

Decision Number: 60F [2023] 15125

IN THE MATTER OF

the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF

an application by B & M HOSPO LIMITED for an On-Licence in respect of the premises situated at 51 Pages Road, Christchurch and known as 'Mackenzies Bar & Eatery'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Mrs M Redstone
Members: Mr G Clapp
Ms T McIlraith

HEARING at CHRISTCHURCH on 14 and 15 September 2023

APPEARANCES

Mr B Mann – Director of the Applicant
Mr I M S Saini – Director of the Applicant
Ms T Nelson-Sauni – Witness for the Applicant
Mr J Stocker – Witness for the Applicant
Mr P Egden – Counsel for the Applicant
Mr D Eastwood – Objector
Mr A Ali – Witness for Mr Eastwood
Dr L Gordon – Counsel for the Objector
Mr M Zareei – Objector
Mr R Edmundson – Objector
Dr P Burrows – Witness for Mr Edmundson
Ms A Lavery – Licensing Inspector, to assist
Ms L Bromley – on behalf of the Medical Officer of Health, to assist
Senior Constable G Joliffe – NZ Police, to assist

RESERVED DECISION OF THE COMMITTEE

INTRODUCTION

[1] This is an application by B & M HOSPO LIMITED ('the Applicant' or 'the Applicant Company') for an on-licence. The premises is situated at 51 Pages Road, Christchurch and known as 'Mackenzies Bar & Eatery' ('Mackenzies'). The application was received on 3 November 2022.

[2] The licensed premises is currently operated pursuant to a series of Temporary Authorities attached to an underlying licence which has been renewed and the Christchurch District Licensing Committee ('the Committee') accepts there is a current on-licence in place.

[3] The Applicant company has two directors: Balwinder Mann and Inder Mohan Singh Saini. There are three shareholders being the directors together with Jamaljit Kaur, the wife of Mr Mann.

[4] The application states that the nature of the business is that of a hotel. The Applicant has sought the following trading hours:

Sunday to Tuesday, between the hours of 8.00am and 11.00pm;

Wednesday and Thursday, between the hours of 8.00am and 12.00am
midnight;

Friday and Saturday, between the hours of 8.00am and 1.00am the
following day.

[5] These hours are less than the default maximum trading hours for an on-licence.¹

[6] Ten public objections were received within the required timeframe all of whom had standing. A summary of Objectors is as follows:

- (a) Dan Eastwood, Mohammad Zareei, Eloise Todd, Beck Ward, Peter Mueller, and Verity Verster work at St John of God Hauora Trust (known as Waipuna), located at 349 Woodham Road. Mr Eastwood, together with his witness, Azam Ali, and Mr Zareei gave evidence at the hearing.
- (b) Richard Edmundson and Gretchen Smith are the principals of local schools, Te Aratai College and Linwood Avenue School respectively. Mr Edmundson gave evidence at the hearing and called a witness, Dr Peggy Burrows, the principal of Haeata Community Campus.
- (c) Mike Gibbs, who submitted objections on behalf of both the Wainoni Avonside Community Services Trust and the Avondale Neighbours Group, who chose not to appear at the hearing and give evidence.

[7] The objections of those who chose not to appear were read by the Committee and considered in reaching its decision. The input of objectors is appreciated in assisting the Committee to get a picture of the local area and the challenges faced by it. It was noted most of the objections were in the same format being that usually provided to objectors by a group called Communities Against Alcohol Harm.

¹ Section 43 of the Sale and Supply of Alcohol Act.

[8] A prehearing teleconference was held on Friday 30 June 2023 at which issues to be raised at the hearing and timetable for filing were agreed. All parties agreed that the hearing be held in the local community. St John of God Waipuna offered the use of their facility, and it is appreciated that Counsel for the Applicant agreed to the hearing taking place there, even though the majority of objectors work for that organisation.

The Committee undertook a site visit of the premises and the surrounding locality on Friday 8 September, prior to the hearing. This visit prior to the hearing proved helpful to the Committee in visualising matters raised in the course of the hearing.

THE APPLICANT

[9] Mr Egden, Counsel for the Applicant, submitted on behalf of the Applicant to the Committee. His submissions were taken as read. Counsel highlighted that whilst this was a new application, it arose from the sale of a business which included an existing on-licence and therefore only objections as to the suitability of the applicant could be raised, pursuant to s102(4) of the Act. He noted that the Tri-Agencies did not object to the application, although the Inspector had expressed concerns which the Applicant would address in evidence. He further noted that all the objections were similar and that those objections, together with the briefs of evidence of those appearing, in his view, went well beyond the suitability of the Applicant, even when 'enhanced suitability' is considered given the locality of the premises.

[10] Both Mr Mann and Mr Saini gave evidence for the Applicant.

