

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

A N D

IN THE MATTER of an application pursuant to s.100 of the Act for the granting of an Off Licence to **Hira Estates Limited**, 19 Freyberg Road, Ruawai, Kaipara District.

Before the Kaipara District Licensing Committee

Chairperson: Mark Farnsworth MNZM
Member: Cr Gordon Lambeth
Member: Murray Clearwater

HEARING at Ruawai on 6 and online 22 August 2024

APPEARANCES

Applicant:

Hiria Estates Limited (HEL)

Mr Gurpal Singh

Kaipara District Licensing Inspector

Ms Fiona Poyner

Medical Officer of Health

Dr Ankush Mittal

Witness – Mr Jeffery Garnham

New Zealand Police

Sergeant Tai Patrick

Senior Constable Paniora

Legal Counsels:

Mr John Young for Hira Estates Limited

Mr Warren Bangma – for the Licensing Inspector

Dr Grant Hewison – for Dr Mittal Medical Officer of Health

Mr Jasper Sontier – for the Cancer Society & Te Ha Oranga

Objectors:¹

The persons whose names are in bold appeared before us and spoke in support of their objection.

1. Vimal Theva
2. Megan Elder
3. Gaewyn Pook
4. Amanda Nunn
5. Marama Haretuku
6. Sunny Oud
7. Craig Jones
8. **Amanda Bennett**
9. Lavinia Day
10. Neville Hammon
11. **Antony Raven**
12. **Grace Le Gros** Mauri Ora ki Ngāti Whatua Inc
13. Siutaisa Pua
14. **Kelly Retimana** Naumai Whanui Māori Committee
15. Isabel Renton
16. Carla Fraser
17. **Winnie Clarke** Naumai Marae
18. Sue King
19. Demelza Tana
20. Sharyn Philips
21. Peter Tan
22. Noelleen Subloo Ruawai Born Group 20s et al
23. Tracey Scott
24. Joseph Miru Ngāti Miru
25. I Densie
26. Karen Campbell
27. **Beverley Pullar**
28. Mary Mcleod
29. April Lindsay
30. **Jenny Joynt**
31. Diann Hammon
32. Christiane Rudolph-Anania
33. **Dorothy Simpson**
34. Kim Tepania Te Ha Oranga
35. Kristeen Pranglely
36. Walker Naomi
37. Jacquelin Fenney
38. Janet Curle Wild Side Charitable Trust
39. James Simpson
40. Lois Moselen
41. Robert Fenney
42. Annissa Thompson Parirau Marae
43. Sharon Stirling
44. Daphne Spice
45. Rodney McIntyre
46. Vera (aka Joy) Steenson
47. Jacqui Hart
48. David Hart
49. Dorothy McCarthy
50. Gail Battensby
51. **Malcolm Joynt**
52. Valeria Maw
53. Benjamin Lord

¹ Each objector provided an email address and the reason for their objection: - live in Ruawai, family in Ruawai; do business in Ruawai; connections to Ruawai; and interests in Ruawai.

54. Des Bickers
 55. Karin Simmonds
 56. Valerie Stanton
 57. Baden Bickers
 58. Kereti Simmonds
 59. Eleanor ODonnell
 60. Cathryn Dunn
 61. Koren Lord
 62. Gavin Carey
 63. Jenna Fraser Ruawai Community church
 64. Kathryn Carey
 65. Piripi Lockley
 66. Shelley Paniora
 67. Lynne Smith
 68. Katie Turnwald
 69. Katie Turnwald
 70. Clayton Danswan
 71. Anne Simpson
 72. Anthony Peihopa
 73. David Curle
 74. Frank Simpson
 75. David Dreadon
 76. **Keremete Tom Pickering**
 77. Lynne Smith
 78. Marie Curle
 79. Suzanne Dreadon
 80. Isabella Brown
 81. Anders Nilsson
 82. Marie-Louise Nilsson
 83. Daphne Spice
 84. Jordan Hammon
 85. Esmé Spoelstra
 86. **Rebecca Gilbert** Cancer Society Auckland Northland Branch
 87. Isabel Renton Te Ha Oranga

Kaipara District Council hearing support staff:

Ms Kelly Ockwell, Governance Advisor

Ms Tracey Deane, Acting Governance Advisor

Ms Alana Thurston, Governance Advisor

RESERVED DECISION OF THE COMMITTEE

Introduction

1. In an application dated the 22nd of February 2024, **Hira Estates Limited (HEL)** applied for an Off Licence for a purpose-built premises² to be constructed at 19 Freyberg Road, Ruawai, Kaipara District. The application was duly advertised³, and 87 public objections were received.

² A Building Consent (230426) was granted by the Kaipara District Building Control Authority on the 12th of February 2024 for the construction of a single storey commercial retail building.

³ In the *Kaipara Lifestyler* and placed on the nominated internet site (Kaipara District Council website.) The actual legal notice nominated by the secretary of the Kaipara District Licensing Committee is via Kaipara District Council's website.

2. The application also received opposed reports from the Medical Officer of Health and the police citing amongst other issues:
 - the suitability of the applicant;
 - the potential increase of alcohol related harm in the community with a high deprivation index;
 - the degradation of the amenity and good order of the area due to alcohol related nuisance noise: and
 - alcohol related litter in and around the village, especially the boat ramp area.
3. Kaipara's Licensing Inspector tabled her report and proffered the view that there was nothing preventing the licence from being granted.
4. The applicant is seeking licensing hours of **Monday to Sunday 11.00am to 7.00pm each day**. These hours are within the default national maximum trading hours for Off licences as set out in section 43(1)(b):

"The default maximum national trading hours are the hours between 7 am and 11 pm on any day for the sale on which a premises for which an off-licence is held."

