

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by Huntly
Grocer Limited for an off-
licence pursuant to s.100 of the
Act in respect of premises
situated at 107 Main Street
HUNTLY known as "Fresh
Choice Huntly".

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Quorum: Chairperson Andrew Baker
 Members: Dr Patsi Davies
 Jason Howarth

HEARING at Ngaruawahia on 23rd August 2024

APPEARANCES

For The Applicant

Ms Katherine Martelli - Applicant
Ms Poppy Mitchell-Anyon – counsel for applicant
Ms Alana Hillary Wouters – assisting counsel

In Opposition

Ms Mereana Peka – objector
Ms Sheryl Matenga – objector
Mr Hori Awa MNZM– objector
Mr Timi Maipi – objector
Mr Neil Blakeman – witness
Dr. Grant Hewison – Counsel assisting
Mr Carlton Buckley – Counsel assisting

REPORTING AGENCIES PRESENT

Ms Clare Sturzaker – Waikato District Council Licensing Inspector
Sgt Hadyn Martin – NZ Police
Ms Ayobami Adesanya – representing Medical Officer of Health (MOoH) to assist.

DECISION OF THE WAIKATO DISTRICT LICENSING COMMITTEE

Introduction

[1] We have before us an application by Huntly Grocer Limited for an off-licence in respect of premises situated at 107 Main Street Huntly known as "Fresh Choice Huntly".

[2] Reports on the application were received from an Inspector and the Police and offer no opposition. The Medical Officer of Health did not provide a report within the timeframe required within the Act.

[3] The application was duly advertised, attracted public objections and accordingly the matter was set down to be determined by public hearing.

[4] The Inspector and Police did not offer any evidence, referring to their reports while the MOoH advised they were available to assist the hearing is called upon.

[5] Prior to the hearing, counsel for the applicant provided a memorandum seeking that the committee clarify if the objections were vexatious in nature. The committee considered **Re Blackburn Retail Holdings Ltd** as the matters relates to S202 of the Act. The authority in the case stated:

“[11] The Authority cannot reach a conclusion that an objection is vexatious or based on grounds outside the scope of the Act without first giving consideration to the objection. That statutory requirement presupposes that an objection must contain sufficient detail to enable its evaluation to occur. It follows that any objection that fails to contain sufficient detail to enable its consideration to occur runs the risk of an adverse finding resulting in no public hearing taking place. This conclusion can be drawn from comments of Dobson J in [Police v Casino Bar (No 3) Ltd [2013] NZHC 44, [2013] NZAR 267 at para [67]] where reference is made (amongst other things) to a ‘cynical test’ in certain circumstances.

[12] An objection is based on grounds outside the scope of the Act where it does not comply with s 42(3) of the [former] Act. Thus, where objections are made in respect of matters not contained in s 45(1) of the [former] Act, they have no validity; and there is no requirement to hold a public hearing.

[13] An objection is vexatious ‘where it is brought without sufficient grounds for winning, purely to cause annoyance to the [applicant]’: Concise Oxford dictionary 10th edition”.

[6] A memorandum dated 23rd July 2024 was provided in response to the counsel’s request.

[7] The committee has given consideration to the objections and formed the view there is sufficient detail relevant to s.105 and to enable evaluation to occur.

[8] The committee also notes that the Act and particularly the more recent community participation amendments, reflect Parliament’s intent to improve community participation and access to the licensing process. The committee bears this in mind takes no view on who or how communities communicate when responding to licence applications.

[9] Accordingly the committee proceeded with the hearing and received the evidence of the objectors.

[10] The committee determined that the transitional provisions in Schedule 1AA, Section 2 of the Amendment Act applied to this application and hearing. Thus, the provisions in Section 16 of the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023 apply to this hearing.

[11] Parties to the hearing and their representatives were not permitted to question other parties or witnesses of other parties, and cross-examination was not permitted.

[12] For clarity, the committee records that it received two objections from Mr Maipi. The first objection was received in time on 26 April 2024 and the other on 27 April 2024 which was out of time.

Evidence of the Applicant

[13] Counsel Ms Mitchell-Anyon made opening submissions describing the physical attributes of the premises and referred to the matters within the Act the Committee is required to consider.

[14] Ms Martelli was sworn in, confirming that she had prepared her brief of evidence and proceeded to read an abridged version of that brief as circulated to all parties.

