

Decision Number: 60F [2025] 22424

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

IN THE MATTER OF an application by **MASON KIRK LIMITED**
for a new **Off-Licence** in respect of
premises situated at **71 Lichfield Street,**
Christchurch to be known as '**Bottle O**
Christchurch Central

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 12, 13 and 6 June 2025 (at Papanui Service Centre, Christchurch)

Committee

Chairperson: Mrs M Redstone

Members: Mr D Ivory
Ms T McIlraith

Appearances: Ms Jo Appleyard and Ms Meg Davidson, Counsel for the Applicant
Mrs Heather Brown, Director of the Applicant
Mr Scot Brown, Director of the Applicant
Mr Robert Speer (Witness for the Applicant)
Ms Nikki Carter (Witness for the Applicant)
Mr Matt Wood (Witness for the Applicant)
Mr Malcolm Campbell, Bottle O (Witness for the Applicant)
Dr Liz Gordon (Counsel for Objector Mr Robert Fox)
Mr Robert Fox (Objector)
Dame Sue Bagshaw (Objector)
Rev Chris Orzcy (St Lukes) (Objector)
Rev Matthew Maslin (Christchurch Cathedral) (Objector)
Ms Frances Young (Objector)
Ms Rowan Milburn (Hagley High) (Objector) accompanied by Ester
Ms Anita Yarwood (Witness for Mr Robert Fox) accompanied by Ruby-Grace
Mr Rahul George (Lawyer) (Objector)
Mr John Minto (Resident) (Objector)
Mr John Sullivan (Community Law) (Objector)
Ms Suzanne Clark (Māori Women's Welfare League) (Objector)
Mr Jake McLellan (City Councillor, ChCh Central) (Witness for Mr Robert Fox)
Ms Anneke Lavery, Licensing Inspector, in opposition
Sergeant Dave Robertson, New Zealand Police, in opposition
Ms Louise Bromley on behalf of Medical Officer of Health, in opposition

Decision: 29 June 2025

RESERVED DECISION OF THE COMMITTEE

Introduction

[1] This is an application by Mason Kirk Limited (the Applicant) for a new Off-Licence. The premises is situated at 71 Lichfield Street, Christchurch CBD, and to be known as 'Bottle-O Christchurch Central'. The application was received on 20 January 2025.

[2] The Applicant seeks to establish a new premises adjacent to the Fresh Choice City Market at the Lichfield Street end of the Crossings Shopping Precinct in the central city. The Applicant sought the following trading hours:

Monday to Sunday, between the hours of 9:00am and 10:00pm

These hours are shorter than the default maximum trading hours for Off-Licences.¹ During the course of the hearing, the hours requested were changed to:

Monday to Sunday, between the hours of 9:00am and 9:00pm

[3] The application was publicly notified on the Council's website on 20 January 2025 and remained on the website for a minimum period of 25 working days.

[4] A total of thirty-nine public objections were received within the required timeframe. Eleven Objectors (together with witnesses where applicable) appeared at the hearing.

[5] The application was opposed by the District Licensing Inspector,² the New Zealand Police³ and the Medical Officer of Health (MOH)⁴

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

[7] A hearing of the application took place on 12, 13 and 16 June 2025.

APPLICANT

Submissions and Evidence

[8] Ms Appleyard opened on behalf of the Applicant. She gave an overview of the application, spoke about the relevant Statutory requirements and Case Law Principals. She advised evidence on behalf of the Applicant would be given by Mrs Heather Brown and Mr Scot Brown supported by witnesses, Mr Robert Speer (Town Planner from Auckland), Ms Nicola Carter

¹ Section 43 of the Act.

² Inspector's Report 16/04/2025

³ Police notification of opposition 11/02/2025

⁴ MoH Report 10/02/2025

(Landlord), Mr Malcolm Campbell (Bottle O Franchise) and Mr Matt Wood (October Protection). All briefs of evidence were taken as read.

[9] Opening comments were also received from the Agencies and Counsel for one of the objectors.

Mrs Heather Brown

[10] Mrs Brown highlighted the Brown family's long association with the supermarket industry in Christchurch, including managing Off-Licences associated with them and, additionally, a bottle store adjacent to the Fresh Choice Supermarket in Sumner operated by one of her sons.

[11] She explained the operation of the Fresh Choice City Market next door to the proposed premises, including their catering operation and the fulfilling of orders to corporate clients. Particularly in this regard, there had been requests for the provision of alcohol choices over and above those provided by the supermarket.

