

IN THE MATTER

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

AND

IN THE MATTER

of an application by **Castle Management Paihia Limited** for the grant of an ON Licence pursuant to s.100 of the Act in respect of premises situated at 18 Kings Road, Paihia, Far North District known as "Pipi Patch."

BEFORE THE FAR NORTH DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: John Thorne
Member: Martin Macpherson

HEARING at Paihia on 17 & 18 May 2023

APPEARANCES

Mr. Akshat Rajvanshi- for the applicant Castle Management Paihia Limited
Mr. Andrew Braggins- counsel for the applicant
Mr. Bradley Greenwood- witness for the applicant

Ms. Natasha Thompson- Far North Alcohol Licensing Inspector – in opposition
Ms. Inna Shibalova- counsel for the Inspector

Sergeant Tai Patrick – Police Alcohol Harm Prevention Officer – in opposition
Constable Xavier Troy Henare- witness for the Police
Constable Fergus Giuseppe Tonkin- witness for the Police

Mr. Alastair Sherriff counsel for the MOoH
Dr. Ankush Mittal- Medical Officer of Health (MOoH)- in opposition
Mr. Jeffrey John Garnham- witness for the MOoH
Mr. Wiremu Tane- witness for the MOoH

Objectors

1. Bruce and Kim Rogers: 19 Kings Road
2. **Carlsen and Noleen Orr: 36A Kings Road**
3. Robert William and Lesley Mary Curtis: 4b Bedggood Close
4. Nancy Lulu Shuker: 32 Kings Road
5. Brett Sutton: 23 Kings Road
6. Shelley and Chris Ash: 11 Kings Road
7. Stephen and Hine Beattie: 52 Kings Road
8. Wendy Roland: 50 Kings Road
9. Porsha Anderson: 13D Kings Road
10. Tracey Anne Phillips: 15/98 Marsden Road
11. **Eduard and Ingeborg Amsler: 6 Bedggood Close (chose not to speak)**
12. **Anne Elizabeth Corbett: 49 Kings Road**
13. Garth Leonard Craig: 49 Kings Road
14. Susan Ann and Trevor Edward Lochore: 30B Kings Road
15. Edith Maud Bell and John Albert Porter: 2 Kings Road
16. **Susan Marie Ross and Yin Tan Lee: 62 Seaview Road**
17. **Margaret Helen Thomas: 51 Kings Road**
18. Roger Clive McCracken: 47 Kings Road
19. Nicholas Madden: QRC 22 Selwyn Road
20. Hadlee Richard Gordon Wright: 40 Kings Road
21. **Peter Robinson for Focus Paihia Community Charitable Trust: Unit H, I, J/1 Williams Road**
22. Penelope Ann Davidson-Boles and Craig Allan Boles: 2 MacMurray Road
23. Michael Champstaloup: Local Resident Address Not Supplied
24. **Belinda Ward: Chairperson BOI Whangaroa Community Board. Local Representative**
25. Deb Beazley: Not Provided
26. Gavin Dreaver and Sarah Townsend: 36 Kings Road
27. Neil McCorkindale: 38A Kings Road
28. Andrew David Larsen: 11 MacMurray Road
29. Don Mandeno: 22 Marsden Road
30. Nicolette Hope Kempthorne: 8-10 Marsden Road
31. **Charles Parker for Business Paihia**

The persons whose names are highlighted appeared before us and spoke in support their objection.

RESERVED DECISION OF THE COMMITTEE

Introduction

1. In an application dated the 13th of May 2022, **Castle Management Paihia Limited** applied for an On Licence for Pipi Patch, a small late night bar on Kings

Road, Paihia. It was duly advertised, and 31 public objections were received.

2. The application also received opposed reports from the agencies citing amongst other issues, the ongoing degradation of the amenity and good order of the area due to alcohol related offending in and around the bars on Kings Road. The applicants have been operating Pipi Patch under a series of Temporary Authority since 21 January 2022.
3. The applicant is seeking the licensed hours of **Monday to Sunday 11.00am to 1.00am the following day and 11.00am to 10.00pm on the exterior deck area.** These hours are within the default national maximum trading hours for ON licences and in line with the Resource Consent pertaining to this property.
4. The business is a very small 'vertical drinking' tavern/nightclub with an internal area of only about 7 metres by 4 metres and wooden deck outdoor area of 7 metres by 2 metres. The premises is situated in the so called entertainment strip of Paihia. It is currently open only on Friday and Saturday nights with an occasional Thursday evening. The maximum permitted occupancy is 75.
5. One of the major issues for the Committee to evaluate is the vastly changed makeup of the area since the influx of social housing clients from the Ministry of Social Development (MSD) and Corrections over the last couple of years following the COVID pandemic. Due to the pandemic, the number of tourist and backpacker visits have been severely reduced, and several businesses were forced to sell up or relocate. Others have had to diversify to survive.
6. Several tourist accommodation providers and backpackers have been converted to accommodate emergency housing clientele and some also accommodate seasonal workers.
7. Certainly the 'face' of the Paihia community, once called "The Jewel of the Bay of Islands" has changed markedly.
8. The first plan of the licensed area, dated 13 May 2022, showed the whole of the building was to be licensed. This was apparently a mistake and only the currently licensed area, i.e., the existing bar room and front deck area, are sought to be licensed. The original 'doubling' of the licensed area generated many of the objections. The whole of the proposed licensed area is to be designated as a **Supervised Area.**
9. The application was set down for a formal hearing as the Committee wanted to hear about the concerns of the objectors, and the agencies, and to satisfy itself that the applicant company was suitable, and that their proposed operating regime would not reduce the amenity and good order of the area by more than a minor extent.

