

DECISION

Off Licence

Decision No. 58/ON/LL1309/2021

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by Te Tino
Enterprises Limited, for the granting
of a new off-licence pursuant to
Sections 99 and 100 of the Sale and
Supply of Alcohol Act 2012 in respect
of the premises situated at Unit 2, 61
Main North Road, Woodend.

BEFORE THE WAIMAKARIRI DISTRICT LICENSING COMMITTEE

Chairman: Cr N Atkinson

Members: Cr W Doody

Commissioner J Gerard

HEARING at Rangiora on Wednesday 24 March 2021

APPEARANCES

For the applicant – Mr Stringer*, Counsel, Mr G Singh Dhillon* and Mr N Singh Warraich*
Mr R Deo* – Waimakariri District Council Alcohol Licensing Inspector – In opposition
Mrs H Barbour* – for the Medical Officer of Health – In Opposition

For the objectors

Mrs B Cartwright* –Also representing Justin Cartwright and Erin Inwood.
Mr S Powell* representative of the Woodend Sefton Community Board

**Sworn in before appearance by the Minutes Secretary Adrienne Smith*

Introduction

1. Before the Waimakariri District Licensing Committee (WDLC) is an application by Te Tino Enterprises Limited, for the granting of a new off-licence pursuant to Sections 99 and 100 of the Sale and Supply of Alcohol Act 2012 (The Act) in respect of the premises situated at Unit 2, 61 Main North Road, Woodend.
2. The applicant is a company with two director shareholders, Narinder Singh Warraich and Gurpreet Singh Dhillon. The applicant seeks a licence pursuant to s.32(1)(b) of the Act to trade as a Bottle Store. Hours sought in the application were 10am to 10pm Monday to Sunday. These hours are within the off-licence hours permitted in the Waimakariri District Council's Local Alcohol Policy (LAP).

3. The proposed premise is located within a commercial development (retail centre) at Unit 2, 61 Main North Road, Woodend. The shop is attached to two other units in a block of retail units on the main road. The other shops are a restaurant, which is licensed, and a single tenancy office unit on the first floor. The unit was previously a pizza business which was run by one of the applicants, Mr Narinder Singh.
4. The zoning for this retail development where the bottle store is proposed to be located, (2/61 main North Road, Woodend), is Business 1 Zone.
5. The Alcohol Licensing Inspector and Medical Officer of Health opposed the application along with the New Zealand Police. The Police subsequently withdrew their opposition
6. 18 objections were received from members of the public opposing the granting of the application.
7. The local Woodend Sefton Community Board sought leave of the committee to be heard under s.204(2)(b) of the Act. This was granted.
8. Of the 18 public objectors who submitted an objection to the application only one, Mrs B Cartwright, appeared before the Committee. Mrs Cartwright was also appearing on behalf of two other objectors from her household, Mr Justin Cartwright and Ms Erin Inwood.
9. A number of objectors raised issues of suitability of the applicant and issues around competition with other local alcohol outlets.
10. The committee would have liked to have heard directly from all objectors and allow the matters in opposition to be tested, however only two objectors were present.
11. The Committee records its disappointment regarding the reluctance of some objectors to appear and speak to their objections although it does recognise that making time to speak to their objections is often not achievable due to a number of factors.
12. All objections were read and considered and the Committee records it's appreciation to those who took the time to record their objections to this application.
13. The process under the new Act is heralded as being one where local communities can have more input into the licensing regime. District Licensing Committees need to hear first-hand what communities are saying in relation to alcohol and their communities. When matters are raised in objection, objectors should be available to clarify and speak to their objections. This provides an opportunity firstly for the applicant to enquire further into the objection and potentially allay concerns, and secondly, it enables the Committee to properly assess and weigh the evidence accordingly. The importance of objectors turning up to support their objections cannot be overstated.
14. In the High Court decision of *Utikere v I S Dhillon and Sons Limited*¹ the High Court commented on the Authority's decision to place no value on an objection if the objector fails to turn up at the hearing and give evidence. Kos J stated:

[27] I would not go so far as the Authority which said:

"If objectors fail to appear it is likely that their objection will have no value".

There is no reason why an objector could not make a cogent, self-sustaining written objection. It would carry some weight. But its weight may tend to be diminished if the objector is not available to give evidence at the hearing and be questioned.

¹ *Utikere v I S Dhillon and Sons Ltd* HC appeal - NZHC 270

The Application

15. As stated above this is an application for an off licence in the rural town of Woodend which is situated on State Highway one. The application was submitted to the Waimakariri District Council on 25 June 2020. The application was publically notified. After some delay caused in part by an Immediate Modification Order under the Epidemic Preparedness Act 2006 the tri-agencies provided a report on the application. A hearing was held on the 24th and 25th of March 2020.
16. The application contained all relevant information as well as containing a Business Plan, photographs of the proposed premises from both inside and outside and curriculum vitae of both directors. The Host Responsibility Policy which was attached to the application was subsequently updated and submitted to the Committee.
17. The floor plan which was attached to the application was also updated after opposition from Police. After the updated floor plan was submitted the Police withdrew their objection.

Reporting Agencies

18. As discussed above, the New Zealand Police, after objecting to the application subsequently withdrew the objection after receiving further information from the applicant relating to the layout of the premises. The Police did not appear at the hearing.
19. The Medical Officer of Health opposed the application on the grounds that the application 'would likely' contribute to alcohol harm. Further concerns were the proximity to sensitive sites, the presence of an existing bottle store, suitability of the applicant and a potential reduction in amenity and good order.
20. The Alcohol Licensing Inspector reported on the application in his report dated 10 March 2021 and opposed the application on the grounds of suitability of the applicant, the applicant's lack of knowledge of the area and failure to consult with the community.

