

**Decision Number: 60G [2022] 11115**

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

**AND**

**IN THE MATTER OF** an application by **G & B PVT LIMITED**  
for an Off-Licence in respect of premises  
situated at **608 Ferry Road,**  
**Christchurch** to be known as '**Super**  
**Liquor Woolston**'

**BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE**

Hearing: 11 & 12 July 2022 (at Christchurch)

Committee

Chairperson: Mr D Ivory

Members: Mr G Clapp  
Mrs M Redstone

Appearances: Mr S Brar, Director and Shareholder of the Applicant  
Mr G Hoar, Witness for the Applicant  
Mr P Webster, Witness for the Applicant  
Ms A Lavery, Licensing Inspector, to assist  
Ms P Williams, Medical Officer of Health representative  
Dr A Stevenson, Witness for Ms P Williams  
Senior Constable G Jolliffe, for the Police  
Mr P Egden, Counsel for the Applicant  
Dr Hewison, Counsel for Mr P McMahon – Objector (*via audio/visual link*)  
Dr Liz Gordon, Legal Support Team of Dr Hewison (*via audio/visual link*)  
Mr P McMahon, Objector  
Ms J Reid, Witness for Mr P McMahon (*via audio/visual link*)  
Mr R Edmundson, Objector (*via audio/visual link*)  
Andrew Campbell – Hearings Advisor, Christchurch City Council

Decision: 8 August 2022

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**RESERVED DECISION OF THE COMMITTEE**

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## **Introduction**

[1] This is an application for an off-licence by G & B PVT Limited ('the Applicant') resulting from a change in ownership of retail premises located at 608 Ferry Road, Christchurch ('the premises'). The premises are intended to be managed by the two directors, who are also two of four shareholders of G & B PVT LIMITED. The directors are Mr Sukhwant Singh Brar and Mr Jagroop Singh Brar ('the Applicant').

[2] The premises is currently trading under a series of Temporary Authorities (pursuant to licence 60/OFF/40/2011) issued by this Committee. The commencement date of this Temporary Authority was 7 April 2022 which expired on 7 July 2022. A fifth Temporary Authority was granted to accommodate agency reporting and hearing. The current base licence for the premises expired on 1 June 2022.

[3] This new licence application was received on 12 October 2021. The application was publicly notified on the Council's website on 12 October 2021. Six public objections were received: from Mr Paul McMahon, Ms Raewin Boot, Ms Elaine Greaves, Ms Jackie Simons, Mr R Edmundson, and Mr Simon Payne.

[4] Police and the Medical Officer of Health ("MOH") are both opposed to this application (under s.105(1)(i) of the Act), and the Inspector has raised concerns.

[5] A hearing of the application took place on 11 and 12 July 2022.

[6] The District Licensing Committee ("DLC/Committee") is required to have regard in the forming of a decision to matters raised in sections 105 and 106 of the Sale and Supply of Alcohol Act 2012 ("the Act"). Section 102(4A) of the Act restricts objections to the matter of applicant suitability only when a premise is changing hands with no change in the conditions of the licence being sought.

[7] Mr Peter Egden appeared as Counsel for the Applicant, and called Mr Paul Webster, Super Liquor Franchise Manager, and Mr Greg Hoar, Super Liquor National Operations Manager, who both appeared as witnesses for the Applicant in this matter. He questioned parties and presented both opening and closing submissions.

[8] Mr Paul McMahon, Objector, is represented by Dr Grant Hewison.

[9] Ms Anneke Lavery, is the Licencing Inspector (“the Inspector”). She did not call evidence or appear as a witness. Ms Lavery did question parties and presented both opening and closing submissions.

[10] Ms Paula Williams appeared for the Medical Officer of Health, and called Dr Anna Stevenson as a witness. Ms Williamson did question parties and presented both opening and closing submissions.

[11] Senior Constable Graeme Jolliffe, represented the Police, and presented an opening submission. He did not call any witnesses.

[12] Dr Hewison, appeared as Counsel for Mr Paul McMahon, objector, and called Ms Janeane Reid as a witness. He did question parties and presented both opening and closing submissions.

[13] Mr Richard Edmundson, Objector, addressed the hearing around matters of suitability, questioned a witness, and responded to questions.

## **Preliminary Matters**

### ***Conflicts***

[14] Mr Ivory, Chairperson of the Committee, noted he knew Mr Richard Edmundson, objector, in an educational role as Chairperson of Haeata Community Campus.

[15] Mr Clapp noted he had known Mr Webster in the course of his business many years ago. Counsel accepted that this connection was remote and did not constitute a conflict of interest.

### ***Objector status***

[16] The Committee in evaluating each application must have regard to section 102(1) of the Act and objectors must have an interest greater than the public generally. Decisions were made by the Committee on the basis of objectors living or working within 1 km of the premises. Also, objector status was provided to a Principal of a local school whose enrolment zone included the premises and who had a high level of engagement with the local community.

[17] Objector status was conferred on Mr Paul McMahon and Mr Richard Edmondson who both had interests greater than the public generally in terms of s102(1) of the Act. Status was also granted to Ms Raewin Boot, Ms Elaine Greaves, and Ms Jackie Simons.

[18] Mr Simon Payne was granted status, pursuant to s102(1) of the Act. Mr Egden noted that due to the non-appearance of Mr Payne at the hearing appropriate weight needed to be given by the Committee to this objection.

### ***Status of Evidence***

[19] Mr Egden on behalf of the Applicant accepts the area of Woolston, where the premises are located, is one of deprivation. He referred to s105 of the Act with respect to suitability and he stated in terms of deprived areas a need for enhanced suitability existed.

[20] With respect to Mr McMahon's evidence, Mr Egden submits it needs to be around matters of suitability only.

[21] Mr Egden expressed that Ms Greaves raised the issue of suitability in evidence, but then proceeded to refer to amenity and good order issues. He noted Ms Greaves' Brief of Evidence 'did not touch on suitability'. Mr Egden submits as Ms Greaves was not attending the hearing, only weight should be attached to her written letter of objection.

[22] It was acknowledged by Mr Egden that Ms Simons' objection was based on suitability and was accepted.

[23] Mr Payne had referred to suitability but relied on amenity and good order, and Mr Egden maintained his evidence should be deemed inadmissible.

[24] With respect to Mr Edmundson's objection, Mr Egden stated it related to suitability, however his Brief of Evidence was focused on amenity and good order, and alcohol harm in a deprived area. Both these matters were identified as providing no grounds for objection.

[25] Ms Boot's objection was focused on suitability, and raised no concern for Mr Egden.

[26] Ms Belinda Fowler, a proposed witness for Mr McMahon, whose grounds were stated as suitability were identified as matters of good order and amenity by Mr Egden.

[27] He also stated the letter of objection by Ms Reid related only to suitability but evidence related to other matters and therefore needed to be ruled inadmissible. It was argued by Mr Egden the legal right to object is based only on suitability in this matter.

[28] Dr Hewison accepted the only basis of objection with respect to s102(4) and (4)(a) of the Act was suitability. But he noted the section doesn't say the evidence submitted is limited to suitability of any application, 'the section doesn't say evidence given by objectors cannot go beyond this scope'. If this view was accepted by the Committee, Mr Egden's argument relating to evidence is limited. However, Dr Hewison cited s207 of the Act allows the Committee to receive 'essentially everything'.

[29] Dr Hewison further argued the Applicant would address all matters in relation to s105 of the Act during the hearing and natural justice means objectors should also be able to respond in a similar manner. Mr Egden conceded that Woolston was a highly deprived area and extended suitability was the required standard as stated in *Nekita Enterprises Limited*<sup>1</sup>. Dr Hewison as a result of this concession believed evidence can be provided which relates to aspects of vulnerability of the Woolston community. Dr Hewison was clear that Mr McMahon's amenity and good order evidence relates to vulnerability and deprivation as part of extended suitability. In essence, the evidence to be provided by Mr McMahon is intended to show deprivation and vulnerability of the community.

[30] Ms Lavery, Inspector, didn't disagree with Dr Hewison's position but noted s102(4)(a) of the Act provided that objectors are confined to the matter of suitability of applicant.

[31] Senior Constable Jolliffe, Police, acknowledged both Counsel raised valid points, but stated opposition can only be provided on the grounds of suitability.

[32] Ms Williams, MOH, noted both sections 207 and 102(4)(a) are at play, and to allow this evidence would allow well-rounded arguments to be heard by the Committee.

[33] Mr Egden reasserted that evidence must relate to grounds of objection and other issues cannot be raised, 'they need to rely on grounds of suitability'.

[34] The Committee made a decision on evidence. It accepted Mr Egden's submission on s102(4) of the Act. However, in order to determine suitability, the Committee decided to hear

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<sup>1</sup> *Christchurch City Council Alcohol Licensing Inspector v Nekita Enterprises Ltd* [2021] NZARLA 145.

all relevant evidence relating to vulnerability of the community and determine its weight. Mr Egden objected and raised a question of law. He sought the Committee to appeal to ALRA (“the Authority”) on this point of law. The Police believed Mr Egden's position was correct and the statute is clear and directly relates to suitability, and doesn't go beyond s102(4) of the Act.

[35] Dr Hewison raised an alternate view and questioned the need for the Committee to have the point of law considered by the Authority. He contended that in matters of procedure the Authority does not accept appeals, and noted the matter was within the scope of the Committee to decide. Dr Hewison suggested the only route for Mr Egden was to seek a judicial review before the High Court. Dr Hewison outlined what he considered the only other option for the Committee was to: ‘revert to a conservative approach and hear evidence relevant to suitability’. However Dr Hewison submitted that because Mr Egden agreed the area is highly deprived, issues such as alcohol rubbish, consumption and intoxication in public are relevant to both vulnerability and extended suitability. Further, Mr McMahon’s evidence on the sales of Nitro and RTDs, and continued cheap single sales represents issues that are clearly relevant to suitability.

[36] Mr Egden reiterated the Act draws a distinction between a new licence and one for existing premises: ‘where the focus must be on the suitability of the Applicant’.

[37] Mr Egden further explained the legal basis of his view:

S105(1)(i) provides:

“Whether (in [the Committee’s] 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 unlikely 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.”

[38] Mr Egden submitted reporting agencies have a legal duty to enquire into and report on applications. None of the reporting agencies opposed the Desai Investments application and the DLC granted the licence after having regard for the matters it was required to under s105 and s106 of the Act. Unless the evidence demonstrates a significant reduction in amenity and good order or a significant increase in alcohol related harm the applicant is entitled to receive

the same treatment as Desai Investments Limited. Police and MOH rely on s.105(1)(i) of the Act for their opposition. Mr Egden noted while clearly applicable to an application for an additional licence in a locality, it is not applicable to an application for a licence for an existing licenced premises.

