

OFF-LICENCE

Sections 17 to 20, and 64, Sale and Supply of Alcohol Act 2012

KIW-E OTAKI LIMITED

Licence Number 45/OFF/031/2022



Pursuant to the Sale and Supply of Alcohol Act 2012 (the **Act**), Kiw-e Otaki Limited (the licensee) is authorised to sell alcohol on the premises situated at Shop 3 and 4, 4 Arthur Street, Otaki known as Super Liquor Otaki, to any person for consumption off the premises and to supply alcohol free, as a sample, for consumption on the premises. The licensee is also authorised to sell alcohol on or from the premises and deliver it somewhere else.

The authority conferred by this licence must be exercised through a manager or managers appointed by the licensee in accordance with Subpart 7 of Part 2 of the Act.

Conditions

This licence is subject to the following conditions:

1. Alcohol is only permitted to be sold, supplied or delivered on or from the premises authorised by the licence.
2. Alcohol may be sold or delivered only on the following days and during the following hours:
Monday to Sunday – 10am to 9pm
3. No alcohol may be sold or delivered on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day.
4. The whole of the premises is designated as a **supervised** area.
5. Water must be freely available for drinking at all times alcohol is being supplied free as a sample on the premises.
6. The licensee must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and intoxicated persons.
7. The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the safe and responsible consumption of alcohol, and minimising alcohol related harm.
8. The sale of single units of mainstream (high volume commercial) beer, and ready to drink spirits or shots is prohibited.
9. There will be no sales of RTD's in containers over 500ml with an ABV of 6% or more.
10. There will be no sales of light spirits up to 13.9% ABV of any kind.
11. The premises will remain a Super Liquor franchise store for the period of the licence.

Display of Licence and Principal Entrance

A copy of this licence must be displayed at the principal entrance to the premises. The entrance from Arthur Street is designated as the principal entrance.

Licensed Premises

The licensed premises situated at Shop 3 and 4, 4 Arthur Street, Otaki are more precisely identified as outlined in the plan date stamped as approved by the District Licensing Committee on 8 September 2020 (held on DLC file OFF872).

Duration

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

- (a) either—
 - (i) until the close of the period for which it was last renewed; or
 - (ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but
- (b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either—
 - (i) until the close of the period of 3 years after the period for which it was last renewed; or
 - (ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

Dated at Paraparaumu on 4 October 2022.

Secretary
Kapiti Coast District Licensing Committee

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, the licence expires on:

1 March 2025

This licence replaces licence no. 45/OFF/025/2021 issued on 1 March 2021

Decision No: 45/031/2022

IN THE MATTER

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

AND

IN THE MATTER

of an application by Kiw-E Otaki Limited for
renewal and variation of conditions of an Off
Licence pursuant to sections 120 and 127 of
the Act in respect of premises situated at
Shop 3 and 4, 4 Arthur Street, Otaki known
as Super Liquor Otaki.

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

Chairperson: Rob McCann

DECISION (ON THE PAPERS)

This is an application by Kiw-E Otaki Limited for the renewal and variation of conditions of an Off Licence in respect of premises situated at Shop 3 and 4, 4 Arthur Street, Otaki, known as Super Liquor Otaki.

The general nature of the business to be undertaken is that of a Bottlestore. This application relates to the renewal of the licence first issued on 1 March 2021.

The application was duly advertised and no objection or notice of desire to be heard has been received. The application was duly forwarded to the Police, Medical Officer of Health and the Inspector and no opposition to the application was received.

I am satisfied as to the matters to which we must have regard as set out in section 131 of the Sale and Supply of Alcohol Act 2012. Accordingly I deal with the matter on the papers.

DECISION

The District Licensing Committee Chairperson, acting pursuant to the Sale and Supply of Alcohol Act 2012, approves the application by Kiw-E Otaki Limited for the renewal and variation of conditions of the Off Licence for premises situated at Shop 3 and 4, 4 Arthur Street, Otaki, trading as Super Liquor Otaki. This licence will issue for the period of three years from the date of expiry of the last issue or renewal of this licence and is subject to standard conditions and the cancellation of the following conditions:

11. The licence holder will take reasonable steps to establish an Otaki alcohol forum. It will do so in collaboration with the reporting agencies. Such reasonable steps may include undertaking the administrative tasks of coordinating the reporting agencies, emailing invitees, and arranging a venue.
13. The licence holder will not appoint temporary or acting managers under sections 229 and 230 of the Sale and Supply of Alcohol Act 2012.

The licence may issue immediately.

DATED at Paraparaumu on 02 October 2022.



Rob McCann
Chairperson
Kapiti Coast District Licensing Committee



Sale and Supply of Alcohol Act 2012

INSPECTOR'S REPORT

File Reference: OFF872

INSPECTOR: Antoinette Bliss

DATE: 26 August 2022

Application Type:	Off Licence Renewal and Variation of Conditions
Section of Act:	Sections 120(2) and 127(2), Sale and Supply of Alcohol Act 2012
Date of Application:	27th January 2022
Applicant:	Kiw-E Otaki Limited
Address:	Units 2 & 3, 4 Arthur Street, Otaki
Premises Trading Name:	Super Liquor Otaki
Principal Purpose:	Bottlestore

APPLICATION

Kiw-E Otaki Limited has made application under sections 120(2) and 127(2) of the Sale and Supply of Alcohol Act 2012 (the Act) for the renewal and variation of conditions of an Off Licence to sell alcohol for consumption off the premises, situated at Units 2 & 3, 4 Arthur Street, Otaki, and known as Super Liquor Otaki.

PREMISES DESCRIPTION / BACKGROUND

The premises are an existing commercial building which forms part of a complex of four commercial/retail units, the premises occupy two of the four existing commercial units.

Council records indicate that the site was previously occupied by a building which was converted from a dwelling to a shop in 1987. That building, which had housed the Otaki Railway Theatre latterly, was demolished in 2006 and a building consent granted for a new commercial building.

The premises meet the criteria under section 32(1)(b) of the Act for the kinds of premises that can hold an Off Licence, as the general nature of the premises is that of

a retail alcohol (bottle) store, the principal business being the sale of alcohol for consumption off the premises.

The applicant was granted an Off licence by the District Licensing Committee on 8 September 2020. The decision to grant the licence was appealed by Ms Merena Selby on behalf of Te Wananga o Raukawa. The appeal was heard by the Alcohol Regulatory and Licensing Authority (ARLA) which concluded 'for the reasons stated, the application to adduce new evidence on the appeal is dismissed' on the 22 December 2020. (Refer to Attachment 1). The Off licence was issued on 1 March 2021.

The owner of the property, Nigel Keith Ross, in his capacity as manager of Freehold Properties (Investments) LLP, has no objection to a licence being held on the premises, a copy of the lease is held on file.

The licence expired on 1 March 2022 but has remained valid as an application for its renewal was lodged prior to this date.

The application included a proposed cancellation of the following conditions:

11. The licence holder will take reasonable steps to establish an Otaki alcohol forum. It will do so in collaboration with the reporting agencies. Such reasonable steps may include undertaking the administrative tasks of coordinating the reporting agencies, emailing invitees, and arranging a venue.
13. The licence holder will not appoint temporary or acting managers under sections 229 and 230 of the Sale and Supply of Alcohol Act 2012.

The applicant has outlined their reasoning for the removal of the above conditions in their application (Refer to Attachment 2).

The application falls within the medium cost/risk rating under sections 5 to 7 of the Sale and Supply of Alcohol (Fees) Regulations 2013, in that it is an Off licence in a bottle store, having licensed trading hours finishing before 10pm, and having no recorded enforcement holdings within the last 18 months.

The corresponding application fee paid is \$816.50 and the annual fee payable is \$632.50.

CANCELLATION OF CONDITIONS

All three reporting agencies agree that condition 11. has been satisfied by the applicant having taken reasonable steps to establish the forum, and that this was done in collaboration with the reporting agencies.

The two directors of the applicant company met with representatives of the three reporting agencies on 6 April 2021 to consider the approach for establishing the forum, including the agenda (copy included with application material), invitees, timing and location.

The forum date was set for 8 September 2021 at Otaki Memorial Hall Supper Room, and 10 invitees confirmed their attendance. However, due to the Covid lockdown (the directors reside in Auckland) and restrictions on gatherings the meeting had to be cancelled. Reporting agencies and the applicant did not deem it appropriate that the forum be held online which meant that, with the ongoing national Covid Protection

Framework in place, the applicant was unable to set a further date for the forum. The Medical Officer of Health had advised they were unable to participate in a forum as staff were working on the Covid response.

Community networks

The Kapiti Coast has a number of community networks in place which enable the community to share information and address local issues.

- **Kapiti Community Social Services**
Meets on the second Monday of each month at 1.30pm. This is a network of community and welfare organisations that shares information, make sure that services across the District are making the best use of community resources, promotes public awareness about community issues and advocates for change.
- **Ōtaki Community Network Forum**
Meets on the first Tuesday of each month at 9.30am in the Dr Atmore Supper Room, Memorial Hall, Ōtaki. The forum is a place to share information and discuss local issues.
- **Citizens Advice Bureau Kāpiti**
The essence of the CAB service is about promoting knowledge and understanding and providing people with the confidence and support that will enable them to influence the things that affect them.

Community participation in the licensing process

To assist with public participation in the licensing process, we have provided the following information throughout the licensing period to Mereana Selby and other interested parties:

- Council has added alcohol licences to its public notices page on the website, allowing the community to sign up for the Antenno App which will send alerts when an application is publically notified.
- Community Social Movement for alcohol harm minimization Te Hiringa Hauora has sought applications from Māori community organisations to be partners in a new community social movement to minimise alcohol harm with, by and for Māori communities. “Our vision is that Māori are the leaders of change in alcohol harm minimisation across the country. We are looking for community partners to take part in this multi-year initiative where we collaboratively develop a national social movement supported by local innovative projects in your communities that work to reduce alcohol harm.” Community Law - we have also been in communication with Rob O’Brien, Project Co-ordinator of the Community Law Alcohol Harm Reduction Project, which aims to empower communities to better participate in local alcohol licensing procedures. A pilot programme has been operating in Wellington/Hutt Valley and will be rolled out nationally in 2022. Please feel free to contact Rob directly to find out how he, and his project team, can best support you and other members of the Otaki community.
- , Kiwi Limited Off Licence Renewal Application, I am writing to let you know that we have received an application from Kiwi-E Otaki Limited for the renewal and variation of conditions of the Off licence for Super Liquor Otaki. The application will be notified in the Kapiti Observer on 3rd and 10th February and

can be viewed via our website Public notices - Kāpiti Coast District Council (kapiticoast.govt.nz) from tomorrow.

Conclusion:

I consider the establishment of another Otaki community forum by a licensee would not produce any desirable outcomes that would meet the needs and wants of the community. Nevertheless, in my opinion, the applicant has satisfied Off licence condition 11. by taking reasonable steps to establish a forum, and I recommend that the condition is cancelled.

With regard to condition 13., the licensee is complying with the requirements around the appointment of duty managers and the management of the sale of alcohol. Therefore, I recommend that this condition be cancelled.

LOCATION OF THE PREMISES

The premises are situated on land zoned Town Centre under the Operative Kapiti Coast District Plan (the District Plan). The District Plan provisions that relate to the property apply. Resource consent was not required for the land use as it is a permitted activity.

The premises are accessed from Arthur Street, which is an access road between the railway station and State Highway One.

The premises are located within the commercial/retail centre of the Otaki Highway township. The premises are visible from the State Highway and are situated adjacent to a service lane and car park that are used by both train passengers and shoppers.

