

Decision No. 60A [2018] 1131

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by
**RICCARTON LIQUOR
LIMITED** for an Off-Licence
pursuant to s.99 of the Act in
respect of premises situated
at **375 Ferry Road,
Christchurch** to be known
as "**Liquorland Ferry
Road**".

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairman: Mr A J Lawn.
Members: Ms A Keir
Mr D Blackwell QSM

HEARING at Christchurch 19 and 20 March 2018.

APPEARANCES

Ms S Stienstra – for applicant
Mr M Ferguson – Senior Alcohol Licensing Inspector – in opposition.
Sergeant D Robinson – NZ Police – In opposition.
Mr P Shaw – for the Medical Officer of Health – In opposition.
Ms S Buck, Ms A Davids and Dr D Latham – on behalf of Linwood-Central-
Heathcote Community Board - Appearing under s.204(2)(b)

Objectors

Mrs J Hoskin
Mr J Hoskin
Ms L Cowe
Ms T Davidson
Ms Korgaonkar
Ms R Hughes
Ms M Young- Deputy Principal of Linwood College
Mr D Turnbull – Previous Chair of Linwood College Board of Trustees
Mr D Currie
Mr P Mulvaney
Mr W Hawker

RESERVED DECISION OF THE COMMITTEE

Introduction

[1] This is an application by **Riccarton Liquor Limited** (hereinafter called “the applicant”) for an off-licence in respect of premises situated at **375 Ferry Road, Christchurch**, to be known as “**Liquorland Ferry Road**”. The applicant seeks a licence pursuant to s.32 (1)(b) of the Act to trade as a bottle store; in other words the sale of alcohol is to be the principal business of the store. The applicant seeks hours of Sunday to Tuesday 9.00am and 9.00pm and Wednesday to Saturday 9.00am to 10.00pm. These hours are within the default national trading hours for off-licences as set out at s.43(1)(b) of the Act.

[2] The applicant is a company with two director/shareholders, Mr Michael Scott and Mr Steve Crotty. Messrs Scott and Crotty have operated another off licence for over twenty years without reported incident. There is no opposition to the suitability of the applicant. The applicant proposes to trade under the ‘Liquorland’ franchise. This is a national franchise network with 113 stores.

[3] The proposed premises are located on the corner of Ferry and Aldwins Road, in a commercial shopping centre, in the suburb of Phillipstown. The premise is a new building which was granted a consent under the Resource Management Act in 2013. There has been a delay in the building consenting process which means that the building is only now near completion.

[4] In reports required under s.103 of the Act all three of the reporting agencies reported in opposition to the application. The opposition of the agencies can be distilled down to the following key issues:

- (i) The Inspector’s opposition relates to the number of off licenced premises in the location. Another premise (he says) would give the impression that there is a proliferation of off licences and;
- (ii) Additionally, the Inspector argues that two off licences in close proximity will increase competition and therefore increase alcohol related harm.
- (iii) The Police opposed the application primarily on the grounds of s.105(1)(i):
 - (a) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—
 - (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
 - (ii) it is nevertheless desirable not to issue any further licences:
- (iv) The Medical Officer of Health opposed on the grounds of s.105(1)(h):
 - (h) 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:

[5] The application drew a large number of public objections, 121 in total. The majority of objections were very short on detail and what one would describe as ‘pro forma’ where the objector had placed their name at the top of a pre-printed form and then signed it. Two petitions were submitted to the Committee via Mr and Mrs Hoskins, together they contained 35 signatures.

[6] Some objections were very well thought out and contained more detail. A number of these objectors did not attend the hearing. We would have welcomed the opportunity to hear from these objectors in person. It would have allowed their evidence to be ‘tested’ and thus greater weight may have been assigned to it.

[7] In the High Court decision of *Utikere v I S Dhillon and Sons Limited* the High Court commented on the Authority’s decision to place no value on an objection if the objector fails to turn up at the hearing and give evidence. Kos J stated;

[27] I would not go so far as the Authority which said:

“If objectors fail to appear it is likely that their objection will have no value”.

There is no reason why an objector could not make a cogent, self-sustaining written objection. It would carry some weight. But its weight may tend to be diminished if the objector is not available to give evidence at the hearing and be questioned.

[8] The process under the new Act has been heralded as being one where local communities can have more input into the licensing regime. District Licensing Committees need to hear first-hand what communities are saying in relation to alcohol and their communities. When matters are raised in objections they need to be clearly provided to us as evidence so that the contents can be tested, and evidentially weighed. In our view, to place too much weight on unsubstantiated comments in written objections would bring the process into disrepute. The importance of objectors turning up to support their objections cannot be overstated.

[9] However, we are aware that it is often difficult for objectors to attend hearings due to work and other commitments. The community insights which we gain, by local community members appearing before us, are often pivotal to the evaluative exercise which we must undertake in deciding a matter. We can be flexible in when, and how we hear from objectors, and if requested we try to facilitate alternative means of giving evidence.

[10] We are grateful to those objectors who took the time to attend the hearing, some on both days, allowing us to listen in person to their reasons for objecting and also to allow the applicant to test their evidence.

[11] In regards to the objectors who did not appear at the hearing, given the lack of any explanation for their non-appearance, it is not possible to ascertain whether these objectors wished to continue with their objections or had lost interest in the outcome.

[12] In the decision *Liquor World Limited* LLA PH 1189/2009 the Authority set out a number of principles and guidelines that apply when applications like the present one

are made. This was because of general public misconceptions and/or misunderstandings about the licensing of new liquor outlets. These principles and guidelines are:

- *Only people who have a greater interest in the application than the public generally can object. They can only object in relation to one or more of the criteria set out above. How people establish an interest in the application that is greater than any other member of the public, is a matter of judgement. In this case the Inspector has suggested a circle with a radius of one kilometre within which an objector must reside or have a business that could be affected. We think that although the proposal is generous, it is a fair and realistic suggestion (see s.32(1) and (3) of the Act);*
- *If there is a valid objection then it is likely that there will be a public hearing. At the hearing we have the discretion to hear evidence about matters outside the above criteria. How much weight is given to that evidence is a matter for us. Such evidence may assist us in fixing the conditions of the licence, with particular regard to the trading hours;*
- *If objectors do not appear and no explanation is received for their absence, then it is likely that their objection will have no value. On the other hand if they appear and do not address the above criteria then their objection will also have little probative value;*
- *Any objection that refers to the prejudicial effect that the grant of a licence may have on any other licensed premises will not be taken into account (see s.35(2) of the Act);*

[13] The decision refers to sections of the old Sale of Liquor Act but the general guidelines in relation to objectors and the weight placed on evidence is still relevant under the new legislation.