[39] Density and locality of licences matter, Mr Egden explained, but should be dealt with in a Local Alcohol Plan ("LAP"). He stated this current matter is not the opportunity to create policy through the back door. Mr Egden submitted that 'obviously' the amenity and good order of the locality will be unchanged by the issue of the licence. If the Committee is satisfied s105(1) (d) (e) (f) (g) and (i) of the Act are met then the licence should be granted. A further point was made to the Committee, that the Applicant is relying on the existing licence and was entitled to do so, notwithstanding suitability as provided in the Act. Mr Egden accepts in terms of suitability Mr McMahon can address issues that go to suitability, including display stands, sales of RTDs, items which are perfectly acceptable, 'but the objectors cannot go beyond this'.

[40] Ms Williams, MOH, stated suitability is not considered in a vacuum and sought to rely on case law which was not able to be provided to the Committee.

[41] Ms Lavery (Inspector) noted s102(4)(a) of the Act is relevant and stays in place until legislation is changed.

[42] Mr Egden explained to the Committee that s209 of the Act allows the Committee to seek an opinion from the Authority on questions of law and therefore does not require a judicial review as suggested by Dr Hewison.

[43] **[Adjournment]** The Committee reviewed its initial decision, and agreed with the submission of Mr Egden that the evidence must relate solely to the suitability of the Applicant. Dr Hewison then talked about evidence relating solely to suitability. Case law was identified as being wide on the matter of suitability to include 'almost anything and not solely related to character and honesty of Applicant'. He concluded by stating 'In terms of enhanced suitability a lot of matters can be included'.

[44] Mr Egden made a concluding comment on the matter of suitability. The Applicant's witnesses, when answering questions during cross examination, must also relate solely to suitability and objectors must only make comment on suitability. Once again Dr Hewison expressed opposition to this view, 'there is nothing in the Act in terms of cross examination of anyone, nor are they limited by their objection'. This matter was identified by Dr Hewison as

one of natural justice: if the Applicant is bringing evidence on matters, other parties should be able to ask questions beyond suitability as the Act doesn't restrict questions.

[45] The Committee reasserted its decision and followed the position as expressed by Mr Egden. Dr Hewison requested the decision be recorded so the ruling can be reflected on and possibly appealed.

## **The Hearing**

### **The Applicant and Application**

[46] Mr Egden referred to his opening submission (some typing corrections and repetition corrections made). Matters of legitimate expectation, and reporting agencies decision making in the case of the Desai Investments application were highlighted. It was asserted the Desai decision stands unless evidence of material changes exist with respect to amenity or good order, 'this is not an opportunity to create policy'. Mr Egden reiterated density and proliferation need to be dealt with in a LAP, and if the Applicant is found suitable and other matters under s105 are at the licence needs to be granted.

### **Evidence of Mr Sukhwant Singh Brar - Applicant**

[47] Mr Sukhwant Singh Brar (Sam) the Applicant read his Brief of Evidence. He and his cousin, Mr Jagroop Singh Brar are both shareholders and directors of the company, G & B PVT Limited. Mr Egden advised the Committee both their wives are now also shareholders in the company. Mr Brar explained his work history in New Zealand as a farm manager. To raise capital for entry into the liquor industry, he took up contracting work with Toll Holdings along with his cousin. His cousin obtained employment in the liquor industry and obtained a manager's certificate. Super Liquor Woolston became available for sale due to health issues of one of the owners.

[48] Once the Applicant expressed interest in the business, part of the purchase process involved engagement and acceptance by Super Liquor (the franchisor). As part of the purchase, Mr Brar stated he was aware the sole issue to be considered was suitability as provided in both s105 and s106 of the Act. An expectation was held that if suitability was proved, a new licence would be granted. He was also of that view because Desai Investment's licence was granted in 2021. From 16 July 2021, both he and his cousin have managed the

off-licence of Super Liquor Woolston. A long-standing Super Liquor Woolston employee has held a manager's certificate since 2012, and was reported as being very experienced. An explanation was provided, by Mr Brar as to on-site management and operation of the premises.

[49] Mr Brar reported he and his cousin worked full-time at the premises, and their skills and experience were explained to the Committee. Good relationships with customers and other businesses in the area were explained. An awareness was expressed of the strict standards held by Super Liquor and on-going requirements for compliance. Safety and responsibility required for the sale of alcohol were described. Mr Brar reported that good systems are in place, and supporting letters were referred to from a customer, neighbour, and proximate business.

[50] Mr Brar provided the Committee with an outline of opening hours, design, layout of the premises and a clear willingness was expressed to make any reasonable change if required. Information was provided on sales mix, availability of non-acholic products, food sold, vaping products, and cigarettes. It was submitted some items, such as vaping products and cigarettes, were sold as a convenience to customers and were not on display.

[51] Mr Brar stated the Super Liquor Woolston licence had existed since 2014, and reference was made to the Inspector's report, which included matters relating to vandalism. Mr Egden intervened to seek clarification around the matter of litter. Mr Brar stated each day (mornings) there is a focused collection of litter from a radius of 50 metres from the premises. If required by the Committee Mr Brar offered to collect rubbish twice a day. Mr Brar also noted the collection of rubbish extended to 'around the service station down the road'. It was reported no discrimination existed around rubbish collected: alcohol related rubbish and all other non-related rubbish was cleaned up.

[52] Mr Brar explained that within 1 km of the premises there are four off-licence premises, and a number within 2 km of the premises. LiquorLand is situated across the road. There was an explanation provided as to custom demographics as between the two outlets. Mr Brar stated that no price war had occurred between the two off-licenses and none was intended. Both off-licences were said to have prices set by their franchisor on a weekly basis. It was reported that when LiquorLand closed for four weeks, October 2021, sales increased by 100% at Super Liquor Woolston.

[53] No positive or negative effect on amenity or good order would occur if the licence were granted. According to Mr Brar, 'it will be the status quo'.

[54] The management of the premises were described by Mr Brar as adhering to high standards. He noted the need for experienced persons to work on the premises and the need to have a clear awareness of the issues around the sale of alcohol to intoxicated persons and those under age. Mr Brar explained the object of the Act, ongoing staff training, and the support and experience which Super Liquor brings to the business. He referred to the high standards of Super Liquor which were safeguarded by spot checks and good systems to prevent sales of alcohol to underaged and intoxicated person.

[55] In conclusion, Mr Brar stated he and his cousin take their responsibility seriously and are both suitable. He acknowledged if a licence is granted it will be for a 12-month period, and will provide an opportunity for the community and Inspector to assess suitability.

### ***Cross Examination of Mr Brar***

#### The Inspectorate

[56] Ms Lavery talked of her first visit to the premises where she referred to the single (cans of beer) sales on offer, located in a bucket in the chiller. These are now removed from the premises. The single sales identified were for \$2.00 an item and was identified as a continued practice from Desai Investments. Ms Lavery reported on the sale of Nitro, and that on her suggestion the product is now placed on the bottom shelf of a fridge. Under the former owner, Desai Investments, Nitro was more prominently displayed.

[57] Ms Lavery had asked Mr Brar about the high alcohol beers and Nitro which are concerns for the community. Mr Brar was asked by Ms Lavery if he had given thought to removal of Diablo (Super Strong Brew, 12% alcohol). He agreed to stop sales of this product but there was no concession with respect to Nitro. However a change in display to a bottom fridge shelf occurred.

[58] Ms Lavery reported a good understanding was held by Mr Brar and his cousin, who are 'hands on'. It was noted by Ms Lavery some persons have been trespassed, an Incident Book exists and is regularly used and provides evidence of declined sales to under-aged and intoxicated persons.

## The Police

[59] Senior Constable Jolliffe asked Mr Brar if he was aware of those in the Woolston community whom he would not sell alcohol to. Mr Brar responded with two examples: one person with mental health issues; and, another called 'Jerry' who experienced health issues when drinking, and was the subject of a trespass notice.

## The Medical Officer of Health

[60] Ms Williams noted when the application was lodged, subsequent change has occurred. Mr Brar's cousin, Mr Jagroop Singh Brar, in March 2022 has been appointed a director. Mr Egden noted that Mr Jagroop Singh Brar was available to provide evidence to the Committee if required.

[61] Ms Williams asked questions around the training of Mr Brar's cousin. It was noted Mr Jagroop Singh Brar worked in a variety of liquor outlets as a paid employee. Ms Williams asked questions around what Mr Brar (Sam) saw as vulnerability in the Woolston community. His response was 'it's an area of high deprivation but not all... people don't have enough income'. Another question put by Ms Williams was around amenity and good order as defined in the Act. Mr Brar responded that his understanding of amenity and good order was 'how people were living in community', he was unable to remember the definition in the Act. He was asked if people drink outside – what do you do? He said, *'move them on, and mentioned in the Incident Book'*. Ms Williams continued her questioning of Mr Brar around engagement with local businesses. Mr Brar stated he was happy to receive suggestions or objections, 'we are happy to take it'. Mr Brar reported he was 'happy' to participate in any business group and any alcohol accord group but not lead or be a 'mover and shaker' as suggested by Ms Williams.

[62] Ms Williams asked questions relating to staff training. Mr Brar responded that Super Liquor provides this on an on-going basis, and he and his cousin who both have experience would also provide such training and peer support: *'we share concerns between us and complete Super Liquor tests'*. Ms Williams asked questions around the responsibilities required at the point of sale when confronted by an intoxicated customer. What would you consider excessive consumption of alcohol? Mr Brar replied, *'we can see from a person's behaviour, see aggression, we will never sell to those guys, we will ring helpline guys'*. Another question was put by Ms Williams, *'would you sell alcohol twice in one day to the same person (morning and afternoon)'*? The response provided by Mr Brar indicated it depended on the circumstances; *'We don't know if he (customer) provided item to someone else, if they*

*presented later in day but we would make a decision based on signs of intoxication but not refuse sale if they present okay*. Ms Williams noted in terms of awareness some persons don't show signs of intoxication, but Mr Brar clarified by stating, *'if it were a repeat purchase over number of days we won't sell'*. In response to a question by Ms Williams, Mr Brar was unclear if he would consider putting a one-person sale per day practice into a host responsibility policy: *'we would consider that, but we can't breach human rights'*.

[63] Ms Williams asked questions on the pictures, provided as evidence, around advertising on the exterior of the premises. Mr Brar responded that advertisement placement was guided by Super Liquor policies. Mr Brar was asked if he would agree to no external advertising on the exterior of the premises. Mr Brar agreed to discuss the suggestion with Super Liquor but reasserted he is complying with their policies.

[64] Ms Williams asked why it was not okay to sell single cans of beer for a price of \$2.00 the response provided from Mr Brar was, *'we don't want to make them too cheap, it's not good for us'*.

#### Mr Edmundson, Tumuaki – Principal Te Aratai College - Objector

[65] Mr Edmundson addressed one question to Mr Brar. Mr Edmundson had assumed Mr Brar had read his submission on alcohol harm in the community. This was acknowledged by Mr Brar. Mr Edmundson asked what Mr Brar's response was to this. Mr Brar didn't understand how the current application related to the schools as they don't serve underage persons. Mr Edmundson clarified by stating general alcohol harm is contributed to by each individual alcohol business. Mr Brar said he doesn't sell to intoxicated persons. Mr Edmundson responded by noting, *'it's not the selling of alcohol to kids but a high prevalence of alcohol in the community, thereby affects community and the welfare of children'*. Mr Brar stated the 'key issue' was how alcohol was 'handled' [presumably by the customer]. He also stressed he was not seeking a new licence but an existing licence was already in place. Mr Edmundson noted he did not hear a satisfactory response to his question.

