

1 July 2019

Notice of Decision of the District Licensing Committee in the matter of:

the application by RIZAK ENTERPRISES LIMITED for an Off-licence pursuant to s.99 of the Sale and Supply of Alcohol Act 2012 in respect of premises situated at, 1/87 Main Road, Redcliffs, Christchurch, known as Redcliffs Fine Wine and Spirits

Following the hearing of the above application on **23 and 24 May 2019**, please find enclosed the decision of the Christchurch District Licensing Committee.

Decisions of the District Licensing Committee may be subject to appeal under Section 154 of the *Sale and Supply of Alcohol Act 2012*. Any party to the proceedings before a licensing committee who is dissatisfied with the decision may appeal to the Alcohol Regulatory and Licensing Authority (ARLA). Such an appeal must be made within 10 working days of this notice of decision; that is by **Monday, 15 July 2019**.

Please note that the licence cannot be issued until any clearances have been received, all required fees paid, and not until after the end of any appeal period.

Please find below a link to the relevant area of ARLA's website:

<http://www.justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority/appeals-to-the-alcohol-regulatory-and-licensing-authority>

Please contact me if you have any queries.

Yours Faithfully



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Decision No. 60D [2019] 1657

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

AND

IN THE MATTER OF an application by **RIZAK
ENTERPRISES LIMITED** for an Off-
licence pursuant to s.99 of the Sale
and Supply of Alcohol Act 2012 in
respect of premises situated at, **1/87
Main Road, Redcliffs, Christchurch,**
known as **Redcliffs Fine Wine and
Spirits**

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Ms C Robinson
Members: Mr P Rogers
Ms A Keir

DECISION OF DISTRICT LICENSING COMMITTEE

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Introduction

[1] This is an application for a new retail premises off-licence by Rizak Enterprises Limited ('the applicant') located at 1/87 Main Road Redcliffs, a seaside and hill suburb of Christchurch ('the premises'). The premises is located in a block of retail shops which are zoned for commercial purposes in the Christchurch District Plan.¹ The premises is intended to be managed by the applicant's sole director and shareholder, Mr Jugraj Singh and his wife Satinder Kaur Kahlou.

[2] Mr Singh is an experienced Licensee and is a 60% shareholder of B & S Liquor, trading as Thirsty Liquor Papanui. When the application was originally lodged it was intended that the premises would also be a Thirsty Liquor franchise store (the original application). However, following a significant number of public objections and after taking advice, the applicant amended his application to propose an independent liquor store to be known as "Redcliffs Fine Wine and Spirits" (the amended application). The exact nature of the amended application was the subject of contention during the hearing of the application and we return to this below.

[3] The original application was publicly notified on the Council's website on 21 January 2019 for 15 working days and notice was posted on the premises. On 30 January 2019 the Council was advised of the change in trading name and the amended application was re-notified and remained on the Council's website for 15 working days. A new notice was placed on the premises.

[4] Public Notification attracted 46 written objections from Redcliffs residents. A number of objections were in relation to the original application for a "Thirsty Liquor" store. Some objections were from persons who resided more than 1km from the premises and we consider the status of Objectors below.

[5] There was no opposition reported by the Medical Officer of Health (MOH) or by the Police to the amended application. Licensing Inspector Mr Hamish Little did not raise any matters in opposition to the application and prepared a report for the Committee on the application in accordance with s103 of the Act (Inspector's Report).

[6] A hearing of the application took place on 23 and 24 May 2019.

¹ A certificate has issued under s100(f) of the Sale and Supply of Alcohol Act 2012 (SSAA).

[7] The applicant was represented by legal Counsel Mr Peter Egden, and Mr Singh gave evidence in relation to the application.

[8] We heard from the following objectors:

- (a) Reverend Dr John Fox
- (b) Eileen Ballard (who called Mr Dan Tremewan as a witness)
- (c) Sue Swift
- (d) Robyn Pearson
- (e) Suzanne Craig
- (f) David Rothe
- (g) Anne Archer
- (h) Jacqueline Jones
- (i) Neralie Brittenden
- (j) Barbara McEwan (filed evidence but did not appear).

[9] Mr George Poole, on behalf of the MOH, and Senior Constable Logan Steele, on behalf of the Police, appeared to assist.

[10] Mr Little did not call evidence or appear as a witness, he did, however, present brief opening and closing submissions. We also received closing submissions on behalf of the MOH. The MOH, Police and Inspector are collectively known as 'the Agencies'.

Preliminary matters

Standing

[11] Mr Egden made submissions that 7 of the written objections were from people who resided beyond a 1km radius of the premises and he submitted these ought to be disregarded.² The significance of the 1km radius is that objectors must demonstrate that they have an interest in an application greater than the public generally.³ The extent of an objector's interest is a matter of judgement for the District Licensing Committee (DLC/the Committee). This DLC and the Alcohol Regulatory and Licensing Authority have generally accepted residence or business in a 1km radius as being indicative of an interest in an application. It is not irrefutable as an objection lodged at a lesser distance may not

² Inspector's List of Objectors numbers 8, 15, 25, 29, 30, 31 and 43.

³ SSAA, s 102(1).

demonstrate an interest greater than the public generally.⁴ In some cases an objector at a greater distance may establish a greater interest.

[12] What is of importance is that the onus is on the Objector to establish the relevant interest. In this case none of the Objectors identified by Mr Egden who resided outside the 1km radius appeared before us, therefore, we have not been able to confirm their status in these proceedings.

[13] In terms of the remaining Objectors, there was no further opposition to their standing and each of the Objectors who did appear at the hearing were able to demonstrate their interest by virtue of their proximity to the premises. Mr Egden submitted that some Objectors appeared to reside at the same address and there were some duplicates. There does not appear to be any statutory bar on persons from the same address lodging an objection regardless of their relationship. In terms of the duplicates, we note that the number of objections received is not determinative of the weight to be given to the issues raised by Objectors, we have not double counted the duplicate objections. We have had regard to all written objections made by persons residing within 1km of the premises and have considered what weight to give them in light of the evidence received.

[14] Mr Egden also submitted that we should give no weight to the petition signed by a number of Redcliffs residents. In this case the petition was attached to the written objection of Mrs Eileen Ballard, who is an Objector with standing in these proceedings. It is difficult to place any meaningful weight on a petition simply based on the numbers. At best it may be indicative that some other residents share the same concerns as Mrs Ballard, but as all of the signatories are not before us (except Mr Tremewan who was called to give evidence and Objectors Mrs Craig, Mr Rothe, Ms Archer and Mrs Ballard)⁵, we are unable to test their reasons for their objection or verify their identity. The petition itself does not assist with our inquiry, so we have not given it weight. We had the benefit of hearing from a number of objectors (some who also signed the petition) and who raised similar issues to Mrs Ballard. Mrs Ballard also called one of the signatories Mr Tremewan to give evidence about the use of the Beachville Reserve which was of more direct assistance to our inquiry.

⁴ *The Liquorworld Limited* NZLLA PH 1189/23009 and *Janhurst Holdings Limited* [2013] NZARLA PH 826.

⁵ We recognise the names of some signatories as being people who also lodged written objections, such as Mr Cook, Ms Geldoff and Mr and Mrs Wayne.

Disclosure of Inspectors Report

[15] The Reverend Dr John Fox (hereafter 'Dr Fox') on his own behalf and on behalf of a number of Objectors raised a concern that the Inspector's Report was not made available to the Objectors prior to the hearing. It has been the practice of the DLC not to make available the Inspector's Report (or other Agencies' Reports) until the Objectors have confirmed their standing, which in most instances occurs at the commencement of the hearing. That was the case here and the Inspector's Report was circulated to Objectors at the commencement of the hearing.

[16] When the Committee received the Inspector's Report the Committee asked the Inspector and the applicant whether the Report ought to be disclosed in this case.⁶ The Chief Inspector (having taken legal advice) and Mr Egden responded that this was not necessary and highlighted the *Kiwano* case⁷ and the statutory function of the Inspector's Report. We did not find it necessary to depart from usual practice.⁸

[17] Dr Fox pointed out that the practice of the Christchurch DLC was not universal, and he identified that DLC's in Auckland and Dunedin disclose Reports on their websites. Objectors can request information from the Council pursuant to the Local Government Official Information and Meetings Act 1987 and the request will be dealt with in accordance with the principles of that Act.

[18] We note for completeness that we did direct the prior disclosure of briefs of evidence and that the applicant's opening submissions and evidence was served on the Objectors prior to the hearing. As noted above the Agencies did not call any witnesses.

Disclosure of names and addresses of Objectors to other Objectors

[19] Dr Fox also complained that he had requested the Council to disclose to him the names and addresses of all Objectors so as to facilitate the coordination of the Objectors' cases before the Committee. That request was dealt with by the Council pursuant to the Local Government Official Information and Meetings Act 1987 and we were told had been refused on grounds of privacy. The Council offered to circulate Dr Fox's contact details to other Objectors if he wished.

