

Application 19/072/2023
IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND
IN THE MATTER of an application by
AW and BL Mudaliar and Co Limited
for renewal of an off-licence pursuant to
section 127 of the Act in respect of the
premises situated at 57 Moa Street, Piopio,
and known as Piopio Superette

HEARING at Railway Building 3, Te Kuiti, on Friday 30 October 2025

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Dr M Cameron
Members: Dr P Davies, Mr R Johnson

APPEARANCES

Ms B Mudaliar, Director of the applicant company
Mr A Mudaliar, Director of the applicant company
Ms P Mudaliar, Family employee of the applicant company
Ms S Rawcliffe, Counsel for the applicant
Ms A Suckling, Counsel for the applicant
Mr A Chand, Licensing Inspector
Ms A Mail, Medical Officer of Health delegate, to assist the Committee
Mr B Wipa, Medical Officer of Health delegate, to assist the Committee

SITE VISIT:

A site visit was undertaken by the District Licensing Committee (the Committee) on the morning of Friday 30 October 2025. The Directors of the applicant company were present for the site visit.

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

The application by AW and BL Mudaliar and Co Limited for renewal of an off-licence pursuant to section 127 of the Act in respect of the premises situated at 57 Moa Street, Piopio, and known as Piopio Superette is granted.

NON-PUBLICATION ORDER

Pursuant to Section 203(5) of the Sale and Supply of Alcohol Act 2012, an order is made prohibiting the publication of the following information:

1. Any financial details included in the hearing file for application 19/072/2023; and
2. The name of any person mentioned in the report of the Labour Inspector (included in the hearing file for application 19/072/2023), who is not also a party to these proceedings.

This order applies in perpetuity.

INTRODUCTION:

[1] AW and BL Mudaliar and Co Limited has applied for renewal of an off-licence in respect of premises situated at 57 Moa Street, Piopio, and known as "Piopio Superette". The application was filed with the Waitomo District Council on 19 September 2023.

[2] The general nature of the business is that of a grocery store.

[3] The applications were duly advertised in accordance with section 101, and no objection or notice of desire to be heard has been received. Reports on the application were received from an Inspector, the Medical Officer of Health, and the Police. The Police did not oppose the application. The Medical Officer of Health initially opposed the application but withdrew their opposition after further clarification from the applicant. The Licensing Inspector opposed the application. Given the opposition of the Licensing Inspector, the application was set down to be determined at a public hearing.

[4] A hearing into the application was held on 6 March 2025, and the Waitomo District Licensing Committee released a decision on this matter dated 17 June 2025, declining the renewal application. The decision of the Committee was appealed to the Authority by the applicant.

[5] In a minute of the Authority dated 18 August 2025, the matter was referred back to the Committee for re-hearing, with a Committee "differently constituted to that which heard the application on 6-7 March 2025 and whose decision was issued on 17 June 2025". At paragraph [8] in the Minute, the Authority noted that the referral to a re-hearing:

"...should not, however, be taken as a criticism in any way of the DLC that heard the application for renewal in March 2025. However, the accumulation of the problems arising from the inaccurate record of that hearing as well as the other matters raised by Ms Rawcliffe require the matter to be considered afresh."

[6] A new Committee was constituted to re-hear the matter.

HEARING:

Preliminary Matters:

[7] At the site visit on the morning of the hearing, the Committee were approached by a member of the public, who expressed views on the applicants, the application, and the community. There was no indication to the Committee that this encounter was planned by the applicant and appeared to have been initiated by the member of the public. As this member of the public was not called as a witness to the hearing, and their comments were not able to be tested under oath or affirmation, the Committee has not given their comments any weight.

[8] At the commencement of the hearing, Ms Rawcliffe raised whether it would be necessary to hear from the labour inspector, who was scheduled to be called as a witness for the Licensing Inspector. Ms Rawcliffe submitted that, as the Employment Relations Authority had already heard and ruled on the matter, the labour inspector's evidence would not add any new information to the proceedings. Ms Rawcliffe submitted that the Committee should instead consider the decision of the Employment Relations Authority.

[9] On this point, the Medical Officer of Health delegate submitted that the labour inspector's evidence was important to hear. The Licensing Inspector submitted that it would be important to hear from the labour inspector.

[10] The Committee carefully considered whether it would be necessary to hear from the labour inspector at the hearing. The Committee considered two issues. First, is it necessary for the Committee to test the evidence of the labour inspector, given that it has been tested already by the Employment Relations Authority? Second, is there evidence that the labour inspector could provide to the Committee that has not already been tested by the Employment Relations Authority?

[11] In relation to the first question, it is clear that the labour inspector's evidence has already been tested by the Employment Relations Authority, which is a higher authority than a District Licensing Committee. Thus, the Committee could not override the Authority's decision and come to a different conclusion.

[12] In relation to the second question, the Committee has read the labour inspector's report, and concludes that the labour inspector will not be providing new evidence that has not already been tested by the Employment Relations Authority.

[13] The Committee determined that the labour inspector's report would be taken as read, and that it was not necessary to hear directly from the labour inspector.

