

Decision Number: 60F [2022] 11112

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

AND

IN THE MATTER OF GKD LIMITED for a new Off-Licence pursuant to Section 99 of the Act in respect of premises situated at **420 Colombo Street, Christchurch** to be known as **'The Colombo Liquor Centre'**

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Committee: Mrs M Redstone
Mr D Ivory
Mr G Clapp

CORRIGENDUM

[1] This corrigendum is issued in response to the recent Alcohol Regulatory and Licensing Authority (**'the Authority'**) decision of *Duncraft v GKD Limited* [2023] NZARLA 78.

[2] At paragraph 114(b) of its decision, the Authority noted a discrepancy between the proposed hours recorded in the original application and the Christchurch District Licensing Committee's (**'the Committee'**) final decision on the matter.

[3] In decision **60F [2022] 11112**, dated 30 August 2022, at paragraph 79(f)(i), the Committee recorded that:

Compulsory conditions – section 116(2)

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

Monday to Saturday, between the hours of 9.00am and 10.00pm

[4] In its application, the Applicant had sought hours of 10.00am to 10.00pm seven days a week. As such, the above is a typographical error.

[5] Accordingly, para [118](f) is therefore hereby corrected as follows;

Alcohol may only be sold or delivered the following days and during the following hours:

Monday to Sunday, between the hours of 10.00am and 10.00pm.

[6] In all other respects the decision remains unaltered.

DATED at Christchurch this 1st day of June 2023

A handwritten signature in black ink, appearing to read 'Merelyn Redstone', written in a cursive style.

Merelyn Redstone

Chairperson

Christchurch District Licensing Committee

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

AND

IN THE MATTER OF an application by **GKD LIMITED** for a new Off-Licence in respect of premises situated at **420 Colombo Street, Christchurch** to be known as '**Colombo Liquor**'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 28 July 2022 (at Christchurch)

Committee

Chairperson: Mrs M S Redstone

Members: Mr D Ivory
Mr G Clapp

Appearances: Mr Andrew Riches, Counsel for the Applicant
Mr Deepkumar Trivedi, Director of the Applicant
Mr Kinjan Shah, Shareholder of the Applicant
Dr Liz Gordon, Counsel for the Objector
Ms Rhonda Duncraft, Objector
Ms Nikki Anderson, Licensing Inspector, to assist
Ms Paula Williams on behalf of the Medical Officer of Health

Decision: 31 August 2022

RESERVED DECISION OF THE COMMITTEE

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Introduction

[1] This is an application by GKD Limited (**‘the Applicant’**) for a new Off-Licence. The premises is situated at 420 Colombo Street, Christchurch, and is to be known as ‘Colombo Liquor’. The application was received on 10 September 2021.

[2] The Applicant seeks to establish a new premises in a commercial area on Colombo Street South. The Applicant has sought the following trading hours:

Monday to Sunday, between the hours of 10:00am and 10:00pm

These hours are shorter than the default maximum trading hours for Off-Licences.¹

[3] The application was publicly notified on the Council’s website on 10 September 2021 and remained on the website for a minimum period of 15 working days.

[4] Two public objections were received within the required timeframe. A preliminary status hearing was held on 3 May 2022 at which it was found that Ms Rhonda Duncraft (**‘the Objector’**) had standing as she lived within a 2km radius of the proposed premises, but the second objector, Ms Kylie Jay, did not. Ms Duncraft and Ms Jay are both teachers at the Sydenham Community Preschool. The Committee was clear that in the absence of

¹ Section 43 of the Sale and Supply of Alcohol Act 2012.

any formal resolution of the preschool, it did not have standing as an objector and Ms Jay lived outside of the 2km radius of the proposed premises.²

[5] The application was not opposed by the District Licensing Inspector, Ms Nikki Anderson³. However, Ms Anderson appeared at the hearing to assist.

[6] The New Zealand Police⁴ and the Medical Officer of Health (MOH)⁵ provided reports to assist the Committee. The Police were unable to attend the hearing due to illness, but answered further questions by way of memorandum following the hearing. Ms Paula Williams, on behalf of the Medical Officer of Health, attended the hearing.

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

[8] A hearing of the application took place on 28 July 2022. We heard evidence and submissions on behalf of the Applicant, and the Objector.

