

Decision Number: 60C [2014] 1582

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

AND

IN THE MATTER of an application pursuant to
s32 (1) (b) of the Act by
B & S Liquor Ltd for an
Off Licence for premises situated
at 411 Worcester Street,
Christchurch.

BEFORE THE CHRISTCHURCH DISTRICT LICENCING COMMITTEE

Chairman Mr R.J.Wilson JP

Members Mr A.J.Lawn
Mr D.L.Blackwell QSM

HEARING at Christchurch on 3rd and 4th July 2014

APPEARANCES Mr G. Jones Counsel for Applicant
Mr J. Singh B&S Liquor Ltd
Mr P.Hughes Tasman Liquor Ltd
Mr M. Ferguson Senior Licensing Inspector
Sgt K. Giddens NZ Police
Mr P. Shaw for the Medical Officer of Health
Mr S. Dodd for the Medical Officer of Health
Ms J.Smith Te Whare Roimata
Ms R.Kane Inner City East Neighbourhood Group
Ms M. Reedy Inner City East Neighbourhood Group

PRELIMINARY

(1)The submission in opposition from the Inner City East Neighbourhood Group (ICEN) was received late. The closing date for submissions to be lodged with the Christchurch City Council was 29th May 2014. The envelope containing ICEN's submission was postmarked 30th May 2014 and received by the Council on 4th June 2014. Mr Jones, Counsel for the applicant had advised the Committee that he thought it had no power to accept a late submission. In his view s102(2) was absolute. The Committee for its part was of the view that s208 did give it the power to grant a waiver. It acknowledged that such power should be exercised sparingly and only if a

cogent explanation for the failure to meet the prescribed timeframes was advanced. It decided to hear evidence from ICEN in the first instance as to why it should accept a late submission.

(2) Ms Kane for ICEN said they were an entirely voluntary group and were involved in making submissions on a number of issues considered important to the local community. Unfortunately they had simply missed the closing date. She thought a community perspective was very important in this matter. Mr Jones for the applicant said he now accepted that the Committee had a discretion but considered a more compelling reason for exercising it was required than simply missing the closing date. He also raised the standing of the Group and produced a letter from the Registrar of Incorporated Societies listing a number of societies recently removed from the register as “no longer carrying out their activities”. ICEN was listed.

(3) Ms Reedy then gave evidence to the effect that she was the Secretary of ICEN but had received no such advice from the Registrar. She said that since the earthquakes numerous people had moved and addresses had changed including her own. They were still dealing with the dynamics of reshaping their community. She believed ICEN had standing as they had a greater interest than the general public. The Group had been in existence for 28 years and was in regular and close contact with the Council and the Hagley-Ferrymead Community Board. The Council funds an ICEN newsletter which is distributed to 3000 households.

(4) The Committee decided that it would hear submissions from ICEN but would consider later what weight it should give them. It made this decision because the Act required the Committee to take account of the views of the community and it considered the fact that the Council funded the group was evidence of its standing.

(5) There was also the matter of a petition containing a large number of names of people ostensibly opposed to the establishment of a bottle shop at this address. The petition document said it had been organized by a Mr West but despite extensive enquiry the Licensing Inspector had been unable to contact this person. Written advice to the address given that he should attend the hearing to present the petition had gone unanswered. The Inspector’s view was that the petition may have been organized by the local supermarket which would be a competitor if B & S got its licence. The Chairman advised the hearing that the Committee would take account of the petition given that it had numerous local signatories but that it would not be able to give it much weight if no one appeared to speak to it and be available for cross examination.

EVIDENCE OF MR JUGRAJ SINGH

(6) Mr Jones called Mr Singh to give evidence. Mr Singh and his wife are the owners of B & S Liquor Ltd. Mr Singh read a brief of evidence and answered questions arising from it. He said he was familiar with the area of his proposed liquor store as he had previously lived and worked in the locality and in his current employment as a taxi driver he often went there. He pointed out that previous liquor outlets in the area were now gone as a result of the earthquakes. His intention was to help develop the area not to create further problems. If granted a licence he

intended to enter an agreement with Tasman Liquor Ltd to be part of its "Bottle-O" chain. There are no schools close by and the nearest playground is half a kilometer distant. He said it was not his intention to sell single cans, small bottles of beer or cider or shots. RTDs would be located at the furthest point from the entrance. He intends to instal 24 hour security cameras to monitor outside the store and the car park and would also have good lighting. In terms of matters raised by the objectors he stressed he would be careful about how alcohol is presented and sold. He said the Bottle-O chain does not promote the sale of RTDs by discounting nor will it permit the sale of single cans. He proposed that the Duty Manager would keep an eye on the Doris Lusk Park (which is close to the premises), would check it hourly and would refuse to sell alcohol to persons seen to be drinking there. He considered that the R18 store selling legal highs around the corner in Stanmore Road was the main cause of past problems in the area. This is now closed. He supports the moves of the community groups to enhance the area, wants to be part of the revival and would not do anything to harm it.

CROSS EXAMINATION BY LICENSING INSPECTOR

(7) Mr Ferguson asked how it was possible to check the Doris Lusk Reserve hourly. Mr Singh asserted that it was possible and that similar action had been taken when he worked at Eastgate. When asked about craft beers Mr Singh advised that he would be prepared to sell single bottles but he would not split packs of beer.

CROSS EXAMINATION BY POLICE

(8) Sergeant Giddens asked whether Mr Singh had disclosed everyone who had an interest in his business. Mr Singh responded that he and his wife had worked hard and saved money to put into the business. He had financial support from his father who lived in India and the balance is in the form of a loan from the bank. He suggested that the Police may have got the wrong idea that he had a partner but in this case the partner was his wife. He thought the incorrect information may have come from his former employer who did not want him to leave. Sergeant Giddens stated that the former employer was not the informant and that he had said that Mr Singh was a very good employee. The Police were now satisfied that ownership was not an issue.