Opening Submissions – Applicant:

[14] Ms Rawcliffe gave a brief oral opening submission, summarising the key issues from the applicant's perspective and setting the scene.

Witness for the applicant – Ms B Mudaliar:

[15] Ms Bidya Mudaliar, Director of the applicant company, read her brief of evidence. She introduced herself and outlined her background and experience. She moved to New Zealand in 1995

and purchased Piopio Superette in 2002. She and her husband Avinesh “have been involved in the day-to-day operation of our store since we opened”.

[16] Ms Mudaliar discussed the role of the premises in the community, noting that “Piopio Superette serves as a vital local service and community hub. Piopio is a small town and we are the only off-licence in the town. The closest other supermarket and/or off-licence is in Te Kuiti, which is a 30-minute drive from Piopio. The community relies on us as being a one-stop-shop for all of their needs and this includes being able to buy alcohol with their shopping. If they cannot get it from us, they have to drive to Te Kuiti”.

[17] Ms Mudaliar stated that “[w]e have two fulltime employees working at the store, who are both on work visas”. She noted that both she and her husband hold current Manager’s Certificates and are “actively involved in the day-to-day operations of the business”. She further noted that “[m]y family and I are committed to running the business responsibly, with a focus on minimising any potential harm from alcohol”.

[18] Ms Mudaliar noted that they have “operated the shop since 2002 and in that time there has never been any alcohol compliance issues with our premises”. She noted that there had never been any failed Controlled Purchase Operations, and that she and her husband “take our responsibilities as licensees extremely seriously”.

[19] Ms Mudaliar then addressed the labour inspectorate’s investigation and subsequent Employment Relations Authority hearing, noting that “the ERA decision points out that none of the allegations that our former employee made were able to be proven and that any breaches of employment standards was not intentional”.

[20] Ms Mudaliar outlined the circumstances around the proceedings and said that “[t]he investigation arose after a complaint was made by a former employee two years after we dismissed him. The complaint related to allegations that we made the employee pay premiums and required him to pay back money to us in respect of wage rates”. She noted that “[w]e co-operated with the Labour Inspector’s investigation and provided information as requested”.

[21] Ms Mudaliar outlined her perspective on the Employment Relations Authority’s decision, the negative publicity that arose as a result of the investigation, and the challenges that the family faced as a result. She noted that “[w]e sincerely regret the mistakes we made with our record keeping and everything has been fixed since then. We have paid the penalties that were ordered”. Ms Mudaliar then asserted that “[w]e are good employers and we understand the importance of meeting our obligations under employment law and other legislation”. She referred the Committee to a Labour Inspectorate report dated 14 May 2025, that confirmed that “we are compliant and the file will be closed”.

[22] Turning to systems, staff, and training, Ms Mudaliar noted that “[s]ince the renewal application was filed, we have increased the number of duty managers to ensure coverage for the licensed hours”. They currently have five certificated duty managers, and one other staff member who has applied for a Manager’s Certificate, Manish Sharma.

[23] Ms Mudaliar noted that temporary or acting managers had “previously been appointed as needed for absences”. She acknowledged the warning they received from the Licensing Inspector for having an acting manager appointed for more than three weeks but clarified that “it was actually only two days a week for a period of just over three weeks, it was not continuous”.

[24] Ms Mudaliar then discussed training, noting that “[t]raining is conducted at induction and then every six months for new staff, with annual refreshers for more experienced team members”. She also discussed the training records, and what was included in training. On the latter, “[s]taff are trained in responsible alcohol service, and internal policies are regularly reviewed to ensure compliance with the Act”.

[25] On days and hours of operation, Ms Mudaliar said that they wished to retain the current licensed hours of 7am to 10pm, Monday to Sunday. She noted that “[t]he business does not operate at full licensed hours every day. Instead, it maintains flexibility to accommodate busier periods”.

[26] Ms Mudaliar then discussed the single alcohol area, and why they proposed changing the layout of the area. She noted that “[w]e moved the freezer in about January 2024 (after the renewal application had already been filed) because it effectively created two entry points to the alcohol area and created some difficulties with access to the area and there was not enough room to open the chiller doors properly. It also caused a bit of confusion for some customers as it provided a pathway to behind the counter and we found that some customers were coming behind the service counter which we felt was a safety issue”.

[27] In concluding her evidence, Ms Mudaliar noted that “[w]e also understand that Piopio is a vulnerable community which means that we have added responsibilities when it comes to how we run our business”.

[28] In response to a question from her Counsel, Ms Mudaliar confirmed that Manish Sharma now has a Manager’s Certificate, that was recently issued. She also confirmed that they have changed the processes for refilling the refrigerators in the single alcohol area, to ensure that the alcohol remains within the single alcohol area during this process.

[29] Asked by her Counsel about her customers, Ms Mudaliar responded that they were people from the community, passersby, and visitors during Christmas and New Years. People came to the store from Awakino, Mokau, and Aria. This included people from the community, mostly farmers, to buy their groceries.

[30] Responding to a question from the Inspector, Ms Mudaliar said that there are two clubs in Piopio, but she did not know if they had off-licences or not.

