

Decision number: 022/ON/7264/2019

**IN THE MATTER** of the Sale and Supply of  
Alcohol Act 2012 (the Act)

**AND**

**IN THE MATTER** of an application  
by KLM Enterprises Limited  
pursuant to s.100 of the Act  
for an ON Licence for  
premises situated at Shop 6,  
168 Omokoroa Road,  
Omokoroa to be known as  
“The Locals Bar & Eatery”

**DECISION OF THE WESTERN BAY OF PLENTY DISTRICT LICENSING  
COMMITTEE**

Chairman: Murray Clearwater  
Member: Arthur Wilkinson  
Member: Bev Edlin

HEARING at Tauranga on the 29<sup>th</sup> and the 30<sup>th</sup> of January 2019

**APPEARANCES**

Mr John Young - for the Applicant KLM Enterprises Limited (“the applicant”)  
Mr Kunal Lachhani – for the Applicant  
Mr Dougal Elvin – Western Bay of Plenty Alcohol Licensing Inspector (“the  
Inspector”) – to assist  
Sergeant Trevor Brown – Police Alcohol Harm Reduction Co-Ordinator (AHRO) –  
to assist  
Ms. Dawn Meertens- for the Medical Officer of Health (MOoH) – to assist (30  
January 2019)

**Public Objectors:**

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The application was publicly notified in The Weekend Sun newspaper on the 29<sup>th</sup> of June 2018 and the 6<sup>th</sup> of July 2018 and by the cut off time of 20 July 2018 more than 108 objections had been received from members of the public.

Some were from individuals, some in the form of a pre-formatted letter and more than 350 persons had signed a petition organised by a group called Communities Against Alcohol Harm.

Nineteen of those objectors sought to appear before the Committee in support of their objections.

1. Geoffrey Annan
2. Barrie Smith
3. Bob Miller
4. Lorraine Davis
5. Ian Barnes
6. Richard Hewison
7. Geoff Davis
8. Matthew Farrell
9. Murray Grainger
10. Brett MacLean
11. Kate Dallas
12. Lorraine Barnes
13. Jose Law (witness of Richard Hewison)
14. Wendy Morris
15. Kevin Judd
16. Robert Hallam
17. Rev Linda Moses
18. Sharon Addison
19. Marcus Ulyatt (lead by counsel Dr Grant Hewison)

## **RESERVED DECISION OF THE COMMITTEE**

### **Background**

1. The Omokoroa township has a resident population of around 3,000 and there are several residential and commercial developments underway at various locations. There are many elderly people living in retirement villages, gated communities and there are newly developed subdivisions on the peninsula. It is expected that the population will swell to more than 12,000 in the coming
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years. Infrastructure and service providers will be required for the growing population.

2. The proposed tavern is to be situated within the current commercial hub of Omokoroa. The hub currently consists of the Fresh Choice supermarket, a licensed café, and a Super Liquor bottle store (operated by the applicant). There is a Medical Centre adjacent to the site that houses a physiotherapist, a pharmacy, an optometrist, a barber, a family chiropractic business and a real estate agent. There is also a pizza takeaway outlet operating from a cargo container, a laundrette, an Indian Takeaway and three empty tenancies. Access to the site is directly from the main road that runs through Omokoroa.
  3. The initial application was lodged in June 2018 by Hospitality Licensing Limited, a licensing consultancy engaged by the applicant, and sought the days and hours of Monday to Sunday 9.00am to 1.00am the following day and had provision for up to 9 gaming machines to be installed. The lease agreement, and the first draft plan, also showed provision for a TAB terminal. A **Supervised Area** designation was sought for the whole of the licensed area.
  4. Once the applicant became aware of the strong level of opposition within the nearby community, he instructed his lawyers to amend the application.
  5. On 4 October 2018 Mr John Young, counsel for the applicant company, issued a memorandum in which he stated that the applicant “responds to and clarifies matters that have been raised in objections.”
  6. At paragraph two Mr Young stated “*Firstly the application never included a TAB. No TAB was ever proposed.*” However, during the course of the hearing, he told the Committee that those were “*his words, not the applicants.*” Clearly a TAB terminal was a consideration for the applicant at the time of obtaining the Resource Consent and it was also stated on the lease agreement.
  7. Mr Young was technically correct to say that no TAB was included in the (alcohol) application and it was confirmed by Mr Lachhani, in his evidence in chief, that there would be no TAB during his tenure of the proposed business.
  8. In regard to gaming machines in the proposed business, Mr Young, gave an assurance on behalf of his client, that there would be no gaming machines on site for the life of the first licence, should one be granted.
  9. He confirmed a full menu would be on offer and that they were removing the word “Tavern” from the trading name in an attempt to assure concerned persons that the activity would be a family friendly business and “*not a dark and unfriendly tavern.*”
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10. This memorandum triggered a "Preliminary Legal Submission" from Dr Grant Hewison on behalf of an objector that he was representing, Dr Marc Ulyatt. It was his belief that the amendments to the application amounted to 'asking for more' and to do so had prejudiced the rights of the objectors, other potential objectors and the agencies who had already reported on the application.
  11. Mr Hewison asked us to refuse the application on his submission however due to natural justice considerations we declined to do so. He indicated that he would take an immediate appeal to ARLA if we decided not to do so but as submitted by counsel for the applicant there is no right of appeal for a procedural direction of the Committee. This was conceded by Dr Hewison on behalf of his client.
  12. Similarly, a late request from the MOoH for a waiver to 're-report' on the amended application was declined. As we had told Mr Hewison we believed the application had been 'softened' by the amendments. Any changes to increase the overall risk of the activity would most likely have triggered a direction from the Committee to re-advertise, (and allow re-reporting on) the application.
  13. A further memorandum dated 22 January 2019 was received from Mr Young on behalf of his client. In it, Mr Lachhani disclosed two matters to clarify his assertion in the application that he had no criminal convictions. Firstly, he admitted a conviction for excess breath alcohol in 2012 and secondly, he told us of an incident in 2008 where he received diversion for possession of a cannabis cigarette.
  14. Arguably he has no criminal convictions as the excess breath conviction is a traffic offence and no conviction was entered for the cannabis possession.
  15. The memorandum also advised of a reduction of hours sought from 9.00am to 1.00am the following day to 10.00am to 11.00pm daily.
  16. And finally, the memorandum confirmed that the current licensed area sought was the same as that that was originally lodged.
  17. Within this background of amendments and communications the hearing was confirmed for the January dates.
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## The Substantive hearing

