

IN THE MATTER OF the Sale & Supply of Alcohol
Act 2012

AND

IN THE MATTER OF an application by
Nekita Enterprises Limited
for renewal of an Off-Licence
pursuant to s127 of the Act
in respect of premises known
as Woodham Road Liquor
Store situated at 191
Woodham Road,
Christchurch

RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

CHAIRPERSON Mr D.L. Blackwell OSM
MEMBERS Mr P. Rogers
Ms C.E. Robinson

HEARING at Christchurch on 15th April 2019

APPEARANCES Mr P.J. Egden, Counsel for the applicant
Mr H. Singh, Nekita Enterprises Limited, the applicant
Dr J. Finn, Counsel for Mr McMahan/CAYAD (Status only)
Mr M. Ferguson, Senior Alcohol Licensing Inspector, CCC, to
assist
Senior Constable L. Steele, NZ Police, to assist
Ms H. Barbour for the Medical Officer of Health, to assist
Mr P. McMahon, Public Objector
Mr B. Jaeger, Witness for Mr McMahon
Ms V. Burns, Witness for Mr McMahon
Ms R. Wilson, Witness for Mr McMahon
Mr M. Saunders, Hearings Adviser, CCC

OTHER OBJECTORS Pastor John Carr Written objection only

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BEFORE THE CHRISTCHURCH DISTRICT LICENCING COMMITTEE

Chairperson Mr D.L. Blackwell OSM

CORRIGENDUM TO DECISION NO. 60E [2019] 1092

Compulsory Condition relating to Days Alcohol may be Sold and Delivered

- [1] Within Decision No. 60E [2019] 1092 (the "Decision") on this matter there is an accidental slip relating to the days alcohol may be sold and delivered in recording at para [103](b) of the Decision that alcohol may only be sold and delivered on the following days and during the following hours: Monday to Saturday 9.00am to 11.00pm. The application for renewal did not include a variation to hours and the Committee did not determine it was necessary to do so (see paras [3], [40] and [98](d) of the Decision).

First Correction

- [2] Para [103](b) of the Decision is therefore hereby corrected to replace "Saturday" with "Sunday" as follows:

Alcohol may only be sold and delivered on the following days and during the following hours:

Monday to ~~Saturday~~ Sunday 9.00am to 11.00pm

Mr McMahon's Evidence

- [3] Mr McMahon has noted the following relating to the Decision since it has issued:

Relating to para [22], Mr McMahon states that: "I do not work in the area described, but my colleagues do. I work in the area of alcohol and other drug harm reduction, as stated elsewhere in the Decision."

Relating to para [24], Mr McMahon states that: "I live 15 minutes bike ride away, but half that by car, which I believe I also said in the Hearing. Saying 15 mins bike ride would be acceptable to me."

Relating to para [30], Mr McMahon states that: "The name of my employer is St John of God Hauora Trust, as I said to the Committee during the Hearing. It is colloquially known as Waipuna."

- [4] With the exception of the error in respect of Mr McMahon's employer, which I duly correct, the changes requested by Mr McMahon to paras [22] and [24] of the Decision do not amount to a drafting slip.

Second Correction

- [5] Accordingly, at paras [21] and [30] of the Decision the references to St John of God Waipuna Trust are to be read as "St John of God Hauora Trust".

DATED at Christchurch this 3rd day of May 2019



D.L. Blackwell OSM
Chairperson
Christchurch District Licensing Committee

INTRODUCTION

- [1] This is an application for renewal of an Off-Licence pursuant to s127 of the Act by Nekita Enterprises Limited (the applicant) for premises known as Woodham Road Liquor Store situated at 191 Woodham Road, Christchurch. The application is opposed by two public objectors, Mr McMahon/Community Action on Youth and Drugs (CAYAD) and Pastor John Carr. The Inspector, the NZ Police and the Medical Officer of Health were not in opposition. Pastor Carr had advised the CCC Hearings Advisor that he would not be attending the hearing.
- [2] The Chair advised that Pastor Carr's objection would be noted by the Committee. However, because he did not attend we were unable to verify his standing in this matter, so he was not a party to these proceedings.
- [3] The Off-Licence in respect of these premises was last renewed without opposition in 2015. This stand-alone bottle store has traded in this area, largely without incident, since 2000. Following the Christchurch Earthquake the business moved across the road to its current site at 191 Woodham Road. The present application is seeking the same terms and conditions as the previous licence with the hours Monday to Sunday 9.00am to 11.00pm. We note that, as in many similar premises, the actual trading hours are less.

