

Decision Number: 60F [2022] 10604

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

AND

IN THE MATTER OF an application by **YANKEE BOURBON COMPANY LIMITED** for renewal and variation of off-licence in respect of premises situated at **266a Ferry Road, Christchurch** known as '**Yankee Bourbon**'

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 12 September 2022 (at Christchurch)

DLC

Chairperson: Mrs Merelyn Redstone

Members: Ms Cindy Robinson
Ms Lana Shields

Appearances: Mr Andrew King, Shareholder of the Applicant
Mr John Young, on behalf of the Applicant
Ms Lisa Cowe, Objector
Dr Liz Gordon, on behalf of the Objector
Mr Paul McMahon, Witness for the Objector
Mr Richard Edmundson, Witness for the Objector
Ms Janeane Reid, Witness for the Objector
Mrs Jennifer Hoskin, Witness for the Objector
Ms Belinda Fowler, Witness for the Objector
Mr Martin Ferguson, Licensing Inspector, to assist

Decision: 28 October 2022

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Introduction

[1] This is an application by **YANKEE BOURBON COMPANY LIMITED** ('the Applicant') for renewal of an Off-Licence¹ pursuant to s127 of the Act for premises is situated at **266a Ferry Road, Christchurch** known as '**Yankee Bourbon**'. The premises operate under an existing licence, which expired on 21 September 2021.

[2] The general nature of the premise is that of a **Bottle Store**.

[3] The application was received by the Christchurch City Council Alcohol Licensing team on 23 August 2021. The application was publicly notified on 23 August 2021 and remained on the website for a minimum of 15 working days. Two objections were received.

¹ 60/OFF/70/2019.

[4] Following a status hearing a decision was issued on 9 May 2022 declining objector status for Mr Paul McMahon, and confirming it for Ms Lisa Cowe (**‘the Objector’**).

[5] The licence was last renewed, with conditions, in 2018 following a public hearing by the District Licensing Committee² (**‘DLC’**). That decision was confirmed by the Alcohol Regulatory and Licensing Authority (**‘ARLA’**) on appeal.³

[6] The current renewal application was not opposed by the District Licensing Inspector,⁴ the New Zealand Police or the Medical Officer of Health (**‘MOH’**).

[7] The DLC members undertook an external site visit on 16 September 2022, accompanied by Mr Andrew Campbell, the Hearings Advisor.

[8] A hearing of the application took place on 12 September 2022. Both the Police and the MOH sought leave to be excused from attending the hearing, which was granted on the basis that any questions that arose in the course of the hearing could be referred to them by way of memorandum. We heard evidence and submissions on behalf of both the Applicant and the Objector and her witnesses.

Submissions and Evidence

The Applicant

[9] Mr Young presented opening submissions for the Applicant.

Mr Andrew King

[10] Mr King on behalf of the Applicant sought a renewal of the Off-Licence. The Applicant applies for licensed hours between 9:00am and 10:00pm, although at the end of the hearing asked for licensed hours to be reduced to 10:00am to 8:00pm. The store currently shows a closing time of 6:00pm and usually closed in the summer at 7:00pm, aligning itself with the dairy next door. Mr King would like the flexibility to remain open to 8:00pm at busy times of the year.

² DLC Decision Number 60C [2018]3416.

³ *Cowe v Yankee Bourbon Co Ltd* [2019] NZARLA 150

⁴ Inspector’s report 17 February 2022.

[11] Mr King gave evidence of his family living in the Linwood and Woolston area most of his life and his father running a dairy on Ferry Road.

[12] He and his father started the Applicant company in around 1997 as a small batch spirits brewing business. The products are sold wholesale nationwide to various stockists. The premises was intended as a showroom and, Mr King noted, it remains that way primarily. The business stocks other products, some of which it imports, and some to meet local customer demand. He said the business differs from other bottle stores in that: it does not advertise; there are no '*specials*'; and, it carries only a limited range of stock. He further noted that the Applicant does not stock much that is an attraction to young people. The closing time means it is not an available outlet for patrons leaving local Licensed premises.

[13] The initial application and subsequent renewal applications were not opposed until the last one in 2018. There have been no incidents. Since the business started seven other Off-Licences have been granted in the area.