### Applicants Evidence

18. Mr Young opened the case for his client and briefly covered off the 'refinements' that his client was prepared to make in light of the community objections. He further advised that his client now only sought a 10.00pm finish in the outdoor area to mitigate the concerns about noise emissions.
  19. He touched on his client's conviction for EBA and the diversion matter suggesting that the Committee could put these matters to one side as the Police would surely have been aware of them when they reported and that they chose not to oppose the application.
  20. He outlined a number of legal principles he believed the Committee should consider whilst receiving the evidence and determining the application and he then called his sole witness, Mr Kunal Lachhani.
  21. Mr Lachhani told us he was 29 years of age and was sole director of KLM Enterprises Limited. He is a minority shareholder of the company with his sister holding the balance of the shares. He said he currently owns and operates four bottle stores in Paihia (2), Kawakawa and Omokoroa and a hotel in Kawakawa. He also has interests in a kombucha brewery and a service station in Auckland.
  22. He told us that other than one CPO failure at Omokoroa in 2016 none of his stores have failed any controlled purchase operations. As per his counsel's memorandum he clarified the details around his EBA conviction and his diversion for a historical cannabis possession incident.
  23. He says he understands the potential consequences of convictions on his businesses and does not drive even after 'one small drink.'
  24. He explained that one of his family's trusts owns the building involved in this application. It was in response to customer's suggestions, at his Omokoroa bottle store, that it would be nice to have a sports bar with good food, he thought about opening a bar and eatery.
  25. He conceded that a TAB terminal and gaming machines were two of the options that they considered in the early days. When the application itself was prepared they decided not to include a TAB. He told us he had recently removed the TAB terminal from the Hunter Star tavern (hotel) at Kawakawa as part of the refurbishment of that site.
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26. The applicant said that he did initially plan to have gaming machines but due to objections from the community members they have withdrawn that request, at least for the first term of the licence, should it be granted.
  27. He said, "Our vision is for a family friendly bar with good food." He likened the style of business to that of the Papamoa Beach Tavern and provided photographs of that tavern and its associated play area for children. In addition to substantive meals produced on the premises they also intended to offer pizzas from the adjacent pizzeria which is also a tenant of the family trust.
  28. He told us he had researched the growing community and believed that the community was full of "families and nice people." He noted the large developments underway with hundreds of sections being opened up for residential development.
  29. In regard to staffing he indicated that he would employ 2 full time duty managers, 2 part-time duty managers, 2 chefs and 3 wait staff/glassies. In the application, one certificated manager was appointed to the application, Simranjeet Singh, who currently works in the bottle store adjacent to this site.
  30. Mr Lachhani provided us with a 'draft roster' that showed 'duty manager' coverage from 10.00am to 10.00pm yet he was seeking a closing hour of 11.00pm. He also added that he 'hoped' to employ the required staff locally.
  31. Mr Lachhani also committed to renting or buying a house in the vicinity and be personally on duty at the premises at least 3 days a week.
  32. In regard to training he said all duty managers will be certificated and other staff would be encouraged to complete the on-line Servewise course. He attached to his brief 'his' training manual which consisted of three pages from the Hospitality NZ suite of resources for their members.
  33. He then commented on the in-shop survey that they had undertaken and the objections to late night opening and noise. In response to these concerns they had reduced the hours sought to 10.00am to 11.00pm daily and 10.00am to 10.00pm in the outdoor area. He said it was not (going to be) a late-night venue.
  34. The applicant did consider 10.00pm closing across the board but believed it was too early if they were to cater for televised sport. He believed the
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location for the activity was the best location in the township as it is surrounded by other commercial activity.

35. In regard to his personal suitability, Mr Lachhani believed he was honest and hardworking and had learnt from his mistakes. He wanted to make the business a success and a place that the locals would support. Responding to objectors concerns around amenity and good order he said that *“as a family-friendly venue with good food, we will not have a late-night rowdy clientele.”*
  36. He believed that with the amendments that they had put forward the bar would provide a safe environment and not adversely affect the amenity and good order of the area.
  37. Mr Lachhani was then cross-examined by the agencies and responded to questions from the objectors and the Committee.
  38. He agreed transport options for patrons were going to be a difficulty. He conformed there was no taxi service in Omokoroa, and taxis would have to be called out from Tauranga. He further agreed that his customers would be unlikely to pay \$50-\$60 to get a taxi out from Tauranga to be only driven a few kilometres up the road. This was partially resolved later in the hearing when it was indicated that a courtesy shuttle for locals would be offered should a licence be granted.
  39. He was asked how he personally could effectively manage so many licensed premises. He replied by saying that he has good staff that he can rely on. He believed he was going to be able to recruit good staff locally.
  40. He confirmed that he had not commissioned an Acoustic Report or Design Certificate at this stage and that there was no additional soundproofing in the building. Nor had he conducted any noise measurements of the surrounding activities.
  41. When asked how he would manage noise emissions he said they would close down the outdoor area by 10.00pm, close the doors and windows in the building and they had reduced the hours sought from a 1.00am close to a 11.00pm close. He said any ‘bands’ employed would consist of 1,2 or 3 persons playing acoustically. There would be no ‘loud bands’ or DJ style music.
  42. He confirmed there would be no pokies for the first year of operation and they would reassess that position at the first renewal.
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43. He was asked why he hadn't approached the 'community' prior to lodging the application. He replied that he had conducted a survey in the bottle store and had been encouraged by the responses he got.
44. He was quizzed at length on the suitability of his father and the businesses that they have shared over the years. Mr Lachhani said he had worked hard to get where he currently was and now made his own business decisions.
45. He was asked about potential patron numbers that he hoped might frequent this business. He said 40-50 at busy times and he would "love it" if numbers got to 100. Later in written closing submissions, for Mr Lachhani, Mr Young conceded that his client had got those numbers wrong and the Resource Consent for the building had set the maximum number of patrons in the building at 30, due to parking restrictions. This loading level would be complied with.

**That was the case for the applicant. By agreement we then heard from a number of the objectors so that they could return to work or other engagements**

46. First, we heard from Geoffrey Annan. He is a solicitor working in property law and lives about 80 metres from the proposed tavern.
  47. He referred the Committee to the 'Policy Goals' contained within the Local Alcohol Policy (LAP) the third of which states (the policy) *is to reflect local communities' character, amenity, values, preferences and needs.*
  48. He urged the Committee to use its discretion and refuse the licence for the tavern as it would be inconsistent with the provisions of the LAP.
  49. He also had concerns about parking and noise overspill and the lack of consultation with the community by the applicant. He queried the validity of the Planning Certificate for the activity.
  50. He told us he was a member of the local Fire Police and had attended many alcohol related road crashes. He believed the amenity and good order of the area would be adversely affected by more than a minor extent if the licence was granted.
  51. Under cross-examination from Mr Young he conceded that there was no cap on on-licensed premises in Omokoroa and that the zoning for the area allowed the development. He agreed that the community was expanding and said he would not oppose a restaurant on that site but with a 9.00pm closing.
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He believed that the trigger in the LAP for an Acoustic Design Certificate to be required had been activated.