PRELIMINARY MATTER

- [4] In the weeks leading up to the hearing Mr Ferguson submitted a memorandum questioning the status of the objectors and in particular, Mr McMahon/CAYAD on the basis CAYAD did not have standing to object due to it not having an interest in the application for renewal greater than the public generally. Mr Egden filed legal submissions which generally supported Mr Ferguson's view. Dr Finn filed legal submissions in reply supporting both Mr McMahon/CAYAD as having standing to object.
- [5] A few days before the hearing Mr Egden circulated a recent decision by the New Zealand Alcohol Regulatory and Licensing Authority, *Gisborne Liquormart Limited v Ka Pai Kaiti Trust* [2018] NZARLA 316 (Black Bull Gisborne Decision). That decision held that the Ka Pai Kaiti Trust did not have standing simply because it was a responsible public interest group that represents a relevant aspect of the community. The Court said that while the kaupapa of the Trust is acknowledged, it is not different in nature to other community-based

groups who might be concerned about direct and indirect alcohol related harm. The fact that the trust provides services funded by the government does not in itself establish an interest in the application.

- [6] At the start of the hearing Mr Ferguson and Mr Egden both advised they wished to withdraw one ground of their objection relating to section 128(1) of the Sale and Supply of Alcohol Act 2012 (the Act) which questioned whether only a natural person may object to the granting of a licence if he or she has a greater interest in the application than the public generally.
- [7] As this ground of objection was withdrawn the Committee did not deliberate on this matter.
- [8] Before speaking, and with leave of the Chair, Mr Ferguson read a document outlining the role of the inspectors and how they operate independently.
- [9] Mr Ferguson then proceeded to speak on two matters explaining why he believed Mr McMahon/CAYAD did not have status as an objector.
- (a) Does the objector have a greater interest in the application than the public generally?
 - i. Mr Ferguson submitted that although CAYAD obviously have an overarching concern relating to youth drugs and alcohol, that it does not give them status greater than the public generally. He submitted CAYAD's concern is alcohol in general and not in relation to the conduct of these premises.
 - ii. Mr Ferguson also sought more clarification on whether the objection was made by CAYAD or Mr McMahon.
 - (b) The relevance of the matters raised and the witnesses he seeks to bring. As set out in section 128 of the Act an objector may only raise matters as specified in section 131 of the Act.
 - i. Mr Ferguson submitted that the matters raised in the objection are of a generic nature and not specific to the operation of the store in question. He suggested this question makes him question if the applicant has a greater interest in this application than the public generally.
- [10] Mr Egden confirmed that he has also withdrawn his objection to CAYAD on the grounds of the organisation not being a natural person but objects to

CAYAD having status on the grounds that it did not have sufficient nexus with the area.

- [11] He referred to the Black Bull Gisborne decision.
- [12] Mr Egden submitted that CAYAD should not be permitted to give evidence and Mr McMahon and his witnesses can only give evidence if they meet statutory criteria and their evidence relates to the premises.
- [13] Mr Egden then suggested to the Committee that much of the proposed evidence by Mr McMahon/CAYAD, with the exception of Mr Jaegar who was a resident, was not related to the premises and that a more appropriate option would be for Mr McMahon/CAYAD to lobby Parliament for a change in the law.
- [14] Dr Finn, at the start of his submission, was asked by the Chair to clarify if he was acting for CAYAD or Mr McMahon. He clarified that he was acting for both.
- [15] He commented on the initial objection by Mr Ferguson and Mr Egden, withdrawn at the start of the hearing, but he noted that non-natural parties have been granted standing in other cases.
- [16] Dr Finn urged the Committee to consider that Mr McMahon has a greater interest than other members of the community because of his work. Mr McMahon works in the area and he is also a Pastor at a church nearby.
- [17] Dr Finn argued that CAYAD's standing could also be argued on several grounds and that the Black Bull Gisborne case should not be followed as he believes the reasoning is suspect in light of the purpose of the Act.
- [18] Dr Finn submitted that in any event CAYAD's position is distinguishable from the Black Bull Gisborne case as it is not an entity of the same kind. It is specifically funded by the Ministry of Health to deal with results of alcohol related harm in the area. There is a need to amenity of the area and not just the premises.ⁱ
- [19] The Committee asked to hear from Mr McMahon before determining the issue of standing.