[12] Mrs Brown explained how the store would be small by comparison to others, at 89m². She said this would contribute to a "higher end and boutique" feel, which would be reinforced in the layout together with the subdued exterior livery and an absence of price or brand images on the exterior of the premises.

[13] Mrs Brown filed rebuttal evidence refuting much of the Police evidence about incidents in the City market and surrounding area, and disagreeing with Ms Bromley that the area is well-served in terms of availability to alcohol. She said Ms Bromley referred mainly to On-Licences whereas the proposed bottle store would be focused on catering for alcohol demands to be consumed in private homes by those exiting the CBD after work, in private accommodation, and visitor accommodation, and in work settings.

[14] She said that having operated in the area for eight years the applicants believe they are best placed to properly understand the "real world" experience referred to by Ms Bromley.

[15] Mrs Brown said the applicant contributes to the local community, particularly the Central Mission, by providing each morning 5 to 6 banana boxes of leftover bread and other food items from the previous day. She said these donations are in excess in value of \$200,000 annually. In addition to the food donations the City Market also makes financial contributions, underscoring its commitment to making a positive impact in Christchurch. Further, she has visited the Igloo and expressed a wish to foster a relationship and mutual understanding both with the Igloo and with the Youth Hub.

[16] In response to issues raised in relation to the bus exchange she pointed to their trained staff, security and CCTV monitoring. She provided a comprehensive bespoke Alcohol Management Plan and considered the Bottle O Franchise to best support the responsible sale of alcohol from an Off-Licence.

[17] Mrs Brown said there would be two full time Duty Managers, in addition to those employed at the supermarket, who would hold security qualifications. This was in addition to Mr Scot Brown who would be the only person to cross-over between the two businesses. Full time security at the supermarket would also prioritise the Bottle O. There would be at least six staff employed, two full time (who would complete a two-day security training course, along with Mr Scot Brown) and four part time.

[18] Since filing the application, the Applicant had agreed:

- To pull back the closing time to 9:00pm
- Not to sell vapes or cigarettes
- Mainstream beers and RTDs would not be broken down and sold as singles
- No single sales of beer, RTDs and cider smaller than 600ml at less than \$6.00
- No sales to anyone in school uniform, even if over 18 years of age.

In regard to school uniforms it was noted that the two closest senior schools, Hagley and Ao Tawhiti, students did not wear a uniform. In response to a question on students not wearing uniforms, Mrs Brown said it requires diligent staff to check IDs. Mr Scot Brown's response to a similar question was "you can tell".

[19] Mrs Brown referred to the Landlord expecting a high end/luxury fitout and described what they intended. She said some products would be "high end" and would be in a locked cabinet behind the counter. She said the Franchisor requires a 'core range' and this equates to 22% of the store range. 78% of the proposed stock would be focused on meeting the demands of their clientele.

[20] Mrs Brown said most of their supermarket clients come on foot and she would expect the same at the Bottle O. When asked about the alcohol going into an alcohol ban area, she advised there would be carry bags available for sale or brown paper bags that would be provided free of charge.

[21] She said the measures they had taken at the supermarket with a "hardline approach" and "zero tolerance on antisocial behaviour" had seen behaviour and theft issues rapidly decline. She said this had shown them they can manage situations where people try to abuse the

environment where the business is located. She pointed to the high level of security they intended to employ and said Mr Matt Wood would speak to that.

[22] In response to questioning, she disagreed that the product range would reflect its status as "high end" or "boutique", but rather it was the design and layout as required by the landlord. There would be some very expensive stock held, but not all the products could be considered luxury. She acknowledged they would be bound by the advertised specials of the Bottle-O franchise. When questioned on total sales of the 'core range' Mrs Brown said as the store did not exist, it would be "best guess/wild guess". She agreed that if the demand was for RTDs and similar products, then it was fair to say the stock would reflect that.

Mr Scot Brown

[23] Mr Scot Brown gave similar evidence to that given by Mrs Heather Brown, saying they were looking to expand their operations with the proposed Bottle-O, enabling them to enhance the offerings available to their existing customers, and recognising a gap in the market for a full-service alcohol retailer "offering a unique and high-quality experience". He was supported in this by the evidence of **Mr Malcolm Campbell**, Bottle-O Retail Business Manager for the South Island, who explained the flexibility with regard to stocklists, advertising and signage. Mr Campbell's evidence was taken as read and there were no questions from the Committee.

[24] Both Mrs Heather Brown and Mr Scot Brown pointed to the growth in Central Christchurch including Te Pae Conference Centre, the new Court Theatre, the Parakiore Recreation and Sports Centre, and the new Te Kaha Stadium to open next year and the visitors, both local and from out of Christchurch, those facilities will bring to the city.

