

Decision Number 60C [2015] 1642

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 PM LIQUORS LTD for
a new Off Licence for premises to be
known as The Liquor Shop situated
at 291 Lincoln Road, Christchurch.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson Mr R.J.Wilson

Members Mr D.L.Blackwell OSM
Mr P.Buttell

HEARING at Christchurch on Tuesday 21st July 2015

APPEARANCES Mr J.Taylor, Counsel for the applicant
Mr Lovepreet Singh Minhas, PM Liquors Ltd
Mr M.Ferguson, Senior Alcohol Licensing Inspector, CCC
Constable B. Ross, NZ Police
Mr P.Shaw, for the Medical Officer of Health
Major W. Barney, The Salvation Army
Ms L D'Aeth, Christchurch Resettlement Services
Ms R.Noble, Business Owner
Mrs J.Anderson, Hearings Adviser, CCC

INTRODUCTION

(1)This is an application by PM Liquors Ltd for a new Off Licence for premises located in a commercial area in the suburb of Addington. The premises have not been licensed previously. The application was duly advertised and attracted a number of public objections as well as the opposition of the NZ Police and the Medical Officer of Health. The public objectors were all contacted and given the opportunity to appear at the hearing. Only three chose to do so. In his

opening remarks the Chairperson acknowledged the interest of the objectors who had opted not to attend but said little weight could be given to their concerns as they were not available to give evidence and be subject to cross examination. In consideration of the other commitments of the public objectors it was agreed to hear their evidence immediately after that of the applicant so they could be excused at that point.

EVIDENCE OF MR LOVEPREET SINGH MINHAS FOR THE APPLICANT

(2)Mr Minhas described the area surrounding the proposed bottle store. It was to be in a small shopping centre off Lincoln Road. The premises would be next to a bakery and there were licensed restaurants and other retail businesses in the block. Sullivan's Irish Bar is also nearby. The location was then clarified by the production of a map (Exhibit A) showing the location of the proposed bottle store to other licensed premises in the vicinity. Mr Minhas thought the nearest Off Licence was Henrys which was a kilometre away. He did not realise that Sullivan's also held an Off Licence. The Super Liquor in Barrington Street was 1.5 kilometres distant while the Supervalu Supermarket was about 1.1 kilometres. The map also showed the Salvation Army facility at 35 Collins Street was 750 metres distant. Mr Taylor asked Mr Minhas to explain his aim and target market. Mr Minhas said that there were a lot of people working in offices and other businesses in the area and he hoped to sell to these people. He said his experience was that these were well paid people and in another business he had done well selling to this type of customer. Asked about his Host Responsibility Policy Mr Minhas said he would not sell single cans or single bottles of RTDs. Nor would he sell to minors or intoxicated persons. Mr Taylor asked Mr Minhas how he thought his store would affect the Salvation Army's clients. He responded that he thought it would have little effect but he was prepared to work with the Salvation Army if problems did arise. He thought it might be possible to refuse service to particular people if he knew who they were.

CROSS EXAMINATION

(3)The Senior Licensing Inspector had no questions for Mr Minhas. Constable Ross asked for further details on how Mr Minhas expected to work with the Salvation Army. Mr Minhas said that perhaps if he had photographs of people who were attending addiction programmes this would help him identify them and thus exclude them. He was open to suggestions. With permission from the Chairperson, Major Barney commented that she had no idea how the Salvation Army could work with a bottle store as they were diametrically opposed. In any event there would be major issues with client confidentiality.

(4)For the Medical Officer of Health Mr Shaw asked about the previous licensed premises Mr Minhas had operated. He responded that he had a bottle shop in Cranford Street and previous to that two businesses in Dunedin. He had no breaches of the law. He expanded that his Cranford Street shop was in a shopping complex with bars, restaurants and retail shops. It was 200 to 300 metres from a school. The socio-economics of the area were fine, certainly not low. Mr Shaw then asked whether he was aware that the area around the proposed bottle store was of relatively high deprivation. Mr Minhas responded that he was aware of the poorer areas but

there were also areas that were not so deprived. Mr Shaw was then granted permission to table a plan derived from 2013 census figures which showed levels of deprivation between 6 and 10 in the immediate area of the proposed bottle store (Exhibit B). Mr Minhas agreed in response to Mr Shaw that this was significantly different to the Cranford Street area where Mr Minhas's previous business was located.