[66] Mr Egden, said Mr Edmundson was making a submission and asking the Applicant if he agreed to it, in essence rolling his question into a submission which created difficulty for the Applicant. Mr Brar stated, *'if outlets close, like the closure of LiquorLand in 2021, people don't stop alcohol consumption, they just go to alternative venues'*. Mr Brar indicated there was no disagreement with Mr Edmundson's view on the harm of alcohol on the community. Mr

Edmundson then stated his proposition: the higher number of alcohol outlets in the community, the higher the harm. Mr Brar's response was no, again he cited the recent example of the four-week closure of LiquorLand.

Dr Hewison, Counsel for Mr McMahon - Objector

[67] Mr Brar was asked if he accepted the area was deprived and parts of the area were highly deprived. He responded, *'yes the area is vulnerable'*. It was put by Dr Hewison that *'you have a higher threshold in terms of enhanced or higher suitability'*. This was acknowledged. Mr Brar was asked what an Applicant needed to meet the higher threshold of suitability. His response was *'not sell cheap alcohol at low prices or serve intoxicated or underaged persons, and comply with object of the Act'*. Further questions were put about the difference between suitably and enhanced suitability, Mr Brar stated the difference was *'not selling cheap alcohol and not promoting cheap alcohol'*. Mr Brar was asked for examples of cheap alcohol. His response was selling beer singles in a bucket for \$2.00 each and 3 cans for \$10.00 specials. When questioned in detail around what is seen as the promotion of cheap alcohol, Mr Brar's response was, *'we now follow Super Liquor prices, no cheap promotions are independently undertaken'*.

[68] Dr Hewison asked questions about the sale of Nitro and in particular Mr Brar's discussion with the Inspector. Mr Brar was clear he was not asked to cease selling Nitro, the discussion focused on the display of Nitro.

[69] The range of single sale beers on sale (including those in photographs), referred to in the evidence of Mr McMahon, were all on sale and promoted. This was agreed by Mr Brar. Clarification was sought from Dr Hewison on matters of promotion. He suggested having a product in store with a price alongside it was a promotion, this premise was agreed by Mr Brar. Dr Hewison stated a special is another sort of promotion for example with a yellow sticker, this was also agreed by Mr Brar. Dr Hewison repeated the claim of Mr McMahon that an item in the fridge with a price next to it amounts to a promotion.

[70] Mr McMahon's pricing evidence was accepted as correct – but it was noted by Mr Brar his prices were not the cheapest in the market place and he provided New World pricing as an example. It was stated by Dr Hewison that RTDs and Nitro were not sold at New World. There was further discussion around beer price sales as between New World and what was offered at Super Liquor Woolston, and what is considered as a cheap price by Mr Brar. In response to questioning Mr Brar did not see Ranfurly and Lion Brown beer as being cheap.

Nitro at \$9.99 (one litre, 7% alcohol), Mr Brar did not consider cheap. Dr Hewison asked Mr Brar whether the sale price examples expressed were consistent with his previously expressed view he did not sell cheap alcohol. The response provided was yes.

[71] Dr Hewison offered further examples of pricing: Baltika Beer (8% alcohol), was offered at 3 for \$10.00 by Super Liquor Woolston. Mr Brar said this was not a cheap promotion. In response to Dr Hewison's questions, the price was stated as a manager price and determined at his discretion. The Baltika promotion was run for a fortnight. Other similar promotions do occur, but Mr Brar noted there is not much margin in such activities.

[72] With reference to Mr Brar's evidence to MOH, it was noted by Dr Hewison that \$2.00 cans were identified as too cheap and ease of access to them existed. Mr Brar clarified that easy access meant people can buy in bulk, which is problematic as if *'too cheap, no profit'*.

[73] Mr Brar, in response to questions talked about Super Liquor price-setting being embedded into an existing system. Super Liquor also sends price labels and these are applied to products.

[74] Dr Hewison asked if there had been any discussion with Super Liquor on the pricing structure due to operating in a deprived community. It was submitted by Mr Brar they are aware of the community and *'don't want us getting killed due to cheap alcohol'* and *'want margins within double digits for us to survive'*. Mr Brar reported Super Liquor won't allow us *'to do cheap alcohol'*. Dr Hewison sought to cite the Super Liquor policy on this matter (not provided). Mr Brar was asked to consider if it was good enough in a deprived area that the pricing policies of Super Liquor are blindly followed. The response provided was a reiteration of the previously made point, that cheap alcohol is not being sold.

[75] Dr Hewison asked to cite the documentation in the training manual about Super Liquor's policy on the sale of cheap alcohol. He asserted this as a serious issue. The Applicant could not find the requested material on cheap alcohol. However the policy was said to be embedded under the identified title: Sales and Customer Service.

[76] Mr Egden talked about the storage, size, and scope of the training manual material and suggested that Mr Brar's inability to identify material was understandable in the circumstances.

[77] Dr Hewison referred to the LiquorLand store (50 metres from the premises) and its closure for four weeks which created a doubling in turnover for Super Liquor Woolston, and which then declined slightly once the store reopened. Mr Brar was asked if the reported situation showed strong competition in Woolston. Mr Brar's response was that it did not. Dr Hewison stated to the Applicant as between LiquorLand and Super Liquor Woolston very strong competition exists alongside limited customer loyalty. Mr Brar suggested matters like customer service and store layout and design were material.

### The Committee

[78] The Committee asked Mr Brar who the landlord was of the premises. Mr Brar advised that the landlord is based in the Nelson area and assured the Committee there was no connection with any interest associated with Nekita Enterprises. Mr Brar's cousin had worked for Nekita Enterprises and Mr Brar was questioned on the differences in practice between the former employer (Nekita) and Super Liquor Woolston. Mr Brar's response was that he did not like the Nekita business model – he asserted good customer service, restraint on promotions, maintenance of store standards, and good systems in place.

[79] Financial questions were put to Mr Brar. It was reported the purchase price of the business was \$365,000 which was lower than the previous owner had paid. It was stated that the purchase price was funded based on capital contribution to debt of 50%:50%. The turnover figure per annum and monthly fee paid to Super Liquor were provided on request to the Committee [on the suggestion by Mr Egden – the requested figures were written down and shared with Committee (because of a sensitive nature – it was stated by Mr Egden non-publication order would not be sufficient)].

[80] The Committee sought an explanation on what was meant by 'food' in Mr Brar's Brief of Evidence. The response was hot and cold snacks. Mr Brar was also able to state the object of the Act upon the request of a Committee member.

[81] Mr Brar responded to questions by noting a training register exists, the sales of cigarette and vaping products were for customer convenience. The average customer coming on to the premises will spend approximately \$40. A till receipt would show limited single can sales, 'we don't do a lot of single sales'. In terms of percentage of income, Mr Brar submitted single can sales would generate a small percentage (2% of sales). Questions on volume of Nitro sold and on display elicited the following response from Mr Brar, '*a variety of Nitro items were stocked due to a coverage of flavours. Over a period of two months, Super Liquor Woolston*

would sell 30 bottles of Nitro'. A question was asked as to why the hours requested on the application showed opening occurring at 8.00 am when previous evidence stated the store opened at 10.00am. Mr Brar said, 'flexibility is required'. A copy of the staff roster was requested by the Committee.

[82] The Committee sought a response as to what systems were in place to reduce the harm of excessive alcohol consumption. Mr Brar assured the Committee that no one presenting as intoxicated would be served, 'we don't sell to anyone intoxicated'. He also described the visual effects of intoxication. Mr Brar described a vulnerable community as one where violence was present, low income and people accessing government support. Mr Brar was asked about alcohol vulnerability on children in schools in the area. He stated the premises were not located close to schools.

### ***Re-examination of Mr Brar***

[83] Prior to re-examination Mr Egden addressed the issue of proposed undertakings. These included: ceasing to sell RTDs (not including Nitro); ceasing the sale of Diablo (Super Strong Brew, 12% alcohol, 500 mls) but retaining the sales of other beers; and, no external advertising except for one poster showing current Super Liquor weekly specials. Reference was made that no similar constraints or undertaking are in place at LiquorLand or New World. It was stressed by Mr Egden that concessions go to suitability of the Applicant.

[84] Discussion occurred between both Counsel, Inspector, Police, MOH, and the Committee on the matter of undertakings versus conditions.

[85] Mr Egden, spoke of the bucket of single cans previously placed in the chiller priced at \$2.00 each, this practice was continued from the previous owner, Desai Investments Limited. The bucket was removed once the Inspector drew attention to the matter. Beers displayed in chiller, were at a price above what was offered in the New World supermarket by \$1.00 to \$2.00 per unit. Mr Egden asserted that stand-alone off-licences, including LiquorLand cannot compete against supermarkets on price. Super Liquor Woolston's point of difference from LiquorLand is customer loyalty and convenience. Mr Egden submitted customers come from beyond the area, including Sumner and Lyttelton. Super Liquor Woolston has sales of high value items or products, including whisky – another potential point of difference.

### **Evidence of Mr Richard Edmundson, Tumuaki/Principal Te Aratai College – Objector**

[86] Mr Edmundson was reminded that his evidence needed to be confined to matters of suitability. His filed Brief of Evidence was objected to by Mr Egden as going beyond the narrow permissible area of objection. The grounds for Mr Edmundson's objection were suitability but not aligned with his filed Brief of Evidence.

[87] Mr Edmundson stated that discussions heard early in the day involving the Applicant were of concern. Mr Edmundson holds the view the Applicant has no capacity to be a suitable licence holder in this deprived area of Woolston. All information provided during the hearing by the Applicant was general in nature. He heard nothing about the vulnerability of this area, therefore he considers the Applicant not a suitable person.

### ***Cross Examination of Mr Edmundson***

[88] Neither the Inspector nor the Police nor the MOH had questions for Mr Edmundson.

### **Dr Hewison, Counsel for Mr McMahon - Objector**

[89] Dr Hewison asked Mr Edmundson to describe issues of students, families and the effects of alcohol in his school community. He also asked Mr Edmundson what were his key concerns in terms of students and alcohol issues. Mr Edmundson responded by noting any alcohol outlet in a vulnerable community adds to harm. Therefore, the standard of care of how alcohol is sold in the community needs to be higher. A burden falls on the community but also on the alcohol industry according to Mr Edmundson. He raised concerns that binge drinking is becoming standard. When questioned around Nitro sales at the outlet, he said he was *'appalled by the continuance'*.