Preliminary Matter

[9] Counsel for the Applicant, Mr Andrew Riches, filed a Memorandum in Opposition to Admissibility of Witness Statements. Counsel for the Objector, Dr Liz Gordon, filed a Memorandum in response and objected to the late filing of the Applicant's Brief of Evidence in Response on the grounds that it was filed late.

[10] The Committee made the following rulings on the preliminary matters:

[a] Firstly, as to the admissibility of Ms Jay and Ms Belinda Fowler as witnesses, the Committee is of the view that an objector is entitled under section 204(3) of the Sale and Supply of Alcohol Act 2012 (**'the Act'**) to call witnesses in support of their objection. The weight given to the evidence provided by those witnesses is a matter for the Committee in reaching its decision.

[b] The Committee reiterates its decision contained in its Minute of 11 May 2022 following the preliminary status hearing that it was not satisfied that Ms Jay had standing as she did not live within a 2km radius. Further, the Committee did not

² DLC Minute dated 11 May 2022.

³ Inspector's report 16 March 2022

⁴ Police Report

⁵ MoH Report 10 March 2022.

consider the preschool itself had standing in the absence of any formal resolution of the preschool to object.

- [c] With respect to Ms Fowler, the Committee accepts that the Communities Against Alcohol Harm Society is not situated within the zone affected by this application. The Committee further accepts the finding reached in ***GRD Trading Limited v Communities Against Alcohol Harm Inc [2019] NZARLA 222*** at paragraphs 60-62 that in that case the CAAH did not have standing. However, in that case the CAAH was an objector, whereas in the matter before us an individual, who happens to work for CAAH, has been asked to give statistical evidence as a witness in support of an objector. It will be for the Committee to determine what weight it places on that information and its relevance to this application.
- [d] With respect to the late filing of the Applicant's Brief of Evidence in Reply, the Committee gives a waiver in respect of the late filing, whilst noting that no apology was received in respect of this. However, the Applicant would be permitted to respond orally in any event and the Objector was not prejudiced by the late filing.

Submissions and Evidence

[11] Mr Riches opened on behalf of the Applicant highlighting that 420 Colombo Street was previously a bank building and is located in a commercial area on a busy main road. The area contained a number of adult-focused businesses and no sensitive sites in the immediate vicinity. There is a very low residential population in the immediate area. He noted the proposed premises is situated within a Liquor Ban area which he felt should give some comfort to the Objector. He noted proliferation was not a stand-alone ground for objection but a matter for the Committee. He noted that the proposed premises were adjacent to the City, other bottle stores were located at some distance, with the only other closely located businesses selling alcohol being boutique in nature.

[12] All briefs of evidence were taken as read. Mr Deepkumar Trivedi then answered questions on behalf of the Applicant.

Mr Deepkumar Trivedi

[13] Mr Trivedi briefly highlighted his experience in the industry, including his ownership, since 2018, of a similar business in the Burwood area of Christchurch (**'Thirsty Liquor Burwood'**). He undertook the LCQ course in 2018 and obtained a Duty Manager's Certificate. He works for Fujitsu, working from home, for 37 hours per week. He works a

further 18 hours in the evening at Thirsty Liquor Burwood, either working as the Duty Manager or supervising other staff.

[14] It is the intention of the applicant to take a franchise with Liquor Centre and, at the same time, change the branding at Thirsty Liquor Burwood. He gave evidence that Liquor Centre provide their own pricing for products and that the Applicant will not be setting any pricing at all, including specials. His witness, Mr Kinjan Shah is a 50% shareholder in the Applicant, which will own the Colombo Street store.

[15] Ms Williams, the Medical Officer of Health representative, put a number of questions to Mr Trivedi. He agreed there was graffiti in the area, but mainly on empty buildings resulting from the Christchurch earthquakes. He said in his opinion the more buildings in the area become occupied, the less graffiti would be found. With respect to a scenario put to him of people drinking in empty buildings, he said if he became aware of any such activity he would call the Police to deal with it as it is a Liquor Ban area. As to any sensitive sites such as schools, preschools and churches, Mr Trivedi noted that they are located some distance away. Mr Trivedi said an incident book would be kept. Mr Trivedi intends to employ an experienced manager to run the proposed business on a daily basis with himself and Mr Shah working in the evenings and weekends in support. He said his business would compete with others by having a focus on good service. In response to a question about the colour of the building as required by the Franchisor, he said there would be a choice of either red or blue and a red and black banner, with the name, above the store. He hoped to negotiate with the Franchisor on other colour aspects and believed one or two options were available. Ms Williams asked if he would sell a second litre of, say, Vodka to one person in a day. He replied he would if they were not intoxicated and would encourage them to buy food.