⁶ DLC Minute, 7 May 2019.

⁷ *Corrine Smith v Kiwano Limited* [2016] NZARLA PH 497.

⁸ DLC Minute 17 May 2019.

Submissions and Evidence

The Applicant

[20] Mr Egden made brief opening submissions regarding the grounds raised by Objectors and noted the reasonably high evidential threshold that needed to be met by Objectors in order to displace an absence of concerns regarding suitability from the Agencies⁹ and in relation to matters such as noise and nuisance.¹⁰

[21] Mr Egden referred to the hours proposed by the applicant and said they were “fairly standard” for stand-alone bottle stores throughout the country in the absence of a Local Alcohol Policy. He noted the proposed hours of 9am to 10pm were permitted and were less than the total weekly hours of the adjacent Redcliffs New World Supermarket.

[22] He submitted that there was no evidence of disorder or nuisance directed specifically at the hours sought. He submitted that if there was clear evidence of amenity and good order of the locality being markedly reduced after 9pm because of the availability of alcohol then there may be reason to limit the closing time.

[23] Mr Egden identified the low number of licensed premises in the locality which was significantly less than throughout the country and made a comparison with the Horowhenua and Masterton areas referred to in the cases of *Kiwano*¹¹ and *Masterton Liquor v Jaquiere*¹².

[24] Mr Egden made submissions in relation to the legal tests required by s105 and s106 of the Act. He referred to the cases of *R Venus NZ Limited* [2016] NZHC 1377 and the *Medical Officer of Health v Lion Liquor Retail Limited* [2018] MZHC 1123. He also submitted that although s3 of the Act is not one of the criteria that we consider under s105 it is important in that it provides that the relevant parts of the Act are for the benefit of the community as a whole, that is, to put in place a system of control over the sale and supply of alcohol which is reasonable and its administration helps achieve the Object of the Act. He submitted that the concept of reasonableness imports the need to achieve a balance between the competing priorities under the Act to permit and provide for the sale of alcohol but to minimise alcohol related harm.

⁹ *British Isles Inn Limited* NZ LLA PH406/2006.

¹⁰ *Narrows Landing Limited* NZ LLA PH474/2003.

¹¹ See Note 6.

¹² *Masterton Liquor v Jaquiere* [2014] NZ ARLA PH881.

[25] Mr Egden acknowledged that the Act recognises that harm is caused to individuals and society by the excessive and inappropriate consumption of alcohol, but at the same time recognises that the sale and consumption of alcohol will continue, and a reasonable system of control is designed to minimise the harm alcohol may cause.

[26] Mr Egden went further to suggest that the Act “implicitly recognises that, if the administration of the Act’s licencing systems becomes too heavy handed so that it unreasonably inconveniences those wishing to purchase and consume liquor in a manner not giving rise to abuse, that result would be inconsistent with the Act.”

[27] Mr Singh gave evidence and was cross examined by the Objectors and Agencies in relation to each of the matters in s105 and 106 of the Act.

[28] In terms of his suitability Mr Singh referred to his experience in the Off-licence industry and to his good relationship with the Agencies and the local community in Papanui. Mr Singh and his wife both hold Manager’s Certificates and intended to run the new premises together with the assistance of two or three staff who will also hold Manager’s Certificates. Mr Singh was open about an historical blemish to his otherwise good record that occurred over 8 years ago. That involved a failed controlled purchase operation and resulted in a six-week suspension. Since that time, he has successfully operated the Papanui Thirsty Liquor store without incident and has had that licence renewed without objection.

[29] Mr Little asked Mr Singh how he proposed not to target younger drinkers. Mr Singh explained that as was the case with his Papanui store he was not proposing cheap prices targeting younger drinkers. He would also only have a limited supply of RTDs, and these would not be displayed prominently. He did not consider that this was the market to sell RTDs cheaply. Later Mr Singh gave an undertaking not to sell products like Nitro (an energy-drink alcohol RTD which appeals to younger drinkers) and that RTD products would not be discounted. He undertook as follows:

To not sell Nitro or Smirnoff Ice or any other alcohol products containing guarana.

He will not sell single serve RTDs.

He will not discount or special RTD products.

[30] On cross examination the Objectors¹³ challenged Mr Singh on his suitability, particularly about his knowledge of the local area and vulnerable members of the community. Mr Singh said he had spoken with the landlord and with owners of the adjacent shops who had not observed any particular concerns since the New World reopened nearby. Dr Fox asked Mr Singh how he had taken into account the particular fragility of the community post-earthquake in his business plan. Mr Singh acknowledged he had not.

[31] Mr Singh explained the premises is located in the Commercial Core Zone and is situated on the corner of Main Road Redcliffs and Beachville Road. The store sits within a group of shops and has carparking to the rear off Beachville Road. Mr Singh identified there were no other standalone Off-licence stores in the immediate vicinity. He explained that Redcliffs New World was 70m away and there was a local remote sale Off-licence 500m away. The closest Off-licences were Super Liquor and Ferrymead Wine and Spirit 3.5km away and a bottle store in Sumner 2.1km away.

[32] Mr Singh referred to data that showed Redcliffs had a population of 7,000 and that approximately 5,000 cars passed the premises daily. He expected that most of his customers would be local and motorists commuting to and from the City.

[33] Mr Singh explained his original intention for a Thirsty Liquor franchise, however, after discussions with his lawyer, Senior Inspector, with the landlord (who did not permit the exterior of the building to be painted¹⁴) and in response to local opposition he decided that the signage for this franchise (characterised by the bright orange exterior paint) was not appropriate for this location. Both in the original business plan and the amended business plan he described his intention of a bottle store that was “more than just another liquor retail store”. His amended business plan further stated that he wanted to sell “high quality and upmarket range of New Zealand, Australian and International wines, beers, spirits and premixed drinks” as well as cheeses and snacks. He described this a “boutique” bottle store.¹⁵ He explained that he also intended to sell a full range of alcohol products, including beer, RTDs, wines and spirits. He said he was unable to compete with the Supermarket on the price of beer and wine; therefore, he intended to stock more upmarket wines and spirits and place an emphasis on craft or premium beers. The list of alcohol products in the original and amended business plan includes RTDs and stated that single item sales were not permitted. He expressly states in the amended business plan that products like Nitro will not be stocked.

¹³ The Objectors helpfully worked together and Dr Fox, Mrs Brittenden, Ms Pearson, Ms Jones, Ms Swift and Mrs Ballard asked questions by topic on behalf of each other so as to avoid repetition.

¹⁴ Exhibit JS3 Lease agreement and addendum.

¹⁵ Letter from Peter Egden Barrister dated 4 March 2019.

[34] Mr Little asked Mr Singh whether he would be prepared to provide an undertaking or accept a condition that the store would be “boutique” as described in his amended application. Mr Singh explained the “boutique” was the selling of upmarket wines and spirits as well as “high class” general product and is “more the look of the store and upmarket products”. He confirmed the name of the store would not change and that he would provide the undertakings noted. The Committee observed, and Mr Egden agreed, that there were difficulties using the word “boutique” as it did not provide the necessary clarity of purpose. Mr Singh then offered the following undertakings:

The premises will remain an independent store (not linked to Thirsty Liquor or any other franchise).

He would not change the name of the store from Redcliffs Fine Wine and Spirits.

He undertakes to operate his business in accordance with his evidence and his business plan.¹⁶

[35] Dr Fox also sought clarification as to whether the premises was a “boutique” store or just a bottle store. He also questioned whether it was simply a “shrunk more upmarket bottle store”. Mr Singh confirmed that it was a small upmarket bottle store and that was his understanding of “boutique”. Dr Fox also pressed Mr Singh on whether it was simply an upmarket “Thirsty Liquor style store” or a “shrunk” version. Mr Singh maintained his view that it was not a franchise store. He explained that under the franchise agreement he was required to stock the product required by Thirsty Liquor and this would not be the case here. We understood him to clarify that the layout of the store is not a franchise requirement, regardless of whether or not there was a franchise in place he could determine the layout. The layout was limited by the store size and a logical grouping of products. The franchise determines the stock, pricing and the branding.

[36] Our observation of the original business plan is that it is rather general in the way it describes the sales model. The amended business plan goes further and clearly states that the intention is to stock an “extensive high quality and upmarket range” and that he does not wish to be “just another liquor retail store”. The Committee asked Mr Singh about how he would measure his success and how would we or the Agencies measure whether he was operating as outlined in his business plan. Mr Singh was not able to identify any specific measure other than operating in accordance with his business plan. Mr Egden said that if Mr Singh doesn’t do as he said he would then this would be a matter that went to his suitability

¹⁶ The amended business plan dated March 2019.

on renewal. Mr Egden submitted that this would effectively sanction compliance with the undertaking.