[31] Asked by the Inspector about the hours worked by each duty manager in the last month, Ms Mudaliar responded that staff work 30 hours per week, and since there are two of them that covers 50 hours. Her daughter Priya is a lawyer and works from home. Her son Ayush also works from home.

[32] In response to further questions from the Inspector, Ms Mudaliar noted that the current opening hours of the premises were 7am to 7:30pm every day. Asked about their customers, Mr Mudaliar responded that they included mothers dropping kids off at school in the morning, then farmers and travellers through the rest of the day.

[33] Asked by the Inspector whether they accepted that the employment breach occurred, Ms Mudaliar responded that she did not.

[34] Responding to the Inspector, Ms Mudaliar noted that they provided training six-monthly.

[35] Asked by the Inspector about the single alcohol area, Ms Mudaliar accepted that three boxes of beer were outside of the single alcohol area on 4 June 2024, as shown in photos of the Inspector's site visit. She noted that in this application she has asked to change the single alcohol area to make it clearer.

[36] Responding to questions from the MOH, Ms Mudaliar noted that she had not been notified of any controlled purchase operations (CPOs) and that, as far as she was aware of, they had never failed a CPO for vapes or tobacco.

[37] Asked by the MOH about training prior to the first hearing, Ms Mudaliar responded that it covered the same subjects, the conditions of the licence, the legislation, Servewise, and the Host Responsibility Policy. The training used to be six-monthly to yearly, but the training is now six-monthly.

[38] Asked about what host responsibility meant to her, Ms Mudaliar responded that it was a duty of care, responsibility, and compliance with the law.

[39] Asked by the MOH about how often they open until 10pm, Ms Mudaliar responded "not very often".

[40] In response to questions from the Committee, Ms Mudaliar noted that Piopio Superette had been a Four Square supermarket when they bought it, and was licensed at that time. She noted that she worked at the store 3-4 times per week, for 6-10 hours. Avinesh works at the store 4-5 times per week, 8-10 hours per day. Priya worked once every two weeks, to cover weekends. Ayush works 1-2 days during the week, weekends, and public holidays. They have a staff roster, but not for family members. Now, all employees are certificated managers.

[41] Asked by the Committee about how they have changed their processes for recording pay and holidays to ensure compliance, Ms Mudaliar responded that she ensures that she does everything on time, and accurately. She writes it in a book. She noted that the labour inspector had observed the book on their last compliance visit and they were happy with it.

[42] Asked to clarify from her brief of evidence who she considers as 'more experienced' in relation to training, Ms Mudaliar responded that they "do the quiz" every year, then clarified that she was referring to ServeWise. On external training, Ms Mudaliar mentioned Club Champs, and noted that herself and Avinesh had attended the most recent event. Asked about training in relation to business practices, Ms Mudaliar responded that there was none.

[43] In response to questions from the Committee about her duties as a Director of the applicant company, Ms Mudaliar responded that her duties were to act in good faith, in the best interests of the company, to comply with all Acts, and record-keeping, including filing the annual report, and monitoring how the business is doing. She noted that she had not done any specific training as a director, but that she knows her responsibilities.

[44] Signage was then briefly discussed, with Ms Mudaliar agreeing to move the copy of the licence to be displayed next to the door, rather than behind the counter.

[45] Turning to the single alcohol area, the Committee observed that there was a yellow and black line marking on the floor at the site visit, which was inconsistent with the proposed plan. There was extended discussion about the single alcohol area, and where the boundaries should be placed. It was agreed by the applicant that the current yellow and black line was suitable to delineate the

single alcohol area, and that the plan would be updated to reflect this. Asked whether the freezer would be moved, she noted that it would be moved to the other side of the hardware once the new plan is approved.

[46] Asked by the Committee about the demographics of her customers, Ms Mudaliar responded that they included young children, adults, to older people aged 60 plus. There was a mix of ethnicities, more European (60 percent), Māori (30 percent), and others.

[47] Asked to clarify what she meant by 'vulnerable' at the end of her brief of evidence, Ms Mudaliar said that mean disparities, inequalities, being in a remote area. She noted that her customers "are like part of our family, we take care of them". Asked to elaborate, she said that this involved providing advice, guidance, checking on each other, talking about health. She reiterated that "we look after each other".

[48] Asked whether she knew some of her customers very well, Ms Mudaliar responded that she did. Asked whether they talked to the local community about their renewal application, she responded that they did not. They did not talk to the marae. She said that "we just sent the application in".

[49] In response to a question from the Committee about what measures were in place the minimise alcohol-related harm, Ms Mudaliar responded that they don't promote alcohol, and they don't have specials. They only sell a minimum amount. They don't have a large area for alcohol, and "only sell a small percentage".

Licensing Inspector – Mr A Chand:

[50] Mr Anish Chand appeared at the hearing on behalf of the reporting inspector, Ms Berry. Mr Chand's brief of evidence was taken as read, and he summarised his opening submissions.

[51] Mr Chand's submissions first covered the statutory criteria that the Committee must have regard to, then turned to this application. Mr Chand submitted that "the DLC must treat the recurrence of similar issues from previous decision [sic] and failure of compliance with Act/condition as an aggravating factor when determining this application".

