

Decision Number 60C [2018] 3416

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

AND

IN THE MATTER OF      an application by YANKEE  
BOURBON CO. LTD for  
renewal of an Off-Licence  
pursuant to s127 of the Act in  
respect of premises known as  
Yankee Bourbon situated at  
264 Ferry Road, Christchurch.

RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson      Mr R.J.Wilson JP  
Members          Mr P.Rogers  
                         Mr D.Blackwell QSM

HEARING at Christchurch on 6<sup>th</sup> December 2018

APPEARANCES

Ms A. Linterman, Counsel for the applicant  
Mr A.King, Yankee Bourbon Co. Ltd, the applicant  
Mr M. Ferguson, Senior Alcohol Licensing Inspector, CCC  
Constable G. Jolliffe, NZ Police  
Ms P. Williams for the Medical Officer of Health  
Ms L. Cowe, Public Objector  
Mrs J. Hoskin, Public Objector  
Mr J. Hoskin, Public Objector  
Mrs J. Anderson, Hearings Adviser, CCC

OTHER WITNESSES

Dr A. Humphrey, Medical Officer of Health  
Mr P. McMahon, CAYAD  
Dr N. Jackson, Alcohol Health Watch

## INTRODUCTION

[1] This is an application for renewal of an Off-Licence pursuant to s127 of the Act by Yankee Bourbon Co. Ltd (the applicant) for premises known as Yankee Bourbon situated at 264 Ferry Road, Christchurch. The application is opposed by the Inspector, the NZ Police, the Medical Officer of Health and three public objectors who were accepted pursuant to s128(1) of the Act. Three other persons lodged written objections to the application. Two failed to appear at the hearing and one was deemed not to qualify under s128(1). However that person subsequently gave evidence for the Medical Officer of Health. The opposition to renewal of the licence is essentially based on concerns about amenity and on alleged failure by the applicant to meet the requirements of the Object of the Act.

[2] The Off-Licence in respect of these premises was last renewed without opposition in 2015. This small stand alone bottle store has traded on this site largely without incident since 1997. The initial application for a licence was unopposed as have been renewals since. The present application includes the seeking of a variation to reduce the trading hours, currently 7 am to 11 pm to 7 am to 10 pm. We note that, as in many similar premises, the actual trading hours are significantly less.

[3] The District Licensing Inspector, Mr Ferguson sought and was granted an opportunity to explain the role of the Inspector with respect to the processing of applications. He thought this would be particularly helpful to the public present.

[3] As a preliminary matter the Committee considered the status of the members of the public who had submitted written objections. One contained seven signatures and appeared to be a petition. We explained that we would adopt our usual approach to petitions where the signatories are not present and available for questioning. That is, we note the interest of these people and will give their concerns what weight we can while recognising that cannot be much, given their absence from the hearing. Mr Hawker who is a local resident was unfortunately unable to be present. We note his concerns along with those of the Tamariki School which also was unrepresented at the hearing. The Tamariki School is located over 2 kilometres from the applicant's store and may have struggled to meet the criteria of having a greater interest in the application than the public generally. The Committee was however prepared to hear argument on that but that did not arise due to the absence of a representative.

[4] The Committee did hear argument from Mr Paul McMahon, Senior Project Worker for Community Action on Youth and Drugs (CAYAD) – Otautahi who had made a detailed submission and wished to call witnesses to support his objection. After hearing from him and from the applicant's counsel, the Committee ruled that CAYAD did not have a greater interest in the matter than the public generally and would not be heard. However the Committee agreed that both Mr McMahon and one of his prospective witnesses, Dr Nicki Jackson could appear as witnesses for the Medical Officer of Health and this is what transpired.

[5] Mr John Hoskin expressed the wish to give his evidence as President of the Friends of Edmonds Garden and Chairman of the Charleston Neighbourhood Association but was unable to produce evidence that he had been appointed by those groups to do so. We explained that he was welcome to give evidence as a local resident and could include reference to his activity with the two community groups. The Committee did not believe he would be disadvantaged by doing it in this way.

[6] All prospective witnesses had met the Committee's requirements as to prior disclosure of their evidence with the exception of a short additional document from the Medical Officer of Health which the Committee agreed to receive at the hearing. Witnesses were advised that they did not need to read material submitted previously in writing but could simply speak to it if they wished. The Committee acknowledged that it had received and read the reports required under s129 of the Act and the various documents submitted by the applicant and other parties to the hearing.

