

Decision No. 60B [2018] 638

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012.

AND

IN THE MATTER

of application under s. 99 of the Sale and Supply of Alcohol Act 2012 by **Brothers Enterprises Limited** in respect of premises at **238 Barrington Street, Christchurch.**

RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: Mr P R Rogers

Members: Mr D Blackwell QSM
Mr A Lawn

HEARING

at 50 Colombo Street, Christchurch on the 14 and 15 February 2018.

PRESENT:

Amit Kumar Sachdeva – Representing Brothers Enterprises Limited

Andrew Riches – Counsel for Applicant

Jennifer Ramsay - Licensing Inspector - In opposition

Sergeant David Robertson - NZ Police - In opposition

Peter Shaw - Canterbury District Health Board – In opposition

Sam Ludemann – Witness for Licensing Inspector

Lois Wells – Public Objector

Patricia Siatago – Public Objector

Mark Wilson – Objector Headmaster Cashmere High School

Angela Wasley – Public Objector

Pat McGarva – Public Objector

Sue Bye – Objector Representing the Lower Cashmere Residents Association.

Lisa Dermott – Public Objector

Anna Woolman – Public Objector

Diana McCoy – Public Objector – Representing Spreydon Neighbourhood Network.

Graeme Donaldson – Public Objector

Ashley Probert – Public Objector

Janette Smith – Public Objector

Julie Tobell – Public Objector

Natacha Maher – Public Objector
Peter Warren – Public Objector
Bob Roberts – Public Objector
Rik Tindall – Public Objector

INTRODUCTION

[1] This is an application by Brothers Enterprises Limited for an Off-licence at 238 Barrington Street, Christchurch. The applicant is a private company and the shareholders and directors are Amit Sachdeva and Taran Singh. Both directors will have 'hands on' running of the company. At the Hearing only Amit Sachdeva appeared and gave evidence on behalf of the company and will be known throughout this Decision as the 'applicant'.

[2] The applicant was represented by Counsel, Mr Riches, and he explained that the other director was not able to appear as he was currently in India getting married.

[3] This application is for an Off-licence in the form of a small bottle store at 238 Barrington Street Christchurch. While the official Council records show the address as Barrington Street, the premises will have the address of 1A Milton Street.

[4] The premises have not previously been licensed and have been formed by dividing off a new space from an existing accountant's office. The accountant will remain in the smaller area and the new space will be occupied by the proposed bottle store.

[5] The intended premises are on the corner of Barrington Street and Milton Street, a very busy suburban intersection controlled by traffic lights.

[6] At this corner there are rows of small shops and west along Barrington Street are the Barrington Mall and the Spreydon Library. On the western side of the Mall is Barrington Park, the focus of much attention during this Hearing.

[7] This application attracted a lot of public objections as well as opposition from the Alcohol Inspector, NZ Police and the Medical Officer of Health, (the 'Agencies'). A total of 17 objectors appeared in person at the Hearing.

[8] In a petition was organised by the Spreydon Neighbourhood Network and a total of 532 signatories were obtained. As is the case in all hearings the Committee notes this fact with the comment that no evidential weight can be given to it as the signatories are not parties to the Hearing and have not been cross examined.

EVIDENCE OF THE APPLICANT

[9] Amit Kumar Sachdeva gave evidence from a prepared brief, as one of the two directors for Brothers Enterprises Limited. He explained why his business partner, Taran Deep Singh, could not be present at the Hearing.

[10] Mr Sachdeva stated he was 34 years old and immigrated to New Zealand in 2011. In May 2012 after working for as a Customer Service Representative for BP Connect he was employed as Store Manager at a Super Liquor outlet in Timaru and

obtained his General Manager's Certificate. He stated he managed this Store and subsequent ones in accordance with the object of the Act. He went on to explain the object of the Act in accordance with the wording of section 4(1).

[11] The applicant then gave evidence that he had implemented a number of changes that had raised the profitability of the store by offering more expensive and high end products which have a higher profit margin. The outlet stocked higher end craft beer and focused on products such as single malt whisky. He held the role of store manager for three and half years and never came to the attention of the Agencies for breaches of the Act. This was despite being near a high school and on occasions having students attempt to purchase alcohol.

[12] After three and half years in Timaru he moved to Christchurch and managed Super Liquor Blenheim Road. He was again able to boost revenue by focusing on different products, namely high end products with greater profit margins. Since July 2017 he has been managing Merchants Liquor, a bottle store on Lincoln Road Christchurch.

[13] Across these three stores the applicant stated he had gained experience in such things as preventing minors purchasing liquor and intoxicated patrons. He gave details as to what he thought were signs of intoxication.

