

**Decision Number: 60E [2020] 6837**

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

**AND**

**IN THE MATTER OF** an application by **JJMS ENTERPRISES LIMITED** for an **Off-Licence** pursuant to s 99 of the Act in respect of premises situated at **299 Main South Road, Christchurch** to be known as '**Good Bliss Liquor**'

**BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE**

Hearing: 15 and 16 April 2021 (at Christchurch)

Committee

Chairperson: Mr D L Blackwell, QSM

Members: Mrs M Redstone, JP  
Mr G J Clapp, JP

Appearances: Mr A Riches, Counsel for the Applicant  
Mr A Lawn, Assisting the Applicant  
Mr R Kapoor, Director of the Applicant  
Mr A Singh, Director of the Applicant  
Ms N Anderson, Licensing Inspector, to assist  
Mr P Spang, Assisting the Licensing Inspector  
Senior Constable Jolliffe, New Zealand Police, to assist  
Dr G Hewison, Counsel for Greater Hornby Residents Association (GHRA)  
Mr M Duff, Chair of the GHRA (Objector)  
Mr R Houlston, GHRA Research/Submissions Officer  
Mrs G Turner, Objector  
Ms A Josephs, Objector  
Dr E Gordon, Objector  
Ms J Milne, Objector  
Mr M Peters, Objector  
Mr M Mora, Community Board Delegate (leave to appear under s 204(2)(b))

Decision: 24 May 2021

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**RESERVED DECISION OF THE COMMITTEE**

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## **Introduction**

[1] This is an application for an off-licence by JJMS Enterprises Limited (the applicant) to establish an off-licence Bottle Store under the trading name of 'Good Bliss Liquor'. The premises is situated at 299 Main South Road in the suburb of Hornby.

[2] The proposed location is in a vacant shop which is part of a small block of shops. Across Main South Road is a large agricultural chemical company while adjacent to the block of shops is an auto repair type operation. The block of shops has a good size parking area with access from Main South Road and Garvins Road, a mostly residential street.

[3] The application is for the sale of alcohol between the hours of 9.00 am and 11.00 pm. Mr Singh, one of the directors of the applicant company, did offer to reduce the hours for Sunday through Thursday to 10.00 am – 10.00 pm if it would help reduce the fears of some of the objectors.

[4] The application was publicly notified on the Council's website on 4 September 2020 and remained on the website for a minimum period of 15 working days. The public notice was displayed on the front of the premises where it could clearly be seen. A total of 30 public objections were received.

[5] The application was not opposed by the District Licensing Inspector,<sup>1</sup> the New Zealand Police or the Medical Officer of Health (MOH).

[6] The District Licensing Committee (DLC) members each undertook an external site visit on an individual basis.

## **Summary of result**

[7] The application for an Off-Licence by JJMS Enterprises Limited for premises at 299 Main South Road is declined on grounds of suitability and amenity and good order.

## **Preliminary matters**

[8] In her report the Licensing Inspector brought to the DLC's attention matters in relation to the status and validity of several of the objectors/objections. A subsequent memorandum

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<sup>1</sup> Report of Nikki Anderson, Licensing Inspector, undated.

from the Inspector dated 16 February 2021 confirmed challenge to the status of five individuals and two organisations as objectors in terms of section 102 (1) of the Act.

[9] A pre-hearing conference was held on 8 March 2021 to determine the status or otherwise of the identified individuals and organisations. In relation to the validity of some objections (in terms section 102(3) of the Act), the Chair indicated that he would accept argument from all parties but his general view was that because the objectors were laypersons he would prefer to hear the objectors at the substantive hearing and then let the DLC determine in its deliberations what weight, if any, should be given to each objector.

[10] A minute setting out the DLC's decision<sup>2</sup> (Minute No.4) sets out the decision and the reasons for such a decision.

[11] The DLC declared that The Greater Hornby Residents Association (GHRA), Mr Duff and Mr Peters have status alongside all the other objectors who were not asked to attend the pre-hearing conference.

[12] Mr Mora, a member of the Waipuna/Halswell-Hornby-Riccarton Community Board ('Community Board'), withdrew his objection prior to the pre-hearing conference and advised that he would be seeking leave pursuant to section 204(2)(b) of the Act to appear and present submissions in support of the objectors.

[13] Mr Sumpter, an initial objector who was not granted status, raised in his objection a number of what he believed were errors in the application form. The Chair indicated that should Mr Sumpter not be given status and no other party raises the issues, the Chair would raise the issues at the substantive hearing.

## **THE HEARING**

### **The applicant and application**

[14] Counsel for the applicant, Mr Riches, gave a brief opening statement supporting the application and the two directors. He noted that none of the agencies opposed the application.

[15] Mr Riches did say that the directors had now decided to change to the Thirsty Liquor franchise. At this point Counsel for the Residents Association, Dr Hewison, raised an objection

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<sup>2</sup> Minute of DLC, 16 March 2021.

saying that this was new evidence and was not pre-circulated as directed. Mr Riches said that he didn't agree this change of franchises was prejudicial to the objectors.

[16] Mr Riches said many of the objections have been suggesting 'not suitable' but the applicants have engaged Alcohol Consulting Group (ACG) to assist them.

*Mr Raman Kapoor's Evidence*

[17] Mr Kapoor read from his brief of evidence stating that he was a director of JJMS Enterprises Limited and the proposal was for a new off-licence that would be a stand-alone bottle store situated at 299 Main South Road, Hornby.

[18] Mr Kapoor said he and his fellow director, Mr Singh, chose the site as there were no sensitive sites nearby and, as the site was on a main arterial route out of the city, motorists will be able to drive to the premises, purchase their alcohol and leave the area immediately.

[19] Mr Kapoor outlined his academic qualifications and noted he has a Licence Controller Qualification (LCQ) and had previously held a manager's certificate. He said he had previously managed alcohol sales in a restaurant, worked as a shift supervisor at McDonalds and currently works as a taxi driver.

[20] Mr Kapoor said he will re-apply for a manager's certificate once the licence is granted. He said he and his business partner, Mr Singh, took their obligations under the Sale and Supply of Alcohol Act 2012 seriously and that they have a strong focus on the objects of the Act. He said that while many people drink in moderation he recognises that his obligation as a duty manager and licence holder is to do everything in his power to minimise harm to other persons as a result of alcohol. He said that included, but was not limited to, not selling to minors, intoxicated persons, and those who appear to have an alcohol dependency. Also those who they believe are likely to drink and drive.

[21] Mr Kapoor talked about the locality and how he had visited several parks and reserves on March 9, 2021 and March 25, 2021 and he did not find any cans. He also noted that there was plenty of parking with 6 – 8 car parks in front of the proposed premises and 10 – 20 car parks beside the block of shops which were part of the premises. He said he feels they would not have any direct competition with other liquor stores as the proposed premises were on a main arterial route, not in a residential area, and far enough away from other off-licences not to be a direct threat.

[22] Mr Kapoor said he had talked to the landlord, who runs a dairy in the same block of shops, and there were never any issues and he rarely sees children in school uniform.

[23] Mr Riches asked Mr Kapoor to explain his dealing with ACG and the systems they would be using. He said ACG were very professional and will give the staff one-on-one training. He produced a Host Responsibility Policy and a Staff training manual.