[52] Mr Chand then submitted that the DLC must consider whether the applicant has applied for the right type of licence, referring the Committee to the Authority's decision in *Dalton v Baj Holdings Ltd* [2025] NZARLA 185, on forming an opinion on whether a premises is a grocery store.

[53] Mr Chand then noted the failings of the licensee during past site visits and submitted that he was still opposed to the application and remained concerned about the applicants' ability to manage the licence properly.

[54] On cross-examination by Counsel for the Applicant, Mr Chand accepted that Ms Berry had not opposed the granting of the renewal on the basis that the premises was not a grocery store. Asked to clarify which things were still at issue, Mr Chand responded that they were on the reports, and that the licensees were not suitable.

[55] Asked by Counsel for the Applicant about whether the single alcohol area was now okay, Mr Chand responded that in terms of location, it is better than it was. He did not know about the height of the screening but was happy if it is the same height as before. Mr Chand noted that the applicants

may need to seek a variation, if the public have been disadvantaged by the change in the single alcohol area. Mr Chand said that he was happy with the change in the process for refilling the refrigerators but noted that the licensee would need to ensure customers do not move the trolley outside of the single alcohol area. He was also happy with the use of the tape line to delineate the single alcohol area.

[56] Asked by Counsel about whether the managers register was now ok, Mr Chand responded that the licensee would need to make sure that the notification process is followed.

[57] Asked if he was still opposed to the grant of the renewal on suitability, Mr Chand responded “probably not”.

[58] Asked by the Committee about why no enforcement action was taken after the site visit where alcohol was observed outside of the single alcohol area, Mr Chand responded that this was addressed with Mr Mudaliar at the time.

[59] Mr Chand then clarified that he needed confidence that the managers registration notification would happen. Asked if that was his last remaining concern, he responded that it was.

Medical Office of Health – Ms A Mail:

[60] Ashleigh Mail’s brief of evidence was taken as read. Ms Mail noted that the applicant is clear that they have taken things on board, and that they know the community.

[61] Asked by the Committee about what she would expect an off-licence applicant to be doing or not doing, Ms Mail responded that they put a lot of trust in these licensees. Knowing their customers works in their favour, as does putting their customers’ wellbeing first. Asked whether than generally lines up with what she had heard at the hearing, Ms Mail said that it was “probably sufficient, but can’t speak for what happens in the future”.

CLOSING SUBMISSIONS:

[62] Mr Chand asked the Committee to consider a condition on the licence that staff training be required six-monthly.

[63] Ms Rawcliffe provided written submissions. The submissions summarised the law and addressed each of the criteria under the Act.

FINAL MATTERS:

[64] At the close of the hearing, the Committee asked the applicant to provide an updated site plan, specifying the agreed location of the single alcohol area. This was provided to the Committee on 31 October 2025.

CRITERIA FOR DETERMINING THE APPLICATION:

[65] In deciding whether to renew an off-liscence the committee must have regard to the matters detailed in s 131(1) of the Act. These are:

- (a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1);
- (b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased by more than a minor extent, by the effects of a refusal to renew the licence;
- (c) any matters dealt with in any report from the Police, an Inspector, or a Medical Officer of Health made by virtue of section 129;
- (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

[66] The relevant matters in section 105(1) are:

- (a) the object of the Act;
- (b) the suitability of the applicant;
- (c) any relevant local alcohol policy;
- (d) the days on which and the hours during which the applicant proposes to sell alcohol;
- (e) the design and layout of any proposed premises;
- (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods;
- (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services;
- ...
- (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.

[67] In the Committee's view, s 131(1)(a), (c), and (d), and s 105(1)(a), (b), (e), (j), and (k) are most relevant when considering the on-liscence renewal application. The Committee has considered the other criteria in s 131(1)(b) and s 105(1)(c), (d), (f), and (g) and is satisfied regarding those criteria.

REASONS AND DECISION:

S125 Whether the premises is of a kind for which an off-liscence can be granted

[68] In his submissions, Mr Chand questioned whether the premises was a grocery store and whether it could be granted an off-liscence. He referred the Committee to the Authority's decision in *Dalton v Baj Holdings Ltd* [2025] NZARLA 185, where at [40] the Authority wrote:

[40] A question that we asked ourselves was whether this was a store to which a person would go to purchase items to cater for a moderately sized family for two to three nights, which is what we considered could or should be expected of a grocery store. That would not be the same as for a major shop where we would be more inclined to go to a supermarket because of the more extensive range of products that would be available at a supermarket and generally available at a lower cost. However, we still considered that a grocery store

should be able to provide food product sufficient to cater for a moderately sized family for two to three days. Frankly, the range and quantity of bread, fresh fruit, vegetables and fresh meat on display was so minimal at the time of inspection that it would not take many shoppers at all to deplete the shop of those food products.

