

	Decision Number: 60E [2024] 19429
IN THE MATTER OF	the Sale and Supply of Alcohol Act 2012
AND	
IN THE MATTER OF	an application by Adrianleigh Limited for renewal of an Off- Licence (Supermarket) in respect of premises situated at 7 – 11 St Johns Street, Christchurch, known as ‘New World Ferry Road’

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: **Mr David Blackwell, QSM**

Members: **Mr Greg Clapp, JP**
Ms Tracy McIlraith

HEARING at CHRISTCHURCH on **Monday 30 September, 2024 & Wednesday 11 December, 2024.**

APPEARANCES

Mr Iain Thain – Counsel for the Applicant

Mr Timothy Maxwell – Representing **Adrianleigh Limited** – Applicant

Mrs Tammy Maxwell – Representing **Adrianleigh Limited** - Applicant

Ms Nicole Smith – Witness for the applicant

Dr Liz Gordon – Counsel for the Objector

Mr Paul McMahon – Objector

Mr Gary Hay – Licensing Inspector – Opposed

Mr Alex Cumming – Counsel for the Licensing Inspector

Mr Wade Morris – Counsel for the Licensing Inspector

Ms Paula Williams – on behalf of the Medical Officer of Health – to assist

Senior Constable Graham Jolliffe – NZ Police – Opposed

Assisting the Committee were Christchurch City Council Hearings Advisors

Mr L. Smeele

Ms N. McDonnell

RESERVED DECISION OF THE COMMITTEE

INTRODUCTION

[1] This is an application by Adrianleigh Limited (**'the Applicant'**) for a new **Off-Licence (Supermarket)**. The premises is situated at **7 – 11 St Johns Street**, Christchurch, known as **'New World Ferry Road'**. The application was made on 11 July 2022.

[2] The Applicant Company consists of two directors and shareholders, Tammy Leigh Maxwell and Timothy Adrian Maxwell.

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

Monday to Sunday, between the hours of 7.00 am and 9.00 pm.

(a) These hours are within the default maximum trading hours for an off-licence.

[4] One public objection was received within the required timeframe. The Liquor Licensing Inspector and the New Zealand Police are opposed.

[5] The Medical Officer of Health is not opposed.

Preliminary Matters.

[6] There were no preliminary matters raised, however, a matter was raised by Dr Gordon part way through the hearing. Dr Gordon sought to have a representative from FoodStuffs summonsed to attend the second day of the hearing to answer questions in relation to the franchise agreement. Dr Gordon was asked to provide the type of questions she would ask the Foodstuffs representative if he/she did attend the hearing. After considering Dr Gordon's

request the Committee decided to seek a copy of the franchise agreement. This was supplied to the Committee and a redacted copy sent to the parties.

Non Publication Order

[7] A non-publication order on specific commercially sensitive information in Mr Maxwell's evidence applies. A redacted version of his evidence has been made available and only this version may be used, published or circulated by any party or person.

[8] A non-publication order also applies to the contents of the franchise agreement.

Procedure of the hearing

[9] The Chair outlined how he proposed to conduct the hearing and no issues were raised by any of the parties.

[10] The Chair said that after reading all the documents several times in preparation for the hearing, he felt that there really only seemed to be two issues that there was a disagreement over. They are single sales and perhaps a minimum price, although he accepted they could be taken back to suitability and amenity and good order. The parties all agreed those were the issues.

The Applicant

Mr Thain, Counsel for the Applicant, submitted on behalf of the Applicant, Adrianleigh Limited.

[11] Mr Thain's written opening submissions were taken as read and he gave a verbal overview of the application stating that it is the applicant's view that the off-licence for the premises should be granted with no discretionary conditions.

[12] Mr Thain said he agreed with the Chair's assessment that we are dealing with matters around whether it is appropriate for the store to sell single units of beer and cider and would

it be appropriate to sell those units at a price the store sets without an imposed minimum price.

[13] Mr Thain said the law requires any condition to be reasonable and a condition cannot be imposed if it is not reasonable. He said what is reasonable comes down to proportionality, something that achieves only a marginal gain in terms of minimisation of alcohol harm would not be reasonable, nor something that is merely arbitrary.

[14] Mr Thain said that the objector has objected under suitability but only because under the rules that is the only place he could object as this is an application for a new licence, but to continue the operation for an existing store that has been in operation for some time.

[15] Mr Thain said the objector's thesis around suitability is not around the suitability of the applicant, Adrianleigh Limited. He said the objector's theory is that selling single units of beer and cider makes the applicant unsuitable to hold a licence for a supermarket.

[16] Mr Thain said the Inspector confirms that there is no general concerns about suitability but the question is that does selling those units at that price make you unsuitable.

[17] Mr Thain said the objector seems to suggest that there is some inherent risk in someone buying a single unit as opposed to someone who buys two cans, or six cans or a twenty four pack. The applicant's view, as a safe and responsible retailer, and recognising that all alcohol products carry some risk, it ought to provide options for its customers to manage their consumption and spending of alcohol.

[18] Mr Thain outlined relevant cases law for the Committee to consider in its deliberations.

Applicant's Evidence

Mrs Maxwell

[19] Mrs Maxwell's evidence was taken as read.

[20] Mrs Maxwell said she was a director of Adrianleigh Limited along with her husband Mr Tim Maxwell. She said she had read Mr Maxwell's evidence which she agrees with him and will not repeat his evidence.

[21] Mrs Maxwell said she has been in the supermarket business for about eight years and has been the co-owner/operator of this store for about two years. Prior to that they owned and operated New World Temuka for two and half years. She had held a manager's certificate for five years.