#### EVIDENCE OF THE APPLICANT

[6] Ms Linterman, Counsel for the applicant, spoke to her written opening submissions which had been previously disclosed. She then called Mr Andrew King (the applicant) to give evidence. Mr King explained that he and his father Mr Ronald King had set up Yankee Bourbon Co. Ltd in 1997 on another site as a craft spirits brewing business to produce locally made products. The present retail store was opened essentially to provide a showroom for their products and to prove to some potential wholesale customers that there was a demand for locally made spirits. Later other lines were introduced to meet customer demand. However the business is different from other bottle stores in that it does not

advertise and does not seek to match the competitive marketing approach of others. The range of stock is limited and most customers are known personally.

[7] The initial application for a licence was not opposed nor have been applications for renewals since. Mr King said that over the years the shop has been the subject of a number of Police and Council operations and they have consistently been told that they are doing a good job controlling any identified issues. Since they started in business approximately seven other Off-Licences have been granted in the area. These are all mainstream chain bottle stores and in his view all aggressive marketers in contrast to Yankee Bourbon.

[8] Mr King explained that he had been brought up and went to school in the area where his father and business partner still lived. His children had also gone to school locally. Although he no longer lived in the area himself he was a frequent visitor and still considered himself a local. The store manager also went to the local schools. Both Mr King and his father had significant involvement in the local community. He considered their business was an established part of the community and did not believe it had a negative impact on its amenity and good order. With respect to the assertions made that Yankee Bourbon was the lowest price liquor store in Christchurch Mr King refuted these statements and produced figures that suggested this was generally not so. He acknowledged that their bulk spirit prices were among the lowest but other stock was similarly priced to other stores or in a number of cases even more expensive.

[9] With respect to concerns raised by the Agencies, Mr King said that Yankee Bourbon Co. Ltd was willing to make changes to the way the business was operated to meet them. He made the point that had any issues been raised with them earlier they might well have been addressed to the satisfaction of the Agencies thus avoiding the need for this hearing. In anticipation of the matter being raised at this hearing he had ceased offering single items for sale on an interim basis and was prepared to make this a permanent thing. Mr King was equally prepared to work with the public objectors to meet their concerns although he rejected any suggestion that Yankee Bourbon had any significant responsibility for the littering of local public places or for any undesirable elements that may loiter in the area from time to time.

## CROSS EXAMINATION

[10] Ms Williams for the Medical Officer of Health asked a number of questions relating to the background of the business and Mr King's role in it. Mr King expanded on the reason for opening the business and why it was in its present location. He said that he was the person mainly involved in the oversight of the business as his father, Mr Ron King had taken a step back since suffering ill health. He was usually in the store several times a week and from time to time relieved the manager, Mr Julian Cross when he had need of time off. Ms Williams said that when she had visited the store she had noticed hundreds of single bottles displayed and sought Mr King's comments in relation to these. He responded that this was mostly stock acquired after the earthquakes from other businesses that had been forced to close or otherwise dispose of stock. Single beer bottles for example were likely to have been part of packs where the packaging had been damaged.

[11] Mr King went on to explain that their customers are mostly the same people who have been supporting them since they have been in business. The Manager, Mr Cross, knows most of them by name. They are mostly older people. Yankee Bourbon does not stock much that is an attraction to young people. Their RTDs for example tend to be more expensive than those available elsewhere and their line of spirits are not what young people want. Ms Williams was also concerned about the absence of a Training Manual. Mr King responded that he had not thought one necessary in the past as the Manager had been their sole employee in the shop for some time and he kept himself up to date with changes in requirements. However he acknowledged that a Training Manual would be a useful thing to have and undertook to put one together. Mr King also agreed that he did not have an Incident Book. The reason for this is that it would be blank. There have been no incidents at the store in nearly twenty years. This may be a result of how the store is managed. For instance it is long closed by the time patrons start leaving nearby On-Licensed premises, thus avoiding any issues with people who have been drinking and want to take alcohol home for further consumption. When asked about recent photographs showing a much improved appearance to the interior of the store compared to those filed by objectors, Mr King said that they had a clean up after reading what had been said. Had any of the Agencies raised any concerns earlier they might have taken action earlier.

[12] Constable Jolliffe wanted to know whether it was correct that the store targeted locals in what was a deprived area. Mr King replied that it was not correct. As he had said earlier Yankee Bourbon did not advertise and customers had to seek them out. There were no "specials" or anything like that. In any event only perhaps 50 to 60% of customers were locals. Others came from as far away as Timaru and the West Coast. The store did not sell a lot of singles as there was not the demand for them. He had removed them from display a few weeks ago and was prepared to make this permanent if the Committee required it as a condition of renewal. Personally he had mixed views as not being able to make single sales might lead to people buying and consuming more than they intended. In his view that could be seen as not meeting the Object of the Act.