### **Mr Egden, Counsel for the Applicant**

[90] Mr Egden asked if Mr Edmundson objected to the LiquorLand renewal or the application by Desai Investments in 2021, to which he replied *'I can't remember'*. Mr Edmundson could recall objecting to four off-licence applications, over his seven years as Principal of Te Aratai College (formerly Linwood College). It was noted by Mr Egden that no restrictions were placed on LiquorLand when its licence was issued in 2021, and that Mr Edmundson did not oppose

suitability in the LiquorLand application. Mr Edmundson considered it was *'an opportunity missed'*.

[91] Ms Lavery (Inspector) confirmed Mr Edmundson did oppose the Desai Investments application, but did not attend the hearing.

[92] Deprivation in the area is worse than a few years ago because of alcohol according to Mr Edmundson. He clarified alcohol was not the sole cause but part of it, as seen from alcohol-related rubbish on his school premises and demand for counselling services at his school.

### The Committee

[93] The Committee asked Mr Edmundson if the proposed three undertakings offered by the Applicant provided any softening in his approach. His response was *'not enough'*.

### **Evidence of Mr Paul Webster, Super Liquor Franchise Manager, Witness of the Applicant**

[94] Mr Webster read from his Brief of Evidence. The Applicant has been part of the Super Liquor franchise since July 2021. Suitability from the perspective of Super Liquor included an interview with directors, credit checks, profit projections, and site visits. A strong vetting process had occurred. In response to questions by Mr Egden, the Woolston area was identified by Mr Webster as vulnerable. Mr Webster advised that in such areas external advertising is reduced. An example cited was the Super Liquor Hornby outlet. Super Liquor takes into account how the proposed franchisee will relate to a vulnerable area.

[95] Mr Webster explained the approach of Super Liquor. A core range of Super Liquor products must be stocked but there exists a discretion for managers to respond to their own particular market in terms of both product and price. Mr Webster reported Super Liquor takes its responsibility to minimise harm seriously and takes care in assessing applicants/franchisees. Regional meetings are held and regular training in systems and processes are provided. Licence and compliance issues are regularly addressed and include checking that point of sales systems are in place to ensure compliance in all alcohol sales. Mr Webster explained systems in place ensured quality assurance in outlets and audit systems were operative and completed at Super Liquor Woolston. Favourable audit results were evidenced at the outlet managed by the Applicant.

[96] Mr Webster assured the Committee that all Super Liquor stores have systems in place to ensure compliance with the object of the Act. The layout of Super Liquor Woolston was identified as good. The amenity and good order of the locality would not decrease if the licence application is approved according to Mr Webster.

[97] The attachments to the Brief of Evidence provided by Mr Webster were discussed. In response to questions from Mr Egden, it was explained by Mr Webster he had familiarity with the outlet on a professional basis, via quarterly visit, and in a personal capacity as a customer. He holds no concerns around personnel and how Super Liquor Woolston was operated.

### ***Cross Examination of Mr Webster***

#### The Inspectorate

[98] Ms Lavery noted the comments Mr Webster made on rogue operators in Christchurch, but not with Super Liquor. Mr Webster was asked if the Applicant has improved the store since the change of ownership. Mr Webster reported *'they realigned the chiller to accommodate RTDs and brought beers to the front'*. The retail floor changes included regraded shelving and displays and new floor covering. It was reported the operators are now more hands on since the takeover, and have shown a greater interest in the wider community. Mr Webster stated he is the first point of contact in approving a franchise, then a wider Super Liquor consideration takes place. In initial due diligence processes he seeks background material, details of experience, responses as to why the prospective franchisee wants to join the liquor industry, an explanation on the difference between franchisee/franchisor, and financial questions are raised. The relationship is ongoing including quarterly catch-ups and phone/email support is provided.

#### The Police

[99] Police had no questions of Mr Webster.

### The Medical Officer of Health

[100] Ms Williams asked Mr Webster several questions including whether the previous operator Desai Investments went through the same rigorous due diligence process. The response was no. It was noted by Mr Webster that Super Liquor operate around 35 out of 175 premises located in deprived areas. Training is reported as standard across the Super Liquor group and not differentiated in terms of stores in deprived areas. All standards are identified at an already high level.

[101] In response to further questions Mr Webster said franchisees are required to sell core products, but scope exists to set prices and select stock for each operator. Ms Williams asked what suitability meant to Mr Webster, he responded *'looking for someone experienced in the industry, retail, and/or franchise experience. Personal attributes around values, connected within the community'*. Mr Webster provided an explanation of prompts available to determine date of birth at the point of sale within Super Liquor outlets.

### Dr Hewison, Counsel for Mr McMahon - Objector

[102] Dr Hewison engaged in questioning around which of Super Liquor's core products were shown in the photographs presented as evidence. Differentiation between core products and non-core products was explained by Mr Webster. It was confirmed the Applicant has the discretion not to stock certain products. Nitro is not a core Super Liquor product. The Applicant was not required to sell it, if an even playing field existed according to Mr Webster. However he noted it was not a fair business proposition for one store not to sell Nitro, and Super Liquor business advice is to sell Nitro.

[103] Confirmation was provided by Mr Webster that Super Liquor core products have a suggested recommended retail price. Non-core products are at the owner's discretion as to price. Clarification was provided as to pricing on specific products based on examples provided by Dr Hewison. Discussion occurred as to price offered by the competition in the local area.

[104] Questions on social responsibility were asked. Mr Webster was asked to comment on the Super Liquor core range of products: Was it socially responsible to sell a Kingfisher single (7%, 500 mls) at \$4.50 per can? Mr Webster responded, *'if that is what the competitive market*

*dictates – fine*'. Dr Hewison also asked about his knowledge of imposed conditions provided in case law nationally. Mr Webster had some knowledge. Dr Hewison specifically referred to the case of St Joseph's School Pleasant Point<sup>2</sup>, where a condition on price was applied: *'No single sales of beer, cider, or RTDs priced at, or less than, \$6.00 per unit are to be sold'*. Also cited by Dr Hewison was the case of Reed v Kaloti<sup>3</sup> where the following conditions were upheld:

No alcohol of the following types are to be sold under this licence:

- a) Spirit-based shots of any type;
- b) Ready to Drink (RTDs) of any type;
- c) Light spirits up to 13.9% abv of any type;
- d) Mainstream beers under \$25 per dozen;
- e) **No single sales of beers or cider under 500mls excluding craft beers;**
- f) Cask wine of any type".

[105] Further, Dr Hewison referred to The Alcohol Regulatory and Licensing Authority Annual Report 2021 to Parliament which stated:

*Single Sales of Beer, Cider and RTDs*  
*'The Authority notes that applicants for licences (both new and renewed), are increasingly accepting that single sales of beer, cider and RTDs are unlikely to be viewed favourably. The Authority is seeing more applicants willing to have conditions imposed on their licences to the effect that single sales of beer, cider and RTDs (with the exception of craft beer) cannot occur.'*

[106] Mr Webster was asked, do you think the Applicant offering 3 cans of Baltika for \$10.00 is socially responsible in a deprived area, is it suitable? His response was *'possibly not - no'*. Mr Webster noted he will raise the issue with the Applicant. Dr Hewison asked whether Mr Webster saw the promotion of single sale, non-core products by the Applicant as the actions of a rogue operator. A response of no was recorded. Dr Hewison finally asked, would you see a manager who offered 3 cans of Baltika for \$10.00 as a rogue operator. Mr Webster responded that he did not.

### The Committee

[107] Mr Webster was asked about the former operator, Desai Investments Limited. A rapid sale occurred shortly after the application decision to grant a licence occurred (2021). He responded that the reason for the sale was a reported health issue of one of the owners and the impact of the DLC process of 2021. Mr Webster said the undertakings offered by the Applicant were *'hard to take'* and made reference to the level playing field.

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<sup>2</sup> **St Joseph's School Pleasant Point / Te Kura O Hata Hohepa v Singh Trading (2016) Limited [2021] NZARLA 123 (10 August 2021)**

<sup>3</sup> **Reed v Kaloti NZ Ltd [2019] NZARLA 27**

[108] A question was asked about how Super Liquor takes into account outlets operating in vulnerable communities. He responded by highlighting the processes adopted: *'when an application comes in from such an area our management team becomes involved, this is not the norm in a standard area'*. Questions about dealing with intoxication, and how operators engage with vulnerable communities were put to Mr Webster. In response, he stressed Super Liquor requirements of applicants having experience in the liquor industry and retail or franchise experience: *'criteria all met with respect to the current Applicant'*.

[109] Mr Webster was asked whether Super Liquor would consider not stocking high percentage alcohol. His response was, *'we need a level playing field – other than that we would be for such a proposal'*. An explanation was provided to the Committee on the governance structure of Super Liquor and who the key decision makers are in relation to: applicant selection; core product range; and, formation of policies. Mr Webster responded that *'in essence most of the board members have direct experience in the liquor industry and others business experience'*.

### **Re-examination of Mr Webster**

[110] Reference was made to undertakings made by the Applicant to the Committee, and would such an offering make the business unviable. Mr Webster replied that it would not.

[111] Mr Webster was asked if he saw the voluntary withdrawal of products by the Applicant, on the recommendation of the Inspector, an indicator of suitability. His response was yes. With respect to criteria of suitability of a franchisee, Mr Webster restated the overall assessment of a franchisee which included: factors of experience; business acumen; and retail experience, all of which was met by the Applicant. Mr Webster also emphasised several applicants are refused each year by Super Liquor.

[112] Mr Webster was asked if there was a market for single sales of beer. He stated, *'we undervalue the market especially in terms of craft beer, but we don't do a good job of single sales'*. In response to a question as to why single sale beers are popular, he said *'people can't afford more, and in lower socio-economic areas it is good that an individual can purchase single sales instead of a slab – one or two could be a better option for some customers'*.

### **Evidence of Mr Greg Hoar, Super Liquor National Operations Manager, Witness of the Applicant**

[113] Mr Hoar's Brief of Evidence was taken as read. A few comments were highlighted to the Committee. The owners: have put everything on the line; are honest and authentic people; and, are looking to advance themselves and their families. They have a lot of life and work experience and have managed people before.

[114] Mr Hoar noted in the first 15 months of the off-licence operation (Super Liquor Woolston) compliance with Super Liquor was first class. They have an ability to learn. Mr Hoar was involved in the initial conversation to ensure they were right for the community and Super Liquor. He made reference to a complaint made to him by a member of the public who was refused service at Super Liquor Woolston. Mr Hoar investigated the matter with the onsite staff. The result indicated good judgment and professionalism had been exercised by staff at Super Liquor Woolston.

[115] Reference was made by Mr Hoar to Nitro and its availability from LiquorLand (across the road) whose range contained a higher level of alcohol at a lower price.

[116] Mr Egden referred to the complaint incident which was explained more fully and identified as an aspect of the Applicant's suitability.

### ***Cross Examination of Mr Hoar***

[117] Both the Inspector and the Police had no questions.

### **The Medical Officer of Health**

[118] Ms Williams, referred to the incident identified by Mr Hoar. She asked whether the matter had been recorded in the Incident Book. Mr Hoar expected the incident would have been recorded. However, the incident could not be identified in the book.