[24] Mr Riches asked Mr Kapoor to explain the change of franchise. Mr Kapoor explained that they were originally to go with Liquor Centre but decided to go with Thirsty Liquor as Mr Singh had worked at one of their franchises for some years.

[25] Mr Kapoor explained the signage that they proposed to have on or around the store. He said that he was also under instructions from the landlord not to have the store painted in the Thirsty Liquor orange colour. He proposed and gave an undertaking that they would have one sign on the window and one flag outside and there would be no orange paint on the building.

*Cross examination of Mr Kapoor*

[26] Both Ms Josephs and Ms Milne asked questions concerning why the applicant decided on this location and questioning their assumption that this was now a main route out of town. Mr Kapoor replied that they found the location a handy location on a main road. He visited the area often as a taxi driver and information showed there were around 13,000 vehicles passing the location daily.

[27] Mr Kapoor said he thinks they would take business away from other locations and they would and could not compete with the supermarkets.

[28] Dr Gordon sought clarification that the white look on the front of the block of shops would not be changed. Mr Kapoor reaffirmed the signage they would be using and that the look of the front of the store would not change. She also asked if he knew the area was one of the most deprived areas in Christchurch. He said the business would be concentrating on commuters as potential customers.

[29] Dr Gordon sought further clarification as to if he knew it was one of the most deprived areas. Mr Kapoor said he had spoken to the landlord who said he never had any issues. He also spoke to a Mr Singh (not the other director Mr Singh) who worked at Z Hornby and he said it was a nice area. Mr Kapoor re-emphasised that they would be concentrating on commuters.

[30] Mr Peters asked about his knowledge of the area and asked him to convince him that he had a feel for the neighbourhood. Mr Kapoor said the only impact from the proposed store will be on other licences. He believed opening another store will be good for the community. He said if the community had any concerns he would listen to them.

[31] Dr Hewison then asked if Mr Kapoor agreed customers would come from the residential area behind the store. Mr Kapoor said they proposed to not have any single sales and that they will sell high-end wines / craft beers to attract high-end commuters.

[32] Dr Hewison then questioned him on his qualifications and noting his post graduate qualification in Electronic Engineering is not on his CV. He stated that qualification was obtained in India and NZQA have not assessed it. Mr Kapoor confirmed to Dr Hewison that he had not worked in a bottle store.

[33] Mr Kapoor said he had worked as a manager of a restaurant and that meant dealing with intoxication and checking under 25 IDs.

[34] Dr Hewison asked numerous questions about his understanding of alcohol harm dependency noting there was nothing in the manuals that alluded to it. Mr Kapoor said that if they became aware of anyone with dependency they would refuse to sell to that person. The staff would get regular training from ACG to help deal with these issues. If institutions come to him about a particular person they would not sell to them. They proposed to have cameras and an incident control book.

[35] Dr Hewison then asked where in his proposed manual did it state that they would not sell single sales. Mr Kapoor confirmed that they would not sell singles sales of RTDs and any other alcohol under \$6. He confirmed they would be happy for that to be a condition of the licence.

[36] Dr Hewison asked about his obligations under section 237 of the Act. Mr Kapoor said he was not aware of it but ACG would give support to them to follow the requirements. Dr Hewison again questioned him over him having no knowledge of section 237 saying it was a very important part of the Act and one of his key obligations. He also said, does this not make you (Mr Kapoor) unsuitable.

[37] Dr Hewison sought clarification of the reason for not proceeding with the Liquor Centre franchise. Mr Kapoor explained that Liquor Centre had a policy that if a new proposed store

was within 2.5 km of an existing Liquor Centre store then the existing store needs to give approval for the new store. This approval was not given.

[38] Again following questions from Dr Hewison, Mr Kapoor said the reason for going with Thirsty Liquor was that Mr Singh had worked for them at their Linwood store. Dr Hewison then asked him if he was aware of the recent negative publicity concerning Thirsty Liquor stores and the recent decision relating to a Tokoroa store. Mr Kapoor said that if a licensee does anything wrong their licence should be cancelled. He said it is about the individual.

[39] Mr Kapoor said the manuals they were going to use were the ACG system as they were very professional and ACG also supplied staff training.

[40] Dr Hewison asked if he had read the objections. Mr Kapoor said he had gone through them.

*Questions from the Committee to Mr Kapoor*

[41] Why was he currently driving a taxi and not gaining experience in the industry? Mr Kapoor said his wife had been made redundant and he needed the flexibility. He confirmed they would only be selling alcohol, chips and juice type products. They would not be selling cigarettes.

[42] Mr Kapoor said they would be hiring one other manager and he himself would be applying for a manager's certificate.

[43] The Chair noted an issue that was raised at the pre-hearing conference that he said he would raise at the substantive hearing if no one else raised it. One shareholder was listed on the application form but there appears to be two shareholders. Two directors were listed on the application form. Later documents, including the Inspector's report, listed two directors and two shareholders. Mr Kapoor said he had asked his accountant in Timaru to change the listed shareholders and this did not appear to happen as fast as he would have liked.

[44] He was asked about the gate behind the proposed store onto Garvins Road. Mr Kapoor said that he would ask the landlord about them locking the gate at 9.00 pm when the other stores in the block closed. Packaging rubbish was also raised and he said they intended to get a bin for this.



[45] In clarification, Mr Riches asked Mr Kapoor who wrote the staff manual and he replied ACG. He also asked him to explain how he intended to take business away from other stores. He said their location on the main road would attract passing commuter customers.

*Mr Arvinder Singh's Evidence*

[46] Mr Singh read from his brief of evidence. He stated that he had a Bachelor of Commerce and a Diploma in International Management. He has been involved in selling alcohol since 2012 and had held his manager's certificate until 2018. He has applied for a new manager's certificate which is currently in the system waiting for a decision.

[47] During his time in the industry he has faced many challenges, like how to handle minors and intoxicated persons. He refused to serve them but he believed he handled them in a manner so that they did not cause further trouble.

[48] Mr Singh stated that he took his responsibilities under the Act seriously doing everything in his power to minimise harm as a result of alcohol. In addition to his responsibilities under the Act they would not be selling single sales of RTDs or other products that would be favoured by pedestrians or those looking to consume alcohol immediately or in the nearby vicinity.

[49] Mr Singh confirmed that they were comfortable to reduce the hours from those applied for to Sunday through Thursday 10.00 am – 10.00 pm, and Friday and Saturday 9.00 am – 11.00 pm.

[50] Mr Singh said they would comply with the Crime Prevention Through Environmental Design (CPTED) principles. The person at the point of sale will be able to see inside and outside of the store. They would keep RTDs in the chiller at the rear of the store and they will not be selling cigarettes. They will sell a range of low-alcohol products and he noted these are becoming more popular and they will stock a good range of them.

[51] He believed the premises will not contribute to additional noise as Main South Road is a busy road with industrial premises in the area. He believed his customers will call, make a purchase and then leave. He also believed they would not congregate in the area.

[52] Mr Singh noted the following in the Inspector's report and stated the information from the Inspector confirms their observations:

As far as I am aware the amenity and good order of the locality is not affected by the effects of the current licences in the area. I have spent a number of hours walking and driving around the vicinity of the premises, particularly the residential zone, the old roller dome and the surrounding parks. I have found no evidence of alcohol related issues such as rubbish during these times. In my view the area appeared to be clean and tidy and in all a pleasant place to wonder.