[14] No concerns have been raised by the Agencies and in response to concerns raised by Objectors at the last renewal, the Applicant agreed to several undertakings, in addition to compulsory and discretionary conditions, which became conditions of the Licence. These additional agreed conditions are set out, for clarity, as follows:

- (a) There are to be no bulk sales or "fill your own" liquor on the premises.
- (b) There are to be no sales of single bottle mainstream beers or RTDs.
- (c) The applicant is to produce a Training Manual to the satisfaction of the Inspector within three months of the date of this licence.
- (d) The applicant, Mr Andrew King, is to complete his LCQ and advise details of this to the Inspector within six months of the date of this decision.
- (e) No internet sales are to be undertaken under the licence.

[15] Cross-examination by Dr Gordon for the Objector centred on what was perceived to be sales of cheap alcohol, and the deprivation of the community in which the bottle store is located. The exact wording of the undertakings agreed to at the 2018 renewal was questioned but there was agreement that the word '*bottles*' in undertaking (b) as set out above was confusing and probably did not reflect the intention of the DLC at that hearing. Further, the reference to '*mainstream*' lacked clarity. It was agreed that that issue would be addressed in the current application.

[16] Mr King accepted that the business dealt with both wholesale clients and locals, with most wholesale orders received via email.

[17] Mr King was challenged as to Bali Hi products being cheap 'mainstream' beers as opposed to craft beers. He disagreed with that proposition. He agreed there was deprivation in the area but said that had always been the case. In response to a question, he said he sold approximately 240 items of Panther El Diablo and Red One beers per month. He said he had not talked to community organisations himself but that his manager does interact with local people and organisations. He strongly disagreed that he did not care about the community, reiterating that he was raised in the community, as were his children who attended the Bamford Street School in Woolston, and he considers people who live in the community are good, hardworking people.

The Objector

Ms Lisa Cowe

[18] The Objector read her brief of evidence in which she outlined her objection highlighting that the Applicant sold cheap alcohol in a very deprived area of Christchurch. She said the Applicant's own brands were essentially flavoured ethanol. However, how the Applicant's products were made was not put to Mr King. She said most of the other products sold are cheap imports from places such as Indonesia and Russia with high alcohol contents. In addition, the premises has only one staff member, apparently present all day who, she said, would not be in a position to react to any disturbance.

[19] The Objector said in her brief of evidence that, in her view, these issues raised a question as to the suitability of the Applicant in terms of s105(1)(b) of the Act. Further, she said that the object of the Act, s105(1)(a) to minimise harm, cannot be achieved by this licence.

[20] At paragraph 4 of the Objector's Brief of Evidence she said:

"There seemed to be some views noted at the status hearing that community objectors who had objected at one renewal should then not subsequently object at a further renewal. I strongly reject these views"

[21] The Chair raised this paragraph with the Objector and advised that what was noted at the status hearing was that her objection at a previous renewal had been considered by that DLC, and on appeal to ARLA, and that she would "need to bring to the hearing some cogent evidence to support the matters she has raised", meaning that the DLC accepted the previous decisions of both itself and ARLA and some new evidence as to how she is affected by this licence would need to be produced at the current hearing in order to convince the DLC that the licence should not be renewed.

[22] At paragraph 6, the Objector set out the areas of the Act which would be covered by her objection, including s105(1)(i). It was put to her by a DLC Member that this subsection of the Act did not relate to renewal applications. However, she disagreed.

[23] At paragraph 21, the Objector says she is "*concerned about the extent to which the Applicant promotes and sells alcohol in ways other than through the shop*" and referred to a website with an inactive front. Counsel for the Applicant explained that this is merely a website name held by one of the Applicant's directors and leads nowhere. It is not, and never has been, used for the sale or promotion of alcohol.

[24] In response to a question from Mr Young, the Objector said she had not taken the photographs contained in her brief and neither had she been present when they were taken. She did not know who had taken the photographs. They had been supplied to her by one of her witnesses and taken by yet another person. There was no direct evidence given at the hearing by the person who took these photos as to when and why they were taken.

[25] The Objector was unable to answer several questions put to her by Mr Young in relation to the evidence contained in her brief and appeared to seek guidance from her Counsel and one of her witnesses when answering questions, which we noted, with concern, appeared to be offered by her Counsel. The DLC asked the Objector if she had written her brief of evidence. She said she had, but in conjunction with others' input.

[26] The Objector struggled to answer many of the questions put to her and the overall impression was that she objected to alcohol outlets generally, rather than objecting to this premises in particular. There was nothing in the Objector's evidence, or responses to questions put to her by the DLC as to how she is personally affected by these premises, that showed she was affected to a greater extent than the public generally.