[22] Mrs Maxwell said the store serves a wide range of customers that could be described as middle class to working class. They see lots of tradies, elderly customers and mums with their children. She said they have customers who appear less well-off but they have a number who appear very well off.

[23] Mrs Maxwell said the types of customers who purchase alcohol are very mixed and not one type of customer stands out. She said in relation to single unit sales of beer and cider they do not often see customers purchasing just one single unit alone. She also noted that most customers who purchase alcohol would also purchase groceries.

[24] Mrs Maxwell said she had not personally seen any instances of alcohol related altercations around the store and particularly not related to the sale of a single unit. Nor had she personally received, or heard of, any complaints about alcohol sold from the store aside from the objection lodged with the Committee.

[25] Mrs Maxwell outlined two instances relating to alcohol that have been raised by Mr Joker, the then senior licensing Inspector, and the objector Mr McMahon.

[26] Mr Joker had sent to Foodstuffs a photo of a customer who was seen sitting on a bench seat outside the store drinking a Kingfisher single unit beer. She said the tradie also purchased a energy drink and lunch snack meal. She said their CCTV coverage at that time did not have a clear view of the bench. They could see the customer later take the products he had purchased to his bike in the carpark and ride off.

[27] Following that instance Mrs Maxwell said they immediately reviewed their instore processes. CCTV coverage has now been increased to cover the bench. She said she has only once approached a person drinking an RTD and that person explained they did not realise the rules and apologised profusely. Mrs Maxwell noted under cross examination that they do not sell RTDs.

[28] Mrs Maxwell also commented on an email and photos provided to the Inspector by Mr McMahon of a female customer purchasing a Kingfisher single serve beer. She said the customer was an irregular customer purchasing groceries as well as alcohol and that the customer had been refused the purchase of alcohol the day prior. Mrs Maxwell said she had spoken to the staff involved but they cannot remember that event and the supervisor in the photo advised that she would not have used the language 'on the turps'.

[29] Mrs Maxwell said that particular customer has now been trespassed due to theft.

Cross examination

[30] Under cross examination Mrs Maxwell said or confirmed the following

- She works as a checkout supervisor when required which was usually about once a fortnight and usually the evening shift. The store has around 80 staff with 10 or 11 managers and the busiest time is around 5 pm – 6.00 pm.
- Asked why they sold alcohol to the woman customer in the photo supplied she said each customer is assessed for intoxication and she passed that assessment. She said that customer has now been banned from the store for attempting to steal.
- She said most of the purchasers of single units of alcohol were tradies and most customers also purchased groceries as well.
- She said other than the objections raised in this case she had never received a complaint about alcohol sold from her store.
- She said the price of alcohol in the store was set by Foodstuffs.

- Mrs Maxwell agreed that drinking in the locality does occur. She agreed with Mr Cumming that other than underage sales and intoxicated persons it is difficult for staff to judge underlying issues. She said her staff were well trained to deal with these type of issues.
- She said they had 23 checkout staff with three managers on at any time. They had a recording system so that a new shift coming on duty could see any issues that had happened earlier that day.
- Mrs Maxwell agreed if she could take steps to reduce alcohol related harm in the area she would. She also agreed preventing an issue is better than dealing with it when it arises.
- She said the proposed condition to stop singles sales of high alcohol content alcohol was unreasonable.
- She said the statement in her brief of evidence, that tradies were the majority of purchasers of singles sales was her opinion based on observations.
- She said they do sell Kingfisher beer, and she thought it was on special at \$4.99 the previous week.
- She spends time in the office but she also spent time on the shop floor and that was usually helping out the checkout staff. She estimated she spends 10 hours a week on the checkout.
- Mrs Maxwell confirmed to Mr Thain that the woman who was trespassed from the store was trespassed due to theft.

Applicant's witness – Mr Maxwell

Mr Maxwell's brief of evidence was taken as read.

[31] Mr Maxwell said he owned and operated the store with his wife Mrs Maxwell and they were experienced operators and familiar with their responsibilities and in accordance with

Foodstuff's policies. He said failure to comply may result in termination of their franchise agreement.

[32] Mr Maxwell outlined their system for inducting new checkout staff members in relation to alcohol sales and their electronic sales system. He noted they check any incident reports daily which allows them to follow up on any issues and consider any additional action needed. He said there were very few incidents, with the majority relating to the lack of appropriate ID. He said over a four month period May to August this year there were 24 incidents, five related to intoxication and 19 were ID related.

[33] Mr Maxwell said in addition to the supermarket staff they have in-store security staff working at the entrance and monitoring CCTV footage. He said they also have a culture around anti-social behaviour. He said staff take a cautious approach to the sale of alcohol and the staff are aware that the refusing alcohol can sometimes result in negative customer feedback and we support their decisions to refuse a sale.

[34] Mr Maxwell said he can confirm the applicant has never failed a controlled purchase operation.

[35] Mr Maxwell detailed a large number of clubs and organisations where they provided sponsorship and or food supplies. He also talked about the measures they take around staff welfare, with all staff having access to a counsellor through their employee assistance programme.

[36] Mr Maxwell said he understood the Police and the Inspector do not oppose the application per se, but their concerns are with the sale of high strength low-cost single units of beer in what they describe as an area of high deprivation and subject to an alcohol ban.

[37] Mr Maxwell said Mr McMahon is seeking no single sales under \$6.00 of vessels 500ml or more over 5.5%.

[38] Mr Maxwell said he considers impositions of the proposed discretionary conditions would not be reasonable for this store.

[39] Mr Maxwell said this store is one of four within a 5 – 8 minute drive. He said his customers and the store's catchment area is much wider than just Woolston. He said when customers purchase alcohol they generally do so alongside their grocery purchases. He said they promote no or low options for their customers.

