

Decision Number: 60G [2023] 15929

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

AND

IN THE MATTER OF an application by Opawa Liquor Centre Limited for renewal of an off-licence pursuant to section 127 of the Sale and Supply of Alcohol Act 2012 ('the Act') in respect of premises situated at 15 Opawa Road, Christchurch, known as 'Opawa Liquor Centre'.

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RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

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BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

DLC Hearing: 9 October 2023 (at Christchurch)

Chairperson: Mr D Ivory

Members: Mr D Blackwell OSM  
Mr M Hossain JP

Appearances: Mr M S Gill – Director/Shareholder of the Applicant  
Mr G S Dhillon – Store Manager, for the Applicant  
Mr J Taylor – Counsel for the Applicant  
Mr J Minto – Objector  
Ms B Summers – Objector  
Dr L Gordon – Counsel for the Objectors  
Mr P Spang – Licensing Inspector, to assist

Excused: Ms L Bromley – Medical Officer of Health representative (not opposed)  
Senior Constable G Jolliffe – New Zealand Police (not opposed)

Decision: 5 December 2023

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## Introduction

- [1] This is an application by Opawa Liquor Centre Limited ('the Applicant' or 'Applicant Company') for renewal of an Off-Licence pursuant to the Sale and Supply of Alcohol Act 2012 for premises situated at 15 Opawa Road, Christchurch known as 'Opawa Liquor Centre'.
- [2] The general nature of the premises is that of a Bottle Store.
- [3] The current license for this premises expired on 21 April 2023 (60/OFF/43/2020).
- [4] The premises is in a block of shops in a light industrial area but adjacent to the residential suburb of Opawa.
- [5] The Applicant seeks renewal on the same terms and conditions as the existing licence for the premises.
- [6] The application for a renewal of an Off-Licence was received by the Christchurch City Council Alcohol Licensing team on 13 April 2023. The application was publicly notified on 19 April 2023 and remained on the website for a minimum of 15 working days. Ten objections were received, of which two were identified as valid and wished to appear at the hearing, Mr John Minto and Ms Bronwen Summers.
- [7] This application for renewal was not opposed by the District Licensing Inspector<sup>1</sup>, the New Zealand Police ('Police') or the Medical Officer of Health ('MOH').
- [8] On 31 August 2023, a pre-hearing meeting was convened to discuss possible hearing dates, scheduling for filing and other logistical matters.
- [9] Before the hearing, Committee members independently undertook external site visits of the area surrounding the premises. Further, on 2 November 2023, accompanied by Mr Andrew Campbell, Hearings Advisor, members of the Committee inspected the premises to look at the design and layout. The premises are situated in a row of shops including a convenience store, a restaurant/bar, a fish and chip shop, a hairdressers', and a nail salon. There was no rubbish in the area. Inside, the premises was neat, tidy, and well organised. Boxes of alcohol products were neatly stacked on the floor and the store was not overstocked. The floor space was uncluttered allowing for good

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<sup>1</sup> Inspector's Report, 26 July 2023

movement throughout the shop. Renovations were underway in the staff area of the shop for a new staff kitchen and toilet. The Committee also inspected the alcohol storage area. This space had previously been a furniture store, but it has since ceased trading. The signs used when the store is closed for staff breaks and the incident book were also cited. At the end of the inspection, the Committee visited the streets adjacent to the store. There were a number of commercial and light industrial buildings and little residential accommodation. Across Brougham Street (south of the premises), a four-lane main arterial road, there is a residential area and open green spaces.

[10] The hearing took place on 9 October 2023. The Committee heard evidence from the parties and received written final submissions on behalf of the Inspector and objectors. The Applicant filed final submissions but not until after the deadline set by the Committee despite reminders from the Hearings Advisor.

### Preliminary Matters

#### *Infringement Notices*

[11] The Inspector, Mr Spang reported there have been no infringement notices issued to the Applicant by the Labour Inspectorate (Ministry of Business, Innovation, and Employment). This report backs resulted from an enquiry made by a committee member at the pre-hearing conference.

### Opening Submissions

#### *Police*

[12] Prior to the hearing, Police had been granted leave to not appear. They did, however, provide the Committee with a document, '*Canterbury District Alcohol Contributing Factor Data - Opawa Liquor, Waltham*' on 22<sup>nd</sup> September 2023 (EXH-1). This data set captures Police calls to service in the area which are coded as being alcohol- related. Copies were made available at the hearing to all parties.

#### *The Applicant*

[13] Mr Taylor's opening submission for the Applicant was taken as read but he reiterated key points. He stated that the Applicant had satisfied the required criteria under s131 of the Act and there was nothing in the Objectors' evidence or submissions that addressed these criteria. The number of liquor stores in the area was not deemed significant unless relating to amenity or good order. Mr Taylor stated there were no issues with suitability of the Applicant. A proposed change in ownership was

not identified as significant and further was argued should not go to any of the section 131 criteria but was provided for the purpose of transparency. He noted that criticism of advertising would be addressed in turn and through evidence of both the Applicant and store manager.

- [14] The Committee questioned Mr Taylor as to the proposed sale and how long it had been under consideration. Mr Taylor indicated that discussion on the proposed sale occurred as the renewal application was progressed, and the Applicant would provide specific details during examination.

#### *The Inspector*

- [15] Mr Spang's opening submission was taken as read. He recapped the key points including agreed conditions by the Applicant.

- [16] Mr Spang was asked by the Committee about the proposed conditions provided by Counsel for the Objectors. He agreed, with respect to hours of operation, that in a deprived area earlier closing times are desirable. Mr Spang added that a trend had been identified with earlier closing on the basis it was cheaper due to reduced wage costs. He stated the matter of hours was relevant and worth discussing as was the issue of advertising. Mr Spang also advised many off-licences were moving towards less external signage, especially promotional advertising. He noted the current premises were near a motorway and also spoke about why a different colour scheme may be a better way of promoting business.

#### *Mr Minto and Ms Summers - Objectors*

- [17] Dr Gordon's opening submission on behalf of the Objectors was taken as read. She highlighted that the Applicant's suitability was at issue. Dr Gordon sought clarification on the proposed change of shareholding, to which the Chairperson provided his understanding - that the proposed change was brought to the attention of the Committee on transparency grounds and was of potential relevance on the matter of suitability. Mr Taylor stated that statutory notice would need to be provided to the Alcohol Regulatory and Licensing Authority ('ARLA') on any change in shareholding or control and noted that a change in ownership may resolve an identified issue of suitability (that the Applicant lives overseas). Mr Spang reiterated the requirement of providing the Authority notice of any change in shareholding (as well as the Police and Inspectorate being advised) but that the licence will stay in force, hence the use of company structure in terms of ownership.

