

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an application by Navajunjara NZ Limited trading as Spagalimis Pizzeria and Rust Kitchen and Eatery for an On-Licence pursuant to section 105 of the Act in respect of premises situated at 228 Rutherford Street, Nelson.

BEFORE THE DISTRICT LICENSING COMMITTEE AT NELSON

Chairperson: Mr Bruce Fraser
Members: Mr Derek Shaw
Mr Laurie Gabites

Hearing at Nelson City Council on 14 July 2025
Decision: 4 August 2025

Appearances

A Cooper in person	For the Applicant
Dr L Gordon	Counsel for the objector, M. Ribas
C O'Fee	Objector, in person
Sergeant S Savage	Alcohol Harm Prevention – Nelson Bays Police

RESERVED DECISION OF THE COMMITTEE

Introduction

1. This is a decision in relation to an application under the Sale and Supply of Alcohol Act 2012 (**SSAA / the Act**) by Navajunjara NZ Limited for an on licence for premises known as Spagalimis, situate at 228 Rutherford Street Nelson (**the Premises**).
2. As required by the SSAA, the application was forwarded to the Police, the Medical Officer of Health, and the local Licensing Inspector (jointly the **Tri Agencies**) for report.
3. The application was also publicly notified, as required by the Act. Objections were received from:
 - Marcelo Ribas, in his role as Health Promoter at Health Action Trust
 - Claire O'Fee, principal of Nelson College for Girls
 - L Crocket

- GM Davidson
 - A Rae, centre manager of Nelson Street Kindergarten
4. G M Davidson and A Rae subsequently withdrew their objections.
 5. With objections still on foot, a hearing was held.
 6. Statements of evidence were filed and circulated to the parties and to the Committee prior to the hearing, along with a statement in reply from Mr Patel on behalf of the applicant.
 7. The application was filed after the new rules regarding the conduct of a hearing came into force and cross examination of witnesses was not permissible. The Committee however was able to ask questions of the witnesses.

The Application

8. The application was filed on 8 November 2024.
9. The application a number of particulars including (but not exclusively) :
 - an on licence was sought for the conduct of a Spagalimis restaurant at the Premises.
 - Hours sought were Monday to Friday 07:30am to 9:30pm; Saturday 11:30 am to 9:30pm; and Sunday 4:30pm to 9:30pm.
 - Details of three duty managers were given.
 - Confirmation that food would be served was provided.
 - Details of CCTV, training, and other relevant information were included.
 - It was identified that there would be no live music, but “an indoor sound system” was intended.
 - Details of the local amenity, including the proximity of Nelson Girls College and a kindergarten were noted, as was housing within 100m.
10. Following discussions between directors of the applicant company, the Medical Officer of Health, and the Licensing Inspector, the hours were subsequently modified to take account of concerns raised so that by the time of the hearing the hours sought were:
 - Monday to Thursday 4:30pm to 9:30pm
 - Friday 4:30pm to 11:00 pm.
 - Saturday and Sunday 12:00 noon to 11:00pm.

The View of the Tri Agencies

11. By email dated 24 April 2024 the Police advised that they did not oppose the application.
12. The Medical Officer of Health initially opposed the application, but after the meeting with the applicant referred to above, which resulted in the amended

licence hours, the Medical Officer of Health advised on 20 May 2025 that no matters were raised in opposition to the application.

13. In his report of 3 June 2025, prepared after the amended hours were agreed, the Local Licensing Inspector expressed the view that the criteria of the Act were met, and he raised no opposition to the application.
14. In a report filed in response to the application before the hours were amended the Police advised they had no issue with the hours as sought and expressed the view the premises “should open at 4pm once school is done”. The amended hours still meet that view and the Police raised no opposition at the hearing.
15. In summary, the Tri Agencies do not oppose the application, as amended.