[15] When asked by members of the Committee of her knowledge of “NZ Dep” ratings and Huntly’s rating of “9 & 10” on that rating, Ms Martelli described her hometown of Rotorua as being “mixed as well” and that the store where she worked in Ngongotahā could be seen as being in a low socio-economic area as well.

[16] When questioned directly on the vulnerability of Huntly Ms Martelli accepted that it was a vulnerable community and commented that the objectors had a long history that she did not currently have and if they believe that it is a vulnerable area, “...they probably have more knowledge than I do about that location.”

[17] She explained that she had taken on the lease of the premises in April 2023 and applied for the off licence in November using the support and advice from the Woolworths head office.

[18] When asked if she had met with the community prior to lodging the application, Ms Martelli explained that she had not and that her only meeting was with some of the objectors which was following advice and assistance from the National Licensing Advisor for Woolworths.

[19] She stated that upon requesting assistance from the council to facilitate a meeting with the objectors, the licencing inspector Ms Sturzaker had emailed the objectors to arrange a meeting which subsequently took place at the store.

[20] Ms Martelli described the purpose of the meeting as coming together with the community to understand their concerns and what might be able to be done to deal with those concerns. She described the concerns raised as being about alcohol in general and the systematic matters such as alcohol abuse in the community and a desire by those attending to try to break the cycle.

[21] When asked if she had engaged with any other community groups or organisations in regard to the licence at any stage, she replied she had not.

[22] When asked if she had undertaken any research regarding the community related to alcohol consumption and alcohol related harm, Ms Martelli advised she had not undertaken any such research and was also unaware if the head office of Fresh Choice / Woolworths had undertaken such research.

[23] Ms Martelli was asked if she had ever engaged with local Iwi leaders whereby, she said she had prior to the opening of the store but had not re-engaged with them to discuss the application or the off licence, adding she was not sure why she had not done that.

[24] When asked about her knowledge and understanding of local Maori, she explained that she knew it was Tainui dominant, there was a high Maori population with high levels of unemployment.

[25] She was asked to explain what she knew of alcohol related issues in the community to which she replied there were alcohol related issues but that she had not experienced anything near her store. She went on to say that she had learned from the objectors that there were a lot of family related issues including harm issues.

[26] She explained when asked what this existence of family harm and violence meant in terms of selling alcohol, that they would be selling responsibly, adding that the issues raised by the objectors were outside her direct control, given she had no control over how people acted after consuming alcohol.

[27] She agreed with the Committee that when, as she had estimated, 40 to 50% of her customers were Maori, it would have been appropriate to engage with Maori representatives prior to lodging the application, saying that looking back it would have been a good thing to do.

[28] Ms Martelli provided information regarding the control of the range of alcohol products through a nationally determined range which was often dictated by advertised specials and general Woolworths policy regarding single sales.

[29] She said she agreed with the licensing inspector's description that Fresh Choice Huntly is in a unique location for people in a hurry to be able to "pop in" and grab essentials such as milk or bread.

[30] Ms Martelli described the relationship between Fresh Choice and Woolworths as the parent company. She referred colloquially that Fresh Choice and Woolworths were "cousins".

[31] When questioned about who selected Huntly as location for a Fresh Choice store, she stated head office who she said had also determined the site and the internal layout of the store.

[32] Ms Martelli stated that she was excited when offered the opportunity to own and operate the Huntly store. She stated there was no consequence if she had declined the opportunity. There was also no restriction on owning more than one store, but that Huntly was keeping her busy enough.

[33] The question of locality and catchment was raised with Ms Martelli. She said that the store was serving Huntly. When questioned how that worked given "big brother" (Woolworths) was 800m away. Ms Martelli repeated that customers use Fresh Choice when they just needed to top up with a few things and did not need or want to do a big supermarket.

[34] When asked if she had access to any information about the demographics of the community or if she had undertaken any research to understand the community, she had established her store in, she replied there was no such information provided to her and that she had learned on the job since opening the store.

[35] The committee noted that the submitted site plan did not include the specific measurements of the proposed licensed area. Ms Martelli indicated that the correct site plan would be provided.

Evidence of the Inspector

[36] The Licensing Inspector Ms Sturzaker was sworn in and asked that her report be accepted as read which was agreed.

[37] She added detail regarding delays experienced relating to the required planning and building certificates from Council.

[38] Ms Sturzaker described the process undertaken relating to the meeting between the applicant and objectors saying that it was at the request of the applicant and invitations were sent to all objectors with only a few responses. It was held at the store so people could see what was being proposed.