52. He also advised us of other licensed premises in Omokoroa, naming the Boat Club, that has a band playing on Sundays, but entry is for members only.
  53. Next, we heard from Barrie Smith. He told us he was a retired man and a local resident for 3 years and could see the proposed business site from his house in the Omokoroa Country Estate retirement village. He believed a tavern would also impact on the nearby church's activities.
  54. He was critical of the Inspector, and the Police, for 'approving' the application saying they had failed to take in to account the wishes of the local community. He said "He (the Inspector) forgot who pays his wages." As we explain later in this decision the Inspector is required to report impartially on the application and he did, adequately, do so.
  55. He was critical of the location for a tavern style business and believed that any such business should be located in the new large commercial proposal near Prole Road.
  56. He was concerned about current and future road noise from cars and from patrons from the 'tavern.' Under cross-examination he said the locality went quiet from 9.00pm each night. He was critical of the applicant's attempts to 'sweeten the deal' to get the licence granted.
  57. Next up was Bob Miller who has lived nearby for 12 years. He raised four main points. The location was too close to residential areas. There is limited parking on site and there is already congestion and significant noise from vehicles. He believed the reduced hours were moving closer to 'family friendly' hours and he believed a noisy and unruly tavern would result in devaluation of nearby residential properties.
  58. He said there was already a 'bar' within 50 metres of the site. This was clarified to be a small licensed café next to Fresh Choice. His main concerns were noise and the type of clientele that might be drawn to the tavern.
  59. Ian Barnes told us he lives approximately 120 metres from the proposed site. He was concerned about the potential for noise and anti-social behaviour. He believed most patrons would drive to and from the premises. He was opposed to any tavern on that site.
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60. Next, we heard from Matthew Farrell. Mr Farrell is a journalist and owner operator of a local monthly publication Lizard News. After hearing of the application, he initiated a petition that gained more than 300 signatures opposed to the application.
61. He had enquired deeply in to the Lachhani family background and businesses and believed that the suitability of Kunal Lachhani should be brought into question. He believed the proposal was for a “drinking den with a deep vat fryer” and that the applicant had been underhand with the public notification of the proposal. He said the concessions offered were to gain the licence and the business was all about liquor (sic) and not food.
62. He added that the RMA issues and location of the site were not conducive to a tavern development.

**For the sake of continuity and clarity, we continue with the evidence of the objectors some of which was received on the second day of the hearing**

63. Richard Hewison is a retired registered Cadastral Surveyor. He lives in the Omokoroa community. He uses the commercial complex for his shopping requirements, and he is also a member of the Community Patrol that patrols the area in the evenings.
  64. He believed that a tavern development would be incompatible with the area and that the Planning Certificate was deficient.
  65. Under questioning from Mr Young, he confirmed that he lives some 1.68 kilometres from the site and that his son, Dr Grant Hewison, had assisted him writing up his brief of evidence.
  66. Lorraine Davis told us the proposal for a tavern at this location was ill-conceived and the pizzeria in the shipping container will not be a buffer for the noise that will be generated. She believed the changes to the application reflected badly on the applicant and the proposal did not reflect the community wishes. She believed Omokoroa “does not and will never need a tavern and gaming machines.”
  67. Lorraine Barnes told us she can already hear noise from the commercial complex and vehicle movements in the area. She was not happy with the public notification process and said, to her knowledge, the applicant was not involvement in local community initiatives.
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68. Mrs Barnes raised the issue of remote policing of the area and said they had difficulty raising a prompt response now and believed the Police would have problems attending incidents in a timely manner should they arise. She was still totally opposed to a tavern/gaming facility.
  69. Geoffrey Davis told us he was strongly opposed to the proposal of a tavern and gaming parlour in Omokoroa. He was cynical of the applicant's assertions of the intention to set up a family friendly tavern with good food. Mr Davis thought it would be a 'booze barn first with food later.' He was critical of the design and layout of the building saying the area looked like a "temporary construction site". He also had concerns about potential noise levels.
  70. Mr Davis was concerned about current driving behaviours in the vicinity let alone those that might arise once tavern customers arrive. He believes the amenity and good order of the area would be "downgraded" and he objected to having to defend his 'amenity' rather than the applicant having to prove that he would not "alter the status quo".
  71. Murray Grainger, appeared by leave, as Chairman of the Omokoroa Community Board. In the 'Board's' written objection Mr Grainger stated the objection was lodged on behalf of the Omokoroa Community Board. The objection contained four main points. He argued that the proposed hours of 9am to 1am the following day were 'inappropriate' and recommended 11pm if the licence was to be granted.
  72. Secondly, they were opposed to a gaming venue licence (and TAB) being granted for this site.
  73. Thirdly he raised the potential for noise overspill and nuisance. As a consequence, the amenity and good order of the area would be adversely affected by more than a minor extent if the licence was granted.
  74. And fourthly he argued that the public notification, on-site, and in the Weekend Sun was inadequate.
  75. However, when speaking to the 'Board's' objection he told us, as an ex-acoustic and vibration consulting engineer, he believed the proposal would not be able to meet the prevailing noise standards in the District Plan.
  76. He accepted that there was a measure of support within the community for a "tavern/bar/restaurant/eatery establishment" but that it would be difficult due
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to the size and location of the property to comply with the District Plan noise limits.