Objector Witnesses:

Mr Paul McMahon

[27] Mr McMahon is a member of the group Communities Against Alcohol Harm and is active in either objecting to licences himself or canvassing communities encouraging and assisting others to object. He was originally an objector to this application but was not given status as having a greater interest than the public generally.

[28] He supported the objection of the Objector in relation to suitability and failure to meet the Object of the Act. His evidence centred on a recent visit to the premises he had undertaken to purchase alcohol products, and his interaction with the staff member on that occasion.

[29] He expressed concern about the Applicant importing and selling particularly cheap single-sale beers, and in particular products brewed under the Indonesian Bali Hai label, such as El Diablo 500ml (ABV 12%) for \$4.00. He also referred to the sale of 1L bottles of Yankee Bourbon 'vodka' and 'brandy' for \$9.99. However, in cross-examination he accepted that the cost of these products had recently risen to \$12.00.

[30] Mr McMahon referred to seeing dump stacks of Cody's (12x250ml; 7%) for \$24.99, alongside Jim Beam RTD packs in the middle of the store. He did not accept the Applicant's contention that this would have been because a delivery had just been made and the stacks were there waiting for staff to put them in the chiller.

[31] Mr McMahon referred to the conditions placed on the last renewal of the licence which referred to "*no single sales of single bottles of mainstream beers or RTDs*". He did not consider that the word '*bottle*' reflected the intention of the DLC at that hearing.

[32] Mr McMahon also referred to the definition of '*craft*' beers as opposed mainstream beers in New Zealand. He said in New Zealand generally '*mainstream*' referred to breweries such as Lion, Dominion and Independent breweries. This allowed many of the cheap imported high alcohol products to be referred to as '*craft*' whereas, in Mr McMahon's view, they were mainstream in their country of origin.

[33] Mr McMahon supported the decision of the Authority in *St Joseph's School Pleasant Point/Te Kura O Hata Hohepa v Singh Trading (2016) Limited*⁵ [2021] NZARLA 123 which contained a condition that, "*No single sales of beer, cider, or RTDs priced at, or less than, \$6.00 per unit are to be sold.*"

[34] In cross-examination Mr McMahon conceded that he, and the organisation he belonged to, were against the sale of alcohol generally in deprived communities, rather than solely focused on this particular Applicant.

⁵ [2021] NZARLA 123 at [6] and [152-153]

[35] In response to a question from the DLC as to taking his concerns relating to alcohol harm generally to the correct forum, Mr McMahon was asked if he had taken them to Parliament, particularly given the Sale and Supply of Alcohol (Harm Minimisation) Amendment Bill presently being considered. He said that he had made submissions.

Mr Richard Edmundson

[36] Mr Edmundson is Tumuaki/Principal of Te Aratai College in Aldwins Road, a distance of 600m by foot and 1km by road from the Applicant's premises.

[37] The current roll of the school is 886 students but this is projected to rise to 1200 within three years. Students mostly come from highly deprived areas of Linwood and Philipstown. He pointed to the fact that since the Applicant commenced as a warehouse in its present location, which Mr King said was over 25 years ago, and particularly since it had been given an Off-Licence to sell direct to the public, there had been a significant change in the deprivation of the surrounding areas.

[38] He said alcohol harm within whanau causes significant problems and also leads to further problems in the future. It can affect learning and life opportunities. He said alcohol harm is *"so common in the area that you don't even notice it until someone brings it to your attention. Alcohol harm is shown in bottles and cans all over the place, crime, social degradation and economic devastation in the community"*.

[39] Mr Edmundson said *"the history of the area around Yankee Bourbon, especially in Philipstown, is of significant social and economic decline over the years. Urban growth, infill housing, a shift from home ownership to rental accommodation, a loss of its primary school and very sparse infrastructure mean that the area is both highly deprived and has many social and economic problems"* and these are acknowledged by the City Council. In addition a Council report pointed to further social housing complexes being planned for the area immediately adjacent to the Applicant's premises.

[40] Mr Edmundson elaborated further on these issues in his brief of evidence and when presenting his evidence, pointing, in particular, to seeing people out on the street affected by alcohol and/or drugs, drinking on the street and lying on the ground, when he travels between his school and the local Te Waka Unua primary school. He said this normalised alcohol abuse for local school children, with 300 individuals being seen by the Guidance Team last year who have been affected by alcohol harm.