[53] Mr Singh went to Main South Road, near the store, on 24<sup>th</sup> March at 2.45 pm and waited there until 3.00 pm. He hardly saw any school children and he discussed matters with the landlord and was told by the landlord, who has a dairy in the same block of shops, that he hardly sees any school children during the day. He also visited two parks on 1<sup>st</sup> March and stayed there for 10 - 15 minutes and could not find any kind of litter.

[54] Mr Singh said he was a taxi driver who worked on Friday and Saturday nights and whenever he drops customers in Hornby he never sees people drinking on the roads or groups of drunk people making a mess.

[55] He noted some of the objectors had mentioned the number of other off-licences in the area. He said some were supermarkets and the other bottle stores were more than a kilometre away. He notes the other stores were more difficult to get to for passing traffic and were off the main road. Mr Singh said people travelling south will be attracted to the store for its easy access. These people in his view would purchase higher-end products.

[56] Mr Singh referred to the NZTA data which showed there were over 13,000 vehicles past the proposed location daily. He believed the residential area, around the corner from the store, would not be affected by the store's operations.

#### Systems, staff and training

[57] Mr Singh said they had submitted a staff training manual with their application which covers the issues they may face and which the Act requires them to address. These include intoxication and the sale of alcohol to minors. Staff will be trained to look for anyone showing signs of intoxication and those people will be asked to leave. They will follow industry guidelines and require acceptable identification for anyone looking under 25 years of age. They also will have a policy of not selling to anyone in school uniform.

[58] Mr Singh also said being vigilant and applying common sense is critical.

[59] Mr Singh said they had been assisted with their application by ACG and will be looking to continue that relationship. They will assist with ongoing mentoring and advice and help them address any unexpected situations. They will also help with staff training.

[60] Mr Singh notes the agencies had raised no concerns, which in the applicants' view endorses that the site will enable them to uphold the objects of the Act and sell alcohol responsibly.

[61] Mr Singh notes many of the objections raise issues that alcohol causes harm in our communities. He said while they do not shy away from acknowledging this he produced a document that points to a reduction in adolescent binge drinking in New Zealand.

[62] He said that while overall alcohol consumption per person was declining, customers had become more sophisticated. He believes the trend towards craft beer, low alcohol beer, lower alcohol wine and high-end spirits would enable them to run a successful business without relying on increased consumption.

[63] Mr Singh said that because they would be on a main road many of their customers would reside out of Christchurch.

[64] Mr Riches asked Mr Singh to outline his business model and he replied that he would be focussing on commuters from places like Rolleston and selling high-end wine and craft beers rather than volume.

#### *Cross examination of Mr Singh*

[65] Dr Gordon sought clarification on the look of the outside of the proposed store. Mr Singh said there would be no advertising on the outside of the store other than a sticker on the window and a flag outside. She also asked why Rolleston people would be more likely to purchase high-end products. Mr Singh said that these people were more professional type people and would more likely purchase higher-end products such as craft beer. He also said their proposed store would be the only one on the left hand side of the main road making it easier access for them.

[66] Dr Gordon asked why place the store in one of the most deprived parts of Christchurch. He stated that commuters can stop and purchase on their way home. Dr Gordon asked what had ACG done for them. Mr Singh said they helped with the application, although he wrote his

evidence and it was looked over by ACG. The first thing they would do if a licence was granted was to train their staff.

[67] Ms Milne said his partner talked about sensitive sites in the area. What would he consider as sensitive sites? Mr Singh said schools would be sensitive sites. Ms Milne asked if he was aware of the number of Kāinga Ora homes in the area to which he answered he was not aware of them around the proposed premises. He had walked around the area of the proposed store and the area looked all right to him - it was a nice area. He drove a taxi and looked at the area when he was dropping off or picking up customers in the area.

[68] Ms Milne asked if he was aware of homelessness in the area and Mr Singh said he had never seen any. She also asked if he was aware of the problem in the area with persons doing donuts and again he had never seen any.

[69] Ms Milne asked why an alcohol outlet in the area would be better rather than an empty shop. He said having his store there would be helpful for the local economy. She also asked how he would stop people with alcohol issues coming into his store. Mr Singh said his higher prices and location on the main road would allow him to charge higher prices.

[70] Ms Milne also asked if he had investigated other locations. Mr Singh said the proposed location was a good location and good locations were hard to find. He said commuters will buy from him due to the location of the store on a main road. Ms Milne also asked how available were ACG to assist and he said very approachable.

[71] Ms Josephs questioned Mr Singh on the type of customer he was intending to attract and he confirmed he was looking to attract the commuters who drive past the store. Asked if he would sell to intoxicated gang members who lived within 100 metres of the store he explained how he would not sell to any intoxicated persons. He said he had experience through his taxi driving work. She was also asked if he had policies to support staff and the answer was yes, through ACG.

[72] Mr Peters asked what familiarity he had with the area. Mr Singh said he had read the Inspector's report showing the area is a decile 6. He was used to dealing with people in his previous role and never sold to intoxicated persons. He also said once anyone creates an issue he would not sell to them.

[73] Mr Peters said he had previously heard from objectors of the gang members in the Dickson Crescent area and would he be happy to turn them away. He again explained that if anyone showed signs of intoxication he would turn them away.

[74] Mr Peters also asked if he would be happy to have a condition on his licence excluding the discounting of alcohol. Mr Singh said he would not be discounting any alcohol except the Thirsty Liquor regular discounts.

[75] Dr Hewison asked about what percentage of so called high-end products he would be selling. Mr Singh agreed he aimed to sell about 50% of high-end products. He also said he would not be discounting other products and would be more expensive than supermarkets.

[76] Dr Hewison asked about the percentage of high-end products he sold at his previous role in Linwood. Mr Singh said very few. Dr Hewison also put it to him that Thirsty Liquor was known to be at the bottom end of the market. Mr Singh said it was up to each franchisee as to what they sold.

[77] Dr Hewison also asked if customers who were driving past are attracted by signs and colour. Mr Singh said he would only be having one flag outside and one sticker in the window. He said he will attract 100 cars a day.

[78] Dr Hewison queried why he had produced a new training manual on the day of the hearing. Mr Singh said they had sought professional help to produce the manual. He said the Inspector's report says there are no concerns with the proposed store. Dr Hewison reminded him that the manual had just been produced and the Inspector had just learnt about it.

[79] Dr Hewison questioned Mr Singh's experience at running a high-end store and he said his experience was at Thirsty Liquor Linwood. Mr Singh said he was at present working as a taxi driver and in a cleaning business. Dr Hewison asked why he was not working at a high-end store to get experience. Mr Singh answered that he had a young daughter and had family issues.

[80] Dr Hewison noted his manager's certificate expired in 2018 and asked why was it not renewed. Mr Singh said the store hired another manager.

[81] Dr Hewison queried his producing an academic article that was used to support the application and asked if he was an expert in this field. Mr Singh said it was a complex academic

article and he skipped to the main points. Dr Hewison asked if he had read Dr Gordon's evidence and Mr Singh said he could not remember. Pressed further he said no.

[82] Dr Hewison noted that Dr Ball responded in astonishment that her article was being used in support of an alcohol licence application.<sup>3</sup>

[83] In reply to a question about increasing consumption Mr Singh said their aim was to acquire a share of the market. The handy location would help his business. He also said, referring to poor people who live nearby, that his products were going to be too expensive for them to come to his store.