Objectors

21. The application was publically notified on 15 July 2020 and 22 July 2020. A notice was affixed to the exterior of the proposed premises from 15 July 2020 until 7 August 2020. The objection period closed on 5 August and the WDLC received 17 public objections as well as an application by the local Community Board to appear under s.204(2)(b).
22. The Committee considered the objection of Mr Harmanjit Singh and noted the applicability of 105(2) as the objection appeared to be based on commercial grounds. Mr Singh also raised the suitability of the applicant as an issue but as he indicated that he did not want to appear before the committee no weight was given to his objection as this evidence could not be tested.
23. A submission was received from Mr Weathy lives approximately 3km away. Mr Weathy's objection did not quantify or validate what aspects of his submission dealt with interests greater than the public and ultimately failed to appear at the hearing. The Panel have noted Mr Weathy's submission but decided to give the submission a low weight in there deliberation for these reasons.
24. For completeness, the panel received two late objectors from H Singh and D Sanders (received on 7 an 8 August respectively). These were accepted by way of a minute dated 5 March 2021. Ultimately the late objectors did not attend the hearing.

The hearing and evidence

25. The two director and shareholders of the applicant company, Mr Gurpreet Singh Dhillon and Mr Narinder Singh Warraich, gave evidence on behalf of the applicant.
26. Mr Dhillon read his brief of evidence and outlined his experience in the liquor industry in New Zealand. He has worked in a bottle store in Christchurch since 2014 and obtained his Licence Controller Qualification (LCQ) on 25 August 2014. He applied for, and gained, his Manager's certificate in 2015. He is currently still employed as the store manager at Liquor Centre Opawa.
27. Mr Dhillon stated that as the owners of the Liquor Centre Opawa are located overseas he is principally responsible for the management and the day to day running of the store. In total he stated that he has more than six years of experience in working and managing an off-licence business.
28. As part of this experience Mr Dhillon explained that he has on many occasions been required to refuse to serve potential customers due to their age or intoxication and he knows how to deal with these situations appropriately and confidently.
29. As well as part of this experience Mr Dhillon stated that during this time working in the industry he has gained an understanding of the potential impact that alcohol can have on people's lives and the community and that he understands the importance of the responsible supply of alcohol.
30. Mr Dhillon stated that he has no criminal convictions and an unblemished record in relation to the time managing the Liquor Centre Opawa.
31. As part of his evidence Mr Dhillon outlined how the applicant would carry out its business if granted a licence. This included being a trusted and community conscious business. He also gave evidence of the increase in population of the area surrounding the proposed store. He stated that Statistic New Zealand data showed that the region had experienced rapid population growth over the past five years which was equivalent to a 23% increase. As well as the recent growth explained by Mr Dhillon he also explained that the projected population of the area is expected to be 16 900 people by 2043.
32. In regards to traffic movements on the state highway on which the store is located Mr Dhillon gave evidence that there are approximately 17400 vehicles per day passing the store and that this is expected to increase to 28000 vehicles by 2027. This information was included from the *Enterprise North Canterbury* website and was contained in a bundle of documents produced by Mr Dhillon.
33. Mr Dhillon stated that the key elements of their business strategy were
 - (a) Providing superior customer service.
 - (b) Being industry and market proactive and reactive where appropriate
 - (c) Community integration by establishing a reliable and trusted brand in the community.
34. He stated that *"we are seeking to create an upmarket one-stop-shop where the focus is on more than just another retail liquor store. Rather Te Tino Enterprises will become a place to come to experience a friendly shopping environment supported by professional management with product knowledge and expertise"*.
35. Mr Dhillon produced a list of the categories of alcoholic and non-alcoholic beverages that they propose to supply. This document also set out the range of food and other products that will be offered. The new store layout was also provided.

36. Mr Dhillon noted that a CCTV camera system is proposed to be installed in the premises which will have cameras both inside and outside the premises both on front and rear.
37. Mr Dhillon stated that they had amended the original proposed layout of the premises following concerns raised by the Medical Officer of Health about the location of 'RTD's' in the store.
38. In regards to the proposed franchise that the store would operate under, Mr Dhillon stated that they had decided to go with the 'Liquor Centre' franchise since submitting the application. Mr Dhillon stated that the signage of the store would be of the 'Liquor Centre' brand only and that they are not proposing to advertise or promote specific products to the public. Mr Dhillon stated that the applicants had also chosen not to promote the sale of certain alcoholic products to address the concerns that may arise about minors being exposed to this material while passing the area. He stated that *"we understand that schools operate within the locality and we are conscious about minimising marketing exposure to children in the locality"* and this was altered in their business plan to ensure it is appropriate for the community.
39. In regards to the hours of operation of the store Mr Dhillon proposed that they would be happy to operate from 10am to 10pm Monday to Sunday.
40. Mr Dhillon outlined proposals in regards to systems and staff training and stated that he would be the main duty manager and take principle responsibility for the business' day to day operations and would be on duty most days of the week. Mr Warraich will be supporting Mr Dhillon.
41. Mr Dhillon proposes to employ two additional qualified managers on a part time basis. Both managers will need to have an unblemished record.
42. Mr Dhillon outlined the induction and training that he will lead and that incorporated into that training is the companies Host Responsibility Policy which sets out how the applicant will deal with prohibited persons under the Act.
43. Mr Dhillon then outlined the signage which would be displayed on the premises.
44. In regards to the amenity and good order of the locality Mr Dhillon stated that he recognised that the sale of alcohol can have an impact on the amenity and good order of the community but that it is not invariably the case and that they are committed to ensuring that any impact on the community is minimised to the greatest possible extent. Mr Dhillon stated that he does not consider that the premises will create any material noise disturbance as people will purchase their alcohol and then leave. If there are any issues they will deal with them by asking the people to leave.
45. Mr Dhillon outlined the applicant's plan on how they will mitigate the risk of nuisance and vandalism by the installation of CCTV cameras and the use of appropriate external lighting which is also expected to be a deterrent to vandalism and nuisance within the immediate area of the premises. The applicant also proposed to keep the area regularly maintained and kept clear of rubbish. He also stated that they would work with Police and other community organisations to address instances of nuisance and vandalism and where appropriate staff will be required to report concerning conduct to Police especially if there appears to be a risk to people or property.
46. Mr Dhillon said that they were aware of the other off-licenses in the area but that there was no off-licence currently in Ravenswood. Mr Dhillon acknowledged that there is an off-licence in Pegasus as well as some holders of on-licences in the locality of the proposed store.

