

**Decision Number 60D [2018] 2827**

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

**AND**

**IN THE MATTER OF** an application by **FUTURE  
PACIFIC LIMITED** for an On-  
Licence pursuant to s.99 of the Sale  
and Supply of Alcohol Act 2012 in  
respect of premises situated at, **119  
Riccarton Road, Christchurch,**  
known as **The Common Room.**

**BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE**

Chairperson: Ms C E Robinson  
Members: Mr P Rogers  
Ms T Surrey

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**DECISION ON APPLICATION FOR NEW ON - LICENCE**

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## Introduction

[1] This is an application by Future Pacific Limited ('the applicant') for an On-Licence under s99 of the Sale and Supply of Alcohol Act 2012 ('the Act') in respect of premises situated at 119 Riccarton Road, Christchurch, known as The Common Room.

[2] The premises is located in a commercial block of shops on Riccarton Road, a busy arterial road, adjacent to the Riccarton Bus Exchange<sup>1</sup> and nearby Riccarton Mall. The Riccarton Road commercial area is zoned Commercial Core in the Christchurch District Plan, which provides for a range of business, entertainment and food and beverage outlets. The Council has issued a certificate under s100(f) of the Act which certifies the proposed use of the premises is compliant with the Resource Management Act 1991 (RMA) and the Building Act 2004.<sup>2</sup> There are residentially zoned areas to the south and north of the premises. The nearest residents are approximately 90m from the premises.

[3] The general nature of the premises is that of an entertainment venue, although as we discuss further below the exact nature of the premises was a matter of contention at the hearing. The applicant has requested licensed hours from 8am to 2am seven days a week.

[4] The application was lodged on 14 August 2018. The application was publicly notified on 15 August 2018 and twelve public objections were received, one out of time for which we granted a waiver.<sup>3</sup>

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<sup>1</sup> There is a wait lounge at 123 Riccarton Road

<sup>2</sup> Letter from Christchurch City Council to applicant dated 10 September 2018

<sup>3</sup> Minute granting leave to lodge out of time, 4 October 2018.

[5] The Waipuna/Halswell Hornby-Riccarton Community Board ('the Community Board') were also granted leave to appear and be heard. Mr Mike Mora and Mr Ross McFarlane spoke in support of the residents who objected.<sup>4</sup>

[6] The NZ Police and the Medical Officer of Health are not opposed to the application. The Medical Officer of Health requested that the Committee consider a closing time of 1am for the first year to allow monitoring. The Licensing Inspector has reported on the application and recommends the grant of the licence subject to conditions.<sup>5</sup>

[7] A hearing of the application was held on Monday 15<sup>th</sup> October 2018. The hearing was attended by the sole director and shareholder of the applicant, Mr Matthew Glanville. Mr Glanville gave evidence in support of his application and made submissions in reply. The agencies were represented by Senior Constable Logan Steele for the NZ Police, Mrs Paula Williams for the Medical Officer of Health and Mr Martin Ferguson, Senior Alcohol Licensing Inspector. Senior Constable Steele and Mrs Williams advised that they were present to assist. Both asked questions of the applicant and some objectors. Senior Constable Steele also produced a Police report on alcohol related incidents within a 500m radius of the premises during the period January 2008 to August 2018 ('Incident Report').<sup>6</sup>

[8] The following objectors attended the hearing and presented evidence and/or submissions ('objectors/residents'):

- (a) Mr Tony Simons, representative of the Riccarton Bush Kilmarnock Residents Association.
- (b) Ms Joscelyn Silcock, representing the Central Riccarton Residents Association.
- (c) Ms Clare Mouat, local resident.

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<sup>4</sup> Minute granting leave, 2 October 2018

<sup>5</sup> Report of Senior Alcohol Licensing Inspector Martin Ferguson, 11 September 2018.

<sup>6</sup> Intelligence Notification, 119 Riccarton Road, Riccarton Christchurch, 27 September 2018.

(d) Mrs Helen Broughton, local resident.

(e) Mr Robert Broughton, local resident.

### **The nature of the premises**

[9] The premises is currently used as an unlicensed pool hall. It contains 8 pool tables and a seating and eating area to the front of the premises. There is an upstairs room that can be used for functions. Mr Glanville proposes to use the premises as a community focused pool hall and game venue (not gambling) that will provide space for small functions and parties. Mr Glanville gave an undertaking that his intention for the use of the premises is as follows:

“I am absolutely committed and undertake to operate a pool hall that features, darts and e-gaming, boardgames, chess games, a food component, floorshows and events (...that may be a band in the corner or upstairs function room) and small gatherings, by that I am referring to the 30 people that may be booked into ...the function room upstairs be it for small work dos that they come in for a darts tournament or video game tournament.. that will cover that off. I have no intention at all to remove those pool tables and turn it into a night club.”

[10] Of significant concern to the residents was that the applicant appeared to wish to establish either a more traditional licensed pool hall, which they believed may encourage young people to congregate, drink and cause alcohol related harm and disorderly behaviour in their neighbourhood or, a ‘tavern’ that could morph into a party destination for young people and cause alcohol related harm and disorderly behaviour in their neighbourhood. The confusion of the residents is understandable given the way the application form described the activity and how it was described in the public notice.