[11] Mr Mann gave evidence of being the director of the Applicant at the time of purchase. He has a Bachelor of Arts degree and computer programming qualifications obtained in India. He moved to New Zealand in 2000 and worked in various jobs before purchasing the Peach & Porker Bar and Restaurant in Te Awamutu in 2016. He employed Mr Saini as the General Manager of that business. He accepted an issue with an intoxicated client at those premises resulted in a suspension of the on-licence for 48 hours in 2017. At a hearing on renewal, the Waipa District Licensing Committee was satisfied there were appropriate systems, staff and training in place and renewed the Licence. He has put the same systems in place at Mackenzies.

[12] In the course of evidence and cross-examination it became apparent that Mr Mann purchased Mackenzies through the Applicant Company virtually sight unseen and he knew very little about the history of the hotel or the area of Christchurch in which it was situated. The business comprised the bar and restaurant, TAB and Gaming area, together with a 'backpacker' facility although in reality this was used as permanent accommodation. Rooms are rented to a staff member and other permanent

residents. The accommodation comprises single rooms together with a common lounge area and kitchen.

[13] Mr Mann invited Mr Saini to invest in the business resulting in Mr Saini purchasing shares and being appointed a director. The arrangement was that Mr Saini would move to Christchurch and take charge of the day-to-day running of the business.

[14] Mr Saini gave evidence of completing a Diploma in Business Management and Small Business before starting a career in the hospitality industry. In 2017 he took a position as General Manager of Peach & Porker, owned by Mr Mann. He did not have a financial interest in that business. It was a run-down business with a bad name in the area. Mr Saini trespassed a number of troublemakers and set about changing the image of the business to one promoting dining. He said the business became a family restaurant and catered for special functions for groups and organisations, including the Te Awamutu Council, Waikeria Prison staff and the local Chamber of Commerce.

[15] Mr Saini outlined the business plan for Mackenzies, with a focus on attracting an older clientele and families by upgrading the restaurant area and providing a varied menu. In response to questions, he said the Applicant was not prepared to put much money into upgrading and promoting the premises until they knew whether a Licence would issue following this hearing.

[16] Mr Saini produced a plan of the property on which the business is situated and pointed out the area they had leased. The hotel and backpacker building adjoins another which has been retained by the landlord, Mr Harjeet Singh, and which was previously a bottle store. That business was closed down and there is now no off-licence attached to the premises, either by way of a bottle store or sales across the bar.

[17] The adjoining premises retained by Mr Singh remains the bright red colour of the previous bottle store and at the date of the hearing there were large, albeit outdated, signs outside advertising alcohol. The Applicant approached Mr Singh and from correspondence entered into since the hearing, it is understood these signs will be removed. The landlord also retains part of the surrounding land, on which there are 22 accommodation units in one area, mainly leased to long-term tenants, and the carpark to the right of the buildings (as seen from Pages Road) on which he stores some shipping containers. The colour of the old bottle store portion of the building together with the outdated alcohol advertising and the carpark and surrounding grounds detracts from the Applicant's business.

[18] Mr Saini gave evidence of interacting with the surrounding community since coming to Christchurch. He has trespassed approximately 18 people from the premises and noted there had been no gang presence in the last six to seven months. He has built up what he referred to as "*more of a community hub*" which includes a darts club, pool club, and a golden oldies group with around 150

members. There is a band evening once a week which caters to an older crowd. The weekly spend on food has increased by 40% since the Applicant took over. They provide a free supper most evenings for club members and to all present on a Friday evening. There is a courtesy van available for patrons within a five-kilometre radius. In addition, the premises is used for after match prize-giving and functions for the Linwood Rugby League Football Club.

[19] Mr Saini advised that it is the Applicant's intention, if a Licence is issued, to carry out improvements to the premises and its surrounds. The restaurant will be upgraded and promoted, and the outdoor area will be landscaped to turn it into an outdoor dining and bar area in summer.

[20] Mr Saini said the lease of the premises and the surrounding area contains a demolition clause and that this is an impediment to the Applicant carrying out major renovations. He said the landlord has agreed to repaint the exterior of the premises and this is currently underway. The Committee notes here that the Applicant should continue to encourage the landlord to repaint the whole of the buildings including those attached to/adjacent to the premises formerly used as a bottle store and to remove old signage.

[21] Since taking over the business, the Applicant has installed a new CCTV system with 12 cameras covering the entire premises, outdoor area and carparks. There is a large screen behind the bar which broadcasts all of the camera views at one time. Mr Saini said this allowed staff to assess the demeanour of anyone approaching any entrance to the premises.

[22] In response to questions, Mr Saini clearly had a good knowledge of the Sale and Supply of Alcohol Act and also the Gambling Act 2003. It is noted here that although gambling is of concern to the Committee, it is outside the parameters of the Committee's considerations except to the extent that it plays a part in the general vulnerability of the surrounding community.