77. When questioned by counsel for the applicant he conceded that the objection lodged had not been formally passed by a resolution of the Board. He also agreed that the concession of the applicant for an 11pm closing time satisfied that part of the Board's objection.
  78. Brett McLean is a local plumber and held similar concerns to the others. He was worried about a decrease in the amenity and good order and the effect on property values. He was critical of the public notification process and information about hearing attendance. Staff of the DLC attended the hearing and, no doubt, have taken on board the issues raised.
  79. We then heard from Kate Dallas who owns a house on McKenna Lane directly opposite from the proposed site. She is not currently living there but raised similar concerns to the other objectors; namely, a potential reduction in the amenity and good order of the area, incompatibility with other sensitive activities, and future levels of nuisance and vandalism, and unreasonable levels of noise disturbances for families and particularly those with young children. Parking congestion was another issue raised by Ms Dallas.
  80. She also told us that as there is only one road in, and one road out, traffic density and noise was already a problem at times. The current remoteness of a Policing response was also a concern to her.
  81. In regard to her status as an objector she was not challenged by Mr Young and in any case, we accept her status as having a greater interest than the public at large as she could return to her house at any time.
  82. Lorraine Davis held similar concerns to Kate Dallas i.e. noise, location and traffic noise and a reduction in the amenity and good order of the area.
  83. Jose Law appeared before us as a witness called by Mr Hewison Snr. Ms Law was previously a medical technologist and had researched the correlations between alcohol abuse and harm. She was concerned that more outlets result in more competition, which would drive down lower prices and more consumption resulting in more alcohol related harm. The lack of a taxi service was also a concern for her.
  84. Largely we accept what she says in this regard and will comment on whether or not that relates to this application later in our decision.
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85. Wendy Morris held similar concerns and she was concerned that the currently safe and quiet community would be disturbed by intoxicated persons behaving badly.
  86. Kevin Judd told us he lived nearby and was surprised and disappointed about the scope of the initial application. He said he would have had second thoughts about buying property near to this site if he had known a tavern might spring up. Under cross-examination he said he could live with a restaurant on the site but not to 11pm at night. He was concerned about the entrance to, and exiting from, the premises and the lack of a taxi service.
  87. Robert Hallam lives nearby on Margaret Drive. He too was concerned about a potential for a reduction in the amenity and good order of the area, reduction in property values and noise disturbance from patrons leaving the site.
  88. Next to speak to us was Sharon Addison who is a part owner of the nearby Omokoroa Kiwi Holiday Park. She told us they can accommodate up to 300 campers in their facilities and they have had to deal with some alcohol fuelled behaviour from their own guests and believe if a tavern was to be just across the road it will make matters worse. They struggle to get the Police to assist now and have a house rule that campers on-site must shut down their parties and keep quiet from 10.00pm each night.
  89. They currently employ a COA qualified security guard to assist manage the site if they have big gatherings in house. She believed the noise from people coming and going and the lack of policing will be major problems for this proposal.
  90. Reverend Lynda Moses is a minister at the Omokoroa Community Church some 127 metres from the proposed tavern. She was concerned that Pokies and a TAB target the lower socio-economic clientele and that the potential for intoxicated patrons did not fit current community demographics. The Reverend outlined the many uses the church facilities are put to during the week and provided a list of representative bookings for the hall.
  91. Finally, we heard from Dr Marc Ulyatt who lives 230 metres from the site. His concerns were that the proposed tavern did not sit well with the policy goals in the LAP nor with the many sensitive sites within 500 metres of the site. He named the Country Estate Rest Home, Victoria Key gated community, the Community Church, Acacia Park rest home, The Medical Centre, the Omokoroa Kiwi Holiday Park, and Minnows Pre-School.
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92. He told us that of the over 500 residential dwellings within a 500m radius 73% are occupied by retired people. He told us this was 4.5 times the national average.
93. He was also concerned that the site was within a natural amphitheatre and that any additional noise generated will adversely affect nearby properties. He surveyed the closing times of the nearby businesses and all were closed by 10.00pm at the latest.
94. Overall it was his belief that the amenity and good order of the area would be adversely affected by more than a minor extent. Under cross-examination he said it would be “hard to tell” if the reductions in opening times ‘offered up’ would help the perceived issues.

### **Evidence of the Inspector**

95. Mr Dougal Elvin appeared for the Inspectorate. The role of Inspector is an important one and is prescribed in Sections 103 and 197 of the Act.
  96. Like the Police and the MOoH, the Inspector **must** inquire into the application. The Police and the MOoH **must** file a report with the DLC **if** they have matters in opposition. The Inspector **must** file a report on **every** application.
  97. Section 197(4) of the Act says, “*Inspectors **must** act independently when exercising and performing their functions, duties, and powers and each territorial authority **must** take steps to ensure that its inspector, or inspectors, are able to act independently.*”
  98. They are not bound by any direction of council nor are they bound to advocate for the community members. It is their role to inquire into applications and report on them to the DLC. However, we do expect them to comment on the attitude of any reports received from the Police and the MOoH and any public objections.
  99. There are mixed views on whether an Inspector should make a recommendation at the conclusion of his report. We are of the view that he should. That recommendation could be one of three positions. One, “*the application **appears to meet** the criteria of the Act and the LAP.*” Two, “*the application **does not meet** some of the criteria prescribed in the Act and the Inspector opposes the application on the following grounds (specify).*” And three, “*the application **appears to meet** the criteria of the Act and the LAP*”
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*however I raise the following concerns that the DLC may wish to consider further.”*

100. Inspector Elvin decided to adopt option three and he has written a thorough report identifying the issues, what we call ‘red flags’, relating to the **potential** for noise and a **potential for** adverse effects on the amenity and good order of the area if a tavern on licence was to be granted. He summarised the concerns of the public objections for the DLC.
101. The Inspector, and his report, were subject to strong criticism from some of the objectors, and in our view, unfairly so. As he told one of the objectors, whilst under cross-examination, he is required to report impartially on the application. We agree and support his response.
102. We have used the phrase ‘stick to your knitting’ before and we expect all three reporting agencies to do just that. Each has a specific focus and statutory duty under the Act, the Police focus on the suitability of the applicants and the potential for crime and disorder arising from the operation of a tavern. The MOoH focus on host responsibility issues and public health concerns generally around the sale, supply and consumption of alcohol. The Inspector is to focus on the regulation (inquiring into and reporting functions) of the Act and the monitoring of licensed premises to ensure they are complying with their licence conditions and the provisions of the Act.
103. The Inspector’s attempt to comment on the noise attenuation properties of nearby buildings and fence lines may have been a little simplistic but he did not put himself out to be a noise expert. Overall, we were satisfied with the report of the Inspector.

### **Evidence of the Police**

104. We then heard briefly from Sergeant Brown who said the Police did not oppose the licence as sought but did hold concerns about potential patron behaviour should a tavern style licence be granted and that he believed noise overspill could be a problem.
  105. He highlighted the lack of a dedicated Police presence in Omokoroa and the difficulties of compliance checking. This raises the risk for the Police and applicants in remote locations.
  106. He was unfairly asked to comment on the likelihood of additional policing resources. He choose his response carefully and no doubt the District Police
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hierarchy will be watching the development of all the growing communities in their patch and we would hope that they will provide adequate resourcing accordingly.