The local Community Board

[14] The Linwood-Central-Heathcote Community Board sought leave of the Chair to appear and be heard under s.204(2)(b) of the Act. This states:

(2) With the leave of the chairperson of the licensing committee or the licensing authority (as the case may be), any of the following persons may appear and be heard, whether personally or by counsel, in any proceedings stated in subsection (1):...

(b) a person authorised in that behalf by any territorial authority:

[15] Leave was granted by the Chair to allow three members of the Board to appear and be heard. The Board provided evidence that they held delegations from the Council which authorised them to appear under s.204(2)(b).

[16] Local Community Boards have often appeared before the Authority, either as objectors in their own right, or under s.204(2)(b) of the Act as in this case. The

information that they may provide, and the insights that they may give, often enables decision makers to better understand the locality and the facts at issue. We commend the Board for appearing before us and encourage their participation at hearings.

[17] In this case, the Community Board provided a document at the end of the first day of hearing, purporting to set out its submissions. The document also contained evidence from the Board members. That information should have been disclosed in accordance with the timetabling directions given in advance of the hearing. Because this information had not been disclosed, and the applicant had therefore not been given an opportunity to address it, the Committee directed that the Board could make submissions but not refer to the evidence it had included in the document.

[18] Community Boards appearing before Licensing Committees pursuant to s204(2)(b) must follow the same procedural rules as any other party – which includes the exchange of evidence in advance to ensure fairness to all parties. We encourage Community Boards to get involved in this way, as the Community Board can be a source of vital evidence about the community in which the licence is proposed.

The Application

[19] The applicant's director/shareholders are very experienced operators of off-licensed premises. They operate their current Riccarton Road store under the Liquorland franchise.

[20] The applicant sought an order under s. 203(5) in relation to materials produced by the applicant in a 'bundle'. The bundle contained material as outlined in the next paragraph. An order prohibiting the publication of the information in the bundle of documents adduced by the applicant was made.

[21] The CEO of Liquorland NZ Limited, Brendon Lawry, gave evidence. He outlined his role in the franchise and presented various manuals as evidence. The manuals covered topics such as host responsibility, staff training, and expectations of both staff and franchisees. These manuals were comprehensive and in our view met the standard required by the Act for a licensee.

[22] Mr Lawry further went on to explain how franchisees are selected and he confirmed that Liquorland NZ Limited viewed the applicant in this matter as 'a good fit' for the new proposed store.

[23] In addition to producing the company's manuals, and endorsing the applicant, Mr Lawry explained that Liquorland stores sell beer, wine, liqueurs and spirits at the higher end of the product market and that the layout and location of products within the store is key to the model that ensures those seeking cheap products are not generally attracted to the store. He also explained that the location of the store is intended to supply the corporate and trade market, which has relocated since the 2011 Christchurch Earthquakes, as well as the residential areas of Sumner and Clifton and surrounding suburbs.

[24] As part of getting consumers to buy locally, the location of the store, as part of a local centre, was identified in 2012 and was consented as a liquor outlet in 2013. It took six years to build the store due to building consent issues. Mr Lawry contended that the store was known, and arguably approved by the Council in September 2012 pursuant to a Sale of Liquor Certificate under s.31(1)(e) of The Sale of Liquor Act 1989, and in the meantime the DLC had allowed another store, Thirsty Liquor, to be located in close proximity knowing that Liquorland was going to be located there.

[24] The certificate was issued under the authority of the old Sale of Liquor Act 1989. The application was made under the new legislation. A certificate pursuant to s.31(1)(e) was not a licence to operate under the Act. It was validation that the building could be occupied by a store selling alcohol under the Resource Management Act. It indicates to the relevant licensing authority that a premise could be located there under that act. It does not necessarily mean that a licence to sell alcohol would be issued under the relevant alcohol licensing Act.

[25] There is a distinct difference in the object of the respective Acts. The new alcohol legislation, which this application has been made under, has broader criteria in relation to alcohol related harm and amenity. The applicant in this matter should have been well aware of this.

[26] In any event the evidence from the Inspector is that Thirsty Liquor took over an existing licence that had existed since 2003.

[27] Mr Lawry also outlined two further measures which would be employed at the premises if a licence was granted, an incident log and a 'restricted sales policy'. The incident log is a means by which staff at the premise can note down those persons whom they are concerned about and the store owner can then take action if necessary including asking Police to intervene. The 'restricted sales policy' is a means by which staff limit sales to no more than two sales per day to the same person and under the policy staff are empowered to refuse service if they believe products should not be sold to a person.

[28] It was the evidence of Mr Lawry that Liquorland does not allow parallel imported products or cheap products to be sold at its premises. Promotions are run nationally. Liquorland is not interested in what other retailers are doing as it has its own process. It does not partake in what is commonly referred to as 'price wars'. All discounting is always in line with the responsible promotions under the Act.

[29] He contended that the opposition to this application was based on the operations of other retailers and what they were doing. He stated that he believed the objections from the public did not relate to how the proposed store, and Liquorland franchises, operate and the objections did not consider the policies, procedures and responsible sales procedures that Liquorland would put in place if granted a licence. He concluded by stating that he did not consider that evidence of specific harm, likely to arise out of the proposed store so as to reduce the amenity and good order of the locality, has been provided by the objectors and that the behaviour of another nearby store cannot be used to justify a refusal of the application.

[30] Under cross examination, Mr Lawry agreed with the statement that two stores close together will create competition. He also stated in answer to questions that he had gone into both the Thirsty Liquor Store and Yankee Bourbon store nearby and seen large steel and plastic vats of home distilled spirits, “essentially ethanol with flavouring added” and stated that this was not the practice of Liquorland.

[31] In response to questions regarding whether the proposed store could influence the nature of the consumption of alcohol sold to customers Mr Lawry stated that Liquorland had recently engaged an online celebrity, at considerable cost, to promote responsible drinking with such phrases as “graze while you liaise”.

[32] When questioned about the evidence he gave in regards to targeting the suburbs of Redcliffs, Clifton Hill and Sumner he stated that it was an intention only and they had not carried out any research.