[40] Mr Maxwell said the Inspector refers to the Linwood ward profile stating that the store is on the edge of an area with an IMD deprivation rating of 9 and a deprivation rating within 1 km of the store of 8. Mr Maxwell noted that within a 2km radius, within the Linwood and Heathcote wards, 43.5% live in an area with a ranking of 1 – 2. He said this does not mean that they do not get customers from within the lower socioeconomic areas. He believes the store goes over and above to mitigate risk of alcohol related harm and to ensure sales are made safely and responsibly.

[41] Mr Maxwell said they have access to some information about the New World Club Card data and this shows that their customers come from all over South-East Christchurch.

[42] Mr Maxwell said he understands around March 2023 there were some homeless people hanging around the library, begging and interrupting businesses and their customers. He said the community rallied around to discourage anti-social behaviour, eventually causing the problems to move on. He said that behaviour did not impact the store and his premises very much.

[43] Mr Maxwell said he is not aware of the Police raising concerns about alcohol related incidents and sales from his store. He said they have strong systems in place to ensure the safe and responsible sales of alcohol. They expect their staff to make tough decisions and back them fully to do so and they also are diligent with identifying and preventing the entry of known shoplifters.

[44] Mr Maxwell noted they do not loss-lead on alcohol products.

[45] Mr Maxwell outlined their beer range and noted that over the previous 13 weeks only 11 products had an ABV over 5.5% and were in containers of 500ml or more. He also noted that

the majority of their promotions, as well as every day shelf prices are co-ordinated through Foodstuffs.

[46] Mr Maxwell said the conditions proposed have the potential to impact a significant proportion of their range and impose conditions that would prevent effective competition and reduce the store's ability to compete, as every other retailer would gain a competitive advantage.

[47] Mr Maxwell said imposing the proposed conditions would prevent his store providing options to his customers to buy smaller quantities of alcohol. He said they might buy and consume more alcohol.

[48] Mr Maxwell said he had not seen any evidence that reducing the range in their store, as proposed by the objectors, would likely cause a reduction in alcohol related harm.

Mr Maxwell - Reply brief of evidence

[49] Mr Maxwell explained that his store sits back from Ferry Road and is therefore quite separate from the other businesses along Ferry Road. He also said their business is much larger with great lighting, visibility and CCTV coverage.

[50] Mr Maxwell said significant numbers of staff and customers provide natural surveillance. They discourage anti-social behaviour and have a zero tolerance. They have systems and security, including number plate recognition and walkie talkies, to prevent this behaviour and to allow them to act quickly. He believes their presence has been a deterrent for anti-social behaviour.

[51] Mr Maxwell said they have no substantive issues with homelessness around the store. He also said he cannot agree with Mr McMahon that there has been substantial loss of amenity in Woolston. He does agree with Mr McMahon that they would all appreciate a greater presence of Police in the area.

[52] Mr Maxwell said the local business community has been working together to address anti-social behaviour and his store has hosted a community meeting.

[53] Mr Maxwell said he would not comment on Mr McMahon's opinion of Ms McConchie. He said she is passionate and her intention is to benefit the community.

[54] Mr Maxwell said his customers come from a wider area than just Woolston and they would be impacted upon by the proposed conditions.

Cross examination of Mr Maxwell.

[56] Under cross examination Mr Maxwell said or confirmed the following;

- Suggested conditions recommended by Mr McMahon would not have any impact on the community problems.
- His understanding of the problems in the community was anti-social behaviour and excessive consumption of alcohol.
- He described anti-social behaviour as theft and swearing.
- To address anti-social behaviour in his store he said they have security on duty and set high standards. He said anyone caught stealing would be trespassed. He thought they would trespass someone about every two weeks.
- The normal price for High strength Kingfisher beer is normally around \$5.50 and usually around \$3.00 to \$3.50 when on special. Mr Maxwell confirmed they did not generally have loss leaders on alcohol products except occasionally when they needed to clear a slow product.
- Compared to other New World stores the high strength high alcohol content products were big sellers.
- He had noticed no change in anti-social behaviour in the last year.

- Asked if he thought it would be socially correct if he agreed to join the two off-licences in the locality and not sell the high strength alcohol under \$6.00. He answered no as he felt his competition was other supermarkets.
- Each store has access to a portal in the computer system to allow them to enter specific store specials or create a special promotion for that store. This could include price differential between New World Stores due to freight etc.
- If he could take steps to reduce alcohol related harm he would but bearing in mind his obligation to his franchise agreement.
- He agreed his systems including CCTV only cover matters on his site.
- By instigating the changes recommended by the Inspector the impact would be minimal.
- He felt the low-price high alcohol product helped with the general shopping at the store.
- He had no control of people once they left his store.
- He did not think it was difficult to ask staff to identify possible problem drinkers and if necessary decline sales.
- He said Foodstuffs initiate specials on alcohol products.
- He said about 20% of thefts in the store would involve alcohol.
- He does not take into account the deprivation of the areas where his perceived competition are situated.
- They do not promote high strength cheap alcohol instore.
- He is aware of an accord in Woolston involving the other off-licences aimed at reducing alcohol harm.

- With the help of Counsel, Mr Maxwell confirmed under the franchise agreement they are required to sell a core range at no greater price than set by the co-operative. However, the store will comply with the law.
- He believed under the franchise agreement he would not be permitted to agree to a minimum price for high strength alcohol.
- His catchment area is large and customers come to his store for service, range and environment.

Applicants witness – Ms Smith

[57] Ms Smith said she was a checkout manager at New World Ferry Road. She had been working at the store for about two years and had been in her current role for almost a year. Previously she had worked at another New World store for about 8 years. She said she lives within 5 minutes' drive of the store and considers she is familiar with the local community.