CROSS EXAMINATION ON BEHALF OF MEDICAL OFFICER OF HEALTH

(9) Mr Shaw asked Mr Singh how he believed that opening a bottle store would help develop the neighbourhood as he had said it was his intention to do. Mr Singh responded that he is very hard working and would become part of the community. He would give donations to local groups. Mr Shaw referred to evidence that would be presented by Ms Smith of Te Whare Roimata that the community had been badly affected by the earthquakes and the negative effects of the R18 store. He suggested that alcohol would have a similar effect. Mr Singh considered that alcohol was not a drug in the same way as what was sold in the R18 store. He did not intend to sell cheap alcohol, would keep an eye on the Doris Lusk Park and if he sold responsibly he did not think there would be a problem. Mr Shaw then asked Mr Singh about his

previous employment. He replied that he had worked for Eastgate Super Liquor for the past three and a half years. Mr Shaw then referred to the objections received from the community and asked Mr Singh what he had done to understand their concerns. Mr Singh admitted he had not spoken with the community groups. Mr Shaw then produced and showed Mr Singh a map showing the deprivation levels in the area and the licensed premises within a 1.5 kilometre radius of his store. Mr Singh said a number of the licensed premises in the area had closed but agreed the Supermarket was very close. Mr Shaw then listed eight licensed premises with another two applications pending all within a 1.5 kilometre radius of Mr Singh's proposed business and asked whether Mr Singh felt he was adding to what was already a significant number of premises in the Linwood area. Mr Singh did not think that granting a licence to him would harm the community. He was aware the Christchurch City Mission was located in the area. Mr Singh said he was aware the Police did not support an alcohol ban in the area and thought it was because they did not see alcohol as a problem in the area. Mr Shaw said that it was actually because of a resourcing issue. Mr Shaw then asked about the controlled purchase operation which had led to Mr Singh having his Manager's Certificate suspended. Mr Singh said it was about three years ago, he had just started work and he thought the customer looked about 20. Since that time there have been no further issues.

QUESTIONS FROM THE COMMITTEE

(10) Mr Singh was asked whether he had given thought to signage and to what his store would look like. Mr Singh responded that "Bottle-O" does not promote alcohol like other companies. There would be signage outside identifying the shop but all displays would be inside the store where they could not be seen by passers-by. At this stage he does not have an agreement with "Bottle-O". That will be done if a licence is granted. They have however given undertakings about promotions. Mr Singh was asked to clarify the ownership of the "Bottle-O" franchise. Mr Singh knew it was owned by Tasman Liquor which was an Australian company but did not know who in turn owned Tasman Liquor.

(11) He was then asked who decided the prices at which alcohol would be sold. His understanding was that Head Office decided the discounts and notified the stores but local owners were entitled to offer Manager's Specials. He said discounted prices were advised each fortnight but the owner/operator set the prices for the rest of the stock. He understood "Bottle-O" did not promote RTDs by discounting them and it was not his intention to make them a Special either. RTDs would be located well away from the entrance. Mr Singh produced his Business Plan at the request of the Committee. This showed his own contribution plus a loan from ANZ Bank.

(12) He was then asked whether he understood the term "deprivation levels of 10". He admitted he did not know what this meant. Mr Singh went on to repeat that he did not see alcohol as a drug if it is not used excessively. He confirmed he would not be giving free samples or holding wine tastings. Asked what he thought about concerns about persons drinking in the Doris Lusk Park and the car park. He said he could observe both areas from the shop and would have security cameras to assist surveillance. He would not sell alcohol to people drinking in

these places. The Committee wanted to know how many staff he would have on duty to permit this. Mr Singh said two people from 12 noon and more at the week-end as business picked up. Even if only one staff member was on duty he could lock the shop while he went out to check the Park. He will not sell single bottles and he will not sell to persons coming back again and again. Mr Singh then produced his staff training documentation and clarified that he will not allow drinking on the street or near his premises. He thought the problems in the area had been caused by the use of cannabis and legal highs. He said he had not personally seen drinking in the park. He confirmed that he was in the area on a daily basis as he drives a taxi locally.

QUESTIONS FROM COMMUNITY REPRESENTATIVES

(13) Ms Kane asked on behalf of the objectors whether Mr Singh would have signage about the harmful effect of alcohol. She considered Mr Singh's view that alcohol is not a drug to be naïve. Mr Singh said he intended to do his best, he did not want to make any trouble for the area where he lived and worked. Ms Kane then asked how the no single bottle sales policy would work given people could pool their money to buy a pack. Mr Singh said that they had a such a policy at Eastgate when he worked there. He would monitor such sales carefully.

RE-EXAMINATION BY SOLICITOR FOR THE APPLICANT

(14) Mr Jones asked Mr Singh whether he had been into the neighbouring Arts Centre to see what they do. Mr Singh responded that he had visited and obtained a newsletter. The previous night he had looked around the area and gone into the park. No-one was there. This was about 9 pm. He confirmed there will be a pull down roller door when the shop is closed and the windows would be barred for security. During opening hours one staff member would be responsible for checking IDs and for intoxication at the door.

EVIDENCE OF LICENSING INSPECTOR

(15) Mr Ferguson produced a very comprehensive brief of evidence. He referred to the Objects of the Act that is the sale and supply of alcohol to be undertaken safely and responsibly and harm from excessive and inappropriate consumption of alcohol to be minimized. He said there was no evidence to suggest that the applicant would sell alcohol other than safely and responsibly. To establish that the granting of a new licence would offend against the second object of the Act would require the establishment of a link between the granting of the licence and excessive or inappropriate consumption of alcohol. The number of alcohol outlets in Christchurch remained lower than pre-earthquake times. As yet no new Off Licence premises have been established in the central city area. In addition alcohol consumption appeared to have peaked then levelled out suggesting that a new outlet would simply draw from an existing pool of customers. The issue before the Committee is whether the amenity and good order of the area would be reduced by more than a minor extent by the effect of granting the licence or alternatively that the amenity and good order of the area is already so badly affected by the effects of the issue of existing licences that they would be unlikely to be reduced further but it

is nevertheless desirable not to issue any further licences in the area. He pointed out that the map produced by Mr Shaw is counting Club licences which only cater to members. There are not many Off Licences in the area. Within a kilometer radius there are two taverns (neither of which have Off Licences), the Supervalu store and the Mill 500 metres away and the Yankee Bourbon 650 metres away. The Inspector was not aware of issues relating to any of these premises suggesting the amenity and good order of the area is not affected to any significant extent.