#### *Questions from the Committee to Mr Singh*

[84] The Committee asked questions about his obligations under the Act and how he was going to minimise harm. Mr Singh said he believed he had good experience handling intoxicated persons and had developed a manner to ask them to leave without them getting more aggressive. He was also asked about the design of the store to which he replied that it was mainly about the outside of the store and the openness for the manager to see everything that was happening. He said they would be at first having just one manager working but that would increase at busy times. He also said he had the experience to identify trends in liquor sales such as the increase in craft beer sales and the growing sophistication of customers.

[85] He was asked what hours would he and the other director work and what hours would their proposed employee work. Mr Singh said the employee would work 35 hours and he and Mr Kapoor would cover the rest. He said he still had a small cleaning company that he would maintain but this only involved about one hour per day. Asked about the expected drop in traffic numbers due to the new motorway he indicated even if it dropped to 8,000 per day they only needed 100 cars a day stopping to make their proposed business work.

[86] After being asked how long he had known that they were changing proposed franchises Mr Singh said more than a month. Regarding hours he said he was happy to reduce their proposed hours but not to the 9.00 pm closing as suggested by at least one of the objectors.

[87] Mr Singh was then asked if they had consulted with the residents or residents groups and he answered no.

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<sup>3</sup> Letter dated 12 April 2021 from Jude Ball to Dr Gordon, appended to Dr Gordon's Brief of Evidence (Exhibit "EG3").

[88] In re-examination from Mr Riches, Mr Singh said he was not planning to sell the business should he gain a licence. He also confirmed that he was free to set his own prices and was not controlled by Thirsty Liquor. He also confirmed that they would be installing 8 - 12 CCTV cameras.

### **Evidence of Ms Turner**

[89] Ms Turner's objection identifies good order and amenity, suitability and the object of the Act as her concerns. Ms Turner, through some of her comments, obviously does not understand the autonomy of the DLC or the Licencing Inspector but this is not uncommon for laypersons and the Committee looks past this.

[90] Ms Turner, who lives about 600 metres from the site, expressed concern at the litter around the area, the already high crime rate in Hornby and the regular drinking sessions at a house close to where she lives with the yelling of abuse, fighting and burnouts. She said her two children, aged 16 and 19, are at a very vulnerable age. She believes more outlets and longer hours will cause harm to more than a minor amount which is against the object of the Act.

[91] Ms Turner also believes the addition of a bottle store will lead to lower prices as stores compete for customers.

[92] On suitability, Ms Turner believes the applicants have given little consideration to the community and site they have chosen, have undertaken little research into the community and the problems that already exist. She also pointed out several inconsistencies in the application form.

[93] Ms Turner said she walked her dog in the area daily and always took a bag for rubbish she picked up. She said her evidence in this area conflicted with the evidence of the Inspector who said she saw no evidence of rubbish in the area.

[94] In questions from Mr Riches, Ms Turner acknowledged that she held a manager's certificate and worked in a liquor store in Ilam. She also acknowledged that her employer at that liquor store, where she works in Ilam, also owned one of the current bottle stores in Hornby. This had not been previously disclosed.

## **Evidence of Ms Josephs**

[95] Ms Josephs read her brief of evidence. She told the hearing that she regularly walked and ran in the area between 7.30 pm and 11.00 pm and was concerned with the proposed hours of operation of the proposed store. She was concerned that the late hours of operation would increase the foot traffic of intoxicated persons and decrease her safety.

[96] Ms Josephs said it was noticeable that there were a large number of Kāinga Ora housing units in the locality and she had produced a document from Kāinga Ora stating that there were 89 of their managed properties within one kilometre of the corner of Main South Road and Garvins Road.

[97] Ms Josephs pointed to a decision of the DLC in Phillipstown where there were 14 off-licences within a two kilometre radius and she said in her community there were 10 off-licences raising concerns of potential discounting.

[98] Mr Riches handed Ms Josephs a document for production showing there were a total of 6265 Kāinga Ora houses in Christchurch.<sup>4</sup>

## **Evidence of Dr Gordon**

[99] Dr Gordon's evidence was taken as read but she spoke to her evidence. Her evidence was very detailed and was extremely useful to the Committee. Dr Gordon said she owned and lived at a property in Dickson Crescent and she was objecting on five grounds listed in section 105 of the Act. The object of the Act, suitability of the applicant, hours of operation, amenity and good order and systems, staff and training.

[100] Dr Gordon said the area was a most deprived area with a long history of alcohol and drug related harm. She was concerned at the lack of opposition from the agencies and hoped the Committee would give that lack of opposition no weight.

[101] Dr Gordon said the area around the proposed off-licence is in the most deprived quintile (decile 9 – 10) of Christchurch as determined in the 2018 census. She had produced a map showing that the most deprived area being all of Garvins Road and Dickson Crescent, most of Oakhampton, parts of Main South Road and Springs Road.<sup>5</sup>

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<sup>4</sup> Exhibit "AJ2".  
<sup>5</sup> Exhibit "EG2".



[102] Dr Gordon outlined some of the persons that had lived near her and some of the issues they had. She also said that about 1987/88 the Police declared Dickson Crescent the worst street in Christchurch because of gang problems, violence and harm.

[103] Dr Gordon outlined harm in the area and in particular domestic violence and numerous disturbances of public disorder. She also outlined several major incidents over the last few years including firearms and drug dealing. Dr Gordon also said that during the lockdown the corner of Garvins Road and Dickson Crescent became a favoured place for drug dealing.

[104] Dr Gordon outlined the problems when the dairy, in the block of shops proposed for this licence, was designated as one of the outlets for legal highs in Christchurch.

[105] Dr Gordon pointed out some of the worst incidents of domestic violence had occurred in the area. She said that on a number of occasions she had offered support to women victims establishing her home as a safe haven for them. Dr Gordon quoted an occasion where she was able to turn the life around of a woman and even help her into employment. These people were then able to save and later get into their own house.

[106] Dr Gordon stated that this proposed licence will provide a means by which problems will increase. The drunk will be able to top up their intake without having to drive their car.

[107] Dr Gordon said the Act is designed to consider possible future harm. She said In *Lion Liquor*,<sup>6</sup> Clark J notes: "The Authority erred in requiring evidence of demonstrable historical harm. Rather, it was required to assess risk which, by definition, is future risk".

[108] Dr Gordon also brought to the Committee's attention a decision of the DLC in 2018<sup>7</sup> relating to a new licence application in Phillipstown where a licence was declined on the basis it would "result in a failure to meet the object and purpose of the Act". This decision was upheld on appeal.<sup>8</sup> Dr Gordon said the current proposed area is even more deprived than Phillipstown.

[109] Dr Gordon stated that she believed the Act was written for areas like hers, where there is already harm, and the sale, supply and consumption of alcohol will just makes it worse. She quoted subsection 4(2) of the Act.

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<sup>6</sup> *Medical Officer of Health v Lion Liquor Retail* [2018] NZHC 1123.

<sup>7</sup> Christchurch DLC Decision No. 60A [2018] 1131 (application by Riccarton Liquor Ltd for Off-Licence in respect of 'Liquorland Ferry Road').

<sup>8</sup> *Riccarton Liquor Ltd v Ferguson* [2019] NZARLA 93.

[110] Dr Gordon said she takes issue with Mr Singh's view that the area is improving economically and the area is a good economic, social area. Dr Gordon produced maps from the 2013 and 2018 census showing an increase in the dark areas directly around the premises.<sup>9</sup> She said the applicant is plain wrong in thinking there has been any improvement in the socio-economic status of the area.