[33] In regards to products carried by the proposed premises, Mr Lawry stated that they would carry most of the mainstream products similar to the ones stocked by the adjacent Thirsty Liquor, but would have a higher percentage of the more premium products which Thirsty Liquor would not carry.

[34] When challenged about his statement that harmful drinking had decreased in the general population he was not able to offer any evidence to support that view. He agreed that an off-licence store could not control the way alcohol is consumed by the customer but he said the model which Liquorland promotes is not targeted to those who consume alcohol in a risky way.

[35] Mr Steven Crotty gave evidence for the applicant company. He confirmed that he is one of the Directors and shareholders of the applicant company and that he and his business, partner Michael Scott, have been running a bottlestore under the Liquorland franchise for over 20 years. He also confirmed that he has been in the hospitality trade since 1976. He is the Chairman of the Liquorland Franchisee Advisory Council.

[36] Mr Crotty stated that it was his view that the proposed store will not create additional harm in the local neighbourhood. He stated that he was familiar with the area and acknowledged that in some parts of the community near the store there would be some vulnerable persons for whom alcohol could be an issue although he did not think that these people would be attracted to the proposed store.

[37] It was the evidence of Mr Crotty that with the implementation of the high standards that Liquorland stores are required to meet, the amenity and good order of the locality will be improved. He was critical of the other liquor outlets, as they have few procedures and little training as well as products which may not be suitable and may attract the more vulnerable members of the community. When asked how the proposed store would improve the amenity and good order of the area Mr Crotty stated that they would cause the other store to improve and therefore the area will improve.

[38] Under questioning, Mr Crotty accepted the evidence of Police, Medical Officer of Health and objectors that the area surrounding the proposed site was already badly affected by alcohol related harm.

[39] Mr Michael Scott is a director and shareholder of the applicant company. He confirmed his experience in the alcohol industry and the reasons for choosing the site for the proposed store. He also made the statement that the Council had granted a resource consent to build a liquor store on the site in 2013 and subsequently approved an off-licence to Thirsty Liquor despite knowing that Liquorland was going to be sited nearby.

[40] It can be interpolated at this point that the evidence of the Inspector was that there has been an off-licence located on the "Thirsty Liquor site" since about 2003. Thirsty Liquor took over the site in 2012, before the new Act came into force. A variation was sought by Thirsty Liquor to increase the size of the premise around 2016 or 2017. In other words the Thirsty Liquor site was the location of an off-licence before the applicant's proposed site.

[41] Mr Scott stated that he had engaged with the community as he had met with the Principal of Linwood College. He confirmed that the target market for the proposed store is those living in the hill suburbs from Ferrymead to Sumner, as these people will shop at the other stores located adjacent to the proposed store. Mr Scott stated that the other large part of the business would be servicing the corporate sector and nearby businesses many of whom have relocated to the area as part of the rebuild after the Christchurch earthquake.

[42] Mr Scott explained the layout of the store and explained that the store would attract those who seek higher than average priced wine, liqueur, spirits and premium beers. The offering would be of a 'boutique' nature and be at a higher price point than nearby stores. He stated that there was no intention to create a price war. Mr Scott reiterated Mr Lawry's comments about the training and staff manuals and procedures and detailed the steps he will undertake in managing the store and carpark which include security cameras.

[42] In regards to issues raised by objectors Mr Scott stated that he had spent some time on Friday evenings, Saturday and Sunday mornings in the area, including Linwood College. He did not see large gatherings of young people or deposits of empty cans and cartons but understood this could be an issue and contended that the store's sales and training procedures would ensure that these concerns are managed. He also stated that the store would not sell single cans and bottles of RTD's or mainstream beer.

[44] It was contended by Mr Scott that those opposing the application had not shown that sales from the proposed store would cause harm in the locality.

[45] In cross examination Mr Scott agreed that off licences could not control how the alcohol sold will be consumed. He also acknowledged that a Liquorland mailer was being delivered into the Philipstown area by the Liquorland store approximately 2 kilometres away on Fitzgerald Avenue.

[46] He also stated that the store's premium offering (higher priced wine or premium/craft beer) would be around 20% of its business, while the balance was "ordinary" bottle store brands and products.

[47] Given the assertions of the applicant in regard to its target markets the applicant was asked if it had a business plan. The applicant did not have one at the hearing but stated that one existed. The Committee asked the applicant to provide the plan the next day but the applicant sought 5 working days to provide the plan. A business plan was submitted to the Committee, and other parties, subsequent to the hearing.

[48] The document provided was labelled as being provided for disclosure at the hearing. It is not clear when it was prepared. The plan does not provide specific detail relating to how the identified markets will be targeted, or refer to market research supporting the proposed modes. While the Committee accepts the applicant's desire to attract premium customers, the written plan does not set out how it intends to achieve that goal.

Reporting Agencies

[49] Mr Martin Ferguson is a Senior Alcohol Licensing Inspector (The Inspector) for the Christchurch City Council. He produced a comprehensive report on the application and attached a number of documents to assist the Committee. The Inspector reported in opposition to the application. His report confirmed the location of the proposed premises and included a map of the area and comments on all the criteria as set out at s.105 and 106 of the Act.

[50] In his report the Inspector detailed the locality. The majority of the area has a deprivation index of 9 and 10. He stated that Linwood College is a short distance to the north of the proposed premises and Eastgate shopping mall is further along from the College. Adjacent to the carpark of the premises is Edmonds Gardens.

[51] The Inspector states that there are four liquor outlets of a similar kind within one kilometre of the proposed premises and Thirsty Liquor is adjacent to the premise. Within two kilometres of the proposed premises the Inspector stated there are 14 premises with off-licences. The report detailed some comparative areas in Christchurch and the density of licensed premises.

[52] Mr Ferguson has no issue regarding the suitability of the applicant.

[53] He stated that the number of liquor outlets in the Christchurch area has decreased since 2010 when there were 280 off-licenses. As of 1 July 2017 there are 223 off-licenses.

[54] The Inspector stated in his report that he had visited the area on 12 December 2017 between 12.30am and 2.30pm. He spoke to the managers of 'Yankee Bourbon' and 'Thirsty Liquor'. Both expressed the view that the area contained a number of people with alcohol problems, and that these people caused problems later in the evening. Due to these issues Yankee Bourbon is closed by 7.30pm and Thirsty Liquor by 9 to 9.30pm. Mr Ferguson stated that when he was in Thirsty

Liquor three men came into the store whom he described as extremely intoxicated. The duty manager refused service. They became argumentative and it took some time for them to leave. The manager stated to Mr Ferguson that this is “rare but not uncommon”.