CROSS EXAMINATION BY SOLICITOR FOR APPLICANT

(16) Mr Jones asked about Harrington's Brewery. Mr Ferguson replied that this was not a discernable shop and sold beer mainly in kegs. The nearest comparable liquor Off Licence is the Mill, then Eastgate Super Liquor which is a kilometer distant. Asked about his familiarity with "Bottle-O" Mr Ferguson said there was only one other outlet operating in the city and that only open for two months. He did not have any concerns.

(17) The Committee had adjourned at this point overnight. When the hearing resumed Mr Jones informed the Committee that he had arranged for Mr Philip Hughes of Tasman Liquor to attend and answer any questions. The Committee agreed to take Mr Hughes' evidence at this time ahead of resumption of cross examination of the Licensing Inspector.

EVIDENCE OF MR PHILIP HUGHES

(18) Mr Hughes stated that he was the South Island Manager of Tasman Liquor Ltd. Tasman Liquor is a straight wholesaler and "Bottle-O" is the marketing arm. The other "Bottle-O" in Christchurch is the Black Horse on Lincoln Road. He produced a photograph of the Black Horse to show the general appearance of "Bottle-O" stores. Advertising is limited to A3 snap frames of the list of Specials and this list is outside the store. All other advertising outside is about the "Bottle-O" brand rather than their suppliers. He confirmed that "Bottle-O" sets the pricing of Specials but other than that pricing is up to the owner-operator. There is fortnightly advertising of specials in the press. He said the owner-operators were retailers and would set prices to meet the market. Mr Hughes said he could work with Mr Singh if he did not want signage for products outside the store. Generally advertising outside the store is environmental, that is opaque glass on the bottom clear on top with illustrations of glasses and wine bottles.

CROSS EXAMINATION BY POLICE

(19) Sgt Giddens asked whether "Bottle-O" looked at the environment around a proposed store. Mr Hughes responded that the first thing they look for is the ability of the proposed operator to meet their requirements. The ability to stock about 50 products with 50% wine. The company wanted to have a full range of customers and to be female friendly. He did know the area around the proposed liquor store. He had seen nothing that would put him off. He hopes that the store would enhance the area. Asked about how the company selected people to carry their brand, Mr Hughes responded that his company was just in the process of launching its

brand in New Zealand. A mix of people had approached them and they in turn had approached other likely customers. A lot were tied to other brands for the next two to three years but may join "Bottle-O" later. Currently they have roughly 38 stores signed up nation wide and hoped to have 70 to 80 by 2015. Tasman Liquor as a wholesaler also supplies other groups. Mr Hughes confirmed that it was Mr Singh who approached them. He then explained that the illustration of wine glasses on the windows of the store was part of their branding. They needed to communicate who they are. The illustration tells the story of wine, about enjoyment not just liquor. Mr Hughes suggested that the Black Horse should be considered both before and after it joined the franchise. It is now a bright open place with a much better environment for shoppers. Sgt Giddens put it to him that some other retailers, such as Henrys, only have their name on the outside of the store with no other signage. He then asked about RTDs. Mr Hughes stated that there would be RTDs in the discount cycle. Sergeant Giddens advised Mr Hughes that Mr Singh had given evidence that this would not be so. Mr Hughes said that he had not worked through every product with Mr Singh but he was incorrect about the LTDs. Mr Hughes was then asked about single bottle sales to which he responded that they discourage this and communicate that policy to the operators. "Bottle- O " supports Mr Singh's plans not to sell single bottles of beer or RTD cans. Sale of higher priced craft beer is not an issue.

(20) The Australian owner behind Tasman Liquor Ltd is Met Cash, a publicly listed company with wholesale distribution of a range of products to such as IGA Supermarkets, Mitre 10 and Autobahn. "Bottle-O" stores are all franchises and Mr Singh's store would be similar in appearance to the photographs produced.

CROSS EXAMINATION OF LICENCING INSPECTOR RESUMED

(21)Sgt Giddens reminded Mr Ferguson that it was Mr Singh's role to convince the Committee that a licence should be granted. At what stage had Mr Singh approached the Inspector? Mr Ferguson said this was at the concept stage. Mr Ferguson confirmed he had advised Mr Singh that if there were public objections it might be difficult for him to get a licence. He said that it was his job to strike a balance. He was then referred to his evidence that the vast majority of the public drink responsibly. Does this represent his view of the community where Mr Singh wants to establish his business. Mr Ferguson replied that he did not know the community well but pointed out that it was also on a route through to the Eastern Suburbs and a lot of people passed through. Sgt Giddens then put it to Mr Ferguson that given the high level of abuse and hospital admissions did he not think this community was more vulnerable than most? Mr Ferguson agreed. He was then asked how long he had spent preparing for this hearing. He replied about a morning. He was then asked what he had done to investigate the impact on the community. Mr Ferguson said they were dealing with an application for an Off Licence. It was difficult to estimate what harm an Off Licence might do a community. Statistics on hospital admissions and Police call outs tended to relate to On Licences. He did agree that there was evidence that every time a new licence was granted it contributed to an increase in alcohol abuse. However he queried whether this evidence related to pre earthquake times or the present. He pointed out that not a single new bottle store had been opened in Christchurch since the earthquakes. He believed it was necessary to look ahead and see some outlets

established. Asked how he had formed the view that hospital admissions from Decile 10 areas were caused by a wider range of factors than just alcohol Mr Ferguson replied that it was based on his opinion as an experienced licensing inspector and on what he has read. Sgt Giddens then put it to Mr Ferguson that in stating that the police were not supporting an alcohol ban in this area he had omitted to mention this was because there were insufficient resources to implement it. Mr Ferguson responded that he did not think this was significant. Sgt Giddens then accused the Inspector of giving little or no weight to the public submissions in opposition. Mr Ferguson said he believed they had value if brought by people who were personally affected and were prepared to come and give evidence. He said in the case of another application he had talked the applicant out of proceeding because of the large number of community objections. Sergeant Giddens then suggested that high deprivation could be a significant factor in people not turning up to speak.