107. The Sergeant told us he had a lengthy conversation with Mr Lachhani who assured him that he was aware of the population demographics and it was his intention to direct his offerings in a format that they would enjoy and utilise. We suggest doing anything else would most likely be futile.

#### **Evidence of the Medical Officer of Health**

108. Ms. Dawn Meertens said her colleague Michael Martin had inquired in to the application and had reported no matters in opposition.
109. In response to a question she confirmed that several taverns like the Papamoa Beach Tavern had play areas for children.

#### **Evidence of the Objectors.**

110. As we recorded earlier, 108 public objections were received. Nineteen asked to be heard in support of their objections.
111. As a matter of clarity, we rule that property owners do have a greater interest than the public at large as they could choose to reoccupy their homes within a very short space of time if they so wish.
112. The status of the various objectors was not seriously challenged by Mr Young and we thank him for that pragmatic approach. We are of the view that Omokoroa is a small community (albeit growing quickly) and in our view any resident could arguably hold a greater interest than the public at large especially if they frequented the commercial precinct and made use of the general and pastoral services there.
113. As to those objectors who chose not to attend the hearing and be heard they can be assured that those who did attend provided the Committee with a clear message of the communities concerns and wishes.
114. However as was said in **GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03**

***“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.*”**

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***By not appearing, their opinions and concerns cannot be tested by cross-examination by the applicant or questioned by members of the Authority.”***

115. On that basis we apply little weight to those persons who did not appear and give evidence before the Committee.
116. As we were allowing Dr Ulyatt, via his counsel, to make a written closing statement, we allowed each of the objectors present at the hearing to make a short verbal closing statement. Most took advantage of that opportunity and largely confirmed that they were still opposed to the application and did not want a tavern in their township. Some said they could live with a restaurant, some did not even want that.
117. Sergeant Brown made a brief closing statement reiterating his earlier comments that the potential for noise nuisance and anti-social behaviour from a live music, tavern style premises was real and should be considered with caution.
118. The DLC was reminded to form its own opinion from the evidence adduced whether the amenity and good order of the locality has, or will be, reduced by more than a minor extent if the licence is granted as sought.
119. In saying that, however, we also put on record that the Committee would be slow to discount the considered views of the community when developing and adopting the LAP and its provisions in November of 2015.

### **Closing Statements**

120. Due to the heightened interest in this application the Committee allowed closing statements from the objectors present at the hearing. Largely these were delivered orally. Dr Marc Ulyatt, via his counsel, Dr Grant Hewison had raised some perceived procedural issues pre, and during, the hearing so we allowed him to provide a written closing submission.
  121. This was provided to the Committee on 5 February 2019 and covered a range of alleged deficiencies with the application.
  122. On behalf of his client, Dr Hewison argued that the site notice was not placed in a conspicuous place. If the public was not able to go on site to view it, as it appeared to us, then he is correct; the site notice was deficient.
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123. However, the application was properly advertised twice on the 29<sup>th</sup> of June 2018 and again on the 6<sup>th</sup> of July 2018 in the Weekend Sun, a local paper delivered free to the residents of Omokoroa. We note that the consultant had included a paragraph pertaining to renewals that was not accurate but other than that, the notification was accurate and in the proper format.
  124. What is clear is that the message got out to community members and more than 100 lodged objections and more than 300 persons signed a petition against the application.
  125. On the public notification issue, as a matter of completeness, we rule that the notification, although not fully compliant, was adequate and we waive the 'neglect' in regard to the public notice on buildings.
  126. In regard to potential occupancy numbers Dr Hewison misquotes Mr Lachhani as saying they would "likely serve 100 persons." That is not what Mr Lachhani said. He said "up to 50 but he would love 100" when asked how many patrons he was expecting to make use of the premises.
  127. Dr Hewison took issue to Mr Young's stance on what questions could be put to witnesses. We take this no further as we allowed a robust evidential examination process by both counsel.
  128. He further alleged that Mr Young's memo of 4 October 2018 stated that it "set out to correct misleading information." Again, that is not what was stated. Mr Young's words were that the memorandum was to respond to and clarify issues raised by the objectors.
  129. He raised the 'evolving' application as an issue and believed that it created unfairness to potential and current objectors and that clearly a TAB and pokies were proposed in the early stages of the proposal. We comment on this later in the decision.
  130. The authority that Mr Hewison cites, **DAVISON V BBC WELLES LTD [2016] NZARLA 69**, to support his theory that the application cannot be amended and 'ask for more' than they originally did, actually supports our view, in that the amendments 'soften' the application and the applicant sought 'less than they originally asked for.' There is no evidence before the Committee, as alleged by Dr Hewison, that the amended application will still result in a 'drinkers' den.'
  131. In regard to the status of objectors, including Dr Hewison's father, Richard Hewison, we agree with the submission that all occupants of Omokoroa
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should be given the status of having a greater interest than the public at large. The community is still small and localised on the peninsula and this commercial hub is the only one in the township at this point in time.

132. Dr Hewison wanted us to reject the Planning Certificate as invalid citing technical deficiencies. It does say the proposed use of the Building meets the requirements of the Resource Management Act, but then adds “subject to compliance with the Land Use Consent 10875.” Officers of the council were present at the hearing and no doubt will provide feedback to the Planning Department. The wording of the Act is very clear. It does not say the application must meet the requirements of the resource consent even though, of course, that is reality.
133. Some activities can be set up without resource consent. It does bemuse the Committee a little that applicants have to pay thousands of dollars to obtain a resource consent under the RMA and then hundreds more for a certificate to say the proposal meets the provisions of the RMA. We intend to follow the lead of the Alcohol Regulatory Licensing Authority (ARLA) on this issue and we do not plan to ‘go behind’ the certificate.
134. In regard to suitability, Dr Hewison attempted to gain mileage by referring to historical issues relating to Mr Lakhani’s father who is involved in the Trust that owns the building. He also alleged that Mr Lachhani had been economical with the truth around his own historical conviction and brushes with the law. We put these concerns to one side and also note that the agencies have not challenged the suitability of the applicant nor have they opposed the application. We discuss suitability issues later in our reasons for the decision that we have come to.
135. He asks us to put to one side the survey conducted by the applicant describing it as ‘self-serving’ but asks us to apply full weight to the petition organised by Matthew Farrell. We also note the notation in the Lizard News article of 18 July 2018 written by Dr Hewison as “the lawyer who represents the lobby group Communities Against Alcohol Harm.”