[39] She explained that the conversation was generally along the lines of questioning from those present about why the Council was allowing the application to be lodged with a general theme that those present did not want alcohol outlets in Huntly “full stop”. She said the meeting got a bit “offline” and the discussion was less about the actual application and more about Council allowing another licensed premises in Huntly.

[40] When questioned, Ms Sturzaker explained that she believed the locality of this premise to be the CBD or main street area of Huntly and that the store was located to provide daily needs for shoppers rather than those doing larger weekly shopping. She went on to describe how she believed the premises would be used more by those already shopping in the main street area as opposed to the larger “destination” supermarket type premise. The store is close to takeaway shops so could be used to buy add on products.

[41] When asked if she agreed with the NZ Deprivation ratings for Huntly, Ms Sturzaker said she would not argue with what the census data shows.

[42] She was asked if she believed this was a vulnerable area, Ms Sturzaker said that her role was to assess the application relative to the Act and the criteria set down in the Act. She reaffirmed that she found the applicant has systems and controls that she believes meets the object of the Act, and in particular, to minimise alcohol related harm, stressing that the Act says minimise and does not say stop alcohol related harm.

Evidence of the Police

[43] Sergeant Martin was sworn in and advised the Committee that Police were satisfied that the application met the criteria of the Act and as such reaffirmed that the Police had no objection or concerns to the licence being granted.

[44] Sergeant Martin was asked to describe his view on alcohol related harm in Huntly. He answered by saying that in general terms family harm was the biggest call for service ranging from arguments to offences being committed and that he estimated 90% of offences involved alcohol use.

[45] He went on by saying that in general, on licensed premises have improved regarding alcohol related harm and that the biggest issue is with those drinking alcohol at home. Police had significant concern at the growing level of drug abuse with Huntly having the

highest levels of drugs detected in regular wastewater testing in the Waikato region. This testing is for the likes of cocaine, MDMA, ecstasy and meth. Cannabis is not tested for.

[46] Sergeant Martin spoke of a decreasing level of property crime such as robberies and burglaries at bottle stores.

[47] Sergeant Martin advised that he liked the controls being proposed relating to the sale and supply of alcohol within the application.

[48] When asked, Sergeant Martin could not provide the latest statistics for drink driving offences, commenting that he had not looked. He did not believe alcohol was a feature in theft statistics from the major supermarket in Huntly.

Evidence of the Objectors

[49] The committee was asked to hear the evidence of Mr Blakeman prior to hearing opening submission from Dr Hewison on behalf of objectors as Mr Blakeman has another commitment. However, in laying out the decision, we have have chosen to present the opening submission before noting Mr Blakeman's evidence.

Opening Submissions

[50] Dr. Hewison assisting the objectors made opening submissions focussing on previous decisions that he believed were relevant to this application. He submitted that it was clear that Huntly is a vulnerable community and as such meets the threshold for the Committee to consider extended suitability set down in Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd [2018] NZHC 3100, (Shady Lady), noting that this application is for a grocery store and not a bottle store as was the case in Shady Lady.

[51] He referenced Flaxmere Liquor [2008] Limited, [2019] NZARLA 94, (Flaxmere Liquor), saying the Committee must, in areas where there is a high Maori population, consider the principles of the Treaty.

[52] Dr Hewison submitted that approval of this application will reduce amenity and good order and would not benefit the community as a whole or the Māori community. He noted that the applicant had not engaged with sensitive sites, including Waahi Paa.

[53] He accepted that Ms Martelli has experience in grocery stores but submits she has no prior experience of holding an off-licence.

[54] Regarding the single alcohol area, Dr Hewison submitted that it appears to be a larger area and that no reasons had been provided about the size. He considered that the single sales condition was reasonable.

Evidence of Mr Neil Blakeman

[55] Mr Blakeman was sworn in and read his brief of evidence. He spoke of the harm alcohol has in the community and the harm it has caused him personally. He described his involvement in a community group that supports men and that many of those who attended the group identify alcohol as contributing factor to the harm they had been involved in.

[56] When questioned about his reference to RTDs and spirits and his concerns as to the types of alcohol available he stated the type of alcohol did not matter and that he did not see the distinction between a grocery store or bottle store. For him it was about the availability of alcohol to the community that he was most concerned about.

Evidence of Mereana Peka

[57] Ms Peka was sworn in, read her brief of evidence and explained her connection to Huntly through 28 years as a Maori Warden.