### Dr Hewison, Counsel for the Applicant

[119] Dr Hewison had confirmed by Mr Hoar that it was not suitable for a sale offering of 3 cans of Baltika for \$10.00 at Super Liquor Woolston. However, Mr Hoar noted it depends on the alcohol content as the product comes in various alcohol percentages and size. Dr Hewison said Mr Webster didn't think it suitable to be offering the Baltika, and Mr Hoar agreed *'the 8% alcohol content item is not appropriate'*.

[120] When questioned on the sale of the business by Desai Investments shortly after its hearing (2021), Mr Hoar stated he had no knowledge of any plans to sell the business at the time.

### **The Attitude of Reporting Agencies**

[121] There was opposition reported by the Medical Officer of Health (MOH) and Police to this application. The Inspector did not raise any matters in opposition, but did note concerns, relating to the application and prepared a report to assist the Committee.

### **The Police - Senior Constable Graeme Jolliffe**

[122] The Senior Constable's Brief of Evidence was taken as read, and cross-examination commenced. [Calls for Service data was also provided to all parties. This had previously been forwarded to all parties but not public objectors or the Counsel of Mr McMahon].

[123] The Senior Constable referred to several concerns about the application. At the time of the Desai Investments application, it was acknowledged Police were not opposed. The reason for no opposition was identified as the COVID-19 environment which prevented a fuller Police investigation. It was also noted by the Senior Constable that Police systems with respect to obtaining Calls to Service data were limited (a future improvement was signposted). An explanation of Calls for Service was provided, evidence of Woolston being a low deprivation area, and the high number of off-licences in the area. In terms of Calls for Service data, offences are 'likely' to have involved alcohol, according to the Senior Constable. An upgraded map on bottle shops in the area was provided to all parties – the change included a miss-placed dot.

### **Questions for Senior Constable Jolliffe**

[124] The Inspector, MOH and Dr Hewison had no questions for the Senior Constable.

#### Mr Egden, Counsel for the Applicant

[125] Mr Egden referred to the Calls for Service data. The Senior Constable said duplicates for calls are taken out. There are records of follow ups from calls. An example was provided with reference to family violence matters, and the Senior Constable advised that these calls are included in a family violence report. The Senior Constable noted a follow up report for alcohol offences would be good but is currently not available. Data is lacking, which was agreed by the Senior Constable, after questioning from Mr Egden. The Senior Constable explained his use of the term '*likely*' to involve alcohol. It was based on being in the Police for over 15 years, where most cases involve alcohol. When questioned by Mr Egden, the Senior Constable confirmed again that not every Call to Service is followed up.

[126] Mr Egden stated of the 700 Calls to Service from the area, some of which involved alcohol, the Senior Constable can't say '*likely*', and '*may*' was a better word. Mr Egden said there is no evidence to support the view that over 50% of all incidents involve alcohol. Mr Egden asserted no comparative Police data was provided for other suburbs in Christchurch.

[127] Mr Egden referred to the case of Medical Officer of Health v Lion Liquor Retail Limited<sup>4</sup> He explained to the Committee and the Senior Constable it was a case of premises situated in the Cuba Mall area of Wellington. Within a 500 metre radius of the premises approximately 130 bars, night clubs and 12 off-licences are located. There were 1026 Calls for Service in the area within a year. The difference in scale compared to the current matter was asserted by Mr Egden.

[128] The Senior Constable was questioned on the map he provided; the dark red represented high deprivation areas of Woolston. Mr Egden asked whether the Senior Constable accepted the Woolston village is almost all commercial and industrial premises and only some residential. He also asked why a deprivation level would be 8 or 9 in that area. No answers were provided by the Senior Constable.

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<sup>4</sup>: The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd: [2018] NZHC 1123

[129] Questioning around the number of licences in the Woolston area occurred. The Senior Constable confirmed that within a 1 km radius of these premises only two standalone bottle stores existed. Mr Egden noted such numbers could not to be described as excessive. However, it was noted by the Senior Constable there are other off-licences in place which were not standalone in the area.

[130] Mr Egden put his view to the Senior Constable that his objection was based on s105(1)(i) of the Act, and that no concerns around suitability were held. It was noted that at paragraph 8 of the Senior Constable's Brief of Evidence s106 of the Act was referred to, but s106(1) only applies to s 105(1)(h). Mr Egden submitted the Senior Constable '*can't have both*'. Section 106(1)(a) of the Act only applies to s105(1)(h). Mr Egden noted at paragraph 13 of the Senior Constable's Brief of Evidence it was recorded the premises were sold a few years ago which suggested it was not a viable location. The Senior Constable responded that he wasn't aware of health conditions of a previous owner, but that financial viability was a concern and there is no evidence to refute that view.

#### The Committee

[131] The Senior Constable was asked by the Committee to identify other drivers of community harm. He was also asked to outline the uses of illicit drugs alongside alcohol. In response the Senior Constable drew on his experience and stated harm from illicit drugs also existed alongside alcohol harm.

[132] The Senior Constable concluded by noting the best evidence available has been presented to the hearing to assist the Committee with its decision making.

#### **The Inspectorate – Anneke Lavery, Alcohol Licensing Inspector**

[133] The Inspector's Report was taken as read. The opportunity was taken by Ms Lavery to highlight some points made in the report. Ms Lavery also made available to parties regular monitoring report and notes. The high level of deprivation and vulnerability that exists in the community was noted, and was consistent with the views of both the Police and the MOH. A higher threshold of suitability is required when operating in areas of high deprivation and vulnerability was also emphasized by Ms Lavery. Not all graffiti and litter are related to alcohol harm, and calls to council for service are '*remarkably low*'. Ms Lavery shared other key points of her report with the Committee.

[134] Ms Lavery noted, with experience, that the operators will not impact on the amenity and good order of the area, specifically it will not decrease but remain the same.

### ***Questions of Inspector***

#### The Medical Officer of Health

[135] Ms Williams asked the Inspector to confirm Nitro was still available for sale on the premises. Ms Lavery responded it was, but was uncertain about single RTDs for sale. It was also confirmed by Ms Lavery no single sales of beer were in the chiller.

#### Counsel for the Applicant - Mr Egden

[136] Ms Lavery confirmed upon request that the Applicant was both experienced and responsible and no concerns were held. She also confirmed that the employed staff member (manager) was a suitable person given the vulnerability of area.

[137] It was also confirmed by Ms Lavery there were no restrictions on single sales of beer at LiquorLand and no restrictions were imposed on Desai Investments.

[138] Mr Egden referred to Mr McMahon's Counsel, who sought support from the Nekita decision (para 127). It was recorded in that case there was a fridge of single sale beers which had to be walked past when entering the premises. In addition, there were singles and dump stacks, and a trolley containing 7 for \$10.00 beer and cider. The Authority was also critical of Mrs Singh for behaviours and cancelled her manager's certificate. Ms Lavery was asked if there were any similarities with the current application. The response was no.

[139] Evidence was referred to by Mr Egden of LiquorLand's closure for four months in 2021, during which time sales at Super Liquor Woolston were reported as virtually doubling. The premise was formed by Mr Egden that if the current application was declined LiquorLand's turnover would double. Ms Lavery agreed. She also confirmed that the same amount of alcohol would be sold in the area. It was also put to Ms Lavery if there was no competition for beer and wine in the area, a competitor could also put prices up. It was confirmed as a possibility by Ms Lavery with the level of alcohol consumption remaining the same with no increase in alcohol-related harm.

[140] Mr Egden stated the premises were granted a licence unopposed in 2014, and renewed subsequently without opposition. Ms Lavery was asked about changes in amenity and good order of the area in this time. She was *'not aware of any negative or positive changes in the area'*.

[141] Clarification was sought on other off-licences and distances from the premises, and the map of deprivation (Index).

[142] Mr Egden referred to the point made by Dr Hewison who considered the matter of deprivation was previously agreed by the Applicant. Mr Egden noted *'it was a concession made at the outset'* but noted there are some commercial zones involved in the map.

#### Dr Hewison, Counsel for Paul McMahon - Objector

[143] Dr Hewison referred to the Super Liquor Incident Book and asked Ms Lavery if she held concerns that there was no record of the discussion with a woman denied service as evidenced by Mr Hoar. No concerns were held by Ms Lavery, but she noted it *'would have been helpful if recorded'*. Further, Ms Lavery explained it doesn't mean the Applicant is not suitable because one incident is not recorded in the Incident Book. Dr Hewison said a combination of factors may affect suitability. Ms Lavery agreed but stated she did not agree that this one matter should be a mark against the Applicant's suitability.

[144] Questioning occurred on the bucket of singles identified on the premises by Ms Lavery and Nitro sales by the Applicant. Both matters were explored. Broken packs resulted in single beers priced at \$2.00 in a bucket found inside chiller. Ms Lavery confirmed the suggestion that they not be sold. In relation to the sales of Nitro, Ms Lavery clarified that she did not say they needed to be removed, but advised the Applicant that they be placed down low in the fridge.

[145] Ms Lavery was asked if she shared the concerns of Mr Edmundson around the Applicant not offering to cease sales of Nitro. Ms Lavery responded that this was a business decision and not a matter of suitability: *'it doesn't make him unsuitable because he won't remove Nitro from sales'*. Dr Hewison asked Ms Lavery if the sale of 3 Baltika beers for \$10.00 is a matter that goes to the suitability of the Applicant. Ms Lavery noted such a practice should not be recommended and took the view it was a learning experience. She felt the Applicants would not be doing the same again. A further question was asked around extended suitability which would be met by an experienced operator. Ms Lavery responded, *'I don't see these operators*

*as rogue operators*, and with respect to the threshold of extended suitability, *'new operators in an environment is a period of learning'*. She concluded by noting there were no concerns raised from inspectorate visits or that of the Police.

[146] Dr Hewison turned to the Nekita decision<sup>5</sup>. He referred to photographs of fridge displays in the evidence of Mr McMahon. Ms Lavery was asked whether the items in the photographs could be considered as cheap singles for sale. Ms Lavery responded that \$3.99 is a cheap sale price, but that it was her understanding that this is normal in a bottle store. Dr Hewison asked is there are differences to a bottle store in a highly deprived area. Ms Lavery responded there was and that is why the suggestion was made to remove single sales in the bucket. Another question was put as to whether there were any concerns Lion Brown and Ranfurly Beer (4% alcohol) are for sale at cheap prices. Ms Lavery responded *'better someone buy one can than slab'*. Dr Hewison noted sales below \$6.00 are a concern for the Authority as expressed in the Pleasant Point decision<sup>6</sup>.

[147] A speculative question was put to Ms Lavery as to whether the closure of one of the two bottle stores in the area, would increase sales for the remaining store. Ms Lavery said, *'a possibility, yes - if you close one bottle store – they will go to another'*. Dr Hewison asked what basis or evidence exists that customers would cross the road and go to LiquorLand. Ms Lavery stated *'intelligent reasoning, New World, Liquor Land, Thirsty Liquor Aldwins Road, or Redcliffs were all possibilities'*. Dr Hewison suggested the possible dispersion of patronage which was agreed by Ms Lavery.

