

**IN THE MATTER**

of the Sale and Supply of  
Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by

**TULLAMORE SPRINGS  
LIMITED** pursuant to ss. 120  
and 127 of the Act for the  
renewal of an on-licence, and  
the variation of the conditions  
of the on-licence in respect of  
premises situated at 14  
Helwick Street, Wanaka,  
known as “Cork Bar”

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr E W Unwin  
Members: Mr J M Mann  
Mr L A Cocks

**HEARING** at QUEENSTOWN on 4 December 2018

**APPEARANCES**

Mr S J Warnock – representing Tullamore Springs Limited – applicant  
Sergeant T D Haggart – NZ Police – in opposition  
Ms L M Grace – Medical Officer of Health – in opposition  
Mrs J M O’Connor – WellSouth Primary Health Network – in opposition  
Ms R A Brown – Wanaka Alcohol Group – in opposition

**RESERVED DECISION OF THE COMMITTEE**

***Introduction.***

[1] This is an application by Tullamore Springs Limited (the company), for the renewal of an on-licence in respect of premises situated at 14 Helwick Street, Wanaka, known as “Cork Bar”. In addition, the applicant seeks to vary the conditions of the on-licence by increasing the hours of trade inside the premises from 11.00am to 2.30am the following day, to 11.00am to 4.00am the following day.

- [2] The application to extend the closing time to 4.00am is the reason for the public hearing. All other licensed premises in Wanaka cease trading on or before 2.30am. This is primarily because for many years the Queenstown Lakes District Council has had a "Liquor Licensing Policy" in place restricting the closing time in Wanaka to 2.30am. This type of local policy was superceded by the provisions of Part 2, Subpart 2 of the Sale and Supply of Alcohol Act 2012, governing Local Alcohol Policies. The current application to bring the trading hours into line with the National Default hours, as set out in s.43 of the Act, is the first such application from the Wanaka area that the Committee has dealt with since the Act came into force on 18 December 2012.
- [3] There are no obstacles to prevent the renewal from being granted. There was an error with the public notices in that the applicant was shown as Samuel Jeremy Warnock rather than the company. We do not think that the error was wilful and a waiver is granted under s.208 of the Act.
- [4] The only issue is the proposed closing time. The application to extend the trading hours drew opposition from the NZ Police and the Medical Officer of Health. In addition, there were four public objections. In very general terms all those who objected to the later closing time claimed that (a), the object of the Act would be compromised and the harm caused by excessive or inappropriate consumption would be increased; and (b), the amenity and good order of Wanaka CBD would be likely to be reduced to more than a minor extent by the effects of the later closing.

### ***The Application.***

- [5] Mr Jeremy Warnock was the only witness for the company. He is the major shareholder and sole director of the company. He also owns and operates another licensed premises in Ponsonby which trades as "Grand Central".
- [6] Mr Nicholas Munday is the manager of the business, and has held that position since the premises opened on 7 July 2017. He was present at the hearing but we did not have the benefit of hearing from him. In her report, the Inspector advised that she had spoken with Mr Munday who advised that the premises usually closes between 12.00midnight and 1.00am. And further that they did not want to become an "end of the night" destination, and would put a provision in place to cope with any "migration" issues, such as a one-way door policy. He thought that they might trade to 4.00am on an "ad hoc" basis about six times a year. Mr Munday had written to the Inspector on 15 August 2018 and stated that they would only ever use the extension if they had sufficient staff to control it.
- [7] Mr Warnock had apparently written out his brief in a hurry, and no attempt had been made to have it typed. He stated that he had no wish to trade until 4.00am every night, but wished to have the option to do so depending on demand from tourists and visitors. He thought that the bar might host drinking

to 4.00am between six and twelve nights a year. He contended that the case was about his 'right' under the Act to be granted a licence until 4.00am. He objected to the fact that premises in the Queenstown CBD could trade until 4.00am but not in Wanaka, which he felt was discrimination. He argued that there should be one rule for all premises in the Queenstown Lakes catchment.

- [8] Mr Warnock also argued that the objects of the Act would always be met because it was against the law to allow excessive consumption of alcohol to the point of intoxication and/or harm. He stated that the "Cork Bar" always provided food and water, and refused service when patrons appeared to be close to intoxication.

Further, that the company's staff asked patrons to leave the bar on a regular basis. Mr Warnock contended that it made no difference whether the closing time was midnight or 4.00am because a person can become intoxicated at any time after drinking in an unsupervised environment. As he pointed out the majority of alcohol is consumed away from licensed premises.

