

Decision Number: 60G [2023] 15326

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

AND

IN THE MATTER OF AK2021 LIMITED for a new Off-Licence pursuant to Section 100 of the Act in respect of premises situated at **670 Main South Road, Christchurch** known as 'Thirsty Liquor Islington'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Committee: Mr D Ivory
Mrs M Redstone JP
Mr M Hossain JP

CORRIGENDUM

[1] In decision **60G [2023] 15326**, dated 15 June 2023, at paragraph [157], the District Licensing Committee recorded that:

Restricted and Supervised Areas - section 119

The licensed area is designated as a supervised area.

[2] However, later in the same paragraph, the Committee recorded:

Section 119: The entire premises is designated as a restricted area.

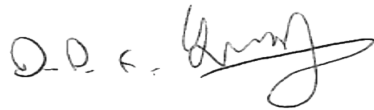
[3] In its application, AK2021 Limited had sought a supervised designation over the whole premises. Further, at the hearing there was no discussion about which type of designation should apply. As such, the above is a typographical error.

[4] Accordingly, para [157] is therefore hereby corrected by the deletion of the words on page 34 of the decision:

Section 119: The entire premises is designated as a restricted area.

[5] In all other respects the decision remains unaltered.

DATED at Christchurch this 19th day of June 2023

A handwritten signature in black ink, appearing to read 'D. D. Ivory', with a stylized flourish extending from the end.

Mr D Ivory

Chairperson

Christchurch District Licensing Committee

Decision Number: 60G [2023] 15326

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

AND

IN THE MATTER OF an application by **AK2021 Limited** for an off-licence pursuant to section 100 of the of the Sale and Supply of Alcohol Act (2012) (“the Act”) in respect of premises, situated at **670 Main South Road, Christchurch**, known as ‘**Thirsty Liquor Islington**’.

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 4 May 2023 (at Christchurch)

Chairperson: Mr D Ivory
Members: Mrs M Redstone JP
Mr M Hossain JP

Appearances: Mr A S Khurpay, Director of the Applicant
Ms P Kaur, Counsel for the Applicant
Mr M Peters, Christchurch City Councillor for Hornby - Objector
Dr L Gordon, Counsel for the Objector (Councillor Peters)
Mr M Mora – Objector
Ms L Bromley and Miss P Williams, on behalf of Medical Officer of Health, to assist
Senior Constable S Magill and Sergeant D Robertson, on behalf of the Police, to assist
Mr P Spang, Licensing Inspector, to assist

Decision: 15 June 2023

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Introduction

[1] This is an application by **AK2021 Limited** ('the Applicant') for an Off-Licence pursuant to the Sale and Supply of Alcohol Act 2012 for premises situated at **670 Main South Road, Christchurch** known as '**Thirsty Liquor Islington**'.

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

[3] The application has resulted from a change of ownership. The premises was granted a Temporary Authority on 26 September 2022. A second Temporary Authority was issued on 26 December 2022 and expired on 26 March 2023. The premises now trades under a Third Temporary Authority issued by this Committee.

[4] The premises is in a block of shops in the residential suburb of Islington.

[5] The Applicant seeks the same terms and conditions as the licence currently in force for the premises.

[6] The application for a new Off-Licence was received by the Christchurch City Council Alcohol Licensing team on 23 November 2022. The application was publicly notified on 23 November 2022 and remained on the website for a minimum of 15 working days. Two objections were received.

[7] The first objection was made by Councillor Mark Peters who is an elected member of the Christchurch City Council. The premises are within the electoral local body boundary he represents.

[8] The second objection was made by Mr Mike Mora who is a community activist and former Chairperson of the local community board where the premises are situated. He also lives in the Halswell-Islington area.

[9] This application was not opposed by the District Licensing Inspector¹, the New Zealand Police ('**Police**') or the Medical Officer of Health ('**MOH**').

[10] Before the hearing, Committee members independently undertook external site visits of the area surrounding the premises. Further, on 9 May 2023, accompanied by Mr Andrew

¹ Inspector's Report, 16 February 2023.

Campbell (Hearings Advisor), members of the Committee inspected the premises. The Premises were situated in a recently built 'L-shape' shopping block with a tavern on one end and empty premises on the other. The Committee found a neatly laid-out store which was clean and well organised. The premises included an office, separate staff room, and separate delivery dock/storage area. Cigarettes were locked in a cabinet under the counter and vape products were in a secure area behind the counter. The Committee noted the 'Nitro' product was in the lower part of a display fridge in the walk-in chiller.

[11] A hearing of the application took place on 4 May 2023. The Committee heard evidence and received written final submissions on behalf of the Applicant, objectors, and MOH.

[12] The Committee is required to have regard to both sections 105 and 106 of the Sale and Supply of Alcohol Act 2012 ('**the Act**') in forming its decision. Sections 102(4) and 102(4A) of the Act restricts objections to the matter of Applicant suitability when a premises is changing hands and no change in the conditions of the licence are being sought.

Preliminary Matters

Financial Non-Disclosure

[13] Ms Kaur sought non-disclosure of the previously provided financial information and any responses to financial questions which may arise at the hearing. No parties objected to this request. The Committee ruled pursuant to s203(5) of the Act that financial information, in hard copy or in evidence provided orally, would not be publicly disclosed to parties beyond the hearing.

Status of Objectors

[14] In her opening submission, Ms Kaur raised an objection to the status of Mr Mora who lives more than 2 kilometres from the premises. She also referred to case law on the matter.

[15] Other parties had no objection to Mr Mora being given objector status.

[16] The Committee decided Mr Mora had an interest greater than the public generally. He has a long-standing involvement in the community and a good understanding of the local area.

[17] The Committee also confirmed Councillor Peters standing as an objector.

Opening Submissions

The Applicant

[18] Ms Kaur's opening submissions for the Applicant were taken as read but she reiterated the key points. She noted that the application is for a licence for premises of the same kind as the licence currently in force for those premises. She noted a bottle store had been at the location for more than 20 years. Ms Kaur emphasised that neither Police nor the MOH were opposed to the application, nor was the Inspector, apart from a recommendation on single sales. The Committee was reminded it needed to adopt a merits-based approach². Ms Kaur said that sections 3 and 105 of the Act must be considered, while also having regard to the object of the Act.

[19] Ms Kaur stated that Mr Khurpay would provide evidence on behalf of the Applicant about single sales. The Applicant was also willing to accept a condition of no single sales of beers or RTDs under 500mls except for craft beer. No minimum price was offered.

The Inspector

[20] Mr Spang's opening submission was taken as read but he recapped the key points. He submitted that the question that the Committee had to be satisfied with was whether this application would help to achieve the safe and responsible sale, supply and consumption of alcohol and achieve minimisation of alcohol harm in accordance with the object of the Act. He also referred to the deprivation of the area, noting it was Decile 7-8 on the New Zealand Index of Deprivation (Decile 9-10 being the most deprived). Mr Spang identified this factor as being an important consideration in assessing this application. The *Shady Lady*³ decision was identified as being material in terms of alcohol-related harm and requiring a greater threshold of suitability in areas of higher vulnerability. Mr Spang submitted that a \$6.00 minimum price per unit for single sales would be appropriate and pointed to the Alcohol Regulatory and Licensing Authority ('ARLA' or 'the Authority') decision in *St Joseph's School Pleasant Point/Te Kura O Hatu Hohepa Singh Trading (2016) Limited*⁴ in support of this. In that case the applicant offered conditions relating to advertising and signage and proposed a condition on the licence regarding single sales of beer, cider and RTDs. The Inspector noted in deciding

² *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749, at [54]; endorsed in *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123, at [46].