[23] Mr Saini was cross-examined by Counsel for the Mr Eastwood, on matters including his knowledge of the area and its vulnerability, the condition of the premises, problem gambling, the accommodation unit attached to the licensed premises, the caravans in the carpark, incidents in the carpark, and the courtesy van. It was put to Mr Saini that providing a courtesy van at a premises leads to an implication that patrons are permitted to become intoxicated. Mr Saini, together with Mr. Stocker in his evidence, refuted that proposition and pointed to courtesy vans being available at many premises to promote a responsible attitude towards drinking any alcohol and driving.

[24] The Applicant called Mr John Stocker and Ms Tiffany Nelson-Sauni to give evidence on its behalf.

[25] Ms Nelson-Sauni is a barrister and solicitor and one of six directors of the Linwood Rugby League Football Club. She spoke of the good working relationship the Club has with Mackenzies in using the

premises for Club functions and for Board meetings. She said Mr Saini had been incredibly supportive of the league community providing food for functions at a reasonable cost, the courtesy van if requested, and space for a Club storage container, which saves the Club a significant amount in storage fees that would otherwise be payable. Ms Nelson-Sauni said her family lives in the community, two kilometres from Mackenzies and, in her opinion, the hotel was not a significant contributor to alcohol-related harm in the community.

[26] Mr Stocker gave evidence of being the Chairman of the Golden Oldies section of the Linwood Rugby Football Club and also Vice President of the Linwood Rugby Club. He said the group had over 150 members. He said that since Mackenzies had come under new ownership and management they had noticed a big improvement in the way in which the premises are run. Mr Stocker said there is now a friendly atmosphere and the unruly element that was previously present no longer go there. He said Mackenzies had become a social hub for the community, and they used it for functions and events. The Club appreciated the support in terms of free food and a courtesy van for all Club members. Mr Stocker said he had received feedback from other groups who use the premises that Mackenzies has improved under the present ownership and provides a pleasant and enjoyable environment. Mr Stocker said without the assistance Mackenzies provides, clubs such as his would struggle to survive, stating "*it provides a base for community sports to function in this locality*".

THE INSPECTOR

[27] Ms Anneke Lavery appeared as the Alcohol Licensing Inspector. Although she did not object to the application, she raised matters of concern to be considered by the Committee.

[28] She raised a 2018 incident at premises owned by JJ Hospitality Group Limited, of which Mr Mann was the sole Director. The incident related to allowing intoxicated people on the premises owned by JJ Hospitality in Te Awamutu. Following consideration by the Alcohol Regulatory and Licensing Authority ('ARLA'), Mr Mann received an order for suspension for 48 hours and one holding under section 288(1)(k) and section 291 of the Act. Mr Saini was the duty manager on the night and an application under section 285(b) of the Act alleged that Mr Saini was not suitable to hold a manager's certificate. However, ARLA was not satisfied the breach was established. Mr Mann also had two failed Controlled Purchase Operations in relation to his premises Peach and Porker, the first in 2017 and the second in 2021 which is yet to be determined by ARLA.

[29] The Inspector also raised concerns as to the current state of the buildings and surrounding carpark and grounds, the caravans in the carpark, rubbish and old chairs lying around, and the backpacker's accommodation with access through a door to the restaurant and bar.

[30] The Inspector put questions to the Mr Mann and Mr Saini at the hearing. They advised the hearing of the new staff training procedures that were put in place following the incidents referred to above and that no further issues have arisen. They have adopted a similar staff training regime at Mackenzies.

[31] By the time of the hearing most of the surrounding area had been tidied and rubbish and chairs disposed of. The door between the accommodation area and the bar has been padlocked, as had a gate which gave access to the premises from the back.

[32] The Committee queried whether the locking of the access door and gate breached any requirements relating to fire exits. In the course of the hearing both the Committee and Counsel for Mr Eastwood raised questions as to the condition of the building, including asbestos concerns, flooring and the outside area. On the second morning of the hearing the Council Building Compliance team visited the premises to address the concerns raised and reported the building met all Council building standards for a licenced premises including fire exits and confirmed its Certificate of Compliance.

[33] The Inspector produced a map ('Map 1') showing the whole of the area and outlining the licensed area.

[34] The Inspector advised that at the conclusion of the Applicant's evidence and her cross-examination of them, she no longer held any concerns regarding the applicant's suitability to hold a licence. In particular, she noted the Applicant's response to issues raised, that the leased area had been cleaned up and efforts had been made to improve the general surroundings.

THE MEDICAL OFFICER OF HEALTH

[35] Ms Louise Bromley appeared as the representative for the Medical Officer of Health ('MOH') [to assist the Committee. The MOH did not oppose the application but did raise concerns as to the deprivation and vulnerability of the surrounding area.

[36] In closing, Ms Bromley said she thought the Applicants "*were doing their best in the locality*". She would like to see more money put into the property. She said she had seen and supported the way in which Mr Saini is running the business and agreed with the Police there should be no 'prizes' offered that involved free alcohol or gambling.