The Objectors

16. By the time of the hearing there remained three objectors. They were:
 - C O’Fee
 - M Ribas
 - L Crockett, who did not appear.As noted, Dr Gordon appeared for M Ribas. Ms O’Fee appeared in person. There was no appearance for L Crockett and the Committee proceeded on the basis their objection, as filed, stood.
17. The objections lodged by C. O’Fee and M Ribas raised similar issues. Fundamentally the objections raised concerns regarding:
 - (a) reduction in good order and amenity in a sensitive area;
 - (b) days and hours exposing students and families to risk of alcohol related harm and intoxicated persons;
 - (c) the object of the Act not being met.
18. The objection lodged by L Crockett focused on:
 - (a) the proximity to the Girls College and the kindergarten and the potential exposure of students to alcohol and inappropriate behaviour.
 - (b) the wellbeing of students.
 - (c) amenity and good order, including noise, vandalism and nuisance.
 - (d) the precedent effect in the community

The Statutory Provisions

19. The criteria to be considered in an application for an on licence are set out in s105 SSAA. That section provides:

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

- (a) the object of this Act:*
- (b) the suitability of the applicant:*

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

20. When considering amenity and good order the Committee is guided by s106(1), which requires us to have regard to a number of factors. The section provides:

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.

21. Not surprisingly, the Committee is required by s 105 to have regard to the “object” of the SSAA. That is set out in s 4, which says:

“4 (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
(b) any harm."

Evidence In Support of the Application

Mr Cooper

22. Mr Cooper, a director of the Spagalimis franchisor opened for the applicant and gave evidence.
23. Mr Cooper's evidence provided a useful insight into the Spagalimis culture, the nature of Spagalimis restaurants, and how they fit into the local community. His evidence included:
 - 23.1 Spagalimis started in Christchurch 47 years ago. It is a small, family orientated restaurant that engages with the community and with schools in Christchurch.
 - 23.2 Spagalimis has provided jobs and opportunities for Downs Syndrome students, and it supports the Champion Foundation, which is based at Burwood hospital and supports children with developmental disabilities.
 - 23.3 The football community has been a significant (our word) beneficiary of support from Spagalimis.
 - 23.4 Spagalimis has also supported the local community, including local football, by providing a large number of vouchers for differing bodies.
 - 23.5 Reference to Spagalimis work in the community post the Christchurch earthquakes, particularly at its Church corner site, where the evidence showed a good relationship with the community and the local police.
 - 23.6 He summarised his view that Spagalimis increases the amenity by being part of the community.
24. In responding to the Committee Mr Cooper said Spagalimis' Christchurch City outlet had approximately 50% dine in, but its smaller stores were more in the order of 80% takeaway (20% dine in).
25. Also in response to the Committee, Mr Cooper advised that Spagalimis encourages staff to do the LQC course, which Spagalimis funds.
26. Mr Cooper confirmed that the Nelson store had seating for 17 patrons.

27. When questioned on the Host Responsibility policy that formed part of the application, Mr Cooper advised it was based in the Spagalimis precedent, modified for the location. He went on to say that Spagalimis has a good relationship with the police (in Christchurch) and if necessary they get the police involved if an issue arises with someone arriving at the restaurant intoxicated.
28. Responding to a queries from the Committee about the Nelson restaurant Mr Cooper stated:
- 28.1 Spagalimis Nelson is a franchise of the Christchurch Spagalimis entity.
- 28.2 Prospective franchisees are vetted, with a confidential statement being provided with an application form when a franchise is sought. If they pass the initial scrutiny the applicant is interviewed to understand their experience in the hospitality sector, and the people who will be present when the restaurant is operating. Mr Cooper stated that they want good, sound, people who will be on site, not remote operators.

Mr Patel

29. Mr Patel, a director of the applicant company, then gave evidence in support of the application.
30. Mr Patel confirmed that alcohol would not be a focus of the business, which he said was to be a small, family restaurant caring for its community.
31. Mr Patel stated that:
- 31.1 The directors had met with the agencies after the application had been filed and the hours had been modified to take account of concerns raised, such that the proposed hours at the time of the hearing were:
- (a) Monday – Thursday 4:30pm to 9:30pm.
 - (b) Friday 4:30 pm to 11:00pm.
 - (c) Saturday and Sunday 12 noon to 11:00pm.
- He said the hours were intended to provide some flexibility, and they may be less in winter.
- 31.2 The other director of the applicant had experience in the pizza restaurant sector (in both Nelson and Auckland) and he personally had experience in the retail sector.
32. Responding to the Committee, Mr Patel stated:
- 32.1 The business had received a positive response locally and the Spagalimis brand was known. People familiar with the brand in Christchurch had asked about alcohol.