[69] The issue of whether the premises is of a kind for which an off-licence could be granted must be resolved before the Committee can turn its attention to the renewal criteria in Section 131. The Authority made this clear in *Abbott v Parmar and Asiata Limited* [2016] NZARLA PH 137, where the Authority said:

[12] Thus, the DLC thought that when determining an application for an off-licence, it should first determine whether or not the application meets the criteria set out in s.131 of the Act. Whilst it is technically possible to consider criteria before the eligibility to hold an off-licence, such an approach is illogical. There is little point spending the time involved in assessing an application against all the criteria in s.131 if the premises are not eligible to be the subject of an off-licence. It was for this reason that in respect of the former Act, the Authority stated in *Paramita International Limited* [2011] NZLLA PH 1253 at paragraph [9]:

“The first issue is whether or not the premises qualify for an off-licence in terms of s.36(3)(a) of the Act.”

Hence the comment in *Re Penoy Spirits Limited* [2014] NZARLA PH697 at para [17]:

“If the applicant’s proposal is encompassed by s.36(3)(a) of the Act, then this is fatal to the application.”

Nothing has changed as a result of the new legislation.

[13] Thus, when determining an application for an off-licence, consideration must first be given as to whether an off-licence can be issued in respect of the premises. In the case of the renewal of an off-licence, the starting point is s.125 of the Act. This reads:

“The licensing authority or licensing committee concerned must not renew an off-licence unless—

- (a) The premises are premises for which (by virtue of sections 32, 34, or 35) an off-licence can be issued; or
- (b) The licence has continuously been held by a club since before the commencement of section 28.”

[70] Section 32(1) of the Act specifies the kinds of premises for which off-licences may be issued. Setting aside subsections (a) to (e) of that section, which relate to premises of a very different kind:

32 Kinds of premises for which off-licences may be issued

- (1) An off-licence may be issued only—
 - ...
 - (f) for premises that (in the opinion of the licensing authority or licensing committee concerned) are a grocery store.

[71] Section 33 of the Act specifies how the Committee should determine whether a premises is a grocery store:

33 Determining whether premises are grocery store

(1) In this section,—

food product—

- (a) does not include—
 - (i) alcohol, confectionery, ready-to-eat prepared food, or snack food; or
 - (ii) a drink (other than milk) sold in a container with a capacity of 1 litre or less; but
- (b) includes delicatessen items that are not ready-to-eat prepared food or snack food

grocery store means a shop that—

- (a) has the characteristics normally associated with shops of the kind commonly thought of as grocery shops; and
- (b) comprises premises where—
 - (i) a range of food products and other household items is sold; but
 - (ii) the principal business carried on is or will be the sale of food products

ready-to-eat prepared food—

- (a) includes food for the time being declared by regulations under this Act to be ready-to-eat prepared food; and
- (b) does not include food for the time being declared by regulations under this Act not to be ready-to-eat prepared food

snack food—

- (a) includes food for the time being declared by regulations under this Act to be snack food; and
- (b) does not include food for the time being declared by regulations under this Act not to be snack food.

(2) In forming for the purposes of this Act an opinion on whether any premises are a grocery store, the licensing authority or a licensing committee—

- (a) must have regard to—
 - (i) the size, layout, and appearance of the premises; and
 - (ii) a statement of the annual sales revenues (or projected annual sales revenues) of the premises, produced in accordance with any regulations in force under this Act prescribing what information such statements must contain and how it must be set out; and
 - (iii) the number, range, and kinds of items on sale (or expected to be on sale) on the premises; and
- (b) may have regard to any other matters it thinks relevant; and

- (c) may determine that the premises do not have the characteristics normally associated with a shop of the kind commonly thought of as a grocery shop by virtue of characteristics that the premises and the items on sale there lack or will lack, characteristics that the premises and the items on sale there have or will have, or a combination of both.

(3) Paragraph (a) of the definition in subsection (1) of **food product** is for the avoidance of doubt only, and does not extend the generality of the term.

[72] The Committee must also be mindful of the prohibitions in Section 36 of the Act:

36 No off-licences for petrol stations, certain garages, dairies, convenience stores, conveyances, or shops within shops

The licensing authority or licensing committee concerned must not direct that an off-licence should be issued for any premises if (in its opinion)—

- (a) the principal business carried on there is—
 - (i) the sale of automotive fuels; or
 - (ii) the repair and servicing of motor vehicles and the sale of automotive fuels; or
- (b) they are a shop of the kind commonly thought of as a dairy; or
- (c) they are a shop of the kind commonly thought of as a convenience store; or
- (d) they are a conveyance; or
- (e) they are situated (wholly or partially) within a shop; or
- (f) the public can reach them directly from a shop, or directly from premises where the principal business carried on is a business of a kind described in paragraph (a).

[73] In response to a request by the Licensing Inspector, the applicant provided a Statement of Gross Annual Sales Revenue for the period from 1 September 2022 to 31 August 2023. That statement shows that food products are the largest revenue item for the premises, and that snack food and read-to-eat prepared convenience foods are less than 20 percent of revenue.

[74] At the site visit, the Committee was able to evaluate the size, layout, and appearance of the premises, along with the number, range, and kinds of items on sale on the premises.

[75] At the hearing, Ms Mudaliar noted that their customers would come to the store to buy their groceries, and that the nearest supermarket was in Te Kuiti, about 30 minutes drive away.