[55] Mr Ferguson went on to state that due to the location close to town and other shopping centre he suspects that the residents of the locality have good access to alcohol already and he did not think that the granting of the licence would have much effect on the levels of alcohol related harm in the area. His main concern is the proximity of the proposed premise to the nearby Thirsty Liquor and a potential ‘price war’ resulting in lower prices. Lower prices increased harm through customers consuming more as they take advantage of cheaper alcohol. In short, he stated that lower prices will increase availability.

[56] It was the evidence of the Inspector that, based on information provided by those he spoke to, his own knowledge of the area and observations made, the good order and amenity of the immediate area, despite initial appearances, is already suffering from the effects of alcohol. He went on to say that he did not believe that the good order and amenity of the area would decrease by more than a minor amount if the licence was granted but that to grant the licence would send the wrong message in this community.

[57] The Inspector believes that the application should be refused under s.105(1)(i) as the good order and amenity of the area is already negatively affected by alcohol and an additional outlet adjacent to an existing outlet would contribute to the issues already in the locality and would send the wrong message to the community. Therefore he believes it is not desirable to issue the licence.

[58] Sergeant Michael Kingston is the officer in charge of the Phillipstown Neighbourhood Policing Team (NPT). In evidence he stated that the NPT had been established in 2011 and he has worked as the Sergeant of the team since 2016. He stated that the NPT project was initiated to enable targeted deployment to priority locations.

[59] He said that one of the factors which was looked at was deprivation. Phillipstown ranked 1st in Canterbury for deprivation in 2013 and 2nd in 2016. The locations selected were areas where social cohesion was likely to be weak and the locations are more likely to suffer higher levels of criminality, victimisation and community tension.

[60] Sergeant Kingston went on to say that one of the key drivers of crime and victimisation is alcohol. He described the area as having a high percentage of social housing and a large amount of high density rental accommodation. Rent rates in the area are amongst the lowest in Christchurch and as such they attract people of lower socio economic means.

[61] It was the Sergeant’s evidence that a large percentage of the people that his team deals with are affected by problems with alcohol, drugs and have mental health issues. The Sergeant detailed incidents in the last year of sexual affronts (during the day), intoxicated persons causing problems close to the location of the proposed

premises and four aggravated robberies that occurred in the immediate vicinity of Edmonds Gardens or outside the proposed store. He stated that alcohol was involved in the incidents. Other incidents were detailed in his evidence that were close to the location at issue.

[62] Sergeant Kingston detailed crime data which, although not unequivocal, gave an indication of the issues associated with alcohol in the area. In a comparative view an area of 500 metres around the location of the proposed store has recorded 115 calls for service in a twelve month period. Hornby had 60 calls over the same period, Harewood had 25 to 30 and Barrington had 90 to 100. It is significant that the Hornby and Barrington suburbs both have shopping malls in their locations whereas the proposed site does not.

[63] He stated that the NPT has been retained in the area, in contrast to another team which started in the same time period in the Riccarton area being relocated to Aranui. The Phillipstown area is still very much in need of Police and social agency support.

[62] Sergeant Kingston stated that it was his clear view that the further availability of alcohol will exacerbate the existing issues in an area which is already badly affected by alcohol abuse and related harm and it would be a significant step backwards for the area if the proposed licence was granted.

[63] Mr Peter Shaw has the delegated authority under s.151(1) of the Act to represent the Medical Officer of Health in Canterbury. Mr Shaw produced a map showing census information regarding the area. It showed the deprivation indices for a 1 kilometre radius from the proposed site which showed that the area had a high representation of deprivation scores of 9 and 10 where 10 was the most deprived.

[64] Mr Shaw stated that the area around the proposed store is one of the most deprived areas in Christchurch. In addition to showing the deprivation indices the map showed off licences in the 1 kilometre radius. It showed that there were four off licences (bottlestores) in the area, of which 2 are currently not trading but the licences remain alive. Mr Shaw stated that there are a further 4 off licences within a 1.5 kilometre radius. Two of these are bottlestores and two are supermarkets.

[65] In his evidence Mr Shaw referred to issues relating to traffic flows and the ability of vehicles to enter and exit the carpark of the proposed site. This matter had been raised by a number of objectors in relation to the applicant's intention to target those people travelling from the city to the suburbs past Ferrymead. Mr Shaw stated that he had observed the difficulty that vehicles have at peak times to exit the carpark of the proposed store.

[66] Mr Shaw referred us to a number of reports and research papers. These highlighted the risks associated with the density of licensed premises as well as the effect of an increased exposure and availability of alcohol on young people. The reports and research included;

- (a) Improving the Transition-Reducing Social and Psychological Morbidity During Adolescence” (Chapter 19.) a report by the Prime Minister’s Chief Science Advisor, May 2011.
- (b) Alcohol in Our Lives: Curbing the Harm, The New Zealand Law Commissions report at Chapter 6 paragraph 6.14.
- (c) Density of Alcohol Outlets and Teenage Drinking: Living in an Alcogenic Environment is Associated with Higher Consumption in Metropolitan Setting (2008) 103 Addiction 1614. Taisia Huckle and others.
- (d) Alcohol outlet density, levels of Drinking and alcohol related harm in NZ, A national study by Conner JL, Kypri K, Bell ML, Cousins K (2011).

[67] Finally Mr Shaw referred us to the Authorities decision of *Tony’s Liquor Upper Hutt Limited* [201] NZARLA PH171 at paragraph 20 which was referred to in the decision of *Sai Wholesale Liquor Limited* [2016] NZARLA PH73 at paragraph 33.

Objectors

[68] Ms Melissa Young is the Deputy Principal of Linwood College. She sought to be heard in the place of the Principal, Mr Richard Edmundson, who was away from the school on the day of the hearing. The Committee took the view that even though Mr Edmundson was the author of the school’s objection he wrote the objection on behalf of the school and in her capacity as Deputy Principal Ms Young was representing the school. In any event Ms Young read the objection that was submitted to the Committee, and disclosed to the applicant.

[69] Mr David Turnbull made an objection as the Chairman of the Board of Trustees of Linwood College. In the intervening time between the lodgement of the objection and the hearing, as part of his succession planning, he is now a board member and not chairman.

[70] The objections of the Principal and Board Chair are identical apart from the name and signature of the objector. The contents state that the school is some 650 metres from the proposed site and that within one kilometre there are seven licensed premises. It states that the community is over served with access to alcohol.

