

[2025] ADLC 8220083662

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012.

**AND**

**IN THE MATTER**

of an application by SIYA NZ LIMITED pursuant to s. 127 of the Act for the renewal of an off-licence in respect of premises situated at: 6-10 Queens Road Panmure, Auckland. Known as: Bottle-O Queens Road.

**BEFORE THE AUCKLAND DISTRICT LICENSING COMMITTEE**

Chairperson: Gavin Campbell

Members: Richard Pamatatau  
Dr Wilson Young

**HEARING** at Auckland, on Wednesday the 27<sup>th</sup> of November 2024.

**APPEARANCES**

Mr Divate Gopal – for the Applicant (Director)

Mr Michael O’Flannigan – for the Auckland Council Alcohol Licensing Inspectorate

Ms Ritchelle Roycroft – Alcohol Licensing Inspector – in opposition

Mr Nicholas Sykes – for the Medical Officer of Health

Ms Ana Ika – witness for the Auckland Council Alcohol Licensing Inspectorate

Ms Jennifer Lamm – witness for the Auckland Council Alcohol Licensing Inspectorate

**RESERVED DECISION OF THE AUCKLAND DISTRICT LICENSING COMMITTEE**

**Introduction**

1. Before the Auckland District Licensing Committee (the Committee) is an application by Siya NZ Limited (the Applicant), for the renewal of an off-licence, number 007/OFF/9130/2021 pursuant to s. 127 of the Sale and Supply of Alcohol Act 2012 (the Act), in respect of premises situated at 6-10 Queens Road Panmure, Auckland. The general nature of the business undertaken by the premises known as Bottle O Queens Road, is that of a retail alcohol outlet – Bottle Store, for the sale and supply of alcohol for consumption off the premises.

2. An off-licence may be renewed for this kind of premises because it meets the description found at section 32(1)(b) of the Act. The premises is operated as a retail business where at least 85% of their annual sales revenue is expected to be earned from the sale of alcohol for consumption somewhere else.
3. Reports on the application have been received from an Alcohol Licensing Inspector (the Inspector), the Medical Officer of Health (the MOoH) and the New Zealand Police (the Police), collectively (the Agencies).
4. (i) The Inspector pursuant to s. 129 & 103(2) of the Act has provided a report and is opposed to the renewal of the off-licence. The grounds for that opposition were listed as pursuant to s. 105 of the Act, and in particular;
  - 105(1)(a) object of the Act
  - 105(1)(b) suitability of the Applicant
  - 131(1)(d) manner of trading
- (ii) The MOoH provided a report pursuant to s. 129 & 103(3)(b) of the Act in opposition to the application. The grounds for that opposition were listed as pursuant to;
  - 105(1)(a) object of the Act
  - 105(1)(b) suitability of the Applicant
  - 131(1)(k) any other matters
- (iii) The Police reported without opposition to the renewal application.
5. The application was publicly notified pursuant to s. 127(3) of the Act and attracted no objection from the public
6. Due to the opposition from the Inspector and the MOoH, and pursuant to s. 202(3) of the Act, the matter was set for determination by the Committee.

### **The Agencies' Position**

7. The Agencies remained unchanged in their respective positions. The Police were not present at the Hearing, nor were they required to do so, given that they had no opposition to the application.

### **The Law**

8. Section 3 states the purpose of the Act as follows:

*(1) The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole, —*

*(a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and*

*(b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*

*(2) The characteristics of the new system are that—*

*(a) it is reasonable; and*

*(b) its administration helps to achieve the object of this Act.*

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

*(1) The object of this Act is that –*

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

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

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

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

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

10. Section 131 of the Act says

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

*(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.*

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

11. Section 105 of the Act says:

*(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:*

*(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.*

## **Background**

12. This is a successive application for the renewal of the off-licence. The Applicant has owned and operated the premises for some time. In June 2022 (during the currency of the off-licence), the Applicant introduced the 'AfterPay Buy Now Pay Later' (BNPL) facility. That facility was promoted by way of social media which led to a 'flood' of negative comment and considerable Media attention. The facility was withdrawn soon after that and has not been reinstated.

13. AfterPay gives applicants the ability of almost being instantly approved (with minimal credit check) for credit with a maximum of \$2,000 purchase limit. Contrasted to a credit card application which requires application, assessment, and a wait period for the credit card to be issued and delivered etc. Afterpay is relatively near-instant.