5. Ruawai is a very small rural service village with a population of 450 persons⁴ sitting on State Highway 12. The village and the immediate surrounding environment have been given a decile 10 rating. 28% of the population are Māori.

Decile 10 explained - The New Zealand Index of Deprivation (NZDep) is an area-based measure of socioeconomic deprivation in Aotearoa New Zealand. It measures the level of deprivation for people in each small area. It is based on nine Census variables. Decile 10 represents areas with the most deprived scores.

In general, people who live in more deprived areas (for example, NZDep 2018 decile 9 and 10) are more susceptible to environmental risks. They may also have less capacity to cope with the effects of environmental risks, and fewer resources to protect themselves from environmental hazards.

Source⁵: ehinz web page

6. One of the main issues for the Committee is to ensure its decision, in meeting the objectives and purpose of the *Sale and Supply of Alcohol Act 2012* does not contribute to the socioeconomic deprivation of Ruawai and its hinterland.

⁴ William Paniora EIC at {11}

⁵ <https://www.ehinz.ac.nz/indicators/population-vulnerability/socioeconomic-deprivation-profile>

7. The application was set down for a formal hearing as the Committee wanted to hear about the concerns of the objectors, and the agencies, and to satisfy itself that the applicant company was suitable, and that their proposed operating regime would not reduce the amenity and good order of the area by more than a minor extent.

Hearing Management

8. By way of Direction⁶ we asked all participants to pre-circulate their evidence and/or their representation statements (submissions). We received: briefs of evidence, and legal submissions from the following:

- *Reporting Agencies:*

Medical Officer of Health for National Public Health Service – Northern Region, Northland

Dr Ankush Mittal (3 Briefs of evidence)

Jeffery Garaham

- *New Zealand Police*

Senior Constable William Paniora

Sergeant Tai Patrick

- *Objectors:*

The Cancer Society Auckland – Northland Branch

Rebecca Gilbert & Shanara Rahipere

Antony Raven

Amanda Bennett + witness Any Blundell

Beverly Pullar

Dorothy Simpson + witness Mary McLeod

Neville Hammon

Grace Le Gros

Kelly Retimana

Keremete Tom Pickering

Jenny Joynt

Malcolm Joynt

- *Legal Counsel:*

Applicant

John Young

⁶ First Direction of the Hearing Panel dated 25 July 2024

- Kaipara District Council Licensing Inspector
Warren Bangma
- Medical Officer of Health
Dr Grant Hewison
- Te Hā Oranga & Cancer Society Auckland – Northland Branch
Jasper Sontier

9. All the pre-circulated material was taken as read, Participants were sworn in and asked to highlight key points of their evidence (submissions) then answer questions.

10. The pre-circulation of material allowed us to clearly identify the key matters in contention, namely:

- The suitability of the applicant under the extended (if applicable) suitability criteria;
- Amenity and good order; and
- Potential increase in alcohol harm in the local area.

Applicant's Case

11. Mr John Young, Legal Counsel for HEL, provided opening legal submissions and coordinated the applicant's case. Mr Young provided advocacy (and case law examples) on the following:

- An overview of the application process;
- The Object of the Act;
- The suitability of the applicant;
- Amenity and good order; and
- Weight to be given to objectors when objectors do not appear.

12. In concluding his legal submissions Mr Young advocated⁷:

"It is submitted that the application is thoughtfully conceived, and the vulnerable aspects of the community has been carefully considered. There may be refinements to conditions that provide further comfort which can be explored during the hearing."

13. We heard from Mr Gurbal Singh the sole director and shareholder of HEL. He will be operating an independent store thereby avoiding the franchise imperative of promoting alcohol sales. He also told us his work experience in the alcohol industry in Henderson has made him very aware of the problems generated by alcohol and as a result his management approach is predicated on

⁷ Young Opening Legal Submissions at [4.1]

minimising alcohol harm. He will be very open to receiving community feedback on problem/vulnerable persons and taking appropriate action to protect them.

14. When questioned on staffing he explained that he would be moving to Ruawai to manage and operate the store. He has the ability to bring in trained staff from other locations. Staffing with appropriately trained managers will happen. Once the store is operational, he intends to employ and train local staff.
15. On questioning about deprivation Mr Singh accepted that while the rural Ruawai situation is different than the urban Henderson situation, he does bring experience in operating in a low decile environment. He is very aware of the social responsibility he needs to exercise and he will implement management measures to meet identified needs. He has a manager's certificate, and he has been trained in host responsibility. In a response to a question from Mr Retimana about his professional training he readily accepted he is not a trained social worker but he does have the experience to know when there is a need to intervene to stop a client purchasing alcohol. He would also welcome feedback from the community to help identify 'problems' that need to be addressed.
16. When questioned about the social issues a small village like Ruawai faces, Mr Singh accepted this is a low-income area and that there is already alcohol harm in the community. He noted, in acknowledging there were issues, that perhaps there were positives in having a local store; namely cost saving and safety aspects achieved by the ability to shop locally.
17. In his application he offered up two additional conditions, in response to the concerns of objectors namely:
 - There will be no advertising of alcohol on the external parts of the premises; and
 - There shall be "no single sales of shots, ciders, RTDs or mainstream beers under 600ml and there will be minimum packaging of 4's and 6's."
18. After listening to the concerns (two recent ram raids) and questions from the Senior Constable Paniora and various other objectors on security he offered up a third augier condition, a complete prohibition on selling of vapes and tobacco. He is also open to closing the store between 2.00pm – 4.00pm each school day to prevent interactions with passing school children. The bottom half of the stores glass door will be frosted to prevent an inward view.
19. Mr Singh proffered two views:

- Having a Ruawai off-licence will stop locals having to travel either to Dargaville or Maungaturoto to make purchases and potentially reduce the risk of drink driving⁸; and
- A local store may help prevent the need for bulk purchasing and perhaps alcohol harm.