[11] The application document requires the applicant to answer the following questions:<sup>7</sup>

- a) What is the general nature of the business to be conducted by the applicant in the premises if the licence is to be granted? Answer: Pool Hall and Eatery.

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<sup>7</sup> Section 8 On Licence Application Form, dated 9 August 2018.

- b) Is the sale of alcohol intended to be the principal purpose of the business?  
Answer: No.
- c) Is the applicant engaged, or intending to be engaged, in the sale or supply of any goods other than alcohol and food, or in the provision of any services other than those directly related to the sale and supply of alcohol and food? Answer Yes – pool, gaming and other small events.
- d) On which days and during which hours does the applicant intend to sell alcohol under this licence? Monday to Sunday 8am to 2am. The applicant had written “~~Tuesday and Sunday 10am – 10pm (later if event is on).~~ ~~Wednesday to Saturday 10am to Midnight 10am – 10pm.~~ [this was crossed out].

[12] The public notice for the application referred to the general nature of the business to be conducted under the licence as being ‘on-licence tavern’.

[13] The Inspector’s Report included two comments about the nature of the premises. At [15] the Inspector states:

Considering the normal hours proposed, closed Monday, Tuesday through Friday 10.00am to 10.00pm, subject to demand, Saturday 10.00am to midnight subject to demand and Sunday 10.00am to 10.00pm and the information provided in the comprehensive management plan provided and the nature of this premise being principally a place of entertainment. I hold few concerns in relation to the application.

[14] At [16] under the heading ‘Waivers Sought’ the Inspector reports:

No waivers are sought, however it has been noted that the premises was advertised as being that of a tavern. This was initially considered appropriate as a major portion of the income will be derived from the sale of alcohol. The fact that the premises is a place of entertainment will have less impact in the community than that of a tavern leads me to conclude that no one has been disadvantaged by the public notice process.

[15] As will be apparent from the nature of the objections received, the evidence presented by the residents and the questions they asked of the applicant at the hearing, the precise nature of the premises was a matter of contention and occupied a considerable portion of the hearing time. The proposed licensed hours are also of concern to the objectors.

[16] It is clear to us from Mr Glanville’s evidence, and in particular in answer to questions from Mr Ferguson, that the applicant has not and never had any intention of establishing a tavern. Mr Ferguson asked that question and he replied:

Mr Ferguson Do you see yourself as being a Tavern?

Mr Glanville By the definition of tavern I think in the conversation when I was submitting the application the guidance that I had taken was around the criteria of a tavern and it was that I would most probably be deriving the bulk of my income by way of alcohol sales therefore I would meet the criteria of being a tavern more so than being a restaurant and that if I had ticked the restaurant box then when people walk in the door they would be expecting to see a restaurant and would be surprised to see that it is actually the food sale is supplementary of...no I do not see it as a tavern but it ticked the box as a tavern.

Mr Ferguson So if someone comes to the door, they look in the door what are they going to see?

Mr Glanville They will see...there are 8 tables there, so I am hoping that there will be 30 people playing at those tables and each of those tables will have a bucket of chicken wings some wedges and may be 2 or 3 beers sitting there...I want them to smell the food, to see the food. In the front of the shop at those tables there need to be people in conversation...and that will be the point of difference of this business plan, I want the people in there talking about the things they are interested in. Upstairs the female NZ champion of darts she'll probably be running a tournament up there and in the corner there will be a juke box playing some swing or 50s rock and roll and the cool part is that there is a dart board that is plugged into the internet that you can then enter the international tournament...there might be someone in the other corner playing jenga ...

Mr Ferguson: So it would be more accurate...to call it an entertainment venue?

Mr Glanville I would call it an entertainment venue.

Mr Ferguson So not an old fashioned bar as such?

Mr Glanville No No.

[17] Mr Glanville's answer is supported by the description of the activity in the application document and the description in the Alcohol Management Plan (AMP) for the Common Room.<sup>8</sup>

[18] It was another Licensing Inspector that encouraged the applicant to consider an amendment to the description of the premises because the likely greatest proportion of income would be generated from alcohol sales. We note that the definition of tavern is as follows:

**tavern—**

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<sup>8</sup> Exhibit MG 2 Alcohol Management Plan, first five pages in particular.

- (a) means premises used or intended to be used in the course of business principally for providing alcohol and other refreshments to the public; but
- (b) does not include an airport bar

[19] Case law has identified that proportion of income is not the sole determinant of whether a premises is a tavern.<sup>9</sup> The following factors are relevant:

- the nature and configuration of the premises;
- public perception;
- reasons for public patronage;
- revenue;
- Applicant's evidence that most of income likely to be generated from alcohol sales
- whether there is a cover charge;
- trading times/days;
- nature of entertainment and facilities; and
- food and range of beverages offered.
- Menu and evidence of applicant

[20] Mr Glanville said that because his business was not a 'restaurant' he needed to "tick the box" for a 'tavern'. We are not certain that his options were limited in that way. The Act only provides for four categories of licence to be issued; an on licence, off licence, special licence and club licences. There are some requirements for sub categories of BYO restaurants, caterers, and whether off licences are on site or at a distance and for auctioneers. There are also compulsory requirements for some types of on and off license. In the case of a Tavern, s119 of the Act requires that areas are designated as restricted (not accessible by those under 18) or supervised (those under 18 must be accompanied by an adult). From a compliance perspective the distinction between a tavern and an entertainment venue is material. S119(2) does, however, provide that for other types of on licence, a licence *may* contain a condition designating an area restricted or supervised. A condition of this kind has been requested by the applicant.