14. The opposition of the Inspector and MOoH was generated in part as a response to the Applicant's reluctance to accept conditions recommended by the Inspector during the enquiry process into the application, and mainly with concerns of the introduction by the Applicant of BNPL, which the Inspector had recommended be prohibited by way of condition applied to the off-licence.

15. At the outset of the hearing, the Applicant advised the Committee that the conditions as recommended by the Inspector had now been accepted as appropriate, with the exclusion of the condition prohibiting the use of BNPL.
16. The Committee at the end of the evidence adjourned the matter to deliberate and ultimately issue a decision. On Friday the 29<sup>th</sup> of November 2024, two (2) days after the hearing, the Committee received a <sup>1</sup> **‘Memorandum of Counsel’** (Pervinda Davies, Pervinder Davies Law) acting for the Applicant, which in part said;
  1. *This memorandum of counsel is filed on behalf of the Applicant to raise concerns regarding the District Licensing Committee hearing in respect of its application for the renewal of its off-licence for Bottle-O Queens Road.*
  2. *In particular, the Applicant respectfully submits that the process followed during the hearing has given rise to serious issues relating to procedural fairness and natural justice.*
17. Counsel in the memorandum submits that in advancing the hearing that there was a;

*Breach of natural justice principles - lack of adequate provision of evidence and agencies’ reports.*

*Counsel has requested that the Committee allow the Applicant to make further written submissions via legal counsel to respond to any outstanding matters or allegations that have not been (in the opinion of the Applicant) properly addressed.*
18. At the time of the hearing, it was established that the pre-filed evidence of the Inspector and the Medical Officer of Health had not been made available to the Applicant in advance. Time was set aside during the hearing for the Applicant to peruse the evidence prior to the introduction of that. There is no explanation as to why the evidence was not provided in advance. Pre-filing of evidence, and disclosure of that may be required by the Committee on a case-by-case basis. It does not occur in all matters that come before the Committee. In this matter no such order had been made by the Committee.
19. At the hearing, the Committee decided to proceed in the manner it did as the sole remaining point of contention was the Applicant’s intent to provide BNPL services at the premises which was opposed by both the Inspector and the Medical Officer of Health.
20. The Committee, in its introduction of the matter, confirmed that all other contested matters (conditions), had been confirmed by the Applicant in its acceptance of conditions to be attached to the off-licence should it renew. Accordingly, the Committee provided sufficient time for the Applicant to peruse the evidence of the Agencies surrounding the sole contested condition (BNPL) prohibition promoted by the Inspector in the report before us.

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<sup>1</sup> Memorandum of Counsel’ (Pervinda Davies, Pervinder Davies Law) 29 11 2024

21. Counsel in the memorandum says at paragraph 24. that;

*24. The Applicant now affirms its acceptance of the condition to ensure that it will not engage in any practices related to BNPL services. The Applicant is fully committed to maintaining a responsible approach to sale and supply of alcohol from its premises and ensuring that its activities align with best practices for community well-being.*

22. The Committee in response to the memorandum of Counsel declined the submission of further evidence (submissions). We said in part that;

*The Committee has concluded its deliberations in respect of the matter. The Committee intends to grant the renewal of the off-licence subject to conditions recommended by the Inspector, including the prohibition on BNPL services.*

*In making that decision the Committee considered the matter of suitability of the Applicant pursuant to s. 105(1)(b) of the Act. Whilst it was somewhat concerned at the responses by Mr Gopal during cross examination, the Committee considered that despite those, there were no other alcohol-related harm matters linked to the premises that we should look to decline the matter on suitability grounds alone.*

*The Committee looked to the provision of BNPL services that would be offered. We were of the opinion that the provision of that type of service would contribute to alcohol harm in the community, based on the evidence provided by the Inspector, the evidence given on behalf of the Salvation Army and Alcohol Healthwatch, and the lead of the Hamilton District Licensing Committee in dealing with that matter.*

*We agreed with the submission of the Inspectorate and Medical Officer of Health by Mr O'Flannigan that to allow such a service to operate from the Applicants premises would simply open 'the floodgates' within the industry. That was a step too far that the Committee was not prepared to take. Our reasoning for that will be documented fully in the written decision which is yet to issue. It is our intent to adopt the condition in respect of (BNPL) services recommended by the Inspector and impose it on the off-licence upon renewal as recommended.*