(21) In answer to the Committee as to what could be done to facilitate community input, Mr Ferguson said he had written directly to Nga Whare Roimata and the Neighbourhood Group. He had also written to the organiser of the petition and made other steps to get in contact. When this failed he visited the Supermarket to make enquiries. He said that there was a danger in petitions as some people just signed what was put in front of them. He also found it surprising that no single person wrote a letter of objection despite it being a deprived area.

CROSS EXAMINATION ON BEHALF OF THE MEDICAL OFFICER OF HEALTH

(22) Mr Shaw asked whether Mr Ferguson's view that alcohol was part of the fabric of society reflected his liberal views on alcohol. Mr Ferguson responded that most people drink alcohol and do so responsibly. He was then asked if he accepted that considerable harm is caused by the consumption of alcohol. Mr Shaw said that in the graph of consumption he presented he left out the fact that alcohol consumption rose in 2013 over 2012. Mr Ferguson pointed out that it was lower in 2013 than in 2011 and that consumption had levelled out or trended down since 2008. With reference to the amenity and good order of the locality was Mr Ferguson not aware that problems decreased when a number of stores closed post earthquakes but rose again when the R18 store opened. Mr Ferguson responded that the problems mainly emanated from On Licenced premises. Mr Shaw then produced a chart showing hospital admissions to Christchurch District Health Board facilities. The graph showed a high level of admissions from Linwood and Richmond.. Mr Ferguson agreed that the figures were alarming. He was then asked what it would take to convince him that the amenity and good order of the community would be affected? Mr Shaw suggested Mr Ferguson had a dismissive approach to objectors. Did he accept that the community groups were there to speak for the community? Had he discussed the applicaton with the objectors? Mr Ferguson replied that he had written to them. Did he have the same attitude to Victoria Street objectors. Mr Ferguson responded that Victoria Street was past the "tipping point" as far as he was concerned and he could not recommend the granting of more licences. Was he the Inspector who recommended the issuing of the Thirsty Liquor licence? Yes he was. Did he advise Mr Singh that he should withdraw his application should there be serious opposition. Yes he did. Is his attitude shared by other

Licensing Inspectors? Mr Ferguson responded that he was not sure but there was often debate among Inspectors.

CROSS EXAMINATION BY Ms SMITH OF TE WHARE ROIMATA

(23) Ms Smith referred to Mr Ferguson's statement that the siting of the shop would enable it to serve more than just the local community. Was he aware that there were plans for Worcester Street to become a cycle way, for cars to be pushed on to Hereford Street and Gloucester Street and closing off access to Worcester Street from Fitzgerald Avenue? Also though the R18 store was presently closed what impact would there be if it reopened? Mr Ferguson said he was not aware of the detail of the proposed traffic changes. He agreed the reopening of the R18 store would add to problems. He then said that he had seen bottle stores open in run down areas before and observed that vandalism and graffiti decreased possibly because there were more people around to manage it. It was a matter of balance. Ms Smith then asked about the number of liquor outlets in Richmond as it had lost 60% of its shops. Mr Ferguson queried how far it was appropriate to go in counting such premises. He said that a decision from the Alcohol Regulatory and Licensing Authority had looked at premises in a one to one and a half kilometer radius when considering applications. Ms Smith then asked if Mr Ferguson was aware of the social services located in the area? Mr Ferguson said he knew the City Mission was there. Ms Smith pointed out that there were also four emergency houses in the area. Did he know about Te Whare Roimata and what its work entailed? Mr Ferguson responded that he presumed it was about developing the community but was unclear whether it represented the views of the community or promoted views to the community. Ms Smith informed him it was about giving the community a voice. She said their group became aware of the application when someone from the Council pointed it out just before the objection period expired. How did he expect people in the community to know about it? Mr Ferguson replied that the requirement in legislation was to advertise and to place a notice on the proposed premises. He accepted that the system may exclude some people.

QUESTIONS FROM THE COMMITTEE

(24) Mr Ferguson was asked whether he thought Mr West who supposedly organized the petition actually existed? Mr Ferguson responded that he thought Mr Lee the Supermarket proprietor was actually behind the petition. He thought it was significant that no one who signed had turned up. He believed that it was the intent of the Act that people who were affected should come forward and explain why they were affected. The Committee noted that the Act only gave 15 days to object and that in a high deprivation area how did we get them to come? Mr Ferguson said that if it were desirable to cap numbers of licences in high deprivation areas this should be included in the Local Alcohol Plan (LAP). In the meantime while we do not have an LAP it falls back on the Committee and the legislation. Inspectors cannot cover all the bases. There are just not enough resources. The Committee asked had he sent anything to anybody apart from the advertising? The information had been sent to the Community Board. Had he got legal advice on the status of petitions? He had not.

(25) The Committee then asked about Mr Singh's previous record of serving an underage customer and whether he would have expected a character reference to accompany this application. Mr Ferguson said as far as he was concerned Mr Singh "had done his time". His Manager's Certificate had been suspended for a time but was now reinstated and there had been no further problems. A Manager's Licence was not issued without a character reference. The two taverns previously in the area had now gone and he considered that while the opening of a new bottle store would increase the use of alcohol it would not do so to a significant extent. Access to alcohol is already available and he did not think this store would have much affect at all. The Committee suggested that it was required to minimise harm so it does not get out of hand and referred to the Hospital admission figures. Should we not take the Medical Officer of Health's caution about an area into account? Mr Ferguson said it was a matter of how much weight to give to such concerns. It could lead to no licences being granted in high deprivation areas.