32.2 The Nelson store had two entrances, but all patrons would be entering through one entrance, with in-house diners walking through to the dining area.

32.3 The dining area had a 17 seat capacity, there were no seats outside.

32.4 Alcohol would only be served in the licensed area, and only with pizza.

32.5 Their focus was on food and a good experience, not on alcohol.

The Objectors

Ms O'Fee

33. Ms O'Fee, the principal of Nelson College for Girls, gave evidence in support of the opposition she had filed, which she said was filed on behalf of the school, (but not the Board).

34. Ms O'Fee gave evidence to the Committee based on her (amended) brief of evidence dated 2 July 2025. In summary:

34.1 She expressed the view that the location of the Premises across from the back entrance to the school gym and recreation area was a particular risk for the school, largely around incursion and threat of vandalism to the school and its users due to the gate being largely unmonitored.

34.2 She was concerned about students at school for sports and other practices often until at least 5:00pm and their family members who may collect them. The proposed 4:30 pm opening time was a key concern for her.

34.3 She expressed a belief that the risk in alcohol related harm in the area was "significant".

35. Responding to the Committee Ms O'Fee stated:

35.1 She felt strongly that 5:00pm was a more appropriate opening hour.

35.2 She accepted the restaurant venue was small, and that was less of a concern than, for example, a pub.

35.3 She was not aware of concerns having arisen at another licensed premises nearby in the locality (but a little further away).

35.4 Proximity was a driver of her objection. She saw this venue as "low risk", not "no risk".

35.5 Having heard the evidence she no longer viewed the risk of alcohol related harm as "significant".

Mr Ribas

36. Ms Gordon presented opening submissions regarding the objection filed by her client, Mr Ribas. Ms Gordon submitted that:

36.1 A new licence receives more scrutiny.

36.2 Although this might be a low risk licence, there was a risk.

36.3 Mr Ribas' objection went to:

- (a) suitability, which she said encompassed many things.
- (b) location, particularly in the context of a residential area and the school.
- (c) good order and amenity.

36.4 The area had particular vulnerabilities and risk and left the community to bear the risk of alcohol related harm.

37. Mr Ribas gave evidence in accordance with his statement dated 2 July 2025 filed with the Committee. His evidence (summarised) was:

37.1 His objection filed on behalf of the Health Action Trust, which worked to reduce alcohol and drug harm to youth. He is the health promoter at the Trust and he coordinates the Community Action on Youth and Drugs Programme in the Nelson Tasman region.

37.2 He was concerned about the suitability of the applicant, which he questioned because the application was for premises "*in a location that is highly sensitive, being across the road from a school, near a bus stop and in an area populated by school children*". He also stated he did not consider it "*ethical to use community giving as a bargaining chip to gain an alcohol licence*".

37.3 Days and hours of proposed alcohol sale were a concern because of parents and children potentially being present, and the unattended school gate (referred to by Ms O'Fee).

37.4 Amenity and good order was confirmed as a concern.

37.5 He did not believe the applicant had sufficient experience / plans to meet the object and purpose of the Act.

38. When questioned by the Committee Mr Ribas replied that:

38.1 He thought the changed hours were a positive step.

38.2 He saw a lot of kids at the bus stop between 3:30pm – 4:30pm.

38.3 Having heard the evidence in support of the application his concerns were not as acute (our word) as they had been.

Closing Submissions

Police

39. At the conclusion of the evidence Sergeant Savage made an oral submission for the Police. That submission provided the Committee with a useful summary of the Police perspective. In summary:
40. The sergeant advised that in preparing his report on the application the question of risk was a focussed priority, particularly when considered with regard to the proximity of Nelson College for Girls. He noted that the neighbouring shops had not objected. The conclusion was that this was not a high risk application. In so saying, the sergeant confirmed he had spoken with the other agencies.
41. He considered the proposed business, a restaurant, a positive, and not a concern. The sergeant observed that it was not intended the restaurant would have a TV, so there would be no watching of sport to encourage people to stay. The intended closing hours were not viewed by the Police as an issue.
42. Sergeant Savage advised there had been a meeting with the directors of the applicant company, whom he described as “realistic”, “engaging”, and “understanding of the community”. A number of matters had been agreed, with some amendments being made to the application and his view was that the conditions proposed by the applicant were more than usual. Matters noted included:
 - The opening hours had been amended, with a later (4:30 pm) opening agreed;
 - The proposed licensed area was to have a supervised designation, which was more extensive than the norm;
 - There was no bar, and no spirits were intended to be served;
 - There was to be no food or alcohol outside the premises;
 - There was not intended to be any alcohol signage.