[58] Ms Smith said they have 23 checkout staff who report to her as checkout manager. She said her staff take a cautious approach to selling alcohol. If they have any concerns they would refuse a sale.

[59] Ms Smith said they have about 5 or 6 customers who they keep a close eye on and if they have any concerns with their behaviour they would refuse a sale. If a customer became aggressive when refused a sale they would consider escalating the issue and possibly serving a trespass order. She said they have photos of those who had been trespassed and a licence plate recognition system.

[60] Ms Smith noted the email to Mr Joker from the public objector regarding a particular customer and she said that customer was trespassed from the store in January 2024.

[61] Ms Smith said her staff were well trained and know if they decline a sale they will be well backed up and have support if a customer becomes difficult. Ms Smith said such incidences

are very rare. She said they are alert to customers trying to purchase alcohol multiple times during the day.

[62] Ms Smith said they have automatic messages that pop up when alcohol is scanned which also locks the checkout. A supervisor only can unlock the system.

[63] Ms Smith said if a non-checkout staff member noted some concern with a customer they will notify the checkout team to take a closer look. Anyone seen drinking around the store would be asked to leave. She said in her experience customers do not purchase alcohol from the store and try to drink it on the premises or close by.

[64] Ms Smith said their customers came from a wide range of socioeconomic backgrounds including those who have work and income cards to those that do not even look at the price. She said there is a large elderly community and a lot of workers with families who all do their weekly shopping at the store.

[65] In terms of single sales the store has a wide range of craft beer and she has seen customers purchasing single units to try new craft beers. She said they get a lot of tradies, particularly males, who buy single sales of beer and cider.

[66] Ms Smith said they do not often see customers purchasing just a single unit of beer or cider but they usually purchase 2 or even 4 together with groceries.

Cross examination. Ms Smith

[67] Under cross examination Ms Smith said or confirmed the following:

- Before refusing to sell alcohol, the checkout staff check ID, if need be, and get a general idea on how the customer is behaving and if there are any problems they call security.
- If there were issues they would take away the alcohol from the sale as usually the customer is purchasing other products as well as alcohol. She said there are usually no problems with taking away the alcohol.

- There is no commonality with the type of customers who are refused alcohol.
- There is a good feeling in the community as everyone knows each other and looks after each other.
- It can sometimes be a hard call to refuse an alcohol sale but most of their customers are very good. They have a register of people that have caused issues which is helpful for the staff when assessing people.
- People do drink in the locality but the ones she had seen were drinking spirits which they do not sell. She said they have 5 -6 customers they keep a close eye on.
- Asked if imposing a minimum price or single sales would eliminate or minimise the issue of looking for concerning factors she said no as people could still purchase at a different price point.
- People buying a single can often purchase other products like wine or 6 packs.

Police opening submissions.

[68] In opening submissions Senior Constable Jolliffe said the Police oppose the application for the following reasons.

- It is an area of low socioeconomic/ high social deprivation
- There have been concerns raised about the sale of single, high strength beers in these areas.

[69] Senior Constable Jolliffe said the other two off-licences in the immediate area no longer sell high strength beer for under \$6.00 a can.

[70] Senior Constable Jolliffe noted the deprivation of the area is high, the premises were located in a level 9 area and surrounded by level 8 and 9.

[71] In conclusion Senior Constable Jolliffe noted that if the Committee is of a mind to grant the application, relevant conditions around the sale of single items with high alcohol by volume content should be imposed and an appropriate pricing structure considered.

Police witness – Senior Constable Jolliffe.

[72] Senior Constable Jolliffe appeared on behalf of the New Zealand Police and is opposed to the application.

[73] Senior Constable Jolliffe said in late 2021 to early 2022 concerns were raised about cheap, high strength alcohol being available in the Woolston area. Also of concern was the low socioeconomic make-up of the area. Constable Jolliffe said as renewals of off-licences come up the tri agencies started to address those concerns and he said there were three in the immediate area.

[74] Senior Constable Jolliffe said the other two off-licences were asked to restrict a number of these products, move away from single sales and a minimum price was implemented.

[75] Senior Constable Jolliffe said in recent applications for renewal of off-licences the Police have indicated a preference for trading hours to be reduced as a means of reducing harm.

[76] Senior Constable Jolliffe produced Exhibit GJ01 a Police ACF data report. This report showed a total of 1431 incidents within a 1km radius of the site over a five-year period to August 2024.

[77] Senior Constable Jolliffe also provided ACF data for four other sites in Christchurch. He said for comparative purposes he would describe the ACF data for this site as moderate to high.

Cross examination Senior Constable Jolliffe.

[78] Under cross examination Senior Constable Jolliffe said or confirmed the following:

- In relation to general policing the area is right up there but he did not know personally much about homelessness.

- Cheap alcohol on the whole is an issue. With money being tight for a lot of people it is obvious that people go for a cheaper option.
- He is aware of the so called accord but has not seen it. He presumes Mr McMahon is driving it.
- He explained there is an alcohol ban in the area and this is a deterrent when it is placed in any area. Generally, there is an under-lying issue in the area before an alcohol ban is established.
- The area is a high deprivation area and there are alcohol issues in the area and we must do what we can to minimise harm.
- 9.00 pm is an appropriate time for closing in that area. He agreed the proposed hours for New World Ferry Road were the same as the new hours implemented in Auckland for all off-licences.
- He agreed, compared with bottle shops, supermarkets are restricted in the type and alcohol content of alcohol they can sell and also supermarkets cannot have external advertising of alcohol.
- He believed the accord was only in relation to single cans of high strength beers.
- He agreed Alcohol as a Contributing Factor data covers incidences where the Police believe alcohol was involved. It does not breakdown to the type of alcohol or if there was excessive consumption. Data for the current year shows an increasing trend of alcohol incidences.