THE POLICE

[37] Senior Constable Graeme Jolliffe appeared on behalf of the New Zealand Police to assist the Committee. The Police, while not opposing the application, had concerns about the suitability of Mr Mann prior to Mr Saini becoming a director of the Applicant Company. Senior Constable Jolliffe was impressed by Mr Saini's knowledge and his manner of running the business. He advised that there had

been no complaints and reported one family harm matter in the area in the last year. The Police had attended alcohol incidents in the area but not related to these premises.

[38] In closing submissions, Senior Constable Joliffe said further information regarding the running of the business, the premises leased, and the Applicant's intention to upgrade had come to light. The issue of alcohol 'prizes' had been addressed. He said that he had concerns about Mr Mann's knowledge of the deprived and vulnerable area in which the premises is situated, but the saving grace was the knowledge shown by Mr Saini which gave him confidence the business would be well-run.

THE OBJECTORS

[39] As stated above in paragraph [6] there were ten public objections.

[40] Mr Eastwood and Mr Zareei both work for the St John of God Hauora Trust ('SJOG'), as the Manager of Community Development and the Manager of Health and Wellbeing respectively. They both talked about the work they do supporting young people who struggle with mental health issues and addictions, together with people recently released from prison. They spoke about the trauma created by alcohol abuse.

[41] Mr Eastwood, supported by the evidence given by his witness, Mr Ali, spoke to incidents in the hotel carpark and showed photos of gang members congregated in the hotel carpark. Mr Ali spoke of cans and bottles being thrown over his fence from the hotel carpark. When asked in cross-examination, it became clear that most of the incidents occurred before Mr Saini took over the hands-on management of the hotel. Mr Eastwood said SJOG own a house close to the hotel where clients on probation, home detention and community detention live and that *"alcohol and its abuse have been one of the largest challenges including intoxication from alcohol consumed at Mackenzies"*. Although he could provide no direct evidence, it was his belief that clients of SJOG, 90% of whom were under 25 and most with no photo identification, were never denied service or access to the pokies at Mackenzies for lack of identification.

[42] The concern of both Mr Eastwood and Mr Zareei was the ability of the Applicant to meet the high standards required of a Licence holder in an extremely deprived area and being next door to a facility that dealt with alcohol and addiction issues.

[43] Under cross-examination, Mr Eastwood confirmed that SJOG had established themselves in the building on the corner of Woodham and Pages Roads some 16 years ago, being fully aware that they would be right next door to licensed premises.

[44] Mr Edmundson is the principal of Te Aratai College. He spoke of the area in general and particularly the motel units behind the Applicant's premises. He said parents were of the view that a lot of problems occur at the site. Although the school is two kilometres from the site he noted that the premises sits

within a decile 10 area, being the most vulnerable and deprived on the Deprivation Index, and said that many of his students were badly affected by family alcohol harm including violence, family break-up and resultant poverty. He did not believe that the object of the Act could be met by the granting of this licence. In cross-examination, he could not point to harm resulting directly from MacKenzie's but held concerns generally as to the effect of alcohol on his students and their families.

[45] Mr Edmundson was supported by his witness, Dr Burrows, the principal of Haeata Community College. She had the delegated authority of the School Board to speak on behalf of the school at the hearing. She gave similar evidence as to the deprivation of the area and the effect of alcohol on the students and their families. She referred to the high rates of foetal alcohol syndrome, family harm and vulnerability. Both principals were concerned about the dilapidated appearance of the buildings and the amount of money that would be required to improve their appearance inside and out.

[46] Under cross-examination by Mr Egden, Dr Burrows said she had walked past the premises during the day and drove past on her way to and from work but had not entered the premises. When asked what she meant by the statement at paragraph 4(f) of her evidence that, *"Mackenzie's is a centre for alcohol related harm..."* she responded that it *"could become a centre for harm"*. Mr Egden also asked about paragraph 4(g) of her evidence that Mackenzie's sells cheap alcohol. Dr Burrows said, *"[w]hen I talk about cheap alcohol I would say that you are probably not going to spend \$35 for a bottle of wine at Mackenzie's bar"*. When Mr Egden put it to Dr Burrows that she did not know that, she responded, *"I would pretty much say you are not going to have to spend between \$35 and \$95 for a bottle of wine at Mackenzie's"*. She said that she thought that anything under \$35 is cheap.

[47] Mr Egden showed Dr Burrows a Haeata School newsletter produced this year advertising Mackenzie's and said the school had sent Mackenzie's a Certificate of Appreciation. She responded that she was surprised at that too, that she was not the principal at the time the newsletter was produced. She added it would certainly not happen in the next iteration of that document.

[48] Both principals responded to a question from the Chair about education around alcohol within the schools' curriculums by saying they had extensive programmes around alcohol, drugs, vaping, and students keeping themselves safe.

[49] Dr Burrows concluded with a statement outlining the number of premises selling alcohol in the area. She also observed that the Applicants were not Cantabrians, did not understand the area. She believed that for a Licensee to be 'suitable' in the area, they would need to have lived in the area, have an excellent knowledge of the community, an understanding of Tikanga Māori and the ability to speak and communicate in Te Reo Māori.