Applicant's Evidence

10. We heard from one of the directors of the company, Akshat Rajvanshi. He said he and fellow director, Manvinder Singh, own a number of liquor stores in Auckland and the Coromandel. They also own accommodation providers in Auckland, Taupo, Rotorua and Queenstown and they also own Bay Adventurer at 28 Kings Road just up the road from Pipi Patch.
11. He told us that he has previously held a Manager's Certificate and that he currently visits "the business fortnightly to check on the operations, training, meetings and meeting the heads of department." He told us he was seeking the 'renewal' of the licence and that he "had not had any major or significant intoxication incidents recorded at the business" during his tenure of the bar.
12. He has also had 33 units at Bay Adventurer contracted to the Ministry of Social Development (MSD) and Corrections for social and/or emergency housing.
13. Most of his businesses are operated by local managers such as Josh Crawford who manages the Bay Adventurer and Bradley Greenwood who runs Pipi Patch.
14. He said the previous customer base for Pipi Patch was from backpackers living in the 22 units attached to the bar. Those units are now occupied by medium to long term low socio-economic individuals and families that pay rent direct to Mr. Rajvanshi.
15. It was his evidence that these people do not socialise at the Pipi Patch, but they have come to the notice of the Police for domestic disputes and the like. His current clientele at Pipi Patch were young locals and out of towners who come into Kings Road on the weekend to socialise.
16. He said he was aware that there was a range of concerns expressed by local businesses that the area was not safe or as fun as it used to be. He believed that was because of the loss of the tourists and the change in use from visitor accommodation to social and emergency housing. (Of which he is one of the main players).
17. He intimated that it was due to his '**social conscience**' that he engaged with MSD and took over these clients despite their troubled backgrounds and significant issues. Almost to the day that the DLC set this matter down for hearing a 90 day eviction notice was served on the MSD clients in Bay Adventurer. He has keep on his 'private' clients in The Base at Pipi Patch.
18. He acknowledged that the Police were regular attendees at Bay Adventurer and that he had asked MSD to remove several families due to their issues in and around the facility.

19. In regard to the operation of Pipi Patch, he acknowledged that it was hard to attract and retain staff. He had appointed Bradley Greenwood only 6 weeks ago and had instructed him not to open if he didn't have enough staff on any particular night.
20. He said there was good visibility from the 'restaurant'¹ out on to the deck area. (We saw no evidence of there being a restaurant. The only internal licensed area is the bar, and it is largely devoid of furniture and seating!)
21. He confirmed that his agent had filed an incorrect plan of the proposed licensed area and that the correct licensed area was just the bar and the outdoor deck area.
22. He said the opposed reports from the agencies and the objections from the public were largely to do with the issues from the social housing clients and not the operation of, or the patrons of the bar.
23. When questioned he said he did conduct due diligence before purchasing the business but admitted that did not including approaching the local residents and businesses and accommodation providers before he purchased the businesses.
24. He did attend a meeting with Business Paihia about 2 ½ months ago after prompting from them. He accepted that Pipi Patch was situated within a vulnerable community but did not agree that the amenity and good order of the area was already degraded when he took over.
25. He was asked how a cocktail on the menu containing 5 different spirits for \$16 could be considered a responsible promotion. He said it wasn't irresponsible as only 10ml of each spirit was added and topped up with non-alcoholic mixers.
26. He believed that if they meet the District Plan rules for noise then that would be OK. (He was clearly unaware of the Excessive Noise provisions in the RMA where noise could be deemed excessive if it was unreasonably interfering with someone else's peace and comfort at an adjacent site).
27. He was asked about the MSD contracts that he took over and whether he thought about the consequences of continuing the contracts as part of his due diligence to the community. He appeared to miss the point saying he was given an option of 3-6 year contracts if he wished. Clearly the financial rewards were considerable and carried precedence over the potential and actual effects on the community.
28. Next for the applicant, we heard from Bradley Greenwood. He has been working for the business since March 2023, just 7 weeks at the time of the hearing. He

¹ Applicant evidence BOE [34]

said he had 6 years' experience in hospitality, and he holds a Manager's Certificate.

29. He said he has worked in Paihia for about 4 years and is familiar with the Kings Road scene. On Thursdays and Friday, it is only him and Rob Evans (Security person) working, and Rob was often working behind the bar. He said on some Thursdays and Fridays they have no customers come in. Saturday night was their busy night. He and another bar person worked the bar, they had a glassie picking up and cleaning glasses and two security guards working on the door.
30. During his time with the bar, he said he had had no problems with the residents of the social and emergency housing. He acknowledged that Kings Road does have a disorder problem.
31. He said he had implemented a 'no fights' policy and a dress code that has seen a drop off in some patronage, but it was better overall for Pipi Patch that was now safer and easier to manage. This is a positive initiative, and we give credit for it but we do wonder about the previous 10 months of operation under Castle Management Paihia Limited.
32. Only one trespass notice has been served on a patron during his tenure as Bar Manager.
33. In regard to noise emissions, he told us they do have two sound meters, but he did not know the specifics of operating them saying the doorman Rob Evans did that. As we discuss later in this decision noise attenuation and preventing the escape of noise is a serious potential problem for this bar.
34. They stopped barbecuing on the deck after that caused some problems with noise and overcrowding on the deck. It also attracted the 'street dwellers' looking for a late night feed. He conceded that their food sales were very small, but he hoped to expand the menu soon. He said he already had the ingredients in the fridges and freezer to make burgers and the like.