[13] Mr Ferguson, District Licensing Inspector asked about the opening hours. Mr King responded that in the summer the store would usually be closed by 7 pm but maybe 8 pm on a Saturday. In the winter time they would often be closed by 6 pm. Often they would work in with the neighbouring dairy owner for security reasons. On Sundays there were generally few customers about and he would not be averse to not opening on that day. As there was only one staff member and they did not need more, the store usually was not open until 9 or 10 am. Challenged by Mr Ferguson that he had deliberately set his prices very low to attract customers from this deprived area, Mr King denied this responding that if this were so the store would be crowded and it was not. They had a small loyal customer base which had supported them for many years. It was rare to have a new customer. There were no sales via the Internet.

[14] Ms Cowe, Public Objector, queried Mr King's statement that Yankee Bourbon did not advertise given it had a Facebook page. Mr King said that the Facebook page had been taken down earlier. There was no internet site either. In response to a question Mr King did not consider that the area was deprived. He agreed that there were a lot of low income people living nearby but he considered it was changing significantly. There was a lot of new building, not necessarily for families but working couples. Asked how he thought the store served the community Mr King said that it was a convenience liquor store.

[15] Mrs J. Hoskin, Public Objector, asked about the proposed reduction in hours and the hours of opening generally. Mr King said that the reduction from 11 pm closing to 10 pm was at the suggestion of the Inspector who pointed out that it brought the premises into the lower risk and consequently lower fee category. In

fact the store was not open for anything like the approved hours but the longer hours gave them flexibility. With respect to the appearance of the store Mr King acknowledged that there was graffiti on the roller door but said this was painted out by the building owner almost every week. Work to improve the frontage of all shops in the block has been delayed because of problems with EOC payouts but should be undertaken soon.

[16] Mr J.Hoskin, Public Objector, asked about regular customers who were alcohol dependent and came in frequently. Mr King acknowledged being aware of two such who lived nearby. They would not be served if they were intoxicated. He thought they also purchased elsewhere. When the store was open late in its earlier years people frequently used to come in intoxicated on their way home from taverns. The store has not been open late for a number of years so this is no longer an issue.

[17] Mr Blackwell sought clarification on opening hours. Mr King explained that they used to have two staff but one left and it was decided there was no need to replace him. Mr Cross was happy to extend his hours but it was a very flexible arrangement. He started later and closed early if it was quiet. They no longer opened on Sundays. Mr King confirmed that he was prepared to cease single bottle sales on a permanent basis but had a concern that this might lead to greater consumption given that some people would be forced to buy more than they needed. He confirmed that the Company's wholesale side sold mainly to bottle stores but also to some restaurants, mainly in the South Island but some in the North. About 30 to 40% of the retail sales were of spirits mostly in bottles. He had considered cutting out the bulk purchase option as it was not widely used any more and Yankee Bourbon was one of only four stores in Christchurch which still offered this option. It was a hangover from the past.

#### EVIDENCE ON BEHALF OF THE MEDICAL OFFICER OF HEALTH

[18] Ms Williams called the Medical Officer of Health, Dr Alistair Humphrey to give evidence. Dr Humphrey read from his previously circulated brief of evidence and said the application was opposed on the following grounds: the Object of the Act, days and hours, systems, staff and training and other matters which relate to the high deprivation of the area in which the off licence is located, high volume low priced product and single sales.

[19] Dr Humphrey pointed out that alcohol is the most commonly used recreational drug in New Zealand and that Ministry of Health data shows that approximately one in five people over the age of 15 drink alcohol at hazardous levels. Survey data also indicates that those living in the most deprived neighbourhoods, men, Maori and Pacific peoples have higher rates of hazardous drinking. There is a clear relationship between the density of alcohol outlets, and the proximity of outlets to residential areas and areas of higher social deprivation and measures of alcohol related harm. Dr Humphrey produced maps showing the location of Yankee Bourbon and other licensed premises within a one kilometre radius together with the relevant NZ Deprivation Index 2013. Yankee Bourbon is located in one of Christchurch's most deprived areas.