[50] The Committee expressed its support of the principals in the work they are doing within their schools supporting student wellbeing and providing education around the harmful effects of alcohol, drugs and other substances, many of which were readily available to students. Whilst a knowledge of Tikanga Māori and the ability to speak Te Reo Māori may be desirable, an Applicant's lack of understanding of these is not fatal to an application for a licence.

CLOSING SUBMISSIONS

Dr Gordon for Objector

[51] The Committee has carefully read Dr Gordon's submissions together with the attachments. She raises concerns about the property on which the licensed premises are situated and in particular the caravans on the site, the poor condition of the landlord's adjoining building, and the accommodation units adjoining the licensed premises which she says, "*probably fail to meet modern standards of property for rental*".

[52] Dr Gordon referred to the caravans used for accommodation located in the carpark, but which have no power or self-servicing. She also pointed to concerns about the landlord's adjoining building and the adjoining 'accommodation' area. While the Committee shares these concerns, together with those relating to gambling, they are not within the jurisdiction of a Licensing Committee. They come within the jurisdiction of other Council departments and other New Zealand legislation, and any concerns should be raised through those channels. In the course of the hearing the Applicant agreed to review the current name of the premises and has agreed to change it from 'Mackenzies Bar and Motel' to 'Mackenzies Bar and Eatery'.

[53] Dr Gordon raised issues related to staff breaks. The Applicant had responded to questions concerning breaks that in the hospitality industry it was difficult to give 'regimented' break times and they depended on the flow of business during a given shift. There was no evidence of staff not receiving breaks, but there was evidence of staff preferring three 20-minute breaks in a shift, and the odd occasion where a staff member was paid for a break. There was no evidence of any refusal to give breaks such that it would be of concern to a Licensing Committee in terms of suitability. However, all applicants are on notice that they are bound by employment law in this respect.

[54] In Dr Gordon's submission, the business' shift towards more of a focus on food was not progressing as fast as she would like. The Committee accepts Mr Saini's evidence that the food bill has risen by 40% since he took over five months ago, and that the ability to serve restaurant meals was dependent on the restaurant renovations being completed. This in turn was dependent on a licence issuing.

[55] The transcribed portion of the hearing, as referenced at paragraph [26] of Dr Gordon's submissions, has been taken out of context. Dr Gordon had asked a number of questions and had responded to

answers with a number of 'asides' and 'throw away comments' to the point that the Chair asked her to concentrate on the questions and perhaps include her "*off the cuff comments*" in her final submissions.

[56] Dr Gordon submitted that the Applicant had not demonstrated that it could meet the extended suitability criteria required in a highly deprived and vulnerable community.

[57] Dr Gordon referred to conditions not compensating for an application that cannot meet the object of the Act and to the principle laid out by the Authority in the *Riccarton Liquor* case². She then went on to list some eleven conditions she would like to see imposed on any grant of a licence.

Mr Egden for Applicant

[58] The Committee has read Mr Egden's submissions. He referred to the fact that evidence of past factors, including clientele and behavior at the premises, cannot be considered in determining the suitability of the current applicant.

[59] Mr Egden submitted, that in evidence, Mr Saini had demonstrated that he has a thorough knowledge of the law, an awareness of the locality and its issues, and a desire to provide a safe and happy environment for his customers. He pointed to the fact that the Inspector gave evidence that the concerns expressed in her report had been addressed by the Applicant at the hearing and she was satisfied that they had been satisfactorily answered.

[60] Mr Egden said that the evidence of the objectors who live and work near Mackenzies on the whole related to behaviour observed around the premises prior to the Applicant purchasing the business. He said the evidence of the school principals was general in nature with nothing to link alcohol-related harm or amenity and good order issues to these premises.

[61] Mr Egden suggested that the premises are an important part of the amenities in the locality and that the evidence established that the Applicant is very community-focused and provides an important community hub.

[62] Mr Egden submitted that the Applicant accepts that the premises are run down but that some improvements have already been made, with further upgrades to take place if a licence is granted. He then raised the issue of the lease of the premises and surrounding area containing a demolition clause noting this is an impediment to major renovations being undertaken. In evidence at the hearing, the Applicant made much of its intention to upgrade the premises, making it an attractive place for family dining. There is an expectation by the Committee that this work will be undertaken, including

² *Riccarton Liquor v Ferguson et al*, NZARLA [2019], 93.

re-decoration, replacement of furniture and fittings, and work to bring the kitchen up to a standard where it has the facilities and equipment required to support a restaurant that would attract families and other diners.

[63] The Applicant agreed to certain undertakings as recorded in Mr Egden's final submissions.

EVALUATION AND FINDINGS

[64] Having considered the Application together with Agency Reports and Objections placed before it, and with the oral evidence and submissions received at the hearing, the Committee must now stand back and determine whether the application for a new licence should be granted.

