

**Decision Number 60D [2018] 3405**

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

**AND**

**IN THE MATTER OF** an application by **BOTTLE O  
HALSWELL LIMITED** for an off  
Licence pursuant to s.99 of the Sale  
and Supply of Alcohol Act 2012 in  
respect of premises situated at, **29  
Ensign Street Christchurch**, known  
as **Bottle O Halswell**.

**BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE**

Chairperson: Ms C Robinson  
Mr R Wilson JP  
Ms A Keir

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**DECISION OF DISTRICT LICENSING COMMITTEE**

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## Introduction

[1] This is an application for an off-licence by Bottle O Halswell Limited ('the applicant') to establish an off-licence Bottle Store under the brand name "Bottle O". The premises is located in a newly developed local shopping centre at 29 Ensign Street in the suburb of Halswell known as the Oaks Centre. The general area is predominantly residential and includes a Church, pre-school and medical centre adjacent to the site. Oaklands School is located nearby. The application is for the sale of alcohol between 9am and 11pm, seven days a week.

[2] Although the Oaks Centre is newly constructed, it is on the site previously occupied by a tavern, known as the Quarry Bar and Bistro and later renamed Ted's Bar and Grill ('the Quarry Bar'). The Quarry Bar held an on and off licence (for over the bar sales) up until September 2013 when the tavern was destroyed by fire.

[3] The Oaks Centre is not yet fully tenanted; however, there is a gym and pharmacy, and will likely include a dairy. We were told that the unit adjoining the premises is earmarked for the return of Ted's Bar and Grill (a restaurant and bar), however, it will also require an alcohol licence. We record we are aware that an application has been made but has yet to be heard. In this decision we do not speculate on whether a licence will or will not be granted, that is a matter for the District Licensing Committee on another day. We have noted the intended use for completeness. The Centre also provides 10 storage units which are accessible off Balcairn Street and back onto the premises. The buildings within the Oaks Centre create a court yard effect with buildings on the perimeter facing inwards. Carparks are located within the central areas. There is also a row of carparks along the western boundary between the South West Baptist Church and the Oaks Centre. We heard evidence that those carparks are used by the Church and subject to an easement. There is access to the Oaks Centre from Balcairn Street and Ensign Street.

[4] The application was publicly notified on the Council's website on 27 July 2018 and remained on the website until 17 August 2018. A notice was placed on the premises and later on construction fencing because the premises was under construction. Public Notification attracted 37 objections from local residents and businesses and included, the Halswell Residents Association, Southwest Baptist Church, the Principal of Oaklands School, and Lighthouse Preschool. Petitions were also lodged including 32 signatures. The application was not opposed by the NZ Police or the Medical Officer of Health ('MOH'). The District Licensing Inspector recommended that the licence be granted subject to conditions.<sup>1</sup>

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<sup>1</sup> Report of Martin Ferguson, Licensing Inspector, 4 September 2018.

[5] A hearing of the application took place on 23<sup>rd</sup> and 24<sup>th</sup> of October and 29<sup>TH</sup> November 2018. We heard evidence and submissions on behalf of the applicant (Mr Richard and Mrs Wendy Gibbons), Licensing Inspector Martin Ferguson, Police Constable Graeme Jolliffe and the representative of the Medical Officer of Health (MOH), Ms Helen Barbour. We heard from the following Objectors:

- Halswell Residents Association – Secretary David Hawke
- Richard and Susanne Holder
- Geoff Siave
- Craig Forster
- Anna-Marie Delaney
- Light House Pre School – Lisa Saunders Centre Manager
- Erin White
- Southwest Baptist Church - Nick Regnault
- Amy Smit
- Sonya Carpenter
- Rod Liddell
- Kathy Ousey
- Elizabeth Manson

[6] We also heard from Mr Mike Mora and Councillor Anne Galloway on behalf of the the Waipuna/Halswell Hornby-Riccarton Community Board ('the Community Board').<sup>2</sup>

[7] At the conclusion of the primary evidence on 24<sup>th</sup> October we adjourned the hearing for the purpose of receiving further evidence to assist with our Inquiry. We also indicated that it was our intention to undertake a site visit and issued directions accordingly.<sup>3</sup> We undertook a site visit at the conclusion of the hearing.

## **Submissions and Evidence**

### *The Applicant*

[8] The applicant was represented by Mrs Wendy Gibbons a director and shareholder. Mr Richard Gibbons and her son Marc Gibbons are also directors. Marc Gibbons will manage the store. We note here, when it came to cross examination, we allowed Mr Richard Gibbons to be sworn in and join Mrs Gibbons to give evidence so that he could answer questions on matters that were within his direct knowledge. Marc Gibbons was unable to attend due to a bereavement.

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<sup>2</sup> Leave was granted for the Board to appear and present submissions in support to the Halswell Residents Association pursuant to s204(2)(b) of the Act.

<sup>3</sup> Minute of Committee, 29 October 2018.

[9] Bottle O is not a franchise; however, store owners have a licence to use the brand. Mrs Gibbons told us there was a high level of focus on ensuring the brand name does not diminish in any way, including a series of inspections and reviews of the store.

[10] Mr and Mrs Gibbons are experienced licensees. They currently own and operate the Bottle O located on Lincoln Road and the Black Horse Hotel next door to Bottle O Lincoln Road. Mrs Gibbons is the proprietor and duty manager of the Hotel. Mrs Gibbons gave evidence that the Black Horse and bottle store did have problems before they took it over, however, they have 'cleaned it up'. She said that there are now residential areas behind the Hotel and they have worked with that community to address any problems. They have no desire to have conflict with anyone in the neighbourhood. More recently they have opened another on-licence known as 'The Long Knight', located in Longhurst subdivision in the wider Halswell area. They also hold an off licence for over the bar sales.

[11] Mrs Gibbons said that the usual opening hours for the premises would be from 10am, which is consistent with their existing operation in Lincoln Road, and closing hours would likely be around 8pm earlier in the week with later closing times later in the week. Mrs Gibbons said the hours of 9am to 11pm were requested as they are consistent with the national default hours and with 80-90% of bottle stores in Christchurch. Mrs Gibbons explained that they did not expect to be open the full extent of the hours sought, but that it would allow them some flexibility to cater for busy times such as Cup Week and Christmas. In answer to questions from Mr Hawke, Mrs Gibbons explained that hours would be determined by demand. In terms of cup week their experience was most people were organised in advance, but they wished to retain flexibility.

[12] Mrs Gibbons believed the bottle store did not pose a risk to school children because it was open after the start of school and that they would not sell to minors. It is also part of their Host Responsibility Policy not to serve anyone in school uniform. We note the Policy is worded "We reserve the right to refuse service to individuals we consider are in breach of the Sale and Supply of Alcohol Act 2012 or any individual that presents themselves in school uniform (regardless of age)." Mrs Gibbons explained a discretion is to be exercised if someone is obviously of age and in fancy dress. The policy is in place at Lincoln Road and even if the student is 18 and legally able to purchase alcohol then they refuse to serve them in school uniform as they do not consider them to be appropriately dressed to purchase alcohol when they are obviously still at school.

[13] Mrs Gibbons also drew our attention to the Henry's Bottle Store in Yaldhurst Road which is across the road from a pre-school and although there was initial opposition to the licence and the hours were limited, she said the pre-school found there were no issues of concern and the hours were extended.

[14] Mrs Gibbons referred to the location of the premises being within the Oaks Centre complex and not directly visible from the street. She said people would need to walk or drive into the complex to see the store. Mr Gibbons accepted, however, that it would be possible to see the store if walking past the Oaks entrance on Ensign Street.

[15] Mrs Gibbons spoke of her experience and commitment to operating a premises in a safe and responsible manner. She spoke of experiences working with neighbours at the Lincoln Road Bottle O, particularly patients from Hillmorton Hospital. She gave examples of having to assist patients with mental health issues visiting the store. Mrs Gibbons said she her staff were well trained and tested to identify issues which are not necessarily alcohol related.