[41] Mr Edmundson is a concerned Principal, with no agenda apart from protecting his pupils from the affects of alcohol in a severely economically deprived area with a proliferation of alcohol off-licences, such as is not seen in higher socio-economic areas of the city.

Ms Janeane Reid

[42] Mrs Redstone noted a conflict of interest in relation to the witness. She is known to Te Waka Unua, as an independent contractor supporting their governance. She has never been party to any discussion or decision-making with respect to the matters under consideration.

[43] Ms Reid gave similar evidence to that of Mr Edmundson outlining the effects of alcohol-related harm on young students attending the Te Waka Unua School.

[44] Ms Reid was asked what experience, as a Principal, she has had of pupils and families in relation to alcohol-related harm. Ms Reid described the ethnic demographic of her school and efforts to reduce challenges associated with alcohol-related harm. She reported that the school has seen an increase in family harm reports and mental health cases, and the school's pastoral care resources are now at capacity. Ms Reid said, "*we see the harm alcohol brings to our school community*". She spoke of rubbish and bottles discarded on streets where kids are playing. She reported that, at times, parents turn up intoxicated to pick their children up at 3.00pm. Ms Reid also stated that, from time to time, she has found people sleeping in classroom doorways when she has arrived at school in the morning.

[45] The children are provided with food during the school day and many school uniforms are provided by the school to encourage parents to send the children to school.

[46] Ms Reid advised that to refamiliarise herself with the premises she had taken the opportunity, during her lunch break, to visit the premises. She reported seeing a dump stack of Cody's in the middle of the floor.

[47] Again, Ms Reid is a concerned Principal, with no agenda apart from protecting her pupils from the effects of alcohol in a severely economically deprived area and the significant effect alcohol has on the learning ability and wellbeing of many students at the school.

Mrs Jennifer Hoskin

[48] Mrs Hoskin, along with her husband, have been involved in the local community for more than 40 years. Mrs Hoskin is secretary of the Charleston Neighbourhood Association. Charleston is the neighbourhood situated right behind the Applicant's premises. She is also secretary of the Friends of the Edmonds Factory Garden. She said that park has been under attack from alcohol related harm and graffiti for many years and it takes a huge effort to keep in excellent condition. She said recently five of the commemorative bronze plaques were wrenched off the seats and CCTV cameras and lights were broken.

[49] Mrs Hoskin pointed to the recent addition of a lot of social housing in the area, including a complex on Olliviers Road, directly opposite the Applicant's premises. Many have drug and alcohol issues and often live in unhealthy situations. In addition, the local motel is now often used for emergency housing.

[50] From time to time she has observed homeless people sleeping rough near the Applicant's premises. She has also observed people "*searching in the gutter for fag ends*" and some pestering passers-by for money sometimes in an intimidating manner.

[51] Mrs Hoskin noted many people in the area are desperate, resulting in a free food cupboard being set up at Te Wai Pounamu, another at the Phillipstown hub and a third on Barbour Street near the chemist shop which provides methadone to drug addicts. She has observed people waiting in the streets for the cupboards to be filled, which is twice-weekly, and said at Philipstown people are now provided with numbers and let in few at a time, because of pushing and shoving.

[52] In cross-examination, Mrs Hoskin said her observations have shown there are many more problems now than there were at the last renewal of this licence, with "*higher levels of poverty, people living below the breadline, and a loss of community resources*" all leading to increasing urban decay.

Ms Belinda Fowler

[53] Ms Fowler's brief of evidence was taken as read. She advised that she was not a member of Communities Against Alcohol Harm but worked for them. She was not an expert witness and she had conducted a desktop review of the area using publicly available information relevant to deprivation. In response to questioning, she said she had not been to Christchurch and had not inspected the area.

[54] She noted from the 2018 statistics that the areas in the vicinity of the premises are mostly Decile 8 to 10 which indicates the residents experience significant levels of socioeconomic deprivation, with the Decile 10 areas indicating the most deprived 10% of areas in New Zealand. In both these decile areas under 50% of people over 15 years of age are in employment and those that are, have a median income of between \$22,200 and \$24,400.

DLC Visit to the Premises

[55] The DLC were joined by Mr Campbell, Hearings Advisor, and a representative of the Applicant at a visit to the premises on Friday 16 September 2022 at 09:00am.