Objectors Evidence

35. As reported by the Inspector a district record of 31 public objections were received against his application. Twenty-eight were from members of the public and the other three were Peter Robinson representing Focus Paihia, Belinda Ward from the local Community Board, and Charles Parker representing Business Paihia.
36. One of the issues for the Committee to grapple with was that the objections were lodged in June of 2022 (some 11 months ago) when incidents were fresh and

clear in the minds of the objectors, and that some of them were strongly opposed to the proposed 'doubling' of the licensed area when an incorrect plan was included in the application.

37. Eight objectors attended the hearing and 7 spoke to their objections. For convenience and clarity, we group the evidence of the objectors together.
38. Carlsen Orr spoke on behalf of himself, and his wife Noleen, who are local residents. He told us that the operation of "*the bars of Kings Road had lead (sic) to continual trouble with late night drunkenness, noise and fighting and speeding vehicles.*"
39. He said the original bar licence for Pipi Patch was for the 'Kiwi Experience' clientele who resided in the attached accommodation.
40. The Kiwi Experience was no longer operating and along with the other bars it attracts anti-social behaviour by people from outside the area who would come to Kings Road to party up on the street and in the bars. He said after the bars closed they would return to their cars and continue partying till 2 or even 4am in the morning knowing that there was no Police in the area to move them on.
41. The result would be that the street would be left strewn with rubbish, bottles and cans that was cleaned up the next day by local residents and not the operators of the bars.
42. He said many local residents feel unsafe walking on the streets in the evening.
43. Peter Robinson appeared on behalf of the Focus Paihia Community Charitable Trust Board. He told us the Trust Board advocated for the best interests of the Paihia community and believed that the applicant was ill-equipped to deal with the social housing people and the other 'undesirables' that currently frequent Kings Road.
44. He said Pipi Patch is right in the middle between the social housing and the other bars and the bottle store. While Pipi Patch may not be a significant contributor to the disorder it was part of the problem that reduced the safety of the area.
45. He said that Focus Paihia had funded the CCTV network for the locality but were not the monitors of the system. He believed the provision of alcohol from all the outlets contributed to the issues on Kings Road.
46. Charles Parker spoke on behalf of Business Paihia that represents more than 100 businesses in the Paihia area. He said the negative media comment relating to poor behaviour in and around Pipi Patch casts a bad light on the destination and will seriously impact the hospitality industry in the Bay of Islands.

47. He said the site has a history of noise issues back to 2007 and considering the 'bowl' that the town sits in it is not appropriate to have a late night dance bar in the same complex housing vulnerable families with children.
48. He said the group members had great difficulty contacting previous operators and they saw no likelihood of improvement now, especially with an absentee licensee owning the business.
49. His attempts to engage with Akshat Rajvanshi drew no meaningful response from him in the early months of his operation. It was not until March of 2023 that Mr. Rajvanshi attended a Business Paihia meeting.
50. He argued that despite the restriction of 102(4) of the Act it was clearly a suitability issue when the applicant has willingly taken on MSD contracts that has put the residents and businesses of Paihia at risk.
51. He conceded to Mr. Braggins that he could not provide evidence of a specific incident at Pipi Patch that caused him concern.
52. Margaret Thomas told us she has been a resident of Kings Road for 6 (now 7) years. She said that during the last 2 years (2020-2022) the town had been seriously impacted by alcohol related violence, general disorder, noise and unrest due to the mix of social and emergency housing and access to alcohol.
53. She said that although things have quietened down a little in the last year she still hears the fights and the screaming from domestic incidents in the accommodation units.
54. Belinda Ward told us she has lived in Paihia for 42 years and been the Paihia representative on the Bay of Islands-Whangaroa Community Board for 21 years. She is the current Chair of the board.
55. She queried whether the applicant had the appropriate planning certification to change from backpacker accommodation to semi-permanent residents. She also queried how smokers could access the smokers area if the deck is not to be used after 10.30pm.
56. Ms. Ward told us that of the 6 backpacker facilities in the area 4 are now catering for social/emergency housing and it has changed the face of the Kings Road area. The old Topsy Oyster has relocated down the road on to Marsden Road and their building adjacent to Pipi Patch is now a community learning hub where tamariki come to learn together after school hours. We note that their hours of opening do not cross over the current hours of Pipi Patch but could do if Pipi Patch was to exercise their ability to open at 11.00am.