### **Closing Submission for the Applicant**

136. The Closing Submission from Mr John Young, for the applicant, was received on the 8<sup>th</sup> of February 2019.
137. He firstly touched on the subject of public notification and asked that the Committee formally record that we have turned our minds to the level of
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- notification and ruled on the adequacy or not of the process undertaken. We have already ruled that public notification was adequate and we have granted a waiver elsewhere in this decision.
138. He commented on the scope of some of the oral objections in that some went further than what was stated in their formal written objection. We have allowed liberal interpretation of the rules for both parties and on the important issue of suitability we have rejected any submission that the applicant is not suitable to hold an on licence.
139. We agree with Mr Young's submission that we should apply little weight to the objections from those who chose not to appear before us to support their objection.
140. He submitted on the potential for noise nuisance and argues his client can operate within the prevailing District Plan Noise Standards. Contrary to his submission that district plan noise limits did not set people up to fail it is our experience that the interface between commercial activity and adjacent residential activity is often fraught with difficulties.
141. Without a buffer zone between the two, a Leq of 45 dba after 10.00pm is relatively quiet and it doesn't take a lot of activity i.e. doors opening and closing, chatting in the carpark and driving off in vehicles to result in non-compliance.
142. The applicant is somewhat fortunate that they are not facing a L10 of 40dba after 10.00pm as is prescribed in neighbouring council jurisdictions.
143. Mr Young is correct to say people's tolerances are different. Equally if a person was to move in to a house adjacent to restaurants and bars, they should expect to hear noise from those activities from time to time.
144. This case is a little different in that Mr Lachhani wants to set up an activity that potentially can be noisy in a currently quiet laid-back environment. The neighbours are entitled to be concerned about the possible impact on their peace and quiet.
145. We agree that we should treat the 'expert' noise evidence of Mr Grainger with caution and we do so. Similarly, we do so to the assertions of Mr Farrell.
146. We agree that there is no requirement for an Acoustic Design Certificate in the LAP. Some objectors argued that it was obligatory for the Committee to
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insist upon one. We are with Mr Young that a) it is a discretionary condition provided to us as “identified for consideration” and b) the trigger is not invoked as the ‘and’ word is conjunctive, and besides, the applicant does not seek hours after 10.00pm outside in any case.

147. Mr Young submits that the amenity and good order argument is subjective, and the Committee should be slow to react to the suggestion that the locality is going to be adversely affected by more than a minor extent.
  148. As we have stated earlier in this decision, had the proposal been licensed as originally sought, we are in no doubt that there would be adverse consequences for the adjacent community.
  149. But the application we have before us now has been softened and we are told via the 100(f) certificate that the RMA and building code requirements have been met. Mr Young correctly submits that the DLC has no ability to go behind the certificate. Our only proviso being that we add to this issue is that the internal fit out is yet to be completed and there will be a building consent and code compliance certification process to go through before public use can occur.
  150. Again, officers of the council were present during the hearing and we are sure the wording of the certificate will be looked at in the near future. For completeness we accept the certificate as sufficiently fit for purpose.
  151. We have dealt with the alleged TAB issue and it has no bearing on our decision. Similarly, with the ‘playground’ we see that as an added bonus to the proposal other than we feel it is inappropriate to include it in the licensed area as it will be relatively small and in full view of the outdoor area.
  152. In regard to days and hours; the amended regime of 10.00am to 11.00pm inside and 10.00am to 10.00pm outside have gone a long way to ameliorate the potential for noise. That last hour is always the most challenging as patrons exit the building and leave the site in vehicles.
  153. The decision that we intend to make should ensure the activity is compliant with the provisions of the LAP. We believe there is a space for a gastro pub with quality meals and refreshments.
  154. Finally, we comment on Mr Young’s submission that his client knows what he is getting in to and the degree of oversight he is likely to receive from the community and the agencies.
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155. Even the licensing regime that we are considering will require competent, overt, responsible management. Alcohol is no ordinary commodity and must never be treated as such.

### **Relevant legislation**

156. **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.*

157. **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).*

158. **Section 105 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to grant a licence as follows:**

#### **105 Criteria for issue of licences**

- (1) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
    - *(a) the object of this Act:*
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- *(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) 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):**

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- (a) *current, and possible future, noise levels:*
- (b) *current, and possible future, levels of nuisance and vandalism.*

- 107 Authority or committee may refuse licence even if application not opposed**  
*The licensing authority or licensing committee concerned may, having regard to any matter stated in [section 105](#), refuse to issue a licence, even if no objection was filed against the application for it under [section 102](#) and no report was filed under [section 103](#) opposing that application.*
- 108 Licence may be refused if contrary to local alcohol policy**  
*The licensing authority or licensing committee concerned may refuse to issue a licence if—*
- (a) *there is any relevant local alcohol policy; and*
  - (b) *in its opinion, the issue of the licence, or the consequences of the issue of the licence, would be inconsistent with the policy.*
- 109 Conditions may be imposed if required by local alcohol policy**  
*The licensing authority or licensing committee concerned may issue a licence subject to particular conditions if—*
- (a) there is any relevant local alcohol policy; and*
  - (b) in its opinion, the issuing of the licence, or the consequences of the issuing of the licence, without those conditions would be inconsistent with the policy.*  
*(our emphasis)*

#### **Section 119- Restricted and supervised areas**

- (1) *The licensing authority or licensing committee concerned **must do one of the things described in subsection (3) when issuing an on-licence for a hotel or a tavern.***
- (2) *The licensing authority or licensing committee concerned may do one of the things described in subsection (3) when issuing a licence of any kind for any premises other than a hotel or a tavern.*
- (3) *The things referred to in subsections (1) and (2) are—*
- (a) **designate all of the premises—**
    - (i) *an area to which minors must not be admitted; or*
    - (ii) *an area to which minors must not be admitted unless accompanied by a parent or guardian:*
  - (b) **designate a part (or any of 2 or more parts) of the premises an area to which minors must not be admitted:**
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*(c) designate a part (or any of 2 or more parts) of the premises an area to which minors must not be admitted unless accompanied by a parent or guardian:*

*(d) both—*

*(i) designate a part (or any of 2 or more parts) of the premises an area to which minors must not be admitted; and*

*(ii) designate a part (or any of 2 or more parts) of the premises an area to which minors must not be admitted unless accompanied by a parent or guardian.*

### **Reasons for the decision**

We now turn our attention to the other matters to which we must have regard. 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**

159. Section 105(1)(a) of the Act requires the licensing committee to have regard to the object of the Act and in particular that the sale, supply and consumption of alcohol should be undertaken safely and responsibly.
160. If we were required to consider the application **as first lodged** it is unlikely that the outcome would have been favorable to the applicant.
161. Our finding on whether the application assists achieving the Object of the Act is discussed later in this decision.