Mr McMahon was sworn in.

[20] Mr McMahon is a senior project worker for a contract awarded to the St John of God Waipuna. This contract is known as CAYAD. There is a team of two, himself and Ms Clare Rumba. He was a former Pastor and housing worker and is familiar with the area. St John of God Waipuna is his employer.

[21] Mr Mc Mahon's office is also on Woodham Road approximately 880 metres from the premises. The St John of God Waipuna Trust has many clients in the area.

[22] Mr McMahon has an Honours Degree in Political Science and a Master Degree in Theology. He works with the reintegration of prisoners, young children and families.

[23] Ms Robinson asked who authorised him to make the objection. Mr McMahon said he would normally run such things past his manager at St John of God Waipuna. He believed that he would have done this in relation to the objections in question, however, he did not recall exactly. He reported to the Ministry of Health on his progress on the contract.

[24] In a question from Mr Egden he advised that he lived in Woolston about fifteen minutes away. He also noted that many of the St John of God Waipuna staff used the BP service station across the road from the Woodham Road Liquor Store.

[25] The Committee took a recess to consider if CAYAD/Mr Mc Mahon did or did not have status as an objector.

Decision on the status or otherwise of CAYAD/Mr McMahon.

[26] The Committee listened very carefully to the submissions made by Mr Ferguson, Mr Egden and Dr Finn, together with the clarifications by Mr McMahon.

[27] The Committee also read very carefully the documents prepared and previously circulated by Mr Ferguson, Mr Egden and Dr Finn.

[28] The Committee also notes that one of the objections by Mr Ferguson and Mr Egden in relation to natural person was withdrawn at the start of the hearing, therefore, it would not discuss this matter any further. The Committee notes that Mr Ferguson did not object to Mr McMahon as an objector per se but was concerned about the relevance of his evidence.

Does CAYAD/Mr McMahon have a greater interest in the application than the general public?

[29] Mr McMahon advised that his office is on the same street as the applicant's store less than 900 metres away. He works in the area of drug and alcohol harm reduction with people and groups in the general location. The view of the Committee is that because his office is in the area and his work in the drug and alcohol field involves interaction with the local community it qualifies him as having an interest greater than the public generally in this application in this instance. The objection filed is written in a manner that points to it being made by Mr McMahon in his personal capacity. We note the reference to his personal employment history and his personal experiences in the locality. The objection raises matters of amenity and good order and the suitability of the applicant. Although we have allowed Mr McMahon to be heard in this case we note that Mr McMahon's interest is probably at the outer reaches of establishing standing because of the distance of his office from the premises and the fact he does not reside in the immediate vicinity.

[30] The Committee had much more trouble in considering whether CAYAD had standing. CAYAD does not appear to be a constituted organisation (incorporated or unincorporated) but just the name given to the contract that St John of God Waipuna Trust delivers for the Ministry of Health. Mr McMahon and Ms Clare Rumba appear to be employees of St John of God Waipuna. Even if considered to be a "person" within the meaning of the Interpretation Act 1999, CAYAD's interest is analogous to the Trust's interest in the Black Bull Gisborne Decision and does not demonstrate an interest greater than the public generally.

The relevance of the matters raised in evidence, circulated only at this stage of the hearing, of Mr McMahon and witnesses.