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<sup>9</sup> *L & H Graces Place Ltd v Marsh* [2017] NZARLA 448 at [63] and [64].

[21] The form of public notice required by the Sale and Supply of Alcohol Regulations 2013 requires the general nature of the business to be conducted to be specified. The form provides a prompt “(type of business, for example, hotel, tavern, restaurant, entertainment/night club.)”<sup>10</sup>

[22] The evidence of Mr Glanville satisfies us that his proposed entertainment venue has some unique characteristics but is not a tavern. It is clear on the evidence that it was never intended that the premises be a tavern. We accept that the description as ‘entertainment venue’, although more accurately describing the activity, also had the potential to confuse some people. That is because the current use of the premises is as an unlicensed ‘pool hall’ and without knowing the details of Mr Glanville’s intended use and aspirations for the pool hall, there is the potential to jump to conclusions about the true nature of the activity. We heard concerns expressed by Mr Simons and Mr Broughton that a more traditional ‘pool hall entertainment venue’, may encourage loitering and disorderly behaviour that could impact on amenity and good order. They were equally concerned about the prospect of a tavern as a licensed traditional ‘pool hall activity’.

[23] Having seen the public notice, a potential objector has the opportunity to inspect the application and supporting material at the Council Offices. The application was supported by an extensive Alcohol Management Plan that describes in some detail what is intended. This is consistent with the undertaking given by Mr Glanville.

[24] As to whether there are any procedural implications arising from the difference between the public notice and the application documentation, we note that the description in the public notice of ‘tavern’ and the proposed licensed hours sparked the local residents’ associations into action. Two residents’ associations objected, and the Community Board requested to be heard. Individuals also objected and appeared at the hearing. We heard evidence that the residents’ associations had support from their members and from local businesses about their concern that granting the licence may see a return to the problems associated with the Bus

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<sup>10</sup> Form 7



Exchange facility.<sup>11</sup> We do not believe that the description in the public notice materially disadvantaged any potential objector (who has an interest greater than the public generally). If anything, the reference to ‘tavern’ and the hours of 8am – 2am the following day 7 days a week caused heightened concern amongst businesses and residents once it was brought to their attention. The concerns of local residents and local businesses were well represented by those who did attend the hearing. The weight to be given to the issues raised in objections is not determined by the number of objections. We have considered all of the objections in reaching our decision.

[25] We have, therefore, proceeded to consider the application on the basis that it is an entertainment venue, however, we have taken into account the special character as described in Mr Glanville’s undertaking.

### **Evidence at the hearing**

#### *Applicant*

[26] Mr Glanville gave evidence as to his background and experience in social and community work and in particular with youths. He explained that he had a vision of a different kind of entertainment venue or bar where people could come together and play pool, darts and other board and card games (not gambling) and enjoy great food and a beer (or other beverages). He spoke of his experience in establishing Arcadia Pinball Emporia and Retro Arcade (‘Arcadia’) in Barbados Street, a similar venture which focused on retro pinball and video games for entertainment. He said Arcadia had become a family friendly and inclusive bar that was enjoyed by a range of age groups. Mr Glanville had a vision that he could ‘socially engineer’ the space. We understood him to mean that he would actively encourage engagement and a sense of community amongst patrons. He had established this at Arcadia through a membership facility where he required patrons to provide the names and contact details in return for discounts, vouchers and special events. He explained that in doing so he could know who his patrons were and encourage them to return and participate in events. He felt this gave him greater control of his space and the ability

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<sup>11</sup> Letter from Arthur McKee 11 October 2018 tabled by Helen Broughton.

to create or socially engineer the culture. He charges non-members extra on alcohol.

[27] Mr Glanville explained that whilst he had in the past been outspoken about the need to encourage a party culture in Christchurch during the promulgation of the now abandoned Local Alcohol Policy, he was now focused on finding ways to further his social and community endeavours. He believed that, as he had experienced at Arcadia, the Common Room had the potential to achieve that. He explained the types of activities and groups that he hoped to encourage. His vision was to see a range of demographics attending the venue at different times. He hoped to appeal to older age groups, such as 3<sup>rd</sup> Age, as well as younger working people and families. Although he did not wish to actively discourage younger people, he did not wish to encourage premises to be 'colonised' by any particular group that might result in anti-social behaviour. He would like to see pool and dart tournaments, people actively engaged in playing 'old fashioned' board and card games, as well as enjoying '50's' style swing and rock and roll music. He envisaged small bands (similar to those that play in a local bar), but not "on stage with a sound rig".