[76] Based on the sales data and the Committee's observations on the site visit, along with Ms Mudaliar's evidence, the Committee concludes that the premises is a grocery store and is therefore a kind to which an off-licence may be issued. Section 125 does not therefore restrict the renewal of the off-licence.

S131(1)(a) Matters related to S105(1)

[77] Matters related to s 105(1) of the Act are dealt with in their own sections below.

S105(1)(b) Suitability

[78] The Licensing Inspector opposed the renewal application based on suitability. In the view of the reporting Inspector, the licensee was unsuitable due to apparent breaches of employment law at the time of the report. Mr Chand also raised concerns about the operation of the single alcohol area on a site visit in June 2024.

[79] In relation to suitability, in *Nishchay's Enterprises Limited* [2013] NZARLA PH 837, the Authority summarised the previous case law at [53-54]:

[53] The applicant sought to establish its suitability by adopting a narrow assessment of the meaning of that term. This approach was criticised in *New Zealand Police v Casino Bar No 3 Ltd* (CIV 2012-485-1491; [2013] NZHC 44). The High Court rejected the proposition that it was the manner in which the business would be operated as the determinate factor. Rather, suitability is a broad concept and the assessment of it includes the character and reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also includes matters raised in reports filed under s.33 of the Act and those reports may raise issues pertaining to the object of the Act as set out in s.4. Thus, whether or not the grant of the licence will result in the reduction or an increase in liquor abuse is a relevant issue.

[54] *Casino Bar No 3 Ltd* did not specifically refer to the test for suitability contained in *Sheard* [1996] 1 NZLR 751 where Holland J said at 758: “*The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence.*” However, the judgement inferred that the test applied when the learned Judge referred with approval to Holland J's statement in *Sheard*: “*Suitability is a relatively broad concept and, in the context of an assessment of an application under s 13 of the Act, it relates to the suitability of the applicant to be granted the privilege of an on-licence to dispense liquor*”. Traditionally, that test has been interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus, it includes the object of the Act as set out in s 4. The *Sheard* test is not simply about how a business is likely to operate in the future. It is dependent on an assessment of the more generalised factors referred to in the previous paragraph. It includes how a licensee will deal with liquor abuse issues that may arise from the establishment of the business. The usefulness of the *Sheard* test is that it gives a focus to the wider exercise contemplated in the *Casino Bar No 3 Ltd* decision by reminding one of the reason for the exercise.

[80] In *New Zealand Police v Casino Bar No 3 Ltd* (CIV 2012-485-1491; [2013] NZHC 44, Dobson J wrote in relation to assessing suitability:

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

- (a) previous convictions, especially those involving liquor or those raising questions as to honesty or propensity for violence;

- (b) character, reputation;
- (c) matters raised in reports filed under s 11;
- (d) previous unlawful operation of premises;
- (e) any of the above in relation to a person other than the applicant who is involved in the application (as a director, manager, etc) or is intended to be employed by the applicant;
- (f) breach of an undertaking; and
- (g) misleading information in an application and/or misleading public notice.

[35] Not all of the criteria from Dormer & Sheriff will be relevant in every application where objection is raised to the suitability of an applicant. However, it is an appropriate starting point for the range of matters that the LLA would need to traverse in assessing whether the onus on an applicant to establish suitability, where it is challenged, has been discharged. These matters are significantly wider than the applicant's proposal as to how the business will operate.

[81] Although the case law cited above relates to the Sale of Liquor Act 1989, it remains current, and was recently affirmed by the Authority in *Two Brothers Wholesale Limited v Medical Officer of Health Waikato District Health Board* [2021] NZARLA 32 at [103]:

[103] While Two Brothers is correct in saying that suitability is not to be considered in a vacuum, it is not correct that suitability must only be considered in the context of the operation of licensed premises as regards the safe and responsible sale and supply and consumption of alcohol. As is clear from *Nishchay*'s an assessment of suitability is much wider and includes considerations of the character and reputation of the applicant and its honesty as well as considerations of the operation of premises. Whether or not the grant of the licence will result in the reduction or an increase in liquor abuse is a relevant issue as are considerations about how a licensee will deal with liquor abuse issues that may arise from the establishment of the business, but suitability is not restricted to these matters.

[82] Moreover, as the Authority noted in *Shady Lady Lighting Limited v Lower Hutt Liquormart Limited - Blackbull Liquor* [2018] NZARLA 198 at [127]:

[127] The vulnerability of the area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol-related harm.

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

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

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

[85] In terms of the relevant locality, the MOH noted in their written evidence that Piopio Superette is located in the Aria SA2 area. In the absence of any evidence to the contrary, the Committee considers that the relevant area is the Aria SA2 area.

[86] Ms Mudaliar acknowledged in her evidence that Piopio was a vulnerable community, by which she meant “disparities, inequalities, being in a remote area”.

[87] The MOH evidence noted that Piopio was “classified as highly deprived, with SA2 blocks rated in deciles 8 and 9”, although the map provided with the MOH evidence suggests that the surrounding rural area is less deprived (decile 6). The MOH also noted that “[r]esearch has shown that adults in the most deprived areas are 1.3 times more likely to drink alcohol hazardously with one in four adults in the most deprived areas having been identified as hazardous drinkers”. This evidence was not challenged by the applicant.