The surrounding locality includes land zoned as Town Centre and Rural Plains, with the wider area also including some Residential zoned land beyond the commercial area to the north and west.

Neighbouring activities and uses within the immediate vicinity include other commercial/retail businesses (Antonio's Restaurant, Subway and the Railway Hotel in Arthur Street) and the railway station.

The premises are situated within an alcohol free zone (Otaki main streets) that is in effect Monday to Sunday, 24 hours a day.

BUILDING AND PLANNING MATTERS

Pursuant to section 127(2)(e) of the Act, the application is accompanied by a statement from the applicant (dated that 25 January 2022 and sent to the authorised Fire Risk Management Officer) that because of the nature of the building, its owner is exempt from the requirement to provide an evacuation scheme as per section 76 of the Fire and Emergency New Zealand Act 2017.

The operation of the premises has not changed since the licence was granted and therefore a planning certificate or building certificate is not required.

NOTIFICATION

The application was publicly notified twice in the Kapiti Observer on 3 February 2022 and 10 February 2022 respectively.

Copies of these notices have been checked for accuracy and are held on file.

A notice of application was placed on the site in accordance with section 41(4) of the Act.

OBJECTIONS

The District Licensing Committee Secretariat did not receive any objections to the application in accordance with section 128 of the Sale and Supply of Alcohol Act 2012.

STATUTORY CRITERIA

The Object of the Act:

- *The sale, supply and consumption of alcohol should be undertaken safely and responsibly*
- *The harm caused by the excessive or inappropriate consumption of alcohol should be minimised*

HOST RESPONSIBILITY:

The premises have a robust host responsibility policy (copy on file), and this is prominently displayed on the premises.

Signage

- Licence, host responsibility and trading hours – displayed at the principal entrance.
- Duty manager name – displayed at the sales counter.
- Prohibited person's signage - displayed prominently in retail area and at the sales counter, along with signage giving customers information about the alcohol free zone.

Alcohol undertaking

- In accordance with the district-wide initiative that the Inspectorate has been implementing since April 2014 (with support from the NZ Police), the applicants signed a voluntary undertaking on 26 February 2020 (held on file) to:

'not to break up retail ready packaging of mainstream beer and ready-to-drink (RTD) products, and therefore will prohibit the sale of single units of RTDs and standard sizes of mainstream beer (such as those in 330ml servings), on or from the premises'

This includes the bundling of individual bottles or cans into a pack of two or three units.

Sales of single bottles or cans of boutique or craft beers of any size, or appropriate products (those that are not likely to encourage excessive or inappropriate consumption) designed to be sold individually (such as in

servings of 500mls or more) will not be subject to this undertaking (are permitted).'

Low alcohol beverages

- There are several choices of low alcohol beers such as Heineken Light, Steinlager Mid, Light Ice, Amstel Light, Export Citrus, Tui Mid, Mac's Mid Vicious, Clausthaler
- Lower alcohol wine options are available for purchase at all times.

Non-alcoholic beverages

- A full range of non-alcoholic alternatives is available for purchase at all times.

Water

- Free water is provided during complimentary tastings run by sales representatives.

Mechanism of selling alcohol

- The applicant conducts onsite sales at the premises.
- The applicant also conducts online and telephone sales in accordance with the requirements for remote sales.

Delivery

- Delivery is undertaken by NZ Couriers, ID verification is not required at time of delivery and the applicant's policy does not state if the items are left at residence when the purchaser is not home.
- Peter Joseph notes that the Super Liquor preference is for stores to make the deliveries themselves, the 'store standard deliveries policy' notes the following:
 - Ensure the recipient is the person who placed the order, and
 - Verify age before leaving the order with the receiver, if sufficient evidence is not produced that they are of age to purchase alcohol, you may not leave the order with them.

Food

- A range of ready to eat snack items is available for purchase at all times, and the premises are in close proximity to a number of food outlets.

Promotion

- The applicant advises the premises do not engage in unacceptable promotions or irresponsible drinking practices.
- Apart from Super Liquor specials on A2 posters, there is no other alcohol advertising on the external areas of the premises.
- Promotion is done through social media, internet, newspaper advertising and word of mouth.

Inspections:

The following inspections have been carried out in the previous licensing period:

Date	Type of Inspection	Result
18 October 2021	Monitoring	Met with Gudevram, all signage in correct place, large variety low and non alcohol options. Managers register up to date, last incident 16/10/21 No ID refuse sale.
16 June 2021	Compliance with	Attended with Police. Met with Gudevram

	Police	Singh Brah. Contacted Licensee day before for updated list of duty managers as not provided any change of management notification. Duty manager did not appear to know what managers register or incident book was. With our help he found it. `No incidents recorded` was what was entered into daily book each day, outlined the need for suitable systems where we can see how they are reducing harm and need to record how this is done. Managers register up to date.
6 April 2021	Monitoring	Met with Peter Joseph and Hitesh Patel, premises as per report, discussed licence conditions and confirmed these are being met. All licence and signage in correct places, incident register and managers registered sited and up to date. Discussed forum and will contact Dr Palmer to organise meeting with health, licensee, police and council initially.

An inspection of the premises was performed by the Licensing Inspector with Mr Peter Joseph, Franchise Manager – Lower North / Otago / Southland, Super Liquor Holdings Limited on 7 March 2022. No issues concerning the signage and operational requirements were noted. A summary of the matters discussed is as follows:

- Sighted managers' register which is up to date.
- Incident book, last incident recorded on 15 January 2022, a customer had no ID and was refused service and asked to leave.
- Remote sales, how sales are conducted. The applicant had originally advised they were not able to provide a delivery service or use the Super Liquor website until they met the prerequisites for joining eCommerce onboarding (refer Attachment 3 – **note this document is confidential**).

Section 59 of the Act and regulation 14 of the Regulations outline requirements which are considered 'reasonable procedures' for the purposes of complying with the Act to verify the buyer and receiver of alcohol by remote sale is not under the purchase age.

SA59.03 and SA59.04 cover obligations to verify entitlement to purchase but do not mention the 'receiver'. NZ Police and the Inspector have been working together to request that holders of Off licences ensure the receiver is over the purchase age, as they are not dealing face to face with the purchaser.

The applicant was sent an email outlining the following additional discretionary condition. Mr Joseph, representing the applicant, has responded to advise they do not agree with the addition of the condition (refer to Attachment 4).

Additional condition

- All deliveries of alcohol must be signed for by a person aged 18 years or over.

An inspection of the website was conducted by the Licensing Inspector.

- **Internet site**
 - *Reasonable steps to verify that people not under purchase age*
 - Section 14(a) and (b) comply (information included with application material).
 - *Information to be provided by remote sellers*
 - Section 15(1) and (3) comply (information included with application material).
- **Telephone order**
 - The applicant confirmed that procedure in section 14(3) is complied with.
- **Physical order form**
 - The applicant advised they do not use a physical order form for ordering, customers are directed to the website.

Conclusion:

The applicant has provided adequate documentation and information to demonstrate that the required legislative measures are being undertaken to ensure the responsible sale of alcohol, and that harm will be minimised.

SUITABILITY OF THE APPLICANT

The applicant is a private company, duly incorporated under the Companies Act 1993 on 20 July 2018 (reference no. 6939794).

The company has two directors: Hitesh Patel and Pragnesh Patel.

The shareholders of Kiw-E Otaki Limited are:

Allocation	Shareholder	Number of shares (of 10,000)
1	Hitesh Ghanshyam Patel	500 (50%)
2	Pragneshkumar Mahendrabhai Patel	500 (50%)

Hitesh Patel and Pragnesh Patel are also directors and shareholders of the company that owns Super Liquor Palmerston North. Pragnesh Patel owns Super Liquor Helensville (since 2003). Hitesh Patel owns Super Liquor Hillstop (since 2008) and Super Liquor Red Beach (since 2006).

The applicants both hold Managers' Certificates, Hitesh Patel (007/CERT/124/2017) since 2006 and Pragnesh Patel (007/CERT/164/2017), since 2009.

A request to Licensing Inspectors around the country regarding Hitesh Patel and Pragnesh Patel or any of their premises did not result in any issues being raised.

Hitesh Patel and Pragnesh Patel are not involved in the day to day running of the business, as they reside in Auckland.,

Based on my discussions with the applicant, represented by Mr Shearer, Authorised Agent, Ignition Group Limited, and Gurdevram Singh Brar, Duty Manager, Super Liquor Otaki, my inspection of the premises, the supplementary documentation accompanying the application, the reports filed, the absence of any adverse issues relating to other premises owned by the directors, and the absence of any issues in the previous licensing period, it is my opinion that the applicant is aware of their responsibilities under the Act, and is suitable to continue to operate the licensed premises.

LOCAL ALCOHOL POLIC

The Kapiti Coast District does not have an adopted and operative Local Alcohol Policy at the present time.

DAYS AND HOURS DURING WHICH THE APPLICANT PROPOSES TO SELL ALCOHOL

The applicant has not sought any change to the current days and hours permitted under the licence, which are:

- Monday to Sunday – 10am to 9pm

These hours comply with the default national maximum trading hours for Off licensed premises as prescribed under section 43(b) of the Act.

DESIGN AND LAYOUT OF THE PREMISES

The design and layout of the current licensed area of the premises is not proposed to change; it is an existing layout created when the premises were altered to merge two shops into the bottle store format, date stamped approved 8 September 2020 (refer to Attachment 5).

1. Two principal entrances, one from Arthur Street and one at the rear of building from the car park.
2. The point of sale counter straight ahead inside the principal entrance from Arthur Street, on the right hand wall, in the middle of the store.
3. The entrance to the walk-in chiller just before the point of sale counter, on the left.
4. The display areas within the premises.
5. The staff office, storage area and amenities at the rear of the premises.
6. The rear delivery entrance into the storage area accessed from the car park behind the premises.

The applicant has provided a Crime Prevention through Environmental Design (CPTED) assessment of the premises which demonstrates that the premises will, through the design and layout, minimise potential harm and ensure a safe environment for patrons.

The following points have been noted by the applicant:

1. At least 50% transparency in the front of the premises with good visibility to and from the premises and the street. The chiller location is to the left of the

entrance backing on to front window, a white translucent film is used on street front window.

2. Bright interior lighting; customers are able to be seen as they enter and move around the premises, and identification is easily read.
3. Suitable exterior lighting to discourage loitering, the loading area is well lit.
4. The point of sale area is positioned close to the entrance, there is good visibility from this area of the customers inside the store and people immediately outside the store. The cash register is located close to the entrance and behind the counter so it is not accessible to customers.
5. There is no recessed entry.
6. The windows and doors are reinforced to prevent break-ins. Should any incident occur that is beyond the control of the duty manager, the Police will be called.
7. Stock displays are no greater than 1.4 metres in height.
8. Good visibility of the chiller through glass doors and a security camera.
9. One staff member working at off-peak times, but during busy times such as evenings and weekends, staff numbers have increased to two staff.
10. RTDs and other drinks that younger people drink, are not located near the front of the store or visible from street frontage.

Summary:

In my opinion, the design and layout of the premises, in conjunction with the applicant's operational procedures, is adequate to fulfil the object of the Act in terms of minimising potential harm and ensuring a safe environment for patrons.

DESIGNATION

The applicant does not propose to change the designation. The entire premises will remain a supervised area.

As the principal purpose of the store is the retail sale of alcohol, I consider it is appropriate to exclude minors unless in the necessary company of a parent or legal guardian. This designation is consistent with all other retail alcohol stores in the District.

THE SALE OF GOODS AND THE PROVISION OF OTHER SERVICES

The applicant is engaged in the sale of goods or the provision of services other than those directly related to the sale of alcohol, low and non-alcoholic refreshments and food.