[25] Mr Brown gave an excellent overview of his current business, his knowledge of the area and current and potential social issues. He said the demographic and purchasing behaviour of his customers do not align with typical patterns associated with pre-loading as the store would position itself as a "boutique outlet" offering high-quality products at a price point that are generally unattractive to those seeking to pre-load. He spoke to the security and staff training that would be provided.

[26] In his rebuttal evidence Mr Brown disagreed with, or had a different perspective on the evidence provided by the Agencies, particularly the three Police Officers.

[27] Mr Brown agreed that any access to alcohol has the potential to result in alcohol-related harm but felt that crime and other antisocial behaviour is "trending in the right direction". He said those trespassed from the Supermarket would also be trespassed from the Bottle-O.

[28] In response to a question to Mr Brown as to whether he had read the Police ACF data, his response was "not particularly", and he was not prepared to accept that they paint a grim picture of that area of the inner city, but acknowledged "from time to time there has been some issues". However, the amount of security and security training he proposed suggested he is aware of the potential for additional harm should the licence be granted but was prepared to pay for security and accept stringent conditions to ameliorate that.

Mr Robert Speer

[29] Mr Speer is a practising planner with over 30 years' experience acting for both private clients and local councils. He holds a Master of Arts Degree in Geography and a Master of Planning Degree from the University of Auckland. He said he was not providing his evidence as a planner. He has experience in a wide range of market research assessments for retail businesses including matters of trade catchments and key market features supporting retail businesses and sales.

[30] Mr Speer said local people require convenience shopping and usually only carry what they comfortably can. He said the proposed store was within the highest area of people movement in the CBD. He provided the Committee with considerable information as to growth, dominant demographic features, pedestrian counts and expected growth in the Central City workforce.

[31] He said The Crossing Mall can be considered a strategic position for "everyday retail business" like Bottle-O and Fresh Choice because of the numerous and wide-ranging types of customer generated activities within the surrounding workable trade catchment and noting strong future growth factors

[32] In response to questions Mr Speer agreed he was not a safety expert and was unsure of the ratio of issues/problems vs total people using the bus exchange.

Ms Nicola Carter (Landlord Representative)

[33] Ms Carter represented the Landlord of the Crossing, A.B. Investment Limited. She has had oversight of The Crossings Management since it opened in 2017 and worked with the Brown Family when they opened the Fresh Choice supermarket where they made a significant fitout investment. She is also on the Executive of the CCBA which is a voluntary role representing all central city businesses. It supports the Hospitality businesses to retail alcohol responsibly.

[34] Ms Carter said "our support of the Bottle-O Christchurch Central within The Crossing was carefully considered because of their desire to align with our vision" and was grounded in the long-standing relationship with the Brown Family and their practices.

[35] Ms Carter said in her view there were issues with the Security at the bus exchange. She said The Crossing uses October Security, the security company proposed for the Bottle-O.

[36] She spoke about the connection between the CCBA and the Central Mission saying that the CCBA Safety Team had made a difference to the central city. She said her grandfather had set up a Charitable Trust to support those in need, which showed their connection to support providers in the Central City.

[37] She said the site was currently operated as a Vape Store and she would "prefer that the tenancy was not occupied with a vape store given vaping is currently an unregulated industry". She said the owner lived in Wellington and is not vested with the overall Christchurch City vision to the same extent as the Brown family and implements no security beyond what is already provided externally by The Crossing".

[38] Ms Carter said from her perspective "the amenity and good order of the locality would likely be increased through the grant of the licence because of who the operator is, the change in product offering, and the added security, training and commitment to quality that comes from the City Market."

[39] In response to a question from the Committee as to whether the landlord would, in any event, discontinue its lease arrangement with the Vape Store if this licence was not granted, Ms Carter was unwilling to make such a commitment.

Mr Matt Wood (October Security)

[40] Mr Wood set out his qualifications and extensive background in the security industry. He said his company, October Security, provides security to The Crossing and to Fresh Choice City Market. In addition, he runs a Responsible service of Alcohol module which Hospitality NZ presents to various outlets across New Zealand. In 2016 he was asked to join the think tank in creating the training module for Drug Harm Mitigation in bars through HPA NZ. The Committee was in no doubt as to his qualifications and commitment to the Security and Hospitality industries.

[41] Mr Wood described the security situation in the CBD, leading him to believe Christchurch is "a relatively safe city". He described an increase in assaults but a decrease in theft, burglary and robbery within the central city. He spoke to homelessness, youth offending, pre-loading and side-loading issues.