[16] Dr Gordon questioned Mr Trivedi on behalf of the Objector. She noted that Mr Trivedi's Thirsty Liquor Burwood store was orange in colour and was in her view "quite tacky" with notices and advertisements everywhere. Mr Trivedi responded that it had remained that way after he took over from a previous owner. He noted that he intends to change the Franchisor he is working with, in conjunction with the proposed new store, which would see a number of changes to the look. Dr Gordon asked Mr Trivedi questions about homelessness and people drinking in the area. He responded that on his visits, although he had met two homeless people, one told him they did not drink, and he had not seen people drinking in the area. He said if he did, he would engage with them, noting again the Liquor Ban in the area. In answer to further questions around alcohol being

consumed in the area, Mr Trivedi said he had noted alcohol-related rubbish but had not himself seen people drinking. In response to questions about graffiti, he responded in a similar way as he had to questions put by Ms Williams. When asked if he would sell to homeless people, Mr Trivedi responded that he would if they were not under-aged or intoxicated. He did not agree with a proposition that alcohol consumption is a condition of homelessness, but accepted that it can be one condition amongst others.

[17] Dr Gordon questioned Mr Trivedi about removing rubbish in the immediate area of the store and graffiti, to which he responded that the Council would do that.

[18] In response to questions about the requirements of the proposed Franchisor as to pricing, including promotions, Mr Trivedi said the Franchisor set the prices and that he had no control over them. However, he said they would firstly follow any conditions placed on a Licence.

[19] In answer to questions from the Committee, Mr Trivedi explained the Company's Host Responsibility Policy and confirmed there would be regular staff training. The Committee referred to the Inspector's report where it was reported that the Applicant had said they had no intention to sell single serves of RTDs with the standard unit price of less than \$6 per unit and that single beers with an average of 5% to 7% ABV will not be sold at a unit price of less than \$7. In answer to further questions Mr Trivedi advised the cheapest wine would be \$11 per bottle and cask wine \$35 per unit. He agreed they would not sell Nitro and, although they had applied to sell them, they would agree not to sell cigarettes and vaping products. He agreed promotions of RTDs, single serve Beers and Wine would not bring the unit price below those set out above. He confirmed that 50% of the windows would be covered and there would be no advertising notices on the outside of the windows or building. He further agreed to not having a sandwich board outside. He advised he has no intention of providing any sort of "after pay" facility for the purchase of alcohol.

[20] The Committee asked Mr Trivedi to provide copies of pages from the Incident Book, time sheets, salary records and training records for his Burwood Business. These were not to be provided to other parties but to satisfy the Committee as to his intention to keep proper records and to pay staff, particularly the day-to-day manager, in accordance with his experience and qualifications and the work and responsibilities expected of him. A copy of the Franchise Agreement with Liquor Centre would also be obtained and provided to the Committee.

Mr Kinjan Shah

[21] Mr Shah's evidence was taken as read. He confirmed he was a 50% shareholder in the Applicant. He has owned a busy dairy in Christchurch for over 5 years which he runs in conjunction with his wife. He has the LCQ certificate and some limited experience working part-time in liquor stores, including Thirsty Liquor Burwood as and when required to cover leave or sickness. If a licence is granted, he proposed to be involved part-time in the business, working some evenings and at the weekend. He had visited several businesses in the proposed Colombo Street store area and received feedback that a new business in the area would be welcomed.

[22] He answered questions put by Dr Gordon on behalf of the objector advising that he would expect most of the business to come from people working in the area and also the high volume of traffic passing down Colombo Street. He agreed people could stop and purchase alcohol and take it into some vulnerable communities. He also noted the area led to some high decile areas of Christchurch and bottle store owners did not know where alcohol purchased would be taken and consumed. He answered questions about graffiti in the area which he agreed was highly visible on buildings in this area which had remained largely empty since the earthquake but said he thought it was gradually building back up.