Ms Gordon

43. In her closing submissions on behalf of Mr Ribas, Ms Gordon confirmed Mr Ribas “*continued opposition to the grant of an on-licence for Spagalimis on three grounds: suitability of the applicant, days and hours and amenity and good order.*”
44. Ms Gordon submitted “*that despite the generally low risk nature of the proposed premises, in this case the applicant is unable to meet the object of the Act*” and that “*the application should be declined, or alternatively, strict licensing hours put in place*”.

45. Addressing suitability Ms Gordon submitted:

45.1 Matters relating to the applicant's suitability were "*dominated in this instance by the actions, writings and words of the franchisor*". She argued that because the applicant was reliant on the franchisor in numerous ways "*the unsuitability of the franchisor affects the quality of the application*".

45.2 Ms Gordon identified a number of matters which she argued supported her submission. The focus of those matters was what she described as the "*angry man*" scenario evidenced by Mr Cooper and what she argued was the lack of sensitivity to the school's concerns.

46. In the context of days and hours of the proposed business Ms Gordon's submissions were:

46.1 The hours sought by the applicant were driven by money.

46.2 A 5:00pm opening was the re-affirmed stance of Mr Ribas.

46.3 Mr Ribas' view was that alcohol should not be available until after 5:00pm in the weekends, and he saw daytime drinking as "*a risk to the local area*".

46.4 Mr Ribas advocated for alcohol sales to stop at 9:30pm, perhaps 10:00pm on Friday and Saturday nights. He saw such hours as being "*more in keeping with the ambience of the area*".

47. Addressing amenity and good order, Ms Gordon submitted:

47.1 "*This is an area currently without any alcohol licence at all*".

47.2 The sensitivities of the area, canvassed at hearing, are:

- (a) those associated with the widespread use of the space, in and outside school hours, by students, staff and associates of the school;
- (b) after hours and weekend use of the (Girls College) gym and access by the school back gate;
- (c) being in a strip of early closing shops in a residential area which is extremely quiet in the evenings.

47.3 Referencing s106, concern regarding noise levels, nuisance and vandalism.

47.4 The s106 matters "*should lead, at the least, to a reduction in the proposed hours of operation or to the refusal of the licence at all*".

48. In the context of the purpose and object of the Act, Ms Gordon submitted:
- 48.1 The purpose of the Act was for a new system that was reasonable for the benefit of the community as a whole and which helps achieve the object of the Act.
 - 48.2 Her earlier expressed concern about “*angry man*” attacks in light of the importance of the purpose of the Act as affirmed, she said, by the Court of Appeal in **Auckland City Council v Woolworths and Foodstuffs**. She said such unsuitability led to a licence being declined in the **Nischays** decision.
 - 48.3 She urged a precautionary approach.

Ms O’Fee

49. Ms O’Fee notified the secretary she had no closing submission to make.

The Applicant

50. In the context of suitability, the closing submissions for the applicant emphasised that:
- 50.1 It was the suitability of the applicant, not the presentation of the franchisor that was the issue for the Committee to consider.
 - 50.2 The applicant is a local Nelson based operator with no adverse compliance history, a clear understanding of the responsibilities under the Act, and it had demonstrated a willingness to meet licensing obligations.
 - 50.3 It was not appropriate to conflate the franchisor with the applicant.
51. Addressing amenity and good order, the applicant submitted:
- 51.1 The threshold required by s105(1)(h) of assessing whether the amenity and good order of the locality would be reduced by more than a minor extent was “intentionally high”.
 - 51.2 While the premises were proximate to a school, there was no evidence that granting the application would lead to any actual disruption or harm. Proximity alone is not determinative without evidence of specific risk.
 - 51.3 There was no evidence to show a causal link between the proposed operation and actual harm. The restaurant would be closed during school hours and signage and host policies would ensure amenity and good order.
 - 51.4 It was noted as relevant that another premises with an on-licence and bar was nearby, as were other shops.
 - 51.5 This was “not a tavern or bar-style operation”.