[42] He further said he was engaged by the applicant to prepare a security plan for the Bottle-O. He said, from his perspective, with the added security provided by this store if a licence was

granted, the amenity and good order of the locality would improve due to the additional security presence and measures that would be implemented.

OBJECTORS

[43] Thirty-nine public objections were received, with a number of Objectors and their witnesses appearing to give evidence.

[44] **Dame Sue Bagshaw** gave evidence of having worked for 40 years with young people including those with different abilities, addictions, victims of abuse, as well as the 80% who are doing well. She explained the detrimental effect of alcohol on all young people and on babies, resulting from foetal alcohol syndrome. Dame Sue was instrumental in opening the 22 bed Youth Hub in February this year for young people between the ages of 16 and 24 who had been living in cars, on the street, and in abusive situations. She said all beds were filled within the first three weeks and if a vacancy arises there are 10-20 young people applying. She spoke about the alcohol-related harm she has observed in central Christchurch, especially around the bus exchange and it was her opinion that an Off-Licence in this location was inappropriate as there was no supervision of alcohol once it left an Off-Licence.

[45] Both the **Rev Chris Orczy** from St Lukes and the **Rev Matthew Maslin** from the Christchurch Transitional Cathedral spoke of their work in the Central City and the alcohol-related disruption occurring in this Liquor Ban area. They spoke of evidence of alcohol use in the litter found around the streets and at their Church properties. Rev Orczy told the Committee he has spoken with security guards working in the city mall who expressed shock that a store could possibly be licensed in this location because of the issues already present. Both Rev Orczy and Rev Maslin expressed that they were not against alcohol, but were against an Off-Licence in this location.

[46] **Frances Young**, Counsellor and Therapist counselling in psychology, is a public health professional and trained secondary school teacher. She advised the Committee she had heard of the application through a mental health community group and felt compelled to oppose such an application saying that emergency services cannot support the current levels of alcohol harm, and felt this licence, if granted, would make matters worse. She gave a helpful overview of what she hears from her clients of abuse in the central city, particularly around the area of the bus exchange. Ms Young handed the Committee a letter (Exh O-01) signed by seven Doctors, Nurses and Clinical Practitioners practising at the Greers Road Medical Centre supporting Ms Young's objection and stating "agree there should be **no licences granted** to any bottle stores

in **Central Christchurch CBD**" (note the emphasis is copied from the letter and is not Committee emphasis).

[47] **Suzi Clarke**, President of the Ōtautahi Māori Women's Welfare League and Chair of the Christchurch Collective for the Homeless Charitable Trust. She advised the Committee that it was difficult for Māori groups to stand up at hearings for fear they will be blamed for "our people's own alcohol issues". In addition, the hearing process is quite alien to the Māori way of addressing issues. She was completely opposed to the application because of the location and how it could impact homeless people, who are predominantly Māori. She gave a good overview of issues that arise in the Māori community from alcohol abuse and misuse. She said the bus exchange is used daily by rangatahi travelling to and from school and by kaumatua and whānau using the public transport system who already have to face disruptive behaviour and crime in this vulnerable area. She concluded by saying:

"I believe that this licence needs to be declined for the sake of the local community. The health and wellbeing of our rangatahi, kaumatua and vulnerable whānau should be prioritised and at the forefront in the decisions when granting liquor licences."

[48] **Rowan Milburn** (Principal Hagley College) and **Anita Yarwood** (Principal Ao Tawhiti) spoke of their concerns about amenity and good order in the central city, how that was often associated with alcohol consumption, and how it affected the lives and the education of students at their colleges. Again, they were particularly concerned about the proximity to the bus exchange. They further told the Committee about finding rough sleepers who left drug and alcohol paraphernalia around their school premises in plain sight of students coming to school. They felt this could increase with any increase in alcohol availability. In particular, Ms Yarwood spoke of how the central city and its facilities play a large part in her school's discovery education and how they often encounter intoxicated people, who are sometimes abusive towards the youngsters, as they move around the city using its library and outdoor facilities. Ms Milburn noted from her own knowledge that Christ College students were not advised to be at the bus exchange in school uniform.

[49] Ms Milburn and Ms Yarwood were supported in their objections by students, **Ester** (Hagley) and **Ruby-Grace** (Ao Tawhiti). Both these young people were articulate in addressing their concerns and could explain to the Committee their first-hand observations of students and young people being able to get adults to purchase alcohol for them, and sharing their lived experience. They had observed young people drinking cider in close proximity to the security guards at the bus exchange with no intervention taking place. They said that teenagers that

hang out at the exchange are often friends with the security guards, vaping with them, and so they get away with bad behaviour. Ruby-Grace had carried out a survey of some 200 students from schools across Christchurch and had presented her findings on issues in and around the bus station to a recent Christchurch City Council meeting. 59 of those included Alcohol-related issues and 84.4 said they feel between neutral and extremely unsafe at this location. Both these students are commended for taking such an interest in the welfare of their peers, and bringing the issues to the attention of the Committee.