20. In addressing the measures, he took to gain an understanding of the area in which he would be operating, and meet the requirements of 'extended suitability' he took the following actions:

- Attended the local bowling club during a club competition, where he engaged with members to discuss the proposal with members. He noted some members expressed concern regarding the impact this licence might have on the local Four Square, however they accepted the reality of the situation in that an off-licensed premises would stock a greater range of products than the Four Square was permitted to. He was questioned closely on this visit, with Ms Jenny Joynt strongly suggesting that he had forced his way in on a competition day which was not appropriate. In her view it was not the way to attempt meaningful consultation.
- Attempts to speak to a representative of the Ruawai Community Sports Club were not successful.
- Personally spoken with the manager of 'Uncle's Kai Shack', Cherie Pohoiwi, who was the individual who posted news of the application on Facebook. The manager stated that she was not opposed to the application, "merely wanted the community to be aware of the situation".
- His attempts to arrange a meeting with representatives of the Naumai Marae were initially rebuffed but he did make contact. Ms Winne Clark totally refuted contact was ever made while the other hand Mr Singh was adamant that he made contact with someone. When questioned on the number of maraes in the area; he, clearly was unaware that there were 15 maraes.
- He approached community heads – Mr Bruce Crompton and Sir Dr Lockwood Smith.
- His attempts to arrange a community meeting did not eventuate. He was questioned on why he didn't attempt to arrange other meetings. His answers gave the impression that on failing with his first attempt he saw little point in trying again.
- On contacting the local police station, he was informed that Seargent Willie Paniora was on holiday leave, however he was able to have a conversation with the duty sergeant at the Dargaville Police Station.

⁸ Opening a can (beer /RTD) on the way home.

21. When questioned on whether he had demonstrated an adequate knowledge and understanding of a disadvantaged, small, isolated community Mr Singh reconfirmed the effort he went to gain an understanding of the location.
22. In response to questions about his other activities Mr Singh confirmed that he has applied for an Off-licence in Bell Block, New Plymouth. He saw a short-term opportunity to develop, and tidy-up the operation. Ruawai remains his prime focus, but he did acknowledge the Bell Block proposition represents a fallback position if the Ruawai application does not succeed.
23. Mr Singh was closely questioned about staffing and whether he had enough staff to run the business appropriately.
24. After the completion of the first day of the hearing Mr Singh tabled a Business Case⁹. Mr Young requested The Business Case be kept confidential as the information provided is commercially sensitive¹⁰.
25. In addressing his *Business Case* Mr Singh confirmed, figures he provided on the first day of the hearing that his cash flow was predicated on 1,000 patrons making purchases of \$20 per week. Mr Singh was rigorously questioned on his business case. With Dr Mittal seeking clarification on the cash flow figure as a weekly spend of \$20 per person would in his view increase the risk of alcohol harm in Ruawai. In his evidence he had provided an estimate that \$20 worth of alcohol would equate to the full weekly recommended limit for alcohol consumption as set out in the national health guidelines¹¹. Mr Singh countered by noting that some customers would be purchasing 'high end' products with a value of over \$20.00 per item.

Kaipara District Alcohol Licensing Inspector's Evidence

26. Ms Fiona Poyner highlighted the key findings of her report:
 - The proposed bottle store will be situated within an alcohol control area and fall within the most deprived decile area (New Zealand Index of Deprivation 2018);
 - She met with the applicant on 6 March 2024; She found him transparent in his answers and explanations;
 - There will be appropriate systems, staff, and training to comply with the law;
 - He has a willingness to work alongside the local Ruawai community. She expressed confidence that he would listen to, and take onboard, the concerns of the community;

⁹ The applicant's *Business Case* was requested at the first the day of the hearing and subsequently tabled 20 August 2024

¹⁰ The committee agreed with Mr Young's request that the Business Case remains confidential with the exception of the weekly cash flow projects which were given in opening meeting on the first day of the hearing.

¹¹ Dr Mittal InC 3 at [9]

- Based on Council records and her own site visits to Ruawai in her opinion the incidence of alcohol related litter is generally low;
- The Inspector's impression is that the township of Ruawai is not adversely affected by alcohol related noise; vandalism; vomit; litter and graffiti.
- There will be conditions to restrict single sales and 600ml sales.

27. In her report¹² she records:

“Whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licenses that—

(i) They would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence;

(ii) but it is nevertheless desirable not to issue any further licenses.

28. In answering a question from Dr Hewison on her analysis of Mr Singh as a “suitable person” under the extended suitability criteria, Ms Poyner acknowledged that she may not have given this aspect of her analysis enough attention. Even with this shortfall she reconfirmed her finding that in her view there were no impediments to the committee granting the application.

29. Mr Warren Bangma's Legal Submissions¹³ for the Licensing Inspector addressed:

- Mr Theva's standing to lodge an objection;
- The relevant statutory considerations;
- Application of the section 105 criteria;
- Application of section 106;
- The relevance of the Kaipara District Alcohol Control Bylaw 2018;
- Community engagement; and
- Achieving the object of the Act.