[28] Mr Glanville answered questions from the agencies about the intended use and the nature of the business. We have already referred to Mr Ferguson's questions that made it clear that the business was not a tavern or a traditional pool hall. He explained that his intention was that the premises would usually only open during the hours of 10am to 10pm or midnight, however, he had listened to the advice of the District Licensing team and extended his application from 8am to 2pm to provide greater flexibility, although he did not intend to open regularly to 2am. This would avoid the need to apply for special licenses for one off events. He said he would like to explore the breakfast market and could see it being more likely he would open earlier, rather than the later times. In terms of social engineering he explained that you can do things to change the behaviour or culture for example; by the food you serve, if people see and smell food they will want to eat. He said in his experience if potential customers see people in conversation, they will understand the type of premises that it is and decide whether it's for them or not. Mr Glanville was seeking

to establish something with a point of difference. He wished to foster creativity and facilitate common interests amongst his patrons.

[29] Mrs Williams asked about the name 'the Common Room' and the possible connotations that it might target young people. Mr Glanville acknowledged that link but indicated that it had broader connotations about the things people have in common. Mrs Williams also asked Mr Glanville about what he would compromise on if it took time to get the business up and running. He answered "I'll shut before I run something dangerous. I will not do it." He said either his concept was going to work or its not. If not, he would stop, rather than transform to something else. He said he was not interested in running a pub like others do.

[30] The residents all asked Mr Glanville questions, particularly about the intended use and also his proposed hours. They put to Mr Glanville their concerns about historical anti-social behaviour in the area and from the Bus Exchange. Mr Glanville assured the residents that he did not wish to change the use to a tavern, remove the pool tables and turn it into a party venue. In answer to questions from Mr Simons, Mr Glanville explained that he would be on site for at least 20 – 30 hours a week and the remaining time he would be overseeing Arcadia. Mr Simons questioned why there was a need to be licensed when Mr Glanville's intention was to effectively create a 'community centre' of sorts. He asked whether an alcohol licence was needed to make the business commercially viable. Mr Glanville said yes. He explained that he came up with the idea as a 'relatively unorthodox' means of achieving his community aspirations without relying on funding and grants. He acknowledged he was not going to make as much money as other bars, but it is a feature of his business plan. Mr Glanville questioned why a pub should just be about food and alcohol. He said, "if we are managing the harm, and adopting the consumption of alcohol, not so much as being bad, but [as] something positive and 'pro social.'".

[31] Mr Simons asked for assurances, other than his personal credibility that there will not be additional harm to the community. Mr Glanville said that the Common

Room would cause harm if it's not properly managed. He assured that the Common Room will not cause harm and it will be properly managed.

[32] Mr Simons questioned whether Arcadia had morphed into something that it was not originally intended to be. Mr Glanville explained that the intention was to have versatile spaces to foster creativity. He characterised it as an arcade and a bar or 'barcade' as had been used to describe similar activities overseas. We note here that Arcadia's on licence is for an entertainment venue and tavern.<sup>12</sup> Mr Glanville acknowledged the hybrid nature of the activity. He explained that at Arcadia more revenue comes from video games than from alcohol. He said not everyone has a drink. There are no video games at the Common Room because there is a non-competition clause with 'Time Zone'. He was also concerned that video games at the Common Room may encourage a congregation of young people, given the location.

[33] Mr Glanville acknowledged there would be more young people attracted to the Common Room than at Arcadia because of the location, and that needed to be managed. Mr Glanville clarified that at different hours of the day there would be different age groups as a target market.

[34] In answer to questions from Mrs Silcock, Mr Glanville explained what changes he would make to improve the image of the premises. He explained that with lighting and paint he would improve the visual appearance of the space.

[35] In answer to questions from the Committee Mr Glanville was reluctant to offer a condition that restricted how he wished to operate, however, he gave assurances and an undertaking that he would operate as he had explained in his evidence. He made it very clear he was not interested in running a 'basic waterhole' or a licensed "pub for pubs sake".

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<sup>12</sup> 60/ON/149/2018

### *Agencies*

[36] Mr Ferguson, Senior Licensing Inspector had filed a report under s103(2) of the Act and spoke to aspects of the report. In particular he focused on the requirements that we are to have regard to under s105 of the Act. On the issue of minimising alcohol related harm, he said that there is a balance, because there is a need for reasonable access to alcohol as the greatest proportion of the community consume alcohol. New premises can establish. In this case he noted the business was being established in a large commercial area, 90 metres from the nearest residents and from his experience he would expect the harm to be minimal.

[37] Senior Constable Steele presented an Incident Report for the area within 500m of the premises. The report showed a reduction in alcohol related incidents in the period January 2015 - August 2018 when compared with the level of incidents immediately post-earthquake. Immediately post-earthquake the Central City was inaccessible and there was an increase in alcohol related incidents in Riccarton. The lack of a bar facility at the University also contributed to an escalation of disorderly behaviour. It was also of note that much of the alcohol related behaviour recently had been during the day time and not in the late evening. The Police are not opposed to the licence being granted.

[38] Mrs Williams spoke on behalf of the Medical Officer of Health and reiterated his request for 1am closing but did not oppose the application.