The applicant sells cigarettes, tobacco, and sundry alcohol related items, which is deemed acceptable for the purposes of the licence. The principal business remains the sale of alcohol.

AMENITY AND GOOD ORDER OF THE LOCALITY

The following areas have been considered with respect to the amenity and good order of the locality and the effect of the licensed premises:

Current and possible future noise levels:

The premises have no history of any noise issues in the previous licensing period, and no changes to the style of operation are proposed under the current application.

The applicant advises that no amplified music is audible outside of the store; a radio station is played via in-store speakers. The only external noise is by way of customers entering and exiting the premises, and vehicle movements (including deliveries to the rear of the premises), as well as some loading and unloading of goods from deliveries.

Current and possible future levels of nuisance and vandalism:

Council has no record (including Police reporting) of recent nuisance or vandalism incidents related to the operation of the premises or to the area.

The design and layout, together with the operational procedures of the premises should minimise any potential for these issues to arise.

Alcohol is only sold for consumption off the premises. The exterior is kept clear, tidy, and well lit, with camera surveillance to discourage loitering and disorder. Staff members regularly conduct a sweep of the immediate vicinity to remove any alcohol related litter.

The number of premises for which the same kind of licences are already held:

While it is noted that the number of licensed premises in the area does not form part of the criteria for assessment of applications for renewal, information on licensed premises activity in the Otaki region is provided below:

Name of Premises	Address of Premises	Licence Type
New World Otaki	155-163 Main Highway	OFF - Supermarket
Big Barrel	42B Main Street	OFF – Bottle store
Countdown	91 Mill Road	OFF – Supermarket
The Tele	284 Rangioru Road	ON & OFF – Tavern
Apple Quarters	30 Addington Road	ON & OFF – Cellar Door
World Wines (Ruth Pretty Kitchen Shop)	41 School Road	OFF - Wineshop
Ruth Pretty Catering	41 School Road	On – Function Centre
The Winemaker`s Daughter	1081 State Highway 1 South	ON - Restaurant
Otaki Maori Racecourse	47 Te Roto Road	On – Function Centre
Gorge	50 Riverbank Road	ON – Cafe
Antonio's	5 Arthur Street	ON - Restaurant
Curry Town	57 Main Street	ON - Restaurant
Family Hotel	30 Main Street	ON – Tavern
Otaki Kitchen	30 Main Street	ON – Restaurant

River Cottage Café	3 Main Highway 1	ON - Restaurant
Railway Hotel	6 Arthur Street	ON – Tavern
Otaki & District Memorial RSA	9 Raukawa Street	CLUB
Rahui Football & Sports Club	Otaki Domain, Mill Road	CLUB
Whiti Te Ra Sports Club	Otaki Domain, Mill Road	CLUB
Otaki Bowling and Pentaque Club	15 Waerenga Road	CLUB
Otaki Sports Club	Haruatai Park, Mill Road	CLUB
Otaki Golf Club	2 Old Coach Road North	CLUB
Te Horo Rural Fire Force	58 School Road, Te Horo	CLUB

Sensitive uses / activities:

The premises are within a roughly 500 metres linear distance of the following sensitive uses or activities:

- Otaki College – secondary school located approximately 500 metres from the premises on Mill Road.

Council has no recorded incidents of adverse issues to date, including reports from the Police. Provided the premises are managed in accordance with the licence and all other operational information supplied, and based on the previous licensing period, I would not expect any adverse impacts on these uses.

Summary:

Considering all of the above, in my opinion, the amenity and good order of the locality would not be likely to be increased, by more than a minor extent, by the refusal to renew the licence.

SYSTEMS, STAFF AND TRAINING

The applicant has provided the following management plans, and/ or supporting information:

Duty managers:

A certificated duty manager is on the premises at all times alcohol is available for sale.

Staff, training and development:

Five employees have formal manager’s qualifications and training.

Manager’s Name	Certificate No.	Expiry Date
Hitesh Patel	007/CERT/124/2017	24 April 2025
Pragnesh Patel	007/CERT/164/2017	30 January 2023

Taharangi Turitoa Smith-Gray	45/CERT/948/2021	5 October 2022
Gurdevram Singh Brar	007/CERT/3423/2109	10 September 2023
Harmandeep Singh Bhattal	39/CERT/072/2018	9 August 2025

This is deemed sufficient for the intended days and hours of sale permitted under the licence.

One or two staff are on the premises depending on the time and day of the week, usually one during the day and two on Thursday, Friday and Saturday evenings.

All staff involved in the sale of alcohol are trained by Gurdevram Singh Brar in the premises' host responsibility policy, operational procedures, and the requirements of the Act and the licence.

The applicant has the support of the Super Liquor franchisor who ensures they have good systems and procedures in place to promote the safe and responsible sale of alcohol in the community. Super Liquor have online training that all staff must complete and pass, this is checked through three monthly audits.

The Managers' register was sighted and up to date.

Monitoring systems:

Underage persons are not sold alcohol. Identification and proof of age is required where a customer appears to be under 25 years of age. All members of a group of young people are asked for ID at time of purchase. If any person in the group cannot supply ID, no one in the group is sold alcohol.

The point of sale terminals have an automatic electronic prompt requiring the date of birth to be entered whenever alcohol is scanned, in order to authorise the sale. The system displays the current 18 years of age date for staff reference.

Intoxicated persons are not served. Staff identify and assess signs of intoxication by using the SCAB Intoxication Assessment Tool. Entry is not permitted to intoxicated persons but assistance will be offered by the duty manager if required, this may include safe transport or other means to ensure their safety.

Prominent signage is displayed advising that prohibited persons will not be served and that ID may be required.

All incidents are recorded via an incident book, and Police will be contacted if issues persist. Generally, any customer causing problems will be warned once, after which time they will be trespassed for two years.

The incident book is held behind the point of sale area, the last incident recorded on 1 March 2022, a customer had no ID and was refused service and asked to leave.

Conclusion:

After review of the application, supporting information and discussions with the applicant, in my opinion the applicant has demonstrated that there are appropriate systems, staff and training in place to meet the requirements of the Act.

REPORTS FROM OTHER AGENCIES

The NZ Police have inquired into the application, and do not oppose the renewal and variation of conditions of the licence. A copy of the report, dated 2 February 2022, is attached to the application.

The reporting Officer for the Medical Officer of Health has inquired into the application, and does not oppose the renewal and variation of conditions of the licence. A copy of the report, dated 1 May 2022, is attached to the application.

RECOMMENDATION

Having regard to the particulars of the application and the relevant statutory criteria under the Act, I do not oppose the application for renewal and cancellation of the following conditions:

11. The licence holder will take reasonable steps to establish an Otaki alcohol forum. It will do so in collaboration with the reporting agencies. Such reasonable steps may include undertaking the administrative tasks of coordinating the reporting agencies, emailing invitees, and arranging a venue.
13. The licence holder will not appoint temporary or acting managers under sections 229 and 230 of the Sale and Supply of Alcohol Act 2012.



Antoinette Bliss
Licensing Inspector
Kāpiti Coast District Council

Attachment 1: District Licensing Committee (DLC) and Alcohol Regulatory and Licensing Authority (ARLA) decision	Page 15
Attachment 2: The applicants reasoning for the removal of the above conditions in their application	Page 52
Attachment 3: Confidential Super Liquor E-Commerce onboarding Manual	Page 53
Attachment 4: Applicant has <u>not</u> agreed to the addition of a discretionary condition and undertaking around delivery and remote sales	Page 57
Attachment 5: Plan of licensed area	Page 58

Attachment 1: Alcohol Regulatory and Licensing Authority (ARLA) decision dated 22 December 2020.

Decision No: 45/011/2020

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

AND

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

BEFORE THE KĀPITI COAST DISTRICT LICENSING COMMITTEE

Chair: Ms F M Vining

Members: Mr P Parkinson

Mr F McInnes

HEARING at ŌTAKI on 22 July 2020

APPEARANCES

Mr John Young (Counsel for the applicant)

Mr Pragnesh Patel (on behalf of Applicant)

Mr Peter Joseph (Regional Manager Super Liquor)

Objectors

Mr Donovan Joyce (Ngāti Maiotaki hapū)

Ms Mereana Selby (Te Wānanga o Raukawa)

Mrs Shelley Warwick

Ms Leigh Rau

Reporting agencies

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

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

Ms Antoinette Bliss (Licensing Inspector)

RESERVED DECISION OF THE COMMITTEE

Introduction

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

Preliminary procedural matter

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

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

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

The Application

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

Submissions of Mr Young

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

Evidence of Mr Joseph

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

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

20. Mr Joseph provided detailed documentation regarding Super Liquor processes on the basis as Super Liquor's intellectual property, the information in those documents would be kept confidential and be subject to a non-publication order. The Committee agrees that this is appropriate and orders that in respect of the 8 page audit document titled "Business Partnering January – March 2020 (incl. Audit) and the 1 page screen shot of the "SuperLiquorpedia" internal website ("the materials") the following orders shall apply:
 - a. All persons present at the DLC hearing do not discuss the material with any other persons;
 - b. The Council and/or the reporting agents will not permit the material to be inspected, disseminated or published without the Applicant's written consent; and
 - c. The Council and reporting agent files be stamped or marked with "This material is subject to non-publication and suppression orders from the Kāpiti Coast District Licensing Committee".

21. The audit reports provided by Mr Joseph set out the results of the audits undertaken in the January to March 2020 quarter on stores run by either director of the Applicant. These provided results which showed the only issue was a new staff member not having completed "the SSAA training module". He stated that a shortened audit was undertaken for the April to June quarter for which all these stores achieved a result of 100%.

22. In Mr Joseph's view, Mr P Patel and Mr H Patel have consistently operated their stores in accordance with the conditions of their off-licences and the Act.

23. Mr Joseph arranged to meet with Ngāti Maiotaki hapū to discuss the proposed new store. He also contacted Ms Selby, Mrs Warwick, Ms Rau and Ms Taylor to offer to meet. This offer was declined. Mr Joseph could not provide such an offer to P Campbell as he did not have a phone number or email address for this objector. He did not contact Global Wines and Spirits as he did not think it was appropriate to contact a trade competitor about the proposed licence.

24. Mr Joseph met with Vanessa Young and Dr Stephen Palmer from Regional Public Health. He provided information about the policies and procedures of Super Liquor and the Applicant's experience owning and managing a liquor store in a low decile location. At that meeting Dr Palmer suggested that it would be good if police could organise regular catchups with licenced premises and community groups. This suggestion was supported by Mr Joseph.

25. Mr Joseph then met with Sergeant Grimstone from the Police and the Licensing Inspector. He raised the possibility of regular meetings with licensed premises and was advised by Sgt Grimstone that Police didn't have the resources to do this. However, Mr Joseph, Mr P Patel and Mr H Patel would still like to explore options to do this.

Evidence of Mr Patel

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

Objectors

Ms Mereana Selby

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

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

Ms Leigh Rau

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

Mrs Shelley Warwick

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

Mr Donovan Joyce

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

Reporting Agencies

Evidence of the Licensing Inspector

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

Evidence of the Medical Officer of Health

52. The evidence for the Medical Officer of Health was provided by Vanessa Young. The Medical Officer of Health initially opposed the application.
53. The Medical Officer of Health, Dr Palmer, met with the Applicant together with the Police prior to the hearing. Ms Young advised that she was present. Dr Palmer had suggested to the Applicant that he initiate a forum for agencies, license holders and local representatives to meet to discuss alcohol issues at a local level and look at ways of reducing these. Following this meeting, the Medical Officer of Health withdrew his opposition to the application.