[111] On suitability, Dr Gordon said applicants for new licences need to demonstrate a knowledge of the locality and any problems associated with the premises. She said the applicants see no problems and have no plan about how to mitigate the significant alcohol harm arising from this deprived area.

[112] Dr Gordon said Westlaw commentary on applicant suitability summarises the current law by saying an applicant should demonstrate an understanding of the vulnerabilities, engage with agencies and the community on how to address the vulnerabilities having regard to section 4 of the Act and convince the decision-maker of this. She said the applicant had chosen to go down the denial route rather than engaging with the vulnerabilities.

[113] Dr Gordon told the Committee that the proposed hours would create serious risk as all the other shops in the block close by 9.00 pm. She said a closing of 9.00 pm would be more in line with the area but she does not think shorter hours will reduce harm.

[114] Dr Gordon said the experience with legal highs showed how their pleasant ambience can devolve into chaos. She said nuisance and vandalism are part and parcel of their area and they do not want to see it get worse. She believes it will get worse if the licence is granted.

[115] On systems, staff and training, she said the material presented had been plucked from other licence applications and the manuals are superficial.

[116] Mr Riches asked Dr Gordon a number of questions and she stated that she had a PhD in Education Policy and a law degree, had lived in the area for 26 years and has become attached to her house. She said the area does not have a town centre but she had a car so she was mobile. It was not a fabulous area but she liked it. She said she had worked at Community Law for a short time and written a couple of articles about the alcohol industry and the law.

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<sup>9</sup> Exhibit "EG1".

[117] Dr Gordon said Christchurch badly needs a Local Alcohol Policy (LAP).

[118] She accepted that not all Kāinga Ora residents had alcohol problems but there are alcoholics in every suburb. She said alcohol triggers violence.

[119] Asked if the Hornby area has improved in recent times she agreed it had but said the area immediately around the proposed licence had got worse. She said the area is on the edge.

[120] Asked by the Committee how she would describe the area, Dr Gordon said it was good and bad. It is an area of high deprivation with a lot of ex-prisoners. Not a high burglary area but high in violent crime.

### **Evidence of Ms Milne**

[121] Ms Milne said she had lived in Garvins Road for 27 years just down the road from the proposed store. Ms Milne told the Committee that she was a secondary school mathematics teacher at Riccarton High School so she sees the effects of alcohol on children on a daily basis.

[122] Ms Milne said prior to the earthquake the block of shops were very old and were rebuilt following the earthquake. This new block of shops appeared to not attract the same sort of what she referred to as undesirables. She did detail in her written evidence a list of 11 alcohol outlets in Hornby.

[123] Ms Milne said she always had alcohol related litter outside her property and had even had to screw down her fence posts to stop them being used for fights. She said she was happy to live there as it suited her being handy to all the services she needed. She was surprised to see the deprivation rating of the area but noted it confirmed what she had thought.

[124] Ms Milne said there appeared to be a lot of single parents, mainly women, in the area and she presumed that like her they moved there to get out of relationships. She said there were a lot of very poor people in the area and a number of homeless.

[125] Mr Riches asked about the assessment of the Licensing Inspector who said there was no sign of homelessness. Ms Milne referred to one man who pushes a trolley around and lived in the former school grounds.

[126] Ms Milne said she was concerned the applicants had a profit motif in mind and did not have the residents at heart. She said the permanent residents tried hard to look after their homes and the area but people like refugees and transient people do not take pride.

[127] Asked by Mr Riches if the closing of a number of bars in the Hornby area since the earthquake had made a difference, she agreed that it has. She also said the rebuilt shops where the applicants proposed to open their store had improved the look of the area.

### **Evidence of Mr Duff, Chairperson GHRA**

[128] Mr Duff tabled his evidence as read and then spoke to the evidence. He spoke with great passion for the cause against another liquor store in Hornby and in particular for the location proposed.

[129] Mr Duff explained that he worked and lived in the area and was chairperson of the GHRA; he noted that 4 out of their 15 person committee lived in the area of the proposed store. He said the GHRA worked hard to hold alcohol-free events in Hornby and also worked hard for the betterment of the area. They had about 8,000 Facebook contacts and a quarterly newsletter was delivered to all households.

[130] Mr Duff's evidence raised suitability as a concern noting that the area had a history of problems in the locality of the proposed store, meaning there is a higher threshold for suitability of the applicant.

[131] He was disappointed that the applicants had not bothered to contact him or the GHRA before making the application or since making the application. He noted that neither of the applicant's directors held a manager's certificate which was a huge concern to him with their proposal to run high risk premises in one of the most disadvantaged areas in New Zealand.

[132] Mr Duff noted that today, the day of the hearing, Kāinga Ora was running a working bee in the area to try in his words to 'flip the area'. He also said that he had been advised by Kāinga Ora that they were just about to move 12 new vulnerable families into the area. He said the last thing they need is a new liquor store.

[133] Mr Duff also expressed a concern about the hours and days proposed saying the shop would be exposed in the evenings and susceptible to criminal perpetrators and even armed robberies.

[134] Under amenity and good order he listed five existing bottle stores and three supermarkets within a 2 km radius. He noted the Inspector missed one other in her report, the Hornby Club, which also holds an off-licence.

[135] On nuisance, vandalism and crime he talked about the Hornby Toy Library which was sited near the proposed store on Main South Road and their need to spend thousands of dollars a year cleaning up graffiti attacks. He said City Care have their graffiti team do a drive-by daily looking for new graffiti.

[136] Mr Duff pointed out to the Committee Attachment 8 to the Inspector's Report (mini community profile) dated 2018 clearly showing that much of the area was in the most deprived statistic. It was clearly the wrong place to put another liquor store and the application should be refused.

[137] Mr Duff said that he understood there were approximately 38 households in social housing in the immediate area but there were others in housing maintained by other trusts including iwi.

[138] Dr Gordon asked if he was surprised when the agencies did not oppose. He commented that he was utterly frustrated. He said he approached a Police Youth Aid Officer, who did work in the area, to speak at the hearing but that person was told not to speak as the Police had their own systems.

[139] In questioning from the Committee, Mr Duff said he and he thought 4 other members of his GHRA committee were members of the Hornby Club.

### **Evidence of Mr Peters**

[140] Mr Peters is a Community Board member but was making his objection in a personal capacity. He outlined his significant involvement in Hornby and in particular his leading of the battle to save Denton Park.

[141] Mr Peters said his reason for objecting was that he was a firm believer that there are plenty of existing off-licenses and another one is not needed in such a deprived area.

[142] Mr Riches asked about his role of attracting new businesses to the area. Mr Peters said he had concerns as the applicants did not live in the area.

## **Submissions of Mr Mora on behalf of the Community Board**

[143] Mr Mora made it very clear that his Community Board supported the objectors opposing this application.

[144] Mr Mora summarised the Board's concerns which were mostly around amenity and good order. They were concerned about an increase in anti-social behaviour and noted the problems in the area when the dairy, in the block of shops where the proposed store is planned, was selling synthetic drugs. Also he was concerned about a potential increase in litter and the feeling of safety in the area.

[145] Mr Mora also expressed concern at the number of outlets in the area and the possibly competitive practices that could make alcohol more affordable as outlets strive to attain a commercial edge.