- [18] Dr Gordon spoke to suitability, the location of the store, and the high level of deprivation in the surrounding area. As a result, it was stated that extended suitability applies. The *Shady Lady*<sup>2</sup> case was cited to show that standards rise because of deprivation and vulnerability in an area. Dr Gordon also expressed concerns that the existing director was living overseas, and the current store manager had learnt his management practices from the director. Mr Singh's, the current store manager, ownership of two other alcohol outlets was highlighted alongside his ownership of an adjacent furniture business. Dr Gordon noted that 85% of an off-licensed premises' sales must relate to alcohol.
- [19] Dr Gordon referred to the hours of operation. Dr Gordon had carried out a Google search which identified that significant sales occurred after 9.00pm. She argued that the current opening hours of 10.00am to 11.00pm were excessive. The *Lion Liquor* case<sup>3</sup> was cited to show the higher potential harm occurring after 9.00pm. Dr Gordon also referenced the practice in Auckland of closing off-licences at 9.00pm. A 10.00pm closing time was suggested, which was reflected in Ms Summers' brief of evidence.
- [20] Dr Gordon addressed amenity and good order, indicating both Objectors would speak to this matter. She stated it would seem unlikely the Committee would cancel the licence and would look to impose conditions instead. Dr Gordon noted that within five- or six-minutes' drive of the Opawa Liquor Centre there were 15 off-licences and this high density of supply leads to social depreciation and causes harm.
- [21] Exterior advertising was addressed by Dr Gordon, and an apparent sea change away from this trend identified which has occurred in recent times. She noted the premises had seven promotional signs used for advertising purposes which she deemed excessive. Dr Gordon said three of the four signs advertising alcohol affixed to the front of store, created an expectation. As a result, she stated no alcohol advertising should be on the front of store, and the pavement flag be removed as this was just another form of advertising.
- [22] Dr Gordon referred to a recent Committee Practice Note on single sales which was proposed as a condition by the Applicant. Mr Spang confirmed he had used the wording in the Committee Practice Note: "*No single sales of beer, RTD's or cider smaller than 600ml and under \$6.00 per unit*".

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<sup>2</sup> *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.

<sup>3</sup> *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd* [2018] NZHC 1123 at [65]

## Evidence

### *Mr Mandeep Singh Gill*

[23] Mr Gill, director for the Applicant Company read his brief of evidence in full.

[24] Mr Gill is currently living in Australia and mentioned the proposed sale of his shareholding. Mr Gill noted he purchased the business in 2016. He spoke of his reasons for the proposed sale, as the difficulties of living in Australia and his desire to focus on other business “ventures”. Mr Gill referred to Mr Gurpreet Singh Dhillon, the store manager, who is also his brother-in-law. and explained Mr Singh’s management role since the purchase of the bottle store. Mr Gill outlined his role overseeing the business and his working relationship with Mr Singh. He also noted a strong level of engagement between the Applicant Company and the local community.

### *Committee Questions for Mr Gill*

[25] The Committee asked about Mr Gill’s business interests in Australia. Mr Gill revealed he owns two restaurants and grocery stores (which sell alcohol). He confirmed he has never worked in the Opawa store. When asked about how he trained his manager, Mr Gill said it was *“no problem – he already knows everything”*. It was explained that Mr Singh had worked at the store before Mr Gill purchased it. Mr Singh’s presence was a driver as to why Mr Gill decided to purchase the business.

[26] Mr Gill stated he has no capacity to come to New Zealand often. He was clear the business enjoyed the goodwill of the local community. When asked by the Committee, whether there was the need for much external advertising at the premises given this goodwill, Mr Gill said he felt there was.

[27] Mr Gill was unable to provide clarification about the purpose and frequency of use of the door between the premises and the adjacent furniture store but noted that Mr Singh would be better placed to address that question. Mr Gill responded to questions on his remote oversight of the business, stating that he receives regular updates from Mr Singh on sales, ordering, finance, and staffing matters.

[28] Mr Gill was asked to explain the characteristics of the local community of Opawa, but he deferred to Mr Singh’s understanding of the business and community. Since 2016, Mr Gill reported he had made four site visits to the premises.

[29] Mr Gill advised the Committee that he intended to leave finance in the business once sold. He said 50% to 75% of the sale price would be left in as vendor finance depending on a number of factors including stock, and noted additional funding would be necessary.

*Inspector's Questions for Mr Gill*

[30] Mr Spang asked a question around the trading hours and the premises' busy periods. Mr Gill said the store was busy between 9.00pm and 11.00pm and that any reduction to the store's hours would cause a financial loss for the business.

*Cross-examination by Counsel for the Objectors*

[31] Dr Gordon asked Mr Gill, as sole shareholder, and director of the Applicant Company, about his understanding of company law in New Zealand, and specifically around responsibility. Mr Gill was aware he bears sole responsibility. In response to further questions on distant supervision of his store manager he again noted Mr Singh's sufficient experience and that he had worked in the store prior to its purchase.

[32] Mr Gill was unable to answer questions on the hand drawn map on the premises (p31 of the Hearing Bundle) and how it could be transposed on to the map on another map (p32 of the Hearing Bundle) and referred these to Mr Singh for comment.

[33] When asked about his employment law obligations with respect to hours of work, breaks, holidays, and leave entitlements, Mr Gill said he is in regular communication with Mr Singh to ensure all obligations are being met.

*Mr Gurpreet Singh Dhillon*

[34] Mr Singh read his brief of evidence in full recounting his background in India, experience, and role as store manager of the Opawa Liquor Centre since 2016. He detailed his ownership of two other liquor outlets and stated his awareness of responsibilities and obligations under the Act. He also spoke of his plan to purchase the Applicant Company.

[35] Mr Singh carefully described the location, operations of the Opawa Liquor Centre, and provided a clear account of the day-to-day operations including: staff; training arrangements; product range; and systems; and procedures. Mr Singh also emphasised his family engagement with the local community.