[31] The Committee acknowledges the concerns expressed by Mr Egden and Mr Ferguson about the relevance of some of the evidence outlined in the briefs circulated by Mr McMahon. District Licensing Committees (DLCs) get all sorts of evidence styles from, particularly laypersons, and the proposed evidence is no exception. The new Act in 2012 was designed to allow the local community to have more say in licence applications or renewals.

[32] The Committee accepts that some of the evidence may be of a very general nature but was hopeful most of that will be rectified in the cross-examination process. The Committee can then give appropriate weight to each witness's statement.

[33] Overall the Committee is satisfied that Mr McMahon can be treated as an objector.

[34] Dr Finn left the hearing as he was only retained to deal with the matter of status.

Substantive Hearing.

[35] Mr Egden made an opening statement for the applicant advising that Nekita Enterprises Limited had made an application under s127 of the Act for the renewal of the premises at 191 Woodham Road. The application had been made on the prescribed form and duly advertised.

[36] The renewal is not opposed by the Inspector, the Police or the Medical Officer of Health. It has, however, drawn two objections.

[37] Mr Egden briefly spoke to his written opening submissions that had been circulated prior to the hearing. He then called the applicant, Mr Harjit Singh.

[38] Mr Egden asked the Committee to consider excluding Mr McMahon's witnesses from the hearing until they have given their evidence. When asked to explain why by the Chair he said he was concerned there might be some collusion. The Chair declined his request stating that the hearing was a public hearing and all the evidence had been pre-circulated.

[39] Mr Singh explained that he and his wife, Shereen Singh, are the two directors and shareholders of Nekita Enterprises Limited.

[40] The Off-Licence is located at the intersection of Gloucester Street and Woodham Road and they have held the licence since 2000. They were forced to move across the road to their current site following the Christchurch Earthquake as their old building was demolished. The current licence hours are 9.00am to 11.00pm Monday to Sunday. He noted that they rarely stay open until 11.00pm.

[41] He noted that their company owned 15 other Off-Licences in Christchurch, Waimakariri and Ashburton as well as two On-Licences. They serve approximately 27,000 customers a week across their stores. Over his 19 years

there had been just one blemish, in 2006, when a staff members sold to a minor. He said their company and staff place an importance on maintaining high standards.

- [42] He noted that the Inspector's report considers his company as a suitable applicant to hold a licence and the Police and the Medical Officer of Health have not raised suitability issues. He believes his company is a suitable applicant for the renewal of a licence.
- [43] He said there had been no design and layout changes since the last renewal and noted they have adopted many of the Crime Prevention Design Guidelines produced by the NZ Police and Health Promotion Agency. These included windows and glass door, lighting, internal layout, CCTV. RTDs and other popular drinks that have particular popularity with young people are not located near the front of the store and are not visible to young people from outside the store.
- [44] Mr Singh said his company uses the Super Liquor Group systems for staff training and also a training manual produced by the group. He believes his store operates to very high standards.
- [45] There have been no issues with noise levels generated from the premises that could affect the amenity and good order of the premises and to his knowledge no incidents of vandalism. His staff are trained to ensure the area outside the store is clear of rubbish and is kept tidy at all times. He notes one objector claims there have been empty beer cans on the roadway near his church and a person drunk at his church. These cannot be linked to his premises.
- [46] Mr Singh then went through the individual points raised by the two objectors, Pastor John Carr and Mr McMahon.
- [47] Pastor Carr raised amenity and good order and the number of licenced premises in the area while Mr McMahon raised hours of trade, design and layout, amenity and good order, the number of licenced premises in the area and suitability.
- [48] He believes the number of licenced premises in the area was not a matter for the Committee to consider under s105 (1) or s106 (2).

- [49] Mr Singh acknowledged there were a number of Off-Licences in the general area but there was little or no evidence of present or future noise levels, acts of vandalism or nuisance connected to the premises. He noted that had there been any it is reasonable to expect the matters would have been raised by the agencies.
- [50] The design and layout of the premises has not been changed since the last renewal and that no issues were raised at that time. He said that the Super Liquor Group requires high standards.
- [51] He is not seeking to change the hours of trade, which are within the default hours. He has 19 years of experience in the industry and considers himself a knowledgeable, responsible operator.
- [52] In questions from Mr Egden he confirmed that no product signage can be seen from outside the store and RTDs were kept at the back of the chiller. He confirmed that in many cases his prices were often more expensive than his opposition. He does not do mailers and cannot afford external advertising, only internal. Mr Singh also produced an exhibit comparing his product prices with a local supermarket and bottle store. His prices were not generally cheaper.