*Given that, and the acceptance of the BNPL condition by the Applicant, then in my mind, the memorandum of Counsel seeking the opportunity to make further submissions becomes moot, as the decision to renew the off-licence has been made.*

*At the hearing, and within the Memorandum of Counsel, the Applicant was concerned at 'the unfairness' of the condition if that was not to be imposed on other premises offering or intending to offer BNPL services. The Committee has an expectation of its Inspectorate that they will address such matters as they arise and bring any Applicant before the Committee on the renewal of licenses if that is the case. As we have said, the Committee considers that there is the potential for alcohol-related harm from any premises offering such services, and that concern should be addressed if there are any future instances of that provision.*

*Given that, the Committee respectfully declines the application to submit further, given that the off-licence will renew shortly.*

### **Submissions and Evidence**

23. For the sake of clarity, we have paraphrased the submissions, evidence, and cross-examination of that, where it is relevant to our decision.

### **For The Applicant**

24. The Applicant was represented by Divate Gopal. His evidence is summarised as;
25. The Applicant made an oral submission for the renewal of his license.
26. The Committee recognised he had already accepted a number of conditions.
27. He was asked by the Committee to submit evidence to the committee as to why his license should be renewed with respect to objections over his use of the Afterpay BNPL money product.
28. Mr Gopal presented a fact sheet produced by AfterPay that detailed how the product worked.
29. He said it was like a regular credit card which allowed people to buy goods and then pay them off later.
30. He rejected that the area he operates in is a risky area and therefore AfterPay would be a dangerous product to have available in his liquor store.
31. He argued that because AfterPay does a credit check it is a safe product to have on offer and if someone does not have good credit they will not be able to use the service.
32. Much of his argument was circular and Mr Gopal constantly referred the Committee to the AfterPay marketing material.
33. He said it would not be fair on his business if other liquor outlets were able to offer it and his was not.
34. He said that he is only interested in selling alcohol and AfterPay was a way to do that.

### **For the Agencies**

35. Mr Michael O'Flannigan made opening submissions on behalf of the Licensing Inspector and the Medical Officer of Health. He said the crux of the agencies' opposition relates to the Applicant's refusal to accept a licence condition prohibiting the use of BNPL services at the premises.
36. He submitted that the power to impose discretionary conditions under section 117 is broad, so long as the condition is reasonable and not inconsistent with the Act. He also submitted that, in deciding whether a condition is appropriate, the DLC can apply what is known as the precautionary principle.

37. He argued that imposing a condition prohibiting the use of BNPL will prevent impulse purchases by customers with behavioural issues and would reduce the availability of alcohol more generally and help ensure the licensee can meet the object of the Act.
38. Mr O’Flannigan quoted the New Zealand Alcohol Regulatory and Licensing Authority decision <sup>2</sup> **Two Brothers Wholesale Ltd v Medical Officer of Health, Waikato District Health Board [2021] NZARLA 32** and contended that offering BNPL services to customers in a vulnerable locality likewise undermines the Applicant’s claim that it is a suitable operator.
39. Considering the elevated risk profile of the Applicant’s premises and its manner of trading, he submitted that renewing the off-licence at this location without the conditions recommended by the agencies would, rather than minimise harm, instead compound the risk of harm, and would not be compatible with the object of the Act.
40. Having heard the evidence presented at this hearing, he further submitted that granting the licence without imposing a no BNPL condition would almost certainly ‘open the floodgates’ for other off-licences to use this form of payment for alcohol products.
41. Licensing Inspector Ritchelle Roycroft gave evidence in the form of a written brief. She said the Applicant began offering the AfterPay BNPL service in June 2022, leading to a flood of negative comments from the public when the service was advertised via social media, and also attracting considerable media attention. The Applicant discontinued AfterPay soon after.
42. Ms Roycroft outlined her concerns about BNPL services, as in her opinion this would increase the accessibility of alcohol to people in a vulnerable community who may not be able to otherwise afford it. She said the area in which the premises is located has a deprivation index of 8 and has a higher-than-average Māori and Pacific population.
43. She said the Hamilton District Licensing Committee have on several occasions, imposed a condition restricting BNPL on off-licences in high deprivation areas in Hamilton. *Te Whatu Ora | Health Promotion and Turanga Health* have made submissions to the Ministry of Business, Innovation & Employment (MBIE), recommending that the use of BNPL services to purchase alcohol should be prohibited.
44. Ms Roycroft described her visit to the premises on 13 October 2023 and her concerns regarding BNPL, single sales, external signage, irresponsible promotions, and the Applicant’s social responsibility policy. She also described her 31 October 2023 meeting with Mr Gopal Divate and Mr Ketan Satpute who produced an updated social responsibility policy, which she found to be satisfactory.
45. Following the meeting, she sent the Applicant an email, asking if they would accept a condition prohibiting the single sales of alcohol in containers 500ml or less, excluding craft beers, a condition restricting external advertising of alcohol products, in line with the