(5) Mr Shaw then referred to studies carried out in New Zealand that showed that the higher the level of deprivation the greater the risk of alcohol related harm. He queried whether Mr Minhas was aware of these. Mr Minhas responded that he was. In answer to a question as to what steps he had taken to learn about the area he was proposing to open a business in, Mr Minhas replied that he had lived in Christchurch for a long time, was familiar with the area and had friends who lived locally. He was not aware of any particular problems in the locality. Asked about the location of the Salvation Army facility he responded that he knew where it was but pointed out that it was not in the same street and the route to it from his store would be an indirect one. He agreed that Christchurch Resettlement Services was in the same block as his proposed shop but admitted he was not aware previously of its existence. Mr Shaw then asked what investigations Mr Minhas had done into people movements and behaviour in the area. Mr Minhas responded that he had been to the area often, there were lots of businesses being a shopping district. He had not noticed any people causing trouble in the area. Mr Shaw then asked Mr Minhas about the facilities that drew people to the area. Mr Minhas responded that there was a bus stop close to his proposed shop and it was not far to the stadium. He agreed that the premises were also not far from the Court Theatre, the AMI Stadium, the Horncastle Arena and Addington Raceway. However he said that there was another bottle store at the Black Horse up the road which was probably closer to several of these venues. Mr Shaw then asked about schools in the area. Mr Minhas replied that he was aware of some schools in the area although the high school was some distance away. Mr Shaw pointed out that the area was quite well served with On Licence premises which required patrons to be controlled as a condition of the licence but with an Off Licence there was no control over customers once they had left the premises. Mr Minhas responded that he had occasion in the past to refuse service to intoxicated persons coming to his shop after drinking at other premises.

(6) Mr Shaw then referred to a submission the Medical Officer of Health had made with respect to the draft Local Alcohol Policy. This had ranked suburbs according to numbers of admissions to the Christchurch Hospital Emergency Department. At that time Addington was rated sixth highest. Updated figures put it seventh highest but still indicating that Addington was an area which ranked highly for alcohol related harm. Mr Minhas responded that not all his customers would be from Addington and he had friends who lived locally who had never had any problems with alcohol related behaviour. Mr Shaw explained that the statistics related to where a person lived, not where they had been drinking.

(7) Mr Shaw then referred to the application Mr Minhas had submitted to the Christchurch City Council and specifically to the answers to Section 6. He considered the responses to these questions were inadequate. He asked Mr Minhas whether he thought the answer "Not applicable" with respect to anticipated noise levels was appropriate. Mr Minhas responded that

he thought it was, as his business would not generate any noise and in any case was located in a busy shopping centre off a busy street. Mr Shaw thought he should have considered the prospect of people causing noise at other locations after purchasing alcohol. Mr Minhas also said he thought his answer to 6(f) relating to nuisance and vandalism was adequate. He said he would not be selling single cans or RTDs and this would assist. He said he had not had discussions with other licensees in the area and did not know their experiences. He clarified that he would sell a single bottle of craft beer but pointed out that these were large bottles and not priced under \$5. Mr Minhas then confirmed he had sold his Cranford Street store and would be concentrating on the new one.

QUESTIONS FROM THE CHAIRPERSON

(8)Mr Wilson referred to the objections received from the public which he had earlier explained could not be given much weight. However one had referred to the new shop selling “cheap liquor”. Did Mr Minhas intend to operate a “cheap liquor” shop? Mr Minhas responded that he had to make money but considered his prices would be competitive rather than cheap. Mr Wilson queried who did he think his customers would be - people who work in the area, passing traffic or local residents? Mr Minhas responded that all of these were potential customers. He had not noticed any particular type of customers in his previous store and thought it would be much the same in the new location. The public objectors who were present were given the opportunity to pursue this point but none wished to do so.

RE-EXAMINATION BY COUNSEL FOR THE APPLICANT

(9)Mr Taylor asked Mr Minhas to expand on his motivation for going into this area and his target market. Mr Minhas responded that he had noticed that there were many offices and other businesses in the area. He used to sell a lot in his former business to employees of these businesses, they were well paid and there were a lot of them. He thought that there was an opportunity in Addington to sell to a similar group. Mr Taylor then asked Mr Minhas about his obligations under the law. Did they extend to control of customers’ actions after they had left the premises? Mr Minhas said he did not believe they did. He said Parliament had only put obligations on him with respect to his own business.

EVIDENCE OF MAJOR WENDY BARNEY

(10)Major Barney said she was the Director of the Salvation Army Addiction Service and also had responsibility for the Supportive Accommodation facility both located nearby. She had 21 years experience working with disadvantaged men and women in community based programmes and now at the Addiction Centre where she has been in charge for about 18 months. Major Barney read from her brief of evidence. The Salvation Army objected to the granting of a new Off Licence firstly because of its proximity to its Addiction and Supportive Accommodation facilities which were only about 600 metres away but also because it believed there were already sufficient premises in the area selling alcohol. She said that the Salvation Army had many vulnerable people both on site and coming and going, many being there by

Court direction. These people find liquor outlets very quickly and this compromises their treatment. In addition the Salvation Army facilities are smoke free which leads to clients walking the streets while they have a smoke and the proposed bottle store is well within walking distance.