[16] Mrs Gibbons noted the absence of Police opposition which she said indicated the area was not high risk. She explained the premises was small and so there is not the capacity to have 'massive' pellets of cheap alcohol. She referred to the advertising which would be in line with the strict criteria of the Bottle O brand. There is a regular visit from a secret shopper to check for compliance and cleanliness. She said If standard is not maintained, then you are 'kicked out' of the Bottle O brand. They have received excellence awards from the Bottle O brand for the way the Lincoln Road store is run. There is regular in house and on-line training available through the 'Bottle O' brand.

[17] Mrs Gibbons referred to support that she had heard in the community about the proposal and to face book posts on the Halswell Residents' Association page which included supportive comments. We note that the Act does not provide for submissions in support of an application (except perhaps from the limited circumstances where leave is sought to appear under s204(2)), but an applicant may call witnesses to give evidence in support of an application. The applicant did not call any local residents to give evidence of their support for the application.

[18] Mrs Gibbons made a number of submissions about the relevance of the objections received. Mrs Gibbons urged us to focus on actual evidence of alcohol related harm, rather than what she referred to "hypothetical" scenarios put up by objectors. Mrs Gibbons referred

us to the *Mangere-Otahuhu Local Board v Level Eighteen Limited* [2014] NZARLA PH 627-628 case where it was held that:

If the Police were not concerned about alcohol-related harm, then the DLC was entitled to prefer the Police's expert opinion in preference to the hypothetical concerns of the Board and its witnesses.

[19] In relation to traffic effects she noted that the effects of the bottle store would be no greater than those from the fitness centre or dairy, which could be more.

[20] Mrs Gibbons confirmed they would own the premises. There is an agreement to purchase subject to the issue of licence, however, if the licence were to be granted, we understood Mrs Gibbons to say they were committed to making it work. In response to questions she agreed it would be a destination because generally speaking if driving past or walking you wouldn't see it.

[21] Ms Barbour asked Mrs Gibbons why they chose this area. She explained they had been approached by the developer to go into the Oaks Centre. They are likely to lose the Lincoln Road shop to road widening at some stage. She said there were only two off licences in the vicinity and they felt there was support for it in the community.

[22] Ms Barbour asked about the CCTV cameras. Mrs Gibbons said there would be a minimum of 8. She said they had not yet had access to the premises as it was still under construction but thought based on Lincoln Road there would be 2 cameras outside. Ms Barbour asked about lighting and Mrs Gibbons said they would have some control in discussion with the Management Company. She confirmed there would be tastings from time to time when new products are released. It was their practice that all staff hold duty managers certificates and there would likely be 3 to 4 staff. Mrs Gibbons said the target customers were the local community. She explained that her son Marc would manage both this store and Lincoln Road. They have experienced staff to work in the new store and others in training. Although they already hold duty managers certificates, they still need to be trained in the Bottle O standards.

[23] Mrs Gibbons was asked about the exterior of the premises. She explained there would be three small signs showing the Bottle O name. Mr Gibbons confirmed there would be no sandwich boards or flags. Mr Gibbons said the name of the premises along with other tenants would appear on the entrance sign for the complex. In response to questions from Ms Smit, Mr Gibbons explained that the ownership structure of the shopping centre was that there was a Body Corporate and there are limits as to the size of the signage on the building. He said

that on the windows may be a wine glass and grapes image, but not a bottle of beer or brands of alcohol. He explained that the Bottle O brand advertises in newspapers and on the radio. Licensees do not do this individually. Mrs Gibbons said they would rely on their reputation and demand to attract people to the store. Ms Smit asked about the big green banner across the top of the Lincoln Road premises. Mr Gibbons confirmed that this could not be done here due to the Body Corporate restrictions.

[24] Mr Holder asked questions about the applicant's 'Bottle O' website and the positive community strengthening ideas they had. Mrs Gibbons explained they support the 'Not OK' campaign (family violence campaign). Mr Gibbons said that the Lincoln Road business had supported local sports clubs such as Suburbs Rugby Club. He emphasised that they believed they had a role in educating their customers and considered this was consistent with the Not OK campaign because they felt education about alcohol was an important factor. Mr Gibbons indicated if the local community needed support they should come and ask for support and they would give support. Mrs Gibbons also gave examples of how they had a role in educating parents (and their of-age children) about alcohol content of different products.

[25] Mrs Carpenter asked about what plan they had to address vulnerable people in the community if incidents such as littering and disorderly behaviour were to occur. Mrs Gibbons didn't see a problem with bottle stores as customers are not usually consuming alcohol in the area and breaking bottles. Her experience was that most people purchase their alcohol and go home to consume it. Mr Gibbons confirmed that the staff do pick up rubbish to keep the place clean and tidy. Mrs Gibbons explained that she often declined service for reasons other than what they were legally required to. Mrs Carpenter confirmed that there would usually only be one staff member on at time, but it would depend on demand.

[26] Mr Siave also asked about whether the business model was such that the applicant was more interested in customers buying large amounts of alcohol. Mrs Gibbons said it was more of a convenience store.

[27] Mrs Delaney asked about the timing of cleaning and deliveries. Mrs Gibbons clarified that cleaning is done by staff while working and that deliveries would occur during the day, not at night.

[28] Mr Liddell asked how the applicant had identified that there was a gap in the market. Mrs Gibbons noted that they traded differently from Super Liquor and believed there was a business case. Mr Liddell asked about the advertising campaigns for the opening of the bottle

store. The applicant explained they would simply open the doors but expected Bottle O would advertise the opening.

[29] Ms Ousey asked about recent robberies of the Bottle O brand. Mr Gibbons thought it was bad luck and not related to the brand as such. Ms Ousey and Commissioner Wilson asked about plans to respond to an armed incident and security. Mrs Gibbons said they would leave it to the police. She explained there was a detailed staff manual which documented a “no heroes” approach which meant that staff would comply with demands. Staff were given instructions as to how to hand over to police.

[30] We allowed the applicant to call Mr Chris Casserly the past owner of the Quarry Bar, to explain how the Quarry Bar previously operated and effects on amenity and good order as this was not a matter within the knowledge of the applicant.

[31] Mr Casserly provided a written brief of evidence that explained his past involvement with the Quarry Bar, which he had renamed Teds Bar and Grill. Mr Casserly only took over the then premises in November 2012. Although he gave evidence as to how he operated the premises in the period up to the fire, he was unable to assist with any detail of past operations or issues that the residents spoke of. He was aware that there had been issues with the operation of the premises prior to his ownership of the premises, particularly immediately after the earthquakes when many suburban bars became very busy with the close of the CBD.

[32] We note here that Mr Casserly has recently applied for an on licence to re establish Teds Bar and Grill at 29 Ensign Street, next door to the proposed Bottle O, however, that application is not before us. Whether a licence will be granted for a new premise is a matter for the District Licensing Committee on another day. Our focus was on the merits of the application before us. To that end, we did not find Mr Casserly’s evidence to greatly assist with our inquiry due to his limited knowledge of causes of effects on amenity and good order prior to November 2012.

#### *The NZ Police*

[33] Constable Graeme Jolliffe appeared for the Police. The Police did not oppose the application. The Police did not report any concerns with regard to the applicants nor in relation to issues of amenity and good order. In answer to questions from Mr Hawke, Constable Jolliffe accepted that people do not report everything they are concerned about and the Police are reliant on reported incidents. In terms of nuisance, Constable Jolliffe accepted that there are



varying types of nuisance, such as loitering around dairies, bottle stores or parks. Police had no particular statistics in relation to bottle stores. The Constable said that people report a range of matters from the more trivial to more serious and some do not bother reporting serious matters. The Constable was asked about records of reported crimes during the time the Quarry Bar was operating. The Constable produced a copy of an Intelligence Notification Report that provided information about reported incidents between the period of 2009 to 31 August 2018 within a 500m radius of the premises.<sup>4</sup> We made orders pursuant to s203 that the Intelligence Report circulated by the Police at the Hearing is not to be published. It was made available for inspection by parties at the hearing, but all copies were directed to be handed to the hearing's administrator at the conclusion of proceedings. Constable Jolliffe did not consider there to be a significant difference over the time period, noting spikes in numbers of reported incidents both before the close of the Quarry Bar in 2012 and after it closed in 2016. The report notes that the reported incidents are not necessarily all alcohol related.