### *Objectors*

[39] Mr Simons spoke to the Riccarton Bush Kilmarnock Residents Association objection and the concerns that it had about the application adding another licensed premises to an area with a number of bars already. He identified 4 other bars or taverns in the area, The Craic, Wilsons Bar (TAB), the Fox and Ferret, the Volstead Trading Company (towards the rail way line end of Riccarton Road) and Robbies Bar. He said that he was concerned about the effects on the residential area, noise from the Craic Bar, vandalism, drinking and drugs, and difficulties with the Bus Exchange. He said that Mr Glanville was moving into an area that the community

was desperate to change to a more community-based area. He supported the introduction of a community centre, but not one that serves alcohol under a tavern licence. He is concerned that the rules around granting licences put objectors in the position of proving no harm will be done, rather than the applicant having to prove it. He submitted that Mr Glanville's evidence doesn't demonstrate that harm will be minimised.

[40] Mrs Broughton, who has been an elected member for the Riccarton Area for more than 20 years, gave evidence in her capacity as a resident of a nearby street. Mrs Broughton spoke of past experience of neighbours with disorderly behaviour and vandalism from young people and her concerns that the efforts the community had made to improve the situation could be undone by the introduction of this licensed premises. Mrs Broughton urged us to consider reducing the hours of operation to close at midnight or 1am to reduce the impact on residents.

[41] Mr Broughton acknowledged the efforts that Mr Glanville had made to explain the type of activity he intended. Personally, he had not experienced noise from the Craic bar, however, he was concerned that the nature of the premises may change in time and cause problems.

[42] Clare Mouat, a resident of Riccarton, some distance from the premises was also concerned about the increase in numbers of licensed premises.

[43] Mrs Silcock gave evidence on behalf of the Central Riccarton Residents Association representing the residential area South of Riccarton Road, bounded by the railway, Blenheim Road and Wharenui Road. Mrs Silcock spoke of her residents' association concerns on the southern side of Riccarton Road and the disorderly behaviour associated with an increase in licensed premises.

[44] Mr Mora spoke in support of the objectors. He spoke of the Community Board concerns about the proposed hours of operation, lack of parking for the premises and the impact of parking on local streets when the proposed road works on Riccarton Road commence. He was concerned that if the premises is open to 2am and people would be returning to their cars they could cause distress to local

residents. He was concerned that the name ‘The Common Room would attract youth. He said that if everything the applicant had said would occur happened there would be little to object to. He was concerned about the possibility that the activity may change, and the pool tables could be removed. He said that he would be more comfortable for a 12-midnight closing time.

[45] Mr McFarlane spoke about the Christchurch Alcohol Action Plan, a non-regulatory document.<sup>13</sup> We note that this is a document that has been promulgated by the Christchurch City Council, Canterbury District Health Board and New Zealand Police. It is not a Local Alcohol Policy within the meaning of the Act.

#### *Mr Glanville’s closing submissions and undertakings*

[46] Mr Glanville responded to a number of concerns raised by the objectors, particularly those that challenged his sincerity. He reiterated it was not his intention to be a publican and his commitment to pursuing his vision which was community and values based. He gave his undertaking of the nature of the premises as referred to earlier at [9] above. Mr Glanville was asked by the Committee whether he would offer a condition limiting his hours as requested by some Objectors and the Medical Officer of Health. He declined to do so because he wished to retain flexibility for some events.

#### **Evaluation and findings under s105 and 106 of the Act**

[47] The role of s105 and how it is to be approached in relation to applications has received plenty of judicial attention.<sup>14</sup> The approach, when considering the licence application, is succinctly summarised as follows:<sup>15</sup>

“Is the decision-maker satisfied, having regard to all the relevant factors set out in s105(1)(b)–(k) that the grant of the licence is consistent with the object of the Act?”

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<sup>13</sup> <https://ccc.govt.nz/culture-and-community/community-safety/alcoholactionplan/>

<sup>14</sup> *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315 per Heath J; *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689 per Moore J; and *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382 per Gendall J.

<sup>15</sup> *Re Venus NZ Limited* at [20] and *Auckland Medical Officer of Health* at [60] see Westlaw NZ, SA 105.02

[48] The duty to “have regard to” requires that we turn our mind to the listed criteria. We are required to give them “genuine attention and thought”. The weight to be attached to each is a matter for us to decide.<sup>16</sup> In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123, Clark J summarised the applicable principles in respect of the renewal of a licence, however, they apply equally to a new licence. We further summarise the following:

- (a) There is no presumption that an application will be granted.<sup>17</sup>
- (b) The DLC, and the Authority, after having regard to the criteria in the Act, is then to step back and consider whether there is any evidence indicating that granting the application will be contrary to the object in s4 of the Act. The test is as articulated in *Re Venus NZ Limited* (as referred to at [47] above).
- (c) The application of rules involving onus of proof may be inappropriate<sup>18</sup>, and similarly, there is no onus on the reporting agencies to prove the application should not be granted;
- (d) The criteria for the issue of licences, and for renewal, are not to be interpreted in any narrow or exhaustive sense. The Authority (and DLC) may take into account anything, which from the terms of the statute as a whole, appears to be regarded by the legislature as relevant to conditions and the terms on which they should be granted...
- (e) The Authority is not required to be sure that particular conditions will reduce alcohol abuse. We are entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility

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<sup>16</sup> *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC)

<sup>17</sup> *Christchurch Medical Officer of Health v G and J Vaudry Limited* [2016] 2 NZLR 382 at [54]

<sup>18</sup> Above note 15.



of meeting the statutory objective...then we are entitled to test whether that possibility is a reality.<sup>19</sup>

[49] Further, the evaluative function is an assessment of risk.<sup>20</sup> Clark J said at [43]

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

*The object of the Act.*

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

Object

(1) The object of this Act is that—

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

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

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

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

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

[51] There are two arms to the Object of the Act and both must be met. The Objectors were sceptical as to whether the applicant could successfully carry out his proposed use. They feared it may morph into something that would not be undertaken safely and responsibly. As Mr Mora, on behalf of the Community Board said, if he could be assured the applicant would carry out the activity as he intended, there would be little to complain about.