CROSS EXAMINATION

(11) Mr Taylor for the applicant referred to s106 of the Sale and Supply of Alcohol Act (effect of issue of licence on good order and amenity) which referred to the number of premises for which licences *of the kind concerned* are already held. He suggested that an objection on those grounds would need to be about Off Licences. He asked Major Barney whether as well as residential clients there were clients who would come and go. Major Barney agreed and accepted that these clients were likely to pass other liquor outlets on their way to and from the Salvation Army facilities. Mr Taylor then referred Major Barney to the document produced by the applicant as Exhibit A. The Salvation Army facility in Collins Street was 1.5 kilometres from the Super Liquor in Barrington Street and 750 metres from the proposed bottle shop at 291 Lincoln Road. He suggested both were feasible walking distances, perhaps 9 minutes versus 18 minutes. Major Barney responded that for most clients the closer the better. Mr Taylor then referred to Mr Minhas's suggestion that if photographs of vulnerable clients were provided he could refuse service. Major Barney thought there were ethical issues involved and doubted that clients would agree to this step. She said it may be an option but she seriously doubted it. She thought it would be difficult for the Salvation Army to work with liquor outlets and she was sceptical that it would be beneficial.

(12) Mr Ferguson, Senior Licensing Inspector suggested that there were a number of On Licensed premises in the area and Salvation Army clients could go there. Major Barney agreed but said the objection was about mitigating risk as much as they can.

(13) Constable Ross asked whether the Salvation Army's clients were financially not well off. Major Barney said in reply that most were on benefits or low income. She thought it would be more attractive to them to go to an Off Licence and spend say \$20 on a few bottles than to go to an On Licence to drink on the premises. If so they would likely go to the nearest Off Licence. Constable Ross then returned to the possibility of photographs of vulnerable clients being provided. Major Barney thought that it would be logistically very difficult given the large number of clients receiving treatment. There was the problem of getting the photos back. Constable Ross asked whether these clients were in a position to give consent to such a requirement. Major Barney thought not, particularly in the early stages of treatment when they found it difficult to make decisions. She felt the treatment provider had a responsibility to protect these vulnerable people.

(14) Mr Shaw for the Medical Officer of Health asked whether the Salvation Army had opposed an earlier application by Super Liquor for an Off Licence in the area. This would have been a similar distance from Collins Street. Major Barney said they had along with other people in the community. She understood that the applicant had then decided not to proceed.

(15) For the Committee Mr Blackwell asked about turnover in the 18 beds available in the treatment facility. Major Barney said two or three people leave each week and are replaced by people off the waiting list. He then asked about numbers attending the day time groups. Major Barney responded that these were run Monday to Friday and some people kept coming back to keep their sobriety happening. She thought there would be in excess of 1000 people a year. Each session runs for two hours and clients made their own transport arrangements but usually travelled by bus. Mr Buttell sought clarification that the figure of 500 places a month which had been referred to could include the same people attending several times during the month. It was agreed this was so.

(16) Mr Wilson asked whether Major Barney could give practical examples where clients had gained access to alcohol during their treatment and the result. Major Barney responded that on just the past week-end three relatively young persons in the residential programme went absent on a Saturday and obtained liquor. They brought it back and consumed it on site. As a result they were taken off the programme as that is the rule. Their life changing decision to come into treatment was therefore totally messed up and this had serious consequences. As to the Supported Accommodation site Major Barney said for many people life was too hard on the streets. They tried to stay sober but found it hard to go past the nearest place where they could get a drink. The Salvation Army is dealing with people who have been drinking all their lives. This leads to them being unsociable. They are aware of this and try to mitigate it by seeking help. The more access they have to alcohol the harder it is for them. Another licensed premise just adds to the problem. Mr Wilson asked if Major Barney could comment on homelessness in Addington. Major Barney said there were a number of homeless people to be seen in the area. Some congregated in Church Square and slept under the trees. There are also a number of flats in Addington and they will "couch surf" going from one person's place to another sleeping on the couch. Alcohol is usually the reason for them having no fixed abode but there are also mental health reasons and the cost of living is a factor.

FOLLOW UP QUESTIONS FROM COUNSEL FOR APPLICANT

(17) Mr Taylor asked Major Barney whether her concerns about "brash advertising" and "cheap liquor" may not apply in this case given the applicant's evidence about the target market for his business and his intention not to promote discounted liquor. Major Barney accepted this might be the case. She was unaware of the reason the other application for an Off Licence had been withdrawn nor did she know where the clients who were excluded from the Residential Programme had obtained their liquor.