## **CLOSING SUBMISSIONS**

### **Submissions for the applicant**

[146] Mr Riches told the DLC that they had an evaluative task with the application although he accepted that there is a requirement on the applicant to prove that the licence should be granted.

[147] In relation to suitability he said both directors were good witnesses, both had previously held manager's certificates and he submitted that both had a good knowledge of the Act. He cited as an example how they dealt with an intoxicated person.

[148] Mr Riches said some questions were raised about the franchise but both Mr Kapoor and Mr Singh made it very clear they would be involved in all employment decisions, not the franchise.

[149] Mr Riches said both directors were entirely appropriate persons and they both currently drive taxis. Mr Singh has had previous experience in the Linwood area, a similar area to Hornby. Because of this experience they are experienced at dealing with issues that might arise.

[150] Also they have engaged ACG to supply ongoing training and an annual mystery shopper operation. All this is in addition to whatever the agencies might do.

[151] In relation to an error in the application form regarding the shareholders, Mr Riches said this is a relatively minor issue and could easily be dealt with under section 208. He noted the agencies did not raise any issues in this area.

[152] Mr Riches said all parks had some sort of litter problem and it was no worse in this area. He said while some of the area in the triangle behind the proposed site had slipped, some of the area had improved. He said the lack of opposition from the agencies is a strong factor in support of the application. Any concerns about crime in the area were much generalised. An example being boy racers – there is no evidence they were intoxicated.

[153] Mr Riches said the neighbouring area is quite suitable for the licence. He noted that many of the objections were better directed to the Christchurch City Council and the lack of a LAP. A LAP could deal with matter of proliferation, hours and the harm from alcohol generally.

[154] Mr Riches noted the *Corrine Smith*<sup>10</sup> and *British Isles*<sup>11</sup> decisions - where there is no opposition from the agencies the bar for objectors is considerably higher. He noted that homelessness, graffiti and alcohol abuse were not identified in the Inspector's report.

[155] Mr Riches said the hours sought were reasonable for a main road location and noted that the shop would likely close earlier on a number of days each week. He said they needed these hours to catch their targeted customers, those commuting out of town.

[156] Mr Riches noted the Harewood case<sup>12</sup> mentioned during the hearing was different in that it had a one-way street directly adjoining it.

[157] He noted that Dr Gordon had the great advantage of being at the head of her street and she spoke of the community spirit but lacked detail around section 105 issues. He said the Police had not opposed despite them having the crime statistics.

[158] Evidence was given by the applicants that they had a prime location enabling them to charge a little more and then he submitted that they will be able to successfully operate a store consistent with the objects of the Act.

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<sup>10</sup> *Smith v Kiwano* [2016] NZALZ PH 47.

<sup>11</sup> *British Isles Inn Limited* NZLLA PH 406/2006.

<sup>12</sup> Christchurch DLC Decision No. 60C [2017] 1766 (application by Samarth Rajeshkumar Limbachiya for Off-Licence in respect of 'Harewood Bottle Store').

### **Licensing Inspector's Closing**

[159] Ms Anderson gave a brief closing submission saying that in essence the Committee has to consider if the applicant has their confidence and is suitable.

### **Dr Elizabeth Gordon's Closing**

[160] Dr Gordon took the Committee back to two previous decisions of the Christchurch DLC, the Liquorland Ferry Road case and the Harewood decision. She said if the Committee deemed the area as good then the Harewood case<sup>13</sup> comes into play; otherwise the Ferry Road case<sup>14</sup> comes into play – like the area in question, they also had a school taken away and the area is a high deprivation area.

[161] Dr Gordon said the applicants were relatively low on experience with no recent experience to run a store in a highly vulnerable area. She also noted as in the *Lion Liquor* case<sup>15</sup> there is no presumption that a licence will be granted.

[162] Dr Gordon said that the agencies did not support the community and in her view they did not meet their statutory obligations. She re-emphasised that the area is an area of high deprivation and a new liquor store should not be placed in the area.

### **Submissions for the Greater Hornby Residents Association (GHRA)**

[163] Dr Hewison for the GHRA started by saying that his closing submissions would be broadly based on his opening submissions with a few bits added.

[164] Dr Hewison spent some time complimenting the quality of evidence from the objectors and in particular Mr Duff from the GHRA. He said the number of objectors was an indication of the concern in the community.

[165] Dr Hewison said the objectors concerns were suitability, amenity and good order, and the object of the Act.

[166] On suitability, Dr Hewison said the two applicants were relatively inexperienced and had no recent experience. He said there was a clear lack of experience and training to run a bottle

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<sup>13</sup> Ibid.

<sup>14</sup> Christchurch DLC Decision No. 60A [2018] 1131 (application by Riccarton Liquor Ltd for Off-Licence in respect of 'Liquorland Ferry Road').

<sup>15</sup> *Medical Officer of Health v Lion Liquor Retail* [2018] NZHC 1123.



store in a highly vulnerable area. The applicants were not able to answer questions on section 237.

[167] Dr Hewison said the applicants acknowledged they had not even properly read the objections. On the morning of the hearing they advised they had changed proposed franchises. This means that the agencies' reports were not based on the systems and training of the Thirsty Liquor franchise. Also, the Committee did not even know before the hearing. This alone comes back to suitability.

[168] The applicants stated they were currently working as taxi drivers because it gives them more flexibility to spend more time with their families. This is inconsistent as should they be given a licence they will work long hours in the liquor store.

[169] Dr Hewison said the applicants made a big issue of establishing a high-end bottle store but they had no experience in this area. Thirsty Liquor, where one of them had worked, was not high-end.

[170] Dr Hewison pointed to the *Lion Liquor* case.<sup>16</sup>

[171] He said the 2012 legislation was to make a more robust regime making alcohol licences harder to get and easier to lose.

[172] Dr Hewison then turned to section 105 of the Act and in his view its important link to section 106. He said that the Inspector said in her report that supermarkets do not count when assessing this proposed application. He submitted that supermarkets must be taken into account. He said bottle stores do have more issues than supermarkets by selling spirits and RTDs.

[173] Dr Hewison said that section 106 requires a DLC to look at the future. Matters relevant under section 106 relating to the future are unknown but the DLC must make some presumptions based on the evidence presented.

[174] Dr Hewison said the area around the proposed bottle store is a socially deprived area and the evidence of Dr Gordon and Ms Milne clearly shows what deprivation had been over

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<sup>16</sup> Ibid.

time. Ms Milne also pointed out that there was a larger than average percentage of Māori in the area and statistics show they do suffer more from alcohol related harm.

[175] Dr Hewison expressed concern at the lack of opposition and noted that in South Auckland, an area similar to the proposed site, the agencies oppose all applications for new bottle stores in areas of deprivation 8, 9 and 10. He noted the Inspector's report identifies deprivation level 9 but in his view she drew the wrong conclusion.

[176] Dr Hewison acknowledged without opposition from the agencies there is a higher threshold, however the evidence presented is well above the threshold required.

[177] Dr Hewison said the applicants failed the suitability test. The area is an area of high deprivation with a high level of Māori and this was clearly articulated by Ms Milne when she said a new bottle store will create a whole lot more deprivation and more domestic violence.

### **Final Submissions for the Community Board**

[178] Mr Mora's final submission was as he himself described brief. He said he was disappointed with the quality of the application although the applicants appeared to be nice people. He did not like what they were wanting to do to his community.