³ *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 (28 November 2018)

⁴ *St Joseph's School Pleasant Point/Te Kura O Hato Hohepa v Singh Trading (2016) Limited* [2021] NZARLA 123

that matter the Authority agreed such a condition was appropriate in the location, and consistent with objective of Act.

Police

[21] Sergeant Robertson took the opportunity to outline Police enquiries undertaken in all applications generally. Police processes were explained from initial consideration of a Temporary Authority application through to substantive applications. Sergeant Robertson outlined the information sought as part of their enquiries included: the Sale and Purchase Agreement; details relating to the finance of a business; and the applicant's financial information. Also, there is a focus on any links (including as a previous tenant or employee) with Nekita Enterprises Limited (**'Nekita'**) because of the recent ARLA decision⁵. Police seek to satisfy themselves no concerns arise from the information provided by the Applicant and apply the same consistent process in each case. In the current matter there were no concerns for Police, and they are not in opposition to the issuing of a licence.

[22] Police noted the narrow framing of grounds for objection in the current matter as only relating to the suitability of the Applicant. They expressed concern that the objections in this matter suggested that the director of the Applicant was unsuitable simply because he had been employed by Nekita. The Police stated that Nekita had employed many migrant workers over the years, many of whom have since gained residency and some who had gone on to purchase their own businesses. They said the Objector's concerns were a matter that the Committee would have to determine on.

Mr Mike Mora – Objector

[23] Mr Mora stated his objection was around the suitability of the Applicant. He focused on Mr Khurpay's association with Nekita and its exploitation of workers. A further concern was community vulnerability. A symbol of this vulnerability was identified as the Alpine View Holiday Park (**"the Holiday Park"**). The Holiday Park is situated behind the retail block in which the Applicant's premises are located. Mr Mora spoke of concerns with this premises and the effect it has on the residents of the Holiday Park. He also reemphasised the vulnerability of the surrounding area.

⁵ Christchurch City Council Alcohol Licensing Inspector v Nekita Enterprises Ltd [2021] NZARLA 139

Dr Liz Gordon (for Councillor Mark Peters - Objector)

[24] Dr Gordon's opening submission was taken as read. She highlighted that Mr Khurpay has a background in the Christchurch alcohol industry and learnt his trade from Mr Harjit Singh, a director of Nekita. Dr Gordon stated her concerns around the suitability of the Applicant on three factors: his liquor store experience, his relationship with Mr Singh, and, that he sells high alcohol by volume, low-price beer, Nitro, and cigarettes and vapes. Dr Gordon concluded by saying that the reason Councillor Peters had objected was the fact that Mr Khurpay presented himself as a moral, ethical, and experienced person, but his actions did not match this.

Evidence

Mr Khurpay – for the Applicant

[25] Mr Khurpay read his brief of evidence in full.

[26] He outlined his employment history, including: a variety of roles at Pak'nSave Riccarton; as Duty Manager at Super Liquor Woodham Road (**'Woodham Road'** or **'the Woodham Road store'**); and, as an Event Organiser at the New Zealand Sikh Society, South Island.

[27] Mr Khurpay addressed the well-publicised illegal work practices of Mr Singh at Nekita. He denied any knowledge of these while working there, stating he only became aware as a result of newspaper articles and when Immigration New Zealand declined his visa application due to concerns about Mr Singh. As a result, he found another job, which he was unable to take up because of the COVID-19 pandemic. He returned to work at Nekita as it was a condition of his visa but sought and received the support of both the Mayor of Christchurch and MP Ruth Dyson to secure residency.

[28] Mr Khurpay outlined his attempts to purchase a bottle store. He spoke of entering a previous sale and purchase agreement for the Woodham Road store from Mr Singh which did not proceed after he withdrew his licence application due to a large number of public objections. Mr Khurpay then spoke about his purchase of this business.

[29] Mr Khurpay is seeking the same terms and conditions of the previous operator. He provided the Committee with an insight into the demographics of customers and peak sale times during the day.

[30] With respect to addressing the concerns of objectors, Mr Khurpay referred to learning about the alcohol trade under Mr Singh at Woodham Road. He reported meeting both objectors to discuss their concerns. Mr Khurpay also noted that financial information had been provided to the Inspector and included details about where funds for the purchase have come from. He also asserted that no links to Mr Singh existed other than as his previous employer.

[31] Mr Khurpay stated he only ever followed the law and rejected the view he should be tainted due to a former employment relationship with Mr Singh. He said his experience began with Pak'nSave not with Mr Singh noting he fully understands the responsibilities of holding a duty manager's certificate and had never failed a controlled purchase operation (CPO). Mr Khurpay had also worked for three weeks at the Islington store prior to purchasing it to gain an understanding of its operations.

[32] Mr Khurpay was clear that the sale of cigarettes was not an illegal activity. He noted they were available at a variety of local retail outlets. He talked about his staff training and sale practices concerning cigarettes, including the resources used. Mr Khurpay outlined staff compliance with policies and practices.

[33] Mr Khurpay clearly asserted the law does not restrict single sales of beer but does not encourage irresponsible sales of beer. He referred to other local outlets which had much lower prices than his. Mr Khurpay said he would not object should the Committee impose a condition on the single sales of beer.

[34] Mr Khurpay also explained the Applicant's advertising policies. He stated that 'head office' was responsible for all direct advertising. He further noted that Thirsty Liquor was one of the biggest franchises in the country. He said no products were displayed outside but there was some branding on the bollards in front of the shop.

[35] Mr Khurpay spoke of staffing numbers, noting one full-time and two part-time duty managers, although one had recently resigned.

[36] Mr Khurpay concluded by expressing a willingness to work with the local community not against it and was seeking the support of local customers.

Cross-examination - Inspector

[37] Mr Spang outlined the level of scrutiny in this matter given Mr Khurpay's previous employment relationship with Mr Singh. Mr Khurpay was asked about his participation in a

protest outside the Christchurch Court building supporting Mr Singh and what he had hoped to achieve. He replied that he was trying to keep his job and support his old friends and colleagues as he thought the employees had not been fairly considered. When asked, Mr Khurpay acknowledged the deprivation of the area but said he was a responsible business owner. In response to questions about the Holiday Park, Mr Khurpay said he did not consider there to be any issues because it is behind the premises. He did note it was close, but that it was not in sight. Mr Khurpay also said he was aware of the nature of occupants at the Holiday Park.

[38] Mr Khurpay acknowledged that minimum prices on alcohol would minimise harm. He explained that he sold single beers but referred to other local outlets selling them at lower prices. Mr Khurpay said no longer sold single RTDs or beers under 500mls. Mr Khurpay accepted that there could not be a blanket introduction of a single sales policy and new licence and renewal applications presented an opportunity to introduce such a condition. He noted that he would follow the law regarding single sales and would adhere to any changes or conditions deemed necessary.

[39] When questioned, Mr Khurpay acknowledged that a minimum price on single sales of beer would have little effect on overall sales.