[50] **John Sullivan** (Community Law) and **Rahul George** (practising from High Street and living in Central Christchurch). **Mr George** said he represents many clients appearing at Court (about 50m from the proposed premises) and walks through the Crossing and bus exchange area on a daily basis to get to the Court building. He said on numerous occasions he has seen people who appeared to be intoxicated, and Police Officers attending to incidents in the area. He said further that many of his clients "self-medicate" with alcohol and other drugs, and he was concerned that having an off-licence in the area will increase the availability for purchasing and consuming alcohol by these clients in an unhealthy way, particularly at times close to their scheduled appearances in Court when they were at their most stressed and vulnerable. He was similarly concerned for clients detained or treated under the Mental Health Act who he sees regularly using the bus exchange and surrounding area. For these reasons, in his view, the amenity and good order of the locality would be likely to be reduced by more than a minor extent by the issue of a licence.

[51] **Mr Sullivan** expressed concern about a bottle store located in this vulnerable locality. The committee put to him, would having good operators not be better than a new entrant into bottle store ownership? He responded that even if the operators were great, they could not stop the alcohol harm that would occur. Asked what an operator could do, or what conditions could be imposed, to get a 'tick of approval' he said "probably nothing". No conditions would satisfy him for this location. He said in a different location "he would be able to support good operators such as the applicant. "It is the location that is the issue, no matter any conditions that could be imposed".

[52] **John Minto** who lives on the edge of the central city said in his view "there is a smouldering problem at the bus exchange and the proposed bottle store would add petrol to this". He believes New Zealand has a low level of regulation for the security industry and it is therefore difficult for a security company to give good guarantees. In his view "these companies always over promise and under-deliver".

[53] Dr Gordon opened for Objector Robert Fox. She submitted that all objections should be weighted even if they were unable to take the time off work to appear at the hearing. She said this is because the DLC is in the 'community participation era'.

[54] **Robert Fox** a relatively new homeowner in the Central City. He produced photos of alcohol litter he has seen in the streets and homeowners' garden plots. He said it should not be an expectation that because someone chooses to live in the central city they should accept there being antisocial behaviour. He believes a bottle store will increase street drinking in an alcohol ban area and lead to more litter and vandalism. He acknowledged the Security at Fresh Choice City Market was good, but he would prefer the current Vape store to a full-service bottle store. Mr Fox had called Ms Yarwood (para 20 above) and Mr Jake McLellan as witnesses.

[55] **Jake McLellan**, City Councillor for Central Christchurch. He spoke about the considerable Council investment in the Igloo at the bus exchange, and in the surrounding area which the Council saw as probably the most problematic area of the central city. He said licensing a bottle store on this site goes against the investment that Council has made into safety in the central city, and would give additional opportunity for pre-loading and side-loading prior to large events at the new stadium and other central city locations. He was reluctant to respond to hypothetical questions about potential opposition for stores located elsewhere, but thinks the location is the biggest issue with this application. He would likely be less concerned about a different location, and outlined what his expectations would be.

[56] All objectors made a point of saying they were not against alcohol use by those who drink responsibly but were vehemently opposed to a bottle store **in this location**.

TRI-AGENCIES:

Sgt Dave Robertson:

[57] Sgt Robertson made opening submissions, gave his own evidence, and called **Detective Sergeant Karen Simmons** and **Senior Constable Dean Stevenson** as witnesses.

[58] **DSS. Simmons** outlined issues with pre-loading at the Electric Avenue Music Festival in Hagley Park and referred to large numbers of intoxicated people either being sobered up at the park or refused entry. In addition, in her role with Metro Crime, she manages investigations, including matters arising from the CBD. She said CCTV evidence or direct engagement with victims and offenders will often confirm one or both parties are affected by alcohol.

[59] The Detective also drew to the attention of the Committee that harm additionally impacts on demand, not only of Police, but also on social services including Christchurch Hospital

through both acute admissions and emergency department presentations. She said this evidence, combine with the ACF Data presented by Sgt Robertson for the CBD and relevant NIA occurrences linked to the Fresh Choice City Market reinforce her view that the proposed site is not an appropriate site for an Off-Licence.