[71] The objection went on to say that the school’s students should not be exposed to the normalisation of excessive liquor outlets and that although the Linwood community is rejuvenating there is still a significant vulnerability in the community.

[72] In answer to questions Ms Young stated that there are 692 students attending the school, approximately 400 families, and that social workers, youth workers and school counsellors cannot keep up with referrals. She was asked how many students are under such guidance, and gave an estimate of 20% to 30% of students. Of those where there is social worker or other social agency involvement, she estimated alcohol was a factor in 90% of cases. This evidence was confirmed by Mr Turnbull, who is a very experienced educator.

[73] Mr John Hoskin lives 180 metres from the proposed premises and has done so for 47 years. He spoke on behalf of The Friends of Edmonds Factory Garden Incorporated and himself. Both he and his wife take an active interest in the community and especially the Edmonds Garden, which is adjacent to the proposed off-licence. His evidence outlined his experiences of finding alcohol related rubbish including broken glass, bottles, cans, vomit, human excrement, discarded condoms etc. He very regularly picks up rubbish from the gardens. He went on to describe an incident of a teenage party being held in the gardens where scores of young people gathered and “drank themselves silly”. He said it took four volunteers hours to clean up the mess.

[74] Mr Hoskin detailed comments from people about not wanting to frequent the gardens due to the alcohol related issues in it. He produced a number of photographs of rubbish that he had picked up from the gardens on a daily basis. Mr Hoskin presented a petition signed by 35 people who were in opposition to the application. He opined that “the addition of yet another off-licence nearby, will further escalate our existing problems”.

[75] Mrs Hoskin gave evidence of her knowledge of the area. Her evidence included occasions where discarded alcohol cans had been left in her front garden and confirmed the evidence of her husband about the rubbish left in the Edmonds Garden. She produced photographic evidence of a trolley left by three drunken men which contained predominantly alcohol related rubbish. It was left on the corner of Olliviers Road and Ferry Road.

[76] Ms Lisa Cowe spoke to her written objection which outlined issues within the locality of tagging, crime and drunk and disorderly behaviour. She stated that in her opinion the crime and disorderly behaviour has increased to the point that she has become a member of the local community patrol. Ms Cowe also stated that she had been woken on many occasions by drunken shouting, swearing and violence.

[77] Ms Treena Davison and Ms Korgaonka spoke to their objection which detailed their experiences of groups of people drinking in the evenings in Edmonds Gardens, vandalism, and broken bottles.

[78] Ms Rae Hughes lives in a Commcare housing unit. She stated that there are 70 Commcare social housing units and 70 Emerge social housing units in the locality, and all the people who live in Commcare units have mental health issues. It was Ms Hughes evidence that a lot of the residents of these social housing units have addiction and alcohol issues. She went on to say that you cannot tell by looking at people who has mental health and addiction issues. Ms Hughes provided us with a number of documents including, a Community Profile from the Christchurch City Council dated November 2014, research papers and articles.

[79] Mr Dion Currie lives 300 metres from the proposed site. He lives on a back section that backs onto a park. He stated that there have been numerous incidents involving alcohol over the past 5 years in the park behind his house. He confirmed the evidence of Mr Hoskin that rubbish is an issue in the area. He stated that it was not uncommon to see people drinking alcohol, fights and assaults in the park as well as seeing the seats in the park vandalised. He stated that he accepts that the

applicant is a quality retailer but opined that increased competition would mean more harm.

[80] Mr Currie provided us with a number of documents including a list of liquor outlets within a 2.7 kilometre radius of the proposed store, Phillipstown demographics and studies. Under questioning Mr Currie stated that he thought the area was vulnerable and that he has seen intoxicated people in the area during the day.

[81] Mr Paul Mulvaney lives 120 metres from the proposed site and has done so for 14 years. He gave evidence of living at the rear of Edmonds Garden and described incidents of vandalism, groups of people drinking alcohol in the gardens and discarding their cans and bottles in the area. He also described being woken by drunken behaviour at night and opined that there had been an increase in problems on the weekends and benefit days.

[82] Mr Mulvaney told of receiving Liquorland flyers in his letterbox on at least three occasions in the last six months and stated that he thought that the establishing of a liquor outlet 50 metres from an existing premise would naturally increase a level of competition between the outlets to obtain customer patronage and preference.

[83] He also quoted a decision of the Christchurch DLC *Fillosophy Limited* 60C [2016] 3263, where the Chairman stated

[4] Public objection has been around concerns about loss of amenity, the proximity of a number of other licensed premises, schools in the immediate vicinity and the desire of residents, especially older people, not to be disturbed. The criteria for the issue of licences is set out in s105 of the Act and in s106 guidance is given as to how the effects of issuing a licence should be considered. Of particular relevance is s106(1)(a)(iii) which states that account should be taken of the number of premises for which licences of the kind concerned are already held.

[84] Mr Mulvaney's main concern was that the amenity and good order of the area would be reduced if the licence was granted.

[85] Mr Wayne Hawker spoke to his objection. He stated that there were 100 Christchurch City Council social houses in Phillipstown and over 300 social houses in total in the locality. He described seeing the homelessness in the area and cleaning up the Community Centre of alcohol related litter.

[86] Mr Hawker spoke of his experience of being a victim of alcohol related crime. He raised three points,

1. The application does not fit the Act's object of minimising harm caused by alcohol.
2. The granting of the application is likely to increase crime in the area.
3. There are already enough off licence liquor stores. He presented a list, which he stated, identified 39 various off-licenses that are located either within the CBD or on the main or residual roads that lead directly into the communities identified as the targeted customer base.

[87] Mr Hawker provided us with a large number of documents, including research papers.

[88] As mentioned previously in this decision the Linwood-Central-Heathcote Community Board sought leave of the Chair to appear and be heard under s.204(2)(b) of the Act. This was granted.

[89] The Board was represented by three members, Ms S Buck, Ms A Davids and Dr D Latham. Although there were some issues with some of the contents of the submission of the Community Board, as it contained evidence which had not been disclosed in a timeframe which would be fair to the applicant, we are appreciative of the Board for taking the time to appear before us. Their submission confirmed, and supported, much of the views of the objectors in relation to the vulnerability of the community and community opposition to the application.

[90] In their submission the Board said,

“They agree with the summations from the Licensing inspector, Medical Officer of Health and New Zealand Police; their comments are clear, disciplined, rational, open-minded, and informed by evidence. They know and understand the relevant issues and concerns. They understand the legal, social and health issues related to this application. Ignoring their advice is at our peril”.