[179] Mr Mora also expressed disappointment with all three agencies for not opposing the application. He said the Christchurch City Council did not have a LAP but the rate payers and the Council all wanted one but they had been unable to get one due to legal action from the industry.

[180] Mr Mora said there was a Christchurch Alcohol Action Plan and the DLC should consider that there is a plan to reduce alcohol in the community in place.

### **Final submissions for the applicant**

[181] Mr Riches said he took umbrage with the criticism of the agencies, as the agencies were the people who knew the area. There was no evidence presented of a high degree of alcohol harm in the area.

[182] The applicants knew details of the minimum wage. The question to them around section 237 was unfairly focused on knowing the statutory reference, rather than the responsibility it

references. The signage they will have will be minimal and they will be using ACG manuals and training rather than relying on the franchise documents.

## **PRECUSORY POINTS TO DISCUSSION**

### **Evidence of Ms Turner and Mr Duff**

[183] During cross-examination Ms Turner acknowledged she worked in a bottle store in the Ilam area, had a current manager's certificate, and her employer owned one of the other bottle stores in the Hornby area.

[184] The Committee is prohibited from taking into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence (section 105(2)), though this does not deprive an economically affected person of status to object. Nonetheless, the Committee is not inclined to place independent weight on Ms Turner's evidence. The DLC may have felt less constrained if Ms Turner's connection had been led by herself in her objection or evidence; as it is, the DLC is only inclined to weigh it where it is corroborated in other evidence or reporting.

[185] Mr Duff, Chairperson GHRA, also acknowledged under cross-examination that he was a member of the Hornby Club, the holder of an off- and on-licence, and he thought about four members of his 15 person GHRA committee were also members.

[186] The Hornby Club is a very large social and sports club with over 8,000 members situated about 1 km from the proposed site. The Committee has been careful in assessing Mr Duff's evidence but believes there is minimal or no risk associated with his evidence. The Committee also notes that his evidence is much more of an overview of the district, the sort of evidence expected from a residents association.

### **Errors in the application**

[187] An issue was raised regarding an error in the application form. Both Mr Kapoor and Mr Singh were listed as directors but only Mr Kapoor was listed as a shareholder. We note the Inspector's report refers to them both being directors and equal shareholders.

[188] Mr Kapoor said his accountant in Timaru registered the additional shareholder which appeared to happen a few days before the application was signed. The Committee accepts this in all probability was a timing issue.

[189] There were also several other minor errors or missing words mentioned in Mr Sumpter's initial objection. The Committee feels they were minor in nature, not wilful and had no impact on any party. The Committee grants a waiver under section 208.

### **Objectors not attending the hearing**

The Committee notes there were a number of objectors who did not attend the hearing and there were three letters of support attached to the GHRA's evidence. There was also a letter of support of the application from the landlord, Mr Patel.

The Committee accepts all these documents but, as advised by the Chair at the hearing, the Committee can only give minimal weight to these documents as the authors of the documents were not able to be cross-examined.

### **DISCUSSION**

[190] This is an application for a new bottle store in a small block situated on Main South Road in Hornby and backing onto a residential area. The Licensing Inspector, the New Zealand Police and the Medical Officer of Health do not oppose the application. There was considerable opposition from the Hornby community in general and a number of residents in the immediate area who argued against the granting of the licence on grounds of suitability, amenity and good order, and perhaps to a lesser extent proliferation of alcohol outlets.

[191] Evidence presented to the Committee paints the suburb of Hornby as generally a pleasant working class area but perhaps lacking of some good facilities such as a pool and Council Service Centre. However, as pointed out very clearly by Dr Gordon and Ms Milne, the area in the triangle directly behind the shop where the applicant intends to locate their store is an area of high deprivation. As identified on the maps presented from the 2013 and 2018 census the area's deprivation level has deteriorated over that five year period.

[192] Both Dr Gordon and Ms Milne are longtime residents of the area and were able to articulate their experiences in the area and the high levels of alcohol abuse they see. Dr Gordon explained how she has made her house a safe house for those suffering from domestic violence in the area. Ms Milne shared her personal story at the hearing and also told us about some homelessness in the area.

[193] The applicant's directors very clearly stated they propose to establish the store as a high-end liquor store, where the margins are higher, and their target audience would be

commuters travelling to places such as Rolleston. They acknowledged that they believe 50% of their turnover would be of their higher-end products. The balance would be the normal beers, RTDs and the like. They said they would not be competing with supermarkets and believed their proposed location would allow them to charge a few dollars extra for those mainstream products.

[194] Mr Duff told us about the new social housing being built in the area and that he had recently been advised by Kāinga Ora that they were about to move up to 12 new families into the new properties, just finished or about to be finished, in the area. He said some were even 5 bedroom properties. While this evidence may be classed as hearsay evidence we have little doubt about its authenticity.

[195] The proposed site is a shop in a small block of shops that was rebuilt after the earthquake. The shops are on Main South Road almost 1km from the main Hornby town area. The gate behind the shops gives access to the carpark and potential customers can walk from Garvins Road through this carpark to the proposed store. This direct access from an area of such high deprivation is of concern to the Committee.

[196] The Committee formed a strong view that the area directly behind the shop is an area of high deprivation and an area of high vulnerability. The new high density social housing being built will not assist the vulnerability of the area.

[197] The Committee notes the decision in *British Isles Inn Ltd* where the Authority stated:<sup>17</sup>

Although the onus is on the company to establish its suitability, there is a reasonably high threshold to be met by the objectors in order to displace the absence of concerns by the reporting agencies. We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an applicant is unsuitable.

Those comments were directed to the issue of suitability and pre-date the present Act. While we accept they have some relevance to the matter of amenity and good order, the 2012 Act makes a specific provision for the Committee to form its own opinion on that subject. It provides criteria to assist it in doing so.

It follows that the Committee cannot ignore public objections simply because the Agencies have not raised any opposition to the granting of the licence. However we have to be able to

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<sup>17</sup> NZLLA PH 406/2006, at [39].

identify facts that are directly relevant from the material presented. As the Alcohol Regulatory and Licensing Authority said in *Smith v Kiwano* [2016] NZALZ PH 47 at [51]:

The decision of the DLC must be based upon some material that tends logically to show the existence of facts consistent with the finding and that the reasoning is supportive of the finding. The reasoning of the DLC and the inferences drawn from the facts, need to be logically available to the DLC.

[198] We therefore proceed to evaluate the evidence presented using the approach outlined by the High Court in *Otara-Papatoetoe Local Board v Joban Enterprises Limited* [2012] NZHC 1406:

[...] the Authority is required to undertake an evaluative exercise. [...] An appropriate framework would involve in no particular order consideration of:

- (a) the criteria set out in s35 (1);
- (b) the reports presented by the Police and inspector [...]; and
- (c) Public objections [...],

Having considered all of that information, the Authority must stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires the Authority to form a view on whether there is evidence to suggest that granting the application will be contrary to s 4(1), increase the risk of alcohol abuse. While a causal nexus is required between such evidence and the relevant risk, it is unnecessary to qualify the nature of the link by reference to such words as “powerful” or “direct”.

[199] We are mindful however that arising from this exercise we are obliged to form an opinion. Discussing this in *Venus NZ Ltd* [2015] NZHC 1377 Heath J at [57] said:

First, s105(1)(h) and (i) of the 2012 Act, both of which deal with “amenity and good order” considerations, requires the Authority to form an “opinion”. The need for a judicial body to form an independent opinion is conceptually different from a decision that is based on whether or not an applicant has established on a balance of probabilities that a relevant fact has been proved.