[60] In response to questions, DSS. Simmons said in her view it was naïve to suggest this bottle store wouldn't contribute to lowered amenity and good order. She said it was too difficult to try to minimise harm by providing good security, because you don't know what the person who is buying the alcohol is going to do with it and you can't control what happens when the alcohol leaves the store.

[61] **Snr Const Stevenson** gave an overview of his work as a Central Beat Section officer and his observations of issues encountered. He noted not only cheap alcohol was an issue and referred to a highly intoxicated youth comatose just outside the bus exchange after consuming about three-quarters of a bottle of whiskey. He said while he accepted that people arrived in the CBD in the evening by uber, often having pre-loaded and/or bringing alcohol with them, most of the alcohol appears to come from inner city supermarkets, some of which is stolen. He said personally he would not go to that part of the inner city at nighttime.

[62] The Snr Constable agreed with DSS Simmons view that a lot of the disorder and assaults they deal with in the inner city is fuelled by alcohol. In his view any further Off-Licence in the CBD would increase the alcohol-related disorder and crime and have a negative impact on our inner city both for locals and the tourist industry.

[63] **Sgt Robertson** produced the ACF and NIA data and explained the data collected, and the implications of it, to the Committee.

[64] Sgt Robertson was concerned that the Applicant (and witnesses) had gained the impression from a pre-hearing meeting that it was his view that **ANY** future Off-Licences in the CBD would be problematic. He said he did not intend to give this impression, and applications are dealt with on a case-by-case basis.

[65] He said the primary Police concern with this application is the location of the proposed premises in an area that is already significantly negatively impacted by alcohol-related harm and general crime and disorder. Of particular concern is the central bus exchanges directly across the road.

[66] Sgt Robertson drew the Committee's attention to the incidents of theft from the Fresh Choice City Market next door to the proposed premises, but did acknowledge the action the

applicant had taken to address issues by removing a number of alcohol and other products from sale.

[67] Sgt Robertson concluded by saying "these applicants are very experienced and capable but cannot control what happens after alcohol is sold". Harm will be worse if the licence is granted. "Browns are not bad people, but this is a bad idea". There was nothing he had heard, including all the information about security to be provided, that satisfied him to a point where the Police would consider withdrawing their opposition.

Ms Anneke Lavery (Inspector)

[68] The Inspector had provided a comprehensive report for the Committee and stood by that report at the hearing.

[69] Of particular concern she felt that the amount of security offered by the applicant shows they are anticipating problems and are trying to alleviate these. She was concerned about the evidence provided by Mr Matt Wood of October Security, particularly his statement:

"From my perspective there will be no impact on the amenity and good order of the locality if the application is granted and it is possible that amenity and good order will be improved through the grant of the application due to the additional security presence and measures that will be implemented"

She submitted that that view "was naïve to say the least".

[70] In response to questions from the Committee, the Inspector said after hearing all the evidence her opposition to the grant of this licence had not altered. It is her belief there are issues with this particular locality, and she thinks it is undeniable the additional harm an Off-Licence will cause, making for a decline in the current amenity and good order of the area.

Ms Louise Bromley (on behalf of the Medical Officer of Health)

[71] Ms Bromley, on behalf of the Medical Officer of Health provided a report to the committee referring to the Off-Licences available in the City Centre. She said the area is well served by a range of alcohol retailers catering to both residents and tourists, making the addition of another outlet unnecessary and excessive.

[72] Ms Bromley referred to sensitive sites nearby including schools and the bus exchange. She referred to current issues that reduce the amenity and good order of the locality saying these are not just through tangible effects, such as noise or litter, but by fundamentally altering the public feel, safety and comfort of the area. She referred to recent Press items reporting "completely unprovoked" violent assaults near the bus exchange which the Police have

confirmed as random acts of violence. She said, "This illustrates the volatility of the location and the real-world implications of increased alcohol access in already unstable environments".

[73] Nothing she had heard from the Applicant and its witnesses had altered her view that the introduction of a new Off-Licence in this location would create conditions that enabled increased antisocial behaviour, escalate safety concerns and undermine the public use and enjoyment in the area.

[74] In response to a question put through the Chair by Counsel for the applicant as to why Ballantynes was permitted to hold an Off-Licence, the renewal for which was not opposed by the Agencies, she said that was because Ballantynes are a responsible retailer who maintain a limited range of products and choose not to sell many of the products that are sold by franchised Off-Licences. She concluded by saying that she respected the Brown Family as supermarket owners, but thinks "it would be too much pressure to put an Off-Licence in this particular site as the mitigation of harm would be too difficult to achieve".