- [9] Mr Warnock spoke of his concerns about pre-loading as a result of which, people can become intoxicated after only one drink in a public bar because they have drunk so much prior to coming to town. He blamed much of the disorder or drunken behaviour on those who consumed alcohol in private premises, and who were then ejected from the bars onto the streets, and proceeded to cause trouble. He did not accept the argument that by opening his bar longer there would be more alcohol related issues.

- [10] Mr Warnock also took issue with the claim that there was a lack of Police resources around 4.00am particularly on a Saturday or Sunday morning. He argued that there was a similar lack of Police resources at 2.30am on say a Tuesday when the Police were no longer available after midnight. He claimed that Wanaka was a tourist town, a young person seasonal worker town, an event town, and a New Zealanders holiday home town. Therefore, he argued that patrons might go out on any night of the week to eat and drink.

- [11] During the weekend prior to the hearing there had been a successful beer festival in Wanaka attended by a large number of patrons. "Cork Bar" was promoted as the 'After Party' bar for the festival. When asked why he had not applied for a special licence for the event to enable patrons to stay at the bar until 4.00am, Mr Warnock responded that he had thought about it but decided to wait for the outcome of the renewal application, which he had initially expected before the beer festival. In answer to another question he regarded the 20 day notice as an obstacle to any application for a special licence.

- [12] Although there are times when there are queues outside the "Cork Bar", Mr Warnock stated that he does not employ security staff and had no intention of doing so on a permanent basis. He stated that he would get security in when it was necessary. Mr Warnock acknowledged that there were often times when he had a full house or one that was close to capacity. As we will comment later, Mr Warnock did not appear to have given the application a

great deal of thought, although by the time he made his final submissions, he realised the need to have systems in place to cope with issues that would inevitably arise.

***The NZ Police.***

- [13] In contrast Senior Constable Ian Jeremy Henderson was highly professional. He has been front line policing in Wanaka for 16 years of his 33 year career. One of his current portfolios is the Alcohol Harm Prevention Officer for the Wanaka area. On receipt of the application, he checked with the two taxi companies in Wanaka to see whether there would be any service at around 4.00am, and was advised that there would be none. The taxi owners stated that they received the most racial and general abuse from customers when the bars were closing at around 2.30am.
- [14] Senior Constable Henderson confirmed that in Wanaka there is no 24/7 service. The Police do not have the resources to cope with the closure of bars at 4.00am. Presently, the Police patrol until midnight on Mondays to Fridays, and to 3.00am on Saturday and Sunday mornings. Because the Police will not be sighted after 3.00am he submitted that there was a real chance that members of the public would drive while intoxicated after 4.00am.
- [15] Based on his experience in Wanaka he contended that once the bars were shut during the weekend, the Police spend until 4.00am in 'prevention mode' being seen by all the groups, sitting watching them standing around, and so preventing a lot of that drunken behaviour that leads to fights and assaults and general disorder. He said that the pie window at the 'Doughbin' was a big focus as well. At 4.00am the 'Doughbin' will be the only food outlet available. This has been the scene of a large number of fights, assaults, serious violence and disorder over the 16 years that the Senior Constable has worked in Wanaka. Indeed, he provided some details of serious alcohol fuelled incidents that had taken place over that time.
- [16] The Senior Constable had checked the calls made to the Station which showed a reduction between 4.00am and 9.00am because the public are aware that the Police are not on duty. The calls spike at 9.00am the following day when the receptionist goes on duty and starts to answer the phone. He noted that in a period of nine months in 2018 there were at least 46 incidents after 2.00am on Saturday and Sunday mornings, the vast majority of which involved alcohol resulting in disorder, wilful damage and assaults.
- [17] From his experience, the Senior Constable believed that a large proportion (about 75%) of offences in Wanaka were committed by people who had been consuming alcohol, and further that the timing of the offences such as assaults, violence, damage, crime and disorder happen either side of the 2.30am closing time of local bars.