57. Similar to other objectors, she believed that the proposed late night venue is no longer compatible with the current or future use of the surrounding properties.
58. There is no public transport in Paihia, and she said that the Kerikeri taxi companies refuse to service Paihia late at night.
59. While conceding that the Pipi Patch brand has been operating with a low profile she was concerned about what would happen once they expanding their operating window should a licence be granted.
60. Susan Ross and Yin Fan Yee appeared in support of their objection. Susan's family owns the land and Ms. Yee leases the Averill Court Motel from the Ross family. Their property is on the southern boundary of Pipi Patch, and they look down on to the deck and smokers area.
61. They had objected to previous licence applications for Pipi Patch as they, and their paying guests, were affected by late night music and people noise. She believed that the previous hearing for Pipi Patch in 2021 determined that the deck could not be used for any purpose.
62. We do not intend to relitigate that determination, but it seems to us that the deck should be shut down for use at 10.00pm but we see no reason why the orderly use of the principal entrance and a path to the smokers area could not be permitted.
63. Clearly patrons should not be permitted to queue up for access to the smokers area or await entry into the premises.
64. As we discuss elsewhere in this decision, this area is very much a 'pinch point' and indicative of our assessment that this venue is most likely no longer fit for purpose.
65. Ann Corbett told us that she had been a resident for 36 years and that when she lodged her objection she was still being subjected to daily yelling, swearing, children crying, general domestic abuse incidents and cars doing wheelies up the street. She believed that much of this was alcohol and drug related and crime in the area had increased over recent years.
66. She was cautious to walk down Kings Road even during daylight hours and had been forced off the foot path by drunk men and had been verbally threatened.
67. The other objectors who, for a variety of reasons, did not appear to support their objection conveyed a similar message to the ones who spoke to us, i.e., the mix of alcohol from the licensed premises and street drinkers/dwellers and the social housing people collectively had significantly damaged the amenity and good order of downtown Paihia.

68. As to weighting of their evidence we turn to the decision of the Liquor Licensing Authority who said in **GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03**²

“The objections will have little probative value if those making the allegations in the objection are not able, or prepared, to appear at the hearing to affirm, or swear, to the truth of what they are saying. By not appearing, their opinions and concerns cannot be tested by cross-examination by the applicant or questioned by members of the Authority.”

Police Evidence

69. We then heard from Sergeant Tai Patrick who told us he was standing in for the local Alcohol Harm Prevention Officer, Sergeant Michelle Row, and that he was also an Alcohol Harm Prevention Officer for the Whangarei/Kaipara Region.
70. He was familiar with the Paihia area as he had policed it earlier in his career. He presented the Brief of Evidence from Sergeant Row and called two sworn officers to give evidence about their attendances at incidents on Kings Road.
71. We were shown a small clip of an incident outside Pipi Patch in April 2022 in which alleged patrons from licensed premises began to fight and the two attending officers used OC Spray to subdue the combatants and defuse the incident. We were not shown the intimated 15 minute clip depicting a serious assault, a hit and run incident and public urination. (Clearly we cannot put any weight on material we have not seen).
72. The Mapping Tool and the NIA and CARD data was largely unhelpful as it was over a 3 year period, but we could see that there had been no real downturn in the last 12 months. In any event, that data was not premises specific and all we could really extract from it was that recorded alcohol related harm within one kilometre of Pipi Patch was 206 for the 12 months to March 2023. This was the same (206) as the previous 12 months 2021/2022 but down from 283 recorded offences in 2020/2021.
73. Constable Xavier Henare is based at Kerikeri, and he told us about a shift on 23 April 2022 when they were patrolling in Paihia.
74. He said that in April 2022 there were three late night bars operating, the ‘Salty’, The Sandpit/Pool Bar and Pipi Patch.
75. His evidence was that *“Due to the amount of intoxicated people that come out*

² GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03

onto the street when all the bars close there is never a night when a fight or disorder does not break out.”³

76. At about 1.00am at tip out time he saw multiple people exiting the bars along the street. *“The majority of them were stumbling and yelling.”*
77. Shortly after a fight broke out between parties and the Police deployed OC Spray to defuse the incident. He said it was too unsafe to effect any arrests at the time of attendance.
78. When questioned he said the patrons came out of all three bars on the street. He was asked what follow up investigation was undertaken by him or the ARPO officer to identify offenders and/or the bars that served them to the point of intoxication. He said there had been no follow up to his knowledge.
79. He was asked how many cold call compliance inspections he had undertaken of Pipi Patch and the other bars on his patrols of Paihia, he said none.
80. Sadly, Sergeant Patrick confirmed that the Police responses in Paihia are largely reactive rather than pro-active. We comment on this later in our decision.
81. Constable Fergus Giuseppe Tonkin told us he was a sworn officer based out of Kerikeri.
82. He told us about an incident in Paihia at about 12.50am on 10 September 2022. As the closing ‘tip out’ commenced he saw a large number of patrons coming out of the Saltwater bar and mixing with the crowd already on the pavement.
83. One of the group kicked in a panel of the Police car and another male stepped in and challenged the Police officers when they tried to prevent further damage occurring. The man was OC sprayed and eventually arrested and charged.
84. When questioned he confirmed that the male person was intoxicated and to his knowledge there was no follow up with the bar as to why he was served excess alcohol. In fairness there was no evidence that indeed he had come from a bar or whether he had been one of the many street drinkers.