(26) The Committee then turned to the evidence of Mr Hughes and asked about the advertising on the outside of a "Bottle-O" store. Mr Ferguson was of the view that the tackier the advertising the more problems ensued. Good clean advertising would help. The Committee pointed out that Mr Hughes had contradicted Mr Singh's evidence about the promoting of RTDs. Mr Ferguson believed it came down to the approach of the operator that he would not sell single bottles or cans to unsuitable people. Mr Ferguson confirmed that he had no problems with the "Bottle-O" franchise. They were new but were coming across well. The Committee then referred to Mr Ferguson's concession that there would be a minor increase in problems and wanted to know what problems. Mr Ferguson thought possibly drunkenness in the streets or domestic violence. If Mr Singh does what he says then he may discourage people from congregating in the reserve say if he goes over then calls the Police. While research shows that every time a new outlet is opened there is an increase in alcohol harm the alternative is banning alcohol altogether.

EVIDENCE OF SGT GIDDENS

(27) Sgt Giddens read a brief of evidence and produced a map of the area showing calls for service within a one kilometer radius of 411 Worcester Street in the 62 days preceding 30 June 2014. These calls were colour coded into three categories of alcohol related- possible, likely and probable. He produced similar maps for three other areas of the city by way of comparison. The map for the area the Committee is required to consider showed a much greater number of calls for service than the other three. It was Sgt Giddens' view that alcohol clearly impacted on the amenity and good order of this locality in a negative way. The proposed Off Licence would increase resident's exposure to alcohol promotion and to access to higher strength alcohol such that it was difficult to see how amenity and good order would not be reduced by more than a minor extent.

CROSS EXAMINATION BY SOLICITOR FOR APPLICANT

(28) Mr Jones referred to the file which contained a letter from the Police opposing the application and stating that further investigation was required as to who was behind the business. In addition the Police wanted information on the franchise Mr Singh was to use. There was nothing in the letter about amenity and good order. However at this hearing this had been the sole focus of the Police as the other matters had been covered off. Sgt Giddens said the Medical Officer of Health had raised issues and as the Police had information in support he had produced it. Mr Jones asked if the maps were Sgt Giddens' own work. He replied they were not but he had been part of the group that decided which other areas would be used for comparison. Mr Jones then asked how the incidents were classified by a red or pink spot. Sgt Giddens said the information was in the data base. Mr Jones wanted to know whether the data base stated where the alcohol was obtained or consumed. Could it be from On Licenced premises? Sgt Giddens agreed it could. He also agreed that if it were from an Off Licence it could be from one near by or far away. Mr Jones put it to Sgt Giddens that it was not possible to draw a connection between the outlets in the area and these incidents. Sgt Giddens responded that it was indicative of the community's vulnerability and that there was potentially a relationship between licensed premises in the area and calls for police service. Mr Jones then said that residents in the area already had access to alcohol to which Sgt Giddens responded that it was mainly to lower strength alcohol. There were not many outlets nearby where people could buy higher strength alcohol. His concern is around the type of alcohol the shop would sell and the promotion of more sales in the area. Mr Jones then asked whether Sgt Giddens agreed with Mr Shaw that the area was already at saturation point. He responded that he did not think the area within a one kilometer radius was at saturation point. There were plenty of alcohol outlets handy but people had to make an effort to get to them. Sgt Giddens did not agree with the Inspector that it would not add to alcohol abuse by other than a minor extent. Mr Jones said the Committee had to reach its decision on evidence not speculation and the Police had not brought any evidence that the granting of the licence would increase abuse by more than a minor extent. Sgt Giddens responded that the map adds to the picture and the comparison between the locations was compelling. Although the map does not show where the alcohol was supplied or consumed it did indicate vulnerability.

QUESTIONS FROM THE COMMITTEE

(29) Sgt Giddens was asked to explain how the classifications entered into the data base were arrived at. He explained that each call for service was logged in as received. The call taker decided the classification and if the Police attended it would be updated at the scene. He agreed that the Police did not attend every call. Asked what reliability he thought could be given to the classifications on a scale of 1 to 10 he said he thought about 7. Sgt Giddens said he did not know the deprivation levels of the other localities selected for comparison. Sgt Giddens admitted that he did not know whether anything about amenity and good order had been put to the applicant as he had not personally attended the meeting with him. He also admitted that when he wrote the report objecting to the issue of the licence he did not raise amenity and

good order issues. He regrets this now and confirms that all issues of suitability have been satisfied. He regarded his evidence as now being presented to assist the Committee rather than being by way of objection. He did not present “last drink” crime statistics as these were not available. Sgt Giddens was asked to expand on his familiarity with the area. He said that he had always been aware of its high deprivation, high population density and its high rate of offending. Police spent a significant amount of time there. The problems were compounded by the presence of the City Mission. Historically 25% of people arrested had consumed alcohol.

EVIDENCE OF MR STUART DODD ON BEHALF OF THE MEDICAL OFFICER OF HEALTH

(30) Mr Shaw called Mr Dodd to read a brief of evidence which contained a copy of the District Health Board (DHB)'s submission to the Christchurch City Council on its draft Local Alcohol Plan (LAP). Two analyses showed that there were twice as many Off Licence outlets per capita in the more deprived areas (Decile 7+) as in the Deciles 1 to 5 and there was a strong correlation between alcohol attributable ill health and deprivation. He clarified that alcohol debilitates rather than kills. He wished to correct an assumption made by the Licensing Inspector regarding the rate of alcohol consumption. This has steadily trended upwards from last century, what is trending down is the proportion of drinkers in the population. He then referred to research papers listed on pages 24 to 27 of the DHB submission on the LAP. These supported the strength of the relationship between alcohol outlet density and the incidence of alcohol related crime, violence, accidents and harm to vulnerable people. This had been found to apply to even well managed premises. DHB Emergency Department admissions had been analysed and show that at the current rate, alcohol related admissions are set to double every nine years. The DHB had in its submission proposed a moratorium on the issue of new licences outside the Central City except where a Community Board expressly indicated that licences should be granted. The Council did not however take up this proposal.