## **Evaluation and findings under s 105 and s 106 of the Act**

### ***Section 105(1)(a): the object of the Act***

[200] Reference has been made to the object of the Act throughout the hearing. We adopt the approach suggested by Heath J in *Venus* and will take a step back after considering all the

other criteria to consider whether the grant of an off-licence is consistent with the object of the Act.<sup>18</sup>

***Section 105(1)(b): the suitability of the applicant***

[201] Both the directors, Mr Kapoor and Mr Singh, presented their evidence well and were even acknowledged by more than one objector as very nice young men. Suitability in the context of the Sale and Supply of Alcohol Act has wider connotations.

[202] At the hearing the applicants advised they had decided to change franchises to Thirsty Liquor. While the Committee is disappointed to only hear of this at the hearing it probably points more towards lack of organisation.

[203] The applicants said in their evidence that the area is a nice area. They said they obtained their information from the landlord of the proposed premises and a friend who worked at a service station. We agree the suburb of Hornby generally is a nice and possibly an even improving area but as stated earlier the area designated directly behind the proposed bottle store is an area of high deprivation and high alcohol harm. The applicants were in complete denial of the vulnerability of the location. No real plan to manage this vulnerability was presented to the Committee other than the normal items regarding not selling to under age persons or intoxicated persons and the like.

[204] The Committee would have expected, had they not been in denial of the vulnerability of the area, for the applicants to have consulted widely with the community before proceeding with their application for an off-licence.

[205] Mr Kapoor had previously held a manager's certificate for his work at a restaurant while Mr Singh had previously held a manager's certificate for his work in a Thirsty Liquor store in Linwood, an area probably similar to the proposed site. He said they sold few high-end products in that store.

[206] Both Mr Kapoor and Mr Singh do not hold current manager's certificates. Both currently drive taxis. While the Committee does not doubt the integrity of the applicants, it notes they have no experience in a high-end liquor store.

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<sup>18</sup> Refer *Venus NZ Ltd* [2015] NZHC 1377 at [20].

[207] The applicants appeared to have a reasonable knowledge of the Act and employment law having been presumably assisted by ACG.

[208] The Committee does not accept that the applicants meet the suitability test to open a liquor store in such a high risk location.

***Section 105(1)(c): any relevant local alcohol policy***

[209] Christchurch has no Local Alcohol Policy.

***Section 105(1)(d): the days on which and the hours during which the applicant proposes to sell alcohol***

[210] The applicant originally proposed days and hours which were totally consistent to those commonly pertaining in the industry and with those of existing off-licences in the vicinity. At the hearing, Mr Singh said they would reduce their hours to 10.00 am – 10.00 pm Sunday to Thursday, and 9.00 am – 11.00 pm on Friday and Saturday. We note more than one objector questioned the hours as in their view the commuter traffic, their proposed customers, is more or less gone by 6.30 or 7.00 pm.

***Section 105(1)(e): the design and layout of any proposed premises***

[211] There were no specific objections raised under this heading except for questions around the exterior signage. The applicants were very clear that the shop would retain its current white colour and would not display the Thirsty Liquor colours. They would only have a notice/sticker on the window and a flag outside.

***Section 105(1)(f): whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food and if so, which goods; and***

***Section 105(1)(g): whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so which services***

[212] The applicants stated that the only products to be sold other than alcohol would be the likes of chips, nibbles and juices. They would not be selling cigarettes.



**Section 105(1)(h): whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence**

[213] We heard evidence, as detailed above, that the triangle area behind the proposed store is an area of high deprivation and alcohol harm. The location appears to have a close knit long-term permanent community who generally care about their community and a less permanent community, mostly in social housing, that in the permanent residents' view care less about the community. The deprivation maps produced as part of the 2013 and 2018 census clearly show the deprivation level of the area has worsened over that time. We also have concerns that the new high-density social housing for the area will make the area even more vulnerable.

**Section 106 of the Act**

[214] This section requires us, when considering the effects of the issue of a licence on the amenity and good order of a locality to 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.**

[215] Objectors felt that the presence of a bottle store where alcohol could be easily accessed would likely add to the problems in the area. We accept that argument.

[216] We also heard concerns about what might happen if the proposal to create a high-end store did not eventuate or if the business did not reach expectations and price-cutting became the way to increase sales. In the event of the latter it would likely to add the problems.

[217] The question we must answer is whether this bottle store is compatible with the vulnerable residential nature of the surrounding area. We must form our own opinion on that based on what we have heard as stated by Heath J in *Venus* already referred to above. We do not believe it is compatible.

***Section 105(1)(i) 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***

[218] We heard evidence, particularly from Dr Gordon, of her fears for the area becoming much worse should a licence be granted. Several objectors raised the high number of licences in the Hornby area compared with many other parts of Christchurch. We feel we did not have sufficient evidence to rule on density for the whole of the Hornby area but we believe it is desirable not to issue any licences in this part of Hornby.

***Section 105(1)(j) whether the applicant has appropriate systems, staff, and training to comply with the law***

[219] We accept that ACG is highly regarded with good quality ongoing training and would be of great assistance should a licence be granted. We did hear concerns expressed about the very limited staffing proposed but that was in respect of increasing the risk of criminal activity by others. We did hear of all the concerns relating to suitability for this site which we have covered elsewhere.

***Section 105(1)(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103***

[220] We record that there were no such reports submitted from the Police or Medical Officer of Health and no matters raised. We acknowledge the assistance of the Inspector with respect to the information in her report. None of the agencies found any reason to oppose the granting of the licence and none gave evidence. However we also note it is for the Committee to assess the public objections.

## **CONCLUSION**

Having considered all the criteria to which we must have regard as detailed in section 105 and section 106 we now step back and consider the view we have formed against the object of the Act as set out in section 4:

**The object of the 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 minimized.**

[221] We are mindful that as the High Court said in *Joban* referred to above,<sup>19</sup> when a causal nexus is established between evidence and relevant risk, it is not necessary to qualify the nature of the link by reference to such words as “powerful” or “direct”. We accept that there is a nexus between the evidence given by the objectors about amenity and good order and other matters and the risk of unfavourable consequences for the neighbourhood if the licence is granted. We are required to form an opinion as to whether the amenity and good order of the locality would be reduced, by more than a minor extent, if the licence were to be granted.

[222] The Committee is of the opinion, after listening to all the evidence, that the amenity and good order would likely be reduced by more than a minor amount.

[223] As stated earlier we do not find a positive outcome when we consider the suitability of the applicant to open a new bottle store in the proposed location.

[224] . Returning now to the object of the Act, we do not think that the granting of this licence would be consistent with the stated object and on that basis and on the evidence we have heard it is our decision to refuse it.

**Decision**

[225] The decision of the Committee is that the application by JJMS Enterprises Limited for a new Off-Licence at 299 Main South Road, Christchurch is declined.

**DATED** at CHRISTCHURCH this 24<sup>th</sup> day of May 2021



David Blackwell, QSM  
Chairperson  
**Christchurch District Licensing Committee**

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<sup>19</sup> *Otara-Papatoetoe Local Board v Joban Enterprises Limited* [2012] NZHC 1406.