- [18] Although the company sought to portray the “Cork Bar” as an upmarket wine bar, the Senior Constable stated that he had seen a lot of shabbily dressed men drinking beer there, and as far as he was concerned it was a bar that was open to everybody. On the other hand, it seems that there is more horizontal drinking than in an average bar. Senior Constable thought that the company was not well prepared to cope with patrons being able to continue drinking until 4.00am, and although Mr Warnock disputed any such suggestion, we thought it was an accurate assessment. It was his view that any extension of the current hours would only cause further harm in the community.
- [19] In her final submissions, Sergeant Tracy Haggart, referred to the large area covered by the Police in Wanaka out to the Haast Pass (90 kilometres), to the Crown Range Summit, half way to Cromwell and to Mount Aspiring Park. It was her submission that on-call officers may be at any of these destinations responding to calls for assistance, so that there could be a long wait for the officers to return for a similar request in the Wanaka CBD. On the other hand, she argued that with closing at 2.30am, along with public transport providers, calls for service have been reduced.
- [20] The Sergeant stated that the Police were concerned that if a variation was granted in the present case, it would set a precedent for other licensed premises to follow. She argued that if trading hours in Wanaka were increased to 4.00am there was a likelihood of more alcohol related harm due to the lack of taxis and other forms of public transport to return patrons back to their homes and/or other accommodation.
- [21] The Sergeant helpfully referred to three decisions all of which have relevance on topics such as the purpose of the Act, the importance of enforcement of the Act, and the lack of Police resources. The first was a decision of the Alcohol Regulatory and Licensing Authority ***Miklos v Shen [2015] ARLA PH 284*** in which the Authority referred to comments made by the Minister when the Act was being considered in Parliament as follows:
- [10] *This view is supported by the Minister who moved the first reading of the Bill, then known as the Alcohol Reform Bill in Parliament, the Honourable Simon Power (2010 668 NZPD 15251);*
- “This is a large Bill, but its objects are simple. It zeros in on alcohol related harm, crime, disorder, and public health problems, especially where our young people are concerned. It aims to reduce excessive drinking and improve the operation of the alcohol licensing system, including community input on licensing, and to support the responsible sale, supply and safe consumption of alcohol. Licences will be harder to get and easier to lose.”*
- [22] The second decision was also a decision of ARLA in ***Hospitality New Zealand Incorporated v Tasman District Council [2014] NZARLA PH 846*** in which the Authority was considering the trading hours in a Local Alcohol Policy involving the

town of Motueka which is approximately 34 kilometres from Richmond. The Authority made these comments:

[63] *The second contention of the respondent and those supporting it is that the Tasman District Council encompasses a large rural area and inevitably difficulties can be experienced in ensuring that the provisions of the Act are observed. The longer on-licensed premises can remain open in the more distant portions of the locality, the more difficult enforcement becomes. Resources both of the Inspectorate and the Police are limited. Enforcement of the alcohol laws is an integral part of achieving the Act's object.*

[23] Finally, the Sergeant referred us to the decision of **re Waihi Beach Memorial RSA Incorporated** PH 201-202/2002 in which the former Liquor Licensing Authority gave an oral decision declining to grant the RSA an extension of trading hours from 1.00am to 3.00am. Part of the decision reads as follows:

[20] *We refer to a case of HL Walker and WJ Walker given in the High Court in Wellington under AP 87/01 in which Justice Fisher said at para 46:*

*"In principle, it could not possibly be the case that no matter how remote and non-populated an area might be and no matter how uneconomic it might be to provide Police there, the Authority could ignore the unavailability of the Police to respond to the probable consequences of extending the licensing hours."*

[21] *In other words, the absence of Police resources is a matter that the Authority is properly able to take into account. This is but one of the concerns held by the Authority. Its primary concern is the potential domino effect of such a decision if this application were to be granted.*

### **The Medical Officer of Health.**

[24] Ms Lynette Marion Grace is employed by the Southern District Health Board in Invercargill, and holds delegation from the Medical Officer of Health throughout Southern, Otago and Central Otago regions. She had arranged to call a witness about the hospitality scene in Invercargill and the effects of changing closing times. However, the witness was unavailable, and in fairness to the company, the evidence cannot become part of our considerations. Her concerns related to the difficulty in dealing with the dichotomy of extending the closing time of the "Cork Bar" on the one hand, and supporting the object of the Act on the other. She argued that extending the trading hours of the "Cork Bar" would probably reduce the amenity and good order of the locality.

[25] As a former police constable she had experienced at first hand the relationship between problematic behaviour and crime and increased alcohol consumption into the late night hours, particularly from around 2.00am onwards. In addition, she spoke of the general concern of the precedent that would be set if the closing time of one bar in Wanaka was extended.

### **The Inspector.**

[26] The Inspector was concerned that the evidence of alcohol related harm was primarily subjective. As part of her inquiry into the application, she wrote to ten Wanaka service providers such as St Johns Ambulance, medical and health centres, the Police, ACC, taxi companies to see whether they could provide some information or evidence of alcohol related harm in Wanaka. The overall response was underwhelming and it is clear that very little data or information is gathered.