Christchurch City Council Licensing Inspector – Opening Submissions Mr Cumming

[79] Mr Cummings opening submissions were taken as read.

[80] Mr Cummings outlined the relevant legislated provisions being section 105, the object of the Act and section 117.

[81] Mr Cumming said the premises are located in an area of high deprivation and can therefore be categorised as vulnerable. He reminded the Committee that in the *Medical Officer of Health v Lion Liquor* the High court found that harm must be minimised, not ignored or condoned.

[82] Mr Cumming said that while the applicant is taking commendable steps to ensure that it does not sell to minors or those who are intoxicated, this is insufficient in these circumstances to minimise alcohol related harm in the locality.

[83] Mr Cumming said the area, as well as being vulnerable, is subject to an alcohol ban.

[84] Mr Cumming said single units of low price, high alcohol percentage drinks are more likely to be purchased by problem drinkers. He said while Mr Maxwell says staff are empowered to refuse sales where there is a concern for a customer's welfare, this is a very difficult call. Mr Cumming said this pressure could be removed by the imposition of a single sales condition.

[85] Mr Cumming reminded the Committee that the Authority has approved numerous conditions imposing that there be no single sales or placing a minimum price for drinks.

Liquor Licensing Inspector – Mr Hay

[86] Mr Hay's brief of evidence was taken as read.

[87] Mr Hay explained that the Inspector's report, dated 22 June 2024, was filed by the previous Chief Licensing Inspector, Mr Joker, opposing the application on the grounds that the sale and supply of alcohol will not be undertaken safely and responsibly due to the premises being in a deprived area and that the applicant needed to agree to the condition involving single sales of high strength low-cost beers.

[88] Mr Hay said Mr Joker left the Christchurch City Council on 9 August 2024 and he assumed responsibility for this hearing.

[89] Mr Hay then addressed sections 105(1)a, b and h.

[90] Mr Hay said the premises is located in an area of high deprivation which generally correlates with elevated alcohol harm issues.

[91] Mr Hay said the community profile prepared by the Christchurch City Council in February 2023 indicated around 44% of the ward population are living in an area considered most deprived, where deprivation is 9 or 10. He said the Index Multiple Deprivation (IMD), produced by the University of Auckland, ranks the Woolston Village neighbourhood 5035 of the 6181 neighbourhoods in New Zealand for overall multiple deprivation.

[92] Mr Hay said he had concerns with the existing supermarket selling high strength high volume alcohol in single cans at low prices to people, particularly the homeless, who then consume alcohol locally including in the alcohol ban area. To address this he believed a condition prohibiting single sales of high strength low-cost beers is necessary.

[93] Mr Hay said the removing the sale of single low-price high-alcohol drinks will minimise alcohol harm in the area.

[94] Mr Hay addressed the suitability of the applicant and said he has no concerns generally with the suitability of the applicant to hold a licence but the community is vulnerable due to the high deprivation levels. He said he had doubts the applicant would meet the test for heightened suitability should it insist on selling low price, high alcohol singles.

[95] Mr Hay said Mr Joker contacted Mr Maxwell on 21 August 2023 requesting him to consider adopting the single sales condition as per the Committee's practice notes. He said on 21 May 2024 Mr Joker advised the applicant that a public objection had been received and he reiterated his request to consider the single sales condition.

[96] Mr Hay said on 14 August 2024 Mr Mahon, Head of Retail Operation at Foodstuffs contacted him proposing to introduce four packs and removing singles sales of beers. He said he contacted Mr McMahan, the public objector, who said they would welcome strong beers being in four packs but they were looking for a wider settlement and wanted New World to

join Super Liquor and Liquorland on a no cheap singles approach and no singles under \$6.00 or more than 5.5% ABV, putting all three off-licences on a level playing field.

Cross examination Mr Hay.

[97] Under cross examination Mr Hay said or confirmed the following:

- Since the application was filed in 2022 there had been no issues identified with this store.
- He believes there should be a ban on single sales of high strength alcohol because of the alcohol ban in the area, the high deprivation area and to bring some consistence to the Woolston area.
- He understands problem drinkers are looking for the best bang for their buck and that is why they seek the high strength cans.
- You are more likely to see people in the street with cans these days as opposed to 15 – 20 years ago when caskets of wine or bladders of wine were popular.
- He is aware of the accord but is unaware when it came into being.
- He agreed all alcohol carries risk. High alcohol cans are easy to drink, are cold, easily concealed and a person gets a quick effect from that can.

Opening submissions for the objector – Dr Gordon.

[98] Dr Gordon's opening submissions were taken as read.

[99] Dr Gordon said Mr Maxwell appears to distance himself from being a Woolston business.

[100] Dr Gordon sets out case law around extended suitability section 105(1)(b).

[101] Dr Gordon said Mr McMahon's evidence is that New World Woolston is subject to the requirements of extended suitability as the applicant has failed to acknowledge or act on the vulnerability and therefore fails to meet the required standard.

[102] Dr Gordon also outlined case law in relation to single sales noting that ARLA had repeatedly found singles to be contrary to the Act, in relation to suitability of the applicant.

[103] Dr Gordon said Mr McMahon seeks that the DLC upholds its 2023 practice note in terms of single sales and impose, should it become necessary, the terms of that practice note onto the new operator of these premises.

Mr McMahon – Objector -Brief of Evidence

[104] Mr McMahon said the objection was from him in a personal capacity, but consistent with the view he articulates in his elected and professional roles. He said he lives nearby and shops regularly at New World Ferry Road and he generally finds it a good place to shop.