Medical Officer of Health

30. Dr Ankush Mittal tabled three statements of evidence. Dr Mittal's first brief of evidence addressed what he termed key matters to the application namely:

¹² Inspector's Report OF0098 Hira Estates page 107

¹³ Committee Member Mr Clearwater questioned whether it was appropriate for Mr Bangma to provide legal submissions that supported the application. This not a matter that the committee is going to address. The advocacy of Mr Bangma is not evidence in the final analysis the Committee will make its decision on the evidence placed before it.

- Given the area's high level of deprivation the bottle store will create a significant additional risk of alcohol-related harm via community exposure (should the licence be granted). Dr Mittal did not believe the current levels of harm caused by the excessive or inappropriate consumption of alcohol in the community will be minimised by the grant of this licence¹⁴. He also indicated that there are population risk factors that exacerbate the situation.
- *Service gaps* which isolate this community from services that address alcohol related harm (such as injuries), compared to the population generally.

31. Dr Mittal told us¹⁵ it was his assessment compared to the Northland and New Zealand population generally:

- the *population risk factors* in Ruawai and its surrounding communities are such that they raise the threshold of suitability required by the applicant to the 'extended suitability' standard; and
- the *service isolation factors*, which are non-modifiable for the applicant, mean that in the event of alcohol-related harm occurring (such as that arising from disorderly behaviour, injury or disease caused by the excessive or inappropriate consumption of alcohol), there will be limited service provision to address that harm (or not to the same standard as in other areas).

32. In addressing Section 105 criteria he told us (with justification):

- applicant has not demonstrated its suitability (the necessary level of suitability) to hold a bottle store licence in the proposed location.
- A range of issues would significantly reduce the overall amenity and good order of this locality if this proposed bottle store application were granted
- the current staffing proposals do not demonstrate a sustainable and safe model for management of the premises

33. In concluding Dr Mittal opined¹⁶:

"To my knowledge, the scale of community opposition to this application is unprecedented for any application for the whole Northland region since the introduction of the new Act in 2012. Given the small size of the community concerned, particularly the town of Ruawai which may only have around 500 inhabitants, this scale of concern confirms for me that this application is not for the benefit of the community as a whole".

34. In his second brief of evidence Dr Mittal focused on the applicant's Company, Its Directorship and the Staffing Arrangements. He advanced the view that he had doubts whether the Applicant meets the test of suitability required at the standard of extended suitability, especially given the

¹⁴ Dr Mittal EiC (1) at [12]

¹⁵ Ibid at [14]

¹⁶ Ibid at page 38

issues related to limited experience, competing and overlapping interests and commitments, and issues of responsibility.

35. Dr Mittal's third brief of evidence provided an analysis of the implications of the applicant's sales projections with Dr Mittal proffering the view¹⁷:

“Due to the limited population size of the catchment area and the alternative provision of alcohol from other premises, I believe there is a considerable risk that local alcohol consumers would need to regularly drink alcohol in excess of the nationally recommended drinking limits to meet the sales projections given in evidence by the applicant.”

36. Mr Young questioned the reliability¹⁸ of the MoH evidence asking Dr Mittal if he was providing expert evidence; if so had he signed up the Code of Conduct for expert witnesses? Mr Young submitted¹⁹:

....given the nature of Dr Mittal's evidence that some reference to the Code and compliance with it should have been made.

37. Mr Young also noted²⁰:

“Dr Mittal gave pricing evidence, despite having no experience or understanding of standard prices for alcohol products. It is submitted that this evidence should be treated with caution by the Committee. It is further submitted that the evidence for the applicant should be preferred in relation to retailing generally.”

38. Dr Mittal indicated that he had not signed up to the *Code of Conduct* as he wished to provide us with the benefit of his wider experience. While we do agree with Mr Young that, generally witnesses who are giving expert evidence should comply with the code; in this instance Dr Mittal provided us with useful analysis and background information. We found Dr Mittal to be a measured and credible witness.

39. Mr Jeffery Garnham, a Health protection Officer²¹, appeared as a witness for Dr Mittal. He told us that he had carried out an assessment of the amenity and good order of Ruawai by making observations while walking along the footpath and roadside areas predominantly within (or just outside) the Ruawai alcohol ban area. He also visited the boat ramp area that is also within the

¹⁷ Dr Mittal's third brief of evidence at [11]

¹⁸ Young Closing legal Submissions at [3]

¹⁹ Ibid at [3.2]

²⁰ Ibid at [3.7]

²¹ Te Whatu Ora – Health New Zealand (Te Tai Tokerau/Northern Region)

Ruawai alcohol ban area where he observed a small group drinking alcohol at the boat ramp (within the alcohol ban area).

40. From his observations Mr Garnham concluded²²

- The current levels of alcohol-related litter in Ruawai are high.
- People are consuming alcohol within the alcohol ban area that is contributing to high levels of nuisance.
- The addition of a bottle store type off-licence in Ruawai (should the licence be granted) will contribute to higher future levels of alcohol-related litter and nuisance in Ruawai.
- The amenity and good order of the locality will likely be reduced by more than a minor extent by the effects of the issue of the proposed bottle store off-licence sought by the Applicant.

New Zealand Police

41. Senior Constable William Paniora's²³ brief evidence provided an explanation of why a bottle store will have a detrimental impact namely there will be:

- An increase in alcohol related incidents;
- Consumption of alcohol in public places; and
- The generation of alcohol related litter.

42. Sergeant Tai Patrick the Alcohol Prevention Officer Northland police District evidence addressed by way of a *Powerpoint* presentation an overview of alcohol related incidents extracted from the National Alcohol Harm viewer. Mr Young observed that data provided by the sergeant show modest levels of offending²⁴.