[27] Ms McGivern posed the question “If it is accepted that there is a degree of alcohol related harm in Wanaka, how will it be possible to establish whether extending the trading hours of the “Cork Bar” will increase that risk of harm?” She referred us to the High Court decision of Clark J in ***The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited and anor*** [2018] NZHC 1123 in which Her Honour stated:

*[68] In the face of such evidence the Act does not countenance the continuation of alcohol related harm. The Act requires minimisation of the alcohol related harm. The task of the DLC was to respond to the risk and it did so. It is not necessary to establish as the Authority required, that the proposed operation “would be likely to lead to” alcohol related harm. To require demonstration of a link to this degree of specificity is not much different from requiring proof. Requiring proof of “a causative link is not only unrealistic but is contrary to the correct legal position.”*

[28] The Inspector submitted that the concerns of the objectors as well as the Agencies related to the domino effect that the granting of the extension might have on other licensees, thus creating a cumulative effect. She contended that the Committee is entitled to take into account the lack of Police resources.

[29] The Inspector also suggested that the decision referred to in paragraph [27] supra, is also helpful in looking at the wider picture. At paragraph [53] Her Honour suggested that if the evidence established that there were risks of alcohol-related harm, and if it could reasonably be inferred from the evidence that the premises contribute to that risk, then the Committee should respond. And further, that such response should be aimed at minimising (that is, reducing to the smallest amount, extent or degree), alcohol related harm. And finally, in paragraph [67] of the same decision the Judge stated that where there is an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant or renewal of a licence, the harm must be minimised, not ignored or condoned.

### **The Objectors.**

[30] As stated above there were four public objections. One of the objectors was Mr Aaron Heath on behalf of Wanaka Pharmacy which is located in Helwick Street less than 500 metres from the “Cork Bar”. His issue was the amenity and good order of the neighbourhood based on rubbish and human detritus

outside the pharmacy on Saturday and Sunday mornings, and the potential exacerbation of these issues should the closing time be extended. Mr Heath apologised that he was unable to attend the hearing, and his objection therefore carries less weight.

- [31] Another objector was Ms J Calder. The objection was said to be on behalf of Bayleys Real Estate which has an office less than 500 metres away from the “Cork Bar”. However, there was some doubt about whether the objection was personal or representative. At any event Ms Calder did not appear, and no explanation was received for her non-appearance. The objection has accordingly been discounted.
- [32] Mrs Joanne Maree O’Connor is employed by WellSouth Primary Health Network (WellSouth) as a Health Promotion Specialist based in Alexandra. WellSouth is a charitable trust funded by the Southern District Health Board to provide primary health care services to residents enrolled with general practices in Otago and Southland. One aspect of health promotion is to advocate for healthy social, cultural and physical environments. WellSouth is a member of the Wanaka Alcohol Group.
- [33] It was her argument that extending the closing hour to 4.00am would reduce the amenity and good order of the locality and in all likelihood, increase the level of alcohol related harm. She contended (and supported with research examples), that regulating the availability of alcohol was an evidence based strategy to reduce alcohol related harm. Mrs O’Connor contended that we cannot assume that there is no alcohol related harm because there is insufficient data. On the other hand, she claimed that the Wanaka community does experience alcohol related harm and based her claim on statements from two health practitioners both of whom worked in Wanaka, as well as the findings of the New Zealand Health Survey 2017/18.
- [34] In response to questions, Mrs O’Connor stated that in her opinion Wanaka did not have the infrastructure to deal with licensed premises closing at 4.00am, and further that nothing good came from people drinking until 4.00am.
- [35] Ms Rachel A Brown was involved in the setting up of the Wanaka Alcohol Group, (the Group), a collaborative entity representing a variety of stakeholders in the community such as the Wanaka Community Board, QLDC, ACC, Mt Aspiring College, Parenting Life, Police, Alpine Community Trust, Southern District Health Board, Kahu Youth Trust and individual and interested community members. In addition, she has been on the Community Board for five years. The Group seeks to acknowledge and address current and future issues relating to access to, and consumption of, alcohol and other drugs. It adopts a proactive preventative approach towards implementing initiatives aimed at supporting families and reducing alcohol related harm in the community.
- [36] Ms Brown stated that she was proud to be part of Wanaka and particularly because it was not like Queenstown, one of the differences being the earlier

closing time of 2.30am. She stated that the Group truly believed that extending the trading hours for one bar in Wanaka would lead the way to extending the general closing time.