EVIDENCE OF Ms L D'AETH OF CHRISTCHURCH RESETTLEMENT SERVICES

(18) Ms D'Aeth read from her brief of evidence. She said she was a Board Member for Christchurch Resettlement Services which worked with refugees and new migrants. Its offices are located in the same shopping centre as the proposed bottle shop. She said Christchurch

Resettlement Services had concerns about the effects granting the licence would have on the area around their office, their staff and the people who use their services. Canterbury Resettlement Services has been at its Lincoln Road address since 2007 and in that time has seen the area change markedly particularly since the earthquakes. There have always been large numbers of vulnerable people in the area due to the proximity of the Salvation Army facilities, Hillmorton Hospital and the fact that before the earthquakes there had been a lot of cheaper housing. Latterly there has been an influx of corporate offices and other businesses and the area has become a busy centre for nightlife with many bars and restaurants. Their staff regularly see the detritus of this nightlife around their premises. Their stairwell is frequently used as a urinal and staff are often confronted with empty cans and bottles and used condoms. They even had a homeless man living in the stairwell for a time. Ms D'Aeth was concerned that Resettlement Services clients would have to confront the evidence of alcohol abuse to approach their office. She envisaged the possibility of people purchasing alcohol at the Off Licence and consuming it in the carpark. Alcohol use was strongly objected to by many refugees and new migrants on cultural and religious grounds. She thought having a liquor shop outside the Resettlement office would be both offensive and a barrier to people seeking help.

CROSS EXAMINATION BY SOLICITOR FOR THE APPLICANT

(19) Mr Taylor referred to the evidence of urine in the stairwell, condoms, vomit and the presence of glue sniffers and the homeless man and suggested to Ms D'Aeth that this had likely come about through the presence of On Licensed premises in the vicinity and not Off Licences. Ms D'Aeth responded that no one could say but it was the general environment that made it possible. By that she meant that it was alcohol saturated. Often the people who abuse alcohol will pre load. Ms D'Aeth conceded that it was hard to determine which alcohol sale had led to which evidence of littering etc. Her concern was that the community had to work together to make it safe for refugees. The service offered is non residential and numbers vary but there would be thousands of client visits throughout the year. Often they came by bus from other parts of the city. There was a bus stop right outside the shopping centre.

(20) There were no questions from the Agencies.

QUESTIONS FROM THE COMMITTEE

(21) Mr Buttell referred to paragraph 8 of Ms D'Aeth's evidence and asked about the use of alcohol by her clients. She said that some of their clients were using alcohol in a harmful way while for others it was taboo. Some who are subject to the taboo do in fact abuse alcohol which leads to issues of cultural shame. Mr Wilson asked about the numbers of clients using the bus. Ms D'Aeth said it was about 50%. Would they come in for the whole day? She responded that there were morning and afternoon groups and also people calling in individually. Mr Wilson wanted to know what specific behaviours she would expect should the Off Licence be granted. Ms D'Aeth said that the presence of people buying alcohol from the store then sitting around consuming it would create a hazard for clients to negotiate. The presence of broken bottles

would also not contribute to a welcoming space. Having premises selling alcohol right outside the Resettlement offices would be very "in your face".

EVIDENCE OF SENIOR LICENSING INSPECTOR

(22) Mr Ferguson was sworn in and tabled his report. He said that other Off Licence premises within about a kilometre radius were Henrys at Tower Junction, Sullivan's Irish Bar (which sold bottles over the bar) and Punky Bewsters which sold craft beer. In his opinion this was not excessive. He did not consider there was anything in this application that would lead him to oppose it. "Sensitive sites" which had been referred to by the Medical Officer of Health did not appear in the legislation but the Committee was required to consider under amenity and good order- noise, nuisance and vandalism. It also should consider compatibility with neighbouring properties. The neighbouring usage in this case was retail and this was completely compatible. If Off Licences led to inappropriate consumption there was no way of identifying this. Reference had been made to deprivation levels. He noted that Lincoln Road was not Manukau with a bottle store on every corner. If licences could not be issued in high deprivation areas then this would rule out large areas of the city. The Salvation Army and Resettlement Services dealt with people from all over the city. These people would encounter similar issues wherever they came from. Mention had been made of people congregating and drinking in Church Square but this was an issue in parks and reserves all over the city. The applicant's proposed bottle store was located on a main thoroughfare out of the city and it was envisaged that a good deal of the business would come from that.

CROSS EXAMINATION

(23) Mr Taylor had no questions. For the Medical Officer of Health, Mr Shaw suggested that the dictionary meaning of "amenity and good order" was "pleasant and agreeable". Mr Ferguson agreed but re-iterated that the legislation referred to noise levels, nuisance and vandalism. Mr Shaw asked whether the Inspector conceded that what Ms D'Aeth described lying around the vicinity of her office was not pleasant and agreeable. Mr Ferguson did but said since the earthquakes problems which had previously existed in the central city now spread throughout the suburbs. There were a lot more problems with On Licences than Off Licences and that is where the attention should be. Mr Shaw asked whether the Inspector was aware that On Licences had problems with pre loading and where this came from. Mr Ferguson thought in the majority of cases the alcohol came from supermarkets which sold a great deal more than bottle stores. The Inspector was then asked whether he thought the applicant had demonstrated sufficient knowledge of the locality. Mr Ferguson thought he had, for an Off Licence. Constable Ross had no questions.