[56] The premises is in an older block of shops with what looks like empty premises on the corner, then the Applicant's premises, then a dairy. The building has not been well maintained. The amenity of the immediate area is far from pleasant and agreeable. The Applicant's premises has a concrete floor, old shelving, fridges with what looks like rust marks down the side, boxes stored behind shelving and generally the windows and the table beside the counter were dirty. It very much looks like a warehouse rather than a bottle store that is well presented.

[57] Inquiries made of the dairy next door, which had a sign up that it was closing at the end of the month, engendered the information that it was indeed closing and there was no prospective tenant.

[58] While the DLC was present, we observed a gentleman in his slippers, walking along the gutter and around the carpark area outside the Applicant's premises and the dairy next door, picking up cigarette butts, rolling them into a cigarette paper and smoking. He was there for the whole 15 or so minutes the DLC was present.

[59] A walk along surrounding streets showed that while some houses were well maintained and well kept, others were not, and there were bottles and other alcohol containers in the surrounding streets. However, we are not suggesting those items necessarily originated at the Applicant's premises.

Closing submissions

Closing Submissions of the Objector

[60] The Objector, through Counsel, submitted that the evidence shows that the location of the premises is in a highly deprived and/or highly vulnerable community and, as a consequence, the higher threshold of extended suitability applies (as set out in *Shady Lady Lighting Ltd v Lower Hutt Liquormart Ltd*, [2018] NZARLA 198⁶ and *Two Brothers Wholesale Limited v Medical Officer of Health, Waikato District Health Board*⁷).

[61] Counsel submitted the evidence shows that the Applicant has failed to demonstrate it is suitable to the standard of extended suitability required to continue to operate an off-licence in this location.

[62] She further submitted the conditions proposed by the Applicant do not address this failure nor do they minimise the alcohol-related harm caused by the operation of this store in such a deprived area, or the risk of alcohol-related harm, as required by the Act and especially the Object of the Act. Instead, they are offered to ensure that there is no change in the sales practices and hours of the premises.

[63] The submissions made are detailed in relation to the vulnerability and deprivation of the community, and various ARLA and High Court decisions dealing with reduction or increase in alcohol-related harm in such communities. Further the submissions raise the issue of sales of cheap alcohol, especially high strength beers in single cans.

Closing Submissions of Licensing Inspector

[64] Mr Ferguson submitted that the definition of alcohol-related harm, as provided in s5(1) of the Act made it clear that the object was minimising harm from the 'excessive and inappropriate' consumption of alcohol, not all consumption of alcohol. He referred to case law that supported the DLC giving greater weight to the absence of opposition from Police and MOH over the hypothetical concerns of the objectors in relation to the renewal and the variations sought.

⁶ [2018] NZARLA 198 at [127]. See also *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd* [2018] NZHC 3100 at [65].

⁷ [2021] NZARLA 32 at [124].

[65] He also referred to ss105 and 106 of the Act and noted that the Agencies had not raised any matters in relation to those sections.

[66] He submitted that little or no direct evidence was presented showing this premises has a direct effect on the locality. The evidence presented was of a general nature about alcohol harms and not specific to the operation of this premises.

[67] The Inspector further noted that the Applicant sells only a limited range of products, most of which are available at other alcohol outlets at similar prices. He referred to Table A presented by the Applicant. In referring to the beer products with a high alcohol content, raised by the witness, Mr McMahon, the Inspector said he was not aware of any legal restriction on the sale of these products, and none were banned under s238.

Closing Submissions of the Applicant

[68] Mr Young, on behalf of the Applicant, reiterated the experience of the Applicant and the fact that the premises is a relatively small operation with limited hours and a limited range of products. The majority of the Applicant's revenue is derived from its wholesale business. His prices are similar to other local outlets, and, unlike others, the Applicant does not promote discounts and neither does it aggressively market its existence or its products.

[69] The submissions pointed to many aspects of the Objector's evidence being prepared by others, leaving her in considerable difficulty when answering questions. Counsel submitted the Objector's evidence was fatally flawed in that she maintained that s105(1)(i) applied to a renewal.

[70] Counsel pointed to the evidence of the Inspector to the effect there had been no major problems with the Applicant's business since the last renewal. He submitted the allegations from the Objector and her witnesses of "cheap" products was not sustained.

[71] Counsel pointed to the fact that the Applicant had readily supplied all confidential information requested by the DLC. The Applicant also offered a change to its trading hours to close at 8:00pm and there would be no single sales of beer in vessels under 500ml.