[20] Photographs taken by delegated alcohol licensing officer Paula Williams on 18<sup>th</sup> August 2018 showed that Yankee Bourbon is engaged in the sale of single units of beer and RTDs at very low prices. Photographs also showed spirits from fill your own plastic drums available at very low prices. Dr Humphrey stated that cheap alcohol is favoured by both young drinkers and heavy drinkers. A comparison with other bottle stores showed that even with significant discounts offered, prices at the other premises were rarely lower than at Yankee Bourbon. He said it is well known that the availability of cheap alcohol products contributes to the excessive and harmful consumption of alcohol and this is in direct contradiction of the Object of the Act.

[21] Dr Humphrey went on to say that regulating physical availability is an effective way to reduce alcohol related harm and restrictions on trading hours and curbing outlet density are key methods of achieving a reduction in alcohol related harms. There is evidence that supports a growing concern over the easy access to single serve RTDs which have been shown to have particular appeal to young and entry level drinkers particularly young women. Census data shows that Phillipstown has a relatively youthful population, a high proportion of Maori and Pacific residents, an unemployment rate almost twice the Christchurch City average and a median income significantly lower than the median for all of Christchurch City.

[22] A recent example of presentations at the Emergency Department at Christchurch Hospital on a particular weekend showed 29% of 16-25 year olds recorded as "alcohol related". Dr Humphrey concluded by saying that alcohol including single sale RTDs at Yankee Bourbon are low priced and therefore

accessibility and consumption are likely increased. In his opinion low priced high volume sales are significant factors in contributing to alcohol related harm in this community.

### CROSS EXAMINATION

[23] Ms Linterman said that Mr King had agreed to produce a training manual and to take pro-active steps to deal with rubbish. Also that he was prepared to stop selling bulk items and to cease single sales. Did Dr Humphrey agree that these were desirable steps to take. Dr Humphrey did, but commented that he had heard Mr King say these things but he had no guarantee that it would happen. Ms Linterman said that the applicant was willing to do what the Committee wanted and was willing to give an undertaking. She noted that the statistics being used were dated 2013 and the alcohol licence had been renewed in 2015 without opposition. Dr Humphrey responded that these were the latest figures available. When asked whether there was anything specific linking the figures to the applicant's premises he agreed there was not but as he saw it the applicant was selling low price alcohol to people without much money when they cannot afford it. There were no questions for Dr Humphrey from the Police, the Inspector or Objectors.

### EVIDENCE OF DR NICKI JACKSON

[24] Dr Jackson is the Executive Director of Alcohol Healthwatch, a charitable trust funded by the Ministry of Health to promote evidence-based policy and practice to reduce alcohol related harm. She was originally to give evidence for CAYD but when we declined public objector status for that group, was called to give evidence by the Medical Officer of Health. She spoke to her previously circulated brief of evidence. Dr Jackson said that in her expert opinion, the renewal of the bottle store Off-Licence with its existing conditions is likely to be contrary to the Sale and Supply of Alcohol Act 2012 in its object to minimise alcohol related harm. This arises from characteristics of the locality that predispose its residents and visitors to experiencing alcohol related harm. These include deprivation, crime and ethnic composition. Dr Jackson discussed these factors, outlined relevant research and provided charts and diagrams.

[25] She believed the evidence supports a precautionary approach in considering the renewal of the licence given the existence of the range of factors within this

particular environment that may predispose to increased levels of harm to both the drinker and those exposed to the drinking of others. Evidence suggests that deprived communities experience more harm from their drinking than residents of more advantaged communities. Until the causal pathways are more clearly understood, she believed the threshold for outlet density in disadvantaged areas should be lower and licence conditions should be used to minimise alcohol related harm to vulnerable populations.

### CROSS EXAMINATION

[26] Ms Linterman sought clarification regarding the pricing of alcohol. The figures given by Dr Humphrey did not seem to be consistent with those in Dr Jackson's evidence. After some discussion it was agreed that the comparison was not like with like. Dr Jackson did some recalculation and confirmed that the unit price per standard drink for Yankee Bourbon fill your own spirits was 93 cents and for bottles 1.09 cents. These figures are very cheap. With respect to the incidence of the various factors relating to deprivation, there is no specific link to Phillipstown in the studies but it would be reasonable to accept that what was found nationally would apply in this area. Mr Rogers asked Ms Jackson to explain her assertion that Maori children were more susceptible to alcohol advertising. It seems this may be because such children are more mobile in the community. That is they tend to be out and about more than Pakeha children and thus encounter more advertising in their daily lives.