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

162. Section 105(1)(b) says that the applicant must be a suitable entity to hold an on-licence.
163. In this regard the suitability of the applicant is not seriously, or sufficiently, challenged by any party, and certainly not in recent times. Mr Lachhani appears to operate a number of other licensed premises compliantly. We find him, and KLM Enterprises suitable to hold an ON Licence. We put weight on the evidence of the Police that they found no grounds to lodge an opposition based on suitability.

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

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164. In respect of section 105(1)(c) of the Act there is a relevant Local Alcohol Policy (LAP) in force and the hours sought are within the prescribed hours of the LAP and the default national maximum trading hours for ON Licences.
165. Several of the objectors reminded the Committee that the third Policy Goal of the LAP is *“To reflect the local communities’ character, amenity, values, preferences and needs.”*
166. In the objectors views they believed the Committee must have regard to the wishes of the community.
167. Our position is this, had we had before us an application for a tavern with the hours of 9.00am to 1.00am the following day with pokies and a TAB it quite likely would have been refused on amenity and good order grounds and inconsistent with the policy goals of the LAP.
168. The application before the Committee for us to determine now has been modified with reduced hours, no pokies (at least for the first 12 months) and no TAB terminal. We have also had confirmed that the maximum occupancy of the building is 30 persons inside not the 50-100 that the applicant hoped it might accommodate. An undertaking to provide a shuttle van for the locals is also on the table.
169. These factors allow us to consider that an ON Licence, with appropriate conditions, could be considered for this business.

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

170. The proposed operating hours are now Monday to Sunday 10.00am to 11.00pm and a 10.00pm finish for the outdoor area. These days and hours are within the default national maximum trading hours for ON licences and the Tauranga and Western Bay of Plenty LAP.

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

171. There have been issues raised pertaining to the design and layout of the premises i.e. is the building fit for purpose? The applicant has provided a building and planning certificate that says that the proposal meets the town planning requirement (subject to complying with the Resource Consent granted for the activity) and the provisions of the Building Code.
  172. It is not the role, or the desire, of the Committee to go behind the finding contained within this certificate.
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173. What is unsaid however, is whether the building has sufficient noise attenuation measures currently installed to ensure that there is no unreasonable noise overspill into the surrounding residential areas and sensitive sites.
174. Now that we are aware that the maximum number of persons who can be in the building is only 30, noise nuisance may not be as of a serious concern as first envisaged.
175. We record that the fit out is yet to be completed.

**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**

176. The applicant advised they will only be selling a range of food and low and non-alcoholic beverages. Mr Lachhani has set the bar high with his proposed menu. He is now bound to that level of provision for the duration of the licence, if granted. The provision of quality, well priced, food options can be the difference between success and failure.
177. There has been an evolution of hospitality outlets in New Zealand in recent years with the advent of gastro pubs offering quality food options, and craft beers. A move away from the booze barns of old should always be supported by the licensing regimes.

**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 food, and if so, which services.**

178. Now that the gaming machines and the TAB terminal are out of the picture for the scope of this application there is nothing else to consider in the way of 'other services' other than the provision of opportunities to watch televised sport.'

**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.**

179. We are directed to the parameters of s.106(1) and to have regard to a series of matters (as they relate to the locality). Firstly, we consider current and possible future noise levels. We are told by the objectors that the Omokoroa community currently is a quiet one and is basically silent from 9.00pm other than vehicular noise on the road.
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180. We are told that if a tavern licence is granted to 11.00pm patrons going home at that hour, getting in to their cars and driving off will create a noise nuisance.
181. Similarly, we are told that it is likely that patrons chatting in the outdoor area, laughing and yelling in the premises watching the rugby and their comings and goings will create a noise nuisance.
182. Regarding the current, and possible future, levels of nuisance and vandalism the Police advise that there is no significant crime or behavioural concerns currently in Omokoroa. A Community Constable is linked to the community and tries to spend one day a week in the township. Sergeant Brown told us that a tavern operation is considered 'high risk' and must be firmly managed by staff.
183. We are required to take into account: "the purposes for which land near the premises concerned is used." We note there are residential properties across the road and retirement villages nearby. An active church is within 130 metres of the site and is used by many organisations as a meeting venue.
184. Importantly we note the surrounding area appears to be a natural Amphitheatre and several objectors told us that they already hear people's conversations at the bottle store and on other sites and carparks.

**Section 105 (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:**

185. There are only three licensed premises in the immediate vicinity i.e. two OFF Licences at Fresh Choice supermarket and Super Liquor Omokoroa and an ON Licence at Montre café. There are no density or amenity and good order issues reported currently in the locality.
186. Omokoroa is set to grow exponentially over the next decade or so and additional infrastructure and services will be required.
187. It is with this background that we have formed our opinion as to whether the amenity and good order of the area will be (adversely) affected by more than a minor extent.

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

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188. The applicant advises that there will be four staff employed with manager's certificates to provide coverage for the opening hours. Currently only one is attached to the application and he appears to only have off-licensed experience. Mr Lachhani had stated that he, personally, intends to work shifts at the premises at least three days a week.
189. The applicant has provided three pages from Hospitality NZ's suite of resources for its members. It appeared to the Committee to be superficial in nature, but we also note that the business is yet to gain a licence and commence operation. As we have said before, comprehensive training manuals and thorough staff training, and record keeping, are the hallmarks of a competent operator.

**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**

190. The Police and the Medical Officer of Health did not report with any matters in opposition. The Inspector, whilst not opposing the application has raised several potential issues that we have discussed throughout this decision.