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

Written submissions on conditions

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

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

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

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

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

The Law

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

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

[20] Although the "object" of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the "object" of the legislation. It seems to me that the test may be articulated as follows: is the Authority satisfied, having considered all relevant factors set out in s105(1)(b)–(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act?

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

Suitability of the Applicant

61. The Applicant is a limited liability company. It can only act through its agents. Therefore, the Committee is required to consider the suitability of that agent or agents.

62. Both Mr P Patel and Mr H Patel have a number of years experience owning and operating licensed premises with no issues arising in the last ten years.

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

Days and hours of trading

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

65. The Committee regards these hours as reasonable.

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

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

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

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

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

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

70. There was no suggestion raised that that the proposed licence would impact on the amenity and good order of the locality. The Applicant provided evidence that it had considered issues relating to location and would trespass anyone seen consuming alcohol in alcohol free areas.

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

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

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

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

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

The object of the Act

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

(1) The object of this Act is that—

(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—

(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and

(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

75. The Act does not prohibit the sale of alcohol nor prohibit the opening of further licensed premises. It seeks to balance responsible alcohol consumption with the minimisation of alcohol related harm.

76. The Committee acknowledges the concerns raised by the objectors and their objection to the opening of a new off-license in Ōtaki. These objections all stated that there should be no more alcohol licenses granted in Ōtaki. Some were of the view that there should be less alcohol available.

77. The main concern that was specific to this application was that the Applicant is not local and does not have knowledge of the local community. However, the objectors and witnesses all acknowledged that the Applicant contacted them seeking to meet and learn about any specific issues that they wished to raise. None took up this offer.

78. The Committee is bound by the Act and must assess all applications against the criteria set out in it. None of the objections provided any evidence of how the application did not satisfy the requirements of the Act. While it has sympathy for the positions of the objectors it cannot simply decline all new applications for alcohol licenses. The Committee does not have the power to cap the number of licenses in a given area. This is an area that can be addressed through a Local Alcohol Policy which the Kāpiti Coast District Council can put in place.

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

Decision

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

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

DATED at Paraparaumu 8 September 2020



Fiona Vining
Commissioner
Kāpiti Coast District Licensing Committee



Antoinette Bliss

From: Thomson, Stephanie <Stephanie.Thomson@justice.govt.nz>
Sent: Thursday, 19 November 2020 3:32 PM
To: Duncan MacKenzie; John Young; ^Vanessa Young; Antoinette Bliss
Subject: ARLA 427804/2020 - Selby, Mereana v Kiwi-E Otaki Limited
Attachments: [2020] NZARLA 193 Kiw-E Otaki Limited (New Evidence).pdf

Kia ora,

Please find attached the decision of the Alcohol Regulatory and Licensing Authority in relation to the matter ARLA 427804/2020 – Mereana Selby v Kiw-E Otaki Limited.

Kind regards,



Stephanie Thomson

Case Manager | Wellington Tribunals Unit
Ministry of Justice | Tāhū o te Ture
Level 1 | 86 Customhouse Quay
DX SX11159 | Wellington
Ph: +64 4 918 8830 | Ext: 58830
Stephanie.Thomson@Justice.govt.nz

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- (2) do not act on this email in any other way.

Thank you.

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

[2020] NZARLA 193

UNDER the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an appeal pursuant to s 154 of the Act relating to the grant of an application for an on-licence for premises situated at 4 Arthur Street, Ōtaki, to be known as 'Super Liquor Ōtaki'

BETWEEN MEREANA SELBY
(on behalf of Te Wānanga o Raukawa)
Appellant

AND KIW-E OTAKI LIMITED
Respondent

Authority: Judge K D Kelly
Mr R S Miller

Counsel: Mr D MacKenzie – for Appellant
Mr J D Young – for Respondent

Hearing: On the papers

Judgment: 19 November 2020

DECISION OF THE AUTHORITY



Introduction

[1] On 8 September 2020, following a hearing at Ōtaki on 22 July 2020, the Kāpiti District Licensing Committee (DLC) granted an application for a new off-licence to Kiwi-E Otaki Limited for premises situated at 4 Arthur Street, Ōtaki, to be known as ‘Super Liquor Otaki’.

[2] Ms Mereana Selby for Te Wānanga o Raukawa objected to the application being granted and now appeals the decision of the DLC to the Authority.

[3] The appeal is set down to be heard on 18 December 2020 in Levin. Pending the appeal, pursuant to s 152 of the Act the decision of the DLC has no effect. Accordingly, no licence has yet been issued.

[4] On 6 November 2020, Ms Selby has applied to adduce further evidence on appeal.

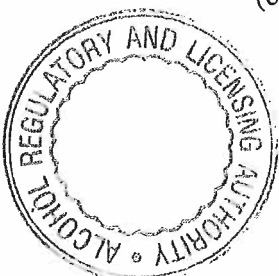
[5] This decision determines this application to adduce further evidence.

Objections and attitude of reporting agencies

Te Wānanga o Raukawa

[6] Before the DLC, the application was the subject of five objections, including from Ms Mereana Selby for Te Wānanga o Raukawa. Amongst other things, Te Wānanga o Raukawa has stated the following concerns with the application:

- (a) another liquor outlet in Ōtaki will ‘help solidify’ the profile of Ōtaki as a town of fast food and liquor outlets, that does not value the health and well-being of its residents;
- (b) Te Wānanga o Raukawa is an alcohol-free campus and wishes to present an environment and lifestyle that supports and promotes well-being;
- (c) the health statistics in the locality are a great concern; and



- (d) the proximity of the proposed outlet to Ōtaki College is a concern given the ‘severely harmful’ effects of alcohol on young people.

[7] Amongst other things, the objection from Te Wānanga o Raukawa said:

Approval of another liquor outlet in our town, alongside the several other premises, that include cafes, clubs, hotels, supermarkets, restaurants and bottle stores where people can purchase and/or partake of alcohol in Ōtaki, potentially opens the door for more services and products that will counter our efforts. The case for demand for such a business is hard to substantiate with what appears already to be a ridiculous over supply of alcohol. We note that the application is made on behalf of a business located in Auckland. Therefore, we can see no benefit at all to the local economy.

Attitude of the Police

[8] By way of an email dated 16 January 2020, Sergeant Grimstone, Officer in Charge – Ōtaki Police, advised the DLC that the Police have no concerns with the proposed Super Liquor store. The Police sought further information, however, on whether the applicant proposes to sell cigarettes; who the on-site managers will be; and about the need for consultation with the Police about security proposals to reduce the risk of shoplifting, robbery and burglary.

Attitude of Medical Officer of Health

[9] By way of a letter dated 10 January 2020, Dr Stephen Palmer, the Medical Officer of Health for the Hutt Valley District Health Board, opposed the application. The bases of Dr Palmer’s opposition were:

- (a) s 105(1)(a) (object of the Act): the application is unlikely to be in harmony with the object of the Act as there are existing higher levels of health harm caused by excessive or inappropriate consumption of alcohol in the area and additional premises will not minimise this harm;
- (b) s 105(1)(b) (suitability of the applicant): the applicant may not be suitable to operate a liquor store in a high-risk locality;
- (c) s 105(1)(i) (amenity and good order of the locality): the amenity and good order of the locality would likely to be reduced, to more than a minor extent, by the effects of the issue of the licence; and
- (d) Section 105(1)(j) (systems, staff and training): the systems proposed by the applicant may not be adequate as the applicant is not familiar with the high-risk



profile of the Ōtaki area and has not tailored his systems to mitigate possible risks.

[10] Dr Palmer said:

The Medical Officer of Health is concerned about the future risk of alcohol-related harm for Ōtaki. Ōtaki is one of the highest Census Area Units for alcohol-related hospital admissions (acute and chronic alcohol related conditions) for the whole of the greater Wellington region. Given the high risk the Medical Officer of Health recommends a precautionary approach is taken and not to approve the licence.

If the off-licence is to be issued then the Medical Officer of Health recommends that the trading be reduced from the 9pm being applied for to 6pm.

[11] Prior to the application being heard by the DLC, however, the Medical Officer of Health withdrew his opposition to the application. The decision of the DLC records that:¹

The Medical Officer of Health, Dr Palmer, met with the Applicant together with the Police prior to the hearing. Ms Young² advised she was present. Dr Palmer had suggested to the Applicant that he initiate a forum for agencies, license holders and local representatives to meet to discuss alcohol issues at a local level and look at ways of reducing these. Following this meeting, the Medical Officer of Health withdrew his opposition to the application.

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

[12] This withdrawal of opposition is set out in an email dated 25 March 2020, from Ms Vanessa Young, Health Protection Officer for Regional Public Health to the DLC which reads:

The Medical Officer of Health has been in discussions with the applicant and the Super Liquor Franchise Manager around this application. The applicant has agreed to work with the Medical Officer of Health to look at ways of reducing alcohol related harm in the Otaki area. The applicant has also detailed to the Medical Officer of Health the systems they will be using to operate the store.

As such the Medical Officer of Health now wishes to withdraw his opposition to this application.

Attitude of Licensing Inspector

[13] In her s 103 report on the application, Ms Antoinette Bliss, Licensing Inspector for the Kāpiti Coast District Council reported, amongst other things, that:³

It is difficult to say whether the amenity and good order of the locality is likely to be reduced, by more than a minor extent, by the granting of the licence. I believe that

¹ DLC decision at [53] – [54]

² Regional Public Health representing the Medical Officer of Health
³ s 103 report dated 19 February 2020 at [75]



management systems of the individual premises play a major role in minimising the impact of the licensed premises.

[14] In her report, the Licensing Inspector also notes⁴ that as a result of discussions with the applicant and the Super Liquor Franchise Manager, the Medical Officer of Health withdrew his opposition to this application.

[15] The Licensing Inspector recommended:⁵

Having regard to the particulars of the application and the relevant statutory criteria under the Act, and without the direction of a Local Alcohol Policy or evidence of specific incidences of alcohol related harm in the area, I do not have any grounds on which to oppose the application.

Decision of DLC

[16] Relevant to this appeal, the DLC held:

- (a) that as the applicants, Mr Pragnesh and Mr Hitesh Patel have a number of years' experience owning and operating licensed premises with no issues in the last ten years, and that the applicant company is suitable to hold a licence;⁶ and
- (b) there was no suggestion that the proposed licence would impact on the amenity and good order of the locality and that the applicant had considered issues relating to the location and that it would trespass anyone seen consuming alcohol in alcohol free areas;⁷ and
- (c) there is no evidence that the amenity and good order of the locality is badly affected by the effects of the issue of existing licences.⁸

[17] The DLC concluded:⁹

The Act does not prohibit the sale of alcohol nor prohibit the opening of further licensed premises. It seeks to balance responsible alcohol consumption with the minimisation of alcohol related harm.

⁴ s 103 report dated 19 February 2020 at [92] – [93]

⁵ s 103 report dated 19 February 2020 at [94]

⁶ DLC decision at [62] – [63]

⁷ DLC decision at [70] – [71]

⁸ DLC decision at [72]

⁹ DLC decision at [75] – [79]



The Committee acknowledges the concerns raised by the objectors and their objection to the opening of a new off-license in Ōtaki. These objections all stated that there should be no more alcohol licenses granted in Ōtaki. Some were of the view that there should be less alcohol available.

The main concern that was specific to his application was that the Applicant is not local and does not have knowledge of the local community. However, the objectors and witnesses all acknowledged that the Applicant contacted them seeking to meet and learn about any specific issues that they wished to raise. None took up this offer.