47. In his evidence Mr Dhillon addressed concerns regarding the sensitive sites in the locality and stated that none of the organisations associated with sensitive sites have objected to the application. He also noted that they will take steps to minimise the impact that the granting of the licence could have on the sensitive sites, and the community by;
- (a) Changing the marketing proposals so that they are not advertising the sale of alcoholic products outside the premises within view of the public.
 - (b) Sharing profits with the community by making contributions to appropriate local not-for-profit organisations in the community.
 - (c) Attending community forum and engaging with the community about any concerns that they may have about the business and being responsive to those concerns.
 - (d) Playing their part in ensuring that issues relating to noise, vandalism and nuisance are addressed by members of staff and followed up with appropriate organisations such as the Police as necessary.
48. Mr Dhillon also covered their framework for complying with the Act in regards to promoting the responsible consumption of alcohol and the applicant's view that any vulnerable communities in the locality will not be at risk from the premises as the applicant is aware of their obligations under the Act and are committed to supplying alcohol responsibly.
49. Mr Dhillon also outlined how they had consulted with the community by attending the Community Board meeting on 13 October 2020, speaking to local businesses about the application and speaking with the agencies regarding their concerns and making changes to address the concerns.
50. In his evidence Mr Dhillon addressed the reports of the agencies and responded to the issues raised. He addressed the issues raised by the Inspector in his report at paragraphs 9, 10, 13, 16 to 25, 48(a), 48(b) and 48(c). He contended that Inspector was incorrect on all the points mentioned and provided specifics. He also stated that he had not raised all his concerns about the Inspector's report and where he had not specified comments with which he disagreed this did not mean he agreed with those comments of the Inspector.
51. In regards to the report of the Medical Officer of Health (MOH) Mr Dhillon stated that the MOH had asked several questions of the applicants prior to submitting her report and that these were outlined, with responses at page 75 of the bundle produced by the applicant at the hearing. In all seven questions were asked by the MOH. All questions were answered by the applicant and provided to the MOH.
52. The questions were;
- 1. What is the proposed name of the store?
 - 2. Which franchise will you be using?
 - 3. Please re-evaluate your proximity to schools, residents, and other sensitive sites.
 - 4. Please can you provide a list of the products you wish to sell?
 - 5. What has made you change from fast food to a bottle store?
 - 6. Please can you tell me why you think Woodend needs another bottle store?
 - 7. Please can you provide a host responsibility policy suitable for an off licence?
53. Mr Dhillon stated that the MOH had objected on three grounds, design and layout, the stores affiliation with the Liquor Centre franchise and the marketing material that would be employed and a lack of knowledge of the local community by the applicant. Mr Dhillon

also stated that the MOH had raised the concern regarding parking congestion and road safety.

54. It was contended by Mr Dhillon that they had addressed all the concerns raised by the MOH apart from the traffic issues and that they did not agree that the store would raise any traffic safety issues any more than any other retail business would.
55. Finally Mr Dhillon stated that they were responsible, experienced and community minded operators who have had a presence in Woodend since 2019 and that the population of Woodend and surrounding townships is growing.

Cross Examination of the Applicants by the Inspector and the MOH Representative

56. Mr Dhillon was cross examined by the Inspector and the MOH Representative. Under questioning Mr Dhillon stated that they would sell a different range of products at a higher price than his competitors. He also stated that the plan that was submitted with the application would be complied with. He also confirmed that there would be one flag only outside the premises and no additional external advertising.
57. Questions were asked of Mr Dhillon by the Committee in regards to sensitive sites, car parking at the front of the store, public consultation, and the training plan.
58. Mr Warraich gave evidence by reading his brief of evidence.
59. In his evidence Mr Warraich outlined his background in business and that he operated the 'Big Bites Pizza' takeaway store at the location which the proposed bottle stores site.
60. Mr Warraich also outlined his suitability by referring to his community involvement, including his role as a 'White Ribbon' ambassador, coordination of community volunteers following the March 2019 Mosque attack and coordination of the delivery of food parcels and face masks during the 2020 Covid-19 lockdown.
61. In regards to the running of the proposed business Mr Warraich outlined his proposed role in the business as a support to Mr Dhillon and as a more strategic level of management. He also addressed how they had consulted with the community and that he felt that he had a good understanding of the community through his pizza businesses.
62. The applicant then called Mr Andre Senaratne to give evidence on behalf of the new 'Liquor Centre' Franchise. The chair canvassed the agencies and objectors regarding the calling of Mr Senaratne and decided that as Mr Senaratne had not provided eventual disclosure that he could not give evidence as such but could be asked questions. There were no objections to Mr Senaratne being available to answer questions.
63. Mr Senaratne was asked questions by the agencies and the committee. When questioned he outlined the company structure and how they operate. He was asked when the applicant approached the 'Liquor Centre' Franchise and he confirmed that it was before the application was submitted. In relation to the external signage of the proposed store Mr Senaratne stated that there was no issue with the brand name only being displayed and that no alcohol advertising on the external of the building was approved by the franchise.