Medical Officer of Health Evidence

85. Mr. Alistair Sherriff ably introduced the MOoH opposition and called Dr Ankush Mittal.

³ Constable Xavier Troy Henare BOE page 1

86. Dr. Mittal qualified himself as an expert witness and told us of the MOoH enquiries into this application and the population demographics of the Paihia community.
87. He summarised his evidence as follows: *“There is considerable vulnerability to alcohol related harm in the locality this premises operates in. Particular features of risk include higher deprivation neighbourhoods and regional catchment, younger audience appeal, and a high Māori population representation which is growing.*
88. *There is also considerable evidence of alcohol related harm in the locality as demonstrated by hospital and ambulance statistics. Police evidence and community objections support this evidence, and also highlight the role of the nighttime economy on Kings Road as a long standing contributor to alcohol related harm.*
89. *The premises appears to be promoting higher strength beverages at accessible price points for a predominantly younger audience, with an aim to grow the volume of its business.⁴”*
90. During questioning he was challenged by the applicant as to why the MOoH did not oppose the recent granting of an ON Licence to the Hideout. He said it was because the business was that of a Class 3 restaurant and of a considerably lower risk factor.
91. He agreed that there was no evidence of the social housing people drinking at Pipi Patch nor was there any evidence of an increase or reduction of ambulance call outs in recent times.
92. Next we heard from Mr. Jeffrey John Garnham. He is a Health Protection Officer for Te Whatu Ora and is based in Kerikeri.
93. His evidence was taken as read and summarised in his own words by saying: *“.In my opinion the degradation of the (good) order and amenity in the locality in and around Kings Road is associated with the type and mix of premise (sic) (being three tavern/bar type licenses and an off license), a culture of street drinking within a liquor ban area in close proximity of the beach associated with a secluded carpark and lookout.*
94. *In conclusion, it is my view that the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licenses that granting a licence will likely reduce or at a minimum maintain the status quo of poor amenity and good order. As such, the license application should be refused.⁵*

⁴ Dr Ankush Mittal BOE paragraphs 27-29

⁵ Jeff Garnham BOE 47 & 48

95. He was questioned by the applicant, who asked him if the air lock and no drinking outdoors after 10.00pm was a positive move to attenuate the escape of noise? He agreed that it was.
96. As a matter of completeness, we confirm the non-publication order on the document presented showing the ambulance call outs over the last 5 years to Paihia.
97. Mr. Wiremu Tane was called as a witness for the MOoH. He told us that he is a kaumatua of the hapu Ngati Rahiri who are acknowledged as having cultural oversight and mana whenua over the Paihia area.
98. He outlined the business interests of the Te Tii (Waitangi) B3 Trust including owning the building currently tenanted by Countdown Waitangi. He said he had seen the damage done to Māori communities by the misuse of alcohol and that alcohol was a stain on the community.
99. He believed many of Pipi Patch's clientele were young Māori males looking for the ladies. When questioned he agreed that if there were no bars for people to go to, then they would be likely to drink on the streets or down on the beach.

Inspector's Evidence

100. The Inspector's report was taken as read and she was available for questions.
101. She described the premises in her own words as follows: *The premises consist of an existing accommodation lodge set on the main Kings Road entertainment strip in Paihia. In previous years (before COVID), the premises operated the tavern with their target customers being backpackers and budget tourists and was licensed as a tavern since 1998.*
102. *However, the socio-demographic makeup in the area has changed significantly during COVID outbreak. The accommodation lodge that was intended for backpackers and tourist's short stay, had been used for housing of low socio-economic vulnerable people, some of which with children.*⁶
103. She told us about the mix up by the agent over the plan of the licensed area. She had met with Mr. Greenwood twice and she agreed that, to her knowledge, Pipi Patch was not the worst bar on the street.
104. She also conceded that the amenity and good order of the area had improved very recently but put it down to the reduced number of people in social housing.

⁶ Inspectors Report Agenda page 51

105. She confirmed with the Committee that she has not conducted any late night compliance inspections of Pipi Patch or the other bars on Kings Road either with other Alcohol inspectors or with the Police.

Relevant legislation

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

- (1) The purpose of Parts 1 and 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.**

107. 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).**

108. Section 105 of the Act provides the criteria that the licensing committee must have regard to when deciding whether to grant a licence:

105Criteria for issue of licences

- **(1)In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:**
 - **(a)the object of this Act:**
 - **(b)the suitability of the applicant:**
 - **(c)any relevant local alcohol policy:**
 - **(d)the days on which and the hours during which the applicant proposes to sell alcohol:**
 - **(e)the design and layout of any proposed premises:**
 - **(f)whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic**

- refreshments, and food, and if so, which goods:
- (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:
- (h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:
- (i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—
 - (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
 - (ii) it is nevertheless desirable not to issue any further licences:
- (j) whether the applicant has appropriate systems, staff, and training to comply with the law:
- (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).

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

106 Considering effects of issue or renewal of licence on amenity and good order of locality

(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee **must have regard to**—

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

(i) current, and possible future, noise levels:

(ii) current, and possible future, levels of nuisance and vandalism:

(iii) the number of premises for which licences of the kind concerned are already held; and

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

(i) the purposes for which land near the premises concerned is used:

(ii) the purposes for which those premises will be used if the licence is issued.

(2).....

Discussion and Reasons for the Decision

The Act requires that when deciding whether to grant a licence or not, the licensing committee **must have regard** to the matters contained in section 105 and 106 of the Act.

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

109. Section 105(1)(a) of the Act requires that the licensing committee must have regard to the object of the Act and in particular that **the sale, supply, and consumption of alcohol is to be undertaken safely and responsibly, and that the harm caused by the excessive or inappropriate consumption of alcohol is minimised.**

110. We are required to stand back and cross-check the evidence adduced at the hearing and determine whether, **in our opinion**, the granting of this application would help achieve the object of the Act.