#### **Evidence of the Medical Officer of Health – Paula Williams, Alcohol Licensing Officer**

[148] Ms Williams, submission was taken as read, as was her Brief of Evidence. [4 MOH Exhibits handed out]

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<sup>5</sup> Christchurch City Council Alcohol Licensing Inspector v Nekita Enterprises Ltd [2021] NZARLA 145

<sup>6</sup> St Joseph's School Pleasant Point / Te Kura O Hato Hohepa v Singh Trading (2016) Ltd [2021] NZARLA 123

### **Questions for Ms Williams**

#### The Inspector

[149] Ms Lavery sought clarification on the map provided: Twisted Hop premises is now closed as is Lyttelton premises.

#### Mr Egden, Counsel for the Applicant

[150] Ms Williams confirmed a public health specialist (Dr Stevenson) would be her witness and would talk to the international evidence cited in her Brief of Evidence.

[151] Discussion occurred around Local Alcohol Policies (which normally exclude existing premises).

[152] Mr Egden stated conditions can change in terms of licences, and asked Ms Williams what has changed since the decision to issue a licence to Desai Investment Limited. Ms Williams responded, *'to my knowledge nothing had changed in Woolston'*, and if it had not been for the COVID-19 environment, Desai Investment should have been opposed by the MOH. Mr Egden reasserted there were no changes of deprivation in Woolston, only a change in Applicant. It was noted by Mr Egden that if the application was declined on grounds of suitability, Desai Investments licence would remain in place (confirmed by Inspector) and the future would be unknown.

#### **Witness for the Medical Officer of Health – Dr Anna Stevenson, Medical Officer of Health**

[153] Dr Stevenson, read her Brief of Evidence. She noted this application may not be consistent with the object of the Act due to the high level of deprivation. Dr Stevenson explained that far more crime and income differences exist in the Woolston area when compared to other areas. Woolston also has higher-than-average Māori and Pacifica populations.

[154] Reference was made to other licences in close proximity to the Super Liquor Woolston premises. Dr Stevenson stated greater availability to alcohol leads to more alcohol-related harm.

[155] Statistics relating to alcohol-related harm were stated, with reference to Woolston (where they existed noting there were some identified deficits in data capture).

### ***Cross Examination of Dr Stevenson***

#### Mr Egden, Counsel for Applicant

[156] The Māori population in Woolston was referred to in the evidence by Mr Egden. He asked Dr Stevenson what percentage the Māori population of New Zealand was: *'maybe 16%'*. Mr Egden asked for clarification on the definition of hazardous drinking. The response was an *'amount you drink over a period of time (week/year) and amount of alcohol consumed in one episode'*. It was further explained by Dr Stevenson there is no safe limit, but the focus is on limiting the harm. No definition of hazardous drinking was provided by Mr Egden.

[157] Mr Egden restated his view that should the licence not be granted the base licence held by Desai Investments would remain. Questions were put to Dr Stevenson around the number of premises and the relationship or correlation with alcohol-related harm. Dr Stevenson replied that evidence exists which suggests *'the more availability of alcohol – the more harm'*. Mr Egden did note a positive in the data provided which indicates alcohol-related harm is on the decline. This was agreed by Dr Stevenson but she stressed alcohol-related harm has increased since the earthquake but at present there is no research or data to support this view.

#### Dr Hewison - Counsel for Paul McMahon - Objector

[158] Dr Hewison's opening submission was taken as read, but key points were restated.

[159] Dr Hewison talked enthusiastically about the Nekita Enterprises<sup>7</sup> decision. The Authority cancelled several licences held by Nekita Enterprises Limited and in doing so *'reinforced the way the Act should be applied where applications are made for alcohol licences in highly*

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<sup>7</sup> Christchurch City Council Alcohol Licensing Inspector v Nekita Enterprises Ltd [2021] NZARLA 145.

*deprived communities at high risk of alcohol related harm*. Dr Hewison stated the *Nekita* case is very relevant to the current application. The case highlights serious concerns from the Authority about single sales, cheap single sales, and a comparable special offering of 3 for \$10.00. A consequence of the case was cancellation of an existing licence. In this application we are addressing a new licence. Dr Hewison was minded the Authority would cast serious concern on singles, cheap singles, and promotions of 3 for \$10.00 specials. Also in terms of suitability the *Nekita* case was clear; in deprived areas the standard is extended suitability. In contrast to the Inspector's view, Dr Hewison asserted applicants must be operating at this higher level and there is no room for a learning experience in such an environment. The *Nekita* approach built on the decision in the *Shady Lady* case<sup>8</sup>.

[160] Dr Hewison posed the question about price for a single unit. The Authority in the *St Joseph School* case<sup>9</sup> imposed a condition on a new licence, of no single unit for sale for less than \$6.00. A price limit set by the Authority is well known by Super Liquor and there is a clear and serious issue of suitability according to Dr Hewison. Also mentioned was the *Alcohol Regulatory & Licensing Authority's Report to Parliament 2021* (previously stated and referenced) which is supportive of similar conditions – no single sales conditions are essentially supported. Dr Hewison noted the conditions are required to be imposed licence by licence and without the mention or need for a LAP. There are concerns that access to cheap alcohol in terms of single sales are harmful.

[161] Dr Hewison noted the Authority is clear that the Committee can decline an application if one of the criteria set out in s105 of the Act is not met. He stated if the Committee finds the Applicant not suitable, on that ground alone the licence should not be granted. In terms of s105 the Committee does not have to find on each criterion, one is sufficient.

[162] Dr Hewison referred to Mr Egden's claim that an underlying licence was held by Desai Investments. He stated Desai Investments no longer holds the lease and therefore it cannot hold a license without a lease. Furthermore, now Desai Investments has sold the business to new operators, they would be extremely reluctant to take up the business again. So, we are dealing with a brand-new liquor store in Woolston, according to Dr Hewison.

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<sup>8</sup> Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd [2018] NZHC 3100, [2019] NZAR 403

<sup>9</sup> St Joseph's School Pleasant Point / Te Kura O Hata Hohepa v Singh Trading (2016) Limited [2021] NZARLA 123 (10 August 2021)

## **Evidence of Mr Paul McMahon - Objector**

[163] Mr McMahon read his Brief of Evidence.

[164] Mr Egden objected to paragraphs 4 to 35 of Mr McMahon's evidence insofar as they have no relevance. Mr Egden submitted that only paragraphs 36 to 42 related to suitability. Amenity and good order were decided by the Committee to have no relevance to these proceedings. Mr Egden argued Mr McMahon was attempting to get these matters through the backdoor. Also, Mr Egden noted Mr McMahon's objection relating to suitability and the evidence he provided must also align to his initial letter of objection.

[165] The Committee decided that paragraphs 4 to 35 of Mr McMahon's evidence were to be excluded, reflecting the earlier decision of the Committee that grounds are limited to suitability.

[166] Mr McMahon noted the limitations the Committee decision placed on his Brief of Evidence. Concerns were highlighted by Mr McMahon of the large number of single sales, including beer and RTDs, on display close to the front door of the premises. Video evidence was also offered, which was described as showing consumption of alcohol at the back of Woolston Pharmacy, but with no direct linkage to the Applicant's premises. The Committee made the point no nexus exists. Mr McMahon stated the video evidence provides a general context of harm in the community. Dr Hewison cited the *Lion* decision<sup>10</sup> which is authority for only needing to demonstrate alcohol-related harm, and not needing to relate to a specific premises. Mr Egden stated the evidence should be ruled out and not put to the Applicant when he is questioned as it does not relate to suitability.

[167] The Committee decided there was no need to view the material and it had already been accepted by the Applicant that deprivation exists in the Woolston community.

## ***Examination in Chief – Dr Hewison, Counsel for Mr McMahon***

[168] In response to questions from Dr Hewison around matters of suitability, Mr McMahon talked about the products offered for sale by the Applicant (Mr McMahon also brought actual products as a display, as evidence). Mr McMahon stated, '*reducing price increases demand and increasing prices reduces demand, consumption, and harm*'. He noted some items were

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<sup>10</sup> The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd: [2018] NZHC 1123

sold at the discretion of the Applicant, and a conscious choice had been made to operate in the community in such a manner. Mr McMahon reported looking through the premises window and seeing the fridge containing singles for sale. Reference was made to the sale of Nitro. This product was identified as *'harmful'* by Mr McMahon who also commented on the reluctance of the Applicant to take it off the shelf. He suggested this indicated a lack of extended suitability. Concerns were also expressed by Mr McMahon around the lack of willingness of the Applicant to show leadership in terms of an alcohol accord in the area, and to continue selling items below \$4.00 and \$6.00. Mr McMahon did note the Applicant's concession to not sell Diablo beer.

### ***Cross Examination of Mr McMahon***

#### The Medical Officer of Health

[169] Ms Williams asked a question around Nitro, and enquired as to whether Mr McMahon was aware of any other alcohol-mixed energy drinks for sale at the Applicant's premises. Mr McMahon referred to the sale of *Hemp* drinks (a vodka guarana drink available in 1L bottles).

#### Mr Egden, Counsel for Applicant

[170] Mr Egden explained to Mr McMahon the Applicant's position that he is prepared to be part of an alcohol accord, but not take the lead. Mr McMahon emphasised, in his responses to questions, a clear need for extended suitability is required. Mr Egden referred to emails initiated by the Applicant and the response(s) provided by Mr McMahon. Dr Hewison asserted the introduction of these emails formed new evidence on the part of the Applicant, and was *'an ambush'*.

[171] The Committee decided not to accept the email correspondence as evidence. Mr Egden asked that his objection to that decision be recorded.

[172] Mr Egden noted the New World renewal was not contested by Mr McMahon. In response Mr McMahon said he would have contested the matter if the current case law had been in place (specifically, the *Nekita* decision). The proposition suggested by Mr Egden was that Super Liquor conditions would be helpful in a New World licence renewal. This was not accepted by Mr McMahon.

[173] A case scenario was put to Mr McMahon involving the sale of a single product to a pensioner. The context of the scenario was around the suggested need for competition in a vulnerable community that would have the effect of lowering or maintaining low prices. Mr McMahon responded, *'there is no legal right to purchase alcohol – it is a recreational drug'*. He reasserted the view that if you increase price, a reduction in demand occurs and therefore alcohol-related harm decreases. Further, Mr McMahon said *'the harm created by bottle stores selling products outweighs any benefits to a pensioner in a vulnerable community'*. Dr Hewison submitted the view of Mr Egden in the outlined scenario was not that of the Applicant. Mr Egden noted the hypothetical situation had not been put to the Applicant previously.

[174] In response to final questions, Mr McMahon was clear that selling cheap single alcohol products to vulnerable communities shows a lack of suitability.