Reports and Evidence of the Inspector and MOH Representative

64. The Medical Officer of Health Representative, Mrs Helen Barbour confirmed her delegated authority and read her brief of evidence.

65. Mrs Barbour outlined the opposition to the application and confirmed her report. Her evidence included a list of entities she believed may or may not be compatible with the operation of an off licence. Mrs Barbour also produced was a map showing the deprivation index of the area surround the proposed premise. This showed a median deprivation index for the area 1 kilometre surrounding the proposed premises has a median rating of 4 out of 10 where 1 represents areas in NZ with the least deprived scores and 10 being the most deprived areas of NZ.
66. Mrs Barbour also submitted very helpful evidence showing the population within the 1 kilometre of the proposed store to be 2778 from statistics NZ data and also showing that the existing stand-alone bottle store trading as 'Canterbury Liquor' is 91 metres away from the proposed store.
67. In regards to the Local Alcohol Policy (LAP) Mrs Barbour quoted s.4.2.3 which outlines where a stand-alone bottle store can be located in the Waimakariri District. She agreed that the proposed store complies.
68. It was the MOH's representative's view, which was based on passing the locality 5 days a week for six years that the locality was pleasant and agreeable.
69. Mrs Barbour outlined her view that the sensitive sites nearby and she detailed these in a map with attached list of sensitive sites. She also detailed her questions to the applicant as part of her inquiry into the application and her view that traffic is a serious issue in Woodend and in particular the volume of traffic and accessibility to businesses and services.
70. It was the view of the MOH that a second off licence granted for the purpose of a stand-alone bottle store in a village as small as Woodend would likely contribute to alcohol related harm not just in the village but also in its environs.

Cross Examination of Inspector and MOH Representative

71. Under cross examination Mrs Barbour confirmed that there was no evidence of alcohol related harm in the area.
72. Mrs Barbour confirmed that she was now comfortable with the layout of the premises and the undertaking to keep the layout the same in the future.
73. Mrs Barbour confirmed that she was comfortable with the undertaking around no external advertising on the premises.
74. Mrs Barbour agreed, in relation to the traffic issues, that these issues could apply to any business located on that site.
75. The Alcohol Licensing Inspector, Mr Raj Deo, was called and confirmed his report. He gave no evidence by way of a brief but was questioned.
76. When asked if he thought the applicant understood the community now he confirmed that after what he had heard during the evidence given by the applicants that they had a better knowledge of the community. He also accepted that everything that was required to be submitted in regards to the application had now been provided.

Evidence of the Objectors

77. Mrs Shona Powell represented the Woodend Sefton Community Board. She appeared under s. 204(4)(b) of the Act.

78. Mrs Powell outlined the opposition of the Community Board to the application which was centred around;
1. the object of the Act,
 2. a likelihood that the premises will have a more than minor impact on the community,
 3. that there are no controls on the consumption of off licence purchased alcohol,
 4. ARH will not be reduced and discounting is a possibility.
79. Mrs Powell believed that the Liquor Centre was a '*sell anything at any price*' franchise and that there was no need for another off licence as there were already enough outlets servicing the area.
80. It was the opinion of the Community Board that the sale of single 'RTDs' was admirable but did not go far enough. They agreed with the MOH that traffic safety was a big issue and that even though the location was zoned for business a liquor store was different due to the short duration of the customers.
81. In relation to the CCTV proposed by the applicant Mrs Powell believed that this was a good idea but more were needed, especially at the rear of the premises.
82. Under cross examination, Mrs Powell was asked if there was any evidence of alcohol harm reduction. She agreed that there was none and that this was just a concern. She also had concerns regarding the rear of the property as well as concerns regarding sensitive sites such as the nearby church.
83. Mrs Belinda Cartwright gave evidence and explained that she lived in a two storey house to the rear of the proposed premises and their drive way was at the north end of the complex housing the proposed premises.
84. She also stated that she was representing her husband, Justin Cartwright with whom she lived as well as her sister, Erin Inwood, who also lived at their address.
85. Mrs Cartwright objected on the grounds that she believed that good order and amenity would likely be reduced, to more than a minor extent, by the effects of the issue of the licence s.105(h) as well as s.106(1)(a)(i) current and possible future noise levels.
86. It was Mrs Cartwright's opinion that the neighbours of the proposed store would be subject to increased noise from vehicle movements, loitering, shouting, breaking glass or other anti-social behaviour. This would be particularly so due to the concealed nature of the large carpark behind the premises.
87. Mrs Cartwright took issue with the applicant's application on a number of points such as 12(a) and 12(c) of the bundle where it is stated that there are no residential neighbours and no school and that they did not think there would be any noise problems. She also outlined her apprehension at the potential for broken glass to be left on or around their driveway which would particularly affect her sister who uses a wheelchair along with her young children.
88. In her objection Mrs Cartwright also raised the issue of advertising on the outside of the building being visible to passing high school students and the general public.
89. When cross examined Mrs Cartwright agreed that the locality was a safe and pleasant place and ideal for raising children. She did confirm that traffic is an issue and that it was heavy at specific times but also busy most of the time.