- [36] Mr Singh provided information on staff training about identification of intoxicated persons, harm minimisation, and awareness of their obligations under the Act (including no sales to minors, assessment risk of harm, and efforts to encourage responsible consumption).
- [37] Mr Singh was mindful of the deprivation of the local community and assured the Committee there was no negative effect on the amenity of the local area from the business. He cited the Inspector's report to support this view and that no negative comment had been provided from Police. The Objectors' concerns were minimalised and referred to more as a condemnation of the sale of alcohol generally and not specifically to the store of which he manages.
- [38] Mr Singh asserted he managed a store which did not attract crime and was no cause of concern for children. He also spoke of the purchasing habits of his customers which were responsible, also mentioned were the proposed conditions the Applicant had put forward with respect to minimising harm: single sales not below \$6.00 per item.
- [39] It was noted by the Chairperson that hours of operation had not been mentioned in the original objections received but were however referred to in evidence. He said the Committee would consider such evidence pursuant to section 207 of the Act and then decide what weight, if any, to attach to it.

#### *Committee Questions to Mr Singh*

- [40] Mr Singh was asked to explain his reported 'high reputation' in the community. He responded by saying he had spent nearly eight years at the premises, that most customers knew him by name, he enjoys good chats with customers, and they ask about his day and enquire about his family.
- [41] Mr Singh explained the door between the premises and the old furniture store was not used. He confirmed for the Committee that no stores that he operated or managed had failed controlled purchased operations.
- [42] Mr Singh answered questions about hours of store operations. He noted the store was busy on weekends and if hours were cut the Applicant would lose money. Mr Singh said business after 9.00pm accounted for "between 20% to 30% of sales".
- [43] Mr Singh agreed the three explicit brands (Nitro, Honey Badger and Charge), will not be stocked (noting only Nitro is currently available). Counsel for the Applicant proposed a definition of alcohol-

mixed energy drinks that could also be used to exclude other new to market bands. It was agreed this definition would be provided to the Committee prior to its decision-making either by email to the Hearing Manager or in final submissions.

- [44] When Mr Singh was asked how far the beyond the premises staff clear rubbish; he said not much rubbish is found in the area. The parking lot and surrounds were checked on a regular basis, approximately 100 metres beyond the store. Mr Singh assured the Committee this would continue.
- [45] Questions then focused on signage (p.34 of the Hearing Bundle) including Woodstock and Carlsberg window signs. Both signs were identified as a requirement of the Liquor Centre franchise agreement. Mr Singh indicated his agreement to remove an exterior Steinlager sign, the exterior flag and one of the Liquor Centre signs. Counsel for the Applicant intervened when Mr Singh was asked to comment on a suggestion that all signage be removed apart from the store name. Counsel stated there would be a cost to the Applicant and that any imposed conditions needed to be linked to alcohol-related harm. He asked how the removal of the flag contribute to reduce this.
- [46] Mr Singh said that he had good relationships with surrounding businesses and noted their combined efforts on parking management as an example of this.
- [47] Mr Singh agreed Opawa was an area of high deprivation, however, the store enjoyed a strong and loyal customer base.
- [48] Mr Singh was asked if the Opawa Liquor Centre would be his sole business focus in the future. He said he still intended to reopen the furniture business, at a different site, but was having issues finding staff. In the alcohol industry, he indicated an intention to sell his other bottle store in Woodend and focus on the current premises.
- [49] Employment law questions about business practice were put to Mr Singh. He assured the Committee that the store has two signs which are used when staff are on breaks and the store needs to close. Mr Singh was asked about the premises' incident book and the nature of incidents recorded. He said the book was hardly used, with entries made only once every two or three months.
- [50] Mr Singh was asked about his level of community engagement/participation apart from selling alcohol. He referred to sponsoring a cricket tournament in 2022. Mr Singh also pointed to his good relationships with customers during trading hours.

[51] He was then asked to describe similarities and differences between the Opawa store and other alcohol outlets he had owned. Good similarities and differences were identified: customer base, incident rates, semi-industrial settings, trade customers and community goodwill, and same business practice.

[52] When asked what was meant by high deprivation, Mr Singh responded that it meant a high-risk area. Further questioning as to sensitive sites (churches, schools, and parks) revealed that Mr Singh has a good understanding of the Opawa area. He also noted that he lives in the area which gives him a greater understanding.

[53] Mr Singh said his business model was reliant on factors other than price to be competitive, noting:

*"80% customers are repeat customers...what matters is service...how we look after them...how we respect them...how we talk to them...we never choose...cheap stuff...all over South Island normally people are selling Nitro for \$10.00, I'm selling for \$11.99."*

[54] The Committee requested a copy of the incident book be provided within a reasonable period prior to decision-making. The Committee also reconfirmed with the Counsel for the Applicant they had agreed as a condition not to offer the following products – Nitro, Honey Badger, and Charge.

[55] Discussions were held during the lunch break between Counsel for the Applicant, Counsel for the Objectors, and the Inspector. Mr Taylor reported back to the Committee that no wholesale agreement had been reached regarding conditions. No agreement on advertising and hours was reached, however agreement was made on removal of the pavement advertising flag. The Applicant also agreed to making with further enquires with the franchisor around the removal of the external Carlsberg and Woodstock advertising. Mr Taylor also confirmed that no product can be seen from the window nor is there advertising of specials outside of the premises.

#### *Cross-examination by Counsel for the Objectors*

[56] Mr Singh was asked about Liquor Centre's advertised special on Gordon's Gin between 5 and 8 September 2023. Dr Gordon suggested the Applicant had low special prices compared to other outlets. Mr Singh explained the franchisor's four-day special, noting that in this time they only sold four or five additional units. The premises did not have its own a Facebook page for promotions,

relying only on Liquor Centre channels. Mr Singh noted most customers go with their standard drink and they have a budget.

- [57] Dr Gordon then focused on Mr Singh's experience. She asked if employment law was the same in India as in New Zealand. In response Mr Singh stated he follows New Zealand law, and that India had different rules and regulations. Mr Singh said he gained knowledge of New Zealand employment law since 2016, from his day-to-day experiences. He then explained his qualification and duty manager role. Mr Singh was able to state the minimum wage and assured the Committee that all staff were paid above this. He said closing hours vary, with Monday and Tuesday being normally quiet, and sometimes the store is not opened until 12.00pm. Average shift hours were variable but normally between five and eight hours. Mr Singh successfully answered questions put by Dr Gordon on the required statutory breaks and both the purpose and object of the Act.
- [58] When asked by Dr Gordon about the alcohol-harm incident referred to by Mr Minto, Mr Singh noted the lack of clarity around when and where the alcohol was purchased from.
- [59] Mr Singh confirmed all staff employed at the Opawa Liquor Centre were New Zealand residents. Dr Gordon expressed surprise at the lack of incidents recorded in the Incident Book. In response, Mr Singh spoke of the lovely community in which he operates. Dr Gordon then asked Mr Singh how many of his customers were alcoholics. The Chairperson, intervened, and pointed out there was no expectation or requirement Mr Singh have clinical skills to assess each of his customers.
- [60] Dr Gordon questioned the relationship between Mr Singh and the franchisor regarding advertising. Mr Singh did not know who put the advertising signs on the window nor relationship details between the franchisor and Woodstock.
- [61] Mr Singh was also questioned on maps depicting the layout of the premises (pages 31-32 of the Hearing Bundle). He was asked why one map was hand drawn. Dr Gordon stated such a plan was not a Resource Management Act standard. The large space beyond the staff entrance was identified, as was kitchen access, staff room and toilet. Dr Gordon suggested the map was misleading. The Inspector assisted the Committee by stating the map provided was sufficient to meet the regulatory requirements. In response to a question from Dr Gordon, Mr Singh identified the furniture store on the map but noted the furniture company was operated independently in terms of finance, cash handling and staff management.