52. Addressing hours of operation the applicant submitted:
- 52.1 The proposed hours aligned with common restaurant trade.
- 52.2 The objectors' advocated 5:00pm opening time was not evidence based and it was not accepted that a 4:30pm opening created undue risks.
53. The "precautionary principle" must still rest on evidence.
54. Finally, the applicant expressed some concerns about late evidence being admitted by the Committee. We simply note that in the interests of fairness and enabling parties to be heard, and while ensuring adherence to natural justice, leniency was granted to all parties, who were given an opportunity to consider and respond. We do not consider the leniency was inconsistent with our powers or that the evidence was such that either party was disadvantaged by the evidence received; all had opportunity to address the evidence.

Case Law on Applications for an On Licence

55. Decisions commenting on, and providing guidance on, the application of the statutory provisions are numerous, and include rulings from both the Alcohol Regulatory and Licensing Authority (**ARLA**) and Superior Courts.
56. ARLA considered the matter in some depth in ***Sogi Trading Ltd v Licensing Inspector Auckland City Council***,¹ where numerous judgments of the High Court were referenced. We do not repeat the passages in the judgment but do specifically note paragraphs 113-120 as providing helpful guidance. In summary:
- (i) The Act does not articulate a specific test. A series of identified criteria have to be taken into account, any one or more of which may assume prominence in any given application.
 - (ii) Our role in considering an application is evaluative. This requires an assessment of risk
 - (iii) There is no presumption that a licence will be granted;
 - (iv) The committee is to have regard to the criteria in the Act, and then step back and consider whether any evidence indicates that granting the application will be contrary to the statutory object in s 4.
 - (v) Although the "Object" of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the "object" of the legislation. It seems to me that the test may be articulated as follows: is the Authority satisfied, having considered all relevant factors set out in s 105(1)(b)-

¹ *Sogi Trading Ltd v Licensing Inspector Auckland City Council* [2020] NZARLA 96 @ [113]

(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act?

- vi) The application of rules involving onus of proof may be inappropriate, for both the applicant and those opposing the application.
- (vii) The criteria for the issue and renewal of licences are not to be interpreted in any narrow or exhaustive sense. In taking account of information (having regard to the statute as whole) matters raised by section 4 are to be approached on a nationally consistent basis.

57. Given the task is risk assessment, it is appropriate we note ARLA's view that:

"A causal nexus is required between the evidence to suggest that the grant of the application, contrary to the object of the Act, will increase the risk of alcohol abuse and the relevant risk. As the evaluative function is an assessment of risk, it is the risk profile which is relevant, there is no requirement to link specific alcohol-related harm to a specific licence"².

58. The committee adopts the procedure outlined in **Sogi** and set out above.

Assessment of Statutory Criteria

59. The Committee notes that there is no onus of proof in a liquor licensing setting. Rather, it is for all parties to put their best foot forward and for the Committee to evaluate what it has heard, apportioning weight as it sees fit, and reaching a decision having regard to the factors set out in the SSAA.
60. We have approached our task with due regard to comments of Gendall J in **Shady Lady Lighting Limited v Lower Hutt Liquormart Ltd**³, relying on the decision of Gendall J in **Vaudrey**:
- the phrase 'have regard to' bears its ordinary meaning
 - The decision maker must actively and thoughtfully consider relevant matters
 - The weight given to such matters is generally within the discretion of the decision maker
 - There will be cases where the matter(s) to which the decision maker is required to have regard are so fundamental that they will assume an elevated mantle.
61. Looking at the criteria we are required to consider pursuant to s105 the Committee's concluded views are:

Object of the Act

62. We discuss this below.

² Sogi @ [118]