90. When questioned about her apprehension around the reduction of the good order and amenity of the locality she thought that people could be drawn to the rear carpark. She also stated that there was currently some increase in noise and vehicle movements.
91. Mrs Cartwright also confirmed that when they bought their property they knew that the properties in front were zoned business. She was also informed that the applicant had undertaken to clean up the area in front of the proposed premises, including her driveway and that the applicant had also undertaken to not have any external advertising on the premises.

Closing submissions

92. The Alcohol Licensing Inspector in his submission referred us to his report and pointed to s.105 and 106 of the Act in regards to good order and amenity. He stated that the number of premises in the locality is an issue. He also referred the committee to decision the decision of the Authority of Hari Om (2013) Limited NZARLA [2014] 946 in relation to the issue of the good order of the locality and whether this would be reduced by more than a minor extent by the issue of a licence.
93. Mrs Barbour for the MOH referred the committee to a number of cases in regards to its role as an inquisitorial body and a duty to consider all sensitive sites in the locality. She referred to Mrs Cartwrights comments that the locality had a safe feel to it and that the school was the heart of the community.
94. It was Mrs Barbour's view that the applicant lacked community knowledge and that the concerns of the applicant stopped 'at the door'. She also stated that the sale of off licence alcohol brought an inherent risk as there was no control over the consumption of the alcohol.
95. The committee were reminded that the holder of a licence took on both the privilege and burden that was associated with it. She also stated that the traffic safety issues that had been raised were a valid consideration and that the licence should be declined.
96. Mr Stringer for the applicant spoke to the standing of some of the objectors. This in our view was a moot point as some had not appeared and therefore their objection carried little weight.
97. Mr Stringer stated that the applicant had proved their suitability and that both representatives of the applicant were honest and transparent. They had no convictions and were balanced with experience in the alcohol industry and also in business.
98. He said stated that the Inspector accepted that the material that was required to be produced was now all submitted but that the Inspector still had unsupported opinions.
99. It was submitted that there was no issue with the LAP and that the hours were acceptable but could be changed in response to the objectors, especially in regards to Sunday trading. He also submitted that the design and layout of the premises was now acceptable to the agencies.
100. In regards to the good order and amenity to the location Mr Stringer quoted 'Health J' in *Venus* which concludes there is now onus on the applicant to prove a reduction in the good order and amenity and that it must rest on the facts of the case.
101. Mr Stringer stated that it appeared that the main concerns were the number of stores in the locality, sensitive sites, traffic and the risk of noise and vandalism. He submitted that no concerns were backed up by evidence and there was no evidence as to how the good order and amenity of the locality would be reduced by the granting of the application.

102. It was the view of the applicant that the agencies cannot just put forward a statement and not produce evidence of the validity of that statement and that assertions on their own cannot be stood on.
103. In regards to proliferation of bottle stores Mr Stringer stated that there is one other off licence in the locality and a second would be consistent with the growth in the area. Mr Stringer stated that in 2018 the Waimakariri District Council looked at a rule in the LAP which would restrict the granting of any new off licences within 500m of an existing licence and that this suggested rule was rejected. He went on to state that it is not the number of outlets that is the issue but rather the harm associated with them that is the issue.
104. Mr Stringer stated that it is was important to note that no sensitive sites or sensitive organisations have objected to the application and suggested that mere proximity to such sites should mean refusal of a licence. He also stated that the applicant is conscious of the sensitive sites and has responded by making undertakings.
105. In regards to the issue of traffic safety which has been raised, Mr Stringer submitted that there was no evidence that the proposed premises will materially increase traffic issues and that the traffic issues are not an alcohol harm reduction issue. He also submitted that there was anecdotal evidence only of noise and vandalism and that there was no real cogent evidence. There is no evidence to suggest that there would be unsafe or irresponsible sale of alcohol by the applicants
106. Mr Stringer submitted that the lack of objection from Police is a relevant factor and that when the DLC steps back and evaluates the evidence then the object of the Act can be met by the granting of the licence.

Criteria

107. In considering an application for an off-licence the Committee is directed by sections 105 and 106 of the Act as well as reports under section 103. The criteria is listed below.

105 Criteria for issue of licences

- (1) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - (a) *the object of this Act:*
 - (b) *the suitability of the applicant:*
 - (c) *any relevant local alcohol policy:*
 - (d) *the days on which and the hours during which the applicant proposes to sell alcohol:*
 - (e) *the design and layout of any proposed premises:*
 - (f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
 - (g) *whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
 - (h) *whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*

- (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:*
- (j) *whether the applicant has appropriate systems, staff, and training to comply with the law:*
- (k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*
- (2) *The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*

108. Section 106 sets out the criteria when one is looking at the “amenity and good order of the locality” and includes matters such as current and possible noise levels, nuisance and vandalism, and the proliferation of liquor outlets. The Committee is also obliged to take into account whether the proposed use of the premises is compatible with the land used near the premises.

109. The object of the Act, as well as its purpose, are the lens by which the application is measured. The minimisation of harm is the key principle of the Act.

The Applicant and Suitability

110. The suitability of the applicant was challenged by the Inspector, the Medical Officer of Health and a number of the objectors.

111. The Committee acknowledge that it is the applicant's responsibility to demonstrate that they meet the requirement of the recognised test as to suitability which is found in *Re Sheard* [1996] 1 NZLR 751 at 758:

“The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that are to go with the holding of a licence.”