[34] Mr Wilson asked about risk to the owner and passers-by in case of a robbery. The Constable was of the opinion that a dairy is more likely to be targeted rather than bottle stores. He acknowledged that any place can be a target. We understood him to say that it's not that a bottle store is significantly more at risk than a residence, there may be a small increase, but the risk was more dependent on who might reside there.

#### *The Medical Officer of Health*

[35] Ms Helen Barbour appeared on behalf of the MOH who did not oppose the application. Initially the MOH had opposed the application because further information was required from the applicant ('initial report').<sup>5</sup> In the initial report Ms Barbour reported that within a 1km radius of the premises, relying on 2013 Census data, the medium deprivation score of the area was 2 (where 10 was the most deprived and 1 the least). The report noted 1 supermarket with off licence and 1 off licence within a 1km radius of the premises. A supplementary report was then filed confirming the MOH had received the information required and withdrew the opposition.<sup>6</sup>

[36] Mr Ferguson asked why the MOH did not oppose the application notwithstanding the literature about the risk of harm with every newly opened bottle store. Ms Barbour spoke to the broader approach under the Act; which was to look at the whole spectrum including the locality and the quality of the application. She noted in this case she did ask for more

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<sup>4</sup> Police Exhibit 1

<sup>5</sup> Letter from MOH, 10 August 2018.

<sup>6</sup> Letter from MOH, 31 August 2018.

information about the application and ultimately that addressed her initial concerns. Mr Hawke asked about whether the MOH had a priority list, focusing resources on lower socio-economic areas. Ms Barbour clarified that is not the case. Her role is to investigate every application and she puts equal effort into each one, but ultimately, it's a question for the MOH whether an application is opposed.

[37] Ms Barbour was asked about the research about harm caused by alcohol consumed at home rather than licensed premises and why is MOH not opposing another bottle store. Ms Barbour explained that the MOH looked at the deprivation scale in the area, the density of other off licences, sensitive sites and put all of those things together with the applicant, suitability, track record, systems and staff training. MOH looks at the risk profile and how the premises are to be managed. The applicant was asked for more information about systems and staff and from that MOH was happy with the information.

#### *The Licensing Inspector*

[38] Mr Martin Ferguson, Senior Licensing Inspector, prepared a report pursuant to s103(2) of the Act in relation to the application. Mr Ferguson spoke to his report and commented on the application against each of the matters in s105 and 106 of the Act. He recommended the grant of the consent subject to conditions.<sup>7</sup>

[39] Mr Ferguson asked himself "will this application increase alcohol related harm?" In relation to that matter he said it would not because alcohol sales by volume are static and that the addition of another licence does not increase the sales of alcohol, it effectively takes business away from other bottle stores.

[40] He confirmed his opinion that the applicants are suitable. He noted that the applicants already held a licence for Bottle O Lincoln Road and had run the Black Horse Hotel without issue.

[41] Mr Ferguson noted the absence of a Local Alcohol Policy and noted that applications were dealt with in relation to the national default conditions and also to "practices acceptable to the three reporting agencies".

[42] In terms of amenity he considered that the effects would be less than minor; that was because the store will be set back from the road. He felt it was better than most normal

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<sup>7</sup> Inspectors Report dated 4<sup>th</sup> September 2018.

situations where a store is on the street. In his experience bottle stores don't generally cause environmental concerns in the area. He emphasised that this is not to be confused with the effects of people consuming alcohol creating problems which was a wider societal issue due to the availability of alcohol. He acknowledged those issues, however, did not consider such effects could generally be "honed back" to a particular bottle store. He concluded this bottle store would not create issues in this neighbourhood. He noted that the applicant had agreed to deal with any issues such as litter and graffiti if they were to arise.

[43] In terms of the number of similar licenced premises in the area, Mr Ferguson did not consider the area to be "saturated" with bottle stores. There are only two off licences in the immediate area, the New World Supermarket and Super Liquor. He focused on looking at what other bottle stores were in the area and therefore what access do the general public have to purchase alcohol to take home. He noted that the area was fast growing and had room for more bottle stores.

[44] Mr Ferguson said that in terms of effects on neighbouring land uses the focus was generally on whether there were issues with people drinking on the streets or in local parks. His impression of the area was that it was "nice", and this was not likely to change.

[45] Mr Ferguson was satisfied that the applicants had appropriate staff, training and systems in place. He is confident they would manage the premises safely and responsibly due to their past operations.

[46] Mr Ferguson recommended standard conditions. When asked by the Committee he said there was no reason to impose more stringent conditions. He noted that the hours of trading were the default hours and that although the applicant would operate on a more limited basis it provides them with greater flexibility and that was consistent with most other bottle stores including supermarkets.

[47] Mr Hawke asked Mr Ferguson about how he kept up to date with research on drivers of alcohol related harm and amenity loss. Mr Ferguson explained that the staff attend conferences and have legal training. He said they received regular updates on case law. He did not directly engage with the authors of the articles and research. He commented that the literature probably supported prohibition, however, the reality was that 86% of people drink alcohol, so that was not a likely political outcome. He acknowledged it was a balancing act between allowing some access to alcohol "but our role is to bring it back to what alcohol related

harm will this application create?” His experience tells him this application would not create any problems.

[48] Mr Hawke asked Mr Ferguson about how he reconciled the literature with the Act. Mr Ferguson explained “I try to bring it right back to minimising harm as much as we can”. Mr Ferguson did not deny the literature conclusions that every new bottle store increases alcohol related harm. Mr Ferguson went on to offer a “broad statement” that the object of the Act “has gone a step too far because its unachievable”.

[49] Mr Regnault for Southwest Baptist Church asked whether bringing the bottle store into the area will increase harm. Mr Ferguson accepted that is the case, however, he said the application was not increasing the availability of alcohol in the community, but he accepted that we are potentially increasing the harm to people, but he said we do this every time we grant or renew an alcohol licence.

[50] Mr Ferguson accepted that there is an increased risk of harm in lower socio-economic areas, particularly because there is harm in those areas already and often those areas can be targeted by bottle stores. Mr Ferguson said the site would not be visible from traffic but would be visible by pedestrians, but it was less visible than a bottle store on a road frontage.

[51] Ms Smit asked whether the bottle store would bring people to the area who drink. Mr Ferguson said it was a possibility, but it was likely people were already buying the alcohol elsewhere and this is simply more convenient. Mr Ferguson did not expect that people would walk to the bottle store regularly; most would drive. He noted that Liquor Ban areas curb drinking in the street. Ms Smit asked about the carparks and alley ways where people could linger and drink alcohol. He said that it was a slim possibility but not likely to be an issue of a large magnitude. He accepted it was a possibility that people might breach liquor bans and drink on the way home from the bottle store or drop litter. In his experience it was unlikely to be a problem. He accepted this was a possibility and this could increase if the licence was granted.

[52] Mr Ferguson agreed with Mr Siave that this is not an ideal site in terms of distribution, but he did not believe it was one of the considerations.

[53] Ms Keir asked about whether there was any significance to the suggestion that a restaurant and bar may open next door. He agreed there was some significance, however, the weight to be given to it was difficult as he did not know for sure it would go ahead.

However, he was of the opinion that taverns and bottle stores significantly increase the risk because you end up with people who have been drinking for awhile picking up extra alcohol when they have had enough. Ms Keir also asked if there were any specific design or planning features we should consider in relation to the risk of armed robbery. Mr Ferguson did not think so.