Cross-examination – Medical Officer of Health

[40] Ms Bromley noted Mr Khurpay was granted a visa in 2020 and was eligible to apply for permanent residency on 29 December 2022. He was asked about the effort that went into applying for permanent residency. Mr Khurpay provided a detailed list of the requirements of a visa application, including: the provision of job offers; work experience; evidence of relevant study; expensive visa costs; medical fees; and police clearance. He then explained the residency visa points system. He explained that with the right job offer a pathway existed subject to being deemed suitable.

[41] Ms Bromley asked about the address used on the application. Mr Khurpay explained the address was that of the Gurudwara Singh Sabha (Sikh Temple).

[42] When asked, Mr Khurpay said that very few customers came from the Holiday Park.

Cross-examination - Police

[43] In response to a question from Senior Constable Magill Mr Khurpay said he was the one who set prices, not Thirsty Liquor which was primarily responsible for promotions.

Cross-examination - Mr Mora

[44] When asked by Mr Mora how he had reduced single sales, Mr Khurpay said, since taking over the business, he had stopped selling single RTDs and his prices were higher than other stores. He also noted most craft beers had a minimum price of around \$12.00.

[45] Mr Khurpay was asked by Mr Mora about his residency status and that of his employees. He said he and his other staff were all permanent residents. Mr Mora also had Mr Khurpay confirm that the distance from the Holiday Park to the premises was only about 100 metres.

[46] Mr Mora asked how Mr Khurpay had been able to finance the purchase of the business. Mr Khurpay told the Committee that all the monies had come from working full time and saving his earnings since he started working in New Zealand in 2011. He reiterated that all financial material relating to these savings had been provided to the Inspector and the Police.

[47] Mr Mora further asked how someone working in, what he considered, a low-paying job and having outgoings such as rent and other expenses was able to save enough money to be able to purchase a business such as this. Mr Khurpay responded by saying he was working a minimum of 50 hours a week and kept expenses low by flatting with others. In summary, Mr Khurpay stated the purchase price was attributed to savings made, vendor finance and bank loan. The vendor finance related to stock.

[48] Mr Mora expressed concern of exploitation of migrant workers and sought Mr Khurpay's views on this. Mr Khurpay noted that there are laws relating to this and all the staff he employed were permanent residents. He said he would be happy to employ someone from the Holiday Park if they were eligible.

Cross-examination - Dr Gordon (for Councillor Peters)

[49] Dr Gordon took Mr Khurpay through his CV. She referred to his work at Pak'nSave which commenced in 2011. He confirmed he started part time (when he was a student), was then promoted to supervisor, and then assistant night fill manager and then finally night fill manager. Mr Khurpay explained he was responsible for the movement and organisation of stock in the shop. When asked about his work as an alcohol manager at Pak'nSave Mr Khurpay outlined

his roles and responsibilities. He covered for the Liquor Manager when they were on leave, and on other occasions he worked alongside them. Mr Khurpay said he worked a minimum of 10 hours a shift, five days a week. Following this, he went to work as an event organiser at the Sikh Temple before going to work for Mr Singh in 2017.

[50] Mr Khurpay explained about transferring from the Pages Road Super Liquor, where he was employed for approximately one month, to Woodham Road. This latter role was as store manager, or 'head honcho' as described by Dr Gordon. There was an office at the Woodham Road store which Mr Khurpay was there to deal with accounts and payments, but he was not involved with this. At this store he was responsible for two full-time and one part-time staff members. Mr Khurpay said he was unaware of any employees being exploited at Woodham Road or other sites as all accounts and payments to employees were dealt with by the office. Mr Khurpay said he had no idea of the bad employment practices and behaviours present at other Nekita outlets as he was a store manager, and he was doing his job.

[51] Mr Khurpay explained the first he knew of Nekita's bad employment practices was in a newspaper article and then a subsequent letter from Immigration New Zealand declining his visa application on 19 February 2020.

[52] When he found out about these employment practices, Mr Khurpay sought other employment. He received a job offer from a Rakaia liquor outlet on 28 February 2020, but due to the COVID-19 pandemic the offer was retracted.

[53] On 7 April 2020, a letter in support from Ms Ruth Dyson, MP, was provided to Mr Khurpay in his efforts to secure residency in New Zealand. At the time he was still employed by Mr Singh at Woodham Road. It was explained that he stayed working at Nekita due to explicit conditions in his work visa. Dr Gordon said Ms Dyson's letter was based entirely onto Mr Khurpay's service to the Sikh community. She asked how owning a liquor store helped to service the Sikh community. Mr Khurpay explained that while Sikhism is highly opposed to the consumption of alcohol, it is not against the law.

[54] During Dr Gordon's questioning, the Committee sought clarification about the employment offer referred to in Ms Dyson's letter. The Committee had understood the offer of employment had lapsed in March 2020, yet was explicitly referred to in the letter from Ms Dyson which was dated 7 April 2020. Also, at this time the Applicant was still employed at Woodham Road. The responses provided by Mr Khurpay were unclear and confused, even with the support of Counsel and helpful questioning by the Committee. However, the evidence

does suggest the job offer was still on the table when Ms Dyson was approached. Mr Khurpay stated the 'misunderstanding' reflected in the letter was attributable to Ms Dyson and not himself. It was asserted the employment offer was still valid when the letter was drafted and signed but was later withdrawn as the COVID-19 pandemic continued.

[55] Dr Gordon asked further questions around Nekita's exploitation and whether a skilled manager should know if the owner of a business was engaged in such practices. Mr Khurpay reiterated that he was an employee doing his job, and when he did ask Mr Singh about the allegations, he was told that it was being sorted out.

[56] Dr Gordon came back to questions relating to the consumption of alcohol within the Sikh community. Mr Khurpay noted the religion says to stay away from it, but some Sikhs still choose to drink. He reiterated that it was not against the law.

[57] Dr Gordon referred to the Applicant's proposed purchase of Woodham Road in 2021. Mr Khurpay was asked if it had occurred to him that the public may not look favourably on a new owner of a store that was closing because the parent company was in trouble. Mr Khurpay's response was that he decided to withdraw the application because his business plans were derailing, and he was set to get married in India later in the year. The decision was made to withdraw the application and start from scratch after the wedding.

[58] When asked if he felt he would be tainted as having similar business practices as Mr Singh, Mr Khurpay said he did, but expressed that he had a sole focus on business and was working within the law. Mr Khurpay said he did not know that Mr Singh was selling off businesses as he was at risk of losing stores. His intention was to stand on my own feet and run his own business.

[59] In response to a question from the Committee, Mr Khurpay initially denied or sought to minimise bad employment practice by his former employer as not necessarily being correct or accurate. He continually referred to these employment practices as being "*according to*" or "*presented by the reports*". When he was specifically referred to the ARLA decision in *Nekita*, Mr Khurpay said he knew that Mr Singh had taken it to the High Court seeking a stay on the decision. Mr Khurpay denied to the Committee that his participation in the protest outside the Court building was to show his backing for Mr Singh but was an act of support in concern for his and his colleagues' on-going employment, especially in light of the difficulty of finding other employment at that time.

[60] Dr Gordon asserted that Mr Khurpay had not accepted that Nekita had done anything wrong. She raised concerns that no clear acknowledgement had been given by Mr Khurpay, who had supported his former employer at a protest and only referred to Mr Singh's wrongdoing as being "according to reports". After some assistance from Counsel, Mr Khurpay eventually acknowledged the exploitation and employment breaches, and inaccurate record keeping.