[91] Our attention was drawn by the Board to the decision of the Authority of *Penoy Spirits Limited* NZARLA PH 697/2014 where it said at [19];

[19]... The object referred to in s.4 of the Sale and Supply of Alcohol Act 2012 is different from that in s.4 of the Sale of Liquor Act 1989. Now the aim is the minimisation of alcohol related harm; not merely its reduction. Minimisation means “reduced to the smallest amount, extent or degree” (New Shorter Oxford English Dictionary).

[92] We were presented with a number of research documents in various forms by the agencies, Community Board and some objectors. Some of this research was new and we would have liked to question the authors of the research to test its veracity. This would have also meant that the applicant would have been afforded the opportunity to test the veracity of the evidence as well, which speaks to the issue of fairness. Not being able to carry out a proper assessment of the evidence means that we can place little weight on it. However, some research which was placed before us by the agencies and some objectors has previously been placed before the Authority and has subsequently been quoted as part of the reasons for refusing an application, as in *Hari Om (2013) Limited* above.

[93] We view the research evidence as but one part of the evidence that was placed before us, it adds to the matters to which we must have regard in making our decision but is not determinative.

Mandatory Considerations

[94] In considering an application for an off-licence the Committee is directed by sections 105 and 106 of the Act as well as reports under section 103. The criteria is listed below.

105 Criteria for issue of licences

- (1) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - (a) *the object of this Act*
 - (b) *the suitability of the applicant*
 - (c) *any relevant local alcohol policy*
 - (d) *the days on which and the hours during which the applicant proposes to sell alcohol*
 - (e) *the design and layout of any proposed premises*
 - (f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
 - (g) *whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
 - (h) *whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
 - (i) *whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*
 - (i.) *they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
 - (ii.) *it is nevertheless desirable not to issue any further licences:*
 - (j) *whether the applicant has appropriate systems, staff, and training to comply with the law:*
 - (k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*
- (2) *The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*

[95] Section 106 sets out the criteria when one is looking at the “amenity and good order of the locality” and includes matters such as current and possible noise levels, nuisance and vandalism, and the proliferation of liquor outlets. The Committee is also obliged to take into account whether the proposed use of the premises is compatible with the land used near the premises.

[96] The object of the Act, as well as its purpose, are the lens by which the application is measured. The minimisation of harm is the key tenet of the object.

The Applicant and Suitability

[97] The suitability of the applicant was not challenged. From the evidence that was adduced at the hearing in relation to the applicant it is our opinion that the applicant, and the franchise it represents more than meet the criteria in relation to suitability.

Any relevant Local Alcohol Policy and the days and hours on which alcohol proposed to be sold

[98] The Christchurch City Council does not have a Local Alcohol Policy (LAP).

Systems, Staff and Training

[99] Evidence was adduced by the applicant of the comprehensive training program which will be used by the applicant.

Design and layout of the proposed premises and external advertising

[100] The design and layout of the premise, as shown in the plan submitted at the hearing raises no issues, other than we would have placed a condition on the licence that there would be no external advertising of product on the premises. The applicant agreed to this whilst giving evidence.

Whether the applicant proposes to engage in the sale of goods and services other than alcohol, food, low alcohol refreshments, non-alcoholic refreshments and food

[101] The applicant does not intend to sell any other goods and services.

Amenity and Good Order of Locality – Proliferation - Density

[102] Section 105(1)(h) requires the Committee to have regard to “*whether (in its opinion) 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 the licence*”. In this regard s.106(1) requires the Committee to have regard to the number of premises for which similar licences are held in the locality.

[103] In the decision of *Hari Om (2013) Limited* NZARLA [2014] PH 000309 the Authority stated;

[27] Whether or not this application should be granted revolves around a consideration of s.105(1)(h) and s.105(1)(a) of the Sale and Supply of Alcohol Act 2012. The issue as to whether 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 is one of the new criteria introduced by the Sale and Supply of Alcohol Act 2012. Section 106(1)(a)(iii) requires the Authority to have regard to the number of premises for which similar off-licences are already held. Thus, whilst

under the Sale of Liquor Act 1989 the proliferation of liquor licenses was not relevant, it now becomes very relevant.

[28] *The proliferation argument was raised on behalf of the appellant in Utikere (Supra). In commenting on it at paragraph 63, Kos J stated:*

“In addition there was no cogent evidence that the granting of a licence to the applicant to establish its new store would necessarily result in an increase in the supply of liquor to the public in absolute terms. Let alone an adverse increase in the abuse of liquor. As Mr Sheriff put it, dilution or diminution of sales at other outlets, resulting in the same total volume sold, was an equally (if not more) likely outcome. It followed that there was no evidence that more liquor in absolute terms would be consumed by the public either generally, or specifically in the two suburbs most concerned.”

[29] *At paragraph 64, Kos J noted that it was not the scheme of the Sale of Liquor Act 1989 to limit the proliferation of outlets.*

[30] *Sections 105(1)(h) and 106(1)(a)(iii) of the Sale and Supply of Alcohol Act 2012 introduce the proliferation argument unequivocally. The Authority considers that just as in the case of suitability issues, there is an onus on an applicant to prove its case (see, for example, Page v Police 24/7/98 Pankhurst J, HC Ch-ch, AP 8498), so also is there an onus on an applicant to satisfy the Authority that the issue of the proposed off-licence is unlikely to reduce the amenity and good order of the locality to more than a minor extent. In any event, whether the Authority is correct as to the onus on an applicant in this regard, the proliferation issue was squarely placed before the Authority, both by the Medical Officer of Health and by the objectors. Thus, it was incumbent upon the applicant to give consideration to this issue. It did not do so.*

[31] *When considering s.106(1)(a)(iii) relating to the number of premises for which licences are already held, it is not so much the number of licences that creates the concern but rather the harm which could be created by them. This is directly relevant to the object of the Act as set out in s.4 of the Sale and Supply of Alcohol Act 2012. Whilst in Utikere Kos J commented that there was no cogent evidence that a new licence would necessarily result in an increase in the supply of liquor to the public and therefore greater harm, that comment is not supported in the summary of the report by the Alcohol Advisory Council of New Zealand “The Impacts of Liquor Outlets in Manukau City” in its summary dated January 2012. In Part 7 of the summary the report reads:*

“In Manukau City, off-licensed liquor outlets tend to locate in areas of high social deprivation and high population density, while on-licence liquor outlets tend to locate in main centres and areas of high amenity value. Price and non-price competition leads to lower alcohol prices

and longer opening hours in areas where the density of off-licence liquor outlets is higher.