(24) For the Committee, Mr Blackwell asked whether the Senior Inspector had any concerns about this application in the light of statistics which showed an increase in alcohol related harm whenever new premises were opened. Mr Ferguson responded that the harm identified would be excessive and inappropriate consumption and it was difficult to relate this to an Off Licence.

He noted that he had not made a recommendation with respect to this application but he did not oppose it.

(25) Mr Wilson then asked about the nature of the premises, there being nothing in the report which described this nor whether there was to be an association with any franchise. Mr Ferguson replied that the proposed store would not be on the road frontage so would not be "in your face". He would have concerns if it was horribly sign written or had RTD dump stacks at the door but he had no indication that this would be the case. He understood that initially the bottle store was to be independent but Bottle O would be the preferred franchise if there were to be one. Bottle O did not permit RTDs at the door. The applicant was invited to comment. He said the only external sign would be one saying "The Liquor Store". The emphasis would be on wines and spirits and there would be no cheap liquor anywhere. His aim was to keep the store as a place where people felt comfortable to come in and buy top end wines and spirits.

EVIDENCE OF NZ POLICE

(26) Constable Ross read from his brief of evidence and presented an Environmental Scan of calls for service received within a one kilometre radius of the proposed bottle store and an Environmental Scan for a similar area around the corner of Harewood Road and Papanui Road (Exhibit C). These reports showed a higher call out rate attributed to alcohol linked offending in Addington than in the comparable area.

CROSS EXAMINATION

(27) Mr Taylor, Counsel for the applicant, noted that most of the call outs were between 10 pm and 1 am and asked therefore whether most related to On Licence premises. Constable Ross agreed that this was most likely. Where pre loading had occurred it was possible that the alcohol had been purchased elsewhere and brought into the area. However there had been problems with one of the existing On Licences and another Off Licence could well lead to further problems.

(28) Mr Shaw for the Medical Officer of Health asked whether the preparation of the Scans was in response to the Committee's request in the past for the Police to provide such information. Constable Ross agreed that this was so and said that the material highlighted some issues with Addington. He had been based in the Southern Area of Christchurch for six years and had personal knowledge of the area. He had been in the Alcohol Harm Reduction Team since the earthquakes and had noticed since then a lot of migration between the bars. People were intoxicated and moving around. Constable Ross said he worked two out of three week-ends and Addington was a targeted area. The On Licences in the area vary, some are frequented by higher socio economic type customers while others catered for the less financial. Mr Shaw asked whether the bars employed security guards. Constable Ross said he thought they all did and were needed. Mr Shaw then asked about the effects of the stadiums within the area. Constable Ross responded that after the recent All Black Test there had been a huge flow of people to the bars. Most games concluded around 9.30 pm so it would be after that. Mr Shaw

asked whether Constable Ross could give the Committee more information about transients in the area. Constable Ross referred to the area beside the Jail House accommodation and also the nearby backpackers as places people gathered. There was also a large block of flats in Poulson Street which was a scene of activity for the Police as it attracted a lot of transients. Asked whether alcohol was involved in the issues Police had to deal with Constable Ross said often yes but not always.

(28) For the Committee Mr Blackwell clarified that the Environmental Scans referred to just those calls where alcohol was probably involved or likely to have been involved. Mr Buttell noted that the Papanui scan showed more calls focussed on a single small area, possibly related to a single premise whereas the call outs in Addington were more scattered. He asked Constable Ross whether he thought the proposed new premise would make much of a difference. Constable Ross thought it might if people could not get into nearby bars. People will go to what is closest.

(29) Mr Wilson asked about the classification of the calls. Constable Ross explained that it was initially done at the call centre but may be verified if the Police respond- see Appendix 2. If units are available Police will attend any call out but it depends on the time of night and whether they are busy. If the event seemed small and trivial to the officer in charge then they may not attend. Mr Wilson then asked about Constable Ross's description of the Addington area as "busy" after the events at the stadiums. Did this equate to poor behaviour? Constable Ross said that sometimes this was the case but not always. It could get messy if bars did not have enough staff on and this had happened after the All Black test. Police had stayed in the area to monitor but behaviour was not too bad, only a couple of people needing to be spoken to after having a few too many. Constable Ross conceded that the issues are with On Licences, any Off Licences having likely closed by then. He thought Thursday nights were likely to be more of an issue than proximity to the stadiums as Lincoln Road was very busy on a Thursday night and young people in particular would come in and pre load. Asked where the alcohol would be consumed Constable Ross said there was evidence by way of discarded bottles and cans in many of the business car parks.

(30) Mr Taylor made the point that people may be consuming alcohol at home then going to On Licence premises rather than buying it at local Off Licences. Constable Ross agreed it could well be the former. After the events at the stadiums did he agree that issues would be with On Licence premises not Off Licence? Constable Ross agreed it would.