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<sup>2</sup> Two Brothers Wholesale Ltd v Medical Officer of Health, Waikato District Health Board [2021] NZARLA 32



DLC practice note on external signage, a condition requiring compliance with the amended social responsibility policy, and an undertaking that the Applicant will not offer Afterpay or any other BNPL service at the store or online. The Applicant agreed to all the proposed conditions but refused to make any undertaking regarding AfterPay/BNPL.

46. Ms Roycroft concluded by saying that the Applicant's refusal to accept conditions intended to minimise harm in a high deprivation area, just because other off-licences do not have the same conditions, indicates a disregard for the vulnerability of the area where the premises are located, which in her view makes it unsuitable to hold a licence, and she believed granting this application would be contrary to the object of the Act.
47. Ms Ana Ika gave evidence in the form of a written brief. She is a Social Policy Analyst and Advocate for the Salvation Army's Social Policy and Parliamentary Unit. She described the services offered by the Salvation Army which includes promotion of alcohol harm minimisation strategies and treatment for alcohol and other drug dependency. She said they estimate that 60% of those who seek their services are either directly or indirectly impacted by alcohol harm.
48. Ms Ika said in the past year, they have almost 200 clients that have significant BNPL debts, amounting to almost \$1,000 per client. She said clients who are BNPL users often came from disadvantaged backgrounds, dealing with addiction, homelessness, and low-wage employment. Many struggles with multiple debts and poor financial literacy and frequently face ongoing physical and mental health issues that add to their financial burden. Many individuals have strained relationships with family and community and often have complex relationships involving a family member who would use their finances for alcohol purchases. These were almost always associated with significant issues of family violence, and the clients often struggle to break cycles of addiction and poor financial habits.
49. Ms Ika said they have 165 active clients that live in a 2km radius of Bottle O Queens Road, nine (9) of whom are currently in their Bridge addiction services. Overall, there are over 500 clients in Auckland that have accessed the Bridge services in the past six months, many of whom displaying heavy drinking patterns. She feels the availability of BNPL would exacerbate the challenge of alcohol availability and affordability for these clients.
50. Ms Ika described their submission to MBIE in 2021 around regulating BNPL, having seen the negative impacts of BNPL on many of the families they were supporting, particularly in the aftermath of Covid 19. She also mentioned a paper "Uncapping Community Voices," authored by their Unit in 2022, which focussed on the complexities of alcohol licensing, and highlighted emerging trends such as the increasing availability of BNPL options, particularly in off-licence stores. Media coverage on this particular store was referenced in this paper.
51. Ms Ika concluded by saying that BNPL increases the availability and affordability of alcohol to the vulnerable communities that they serve and therefore perpetuates alcohol harm. She said they supported Inspector Roycroft's opposition to the licence. If the

licence were to be granted, they particularly supported the restriction of BNPL as a purchasing method.