On-licence density and off-licence densities of clubs and bars, and restaurants and cafes, were associated with a range of indicators of social harm. However due to the context specificity found ...”

[32] That conclusion also confirms the Authority’s view as stated in Sapphire Dreams Limited [2012] NZLLA PH 1370. In that case Mr J P Tregidga, who is the Mayor of the Hauraki District but who has also been in retailing all his life said that in retailing any additional outlet creates additional demand and that usually results in price cutting. The price cutting was not necessarily by the new entrant but by competitors. As the Authority stated at paragraph 17 of that decision:

“The evidence of Mr Tregidga indicated that if this application were granted, price cutting (not necessarily by the applicant) would result. Inevitably this would result in more liquor becoming available in an area where liquor abuse problems are rife.”

[33] In this case, the evidence is that Taumarunui has a population of approximately 4,500. Its unemployment rate is 8.9% (being those on the Unemployment Benefit). Like Manukau City and Waihi, the median income per adult of the town is low by national standards. If anything, the population of the town is continuing to diminish. Whilst the hinterland contains many persons who also shop in Taumarunui, no details of the numbers or their economic status were available. The evidence indicates, therefore, that the market for alcohol in the town and surrounding area is static if not reducing. Inevitably a new entrant into this market place must have an effect on the other off-licences in the area. Whilst the Authority is not permitted by s.105(2) to take into account the prejudicial effect that this might have on the existing businesses, nevertheless, the Authority is entitled to consider whether or not the grant of this off-licence would accord with the object of the Act and in particular the extent that harm caused by the excess or inappropriate consumption of alcohol should be minimised. It is axiomatic that if competition results in a reduction of prices, it is likely that more alcohol will be sold. More alcohol becoming available to a static population must result in an increase in consumption, at least by some of that population, with possible adverse harm resulting.

[34] It was argued that the applicant would not directly compete with the existing off-licensees as he would be targeting the higher end of the market with products such as craft beers and expensive spirits. No doubt he will be selling those products; and they will be a point of difference from the existing off-licensees. However, in a town such as Taumarunui, it is unlikely that his sales would be restricted to the expensive products. Indeed, he conceded that he would be selling all types of alcohol; albeit with an emphasis on the high end product. It is

his total operation that will create the competition and consequential retaliatory responses from existing licensees.

[104] In regards to this application the issue of proliferation was raised but unlike the decision quoted above the applicant addressed the issue of proliferation and competition. In the above decision the Authority stated at [31] “so also is there an onus on an applicant to satisfy the Authority that the issue of the proposed off-licence is unlikely to reduce the amenity and good order of the locality to more than a minor extent”. We do not suggest that this is the correct approach and refer to the decision of *Re Venus NZ Ltd* [2015] NZHC 1377 where Heath J said at [56]:

[56] Section 106(1)(h) of the 2012 Act requires the Authority to form an opinion that “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”. That is one factor to be taken into account in determining whether a licence should be granted. To the extent that Re Hari Om held that there was an onus on an applicant to demonstrate that there would be no material reduction to the good order and amenity of the location, I consider that it was wrongly decided. In my view, no such onus exists.

[105] The applicant’s evidence was that it would not be competing with the other off licences in close proximity as it had a very different sales approach, had much higher standards in regards to training, host responsibility, and some products it intends to sell. It stated that it intends to sell higher end, or premium, products and would therefore not be competing with the other off licence on price or product and that all its training and sales practices will minimise sales that are likely to increase harm in the locality.

[106] The Committee does not dispute the applicant’s training regime, Responsible Sales Practices and other initiatives but despite this we conclude that the current premises are more likely than not to compete with the new premise in the manner described in the *Hari Om (2013) Limited* decision above.

[107] The Authority stated in the appeal decision of *Pangotra Holdings (Palmerston North) Limited v Sargent* [2016] NZARLA PH 73,

[30] In those circumstances the DLC was correct, when it considered s.105(1)(h) of the Act, to take into account the guidelines contained in s.106(1)(a)(iii) of the Act: “The number of premises for which licences of the kind concerned are already held”.

[31] Against that background, the DLC referred to Tony’s Liquor Upper Hutt Limited [2014] NZARLA PH 171. The DLC specifically referred to the appellant’s evidence to the effect that there was no intention to compete with other off-licensees in the area and therefore there would be no increase in the overall volume of alcohol sold in Johnsonville. In Tony’s, the Authority stated at [24]:

“[24] The Authority accepts that it is not the intention of Mr Loveday that the applicant will compete against its competitors on price. That does not mean, however, that the competitors will not compete on price when a new bottleshop enters the market.”

[32] The same situation applies in this case.

[33] Given the evidence of the Police and Medical Officer of Health, it is worth recording that the comments made by the Authority in Tony’s are pertinent. The Authority stated at [19]:

*“[19] Until the enactment of the Sale and Supply of Alcohol Act 2012, the proliferation of off-licences and the effect of a new entrant into a confined marketplace was not an issue for the Authority unless the proposal offended against the object of the Act. However, this is now a significant issue when considering whether or not to grant an off-licence. The applicant argued, as did Mr Sheriff in *Utikere v I S Dhillon & Sons Limited CIV 2013-454-264 [2014] NZHC 270*, that a diminution of sales at other outlets resulting from the same total volume sold was a likely outcome of a new entrant entering the marketplace. It followed that there was no evidence that more liquor in absolute terms would be consumed by the public, either generally or specifically as a result of the new entrant entering the marketplace: *Kos J* accepted this argument.*

*[20] When considering s.106(1)(a)(iii), it is not so much the number of licences that creates the concern as the harm that can be created by them. This is directly relevant to the object of the Act as set out in s.4 of the Sale and Supply of Alcohol Act 2012. Whilst in *Utikere* *Kos J* commented that there was no cogent evidence that a new licence would necessarily result in an increase in the supply of liquor to the public and therefore greater harm, that comment is not supported in some of the literature. For example, in the summary of the report by the Alcohol Advisory Council of New Zealand ‘*The Impacts of Liquor Outlets in Manukau City*’ dated January 2012 can be found the following comment:*

‘In Manukau City off-licence liquor outlets tend to locate in areas of high social deprivation and high population density, while on-licence liquor outlets tend to locate in main centres and areas of high amenity value. Price and non-price competition leads to low alcohol prices and longer opening hours in areas where the density of off-licence liquor outlets is higher’.