### *Re-examination by Counsel for the Applicant*

[62] Mr Singh was asked about Mr Gill's remote supervision. He said he spoke regularly by phone and video with Mr Gill and while the Covid-19 pandemic had created some physical barriers to Mr Gill's engagement with the business, he was very proactive and supportive of Mr Singh. He also explained Mr Gill's other commercial commitments were a driver for the proposed sale of the business.

### *Ms Summers – Objector*

[63] Ms Summers read her brief of evidence.

[64] Ms Summers talked of Opawa as a high deprivation and high need area, which includes sensitive sites, the Ara satellite campus, and social and community housing. In Ms Summers' view, the premises either needed to be closed or significant conditions imposed. She referred to external advertising as being excessive and acting as a beacon. Ms Summers said all these matters go to the suitability of the Applicant.

[65] Ms Summers raised concerns with the Applicant's closing time of 11.00pm when compared with other liquor stores in the area with a 10.00pm closing. According to a Google search carried out by Ms Summers, sales of alcohol at the Opawa Liquor Centre between 10.00pm and 11.00pm are significant. She said a 10.00pm closing time would be more appropriate in the circumstances.

### *Examination by Counsel for the Objectors*

[66] With consent of the Committee and Counsel for the Applicant, and under the s207 powers conferred on the Committee by the Act, Ms Summers read an additional statement which described the community in which she has lived for the past seven or eight years. Ms Summers referred to a community cottage whose attendees had high needs, and two kura (school) with young ākonga (students). She described other features of the community including residents with addiction and mental health issues along with occupants of local council and social housing.

### *Committee Questions for Ms Summers*

[67] In response to a question from the Committee, Ms Summers said the conditions agreed by the Applicant, and further concessions made at the hearing, particularly in terms of advertising and restriction on product range, had not diminished her resistance to this licence renewal.

*Cross-examination by Counsel for the Applicant*

[68] Ms Summers agreed with Mr Taylor that the Liquor Centre sign over the store would most likely inform people what was within the store. When asked what the increased harm caused from a sign in the window advertising Carlsberg Beer would be, Ms Summers said it was just 'one more encouragement' to enter the store. Mr Taylor responded by noting that in Ms Summers' brief of evidence she had clearly stated that the flag adds nothing to the external advertising. Ms Summers' view remained unchanged; the signs were "adding to constant advertising of liquor within our community".

[69] Ms Summers was questioned on her evidence relating to opening hours in deprived communities and the apparent movements around the country to reduce closing times to 9.00pm. When asked what these movements were, Ms Summers referred to movements generally based on newspaper reports that she had read regarding some areas around the country. Mr Taylor asked her to explain the precautionary principle (referred to in her submission). Ms Summers couldn't remember principle but had read about it at the time.

*Mr John Minto – Objector*

[70] Mr Minto read his brief of evidence. He described the local area surrounding the Opawa Liquor Centre. Mr Minto said there were too many liquor stores in the area, including a new licence recently granted for an outlet in Colombo Street.

[71] Mr Minto made some generalised comments on the liquor industry, as well as outlining his activism towards liquor stores, pokie machines, loan sharks and fast-food outlets which he described as "*industries that pray on vulnerable people*". Further, he noted "*these are concentrated in low-income communities where people are more likely to end up with addictions of various kinds*".

[72] Mr Minto talked of reducing alcohol-related harm and for the Committee to decline the licence renewal application would be a good start. Two incidents in the last year were referenced, both involving alcohol. One incident was described in detail, in which an ambulance was called at 2.00am or 3.00 am in the morning to assist an intoxicated person who had injured themselves outside Mr Minto's house. He expressed surprise at no presence of a representative from MoH at the hearing (also previously noted by the other objector and their shared Counsel). There was a clear expectation on the part of Mr Minto MoH be present. It is worth noting that while the MOH was excused, parties were given an opportunity to submit questions to the MOH, but no such requests were made.

[73] Mr Minto talked of the high deprivation surrounding the liquor store (Level 9 on the Deprivation Index) and referred to a community impacted by the earthquakes and with a large amount of social housing, including Brougham Village, Tommy Taylor Flats, and Cecil Courts (a mixed accommodation model). He spoke of cans and bottles in community spaces which were occasionally cleaned up. Mr Minto commented on an “alcohol haze, big footprint in our community, reflected in the people we know”. He supported the conditions advanced by Inspector.

[74] Mr Minto reported on his experience entering the Opawa Liquor Centre and described it looking like a wholesaler not a retail store. He described alcohol stacked on the floor and in his view, the way it looked was disrespectful to his community.

*Committee Questions for Mr Minto*

[75] The Committee referred to Police EXH-1, Alcohol Contributing Factor Data, Opawa Liquor, Waltham, and noted the statistics showed a decline in reported alcohol-related harm incidents in the area. Mr Minto was clear he had not noticed a decline in anti-social alcohol-related bad behaviour, but that any decline may have been because of COVID-19. He was unsure if all incidents were recorded in the Police data, including the above incident. He also noted the Police may change their priorities from time to time. Mr Minto was questioned on a clear causation between the Applicant’s premises and the incident he had referred to. He responded by noting there was only one in 15 chance it could have been and reiterated the danger time for purchasing of alcohol after 9.00pm.

[76] When asked, Mr Minto said that none of the conditions or concessions offered by the Applicant before, and during, the hearing had reduced his opposition as he felt the Applicant didn’t have a good understanding of the community.