Cross examination.

- [53] Mr Ferguson asked about alcohol mixed energy drinks. Mr Singh said that they were liked by the younger generation but only represented 2-3% of his RTD sales. He had never had a complaint about these products.
- [54] Senior Constable Steele sought confirmation of a controlled purchase failure in 2006. He also raised a very recent incident at another store owned by Mr Singh. Mr Singh explained that he had very recently, about three weeks ago, purchased another store at Ferrymead and there one of the staff he inherited sold a product to an intoxicated person. That staff member is no longer working for his company.
- [55] Mr McMahon asked about staff and the hours they worked. Mr Singh said he looked for staff willing to work and willing to learn. He had two fulltime staff and one part-time at the Woodham Road store. The maximum hours for any person was 51 hours.

- [56] He said he contributed to a local school fundraising and in the last year he contributed to ten golf tournaments.
- [57] Mr McMahon asked that if he knew a product was causing harm would he stop selling it. He said that he would be happy to sit down and discuss the product but believes if the product is drunk sensibly it will not cause harm. Mr McMahon also asked about the sale of energy drinks like Nitro. Mr Singh said he does not make the product and he tries to sell what his customers want. The product range is selected by his manager and himself.
- [58] Asked why he had so many stores in the East he said that he had not opened any new stores, he only purchased existing ones. He also lived in the East. Mr McMahon asked if he would consider not selling single bottles and RTDs. Mr Singh said he would consider it. (Later in the hearing his counsel said they had considered this matter during a break and felt they would not offer this as he believed it encourage people to drink more alcohol.)
- [59] Ms Robinson asked about his customers. He said they were mainly over 30 years old.
- [60] He recently went to Woodham Park with Mr Egden and could not find one bottle. In response to the photographs in Mr McMahon's evidence showing cans and bottles in the street and in local parks, Mr Singh had reminded his staff about the need to check the street and carpark areas for litter before opening the store each day and to send him photographs. His staff had been doing this regularly since.

Evidence of Ms Rebecca Wilson.

- [61] Mr McMahon asked the Committee, prior to his witnesses giving evidence, to suppress specific details relating to individual cases that Ms Wilson or Ms Burns may discuss. The Committee agreed to this request. Non publication orders remain in place in that regard. Ms Wilson is the Director of Learning (Deputy Principal) at a year 1 to 13 school an estimated 2- 3 km from the store. She had worked in education for 17 years and the last three in a secondary school environment. She currently holds the well-being portfolio across the school.

- [62] She believed there were too many liquor stores in the community. She had dealt with two incidences involving alcohol. In questioning from Mr McMahon she said young people were attracted to cheap RTDs and wine.
- [63] Mr Ferguson asked if she was familiar with this store and she said yes. He also asked if she was familiar with any problems coming from it. Ms Wilson said no, however, she was aware some families had alcohol issues.
- [64] Ms Wilson was asked about the amenity of the area. Ms Wilson said it was a good community with a lot of positive features.

Evidence of Paul McMahon.

- [65] Mr McMahon stated that he was not against alcohol but he believed in social justice and alcohol was a serious issue. He believed the Lion Liquor case meant that the Committee should consider this application as if it were an application for a new licence.¹
- [66] He would like to see an earlier closing time. He then produced a number of photographs of litter in the general location of the store, mainly in Woodham Park. He stressed that the community is vulnerable.
- [67] Mr Ferguson asked if there were issues of harm wouldn't he think that the Medical Officer of Health would have raised them. He suggested to Mr McMahon that his concerns would be better directed as a petition to Parliament. Mr McMahon said that in a private capacity he was working on that.
- [68] Mr McMahon said that he no longer wanted to take his children to Woodham Park because of the people he had seen there walking around drinking. He said from his previous work in housing he knew there is a significant level of harm in the community.
- [69] Mr Egden asked what had changed since the last renewal. Mr McMahon said that the economy had slowed down, the government had changed and three years ago he had other priorities.
- [70] Mr Egden put it to Mr McMahon that he pointed to the area being a sensitive site but that he was a lone wolf as no one else had objected. Pastor Carr had objected but was unable to be at the hearing. Mr McMahon acknowledged