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<sup>19</sup> *My Noodle Ltd v Queenstown Lakes DC*. [209] NZCA 564

<sup>20</sup> *Lion Liquor*

[52] In terms of the first arm we need to be satisfied that the sale, supply and consumption of alcohol at the Common Room will be undertaken safely and responsibly.

[53] The second arm requires that harm caused by excessive or inappropriate consumption of alcohol should be minimised. 'Minimised' means reduced to the smallest amount, extent or degree. It does not mean eliminate altogether.<sup>21</sup> In *Lion Liquor Retail Limited*, Clark J held that "the legislative framework enacted by the 2012 Act was intended to restrict rather than relax drinking laws. The legislative measure proceeded on the basis of clear evidence showing a link between availability of alcohol and alcohol-related harm." Our role is an evaluative one, and we need to have regard to the extent to which granting a licence with conditions will minimise alcohol related harm.<sup>22</sup> There is an assumption built in to the Object of the Act that excessive and inappropriate consumption of alcohol causes harm i.e. harm caused by excessive or inappropriate consumption of alcohol.

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

[55] The remaining matters in s105 all serve to assist us to evaluate whether both arms can be met.

[56] The main issues of contention in this case related to whether this second arm of the Object could be met; the effect on amenity and good order and the hours of operation. We come back to our conclusions on the Object of the Act after considering the other s105 matters.

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<sup>21</sup> See Shorter Oxford Dictionary; *Re Peony Spirits Limited* [2014] NZARLA 696 at [19]; *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980 at [18] and *Auckland Medical Officer of Health v Birthcare Auckland Limited* [2015] NZHC 2689 at [115].

<sup>22</sup> Alcohol related harm is defined in s5 to mirror that in s4(2) of the Act.

*The suitability of the applicant*

[57] The NZ Police have not opposed the application. There is no evidence to support a conclusion that Mr Glanville is unsuitable to hold a licence. We found the applicant to be knowledgeable as to the requirements of the Act and committed to ensuring that the premises would operate in accordance with the requirements of the Act. Further his experience working with youth, places him in a unique position to be able to respond to any issues of anti-social behavior that the objectors were concerned about should they arise.

*Any relevant local alcohol policy*

[58] There is no relevant Local Alcohol Policy (LAP). The objectors and Community Board urged us to have regard to the fact that under the draft LAP (as it was) the Council had proposed a 1am closing time for suburban licensed premises. We note that the intentions of Council were subject to a statutory submission and appeal process and it was subsequently withdrawn by the Council. The draft LAP has no legal status. We have given no weight to the draft LAP and have assessed this application on its merits on the basis of the evidence we heard.<sup>23</sup> We note here that Mr McFarlane referred us to the CAAP. It is not a Local Alcohol Policy prepared under sub part 2 of the Act. We did not have the benefit of legal submissions as to how it might fit into the mandatory criteria under s105 so did not consider it.

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

[59] The hours of operation are an issue of some concern for Objectors. The applicant's intentions are that the usual operation of the premises would be from 10am to 12 midnight, with earlier closing of 10pm on weekdays. However, to provide some flexibility to either open earlier to enter the breakfast market, or to have later closings for special events, the applicant had been persuaded by the Licensing team to request the extended hours of 8am to 2am the following day 7 days a week. Objectors were concerned about the early opening hours due to the number of school children using the Bus Exchange and the potential for alcohol related harm

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<sup>23</sup> See *Shady Lady Lighting Limited v Lower Hutt Liquormart Ltd* [2018] NZARLA 198 at [130] in relation to a proposed amendment to an LAP not yet in force.

from them being exposed to potentially intoxicated persons at that time of the day. We find, however, that given the nature of the use of the venue and the intention to provide an early breakfast service, that there is little real risk of alcohol related harm arising from an early opening time. We have taken into account Mr Glanville's undertaking and the content of the AMP.

[60] In terms of the 2am closing, we heard concerns expressed by objectors and the Community Board that a later closing time could result in nuisance effects on surrounding neighbourhoods if patrons were returning to their cars at 2am. The Council is also proposing significant road works on Riccarton Road which will limit the amount of parking on Riccarton Road for more than 12 months. Mrs Broughton provided a copy of a decision of the Alcohol Licensing Authority from 2009 for the Bush Bar in Upper Riccarton.<sup>24</sup> That case, decided under previous legislation, turned on its own facts, however, that case highlights the concern that particularly on week days residents may be impacted to a greater extent than on weekends.<sup>25</sup>

[61] In this case we find that the concerns expressed by residents about a 2am closing are reasonably based, given their evidence of past experiences with disorderly behavior in the neighbourhood. Limiting the licensed hours of operation, at least for the first year of operation, is a precautionary mechanism to reduce the impact on amenity and good order in the neighbourhood.