*Cross-examination by Counsel for the Applicant*

[77] Mr Taylor referred Mr Minto to the satellite picture of the area showing deprivation. He accepted a large part of the area is commercial and industrial, but noted it was within easy walking of dense housing. Mr Taylor referred to Mr Minto’s evidence that there were 15 bottle stores within a five-minute drive of his house and asserted distance was a more objective and consistent measurement than driving time. Mr Minto disagreed. He was asked about his familiarity with other specific alcohol outlets, especially on-licences, in the area. His response was mixed. Mr Taylor made the point in many cases alcohol was secondary to another activity, such as sport.

[78] Mr Taylor asked questions of Mr Minto on exteriors of liquor stores. Mr Minto referred to them as looking 'shabby' characterised by clutter and disorder. He acknowledged that the Opawa Liquor Centre was not a particular problem and looked a relatively clean store from the outside. Mr Taylor asked him to identify from a photograph what looked shabby and run down from the outside of the premises. Mr Minto's response was *"everything...the fonts they've used...the whole look of the place is shabby and rundown...all this clutter of signs around...liquor centre three, four, five times in picture. It's one of those in-your-face things...and feels like it is disrespectful to the community"*. The Chairperson suggested instead of the word 'shabby' that the store 'presents poorly', which was agreed by Mr Minto.

[79] Mr Taylor then asked questions focused on the deprivation of the area. It was confirmed that both the Police map and that provided by Mr Minto were the same except for the quality of printing. Mr Minto accepted some areas were at deprivation levels 7-8, and not all were at level 9. The satellite map showed high deprivation in a quadrant which was largely industrial according to Mr Taylor and not a densely populated residential area. Mr Minto agreed largely the identified quadrant was industrial/commercial but was not sure on the number of houses there. Mr Minto suggested Mr Taylor was trying to minimise the deprivation of the area with respect to questions he put.

*Mr Spang – Inspector*

[80] The Committee asked questions around the lack of a response from the local kura, a sensitive site. Mr Spang explained the process he undertook in reaching out, but no response was received. The impression from kura in general is that workload is high, and unless they had strong opinions no feedback would be provided.

[81] Dr Gordon asked Mr Spang to recall the Yankee Bourbon case where the Committee decided no dump stacks were allowed and asked if there were any at the current premises. Mr Spang provided his understanding of dump stacks, usually characterised by products like beer getting close to expiry date, and price heavily discounted where the operator is seeking to dispose of quickly. Mr Spang did not recall seeing examples at the Opawa Liquor Centre, and that the stacks were more of a result of a lack of investment in shelving and displays.

[82] Dr Gordon asked Mr Spang about his inspection of the store. She asked if he specifically checked the fire door and accuracy of the map. Mr Spang responded by noting his focus when carrying out inspections was on the retail areas and how alcohol is displayed and sold to the public.



## Closing submissions

### *Inspector*

[83] Mr Spang filed his closing submission on 20 October 2023. In his Inspector's report, Mr Spang did not oppose the application due to the agreed conditions. In his final submission he restated the conditions agreed by the Applicant but noted wording regarding the description of the alcohol-mixed energy drinks the Applicant will not sell still needed to be confirmed. The Applicant's agreement to reduce external advertising for this store had the support of the Inspector.

[84] Mr Spang submitted on store trading hours as discussed during the hearing. The store currently trades Monday to Sunday 10.00am to 11.00pm. He referred to the lack of a Local Alcohol Policy to limit trading hours, and that the default for national maximum trading hours for an off-licence were between 7.00am to 11.00pm, pursuant to Section 43(1)(b) of the Act.

[85] After the hearing, Mr Spang was requested by the Committee to confirm the trading hours of the 14 other liquor stores listed in Mr Minto's brief of evidence. Mr Spang restated his findings, initially provided to the Committee and parties on 11 October 2023, that six of the bottle stores have trading hours to 10.00pm.

[86] Mr Spang noted, Mr Singh is the current store manager and is in the process of purchasing Opawa Liquor Centre from Mr Gill, stating, *"this sale will eliminate current concerns alleging lack of oversight from Mr Gill due to his residing in Australia and other business interests"*.

[87] In conclusion, Mr Spang submitted he supported a review of external signage, trading hours, and the proposed purchase of the store by Mr Singh as a positive step that will help achieve the object of the Act.

### *Objectors*

[88] Dr Gordon filed her final written submission on 20 October 2023. She reiterated that both Objectors explicitly support their own briefs of evidence.

[89] Dr Gordon states there was *"no dispute among the parties that the store is in an area of high deprivation and that the area has many vulnerabilities, including a lot of social housing, sensitive sites, an at-risk population and plenty of alcohol-related harm"*.

- [90] She referred to the *Shady Lady* case<sup>4</sup> where an applicant must meet the higher threshold of extended suitability when premises are operated in very vulnerable communities, and suitability is treated as a wide concept under the Act<sup>5</sup>.
- [91] Dr Gordon referred to the Mr Gill's purchase of the business in 2016 and employment of the current manager who, at the time, was very inexperienced. Mr Gill then went to live in Australia and "*gave the impression that he had little to do with the store*". Dr Gordon also stated the Committee was being asked to "*judge the store on the pending new ownership*". The proposed new owner/current manager, Mr Singh, has also reported a number of business interests, including a previous furniture business in an adjoining premises.
- [92] Dr Gordon submitted on the product range and the interior displays within the store. She said exterior signage was excessive and harmful and was linked to the suitability of the operator. Dr Gordon suggested a condition around more minimal signage, allowing for only one (large) sign above the door.
- [93] Dr Gordon also submitted on days and hours of operation. The argument was put that late hours are also associated with the highest risk of alcohol-related harm. It was submitted that a reduction in closing hours to 10.00pm would have a material effect on reducing alcohol-related harm, but it was noted, however, that some other liquor stores in the area had 11.00pm closing.
- [94] With respect to amenity and good order, Dr Gordon noted evidence was given that 15 liquor stores within a five-to-six-minute drive of the Objectors' residence. The Opawa Liquor Centre was the closest. The number of stores was identified as extremely high by any standards. It was also submitted public health research shows the two most harmful factors in alcohol supply are the density of supply and social deprivation. Further these are associated with higher levels of alcohol consumption and social disorder.
- [95] Having formed the view, the Committee would not be minded to declining the licence, Dr Gordon addressed the matter of conditions. The driver for conditions being that "*strict conditions can mitigate, to an extent, the problems identified, but cannot compensate for high levels of harm in the area, high density and other factors*". It was noted the Objectors supported all the conditions identified by the Inspector.