EVIDENCE OF RAEWYN NOBLE

(31) Ms Noble explained that she had been in business for the past six and a half years selling designer label pre-owned clothing. Her customers were women who came from all over the city. They came to Addington to lunch and shop because Addington is seen as a "cool" place being multicultural and having a nice vibe. She remembered when there was a synthetic marijuana store across the road and the dairy next door was selling alcohol. There were men in groups hanging around outside the shops which was intimidating to customers. Some were

asking for money. She felt unsafe getting to her car at night. She thought bringing an Off Licence back into the area would be disastrous. When there are events in the area such as the races or rugby people get dropped off early and pre load. There are already a number of licensed premises in the area. It is a nice area and has improved with absence of the synthetic marihuana shop. It did not need any more alcohol outlets. Ms Noble then criticised the processing of the application saying that most businesses in the area were unaware of the proposal. More would likely have registered their opposition. The Chairperson then explained to Ms Noble that the advertising had been what the legislation required. Ms Noble continued that with alcohol sales comes rubbish. She used to have to remove graffiti from her shop windows, pick up bottles and wash down vomit. She did not want to return to those days after the area had improved. She said the proposed liquor store was also close to a bus stop used frequently by disabled people and school children.

CROSS EXAMINATION

(32) Mr Taylor asked when the dairy next door had stopped selling alcohol. Ms Noble thought it was about three years ago. Had there been any issues with Sullivan's Off Licence? Ms Noble said not to the same extent as with the shop. Mr Taylor then referred Ms Noble to previous evidence that the applicant in his previous businesses had not been responsible for any breaches of the law such as sales to minors or intoxicated persons. Did that alleviate any of her concerns? Ms Noble relied that there 18 year olds still at school who could buy and then sell to their friends. Mr Taylor then asked if the vandalism she had referred to had been caused by people coming from the On Licence premises or the Off Licence premises. Ms Noble thought it was likely to have been people who were hanging around the streets who had caused the problems.

Mr Taylor suggested that the location of the proposed Off Licence was not obvious and that sales might be more to people wanting a bottle of wine to take out. Was she not speculating about what might happen? Ms Noble replied yes but it was also based on her experience in the area.

EVIDENCE ON BEHALF OF THE MEDICAL OFFICER OF HEALTH

(33) Mr Shaw read from his brief of evidence and referred to the attachments. He presented an updated table of admissions to the Emergency Department at Christchurch Hospital which showed that Addington was still in the top ten suburbs at number seven. He then referred to the submission made by the Medical Officer of Health to the Council's draft Local Alcohol Policy, also attached to his brief and to two studies relating to the effect of alcohol outlet density on alcohol related harm (Connor, Kypri) and on higher teenage consumption (Huckle, Huakau). These studies supported the need to control alcohol outlet density.

CROSS EXAMINATION

(34) Mr Taylor suggested that the evidence presented on density would apply to any increase in On or Off Licences and that in effect he was asking the Committee to reject any application for

a new licence. Mr Shaw responded that he was objecting to the granting of this licence because there was no evidence of the layout and what it would look like and also because of the applicant's lack of knowledge of the area. An increase in density equalled an increase in risk which he thought was about 4% per premise although he conceded this depended on how the premises were operated. Mr Taylor then asked Mr Shaw about the requirement in the legislation for the Committee to consider licences *of the same type*. Mr Shaw agreed but said this did not prevent the Committee from considering the area as a whole. Mr Taylor then put it to Mr Shaw that once a sale is concluded a licensee has no control over how the alcohol is consumed, that this is a matter of law and of practicality. Mr Shaw replied that the Committee is still required to look at the effect an Off Licence will have on the area. He would have expected to see a plan as to how the applicant would work with the community to minimise alcohol related harm and he had not seen this. Mr Taylor referred to Mr Minhas' evidence that he was prepared to work with the Salvation Army to which Mr Shaw responded that the Salvation Army was only a small part of the community. Mr Taylor then referred to the evidence given that the target market was people employed in businesses and industries in the area not on providing cheap discount liquor. Mr Shaw responded that it depended on what was meant by cheap and he had not seen a list of stock or a price list. The Connor/Kypri study concluded that greater availability of alcohol causes greater likely harm. Mr Taylor then addressed Mr Shaw's criticism of the completion of the application form. He contended that it was difficult to draw a connection between noise and an Off Licence and the expectation would be that this was more a question for an On Licence. Mr Shaw maintained that "Not Applicable" was not an appropriate answer nor was the answer to the question about current and future levels of nuisance and vandalism as it does not address current levels. Also if the applicant thought his patrons would all buy alcohol and take it home then he was missing out all the people who would not do this. Mr Shaw suspected the applicant had copied his answers from somewhere else and not put much care into his application. Mr Shaw also thought the answer "No Retail" to Question 6(g) was insufficient. Nor had the applicant mentioned the sensitive sites in the vicinity. He was not aware that Resettlement Services was located in the same block. Mr Taylor then referred to the Medical Officer of Health's opposition in the case of *B&S Liquor* where Mr Shaw had also reported. Mr Shaw conceded that the level of deprivation and alcohol abuse in that area (Linwood) was different and that Addington had nowhere near the same problems.