[62] The Medical Officer of Health also requested a reduction of hours to 1am during the first year of the licence to allow the agencies to monitor for compliance with the Act.

[63] We find that due to the proximity of the premises to Kauri, Rimu, and to a lesser extent due to distance, Rata Street that the impending road works on Riccarton Road, creates the potential for patrons to park on those streets when attending the Common Room and has the potential to reduce amenity by creating disturbances to residents if that occurs in the early hours of the morning. We find those effects to have the potential to be more than minor during the working week, although the

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<sup>24</sup> *An application by the Bush Bar Limited PH836/2009*

<sup>25</sup> *Ibid* at [72]

frequency of the effect is not known. On that basis we consider that it is reasonable to restrict the hours of operation to 8am – 1am Sunday to Thursday and 8am to 2am the following day on Friday to Saturday.

*The design and layout of any proposed premises*

[64] We find that the design and layout of the premises is appropriate for the intended use. We find that the applicant’s intended improvements to the appearance and lighting of the premises to be appropriate and improve the accessibility to, and safety around the building.

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

[65] The applicant has explained the range of games that will be available as entertainment for patrons including pool, darts, a range of board games and electronic games.

*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:*

[66] Amenity and good order is defined in s5 of the Act as:

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

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

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

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

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

- (i) current, and possible future, noise levels:
  - (ii) current, and possible future, levels of nuisance and vandalism:
  - (iii) the number of premises for which licences of the kind concerned are already held; and
- (b) the extent to which the following purposes are compatible:
- (i) the purposes for which land near the premises concerned is used:
  - (ii) the purposes for which those premises will be used if the licence is issued.
- (2) ...

[68] We have had regard to the fact that currently the amenity of the area is affected to some degree by the noise and business of Riccarton Road and there is evidence from residents about hearing noise from other licensed premises, although the source is not specifically identifiable. Clare Mouat is closer to the Craic and experienced noise. The experience of and Mr and Mrs Broughton was different at their property. The closest residential property is 90m away from the Common Room. We have found that there is the potential for the amenity and good order of the residential areas to the north of Riccarton Road to be impacted by patrons returning to parked cars after 1am during the working week.

[69] For that reason, we have restricted the licensed hours to 8am to 1am the following day Sunday to Thursday and 8am to 2am the following day Friday and Saturday. Aside from that we do not have sufficient evidence to find noise generated from the Common Room will disturb residents over and above general noise from this busy commercial area. We have considered the applicant's noise management plan (included in the AMP) and are satisfied that the steps contained in it will adequately mitigate noise impacts.

[70] The Inspector and the objectors all referred to concerns about vandalism and nuisance that has occurred in the locality in the past. Although that cannot be blamed entirely on licensed premises there is evidence that the locality is frequented by many young people, including students from the University and those using the Bus Exchange. The evidence from the Incident Report produced by the Police is

that there has been a reduction of alcohol related incidents since 2015 and that they predominantly occur during the day time. The applicant has provided a detailed AMP which sets out the means that the applicant will seek to ensure that amenity and good order of the locality will not be reduced by a more than minor extent.

[71] Mr Glanville's evidence also satisfied us that he will ensure that any issues arising from litter, tagging and loitering in the vicinity will be addressed promptly so as to ensure any effects are no more than minor.

[72] The objectors were concerned that the neighbouring Bus Exchange meant that children would be exposed to intoxicated people when they were on their way to school in the mornings or on their way home in the afternoon. We are satisfied on the evidence that is unlikely to occur due to the nature of the premises as described in Mr Glanville's undertaking and the AMP. The applicant's ordinary hours are intended to start at 10am, however, the applicant wishes to consider offering breakfast at the earlier time of 8am. Although the applicant said that it is likely that the majority of his income is likely to be from the sale of alcohol, the focus of the premises is on the range of entertainment activities described in his undertaking and in the AMP, not on excessive drinking culture.

[73] There are 3 'tavern' like premises in the locality and a licensed TAB, as well as a significant number of licensed restaurants. The tavern premises currently have closing times of 3am, although the evidence was that most closed before midnight. No issues affecting amenity and good order of the locality were reported by the Inspector or the Police. The Police Incident Report revealed most reported incidents occurred through the afternoon period rather than late in the evenings. We are satisfied that to the extent that there may be a migration of patrons from one venue to the next, due to their location within the Riccarton Commercial Area, it would not involve patrons passing through residential areas.

[74] Having heard the evidence of all parties and considered the submissions we find that there has been a historical issue in this location of alcohol related (and drug related) incidents and anti-social behaviour that plagued residents and businesses

for a number of years. In recent times things have improved. Although for a time the Bus Exchange was a source of anti-social and criminal behaviour, that too has improved through the collective work of the local community and the police. The residents are understandably reluctant to see a regression to that time.