[58] She outlined her experience in that role dealing with alcohol related harm involving all people, not just Maori. She challenged the Committee as to “when do we draw the line as to the number of licensed premises”.

[59] Ms Peka advised she had not attended the meeting at the store but had visited it and had concerns about the location of the single alcohol sales area as it was too tempting to people shopping for other items.

[60] She said she believed it was important that the applicant established an ongoing relationship with the community but that she needed to understand Maori and Maori Wardens. She also acknowledged the applicant wanting to make a living out of her store.

[61] In response to a committee question about the proximity of the milk to the proposed single alcohol area, Ms Peka responded she would like the milk to be moved.

[62] In response to a further question, Ms Peka acknowledged the objection for this premises was provided to her to simply sign.

[63] Ms Peka when asked if Huntly had an alcohol ban, she said did not have her book with her, but she assumed there was one. She stated as a Māori Warden she played a role in enforcement in other areas that did have an alcohol ban.

[64] When asked about alcohol related litter in Huntly, she noted she had seen broken bottles in the children’s playgrounds, boxes of empties and sees rubbish every day.

Evidence of Mr Taitimu Maipi

[65] When calling objector Ms Sheryl Matenga to give evidence, she asked that Mr Maipi be given the opportunity to speak. Her reasoning was that whilst Mr Maipi had submitted an objection, it was not accepted as it was out of time.

[66] Dr Hewison advised that the other objectors supported the request as Mr Maipi was a respected Kaumatua in Huntly and in line with tikanga, Mr Maipi should be afforded the respect associated with his position in the community.

[67] The applicant through their Counsel was asked if they had any objection to Mr Maipi giving evidence to which they objected on the basis that his objection had been received out of time and as such he had no standing at this hearing.

[68] The Committee conferred and determined that Mr Maipi was able to speak to the Committee consistent with the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023

s.203 (A) which states:

Licensing committees must establish appropriate procedures

- (2) When doing so, a licensing committee must ensure that those procedures—
(d) allow for tikanga Māori to be incorporated into proceedings**

[69] Furthermore, s.207 of the Sale and Supply of Alcohol Act states:

Evidence in proceedings before licensing authority or licensing committee

- (1) The licensing authority or licensing committee concerned may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectually with any matter before it, whether or not the statement, document, or matter would be admissible in a court of law.**

[70] Mr Maipi was sworn in and outlined the historical context for his concerns. He was concerned that no one had raised this matter with the Māori Health Authority. He was also concerned at the possibility of another off licence in the town, stating that Huntly has too many off licences and so many social issues related to alcohol. He also spoke of his disappointment that the inspector and Police were giving support to the application.

Evidence of Ms Sheryl Matenga

[71] Ms Matenga was sworn in. She spoke of Maori history in the area and its importance to the issues being discussed.

[72] She outlined her position as Chair of the Huntly Community Board and that she was representing the kura and young people. She said it was “heart breaking” that the applicant had not consulted with Maori and the community.

[73] Ms Matenga spoke of the belief there were too many liquor stores in the town and that this store was located where there was exposure to school children using the highway foot bridge and the public area outside the store.

[74] When questioned in regard to her understanding of alcohol related harm in this community, Ms Matenga explained that workshops had been held with young people and that two things had stood out when discussing the issues faced by their families; drugs and alcohol; which were associated with inability to access food and prevalence of violence.

[75] When asked to describe what she believed was a vulnerable community, Ms Matenga said it was when the community has no control of things like alcohol, high unemployment and crime and education problems. She went on to describe Huntly as having the 3rd highest level of P use in the community anywhere in New Zealand and stated, that in her opinion and experience within the community, that Huntly is “absolutely vulnerable”.

[76] She also stated that the only consultation received from the applicant in regard to the application was the email from the inspector seeking the meeting with the objectors after the application was lodged.

Evidence of Mr Hori Awa MNZM

[77] Mr Awa was sworn in. He referenced his objection on behalf of Waahi Whaanui Trust which is a Waikato Tainui tribal and community organisation. He spoke of the continued

desire of Tainui through their leadership to have alcohol removed from the area due to the harm it caused.

[78] He gave details of the work the Trust did in the Huntly community and dedicated staff dealing specifically A.O.D – alcohol and other drugs. He repeated the statistic raised by Ms Matenga that Huntly was the 3rd worst community in New Zealand for P use.

[79] He stated that they, as local Maori leaders were failing the community and that “enough is enough”. Change was needed in Huntly which he described as being a vulnerable community. Mr Awa went on to describe his own experiences through his own whanau of the impacts of alcohol and drugs.