[37] Mr Singh explained that he had requested hours between 9am and 10pm which were standard across the City notwithstanding that the default hours under the Act were greater. He wished to have some flexibility to change hours throughout the year, however, actual hours may be less again.

[38] Mr Rogers asked whether Mr Singh would work full time at the premises. Mr Singh indicated that he or his wife would work at the store. He undertook to work from the premises for a period of 12 months. He understood the value in such a commitment to build good relationships with the community.

[39] Jacqueline Jones also questioned Mr Singh on the fact he had not identified the sale of tobacco or cigarettes on his application form, in fact the disclosure of product other than food was left blank. Mr Singh said this was a mistake and had not been drawn to his attention by the Inspector. He explained when re-examined by Mr Egden that cigarettes had been mentioned in the business plan and had been disclosed to the Inspector. On our reading of the two versions of the business plan, there is no mention of cigarettes or tobacco. We later heard from Mr Little that he was made aware of tobacco on 5th March 2019, after the application was notified. Mrs Jones also asked how the sale of cigarettes fit with the upmarket bottle store. Mr Singh considered that it fit with his business plan.

[40] Mr George Poole on behalf of the Medical Officer of Health asked Mr Singh about his reasons for choosing Redcliffs and changing the trading name. Mr Singh explained that from the beginning he had had a 'dream' to open a store that was more upmarket. He had researched Statistics NZ and found the area was not a low socio-economic area. He said it was a high-income area and people were well educated. He also explained that the majority of population is 30 – 65 years of age. He acknowledged that there were also young families and children and he did not wish to target advertising to them. Mr Singh was asked about what he knew about the community. He referred to the fact he knew some people in the area, he was aware the area was significantly impacted by earthquakes and the school is being rebuilt. He visited the area during the day and night-time. He said it was a very nice place and a tourist area. He wasn't aware of the number of local markets in the area that had special licences to sell alcohol also.

[41] Mr Poole asked Mr Singh about the products such as beer and RTDs and whether they were 'fitting' with the upmarket wines and spirits proposal. Mr Singh explained that there are upmarket 'premium' and local craft beers as well. He said there are good RTDs in the market such as "Gordons Gin and Tonic" and "Gentleman Jack" which appeal to the older customer. Mr Singh said that cigarettes may be about 5% of trade. His experience in Papanui is that smoking is expensive, and people are choosing alternatives such as vaping and so sales are down.

[42] Mrs Brittenden also questioned Mr Singh on how the full range of products including beer and RTDs was in line with the fine wine and spirits store. Mr Singh reiterated his earlier explanation about his business model and said that it was a good name for the store. He said that other fine wine and spirits stores also sold beer and RTDs and that it was a business decision as it was not illegal to do so. Mrs Brittenden sought clarification on what "more upmarket wines and spirits" are. Mr Singh explained that these were vintage wines or unique and premium spirits and gave examples of them which included wines in the \$50-\$60 price range. Mrs Brittenden also asked about advertising of specials. Mr Singh explained the specials would be advertised in store and there would be no advertising outside of the store. The Committee asked how Mr Singh intended to advertise the business. Mr Singh explained that the main advertising of product promotion would be done through Facebook and it may be done through the local paper. He did not intend mail outs and letter box drops.

[43] Mr Singh presented a visual mock-up of the exterior of the store with intended signage and a changed layout of the store which included a fridge for the sale of cheese and deli products.¹⁷ The floor plan was not significantly changed from the original application. Mr Singh explained that the store is only 62m² so he will need to carefully manage the location of stock. Since the original application he had introduced a cheese fridge and shifted some shelving. Mr Singh explained that the exterior facing windows of the store will have frosted glass to the height of shelving so that alcohol will not be readily visible from the street, this included the shelving units in the middle of the store. He said there would be no brand advertising visible from the street. In response to questions from Mrs Pearson he explained that the frosted glass was so children could not see into the store. Mr Singh explained he needed to also be able to see out of the store. It was not intended to block the whole view, but it was to provide some protection for children in response to concerns of the community.

¹⁷ Exhibit JS2.

[44] Mr Singh confirmed that the frosting of the windows would be to a height of 1.5m measured from outside the building. He also gave undertakings that:

There will be no advertising of alcohol products displayed on the building, including its windows so as to be visible from the street.

No alcohol advertising on the street. One sandwich board outside the entrance with the name of the store outside the entrance.

[45] Mr Singh explained to us his observations of amenity of the locality and the absence of any significant issues relating to noise, nuisance or vandalism or visible signs of alcohol related harm. He did not expect that to change. He had identified the small Reserve on Beachville Road adjoining the estuary (the Reserve) and on his few visits to the area had not observed any alcohol related amenity concerns. Mr Singh explained how his staff in Papanui regularly checked the RSA memorial rose garden across the road from the store and collected litter and kept the area tidy.

[46] Mr Little asked Mr Singh to explain how he could reduce concerns raised by Objectors regarding amenity of the Reserve. Mr Singh explained that staff would monitor through CCTV where customers would head. Staff could check the Reserve on a regular basis. Mr Singh undertook as follows:

Staff will check for litter daily in the general area and the Reserve and they will collect and dispose of any litter.

[47] Mrs Ballard asked Mr Singh about whether he was aware that groups of youths used the Reserve and played loud music until the early hours of the morning and whether he was aware of people drinking in the Reserve and sleeping in the Reserve. He was not aware of these matters. He had not identified any alcohol related harm and had relied on the fact the Police had not opposed the application. He noted there was no liquor ban in the area. Mrs Ballard asked about storage for the store. Mr Singh explained that he is not sure they need it. There is limited storage in the store. He acknowledged that the landlord offered a container, however, he did not know whether he needed it yet.

[48] Mrs Pearson asked Mr Singh about the character of the area. He agreed that it was beautiful. He was asked whether it would completely change the character if he put bars (on the windows) and roller doors on the store. He did not think so. Later in the hearing, through Mr Egden, Mr Singh confirmed that any security measures would be installed internally so there would be no need to install roller doors on the outside of the building. Both the original and the amended business plans referred to the installation of security grills.

[49] Mrs Pearson asked about Mr Singh's knowledge of the Coastal Pathway and the fact that it passed through the Redcliffs Village, around the corner of the proposed premises. Mr Singh was aware it came through the village but was not familiar with the detail.

[50] Mr Singh explained the systems and training that were in place at his Papanui store which he had developed and would adapt for the new premises. He explained that these were systems he had developed through his years of experience and included policies around not selling to anyone in school uniform, selling to groups and checking for litter. He also confirmed that there would be 24-hour high definition security cameras monitoring the outside and inside of the store including the both street frontages and carpark areas capable of seeing about 150m. If he needed a storage container it would be well lit, alarmed and would be monitored by the security cameras. He explained that he could access the cameras from home and from his mobile phone. He does this now to monitor his Papanui Store.

[51] Senior Constable Logan Steele asked Mr Singh about recording training sessions and Mr Singh said it wasn't currently done but he agreed it would be beneficial to do so.

The Objectors

[52] The written objections and presentations given by Objectors at the hearing generally raise similar concerns under each of the factors we are required to consider under s105 of the Act. They share a common thread regarding their confusion about the style of store proposed as to whether it was "boutique" or a regular bottle store and whether it only proposed to sell fine wines and spirits. Some Objectors had a preference for a "boutique" wine and spirit store but were opposed to a generic bottle store, particularly a Thirsty Liquor franchise. Some Objectors were opposed to any style of bottle store in this location.

[53] The written objections and the presentations given at the hearing included matters of personal opinion about the applicant and his business model, and statements about alcohol harm, alcohol use and availability in society generally. Objectors also gave evidence of their personal observations and experience of the amenity and good order of locality and finer grained detail of the demographics of the community. It is the observations and experience of the local amenity and good order and of the composition of the community which were most helpful to our inquiry.

[54] The breadth of issues raised in written objections were well represented in the submissions and evidence of the Objectors who did attend the hearing, which we summarise

below. This is not a transcript of what was said, but representative of the submissions and evidence we heard that was relevant to the matters to which we must have regard to under the Act. The Objectors collaborated in their presentations and avoided repetition. We asked the Objectors to identify where they live on a plan.¹⁸

[55] We heard from Suzanne Craig, who resides in Beachville Road. Mrs Craig has lived there for over 8 years. Mrs Craig raised a number of concerns in her written objection but was most concerned about the risk of harm, particularly due to the absence of Police in Redcliffs who could respond to any issues and the exposure of families and children to alcohol. She explained that the premises is close to a bus stop used by school children and teenagers, the estuary and Reserve which is utilised by families and children, and to local amenities including the Coastal Pathway, library and services and shops. She noted that the Redcliffs School was set to reopen next year.