The Committee is bound by the Act and must assess all applications against the criteria set out in it. None of the objections provided any evidence of how the application did not satisfy the requirements of the Act. While it has sympathy for the positions of the objectors it cannot simply decline all new applications for alcohol licenses. The Committee does not have the power to cap the number of licenses in a given area. This is an area that can be addressed through a Local Alcohol Policy which the Kāpiti Coast District Council can put in place.

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

Grounds of Appeal

[18] The grounds of appeal are that the DLC:¹⁰

- (a) failed to give any meaningful consideration to s 105(1)(i) of the Act when assessed against both the purpose (s 3) and object (s 4) of the Act;
- (b) did not assess Kiw-E Otaki's suitability under s 105(1)(b);

[19] In relation to the former, s 105(1)(i) reads:

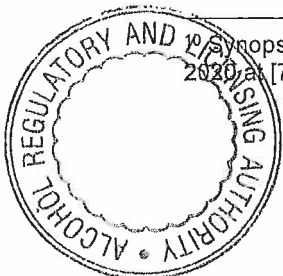
In deciding whether to issue a licence, the licensing authority of the licensing committee concerned must have regard to the following matters:

...

- (i) Whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—
 - (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; *but*
 - (ii) *it is nevertheless desirable not to issue any further licences:* (emphasis added)

[20] It is submitted by the appellant, Te Wānanga o Raukawa, that the DLC only considered s 105(1)(i) in one sentence in its decision saying that “There was no evidence that the amenity

¹⁰ Synopsis of submissions in support of application to adduce further evidence dated 6 November 2020 at [7] – [10]



and good order of the locality is badly affected.”¹¹ Te Wānanga o Raukawa submits that this is wrong and that there was evidence targeted to the exception in s 105(1)(i). It is submitted that the evidence before the DLC was that Ōtaki has high levels of social deprivation and alcohol related harm particularly in relation to the Maori community, which harm is the effect of other licences already granted in Ōtaki. As a result, it is submitted that there was sufficient evidence for the DLC to apply the “*nevertheless desirable*” exception in s 105(1)(i)(ii) and decline the application.

Application to adduce new evidence

[21] Te Wānanga o Raukawa seeks to adduce new evidence on appeal, namely:

- (a) an affidavit of Ms Mereana Selby drawing on publicly available information, and which annexes six letters of support for the appeal; and
- (b) an affidavit of Dr Stephen Palmer that clarifies his position, as the Medical Officer of Health, and which provides data and statistics on alcohol-related harm in Ōtaki.

Affidavit of Ms Mereana Selby

[22] The affidavit of Ms Selby states that in opposing the application, her main concern was the social deprivation of Ōtaki and the disproportionate consequences of liquor outlets in such areas. Ms Selby’s affidavit annexes:

- (a) an extract from Statistics New Zealand’s website of the 2018 Census data in respect of Ōtaki and Ōtaki Beach;
- (b) Kāpiti Coast demographic information which includes deprivation scores for Ōtaki and Ōtaki Beach;
- (c) a *PowerPoint* presentation from the Kāpiti Coast District Council website which refers, amongst other things, to deprivation, crime and employment statistics for the Kāpiti District;



11. DLC decision at [72]

- (d) the MidCentral DHB *Health Equity Data Report 2018* highlighting health indicator disparities in the Mid Central District and which concludes that Ōtaki has the highest proportions of people living in the most deprived neighbourhoods across the MidCentral District;
- (e) the MidCentral DHB's *Otaki Te Mahere Hauora Health and Wellbeing Plan 2018-2023* which discusses deprivation and which identifies as a priority area, mental health and addiction support;
- (f) a Health Promotion Agency/AlcoholNZ publication titled *What's the issue with Outlet Density and Availability?*;
- (g) extracts from the Law Commission Report *Alcohol in Our lives: Curbing the Harm*;
- (h) a study entitled *Close Proximity to alcohol outlets is associated with increased serious violent crime in New Zealand* by Day et al.; and
- (i) letters in support of the appeal from:
 - (i) Ms Shelley Warwick of the Ōtaki Community Board and Ōtaki Community College Board of Trustees';
 - (ii) the principals of Ōtaki College, Ōtaki School, Te Horo School, Waitohu School, Te Kura-ā-iwi O Whakatupuranga Rua Mano, Te Kura Kaupapa Maori o te Rito, Hato Petera Kaneira (St Peter Chanel), and Te Reanga Ipurangi Ōtaki Education Trust;
 - (iii) Adrian Gregory, Chair of Ōtaki Health & Wellbeing Advisory Group;
 - (iv) Leigh Rau, mother and member of the Ōtaki community;
 - (v) Kiwa Raureti, Chief Executive, Ōtaki Medical Centre; and
 - (vi) Donovan Joyce, Chairperson, Ngāti Maiotaki.

Affidavit of Dr Stephen Palmer

[23] The affidavit of Dr Palmer sets out his reasons for his initial opposition to the application, his reasons for withdrawing his opposition, and his current position on the application. Dr Palmer's affidavit annexes;



- (a) evidence about the ‘Crime Domain of the Indices of Multiple Deprivation’ including:
 - (i) an overview of indicators, domains and weights forming part of The New Zealand Index of Multiple Deprivation 2013 (developed by the School of Population Health at the University of Auckland); and
 - (ii) a map titled “Indices of Multiple Deprivation 2018, Victims of Crime Domain;
- (b) evidence about the New Zealand Deprivation Index including a map titled “NZ Deprivation index 2018” which shows the Ōtaki area;
- (c) evidence about age demography including the Age & Gender Demographic Profile from the 2018 Census for New Zealand, Wellington, the Kāpiti Coast District and Ōtaki;
- (d) evidence of alcohol-related harm as it relates to health outcomes including:
 - (i) a map of Alcohol-Related Emergency Department (ED) Attendances 2018 & 2019 showing the Wellington and Kāpiti Coast areas;
 - (ii) a list of Alcohol Attributable Conditions;
 - (iii) maps of Alcohol-Related Hospital Admissions July 2009 – June 2020 showing the Wellington and Kāpiti Coast areas; and
 - (iv) maps of Alcohol-Related Hospital Admission rates adjusted for age - July 2009 – June 2020.

Submissions in support of application

[24] Mr MacKenzie for Te Wānanga o Raukawa submits that the DLC failed to engage with the critical part of the opposition from Te Wānanga o Raukawa, namely whether it is



‘nevertheless desirable’ not to issue any further licences. In failing to do so, it is submitted that the DLC abdicated its inquisitorial function.

[25] It is submitted that as Te Wānanga o Raukawa was not legally represented that inquisitorial function took on greater prominence and that its lack of representation should not be used against it in respect of it now seeking to adduce further evidence.

[26] It is submitted that rather than taking a restrictive approach to the receipt of new evidence (i.e. only in exceptional circumstances), the Authority should apply the test applied in *Re Venus NZ Ltd* where Heath J said:¹²

I decided to exercise my discretion to receive the additional evidence because it was relevant, cogent and responded to the concerns expressed in the Authority’s decision that were not directly put to Mr Vel Ganasundara when he gave evidence.

[27] It is submitted for Te Wānanga o Raukawa that the test the Authority ought to apply is this test, namely that the new evidence must be ‘relevant, cogent, and directly responsive’.

[28] Mr Mackenzie submits that:¹³

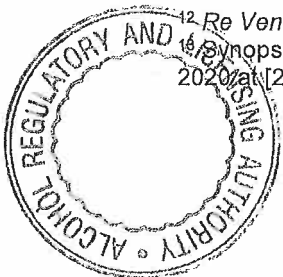
Whilst there is sufficient evidence to make its determination, the further evidence that Te Wānanga o Raukawa seeks to adduce will undoubtedly help the Authority to deal effectively with this matter on appeal (s 207 of the Act). It is respectfully submitted that the further evidence satisfies the relevant cogent and directly responsive test and should be received on appeal.

[29] Further, it is submitted that:

- (a) there can be no sensible objection to Ms Selby’s evidence insofar as it annexes publicly available material which should have been obtained by the DLC as part of its inquiry;
- (b) the evidence for the community is confined; and
- (c) Dr Palmer’s evidence is intended to provide clarity and up to date statistics.

¹² *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315, at [8]

¹³ Synopsis of submissions in support of application to adduce further evidence dated 6 November 2020 at [27]



[30] It is also submitted that if Te Wānanga o Raukawa loses the opportunity to be heard properly, it will have no basis to raise those same concerns on a renewal application.

[31] It is submitted that the new evidence is necessary, given the DLC's failings at first instance, to provide the Authority with additional evidence to help it make an informed decision and deal effectively with the matter before it.

[32] Finally, Mr MacKenzie submits that the community's concerns take priority over any prejudice to Kiw-E Otaki Limited although it is not accepted there will be any prejudice to Kiw-E Otaki Limited because the evidence will be able to be tested and its receipt will not delay the hearing of the substantial appeal set down for 18 December 2020. Further any costs incurred by Kiw-E Otaki Limited in relation to its leasing arrangements are entirely of its own making as its lease could have been conditioned to account for possible appeals.

Submissions of Kiw-E Otaki Ltd opposing the application

[33] Kiw-E Otaki Ltd opposes the application for leave to adduce new evidence.

[34] Mr John Young, counsel for Kiw-E Otaki Ltd submits that the formulation of the test for adducing new proposed by Te Wānanga o Raukawa (that the evidence is "relevant, cogent and responds directly to concerns raised about a matter on appeal"), is misconceived and is contrary to the well-established and orthodox approach in respect of new evidence.

[35] It is submitted that the principles to be applied are whether the evidence is fresh, relevant (or material) and cogent, and that these tests are conjunctive.

[36] It is also submitted that an applicant must put its 'best foot forward' before a DLC and that if it fails to do so, that should not be a basis for seeking to adduce new evidence on appeal.

Ms Selby's Affidavit

[37] Kiw-E Otaki Ltd submits that Ms Selby's evidence is not fresh, relevant or cogent. All of the material sought to be adduced in evidence, it is submitted, existed at the time of the DLC hearing and with reasonable diligence it could have been adduced at the hearing. It is submitted



that to overcome this shortcoming, counsel for Te Wānanga o Raukawa is seeking to avoid the ‘freshness’ requirement based on the fact that Ms Selby was not legally represented. It is submitted that the test should not change based on whether an objector is legally represented, and that Te Wānanga o Raukawa’s submission is also premised on the DLC proceeding being adversarial when it is in fact inquisitorial.

[38] It is also submitted that the evidence is not relevant or cogent in that it is generalised in nature and does not draw any link between the risk to amenity and good order, harm, and the issue of the off-licence other than in ‘general availability terms’.

[39] It is submitted that little weight ought to be given to the letters in support where these parties have not provided their own sworn statements and it is assumed they will not be appearing before the Authority (should the application to adduce new evidence be granted).

[40] Two of the letters (i.e. those of Shelly Warwick and Leigh Rau), it is submitted, are also from objectors who appeared before the DLC, and while they were not granted standing in their own right, they appeared as witnesses for Te Wānanga o Raukawa. Further, it is submitted that both these letters relate to the notification process and engagement by Kiw-E Otaki Ltd with the community and neither matter is raised in the appeal. Moreover, it is submitted that both Ms Warwick and Ms Rau declined an invitation to meet with Kiw-E Otaki Ltd, as did Ms Selby. It is submitted that the concerns of Ms Warwick and Ms Selby are recorded in the decision of the DLC and that the contents of their letters add nothing new such that they are not relevant.

[41] It is also submitted that there is nothing in the letter from Ngāti Maiotaki Hapū (an objector represented by Mr Joyce before the DLC), which could not have been presented to the DLC. In that sense, the contents of the letter are not fresh. Insofar as it differs, it is submitted that the letter is being adduced in an attempt to put a new case forward for no valid reason.