[54] Ms Robinson asked about the surrounding land uses such as Preschool, Sharp Trust and how they featured in his assessment. Mr Ferguson said it is always a consideration, however, Bottle stores are just another service to the community. He did not consider there to be any unique features about this centre and surrounding neighbourhood. He acknowledged that there have been issues near schools' but thought it was part of a wider issue. He spoke about the Henry's on Yaldhurst Road where there had been a significant amount of opposition to the application, particularly from schools and a preschool over the road. He said within 12 months of it being granted, the surveys done showed no impact on school children or preschool.<sup>8</sup>

### *The Objectors*

[55] As recorded above 37 objections were filed in response to public notification of the application. We have read those written submissions in our deliberations. The breadth of issues raised in written objections are well represented in the submissions and evidence of the objectors who did attend the hearing, which we summarise below. This is not a transcript of what was said, but representative of the evidence we heard that was relevant to the matters to which we must have regard under the Act. We have avoided undue repetition where issues are repeated by objectors.

[56] In terms of the petitions lodged with objections, we have not been able to place any significant weight on them as the signatories did not give evidence. Our assessment is not swayed by sheer numbers of objections, we are focused on the merits of the application taking into account the evidence and submissions made. For completeness we note many of the signatories to the petition would likely have failed to qualify as having an interest in the application greater than the public at large because they did not all reside within a 1km radius of the proposed premises.

[57] Anna-Marie Delaney worked at a business at 29 Ensign Street before the Quarry Bar burnt down and lives 20 minutes' walk away in Halswell. Ms Delaney gave evidence of the

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<sup>8</sup> See *Imperial Discount Liquor Limited* [2013] NZARLA PH 840-841

impact of the Quarry Bar and her experiences of noise and loitering in the parking area and some drinking in the carpark. She described unpleasant behaviour of some patrons and her experience of having to, before work, clean up broken and part filled bottles and vomit. She did not want this to be repeated. Ms Delaney described the area as residential, with large number of children. She said in contrast to when the Quarry Bar was operating the area was now quiet. Weekends were particularly quiet. She was concerned about more people being drawn into the area. Her experience of having had alcohol in the area was unpleasant. Before the Quarry Bar closed there was a funeral parlour, physio, curves gym, hair dresser, pharmacy, builder's office and some storage garages (some people worked from those, but they were quiet). She explained that the fire damaged a lot of the area including the builder's office, funeral parlour and physio but the gym, chemist and hairdresser continued.

[58] Robert Liddell is a local resident who resides on Ensign Street. He described the family friendly atmosphere of the street with close proximity of school, preschool, parks and play grounds. Mr Liddell noted that the area was well served with local amenities and there were plenty of opportunities to purchase alcohol at nearby off and on licensed premises. He distinguished the residential area of Ensign Street from the location of the two off licences on Halswell Road and submitted that the bottle store had no place on the residential street or within the complex. He was concerned about the increase in traffic and disturbance from the hours of operation proposed. He was concerned about litter and loitering nearby. He had observed that school children would walk past the site, although he acknowledged it would be set back, but he was concerned about signage and advertising. Mr Liddell also referred to a number of academic research papers that linked the clustering of alcohol outlets to harm and the normalising of alcohol for children.

[59] In response to questions from Ms Barbour Mr Liddell said there had been an increase in drunken behaviour in the time he had lived in the street associated with private residential parties. But said the neighbourhood was better than some. He had moved to the neighbourhood 3 years ago. He said it was about a 10-minute walk to Super Liquor and the New World.

[60] Nick Regnault gave evidence and made submissions on behalf of the Southwest Baptist Church. The Church is an immediately adjoining property on Balcairn Street (at the rear of the proposed Bottle O). He explained that the Church had been there since 1983. The Church objected because amenity and good order of the area is likely to be reduced. The Church runs a number of programmes and hires the Church out to a number of groups involving vulnerable people such as children and the elderly. The Church wants to ensure they provide

a safe and comfortable environment. The Church is concerned about greater access to alcohol causing harm. Mr Regnault noted the numerous off licences within the general area and expressed concern that the target market is impulse purchasers and that will potentially increase harm. Mr Regnault urged us to consider whether this is the right location. He said it's a middle-class neighbourhood with a strong community supporting vulnerable people. Mr Regnault provided us with material showing the various community activities that occur on the site.<sup>9</sup> In answer to questions from the applicant he confirmed that the Church had access to carparking on the Oaks site which is protected by easement.

[61] Mrs Elizabeth Manson lives close to the premises and is a registered nurse. Mrs Manson is also concerned about the residential area. She spoke in support of neighbours who were subject to nuisance and vandalism when the Quarry Bar was there. She had experienced harassment when attending the gym by patrons of the Quarry Bar. Mrs Manson also reiterated concerns about children and young people in the area. She also referred to research about increases in violent crime and bottle stores. As a health professional she had seen the impacts of alcohol. She noted that in middle class neighbourhoods it was likely to be silent and impacts families and loved ones. Mrs Manson referred to the difference in the level of vandalism before and after the Quarry Bar. Mrs Manson has lived in the area for 10 years, but not directly near the premises. Mrs Manson agreed that the area was safe and pleasant.

[62] Mr Geoff Siave lives almost opposite the Oaks Centre next to the alley way that links Ensign Street with Halswell Road. He has resided in Ensign Street for 13 years. He has noticed the difference between before and after the Quarry Bar. His impression at the time was that a lot of people were coming and going to the 'pub' and there were issues with patrons leaving the pub at night. He said his letter box was vandalised three times and the pattern of behaviour was quite marked. He was convinced it was generally people coming from the pub causing the damage. He felt there was perception of danger and unruliness. He noted there would be traffic, but likely to be a combination with whatever eatery was there. He noted that most Bottle O's did not open up to 11pm. He would like the hours to be reduced but acknowledged the applicants had indicated the intended hours were a bit shorter but gave them leeway. He was concerned about the number of licensed premises in the Halswell area, two bottle stores, but nothing to the west of the site. He questioned the placement. He agreed the area was not saturated but there were enough outlets. He loves living in Ensign Street

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<sup>9</sup> Exhibit NR1

and described it as a quiet, lovely place. He is concerned about alcohol being more freely available and the appropriateness of this application.

[63] Mr David Hawke spoke on behalf of the Halswell Residents Association (HRA). Mr Hawke has a PHD in Chemistry and is experienced in interpreting academic literature. We mention this because, although not an expert in this context, his analysis of the research literature on alcohol related harm was helpful to us. He explained the evidence-based approach of the HRA. He raised concerns about the adequacy of public notification and the short time frames for the hearing preparation. He went on to discuss the concerns of the HRA which echoed those of the individual residents who spoke at the hearing. Mr Hawke then took us through three academic papers.<sup>10</sup> The papers draw a link between the availability and proximity of alcohol outlets, including off licences and alcohol related harm. He explained that the *Day et al.* article showed a statistically significant link between the proximity and number of off licenced premises and an increase in alcohol related harm irrespective of confounders such as poverty. On the basis of that published work he submitted that the Committee should decline the application as the increase of one store will likely increase alcohol related harm.

[64] Mr Hawke made submissions about the requirements of s105 and 106 of the Act. He referred to the 'natural experiment' of the before and after the Quarry Bar. He submitted that it would be reasonable to expect greater effects from an off licence because of the greater degree of supervision on an on-licence premises.

[65] He suggested that a 'minor' effect might be lawn mower noise, dogs barking, occasional late-night party. He said the effects reported by residents during the time of the Quarry Bar were more than minor.

[66] He noted the difference between the locations of the Super Liquor and New World which are located off a carpark and main road, where residential properties were not as close as at Ensign Street.