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<sup>4</sup> *Lower Hutt Liquormart Ltd v Shady Lady Lighting* [2018] NZHC 3100

<sup>5</sup> *Re Nishchay's Enterprises Ltd* [2013] NZARLA 837)

[96] Dr Gordon also submitted several further conditions to minimise alcohol-related harm which should be placed on the licence which she argued were reasonable and reflect other recent decisions of this Committee.

### *Applicant*

[97] Mr Taylor filed his closing submission on behalf of the Applicant on 3 November 2023. The timing of this submission is disappointing and was beyond the agreed timeframe and then further assurances provided. Such behaviour is disrespectful to all parties including the Committee.

[98] Alongside the closing submissions, the Applicant provided a copy of an email from Tasman Liquor confirming the Woodstock and Carlsberg signs could be removed as well as a copy of an excerpt from the Incident Book (this was circulated to all parties for any comment). A new agreed condition was provided (a definition to be applied to new products to the market): *"no sales of any drinks that contain alcohol and caffeine or guarana and that are in a vessel of more than 1 litre"*.

[99] Mr Taylor stated that, when the application was considered against the criteria for renewal, all are met despite the concerns raised by the Objectors. Further, section 131 of the Act provides the criteria the Committee must have regard to when considering an application for renewal.

[100] With respect to suitability of the Applicant, it was submitted Mr Singh: has more than eight years' experience working in and managing an off-licence business; holds a current licensed controller qualification; has a manager's certificate; and is of good character. It was also asserted Mr Singh and his family have built a strong reputation in the community.

[101] Mr Taylor addressed the issue of trading hours, reaffirming none of the agencies had not identified this as an issue requiring the Committee's attention. The Inspector's supplementary evidence was referred to which showed off-licence premises within a three-kilometre radius of the Applicant. Of the fourteen stores, seven are licensed to 11.00pm. Mr Taylor also noted a number of other stores in the area are also licensed to 11.00pm.

[102] Mr Taylor said there was nothing in the Objectors' evidence to suggest that between 10.00pm and 11.00pm alcohol was sold at any greater volume than during its other licensed hours. The Applicant's

current trading hours were identified as *“reasonable and in line with ...other stores in the area and are below the default national trading hours”*<sup>6</sup>.

[103] In terms of amenity and good order, it was acknowledged by Counsel for the Applicant that the premises are in a vulnerable community, but it was pointed out the area in which the store operates in is a *“largely non-residential and is predominantly commercial and industrial land”*. Further, Mr Singh was *“well aware of this and is mindful of the community in which the store operates”*.

[104] Mr Taylor addressed the Objector’s concern at perceived excessive advertising and signage. He said there was no logical link between increased signage and alcohol harm and no finding or evidence had been provided in relation to the amenity of the area or store.

[105] Mr Taylor listed the agreed conditions made at the hearing and subsequent agreement to remove advertising located on the front windows of the Premises.

[106] In conclusion, Mr Taylor submitted that the Applicant is an experienced operator and has satisfied the relevant s131 criteria. The Objectors’ evidence was *“centred around alcohol harm generally and the negative effects of same, without any substantiated or credible evidence pertaining to the Applicant”*.

[107] Further, it was noted that any concerns of a lack of oversight are met by the proposed sale as between Mr Singh and Mr Gill, that the pre-agreed conditions provided by the Applicant increased suitability, and *“speak in favour of renewal”*.

#### Considerations of the Committee

[108] Having considered the application together with the Inspector’s report, Police evidence and objections placed before it, and the oral evidence and submissions received, the Committee must now stand back and determine whether a renewal of licence should be granted.

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<sup>6</sup> Sale and Supply of Alcohol Act, section 43.

## *Evaluation and findings*

### *The Law*

[109] Section 131 of the Act requires that:

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

*(a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*

*(b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*

*(c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*

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

*(2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.*

[110] Further, s105 of the Act outlines the criteria for the issuance of licences, namely:

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

*(a) the object of this Act:*

*(b) the suitability of the applicant:*

*(c) any relevant local alcohol policy:*

*(d) the days on which and the hours during which the applicant proposes to sell alcohol:*

*(e) the design and layout of any proposed premises:*

*(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*

*(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*

...

*(j) whether the applicant has appropriate systems, staff, and training to comply with the law:*

*(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*

[111] The role of s105 and how it is to be approached in relation to applications has received plenty of judicial attention.<sup>7</sup> The approach, when considering the licence application, is succinctly summarised as follows:<sup>8</sup>

*“Is the decision-maker satisfied, having regard to all the relevant factors set out in s 105(1)(b)–(k) that the grant of the licence is consistent with the object of the Act?”*

[112] The duty to “have regard to” requires that we turn our mind to the listed criteria. The Committee is required to give them “genuine attention and thought”. The weight to be attached to each is a matter for us to decide.<sup>9</sup> In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123 at [46], Clark J summarised the applicable principles in respect of the renewal of a licence<sup>10</sup>:

*(a) There is no presumption that an application will be granted.*

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<sup>7</sup> *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315 per Heath J; *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689 per Moore J; and *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382 per Gendall J.

<sup>8</sup> *Re Venus NZ Limited* at [20] and *Auckland Medical Officer of Health* at [60]

<sup>9</sup> *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC).

<sup>10</sup> *Christchurch Medical Officer of Health v G and J Vaudrey Limited* [2016] 2 NZLR 382 at [54].

- (b) *A DLC, and the Authority, after having regard to the criteria in the Act, is then to step back and consider whether there is any evidence indicating that granting the application will be contrary to the object in s4 of the Act. The test is as articulated in Re Venus NZ Limited above.*
- (c) *The application of rules involving onus of proof may be inappropriate<sup>11</sup>, and similarly, there is no onus on the reporting agencies to prove the application should not be granted;*
- (d) *The criteria for the issue of licences, and for renewal, are not to be interpreted in any narrow or exhaustive sense. The Authority (and DLC) may take into account anything, which from the terms of the statute as a whole, appears to be regarded by the legislature as relevant to conditions and the terms on which they should be granted;<sup>12</sup>*
- (e) *The Authority is not required to be sure that particular conditions will reduce alcohol abuse. We are entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective then we are entitled to test whether that possibility is a reality.<sup>13</sup>*

[113] The evaluative function is an assessment of risk.<sup>14</sup>

*The factors to be considered in the course of assessing an application for a licence or for renewal, as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm.*

[114] In terms of the risk profile the Court held:<sup>15</sup>

*The Act looks to minimise alcohol-related harm. Where there is an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant or renewal of a licence, the harm must be minimised not ignored or condoned.*

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<sup>11</sup> *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [39].

<sup>12</sup> *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* at [46].