Objectors Evidence/Representations

*Te Hā Oranga*²⁵ – Ms Shanara Rahipere

43. Ms Rahipere spoke of the role of Te Hā Oranga. She reenforced the view that Ruāwai experiences significant socioeconomic hardship. 25% of the population of the residents identify as Māori. She was of the firm view that Ruāwai is already adversely affected by disorder, vandalism, littering, and alcohol related harm.

²² Garnham EiC at [19 -21]

²³ He resides in Ruawai and is a member of local organisations

²⁴ Young Closing legal Submissions at [4.4]

²⁵ Te Ha Oranga has clinics in Dargaville, Wellsford and Helensville offering mobile nursing services, focusing on the management of long term conditions int the community

44. In answering questions from Mr Sontier & Dr Hewison she noted:

- The applicant's evidence does not include any mention of the high Māori population;
- Given the vulnerability of the area the "standard of extended suitability" applies;
- It is not appropriate to compare the socioeconomic environment with that in Henderson; and
- There is an underage drinking problem in the area.

45. We asked Ms Rahipere if the applicant would have been aware of Te Hā Oranga and its functions, she offered no answer. We suggested to her that given the level of her concern why she shouldn't have taken it upon herself to communicate with the applicant – no response was given.

Mr Antony Raven

46. Mr Raven spoke to the key points of his evidence noting:

- He has observed alcohol related litter; and
- Observed persons including young persons, drinking alcohol in contravention of the alcohol ban;

47. When questioned by Mr Young, Mr Raven acknowledged that it is the availability of RTDs that causes him the most concern.

Ms Amanda Bennett

48. Ms Bennett explained the uniqueness of Ruawai to us. Telling us it is a very isolated community, set around a State Highway, servicing an agricultural catchment. The village has a small population dominated by younger persons with a strong Māori base. It is generally accepted that Ruawai and local area has a high social deprivation index.

49. The village already experiences alcohol harm with resultant behavioural problems. An increase in the availability of alcohol especially spirits and RTDs will exacerbate the problems the village faces.

Mr Neville Hammon

50. Ruawai is a welcoming community but the young people need protection. A bottle store will bring spirit and RTD sales locally which has the very real potential to have an adverse impact.

Ms Beverley Pullar

51. Ms Pullar was of the view that Ruawai doesn't need another liquor outlet. A new outlet could attract unwanted attention as evident from the ram raid on the local service station. The local availability of 'top shelf' product will potentially add to Ruawai's problems.

Ms Grace Le Gros – Māori Warden

52. Ms Le Gros shared with the panel the ways, and times she has had to deal with the alcohol related harm. She questioned the applicant's understanding of the Māori population of the area as he appears to be completely unaware that there are 14 maraes in the wider area. Māori do not need the distraction of another liquor outlet. A new bottle store has the very real potential to increase alcohol harm by increasing its availability locally especially RTDs.

53. Ms Le Gros was of the firm view that given the high deprivation of the area there is no place for RTDs; increasing access to alcohol will increase consumption and cause more harm especially for young Māori.

Ms Jenny Joynt

54. Ms Joynt shared her concerns over vandalism and alcohol related litter such as broken glass (which she has had to cleanup). She noted:

- people will be able to purchase alcohol but not have a safe place to consume it; and
- uncontrolled drinking will increase if a liquor store opens in town.

55. In answering questions from Mr Young Ms Joynt confirmed her concerns were about the sale of spirits and RTDs and the potential impacts on students.

Mr Malcolm Joynt

56. Mr Joynt noted that it was fortunate that Ruawai had a resident policeman but he is in an isolated position and backup is some time away. Mr Joynt confirmed the statements made in his evidence²⁶:

"The liquor store will increase the amount of crime in the area. I am concerned about burglaries, ram raids, the shop being broken into and potential sales of alcohol to underage people."

Ms Dorothy Simpson

57. Ms Simpson confirmed the key points of her evidence:

- There is already a lot of alcohol harm in Ruawai;
- Alcohol related harm would increase in our small town; and
- A liquor store would increase the amount of alcohol (particularly with high alcohol content) consumed by some of our local population.

²⁶ Malcom Joynt EiC at [6]

Weight to be given to pro-forma objections and objectors who did not appear

58. The use of a pro-forma objection (jot form) by the vast majority of submitters has caused us to reflect on the weight which should be afforded to this type of submission. Mr Young submitted²⁷ that decision makers generally deride pro-forma or “cut & paste” documents citing an Auckland DLC decision as an example - **Worldwide Distribution Group Limited**²⁸:

“What we would say, is that Objectors, in using such a platform, should be cautious in that process and more clearly indicate to the Committee their specific individual concerns, especially where the pre-formatted document sets out all of the criteria specified in s. 105 of the Act. We note the efforts of the Inspector in attempting to contact the Objectors, however, we do not think that this is a burden that should be placed upon the Inspectorate, given the demand on their time.”

59. Dr Hewison provided us with a different perspective submitting²⁹ the objections made through the jot form are cogent, self-sustaining, written objections that should be accepted by the DLC and carry weight. We do not agree with the advocacy of Dr Hewison. While we have accepted the jot forms, in order to place weight on these submissions, in the magnitude suggested by Dr Hewison we would have required much more information. In particular, on the genesis of the form – for example did the individual objectors have input into design and content of the form, or did they just sign a form that had already been formatted? Were they lobbied to sign the form?

60. We are disappointed that Communities Against Alcohol Harm (CAAH) did not front the hearing to share with us their motives that drove them to draft the form submission, and give us the ability to question them. Instead, we are left with an uneasy perception that there may have been active lobbying to get as many objections lodged as possible.