[65] Section 102 of the Act sets out objections to applications. Section 102(4) is relevant to this application. The premises has been continuously licensed since the 1960s and a current licence is in force. Section 102(4A) states, "*[i]n the case of an application to which subsection (4) applies, the ground for an objection may not relate to any matter other than the suitability of the applicant*".

[66] The High Court (Clark J) in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* ("*Lion Liquor*") in 2018 stated that, "*[t]here is no presumption that an application for a licence will be granted ...*".³

[67] Indeed, the changes implemented in the 2012 Act were intended to create a robust regime under which "*licences will be harder to get and easier to lose.*"⁴ The grant of any licence is a privilege, not a right.

Suitability and Extended Suitability

[68] The Committee agrees with both the Applicant and the objectors that matters in relation to extended suitability apply to this application. The premises is situated in one of the most highly deprived and vulnerable areas of Christchurch, raising the threshold of suitability.

[69] The concept of suitability has been discussed by the Authority and the High Court on a number of occasions. In *Nishchay's Enterprises Limited*, the Authority said:⁵

"[53] The applicant sought to establish its suitability by adopting a narrow assessment of the meaning of that term. This approach was criticised in New Zealand Police v Casino Bar No 3 Ltd (CIV 2012-485-1491; [2013] NZHC 44). The High Court rejected the proposition that it was the manner in which the business would be operated as the determinate factor. Rather, suitability is a broad concept and the assessment of it includes the character and reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions, and other matters. It also includes matters raised 58 Re: Sheard [1996] 1 NZLR 751 at 758 59 Nishchays' Enterprises

³ *Medical Officer of Health (Wellington Region) v. Lion Liquor Retail Limited* [2018] NZHC 1123 at [46], citing *Christchurch Medical Officer of Health v. J & G Vaudrey Ltd* [2015] NZHC 2749 at [54].

⁴ *Miklos v. Shen* [2015] NZARLA 284, quoting Hon. Simon Power (2010 668 NZPD 15251).

⁵ *Nishchays' Enterprises Limited* [2013] NZARLA PH 387 at [53] – [54]

Limited [2013] NZARLA PH 387 at [53] – [54] in reports filed under s 33 of the Act and those reports may raise issues pertaining to the object of the Act as set out in s 4. Thus, whether or not the grant of the licence will result in the reduction or an increase in liquor abuse is a relevant issue.

[54] Casino Bar No 3 Ltd did not specifically refer to the test for suitability contained in Sheard [1996] 1 NZLR 751 where Holland J said at 758: “The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence.” However, the judgement inferred that the test applied when the learned Judge referred with approval to Holland J’s statement in Sheard: “Suitability is a relatively broad concept and, in the context of an assessment of an application under s 13 of the Act, it relates to the suitability of the applicant to be granted the privilege of an on-licence to dispense liquor”. Traditionally, that test has been interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus, it includes the object of the Act as set out in s 4. The Sheard test is not simply about how a business is likely to operate in the future. It is dependent on an assessment of the more generalised factors referred to in the previous paragraph. It includes how a licensee will deal with liquor abuse issues that may arise from the establishment of the business. The usefulness of the Sheard test is that it gives a focus to the wider exercise contemplated in the Casino Bar No 3 Ltd decision by reminding one of the reason for the exercise.”

[70] We now make assessments as to suitability based on the evidence before us and the various reports received.

[71] The Committee, together with the Police in particular, had concerns as to Mr Mann’s knowledge of the community surrounding the premises and the lack of inquiries made prior to the purchase of the lease. The fact that Mr Mann was the Applicant’s sole director and shareholder for several months before Mr Saini bought into the company, and also became a director and shareholder, was a cause for concern as to whether he would have reached the required threshold of suitability. However, this concern was outweighed by Mr Saini’s introduction to the business, his management of the premises over the last 10 months, his knowledge of the community and the efforts he had made to accommodate groups within the community who had no meeting places. Mr Saini was supported by witnesses and written referees who gave evidence as to his engagement and assistance to the local community.

Concerns of School Principals

[72] The Committee, as stated previously, shares the concerns of the principals as to the effect of alcohol-related issues on student learning and home environment. Again, we thank both Mr Edmundson and Dr Burrows for taking the time to appear at the hearing and give their evidence. We accept that students at both schools are exposed to a number of off-licences together with vape shops targeting the area. As with the evidence of all objectors, the principals pointed to the perception of Mackenzies being a run-down premises that did nothing to enhance the area in which it is situated. However, all the evidence before the Committee pointed to those issues arising at a time before the Applicant took over

the premises. The Committee supports any initiatives that schools are able to undertake to educate students with respect to alcohol, drugs, and other related harms.

[73] The Committee is critical of Mr Mann's purchase of the business on a virtually "*sight unseen*" basis and with no inquiries carried out as to the community in which the premises is situated. The Inspector noted in her report that the Applicant "*appeared unsure as to how he intended to operate his business*" and noted "*[o]n 22 February 2023, I monitored this premises and asked the duty manager if I could see the training documents. She had no idea what I was referring to, nor did she say she had received any training within the last few months*". Staff training will be addressed later in this decision.