[105] Mr McMahon said the issue he has is the way alcohol is being sold and he is asking for the applicant to join with Super Liquor and Liquorland Woolston in agreeing to a minimum price. He said for clarity he is seeking the minimum price for an alcohol item to be \$6.00 or as a minimum he is seeking a minimum price for over 500ml and over 5.5% ABV.

[106] Mr McMahon said he had been working to reduce alcohol harm in the community for a number of years. He said he gathered signatures and made submissions to the Council for a liquor ban in the area, which became permanent on 6 September 2023. He said the liquor ban made a significant impact as an effective tool allowing the Police to intervene before serious crimes were committed.

[107] Mr McMahon said he negotiated agreements with Liquorland Woolston and Super Liquor Woolston to put in place common conditions or what is known as the Woolston Solution. He said all he wants is for this applicant to agree to the same.

[108] Mr McMahon was critical of Mr Maxwell's claim that the Council was not supportive and criticised the letter of support from Ms McConchie. He also criticised the letter of support from Mt Pleasant School saying they are in no position to make assessments of the alcohol related harm in Woolston.

[109] Mr McMahon then outlined an incident he personally witnessed where a person, known to him as an alcoholic, purchased a single Kingfisher strong beer for \$4.50. He then clarified with the person authorising the sale that the purchaser had purchased 4 cans the previous day who said “yeah, on the turps”.

[110] Mr McMahon said this case underlines his position and the Inspectorate’s position very clearly regarding single sales and also illustrates who is purchasing alcohol at 8.00 am in the morning.

[111] Mr McMahon said Ms Smith’s evidence indicates the customer concerned was known to the store and a customer they kept an eye on. He said New World clearly knew she had a problem but continued to sell to her.

[112] Mr McMahon said every off-licence in Woolston categorically assures inquirers that people drinking on the street are not purchasing from their store. He said the alcohol ban had helped reduce the issue of people drinking on the street furniture but not eliminated it.

[113] Mr McMahon said the deprived nature of Woolston is not disputed by any of the parties, but what the applicant appears to be arguing is that they draw a portion of their customers from outside of Woolston, which somehow makes it unreasonable for the DLC to impose a minimum price on singles. He said even if he accepted their assumptions, which he does not, it does not dilute the responsibility placed on them as a store selling alcohol in Woolston.

[114] Mr McMahon said Mr Maxwell and Ms Smith both said that single sales largely appeal to tradies. He said no data was produced to back up this assertion. He said whatever the case may be increasing the price to a minimum of \$6.00 is likely to reduce harmful drinking among heavy drinkers of low to modest means.

[115] Mr McMahon said the economic principle behind banning the sale of single beers is similar to that of banning the sale of single cigarettes. By only allowing larger quantities to be sold, the initial purchase price increases, making it less accessible and reducing impulse buys.

He said the strategy aims to decrease overall alcohol consumption among those who might purchase single units frequently.

[116] Mr McMahon said this DLC, Auckland and ARLA have imposed minimum pricing on singles. He said he also understands Woolworths has recently agreed to stop selling singles above 5% ABV and breweries are now able to supply packs in 2 – 4 to any retailer.

[117] Mr McMahon said we know the heaviest drinkers purchase the cheapest alcohol.

[118] Mr McMahon said New World Ferry Road is in Woolston which is an area that bears the brunt, for better or worse, of the operation of the premises and the sale of alcohol from it.

[119] Mr McMahon said the academic evidence and arguments supporting restricting single sales and the basis for imposing minimum unit prices have already been accepted by Christchurch and Auckland DLCs and ARLA. He said while Foodstuffs are entitled to mount the strongest argument they can legally, to him it undermines their suitability to operate in the community.

[120] Mr McMahon said his plea is for the applicant to agree to join the Woolston Solution on alcohol harm. He said their local competition all have single sales conditions including a \$6.00 minimum price and with New World seeking to maintain their competitive price advantage is understandable from a profit perspective, it does not demonstrate a commitment to achieving the object of the Act.

[121] Mr McMahon asks that the DLC impose a minimum price on the applicant of \$6.00 on any alcoholic product, excluding low or zero options. Failing that, a minimum price on any item that is 500ml or over and stronger than 5.5% ABV.

Cross examination Mr McMahon

[122] Under cross examination Mr McMahon said or confirmed the following;

- He did not believe the accord was price fixing but if it was he believed conditions in the decision would override that. He also said alcohol is a different product.
- The agreement or accord with the other two off-licences was agreed to around July of 2024. He lives nearby and believes the accord is working.
- In the absence of a Local Alcohol Plan in Christchurch it is very clear there is a very significant alcohol problem in Woolston.
- He had not approached Mr Maxwell directly regarding him agreeing to conditions but had done that through the Inspectors. He said initially things looked promising but that did not come about.
- In relations to the two off-licences, he had agreed not to object to licence renewals in the future if they agreed to certain conditions. They are not exactly the same.
- He agreed the proposed hours for New World Ferry Road are the same that have been agreed through the Courts for the Auckland Local Alcohol Plan.
- He agreed Parliament did not include a minimum price or restrict certain products in the most recent changes to the Sale and Supply of Alcohol Act.
- The people causing the issues were not all homeless but were variously housed.
- The Committee's primary concern should be with the local community.
- He does not have data himself different from the Police data but he said the amenity of the area has increased markedly since the alcohol ban was imposed.
- He agreed that he was not an expert at interpreting research but that he was trying to give the Committee the flavour of the international research. He said research from around the world kept repeating price as a deterrent.

Final submissions.

[123] **Mr Cummings** – Mr Cumming said the proposed condition will assist in improving the amenity and good order of the locality and help minimise alcohol-related harm.