*[21] That conclusion was confirmed in *Sapphire Dreams Limited [2012] NZLLA PH 1370*. In that case Mr J P Tregidga, who was Mayor of the Hauraki District but also who had been in retailing all his life, said that in retailing any additional outlet*

creates additional demand and that usually results in price cutting. The price cutting is not necessarily by the new entrant but by competitors. The Authority concluded in that decision that price cutting would result in more liquor becoming available in an area where liquor abuse problems were rife.”

[34] In this case the evidence of the Medical Officer of Health and the Police, together with that of Mr Nicolson and other objectors indicated that alcohol induced harm is of concern in Johnsonville. In these circumstances, in evaluating the evidence against s.105(1)(h) of the Act, the proliferation issue and its possible effects on the amenity and good order of the locality was a relevant consideration.

[35] Proliferation was not the only factor taken into account by the DLC. The appellant argues that the DLC erred both in fact and in law by concluding that the number of sensitive premises within the area was not consistent with the grant of a licence.

[36] The Authority considers that the DLC did not err in this regard. There are sensitive premises within the locality and permitting an additional off-licence within the locality would undoubtedly affect persons involved in those sensitive activities (e.g. recovering alcoholics) to some degree. Again, whilst this was not determinative, it was a factor to be taken into account in the evaluation of s.105(1)(h) of the Act as to whether the issue of the additional off-licence would reduce the amenity and good order of the locality.

[108] The circumstances in the decisions set out above are very similar to that which was presented before us. These could be distilled down to;

- The locality is suffering significant alcohol related harm.
- The locality is high on the NZ Deprivation Index.
- The locality is vulnerable.
- There are significant sensitive sites within the locality.
- Another off-licence will increase competition and therefore reduce the amenity and good order of the locality by more than a minor extent, and increase harm.
- The amenity and good order of the locality are already so badly affected by the effects of the issue of the existing licenses that if the licence was granted there would not be a reduction in the amenity and good order (or would be reduced by only a minor extent) but it is not desirable to issue a further licence.
- The granting of the licence would be contrary to the object of the Act.

Committees Decision and Reasons

[109] In determining this matter we have adopted the evaluative framework of Heath J in *Otara-Papatoetoe Local Board v Joban Enterprises Limited* CIV-2011-404-007930 [2011] NZHC 1406. We have considered all the information and stood back and determined whether the application should be granted (whether on conditions or not) or refused.

[110] What we must ask ourselves is whether the granting of this application will offend against the object and purpose of the Act, as set out at sections 3 and 4, or any of the other criteria that we are asked to weigh it against in sections 105 and 106. When we stand back and evaluate the evidence presented to us we find that the granting of this application would be contrary to the object and purpose of the Act.

[111] We have had regard to all the criteria that we must have regard to, although we are not limited to these matters alone. We find that the applicant has satisfied us of the matters as set out in s.105(1) (b), (d), (e), and (f).

[112] The object of the Act and amenity and good order issues are at the heart of this matter. In the appeal decision of the Authority of *B & S Liquor Limited* [2015] NZARLA PH 576 at paragraph [16] the Authority stated;

[16] The over-riding principle which must always be borne in mind when considering an application for an off-licence is the object of the Act, as established in My Noodle Ltd v Queenstown Lakes District Council [2009] NZCA 564. More recently in Venus New Zealand Ltd [2015] NZHC 1377, Heath J said

“[20] Although the “object” of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the “object” of the legislation. It seems to me that the test may be articulated as follows: Is the Authority satisfied, having considered all relevant factors set out in s.105(1)(b)-(k) of the 2012 Act, that the grant of an off-licence is consistent with the object of that Act?

That is the approach I take to the appeal.”

[113] The evidence of the Police, Medical Officer of Health and a number of objectors, which was accepted by Mr Crotty for the applicant, is that the locality in which the applicant seeks to establish an off-licence is already badly affected by alcohol related harm.

[114] In light of this we have asked ourselves the following questions;

- If the location is already so badly affected by alcohol related harm and the effects of the issue of existing licences, and the amenity and good order of the location will not be reduced by more than a minor extent, is it still desirable to grant the application? S.105(1)(i).
 - Our finding is no.
- Would the granting of the application offend against the object of the Act? S.105(1)(a).
 - Our finding is yes.

[115] In answering these questions we have taken into account that the applicant is a very experienced operator and the systems and staff training, as presented to us, are of a very high standard. We also accept that some of the business will be targeted to those living some distance away in the hill suburbs and also to corporate clients.

[116] In balance to this we believe that the majority of the applicant's business would be similar products to the other off-licenses in the location and that this could cause competition and the possibility of undesirable consequences such as, a price war, lower prices and an increase in the consumption of alcohol leading to an increase in alcohol related harm.

[117] We agree with the comment put to, and agreed by the applicants, that the seller of alcohol from an off-licence cannot control the manner in which the alcohol is consumed, and the subsequent issues that may arise from the consumption of that alcohol.

[118] We find that on the evidence placed before us that the locality is very vulnerable, contains a high number of housing units for those affected by mental illness and addiction issues, including alcohol addiction.

[119] This finding is based on the evidence of a number of the objectors, including Ms Hughes who stated that there are over 140 social housing units in the wider Philipstown area with some accommodating those dealing with the issues described above. The objectors gave evidence of their knowledge and direct observations of the locality. They know the area. They know the people. They are aware of the problems and are well qualified to give their opinion of the application and its proposals.

[120] Ms Melissa Young, the Deputy Principal of Linwood College, stated that social workers and school counsellors cannot keep up with referrals and that approximately 20% - 30% of students at the school had a degree of this intervention. Of these about 90% have some impact from alcohol. This evidence was confirmed by the previous Board Chair of the College Mr Turnbull, who is a very experienced educator. We have taken the view that the school is a sensitive site in relation to this application.

[121] Our findings are also based on the evidence of Police and the Medical Officer of Health's representative. The locality sits near the top of the deprivation index. The Police have specifically engaged with this community due to the issues.

[122] After considering the matters to which we must have regard as set out in s.105 and 106 of the Act the application is declined.

DATED at CHRISTCHURCH this 16th day of May 2018.



Chairperson
Christchurch District Licensing Committee