[61] Dr Gordon proceeded to raise questions around the purchase of the Islington premises. Mr Khurpay explained he decided to purchase the business based on the fact the store had been newly built; good customers; and, that he worked as an employee there first to learn about the business. He referred to a period of due diligence when he looked at other stores before settling on Islington. Mr Khurpay had a clear focus on alcohol stores because of his previous experience. He expressed an understanding as to the level of scrutiny he was under due to the questions of suitability a new licence generates. Mr Khurpay explained why suitability was important and how both the right knowledge and experience were material. Harm minimisation was explained in response to questions posed to Mr Khurpay. He acknowledged that harm minimisation was at the heart of Act, noting harm can be increased if he is not a responsible licensee with good knowledge about the environment and rules relating to the sale and supply of alcohol.

[62] Dr Gordon focused on the Applicant's apparent lack of understanding around licensing, especially in the Christchurch context. She noted that there was "*an expectation that certain things happen: including removing sales of cheap cans, Nitro, sales of cigarettes, cigars, and vapes*". Mr Khurpay stated he understood these concerns, stating again that he worked within the law. Dr Gordon was concerned at the lack of proactiveness by the Applicant in addressing concerns over and above adhering to the law.

[63] Dr Gordon noted that the opening hours sought were 9.00am to 10.00pm – 91 hours per week. She sought confirmation of the store opening at 10.00 am with a variable closing time, with Mr Khurpay noting a Friday closing time of 9.30pm. Mr Khurpay confirmed his weekly work pattern of 35 to 40 hours with the other full-time employee working 30 to 38 hours. He also confirmed a part-time employee also worked a total of 7 or 8 hours a week.

[64] In response to further questioning on hours by Dr Gordon it was concluded, based on the provided information, that there would only be one employee at the premises for 80 of the 91 hours that the store was open. This assertion was rejected by Mr Khurpay, who stated his wife was also a staff member working 15 to 20 hours a week as assistant. He restated that

one staff member on site alone would be unusual. Dr Gordon then asked about how statutory breaks were taken by employees. Mr Khurpay said that a 10-minute break could be taken and the process for when an employee was working on their own was explained (the premises has a sign to indicate the store is closed if an employee is on a break). Dr Gordon highlighted ARLA's concerns that employees are opting out of taking legal breaks. Mr Khurpay said that breaks are available for his employees and that they are taken.

[65] The Committee asked the Applicant to provide rosters to be considered as part of its decision-making process. These were provided by Counsel for the Applicant with the final submission. Mr Khurpay again provided an assurance to the Committee that all breaks are taken and referred to the designated staffroom. Dr Gordon then enquired if Mr Khurpay had plans to acquire further businesses. Mr Khurpay said he was happy with one business at the moment, but did not rule it out in the future.

Questions from the Committee

[66] Mr Khurpay confirmed that he attends the same Sikh temple as Mr Singh.

[67] Mr Khurpay was asked about business practices and models learnt working for Mr Singh at Woodham Road. Mr Khurpay told the Committee he was responsible for the day-to-day operations of the store, including the budget. He noted that the store followed Super Liquor's promotion and discount plans. Mr Khurpay also said weekly reports on sales, timesheets and profits were sent to Mr Singh. Mr Khurpay explained that Mr Singh visited Woodham Road from time to time but never instructed him what to do.

[68] The Committee then asked a range of financial questions of Mr Khurpay about his savings and accumulation of funds for the purchase of the business. Mr Khurpay said he had received no financial assistance or support from Mr Singh in the purchase of the business. Once again, he restated that financial records were all provided to the Inspector.

[69] Mr Khurpay was asked about his current employment practices. He said he was paying good money to full-time staff according to their skills and experience. The Committee was told that an Incident Book was in use and entries were made on a regular basis. Mr Khurpay said that he had training workshops in place, there was a manager's guidebook, and host responsibility courses were undertaken.

[70] Mr Khurpay was asked about his work responsibilities and a particular employment reference provided by Pak'nSave. The Applicant confirmed he obtained a manager's

certificate in 2014 while employed by Pak'nSave. He became a night-fill manager and then covered for the duty manager when they were unavailable. The Committee asked why Mr Khurpay had accepted a reference which did not acknowledge his experience with the sale of alcohol when his goal was to seek a role in the alcohol industry. No clear response was provided other than reference to his primary role at the organisation as night-fill manager/duty manager. Mr Khurpay was also asked why a witness or referee was not provided to affirm his work and skills gained while at Pak'nSave.

[71] The Committee asked questions about the role held by Mr Khurpay at Woodham Road. Once again Mr Khurpay referred to his role as store manager, having no knowledge of remuneration or the terms and conditions of those he supervised. He confirmed his responsibilities were budgeting and ordering stock. He did acknowledge advertising for and interviewing potential employees but denied any awareness or involvement in the final part of the employment process, which was handled by the office. Mr Khurpay's recruitment role ended once he had identified the preferred candidate.

[72] When asked by the Committee, Mr Khurpay confirmed existing staff had been retained when he purchased the business. The Committee raised questions around Mr Khurpay's qualification as it appeared to relate to aviation and travel training. He said this was just the name of the institution (Aviation and Travel Training Group (Avonmore Tertiary Institute)) and explained his qualification was in business management.

[73] In response to a question, Mr Khurpay stated he does not actively break open cartons to sell in smaller amounts, but if a carton is damaged, he would sell as six packs.

[74] Mr Khurpay's relationship with Mr Singh was explored by the Committee. It was noted that Mr Khurpay had claimed no connection whatsoever with Mr Singh in his brief of evidence. This statement gave the Committee the clear impression the only link between Mr Khurpay and Mr Singh was as employer and employee. However, it was revealed they both attend the same temple. The Committee expressed concern over this matter, as it indicated a lack of candour and raised questions whether this was the only instance of misrepresentation.

[75] Mr Khurpay showed awareness of harmful products and pointed to his approach to the sale of Nitro as an example. When asked by the Committee, Mr Khurpay said he understood that by issuing him a licence he stood in place of the Police in looking after the community in relation to the sale, supply, and consumption of alcohol.

[76] The Committee formally requested a copy of the weekly staff roster, wage records, and pages from the Incident Book. These were provided following the hearing. Mr Khurpay agreed to a condition that 'After-Pay' will not be introduced to the business (not currently in place).

[77] The Committee asked Mr Khurpay what he teaches his staff about minimising alcohol harm in the community, He responded by outlining the responsibility to control the supply of alcohol. To support this, he provided a recent example. An intoxicated person had driven to the shop to buy alcohol. Mr Khurpay called a taxi and instructed the person to leave their car. He explained this was an example of good care and reinforces the business focus on minimising and reducing harm from excessive use of alcohol.

[78] The Committee also asked to be provided with copies of bank statements showing salary payments, transfers to savings and living expenses. The Committee indicated this information would provide a level of comfort.

Re-examination by Ms Kaur

[79] Ms Kaur asked Mr Khurpay to confirm the details of his academic transcript and qualification as a diploma in business management and marketing. Clarification was given about his Pak'nSave work experience and letter of reference. Mr Khurpay confirmed obtaining his manager's certificate in 2014. He said the process to get this certificate required a support letter from the employer and an interview with a Licensing Inspector to access his qualifications and skills and ensure a full understanding of the role of a duty manager.