³ [2018] NZARLA 198

Suitability

63. The objectors were critical of Mr Cooper, a director of the franchisor, who was described as an “angry man”. Indeed, in her closing submissions, Ms Gordon went so far as to say his suitability “dominated in this instance”.
64. As the applicant correctly submitted in closing, it is the applicant’s suitability that we have to decide. While Mr Cooper pushed some boundaries in his presentation, we are not of the view that the applicant’s ability to meet the object of the Act is compromised by Mr Cooper / the franchisor.
65. Sergeant Savage’s submission was noteworthy in this context. The Sergeant is the alcohol harm prevention officer for Nelson Bays. He has significant experience in the field and in the Nelson region, which he understands from a policing perspective. He described the applicant as “realistic”, “engaging”, and “understanding of the community”.
66. We are satisfied by the evidence before that the directors of the applicant company have the requisite knowledge and experience for the business. There was also clear evidence of a willingness to engage with the agencies to address concerns raised, notably regarding hours. The fact that the applicant was not able to reach agreement with the objectors is not a decisive factor in assessing suitability; to find otherwise would be to give objectors a power of veto. That is not the intention of s105.
67. We consider the applicant is a suitable person to hold an on licence under the Act.

Relevant Local Alcohol Policy

68. The Nelson City Council has no local alcohol policy, so this is not a consideration.

Days and Hours

69. The days and hours of proposed trading were matters of both evidence and submission. They were clearly a concern to the objectors, who sought more restrictive hours than were sought by the applicant (both originally and after amendment).
70. We reiterate that after filing the application the applicant met with two of the tri agencies and amended its proposed trading hours to reflect concerns about the proximity of the Girls College and others. The revised hours saw the restaurant not opening until 4:30 pm on school days. The objectors proposed 5:00pm. In this context we note:
- In his closing submissions Sergeant Savage noted that the applicant had agreed to the later opening hours proposed by the other agencies. The Police had no concerns with the opening hours proposed.
 - The other two of the tri-agencies did not oppose the application, as amended.

- In response to the Committee, Ms O'Fee described the 4:30 pm opening as "low risk", although she maintained 5:00pm was appropriate.
- Mr Ribas maintained 5:00pm was a more appropriate opening time.
- L Crockett 's objection referred to student safety in the context of a licensed venue near schools and bus stops *"particularly during school hours and after-school periods when students are commuting"*.

71. Having considered all the evidence the concluded view of the Committee is that the days and hours sought in the application, as amended, are appropriate. We have reached that view for a number of reasons, including that we consider that the proposed days and hours minimise any risk to students, and neighbours, including the risk of alcohol harm and other matters raised during the hearing, are very low. There was no evidence that these hours would in fact cause issues.

Design and Layout of the Premises

72. The design and layout of the premises are shown on a plan attached to the application and were not the subject of any objection.
73. The Committee visited the Premises at the conclusion of the hearing. They are very small, as the 17 person capacity suggests, and with one entrance and exit, which requires patron to pass by staff, we have no concerns with the design and layout of the Premises.

Sale of Goods

74. The goods proposed to be sold on the premises were included in a menu attached to the application; they included pizza, pasta, and a variety of entrees and a range of non-alcoholic drinks. No objections were raised.
75. The Committee has no concerns in the context of s105 regarding the goods intended to be sold. Indeed, the consumption of food with alcohol is helpful.

Services to Be Provided

76. No issues were raised by any objector to the services intended to be provided and the Committee has no such concerns.

Amenity and Good Order

77. Reduction in the amenity and good order of the locality by more than a minor extent if the licence was issued was a matter of concern to all objectors.
78. In considering these concerns the Committee is required to have regard to the factors set out in s106 noted earlier. In brief, those factors are:
- In relation to the locality:
 - Current and possible future noise levels;
 - Current and possible future levels of nuisance and vandalism;