[74] The Committee notes that numerous improvements have been made since Mr Saini moved to Christchurch to "hands-on" manage the business in terms of staff training, the installation of an excellent CCTV system covering the building and carparks, beginning to clean up the property and renovate the inside of the building to make it more attractive for patrons, the trespassing of some patrons, and his engagement with the local community, outweigh the Committee's concerns with respect to Mr Mann.

[75] The Committee was impressed by the evidence given by Ms Nelson-Sauni and Mr Stocker as to the assistance they had received from the Applicant since Mr Saini's arrival in Christchurch. Their evidence showed the Applicant's willingness to learn about the needs of groups functioning in a deprived area and to help by giving them a place to meet and food at a discounted rate, together with a place to store sports equipment. Both described Mackenzies as having become a social hub in the community, naming several organisations who use the premises for gatherings.

[76] The Applicant has set up a Social Club and provides a courtesy van. In the bar area there is a wheel for Club members to win prizes. It is old, and the Applicant advised it was only used for the numbers, not the prizes outlined. The prizes which would appear to be offered on the wheel are inappropriate in terms of alcohol and gambling minimisation and Mr Saini reiterated they were not relevant and undertook that he would paint them out. The Committee requests that the Inspectorate review the wheel on its next visit to ensure this work has been completed.

[77] The Committee noted in the course of Mr Saini's evidence that he, on several occasions, offered to meet with objectors to work through their issues, in particular where it is perceived that issues arise from the Mackenzies premises. He supports people banning themselves from both alcohol and gambling.

[78] The Applicant would do well, in that respect, to understand the objectors' concerns for the wider surrounding community and should continuously reflect on the responsibility placed on them in operating an on-licence in this community.

[79] The Committee has been mindful of sections of the Act which it deems relevant to extended suitability when taken as a whole.

- *The Object of the Act*

[80] The Object of the Act is set out in sections 4(1) and (2) of the Act. We keep those at the forefront of our minds in considering the application.

[81] There are two arms to the Object of the Act and both must be met. In terms of the first arm we need to be satisfied that the sale and supply of alcohol by the Applicant should be undertaken safely and responsibly. The second arm requires that harm caused by excessive or inappropriate consumption of alcohol should be minimised. '*Minimised*' means reduced to the smallest amount, extent or degree. It does not mean eliminate altogether.⁶ In the *Lion Liquor* case, Clark J held that "*the legislative framework enacted by the 2012 Act was intended to restrict rather than relax drinking laws. The legislative measure proceeded on the basis of clear evidence showing a link between availability of alcohol and alcohol-related harm.*"

[82] Our role is an evaluative one, and we need to have regard to the extent to which granting a licence with conditions should minimise alcohol-related harm.⁷

- *Any relevant local alcohol policy*

[83] Much to the Committee's disappointment, there is currently no local alcohol policy active in Christchurch.

- *The days on which and the hours during which the applicant proposes to sell alcohol*

[84] The Applicant has applied for hours which are within the default maximum trading hours. The Committee noted that the Applicant often closes earlier than the proposed hours.

- *The design and layout of any proposed premises*

[85] There are no concerns with the design and layout of the premises except to the extent that it was agreed by all parties that the premises are tired and run down. The Applicant has submitted proposals to upgrade the premises if the licence is granted, with all work to be completed prior to the next renewal date. These proposals include painting of the interior of the premises and upgrading the kitchen area making it suitable for the preparation of restaurant meals. This will include renewal of a number of appliances.

⁶ See Shorter Oxford Dictionary; *Re Peony Spirits Limited* [2014] NZARLA 696 at [19]; *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980 at [18] and *Auckland Medical Officer of Health v Birthcare Auckland Limited* [2015] NZHC 2689 at [115].

⁷ Alcohol related harm is defined in s5 to mirror that in s4(2) of the Act.

- *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*

[86] Amenity and good order is defined in section 5 of the Act as:

“in relation to an application for or for the renewal of a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable.”

[87] Section 106 requires that when the Committee is considering whether the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of this licence, it must have regard to:

- (a) The following matters (as they relate to the locality):
 - (i) current, and possible future, noise levels;
 - (ii) current, and possible future, levels of nuisance and vandalism.

[88] The Committee acknowledges the deprivation and vulnerability of the area. It further acknowledges the work done by the Applicant in the last five months to engage with the community and provide a safe hub for a number of organisations providing sporting and social opportunities for residents of all ages.

[89] The Committee, while being mindful of the evidence of alcohol harm generally given by the school principals, does not consider that the amenity and good order of the locality would be likely to be reduced by more than a minor extent by the effects of the issue of this licence. From evidence given at the hearing of disruption to lives and damage to properties prior to the Applicant taking over the premises it is likely that the amenity and good order of the locality has in fact improved in the last five months.