[67] Lisa Saunders is the Centre Manager at the Lighthouse pre-school at 6 Balcairn Street. The nursery area at 10 Balcairn Street was added in 2011. Mrs Saunders explained the pre-

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<sup>10</sup> 'Alcohol Misuse and criminal offending: Findings from a 30-year longitudinal study' Joseph M Boden, David M Ferguson and L. John Horwood: *Drug and Alcohol Dependence* 128 (2013) 30-36; 'Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study' Jennie L Connor, Kypros Kypri, Melanie L Bell, Kimberley Cousins; *Journal Epidemiol Community Health* 2011; 65 841-846; 'Close Proximity to alcohol outlets is associated with serious violent crime in New Zealand' Peter Day, Gregory Breetzke, Simon Kingham, Malcolm Campell; *Australian and New Zealand Journal of Public Health* 2012 vol.36 No 1 48-54



school is licenced for 50 children but has a roll of 80 and is open 8am to 5pm. She was concerned about the preschool community being exposed to vandalism and nuisance. She was concerned about the safety of children at pre-school and parents' perception of safety. The pre-school is concerned about the days and hours and the exposure to alcohol sales and promotion. Mrs Saunders confirmed that despite the Quarry Bar, the pre-school extended the pre-school in 2011. Mrs Saunders referred to some vandalism and loitering while the Quarry Bar was operational.

[68] Rick Holder has lived in Balcairn Street for 23 years. He is concerned about amenity and good order. He had experienced anti-social behaviour when the Quarry Bar was there. He referred to rowdy behaviour of patrons after 11pm whilst intoxicated. He referred to litter in the street (bottles and cans) and vomit and damage. He said the Church carpark was a place where people congregated. Mr Holder spoke about a particular violent and threatening incident he and his family experienced when the Quarry Bar was there. Mr Holder referred to the amenity and good order being 'very good'. He was not aware the Quarry Bar held an off licence.

[69] Susanne Holder is a resident and head teacher of the Lighthouse Pre-school. She gave evidence of graffiti during the time of the Quarry Bar and the incident referred to by Mr Holder. Mrs Holder had also come across a potentially intoxicated person on the pre-school premises at night. She now felt safe without the alcohol outlet. Mrs Holder was concerned about possible noise. She submitted that amenity and good order would likely be reduced by a more than minor amount. Mrs Holder also submitted it was not an appropriate location given the prevalence of educational, community and residential properties.

[70] Kathy Ousey, lives within 200m of the premises and her child attends the pre-school. She is concerned about the pre-school and an unacceptable form of risk if there was a robbery. Ms Ousey gave evidence of verbal and physical harassment from intoxicated persons during the time the Quarry Bar was on the site. She was concerned about the risk of intoxicated persons driving to the Bottle Store to purchase alcohol.

[71] Erin White lives nearby and is a member of the staff team at Southwest Baptist Church but is usually based at the Lyttleton Street Church. Ms White is a youth leader for a programme at the Balcairn Church in the evening between 7 and 8.30pm. Young people are often on site until 9.30pm. She likes to walk home at night but would be concerned about doing so if the bottle store was open and is concerned about young girls in the youth program also feeling unsafe. Ms White had knowledge of the Church booking schedule and said the

Church is open every day and is often used at night to 10.30pm. Ms White was able to explain the location of neighbouring parks. She is concerned that the owners would not have control over customers once they left the site. Ms White also shared concerns at the number of licensed premises and the appropriateness of the store in the 'boutique retail' centre and the local schools and community uses at the Church. Ms White explained that there is a lot of pedestrian activity in the area.

[72] Amy Smit spoke on behalf of the Sharp Trust a non-profit Charitable Trust providing afterschool and holiday programs for vulnerable children. The Trust operates out of the Church. The Trust is concerned about parents' perception of safety of their children. The Trust operates after school hours until 5.30 to 6pm. The children are aged between 5 and 13 and youth volunteers are aged 15-18.

[73] Craig Forster lives about 200m from the premises and he has lived in the neighbourhood for about 12 months, he enjoys the neighbourhood and walks past the site regularly. His child attends the pre-school. He is concerned about the effects on the pre school and the residential neighbourhood. He considers the bottle store to be incompatible with the pre-school. Mr Wilson asked Mr Forster whether he walked through or around the shopping centre. He would presume most of the time he would walk around the street not through the Centre.

[74] Sonya Carpenter is also a local resident. Mrs Carpenter read a detailed written submission. Her husband is the Pastor at the South West Baptist Church. They have two adult children with disabilities and have particular concerns about the effect of the bottle store on their safety and the safety of others with disabilities. Mrs Carpenter organised a petition which was submitted with her objection. Mrs Carpenter explained that there were programs held at the Church for people with disabilities along with groups involving pre-schoolers. Mrs Carpenter is concerned about the opening hours, amenity and good order and effects of alcohol related harm. Mrs Carpenter referred to cultural matters and the Treaty of Waitangi. Mrs Carpenter referred to the principle often used in the disability sector of "Nothing about us without us" and submitted that it also applied to tangata whenua. She felt there needed to be greater consultation with the community including tangata whenua.

[75] Mrs Carpenter explained that her adult children with disabilities, including one in a wheel chair, are able to go independently to the Church and local shops or with a support person without having to cross roads. She felt the area is currently safe. She is concerned about the effect of the bottle store on safety. Mrs Carpenter is aware of other families with disabilities in

the neighbourhood and noted that 24% New Zealanders had a disability. Mrs Carpenter also referred to the research including that referred to in Mr Hawkes presentation.

### *The Community Board*

[76] Mr Mora and Councillor Anne Galloway spoke on behalf of the Community Board in support of the Halswell Residents Association submission. Mrs Galloway spoke of the Christchurch Alcohol Action Plan, a joint initiative of the Christchurch City Council, Public Health and Police.

### **Closing statements**

[77] Mr Ferguson submitted in his closing statement that the definition of Alcohol Related Harm, as provided in section 4(2) (and mirrored in s 5 ) of the Act made it clear that the object was minimising harm from the 'excessive and inappropriate' consumption of alcohol, not all consumption of alcohol. He referred to case law that supported the Committee giving greater weight to the absence of opposition from Police and the MOH over the hypothetical concerns of the objectors and for the applicant.<sup>11</sup> He also referred to case law supporting the balanced policy goals of the Act that adults should be able to enjoy the use of alcohol in moderation, notwithstanding the harm that might result from the excessive or inappropriate consumption of alcohol.<sup>12</sup>

[78] Ms Barbour made submissions in support of the objectors' concerns about the effect on good order and amenity. We were told by Ms Barbour that this was done to assist the Committee in light of the evidence from the Objectors. Ms Barbour drew our attention to what she described as a similar application with a significant degree of opposition from the local community in Harewood.<sup>13</sup> In terms of whether the licence ought to be granted Ms Barbour appropriately left that to us to determine but submitted that we must be certain that for the community to which this application relates, the whole object of the Act is achieved. Ms Barbour made it clear she had not changed the MOH position which was not to oppose the application, but was simply trying to assist the committee in response to the Objectors' evidence.

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<sup>11</sup> *Mangere-Otahuhu Local Board* [2014] NZARLA PH 627-628

<sup>12</sup> *Rapira-Davies v Patel* NZARLA 52 (2 March 2017) at [62]; *Foodstuffs South Island Ltd v Dunedin City Council* NZARLA 21 (2 February 2017) at [53].

<sup>13</sup> *Harewood Bottle Store* 60C [2017] 1747

[79] Mr Hawke reminded us of the evidence about the loss of amenity supported by the academic literature that the effects of an off licence are more than an on licence. He submitted that the Inspector had said that he found the object to be out of step with the community and if the act was applied no new or renewed liquor licences would be granted. He said the MOH representative was unable to explain the MOH rationale for not opposing the application. On that basis he urged us to decline the application.

[80] Ms Smit made a brief statement urging us to decline the application due to risks to the family centred community.