[80] He spoke of the Community Trust premises further along the road from the premises where around 50 people per week lined up for food. He stated that Huntly did not need more alcohol being sold in the community saying he would prefer that Fresh Choice sold only kai. He did not believe they needed to sell alcohol and went on to say that there should be a reduction of alcohol outlets in the town as opposed to increasing the number.

[81] Mr Awa said that Fresh Choice had been a positive addition to Huntly and the main street was improved through having another grocery store option.

[82] When asked to explain the harm he sees personally from alcohol, he said he sees it in his own whanau and others through the violence towards women and children.

[83] He said none of the licensees in Huntly had ever consulted with him or the organisations he was involved in regarding alcohol and the community, yet they get consulted daily on other matters. Mr Awa learnt about the application when Ms Matenga sent him a copy of the panui about the meeting on 27 May 2024.

Medical Officer of Health

[84] The Committee took the opportunity in the absence of any report and as such any evidence from the Medical Officer of Health (MOoH) to ask questions of the representative Ms Adesanya.

[85] She was asked to assist the committee by explaining the meaning of the NZ Deprivation Index and in particular level 9-10. Ms Adesanya explained that with high deprivation there is less access to education, food, good environment, income, medical and social services.

[86] When asked where alcohol fitted into that, Ms Adesanya said that alcohol played a role and that there was some evidence that higher deprivation areas were more likely to be harmed by access to alcohol.

[87] She described vulnerable areas as those more at risk of being affected by susceptibility to environmental risks including alcohol, having people as victims of harm, violence and with the inability to access things like health care.

Closing Submissions

[88] It was put to and agreed by all parties that due to the complexities and nature of the evidence produced at the hearing, that closing submissions would be provided in writing.

Submissions were to be provided to the committee and all parties by 9am Monday 9 September 2024.

[89] The Committee made it clear that new evidence or reference to things not produced or provided as evidence during the hearing were not to be included in any such submission. It was also agreed that Dr. Hewison was able to assist any of the objectors to ensure the submissions were consistent with the ruling from the Committee re content and to help objectors get their points across.

[90] All closing submissions were received and were considered in accordance with the instructions of the Committee, with equal weighting during deliberations.

Committee's considerations

Legislation the Committee must have regard to:

[91] Section 3 of the Act describes the purpose of the Act

[92] Section 4 of the Act sets out its object relating to safe and responsible sale, supply and consumption of alcohol; and minimisation of alcohol related harm caused by excessive or inappropriate consumption of alcohol.

[93] For the purposes of s.4(1) of the Act, the harm caused by the excessive or inappropriate consumption of alcohol includes –

- a) **Any crime, damage, death, disease, disorderly behaviour, illness or injury, directly or indirectly caused or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and**
- b) **Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness or injury of a kind described in paragraph (a).**

[94] Section 5 defines the expression “amenity and good order of the locality” as meaning:
...the extent to which, and ways in which, the locality in which the premises concerned are situated is...pleasant and agreeable.

[95] Section 105 (1) of the Act sets out the criteria to be considered for the issue of a licence of this type.

[96] Section 106 (1) of the Act sets out the effects on amenity and good order of a locality by an application of this type.

Decision making

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

[56] So, in my view, the position can be summarised as follows:

- (a) **The role of the relevant body upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination on the application.**

- (b) In considering an application, the relevant body is fundamentally required to assess whether a licence ought to issue. In so doing, it must:
- (i) consider any objections made by persons who have a greater interest in the application than the public generally;
 - (ii) consider any opposition filed by the constable in charge of the Police station nearest to where the application is filed, a Licensing Inspector, and the Medical Officer of Health;
 - (iii) have regard to the criteria stipulated in s 105 of the Act (for present purposes including the design and layout of the premises); and
- (c) The relevant body must finally cross-check whether the application is capable of meeting the object of the Act.
- (d) It must impose the conditions required by s 116(2) and in the case of a supermarket or grocery store, the single area condition (which I discuss in more detail below).
- (e) It may impose further conditions in accordance with ss 116(1) and 117 (which I discuss in more detail below)."

Criteria

[98] As with any application, some of the criteria are of more relevance than others. It is appropriate that each of the relevant criteria be considered; but not necessarily in the order they are set out in s.105 (1) of the Act

[99] In the Committee's view, s 105(1)(a), (b), (c), (d), (e), (h), (j), and (k) are most relevant when considering this application, along with the provisions of s 106.