The High Court in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*⁷ confirmed there is no presumption that a new licence or renewal of an existing licence will be granted: *Thus, when the relevant body receives an application, they must consider it against s 105 in deciding “whether to issue a licence”. There is no presumptive position, and certainly no foregone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.*

111. In line with the recent Supreme Court ruling, we are now also required to consider Sections 3 & 4 together.

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

112. Section 105(1)(b) says that the applicant must be a suitable person to hold an ON-licence.

Suitability has been discussed and defined in many Courts, in particular the High Court.

In *Page v Police* (unreported) HC Christchurch AP 84/98 24 July 1998⁸, Panckhurst J stated:

“Section 13(1)(a) provides that the applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding. ”

Panckhurst J continued:

“Such suitability is not established in a vacuum but in the context of a particular case”.

In *New Zealand Police v Casino Bar No. 3 Limited CIV 2012-485-1491; [2013] NZHC 44*⁹ the High Court treated suitability as a broad concept.

⁷ Christchurch Medical Officer of Health v J & G Vaudrey Ltd

⁸ Page v Police (unreported) HC Christchurch AP 84/98 24 July 1998

⁹ New Zealand Police v Casino Bar No. 3 Limited CIV 2012-485-1491; [2013] NZHC 44

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 under s.11 (now s.103)of the Act.

In Re Sheard [1996] 1 NZLR 751¹⁰ Holland J said :

“Obviously, the applicant’s past conduct will be very relevant to the consideration of suitability. The real issue is whether the evidence of that past conduct will indicate a lack of confidence that the applicant will properly carry out the obligations of a licensee.

And again...“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.”

113. Mr. Akshat Rajvanshi is an experienced businessman with interests in several arenas and as an operator of licensed premises. We are, however, very concerned as to his seemingly cavalier attitude in willfully introducing/maintaining MSD and Corrections clients into the Kings Road area for so long. We understand the effects on businesses caused by the pandemic and the ongoing loss of the tourist and backpacker trade. Businesses are entitled to try and make money and keep afloat. Having MSD and Corrections placements was not appropriate in this environment. The imposition of social and emergency housing clientele, and seasonal workers for that matter, on this village and its residents appears to us to be incompatible.
114. The infrastructure and social services are clearly not in place to deal with the complex needs of these people. Even the big cities struggle to assimilate this type of clientele and their substance abuses, and mental health issues, let alone a struggling isolated tourist town like Paihia.
115. We agree with the agencies that an extended definition of suitability and an elevated mantle is triggered and needs to be surmounted by an applicant wanting to trade in the late night economy in an isolated community. We accept that the current ‘footprint’ of Pipi Patch might be on the light side, but the applicant made it quite clear that they intend to step up the business should the licence be granted and the tourists, and summertime, comes back to Paihia.
116. This is further compounded by Mr. Rajvanshi being an ‘absentee licensee.’ He freely admitted that he is a very busy man with multiple business interests. He assured us that he is in regular contact with his staff but at the end of the day he

¹⁰ Re Sheard [1996] 1 NZLR 751

is reliant on them doing the right thing and making the right decisions on Kings Road.

117. We are not permitted to, and we do not, take into account the lack of police resources to promptly attend and deal with issues when they arise.
118. But what this situation does do, is to raise the bar for licensees to ensure that their patrons do not add to the violence and disorder on the street, and the reduction of the amenity and good order of the area.
119. Counsel for the applicant argues strongly that things have been improving in the 12 months from when the applicant first took over the Pipi Patch. He said that most objectors want Pipi Patch to stay. (We can't see where he got that impression from.) Clearly the street violence and alcohol related issues in 2020 and 2021 were bad. Just because 2022 was arguably "better" doesn't mean that the current level of amenity and good order is now acceptable.
120. To 'threaten' to fill Pipi Patch with additional MSD clients should the licence not be granted is unfortunate and 'telling' of just where the applicant's loyalties lie. Clearly not with the residents of Kings Road and Paihia generally.

Section 105(1)(c) Relevant Local Alcohol Policy.

121. There is no Local Alcohol Policy currently in the Far North District. Therefore, there is nothing for us to consider.

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

122. The proposed operating hours are **Monday to Sunday 11.00am to 1.00am the following day and 11.00am to 10.00pm on the exterior deck area.**
123. The hours sought are within the default national maximum trading hours for ON licences, but we advise that the appropriate hours of operation will vary based on the location and any prevailing risk factors. In simple terms, days and hours of opening should be, and will be, very site specific.
124. As we have already commented on, in our consideration of the amenity and good order of the area, we note that Pipi Patch currently operates only 2-3 days a week on Friday and Saturday nights and occasionally on a Thursday. The doors open at 6.30pm but the business is only busy from 9-10pm until closing.
125. This is currently a very short opening window to get the customers in and try and meet the budget before they leave at or before 1.00am.
126. Mr. Greenwood and Mr. Rajvanshi made no secret of the fact that they hoped to

extend the opening days and hours as, and when, the tourists and backpackers returned to Paihia. It is also undeniable that the late night establishments are, and will be, competing for custom.

127. As we discuss in the next criterium, the Pipi Patch is, in our view, a dark and dingy premises with no comfortable seating or other forms of entertainment such as pool tables, TAB/Pokies or a range of restaurant style meals. This means that they can only compete on musical/DJ events and drink prices.
128. When considering the requested days and hours of operation, the DLC can, and will, take into account the risk rating of the activity, both current **and future**, and the number of days and hours sought.