(31) To the Committee Mr Dodd conceded that he was essentially putting the same evidence to the Committee that had failed to convince the Council. The issue before the Committee was whether the granting of this particular licence would reduce the amenity and good order of this particular locality. Mr Dodd responded that the Council had accepted submissions relating to hours. His point was that an additional licence in this area would likely cause greater harm because of its high deprivation. The Committee then sought information as to when density levels became a factor. Mr Dodd said it varied from area to area but in this area with the highest level of deprivation the evidence is that an additional licence would have a marked effect on alcohol related harm. The Committee was also interested to know whether any research had been done on whether signage increased the consumption of alcohol. Mr Dodd was not aware of any evidence and suggested it would be difficult to obtain. He was then asked about the increase in alcohol related admissions to hospital. He said these ranged from those solely attributable to those partially attributable and referred to the graph on page 16 of his submission. He stated that this area was already experiencing higher rates of hospital admissions and more than any other should not have more Off Licences as they put more people at risk.

EVIDENCE OF MR PETER SHAW ON BEHALF OF THE MEDICAL OFFICER OF HEALTH

(31) Mr Shaw read from his brief of evidence referring to a meeting held between himself, the Licensing Inspector, the Police and the applicant. Mr Singh had been advised then that public objections had been received and that it was up to him to prove that the proposed premises would have not more than a minor effect on the area. Mr Shaw produced a map showing licensed premises in the area. This had been drawn from data held by Community and Public Health. The map shows within 1.5 kilometres of the proposed premises 10 Off Licence outlets and 19 On Licence premises. The Medical Officer of Health believes that the area is already at saturation point and amenity and good order is most likely to be affected by more than a minor extent if this application is granted.

CROSS EXAMINATION BY SOLICITOR FOR THE APPLICANT

(32) Mr Jones asked how Mr Shaw could reconcile his evidence that the area had reached saturation point with that of Mr Ferguson who described it as a desert. Mr Shaw responded that there were a considerable number of alcohol outlets within walking distance. Mr Jones suggested that an additional licence would only be diverting sales from the existing premises. Mr Shaw conceded this was possible but said there was also the potential for increasing the supply of alcohol. He said when a bottle store is in a shopping area customers have a propensity to be diverted into buying alcohol and the proposed store would only increase that opportunity. Mr Shaw then asked whether a new shiny bottle store in a shabby shopping centre might be beneficial to the whole area. Mr Shaw conceded this was possible. Did he have concerns about the lay-out plan or about "Bottle-O"? Mr Shaw replied that he had no concerns about either. Mr Shaw did not know whether the "Bottle-O" in Hillmorton had a detrimental affect on that community but he was sure the level of deprivation in that area was not nearly as high as that of the proposed premises. Mr Shaw believes the incidents of abuse will increase because of the high deprivation level and historically there had been problems with a previous bottle store in that area. He confirmed that there had been applications for new licences which the Medical Officer of Health had not opposed.

EVIDENCE OF Ms JENNY SMITH OF TE WHARE ROIMATA

(33) Ms Smith said she was a Community Development Worker who has worked for the last 28 years in the Inner City East/Linwood area, firstly for the City Mission and then for the Te Whare Roimata Trust. The Trust objected to this application because of the impact it believed another bottle store would have on the locality. This neighbourhood is marginalized and Census data shows it has been rated as Decile 10, one of the highest deprivation levels in New Zealand. The data also shows a high concentration of single people living in bedsits and single rooms and a majority on a benefit. 70% are in rental accommodation. The assumption has been made that this is a transient population but this is actually an area within which people move around rather than leave. Many of these people would have lived there 15 years or more. High unemployment and disability are features. There are former psychiatric patients and also prisoners who have been sent down from the North Island but released to Christchurch and

choose to stay because they have no support systems elsewhere. A lot have addiction issues. The population is also ethnically diverse which has the potential to cause problems. Gangs, white power groups and refugees add to the mix. In addition 300 rooms were lost through the earthquakes with the result that many people are sleeping rough. Alcohol is their companion when they are cold or in pain. The community has lost shops and other amenities. There is no chemist, bank or hairdresser but lots of alcohol outlets. There were three schools in the area, one (Richmond) has now closed and another (Phillipstown) has a question mark over it. There are 9 social service agencies in the area including emergency housing, 2 specialist mental health services, a large aged care facility and the City Mission. A huge investment has been made in supporting this community and its well being. The Supervalu and the Mill play a key role in supplying cheap alcohol. The shops at Richmond are important to this neighbourhood and putting another liquor outlet in this location would put at risk the community's ability to pay for daily necessities. Now the Tristrams bottle store and the Worcester Tavern have gone (as a result of the earthquakes) there is a calmness about the area. It is likely the Worcester Tavern will want to come back and if so it is likely intoxicated people will again gather in the car park and in the Doris Lusk Park. Drug deals are done by the toilets. When the R18 store was operating there was a high visibility of alcohol and addiction problems such as violence, graffiti, gang intimidation, threats to elderly people. It is a challenging environment where things can get out of hand very quickly. The Trust is very concerned about the proposed bottle store right opposite the Arts Centre which opens on to the Doris Lusk Park which could become a "lounge bar" for the bottle store. A previous bottle store in the area opened out on to Worcester Street so did not draw people towards the park.

(34) Ms Smith understood B&S Liquor did not propose to be a discount liquor store but the fortnightly specials will be attractive. Selling alcohol in box lots would only encourage people to pool their money to purchase it. She said the temporary alcohol ban originally sought had been withdrawn because the Police were unable to resource it. She said that the Council and a Working Party had looked at a range of options that could support the area. The proposal to close Worcester Street to vehicle traffic as far as Fitzgerald Avenue would have the effect of diverting traffic to other streets. This means that B&S Liquor would need to place more emphasis on attracting customers from the neighbourhood. This is a neighbourhood where the residents have few educational qualifications and most engagement takes place at street level. Just because the community is silent it does not mean they consent. The Trust has heard their views. It knows some of the people who signed the petition and know they genuinely believed they had registered a protest. Ms Smith also said that the Trust's opposition had the support of the Hagley-Ferrymead Community Board.