[88] The Committee accepts that parts of the area are vulnerable, where people tend to experience more alcohol related problems. The premises is situated in the part of this area which is highly deprived and is therefore operating in a higher risk environment which requires the applicant to operate to a higher standard, as outlined in *Shady Lady Lighting Limited*. The applicant is expected to know and engage with the local community, ascertain any alcohol-related concerns, indicate how it plans to address concerns.

[89] In *Patels Superette 2000 Ltd* [2019] NZARLA 75, the Authority, citing *Shady Lady Lighting*, wrote:

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

[90] Drawing on *Patels Superette*, the Committee infers that the extended suitability test requires the applicant to make an effort to research and understand the make-up of the community and how they might be impacted by alcohol or how this application might address those concerns.

[91] Ms Mudaliar demonstrated knowledge of her customers and described them as “like part of our family”. It is clear to the Committee that the premises is an important site within the community. Ms Mudaliar demonstrated a concern for her customers and their wellbeing, and she outlined the steps they have taken to reduce alcohol-related harm, including not promoting alcohol and not having specials. The premises has a Host Responsibility Policy that appears to the Committee to be akin to those in similar premises. They have also made changes to staff training, that gives the Committee greater assurance that alcohol-related harm will be minimised.

[92] The Committee has carefully considered the range of measures and conclude that they are appropriate to the premises and align with operating at a higher standard in the high-risk environment where the premises is situated.

[93] We next turn to the ‘conventional’ test of suitability, as outlined in *Re Sheard*, that is whether “the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence”.

[94] Considering the checklist provided in *New Zealand Police v Casino Bar No 3 Ltd*, the applicant has not breached any undertakings, and has not provided misleading information in their application.

[95] However, the licensee was taken to the Employment Relations Authority (ERA) by the Labour Inspectorate in relation to several alleged breaches. In their decision dated 10 October 2024, the ERA found that there had been “unlawful deductions from wages, in addition to the failures in record-keeping and breaches of the Act, the HA and the WPA”.¹ The ERA found the breaches were not intentional “in the sense of having been taken in order to deprive employees of monies to which they were legally entitled, although that had been the effect in some cases”.² The ERA further found that the evidence did not support there having been exploitation of the migrant status of the employees. The ERA made an award of penalties against the applicant company and against both directors of the company individually.

[96] It is disappointing that a licensee should have a negative finding in the Employment Relations Authority, and this does speak to their character, as well as their suitability to hold a licence.

[97] There are a number of mitigating factors in this case. The ERA found that the breaches were not intentional. Ms Mudaliar expressed remorse, and the company has clearly taken steps to ensure that employment law breaches will not recur in the future. Ms Mudaliar stated that they no longer employ migrants, and that they have improved their systems for recording employee wages and entitlements. This is also evidenced by a subsequent labour inspector report, which notes that there were no issues and the file was being closed.

[98] The Committee has carefully considered the suitability of the applicant, weighing up the unintentional breaches of employment law against the long-term track record of the licensee, and the steps that they have taken for improvement.

[99] In the Committee’s view, the applicant satisfies each element in the checklist in *New Zealand Police v Casino Bar No 3 Ltd*. Overall, the Committee is satisfied that the applicant is suitable to hold this off-licence.

S105(1)(e) Design and Layout of the Premises

[100] Concern was raised by the Inspector about the operation of the single alcohol area. At a site visit on 4 June 2024, the Inspector had observed several boxes of beer stacked outside of the single alcohol area. According to their discussion with the applicant, this was temporary, while the refrigerators were being re-stocked. The licensee was issued with a warning.

¹ *AW & BL Mudaliar Limited* [2024] NZERA 616 at [153].

² *AW & BL Mudaliar Limited* [2024] NZERA 616 at [158].

[101] A detailed discussion on the single alcohol area was conducted at the hearing, based on the site plan submitted with the application, as well as an updated site plan. A further updated site plan was requested from the applicant, consistent with the discussions at the hearing. The Committee is satisfied with the new plan, date stamped as received on 31 October 2025.

S105(1)(j) Systems, Staff, and Training

[101] Breaches of employment law, and non-compliance with the single alcohol area and notification of managers, lead to concerns with the systems, staff, and training of the licensee. This was explored at the hearing, with Ms Mudaliar explaining that staff training was now conducted six-monthly, and that they would be engaging with external training, including ServeWise and Club Champs. The Inspector asked that the Committee consider imposing a condition on the licence that training be conducted six-monthly. The Committee does not consider this necessary, as the conditions of the licence already require that the licensee ensure that staff are trained in their responsibilities under the Act.

[102] Notification of temporary or acting managers was the last remaining area of concern for the Inspector at the end of the hearing. The Committee heard from Ms Mudaliar and is satisfied that she is aware of her reporting obligations.

[103] Overall, the Committee is satisfied that applicant now has appropriate systems, staff, and training to comply with the law.

S131(1)(d) The manner in which the applicant has sold, displayed, advertised, or promoted alcohol

[104] The stacking of boxes of beer outside of the single alcohol area raises concerns about the manner in which the licensee has displayed alcohol. This was addressed at the time by the Inspector issuing a warning to the licensee. No enforcement action was undertaken, which suggests to the Committee that the Inspector did not believe that this was a serious matter.

