Church Te Kauwhata
#45	A Van de Munckhof	#90	Haapai Te Hauora (M Willison)