[72] In summing up, Counsel for the Applicant pointed to it being having been in business for over 20 years, to Mr King having grown up in the area, and being very much aware of the

deprivation of the Community. However, he submitted, deprivation of an area, in itself, did not make the business unsuitable.

Considerations of the DLC

[73] Having considered the application together with Agency Reports and objections placed before it, together with the oral evidence and submissions received, the DLC must now stand back and determine whether the application for renewal should be granted.

[74] The DLC notes the decision in *Re British Isles Inn Ltd*⁸, referred to by the Inspector, where the Authority stated:

“Although the onus is on the company to establish its suitability, there is a reasonably high threshold to be met by the objectors in order to displace the absence of concerns by the reporting agencies. We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an applicant is unsuitable”

[75] Those comments were directed to the issue of suitability and pre-date the present Act. While we accept they have some relevance to the matter of amenity and good order, the 2012 Act makes a specific provision for the DLC to form its own opinion on that subject. It provides criteria to assist it in doing so.

[76] It follows that the DLC cannot ignore public objections simply because the Agencies have not raised any opposition to the granting of the licence. However, we have to be able to identify facts that are directly relevant from the material presented. As the Alcohol Regulatory and Licensing Authority said in *Smith v Kiwano*⁹:

“The decision of the DLC must be based upon some material that tends logically to show the existence of facts consistent with the finding and that the reasoning is supportive of the finding. The reasoning of the DLC and the inferences drawn from the facts, need to be logically available to the DLC.”

Evaluation and findings

[77] The DLC would first like to acknowledge the view of all parties that it would be greatly assisted by a Local Alcohol Plan, but Christchurch does not have the benefit of such a Plan.

⁸ Liquor Licensing Authority, 7/6/2006, Decision No 406/2006 at [39]

⁹ [2016] NZARLA 497 at [51 *et seq*]; see also *Wilson v Durga Sai Holdings Limited* [2016] NZARLA PH42 and *Kaiti Club Hotel* [2018] NZARLA 225

[78] This Licence was renewed last following a hearing, with the decision issuing on 17 December 2018. The objectors at that hearing were, similarly, Ms Cowe, Mrs Hoskin and Mr McMahon. At that hearing the objectors were also supported by the MOH and the Police. The renewal was granted with compulsory and discretionary conditions as set out in paragraph 14 above. Conditions (c) and (d) as to a Training Manual and Mr King completing his LCQ had been completed to the satisfaction of the Licensing Inspector.

[79] That decision was appealed to ARLA with a hearing taking place on 9 July 2019, with a decision issuing on 23 July 2019 dismissing the appeal and confirming that the Authority agreed with the decision reached by the DLC.

[80] The DLC notes the submissions on behalf of the Objector in relation to extended suitability and the cases referred to. Counsel for the Objector referred, in particular, to *Shady Lady* referred to above, in which Churchman J in the High Court states "*the vulnerability of an area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol related harm*". She goes on to say that the Applicant fails to reach that standard of extended suitability in four main areas: the operation of the store, the sales of cheap alcohol from the premises, the failure to recognise and address alcohol-related harm in the community; and a failure by the Applicant to take responsibility for (or even have an interest in) what happens to the alcohol once it is sold.

[81] In addressing those submissions, the DLC evaluates the application in accordance with the 'process' articulated by Gendall J in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*¹⁰, namely that:

"... when the relevant body receives an application, they must consider it against s 105 in deciding 'whether to issue a licence'. There is no presumptive position, and certainly no foregone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

So, in my view, the position can be summarized as follows:

(a) The role of the relevant body upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination on the application.

(b) In considering the application, the relevant body is fundamentally required to assess whether a licence ought to issue. In so doing, it must:

(i) consider any objections made by persons who have a greater interest in the application than the public generally;

¹⁰ [2015] NZHC 2749 at [55] and [56]

(ii) consider any opposition filed by the constable in charge of the Police station nearest to where the application is filed, a Licensing Inspector and the Medical Officer of Health;

(iii) have regard to the criteria stipulated in s 105 of the Act ...; and

(c) The relevant body must finally cross-check whether the application is capable of meeting the object of the Act..."

Criteria for issue of licences - s105

[82] In its deliberations the DLC has been mindful of the Purpose and the Object of the Act. It has evaluated the application against each of the criteria in s105 (a) to (g), (j) and (k).