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

129. The Committee conducted independent site visits and a joint one. The building is old and tired and operates as a small vertical drinking establishment. Currently it only opens on Friday and Saturday, and occasionally on a Thursday. The hours of operation are 6.30pm to 1.00am the following day.
130. In fairness we acknowledge the advice from the applicant that should a licence be granted, he does intend to renovate and rebrand the business.
131. There are concerns with the noise attenuation qualities of the building itself and the fence around the deck area. Mr. Braggins is quite wrong to say that "*the absence of evidence is evidence of absence.*"¹¹ It is a well-known fact that many residents put up with all kinds of anti-social behaviour and noise nuisance without complaining. As the Authority said in Paihia Saltwater (2001) Limited PH391/2001¹²

[27] We have heard enough evidence to suggest that making such calls (to noise control) in the early hours of the morning is unpleasant and often unrewarding.

132. The deck and smoking area is problematic. We see the deck as a potentially pleasant place to sit during the early evening to eat, drink and smoke but from 10.00pm it is roped off and out of use. The steps become the sole entranceway for patrons and those queueing to await entry. A narrow walkway extends from the front doors to the recessed smoking area.
133. We can only imagine how hard it must be for the door staff to effectively monitor and manage patrons coming to, and from, the smoking area and those entering and egressing from the premises.

¹¹ Applicant closing submission 2.5 (g)

¹² Paihia Saltwater (2001) Limited PH391/2001

134. It is clearly a pinch point and no doubt a place of potential conflict and where breaches of the maximum numbers in the smoking area are likely to occur.
135. The 'people noise' from persons in and around the entrance of the bar will be difficult to control and/or quantify.

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

136. No other goods will be sold other than beer, RTDs and poured spirits with a range of non-alcoholic beverages and some basic food items. No wine is displayed or sold. We accept that the applicant wants to increase the food options and that that is a positive move, however, the type of clientele and the lack of 'eating space' after 10.00pm does not provide 'weight' for us to apply to that initiative.

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 good, and if so, which services.

137. DJ's are engaged on a semi-regular basis and from time to time comedy shows or pay to view sports events, have also been offered at the bar.

Section 105(1)(h) Whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence.

138. We are directed to the parameters of s.106(1) and we **must have regard** to a series of matters (as they relate to the locality). Firstly, we consider current and possible future noise levels. As this was an existing business, we are aware of previous noise issues when DJ and people noise occurred both indoors and outdoors on, and from the raised deck.
139. We heard that the external speakers and internal sub woofers have been removed to mitigate the escape of noise and doors and windows are shut at 10.00pm. These are positive moves and will assist in reducing the levels of noise escaping from the premises.
140. Disappointingly, when we asked the Duty Manager, Bradley Greenwood, about how they objectively assessed the noise he said measurements were taken indoors, and out on the deck, by his door security person. He did not know the levels that had been recorded or whether that was the correct way to assess noise.

141. Once again this demonstrated a thin and cavalier attitude towards compliance with The District Plan and more importantly the peace and comfort of his neighbours.
142. Apparently the applicant has never been across and visited the nearby accommodation businesses and residents to ask about the impact of his business on them.
143. In regard to future noise, as we have stated elsewhere in this decision, the applicant hopes to expand the operating days of the business should the licence be granted, and the tourists come back to Paihia.
144. Another vital factor for us to consider is people noise. The 'noise' and vibe of late night premises attracts patrons like moths to a light. People don't have a volume button that can be controlled by the licensee. People in the smokers area, people queuing on the steps and deck, and passersby, and those 'partying on the street' who cannot get into licensed premises or have been ejected will all make noise, and even more so when they are intoxicated and/or influenced by alcohol.
145. Licensees can do little to control the 'people noise' of their patrons or those in the vicinity of the establishment. An elevated mantle of suitability applies when you have residential neighbours and accommodation providers very close by.
146. The Liquor Licensing Authority, now ARLA, drew a 'line in sand' in its decision **Paihia Saltwater (2001) Limited PH391/2001.** At paragraphs 26-30 they said:¹³

[26] *"It seems to us that there has been a number of changes in drinking and entertainment habits. Music tastes have altered. More and more people seem to congregate outside if the weather permits. Young people tend to want to 'party' at much later hours. The music (particularly the bass) is louder and more intrusive.*

[27] *It is our view that no-one should have to put up with persistent interference with their sleep patterns. **We do not think it is sufficient to submit that a true test is the number of calls to the licensed premises or the Noise Abatement officer. We have heard enough evidence to suggest that making such calls in the early hours of the morning is unpleasant and often unrewarding. (our emphasis)***

[28] *Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes the view that if no attempt is made to prevent the escape or, or reduce noise, then*

¹³ Paihia Saltwater (2001) Limited PH391/2001. At paragraphs 26-30

it is the Authority's duty to monitor the hours of opening, if not the existence of the licence.

[29] We have already heard from licence holders who have either installed air conditioning, so they can keep doors and windows closed, or have employed security people to monitor outside noise, or they have installed automatic sound control systems. We will always give full credit to those holders who acknowledge any existing noise problem and try and do something about it. In our view the term 'host responsibility' does not exclude the people who live nearby.

[30] Many licensed premises have shown that they can operate in harmony with their residential neighbours. It is no co-incidence that the managers and owners of such premises also show a commitment to the reduction of liquor abuse."