[42] The other letters in turn, were prepared by parties who did not object to the application or seek to be heard before the DLC and elected not to attend the DLC hearing when they could have done so. In this regard, the letters are not fresh.



Affidavit of Dr Palmer, Medical Officer of Health

[43] In the case of the Medical Officer of Health's evidence, it is submitted that the appellant has invited the Medical Officer of Health to change his stance from that which he took before the DLC, and that the Medical Officer of Health has accepted this invitation on the basis of him now becoming aware of public objections.

[44] It is submitted that the failure by the Medical Officer of Health to make proper enquiries about public objections does not provide a proper basis for the fundamental change in position now taken by him.

[45] While Dr Palmer records that it might be helpful for the Authority to have a series of information before it regarding crime and deprivation, age demography and alcohol-related harm as it relates to health outcomes, it is submitted that all of this existed at the time of the DLC hearing and with reasonable diligence could have been brought to that hearing.

[46] In so far as Dr Palmer says that the Police may be able to provide greater detail from Recorded Crime Victimisation Statistics for the Ōtaki area, it is submitted that the Police have not sought to change their reporting position, and nor has any new evidence from the Police been sought to be adduced. While Dr Palmer is an expert in public health, it is respectfully submitted that he is not part of the New Zealand Police.

[47] To the extent that Dr Palmer considers that the DLC should have requested information from the Police, it is submitted that is an issue for the substantive appeal.

[48] In any event, it is submitted that this evidence is neither relevant nor cogent as it is also generalised in nature and does not draw a link between amenity and good order, harm and the issue of the licence.

[49] It is further submitted that no party claimed that the locality was badly affected by the effects of existing licences.

[50] It is also submitted that the claim that Te Wānanga o Raukawa will not be able to raise issues relating to amenity and good order or suitability on renewal is wrong. Sections 103(1)(b) and 106(2) expressly require that these matters are considered on renewal.



[51] It is also submitted that Kiw-E Otaki Ltd will be prejudiced if the application to adduce new evidence is granted as it will be forced to deal with generalised evidence which was not adduced before the DLC, over a year after the application was lodged. It is submitted that Kiw-E Otaki Ltd should not be penalised for putting its best forward when Te Wānanga o Raukawa did not.

Decision of the Authority on application to adduce new evidence

Applicable test

[52] An appeal brought pursuant to s 154 of the Act is by way of rehearing.¹⁴ In *Paper Reclaim Ltd v Aotearoa International Ltd (No 2)*, the Supreme Court said that an appeal by way of rehearing:¹⁵

... does not contemplate a right to a new hearing of the evidence. The appellate Court is required to determine issues which had to be determined in the proceeding of the Court appealed from on the basis of the evidence appearing in the lower Court's record. This may be supplemented by adducing fresh evidence, but only within established guidelines. It would ordinarily be outside the scope of the statutory discretion to proceed by way of rehearing for this Court to allow a new case to be put up by a party to the appeal on which fresh evidence had to be called.

[53] In *Berry v Blackbull Liquor Hastings Limited*, Kos J said:¹⁶

The legal principles governing the admission of further evidence on appeals are clear:

- (a) Apart from up-dating evidence concerning matters occurring since the hearing, the power to grant leave to adduce further evidence is sparingly exercised.
- (b) There is no power to admit further evidence on appeals on questions of law only, except where there are "very special reasons".
- (c) The evidence must be cogent and likely to be material.
- (d) It must normally be shown that the evidence could not reasonably have been discovered at an earlier stage. Obviously that qualification does not apply where the evidence is of a purely up-dating nature.

[54] More recently, in *Capital Liquor Limited v The New Zealand Police* Clark J reinforced these guidelines saying:¹⁷

While s 157(4) does provide the Authority "full discretionary power" to admit fresh evidence, it does not specify how that discretion is to be exercised. It is clear, however, from s 157(1), and the established principles governing the conduct of appeals by way of

¹⁴ s 157(1)

¹⁵ *Paper Reclaim Ltd v Aotearoa International Ltd (No 2)* [2007] NZSC 1, [2007] 2 NZLR 124 at [16] cited in *Capital Liquor Limited v The New Zealand Police* [2019] NZHC 1468 at [46]

¹⁶ *Berry v Blackbull Liquor Hastings Limited* [2013] NZHC 3445 at [7]

¹⁷ *Capital Liquor Limited v The New Zealand Police* [2019] NZHC 1468 at [47]



rehearing, that the discretion is to be exercised in accordance with the requirements for freshness, relevance (or materiality) and cogency.

[55] In *Capital Liquor Ltd*, Clark J said that the remarks of Wylie J in *New Zealand Co-Operative Dairy Co Ltd v Commerce Commission*¹⁸ are equally apt to the context of the Authority. Referring to earlier decisions of Wild J,¹⁹ Wylie J said:

It does not seem appropriate to regard the fact that in normal circumstances, i.e. where no new evidence is introduced, the appellate Court will decide an appeal on the basis of the circumstances as at the time of hearing of the decision appealed against as a reason for not introducing new evidence, The real principle to be extracted from his decisions in those cases is, I think, the injunction against allowing the introduction of evidence which will turn an appeal into the presentation of a new case, rather than that an appellate court is to decide an appeal on the circumstances as they existed at the time of the lower tribunal's hearing.

[56] To summarise, the evidence must:

- (a) be fresh, relevant (material), and cogent; and
- (b) not be introduced in an attempt to turn the appeal into the presentation of a new case.

[57] This is also the approach the Authority recently followed in *Sogi Trading Ltd v Licensing Inspector Auckland City Council*.²⁰

[58] The Authority does not consider that in *Venus* Heath J was proposing a new test for the introduction of new evidence. Heath J admitted the new evidence because it related to criticisms by the Authority about the candour of the applicant which were not put to the applicant. Heath J does not expressly state a new test to be applied, or that he was departing from the test referred to above.

¹⁸ *New Zealand Co-Operative Dairy Co Ltd v Commerce Commission* (1991) 3 PRNZ 262 (HC) at 266-267

¹⁹ i.e. *Clark v Licensing Control Commission* [1971] NZLR 678; *AMP Society v Licensing Control Commission* [1970] NZLR 1141, and *Ash Allen Motors (1972) Ltd v Colin Cotter Motors Ltd* [1977] NZLR 146

²⁰ *Sogi Trading Ltd v Licensing Inspector Auckland City Council* [2020] NZARLA 80



Relevance

[59] The Authority is satisfied that the evidence sought to be adduced, which in the main goes to the deprivation and vulnerability of the community, is only of marginal relevance to the Authority's evaluation task on appeal.

[60] The Authority must make its own assessment of the merits of an application on appeal,²¹ independently assessing the application against the criteria in s 105 of the Act and reaching its own conclusion. In this respect, the evidence will be relevant if it goes to one or more of those criteria. As confirmed by the High Court in *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited*²² the vulnerability of an area raises the threshold of suitability (the assessment of Kiw-E Otaki's suitability under s 105(1)(b) being one of the challenges in this appeal).

[61] To that limited extent the evidence might be said to be 'relevant'.

[62] As is clear from *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*,²³ however, what the Authority is required to consider is whether there is a causal nexus between the evidence to suggest that the grant of the application, contrary to the object of the Act, will increase the risk of alcohol abuse and the relevant risk.²⁴ While *Lion Liquor* involved a renewal of an off-licence, the same reasoning is applicable to the initial grant of an off-licence. As Clark J put it:²⁵ "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." How the evidence links to the application is not apparent other than, as we have already said, to say Ōtaki is a deprived area. Beyond this, the evidence does not assist the Authority in any material respect.

²¹ *Rainger v General Distributors Ltd* [2019] NZHC 3483

²² *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [65]

²³ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123

²⁴ *Otara-Papatoetoe Local Board v John Enterprises Ltd* [2012] NZHC 1406, [2012] NZAR 717 at [31], *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, [2015] NZHC 2689, [2016] NZAR 287, at [50], and *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 23 at [60]

²⁵ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 23 at [67]



Cogency

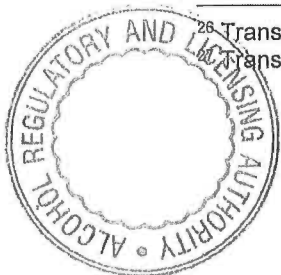
[63] In terms of cogency, Mr MacKenzie has said that there is already sufficient evidence on the record for the Authority to make its determination. The logical conclusion to be drawn from this can only be that evidence will turn the appeal into the presentation of a new case contrary to the injunction in *Paper Reclaim Ltd v Aotearoa International Ltd (No 2)* and *New Zealand Co-Operative Dairy Co Ltd v Commerce Commission*, and recognised by Clark J in *Capital Liquor Ltd*.

[64] Relying on s 207, amongst other things, what Te Wānanga o Raukawa is seeking to do is to provide the further evidence to help the Authority to deal effectively with this matter. Section 207, however, does not assist. That section does not address how the Authority's discretionary power to admit fresh evidence should be exercised. Rather it deals with how any statement, document, or matter might be treated should it be admitted, in circumstances where it would not otherwise be admissible in a court of law. A hearsay statement, for example, might be received by the Authority if it will assist the Authority to deal effectually with the matter before it. That is not what is being considered in the context of this application.

[65] The evidence of Ms Selby is, in essence, that Māori comprise 40% of the population in Ōtaki and that they are uniquely vulnerable. Ms Selby says in her evidence that her main concern was the social deprivation of Ōtaki and the disproportionate consequences of liquor outlets in such areas. What Ms Selby now seeks to do is to put before the Authority readily available information that bolsters this point. Having regard to the evidence on record, the Authority is of the view that Ms Selby's concerns were well articulated before the DLC. Ms Selby spoke of her concerns about the 40% of the population who are "not equal" with regard to health status, economics, housing, and incarceration, and the desire to maximise the well-being of Māori.²⁶

[66] Ms Selby spoke of the reasons Te Wānanga o Raukawa was established in 1981, namely because of the poor state of her people in the 1970s and because of the desire "to try to change the state of our people" and hence it resists "any influences, negative influences on that for our people".²⁷

²⁶ Transcript at page 75 of 127 of DLC bundle
²⁷ Transcript at page 76 of 127 of DLC bundle



[67] Before the DLC Ms Selby said:²⁸

So, what we don't want in this town, Te Wānanga o Raukawa are working really hard to strengthen our people to, to ensure better lives for our children for the future and to have better homes, better health outcomes, a better employment outcome, less incarceration, all of those kinds of thing. Any one of these kinds of activities are a direct threat to achieving the goals of Te Wānanga o Raukawa that is to maximise our contribution to the survival of Maori as people, which we don't think is absolutely secured.

[68] The 2018 Census data simply confirms Ms Selby's evidence before the DLC that Māori comprise just over 40% of the population in Ōtaki, and just under 40% in Ōtaki Beach.

[69] The Kāpiti Coast demographic information, and other reports, in turn, confirm what Ms Selby and others said (albeit in a less statistical way), namely that Ōtaki and Ōtaki Beach are deprived areas in terms of socio-economic status. That the store is proposed for a "low decile area" is also recognised in the evidence of Mr Peter Joseph, the Franchise Manager for Super Liquor Holdings Ltd who said:²⁹

The Directors and I met with Vanessa Young and Dr Stephen Palmer from Regional Public Health. Primarily, Ms Young was concerned about another liquor store opening in a low decile area. During this meeting we discussed the proposed Premises policies and Procedures and explained the considerable experience the applicant had owning and managing a liquor store in a low decile location. During the meeting Dr Palmer indicated that it would be good if the Police could organise regular catch-ups with licensed premises and concerned community groups and I agreed to follow it up with the Police. This is something that I support, and I know that directors also support.