[100] The Committee has considered the other criteria in s 105(1)(f) and (g). No issues or objections were raised specifically by the reporting agencies or public objectors. The committee is satisfied regarding those criteria

[101] In regard to other criteria, we make the following comments:

Suitability of the applicant – s.105 (1)(b)

[102] Having listened to and observed the applicant Ms Martelli, we found her to be a credible, articulate and suitable person to hold a license when applying the test as to suitability as set out in **New Zealand Police v Casino Bar No 3 Ltd**

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

- (a) previous convictions, especially those involving liquor or those raising questions as to honesty or propensity for violence;**
- (b) character, reputation;**
- (c) matters raised in reports filed under s 11;**
- (d) previous unlawful operation of premises;**

(e) any of the above in relation to a person other than the applicant who is involved in the application (as a director, manager, etc) or is intended to be employed by the applicant;

(f) breach of an undertaking; and

(g) misleading information in an application and/or misleading public notice.

[103] However, evidence was produced by the objectors that was not discounted, debated or denied by the applicant that the community of Huntly is classified through official statistics and within the NZ Deprivation database (NZ Dep) as being classified as either deprivation level 9 or 10 depending which part of the community is being measured.

[104] Evidence was given that the Huntly community is not only deemed a vulnerable community through the use of the NZ Dep figures but also through the evidence of the objectors, many of whom are respected and long standing community leaders entrenched in working with those most vulnerable members of their community.

[106] Ms Martelli herself accepted during questioning from the committee that Huntly was a vulnerable community.

[107] We turn to the Authority's decision in **Shady Lady Lighting Limited v Lower Hutt Liquormart Limited- Blackbull Liquor [2018] NZARLA 198 at [127]:**

[127] The vulnerability of the area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction

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

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

[109] The fact Huntly is a vulnerable community is therefore not disputed and, in our opinion, do not believe it could be disputed. Therefore, the committee considers the notion of extended suitability as described in High Court in **Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd [2018] NZHC 3100**, and **Patels Superette 2000 Ltd [2019] NZARLA 75**.

[110] In **Patels** the Authority, citing **Shady Lady**, wrote:

[212] The Authority agrees with the DLC that Mr Hira has made little effort to research and understand the make-up of the community and how they might be impacted by alcohol or how his application might address those concerns.

It was only when at the hearing before the DLC that Mr Hira indicated that the appellant would be willing to close the store when children are likely to walk by, particularly around 9.00am and 3.00pm weekdays to allay any concerns of the community. Further, it is only when appearing before the Authority that the proposed hours were modified to 9.00am to 9.00pm. Rather than this demonstrating a sensitivity toward the needs of the community, this demonstrates a failure to take steps to understand the concerns of the community in advance, and is 'too little, too late'. This lack of engagement is a factor to which the DLC was properly entitled to have regard when assessing the applicant's suitability to hold an off-licence.

[111] Alongside Patels, the Committee considers **Nishchay's Enterprises Limited [2013] NZARLA PH 837 at [58]:**

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

[112] We do not believe the applicant has met the standard of the raised threshold in regard to suitability. Ms Martelli has a very limited knowledge of the community, according to her own evidence, through her relatively recent acquisition of the business and fact that she does not and has not lived in the Huntly area prior.

[113] While we acknowledge her attempt to engage with the objectors after the application had been lodged and objections received, we are of the opinion that this is not enough and is too late.

[114] Meaningful consultation with the community should have occurred prior to the lodging of the application to allow the community to assist Ms Martelli understand the issues and feelings within the community about alcohol related harm and availability of alcohol.

[115] To call a meeting of objectors at the point in time the meeting was called and failing to actively engage with prominent community organisations and members is in our opinion a significant failing. We believe it shows a misunderstanding or lack of knowledge in regard to the requirements set down by the High Court in the Shady Lady case and others.

[116] We do however acknowledge that Ms Martelli was reliant on guidance and advice from the alcohol licensing advisors within the parent company. In her evidence she stated that Huntly as a location and the site specifically was selected by the parent company. Store planning was largely conducted by the parent company design office. The committee feel she has been somewhat let down by the parent company around research, engagement and associated licensing advice.

[117] In our opinion, the applicant satisfies each element in the checklist in **New Zealand Police v Casino Bar No 3 Ltd**. However, very importantly, the applicant has not met the test of extended suitability.