[23] He answered questions about the 'Liquor Centre' brand and agreed there was a mobile phone application to set prices but said that would be adhered to in conjunction with any Conditions placed on the Licence.

[24] Dr Gordon put to Mr Shah that the Liquor Centre website states, *"Members can sell any product they want at any price. There are no mandatory core ranges"* and that this was at odds with the evidence given at the hearing by both Mr Trivedi and himself. Mr Riches, for the Applicant, asked to have Mr Trivedi recalled as questions about the franchise had not been put to him.

[25] In answer to questions from the Committee he explained the staff training proposed and his retail experience. He advised that staff would be directed to dispose of any rubbish in the surrounding area each morning when the store opened.

Mr Deepkumar Trivedi (recalled)

[26] Mr Trivedi was recalled as there were questions from Dr Gordon and the Committee about the franchise that had not been put to him when he gave his evidence.

[27] Dr Gordon put to Mr Trivedi that the Liquor Centre website states, "*Members can sell any product they want at any price. There are no mandatory core ranges*" and that this was at odds with the evidence he had given in his brief and at the hearing. In answering questions about the 'Liquor Centre' franchise, Mr Trivedi was quite vague and appeared uncertain of the requirements, having only spoken twice to the Franchisor.

[28] He explained they were bound by the options provided by the Franchisor as to the colour of the building. He explained pricing and promotions and said if the store did not follow these prices they would not receive certain rebates and buying benefits, which would make the business unprofitable. This is what he had meant by "*no control over the pricing*". He further said that both he and the Franchisor would be bound by any Conditions placed on the Licence.

Inspector - Ms Anderson

[29] The Inspector's report was taken as read. In response to questions from Mr Riches she agreed that there was generally less graffiti when buildings were occupied. She advised Mr Trivedi had been a director and shareholder of Thirsty Liquor Burwood since 2018 and to her knowledge no concerns had been raised with the way this premises has been operated. Eleven monitoring visits had been carried out by Licensing Inspectors at the premises and it was found to be compliant on all occasions. Ms Anderson said the Police had advised her there was no longer a problem with boy racers in that portion of Colombo Street, the community housing was cut off from the premises by a main arterial road and was situated across the road from the Big Daddy's bottle store. She said there was a lower population in the area of both adults and children as it was mainly commercial area.

[30] Dr Gordon asked the Inspector to describe the amenity and good order between Moorhouse Avenue and Wordsworth Street. She responded that there was nothing to suggest it was in such a state that a Licence should not be issued. There were several questions that were more appropriate for the Police to answer and a Memorandum of Counsel's questions was to be sent to the Police for response to the Committee.

Medical Officer of Health - Ms Williams

[31] The report from Ms Williams on behalf of the Medical Officer of Health was taken as read. She highlighted that statistics showed the number of outlets in an area increases alcohol-related harm. In answer to questions, she said that the 16 to 18 outlets in the vicinity, including supermarkets, bottle stores and boutique breweries, was a high number but had to be seen in relation to this being a commercial area in the City where alcohol would largely disperse out to the suburban areas. In response to a question from Dr Gordon about the relationship of alcohol to homelessness, she said a lot of factors affected homelessness including, but not limited to drugs, alcohol, domestic violence and other social issues. In response to further questioning, she said another outlet could encourage the homeless in the area to drink more.

Dr Gordon, Counsel for the Objector – Opening Submissions

[32] Dr Gordon's opening submissions were taken as read. She highlighted that the Objector was of the view that there were issues of suitability with an Applicant wanting to operate in an area with high alcohol-related harm. She was concerned about people congregating in parks drinking. She said it was not a pleasant area and had gone from being a busy business area to an area with few businesses and a lot of graffiti. She said, further, that amenity and good order were so affected that a new licence would reduce it further. She referred to the extended threshold as to suitability of applicants in areas of deprivation.