147. That decision was written 22 years ago relating to premises adjacent to Pippi Patch, and it is as pertinent to the case before us now, as it was then, in 2001, for the Authority. The escape of noise (at unreasonable levels) is an example of bad management and will not be tolerated by this Committee. Whilst there has been no sustained noise complaints under the reign of Castle Management Paihia Limited it does not mean that they are not adversely contributing to the noise nuisance in the area.
148. In regard to the current, and possible future, levels of nuisance and vandalism there was no evidence adduced that there are greater concerns attached to these premises than to any others in the area. However collectively much of the effect on the amenity and good area comes from the licensed premises and the 'imported' clientele in the social and emergency housing.
149. We are further obliged to consider the number of premises for which licences of the kind concerned are already held. There are other licensed premises in the area, but this is the 'entertainment strip' of Paihia and there has been no evidence to suggest there are too many for this town and its extended environment.
150. We are required to take into account "the purposes for which land near the premises concerned in used." There are a number of sensitive sites nearby that could potentially be affected should we grant the licence. There are nearby accommodation providers all with paying guests that look forward to a quiet night of sleep. There is an after school drop in centre adjacent to Pippi Patch but currently their hours of operation do not cross over.

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

151. The applicant advises that there is only one 'full time staff member with a manager's certificate and at the hearing they advised of two other certificate holders would be engaged should the licence be granted. A COA door security person and part time bar staff are engaged. The applicant advised that this was sufficient whilst they were only working 2-3 days a week.
152. We do wonder how the duty manager has time to go and prepare food when he is the sole person working inside the premises on the quiet nights.
153. Similarly, how does the doorman conduct his noise measurements when he is the sole person on the door counting numbers in and out and managing the smoking area?
154. A recently drawn up operation manual was presented but no evidence of completed training was provided to the Committee. Mr. Rajvanshi suggested that he conducts training on his fortnightly visits. There was no evidence of that provided either.

Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129.

155. The Police have raised matters in opposition as discussed elsewhere.
156. We are concerned about the lack of pro-active policing in Paihia. As we all know alcohol is the driver of much of the incidents and offences that the Police attend to. We understand that police resources are stretched, and staff may not be able, or feel safe, to make arrests at the time of attending disorder incidents.
157. However, this should not prevent them operating a thorough reporting system and effective follow up on the next day/s to identify and apprehend offenders. If there is evidence, from the extensive CCTV facility on Kings Road, that offenders have been tipped out of licensed premises, be it Pipi Patch or any of the others, there should be a firm follow up with the bar operators to instill accountability and consequences on licence holders.
158. To not do so will see the problems currently occurring on Kings Road reoccurring and continuing to cause nuisance and fear for law abiding citizens.
159. The representative of the Medical Officer of Health has raised matters in opposition that we have canvassed extensively elsewhere.
160. The Inspector reports in opposition citing similar concerns to the Police and MOoH.

The Decision

161. Section 3 of the Act requires us to act reasonably in the exercise of our duties and to regulate with the aim of helping to achieve the Object of the Act. Importantly we are now directed by the Supreme Court to administer this Act for “the benefit of the Community as a whole.”
162. The Agencies were right to express concerns about the incidents and breaches of the Act that are evident on the street on Kings Road.
163. The objections from the neighbours, and the organisations trying to preserve the unique nature of Paihia, were genuine and heartfelt.
164. Whilst their objections were written 12 months ago they still fear for the future of Paihia and Kings Road. However, they still do want it to return to the ‘days of old’ where tourists and backpackers flocked to Paihia to enjoy the summer and its beaches.
165. ALL the licensed premises on Kings Road have a role to play in that future. For Mr. Rajvanshi to put money before the social consequences of accepting the MSD and Corrections contracts does him no credit. His ‘veiled threat’ to fill Pipi Patch with more social housing should the licence not be granted confirms that stance.
166. He is right in suggesting that the other licensees are also responsible for adding fuel to the fire. As we have said before there is no automatic right of renewal or expectation that any licence will be granted. That is a matter for the future.
167. We encourage the Police and the Inspectorate to conduct regular compliance inspections of the Paihia late night bars. Clearly there is evidence of intoxication and drinking on the streets. Licensees need to be held accountable if they are breaching the Act.
168. Right now, we are not satisfied that granting an ON Licence to the applicant will help achieve the Object of the Act. To do so would perpetuate the current state of affairs where the amenity and good order of the area would be further reduced by more than a minor extent.
169. In saying this, this decision is not finite. In times to come once the accommodation providers have returned to short term tourist apartments and backpackers then the entertainment precinct may well blossom and thrive again, and support additional late night club and taverns.
170. Again, that is a matter for the future. The application for a tavern style ON Licence is refused.

171. We now turn our minds as to when the licensee must cease operation at Pipi Patch. The decision shall have immediate effect, but we believe as a matter of fairness Pipi Patch is entitled to a 'managed retreat' if they choose to do so.
172. The last day of trade must be **on or before the 21st of July 2023** when the current TA expires. We strongly advise the applicant that he ensures that they make a 'soft' exit from the site especially if they plan to attempt a return to the hospitality scene in Paihia.
173. Should there be sustained complaints received about the operation of Pipi Patch we will immediately review the finish date.

DATED at PAIHIA this 6th day of June 2023



Murray Clearwater
Commissioner
For the Far North District Licensing Committee

NOTE

Sections 153 to 155 of the Act relating to the right to appeal against this decision are in effect. This decision shall have immediate effect regardless of whether an appeal is lodged or not.