¹ Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd CIV 2001180518 High Court Wellington

that his work was funded by the Ministry of Health and that he was focused on this small community. He would also like to see alcohol removed from supermarkets as it contributes to the normalisation of alcohol.

[71] Mr McMahon acknowledged there was an accord to limit the alcohol content in RTDs but said accords were not made under duress and there was a compromise reached.

[72] In further questioning he estimates there were about 1500 people in the local area and while he knew of others who wanted to make an objection there were barriers such as the time of the year and work commitments that stopped them.

Evidence of Mr Bob Jaeger.

[73] Mr Jaeger had lived in a nearby street for 32 years and as he was a runner he knew exactly that the site in question was 770 metres from his home.

[74] Mr Jaeger explained his immediate neighborhood, an area he obviously enjoyed living in, and said that when he first arrived there were several gangs in close proximity but life was much better now because they had all gone. A question from Ms Barbour asked how he would rate the area out of 10. He answered at least 8. He said that it probably has not improved over the past three years but it certainly had since the earthquakes.

[75] At Mr McMahon's request he outlined an incident with a neighbor where young people who were having a 21st birthday party. He asked them to turn the bass down but with little avail. He knows one of his neighbours called the noise control people.

Evidence of Ms Vicki Burns.

[76] Ms Burns said she worked in the area as manager of the Young Parents Development St John of God, Waipuna, with a team of social workers. Their aim was to provide opportunities for young parents to develop skills and address problems. She had worked in East Christchurch for 24 years.

[77] Families the team worked with were often referred to them because of issues of alcohol abuse and the challenges alcohol presents in the family unit. They were generally young mums and dads.

[78] When asked what would help the alcohol issues in the area Ms Burns said less liquor stores along with education. She said education is good but does not entirely work on its own.

[79] Mr Egden asked if she agreed that supermarkets provided the lowest cost and she agreed.

Inspectors Report - Mr Ferguson.

[80] Mr Ferguson has worked as an inspector for about twenty years.

[81] Mr McMahon asked if he was aware of the Lion Liquor decision. He said every inspector in the country should be taking it into account, however, he explained that the current application was very different from the premises in that case. He noted that the Lion Liquor premise had been subject to various enforcement issues over a period of time. He was also asked if he supported tagging of bags. He said he thought it could be something a Local Alcohol Plan (LAP) could impose.

[82] Mr Egden asked if he has any concerns with the manner Mr Singh has operated over the years. He said no and he had no issues with the hours of 9.00am to 11.00pm.

[83] Mr Egden noted he had not referred to s131 (1) (b) amenity and good order. Mr Ferguson confirmed that he had no evidence to say the amenity and good order would improve if the renewal was declined.

[84] Ms Robinson asked how he became aware of any issues with regard to amenity and good order. He said he was aware of the area having previously lived there for 12 years. He also said information comes from a variety of sources, including from competitors in some instances. He was sure that if there were concerns, they would come to his attention.

Closing statements.

[85] Mr Egden asked the Committee to note that there were no objections from the reporting agencies and really just one lone objector.

[86] He said Mr Singh was "squeaky clean".

[87] He had discussed with Mr Singh the issue regarding reducing opening hours, however, Mr Singh believes that there should be a level playing field with the

supermarkets, which are open until 11.00pm. He also said that there was a trend that people wanted to buy one or a bottle of several different beers.

[88] He also noted that RTDs were regulated by the voluntary code in the industry and any alternative direction should come from Parliament.

[89] He said the photos produced by the objector were not accompanied with any evidence linking them to this store. He said Mr Singh and his staff were very proactive in always ensuring the immediate area was tidy and they picked up any rubbish if necessary.