[75] All the Agencies contend that as alcohol supplied through off-licences is a significant contributor to alcohol related harm, the location of the proposed premises would make it a likely contributor to additional alcohol-related harm in the location.

[76] They evidenced an area that was frequented by teens and twenties, homeless and street dwellers, those visiting local On-Licences (particularly at weekends) and those attending events in the Central City. It was noted that those events are rapidly increasing with the opening of Te Pae, the new Stadium yet to open, together with the use of Cathedral Square and Hagley Park for concert events.

[77] They drew the Committee's attention to the fact that pre-loading for these large events, and resulting crime, contributed considerably to attendances at Christchurch Hospital Emergency Department.

Closing Submissions

[78] On behalf of the Applicant, Ms Appleyard summarises the evidence given by the applicant and its witnesses at the hearing, highlighting experience and suitability, the customer base, being primarily central city residents, local workers, tourists staying at nearby accommodation, as well as deliveries to Corporates.

[79] She addresses proliferation, which was not raised at the hearing as it is agreed there is not a proliferation of Off-Licences in the area. She speaks of there being a significant gap in the market that affects both tourists and local workers.

[80] Ms Appleyard in her submissions again raised the "boutique" or "high end" nature of the premises and gave the Cambridge Dictionary definition of "boutique" as being "a small shop that sells fashionable clothes, shoes, jewellery etc". However, the Committee prefers the Google definition of a "boutique alcohol store" as being one which "specialises in a curated selection ... often focusing on craft, independent, or lesser-known brands and styles, **and not usually associated with a franchise**" and notes Mrs Brown's response when questioned on this matter that they "would meet the market demand" in relation to what items they would stock. The Committee refers to the decision of ARLA in relation to *Sandringham Beverages Limited*⁵ in which a renewal of the Off-Licence was refused where the original application had been granted having regard to the proposed "boutique" nature of the operation, but the applicant did not comply with the "boutique" model, albeit that the business was not associated with a franchise.

[81] Ms Appleyard, in addressing amenity and good order submits that with good operators and the increase in security provided the amenity and good order would in fact increase.

[82] The Agencies and Counsel for one objector submitted that they had no issue as to suitability, staff and training and layout, but described the applicant's evidence of additional security leading to an improvement in the amenity and good order of the locality as being naïve. Their views are nicely summed up by Ms Bromley who submitted:

"The applicants are well positioned to maintain the safety of their customers and staff, the problems they will inevitably contribute towards within the local vicinity are beyond their control and will negatively affect the wider community, particularly in an area already struggling with alcohol-related harm, public disorder and reduced amenity."

[83] Ms Bromley submitted that the main point of the applicant was convenience whereas alcohol shouldn't be convenient.

[84] The Agencies submitted that Licensees of Off-Licences have little or no control over alcohol once it has been purchased and taken from the premises. They are unable to make the continuing assessments such as can be made of people consuming alcohol on On-Licence premises.

Considerations of the Committee

[85] Having considered the Application together with Agency Reports and Objections placed before it, together with the oral evidence and submissions received today, the Committee must now stand back and determine whether the application for a new Off-Licence should issue.

⁵ Sandringham Beverages Limited v Medical Officer of Health [2024] NZARLA 75 (21 May 2024)

[86] 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...”

[87] The Committee is further guided by the decision of Clark J in *Lion Liquor* at [43]

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

[88] The location of the proposed store presents an unusual demographic in that it is opposite the bus exchange which is used by 18,000 every day, including teens, those who have attended Court hearings, those who are at high risk of causing issues, together with professional people and the general populous that use public transport, all of whom would be faced with a very obvious bottle store directly across the road.

[89] The Te Kaha Stadium is due to open next year just a block from the proposed store and the implications of this on the proposed store is discussed at [107] below under the heading Amenity and Good Order.

[90] The Committee noted that Objectors, on the whole, supported the Agencies in saying they did not oppose a bottle store in the CBD but rather opposed one in this location. (Note the statements of both Rev Orczy and Rev Maslin that they were not against alcohol, or an Off-Licence in the CBD, but were against an Off-Licence **in this location**).

Evaluation and findings under s.105 and s.106 of the Act

[91] 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

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

And

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

"the role of the decision-maker in considering these factors is an evaluative one⁸."

[92] 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.⁹ 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, saying:

"The factors to be considered in the course of assessing an application for a licence or for a renewal, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol related harm"

▪ **The object of the Act**

[93] 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.

[94] 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.¹⁰ In *Lion Liquor Retail Limited*, Clark J held that:

⁸ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382 per Gendall J.

⁹ *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC).