[80] Mr Khurpay was asked about questions addressed to him around how selling alcohol is a service to his religious community. He noted his service to the Sikh community is voluntary, but he still had expenses such as food, power, etc which needed to be paid. Mr Khurpay confirmed he still needed a job or to own a business to pay these.

[81] Ms Kaur reconfirmed, through questioning, Mr Khurpay's role at Woodham Road as a store manager who managed and carried out the sale and supply of alcohol properly. Mr Khurpay confirmed he was not a shareholder or Director of Nekita Enterprises.

Mr Mike Mora – Objector

[82] Mr Mora made a statement, based on his initial letter of objection to the Committee. His concerns relate to the need for bottle store in the area, and the issue of host responsibility which is in doubt. Mr Mora expressed his view on the vulnerability of those who live in the local

community, specifically those living at the Holiday Park. He sees the area surrounding the bottle store as more semi-rural than an industrial area.

[83] Mr Mora outlined his experienced in opposing other applications, concerns around the need for and restrictions on bottle stores, and the suitability of persons applying for licences. In this case the time spent by Mr Khurpay in the employment of *Nekita* and his learnings were identified as a concern, especially as Mr Khurpay said he did not know the conditions any pay of the employees he was managing. This, therefore raised the question as to whether he is a suitable person, according to Mr Mora.

Questions from the Committee

[84] The Committee asked Mr Mora whether it would be helpful if owners of bottle stores had a greater engagement with the local community. Mr Mora said a lot of small businesses do – but perhaps not the same for a bottle store. Mr Mora said business owners need to know their community and noted that there are some “*pretty vulnerable*” people living in the Holiday Park.

[85] The Committee also asked if the Applicant’s concessions had altered Mr Mora’s position on the application. He noted it was a step in the right direction, but he was not satisfied. Mr Mora also referred to the need for a Local Alcohol Policy (LAP).

Cross-examination by Ms Kaur

[86] Ms Kaur asked Mr Mora about Sergeant Robertson’s explanation of Police enquiries made of new applicants. Mr Mora accepted that in this matter, the Police had found no concerns with the Applicant. Mr Mora also accepted Mr Khurpay’s evidence relating to his good character and management and sales practices.

[87] Questions were asked of Mr Mora around the Christchurch Alcohol Action Management Plan. In particular that neither the Council Inspectors, nor the Police nor the MOH, who are all partnering agencies to that Plan, oppose this application. This was agreed by Mr Mora. It was confirmed that there had been a bottle store at the current location as long as the Holiday Park - for at least the past 20 years. Mr Mora agreed that the outlet was set back from main road.

[88] Ms Kaur asked questions of Mr Mora about vulnerability within the community. Mr Mora indicated familiarity with the local Community Board Plan 2020-22 (**Exhibit 1**). Mr Mora accepted that under the priorities of the Plan there was nothing about limiting access to cigarettes, vaping products or alcohol.

[89] Mr Mora was provided an opportunity, by the Committee, to provide a concluding statement. Mr Mora said he was aware of a pre-existing bottle store, but his concerns about this particular application were suitability of the Applicant given his associations with *Nekita* and the vulnerability of the community. The Applicant as a new person coming into area needs understanding of vulnerability in area and Host Responsibility is required.

[90] Ms Kaur reported after lunch break that Mr Khurpay was happy to accept the wording in the Inspector's submission at paragraph [21] from Singh Trading case⁶ about single sales as a condition to any new licence:

That applicant will not make single sales of beer, cider or RTDs of \$6.00 value or under per unit. This value enables the applicant to make single sales of bottles of craft beer.

[91] Further, the Applicant agreed to not sell Nitro or other alcohol-mixed energy drinks. However, regarding the sale of cigarette, vaping products and cigars, Counsel for the Applicant relied to the ARLA decision in *Riccarton Bush Kilmarnock Residents' Association Inc v Christchurch Liquor Limited*⁷ where the Authority did not make a condition on the sale of such products as there was no justification for taking away that discretionary decision from the management of a store. On this basis, the Applicant would refuse such a restriction on its licence.

Councillor Mark Peters – Objector

[92] Councillor Peters was invited to sum up his concerns as outlined in his objection and brief of evidence. The main reason for his objection was concern that Mr Khurpay was fully aware of his obligations as an Applicant. The Committee needed to be satisfied with the judgement of the Applicant because of his engagement with *Nekita* Enterprises. He noted that the Applicant claims he was not aware of what was going on, but Councillor Peters said it was his presumption that he should have been aware of the employment conditions operating around him.

Examination by Counsel - Dr Gordon

[93] Dr Gordon asked Councillor Peters about vulnerability of the area, which was supported by statistical evidence. Councillor Peters agreed with Dr Gordon's assertion that as

⁶ Singh Trading (2016) Limited (2021)NZ ALRA 123

⁷ *Riccarton Bush Kilmarnock Residents' Association Inc v Christchurch Liquor Limited* [2023] NZARLA 18 at para [167]

vulnerability of an area increased so does the level of suitability of the applicant. He made specific reference to the Holiday Park and was not convinced from evidence presented that Mr Khurpay was sufficiently aware of the local community. He wanted to see more connection to the community before a licence was granted.

[94] Councillor Peters was asked about a meeting in January 2023 with Mr Khurpay, where finances of the outlet were discussed. He was asked about a question posed to the Applicant, whether Mr Singh was likely to be involved in purchase of the store, to which Mr Khurpay responded he could be aiding. Councillor Peters noted this was his recall of the meeting. The Committee stated this line of questioning was unfair as it was not put to the Applicant for a response.

Cross Examination by Counsel – Ms Kaur

[95] Ms Kaur asked a series of questions about the roles occupied by Councillor Peters and confirmed generalised details relating to the Islington premises. Councillor Peters confirmed no Police or MOH objections to the suitability of Mr Khurpay and accepted Police investigation processes into the Applicant's finances.

[96] Councillor Peters confirmed he had heard the conditions agreed by Mr Khurpay on single sales and no sales of Nitro in the future. Ms Kaur noted the previous operator sold singles under the licence and the Holiday Park had existed in that locality for over 20 years, which Councillor Peters accepted. He was also asked to confirm the evidence provided that Mr Khurpay worked as Duty Manager at PaK'nSave, has no criminal convictions, provided evidence of never having a licence suspended or cancelled, never sold alcohol to a minor. Councillor Peters agreed to these, and the assertion put by Ms Kaur that since September 2022 neither the Inspector nor Police had raised any concerns over the Applicant's operation of the premises.

[97] Ms Kaur referred to the statement of Councillor Peters that Mr Khurpay knew Mr Singh was cheating his own staff. He responded by stating the matter raised concerns as of how good a manager he was. However, it was agreed this was a presumption by Councillor Peters.