- [37] Ms Brown referred us to the research programme “Harming Me, Harming You” that was sponsored by the Group and was undertaken in 2016, and which aimed to understand alcohol use in Wanaka. The report identified significant excessive drinking in Wanaka by three target groups being youth, parents/adults and transients/tourists. The report indicated a high local prevalence of adults aged 40 years and over drinking excessively, with negative consequences upon relationships, families, abuse, domestic violence, and poor parenting commonly reported. The Group believes that reducing alcohol availability significantly reduces alcohol related harm.
- [38] Ms Brown stated that there were about 95 current alcohol licences in the Upper Clutha area. The group held a forum for licence holders. Thirty licensees attended the two hour forum. A common theme was the lack of Police resources, the lack of taxi services, the lack of Duty Managers and the lack of security company staff. It was decided to hold a further forum with other stakeholders and this took place in September.
- [39] Ms Brown referred us to the research conducted by Dr K Kypri who is a behavioural scientist at the University of Newcastle’s School of Medicine. A key finding is that a reduction in bar trading hours does correlate with a reduction of alcohol related harm. Dr Kypri had recently spoken in Wanaka as the guest of the Royal Society and advised the Group that the current trend in urban centres was to reduce alcohol trading hours not increase them. She concluded as follows:

*We believe that by granting an extension to trading hours for one bar will lead the way to a general extension of Wanaka’s closing time to match that of Queenstown, a situation that cannot assist our community to reduce alcohol related harm and nurture a safe community culture, as there just aren’t the services available to support the extended drinking pattern.*

- [40] Ms Brown called two other witnesses Ms A S Walton and Ms J Ainge both of whom reside in Wanaka and both of whom were able to give evidence confirming that there are alcohol-related harm issues in Wanaka. In the event Mr Warnock acknowledged that there were problems with alcohol related harm, although he blamed the situation on people drinking away from supervised premises

### ***The Committee’s Decision and Reasons***

- [41] In the Court of Appeal decision of **My Noodle Ltd v Queenstown Lakes District Council [2010] NZAR 152** at Para [12] the Court set out the history of the process adopted by the Queenstown Lakes District Council leading to the adoption of a new policy for 4.00am closing of the Queenstown licences as follows:

*In 1999 the Council agree to permit 24-hour liquor trading in the CBD of Queenstown. A closing time of 2.30am was established for all other areas in the district. In November 2003 the Council adopted a liquor policy which maintained 24-hour trading in the CBD. A working party from the Council's Regulatory and Hearings Committee was appointed to review the policy in March 2006. This led to the adoption of the new policy at issue in this appeal.*

[42] As stated in the introduction, all premises in the Wanaka area have continued to trade with a 2.30am closure ever since. The application before the Committee is therefore a significant moment for the town of Wanaka, as well as the licensees.

[43] The criteria to which we must have regard when considering an application for the variation of an on-licence are governed by s.120 (7), and set out in s.105 of the Act. In our view, the relevant criteria are:

- (a) *The object of the Act.*
- (b) *The suitability of the applicant, (to be able to operate a bar in Wanaka until 4.00am when all other bars cease trading at 2.30am).*
- (c) *The days on which and the hours during which the applicant proposes to sell alcohol.*
- (d) *Whether (in the Committee's 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.*
- (e) *Whether the applicant has appropriate systems, staff, and training to comply with the law.*
- (f) *Any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*

[44] Perhaps the most important of these criteria is the object of the Act is set out in s.4 as follows:

*The object of the 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.*

[45] Section 106(1) of the Act is relevant and reads:

*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.*

[46] Under S.5 of the Act amenity and good order of a locality is defined as:

*In relation to an application for a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated, is pleasant and agreeable.*

[47] The current wisdom is that in forming an opinion as to the likelihood of the the amenity and good order being reduced to more than a minor extent, we are required to act in an essentially inquisitorial way.

[48] As foreshadowed in paragraph [12] supra, we were underwhelmed by the application. The company displayed an unwillingness to put systems in place to ensure that the Act's objects would be achieved. It seemed to us that the company did not accept that an extension of trading hours was a privilege and not a right, and that there would be corresponding responsibilities. Prima facie, if a bar closes at 4.00am rather than 2.30am there is likely to be a greater risk in terms of the Act's objects. After all, Mr Warnock acknowledged that members of his staff require patrons to leave the premises on a regular basis. Mr Warnock's argument was that the time of the day was irrelevant. We do not agree.