112. The Authority stated in *Nishchay's Enterprises Ltd*,² suitability is a broad concept:

Traditionally, [the test of suitability] has been interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus it includes the object of the Act as set out in s 4. The Sheard test is not simply about how a business is likely to operate in the future. It is dependent on an assessment of the more generalised factors referred to in the previous paragraph.⁵⁰ It includes how a licensee will deal with liquor abuse issues that may arise from the establishment of the business.

113. The committee noted that Mr Dhillon has 6 years of managing an off licence, he is a director shareholder and noted his qualifications and experience. In regards to the experience of managing a bottle store Mr Dhillon had been carrying out the day to day running of the Opawa Liquor Centre while owners were overseas.

² *Nishchay's Enterprises Limited* above n 46, at [54]

114. On the unchallenged evidence of Mr Dhillon, summarised in paras [27] to [30] above the committee finds no reason to doubt the suitability of Mr Dhillon.
115. With regards to Mr Warraich, Police raised no issues regarding his suitability. Mr Warraich acknowledged that he would gain experience before applying for his manager's certificate. The committee felt that Mr Warraich's involvement as an ambassador for White Ribbon would give him a greater understanding of some of the issues that alcohol may cause. Mr Singh provided a number of references to his involvement that have been recognised at a national level.
116. In terms of community knowledge the committee noted the concerns of the inspector. There was an expectation that applicant engages with the community. They have done so after the application was submitted but they also emailed all the objectors to see if a meeting could be arranged between the objector and the applicant.
117. The applicants have engaged with the local Woodend Sefton Community Board and gave a presentation to the Board on 13 October 2020. At this meeting the Board did not avail itself of the opportunity to ask questions of the applicants.
118. The committee also noted that since 2017 Mr Warraich had a business in Amberley and since 2019 a store in Woodend. These facts were not challenged.
119. Police raised no matters in regard to the applicants' suitability.

Any relevant Local Alcohol Policy and the days and hours on which alcohol proposed to be sold

120. The Waimakariri District Council's LAP came into force on 15 February 2015. As noted by Ms Barbour, this application fits within the Local Alcohol Policy.
121. The Community board raised the issue of effect on church services, but no evidence was directly given on this point. The Applicant has offered to change hours to open from 11am Sunday. Applying a precautionary principle panel consider that this should be a condition, subject a review after a probationary period.
122. If the community is of a mind to place controls on the density of licensed premises then the most appropriate vehicle to do so is through the Local Alcohol Policy (LAP). This mechanism has been placed in the legislation to encourage local territorial authorities to consult their communities, and the industry, and come to a properly consulted policy which recognises the individual needs of those communities in relation to alcohol related harm.

Systems, Staff and Training

123. Following the hearing and at the panel's request, the applicant provided a copy of the training manual. The panel have reviewed this information and find that the systems are appropriate.
124. The Committee was comfortable with the systems and staff training proposed in the application.

Design and layout of the proposed premises and external advertising

125. The design and layout of the premise, as shown in the plan submitted at the hearing was accepted by the Police as acceptable and was amended after hearing the concerns of the Medical Officer of Health.

Whether the applicant proposes to engage in the sale of goods and services other than alcohol, low alcohol refreshments

126. The application confirms the applicants' intention to operate as a 'Bottle Store' and to sell a small range of items such as non-alcoholic drinks, chips, nuts, chewing gum, etc. as well as cigarettes and tobacco.

Amenity and Good Order of Locality – Proliferation - Density

127. As noted earlier in this decision the committee are directed by the Act at s. 105(1)(h) to evaluate, or form an opinion, as to *whether the amenity and good order of the locality (our emphasis) would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence.*
128. S.105(1)(h) further goes on to require a view to be formed as to whether the locality is already so badly affected by the effects of the issue of existing licenses that -
- (i) They would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
 - (ii) It is nevertheless desirable not to issue any further licences.
129. There was no direct evidence produced by the agencies or the objectors in respect to amenity and good order issues and no evidence to suggest that the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence.
130. In the decision of *Re Wino NZ Ltd* [2014] NZARLA 227 the word 'minor' was considered in the context of this Act. The application related to a proposed Off-licence to be situated opposite a church. The Authority said at [12] that:
- "... the fact that St Matthew's Church is across the road from the proposed premises needs to be taken into account and the Authority recognises that already the church grounds and adjacent alleyway are used by undesirable persons for unacceptable activities. Nevertheless, it seems unlikely that if this application is granted there will be any significant increase in the problems experienced by the church authorities."*
131. The committee heard evidence that the area was 'pleasant and agreeable' and the presumption that there will be issues if the licence is granted are not enough to persuade it to believe that the area will be effected by more than a minor extent if this licence is granted.
132. The committee notes that no one from the identified sensitive sites, mentioned in the report of the Inspector and the evidence of the applicant, made an objection to the application.
133. It was noted that the Mrs Cartwright was concerned about the rear carpark behind the proposed premises as well as their driveway which is directly adjacent to the commercial units of which the proposed premises are a part of. Her concerns centred on the depositing of litter primarily in the form of glass as her sister uses this access way in her wheelchair and any glass has the potential to cause harm.
134. The committee has taken this into account in imposing conditions by consent in regards to the applicant undertaking to keep the outside of the premises, carpark garden and footpath clean and tidy and free from rubbish and that this will be attended to by the applicant on a daily basis. This area extends across the objectors driveway thus ensuring her driveway is kept clean and tidy on a daily basis.