[75] Although Mr Glanville has described his proposal as unique or unorthodox and the objectors are sceptical of the ability of Mr Glanville to deliver on his vision, we must assess the application on its merits and have regard to the evidence in light of the statutory requirements. We heard evidence from the Police and Objectors about the contributors to the past issues, some of which have now been resolved (around the Bus Exchange) or are no longer a significant factor as the hospitality industry recovers in the central city. Taking into account that evidence and the nature of the applicants intended use, we find there is a very low risk that issuing a licence for the Common Room will result in a return to the circumstances that concerned the residents for many years.

[76] We are of the opinion that the amenity and good order of the locality will unlikely be reduced, by more than a minor extent, by the effects of the issue of this licence with the conditions we have proposed.

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

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

[77] We do not find that the amenity and good order of the locality to be already so badly affected that it is undesirable to issue a further licence. To the contrary the amenity and good order of the area has improved considerably due to the combined efforts of the community and police. Having heard from Mr Glanville and considered the AMP we find it more likely that the amenity and good order of the vicinity will be improved through responsible management as set out in the AMP and improvements to lighting and appearance of the premises.



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

[78] The applicant satisfied us that he had appropriate systems, staff and training to comply with the law. The applicant has provided a detailed AMP and Host Responsibility Policy.

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

[79] There are no other matters dealt with in the Agency reports that have not otherwise been considered above.

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

[80] We have not taken any such matters into account.

## **Conditions**

[81] As noted at [63] we find that the hours of the licence should be limited to a 1am closing Sunday to Thursday.

[82] The content of the AMP formed part of the application and Mr Glanville's commitment to comply with it satisfied us that the requirements of the Act will be met. Mr Ferguson did not think we needed to add a condition requiring compliance with the AMP on the basis that it formed part of the application document. We have a different view. In this case the content of the AMP is an important reassurance as to how the requirements of the Act will be met, and in particular how the risk of harm from excessive and inappropriate consumption of alcohol will be minimised. We find that it is appropriate that the premises be managed generally in accordance with the AMP as submitted. In this case there was concern about the precise nature of the activity, and Mr Glanville said it was a unique proposition. We tested the need for a condition with Mr Glanville but he was reluctant to be bound by a condition in case he had not provided for everything in his plan. We find that by qualifying the

compliance with the AMP with the words “generally in accordance with” there is an appropriate balance between certainty and allowing for minor changes or corrections. For those reasons we have included a condition requiring the premises to be managed in general accordance with the AMP.

### **Findings as to whether the grant of the licence meets the Object of the Act**

[83] Having had regard to the matters in s105 and 106 of the Act, we are satisfied the granting the licence subject to conditions achieves both arms of the Object of the Act. That is because the applicant has provided detailed evidence and undertakings as to the nature of his business and the ways in which he will ensure the safe and responsible sale, supply and consumption of alcohol and the ways in which harm caused by excessive and inappropriate consumption of alcohol will be minimised.

[84] One of the reasons that the Act provides that when a new licence is granted it is limited to 1 year, is a form of probationary period, whereby the agencies and communities can see whether the applicant remains suitable to hold a licence. The evidence supports the grant of a licence of 1 year.

### **Decision**

[85] The Committee is satisfied that after standing back and evaluating all the matters addressed at [9] to [84] above granting the application subject to conditions achieves the Object of the Act.

[86] Accordingly, pursuant to s.104(1) of the Act the application by Future Pacific Limited for an On-licence for the Common Room at 119 Riccarton Road is granted for a period of 12 months subject to the following conditions:

#### **The Licensed Premises**

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

### **Discretionary conditions – section 110 (1)**

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

### **Compulsory conditions – section 110 (2)**

- (d) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day to any person who is not present on the premises to dine.
- (e) Alcohol may only be sold the following days and during the following hours when the premises are being operated as an entertainment venue:

**Sunday to Thursday 8am to 1am the following day**

**Friday and Saturday 8am to 2am the following day**

- (f) Water will be freely available to customers on the premises while the premises are open for business.

### **Section 117 – Other Discretionary conditions**

- (g) The following steps must be taken to promote the responsible consumption of alcohol:
  - (a) The licence must implement and maintain the steps proposed in The Common Room Host Responsibility Policy<sup>26</sup> aimed at promoting the reasonable consumption of alcohol.
- (h) The premises shall be managed in general accordance with The Common Room Alcohol Management Plan submitted with the application.

### **Section 119 – Restricted or supervised areas**

- (i) The whole of the premises is designated as a supervised area after 9pm.

### **Other restrictions and requirements**

- (j) Section 51 – Non-alcoholic drinks to be available
- (k) Section 52 – Low alcoholic drinks to be available
- (l) Section 53 – Food to be available
- (m) Section 54 – Help with information about transport to be available
- (n) Section 56 – Display of signs
- (o) Section 57 – Display of licences
- (p) Section 214 – Manager to be on duty at all times and responsible for compliance

[87] A copy of the licence setting out the conditions to which it is subject is attached to this decision. The licence shall be issued for 1 year.

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<sup>26</sup> As attached to the application.

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

**DATED** at CHRISTCHURCH this 29th of October 2018.

A handwritten signature in black ink, appearing to read 'CERobinson', with a long, sweeping flourish extending to the right.

Cindy E. Robinson

Chairperson for and on behalf of the Christchurch District Licensing Committee