Ms Rhonda Duncraft

[33] Ms Duncraft's Brief of Evidence was taken as read. She highlighted the number of outlets within a 2km radius of the proposed premises and said, "*We don't need another one*". She said she had seen instances of people knocking on the doors of cars asking for money at 7:00am and people waiting outside Cosmic, a shop that sells vaping products. She said that they had instances of Foetal Alcohol Syndrome Disorder in the kindergarten where she works and that alcohol was detrimental to a lot of parents. She said the kindergarten provides food and clothing where required and she wanted to be the voice of the children. She said she had been living in Byron Street since July 2021 and there were two children in the preschool living in that area.

[34] In response to a question from Ms Williams, Ms Duncraft advised that people consumed alcohol in the Carlyle Reserve evidenced by the rubbish in the area.

[35] In response to questions from the Committee Ms Duncraft advised that the kindergarten organises supervised outings taking the children on foot through the community. They often collected wood to take back for activities at the kindergarten. She said children asked questions about businesses as they passed by. In response to a question as to how she would explain any new bottle store to the children, she responded that their routes are planned in advance, and she would not take them past the store.

[36] Ms Duncraft had called Ms Jay, a teacher at the kindergarten to give evidence on her behalf but advised that she was unable to attend through illness and asked the Committee to take that into account when considering Ms Jay's brief of evidence.

[37] Ms Jay presented evidence of having seen the result of children at the preschool being exposed to alcohol-related incidences outside the preschool and within their homes.

Ms Belinda Fowler:

[38] Ms Fowler's Brief of Evidence was taken as read. In response to questions from Mr Riches she advised that she was not a member of Communities Against Alcohol Harm but worked for them. She was not an expert witness and she had conducted a desktop review of the area using publicly available information relevant to deprivation. In response to questioning, she said she had not been to Christchurch and had not inspected the area. She said further she had not been asked before to look at an area with only 130 people living in it. She agreed that Sydenham had a lower number of children compared to the rest of Christchurch with only 12 of the population of 138 being under the age of 19.

Response of Police to questions put to them by way of Memorandum

[39] Mr Riches put questions to the Police by way of Memorandum seeking further information, as follows:

- Do the Police take actions other than laying charges within a liquor ban zone?
*Breaches of local liquor bans are generally dealt with by way on the issuing of an AION (alcohol infringement offence notice) – with a fine of \$250.00 imposed. The Police response in that regard is discretionary but a firm approach is generally applied to detected offending. In addition to the issuing of an AION Police may either seize the alcohol or ask the offender to tip out any open containers.
As such arrests are not normally effected – so that pre-charge warnings rarely arise.*
- Is there any evidence of an increase in boy racer activity following the 2018 liquor ban review?

No.

- Do Police consider there is any link between alcohol consumption and graffiti in the Sydenham area?

The manner in which Police record offences such as intentional damage (including graffiti) does not necessarily include collation of associated information – such as alcohol consumption by offenders. As such Police are unable to reliably comment on whether or not there is a link.

Closing Submissions

Mr Riches for the Applicant

[40] On behalf of the Applicant, Mr Riches said that much had been made about proliferation, concentration and the number of alcohol stores in the area. He said in terms of proliferation, it was not a criteria to be considered under the Act. He said it may have a bearing in terms of specific criteria, for instance, if there was evidence produced that demonstrates that proliferation generally contributes to a rise in alcohol abuse. However there was no evidence today that had supported that.

[41] Mr Riches addressed the concerns of the Objector and the Committee as to the hours worked by the shareholders of the Applicant and their ability to take responsibility for compliance in the proposed store in addition to their other work. He pointed out that both Mr Trivedi and Mr Shah were hardworking and enterprising businessmen who wished to work hard to ensure the success of their business and their ability to provide for their families. They would each be working six days per week and having Sunday off work completely.

[42] Mr Riches reconfirmed the position as to the Applicant's ability to set its own prices. He confirmed that it could do so but would not as it would result in them not being eligible for rebates on particular products causing a loss of income as well as being removed from advertising on the franchisor's website.

Ms Williams for the Medical Officer of Health

[43] Ms Williams confirmed that the MOH had initially reported no opposition to the application but submitted that that application was quite different to the application spoken to at the hearing. This required the Committee to consider the application in a much wider context than that on which the agencies reported.

[44] Ms Williams submitted that the concessions made by the Applicant as to Conditions to be placed on the Licence, particularly in terms of pricing, may lead the Applicant to look for other ways to make the business profitable. However, it is conceded that the Applicant's words were "*the community came before profit*".