CROSS EXAMINATION BY SOLICITOR FOR THE APPLICANT

(35) Mr Jones put it to Ms Smith that alcohol was already available and accessible in this neighbourhood. Ms Smith agreed but said the issue will be the discounted liquor which is stronger than what is available in the Supermarket. The proposed store would also be closer than other bottle stores so people will be more likely to go there.

CROSS EXAMINATION BY POLICE

(36) Sgt Giddens asked whether the placement of a bottle store in the Stanmore-Worcester-Gloucester Street point would have a greater impact? Ms Smith responded that people get their benefit out of an ATM there and if the bottle store is right there they will be tempted to go there.

CROSS EXAMINATION ON BEHALF OF THE MEDICAL OFFICER OF HEALTH

(37) Mr Shaw asked Ms Smith whether in her experience there were large numbers of calls to the Police for their assistance. Ms Smith replied that she saw nuisance, assault, theft, domestic violence and general violence in the bed sits. She also saw a number of hospital admissions. She explained that Te Whare Roimata was established by the City Mission as it wanted a community development arm. The Mission itself started in 1930 . The City Mission wanted more than an ambulance at the bottom of the cliff. Te Whare Roimata later became a separate trust. Its work includes education, community gardens, a work group, community housing- what local people see as issues. It has four full time and four part time staff and receives funding from charitable trusts and from the Canterbury Community Trust.

QUESTIONS FROM THE COMMITTEE

(38) The Committee wanted to know more about the make up of housing and population in the area. Ms Smith said that the high proportion of bed sits and single rooms were provided by about 10 key private landlords. There is about 8 to 10% unemployment, high levels of disability and health issues and low educational levels. Statistics show 3% Pacifica and 12% Maori. It is normal to see 8 to 10 people just sitting in the Park. They “own” the Park and this is very frightening to the elderly. They also sit outside the Arts Centre. They could be drinking or using herbal highs. After the earthquakes it was fairly OK but it is getting worse again. As the Red Zone is being cleared out more people are drifting into this area. It used to be that people would congregate in the Square by day moving back to the bed sits by night. Now they tend to gather in this locality. A lot of the refugee population moved out after the earthquakes but there is a growing Indian and Asian population. A major concern of the Trust is Maori people from the North Island. These are urbanised Maori who are disconnected from their Whanau, have low educational levels and find it hard to get employment. The Pacifica population tends to be more in families and in Housing Corporation accommodation, while Maori tend to be in single rooms, they are certainly the chief concern.

EVIDENCE OF Ms RAYLEE KANE of ICEN

(39) Ms Kane stated that she was a professional social worker and lived in the area. She is a Trustee of the Te Whare Roimata Trust and of the Latimer Housing Trust. The grounds for objection by the Inner City East Neighbourhood Group (ICEN) are similar to those of Te Whare Roimata. There are already a number of liquor outlets in the area and she is concerned about the proposed location being so close to the Arts Centre and the Doris Lusk Park. Historically this

area is vulnerable and struggling. There are several treatment centres close by and people tend to cluster around them. There is a high percentage of single people, mostly men, who come through the addiction services or the justice system. If they get back on the drink the scenario changes very quickly and people are wary of this. Some of the improvements recommended for the area such as changing the layout of the toilets and doing up the Park will help make it safer. The former Tristram's bottle store was a nightmare. Anything that acts as a honey pot, as this little bottle store will, has the potential to harm the community. She knows a number of people who signed the petition and they believe they have made a protest. However they are not the sort of people who could put anything in writing. She said in answer to the Committee that she did not know the organiser of the petition.

CLOSING SUBMISSION FROM SOLICITOR FOR THE APPLICANT

(40) Mr Jones stated that Mr Singh was a likeable young man and if this application had not been for a bottle store in this area we would not be here. The key issue is s105 (1) (h) amenity and good order and the suitability of the site. The Committee is required to decide whether the evidence presented was that the amenity and good order of the locality would be affected in more than a minor way. It must reach a conclusion that this is more probable than not, acting on the evidence presented not mere assertions, fears and concerns. In his submission there is precious little evidence. Mr Ferguson is a very experienced Licensing Inspector, 15 years of experience, and in his opinion the application ticks all the boxes. Sgt Giddens based his evidence on the "pink dot plan" but when we drill down we find that the grading of the dots is based on a data base filled in according to whether alcohol is likely to have been involved in a request for Police calls for service not whether it actually was. The assessment is related to a pre-determined data base where offences of that type are likely to be alcohol related and no light is shed on where the alcohol was supplied or consumed. Thus a conclusion cannot be drawn that the call out was alcohol related nor that the alcohol consumed was purchased in the area. The evidence of the Medical Officer of Health does not draw a link between the number of hospital admissions and the number of alcohol outlets in the area. Taken with the "pink dot plan" when the assumptions are stripped away there is precious little evidence that the amenity of this area will be reduced by more than a minor extent. Mr Jones urged the Committee to use its common sense and rely on the expertise and experience of the Licensing Inspector who did not oppose the application.

DISCUSSION

(41) At the outset the Committee wishes to express its appreciation of the quality of the submissions presented to it by all the parties to this hearing. It notes that the Act envisaged the involvement of the community in alcohol licensing matters but did not give a lot of guidance as to how this is to be achieved. It also noted that in the absence of a Local Alcohol Policy it fell to the Committee to weigh up questions of where alcohol outlets should be located.

(42) We accept that there is no question as to the applicant, Mr Singh's suitability to run a liquor store. The impression we gained ourselves was of a hard working young man who is very

keen to become a successful businessman in his new country. We commend him on his industry and enthusiasm. If in the questioning of his evidence he appeared at times to give answers that he thought would be helpful to getting his licence rather than basing them on practical realities then we understood that and ascribed it to his eagerness to get his business started.