[98] Councillor Peters was asked if he had seen the Hornby Ward profile information provided by the Inspector in his report. He confirmed he had and that he was Councillor for the ward which included Riccarton Racecourse, Templeton Golf Course, Ruapuna Speedway. Two large retail malls were also identified by Ms Kaur as being in the local area – Dress Mart and Hornby Hub. Ms Kaur pointed Councillor Peters to the Community Board Plan 2020-2022

and the priorities for the Hornby Ward. Ms Kaur said it only identified two priorities – the Hornby Centre Project and local road network improvements. Councillor Peters confirmed this and that there was nothing in the plans about limiting access to cigarettes, tobacco products, vapes and alcohol. However, Councillor Peters took the opportunity to explain community board plans which did not provide the full picture of all priorities. He said the Board always has an underlying goal of minimising harm to its residents.

Questions from the Committee

[99] The Committee asked the Councillor if Mr Khurpay were to engage more fully with the community, whether this would provide more reassurance to him. He explained that if the Applicant was more involved in the local community it would be positive and suggested sports team sponsorship. The Committee suggested sport sponsorship might not be appropriate but supported other community sponsorship.

[100] Councillor Peters confirmed the premises was quite well hidden from the road and he indicated a preference for not seeing large placards/flags from the road. No problems in terms of store visibility were raised but he did indicate an issue with another premise in the area which was brightly coloured.

[101] Councillor Peters was asked if his view on the suitability of Applicant had changed in light of the agreed conditions as recommended by the Inspector. He said it did but still had doubt about the distancing of the Applicant from the poor practices of his previous employer. Further, Councillor Peters said the Holiday Park was home to some of society's most deprived characters who find themselves living in far less-than-ideal circumstances. Councillor Peters concluded by saying these people are some of the most vulnerable members of society and we do not need to put harm in their way by giving them easy access to alcohol.

Committee Questions to the Tri-Agencies

[102] The Committee asked the Inspector how many checks were made on a new operator in a probationary year. The Inspector stated it varied depending on things like location, feedback from the community and other concerns they want to check up on. On this basis, it could be a couple of times or could be as many as four or five times. The Committee was informed that when an inspection is made, the Inspectors look at staff rosters will but not wage records. It was noted this practice may change in the future.

[103] The Police were asked to comment on their alcohol related concerns in the area. Police stated there had been a decline in alcohol related calls for service to the area. Reporting for this year to 6 April 2023, two alcohol related incidents were recorded, less and from April 2022 to April 2023 there were 16 incidents. Police visited the premises two months ago for a compliance check and no issues were identified.

Closing submissions

Closing Submissions of the Inspector

[104] Mr Spang, the Inspector, filed his closing submission on 5 May 2023. He referred to his report of 16 February 2023, where he requested a public hearing so that the association between the Applicant and Mr Harjit Singh could be fully clarified.

[105] In his report, Mr Spang recommended that the following condition be imposed:

“There are to be no single sales of beer with an alcohol percentage of 5.5% or greater, in vessels 450ml or greater, priced at less than \$6.00 per unit.”

However, Mr Spang noted that during the hearing the Applicant agreed to the following condition:

“The applicant will not make single sales of any beer, cider or RTD’s of \$6 value or under per unit.”

[106] The Inspector also noted the Applicant agreed not to sell ‘Nitro’ and associated products.

[107] In the view of the Inspector, Mr Khurpay had been thoroughly examined at the hearing, including on matters regarding Mr Singh. The Inspector believed Mr Khurpay was naïve when it came to Mr Singh’s actions, but the association between the two was not enough for the inspector to oppose this application. The Inspector supported the licence on the above-mentioned conditions.

Closing Submissions of the MOH

[108] Ms Bromley, on behalf of the MOH, filed a closing submission on 7 May 2023. She reiterated that the MOH is not opposed to this application but supported the additional conditions agreed to at the hearing.

[109] Ms Bromley noted that Mr Khurpay had been put through more character assessments than most Licensee applicants before the Committee, due to the high number of character interviews he was required to attend by Immigration New Zealand.

[110] Ms Bromley said that Mr Khurpay's naïve decision to attend the protest outside the Christchurch Court Buildings would put him under intense scrutiny during the licence renewal process, should this application be approved.

[111] The MOH supported more community involvement from AK2021 Limited but did not support the notion of potentially supporting a sports team as this may constitute a breach under s237 of the Act.

[112] In conclusion, the MOH submitted that Mr Khurpay had provided enough evidence to satisfy them he is a suitable person to hold an off-licence.

Closing Submissions of Councillor Peters

[113] Dr Gordon filed her final written submission on 12 May 2023. She reiterated that Councillor Peters argued that the Applicant was not suitable to operate a liquor store in a deprived area.

[114] Dr Gordon broke Councillor Peters' closing submissions down into four parts:

(a) The Committee must use the extended suitability framework in determining this application given the high deprivation of the area and proximity to sensitive sites, including the Holiday Park which is home to a number of people living in emergency housing.

(b) The Applicant is not suitable to hold an alcohol licence in the area, primarily due to his continued support of Mr Singh even in light of his poor employment practices, and his lack of acknowledgement Mr Singh should have lost his licences.

(c) While able to demonstrate he can safely and responsibly sell and supply alcohol, Mr Khurpay does not know how to meet the second 'arm' of the object of the Act in minimising the harm caused by excessive or inappropriate consumption of alcohol.

(d) While he may be a nice person, he has been blind to Mr Singh's shortcomings, is naïve and is fixated on following rules rather than understanding and trying to minimise

harm. According to Councillor Peters, he shows little of the understanding one would expect of permanent residents in the skilled migrant category.

[115] Dr Gordon acknowledged although it should be declined, it is likely a licence will be granted by the Committee. If that is the case, and to ensure the premises operates without harm, Dr Gordon suggested stringent conditions will be needed as the Applicant has shown little initiative in reducing alcohol harm on his own account.

[116] Dr Gordon provided a view as to law in this matter. As Clark J observed in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* (“*Lion Liquor*”)⁸ concerning an application for renewal of a licence:

“There is no presumption that an application for a licence will be granted ...”

[117] She also referred to *Patels Superette 2000 Limited v Muir*⁹ where the Authority stated:

“[W]hile there is no onus of proof on an applicant, it does have an evidential burden and that it is for an applicant to put its best foot forward if it expects a DLC to favour the application over opposition which is itself supported by evidence.”

[118] Dr Gordon also stated that there is no presumption that a licence will be granted which, in her view, affirms the statutory framework of the Act which allows licences to be granted for up to three years and to be objected to at each renewal. The Committee must make a positive finding for the licence to be renewed.

[119] The deprivation and vulnerability of the area was also raised. In *Shady Lady*, Churchman J in the High Court confirmed the ARLA decision:

“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”¹⁰.

⁸ *Medical Officer of Health (Wellington Region) v. Lion Liquor Retail Limited* [2018] NZHC 1123 at [46], citing *Christchurch Medical Officer of Health v. J & G Vaudrey Ltd* [2015] NZHC 2749 at [54].

⁹ *Patels Superette 2000 Ltd v Muir* [2019] NZARLA 75 at 228.

¹⁰ *Lower Hutt Liquormart Ltd v Shady Lady Lighting* [2018] NZHC 3100 at [126]. See also *Shady Lady Lighting v Lower Hutt Liquormart Ltd* [2018] NZARLA 198. See also *Two Brothers Wholesale Limited v MOOH and NZ Police ARLA* [2021] NZARLA 32.

It was not disputed during the hearing that the Holiday Park was occupied by many vulnerable persons within the community with accommodation and other needs.