[56] Mrs Craig is also concerned about the sale of RTDs and the hours of operation and questioned why if the store was a fine wine and spirits store it needed to be open so late. Mrs Craig requested that we refuse the licence, but in the event that it was granted she requested conditions that prevented the sale of RTDs, restricted hours to 8pm, restricted signage and windows to be blocked out so that advertising and shelves of alcohol could not be seen.

[57] Mrs Craig made a statement about the lack of apparent opposition did not mean the community supported the application and she highlighted the challenges for lay people becoming involved in the process. She noted that many in the community had been reassured by statements made by the landlord regarding the similarities of the proposal to a past liquor outlet in Sumner called the Village Grape, which she told us just sold fine wines. She said that if it were known that the proposal included the sale of RTDs and cigarettes then there may be more objections.

[58] Mr Egden put to Mrs Craig a local newspaper article on the premises which referred to the local residents' association which had not objected because "many" of its members supported the proposal and some were concerned.¹⁹ Mrs Craig accepted that but thought people had been misled by public statements made by the landlord that this would be a fine wine establishment, which she was comfortable with, and not a "non-upmarket liquor store selling RTDs and cigarettes at the end of her street".

¹⁸ Exhibit AA1.

¹⁹ Bay Harbour News 13 February 2019.

[59] In answer to questions Mrs Craig also confirmed that she was aware of loud noise at night from people in the Reserve, but she was not aware of any alcohol related issues. She thought that there may be an increase in noise if people were able to buy RTDs. She accepted she had no evidence that would be the case, it was simply her opinion. She said she would love a fine wine establishment on her street but did not believe that was what was being proposed.

[60] David Rothe, a resident of Beachville Road also spoke of his concerns about the availability of alcohol. He resides behind the proposed premises. He rents two adjacent properties; one extends to the Reserve. He has lived there with his partner for a year. He said he was from the US and proposing to put a liquor store near a school defied common sense in his opinion. He also identified a number of bus stops in the area. He was concerned about the proximity of other liquor stores; he didn't think the store would succeed. He was concerned about the lack of parking in the area. Mr Rothe said that the comparison with Papanui was not valid because there is a liquor ban in Papanui. Mr Rothe explained that he had seen litter, glass and cigarette butts in the Reserve. He was not aware of drinking in the Reserve but did hear noise. He believed the amenity would be reduced if the licence was granted.

[61] Neralie Brittenden spoke to her written objection. She resides 300m from the premises in Redcliffs and has lived there for 23 years. She questioned whether another outlet was needed within such close proximity from the New World Supermarket. She said there were 11 liquor outlets between Aldwins Road and Sumner (a 9km distance). She said most Redcliffs residents were mobile (had access to transport) and could get to other outlets. Mrs Brittenden referred to the Christchurch Alcohol Action Plan (CAAP).²⁰ She noted the aims included supporting citizens involved in the process and minimising alcohol related harm. She identified general concerns with the exposure of children to alcohol. She also noted the proximity of the Redcliffs School and to bus stops. Mrs Brittenden urged us to give effect to the CAAP.

[62] The Reverend Dr John Fox, the Assistant Curate at the Parish of Sumner- Redcliffs gave evidence and made closing submissions. He is an Anglican Deacon. He has a responsibility for pastoral care and care of the vulnerable demographic in the Redcliffs community. He also works at the City Mission. He works with young people and the elderly.

²⁰ A Council, Canterbury District Health Board and Police non-regulatory policy document.

[63] The first part of his written statement was a submission on the relevance of the various matters in s105 and procedural concerns. He expressed concern about the incomplete application and inconsistencies as to the description of the store. He referred to the statements from the landlord and the statement posted on the window of the premises below the public notice that said it was going to be like the Sumner “Village Grape” a past liquor outlet, which he had no objection to, or concerns about, regarding vulnerable members of the community. He is also concerned about an absence of “a neighbourly concern to vulnerable members of the community”. Dr Fox considers there to have been ambiguity in the language used by the applicant about his proposal. There are references to a boutique store with very good price protections, but he sees Mr Singh as actually offering a shrunk version of Thirsty Liquor. He said there was “studied ambiguity” by the applicant when asked for details about the franchise agreement, sale of cigarettes and security. He did not consider Mr Singh recognised the vulnerabilities that he says exist in the community. Dr Fox did not have trust in the business plan or model that it is a “boutique” bottle store. He doesn’t want a “Thirsty Liquor Papanui” because of the effect on vulnerable members of the community.

[64] Dr Fox disputed the design and layout was a boutique bottle store. He thinks it’s a “shrunk bottle store”. He said the changes from the original to amended proposal were cosmetic.

[65] On the issue of suitability Dr Fox submitted that the applicant’s language shifted around, perhaps from a language difficulty, but he pointed to the ambiguity in the way Mr Singh described matters and the undertakings given at the public meeting. Dr Fox said that his involvement in the process had been about trying to establish just what was intended and to form a judgment of whether Mr Singh would be a good neighbour. When asked by Mr Egden whether he trusted Mr Singh we understood Dr Fox to say he did not due to the ambiguities in the application and responses to requests for clarification.

[66] He is concerned about a vulnerable community that had gone through a lot with the earthquakes. Dr Fox described his Parish as young, with 40% under 40 years of age and about 100 young people. The Parish has plans for youth facilities and partnerships with schools and young families. He described Redcliffs as a low crime family friendly area. He said it is a residential area that “pulls together” as a village. What he was hoping for (and did not receive in his view) was that Mr Singh would join that community and be a good neighbour. He said he got “superficial lip service to responsibility” and he is not sure what they are going to get.

[67] Dr Fox was critical of Mr Singh's Papanui operation which he said he had been to. He said the business model was "heavy on the RTDs and on cheap spirits" and he had concerns about that being established in Redcliffs. He said the fact Mr Singh would not be bound by a franchise agreement did not address his concern that it continued to be a Thirsty Liquor type model.

[68] Dr Fox spoke of elements of vulnerability in the community from youth, elderly on fixed incomes and those with mental health concerns. He was concerned that the applicant had not considered those people in his business plan which he said based on the Papanui store could include the sale of low price "high volume" RTDs and high alcohol content spirits. Dr Fox was of the view a fine wines and spirits store with significant price protections would have addressed those concerns.

[69] The Committee asked Dr Fox about the differences in vulnerability between the Redcliffs community and other communities in Christchurch. Dr Fox said he initially thought as Mr Singh had that they are rich and over age and not so vulnerable, however, over time he had recognised there were other sorts of vulnerabilities due to earthquake damage to homes and people using various coping mechanisms. He also observed that although not as obvious in Redcliffs as perhaps Aranui or Linwood there were still the three groups of vulnerable members of his community, the young, elderly living alone and those with mental health concerns. Based on his Parish work he has concerns about a Thirsty Liquor store, but he does not have the same concerns with a boutique wines and spirits shop. We asked why in an apparently wealthy suburb like Redcliffs the "price point" made a difference. He explained that when someone is vulnerable there are all sorts of coping mechanisms including "drinking your troubles away", the location and convenience of alcohol is important as is the price. He believed the temptation was greater where there was greater choice and availability of cheap high volume and high alcohol content products. We asked him how he reconciled this with the discount alcohol available at the supermarket. He explained that the New World Supermarket differed because they were "extremely good at verifying age" and extremely good at following the laws they are subject to. Dr Fox suggested that Mr Singh would not be because of his historical compliance issue. He also noted supermarkets can't sell spirits or RTDs. He said it was context also, it was part of the weekly shop and you meet people in the Supermarket. He said that changes the temptation in people to overindulge.

[70] Mrs Eileen Ballard also lives locally. Her objection reiterated the concerns of others and addressed each of the s105 factors. Mrs Ballard was particularly concerned about the use of the Reserve and the Coastal Pathway and the confusion about the nature of the application.

She also suggested that if the application was granted the hours should be reduced to 8 or 9pm. Mrs Ballard called Mr Dan Tremewan, who resides immediately behind the Reserve, to give evidence. He had not objected to the application but was a signatory to the petition that accompanied Mrs Ballard's objection.

[71] Mr Tremewan presented a statement from his wife. He explained the use of the Reserve and presented some photographs of cans, food and vomit on the Reserve. They had observed that there was an increasing frequency of the misuse of the Reserve. They had observed parties at the weekend and late at night. He said young people bring alcohol and use stereos and cause nuisance. They noted that inebriated people sleep in the Reserve and frequent the Reserve in the daytime. They had only lived there since September last year. He was surprised a liquor ban was not in place as it was in Sumner and New Brighton.

[72] Mr Egden cross examined him on why he did not object to the application. Mr Tremewan explained they had been busy with the move to the area, family and business. He accepted that if there was a liquor ban then some of the concerns regarding the Reserve would go away. They had complained to noise control at least once but had not complained to the Police.