[81] In her right of reply Mrs Gibbons addressed each of the considerations under the Act with reference to the evidence we heard. The applicant emphasised their good reputation, experience with the safe and responsible sale of alcohol and their personal experiences which they submitted refuted many of the concerns of the objectors. Mrs Gibbons emphasised that the location of bottle stores and preschools without adverse effect. Mrs Gibbons submitted the effects of the bottle store would be no greater than the other business within the Oaks Centre and drew our attention to the lack of opposition from the Police. She urged us not to have regard to hypothetical scenarios and “scaremongering”. She submitted that the application is consistent with the object of the Act and met the criteria under s105 and should be granted.

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

[82] 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 s 105(1)(b)–(k) that the grant of the licence is consistent with the object of the Act?”

[83] 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

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<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

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

renewal of a licence, however, they apply equally to a new licence. We further summarise the following:

- (i) There is no presumption that an application will be granted.<sup>17</sup>
- (ii) 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 [82] above).
- (iii) 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;
- (iv) 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...
- (v) The Authority is not required to be sure that particular conditions will reduce alcohol abuse. We are entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective...then we are entitled to test whether that possibility is a reality.<sup>19</sup>

[84] 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.*

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

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

<sup>18</sup> And see *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [39].

<sup>19</sup> *My Noodle Ltd v Queenstown Lakes DC.* [2009] NZCA 564

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

## 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).

[86] There are two arms to the Object of the Act and both must be met. In terms of the first arm we need to be satisfied that the sale and supply of alcohol by the applicant should be undertaken safely and responsibly. The second arm requires that harm caused by excessive or inappropriate consumption of alcohol should be minimised. ‘Minimised’ means reduced to the smallest amount, extent or degree. It does not mean eliminate altogether.<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.”

[87] Our role is an evaluative one, and we need to have regard to the extent to which granting a licence with conditions should minimise alcohol related harm.<sup>22</sup> There is a presumption 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.

[88] ‘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.

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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.

[89] We note that many of the objectors, and to a degree the Inspector, struggled with how, when the research literature clearly shows a link between alcohol availability (including density of bottle stores) and increases in alcohol related harm, any new off licence (and potentially any renewal) could be granted.<sup>23</sup> The relationship can perhaps be understood when one considers that the three articles produced by Mr Hawke (of which we accept there are many more) are consistent with the conclusions of the Law Commission and Legislature when considering the reform of the legislation. This is summarised in a very recent High Court Decision *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [6] – [9], (28 November 2018).

[6] The Act was implemented in response to a report by the Law Commission, *Alcohol in our Lives: Curbing the Harm published in 2010* which followed on from a 2009 Law Commission report, *Alcohol in our Lives: An Issues paper on the Reform of New Zealand's Liquor Laws*. The Legislature recognised excessive drinking and intoxication was contributing to New Zealand's crime rate, injury rate and road crash statistics and was affecting the nation's overall level of health. While it was acknowledged that regulation alone would not turn New Zealand's excessive drinking culture around, it was said that:

Legislative settings can, however, support a safe and responsible drinking culture through controls on the availability of alcohol, requirements for safe and responsible licensed premises, and the management of alcohol in public. [our emphasis]

[7] Included in the Act was a new purpose provision, no such section having been in the repealed Sale of Liquor Act 1989 (the 1989 Act). This section, which makes it plain that the Act is intended to reform the law and to introduce a new system of control of not only the sale and supply of alcohol but also of its consumption, provides as follows:

### 3 Purpose

(1) The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole,—

(a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and

(b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.

(2) The characteristics of the new system are that—

(a) it is reasonable; and

(b) its administration helps to achieve the object of this Act.

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<sup>23</sup> Mr Hawke for Halswell Residents Association.

[8] Major changes were also introduced in the object section. Section 4(1) of the 1989 Act stated that its object was "to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse". Whereas the 1989 Act was concerned to reduce liquor "abuse", the concept of "harm" is central to the new Act and is very broadly defined....

[90] The purpose of the Act makes explicit the rationale for the evaluation under s105 and 106 of the Act.<sup>24</sup>

[91] We now turn to assess the application before us in accordance with the section 105 and 106 of the Act. We will return to the Object of the Act after considering each of the other matters in s105.

#### *The suitability of the applicant*

[92] No issues were raised about the suitability of the applicant. Mr and Mrs Gibbons are experienced licensees and satisfied us that they had the experience necessary to responsibly and safely sell alcohol. We are satisfied that they are of good character and are suitable to hold a licence. Although Marc Gibbons, the intended manager, did not appear before us we are satisfied that Mr and Mrs Gibbons (as directors and Mrs Gibbons as the 100% shareholder) are also actively engaged in the business. Marc Gibbons is also the manager at the Bottle O Lincoln Road and no issues have been raised about his suitability.

[93] Objectors complained about the lack of engagement and consultation with the local community. Mrs Gibbons submitted the Act did not require consultation. She explained they had spoken to some in the community but not all residents and not local businesses. ARLA and the High Court accepted that the lack of engagement with the local community can go to the suitability of an applicant in cases where a neighborhood is particularly vulnerable to alcohol related harm.<sup>25</sup> Here, the evidence of the MOH and Police is this neighbourhood is not particularly vulnerable. There are, however, several more sensitive neighbouring land uses such as the preschool and some community groups using the Church. The applicant has not directly engaged with those land users in this case and may have found some benefit in doing so. We are satisfied that the applicant's evidence demonstrated that the directors have been actively engaged and responsive to the circumstances of their other businesses. We conclude that the applicant has the necessary skills and experience to respond appropriately to interactions with more vulnerable members of this community should the need arise. We do

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<sup>24</sup> *Shady Lady Lighting Limited v Lower Hutt Liquormart Limited* [2018] NZARLA 198-199, at [75], upheld on appeal in *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100.

<sup>25</sup> *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [65].



not find the lack of consultation in the lead up to this application to have diminished the suitability of the applicant to hold a licence in this case.

*Any relevant local alcohol policy*

[94] There is no relevant Local Alcohol Policy (LAP). The Community Board urged us to have regard to the Christchurch Alcohol Action Plan (CAAP), a non-regulatory document. It is not a substitute for a LAP prepared under sub part 2 of the Act. We did not have the benefit of legal submissions as to how it might fit into the mandatory criteria under s105. The Community Board wished to produce the CAAP as an exhibit, however, their role was limited to making submissions in support of the Objectors and did not include calling evidence.<sup>26</sup> We asked the applicant if they would be prepared to allow the document in by consent. In the end they did not consent. We did not find it necessary to receive the document as an exhibit; we are aware of it. We have, however, disregarded it as not being relevant to our inquiry as it is not a LAP.

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

[95] The applicant seeks hours of 9am to 11pm 7 days a week. Those hours are consistent with other off licence premises in the area. Mrs Gibbons explained that the hours sought were longer than what would be required for the usual operation of the premises. Mrs Gibbons explained that their current premises in Lincoln Road operated shorter hours from Sunday to Tuesday and did not open until 10am most days. The longer hours would provide flexibility during busy periods such as Cup Week or over Christmas. We were told that this is similar to how other licensed premises operate, such as the near by supermarket and off licence.

[96] Objectors raised concerns about the bottle store being open when school children or parents with pre school age children were in the neighbourhood. We have considered this issue and observed on our site visit that the premises is not visible from either school, however, the premises is visible from the Ensign Street entrance. There was concern that children heading to and from school and preschool may be exposed to advertising and to customers who may have just purchased alcohol. As we discuss further below the premises is located within an enclosed complex that has buildings up to the street frontage so the bottle store is not on the street frontage. It is well screened from the neighborhood. The applicant advised that there would be limited signage on the premises and on the site identification sign at the entrance and egress to the site. The standard use of the green Bottle O banner was also prevented by the Body Corporate rules that apply to the Oaks Centre. On the basis of what

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<sup>26</sup> Minute granting leave 29 October 2018

Mr Gibbons told us about the restrictions placed on the applicant by Bottle O and the Body Corporate we find it reasonable to include a condition preventing the use of sandwich boards and flags as this further mitigates the exposure of children to the sale of alcohol. We were told that Bottle O has strict criteria regarding advertising of product. We agree there should be no advertising of alcohol products on the exterior or visible from outside the bottle store. We also find it reasonable to include a condition to that effect.