### EVIDENCE OF MR PAUL MCMAHON

[27] Mr McMahon is the Senior Project Worker for Community Action on Youth and Drugs (CAYD) and gave evidence for the Medical Officer of Health having earlier been refused the status of a public objector. Mr McMahon explained that CAYD is funded by the Ministry of Health to reduce the harm young people experience from alcohol and other drugs. Mr McMahon spoke to his circulated brief of evidence and produced a number of photographs of the Yankee Bourbon shop and its interior and also photographs of various rubbish containers in which Yankee Bourbon labelled bottles could be seen. He directed the Committee to research findings with respect to the effects of reductions in alcohol pricing and to the alcohol related harm and poor health outcomes prevalent in areas of low deprivation. With respect to local evidence he said that CAYD staff had visited Yankee Bourbon on three separate occasions and had also spoken to local

residents and businesses. He said they had been told of people seen drinking in the bushes, of burglaries in broad daylight and of people having sex in the local funeral director's driveway while believed to be under the influence of alcohol.

#### CROSS EXAMINATION

[28] Ms Linterman asked Mr McMahon whether he would accept that the layout of the store was intended for existing clientele and not intended to attract new people. He agreed but said price was one of the most important factors in attracting young people. Yankee Bourbon may not be the cheapest but people knew if you wanted cheap alcohol Yankee Bourbon was the place to go. With respect to the photographs of rubbish in shopping trolleys, Ms Linterman suggested that the bottles and other material were very tidily stacked as if they had been collected from somewhere else. Perhaps this was a result of there not being enough rubbish bins in the Phillipstown area. Mr McMahon responded that with the amount of alcohol being consumed there would never be enough rubbish bins.

#### EVIDENCE OF CONSTABLE GRAEME JOLLIFFE

[29] Constable Jolliffe is attached to the Alcohol Harm Reduction Unit in Christchurch. He spoke to his tabled report and referred to matters raised already in evidence, that is deprivation, low pricing and single sales. Police had set up two Neighbourhood Policing Units in Christchurch, one in Riccarton the other in Phillipstown to target priority locations. While the Riccarton unit had now completed its work and moved to another area, the one in Phillipstown was still needed as being one of the areas most requiring Police attention to combat crime. The Police adopted a Prevention First model and as alcohol is seen as being one of the biggest problems in New Zealand they have concentrated efforts in this area. High deprivation is associated with attraction to alcohol and low cost spirits in particular was a driver of crime. Yankee Bourbon was known for low priced alcohol.

#### CROSS EXAMINATION

[30] Ms Linterman asked Constable Jolliffe to confirm that he had worked in the area himself and was familiar with it. He said that he had been part of a team which had covered the area for a number of years but several years ago. He

agreed that unless offenders told Police where they had obtained alcohol it was difficult to link them to particular premises. He agreed that if Yankee Bourbon ceased to sell bulk spirits and singles it would be a significant step. Ms Cowe wanted to know the process for getting a liquor ban put in place and did he think it would be a good idea. Constable Jolliffe agreed a liquor ban would be a good move but said it was not a simple process to get one.

[31] Mr Rogers sought clarification as to the 20% reduction in crime reported by Sergeant Kingston, the head of the Neighbourhood Policing Unit. Was this generally or specifically alcohol related? Constable Jolliffe replied that it was generally. Mr Blackwell sought Constable Jolliffe's views on the matter of single sales. It was accepted that single sales of craft beers was different. What was primarily objected to was the sale of cheap spirits and RTDs.

#### EVIDENCE OF DISTRICT LICENSING INSPECTOR

[32] Mr Martin Ferguson made himself available to answer questions on his report. Ms Linterman wanted to know whether he was satisfied with the proposed reduced hours. Mr Ferguson said he was more than comfortable with the hours which were less than some others and quite standard. He agreed that if the fill your own facility was removed that would be a good step. It would also be a good step to stop single sales of RTDs and main stream beers. There was a national trend in this direction. Mr Ferguson confirmed that he had no issues with Yankee Bourbon in respect of the things that were routinely monitored. The application for relicensing had not been opposed in 2015. The main concern now was that this store sold the cheapest spirits in town. That was the issue. Asked whether he had reconsidered his opposition in the light of the changes the applicant had agreed to make Mr Ferguson said he had not. There were no further questions.

#### EVIDENCE OF PUBLIC OBJECTORS

[33] Ms Lisa Cowe read from her letter of objection. She is a local resident who is concerned about the business in its present location and how it advertises and sells alcohol. She had visited Yankee Bourbon herself and noticed bottles of alcohol displayed in rough cardboard boxes on the floor. She also saw plastic containers of alcohol and fridges with single bottles and cans. She referred to the Facebook page maintained by Yankee Bourbon which showed comments from

people who consumed cheap alcohol from the store. She also referred to an article by Dr Doug Sellman which reported on the blighting of numerous lives by the availability of cut price alcohol. She said Yankee Bourbon sold cut price alcohol and also single bottles and cans.