52. Ms Jennifer Lamm gave evidence in the form of a written brief. She is a Health Promotion Advisor with Alcohol Healthwatch.
53. Ms Lamm said BNPL schemes are a relatively new form of credit available to New Zealand consumers, and have grown rapidly, particularly during and after the Covid lockdowns. The limited evidence available in New Zealand shows that, on average, users are typically more financially constrained compared to the general public, they tend to live in poorer socio-economic areas, earn lower incomes, have less savings, and lack alternative access to credit due to past “delinquency” records and damaged credit reputation. These services are also attractive to young people.
54. She said BNPL schemes have been criticised for encouraging impulse shopping and encouraging consumers to spend more than they can afford, with resulting debt. An estimated one in seven consumers have been charged a late fee, most of them paying late fees more than once. Furthermore, it is common for consumers to purchase items only factoring in the first instalment, and to also perceive products to be at a cheaper price due to the use of fractional costing, even if the full cost is received later. BNPL schemes can therefore create and compound financial hardship for vulnerable consumers leading to an unmanageable spiral of debt.
55. Ms Lamm said research shows that the use of BNPL services to purchase alcohol, at an apparent and often advertised low cost and no interest, increases its perceived affordability, which can lead to greater consumption and related harms. The ability to use BNPL may also reduce barriers for drinkers to purchase multiple alcohol products that they cannot afford. She said that price appears to be particularly important for low-income heavy drinkers, a population group that experiences disproportionately more harm from each drink. She said young adults are among the heaviest drinkers, and they are currently the main consumers of BNPL.
56. Ms Lamm referred to public submissions to the Government’s review of Credit Contracts and Consumer Finance Regulations, calling for alcohol products to be excluded from any BNPL services, and for alcohol products to be banned from being advertised or sold with fractional costing. In summary, she said there is extensive evidence that BNPL has the potential to add another layer of harm to existing harms related to alcohol.
57. Mr Nick Sykes is a compliance officer for the MOoH. His evidence largely mirrored the evidence from Ms Roycroft in its opposition to BNPL. He provided information on the local area and an analysis of the deprivation numbers applicable, including noting that the area had a high representation of Maori and Pasifika people. He spoke to the changes to legislation surrounding BNPL. His evidence was that BNPL schemes further increase the affordability of alcohol by lowering the upfront costs for consumers at the time of purchase, even though ultimately the full cost needed to be repaid.

58. He concluded that the Public Health evidence demonstrated that the surrounding communities were already vulnerable to alcohol related harm and in his opinion that would worsen if BNPL were to be available.

### **Committee's Decision and Reasons**

59. The Committee has considered the evidence heard and we must act on the information before us. In this matter, the Applicant seeks the renewal of an off-licence pursuant to s. 127 of the Act. It is now well established that the process of considering applications is done in two-steps. First, to evaluate the application and evidence against the criteria in subsections (a) to (g), (j), and (k) of section 105(1) and also s. 131(1)(b), being, 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. Then, to stand back and consider whether the grant of the application is consistent with and will achieve, the object of the Act, which is the criterion in section 105 (1)(a) and section 4 of the Act.
60. For completeness, we will address the criteria that we are required to consider pursuant to the Act, in that two-part process.

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

61. Suitability is a matter that has been addressed on many occasions by the Committee, the Authority, and the Courts. The *Two Brothers* decision referenced earlier at paragraph [32], referenced an appeal in which the Authority confirmed a DLC decision to decline a licence. In that case, the Authority stated that suitability is not to be considered 'in a vacuum' and should not be construed narrowly. Any determination on suitability includes considerations of the character and reputation of the Applicant, its honesty as well as consideration of the operation of the premises. However, suitability is not restricted to whether the grant of a licence will result in the reduction or an increase in alcohol abuse, although such issues will be relevant. The Authority also confirmed that there is no onus on an Applicant for renewal to prove its suitability.
62. In this matter, given the dual argument of the Inspector and the MOoH, the Committee has considered suitability carefully. We are guided by the Authority that suitability should not be considered 'in a vacuum'. The suitability of the Applicant was challenged by the Inspector & MOoH. We considered the evidence and responses of the Applicant to the challenge made on his evidence. The Applicant in our minds did itself no favours given some of the statements made to the Committee by Mr Gopal in his evidence and examination of that.
63. Nevertheless, and despite Mr Gopal's somewhat alarming comments, we were persuaded that on the evidence before us there was no specific alcohol harm attributed to the premises, and that there were no concerns other than the provision of BNPL with the Applicants manner of trading during the currency of the off-licence.
64. On the evidence before us the Committee is satisfied that the Applicant continues to be suitable to hold such a licence pursuant to the Act. Having said that, the Committee would

point out to the Applicant that it has an expectation of exemplary management to ensure the object of the Act is achieved and maintained.

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

65. The Auckland Council – Local Alcohol Policy (LAP) came into force on the 16<sup>th</sup> of September 2024. The purpose of the LAP is to set out the council’s policy positions on the following licensing matters for the Auckland region, pursuant to section 77(1) of the Act:

- (a) location of licensed premises by reference to broad areas
- (b) location of licensed premises by reference to proximity to premises or facilities of a particular kind or kinds
- (c) whether further licences (or licences of a particular kind or kinds) should be issued for premises in the district or any stated part of the district
- (d) maximum trading hours
- (e) the issue of licences, subject to discretionary conditions.