[73] Anne Archer circulated her letter of objection at the hearing. She shares the concerns of other Objectors but wanted to present to us two key points. Mrs Archer is a retired careers advisor and health education teacher at St Margaret's College. She taught alcohol and drug education for 18 years and had worked as a social worker for 30 years before that working with youth and family, prisoners, alcohol and drug addicts. She had considerable experience in the area of alcohol related harm. Mrs Archer told us that she lives in Redcliffs because of the absence of a stand-alone liquor outlet. She said it was readily understood that the more readily available alcohol the greater the harm. She said it's self-evident. In answer to questions from Mr Egden, Ms Archer expressed her opinion that there was ample evidence before us that this application is neither necessary nor desirable.

[74] Mr Poole asked Mrs Archer whether she thought the grant of this licence would lead to a proliferation of alcohol related harm. Mrs Archer said that it was likely, but we would not know for certain. She said the only way to know would be to grant the licence and then wait and see, but given experience across New Zealand in a number of communities over many years she would say the odds are there would be an increase in alcohol harm in the community if there is more available. Ms Archer has fewer concerns about a specialist store, but her preference is for no Off-licence. She said if it truly is a fine wine and spirits store targeted towards the top end it would cause less harm. She thought young people were less likely to

go into a fine wine store. She said it would be interesting to ask outlets like Vino Fino about their customer base.

[75] Sue Swift is a local resident and wished to present a transcript that she had written from a recent documentary about alcohol harm on television involving Dr Quigley from Wellington. We did not allow the transcript as Dr Quigley was not able to answer questions from us. Mrs Swift said the liquor store was not needed because there was already a New World and bottle stores in Sumner and Ferry Road. She is generally concerned about alcohol harm in society and concerned about young people drinking at the estuary and Reserve.

[76] Jacqueline Jones spoke to her objection; she is a resident of Main Road Redcliffs. She has resided in Redcliffs for 26 years. She is concerned about the impact on amenity and was concerned about increasing the density of alcohol outlets. She raised concerns about the exposure of children to alcohol. She was not convinced it was a fine wine shop. She urged us to lead the way and reduce outlets rather than increase them.

[77] Robyn Pearson is also a local resident who resides approximately 750m from the site. Ms Pearson wished to speak about the character of the locality. Ms Pearson explained the character of the local shopping centres and the nature of the retail activities. She considered it to be a family friendly area. She noted that there were a number of elderly people living alone in her street that were vulnerable. She explained that this was the only group of shops that the Coastal Pathway goes past. The Coastal Pathway is intended to provide for pedestrians and cyclists and to be used by families and tourists. She was concerned about the impact on amenity and also about safety if people were drinking near the beach. She also noted two areas of vacant Red Zoned land where young people gather, she explained that the community was seeking to have these areas turned into community organic gardens. Ms Pearson referred to research about increase in crime rate with the increase in Off-licence outlets. Ms Pearson is a paddle boarder and frequent user of the foreshore and Beachville Reserve and is concerned about broken glass and litter. She was concerned about the practicality of collecting broken glass in the sand and on the rocks. She was concerned about the effect on the coastal ecosystems.

The NZ Police

[78] The Police did not report any matters of opposition to the application.

The Medical Officer of Health

[79] The Medical Officer of Health did not report any matters of opposition to the application.

The Licensing Inspector

[80] The Inspector did not oppose the application and recommended a number of conditions if we were to grant the licence. The Inspector was not a witness, however, he made opening submissions regarding his role in the proceedings and also answered some questions from the Committee. The Inspector was satisfied that the undertakings given by the applicant throughout the hearing were appropriate and that there was no reason to decline the application.

[81] We questioned Mr Little about how he would measure how the applicant's undertakings to carry out his activity in accordance with the evidence and business plan had been achieved on renewal. Mr Little explained that he would look at whether the applicant met the 85% liquor sale threshold and would look at sales figures. Mr Little was not sure on what percentage of sales that were higher end and the pricing that he would look too. Mr Little acknowledged that it was difficult to measure.

[82] Dr Fox pointed out that the Inspector's Report referenced material that was out of date as it predated the decision of the Ministry of Education to confirm the return of Redcliffs School to the community. Dr Fox also identified that Mr Little's observations of the use of bus stops by school children is limited to times he reported on. We have had regard to those matters in our evaluation of the Objectors' evidence.

[83] While we are required to have regard to the Reports of Agencies and they are an aid to our decision making, they are not a supplement for our own evaluation on the evidence before us. We are not required to look behind the reasons why the Agencies are not opposed to the application.²¹

Closing statements

[84] Dr Fox filed written closing submissions on behalf of himself and the Objectors. He took us through the statutory tests and referenced the evidence that we heard on each topic and to some written objections. He submitted that the application should be declined.²²

²¹ See *Kiwano* at [71]-[77].

²² Objectors Closing submissions, 4th June 2019.

[85] The MOH and Inspector made closing submissions. The MOH made reference to the undertakings given by the applicant at the hearing and suggested that we impose a condition restricting the sale of energy based RTDs and offered a condition to that effect.²³

[86] The Inspector commented on the evidence we heard and referred to case law regarding the interpretation of the Act.²⁴

[87] Mr Egden had the final right of reply and commented on the criteria of the Act and evidence we heard and maintained his opening position that there was no evidence that supported the application being declined.²⁵

Site visit

[88] The Committee undertook a site visit of the premises and the general locality. We observed that from the footpath the store frontage on Main Road is partially obscured by a pillar and large tree. The entrance is not clearly visible from the street. We observed people walking around the corner from Beachville Road into Main Road and observed that they kept to the roadside of the pillar and tree, so they did not walk directly in front of the entrance to the store. We observed that the Beachville Road glazed frontage is the more dominant glazed façade with the most exposure to passers-by. It was also possible to stand right up to the glass on Beachville Road and look inside the store. We observed inside the store and noted that it is narrow and long.

[89] We also observed an alley way between the neighbouring store and a stair well up to the Chinese Restaurant which is licensed as BYO and open until 9pm. A copy of the licence was attached to the Inspector's Report.

[90] We also visited the Beachville Reserve and observed an open and well-maintained Reserve with a number of park benches. The Reserve is open to the adjoining property at 8 Beachville Road which enjoys a view over the Reserve towards the estuary and is only separated by a low fence. When we visited the tide was in. We noted the pathway around the estuary on Beachville Road and the fact that at the Beachville Reserve if headed in the direction of Sumner the only high tide link is to walk towards Main Road and through the

²³ Closing submissions of MOH, 4th June 2019.

²⁴ Closing submissions of Inspector, 4th June 2019.

²⁵ Closing submissions of applicant, 14th June 2019.

Redcliffs Village. We noted the proximity of the supermarket, library, bus stops, Tennis Club, St Andrews Church and the new Redcliffs School (approximately 600m from the premises).

Evaluation and findings under s105 and 106 of the Act

[91] The role of s 105 and how it is to be approached in relation to applications has received plenty of judicial attention.²⁶ The approach, when considering the licence application, is succinctly summarised as follows:²⁷

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

[92] The duty to “have regard to” requires that we turn our mind to the listed criteria. We are required to give them “genuine attention and thought”. The weight to be attached to each is a matter for us to decide.²⁸ In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123, Clark J summarised the applicable principles in respect of the renewal of a licence, however, they apply equally to a new licence:

- (a) There is no presumption that an application will be granted.²⁹
- (b) The DLC, and the Authority, after having regard to the criteria in the Act, is then to step back and consider whether there is any evidence indicating that granting the application will be contrary to the object in s4 of the Act. The test is as articulated in *Re Venus NZ Limited* above.
- (c) The application of rules involving onus of proof may be inappropriate³⁰, and similarly, there is no onus on the reporting agencies to prove the application should not be granted;
- (d) The criteria for the issue of licences, and for renewal, are not to be interpreted in any narrow or exhaustive sense. The Authority (and DLC) may take into account anything, which from the terms of the statute as a whole, appears to be regarded

²⁶ *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315 per Heath J; *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689 per Moore J; and *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382 per Gendall J.

²⁷ *Re Venus NZ Limited* at [20] and *Auckland Medical Officer of Health* at [60] see Westlaw NZ, SA 105.02.

²⁸ *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC).

²⁹ *Christchurch Medical Officer of Health v G and J Vaudrey Limited* [2016] 2 NZLR 382 at [54].