[90] Mr Egden submitted that s105 looks at how the store should operate.

[91] The Act does allow for the safe and responsible sale of alcohol. There is no evidence shown that the area has a high level of alcohol harm. He noted the Narrows Landing case.² The applicant can't address a problem if he can't see harm.

[92] Mr McMahan submitted that the DLC must assess whether this is the right place for a liquor store and the absence of a LAP doesn't mean it can't make a decision to decline this application. He submitted that RTDs are more likely to have a higher degree of harm. He emphasised that single alcohol sales are cheaper and they are attractive to problem drinkers. He said it would be helpful to reduce harm if tagged bags were introduced and the hours reduced to 10.00pm or earlier.

[91] Mr McMahan finished with a poem written by a young person.

[92] Mr Egden took exception to Mr McMahan's statement that singles were cheaper.

Discussion and decision.

[93] We are dealing with an application for renewal of an Off-Licence which has now been in place for around nineteen years. The previous application for renewal in 2015, which was under the new Act, was not opposed and no evidence was produced that any other applications for renewal or the original application were opposed. It is a given that there can be no presumption that a licence will be renewed. Nevertheless, we must also have regard to the fact that this is a long established business in which the applicant has a significant

² The Narrows Landing Ltd 2003 20030716 Liquor Licensing Authority

investment, which offers employment to several staff members and which has received no significant criticism with respect to its operations previously. Our task, after considering all the criteria set out in the Act relating to the renewal of an Off-Licence, is to take a step back and consider whether the Object of the Act would be met by the granting of a renewal.

[94] The Object of the Act as set out in s4 (1) is:

- (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.

[95] s4 (2) goes on to explain:

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 or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[96] We are also mindful that the characteristics of the new system of control introduced by the Act as set out in s3(2) are that-

- (a) it is reasonable; and
- (b) its administration helps to achieve the object of this Act.

[97] The matters to which we must have regard when deciding whether to renew a licence are set out in s131(1) of the Act as follows:

- (a) the matters set out in paragraphs (a) to (g), (j) and (k) of section 105(1):
- (b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence,
- (c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129,

- (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

[98] We shall deal with these in order:

- (a) The object of this Act.- As Heath J. said in *Re Venus NZ Ltd CIV 2014-419-420 [2015] NZHC 1377* " having considered all the factors set out in s105(1) (b) to (k) of the 2012 Act, is the Authority satisfied that grant of an Off-Licence is consistent with the object of the Act? It follows that we defer this consideration to last.
- (b) The suitability of the applicant.- There has been no question raised in any reports received or evidence tendered that the suitability of the applicant is in doubt. Mr McMahon raised issues about the decision of the applicant to sell single bottles and RTDs (including the energy variety) when they may cause harm.³ That does not make the applicant unsuitable. To the extent that this may be a wider issue but the Committee was unable to relate this to this specific store.
- (c) Any relevant local alcohol policy. – Christchurch has no Local Alcohol Policy.
- (d) The days on which and the hours during which the applicant proposes to sell alcohol. – The applicant sought the same hours as his current licence 9.00am to 11.00pm Monday to Sunday. These hours are within the default hours set out in the Act. No issues of concern have been raised with regard to the hours of the premises.
- (e) The design and layout of any proposed premises.-
The applicant advised that there had been no changes to the design and layout of the store and that no individual products could be seen from outside the store. Also drinks popular with young persons, such as RTDs, were not positioned near the front of the store.
- (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: -No issues have been raised under this heading.

³ Mr McMahon had cited various academic research papers in his written objection regarding the impact of energy RTDs.

- (g) Whether the applicant is engaged in, or proposes to engage in, the provision of services other than those directly related to the sale of alcohol, low alcohol refreshment, non-alcoholic refreshments, and food, and if so, which services: - Again no issues have been raised.
- (h) Whether the applicant has appropriate systems, staff, and training to comply with the law: - The applicant appears to have good systems in place to cover administrative and compliance matters as well as staff training. We note that he uses the Super Liquor Group/systems for training and advice.
- (i) Any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under s103:- No issues were raised by any of the agencies.