There are three “tiers” of discretionary conditions contained within the LAP:

<b>Category</b>	<b>Description</b>
General conditions	To be applied broadly, unless good reason not to.
Circumstantial conditions	To be applied where relevant and appropriate.
Risk-based conditions	To be applied if High/Very High risk, and/or in Priority Area

66. Off-licences are only subject to the General and Risk-based conditions outlined in the LAP.

67. The Inspector has proposed conditions that reflect the Inspectorates current template for off-licensed premises, including those applicable to the LAP be applied to the off-licence. The proposed conditions have been agreed to by the Applicant including the prohibition of BNPL. The Applicant has also accepted the more restrictive trading hours pursuant to the LAP be applied to the off-licence should the application be successful.

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

68. The proposed operating hours have been well documented. We have already indicated that these are to be reduced if the application is successful due to the introduction of the LAP.

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

69. There are no concerns as to the premises design and layout.

**Section 105(1)(f) Whether the Applicant is engaged in or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods.**

70. There is nothing to advise us that the Applicant intends on providing anything other than alcohol and ancillary goods related to the premises.

**Section 105(1)(g) Whether the applicant is engaged in or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, and goods, and if so, which services.**

71. The Applicant has introduced (and then withdrawn) the Afterpay BNPL facility to the services it offers. That service is directly related to the sale and supply of alcohol, so we have not considered it as part of this criterion nevertheless, we intend to comment on that service in addressing s. 105(1)(k) of the Act.

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

72. There is no challenge to this criterion, none of the agencies have matters in concern. The Inspector has said that; the Applicant appears to have appropriate systems, staff, and training to comply with the law.
73. We are not concerned as to the levels of staff available for the premises. However the Committee does express its expectations that the Applicant is at all times compliant with the provisions of s. 214 of the Act.

**Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector, or a Medical Officer of Health made under section 103.**

74. The Inspector and the MOoH have filed reports with the Committee pursuant to section 103(2) of the Act in opposition to the application, we are satisfied that the Agencies have applied due diligence in the submission of those reports. The submissions and evidence of the Inspector and MOoH followed their reports in opposition.
75. The Inspector's report is comprehensive it does not need to be restated in any length. It covers all of the criteria that we are required to consider, including those that relate to amenity and good order. The Inspector reports that there is no reason to believe that the amenity and good order of the locality would be likely to be increased, to more than a minor extent, by the effects of a refusal to renew the licence. There is nothing in the Inspectors report to suggest that the Applicant has managed the sale and supply of alcohol in an inappropriate manner during the currency of the off-licence other than the contested BNPL service.
76. The challenge was to the provision of BNPL. The evidence of Ms Ika and Ms Lamm was in our opinion strong and well researched. The lead of the Hamilton District Licensing Committee in declining such services was also influential when considering that provision. It was concerning to us that in Ms Ika's evidence, the numbers of people being assisted by the salvation Army where BNPL schemes had direct impact on those people's lives

were so high. We acknowledge the evidence of Ms Ika that the assistance does not discriminate as to the type of service provided by those schemes and is not solely in respect of alcohol, nevertheless it is worthy to note that the Salvation Army primarily deals with those people more directly affected by alcohol in their communities.

77. Given that, when we turned our minds to the evidence provided by Ms Lamm, we are persuaded that such provision has the potential to directly contribute to alcohol harm, so in our opinion it is contrary to the object of the Act. If we were to consider the renewal solely on the evidence before us on BNPL, then ultimately that decision would most likely be unfavourable to the Applicant, given that part of the object of the Act is that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised. We concur with the submission made by Mr O'Flannigan that in allowing the provision of BNPL would 'open the floodgates. That was a step that the Committee was not prepared to take.
78. In any event given that the Applicant has now accepted that the condition prohibiting the provision of BNPL schemes, then the matter as we have said earlier is 'moot'.

#### **Amenity and Good Order s. 131(1) (b) Criteria for renewal**

79. Section 131(1)(b) of the Act says;

*(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:*

80. Section 106(2) of the Act says:

*In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):*

*(a) current, and possible future, noise levels:*

*(b) current, and possible future, levels of nuisance and vandalism.*

81. We have considered the evidence before us, there is no direct link to nuisance, noise, or vandalism from these premises.