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].

“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.”

[95] 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.

[96] ‘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.

[97] 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***

[98] The Committee notes that there were no objections raised as to the suitability of the Applicant to hold a Licence. We find that the Applicant is a suitable entity to hold a Licence and has considerable experience in holding Licences for Fresh Choice Supermarkets at City Market, Barrington Street and Sumner. Neither the Inspector nor the Police could point to any problems that had arisen in respect to the operation of those premises.

▪ ***Any relevant local alcohol policy***

[99] There is no relevant local alcohol policy although a LAP is currently being considered by Council.

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

[100] The Applicant seeks hours of 9:00am to 9:00pm 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***

[101] A draft plan and mockups showing the look of the premises from the outside was provided and a description of a high-quality fit out inside was provided at the hearing. It was noted that no shelving would be over 1.2m in height, giving staff a good view of the premises. The shelving immediately opposite the entrance would contain no-alcohol and low alcohol products. The

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

outside would be more discrete than the usual view of stores within the Bottle O Franchise. However, mockup drawings did show a large lit up Bottle O sign on the Lichfield Street frontage opposite the bus exchange site. There would be no other external advertising of alcohol.

- ***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:***

[102] The Applicant originally proposed to sell a limited quantity of tobacco products but altered their position on this during the course of the hearing to not selling any tobacco or vape products.

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

[103] The Applicant has appropriate systems and will employ sufficient staff and provide training to comply with the law. In addition, two experienced Duty Managers to be employed, along with Mr Scott Brown, would undertake security training with October Security. The Applicant provided a comprehensive training plan, and a Host Responsibility Plan attached to its application.

- ***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:***

[104] 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.”

[105] Section 106 requires the Committee to consider 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:

- (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;

[106] Counsel for the Applicant, who lives and works in the central city, referred to the rights of those who drink responsibly to have access to a wider range of products than those provided in a supermarket, and that this was not provided for within walking distance in the central city. This view was opposed to that held by the Tri-Agencies and Objectors that sufficient outlets were available within a relatively short distance of the central city. The Inspector included a number

of Off-Licences in the central city and it was noted during the hearing that outlets (e.g. Henry's Moorhouse Avenue) is approximately 650m from the Lichfield Street site.

[107] The Agencies went further to say that, in any event, the potential for further harm, vandalism, crime, pre-loading, side-loading, and drinking in an alcohol ban area outweighed any need to provide a more convenient outlet to city dwellers who drank responsibly.

[108] A DLC is additionally asked to look at potential future noise and vandalism. The applicant points to most hospitality patrons coming to the city after the proposed bottle store would be closed at 9:00pm. However, the new Te Kaha stadium, some 650m away, will cater for large sports events, many of which will be played in the afternoon/early evening with supporters then moving on to hospitality venues in the centre of the city, past the proposed bottle store. This could well lead to people taking the opportunity to purchase reasonably cheap alcohol from this premises, which could then be consumed in the alcohol ban area, adding considerably to the current high rates of nuisance and vandalism.

[109] The Committee accepts the tight security plan intended by the applicant and measures they have taken in Fresh Choice to remove products that are attractive to those who would be inclined to steal it, for example Scrumpy and high ABV Kingfisher beer. The Committee commends the Applicant on the steps it has taken to ensure safety around the sale of alcohol both in relation to their own staff, their customers, and those regularly passing through the locality.

[110] The Committee refers to the principal under which the Law Commission said it had approached its review:

"New Zealanders live in a free and democratic society. They are subject to only such limitations in their freedom as can be justified in such a society. They have liberty to behave as they choose as long as their actions respect the rights of others and are not contrary to the law. Public policy decisions that are made to restrict activity have to be justified by strong arguments that it is in the public interest that individuals and corporations do not exercise their freedoms in particular ways."

[111] The Committee must weigh up restricting the rights of responsible citizens with reducing the harm caused to themselves and others by those whose actions and behaviour is contrary to the law.

[112] In this regard the Committee has considered the alcohol ban in place in the central city, together with overwhelming evidence from the Agencies and objectors of the current disregard with respect to the ban, together with the evidence of crime, vandalism and alcohol-related issues in this location.

Decision

[113] 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, the Committee finds that the amenity and good order of the locality would likely be reduced by the granting of this licence, and the risk of, and potential for, future nuisance, vandalism, and alcohol-related harm would be increased to an extent where it would be unsafe to grant the licence.

[114] For these reasons the application is declined.

DATED at CHRISTCHURCH this 27th day of June 2025



Merelyn Redstone
Chairperson

Christchurch District Licensing Committee