[83] Considering whether the Applicant is a suitable entity to hold a Licence, the DLC notes that it has held a Licence since 1997 with no objections until the last renewal in 2018, which resulted in the Licence being renewed following Appeal.

[84] The DLC, in evaluating the evidence presented at the hearing, found no evidence to suggest that the Applicant is no longer suitable.

[85] Addressing the premise of the Objector that the Applicant is unsuitable because it sells cheap alcohol and operates in a vulnerable and deprived area. The Schedule of Pricing produced by the Applicant showed that its pricing was relevant to other businesses operating in the area. The fact that the Applicant operates in a vulnerable and deprived area raises the threshold of suitability but does not, in itself, make an Applicant unsuitable provided the sale, supply and consumption of alcohol is undertaken safely and responsibly in furtherance of the dual objects of the Act.

[86] The DLC is required to consider the pool of evidence available to it against the criteria and the objects of the Act, including that adults in New Zealand should be able to enjoy the use of alcohol in moderation, notwithstanding the harm that may result from the excessive or inappropriate consumption of alcohol.

Amenity and Good Order

[87] All parties acknowledge that the locality is one of high deprivation and vulnerability. Evidence produced by the Objector's witness, Ms Fowler, showed that the area ranks highly on national indices of deprivation, such as income, housing density, receipt of benefits, ethnicity and single parent families.

[88] Counsel for the Objector pointed to Churchman J in the High Court stated in *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd*¹¹:

“the vulnerability of an area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol-related harm”.

[89] That application was for a new Off-licence and was declined on the basis there were pockets of significant deprivation within the locality around Shady Lady’s premises and some areas of vulnerability. Here, we are dealing with a renewal where the criteria under s131 is *“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”.*

[90] The DLC accepts the compelling evidence of both school principals in relation to the effects of alcohol on the school students in their community, but, again, was unable to reach a conclusion that those problems would be reduced by the refusal to grant this particular renewal, given the relatively small quantity of alcohol sold locally from these premises in comparison with the much larger bottle stores present in the area. It is noted here that the DLC had the benefit of receiving confidential sales information from the Applicant giving a breakdown of sales between wholesale and retail. In addition, the DLC accepts the submission of Police at paragraph 21 of their submissions:

“While acknowledging the nature of the area within which the premises operate, Police are not satisfied that there is any clear nexus between the operation of the premises and any alcohol related harm arising within that locality.”

[91] While this submission was not tested at the hearing (as the Police appearance was excused), neither was any challenge raised or request made by the Objector to request further information in relation to that submission.

[92] The days and hours of trading are not excessive and, importantly, we note that the premises will not open until 10:00am after school starts in the morning. This, in itself, will help lessen any risk of exposure of children to alcohol. In addition, the closing time of 8:00pm means that the premises will not attract significant custom from patrons leaving local On-licences.

¹¹ above n 6, at [124]

[93] On the evidence before it the DLC were unable to reach a conclusion that amenity and good order would be increased by a refusal to renew.

[94] In terms of s128 of the Act, the Objector, mainly through her witnesses, did provide some valuable evidence to the DLC about the locality and the issues within it which were helpful in informing the DLC's decision.

Manner of Selling and Display

[95] Of concern to the DLC was the issue of '*dump stacks*'. This was mentioned by several witnesses and the DLC was not convinced by the explanation of Mr King that the '*dump stacks*' merely followed a delivery and awaited removal to other storage areas. The DLC therefore proposes to impose a condition in this regard, with the expectation that products delivered will be moved to storage immediately on delivery. This may require additional staff being employed on days that products are delivered.

[96] The Applicant does not stock or sell products considered to be high risk, such as Nitro and casked wine. It is expected that restriction will continue. The Applicant does not advertise or promote '*specials*'. The Applicant does not sell cigarettes and vaping products, but does stock cigarette papers and lighters. Given that cigarettes and vaping products are not sold, and the DLC having observed cigarette butts being rolled into cigarette papers at the time of their visit, it does not see the need to stock products associated with smoking and vaping. That restriction, added to the fact that the dairy next door is closing thus eliminating that source of cigarettes and vapes, may well add to amenity and good order in the direct locality.

[97] The DLC expresses its concern about the presentation of the premises and the Applicant's employee. Having a business in a deprived community does not translate to poor standards on the part of those providing services to those communities. The DLC considers the cleanliness of the premises, and the presentation of the employee does not meet the DLC's expectations. A much higher standard is expected and the DLC recommends that the Inspectorate monitor this at future visits.