61. The majority of submitters who signed the form submission did not attend the hearing as a result we were not in a position to question them about the substance of their submissions. We are mindful of the decision of the Liquor Licensing Authority who said in **GRAMMADE ENTERPRISES LIMITED Liquor Licensing Authority (LLA) PH648-649/032**:

“The objections will have little probative value if those making the allegations in the objection are not able, or prepared, to appear at the hearing to affirm, or swear, to the truth of what they are saying. By not appearing, their opinions and concerns cannot be tested by cross-examination by the applicant or questioned by members of the Authority.”

²⁷ Mr Young Closing Legal Submissions at [2]

²⁸ Auckland DLC decision 8220066014 [2022]

²⁹ Dr Hewison Opening Legal submissions at [44]

62. In the Police Report on the application Sargent Patrick noted³⁰

“While Ruawai already has a grocery store (off-licence) there has been a large number of public objections to the Hira Estate Limited’s application and as such Police will support the community in any way it can”.

63. We accept:

- there has been a large number of valid objections; and
- These submissions do provide an indication of the high level of community concern.

But for the reasons outlined in Grammade, we put to one side the objections of those that did not appear before us, whilst they are still valid objections, we will apply reduced weight to the contents of those objections.

Relevant legislation

64. Section 3 of the Sale and Supply of Alcohol Act 2012 (“the Act”) states the purpose of the Act as follows:

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

65. Section 4 states the object of the Act as follows:

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

³⁰ Hearing Agenda at page 119

66. Section 105 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to grant a licence as follows: *105 Criteria for issue of licences*

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

(a) the object of this Act:

(b) the suitability of the applicant:

(c) any relevant local alcohol policy:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(e) the design and layout of any proposed premises:

(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:

(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:

(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:

(l) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—

(i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but

(ii) it is nevertheless desirable not to issue any further licences:

(j) whether the applicant has appropriate systems, staff, and training to comply with the law:

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).

(2) *The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*

67. Section 106 Considering effects of issue or renewal of licence on amenity and good order of locality

(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—

(a) the following matters (as they relate to the locality):

(l) 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.

68. The Act provides that in deciding whether to grant a licence, the licensing committee **must** have

regard to the matters contained in section 105 and 106 of the Act. To clearly indicate that regard, we have addressed them individually.

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

69. Section 105(1)(a) of the Act requires the licensing committee to have regard to the object of the Act and in particular that the **sale, supply and consumption** of alcohol should be undertaken safely and responsibly.
70. Mr Singh has argued that he, and his organisation, will be able to sell and supply alcohol safely and responsibly. He explained the measures he would implement, and offered augier conditions, to exercise some influence over the sale and supply of alcohol, but they **can do little, if anything**, to control the later on-supply, and consumption of the alcohol, as it occurs away from the seller's premises and out of their sphere of control.
71. When deciding whether, or not, to grant a licence we must consider the criteria to which we must have regard to, before we measure it against the Object of the Act.
72. We will come back to the Object of the Act once we have had regard to the other criteria.

Section 105(1)(b) Suitability of the Applicant

73. The applicant must be a suitable entity to hold an off-licence. In this matter we have accepted that the higher threshold of 'extended suitability' applies as there is no disagreement about the areas very high decile rating – Ruawai and its hinterland are categorised as being 'vulnerable'. Dr Mittal told us³¹:

"An NZDep2018 Decile score of 10 for the 3 SA1 areas that make up the Ruawai town... All of Ruawai is therefore within the most disadvantaged 10% of New Zealand.

A NZDep2018 Decile score of 9 for the SA2 area of Ruawai-Matakohe, which includes neighbouring communities that may also use this bottle store. This wider area is within the most disadvantaged 20% of New Zealand."

74. Singh himself accepted the categorisation of vulnerable, noting that he had experience in operating in a vulnerable area. As noted above he offered up augier conditions to help mitigate potential alcohol related harm.
75. The matter of how the Mr Singh engaged with the local community was considered at some length at the hearing. With objectors expressing their dissatisfaction with the way Mr Singh engaged.

³¹ Mittal EIC at [13]

76. Dr Mittal³² in his evidence addressed the suitability of Mr Singh proffering the view that Mr Singh had failed to demonstrate his suitability to hold a bottle store licence in the proposed location because:

- The other business interests of the applicant and their proposed staff, which I believe would limit the ability of the applicant to focus on Ruawai and minimise alcohol related harm in this community.
- An overall lack of successful engagement by the Applicant with the community, perhaps as a result of that engagement only beginning after notification of the application;
- An overall lack of engagement with the objectors, despite the large number of objectors;
- A lack of prior experience working in an alcohol off-licence in Northland and one in a rural community; and
- An ongoing intention to sell tobacco and/or vaping products in the future.

77. Other objectors were of a similar mind as Dr Mittal; Ms Amanda Bennett told us:

“..applicant advises that he did make efforts to engage with local community groups and local leaders. I would suggest that turning up at pre organised events and leaving messages with people is not consulting. It is also important to recognise that it is the people who live in the Ruāwai township itself that are the most affected by behaviour relating to alcohol.”

78. Our consideration of engagement is guided by the decision of the High Court in the matter of the Shady lady Lighting Ltd case³³ which noted:

[64] Mr Sherriff, however, frames this somewhat differently, as being an issue, rather, of whether or not an applicant’s engagement with the proposed community is relevant to suitability. He argues that it has long been established in alcohol licensing that an ability to relate to the community in which an applicant proposes to operate goes to suitability.²⁸ The vulnerable aspects of a community and how an applicant proposes to respond are part of that suitability. As to the applicant’s suitability not having been challenged evidentially, Mr Sherriff disputes this, noting that Mr Sharma, the principal of LHL, was specifically cross-examined and challenged on this aspect of suitability and had, in fact, previously been refused an off-licence on suitability grounds through another company for failing to engage with the Johnsonville community and his lack of understanding of that community. He, therefore, well knew before this application that (a) vulnerability and (b) engaging with the community were relevant factors to suitability.