<sup>13</sup> *My Noodle Ltd v Queenstown Lakes DC* [2009] NZCA 564.

<sup>14</sup> *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, [43] and [47].

<sup>15</sup> *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, at [67].

[115] Further:

*“It is not necessary to establish...that the proposed operation “would likely lead to” alcohol-related harm. To require demonstration of a link to this degree of specificity is not much different from requiring proof. Requiring proof of “a causative link is not only unrealistic but is contrary to the correct legal position”<sup>16</sup>.*

[116] The object of this Act is that—

*(1)(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*

*(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*

*(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—*

*(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*

*(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*

[117] The Committee will return to the object of the Act once we have had regard to the other relevant matters in ss 131(1) and 105.

#### *Suitability of the Applicant*

[118] Suitability carries its ordinary meaning as being “well fitted for purpose, appropriate”.<sup>17</sup> It is a broad concept and includes the character and reputation of the applicant and matters such as the past and present operations of the premises are relevant considerations.<sup>18</sup> A positive finding on suitability is

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<sup>16</sup> *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, at [68].

<sup>17</sup> *Re Sheard* [1996] 1 NZLR 751, [1996] NZAR 61 (HC) at 755.

<sup>18</sup> *Re Nishchay's Enterprises Ltd* [2013] NZARLA 837.



required. An applicant must demonstrate his or her suitability. As established in *Page v Police*<sup>19</sup>, suitability is not established in a vacuum, so context is relevant.

[119] In applying the *Page* principle in *Re TK Sodhi Holdings Ltd*<sup>20</sup>, the former Authority said at [46]:

*“If we are to achieve the object of the Act and help encourage a social change where tolerance of liquor abuse is no longer acceptable, then we must have faith in the ability of operators of licensed premises to uphold the provisions of the Act. ....”*

[120] In the case of a corporation, we are required to consider the suitability of the directors involved.

[121] As a licensee they have responsibilities under s214(4) of the Act:

*At all times when alcohol is being sold or supplied on licensed premises the licensee must take all reasonable steps to enable the manager to comply with this section.*

#### *Suitability of Mr Gill*

[122] The Committee finds that the Applicant is suitable to hold a licence. The Applicant is both skilled and experienced in operating an off-licence. This experience involves work in both New Zealand and Australia. Although based in Australia, Mr Gill has regular engagement with his store manager by camera and phone. He remotely oversees aspects of the business: ordering, sales, finance and staff decision making. It is noted that travel to New Zealand would have been difficult within the context of the Covid-19 pandemic. The Committee acknowledges this is not an ideal situation.

[123] The Applicant has not failed any controlled purchase operations.

[124] There is no agency opposition to the suitability of the Applicant.

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<sup>19</sup> *Page v Police HC Christchurch AP84/98*, 24 July 1998, Pankhurst J.

<sup>20</sup> *Re TK Sodhi Holdings Ltd LLA PH12/09*, 14 January 2009

[125] 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.

[126] The Applicant outlined suitable processes, systems and training to the Committee and employs experienced staff. The Committee also notes the use of an Incident Book.

[127] In this application for renewal an enhanced standard of suitability<sup>21</sup> is required: by any applicant operating in a vulnerable community<sup>21</sup>.

[128] The Committee received evidence of an Applicant engaged in positive community engagement and with a strong awareness of the vulnerability of the area. Limited evidence was provided by Mr Gill of any community engagement or understanding. However, this was not the case with respect to Mr Singh, the store manager and proposed owner of the store, who demonstrated a good understanding of the local community. Mr Singh spoke of community sponsorship, positive engagement with business neighbours and customers, and currently lives in the area.

[129] The Committee placed weight on the ability of Mr Singh to fully describe the neighbourhood during questioning, including sensitive sites, and was able to contrast the Opawa community with others in which he operates alcohol outlets. He was also able to compare the different features of the three different liquor outlets he owns or manages.

[130] The Committee notes the proposed sale of the business, and, if realised, hopes that opportunities are pursued for even more active community engagement.

*Days, hours during which alcohol is sold*

[131] The Applicant had sought hours of 10.00am to 11.00pm seven days a week. Those hours are within the national default hours for an off-licence from 7.00am to 11.00pm.

[132] In her closing submission, Dr Gordon sought a reduction in opening hours to reduce alcohol-related harm in the area.

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<sup>21</sup> *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 (28 November 2018)

[133] In the absence of a Local Alcohol Policy, which could address such issues as hours of operation, the Committee must look to the manner in which individual premises operate and consider the nature of the operation, systems and processes along with the risk profile of the locality.

[134] As the Authority observed in *Re N.B.T. Ltd*<sup>22</sup> at [52]:

*"[52] Any licence is a privilege, and there is no guarantee that it will be continued indefinitely, or that the hours will remain the same, particularly if the privilege is ignored or abused. In our judgement, this is what happened. Mr Giles saw a market which he was happy to exploit at the risk of raising noise levels and bringing about misbehaving patrons..."*

*"[53] Limiting the hours of operation has become established as an important tool in addressing the growing social and economic cost of alcohol-related crime, disorder, and antisocial behaviour. Although it has been said that the issue is not so much about the hours of trading, as the way that the premises are managed, it is our experience, that the longer the hours, the greater the potential exists for liquor abuse, or breaches of the Act. In our view, the liberal hours that have been granted in the past have not been universally respected."*

[135] As the Authority emphatically held in *Sogi Trading Ltd v Licencing Inspector Auckland City Council*<sup>23</sup>:

*"[130] If premises are a magnet for antisocial behaviour such as yelling, vomiting, urination, fighting and the like, then it is axiomatic that the effect of the refusal to renew the licence will increase the amenity and good order of the locality by the removal of a contributing cause of that noise, nuisance and vandalism. This in turn, goes to the achievement of the object of the Act, including that alcohol is consumed safely, and that any harm caused by inappropriate consumption is minimised. As is apparent from the definition of alcohol related harm in s 5 of the Act, and the matters referred to in s 106 of the Act, this includes disorder, public nuisance as well as negative public health outcomes."*

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<sup>22</sup> *Re N.B.T. Ltd* Liquor Licensing Authority, 6/9/2005, Decision No PH584/2005

<sup>23</sup> *Sogi Trading Ltd v Licencing Inspector Auckland City Council* [2020] NZARLA 96

*[131] Viewed in this way, the Act is not premised solely on questions of fault such that it is not sufficient that a licensee may be 'doing its best'. Where noise, nuisance and vandalism can be linked to a licensed premises, despite the best endeavours of the licensee, a DLC must act to minimise that."*

[136] The Committee has carefully considered the views of both objectors about the need to look closely at the hours given the high deprivation of the area.