- The number of premises for which licences of the kind concerned are already held.
 - The extent to which the following purposes are compatible:
 - The purpose for which near the Premises is used and the purpose for which those premises will be used if the licence is granted.
79. In the Committee's view the small size of the Premises (17 seats) is significant in the context of the above criteria. There was no evidence of current noise levels being a problem. By its nature, the relatively small size of the restaurant will inevitably constrain the noise levels emanating from the Premises. We do not believe current or future noise levels will result in more than a minor reduction, if any, to the amenity and good order of the locality if the licence is issued.
80. There was no evidence of nuisance and vandalism currently being a concern. The family nature of the (small) restaurant, along with the location of the restaurant are such that, in our view, we do not think issuing the licence will result in more than a minor reduction, if any, to this factor in the amenity and good order of the locality.
81. One similar licence has been issued for premises in the locality. Ms O'Fee's evidence was that she was not aware of any problems in the locality arising from those premises. There was no evidence of adverse impact on the amenity and good order of the locality. The Committee has no reason to think this will change if this licence is issued.
82. The relatively close proximity of Nelson College for Girls is a factor to which we have given detailed consideration, particularly in light of the concerns raised by the objectors and the evidence of Ms O'Fee. Looking at all relevant factors we note:
- The opening hours are outside school hours and there is a relatively minor (half hour cross over between opening and the gym and practice hours for which a 5:00 pm (rather than 4:30 pm) opening was sought.
 - The perceived issue arising during that half hour was speculative and there was no evidence to support the concern.
 - Mr Ribas' evidence referred to a lot of kids at the bus stop, but up until 4:30pm, not 5:00 pm. The bus stop for people leaving the school and travelling south was on the opposite side of the road to the Premises, resulting in minimal interaction between patrons and students leaving school.
 - The bus stop for people leaving the school and travelling north was down the street from (to the north) of the Premises, as was the pedestrian crossing that would logically be used to go to that bus stop. Logically, that would suggest limited interaction between students leaving the school and patrons of the restaurant.
 - Sergeant Savage's submission was that the question of risk was a focussed priority in preparing the report, when considered with regard to the locality of the school. He noted also that neighbouring shops had not objected. The Police had no concerns.

83. Taking all of the above into account we do not think issuing the licence will result in more than a minor reduction, if any, to this factor in the amenity and good order of the locality.

Current Amenity and Good Order of the Locality

84. The Committee has considered whether in its opinion the amenity and good order of the locality are already so badly affected that issuing the licence would invoke the issues in s105(i). We do not consider this is an issue in this case.

Systems, Staff and Training

85. The application included evidence of systems, staff and training. Neither the tri-agencies nor any of the objectors raised concerns in this regard. The information provided in the application addresses the relevant matters and the Committee has no concerns regarding systems, staff and training.

Tri Agencies Reports

86. None of the tri-agencies opposed the application, as amended. Their views do not give rise to any concerns for the Committee.

Object of the Act

87. It is well established that before reaching any decision we must stand back and consider the application in the context of the object of the Act⁴. We must consider s4 and s3 of the Act.
88. The object of the Act is, essentially, twofold:
- To ensure the sale, supply and consumption of alcohol is undertaken safely and responsibly.
 - To minimise the harm caused by excessive or inappropriate consumption of alcohol.
89. Having regard to all the matters canvassed the Committee believes that to issue the licence sought will not increase the risk of alcohol abuse or harm and is consistent with the object of the Act.

Decision

90. The Committee has confidence that the applicant will carry out the responsibilities that go with holding a licence, having due regard to the factors in s105 and s106 of the Act, including the purpose and object of the Act.
91. On numerous occasions Ms Gordon submitted that the application was "low risk, not no risk". Mr Ribas made a similar comment. In the Committee's view the sentiment underlying that submission misrepresents what the Act requires. Section 4(1)(b) of SSAA refers to harm caused by excessive or inappropriate

⁴ See, for example, Re Nischay's Enterprises Limited [2013] NZARLA PH 837 @ [64]

consumption of alcohol being “**minimised**” (our emphasis). The Act does not require elimination of risk; to the contrary, it contemplates that licences will be granted in appropriate cases where the Act’s requirements and object are met. SSAA requires us to make a decision that is consistent with the minimisation of risk. That, in our view, is consistent with the statutory purpose set out in s3(1) that the Act is for the benefit of the community as a whole and also with the purpose in s3(2)(a) that a characteristic of the new system is that it is “reasonable”.

92. Having carefully considered all matters in light of the objections, the evidence, and the submissions of all parties the Committee is satisfied that the applicant has meet the s105 and 106 criteria.

93. For these reasons the Committee grants the on licence with the amended hours as follows:

- Monday to Thursday 4:30pm to 9:30pm
- Friday 4:30pm to 11:00pm
- Saturday and Sunday 12:00pm to 11:00pm

and otherwise on the terms sought.

DATED at NELSON this 4th day of August 2025



B R Fraser
Chair
Nelson District Licensing Committee