[45] Ms Williams submitted that it was a concern that both Mr Trivedi and Mr Shah were committed to other businesses in addition to this proposed new business. She pointed to the higher threshold required to establish suitability in a vulnerable community.

Dr Gordon for the Objector

[46] In closing submissions Dr Gordon discussed what the Objector saw as deprivation and vulnerability in the area and pointed to evidence of: the existence of significant urban decline; worsening crime and disorder; a number of homeless people; vandalism and nuisance in local parks; the number of empty sites and buildings; the huge amounts of graffiti; and, a change in the quality of shops in the area. She submitted that this is an application where the deprivation and vulnerability of the locality is such that the standard of suitability has been raised to the higher threshold of 'extended suitability'.

[47] Dr Gordon submitted that the suitability of the applicant should be questioned and in particular raised issues of the Applicant having little understanding of their franchise requirements and the ability of Mr Shah and Mr Trivedi to give sufficient time to the management and operation of the premises. Dr Gordon noted that they are both involved in other full-time work and Mr Trivedi also operates Thirsty Liquor Burwood but is not hands-on in that business either.

[48] Dr Gordon made further submissions as to the amenity and good order of the area and the likelihood, in her view, that this would be reduced by more than a minor extent by the granting of this application.

Considerations of the Committee

[49] Having considered the Application together with Agency Reports and Objections placed before it, and with the oral evidence and submissions received at the hearing, the Committee must now stand back and determine whether the application for a new Licence should be granted.

[50] The Committee notes the comments of the Police, the Inspector and the Objectors in their frustrations at the lack of a Local Alcohol Policy (LAP) which, if available, could assist in shaping licensing decisions.

[51] We have listened to the Applicant. We also note the concerns of the Objector and acknowledge the research carried out by one of her witnesses to present facts and figures to the Committee.

[52] The Committee cannot ignore public objections simply because the Agencies have not raised any opposition to the granting of the licence. We have to be able to identify facts that are directly relevant from the material presented. As the Alcohol Regulatory and Licensing Authority said in *Mangere-Otahuhu Local Board v Level Eighteen Ltd* [2014] NZARLA PH 627-228:

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

[53] We therefore proceed to evaluate the evidence presented using the approach outlined by the High Court in *Otara-Papatoetoe Local Board v Joban Enterprises Limited CIV 2011-404-007930* [2012] NZHC 1406:

“the Authority is required to undertake an evaluative exercise. An appropriate framework would involve, in no particular order, consideration of:
(a) the criteria set out in s35 (1);
(b) the reports presented by the Police and Inspector...,
(c) Public objections...”

Evaluation and findings under section 105 and section 106 of the Act

[54] The role of section 105 and how it is to be approached in relation to applications has received plenty of judicial attention.⁶ The approach, when considering the licence application, is succinctly summarised as follows:⁷

⁶ *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.

⁷ *Re Venus NZ Limited* at [20] and *Auckland Medical Officer of Health* at [60] see Westlaw NZ, SA 105.02

“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?”

[55] 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.⁸ 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.

[56] Further, the evaluative function is an assessment of risk.⁹ 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***

[57] The object of the Act is that -

- a) The sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
- b) The harm caused by the excessive or inappropriate consumption of alcohol should be minimized.

The Act further states that the harm caused by the excessive or inappropriate consumption of alcohol includes -

- a) Any crime, damage, death, disease, disorderly behavior, 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 behavior, illness, or injury of a kind described in a) above.

We keep those objects to the forefront of our minds in considering the application.

[58] 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

⁸ *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC).

⁹ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123.

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.¹⁰ 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.*"

[59] 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.¹¹ There is a presumption built into 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.

[60] '*Harm caused by excessive and inappropriate consumption*' is defined broadly in section 4(2) of the Act 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.

[61] We now make assessments, based on the evidence before us and the various reports received, on each of the criteria contained in section 105 of the Act.

▪ ***The suitability of the applicant***

[62] We find that the Applicant is a suitable entity to hold a Licence. The Director has a similar business, which he has been operating for approximately three years without incident. The other shareholder in the business is an experienced business operator, with some experience in the Alcohol Industry working as a Duty Manager. Both shareholders hold Manager's Certificates and have completed the LCQ course.