[70] That the population is 40% Māori and that Māori suffer from the effects of alcohol was recognised by the DLC and is a matter of record. In an exchange between Ms Selby and Mr Fraser McInnes of the DLC about whether bringing alcohol to Ōtaki will benefit Māori,³⁰ Mr McInnes said:³¹

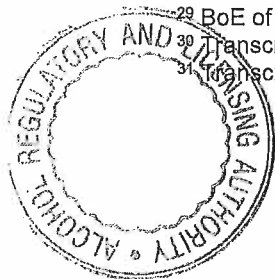
... and therefore if 60% of the population is not Māori. So historically this community [inaudible] shocker, and that [inaudible] Māori as well so I am cognisant of these things. Prohibition has never worked. [inaudible] at one point all licensing agencies in the Hawkes Bay bar Māori from public bars and bars. I think [inaudible] again. We will take this Māori health thing extremely seriously as we make our decision. It's hard for this man here to understand the statistics and things like that. But we cannot make the decision purely on things Māori. We will have a balance view and we will also completely bear in mind what you are saying.

²⁸ Transcript at page 77 of 127 of DLC bundle

²⁹ BoE of Peter Joseph at [3.3]

³⁰ Transcript at pages 58 – 59 (of 127) of DLC bundle

³¹ Transcript at pages 59 of 127 of DLC bundle



[71] The evidence of Mr Donovan Joyce, Chairman of the Ngāti Maiotaki Hapū also refers to the injurious effect of alcohol on Māori and said that:³²

... But I'm here to tell you that [inaudible] wananga we strive to better ourselves, we've had years and years of being at the bottom of every statistic.

[72] To the extent that The Law Commission Report *Alcohol in Our lives: Curbing the Harm* and the Day et al. study speak to the issue of proliferation and outlet density, this is provided for in s 106(1)(iii) of the Act which the Authority must consider. But as this Authority has previously said,

While the number of premises of the kind concerned in a locality is a matter which goes to the DLC's opinion on whether the amenity and good order of the locality, as an objection must relate to a matter in s 105 of the Act.³³ The proliferation of outlets is a legislative aid for the DLC when forming an opinion on s 105(1)(h) and (i).³⁴ In itself, proliferation is not a ground of objection without some discussion of the effects of the issue of the licence on amenity and good order which is the s 105 criterion against which the application is being evaluated.³⁵

[73] Otherwise, to the extent that The Law Commission Report speaks to the effect of alcohol on Māori and is a driver of inequality, there is evidence on the record about this. The issue then, is less about whether Ōtaki is deprived, but how this should be considered by the Authority when evaluating the application. The evidence does not go to this point.

[74] In terms of the letters in support of the appeal, these include letters from Ms Shelley Warwick of the Ōtaki Community Board and Ōtaki Community College Board of Trustees' and Ms Leigh Rau, mother and member of the Ōtaki community. Ms Warwick and Ms Rau both sought to object in their own right but the DLC determined that they did not have standing under s 102 of the Act. Nevertheless, they gave evidence for Te Wānanga o Raukawa.

[75] The letter from Ms Warwick annexed to Ms Selby's evidence seeks to challenge the notification process which is not related to the grounds of appeal. The letter from Ms Rau also comments on the notification process and about engagement with the community, the latter being discussed as part of the record.³⁶ The fact that both Ms Warwick and Ms Rau object to the licence being issued is also apparent from the record.

³² Transcript at pages 97 of 127 of DLC bundle

³³ s 102(3)

³⁴ *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd* [2018] NZHC 3100 at [66]

³⁵ *S Dhillon and Sons Ltd (re Big Barrell Palmerston North)* [2013] NZARLA 256 at [35] and see also *Esborne Liquor Mart v Ka Pai Kaiti Trust* [2018] NZARLA 316 at [89]

³⁶ Transcript at pages 87 – 88 (of 127) of DLC bundle



[76] Similarly, the letter in support from Mr Donovan Joyce appears to add little if anything to what is already contained in his objection in terms of the Ōtaki community and its various whanau and hapu being left to deal with the consequences if the application is granted.³⁷

[77] The letters from the principals of the various colleges and schools and from the Ōtaki Health & Wellbeing Advisory Group, all speak to the alcohol related harm in general terms including domestic violence, students lacking food due to alcohol being prioritised, traumatised students, suicide, risky sexual practices, damaging and dangerous social behaviour, impact on social cohesion and social connectedness. That alcohol may lead to these harms is well understood by the Authority and is expressly recognised in the definition of alcohol-related harm in s 5 of the Act.

[78] The letter from the Ōtaki Medical Centre again speaks to deprivation and the percentage of people in Ōtaki who identify as Māori.

[79] In relation to Dr Palmer's evidence to the extent that this states that Ōtaki is deprived, this does not add significantly to what is already on the record save that it states this in quantitative statistical terms rather than qualitative ones.

[80] On balance, the Authority does not consider that the new evidence, if given, might have influenced the result in any significant way. Against that, the impact on the appeal is likely to be unnecessary delay.

Freshness

[81] The Authority is not satisfied that the evidence could not have been given at the DLC hearing or could not reasonably have been discovered at an earlier stage should the appellant have thought it necessary. As Mr MacKenzie has stated in the case of Ms Selby's evidence, this is in the main evidence derived from public sources and at least two people who provided letters in support gave evidence before the DLC.



[82] In the case of Dr Palmer's evidence, as already stated, on 10 January 2020 the Medical Officer of Health opposed the application. Subsequently, on 25 March 2020 he withdrew his opposition following discussions with the applicant. Then this was qualified by Ms Young before the DLC, who said:³⁸

... we did initially oppose the application and then we withdrew our opposition because we were happy with what they'd come back. But that doesn't, also, our lack of opposition does not mean that we support, a lack of opposition does not mean support either.

[83] Now, Dr Palmer seeks to give evidence that he withdrew his opposition based on discussions with the applicant, but primarily because he understood that there was no opposition from any of the Police, the Licensing Inspector of the local community. How this is relevant is unclear. The Medical Officer of Health is required independently to inquire into an application and report on any matters in opposition to the application.³⁹ This inquiry is not premised on whether the other reporting agencies or the public have any grounds to object under s 102, and operates in parallel to that reporting and objection process. As expressly stated in s 103(4) of the Act, a DLC may assume that if no issues are raised by the Medical Officer of Health within the 15 working days, then the application is not opposed.

[84] Dr Palmer also says that because of the intensity of the COVID-19 workload, neither he or Ms Young were able to prepare full briefs of evidence for a hearing on 22 July 2020. Dr Palmer now says he is in fact opposed to the application and he only withdrew support because he understood there was no opposition to the application and he is now aware that there is considerable opposition to the application.

[85] The Authority is not persuaded by this. While New Zealand went into lockdown for COVID-19 on 25 March 2020, and it is reasonable to assume that he was involved in the COVID-19 response in the lead up to that lockdown to a greater or lesser extent, there is nothing in Ms Young's email of 25 March 2020 about COVID-19. Nor did Ms Young mention COVID-19 when she appeared before the DLC on 21 July 2020. Moreover, before the DLC Ms Young said:⁴⁰

... the Medical Officer of Health can provide some health data if the Committee wants to request it, it now has some health data for Palmerston North Hospital ED admissions if you're interested in looking at that, its collated but he wasn't able to come today and he's received it fairly recently so he hasn't had a through look at what it says.

³⁸ Transcript at pages 73 – 74 (of 127) of DLC bundle

³⁹ s 103(3)

⁴⁰ Transcript at pages 72 of 127 of DLC bundle



[86] While it is unclear when Dr Palmer obtained 2019 or 2020 data, as he states in his evidence, he has this data going back to July 2009. Either way, by withdrawing its opposition, the Medical officer of Health chose not to put this information before the DLC despite it now considering that the Authority might find it helpful.

[87] As this Authority said in *Sargent v Kapiti Supermarket Ltd*⁴¹

Section 103(4) of the Act is relevant. It states:

“The Licensing Committee may assume that, if no report is received from the Police or Medical Officer of Health within 15 working days after sending the copy of the application to them, the Police or Medical Officer of Health does not oppose the application.”

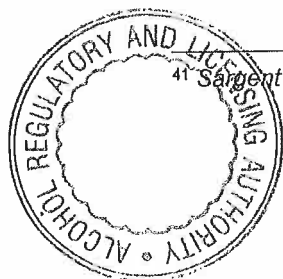
As the decision of the DLC stated, the Police initially (on 8 July 2014) indicated that they had no objection to the application. After the 15 days referred to in s 103(4) of the Act, the Police, by email dated 1 August 2014, advised that they now opposed the application and intended to appear at the hearing to support the Medical Officer of Health in his opposition for the same reasons.

This scenario raises two points:

[a] In terms of s 103(3)(b) of the Act the Police must decide within 15 working days after receiving a copy of the application whether or not they have any matters in opposition to it. Whether or not the Police have matters in opposition must be determined within the timeframe stated in the Act and the Police are bound by the indication that they give. There is nothing in the Act to prevent the Police altering their stance within the 15 day period. Likewise, it is permissible for the Police to withdraw their opposition at any time. If the Police do have matters in opposition to an application they must state those matters within the 15 working day period. Merely to state that they oppose an application without setting out the matters in opposition is not adequate as this fails to tell an applicant the nature of the case it must answer at the subsequent hearing;

[b] If the Police fail to state that they have matters in opposition to an application within 15 working days after the copy of the application is sent to them, the DLC is entitled to assume that the Police do not oppose the application. The Police are deemed not to oppose.

After the expiration of the 15 day period and at the hearing before the DLC, the Police were not entitled to alter their original stance. Further, the DLC should have assumed that the Police had no matters in opposition to the application — s 103(4) of the Act. In this case, the change of stance occurred approximately three weeks after the original indication of no opposition and arguably the respondent did have time to appreciate the nature of the Police opposition and answer it. However, it is important that District Licensing Committees and the Authority require compliance with the statutory obligations of the reporting agencies. Too often recently have reporting agencies failed in this regard and as a result breaches of natural justice have occurred. This must not be permitted to continue. Finally, the waiver provisions contained in s 208 of the Act will seldom apply as the neglect or omission will usually be wilful.



⁴¹ *Sargent v Kapiti Supermarket Ltd* [2015] NZARLA PH 194 at [13] – [18]

The foregoing comments are not at variance with those made by Heath J in *Otara-Papatoetoe Local Board v Joban Enterprises Ltd* CIV 2011-404-007930; [2012] NZHC 1406 as to supplementary reports by the Police and Inspectors. These should be provided when, for example, background community information arising out of an objection would be helpful to the DLC or Authority. However, the provision of those reports does not entitle a reporting agency such as the Police to change its stance and oppose an application when it had previously indicated no opposition.

Arguably, to do so constitutes an abuse of process. This point was not argued at the hearing; and the Authority has not sought submissions on it. An abuse of process of this nature might cause the Authority to strike out an appeal, as it did in *Whittle* (supra).

[88] The vacillation in the attitude of the Medical Officer of Health in respect of this application raises similar concerns to those raised in *Sargent v Kapiti Supermarket Ltd*.

[89] While the Authority is conscious that it is Te Wānanga o Raukawa which seeks to adduce further evidence from the Medical Officer of Health, the Medical Officer of Health's evidence is precisely what one would have expected him to have raised if it had any opposition to the application. Instead, as already stated, he chose not to do so. That he wishes to do so now does not render the evidence to be fresh.

[90] On balance, the Authority is not satisfied that the evidence sought to be adduced is fresh.