135. The Committee saw no element in the location or design and layout of the bottle store that would adversely affect amenity and good order, in the vicinity by more than a minor extent. The committee have been mindful of the issue raised with the close proximity of the nearby Woodend Methodist Church and therefore sought the opinion of the applicant in the form of a minute issued after the hearing in relation to the shortening of the hours on a Sunday so as to reduce the chance of issues arising from sales from the proposed store and the morning services at the church. The applicant has agreed that the hours of operation shall be from 11am to 10pm on each Sunday.
136. Some concerns were raised about an increase in parking and traffic generated by the proposed premises. It is noted that the premises is located in an area zoned for commercial activity and a bottle store is a permitted activity in that zone. Parking and traffic congestion issues are not of themselves a relevant consideration in our inquiry.³
137. In regards to the density or proliferation of the number of licenses held in the locality there was no evidence produced which raised any issues in regards to any increase in harm which is likely to occur should this licence be granted.
138. The two agencies which opposed the application and the objectors who gave evidence cited an apprehension of alcohol related harm but insufficient evidence was provided to substantiate that apprehension. The apprehension of general alcohol harm reduction is understandable but there needs to more than apprehension alone.
139. The committee must look at the locality and what it is like now and then assess the evidence which was placed before them and weigh that evidence in the context of the proposed application in the proposed location. After completing this evaluative assessment the committee must then come to a reasoned decision that balances the ability of the public to access a legitimate product against the real potential for an increase, of more than a minor extent, of alcohol harm reduction. The locality focuses and draws away from considering the general harm from alcohol in the wider community.
140. In the recent decision of *Selby v Kiw-E Otaki Limited - Super Liquor Otaki* [2020] NZARLA 210⁴ the Authority considered the locality of a proposed premise and articulated the relevancy of this at [83] saying;

[83] Notwithstanding that Liquor World Limited and Gisborne Liquormart Limited relate to the determination of the status of an objector, as was the case in Re A Karambayev Limited, the two concepts have a certain mutuality such that the Authority remains inclined to give the expression 'the locality' a restricted meaning parallel to the area used for determining an objector's status for the purposes of s 102(1). In saying this, we acknowledge that what constitutes a locality for amenity and good order purposes should not be defined by reference to an overly prescriptive rule, but nor ought the locality be subjectively defined based on the nature of the objections raised. The benchmark for determining locality for assessing amenity and good order is that part of some place which will proximately be affected by the grant of the application. In the present case that is

³ PKNG Limited v Fluger and Horowhenua District Council [2019] NZARLA 38 [72] – [81]. Parking and Traffic Congestion are not matters relevant to amenity and good order under s106 of the Act. Traffic safety issues may be relevant considerations under s4 see PKNG at [69].

⁴ *Selby v Kiw-E Otaki Limited - Super Liquor Otaki* [2020] NZARLA 210

not all of Ōtaki simply by virtue of Otaki being a vulnerable town but is the area within a radius of about one kilometre around the premises.

Committee's Decision and Reasons

141. In the decision of the *Qing Qing Trading Company Limited - Plush KTV v Wilson* [2019] NZARLA 241 the Authority articulates the well canvased caselaw in relation to how a DLC should approach the evaluative role with which it is charged when hearing and deciding an application placed before it.

[134] *The approach to be taken when determining whether to grant an application for a licence (including a renewal licence) has been well traversed by the superior courts.*

*As Heath J said in Re Venus NZ Ltd:*⁵

There is an underlying assumption (which I take from the way in which criteria are expressed) that the Authority will exercise an inquisitorial role in determining the appropriateness of the grant of a particular licence having regard to all relevant factors. Although the 2012 Act does not express the powers of the Authority in that way, the breadth of its functions, (which go beyond judicial determinations) suggests that the application of rules involving onus of proof may not be appropriate.

[135] *As Gendall J confirmed in Christchurch Medical Officer of Health v J & G Vaudrey Ltd,*⁶ *the role of the DLC or the Authority in considering the relevant factors in s 105 of the Act is an evaluative one.*⁷

[136] *Recently, Clark J summarised the applicable principles in respect of the renewal of a licence in Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*⁸ *and again reiterated that the application of rules involving onus of proof may be inappropriate,*⁹ *and similarly, there is no onus on the reporting agencies to prove the application should not be granted.*¹⁰

[137] *In Lower Hutt Liquormart Limited v Shady Lady Lighting Limited, Churchman J said the same.*¹¹

[138] *In Patel's Superette 2000 Ltd v Muir*¹² *this Authority said that while there is no onus of proof on an applicant, an applicant must put its best foot forward if it expects a DLC to favour the applicant over significant opposition which is supported by evidence.*

[139] *In the present case, that the result might have been the same if a higher standard of proof is placed on an applicant, or that the result may have been the same if the Licensing inspector had the onus of proof, is not an answer. An evaluative framework is simply not one where an onus or standard of proof makes much sense. The point being simply that a decision-maker is obliged to inquire into and assess an application. That assessment involves judgement and is about risk. As Clark J put it: "The factors to be considered in the course of assessing an application for a licence or for renewal, as the*

⁵ *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315 at [60]

⁶ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382

⁷ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 64, at [55] – [56]

⁸ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123 at [46]

⁹ *Re Venus NZ Ltd*, above n 63, at [60] and *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689 at [52]

¹⁰ *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 67 at [113]

¹¹ *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [39]

¹² *Patel's Superette 2000 Ltd v Muir* [2019] NZARLA 75

appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm.”¹³

Nor does it matter that the DLC appears to have been relying on R S Dhillon. The position taken there about the onus and standard of proof¹⁴ can no longer be considered good law in light of more recent decisions of the superior courts. There should be no doubt left in the minds of district licensing committees that the evaluative function, which is for the decision-maker to undertake, does not involve an applicant having to ‘prove’ anything.

142. The Committee must be satisfied that the application is consistent with Sections 3, 4, 105 and 106 of the Sale and Supply of Alcohol Act 2012.