[34] With an associate she had door knocked in the area to see what people thought of alcohol related harm. She said she got mixed responses but did obtain clear evidence that alcohol had been consumed on the streets. She tabled photographs of rubbish including bottles. She had observed outside Yankee Bourbon for an hour in the early evening and saw people she believed to be locals going into the shop. Some people hanging around the shop looked suspicious and she was approached by a beggar. She did not believe there was anything in the Yankee Bourbon store that promoted safe responsible drinking and as far as she can see the store does nothing to enhance the safety and wellbeing of the community.

[35] Mr Blackwell sought clarification about the reference to Facebook as it appeared the page had been taken down. Ms Cowe agreed that this was the case but it had been up when she was first preparing for this hearing back in August. There were no other questions for Ms Cowe.

[36] Mrs Jennifer Hoskin said she had lived in the area since 1971. She was concerned about the hours the bottle store was open. She had observed a man on the street drinking at a quarter to eight in the morning. She had also seen empty bottles and cans in the nearby Charleston and Ensor Reserves. These were formerly nice areas spoilt by rubbish although she could not say that it had come from Yankee Bourbon. She said it was well known that alcohol led to crime, abuse and anti social behaviour. It was a fact that Phillipstown is a low socio economic area with vulnerable people living in social housing close by.

[37] Ms Williams asked whether Mrs Hoskin had been approached by people wanting money. She confirmed that she had. Mr Ferguson asked about the photographs of rubbish including bottles and cans and whether Mrs Hoskin thought the area would be improved if the licence were not renewed. Mrs Hoskin said on one day she had counted seven empty vodka bottles among the rubbish. If Yankee Bourbon did not get its licence renewed there would be one less bottle store contributing to the problem. Mr King pointed out that the red labelled bottles in the photograph were not full strength vodka but low strength at 13.9%.

[38] Mr John Hoskin spoke from his experience as a local resident but also from his involvement in the Friends of Edmonds Garden, of which he was President, and the Charleston Neighbourhood Association. The Edmonds Garden is a historic heritage garden which is maintained by a group of volunteers. Mr Hoskin told of having to clean up empty bottles, cans and other detritus after people had been drinking in the garden. He also spoke of families who would not return to the Garden after being threatened by intoxicated people. When he had remonstrated with one person he had himself been threatened and followed as he left to go home. He appreciated that only a small amount of the rubbish would have come from Yankee Bourbon.

### CLOSING SUBMISSIONS

[39] Ms Williams said that from the evidence the Committee had heard, Yankee Bourbon appeared to bring very little benefit to the community and considerable harm. She did not think Mr King had displayed much knowledge of the local community. She was concerned at the cheap price of alcohol, particularly the bulk spirits. She believed Yankee Bourbon's prices overall were cheaper than any others except perhaps heavily discounted specials in some stores. Should the licence be renewed she would like to see a condition that there were to be no single bottle sales except craft beer. She would also like the hours to be reduced to 9 am to 7 pm and Mr King to obtain his Licence Controller Qualification. She also thought there could be a formal limit on the amount of alcohol purchased in any one day.

[40] Constable Jolliffe had recalculated the unit prices of various lines after the earlier discussion. He said Yankee Bourbon still comes out cheaper compared to other bottle stores. Mr Ferguson reminded the Committee that the Agencies did not have to prove anything, it was for the applicant to prove his case. He did not think it had done so.

[41] Ms Linterman said that having regard to the Object of the Act the application should be granted. She reminded the Committee that this store was different from the usual chain bottle stores. It did not advertise, it was not trying to compete with others and it was not seeking to attract young people. There was no tangible evidence linking the store to any issues in the community. The applicant was prepared to make the following undertakings- Opening hours to be

9 am to 10 pm Monday to Saturday. Closed Sunday; no longer any fill your own spirits; Mr King prepared to obtain his LCQ; a Training Manual to be developed and implemented; a Host Responsibility Policy to be developed; no single sales of mainstream beers and RTDs. Had these matters been raised by the Agencies earlier they might well have been addressed by the applicant.

## DISCUSSION

[42] We are dealing with an application for renewal of an Off-Licence which has now been in place for some twenty years. Both the original application for the licence and subsequent renewal applications until now have been unopposed including the last, in 2015, which was under the present legislation, the Sale and Supply of Alcohol Act 2012. It is a given that there can be no presumption that a licence will be renewed. Nevertheless we must also have regard to the fact that this is a long established business in which the applicant has a significant investment, which offers employment to a staff member and which has received no significant criticism with respect to its operations previously. Our task after considering all the criteria set out in the Act relating to the renewal of an Off-Licence, is to take a step back and consider whether the Object of the Act would be met by the grant of renewal.