³⁰ And see *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [39].

by the legislature as relevant to conditions and the terms on which they should be granted;

- (e) The Authority is not required to be sure that particular conditions will reduce alcohol abuse. We are entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective then we are entitled to test whether that possibility is a reality.³¹

[93] Further, the evaluative function is an assessment of risk.³² Clark J said at [43]

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

The type of premises

[94] Before dealing with the s105 factors we have considered the question of whether we are authorised to issue an Off-licence for the type of retail premises proposed. An Off-licence may only be issued to specified types of premises.³³ One of those is for a “retail premises” where in the opinion of the licencing committee at least 85% of the annual sales revenue is expected to be earned from the sale of alcohol for the consumption elsewhere.³⁴ In this case the applicant has given evidence that he intends to sell some deli items, gift ware, and cigarettes. He anticipates cigarette sales to be no more than 5% of trade. The application states that alcohol product would be 80% which does not meet the requirements of s32 of the Act. He since satisfied the Inspector that he would meet the requirements for an Off-licence retail store. The Inspector’s Report reminds the applicant that his sales records will be reviewed to ensure that the percentage is maintained. We have formed the opinion that the requirements of 85% annual sales revenue from alcohol sales can be met.

[95] The particular style of store and the percentages of particular kinds of alcohol products is a matter for the applicant to determine in his business plan. So is the decision as to whether the premises is independent or a subject to a franchise. We are unable to restrict the type of alcohol that is lawfully able to be sold from a retail premises.³⁵

³¹ *My Noodle Ltd v Queenstown Lakes DC*. [2009] NZCA 564.

³² *Lion Liquor*.

³³ SSAA, s32(a)-(f), which includes hotels, taverns, retail premises, supermarkets, grocery stores and manufacturers of alcohol.

³⁴ SSAA, s32(b).

³⁵ SSAA S116(1)(c) only allows conditions on the kinds of alcohol that may be sold where the principal business carried on is not the manufacture or sale of alcohol.

[96] The type of business model, style of store and the range of products that are intended to be sold are, however, relevant to our evaluation of the s105 factors. The business model is relevant to our evaluation of the risks associated with the application and whether the dual object of the Act can be met.

[97] In this case the evidence before us is that although the application was originally framed as being a Thirsty Liquor franchise, Mr Singh had always had a vision that it would not be a typical retail liquor store given the Redcliffs' mature and predominantly wealthy demographic.³⁶ We were told that he had actively sought a premises in a higher socio-economic area. He acknowledged that some lower socio-economic areas were already saturated with liquor stores and they were not suited to his desire to establish a more upmarket store with higher priced wines and spirits. As it happened his aspirations did not fit within the constraints of the Thirsty Liquor franchise or the terms of lease. This was due to the branding and advertising requirements that were imposed through the franchise arrangements. His landlord would not approve the bright orange exterior paint colour. The community had also responded negatively to a Thirsty Liquor franchise. After taking advice he changed his proposal to be an independent store and to rename the store as Redcliffs Fine Wine and Spirits. As we heard there are a number of liquor outlets that adopt "fine wines and spirits" type name or purport to be specialty liquor outlets and sell higher priced product, but some of those also sell more generic and lower priced brands of alcohol in response to demand. An example given to us is Vino Fino (which literally means fine wine), which also sells beer and spirits.

[98] The fact that Mr Singh described the store as "boutique" does not take us particularly far in our evaluation. "Boutique" simply means a small store and it commonly conveys a sense of being "upmarket" or sophisticated. It is a small store. It is only 62m². Mr Singh has explained his concept of "upmarket", both in his business plan and in evidence, which is to focus on higher priced products and to be well presented.

[99] Notwithstanding the name of the store includes "Fine Wine and Spirits" we have considered the application on the basis that what is proposed in Mr Singh's evidence and in the amended business plan. We find that what he proposes is a small independent bottle store with an extensive range of upmarket, higher quality and higher priced wines, spirits and premium beers that will offer some deli items, tobacco and giftware.

³⁶ Original and Amended Business Plan.

[100] We have, however, taken into account that the applicant does not propose to exclusively sell these “higher end” or high-priced products and there will be a range of lower priced alcohol brands including RTDs, subject to demand. We have relied on the applicant’s undertaking not to sell RTDs containing guarana, not to sell single RTDs and not to discount RTDs.

Section 105 evaluation

The object of the Act.

[101] The Object of the Act is as follows:

Object

(1) The object of this Act is that—

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

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

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

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

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

[102] 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.³⁷ In *Lion Liquor Retail Limited*, 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

³⁷ 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].

of clear evidence showing a link between availability of alcohol and alcohol-related harm.”

[103] 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.³⁸ ‘Harm caused by excessive or inappropriate consumption’ is defined broadly in s4(2) to include harm in the form of crime, damage, disorderly behavior, illness or injury to individuals and to society generally and includes direct and indirect cause or contribution to harm.

[104] Mr Egden accepted that Alcohol can cause harm and that this is the reason why the legislation is in place. We return to the Object of the Act after having regard to the other s105 factors.

The suitability of the applicant

[105] There is no opposition from the Agencies regarding Mr Singh’s suitability. It is acknowledged that in those circumstances it is difficult for Objectors to mount a successful case against an applicant’s suitability.³⁹ It is of course not impossible but the evidential threshold is high. In this case the opposition to Mr Singh’s suitability from the Objectors centered around their concerns that he had a lack of real knowledge and understanding about their community and its vulnerable members. The Objectors have formed the view that Mr Singh was intentionally being vague about the style of store and was therefore not to be trusted.

[106] Contrary to the Objectors’ concern, however, Mr Singh had made inquiries of the local community and undertaken research through Statistics NZ about the demographic of the community and he acknowledged the community was in recovery post-earthquake. We find his efforts to understand the community within which he wishes to operate to have been reasonable in the circumstances. We accept he was not necessarily as well informed about the pockets of vulnerability within the Redcliff community known to Dr Fox through his day to day work. Dr Fox said he had formed a similar view to Mr Singh when he first took up his post in Redcliffs. Dr Fox’s view changed because of his experiences in his role of providing pastoral care for his Parish and as such he is privy to personal information about its members. We do not think an applicant can be expected to have developed that same degree of specialist understanding Dr Fox has. Mr Singh had since meeting with the community become aware of those issues as told to him by Dr Fox. Dr Fox appeared focused on forming a

³⁸ Alcohol related harm is defined in s5 to mirror that in s4(2) of the Act.

³⁹ See note 9 above.

personal judgment on whether Mr Singh was a “good” member of his local community. Mr Singh does not have to satisfy Dr Fox of his suitability. He has to satisfy us.

[107] We find that Mr Singh has demonstrated that that he is responsive to the issues that he has now been made aware of. Mr Singh fronted up to the community and attended a public meeting of the community when asked to do so. Mr Singh responded to concerns expressed regarding his original application and amended his proposal. Mr Singh has offered various conditions and undertakings regarding screening of the windows to limit the exposure of children to advertising of alcohol. He has offered to inspect the local reserve for litter and to pay attention to any alcohol consumption in the Reserve and has undertaken not to sell RTDs containing guarana.

[108] The Objectors were also cynical as to Mr Singh’s intentions regarding the store given his change from the Thirsty Liquor store to a more upmarket independent store called Redcliffs Fine Wine and Spirits. They suggested it was an attempt to disguise what they believed to simply be a smaller generic liquor outlet. They relied on the fact that Mr Singh intended to sell a full range of alcohol products and cigarettes to illustrate that the store was not truly “boutique” nor a “fine wine and spirits” store. We listened carefully to the evidence and submissions of Objectors and Mr Singh’s evidence but did not find there to be any substance to Objectors’ concerns about Mr Singh’s integrity or his suitability to hold an Off-licence.

[109] We acknowledge that there has been some confusion generated through public statements made by the landlord and by the addition of the landlord’s notice positioned under the public notice on the premises which compared the proposal to the “Village Grape” Off-licence in Sumner. It seems to us to have been counterproductive. Although it may have allayed the fears of some would be objectors it seems to have had the reverse effect and unhelpfully fueled suspicion and concern. The Objectors were not actually able to say exactly what the Village Grape sold. Rather their perception was that the bottle store had a limited range of upmarket wines and spirits. The Village Grape is now closed. We do not know whether it sold RTDs (premixed spirits or the energy drink kind) or any kind of beer.

[110] We have considered Mr Singh’s experience and his good record in the last 8 years. We were impressed by his initiatives at Papanui to look after the RSA memorial garden. We also see it as a positive step that he could see value in committing to personally manage the Redcliffs store for the first 12 months. We acknowledge the undertaking but accept that promise is qualified by what is reasonable given his business and family commitments. Our expectation is that he or his wife will be on site for most of the opening hours of the store.

[111] In our opinion Mr Singh is suitable to hold an Off-licence for this premises in this location.

Any relevant local alcohol policy

[112] There is no relevant Local Alcohol Policy (LAP). Objectors referred the Committee to the Christchurch Alcohol Action Plan (CAAP), a non-regulatory document. It is not a substitute for a LAP prepared under sub part 2 of the Act. We have disregarded it as not being relevant to our inquiry as it is not a LAP.