[99] S131 (b) requires us to turn our minds to amenity and good order. We must have regard to "whether (in its opinion) the amenity and good order of the locality would likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence". s106(2) of the Act sets out the factors to which we must have regard when considering amenity and good order

[100] Both Mr McMahon and Mr Jaeger raised issues of amenity. Mr McMahon produced numerous photographs of alcohol cans, bottles etc. in Woodham Park, some several hundred metres away, however, there was no evidence produced that in anyway tied this litter to the applicant's store. Mr Jaeger detailed one particular neighbour he has issues with relating to noise associated to alcohol use but again there was no evidence to tie those issues to this store. He also stated that in his 32 years living in the area things had improved significantly mainly due to numerous gang houses moving from the locality. It was suggested to us that refusing renewal of the licence would mean one bottle shop less and this would help in reducing alcohol problems. We can certainly understand where that view is coming from but we are required to be reasonable in administering the Act. It would not be reasonable to hold the applicant accountable when there is no evidence of it being at fault. Likewise we heard no particular evidence of increased levels of nuisance, vandalism or noise apart from the one issue Mr Jaeger raised, however, there was no evidence that the incident was attributable to the

premises. The Committee noted again that the agencies had no issues in this area and were impressed with the applicant's evidence in outlining his systems and the external audits undertaken by the Super Liquor Group.

[101] When we consider all that, we cannot form the opinion that the amenity and good order would be likely to be increased, by more than a minor extent by the effects of a refusal to renew the licence. Frankly we do not think it would make any discernible difference at all. We note that the objector and his witnesses believe that less bottle stores would assist in lowering alcohol harm in society generally, however, that is not a matter we can address in the course of our consideration of this individual application. These views would perhaps be better directed at Parliament or in the context of a LAP.

[102] We now take the step back as advised by Heath J. in *Re Venus NZ Ltd* and consider the Object of the Act in the light of all the other matters to which we are required to have regard. Can the supply of alcohol by Woodham Road Liquor Store be undertaken safely and responsibly and can the harm caused by the excessive or inappropriate consumption of alcohol be minimized should the licence be renewed? We believe that both requirements can be met for the reasons outlined above. The renewal of the Off-Licence can be granted.

DECISION OF THE CHRISTCHURCH DISTRICT LICENCING COMMITTEE

[103] The decision is that the Off-Licence for Nekita Enterprises Limited trading as Woodham Road Liquor Store will be renewed for a period of three years. It will be renewed subject to the following conditions:

Compulsory Conditions

- (a) No alcohol may be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1 pm on Anzac Day.
- (b) Alcohol may only be sold and delivered on the following days and during the following hours:
Monday to Saturday 9.00am to 11.00pm
- (c) Water must be freely available to customers, while alcohol is being supplied free as a sample on the premises.

Discretionary Conditions

- (a) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
- Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
- Alcohol must only be sold and supplied on the premises in accordance with the premises plan submitted with the application.

Conditions applying to all remote sales:

- (a) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on any receipt issued for any alcohol sold via the internet site: The licence holder's name, the licence number and the date on which the licence expires.
- (b) A copy of the licence or a clearly identified link to such an image must be displayed in a prominent place on the internet site.
- (c) The following steps must be taken to verify people are over the purchase age:
- In the case of an order made using the internet site, telephone order or physical order- the prospective buyer must declare he or she is 18 years of age or over (and where the prospective receiver is involved that the prospective receiver is also 18 years of age or over):
 - (i) once when the prospective buyer first commences the order process, and
 - (ii) again, immediately before the sale of alcohol is completed.

Other restrictions and requirements to be noted on the licence

s56 Display of signs

s57 Display of licence

s214 Manager to be on duty at all times and responsible for compliance.

The premises are designated a supervised area.

DATED at Christchurch this 30th day of April 2019

A handwritten signature in blue ink, appearing to be 'D.L. Blackwell', with a small dot at the end.

D.L. Blackwell OSM

Chairperson

Christchurch District Licensing Committee