[49] The application can perhaps best be summed up by an extract from the e mail sent by Mr Munday to the Inspector referred to in paragraph [6] above.

*Sometimes we find ourselves approaching 2.30am with a nice crowd in the bar who are keen to stay on and socialize. It's these occasions that we would like to have a 4.00am licence to utilise.*

[50] In summary, this is a bar that closes at 1.00am for most of the time, yet the company seeks a 4.00am licence which will only be used when circumstances dictate. It does not want to become an „end of night destination“ but simply to have continuous drinking on an ad hoc or spontaneous basis when the circumstances are right. We gained the impression that the company does not want to assume the responsibility expected of the holder of a 4.00am licence. When Mr Warnock was asked how the Police would know when he intended to open late, so they could arrange to have someone on duty to help

monitor the situation at closing time, Mr Warnock suggested that the Police should assume that every night would be a late closing night.

- [51] There were other aspects of the presentation that were troubling. Mr Warnock knew he would be asked questions about imposing a one-way door policy, but declined to offer such a condition as part of the package. In our view, such a condition would have to apply to every night that the company was trading whether or not a decision was made to close late.
- [52] We would have expected that any licensee applying for a later closing in Wanaka would at the very least apply for special licences to show that it could manage the increased risk. Given the lack of taxi services, and the absence of Police resources, we would expect the licensee to offer the use of a courtesy coach at the very minimum. It was not mentioned. We would expect professional security people to be employed (a) to ensure that the one-way door policy was enforced, and (b) to reduce the risk. And finally, we would have expected the licensee either to trade to 4.00am only on Friday and/ or Saturday nights, or to offer to give at least 48 hours notice to the Police in the event that the premises were to remain open until 4.00am on an ad hoc basis.
- [53] In our opinion the application was seriously deficient in assessing the risk involved and putting systems in place to deal with that risk. In fairness to Mr Warnock he finally recognised that there were issues that had not been covered and in his final submissions, he did state that he would change his systems if the closing time was extended. In our opinion it was a case of too little too late.
- [54] As the Inspector pointed out, Parliament has shown that there is a link between the trading hours of a licence, and achieving the Act's objectives. The longer the trading hours, the greater the risk. Under the former Act there was a 24-hour regime. Now there are reduced national default hours of trade.
- [55] 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 to the current case we are expected to consider:
- (a) The relevant criteria in s.105;
  - (b) Any reports presented by the Police, Medical Officer of Health and licensing inspector following their respective inquiries into the application; and
  - (c) Any objections filed in accordance with the statutory requirements:

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 s.4(1). In other words, whether granting the application, would

increase the risk of alcohol abuse. While a causal nexus is required between such evidence and the relevant risk, it is unnecessary to qualify the nature of the risk by reference to such words as “powerful” or “direct”.

- [56] We have considered the criteria and in our opinion extending the closing hour of the “Cork Bar” would encourage rather than minimize the harm caused by the excessive or inappropriate consumption of alcohol. The evidence from the Senior Constable was convincing. It was he who stated that any extension to the trading hours would cause further alcohol-related harm, and that the majority of incidents on a Saturday or Sunday morning occurred around 2.00am and 3.00am.
- [57] Based on the presentation made by Mr Warnock we believe that he would be unsuitable to operate licensed premises between 2.30am and 4.00am. He gave no impression of understanding the impact that the lack of Police, taxi resources and security staff would have on keeping his patrons safe and getting them home without harm. Given that there is an increased risk with a later closing time, the Committee is entitled to expect an applicant to present a plan to cope with or ameliorate that risk. Mr Warnock presented no system or policy that might have assisted in reducing the type of risk that is associated with bars that operate until 4.00am.
- [58] Based on the evidence from the Police, and the two objectors as well as current research, and submissions from the agencies, we believe that the amenity and good order of the locality would be likely to be reduced by more than a minor extent if the variation was granted. We are in no doubt that a grant in a case such as this would attract applications from other licensees, and the combination of later trading in Wanaka without any improvement to current resources and infrastructure would be quite contrary to the objectives of the Act.
- [59] As stated above, there are no objections to the renewal of the on-licence and the licence is renewed for three years on its present terms and conditions.
- [60] For the reasons we have set out, the application to vary the conditions of the licence is refused.

**DATED** at QUEENSTOWN this 19<sup>th</sup> day of December 2018

  
Mr E W Unwin  
Chairman