³² Mittal EIC at [21]

³³ *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd* [2018] NZHC 3100,

79. Mr Young submitted Mr Singh's effort to engage was unfairly criticised by various parties pointing out to us³⁴:

- *Applicant had taken proactive steps to engage with the community. It is acknowledged that the applicant could have spoken to additional people or could have contacted other organisations. However, it is submitted that there is no denying that the applicant sought to engage with the range of community groups to discuss the proposal.*

- *It also became evident that some community groups did not want to engage with the applicant. That is their prerogative. However, the applicant cannot be criticised for the attitude of others if they do not wish to engage. And*

- *the applicant demonstrated a sound knowledge of the locality and was clearly familiar with businesses, marae other community organisations in the township. It is submitted that community engagement occurred and that HEL's efforts were genuine.*

80. We are of the view, given the approach adopted by Mr Singh, the criticism was justified. While we give Mr Singh credit for trying to engage; questioning exposed: his lack of success in engagement; his lack of temerity to try again; and his very poor understanding of the vulnerability issues of a small isolated rural village and the local area especially those pertaining to Māori. He demonstrated a complete lack of awareness of the number of maraes in the area and their location and the vulnerable dynamics of the Māori population. For these reasons we came to the view that Mr Singh failed to demonstrate that he meets the higher threshold of 'extended suitability' to hold a licence in this location.

81. We do need to note that we did not concur with Dr Mittal's contention that Mr Singh's other business interest would limit the ability of the applicant to focus on Ruawai and minimise alcohol related harm in this community. Mr Singh's commitment to Ruawai was clearly demonstrated by the investment he intends to make in a new bespoke building and his intention to move to Ruawai (even though his proposed living arrangements are a little unusual).

Section 105(1)(c) Relevant Local Alcohol Policy

82. Kaipara does not have Local Alcohol Policy (**LAP**).

Section 105(1)(d) The days and hours of operation of the licence

83. The proposed operating hours are **Monday to Sunday 11.00am to 7.00pm** and are well within the default national maximum trading hours for off licences of 7.00am to 11.00pm.

Section 105(1)(e) The design and layout of any proposed premises

84. The applicant provided plans of a yet to constructed building. A building consent has been sought and

³⁴ Young Closing legal Submission at [7.2 -7.3]

granted by Kaipara District Council. The plans give an indication of the internal layout but the layout, and required signage, cannot be commented on. We were told the bottom half of the front door would be frosted to reduce through visibility by those passing by especially young school children.

Section 105(1)(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.

85. Mr Singh advised that he no longer intend to sell vaping or tobacco products. He gets credit for that.

Section 105(1)(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, and food, and if so, which services.

86. No other services are offered.

Section 105(1)(h) Whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence.

87. The legal test of section 105(1)(h) requires a district licensing committee to form an opinion as to whether the amenity and good order of the locality “would be likely” to be reduced by “more than a minor extent” by the effects of the issue of the licence.

88. The Sale and Supply of Alcohol Act 2012 sets out the criteria for assessing alcohol licence applications. There are various matters that the decision-makers must take into account and one such matter is the “amenity and good order” of the locality, We are directed to the parameters of s.106(1) and to have regard to a series of matters (as they relate to the locality).

Current and possible future noise levels

89. Noise concerns were referenced by a number of submitters for example Antony Raven noted³⁵:

“We have had several instances with some of our neighbours with unruly parties, fighting out on the streets and throwing fireworks into people’s homes along the main road. Many times, we have called Police or noise control and mostly no assistance has arrived.”

90. We came to understanding that submitters held the view that increased availability of alcohol could result in an increase in alcohol related incidents such as unruly parties; more drinking at the local boat ramp with associated car noises. We accept that while these views are perceptions they are based on personal association, experience and a good understanding of the local area.

³⁵ Raven EIC page 1

Current and possible future levels of nuisances and vandalism

91. We must have regard to the current and possible future levels of nuisance and vandalism. We were made aware that there are already alcohol problems in Ruawai. In particular the issue of alcohol related litter was highlighted by a number of submitters. As noted above (paragraph 39) Mr Jeffery Garnham, told us that he had carried out an assessment of the amenity and good order of Ruawai by making a number of observations. One of his conclusions was the addition of a bottle store type off-licence in Ruawai will contribute to higher future levels of alcohol-related litter and nuisance in Ruawai. Given Mr Garnham's conclusions were based on only two visits, his conclusions tested our credibility. We preferred the evidence offered by the Licensing Inspector who acknowledged there was litter but it was not a major concern.

92. In turning our minds to other potential nuisances, we were told by Mr Malcolm Joynt³⁶:

"I also believe that a liquor store will increase the amount of crime in the area. I am concerned about burglaries, ram raids, the shop being broken into and potential sales of alcohol to underage people."

93. Jenny Joynt³⁷ was of the view:

"I am aware that there have been incidents in the main street where there has been vandalism and broken glass. As a store manager, I am concerned this may increase with increased alcohol availability in town. I am concerned that people will be able to purchase alcohol but not have a safe place to consume."