[43] The Object of the Act as set out in s4(1) is:

- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and
- (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

s4(2) goes on to explain:

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

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

We are also mindful that the characteristics of the new system of control introduced by the Act as set out in s3(2) are that-

- (a) it is reasonable; and
- (b) its administration helps to achieve the object of this Act.

[44] The matters to which we must have regard when deciding whether to renew a licence are set out in s131(1) of the Act as follows:

- (a) the matters set out in paragraphs (a) to (g), (j) and (k) of section 105(1):
- (b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:
- (c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:
- (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

[45] We shall deal with these in order:

- (a) the object of this Act.- As Heath J. said in *Venus NZ Ltd CIV 2014-419-420* [2015] NZHC 1377 " having considered all the factors set out in s105(1) (b) to (k) of the 2012 Act, is the Authority satisfied that grant of an off-licence is consistent with the object of the Act? It follows that we defer this consideration to last.
- (b) the suitability of the applicant.- There has been no question raised in any reports received or evidence tendered that the suitability of the applicant is in doubt.
- (c) any relevant local alcohol policy. – Christchurch has no Local Alcohol Policy.
- (d) The days on which and the hours during which the applicant proposes to sell alcohol. – The applicant had originally sought a variation to the licence to amend the closing hour to 10 pm. Following evidence in opposition to the present trading hours, an undertaking was given that the hours sought would be 9 am to 10 pm Monday to Saturday. These hours are well within the default hours set out in the Act and are less than many other bottle stores which might be seen to be competitors. We intend to consider the renewal on the basis of that undertaking.

- (e) the design and layout of any proposed premises.- We note the applicant has already removed the stacks of single bottles from the floor of the store and has given an undertaking that this will be a permanent feature. We also have been given an undertaking that bulk sales from fill your own containers will cease.
- (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods: -No issues have been raised under this heading.
- (g) Whether the applicant is engaged in, or proposes to engage in, the provision of services other than those directly related to the sale of alcohol, low alcohol refreshment, non-alcoholic refreshments, and food, and if so, which services: - Again no issues have been raised.
- (j) whether the applicant has appropriate systems, staff, and training to comply with the law: -Attention has been drawn to the lack of a training manual and the applicant has undertaken to address this. There has also been reference to the lack of an incident book. We acknowledge the applicant's view that such a book would be superfluous as there have been no incidents to record over a number of years. No issue has been raised concerning other systems or staff. The applicant has however volunteered to complete the LCQ course to ensure he is up to date with the latest requirements. We think this is a good move and suggest he might consider taking the next step to obtain a Duty Manager's Certificate. This might be useful when providing relief for the sole employee in the shop.
- (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under s103:-With the exception of the matter of amenity which will be addressed shortly, the tenor of the evidence from Agencies and echoed by public objectors was that the applicant was in breach of the Object of the Act by selling what they termed "cut price liquor". We heard assertions, rejected by the applicant, that Yankee Bourbon sells the cheapest alcohol in Christchurch. Our conclusion on the evidence we heard is that Yankee Bourbon may well be the cheapest when it comes to bulk liquor from the fill your own facility and possibly also in respect of its own brand bottled spirits. We were not convinced that it was necessarily cheaper in

respect of other brand spirits or beers or its own RTDs. We note that Yankee Bourbon does not offer specials or discounts. At times nearby chain bottle stores may well offer cheaper deals. We are however comfortable with the view put to us that Yankee Bourbon is a supplier of low cost alcohol and may well be a "go to" destination for those seeking such. However we are also mindful that alcohol is a legal product and the applicant is perfectly entitled to set its prices at levels it believes are competitive and will be profitable. The applicant has given an undertaking that it will cease offering the fill your own bulk alcohol option and single bottle sales of mainstream beers and of RTDs and we take that into account in our deliberations.