[137] The Committee listened with interest to the lived local experience of both objectors. Two recent alcohol-related incidents, where both objectors had direct involvement during the past year are material. The Committee also noted a decline in number of Police callouts to incidents where alcohol was considered a contributing factor (see EXH-1). The Committee is minded that the impact of the Covid-19 pandemic may have influenced the figures as stated in Police commentary to the data.

[138] The Committee accepts that the Objectors' home is located across a main arterial road, and it would be nigh impossible to relate any issues at their address to this store specifically. Their concerns are more related to alcohol generally. The Committee does accept that the location of this store is in their general neighbourhood Mr Minto in evidence states he visits the diary regularly and is a customer of the fish and chip shop.

[139] The Committee also carefully considered the position or attitude of the Applicant when trading hours were discussed. The final hours of the day were identified as highly profitable and where sales were strong. Mr Taylor has another perspective of this evidence as stated in his final submission. The Committee had been informed of strong goodwill which existed between the Applicant, customers, and the community. Any imposed change in hours may well be mitigated by a change in purchasing behaviours by loyal customers.

[140] The Committee received evidence other alcohol outlets were within a five-to-six-minute drive of the Premises, over half (six out of 10) had a closing time of 10.00pm. Mr Taylor in his final submission identified a smaller number of outlets asserting distance as opposed to driving time. The deprivation of the area where the Opawa Liquor Centre operates must also be considered.

[141] Having given it due consideration, the Committee has decided to reduce the premises' closing time to 10.00pm to minimise alcohol-related harm in the area. The Committee has other mechanisms to further reduce or minimise alcohol-related harm and will also exercise these in accepting proposed

conditions and formally recording an undertaking made at the hearing. The Committee is of the view a reduction of opening hours is consistent with the objects of the Act.

*Amenity and Good Order of the locality*

[142] Section 131(1)(b) of the Act requires us to form an opinion as to whether refusing to renew the licence would improve amenity and good order by more than a minor amount. In this application, the amenity and good order is affected by reports of alcohol-related rubbish and behaviour linked to alcohol consumption as experienced by both Objectors. Police statistics are concerning but the recent downturn was noted by the Committee.

[143] The Licensing Inspector noted several sensitive sites in the local community. He made proactive enquiry of the local kura seeking feedback on the application, but there was no response. The Committee is also aware of the high level of pre-existing alcohol outlets within a short drive from the Objectors' residence.

[144] During the hearing, the Committee heard both Objectors express their views on the advertising and promotional material affixed to the exterior of the premises. A shared view was presented that these promotional efforts were "excessive" and were deemed "disrespectful" with respect to the Opawa community.

[145] On several occasions, Counsel for the Applicant suggested strongly to the Committee (and objector during cross-examination) a link or causation was required between the advertising and alcohol-related harm.

[146] The view of the Committee is that Opawa is an area of high deprivation, and clear evidence was provided as to the effects of alcohol-related harm.

[147] Prior to the hearing, the Applicant proposed a number of conditions. At the hearing, the conditions to remove the pavement flag, and the Steinlager sign were accepted. Then following the hearing, the Applicant provided notice that it would remove the Woodstock and Carlsberg signs from the window of the store. Counsel for the Applicant also provided a definition of the alcohol-mixed energy drinks that would be stocked.

[148] During Committee questioning, Mr Singh provided an assurance that he and his staff would continue clearing the surrounding area of rubbish. The Committee considers this an undertaking by the Applicant to this licence.

[149] In assessing this application against the objects of the Act, standing back and evaluating, the Committee is of the view that, although this is an application for renewal of an 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 renewal licence. However, the Committee has decided that alcohol-related harm, as highlighted by evidence, can be addressed through the agreed conditions and limitation on hours of operation, and that these both would result in a likely improvement in amenity and good order.

[150] The Committee accepts the deprivation and vulnerability of 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.

[151] The Committee is minded of the decision of the High Court in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*<sup>24</sup>, where it was held:

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

[152] 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 willingness of Counsel for the Applicant in initially offering conditions and adding to these during and after the hearing. The Committee has decided to adopt the conditions offered by the Applicant and impose a reduction in opening hours.

[153] After carefully considering all the evidence presented, the Committee finds the Applicant meets the suitability test as set out in s105 of the Act. 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 s131(1) and s105 of the Act, that granting the application for renewal subject to agreed conditions,

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<sup>24</sup> *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd* [2018] NZHC 1123 at [65]

a reduction in opening hours, and an explicit undertaking relating to rubbish removal, these combined will achieve the purpose and objects of the Act.

### Decision

[154] Accordingly, pursuant to the Act, we grant this application for a renewal of an off-licence for a period of three years, subject to the following conditions:

#### The Licensed Premises

- (a) The premises are identified on the plan provided with the application for a licence<sup>25</sup>.

#### Restricted and Supervised Areas - section 119

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

#### Discretionary conditions – section 116 (1)

- (b) 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.
- (c) 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.

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<sup>25</sup> As attached to the application

## Compulsory conditions – section 116 (2)

- (d) No alcohol is to be sold or supplied on the Premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.
- (e) Alcohol may only be sold or delivered the following days and during the following hours:  
  
Monday to Sunday, between the hours of 10.00am and 10.00pm.
- (f) 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

- (g) The following steps must be taken to promote the responsible consumption of alcohol:
  - (i) The licensee must implement and maintain the steps proposed in Opawa Liquor Centre Limited Host Responsibility Policy<sup>26</sup> aimed at promoting the reasonable consumption of alcohol.
- (h) 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, RTD's or cider smaller than 600ml and under \$6.00 per unit.
  - (ii) Packs of mainstream beers and RTD's will not be broken down and sold as singles.
  - (iii) No sales of the following alcohol-mixed energy drinks - Nitro, Honey Badger and Charge.
  - (iv) No sales of any drinks that contain alcohol and caffeine or guarana and that are in a vessel of more than 1 litre;

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<sup>26</sup> Attached to the application



(v) Not to have “buy-now pay-later” purchase methods.

Section 119: The retail area is designated as a restricted area.

Other restrictions and requirements

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

[155] The licence shall be granted for three years.

[156] An undertaking has been made by the Applicant to clear rubbish from around the premises on a regular basis.

[157] 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 s231(1). The applicant must comply with all conditions specified on a licence.

DATED at CHRISTCHURCH this 5<sup>th</sup> day of December 2023

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

Mr D Ivory

Chairperson

Christchurch District Licensing Committee