[105] The Committee has addressed this also in the section related to Section 105(1)(e) above. Accordingly, the Committee is satisfied with the manner in which the applicant has sold, displayed, advertised, and promoted alcohol in the period since the last licence renewal.

S105(1)(k) and S131(1)(c) Reports from the Police, Medical Officer of Health, and Inspector

[106] The reports of the Police and the Medical Officer of Health did not raise matters in opposition to the renewal application. The Inspector did raise matters in opposition to the renewal application. The issues have been discussed earlier in this decision.

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

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

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

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

[108] Having inquired into the application, and received evidence and submissions from all parties, the Committee has evaluated the application against the criteria in s 105 and s 131 of the Act. As outlined earlier in the decision, the Committee has determined that the application satisfies all the criteria.

[109] The Committee now turns its attention to cross-checking whether the application is capable of meeting the object of the Act. The object of the Act is that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

[110] As noted by the Authority in *Rockaway Beach Limited* [2017] NZARLA 445:

[94] The purpose of the Act is designed so that its effect and administration help to achieve the object of the Act which is that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, and that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised. The object of the Act has two limbs. The first limb, that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, is wide and is not constrained by the definition of harm caused by the excessive or inappropriate consumption of alcohol.

[111] Importantly, no causative link needs to be established between the operation of the premises and alcohol-related harm. As Gardiner J affirmed in *Alcohol Licensing Inspector, Auckland Council v Singh 13 Investments Ltd* [2025] NZHC 2868:

[7] ...The legislation does not require such a causative link. It is sufficient for there to be an evidential foundation to suggest that there is a real risk of harm from the grant of the licence. If there is a real risk of harm from the grant of the licence, the object of minimising harm is engaged, meaning reduced to the smallest possible degree.

[112] The Committee is tasked with evaluating whether risk will occur in the future, and any such assessment of future risk comes with some uncertainty. The Supreme Court's decision in *Woolworths v Auckland Council* [2023] NZSC 45 provides for a precautionary approach to be taken:

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

[113] Based on the evidence before it, the Committee is not persuaded that there is a real risk of harm from the grant of the renewal of this licence.

[114] Overall, and as outlined in paragraphs [68] to [113] above, the Committee is satisfied that the application is capable of meeting the object of the Act.

Conclusion:

[115] The application for renewal of an off-licence, for the premises situated at 57 Moa Street, Piopio, and known as "Piopio Superette" is granted, subject to conditions.

Conditions:

[116] Sections 110 and 111 of the Act detail compulsory and discretionary conditions that may be imposed on the licence. Section 133 also provides that particular conditions may be imposed if any relevant local alcohol policy is in force and that the renewal of the licence without those conditions would be inconsistent with the policy.

[117] Section 135 provides that, subject to s 133, the licence may be renewed on the conditions presently attaching to it or on any different conditions, relating to any matter, that the committee thinks fit.

The licence will be subject to the following conditions:

- (a) Alcohol may be sold only on Monday to Sunday from 7.00am to 10.00pm.
- (b) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day:
- (c) No alcohol may be sold other than:
 - i) Beer that complies with the appropriate New Zealand food standard for beer; or
 - ii) Mead that complies with the appropriate New Zealand food standard for mead; or
 - iii) Fruit or vegetable wine that complies with the appropriate New Zealand food standard for fruit and vegetable wine; or
 - iv) Grape wine that complies with the appropriate New Zealand food standard for grape wine; or
 - v) A food flavouring, prepared for culinary purposes that is unsuitable for drinking undiluted.

- (d) The area where alcohol is to be sold is described in the plan date stamped as received by the District Licensing Committee on 31 October 2025. The only area permitted within that plan, as an area for the display and promotion of alcohol pursuant to section 112 is the area labelled 'single alcohol area' on the rear wall, to the right side of the counter.
- (e) The entire premises is undesignated.
- (f) The holder of a manager's certificate or a properly notified manager shall be on duty and on the premises at all times alcohol is sold. If a duty manager is not present then there must be no alcohol sales and a notice displayed advising the public of this fact.
- (g) A manager's register (as required by s.232 of the Act) is to be maintained and available on site.
- (h) A Host Responsibility Policy must be maintained and displayed at all points of sale and the Licensee must ensure all staff receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012.
- (i) There must be no sale or supply of alcohol to minors or intoxicated persons and there must be displayed at every point of sale appropriate signs detailing these restrictions.
- (j) Drinking water must be freely available and displayed whenever alcohol is being supplied by way of complimentary tastings.
- (k) The Licensee must ensure the following are displayed:
 - i) A sign to be seen from outside the principal entrance stating the ordinary hours of business during which the premises will be open for the sale of alcohol.
 - ii) A copy of the original licence with all the conditions, just inside the principal entrance so persons entering can read it.
 - iii) A sign in a prominent place identifying the duty manager.

Dated at Te Kuiti this 17th day of December 2025



Michael Cameron
Commissioner
Waitomo District Licensing Committee