### The Committee

[175] The Committee asked for an explanation of alcohol products brought to the hearing by Mr McMahon. A description of each product was provided by Mr McMahon, including alcohol by volume content and some marketing approaches employed by the various brands. Mr McMahon also shared his understanding of the use of these products by the vulnerable in the Woolston community. Over summer, there appeared to be an increase in public consumption of alcohol in the area according to Mr McMahon. The concessions offered by the Applicant had not changed the position of Mr McMahon. He suggested *'it's one thing to come to a hearing with mitigation of harm concessions – and another thing to show leadership'*. Mr McMahon was clear the Applicant relied on: concessions suggested by legal counsel; tips from the Inspector; relying on an employees' skills and experience; and, asking the community how to mitigate harm. Mr McMahon was also of the view that the Applicant had made *'token concessions'* in order to try and resolve the weakness in the application.

### **Re-Examination of Mr McMahon**

[176] Dr Hewison asked questions around the sale of single RTDs on the premises. Mr McMahon was asked whether he considered other RTDs sold as singles. He responded that both *Nitro* and *Hemp* were found in the store.

[177] Ms Lavery was able to provide an update on relevant information to the Committee and parties. The LiquorLand licence for renewal occurred in March 2021, and New World was

operating pursuant to a Temporary Authority due to a change in ownership, with the underlying licence having been renewed in June 2020.

**Evidence of Ms Janeane Reid, Tumuaki – Principal Te Waka Unua - Witness for the Objector, Mr McMahon**

[178] Mrs Redstone (a Committee member) stated a conflict of interest in relation to the witness. She is known to Te Waka Unua, as an independent contractor supporting their governance. She has never been party to any discussion or decision-making with respect to the matters under consideration.

[179] The Committee reminded Ms Reid as to the grounds of objection in this matter relating to suitability only. It was foreshadowed that Mr Egden may object on occasion. Dr Hewison stated that vulnerability and deprivation of the area requires extended suitability by the Applicant. Ms Reid was asked what experience, as a Principal, she has had of pupils and families in relation to alcohol-related harm. Ms Reid described the ethnic demographic of her school and efforts to reduce challenges associated with alcohol-related harm. She reported that the school has seen an increase in family harm reports and mental health cases, and the school's pastoral care resources were now at capacity. Ms Reid said, '*we see the harm alcohol brings to our school community*'. She considered the Applicant was focused on the commercial aspects of his business and not the complex needs of the community. She suggested this points to the Applicant's unsuitability. Ms Reid spoke of rubbish and bottles discarded on streets where kids are playing. She reported that, at times, parents turn up intoxicated to pick their children up at 3.00pm. Ms Reid also stated that, from time to time, she has found people sleeping in classroom doorways when she has arrived at school in the morning.

[180] Mr Egden considers the evidence provided by Ms Reid to be irrelevant in that while it may be applicable in a hearing into a new additional off-licence application, it does not apply to suitability in this particular application.

**Closing Submissions**

***The Inspectorate***

[181] Ms Lavery was not opposed to the application but had raised concerns. Ms Lavery, noted the role of the Inspector is to assist the Committee as to the relevant statutory requirements of the Act. Guidance was provided around the matter of suitability. Ms Lavery

stated the question for the Committee was whether the applicant is suitable and will they do everything possible to mitigate alcohol-related harm if the licence is granted. She considered the undertakings made by the Applicant will assist the community in the reduction of alcohol-related harm. Ms Lavery briefly focused on the Incident Book which is of assistance in reducing alcohol-related harm. The book assists in ensuring good decision-making takes place. In conclusion, it was noted if a licence is granted it will be for a 12-month period - a probationary period. The Applicant has been operating for a year without significant concern.

### ***The Medical Officer of Health***

[182] Ms Williams remains opposed to the application. The management experience of the Directors was highlighted: farm management and freight contracting. Ms Williams' view is that in no way would such experience prepare the Applicant for operating an off-licence in a vulnerable community. She submitted that knowledge of the community, an awareness of problems associated with premises in deprived areas, and a suitability standard at a higher level are required. The evidence provided clearly indicated, in Ms Williams' view, that the Applicant's understanding of harm in this vulnerable community is limited. High-alcohol single products are not core products and the Applicant has chosen to sell them at a low price which relates to suitability according to Ms Williams.

[183] It is of concern that the Applicant thought that because a previous licence holder experienced no agency opposition, nor would they. In the view of Ms Williams, *'the Applicants did not safeguard their position'*. Each application needs to be considered on own merits. Outlet density and alcohol-related harm is high in the Woolston area. However, Ms Williams accepted suitability is the only criteria in this matter. She suggested reduced hours and availability will cause less harm: 9.00 am to 9.00 pm would be optimal hours. The proposed undertakings should, in the view of Ms Williams, be conditions of the licence should the Committee decided to grant one. References were made to the Committee on case law around the conditions which have been imposed in vulnerable environments. These include restrictions on single sales and those products with a high alcohol content. Evidence was referred to by Ms Williams which shows more alcohol outlets results in enhanced competition, low prices, and increased alcohol harm in communities.

***Dr Hewison, Counsel for Mr McMahon - Objector***

[184] Dr Hewison stated clear community concern existed around this application as indicated by the evidence of Mr McMahon. The Applicant, on the first day of the hearing, provided undertakings for the Committee to consider. Dr Hewison noted this matter goes to suitability. They were not offered early during the hearing, nor did they include reduced hours, no single sales or no single sales under \$6.00 – an opportunity was not taken. Dr Hewison stated the Applicant has failed to reach the standard of extended suitability.

[185] Dr Hewison's view is essentially that this application involves a new premises. Desai Investments no longer have a lease and therefore the underlying licence would need to be surrendered. The argument raised of legitimate expectations does not exist in terms of the alcohol licensing framework. A licence remains a privilege not a right. *Nekita*<sup>11</sup> provides an example of the cancellation of licences.

[186] The need to provide a level playing field is not a consideration for the Committee in the view of Dr Hewison. Further there is no need for the Committee to act in a consistent manner, and conditions can be imposed by the Committee. He noted vulnerable communities can be treated differently. Dr Hewison referred to the *British Isles* case<sup>12</sup>, but this application has two agencies, Police and MOH, opposed so the case does not apply.

[187] On the matter of suitability, Dr Hewison noted that the Applicant wishes to continue to sell cheap alcohol. The Authority has set a price of \$6.00 per single sale with anything less being deemed cheap. The Applicant has a discretion notwithstanding the requirements of Super Liquor. The 3 for \$10.00 sale special by the Applicant also impacts on suitability. Dr Hewison refers to both Super Liquor managers having expressed concern regarding this special. There was no appetite to take leadership in alcohol accords by the Applicant which diminishes the Applicant's standing as to meeting extended suitability. Mr McMahon reported a fridge selling singles can be seen from inside but also outside the premises.

[188] Dr Hewison stressed that the Applicant, having considered the issue of Nitro sales and the evidence provided at the hearing, still wishes to stock and sell the product into a vulnerable

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<sup>11</sup> Christchurch City Council Alcohol Licensing Inspector v Nekita Enterprises Ltd [2021] NZARLA 145.

<sup>12</sup> Re British Isles Inn Ltd Liquor: Licensing Authority, 7/6/2006, Decision No 406/2006,

community. Both school principals who understand youth and vulnerability have raised concerns about this.

[189] With respect to the 12-month probationary period, Mr McMahon's submission is that they have had a probationary year, and they have been found wanting in reaching the higher threshold of extended suitability.

[190] According to Dr Hewison the case law is very clear. In the cases of *Nekita*<sup>13</sup> and *Pleasant Point*<sup>14</sup> both considered vulnerable communities. The Authority has said no to those who wish to sell single, cheap alcohol of less than \$6.00 per item. The Applicant needs to have an appreciation of the consequences that cheap product sales have on vulnerable communities. Dr Hewison believes the application should not be approved.

***Mr Egden, Counsel for the Applicant***

[191] Mr Egden referred to the *Nekita* case<sup>15</sup>, and suggested it is not new law in relation to vulnerable communities, but merely a continuation of a 2014 decision. Mr Egden argues the focus of *Nekita* was employment issues in not only the under-paying of staff but also in not being truthful. If not for these two circumstances, there would have been no attempt to cancel licences. The Authority found Mrs Singh should have been aware of the issues that were raised, and it was this that went to suitability and resulted in her manager's certificate being cancelled. In Mr Egden's view the *Nekita* case is vastly different to the Super Liquor Woolston situation.

[192] Mr Egden reiterates the view that the Desai Investments license remains in full force and effect. The situation is in a different category to a new license in new premises. Should the Applicant be found unsuitable the licence would still be in force. In Mr Egden's view it is highly unlikely Desai Investments would walk away. Options for Desai Investments include choosing to again operate at the premises or employing a manager (which would not be the same as a hands-on manager), or seeking an assignment of the lease.

[193] Criticism of the Applicant for not seeking to initiate an alcohol accord process is unfair according to Mr Egden. The Applicant would join such an accord but not lead which doesn't make them unsuitable.

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<sup>13</sup> Christchurch City Council Alcohol Licensing Inspector v *Nekita Enterprises Ltd* [2021] NZARLA 145.

<sup>14</sup> *St Joseph's School Pleasant Point / Te Kura O Hata Hohepa v Singh Trading (2016) Limited* [2021] NZARLA 123 (10 August 2021)

<sup>15</sup> Christchurch City Council Alcohol Licensing Inspector v *Nekita Enterprises Ltd* [2021] NZARLA 145.

[194] A legitimate expectation exists as to the Committee granting a licence in this matter. Both s105 and s106 of the Act require the granting of a licence. The Applicant can say they meet the criteria of the Act. Further, if no significant deterioration or change in the area has occurred then a legitimate expectation exists. They need to be treated in the same manner as the previous licence holder, Desai Investments, as existing premises with a licence and there is no change to the status quo.

[195] Police are not opposed on suitability – but under s105(1)(i) of Act. Both Police and MOH have the same argument - the amenity and good order of locality is badly affected by existing licenses. Mr Egden argues there is no change as this is not an additional new licence but an existing one and as a result the Police argument is not valid. Further, Police evidence provided on Calls for Service data was acknowledged not to be a reliable measure of alcohol-related harm.

[196] Mr Egden is clear the MOH evidence is not justified pursuant to s105(1)(i) of the Act as this is not a further licence. The evidence submitted relates to an enhanced suitability test because of the vulnerability of the Woolston area.

[197] Mr Egden acknowledged an enhanced test of suitability exists, due to vulnerability within the community. He posed the question *'What can be expected of an Applicant in such circumstances?'* Suggestions offered by the Inspector were adopted, and *'she is satisfied they have what it takes to run premises in a proper fashion'*. A level playing field is a consideration for every applicant otherwise one licence holder will be benefiting from another's concessions. A standalone bottle store cannot compete with a supermarket on price.

[198] Concessions made by the Applicant are described by Mr Egden as *'quite genuine'*, as was the voluntary decision not to sell singles from the premises under 500mls from the outset. The sale of *Diablo* beer (12% alcohol) was not appropriate and an undertaking has been made not to sell this product again. A decision to sell Nitro does not indicate unsuitability. According to Mr Egden the Committee must make a finding the Applicant is suitable to operate in the Woolston area.

[199] The Committee stated it will reserve its decision.