(43) As Mr Jones, counsel for Mr Singh, has stated and all other parties agree the issue the Committee must consider is expressed in s105 (1) (h). *“In deciding whether to issue a licence, the licensing authority or the licensing committee must have regard to the following matters:*

(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence..”

To prepare ourselves for the hearing the Committee undertook a site visit primarily to establish in our minds the exact location of the proposed bottle shop in the neighbourhood and its relationship to other licenced premises and community facilities. We record that we were moved by the appearance of the locality, the closed shops, the graffiti, the empty sites where buildings had been demolished and so on. Even without the evidence tendered we gained a strong impression of a struggling neighbourhood. The question we have to determine is whether in our opinion Mr Singh’s bottle shop will add to the problems, in more than a minor way, or will it as the experienced Licensing Inspector speculated act possibly as a positive retail development that might serve as a catalyst for other businesses to re- establish themselves.

(44) Mr Singh for his part saw the establishment of his business as a positive step and certainly he had given thought to its management and how he would deal with the various issues that concerned the reporting agencies, the objectors and the community. As we have observed earlier we thought some of his undertakings were given hastily without considering whether they were capable of implementation. He clearly will be more in the hands of Tasman Liquor Ltd when it comes to discounting and other specials than he initially gave us to believe. We also query whether it would be possible to keep an eye on the Doris Lusk Park and the car park in the manner he said.

(45) Mr Ferguson the very experienced Senior Licensing Inspector did not oppose the application. He did not think that Mr Singh’s store would detract from amenity and good order by other than a minor amount. He described the area as a “desert” and thought a new store could be seen as a good thing. He pointed out that several licenced premises in the area had closed post earthquakes and that even if Mr Singh got his licence there would still be no more than before. He was not aware of any issues with the other licensed premises which were in a 1.5 kilometre radius of this site.

(46) The Police took a different approach supporting the opposition of the Medical Officer of Health. As Mr Jones, Counsel for Mr Singh, has pointed out the Police originally had concerns on grounds of suitability and had not previously raised the issue of amenity and good order. Now that suitability was no longer seen as an issue they had switched tack. We were nevertheless glad to have the map of the district showing calls for Police service and the maps

of other districts by way of comparison. We accept that there are questions about the statistical basis on which the maps are based. We do not know the exact relationship between calls to the Police and established alcohol outlets. What we can say is that the maps drew to our attention that there are a large number of calls for Police assistance emanating from the Inner City East/Linwood area far more than from the other areas given for comparison and a great many of the incidents involved alcohol. We accept that general information and add it to our overview of the locality.

(47) In turn the representatives of the Medical Officer of Health, Mr Dodd and Mr Shaw gave us information to the effect that hospital admissions and general ill health was greater in this area than in others and that this had a positive correlation with alcohol consumption. Again we accept that information and add it to our overall picture. We do not need to challenge the scientific basis of the data. It is sufficient for us that it is established that there are lot of people in need of health services who live in this area and that alcohol plays a significant part in their situations. Mr Shaw made much of the number of licensed premises which already exist near to the proposed store. Again we accept that although our task is to determine the effect on amenity and good order of one small store if given a licence. As Mr Ferguson has pointed out earlier if the Government or the City Council had wanted to reduce the number of outlets per se it could have created a moratorium on new licences. The Act does not attempt to do so nor does the city's Draft Local Alcohol Policy.

(48) What we did find as totally compelling evidence came from Ms Smith of Te Whare Roimata. She is clearly a very experienced community worker who has worked with the people of this area for nearly thirty years. When she described the deprivation in this area, the huge problem of poor accommodation even homelessness, the poor health, the lack of employment and the transient population she spoke with conviction. We accepted her concern that the granting of this application would lead to problems that an already struggling community had no need of. We were left with a very vivid picture of an area if not in crisis then in a very vulnerable position.

(49) The evidence of Ms Kane also an experienced social worker with good knowledge of the community only served to endorse what Ms Smith has told us. We have no difficulty in admitting Ms Kane's evidence despite earlier questions of standing because she only backed up the very detailed evidence of Ms Smith before her.

(50) Both Ms Smith and Ms Kane referred to the petition and would have us accept that the signatories genuinely believed that in signing they were making a protest in the only way open to them. We do accept that most of the signatories would have found appearing at a hearing such as this, giving evidence and being questioned on it an impossible task. We acknowledge as far as we can that the two community workers speak for them. There is case law about the weight that should be given to petitions and frankly how little weight should be given to them when the organisers or signatories do not front up to speak for them. In this case we have admitted the petition and note that it is signed by a great many people who all oppose the application. That adds to the information we have on the community perspective.

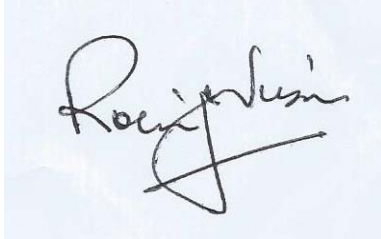
CONCLUSION

(51) The conclusion we have reached is that the granting of this Off Licence would reduce the amenity and good order of the locality to more than a minor extent. We base our opinion on what we have read and heard from the various witnesses and our own observations of the site. As we have said we were considerably helped by the quality of the submissions from all parties. We felt we had been given a wealth of information and we have taken time to sift through it. We were impressed with the applicant and are confident he will make a useful contribution to the alcohol industry in a different location. However we were left in no doubt at all that this locality would be the better without a liquor store.

DECISION

Our decision is that the application by B & S Liquor Ltd for an Off Licence for premises situated at 411 Worcester Street, Christchurch is declined.

DATED AT CHRISTCHURCH THIS 21st DAY OF JULY 2014

A handwritten signature in black ink on a light blue background. The signature is cursive and appears to read 'R.J. Wilson'.

R.J. Wilson
Chairman
Christchurch District Licensing Committee