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

82. The object of the Act is in our opinion relatively self-explanatory. It requires that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly. It raises the bar for all operators of licensed premises over prior legislation of its type. A person who has the privilege of holding a licence, must ensure that the sale and supply of alcohol should be undertaken safely and responsibly and that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

83. The question for the Committee is, can we be satisfied, having regard to all the relevant factors set out in s. 105 and 131 of the Act, that the renewal of the off-licence is consistent with the object of the Act?
84. In considering the object of the Act, we must look to the definition of harm. It is defined as;
- 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.*
85. We have considered the evidence of the Inspector and MOoH, and also that of Ms Ika and Ms Lamm. The Committee was impressed by the evidence given by Ms Ika and Ms Lamm of behalf of the Inspectorate, we accept that as being entirely relevant albeit the acceptance of the Applicant of the prohibition of such a facility going forward. We would expect to hear from them again in the future where there is challenge of this nature. In our opinion, any licensees offering this type of service should expect ongoing challenge to their suitability by the Agencies as has been the case in this matter.
86. We have turned our minds to the evidence and the challenge faced by the Applicant to the renewal of the off-licence. Those challenges primarily relate to suitability. We have addressed those matters as we have dealt with the criteria of s. 105 & 131 of the Act. There was no evidence before us of any direct matters of alcohol related harm directly linked to the premises or the operation of those by the Applicant.
87. On the information before us we satisfied as to the matters which we must have regard as set out in s.131 of the Act, and we are of the opinion that the application meets object of the Act. Accordingly, we renew the Applicant's off-licence for the sale and supply of alcohol for consumption off the premises, for a period of three (3) years.
88. The Inspector has proposed conditions that reflect the Inspectorates current template for off-licensed premises, including those applicable to the LAP be applied to the off-licence. Additionally, the Committees "External Signage" practice note, requires a condition restricting external advertising on all off-licence premises excluding remote sellers, unless there is a valid reason not to. The practise note is more restrictive than the LAP. The Applicant has agreed that the following conditions best suit the way they intend to operate the premises. The conditions are updated due to the provisions of the LAP in respect of trading hours.

Conditions: Off-Licence

- (a) No alcohol is to be sold on or delivered from the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day.
- (b) Alcohol may be sold on the premises only on the following days and during the following hours:

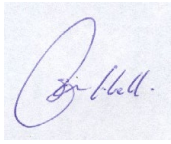
**Monday to Sunday 8.00am to 9.00pm**

- (c) Drinking water is to be freely available to customers immediately adjacent to any alcohol that is being supplied free as a sample on the premises.
- (d) No intoxicated persons may be allowed to enter or to remain on the premises.
- (e) The licensee must ensure that an A4 sign stating the restrictions on the supply of alcohol to minors and intoxicated persons is prominently displayed so as to be easily read from every point of sale.
- (f) The social responsibility policy dated 31 October 2023 must be complied with.
- (g) The following conditions in relation to external signage apply:
  - (i) External or external-facing advertising of prices of alcohol products, or promotion of a special price / discount of an alcohol product must not be displayed on the façade of the building.
  - (ii) External advertising of alcohol products must not be displayed by way of flags, sandwich boards or bollard covers outside the premises.
  - (iii) Any alcohol-related lifestyle or branding images must not exceed 25 per cent of the façade of the premises.
- (h) The whole of the premises is designated as a supervised area.
- (i) The licensed premises are more precisely identified as outlined in the plan date stamped as received by Auckland Council on 27 May 2022.
- (j) No single sales of beer (excluding craft beer), cider, or RTDs in containers sized 500ml or less are to be sold.
- (k) No buy now pay later services are to be used instore or online.
- (l) Incident register: The licensee must maintain a register of alcohol related incidents as set out in clauses 4.4.4. and 4.4.5. of the Auckland Local Alcohol Policy. The register of incidents must be available for inspection by the Police and Licensing Inspectors at any time that the premises is open to the public. The incident should be recorded in the incident register within 12 hours of the incident occurring.
- (m) The licensee must operate CCTV on the premises. Recordings made should be provided to Police or an Alcohol Licensing Inspector if requested. Recording must be of a quality that would assist in the identification of alcohol-related offending. Areas covered by the CCTV must include: the entry, the immediately adjacent footpath located in front of premises and main areas accessed by customers.

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



**Dated** at Auckland, this 7<sup>th</sup> day of January 2025.

A square image containing a handwritten signature in blue ink. The signature is cursive and appears to read 'G. Campbell'.

Gavin Campbell  
Chairperson  
Auckland District Licensing Committee

On behalf of members:  
Richard Pamatatau  
Dr Wilson Young