[46] s131(b) requires us to turn our minds to amenity and good order. We must have regard to "whether (in its opinion) the amenity and good order of the locality would likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence". s106 of the Act sets out the factors to which we must have regard when considering amenity and good order. We heard evidence of undesirable elements frequenting the area, of threats to people making use of public spaces, of litter deriving from alcohol use in public parks and in rubbish bins and abandoned shopping trolleys. With the exception of a few bottles of low strength vodka bearing the Yankee Bourbon label, those giving evidence were unable to satisfy us that the empty alcohol bottles and cans originated from Yankee Bourbon. We accept that there is a problem with rubbish, much of it alcohol related, being deposited in public places. However there are a number of other bottle stores in the area, some much closer to the parks concerned than Yankee Bourbon and we cannot conclude that the applicant's shop has any significant responsibility for the littering. It was suggested to us that refusing renewal of the licence would mean one bottle shop less and this would help in reducing the problem. We can understand where that view is coming from but we are required to be reasonable in administering the Act. It would not be reasonable to hold the applicant accountable when there is no direct evidence of it being at fault. Likewise we heard no particular evidence of increased levels of nuisance, vandalism or noise which could be attributable to Yankee Bourbon. Indeed the external appearance of the shop is rather nondescript and the casual passerby might even be unaware of its existence.

[47] When we consider all that, we cannot form the opinion that the amenity and good order would be likely to be increased, by more than a minor extent,

by the effects of a refusal to renew the licence. Frankly we do not think it would make any discernible difference at all. It may be that collectively there are too many liquor stores in this locality and that less might contribute to improved amenity and good order. However that is not a matter we can address in the course of our consideration of this individual application.

[48] We have already dealt with matters raised in reports by the Agencies except that of the manner in which the applicant has sold (or as the case may be), sold and supplied, displayed, advertised, or promoted alcohol (s131(d)). Concern has been expressed about the containers of loose bottles around the shop and the fill your own facilities. However the applicant has given us an undertaking to remove those so the issue no longer arises. In evidence the applicant also told us that there was no advertising, no specials and no attempt to attract new customers, particularly young ones. It was said that Yankee Bourbon does not see itself in competition with other outlets but exists to service a loyal group of longstanding customers, mainly older people. One objector referred to a Facebook page which might have been held to be promoting the sale of alcohol. However we have been told by the applicant that the page was taken down some time ago.

[49] We are concerned about the matter of pricing. We have no doubt that Yankee Bourbon can be characterised as a supplier of low cost alcohol. We accept unequivocally that there is a link between low prices and alcohol related harm particularly in a deprived area such as Phillipstown. However we are unable to determine what an acceptable price would be if there is such a thing. Central government has considered the issue and been unable to reach an agreement on how to proceed. The best a District Licensing Committee can do, in our view, is to ensure that the conditions under which a licence is issued contribute to the minimisation of harm.

[50] We now take the step back as advised by Heath J. in re Venus NZ Ltd and consider the Object of the Act in the light of all the other matters to which we are required to have regard. Can the supply of alcohol by Yankee Bourbon be undertaken safely and responsibly and can the harm caused by the excessive or inappropriate consumption of alcohol be minimized should the licence be renewed? We believe that both requirements can be met and the renewal of the Off-Licence can be granted.

## DECISION

[52] The decision is that the Off-Licence for Yankee Bourbon Co. Ltd will be renewed for a period of three years. It will be renewed subject to the following conditions:

### Compulsory Conditions

- (a) No alcohol may be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1 pm on Anzac Day.
- (b) Alcohol may only be sold and delivered on the following days and during the following hours:  
Monday to Saturday 9 am to 10 pm
- (c) Water must be freely available to customers, while alcohol is being supplied free as a sample on the premises.

### Discretionary Conditions

- (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 concerned are observed:
  - Alcohol must only be sold and supplied on the premises in accordance with the premises plan submitted with the application.

The licence is also subject to the following conditions which in the Committee's opinion are not inconsistent with the Act

- (a) There are to be no bulk sales or "fill your own" liquor on the premises.
- (b) There are to be no sales of single bottle mainstream beers or RTDs.
- (c) The applicant is to produce a Training Manual to the satisfaction of the Inspector within three months of the date of this licence.
- (d) The applicant, Mr Andrew King, is to complete his LCQ and advise details of this to the Inspector within six months of the date of this decision.
- (e) No internet sales are to be undertaken under the licence.

Other restrictions and requirements to be noted on the licence

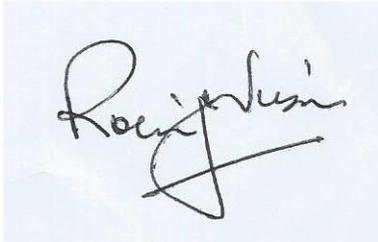
s56 Display of signs

s57 Display of licence

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

The premises are designated a supervised area.

DATED at Christchurch this 17<sup>th</sup> day of December 2018.

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 Committ