[91] For completeness, in making our determination, we make no comment on whether the DLC should have obtained further evidence as part of its inquiry. That is a matter which is more properly addressed in the substantive appeal.

Summary

[92] Having regard to the legal principles governing the admission of further evidence, the Authority is of the opinion that the logical conclusion to be drawn is that evidence will turn the appeal into the presentation of a new case contrary to the injunction in *Paper Reclaim Ltd v Aotearoa International Ltd (No 2)* and *New Zealand Co-Operative Dairy Co Ltd v Commerce Commission*, and recognised by Clark J in *Capital Liquor Ltd*.



Result

[93] For the reasons stated, the application to adduce new evidence on appeal is dismissed.



K D Kelly
District Court Judge
Chairperson, Alcohol Regulatory and Licensing Authority

Attachment 2: The applicants reasoning for the removal of the above conditions in their application

5. Conditions

Question 17 of the Council application form, in relation to Conditions states:

Describe any conditions of the licence the applicant seeks to vary or cancel: To be filled in for each condition the applicant seeks to vary or cancel – attach additional pages as necessary.

The applicant suggests conditions 11 and 13 could be deleted from the licence.

These conditions are as follows:

11. The licence holder will take reasonable steps to establish an Otaki alcohol forum. It will do so in collaboration with the reporting agencies. Such reasonable steps may include undertaking administrative tasks or coordinating the reporting agencies, emailing invitees, or arranging a venue.

13. The licence holder will not appoint temporary or acting managers under section 229 and 230 of the SSAA.

Condition 11 was offered due to concerns expressed by MOH regarding alcohol related harm in the community, and the suggestion that Kiw-E Otaki initiate a forum for agencies, licence holders and local representatives to meet to discuss alcohol issues at a local level and look at ways of reducing these. Kiw-E Otaki agreed to this condition.

Reasonable steps have been made to organise a forum, including from 6 April 2021 when Super Liquor organised a meeting with the Police, MOH and Inspector to discuss the form a forum would take, and timing. After efforts to accommodate all parties, a forum date was set in early August for the 8th September 2021 at the Otaki Memorial Hall Supper Room, with 10 attendees confirmed, and an agenda set.

However, the September forum meeting had to be postponed due to the intervention of covid as the directors of Kiw-E Otaki were in lockdown in Auckland as from early September. This continued until almost Christmas, and the advent of the Omicron variant has now meant the uncertainty means setting a date for the forum is not been possible in the foreseeable future. Significant efforts were made to demonstrate that "reasonable steps" have been taken in compliance with the condition, but the consequences of Covid 19 have been obstructive in the forum actually occurring. Any forum date is now in abeyance pending the end of the pandemic.

Kiw-E Otaki is supportive of the concept of a forum and is keen to participate, and believes it has complied with condition 11 in that reasonable steps have been taken. Kiw-E Otaki suggests however that other parties would be better placed with more expertise and contacts within the community to organise the forum once the uncertainties of Covid have abated. As such, Kiw-E Otaki suggests the requirement to establish a forum be removed as a condition of its licence. Kiw-E Otaki is happy to discuss this matter with the reporting authorities before the District Licensing Committee makes its decision if it is appropriate.

In respect of condition 13, Kiw-E Otaki has not needed to appoint a temporary or acting manager during the past year. It will make every effort not to do so in the future, as it appreciates its responsibility for complying with the law and recognises the importance of its staff being fully trained and with Managers' certificates. However, with the advent of Omicron the directors are aware that staffing may become an issue during the term of the licence, and a temporary or acting manager may be the only way to continue operating for short periods if staff fall ill. As the Act provides specifically for this situation, Kiw-E Otaki requests this condition be deleted from its licence if the licence is renewed.

Otherwise, Kiw-E Otaki does not wish to see any of the other conditions varied or removed from its licence.

Attachment 3: Confidential Super Liquor E-Commerce onboarding Manual.

You will receive an eCommerce Sales Agreement, Service Standards Acknowledgement which included in this manual and the pre-requisite checklist which needs to be executed by both parties to go live on the E-Commerce website.

PREREQUISITES FOR JOINING ECOMMERCE

To participate in the Super Liquor eCommerce solution there are 6 pre-requisites that must be met. These prerequisites are critical to ensure that the product and pricing information needed to populate the website is accurate and available, the customer data stored in POS is protected and secure, and the customer online shopping experience is consistent and reliable. The prerequisites for participation are:

Maintained inventory

- Regular Stock takes being completed (at least 4 per year).
- Inwards Goods are being entered into POS system.
- Transfers being entered into POS system.
- PLU Rationalisation (have the correct PLU active).

Core range compliance

- Core range must be stocked.
- If part of clubs, the clubs range must be stocked.

eCommerce training

Super Liquor Academy On-Line Course commitment to complete:

- Introduction.
- Criteria for eCommerce.
- The Sales Process.
- Service and Delivery Standards.
- Key extra bits.
- Know the law.
- Scenarios.

Service standards

Acknowledgement to agree to standards within this manual.

1. Customers enter the website and verify their age
2. Customers can either register, login or start shopping
3. Customers can click on any cycle promotional or core range products and add to their cart from the main website
4. A pop up will appear asking the customer if they would like to pick up or have their order delivered, the customer can then chose the option they prefer
5. Customers are then prompted to select a store
6. Once the customer has selected their store, they will then be able to view the store product range as well as the promotions on cycle and core range products
7. Customers can then continue to click on products and add this to their online shopping cart
8. Once all the products have been added to their cart, the customer then goes to their cart and selects 'Go to Cart'
9. Customers are then promoted to either log in, check out as a guest, or register if they are not logged in already
10. Customers will see a confirmation screen with their products, price & quantity. Here customers can remove products from their cart or update their quantity as well as add a delivery note or gift message
11. Customers then click on 'Checkout'
12. Customers are then prompted to select their billing address and if they want to ship to the same address, if they choose to deliver to another address, they update this information in the same screen
13. Shipping method is displayed which the customer may or may not have more than one choice for example, rapid delivery (this is set at store level)
14. Once the customer has confirmed their order, payment is processed online
15. You will receive an alert on your POS to action the order within 2 hours
16. The store then needs to pick and pack the order for delivery
17. Update the status of the order on the POS system which is actioned by processing the sales in the POS
18. Print out the delivery label, packing slip and invoice via your POS system
19. All receipts legally must have the licence holders name, licence number & expiry date. For example, "Must Have Wines Limited, 3/050/007, expiry 11/2020"
20. Please send an email or call the customer for local store deliveries, if the deliver is being done by courier, please see details below on how to book the courier.

Deliveries cannot be delivered at any time after 11pm on any day or before 6am on the next day or at any time on Good Friday, Easter Sunday, and Christmas Day, or before 1pm on Anzac Day. You should also check your licence conditions and the local alcohol policy in your area in case different delivery times are specified.

- Same Island - \$15.00
- Inter-Island - \$21.00
- Rural Deliveries – additional charges apply.

*All rates include the various surcharges

This is for the heaviest at 20kg per unit (unit is 12 bottles of wine or 24 pack beer for example – see packaging standards for more detail). Saturday delivery charges are being worked on – if you need to update your charges to have this included, please contact Sinead at the Support Office on sinead@superliquor.co.nz.

NZ Couriers

SLH has preferred rates with NZ Couriers where together with your welcome email, an account application form will be sent to you. On completion of the account application form, please send that to the support office person you received your welcome email from. The application form is then sent to NZ Couriers where the rates are loaded against your account and a local rep will be in contact with you to arrange training. Payment terms with NZ Couriers is 20th of the month following.

Store standard deliveries

For all store deliveries:

- If you choose to brand your vehicle, please contact the Support Office for the branding guidelines
- Orders to be packaged correctly with correct labels (see below). If orders are not packaged correctly and sent via NZ Courier, your claim will not be processed.
- Staff to be in uniform with a name badge and tidy
- Vehicle used for deliveries need to be clean
- Ensure the recipient is the person who placed the order
- Verify age before leaving the order with the receiver, if sufficient evidence is not produced that they are of age to purchase alcohol, you may not leave the order with them

Deliveries cannot be delivered at any time after 11pm on any day or before 6am on the next day or at any time on Good Friday, Easter Sunday, and Christmas Day, or before 1pm on Anzac Day. You should also check your licence conditions and the local alcohol policy in your area in case different delivery times are specified.

Gift Cards

Customers can purchase gift cards together with their product purchases online. In some cases customers may place a large gift card order online (for example, company wanting to give their employees an incentive gift) which may be of a large value. We recommend that you send these orders directly to the support office on accounts@superliquor.co.nz to be processed. Under Phase 1 gift cards will be actioned by SLH and consumers will be told via the site that the order will be directed to SLH. In the later phases, gift card purchasing and redeeming will be integrated into the website so customers can purchase and redeem gift cards online together with their product purchases.

PACKAGING STANDARDS

Packaging orders for delivery or collection

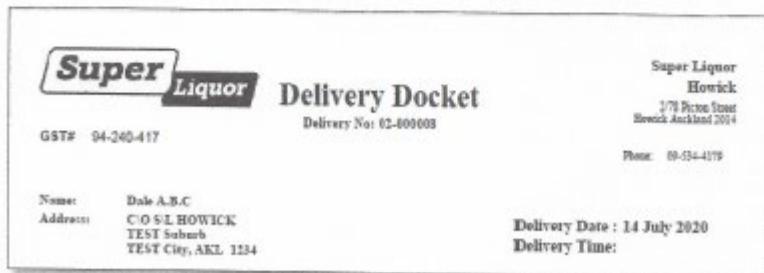
All products are to be packed for delivery; no products are to be loose. Only use boxes that are sturdy or purchase boxes from your local supplier or contact the Support Office to assist you in setting up an account for Officemax through Nice1 for great rates on boxes.

If you are delivering yourself or using a NZ Couriers, please follow these guidelines:

- Choose the right size box
- Consider strength and durability
- Pack any 10 or 12 packs as one package, ensure two 12 packs are also sent as one package using the branded tape (see note below). Wine or spirits can be packed up to a 12 pack size
- Use packaging material like dividers, shredded paper, bubble wrap, corrugated cardboard to ensure products do not move during transport, see the 5/5 rule below
- Include the invoice and/or GST receipt
- Use the branded tape to seal the box. When sealing the box, make sure you seal all openings
- Place the ID sticker in a visible place on top of the box



- Ensure the delivery label is clearly visible. The delivery docket will be printed as per the below screen shot as to be able to fit on smaller boxes



Attachment 4: Applicant has not agreed to the addition of a discretionary condition and undertaking around delivery and remote sales.

Super Liquor Otaki



Peter Joseph <pj@superliquor.co.nz>

To Antoinette Bliss



Fri 19/08/2022 12:33 PM

This sender pj@superliquor.co.nz is from outside your organization.



Hi Antionette, as pe phone call this morning, please find attached on-boarding pages that pertain to what you have requested regarding on-line sales, these 4 pages are part of a 19 page on-boarding process and are happy to show you but would not be able to leave a copy due to commercially sensitive information.

As previously discussed, we can ensure our staff will get proof of age when delivering on-line orders (our preference is to deliver as many deliveries ourselves) and have a sticker on boxes reminding couriers that they also need to ask for proof of age but would not want to be responsible if the courier didn't, just as every other on-line business wouldn't want to
Please let me know if you require anything else

Cheers PJ

Peter Joseph
Franchise Manager – Lower North / Otago / Southland
Super Liquor Holdings Ltd
Mobile : +64 274450535
Email : pj@superliquor.co.nz



Attachment 5: Plan of licensed area



APPROVED
08 SEP 2020