**DESIGNATION OF THE PREMISES-SECTION 119**

191. The Act requires the Committee designate at least one part of tavern or hotel premises as a Supervised Area or a Restricted Area. The applicant asks that the whole of the premises including the outdoor garden bar and play area be designated as a Supervised Area.
192. We decline to do so for reasons that will be come apparent later in this decision. We suspect that the applicant and its alter ego, Mr Lachhani, does not realise that a Supervised Area designation would prevent grandparents from taking their grandchildren to the premises for lunch. The same would apply for aunts and uncles who would not be able to take their nieces and nephews as they are not the parents or lawful guardians of the minors.
193. We suggest this would prevent a significant section of the somewhat unique Omokoroa community from making use of this business.
194. The applicant currently seeks to include the 'play area' within the licensed area where alcohol may be sold, supplied and consumed. It appears to us that the play area is going to be very small and there is no need for parents to take alcohol on to the swing and slide. On that basis, in our view, there is no need to the 'play area' to be part of the licensed area.
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## **DISCUSSION & REASONS FOR THE DECISION**

195. The current wisdom about how to approach our task is distilled from the decision of **Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2102] HCNZ 1406**. Applying the criteria used in that case we are expected to consider: (a) The relevant criteria in s.105 & 106; (b) Any reports presented by the Police, Medical Officer of Health and Alcohol Licensing Inspector following their respective inquiries into the application; and (c) any objections filed in accordance with the statutory requirements.
196. Having considered all this information (including the evidence for the applicant), we are required to stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires us to form a view on whether there is evidence to suggest that granting the application will be contrary to the Object of the Act.
197. The application for a licence is a process not an event. In our view it is a positive to move for an applicant to respond to the views of the community whatever way they are raised. Surely it is the actions of a savvy businessman who recognises the aspirations of the community he hopes to operate in, and then tries to cater for their preferences and needs.
198. In regard to the mitigation of noise we turn to **Paihia Saltwater (2001) Limited PH391/2001**. In that decision the Authority said at paragraph [29]
- [29]..... 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.”***
199. The escape of noise from a tavern style operation will be problematic in this particular location due to the topography of the area, the current low levels of noise nuisance and close proximity of residential properties and elderly people.
200. The Tauranga and Western Bay of Plenty Local Alcohol Policy (LAP) was created and adopted in 2015 after extensive consultation with the community and the hospitality industry. We **must** have regard to the provisions of the LAP.
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201. Indeed, we must also be mindful of sections 108 and 109 of the Act as laid out above.
202. The LAP contains a number of mandatory conditions around hours of operation and one-way door restrictions.
203. There are several discretionary conditions in the LAP that have "been identified for consideration by the District Licensing Committee when issuing or renewing on-licences."
204. After standing back and evaluating the evidence that has been placed before us, we have been unable to accept that a tavern-style business with live bands even until 11pm in the evening will not adversely affect the residential neighbours nor that the amenity and good order of the locality would not be adversely affected by more than a minor extent.

On that basis we are unable to grant a tavern style ON Licence as sought.

### **THE DECISION**

205. The District Licensing Committee has decided to grant the application for the ON Licence. But as we have determined that a tavern style ON licence would adversely affect the amenity and good order of the locality by more than a minor extent, we intend to impose conditions upon the ON Licence that will require it to operate as a class one restaurant.
206. The Locals Bar & Eatery will be able to entertain casual drinkers from time to time and host 'live bands' but only whilst the principal activity occurring overall on the site is that of a **functioning Class One restaurant**. I.e. diners are sitting down consuming substantial meals, chefs are actually in the kitchen preparing substantial meals when it is open.
207. Clearly the onus will be on Mr Lachhani and his team to not abuse this provision. Licensees must always try to operate within the spirit of the law rather than trying to find ways to get around it.
208. **Before the licence issues there must be sufficient certificated managers with on-licensed premises experience employed and appointed from day one to cover the intended opening hours.**
209. A new plan is to be provided by the applicant to the DLC showing the 'play area' to be outside the licensed area. This is to be overtly managed to ensure alcohol is not taken in to the play area.
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210. An Acoustic Design Certificate will not be required of the applicant at this stage. If, however, at renewal time any increase in operating hours or change of style of business is sought it will most likely invoke a requirement for such a Certificate. We suggest a prudent operator might want to commission a report as part of the renewal application IF such changes are to be sought.
211. Acoustic advice from an acoustic engineer is to be obtained before any live musicians are to be engaged and soundproofing of the interior of the building is to be carried out if recommended in the engineer's report;
212. As we have discussed elsewhere there will be no designation of the licensed area. Persons of any age may be present but only those over the age of 18 years may be sold and supplied alcohol.
213. The licensed area will be as defined in the new plan minus the play area.
214. The licence is granted for 12 months and the conditions can be reviewed upon renewal. The ball is firmly in Mr Lachhani's court to make this regime work and be in a position to seek some variation of the licence conditions at renewal if he so wishes and has the support of the community.
215. We also clearly remind the applicant that the Committee can quickly rehear any matter it has determined at any time that it thinks fit.

**The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, grants an application by KLM Enterprises Limited for an ON Licence in respect of premises situated at Shop 6, 168 Omokoroa Road, Omokoroa to be known as " The Local Bar & Eatery", subject to conditions.**

**The licence is not to issue until any building consent required for the fit out is satisfied with either a Code Compliance Certificate or Certificate of Public Use.**

**When it issues the following conditions are to apply to the ON Licence:**

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours:  
**Interior- Monday to Sunday 10.00am to 11.00pm;**  
**Garden Bar 10.00am to 10.00pm**
  2. No alcohol is to be sold or supplied on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is on the premises to dine;
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3. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
  4. The licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcohol beverages;
  5. **Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible, and food should be actively promoted;**
  6. A properly appointed certificated, or Acting or Temporary, manager must be on duty at all times when the premises are open for the sale and supply of alcohol and their full name must be on a sign prominently displayed in the premises;
  7. The licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises **and a courtesy shuttle is to be available from 7.00pm each night Wednesday to Saturday;**
  8. The Licensee must display:
    - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
    - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol;
    - c. A copy of the licence attached to the premises so as to be easily read by persons attending the premises;
  9. **Any live 'bands' are to be housed inside the premises and be ACOUSTIC IN NATURE and the volume reduced to background levels from 10.00pm every night;**
  10. **No drum kits are permitted to be played at this venue;**
  11. **All doors and windows are to be closed at 10.00pm;**
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12. **Occupancy numbers are to be managed so that no more than 30 persons are accommodated within the building at any point in time.**

**The licence is granted for 12 months from the date of issue.**

DATED at TAURANGA this 27<sup>th</sup> day of February 2019

A handwritten signature in black ink, appearing to read 'Murray Clearwater', is enclosed in a thin black rectangular border.

Murray Clearwater  
**Chairperson/Commissioner**  
**For Western Bay of Plenty District Licensing Committee**

**NOTE**

**Sections 152 to 155 of the Act relating to the right to appeal this decision are in effect. This decision shall have no effect until 10 working days after the date on which notice of this decision is given to the applicant, and the objectors.**