[90] The Committee shared the concerns of the objector, Mr Eastwood, that there was a house next to the premises where recovering alcohol, drug and gambling addicts are housed, supported by the SJOG facility on Woodham Road. The Committee notes that the hotel was established in the 1960s, some 60 years ago. The presence of the hotel was no doubt assessed by SJOG in making their decision to set up their premises on Woodham Road 16 years ago and purchase a house for housing addicts next to an established licensed premises. Mr Saini reiterated his offer to meet with Mr Eastwood at any time and assist by banning any persons Mr Eastwood considered should not be on licensed premises or using gambling facilities.

- *Whether the applicant has appropriate systems, staff, and training to comply with the law*

[91] In response to concerns expressed by the Licensing Inspector, the Applicant has introduced appropriate systems, staff and training to comply with the law. The Applicant provided copies of the premises' incident register which contained evidence of several incidents where he had trespassed undesirable troublemakers. The Licensing Inspector, in closing, said she no longer had any of the concerns raised in her report.

- *Undertakings given and Conditions agreed*

[92] The Applicant has given the following undertakings:

- (a) That the Applicant will consider changing the name of the business. It was acknowledged that when purchasing an existing business, it is often wise to maintain continuity with the name. The Committee invites suggestions from the Applicant as to renaming, which may, if desired include the name Mackenzies. As detailed earlier, since the hearing the name has been changed to 'Mackenzies Bar & Eatery' and all signage is currently being updated to reflect the new name.
- (b) The internal renovations, as provided with final submissions, will be completed before the next renewal application.
- (c) The Applicant will continue to negotiate with the landlord with respect to removing all external advertising of alcohol from his premises together with repainting and upgrading all the buildings situated on the site, being both the licensed and leased premises and premises retained for his own use. Again, it is noted that since the hearing progress has been made with these issues.
- (d) No further spaces in the carpark will be rented out for permanent caravans and for the existing ones no additional items for use will be located outside of the caravans. The Committee notes it would prefer that the caravans are removed altogether but it has no jurisdiction over the land surrounding the licensed premises, except to the extent that they relate to amenity and good order. The Committee does not accept the submission that they provide security in the carpark. The Applicant should provide proper and adequate security for the licensed premises and its surrounds by a licensed security agency.
- (e) That the doors identified at the hearing as being locked will remain locked at all times.
- (f) The Applicant will not offer prizes that allow for the free consumption of alcohol or associated with gambling.

- Conditions Agreed:

[93] The Applicant agreed to the following conditions:

- (a) The Applicant will continue to sell beer, both by tap and in other containers at an ABV of under 5.5%.
- (b) No cigarettes or vapes will be sold from the premises.

- *Te Tiriti O Waitangi Considerations*

[94] Prior to the hearing the Committee, through the Hearing Manager, reached out to the local marae asking if someone from that community would speak at the hearing as to how alcohol harm from Mackenzies may affect Māori living in the area. The response received was to the effect that alcohol harm from the premises was not a known issue, but the general effects of gambling were of concern. The Committee, while supporting those concerns, has no authority in this respect. Any issues relating to gambling on or from the premises is controlled by the Gambling Act 2003 which contains conditions to minimise the possibility of problem gambling at a venue, ban anyone who a manager believes is a problem gambler, and conditions encouraging responsible gambling.

DECISION

[95] Accordingly, having regard to the matters set out above together with the evidence and submissions of the Applicant, the Agencies and the Objectors, the Committee finds that the Applicant is a suitable entity to hold a Licence and in addition meets the definition of extended suitability. The Licence will issue for one year, at which time all matters pertaining to extended suitability, amenity and good order, and adherence to the object of the Act, will be revisited.

The Licensed Premises

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

Restricted and Supervised Areas - section 147(2)

- (b) The licensed area is designated as a supervised area with the Gambling area being designated as a restricted area.

Compulsory conditions – section 116 (2)

- (c) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.
- (d) Alcohol may only be sold on the following days and during the following hours:

Sunday to Tuesday, between the hours of 08.00am and 11.00pm

Wednesday and Thursday, between the hours of 08.00am and 12.00am midnight

Friday and Saturday, between the hours of 08.00am and 1.00am the following day.

Section 117 – Other Discretionary conditions

- (e) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - (i) Alcohol must only be sold and supplied within the area marked on the plan submitted with the application.
- (f) The Applicant will continue to sell beer, both by tap and in other containers at an ABV of under 5.5%.
- (g) No cigarettes or vapes will be sold from the premises.

Other restrictions and requirements

- (h) Section 56 – Display of signs.
- (i) Section 57 – Display of licences.
- (j) Section 214 – Manager to be on duty at all times and responsible for compliance.

[96] The licence shall be issued for one (1) year.

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

DATED at CHRISTCHURCH this 18th day of December 2023



Merelyn Redstone
Chairperson
Christchurch District Licensing Committee