Undertakings & Conditions

[98] The Applicant has offered undertakings in an endeavour to address some of the concerns of the Objector, in particular limiting the trading hours and limiting single sales in vessels under 500ml.

[99] The DLC is minded to follow the decision of the High Court in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*¹², where it was held "that there can be no realistic doubt the premises contributes to some of the alcohol-related harm in the locality", and of ARLA in *St Joseph's School Pleasant Point / Te Kura O Hata Hohepa v Singh Trading (2016) Ltd*¹³, and take a precautionary approach by reviewing the conditions placed on the Licence. Although a restriction on price was volunteered in the St Joseph's School Pleasant Point that is not the case here. However, we find the sentiment holds true. The Applicant's offer to restrict the size of the vessel, does not address the accessibility of higher alcohol single products sold at a low price, and thus increasing availability in this vulnerable community. We refer to such products as El Diablo 12% 500ml sold for \$4.99, by way of example. Regardless of the comparative pricing in other stores, we have considered the location of this store and its vulnerable catchment and, having considered the authorities submitted to us, we conclude that a restriction on pricing for single vessel sales would better minimise the risk of alcohol-related harm.

[100] The DLC noted that Mr King's evidence was that he does not interact with organisations within the local community, although he asserted his Manager did. He would do well, in that respect, to understand the Objector's concerns for the wider surrounding community, especially the concerns expressed by the two school Principals, and should continuously reflect on the responsibility placed on the Applicant in operating an Off-licence in this community.

Decision

[101] Having regard to the matters in ss105, 106 and 131 of the Act as they relate to renewal of Off-Licences, together with the evidence and submissions of the Applicant, the Agencies and the objectors, we are satisfied that the grant of a renewal of licence for a period of **3 years** subject to the following conditions is consistent with the Object of the Act.

The Licensed Premises

- (a) The premises are identified on the plan provided with the application for a licence.

¹² [2018] NZHC 1123 at [65]

¹³ above n 5

Restricted and Supervised Areas - section 147(2)

- (b) The licensed area is designated as a supervised area.

Discretionary conditions – section 116 (1)

- (c) 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:

- (i) 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.

- (d) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:

- (i) Alcohol must only be sold and supplied within the area marked on the plan submitted with the application.

Compulsory conditions – section 116 (2)

- (e) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.

- (f) Alcohol may only be sold or delivered the following days and during the following hours:

- (i) Monday to Saturday, between the hours of 10:00am and 8:00pm.**

- (g) Drinking water is to be freely available to customers, while alcohol is being supplied free as a sample on the premises.

Section 117 – Other Discretionary conditions

- (h) The following steps must be taken to promote the responsible consumption of alcohol:

- (i) The Licensee must implement and maintain the steps proposed in The Yankee Bourbon Host Responsibility Policy¹⁴ aimed at promoting the reasonable consumption of alcohol.

- (i) The Licence is also subject to the following conditions, which in the DLC's opinion are not inconsistent with the Act:
 - (i) There are to be no bulk sales or "fill your own" liquor on the premises.
 - (ii) There are to be no single sales of beer, wine, cider or spirits, including RTDs, priced at less than \$6.00 per unit or in vessels under 500ml.
 - (iii) There will be no sales of cigarettes, vaping products, or products (cigarette papers and lighters) associated with smoking and vaping.
 - (iv) No internet sales are to be undertaken under the licence.
 - (v) No transactions will take place using Afterpay or similar payment methods.
 - (vi) There will be no sale, display or storage of "dump stacks" on the floor of the premises.

Other restrictions and requirements

- (j) Section 56 – Display of signs
- (k) Section 57 – Display of licences
- (l) Section 59 – Requirements relating to remote sales by holders of off-licences.
- (m) Section 214 – Manager to be on duty at all times and responsible for compliance

[102] The licence shall be renewed for 3 years.

[103] The Applicant's attention is drawn to s259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under the Act, specifically ss46 to 63 and 231(1). The Applicant must comply with all conditions specified on a licence.

¹⁴ Attached to the application

DATED at CHRISTCHURCH this 28th day of October 2022

A handwritten signature in black ink, appearing to read 'Merelyn Redstone', written in a cursive style.

Merelyn Redstone
Chairperson
Christchurch District Licensing DLC