## Site Visit

[200] On 13 July 2022, the Committee conducted a site inspection of the premises at 608 Ferry Road, Woolston at 9.30am. The inspection was facilitated by Mr Andrew Campbell, Hearing Advisor, Christchurch City Council, who accompanied the Committee for the duration of their visit. The Committee was shown around by a staff member and by a Director of G & B PVT Limited, both of whom did not provide evidence at the hearing. No commentary was provided by either person who responded to specific questions by Committee members.

[201] The Committee observed how the point-of-sale processes operated, which was consistent with the Applicant's explanation at the hearing. The layout of the premises, recent refurbishments, and placement of product were also confirmed. The Committee were left with a favorable impression of the premises.

[202] The Committee noted prior to the conclusion of the site visit, but before the premises opened at 10.00am, that two separate customers attempted access to the premises, both were quietly refused entry. The Committee observed both of these customers cross Ferry Road and enter the LiquorLand store, which has a 9.00am opening time, presumably to purchase alcohol. This observation by the Committee, adds weight to the point raised at the hearing of the indifference to premises exhibited by some customers.

[203] The Committee noted that the store was situated on the corner of Ferry Road and Oak Street and was set back on the site with a large parking area in front. The other premises facing this carpark were the Oak & Ferry Tavern and a restaurant. Oak Street is a short street, containing only two houses behind the Super Liquor. Opposite the premises on Oak Street is a petrol station and an industrial yard. In order to see inside the premises a person would be required to purposely approach the doorway, rather than being able to see anything merely as a result of walking past either on Ferry Road or Oak Street.

[204] The Committee also looked at the surrounds of the premises and the wider Woolston commercial area. There were no signs of rubbish present in the immediate surrounds or the premises carpark. One Committee member noted they had seen, prior to our inspection, a systematic collection of rubbish from the immediate area by Super Liquor Woolston staff. The Committee observed a gentrification of the Woolston commercial areas: new buildings, repurposed historical buildings, good landscaping, good civic amenities, and what appeared to be a new library complex.

[205] The Committee also looked around adjacent streets which contained tidy residential housing. There was little rubbish on streets, apart from bank withdrawal/retail receipts. The only material issue was leaves blocking drains from the heavy rain the previous day. Two empty cans, and packaging material was cited inside a high street planter on the opposite side of the road from the premises at 608 Ferry Road, 50 meters away. This rubbish was not visible from the road and required Committee members to be close and looking down to view the rubbish.

[206] No persons were seen on the street who appeared intoxicated and no consumption of alcohol in public was observed by the Committee.

### **Evaluation and findings**

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

[208] The Committee shares the concerns expressed by all parties in their frustrations at the lack of a Local Alcohol Plan (LAP) which, if available, could assist in shaping licensing decisions.

[209] This application was opposed by the Police and the Ministry of Health, supported by the Inspector, based on the deprivation and vulnerability of the area.

[210] The Applicants called evidence from Mr Webster and Mr Hoar, managers in the Super Liquor Franchise, to support their application and their evidence has been outlined earlier in the decision.

[211] There were six objections to the application. Mr McMahon appeared at the hearing, represented by Dr Hewison, and called evidence from Mr Edmundson and Ms Reid, both principals of local schools. Their evidence at the hearing has also been outlined previously in this decision.

[212] The Applicant seeks hours of 8:00am to 11:00pm seven days a week. Those hours are within the national default hours for an Off-Licence of 7:00am to 11:00pm. Mr Brar, one

of the Applicant Company's directors, said the Applicant had applied for those hours to allow for flexibility throughout the year. Currently they only remain open until 11:00pm on a Friday and Saturday night and on most days they open at 10:00am and close by 9:00pm. However, the longer hours would provide flexibility during busy periods such as over the Christmas holiday period.

[213] The Applicant was supported in its application by the Franchisor whose representative outlined the rigorous process carried out by that company in relation to the selection of a Franchisee. The Committee accepted the evidence of Mr Hoar as to: the role of Super Liquor; its stock requirements; the support and guidance it provided to Franchisees; and, also the regular audits they undertake with each licensee.

[214] The Committee accepted the evidence of the objecting Agencies, the Inspector, the objectors and Mr McMahon's witnesses, particularly Mr Edmundson and Ms Reid, as to the high deprivation found in the Woolston area and how this affected the students and whanau associated with their schools. It acknowledges the extensive and helpful evidence of the Police and Ministry of Health as to the high deprivation and vulnerability of the area.

[215] The Committee further accepted the submission of Counsel for the applicant that this is an existing Off-Licence, which would still exist if the Committee found that the applicants were not suitable.

[216] In assessing the application against the Objects of the Act, standing back and evaluating, the Committee is of the view that, given this is not an additional application for an off-licence in a deprived area, the harm caused by the excessive or inappropriate consumption of alcohol would not be minimised and the amenity and good order of the community would not decrease to any great extent by the Committee declining the grant of this licence.

[217] The Committee accepts that the existence of deprivation and vulnerability in this community requires a higher threshold on the part of the applicant in terms of their ability to deal with the risks associated with minimising the effects of alcohol on the community; but did not accept the objector's submission that deprivation alone meant that the applicant, or in fact any applicant, was not suitable to hold a licence.

[218] Section 105(1)(b) sets out suitability of the applicant as one of the criteria for the issue of a licence. In discussing the meaning of "suitability", Holland J said in *Re Sheard* [1996] 1 NZLR 751, [1996] NZAR 61 (HC) at 755:

*Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in The Concise Oxford dictionary as 'well fitted for the purpose, appropriate'. I do not find it helpful to refer to other decisions on different facts as to the meaning of that word. Where a statute uses an unambiguous and well understood word or expression and chooses (sic) not to enlarge on the ordinary definition of the word or expression by a special interpretation in the statute it is usually unwise for a Court to add to the ordinary meaning of the word as a general guide for all cases, as distinct from applying the word to the particular facts before it.*

[219] The Authority has considered the issue and held that: *"The meaning of 'suitability' has not changed as a result of the enactment of the Sale and Supply of Alcohol Act 2012"*: Re Karambayev Ltd [2013] NZARLA 1214 at [17].

### ***The suitability of the applicant***

[220] We find that the Applicant is a suitable entity to hold a Licence. The Directors of the applicant are working hands-on in the business. Both have Diplomas and experience in business management, including compliance obligations, albeit outside of the alcohol industry. They both hold Manager's Certificates and have completed the LCQ course. They have been running the bottle store without incident for some 14 months and have taken on board suggestions provided to them by the Inspector in the course of regular inspections. The Committee noted, in particular, the commencement and regular use of an Incident Register and also that they had removed all single serve products sold at a cheap price, resulting from broken packages, and also the 3 for \$10 specials following the suggestion that such promotions, whilst not illegal, were not suitable.

[221] The Committee accepted the evidence of Mr Hoar concerning a complaint made to him by a person in the community (traversed earlier in this decision) and accepted that Mr Hoar had raised it to show that the Applicant took its obligations seriously under the Act.

[222] The Committee accepts the concerns as to suitability due to the vulnerability of the area, and the higher threshold this places on applicants. We were impressed by the Applicant Director and believe he had a good working knowledge of the Act. Both Directors have gained considerable experience in the 14 months they have been operating on Temporary Authorities and we believe they have the skills to run an off-licence. In addition, they have appointed a highly experienced manager who takes an active role in the running of the business. A review of timesheets and wages records shows that this manager is paid a salary at a rate that recognises his qualifications and considerable experience. The Applicant is fully supported

by a Franchisor who takes seriously their obligations under the Act and, in addition, carries out regular audits of their Franchisees.

[223] With the Applicants being owner-operators, we believe they have the opportunity to become part of the Woolston community, which should further enhance their ability to run the business to a high level. Their donations to the Christchurch South Community Patrol and the Linwood Keas Rugby League Club indicate their interest is assisting this community.

[224] Mr McMahon's advocacy for his community, along with the other objectors and witnesses, was well received by the Committee. The restriction imposed by section 102(4A) of the Act clearly orientated that advocacy to focus on the suitability of the applicant.

[225] The Applicants expressed a willingness to join any Alcohol Accord that may be instigated in this deprived area. They welcome the opportunity to become part of the Woolston Community. They would do well, in that respect, to understand the objectors' concerns for the Woolston community and should continuously reflect on the responsibility placed on them in operating an off-licence in this community.

[226] After considering all the evidence presented we find the Applicants meet the suitability test (as set out in section 105 1(b)) to enable them to be given a licence to operate their business at 608 Ferry Road, Christchurch. The Committee more broadly is satisfied after standing back and evaluating all the matters placed before us, and having had regard to the criteria as set out in sections 102 and 105 (and informed by section 106) of the Act, that granting the application subject to conditions and undertakings received achieves the purpose and objects of the Act.

[227] The licence will be issued for twelve months (often referred to as the probationary period), and at the renewal the Applicant's performance in running the off-licence can be further assessed.

## **Decision**

[228] Accordingly, pursuant to section 104(1) of the Act we grant the application for an off-licence for a period of one year, subject to the following conditions:

### ***The Licensed Premises***

- (a) The premises are identified on the plan provided with the application for a licence.<sup>16</sup>

### ***Section 116(1) Discretionary Conditions***

(b) The following steps must be taken to ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed:

- Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.

(c) The following steps must be taken to ensure the provisions of the Act relating to the management of the premises concerned are observed:

- Alcohol must only be sold and supplied on the premises within the area marked on the plan submitted with the application.

### ***Section 116(2) Compulsory Conditions***

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

(e) Alcohol may only be sold or delivered on the following days and during the following hours:

**Monday to Sunday 8.00 am to 11.00 pm**

(f) Water must be freely available to customers on the premises while alcohol is being supplied free as a sample.

### ***Section 117 – Other discretionary conditions***

(g) The following steps must be taken to promote the responsible consumption of alcohol:

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<sup>16</sup> As attached to the application.

- The licensee must implement and maintain the steps proposed in the Ferry Road Super Liquor host responsibility policy aimed at promoting the reasonable consumption of alcohol.

**Section 119 – Restricted or supervised areas (other)**

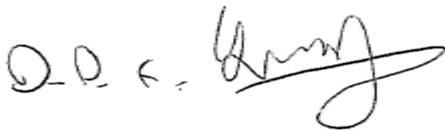
(h) The whole of the premises is designated as a supervised area.

**Other restrictions and requirements to be noted on the licence**

- s56 - Display of signs.
- s57 - Display of licence.
- s214 - Manager to be on duty at all times and responsible for compliance.
- The undertaking of the applicant that no Diablo will be sold.
- The undertaking of the applicant that there will be no single sales of beers and RTDs resulting from broken packaging.
- Advertising outside the building will be restricted to one "Specials" advertisement provided by the Super Liquor Franchise.

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

**DATED** at Christchurch this 8<sup>th</sup> day of August 2022

A handwritten signature in black ink, appearing to read 'D. D. Ivory', with a long horizontal flourish extending to the right.

Mr. D. Ivory

Chairperson

**Christchurch District Licensing Committee**