[97] The national default hours for an off licence are 7am to 11pm. This differs from the on-licence default hours which are 8am on any day and 4am on the next day. Notably under the 1989 Sale of Liquor Act there were no default trading hours. Aside from restrictions on sacrosanct days the days and hours of operation were to be determined on a case by case basis. The introduction (or reintroduction from the 1962 Act) of national default hours responds to the accepted evidence of the relationship between alcohol related harm and alcohol availability.<sup>27</sup> The applicant indicated it was unlikely they would open the full hours sought but wished to retain flexibility.

[98] We return to the issue of hours of operation when we evaluate amenity and good order.

*The design and layout of any proposed premises*

[99] As discussed above the premises is located within a new local commercial centre. The premises itself is not yet complete, however, a plan showing the intended layout of the premises was provided following a request from the MOH. We have considered the design and layout and do not have any concerns. No concerns were raised by the Agencies.

*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:*

[100] No other goods and services are proposed.

*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:*

[101] 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

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<sup>27</sup> Hansard, 11 December 2012, Volume:686; Page 7348 Third Reading of Sale and Supply of Alcohol Bill. Hon. Judith Collins.

situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable.”

[102] 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) ...

[103] In *Progressive Enterprises Ltd v North Shore City Council* (2005) 11 ELRNZ 421, [2006] NZRMA 72 (HC), the Court considered the meaning of “minor” in the context of the Resource Management Act 1991 and concluded that it must bear a meaning consistent with the general policy of participation which lies at the heart of the Resource Management Act. The Court considered that the dictionary senses of “petty”, “comparatively unimportant”, “relatively small or unimportant ... of little significance or consequence” captured the legislative purpose. In *Re Wino NZ Ltd* [2014] NZARLA 227 the word was considered in the context of this Act. The application related to a proposed off-licence to be situated opposite a church. The Authority said at [12] that:

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

[104] The applicant urged us to have regard to actual evidence and not speculation by the Objectors. In this case the objectors gave clear and cogent evidence of their own experiences of amenity and good order before and after the Quarry Bar, which they argue is a “natural experiment” of how they may be impacted by the bottle store. To the extent that they were concerned about future criminal activity associated with the Bottle Store, that may be categorised as speculative, however, as was acknowledged in the *Shady Lady* case<sup>28</sup>, those concerns are backed by research. Risk of harm was also accepted by the Inspector.

[105] All of the objectors we heard were agreed that their neighbourhood was pleasant and agreeable. Most described a quiet and family friendly environment. We heard extensive evidence from the objectors regarding past adverse effects on amenity that the residents attributed to the operation of the Quarry Bar. These included litter, noise and anti-social behaviour, particularly late at night. Some residents had experienced unpleasant, and in at least two cases, violent interactions with intoxicated persons. The residents told us that since the Quarry Bar had closed, that they had experienced a noticeable improvement in amenity of the locality.

[106] We accept the evidence of the residents in relation to the level of amenity they experienced before and after the Quarry Bar. Although the Quarry Bar did hold an off licence, it only represented a small proportion of over the counter trade and was not a stand-alone outlet. In fact, many of the objectors were unaware of the existence of the off-licence component. On the basis of the evidence of the objectors it is more likely that the incidents, if attributable to the Quarry Bar, were related to the on-licence aspect of the premises, particularly patrons leaving the bar at closing time. The Police Intelligence Report presented at the hearing did not highlight any significant concerns within a 500m radius of the premises. There was no evidence of any effects from the Super Liquor or New World Supermarket located within 1km of the site on amenity and good order.

[107] S106 requires us to focus on, amongst other matters, the current and possible future noise, nuisance and vandalism *in the locality*. We do not find that the evidence of the residents demonstrated that the operation of a bottle store, of the kind proposed, in this location will add to the noise to a more than minor degree. That is because the premises is located within a dedicated commercial shopping centre which has planning approval for a range of commercial activities. The hours of operation comply with the District Plan.<sup>29</sup> The current “quiet” noise

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<sup>28</sup> *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [65] at [70]-[75]

<sup>29</sup> s110(f) certificate

environment experienced in the last 5 years may change irrespective of the outcome of this application once the Oaks Centre is fully tenanted. There are only a few businesses operating currently and, as we heard, the new development provides for more business tenancies than existed before the fire.<sup>30</sup> Any noise generated from customers coming and going from the bottle store is unlikely to be distinguishable from noise from other activities within the shopping centre. From the evidence of the objectors the noise they experienced in the past in relation to the Quarry Bar generally related to patrons leaving the premises late at night, some of whom may have been intoxicated.

[108] In terms of concerns about nuisance or vandalism, we accept the evidence of the objectors regarding their past experiences with the Quarry Bar, however, in this case we are concerned with the current application's future impact. Even if we accept the general findings of the research papers referred to us by Mr Hawke, they simply illustrate that there is the potential for an off licence to diminish amenity and good order of a local area. We must evaluate the risk of such effects in this locality. We find that while there is always the potential for such effects, the risk here is low. That is because of the generally high amenity and good order in this location and lack of evidence of negative behaviours from the existing off licences. This, when coupled with the experience and track record of the applicants, the high standard of presentation of the new commercial centre and the applicant's commitment to clean up any litter or graffiti within the centre satisfies us that effects of nuisance or vandalism in the immediate locality are sufficiently mitigated so as to be minor. We also note here that the Oaks Centre has been designed in accordance with Urban Design criteria which required adherence to Crime Prevention and Environmental Design (CPED) principles.<sup>31</sup>

[109] We recognise the applicant can only control what is in the immediate environment of the premises. Once people leave the store, if they become involved in nuisance or vandalism, it may be difficult to show a causative link to the bottle store. We have had regard to the number of premises for which licences of the kind concerned are already held. In this case there are two off licences held for a supermarket and a bottle store located within 1km of the site. We were told of a possible new supermarket and/or restaurant/bar at 201 Halswell Road, however, at the time of the application resource consent had not been approved and no off licence had been applied for. We heard no evidence of vandalism and nuisance problems arising from the existing off licences in local parks and streets that would lead us to conclude there are likely to be any significant issues in this locality.

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<sup>30</sup> Resource consent decision for 29 Ensign Street and evidence of Mrs Delaney

<sup>31</sup> Report and Decision on a non-notified Resource Consent Application RMA2017/269 30 October 2017.

[110] We have had regard to the extent to which land uses near the premises and the purposes for which the premises will be used if the licence is issued are compatible. Immediately adjoining land uses include the other tenancies within the complex which comprise a range of business activities such as a gym and pharmacy and intended uses such as a dairy and a restaurant and bar. These are all activities commonly found in a local commercial centre and we do not find the bottle store to be incompatible with the commercial centre. We note that although we are aware of the possibility of restaurant/bar activity, subject to obtaining a licence, whether or not it will be is a matter beyond the scope of this inquiry. Mr Ferguson had a concern about a tavern and bottle store, however, there is currently no tavern.

[111] We have had regard to the compatibility of the premises and the adjacent land commercial and community uses such as the adjacent medical centre, Church, preschool and the school.

[112] In relation to the health care centre we acknowledge there is likely to be regular pedestrian activity (we heard about the possibility of a pedestrian crossing in the future) as visitors to the medical centre visit the Pharmacy. The Pharmacy is located in unit 1, just inside the Ensign Street entrance. Pedestrians will not have to pass the bottle store to gain access to the Pharmacy. There were no objections from the Pharmacy or the Medical Centre.