[118] When taking into consideration everything we must in regard to suitability, we are not satisfied that the applicant is suitable to hold this off-licence.

Relevant Local Alcohol Policy s.105 (1)(c) –

[119] We acknowledge that the application meets the requirements of the Waikato District Council Local Alcohol Policy (LAP) in force for this location.

[120] Objectors have asked the committee to consider 5.3.1 of the LAP which reads:

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

[121] The inspector in her report, has considered six off-licence premises as relevant and the specific venues were indicated in section 4.3 of the report.

[122] Objectors state the provision doesn't limit the consideration of the committee to just off-licences but other licensed premises; to include on and club licenses. The committee agree with objectors on their interpretation noting the concerns regarding the general availability of alcohol in this vulnerable community.

[123] However S106(1)(iii) supersedes the LAP wording and therefore the committee, for decision making purposes, may only consider the number of premises for which licences of the kind concerned are already held. Accordingly, we must only consider the six as referenced by the inspector.

[124] Therefore, we do not believe there are any grounds to decline the application when considering LAP criterion.

Days and hours proposed to sell alcohol - s.105 (1)(d)

[125] The applicant seeks licensed hours of Monday to Sunday, 7am – 9 pm which it says aligns with the store's operating hours and are less than the "default national maximum trading hours" specified in s.43 (1) (b) of the Act and the Waikato District LAP.

[126] Some objectors sought hours of Monday to Sunday 12 pm – 7 pm. Concerns included more risks for the community from a prolonged sales period and hours too long for the location given the vulnerable community. The Committee was not provided with information on the merits of the proposed change of hours. If the committee is minded to grant the application, it will accept the hours sought by the applicant.

Design & Layout s.105 (1)(e) –

[127] We have considered the compulsory conditions relating to display and promotion of alcohol in single area in supermarkets and grocery stores in s.112(1):

The purpose of this section and sections 113 and 114 is to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol.

[128] S.112(2) states the committee:

must ensure that when it issues or renews an off-licence for premises that are a supermarket or grocery store, it imposes on the licence a condition describing one area within the premises as a permitted area for the display and promotion of alcohol.

[129] S.113 sets the criteria we must have regard:

to (1) The licensing authority or licensing committee concerned must have regard to section 112(1)—

- (a) when describing an alcohol area; and
- (b) when taking any other action under this section; and
- (c) when forming any opinion for the purposes of this section.

(2) An alcohol area must be described by means of a plan of the footprint of the premises concerned (or, in the case of premises on more than one level, a plan of the footprint of the level on which the area is or is to be located) showing—

- (a) the proposed configuration and arrangement (or, in the case of the renewal of a licence, the existing or any proposed new configuration and arrangement) of the premises or level; and
- (b) the perimeter of the area.

[130] Members of the committee raised their concerns about the absence of detailed measurements of the single alcohol area on the submitted floor plan with applicant during the hearing and were advised further detail would be provided. The plans do not contain to scale measurements of the building and floor plan does not contain to scale measurements for the proposed single sale area. A handwritten note on the floor plan reads 'Ground floor 435m2.'

[131] The proximity of the area to products such as milk increased the risk posed to shoppers who may be tempted to purchase alcohol as an impulse type purchase. Members of committee when forming an opinion about the area, believe they do not have sufficient information and cannot ensure that the indicated area on the single alcohol floor area is able to comply with S112(1).

[132] We acknowledge the comments from the applicant that they would be prepared to adjust the layout should a licence be granted and also the report of the inspector who has not opposed the application. However, this matter does hinder the success of the application.

Amenity and Good order – s.105 (1)(h)

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

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

- (i) current, and possible future, noise levels:**
- (ii) current, and possible future, levels of nuisance and vandalism:**
- (iii) the number of premises for which licences of the kind concerned are already held; and**

(b) the extent to which the following purposes are compatible:

- (i) the purposes for which land near the premises concerned is used:**
- (ii) the purposes for which those premises will be used if the licence is issued.”**

[134] We heard evidence from the objectors of the existing issues with rubbish/litter and other issues in the locality of Huntly. There was also evidence from them as to the effectiveness of the community dealing with these issues. It is our opinion the issue of rubbish/litter would not affect the area to a greater than minor extent if a license was granted

[135] We had no concerns with s105(1)(h) as to the consideration outlined in s106

Amenity and Good order – s.105 (1) (l)

[136] As previously mentioned, we accept the evidence that Huntly is a vulnerable community and acknowledge the concerns raised about the convenient access to alcohol and the affect it would have on the surrounds.