143. As has been well canvassed by both the Authority and the High Court there is no presumption that a licence will be issued, see *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*¹⁵;

Thus, when the relevant body receives an application, they must consider it against s 105 in deciding “whether to issue a licence”. There is no presumptive position, and certainly no foregone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

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 ...; and

(c) The relevant body must finally cross-check whether the application is capable of meeting the object of the Act.

144. The Committee adopts the approach outlined by the High Court in *Otara Papatoetoe Local Board v Joban Enterprises Limited* CIV 2011-404-007930 [2012] NZHC 1406¹⁶ and consistently applied since, for example see *Re Venus NZ Limited* [2015] NZHC 1377¹⁷:

(a) The relevant statutory criteria under consideration, in this case [s105(1)];

(b) The reports presented by the Agencies; and

¹³ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 66 at [43] and [47]

¹⁴ *R S Dhillon Limited* [2013] NZARLA PH 920 at [32]

¹⁵ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382

¹⁶ *Otara-Papatoetoe Local Board v John Enterprises Ltd* [2012] NZHC 1406, [2012] NZAR 717.

¹⁷ *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315.

(c) Public Objections.

145. In the Otara-Papatoetoe Local Board decision the Court held that then (referring to the then object of the Act):

Having considered all of that information, the Authority must stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires the Authority to form a view on whether there is evidence to suggest that granting the application will be contrary to s 4 (1), increase the risk of alcohol abuse. While a causal nexus is required between such evidence and the relevant risk, it is unnecessary to qualify the nature of the link by reference to such words as 'powerful' or 'direct'.

146. In this case the committee must stand back and determine whether the application should be granted or refused after forming a view on whether there is evidence to suggest that granting the application will be contrary to the dual objects of the Act 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 minimized.

147. All the evidence placed before the committee has been considered, and the committee have considered the relevant sections of the Act. In particular the sections listed below:

Section 3(2) The purpose of the Act.

The characteristics of the new system are that—

- (a) it is reasonable; and*
- (b) its administration helps to achieve the object of this Act.*

Section 4 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).*

148. Having considered the application, Agency reports, matters raised in opposition by the objectors and the relevant matters contained in s105(1) and (2) and s.106(1) of the Act, the committee are satisfied, after standing back and evaluating all the matters placed before us that the application does not offend against either the purpose or object of the Act.
149. The committee also find that the applicant is suitable. No reasonable argument was raised to alter the view on this and the evidence of the applicant company's directors gave us confidence that they are indeed suitable to be the holder of a licence.
150. The committee find that there is no conflict with the Local Alcohol Policy if this licence was granted.

151. In regards to the hours and days which the applicant proposes to sell alcohol the committee has amended the hours to reflect some of the concerns of the agencies and objectors.
152. In regards to the design and layout of the proposed premises the committee find that the proposed plan placed before us at the hearing, and agreed to by the Police is suitable. It is noted that the applicant has made an undertaking that the only external signage on the premises will be the name of the store and that no brand advertising will be placed on the outside of the building.
153. The committee further find that the location is suitable. No evidence was placed before us that dissuades us from the view that the location is currently pleasant and agreeable and that the granting of a licence in this location would reduce, by more than a minor extent, the amenity and good order of the location.
154. In forming the opinion for the purposes of section 105(1)(h) we have had regard to the matters as set out at s. 106(1) of the Act.
155. The committee find that the applicant has the appropriate systems, staff, and training to comply with the law.
156. A licence is granted for a period of one year and then it must be renewed. If the local community has any relevant issues with the manner in which the premises are run and the effect that it is having in relation to the locality they may raise an objection when the renewal application is publically notified.
157. The agencies also have the ability to raise any relevant issue when the application for licence renewal is notified to them. The Police and Alcohol Licencing Inspector have the ability to bring an application at any time to vary, suspend or cancel the licence if they find any breaches of the Act.
158. These safeguards in the Act are there to allow the local community to continue to have input into the licensing regime. They also serve as an incentive to the applicant to make good on the statements they have made when applying for the licence and to continue to operate their premises in a way which minimises ARH in the community.

Decision

For the reasons outlined above the OFF licence application for Te Tino Enterprises for the premises at 61 Main North Road, Woodend is granted for an initial term of 12 months, subject to the following conditions:

- (a) No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day:
- (b) Alcohol may be sold only on the following days and during the following hours:
Monday to Saturday 10.00am to 10.00pm and
Sunday 11.00am to 10.00pm
- (c) The premises shall be set out in accordance with the modified plan date stamped as received by the Waimakariri District Licensing Committee on 24 March 2020.
- (d) A copy of this licence must be displayed at the principal entrance to the premises. The entrance from the carpark is designated as the principal entrance.
- (e) The Licensee must ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the

supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.

- (f) The licence shall not issue until the Certificate of Public Use or the Certificate of Code of Compliance has been issued.
- (g) The outside of the premises, car park garden and footpath be kept clean and tidy and free of rubbish by the applicant.
- (h) The garden and footpath area outside of the building carpark shall be attended to by the applicant on a daily basis.
- (i) Prior to the commencement of the off licence, any lighting shall positioned away from the dwelling at 65B Main North Road.
- (j) The external security light at the rear of the premises shall not operate past 10.30 pm unless it detects movement at the rear of the property.
- (k) Any signage affixed to the front of the building or within the premises shall not display trademarked alcohol branding. For the purpose of this condition the franchise name shall not be considered alcohol branding.

DATED at Rangiora this 21st day of May 2021.



Chairperson

Waimakariri District Licensing Committee