[124] Mr Cumming said the applicant submissions focus on reasonableness and in these circumstances the proposed conditions are reasonable in a deprived community. He said any sacrifices the applicant would make were very minor when weighed against the harm it is aimed at minimising.

[125] Mr Cumming noted Mr Maxwell said that there are alcohol related issues in the locality. He also said the applicant's main concern was competitiveness but this is not a matter under s105.

[126] Mr Cumming quoted case law to support the Inspector's case.

[127] **Dr Gordon** – Dr Gordon said the relevant criteria for the Committee to consider is sections 105 and 106.

[128] Dr Gordon reminded the Committee of the alcohol ban in the area and that ARLA had already found singles sales contrary to the object of the Act, in relation to suitability of the applicant, over many cases and more than a decade.

[129] Dr Gordon also quoted case law to support Mr McMahon's request for conditions of single sales and price to be imposed.

[130] **Mr Thain** – Mr Thain noted that there is no opposition to the applicant per se. The sole question was whether the licence should be subject to a condition relating to single sales and a minimum price.

[131] Mr Thain said if a condition were imposed it would need to be done under section 117 and only reasonable conditions may be imposed.

[132] Mr Thain said the evidence of the Police and the Inspector were arguing for a condition which was a matter of policy and the evidence presented does not establish a basis for a condition.

[133] Mr Thain said the applicant takes their responsibilities seriously, has strong systems and well trained staff. The applicant declines sales where there is even a slight chance the customer has already been drinking or there is any concerning behaviour.

[134] Mr Thain said a condition would mean that responsible customers would lose choice and pay more.

Site visit

[135] The Committee, as a group, conducted a site visit of the premises. In addition the chair visited the general area several times, including driving and walking the surrounding streets. The Committee noted the building housing the supermarket and surrounding car park was all in excellent condition and obviously well maintained. The layout of the store was also impressive.

Discussion

[136] We are dealing with the application for a new off-licence (supermarket) which was purchased by the applicant company in 2022. The premises have been operating under numerous Temporary Authorities waiting for a decision on the licence application. The application is opposed by the Christchurch City Council Licensing Inspector, The New Zealand Police and one public objector and local resident, Mr McMahon.

[137] The application is not opposed per se by any of the parties. The areas of concern raised by the parties are whether, due to the very high deprivation level of the immediate community and obvious alcohol harm in the area, some restrictions should be placed on the licence in relation to single sales and high strength alcohol.

[138] It was not disputed by any of the parties that the Index of Multiple Deprivation places the Woolston Village at Decile 9.

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

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

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

s4(2) goes on to explain:

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

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

We are also mindful that the characteristics of the Act as set out in s3(2) are that-

- ***it is reasonable; and***
- ***its administration helps to achieve the object of this Act.***

The matters to which we must have regard when deciding whether to grant a licence are set out in s105 (a) to (k) of the Act guided by s106.

[139] We shall deal with these in order:

(a) the object of this Act.- As Heath J. said in *Re Venus NZ Ltd* CIV 2014-419-420 [2015] NZHC 1377 “ having considered all the factors set out in s105(1) (b) to (k) of the 2012 Act, is the Authority satisfied that grant of an off-licence is consistent with the object of the Act?

It follows that we defer this consideration to last.

(b) the suitability of the applicant.-

The Police, the Licensing Inspector and the objector raised the suitability of the applicant. They all considered that due to the alcohol harm in the area an enhanced level of suitability is required and this could be met with conditions around single sales.

The Committee accepts that the applicant runs a busy supermarket in the Woolston Village area and accepts the systems and staff training in general are of a very high standard.

The Committee notes with some concern the high deprivation level of the Woolston Village area and the Police data setting out calls for service for the area where alcohol was deemed to be a contributing factor. We also accept Mr McMahon's evidence which paints a good general picture for us of the area and the problems associated with it.

Mr Maxwell, in his evidence, told us that many of his customers come from outside the area and in particular mentioned the nearby hill suburbs with a very low deprivation level. The Committee agrees with Mr McMahon that its top priority should be to take care of those in the immediate area of the Woolston Village due to its high deprivation rating and clear associated alcohol harm.

We note Mr Maxwell said his store will comply with the law in relation to the sale of alcohol.

The Committee believes that the applicant can meet the enhanced level of suitability with some conditions around single sales of high strengths beers.

(c) any relevant local alcohol policy. –

Christchurch has no Local Alcohol Policy.

(d) the days on which and the hours during which the applicant proposes to sell alcohol. –

The applicant sought the same hours as the current licence 7.00am to 9.00pm Monday to Sunday. These hours are within the default hours set out in the Act. No issues of concern have been raised with regard to the hours of the premises.

The Committee notes all the parties agreed the hours were suitable for this location.

(e) the design and layout of any proposed premises.-

The design and layout of the premises is excellent.

The Committee accepts the current Single Alcohol Area meets the requirements of the Act.

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

The applicant's business is that of a supermarket and no issues have been raised under this heading.

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

Again the applicant is a supermarket and no issues have been raised.

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

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

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

Section 106 of the Act sets out the matters we are to have regard to when forming an opinion that the amenity and good order of the locality.

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

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

(a) the following matters (as they relate to the locality):

- (i) current, and possible future, noise levels:**
- (ii) current, and possible future, levels of nuisance and vandalism:**
- (iii) the number of premises for which licences of the kind concerned are already held; and**

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

- (i) the purposes for which land near the premises concerned is used:**
- (ii) the purposes for which those premises will be used if the licence is issued.**

The Committee accepts the Woolston Village area is an area of high deprivation, as set out in the IMD ranking, and is an area that receives a very significant number of calls for service to the Police where alcohol is a contributing factor. Senior Constable Jolliffe when asked how the Woolston Village area is compared to the rest of Christchurch, he said “right up there”.