¹⁰ 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].

¹¹ Alcohol related harm is defined in s5 to mirror that in s4(2) of the Act.

- ***Any relevant local alcohol policy***

[63] There is no relevant LAP. Christchurch has the Christchurch Alcohol Action Plan (CAAP), a non-regulatory document. However it is not a substitute for a LAP prepared under sub part 2 of the Act.

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

[64] The Applicant seeks hours of 10:00am to 10:00pm 7 days a week. Those hours are within the national default hours for an Off-Licence of 7:00am to 11:00pm.

- ***The design and layout of any proposed premises***

[65] A plan was provided showing the proposed layout of the premises. The Applicant had revisited the initial plan following discussions with the Inspector about crime prevention through environmental design.

- ***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:***

[66] The Applicant proposes to sell food items such as chips, nuts, packeted nibbles and fizzy drinks. Although the Applicant had applied to sell tobacco and vapes, the Director advised, when it was put to him at the hearing that there was a shop that sells vaping products a short distance away, that they would not sell those products.

- ***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:***

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

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

[68] Section 106 requires that when the Committee is considering whether the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of this licence, it 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;

[69] The locality was described as a commercial area situated to the south of the main City area. There are very few residents living in the area. The area was badly affected by the 2011 Christchurch Earthquake resulting in numerous empty buildings and vacant lots. Recently "The Colombo" Centre, situated nearby, has been upgraded and other businesses are gradually being encouraged back into the area. The Objector did not produce any significant evidence specific to this application to support that amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of this Licence. In answer to a question from the Committee, the Objector said if she was out walking with the pre-school children, she could simply take a route that did not pass the proposed bottle store.

[70] The Police, whilst not present at the hearing, did note in the Police Report to Council in 2018 in support of the renewal of liquor ban areas that:

"Currently Police are detecting widespread breaches of the ban in the South City car park area. Efforts to encourage Mall Management to lock the car park overnight (outside mall hours) are ongoing - but have been largely rejected to date.

In addition to widespread breaches of the ban this area has seen a number of serious assaults and attacks on people moving through the area on foot at nighttime. There is a clear correlation between unsupervised consumption of alcohol in crowd situations and increased levels of violence and property damage.

There is clear evidence of people congregating in this area to 'pre-load' before attending local bars in this area."

[71] The Committee notes that this report was dated 2018 and neither the Applicant nor the Objector chose to ask the Police, by way of Memorandum, to provide either an update or further comment.

[72] The Applicant had engaged with some businesses in the immediate surrounding area. They would do well, in that respect, to understand the objector's concerns for the wider surrounding community, together with the comments contained in the Police Liquor Ban Report, and should continuously reflect on the responsibility placed on them in operating an off-licence in this community.

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

[73] The Applicant has provided documentation which indicates appropriate systems, sufficient staffing and the provision of training to comply with the law. The Applicant provided a comprehensive training plan and a Host Responsibility Plan with its application.

[74] The Committee would not be satisfied, on any application for renewal, with training records similar to those provided for Thirsty Liquor Burwood, which appear to have been written contemporaneously, do not give dates and do not record staff training days and achievements. There is no record as to who carried out the training, except to say that Deep Trivedi was the manager. It is noted that Mr Trivedi only passed his LCQ and obtained his Manger's Certificate in 2018. The grant of an Off-Licence puts a much higher standard of responsibility on Mr Trivedi to ensure that staff training is appropriate and carried out by persons with an excellent knowledge of the requirements of the Act. The Committee would recommend, given the other commitments of the shareholders, that they employ a professional trainer to train all staff, including themselves, on a regular basis and keep records of that training.

[75] The Committee noted from the time sheets and wages records of the Thirsty Liquor Burwood together with the roster provided for the Colombo Street business that there was no provision in the hours for a half hour unpaid break, particularly for the full-time manager who was working up to 9.5 hours per day. The applicant is referred to the legislation setting out paid uninterrupted work breaks and unpaid meal breaks, including when these are to be taken. The records of the Applicant show the rostered hours and hours worked as being the same, without the additional half hour for an unpaid meal break.