(35) Mr Blackwell for the Committee noted that evidence had been given that places to drink had been affected by the earthquakes in that those drinking in the inner city had migrated to the suburbs. He was pleased to hear that the applicant did not intend to sell RTDs in single sales and only craft beers would be sold as single bottles. Asked to comment Mr Shaw agreed but pointed out that the percentage of alcohol in craft beer was higher but so also was the price and this had a modifying effect. Mr Blackwell asked Mr Shaw to confirm that supermarkets seemed to be increasing their sales of alcohol and there had been a decline in the number of small bottle stores. Mr Shaw responded that there had been a significant increase in licensed premises overall in Addington since the earthquakes.

(36) Mr Wilson asked how, given the Medical Officer of Health believes the greater availability of alcohol causes greater alcohol related harm, does he choose which applications to oppose. It appears he does not oppose all applications. Mr Shaw replied that each application is considered individually. Community groups could be consulted. In addition he looks at the quality of the application, what sort of information is provided and the care that has gone into it. He makes a judgement on which applications require further investigation as resources do not allow every application to be examined. This application stood out because of community opposition to the previous application in the area since withdrawn.

(37) By way of follow up Mr Taylor put it to Mr Shaw that Parliament could have chosen to link the Deprivation Index to the issuing of Off Licences but had not done so. He was also aware that some Councils had considered including this in their Local Alcohol Policies but had decided against it. He also put it to Mr Shaw that a moratorium on issuing any new licences could have been adopted but this had not happened either. Mr Shaw agreed.

RECALL OF APPLICANT

(38) At this point the Chairperson asked the applicant to return to the witness table. He said the Committee was having difficulty in visualising the appearance of the shop and asked him to elaborate further. Mr Minhas explained that the shop had a glass frontage and it was intended that signage would be put along the bottom no higher than three feet. He had a good relationship with Jim Beam and it was likely this brand would feature on the window. There would be no other advertising on the exterior of the shop nor would there be a price list. He said that at this stage it was intended to be an independent store but if he did join a franchise it would be Bottle O. This franchise insisted on a clean uncluttered appearance to its stores. He envisaged a sign outside on the pavement to indicate that the store was open but that is all. He was aware that if granted the licence would be for one year only so the issue could be revisited.

CLOSING STATEMENTS

(39) Mr Shaw for the Medical Officer of Health referred to the nature of the area, the increase in the availability of alcohol, the presence of sensitive sites, the negative effect of additional alcohol outlets and the standard of the application. He referred the Committee to the case of *Dylan* where it was held that a lack of knowledge of the area could go to the issue of suitability. He also referred the Committee to the High Court decision in the case of *Venus NZ Ltd* which addressed the issue of a reduction in the pleasant agreeable nature of an area by the issue of a particular licence. The onus of proving this was the case was not a matter for the applicant or for the reporting agencies but one for the Committee to enquire into. He concluded by saying that if the same effort was put into running the business as had gone into the preparation of the application then it did not augur well. Neither the Senior Inspector nor the NZ Police wished to make any closing remarks.

(40) Mr Taylor for the applicant presented written submissions in particular drawing the Committee's attention to the case of *General Distributors Ltd NZLLA 396 (2002)* where the

Authority cited with approval comments made in *Cayman Holdings Ltd LLA 145 (2001)* that apprehension of problems alone is insufficient grounds to refuse an otherwise suitable applicant. In that case the Authority decided that the basis of the objections was speculative and noted that if the fears were realised further action could follow. He submitted that all the objections to PM Liquor's application fell into the category of being speculation rather than evidence based. Even when the Committee finds that the area will be affected to more than a minor extent that is only one of the criteria to which the Committee must have regard and the applicant has satisfied all the other requirements.

(41) The Chairperson declared the hearing closed at this point and the Committee reserved its decision.

DISCUSSION

(42) This is an application for a new Off Licence for premises located in a retail area off Lincoln Road in the heart of the Addington business district. We have heard evidence that the area has changed markedly since the Christchurch earthquakes and now is home to numerous offices and businesses which have relocated from elsewhere in the city. The area also is home to a vibrant nightlife with numerous bars and restaurants. The applicant wishes to establish a business catering to the needs of reasonably affluent people who work in the area, pass through on their way to the southern suburbs or Banks Peninsula or come to socialise. He told us his target is not the residents of the high decile deprived areas nor the many people who come to access services from the community agencies who have their offices and facilities here.

(43) We have heard evidence from the Director of the Salvation Army Addictions Centre, a Board Member of Christchurch Resettlement Services, which caters for the needs of refugees and migrants, and a local business person concerned about a decline in amenity. The Medical Officer of Health opposed the application on the basis that a further addition to the number of alcohol outlets would lead to an increase in alcohol related harm and tendered research papers in support of that argument. The NZ Police also opposed the application on the basis that an increase in alcohol outlets could lead to an increase in alcohol related harm.