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

[113] The applicant proposes the hours of 9am to 10pm which is less than the statutory default hours. The amended business plan notes hours would usually be 10am to 10pm but the shop may open and close earlier depending on the season and demand. We were told that there are a number of On and Off-licences in the area that have hours that allow the sale of alcohol until 11pm, however, the Supermarket is only open to 9pm. We also received a copy of the Bottle O Sumner licence which permits sale of alcohol from 7am to 11pm but were advised that the hours were generally 10am to 8pm (9pm on Saturday and Sunday). We also observed on our site visit that the BYO Chinese Restaurant in the same block as the premises is open until 9pm.

[114] As we discuss below under the heading of the amenity and good order, we have received some evidence regarding the use of the Beachville Reserve by young people at night and the noise and nuisance this generates for the immediately adjoining neighbor. We also heard about possible issues with alcohol consumption during the day and nighttime on the Reserve.

[115] We accept that evidence as being indicative of a potential risk of alcohol related harm, noise and nuisance associated with the use of the Beachville Reserve by young people and rough sleepers. We have formed the view that there is the potential given the proximity and, therefore, convenience of the proposed premises that those issues may be exacerbated if the premises were permitted to be open until 10pm. We have reflected on the trading hours of the local Supermarket and local Chinese Restaurant and have formed the opinion that if the premises were to be open beyond the hours currently traded by the Supermarket and Restaurant then the impact on amenity and good order may be more than minor. Those effects would be reduced to a minor level if the trading hours were reduced to 9pm.

The design and layout of any proposed premises

[116] There is a dispute between the Objectors and the applicant as to whether the design and layout proposed by the applicant matches what they consider to be an upmarket fine wines and spirits store. As we have said we have assessed the application on the basis of the evidence and amended business plan. We saw photographs of the intended style of fit out.⁴⁰ We would describe it as “upmarket”, certainly relative to more generic franchise stores that we are aware of. The visual presentation of the store is an important branding feature of the store and the layout proposed is consistent with Mr Singh’s vision of a more upmarket store and his concept of “boutique”. We don’t accept the Objectors’ suggestion that Mr Singh simply proposes a “Shrunk Thirsty Liquor” or a Thirsty Liquor layout. We heard from the applicant that regardless of franchise arrangements the store owner determines the layout. In this small irregular shaped store there will be physical restrictions on how the shelving is arranged.

[117] We are satisfied that the proposed configuration is safe and allows for visibility of customers entering the store and the proposed screening will limit external exposure of alcohol to passersby, particularly children. We have had regard to the undertakings given about security and also about the frosting of windows, no exterior advertising of product and signage. We find that these matters ought to be conditions of the licence under s117 of the Act rather than simply recorded as undertakings.

[118] In terms of the extent of screening and exterior advertising, we require the condition to be expressed so that the stock within the store is not displayed in a manner so as to be visible on the Beachville Road façade. That means that alcohol can be displayed against the Beachville Road façade behind frosted glass, up to a height of 1.5 metres, but not above the frosting.

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 and services:

[119] The Objectors made much of the absence of reference to tobacco sales in the original application documentation. We were told that this was a mistake and that the information was conveyed to the Inspector after the application was re-notified. The relevance of tobacco to this factor of our evaluation is that it assists us in determining what kind of Off-licence is

⁴⁰ These were circulated to objectors by Mr Egden in his letter of 4 March 2019 advising objectors to the changes to the application.

proposed under s32 of the Act. As a retail premises the applicant is limited to selling 15% of non-alcohol product. Mr Singh told us that in reality he only expected to have 5% of his trade from sales of cigarettes. The Objectors also raise concerns that the sale of cigarettes are not in keeping with a “fine wine and spirits store” but we did not have any evidence to show that the two were necessarily mutually exclusive.

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:

[120] Amenity and good order is defined in s5 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.”

[121] Section 106 of the Act sets out the matters we are to have regard to when forming an opinion that the amenity and good order of the locality would likely be reduced, by more than a minor extent, by the effects of the issue of the licence.

S106 Considering effects of issue or renewal of licence on amenity and good order of locality

(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee 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:

(iii) the number of premises for which licences of the kind concerned are already held; and

(b) the extent to which the following purposes are compatible:

(i) the purposes for which land near the premises concerned is used:

(ii) the purposes for which those premises will be used if the licence is issued.

(2) ...

[122] In *Progressive Enterprises Ltd v North Shore City Council* (2005) 11 ELRNZ 421, [2006] NZRMA 72 (HC), the Court considered the meaning of “minor” in the context of the Resource Management Act 1991 and concluded that it must bear a meaning consistent with the general

policy of participation which lies at the heart of the Resource Management Act. The Court considered that the dictionary senses of “petty”, “comparatively unimportant”, “relatively small or unimportant ... of little significance or consequence” captured the legislative purpose. In *Re Wino NZ Ltd* [2014] NZARLA 227 the word was considered in the context of this Act. The application related to a proposed Off-licence to be situated opposite a church. The Authority said at [12] that:

“... the fact that St Matthew’s Church is across the road from the proposed premises needs to be taken into account and the Authority recognises that already the church grounds and adjacent alleyway are used by undesirable persons for unacceptable activities. Nevertheless, it seems unlikely that if this application is granted there will be any significant increase in the problems experienced by the church authorities.” [our emphasis]

[123] We heard extensive evidence from the community that the amenity of the area was agreeable and pleasant. In their own words they described Redcliffs as being “family friendly” “safe”, “quaint”, “quiet”. Aside from concerns from at least two neighbours close to the Reserve about “alfresco” parties being noisy at night in the Reserve, and the evidence of Mr Tremewan and his wife about the nuisance and alcohol use on the Reserve, the Beachville Road area has high amenity and is enjoyed by families, tourists and visitors to the area. We were told that the Coastal Pathway is an important feature of the locality and traverses the Village as well as the estuary.

[124] In closing Dr Fox said on behalf of the residents that a “fine wine and spirits” store may be reconcilable with the area but “not a cheap spirit and RTD shop”. As we have said we have assessed the application on the basis of how it is described in the amended business plan, and by the applicant at the hearing. It is not fair to characterise it as a “cheap spirits and RTD shop”.

[125] We do have concerns though that there is a potential risk that the issues with drinking in the Reserve, noise and nuisance from late night parties that have been observed by local residents could be exacerbated by the proximity and convenience of a bottle store at the end of the street. We are of the opinion that may have a more than minor impact on the amenity and good order of the locality. We find that the fact that the local Supermarket and Chinese Restaurant close at 9pm could increase the risk of people purchasing lower priced alcohol at the bottle store later at night and creating a nuisance in Beachville Road and the Reserve. A number of Objectors requested a reduction of hours to 8pm or 9pm. We agree that a reduction in the closing time would mitigate any potential risk to amenity and good order.

[126] We also see the offer of the applicant to inspect and collect rubbish on the Reserve and Beachville Road as reducing the risk of an increase in litter due to the grant of the licence.

[127] Some Objectors raised concerns about the increase in parking and traffic generated by the premises. We note that the premises is zoned for commercial activity and a bottle store is permitted in the zone. Parking and traffic congestion issues are not of themselves relevant to our inquiry.⁴¹

[128] We have had regard to any more sensitive land uses in the locality. We have already addressed the Reserve. We have had regard to the presence of the Coastal Pathway but do not find that it is incompatible with the grant of the licence, particularly having regard to the undertakings (and our proposed conditions) regarding signage, screening and collection of litter. We have also considered the location of the new Redcliffs School, Tennis Club, Church and community facilities. There was no opposition from the School Board of Trustees in relation to the application. The Tennis Club was not represented at the hearing but their written objection shows they are concerned about the exposure of youth and children to alcohol given the proximity of the Tennis Club and the new School. We heard evidence of the Red Zone areas and the potential for them to become the “lounge rooms” of the Off-licence. They are a considerably greater distance from the premises than the Beachville Reserve, so we find that unlikely to be the case. We heard of two preschools and the Library. These are all commonly found in commercial areas and we heard no evidence as to how they would be directly impacted.

[129] We heard evidence of the proximity of other Off-licences in the vicinity. There is only the New World Supermarket and an online sales premises within a 1km radius of the premises and we heard no evidence that they have significantly adversely impacted on the amenity and good order of the locality.

[130] Having regard to the matters in s106(1)(a) and (b) we are of the opinion that subject to a limitation of the licensed hours to 9am to 9pm and conditions regarding signage, advertising, screening and litter collection the amenity and good order of the locality would not be likely to be reduced, by a more than a minor extent, by the effects of the issue of the licence.

⁴¹ *PKNG Limited v Fluger and Horowhenua District Council* [2019] NZARLA 38 [72]– [81]. Parking and Traffic Congestion are not matters relevant to amenity and good order under s106 of the Act. Traffic safety issues may be relevant considerations under s4 see *PKNG* at [69].

Whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—

- (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
- (ii) it is nevertheless desirable not to issue any further licences:*

[131] We do not find to be the case. To the contrary the universal view is that the area is of high amenity.

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

[132] The Inspector is satisfied of these matters. We heard evidence from the applicant of his practices in relation to these matters and are satisfied that the applicant has appropriate systems, staff, and training to comply with the law.

Any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103

[133] The Agencies were not opposed to the application for the proposed bottle store. The Police and the Medical Officer of Health advised of the lack of opposition. Both reported on 12th February 2019 and indicated they were aware of the changes to the application and they were aware of the risks that independent liquor stores sometimes morph into mainstream or franchised stores. Both the Police and MOH confirmed at the hearing they were comfortable with the undertakings given by the applicant.

[134] Mr Little did not raise any matters of opposition. His Report did not contain a specific recommendation that we grant the licence, he simply reported what he knew about the application (as he required by law to do) and recommended that if we grant the licence then certain conditions ought to apply. The conditions he recommended are standard for this type of application. His Report was prepared without the benefit of hearing from the Objectors at the hearing, or their cross examination of Mr Singh. In closing Mr Little acknowledged the valid concerns of Objectors in relation to alcohol related harm but said these were of broader scope than evidence required for this type of Off-licence. He also submitted that based on the information provided as part of the application and as part of the hearing that the Committee can be satisfied that the criteria of the Act can be met.

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

[135] We have not done so.

Object of the Act

[136] It is accepted that excessive or inappropriate consumption of alcohol can cause harm. With that in mind the Act was put in place to provide for reasonable regulation of the sale, supply and consumption of alcohol for the benefit of the community as a whole. The sale of alcohol is not prohibited, but it must be undertaken safely and responsibly and minimise alcohol related harms. For that reason, we must undertake a careful evaluation of this application against the matters identified in s105 and 106 of the Act. This includes having regard to the Object of the Act in s4. We are then required to stand back and make a judgment, informed by the evidence before us, as to whether the grant of this licence in this location should be undertaken safely and responsibly and minimise alcohol related harm. It is not our role, as suggested by some Objectors, to “lead the way” and find that because alcohol causes harm in society there should be no more liquor outlets. The Act contemplates that even if alcohol can be sold safely and responsibly harm may result from excessive or inappropriate consumption.⁴² The requirement is that alcohol related harm is minimised, not eliminated.

[137] We find that the experience of the applicant and his proposed systems and training and undertakings given are such that alcohol would be sold safely and responsibly.

[138] In our assessment of the risk of alcohol related harm in this community we have had regard to the evidence of Dr Fox and others about particular vulnerabilities or “fragilities” in Redcliffs that might set it apart from the general community. Dr Fox spoke of particular groups in the community who were vulnerable. He also spoke of the fragility of the post-earthquake recovery of Redcliffs. As with any community in Christchurch there are no doubt vulnerable groups in Redcliffs. Dr Fox’s evidence did not demonstrate there to be any significant problem in Redcliffs that put the Redcliffs Community at greater risk than the wider community. Young people, elderly living alone and people with mental health issues (related to the Christchurch Earthquakes or for other reasons) are all vulnerable and we have regard to those people as a part of the Redcliffs community when we consider the criteria under the Act. We have not dismissed the issues simply because the demographic of Redcliffs is generally mature and wealthy by comparison to many other suburban areas in Christchurch. We have, however, formed the view that the risk profile of Redcliffs is not so vulnerable that it cannot sustain the introduction of a premises of the kind proposed by the applicant.

[139] We accept that Redcliffs has been greatly impacted by the consequences of the Christchurch Earthquakes and many people still live with damaged homes and insurance

⁴² *Dr Alistair Humphrey v Cathedral Grammar Friends Group and Martin Ferguson* [2019] NZARLA 9 at [67].

battles as well as mental health concerns. Access to the community has also been restricted due to significant road works and this may have contributed to those issues, but, as we heard from Dr Fox and others, it has also drawn the community together and created a supportive and community minded environment.

[140] We have had regard to the number of young people who are already and will be, when the primary school reopens, in the vicinity walking through the Redcliffs Village, using bus stops, visiting the Tennis Club and dairy. We are satisfied that the proposed screening and limitation on advertising will minimise their exposure to the sale of alcohol.

[141] There is no stand-alone bottle store in Redcliffs and we were told only 6 Off-licences between Ferry Road and Sumner. We do not consider that the number of premises currently available has reached the point where the addition the premises in Redcliffs will offend the dual objects of the Act.

[142] Standing back and considering the matters in s105 of the Act, we are satisfied that any alcohol related harm from the excessive and inappropriate consumption of alcohol that may be attributed to the introduction of this licenced premises will be minimised.

Conditions and undertakings.

[143] We have in our summary of evidence recorded various undertakings given by Mr Singh in relation to how he intends to conduct his business. We accept those undertakings and have factored them into our evaluation. Some matters are also capable of being conditions under s117 of the Act and we have included these as conditions where reasonable and not inconsistent with the object of the Act. We are, however, unable to restrict the kinds of alcohol sold in an Off-licence through a condition.⁴³ We accept Mr Singh's undertakings with regard to the limitations on RTD sales. If he does not adhere to the undertakings given it will be a matter that the DLC will consider on renewal, regardless of whether or not there is opposition as it will reflect poorly on his suitability to hold a licence at this premises and others. We have relied on the description of how Mr Singh intends to operate in his amended business plan and his explanations in his evidence. Although he has not been so specific as to identify pricing schedules or percentages of particular types of product we have accepted it as an expression of clear intent to ensure this bottle store is not a generic bottle store with discount strategies that target young people or vulnerable members of the Redcliffs community. We

⁴³ SSAA s116(1)(c).

have included a condition that he operate the licence generally in accordance with the business plan of March 2019 and the evidence he gave at this hearing. The reference to “generally in accordance with” allows for some fine tuning as he goes, however, does not allow for a departure from the substance of the plan or his evidence.

[144] We note that this licence is issued for a 12-month period in the first instance and this is generally considered as a probationary period. Upon renewal the applicant can expect that the sales records of the store will be reviewed by the Agencies and DLC so as to measure performance against the business plan. We expect the Inspector on renewal to comment on compliance with each of the conditions and undertakings given.

Decision

[145] Accordingly, having had regard to the matters in section 105 and 106 of the Act and for the reasons above we are satisfied that the grant an Off-licence for a period of 12 months, subject to the following conditions is consistent with the object of the Act:

The Licensed Premises

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

Discretionary conditions – section 116 (1)

- (b) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - (i) Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (c) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - (i) Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.

Compulsory conditions – section 116 (2)

- (d) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.

- (e) Alcohol may only be sold or delivered on the following days and during the following hours:
 - (i) Monday to Sunday 9am to 9pm.
- (f) Water will be freely available to customers on the premises while alcohol is being supplied free as a sample on the premises.

Section 117 – Other Discretionary conditions

- (g) The licensee must operate the premises in general accordance with the Business Management Plan dated March 2019 and the evidence of Mr Jugraj Singh given at the hearing before the District Licensing Committee on 23 and 24 May 2019.
- (h) The licensee must implement and maintain the steps proposed in the Host Responsibility Policy contained within the Business Management Plan dated March 2019 aimed at promoting the responsible consumption of alcohol.
- (i) There shall be no advertising of alcohol attached to the exterior of, or visible from outside, the premises.
- (j) No flags or sandwich boards shall be used to advertise alcohol product for sale.
- (k) Signage is restricted to the Redcliffs Wine and Spirits logo and business name.
- (l) The licensee shall ensure that the Beachville Road and Main Road facades are screened with frosted glass to a minimum height of 1.5m measured from the footpath.
- (m) No alcohol product shall be stored or displayed against the Beachville Road interior glazed façade in a manner that is visible from the footpath on Beachville Road.
- (n) The licensee shall install CCTV security to operate inside and outside the store including any external storage areas.
- (o) Staff will check for litter daily in the general area and the Beachville Reserve and they will collect and dispose of any litter.
- (p) Any security grill shall be installed on the interior of the store.
- (q) The premises shall remain independent of any franchise arrangement and shall retain the name Redcliffs Fine Wine and Spirits.

Section 119 – Restricted or supervised areas (other)

- (r) The whole of the premises is designated as a supervised.

Other restrictions and requirements

- (s) Section 56 – Display of signs
- (t) Section 57 – Display of licences
- (u) Section 214 – Manager to be on duty at all times and responsible for compliance

[146] A copy of the licence setting out the conditions to which it is subject is attached to this decision.

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

DATED at CHRISTCHURCH this 1st day of July 2019



CE Robinson
Chair for and on behalf of the Christchurch District Licensing Committee