The Committee acknowledges that its role, when considering an application, is for harm to be minimised but not necessarily eliminated.

We have carefully considered the general locality and have formed the view that we can assist the locality by imposing some conditions around singles sales and allow the applicant to meet the requirements of the Act.

j) whether the applicant has appropriate systems, staff, and training to comply with the law: -

The applicant appears to have good systems in place to cover the general administrative and compliance matters as well as staff training. We note that they use the Foodstuffs Redseed training system.

The high deprivation area means that special considerations need to be implemented by the licensee and the Committee is satisfied their selling of alcohol is generally handled well by their staff. We accept instances will arise in any store from time to time and we have confidence New World Ferry Road handles those well.

As Mr Maxwell acknowledged the store has no control over where and when alcohol purchased from the store is consumed. The Committee also noted Mrs Maxwell agreed preventing an issue is better than dealing with it when it arises.

The problem in the location, as has been outlined, are such that some conditions around single sales need to be imposed.

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under s103:-

The matters raised by the Licensing Inspector and the Police have been dealt with above. Neither opposed the licence per se but both raised concerns with the alcohol harm in the area and recommended conditions around singles sales.

Object of the Act

It is accepted that excessive or inappropriate consumption of alcohol can cause harm. With that in mind the Act was put in place to provide for reasonable regulation of the sale, supply and consumption of alcohol for the benefit of the community as a whole. The sale of alcohol is not prohibited, but it must be undertaken safely and responsibly and minimise alcohol related harms. For that reason, we must undertake a careful evaluation of this application against the matters identified in s105 and 106 of the Act. This includes having regard to the Object of the Act in s4. We are then required to stand back and make a judgment, informed by

the evidence before us, as to whether the grant of this licence in this location should be undertaken safely and responsibly and minimise alcohol related harm. The Act contemplates that even if alcohol can be sold safely and responsibly, harm may result from excessive or inappropriate consumption. The requirement is that alcohol related harm is minimised, not eliminated.

Standing back and considering the matters in s105 of the Act, we are satisfied that any alcohol related harm from the excessive and inappropriate consumption of alcohol that may be attributed to this store can be minimised with the inclusion of conditions relating to the single sales of high strength beers.

We are also required to ensure that any condition is reasonable and its administration helps achieve the object of the Act.

We note, according to Mr Hays evidence, that Mr Mahon, Head of Retail Operations at Foodstuffs, did make an offer to introduce four packs and remove the single sales of beers. This we understand was declined by Mr McMahan, which disappoints the Committee.

This offer from Foodstuffs was generous and it lets us realise that if we impose a condition on the sale of single high strength beers the product can still be sold in multiple packs, but it is highly likely that problem drinkers on very modest incomes will be deterred by the price.

We also note that upon questioning, Mr Maxwell said the store can amend the computer system to allow for local variances on price and local specials. Therefore we do not see many issues with the store's computer systems with condition being imposed on high strength single sales.

The Committee did carefully consider that all single sales should have a minimum price of \$6.00 but feel with the high level of training of the applicant's staff and all their systems, obviously driven by Foodstuffs, this was unnecessary for this application. We do believe that with a \$6.00 minimum price on high strength beers the local community would be better protected and the applicant can meet the object of the Act.

With the area having a very high deprivation rating, the disturbing Police call for service data and the very good overview of the problems in the area as outlined by McMahon, the Committee is of the view that it must take a precautionary view to the issuing of the licence.

Decision

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

Conditions

The licence will be subject to the following conditions:

The applicant's attention is drawn to s259 of the Act which makes it an offence to fail to comply with certain requirements and restrictions imposed by or under this Act specifically s46 to s63.

The Single Area Condition – s112

For the purposes of s112 the single area for the display and promotion of alcohol approved by the District Licensing Committee is the area marked on the plan submitted with this application. No sub areas are included.

Discretionary Conditions – s116(1)

- (a) 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 sale of alcohol to minors and the complete prohibition on sales to intoxicated persons.

Compulsory Conditions -s116(2)

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

Monday to Sunday 7.00 am to 9.00 pm.

- (c) Water must be freely available to customers on the premises when alcohol is being provided free as a sample.

Section 117 Other discretionary conditions

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

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

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

- The Licensee must implement and maintain the steps proposed in their host responsibility policy
- There shall be no single sales of high strength beer that is 500ml or over and stronger than 5.5% ABV for under \$6.00.

The premises is not designated.

Conditions Applying to Remote Sales

(a) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on every receipt issued for any alcohol sold via the internet site:

- The licence holder's name, the licence number and the date on which the licence expires.
- A copy of the licence or a clearly identified link to such an image must be displayed in a prominent position on the internet site.

(b) The following steps must be taken to ensure that intending purchasers are over the minimum purchase age:

- In the case of an order made using an internet site, telephone order or physical order the prospective buyer must declare that he or she is 18 years of age or over (and where the prospective receiver is involved that the prospective receiver is also 18 years of age or over)
 - (i) Once, when the prospective buyer first commences the order process; and
 - (ii) again, immediately before the sale of alcohol is completed.

Other Restrictions and Requirements to be noted on the licence

s56 Display of signs

s57 Display of licence

s58 Restrictions on the kinds of alcohol sold in supermarkets and grocery stores and premises directly accessible from supermarkets or grocery shop.

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

DATED at Christchurch this 24th day of January, 2025.

A handwritten signature in blue ink, appearing to be 'D.L. Blackwell', written in a cursive style.

D.L.Blackwell

Chairperson

Christchurch District Licensing Committee