[120] Dr Gordon also referred to the suitability of the Applicant. She pointed to the fact that he had denied any knowledge of the poor employment practices of *Nekita* at the hearing even though the Woodham Road store where he was the Store Manager for Mr Singh was implicated in these practices and eventually had its licence cancelled. She also noted that he had attended the protest outside the Christchurch Court building.

[121] Dr Gordon submitted that if the licence should be granted, the Committee should exercise its powers with respect to sections 116 and 117 of the Act and impose discretionary conditions. These should include:

- (a) no large, bollard sleeves or sandwich boards outside the premises nor advertising placement on the exterior of premises;
- (b) vapes and cigarettes not to be displayed and locked in secure cabinet;
- (c) no sales to persons in school uniform regardless of their ability to produce an ID;
- (d) no single sales of beer wine, cider, or spirits including RTDs priced at less than \$6.00;
- (e) no sales of alcohol-mixed energy drinks;
- (f) no single sales of RTDs, shots, or premixed shots;
- (g) no sales of cask wine no sales of cider products at more than 7% ABV;
- (h) Alcohol can only be sold in the packaging provided by the wholesaler. There will be no sales of products from broken packages;
- (i) no sales made using any form of "after pay"; and,
- (j) no remote sales.

Closing Submissions of the Applicant

[122] Ms Kaur's final written submission was received on 16 May 2023. She noted Mr Khurpay has nine years' experience in the alcohol industry, having previously worked as a duty manager in an Off-Licence. He has no criminal record. Ms Kaur reasserted the lack of opposition from the agencies and concessions made by the Applicant during the hearing.

[123] Ms Kaur also took the opportunity to remind the Committee of its role. The evaluation of the current application involves the exercise of judgement informed by evidence.¹¹ The view of the decision maker must be supported by evidence¹² and what is required is no more than that the decision-maker is reasonably satisfied of any evidence put to it, having regard to the nature and consequences of the facts put to it.

[124] With respect to suitability Ms Kaur states that in order for the Committee to refuse an Off-Licence on the grounds of suitability it must be satisfied on the balance of probabilities that the character of the Applicant has been shown to be such that they are not likely to carry out the responsibilities that go with holding a licence¹³.

[125] Ms Kaur submitted that the lack of opposition from the reporting agencies in this case triggers the principle in *Smith v Kiwano Ltd*¹⁴ where the Authority repeated the finding in *Re British Isles Inn Limited*¹⁵ of a reasonably high threshold to be met by objectors regarding an applicant's suitability in the absence of concerns from the reporting agencies.

[126] With respect to the objections that Mr Khurpay's training and experience in the alcohol industry was gained at Nekita stores, Ms Kaur notes that these ignore his experience at Pak'nSave between 2011 and 2016. Furthermore, Ms Kaur noted that during his time working for Nekitam he was simply an employee and not the person responsible for its employment practices. The first he learnt of the poor employment practices was from media reports.

[127] Councillor Peters' submissions that Mr Khurpay has no idea about minimising harm were rejected by Ms Kaur. She pointed to the undertakings given by Mr Khurpay regarding single sales and alcohol-mixed energy drinks.

¹¹ *St Joseph's School Pleasant Point – Te Kura O Hato Hohepa v Singh Trading (2016) Ltd* [2021] NZARLA 123 at [91].

¹² *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 (28 November 2018)

¹³ See *Re Sheard* [1996] NZAR 61

¹⁴ *Smith v Kiwano Ltd* [2016] NZARLA 497 at [52]

¹⁵ *Re British Isles Inn Ltd* LLA 406/06, 7 June 2006

[128] With respect to the suggestion Mr Khurpay shows little understanding of someone who is a “*permanent resident in the skilled migrant category*”, Ms Kaur referred to the submissions of the MOH. These stated that Mr Khurpay had undertaken substantially more character assessments than most licensee applicants as a result of the visa application process.

[129] Ms Kaur explained Mr Khurpay’s involvement in the protest outside the Christchurch Court Building. She said he had participated as an employee who had been affected by the closure of Nekita’s stores. Ms Kaur said any employee who had lost their job suddenly might express their concerns in some way, including protest. This reaction should be deemed reasonable in the circumstances.

[130] Ms Kaur’s submission addressed the allegation of Mr Singh’s involvement in assisting Mr Khurpay to purchase the business. She asserts there is no involvement either explicit or under the ‘corporate veil’.

[131] With respect to the issue of vulnerability raised by both objectors, especially in relation to the Holiday Park, Ms Kaur noted that no evidence was put forward suggesting that the premises had caused or contributed to any harm to the vulnerable individuals at the Holiday Park. Further the limitation on the sale of alcohol, cigarettes, tobacco and vaping products was not identified as a priority in the Waipuna Halswell- Hornby- Riccarton Board Plan 2020-2023 (EXH-1).

[132] In conclusion Ms Kaur noted that the Applicant is a responsible supplier of alcohol who is committed to reducing alcohol related harm. The licensed hours applied for are appropriate and in accordance with the Act. Further, the Applicant has reasonable systems, sufficient staff, and training in place to ensure the premises operate in compliance with the law.

[133] Ms Kaur provided a range of financial and other documents to the Committee. After reviewing these and making some additional inquiries of the Applicant with respect to financial transactions, the Committee was satisfied with the information received.

Considerations of the Committee

[134] Having considered the application together with the agency reports and objections placed before it, and the oral evidence and submissions received, the Committee must now stand back and determine whether a new licence should be granted.

Evaluation and findings

[135] The Committee would first like to acknowledge the view of all parties that it would be greatly assisted by a Local Alcohol Policy. Unfortunately, Christchurch does not have the benefit of such a policy.

[136] This application was not opposed by the Reporting Agencies.

[137] There were two objections to the application from Councillor Mark Peters, who was represented by Dr Gordon, and Mr Mike Mora.

[138] The Applicant had sought hours of 9.00am to 10.00pm seven days a week. Those hours are within the national default hours for an Off-Licence of 7.00am to 11.00pm.

[139] The Committee accepted the evidence of Councillor Peters and Mr Mora as to high deprivation and vulnerability of the area. Good evidence was provided to the Committee, including around the vulnerability of the residents of the Holiday Park. The Committee also found the Inspector's submission helpful in understanding the vulnerability of the area. The Committee also noted Police evidence that the area has experienced a decline in reported incidents of alcohol-related harm in the area during the last reporting period which concluded in April 2023. There were only two recent Calls-for-Service incidents recorded in the area. The Committee heard arguments made by Ms Kaur, for the Applicant, the area of the premises was not a place of vulnerability.

[140] In assessing the application against the objects of the Act, standing back and evaluating, the Committee is of the view that, given this is not an application for a new Off-Licence in a deprived area, the harm caused by the excessive or inappropriate consumption of alcohol would not be minimised if this application was declined. Further, the amenity and good order of the community would not decrease to any great extent by the Committee declining the grant of this licence.

[141] The Committee accepts that the deprivation and vulnerability in this community requires the Applicant to meet a higher threshold in terms of their ability to deal with the risks associated with the harmful effects of alcohol on the community. However, it does not accept both objectors' submissions that deprivation alone means that the Applicant, or in fact any applicant, is not suitable to hold a licence.