[113] The Southwest Baptist Church is adjacent to the back of the Oaks Centre on Balcain Street but is separated by an area of carparking. We understood the Church occupies these by legal easement (the Church has a gateway to those carparks from its site). Then there is a row of storage units which form the back side of the bottle store and possible future restaurant/bar. The Southwest Baptist Church, and some of its users such as the Sharp Trust, are concerned about the exposure of vulnerable members of their community, including children, to the effects of alcohol consumption. We find that the community is not required to walk through the shopping centre to access the Church and safer pedestrian access is available on the street rather than through the centre carpark. Pedestrians within the centre are directed to the perimeter foot paths which would not shorten the route. The lack of advertising banners, flags or sandwich boards and limited signage associated with the premises minimises any exposure to the premises.

[114] In terms of the wider concerns about the possibility of intoxicated people walking or driving to the bottle store, we find that the risk is relatively small given the existing levels of amenity and good order. We have carefully considered whether the risk may be greater in the

later evening when young people are leaving various youth groups at the Church.<sup>32</sup> We have considered the evidence of the Mr and Mrs Holder, Mrs Saunders and Ms White about the Church Carpark and the access to the pre-school being places where people (some intoxicated) have congregated in the past. There is a small risk that some people visiting the bottle store late at night may already be intoxicated and present a risk to the community. If already intoxicated they should not of course be sold alcohol by the licensee but nevertheless they may pose a risk by simply being in the location and being turned away. It was later in the evening that caused the most issues to residents in the past. A reduction of hours in the later evening could reduce this risk to young people using the Church at night. The applicant has already indicated that an 11pm closing would be rare and referred to their usual trading hours at Bottle O Lincoln Road. The rationale for the 11pm closing was flexibility. Convenience to the applicant is not one of the matters which we are required to have regard to. If we do include conditions, they do of course have to be reasonable and consistent with the object of the Act.<sup>33</sup>

[115] Notwithstanding the low risk of occurrence, there is a high risk of harm if an incident occurred when young people were out later in the evening. We are entitled to take a precautionary approach. We have concluded that if the bottle store was closed by 9pm Sunday to Thursday and 10pm on Friday and Saturday it would reduce the potential for alcohol related harm and reflects the hours the applicant usually expects to operate. We find such a condition to both be reasonable and consistent with the object of the Act.

[116] The pre-school is located next door to the Church, set back from the street, although the nursery component fronts Balcairn Street. The concerns of the pre-school relate to possible exposure of families to nuisance from the premises and also exposure to intoxicated persons. We refer to our findings in relation to the Church and do not find it likely there is any increased risk to preschool families during the day time. We have taken into account that the pre-school expanded its operation to include the Nursery on the street frontage at a time when neighbours were experiencing adverse effects on amenity and good order from the Quarry Bar.

[117] We were also referred to the location of Oaklands School. Although further away, there is an alleyway from the school site that accesses Brenda Place, therefore, providing a thoroughfare for local primary school children who may live closer to the centre. There is the potential for those children to walk through the shopping centre from Balcairn Street to Ensign Street, and they may also congregate at the proposed dairy. It is most likely this would occur

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<sup>32</sup> Evidence of Erin White and Church Booklet Exhibit NR1

<sup>33</sup> SSAA Section 117.

after school if children choose to visit the dairy. Their exposure is to the bottle store itself would be unavoidable, however, the conditions relating to signage and advertising we propose, the small size of the store and good management of the licensee minimises the risk of harm to children visiting the shopping centre.

[118] There are also a number of public parks on Balcairn Street, and an alleyway linking Ensign Street with Halswell Road which may become places for loitering or congregation of individuals consuming alcohol purchased at the bottle store. We heard no evidence of any existing problems in the vicinity of the Super Liquor or Supermarket. We find the risk to be low in this neighbourhood. We have addressed loitering in the context of the Church above.

[119] Mr Ferguson noted a potential issue if a tavern were to locate within the centre with the bottle store which would cause him concern. As he noted it is difficult to assess that risk given at this stage it's not there and would be subject to a separate licence application yet to be determined. We note that if another licenced premise were to establish within the centre the Agencies will no doubt closely monitor any impact on amenity and good order and alcohol related harm which can then be considered as part of a renewal application. Renewal applications are publicly notified and if neighbours have concerns then they are entitled to object. We note that a new licence is only granted for a 12-month period and this is generally regarded as a probationary period. There is no presumption that a future renewal would be granted.

[120] Having considered each of the matters in s106 we are of the opinion that the effect on amenity and good order by the effects of granting this licence in this location subject to the conditions we have imposed is likely to be minor.

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

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

[121] We do not find to be the case. The existing on licences and off licences are some distance from the Oaks Shopping Centre and neither the Police or residents have reported any amenity or good order concerns. To the contrary the universal view is that the area is pleasant and agreeable.



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

[122] Both the MOH and Inspector were satisfied of these matters. We heard evidence from the applicant of their practices in relation to these matters and are satisfied that the applicant has appropriate systems, staff, and training to comply with the law.

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

[123] We have had regard to the reports from the Police, Inspector and Medical Officer of Health. There is no reported opposition to the grant of the application.

*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.*

[124] We have not done so.

*Object of the Act*

[125] Research shows that a new alcohol outlet may cause alcohol related harm. For that reason the legislation requires that we undertake a careful evaluation of an 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.

[126] Opposition to this application has focused on the potential impact on amenity and good order of an off licence in this location. There has also been concern about harm to the community generally from the addition of a new bottle store. The residents have demonstrated from their actual experience of before and after the Quarry Bar, how the amenity and good order of a location can be impacted by the behavior of customers of alcohol outlets. In this case the experiences arose from a tavern (with a small off licence), not a small stand-alone bottle store. We find the risk of a similar effects arising from this small bottle store to be mitigated by the high amenity of the Oaks Centre development, the position of the store within the development, the generally good amenity and lack of evidence of disorder in the locality and the known track record of an experienced applicant. For those reasons we find the sale of alcohol, subject to the conditions we impose, should be undertaken safely and responsibly and the risk of harm from excessive and inappropriate consumption of alcohol should be minimised.

[127] Before concluding our written decision, we wish to comment on the closing submission of Ms Barbour, who reminded us of an earlier decision of the DLC (differently comprised), to decline an application for an off licence in relation to the Harewood Bottle Store. She submitted that it had many similarities. We are not bound in a legal sense by previous decision of the DLC, each application is to be considered on its merits and will likely have a different matrix of issues and factual circumstances. It is, however, incumbent on the DLC to treat like applications as like. The Harewood case involved a small bottle store in a predominantly residential area that attracted a significant number of objectors from the local community and no opposition from the agencies. There were two bottle stores and one supermarket within 1km of the site. On the issue of amenity, the Committee formed the opinion on the evidence it heard that the bottle store was incompatible with the residential area and the effect on amenity and good order was more than minor. There were some differences in the locality in that case. The proposed store was located on the corner of Harewood Road and Trafford Street, in a small group of shops along the street frontage. The local areas also included a lower socio-economic area. The decision to refuse the application was based on the reduction in amenity and good order of the locality. The applicant was also relatively inexperienced, and the Committee recorded concerns about the applicant's suitability. That is not the case here.

## **Decision**

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

### **The Licensed Premises**

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

### **Discretionary conditions – section 116 (1)**

- (b) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
  - (i) Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.

- (c) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
  - (i) Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.

#### **Compulsory conditions – section 116 (2)**

- (d) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day 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:
  - (i) Sunday to Thursday, between the hours of 9am to 9pm.**
  - (ii) Friday and Saturday, between the hours of 9am to 10pm.**
- (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 licence must implement and maintain the steps proposed in Bottle O Halswell Host Responsibility Policy<sup>34</sup> aimed at promoting the reasonable consumption of alcohol.
- (h) There shall be no advertising of alcohol attached to the exterior of, or visible from outside, the premises.
- (i) No flags or sandwich boards shall be used to advertise the premises or goods for sale.

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

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

#### **Other restrictions and requirements**

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

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<sup>34</sup> As attached to the application.

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

[130] 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 17th day of December 2018.

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

Cindy Robinson  
Chair for an on behalf of the Christchurch District Licensing Committee