[137] The committee considered if the area was so badly affected by its vulnerability it is nevertheless desirable not to issue any further licences.

[138] We also consider the risk of alcohol related harm and the future risk of harm in the community. For guidance we referred to **Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited [2018] NZHC 1123**, in particular:

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

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

[70] It was sufficient to engage the requirement to minimise alcohol-related harm that the evidence implicates the premises. The Authority erred in requiring evidence of demonstrable historical harm. Rather, it was required to assess risk which by definition is future risk. In that regard, there was extensive evidence of the alcohol-related harm associated with this locality on Friday and Saturday nights. In fact, the DLC in its decision described the evidence as compelling. Having read the evidence I agree with that assessment.

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

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

[140] We heard evidence from the Police about the family harm occurring in Huntly and the estimate that 90% of family harm calls involved alcohol use. Police also stated the biggest issue is with those drinking alcohol at home.

[141] We have considered **Lion Liquor Retail Limited [2018] NZHC 1123** at [67] which states:

“...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...”

[142] We acknowledge the evidence of the Police and the objectors and believe there is sufficient information for the committee to draw a link to alcohol related harm with this application. The committee also considered Ms Martelli’ s comment “I cannot control what happens outside the store”. The committee accepts that the vulnerability of the area and the high reporting of family violence where alcohol is a factor forming the opinion that the area is so badly affected, another license cannot be issued.

Appropriate systems, staff and training to comply with the law- s.105 (1)(j)

[143] While not expressly raised as an issue, we had a level of discomfort as to whether the systems, staff and training were appropriate given the acknowledged vulnerability of the community.

[144] We acknowledge that the training information provided is generic and would likely be appropriate when considering an application of this type in an area not considered vulnerable, as Huntly is.

[145] While we consider that it would be more appropriate to show specific training of staff relevant to the risk posed by overall vulnerability or demographics in a locality recognising those most at risk, we do not believe that alone is sufficient to decline the application in this instance.

Other matters - s.105 (1)(k)

[146] We have considered the specifically worded undertaking of the applicant to “not stock single cans of high-strength mainstream beer”.

[147] We believe this undertaking is vague and the term mainstream is subjective. Ms Martelli stated that she had not considered craft beer as part of the market for Huntly.

[148] We have considered **Otautau Hotel 2017 Ltd v Grove [2023] NZARLA 37** and the wording of a single sale condition that was upheld by the Authority and whether that would give us comfort when considering to grant the application with such a condition or associated undertaking.

[149] We turn back to considering the vulnerability of Huntly and the object of the Act to consider whether the availability of high strength beer irrespective whether it is mainstream or otherwise is inappropriate even with a specific condition or undertaking.

[150] We do not accept the offer of the undertaking as proposed.

The Object of the Act-s105(1)(a)

[151] Having consider the application, and having received evidence and submissions from all parties, we have inquired into and evaluated the application against the criteria in s 105 of the Act.

[152] To complete that evaluation we have taken time to cross-check whether the application is capable of meeting the object of the Act as set down in s.4(1) & (2) namely that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

Committee's Decision

[153] We found the evidence of the objectors; their knowledge and understanding of their community, in particular the alcohol related harm and other related social issues; compelling.

[154] With an application of this type, we must, amongst other things, evaluate whether risk will occur in the future. Any such assessment of future risk comes with some uncertainty. The Supreme Court's decision in **Woolworths v Auckland Council [2023] NZSC 45** provides for a precautionary approach to be taken:

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

[155] There has been clear and undisputed evidence presented during this hearing that the Huntly community is deemed vulnerable and at significant continued risk of alcohol related harm.

[156] As outlined earlier in the decision, we have determined that the application does not satisfy all the criteria, in particular, it is our opinion that the applicant is not suitable to hold this licence based on extended suitability.

[157] Having given regard to and considered the matters which we must have regard as set out in the Act, we are not satisfied that the application meets the purpose and object of the Act.

[158] Accordingly, we **REFUSE** the applicant for an off licence.

[159] We refer any party who wishes to appeal this decision or part of this decision to sections 154 through to 158 of the Act.

DATED at Auckland this 8th day of November 2024.



A handwritten signature in black ink, appearing to read "A. Bae", positioned above a horizontal line.

Andrew Baker
Commissioner
Waikato District Licensing
Committee

**On behalf of: Patsi Davies
Jason Howarth**