[142] Section 105(1)(b) sets out suitability of the applicant as one of the criteria for the issue of a licence. In discussing the meaning of 'suitability', Holland J said in *Re Sheard* [1996] 1 NZLR 751, [1996] NZAR 61 (HC) at 755:

'Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in The Concise Oxford dictionary as 'well fitted for the purpose, appropriate'. I do not find it helpful to refer to other decisions on different facts as to the meaning of that word. Where a statute uses an unambiguous and well understood word or expression and chooses (sic) not to enlarge on the ordinary definition of the word or expression by a special interpretation in the statute it is usually unwise for a Court to add to the ordinary meaning of the word as a general guide for all cases, as distinct from applying the word to the particular facts before it.'

[143] The Authority has considered the issue and held that: "*The meaning of 'suitability' has not changed as a result of the enactment of the Sale and Supply of Alcohol Act 2012*".¹⁶

[144] The Committee is not aware of any evidence that indicates the Applicant is not adhering to its responsibilities and obligations, with respect to employees, under the Employment Relations Act 2000.

The suitability of the Applicant

[145] We find that the Applicant is a suitable entity to hold a Licence. The Applicant is both skilled and experienced in operating an Off-Licence. This experience is reported work as an acting duty manager at Pak'nSave (noting the reference provided is silent on this matter) and as a manager at Woodham Road for over four years. The Applicant has been operating the existing Off-Licence at Islington since September 2022 without incident. We are also encouraged by the undertakings agreed to at the hearing which are part of the conditions of this licence.

[146] The Committee carefully considered the evidence provided as to the connection between the Applicant and Mr Singh. We heard evidence of this relationship which was initially reported to be solely of an employment nature (historic) with the Applicant merely working as a store manager. A connection beyond the work environment still exists as both are members of the same religious community. The Committee struggled to understand that the Applicant had no knowledge of the remuneration arrangements and terms and conditions provided to staff he directly supervised on a day-to-day basis for a period of more than four years.

¹⁶ *Re Karambayev Ltd* [2013] NZARLA 1214 at [17]

Evidence was provided that the financial and employment arrangements were conducted in an office on the premises or by 'head office'. In providing this evidence, the Applicant has sought to distance himself from the poor employment practices and migrant exploitation which had occurred.

[147] The Committee also struggled with the lack of insight of the wrongdoing which had been committed by Nekita Enterprises (Mr Singh), by the Applicant. He needed to be prompted by the Committee and Ms Kaur, to provide a clear acknowledgement that bad practice had occurred and not adopt an indifferent approach referring to the matters which 'were reported'. In essence the Committee observed on occasion a reluctance to acknowledge wrongdoing. However, the position of the Applicant changed as the hearing proceeded to a point where clarity of wrongdoing was expressed by the Applicant. The Committee then checked his understanding on these matters through questioning.

[148] During the hearing, Mr Khurpay was often unclear or elusive in his response to questions. Examples of this behaviour occurred during questioning on employment representations made to Ms Ruth Dyson MP, which resulted in a letter in support being provided on 7 April 2020. Also when questioned on a lack of specific duties performed in a reference from his employer at Pak'nSave a sufficient explanation was not provided to the Committee.

[149] The Committee also considered the attitude and manner of the Applicant, when looking at the matter of suitability. On occasion, we were not impressed by a lack of proactiveness and a set position seen on a number of occasions that the law was the sole and only arbitrator in practices and behaviours towards alcohol – the sole standard. During questioning there was a marked reluctance by the Applicant to be treated differently or face sales constraints his trading competitors are currently not subject to. This matter was explained by the Inspector. However, the Committee was encouraged that conditions were agreed at hearing and with respect to Nitro and related products.

[150] As part of 'enhanced suitability' which is required by any applicant operating in a vulnerable community, evidence of positive community engagement is useful in addition to an understanding of the community. No evidence was provided by the Applicant of community engagement, nor was he questioned about current or further community engagement directly by either Objector. However, Councillor Peters in cross-examination suggested sponsorship of local sporting teams could be desirable. In sum, the Committee notes the limitation of

evidence in this area. With the Applicant being owner-operated, the Committee hopes that opportunities are pursued for active community engagement.

[151] Processes, systems, experienced staff and training were explained to the Committee by the Applicant. The Committee also notes the regular use of an Incident Book.

[152] As part of its risk profiling, the Committee made an enquiry about the Applicant's finances. The Applicant provided the Committee with information about the level of debt to equity; the source of finance for the purchase of the business; and, turnover information. All financial information received suggests conservative settings are in place for the business.

[153] The Committee is minded of the decision of the High Court in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*¹⁷, where it was held:

“that there can be no realistic doubt the premises contributes to some of the alcohol-related harm in the locality”.

[154] In the current application we have a community which is vulnerable and suffers from deprivation. The clear harm which can result from single sales of beers and the sale of Nitro products is both relevant and material. The Committee acknowledges the encouraged willingness of Counsel for the Applicant to entering into discussion with a view to agreement on conditions. The Committee has decided to adopt the conditions offered by the Applicant.

[155] After carefully considering all the evidence presented we find the Applicant meets the suitability test (as set out in section 105 1(b) of the Act) to enable the issuing of a licence to operate the business at 670 Main South Road, Christchurch. The Committee, more broadly, is satisfied after standing back and evaluating all the matters placed before it and having had regard to the criteria as set out in sections 102 and 105 (and informed by section 106) of the Act, that granting the application subject to conditions and undertakings received achieves the purpose and objects of the Act.

[156] The licence will be issued for **one year** (often referred to as the probationary period), after which, at the renewal, the Applicant's performance in running the off-licence can be further assessed.

¹⁷ [2018] NZHC 1123 at [65]

Decision

[157] Accordingly, pursuant to section 104(1) of the Act we grant the application for an Off-Licence for a period of one year, subject to the following conditions:

The Licensed Premises

- (a) The premises are identified on the plan provided with the application for a licence¹⁸.

Restricted and Supervised Areas - section 119

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

Discretionary conditions – section 116 (1)

- (i) 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:

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

Compulsory conditions – section 116 (2)

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

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

¹⁸ As attached to the application

Monday to Sunday, between the hours of 9.00am and 10.00pm.

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

Conditions relating to the remote sales to the sale and supply of alcohol:

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

Section 117 – Other Discretionary conditions

- (a) 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 AK2021 Limited Host Responsibility Policy¹⁹ aimed at promoting the reasonable consumption of alcohol.

¹⁹ Attached to the application

(b) The Licence is also subject to the following conditions, which in the Committee's opinion are not inconsistent with the Act:

(i) The Applicant will not make single sales of beer, cider or RTDs of \$6.00 value or under per unit. [This value enables the applicant to make single sales of bottles of craft beer]

(ii) No sales of alcohol-mixed energy drinks including 'Nitro'.

(iii) No After Pay to operate from the premises.

Section 119: The entire premises is designated as a restricted area.

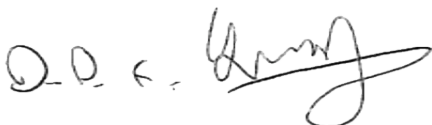
Other restrictions and requirements

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

[158] The licence shall be granted for one year.

[159] The applicant's attention is drawn to section 259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under the Act. Specifically, sections 46 to 63 and 231(1). The applicant must comply with all conditions specified on a licence.

DATED at CHRISTCHURCH this 15th day of June 2023



Mr D Ivory
Chairperson
Christchurch District Licensing Committee