94. Mr Neville Hammon proffered the view:

"I believe that if a new liquor-store is opened in our town of Ruawai, all sorts of trouble, crime, social problems etc. will show up, that we never had before the liquor-store was opened³⁸,"

"We didn't have a liquor store here before, so why bring it here now? Because we're an easy target. We are vulnerable. It is our Ruawai community that will be left to pick up the pieces from the harm that will come with this store."³⁹

95. Ms Dorothy Simpson noted⁴⁰:

"There is already a lot of alcohol harm in Ruawai. My witness, Mary McLeod, will talk about some of that

³⁶ Malcolm Joynt EIC at page 1

³⁷ Jenny Joynt EIC at [3]

³⁸ Hammon EIC at [10]

³⁹ Ibid at [12]

⁴⁰ Dorothy Simpson EIC at [3]

harm. My main concern is about easy access to alcohol for young people, seven days a week. This will cause problems for our community.”

96. Ms Grace Le Gros, a Māori Warden, shared her concerns recording⁴¹:

There is high deprivation and unemployment in our town. Alcohol makes things worse for our people.

97. We came to a clear understanding, given the population dynamics (younger with a higher than usual percentage of Māori, in isolated area), the increased availability of alcohol is likely to increase bad behaviour.

98. The ***Court of Appeal in Port Nelson Ltd v Commerce Commission [1996] 3 NZLR 554*** has discussed the meaning of “likely” and held that the appropriate level is above mere possibility and is best expressed as real and substantial risk. This essentially means that the stated harm or risk of harm is a real and appreciable possibility that cannot be dismissed or ignored as being remote or fanciful.

99. Having listened to the submitters we are of the view that their concerns the potential for increased alcohol related nuisances are neither remote or fanciful. They are real and appreciable, predicated on a good understanding of living in the local environment.

100. We are also obliged to consider the number of premises for which licences of the kind concerned are already held. The local 4 Square holds an off licence. There are no standalone bottle stores within easy access. The 4 Square only sells beer and wine. No concerns were expressed over their operation.

101 We are required to consider “the purposes for which land near the premises concerned is used.” The proposed new building will stand out in this small village as it is a new building. It will be situated between the 4 Square and a café. Children and families commuting to and from local educational facilities will be exposed to the bottle store. The applicant has implemented measures to reduce potential harm by the frosting of the door glass and restricting signage.

102 If this licence was to be granted we anticipate the store would attract patronage.

Section 105(1)(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that-

- (i) They would be unlikely to be reduced further (or would likely to be reduced further to only a minor extent) by the effects of the issue of the licence: but**
- (ii) It is nevertheless desirable not to issue any further licences.**

103 There is no evidence before the Committee of any **current** problems in this area that would be

⁴¹ Grace Le Gros at [6]

sufficient for us to invoke this criteria.

Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law

104 The applicant advised us that all staff at the store will hold manager's certificates and will appropriately trained. While the matter of staffing was commented on by submitters we were assured by the evidence of the licencing Inspector that the store would be adequately staffed.

Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129

105 Both the Medical Officer of Health and the Police opposed this application. The matters they raised matters in opposition to this application and are discussed throughout this decision.

Reasons for the Decision

106 Section 3 of the Act requires us to act reasonably in the exercise of our duties and to administer the Act with the aim of helping to achieve the Object of the Act.

107 The hearing was held in Ruawai so Commissioners Farnsworth and Lambeth were able to experience operating in a small, isolated village. Commissioner Clearwater attended the hearing by AVL. As the building is yet to be built, the site is empty. A new building in Ruawai will stand out.

108 Any licence would be issued for 12 months only, the so called probationary year, and the next test would be at renewal time. An assessment would be conducted on whether the amenity and good order of the area had been reduced by more than a minor extent by the operation of the licence.

109 As noted above this application has a large number of submissions in opposition. We have commented on the use of a form submission and our disappointment that CAAH did not front the hearing. Submitters need to attend the hearing in order for the committee to apply added weight to their submissions.

110 We sincerely thank the public objectors that did attend, for bringing their concerns to the Committee.

111 We are mindful of the issues faced by the local Iwi and encourage them to keep abreast of developments in their Rohé and to support or lodge objections through the normal channels if they so wish.

The Decision

112.Mr Singh, an experienced licence holder, saw a business opportunity and made an application.

113 While Mr Singh did attempt to engage with the local community it was not enough to satisfy the requirements of 'extended suitability'. He did not demonstrate that he had a good understanding of an isolated rural village with a vulnerable population. Mr Singh's changing business plan figures left us confused.

114 After standing back and evaluating the totality of the evidence before us, and adopting the 'precautionary principle', we are **not** satisfied that the amenity and good order of this area will not be reduced by more than a minor extent and that the Object of the Act can be met if we were to grant this licence.

115 The opposition mounted by the agencies, in conjunction with the evidence of the objectors has been cogent. We accept that this is an isolated village (and hinterland) with a vulnerable population. It needs to afford protection from further alcohol related harm. The introduction of a new highly visible bottle store, selling spirits and RTDs is a step to far.

116 The local community has expressed a strong preference – they do not want a new off-licence selling spirits and RTDs we agree with them.

117 The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **refuses** to grant an off licence to Hira Estates Limited for a new premises Main Road Ruawai

Note: This is our decision. We refer any party who wishes to appeal this decision or part of this decision to sections 154 to 158 of the Act. In particular, we draw attention to sections 155 of the Act, which states that any appeal must be made within 10 working days after the date on which notice of the decision is given to a party that wishes to appeal.

DATED at Mangawhai this 8 day of October 2024



Mark C Farnsworth MNZM

Kaipara District Licensing Chair

For

Cr Gordon Lambeth & Commissioner Murray Clearwater