[76] The roster provided shows one staff member finishing and another commencing at exactly the same time. Although the applicant gave evidence that there are handovers, and daily discussions in relation to the issues book, there appears to be no provision for satisfactory handovers and discussions in the roster provided.

[77] The Committee further notes Mr Trivedi's business plan presented at the hearing, provided:

"We ensure that we only hire people that are qualified, honest, customer centric and are ready to work to help us build a prosperous business that will benefit all the stake holders (the owners, workforce, and customers). Profit sharing arrangements are made available to all our management staff and it is based on their performance for a period of three years or more especially when we start selling our franchise.

In view of that, we have decided to hire qualified and competent hands to occupy the following positions:

Owner
Store Manager
Store person
Accountants/Cashiers

The Committee is unsure what is meant by "*when we start selling our franchise*" but acknowledges this was not put to Mr Trivedi at the hearing. The roster does not show a second person working in the store with the store manager, and does not show an Owner as being hands-on and taking overall responsibility for the business. Further we were provided with no records to indicate an Accountant/Cashier would be employed.

[78] The Committee acknowledges in making the above comments and recommendations, that Mr Trivedi has now held a Manager's Certificate for four years and has operated a similar Off-Licence in Burwood since 2018, without incident.

Decision

[79] Accordingly, having regard to the matters in sections 105 and 106 of the Act together with the evidence and submissions of the Applicant, the Agencies and the Objectors, and taking a precautionary approach given the observations made in paragraphs [71] to [77] above, we are satisfied that the issue of a 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.

Restricted and Supervised Areas - section 147(2)

- (b) The licensed area is designated as a supervised area.

Discretionary conditions – section 116 (1)

- (c) 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.
- (d) 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 and supplied within the area marked on the plan submitted with the application.

Compulsory conditions – section 116 (2)

- (e) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.
- (f) Alcohol may only be sold or delivered the following days and during the following hours:
 - (i) **Monday to Sunday, between the hours 9:00am and 10:00pm.**
- (g) Drinking water is to be freely available to customers, while alcohol is being supplied free as a sample on the premises.

Section 117 – Other Discretionary conditions

- (h) The licensee must implement and maintain the steps proposed in Colombo Liquor's Host Responsibility Policy¹² aimed at promoting the reasonable consumption of alcohol.
- (i) There shall be low-alcohol and alcohol-free products prominently displayed to promote responsible consumption of alcohol.
- (j) There will be no sales of single-serve RTDs or cider greater than 7.2% ABV (or Beers from broken cartons).

¹² Attached to the application

- (k) No single sales of RTDs or cider under \$6.00 or beers under \$7.00.
- (l) No promotional sales of multiple single RTDs, cider or beers which would result in individual products being priced at under \$6.00 or under \$7.00 respectively.
- (m) No sales of Nitro, cigarettes or vapes.
- (n) No sales will be made to young persons in school uniform regardless of their ability to produce ID.
- (o) There shall be no advertising of alcohol products attached to the exterior of, or visible from outside, the premises.
- (p) No sandwich boards shall be used to advertise the premises or goods for sale. One flag may be used displaying the Franchise logo.
- (q) No "afterpay" type facilities will be offered to customers.

Conditions applying to all remote sales and supply of alcohol

- (r) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on every receipt issued for any alcohol sold via the internet site.
 - (i) The licence holder's name, the licence number, and the date on which the licence expires.
 - (ii) A copy of the licence or a clearly identified link to such image must be displayed in a prominent place on the internet site.
- (s) The following steps must be taken to verify that people are over the purchase age:
 - (i) In the case of an order made using an internet site, telephone order, or physical order –The prospective buyer must declare that he is she is 18 years of age or over (and where the prospective receiver is involved that the prospective receiver is also 18 years of age or over)-

1. Once, when the prospective buyer first commences the order process;
and
2. Again, immediately before the sale of alcohol is completed

Other restrictions and requirements

- (t) Section 56 – Display of signs
- (u) Section 57 – Display of licences
- (v) Section 59 – Requirements relating to remote sales by holders of off-licences.
- (w) Section 214 – Manager to be on duty at all times and responsible for compliance

[80] The licence shall be issued for 12 months.

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

DATED at CHRISTCHURCH this 30th day of August 2022



Merelyn Redstone
Chairperson
Christchurch District Licensing Committee