(44) The applicant for his part stressed that he was targeting his business to more affluent clients than were likely to be being served by the community agencies and was not intending to sell cheap liquor. He indicated his willingness to work with the Salvation Army and other community agencies although it was unclear exactly how this might be achieved.

(45) Our task under s105 of the Act is to consider the various criteria set out in that section as amplified by s106. At the beginning of the hearing the parties agreed that our focus had to be s106(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*". Mr Shaw for the Medical Officer of Health did observe that what he considered inadequacy in the completion of the application went to s105 (b) *the suitability of the applicant* and we should weigh that factor also. We can say at this point that we do not agree that the application is

inadequate to the extent that it casts doubt on the suitability of the applicant. While a more expansive answer to some questions may have been useful we observe that the Senior Inspector raised no objection and was able to complete his report as fully as we would wish on the basis of the information given. We concentrate instead on forming our opinion on amenity having regard to the factors set out in s106.

(46) We are conscious that the Alcohol Regulatory and Licensing Authority has had occasion to point out that as a judicial body a District Licensing Committee's decisions must be evidence based. That is we must reach our conclusion on the basis of the evidence that has been given before us not the evidence we would like to have heard. We say this because we have considerable sympathy for the Salvation Army, the Christchurch Resettlement Agency and others who objected to this application. We do take note of their concern that their services will be made more difficult to deliver and the neighbourhood a little less pleasant by the granting of this licence. However we are bound by the evidence we received and we have to say that much of it was speculative. The evidence fell short of establishing a direct connection between the issuing of this particular licence and the consequences feared by the objectors.

(47) With reference to the evidence tendered on behalf of the Medical Officer of Health and the NZ Police we acknowledge and respect the points made about the likely increase in harm associated with an increase in alcohol outlets. However we are considering an individual application for an Off Licence. In our view we did not receive cogent evidence which addressed the likely effect on amenity of our granting this individual licence.

(47) With respect to *current, and possible future, noise levels (s106(1)(a)(i))* we were not convinced that the proposed bottle store would have any direct effect on these at all. The shop is sited in a retail enclave in a commercial district adjacent to a very busy main thoroughfare. Any noise generated by the applicant's shop is likely to be immediately subsumed in the general ambient noise of the area. We did not agree with the suggestion that the applicant must also take responsibility for noise generated elsewhere by persons who had purchased liquor from his shop.

(48) Likewise we were unconvinced that the applicant's shop would contribute to *current, and possible future, levels of nuisance and vandalism (s106(1)(a)(ii))*. The evidence we heard led us to the conclusion that any current or future problems with nuisance and vandalism in the area would far more likely be attributable to patrons of the On Licences in the area. Again we remind ourselves that we may not take account under this heading of concerns about alcohol fuelled bad behaviour more generally. Our focus must be on the likely affect this one bottle shop will have.

(49) With respect to s106 (1)(a)(iii) *the number of premises for which licences of the kind concerned are already held*, we are aware that there is only one Off Licence nearby and that is an over the bar operation at a tavern. Other Off Licences are at least 700 metres to a kilometre away. We also can find no incompatibilities under s106(1)(b).

DECISION

(50) The opinion we have formed overall is therefore that the effects of issuing the licence would not reduce the amenity and good order of the locality by more than a minor extent. Accordingly having considered all the matters we are required to consider we grant the applicant an Off Licence pursuant to s104(1) for a period of one year. The licence will not issue until all clearances have been received and all fees paid including the Annual Fee in accordance with Regulation 15 of the Sale and Supply of Alcohol (Fees) Regulations 2012.

(51) The applicant's attention is drawn to s259 of the Act which makes it an offence to fail to comply with certain requirements and restrictions imposed by or under the Act specifically ss46-63.

(52) The licence will be subject to the following conditions:

Compulsory Conditions – s110(2)

The following conditions are compulsory:

- (a) No alcohol is to be sold on the premises on Good Friday, Christmas Day, Easter Sunday or before 1 pm on Anzac Day.
- (b) Alcohol may only be sold on the following days and during the following hours:
Monday to Sunday 9 am to 11 pm
- (c) Water must be freely available to customers on the premises while the premises are open for business and free samples are available for customers to consume.

Discretionary Conditions-s110(1)

- (a) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises are observed:
 - Alcohol must only be sold within the area marked on the plan submitted with the application.
- (c) The following steps must be taken to promote the reasonable consumption of alcohol:
 - The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the reasonable consumption of alcohol.
- (d) The whole of the premises is designated a supervised area.

Other Restrictions and Requirements

The following restrictions and requirements are to be noted on the licence:

s56- Display of Signs

s57- Display of Licences

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

DATED at Christchurch this 29th day of July 2015

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
Chairperson
Christchurch District Licensing Committee