[14] He described the background of his business partner, Taran Deep Singh, and stated Mr Singh had been a duty Manager at Super Liquor Blenheim Road in 2011 and then managed a number of supermarkets. From August 2016 he had been the duty manager at the Yaldhurst Hotel Bar and Restaurant. The applicant went on to say he met Mr Singh at Super Liquor Blenheim Road and that had they had flatted together.

[15] The applicant then addressed the current application for an off licence. He stated that he lives in the area and does most of his shopping at the Barrington Shops. The funding for the bottle store has come from money he and Mr Singh have saved and they also have financial help from their families.

[16] In September 2017 the applicants entered into an agreement with Brews Liquor Store to operate under a Brews franchise. A copy of the franchise agreement was supplied to the Committee. Brews stores operate in Auckland and there is one in Christchurch at Hornby. The applicant said he had visited the Hornby store a number of times and had seen there was a focus on higher end products rather than lower priced items. This fitted the business strategy they wished to follow.

[17] The applicant said they had prepared a business plan and considered the profile of their target market was:

“The target market profile consists of Spreydon residents who are educated, successful professionals with highly disposable incomes who are regular consumers of alcoholic beverages....”

[18] The applicant conceded there were other areas in Christchurch where residents would have higher disposable incomes but they had discovered premises in those areas were hard to find and were likely to have expensive rents making it difficult to run a profitable business. They thought the current store was in the middle ground.

[19] The applicant touched on marketing and said direct marketing would be undertaken by Brews and they would have no advertising outside the store. The layout of the store was described and he also addressed the concerns of the Alcohol Inspector over the chiller holding the RTD's which she believed would be as large as the beer and wine chiller. The applicant said this would not be the case as there would be only one large chiller room with RTDs stored at the back.

[20] Concerning security, there will be high definition cameras installed looking North West along Barrington Street which will allow staff to see anyone approaching the shop. Another camera would look the other way towards Cashmere High School.

[21] The applicant then covered off such matters as staff training and whilst they have the intention of both working when they first open, in the event they do take on more staff they said they will have extensive training material. They have a Health and Safety Training Manual which includes the Host Responsibility Policy. They rejected criticism from the Inspector for taking various pieces from different sources when putting the manual together, rather than starting it from scratch.

[22] The applicant then turned to a heading in his brief entitled "Amenity and Good Order", and commented that they believed this was the biggest issue they had to face, as to whether amenity and good order would be reduced by more than a minor amount should another bottle store open. He acknowledged the concerns of the objectors and Agencies throughout the Hearing. He said he understood their concerns were that people who are consuming alcohol in the area would have either greater access to alcohol or cheaper alcohol if another store was to open. He also acknowledged the presence of the nearby Cashmere High School (about a kilometre away). The applicant's position was that he did not believe the bottle store would impact on amenity and good order as they intended to cater for persons looking for alcohol at the higher end of the market. In his words "in no way would they be looking to sell alcohol to persons who would prefer to drink in the parks, nor to nearby students".

[23] He went on to say he had spent significant time in the nearby Barrington Park paying close attention to the type of person who frequents the park. While he saw persons drinking alcohol in the park it became apparent that it was the same group of six or seven people each time he was there. He believed he would quickly come to recognize who those people were drinking in the park and he would decline to serve them should they come into the bottle store. He noticed they seemed to be consuming mainly RTD's having high alcohol content. He alleged that the nearby Barrington Super Liquor (BSL) sold single cans of the RTD's. He had been able to purchase these and produced receipts as proof. He gave an undertaking as part of the application not to sell individual cans under \$7.00. He did not want to rule out single can sales altogether as a large number of craft beers, for his so called target market, came in individual cans. He believed this undertaking would take any pressure off BSL and the nearby Supermarket to drop their prices.

[24] The applicant made the statement that he did not see that the groups drinking in the park would "trek" the distance past two other Off-licences to purchase from his store.

[25] In early January 2018 the applicant and his wife took photos in and around the park and in particular in the toilets and saw some litter and one vodka bottle which to him did not necessarily indicate a large volume of drinking.

[26] He said he attempted to speak to someone from the Barrington Library, but this person declined saying he had already given a statement to the Alcohol Licensing Inspector and that he could ask him questions at the Hearing. The applicant said there were many people who acknowledged that there were persons who drank in the park but who said they were cheerful and pleasant and did not cause an issue other than the occasional litter.

[27] The applicant said he had assessed the parking outside the proposed store and when he was at the store there were empty carparks at all times. He went on to say that it was the nature of purchasers at bottle stores to make a purchase and then leave and the store would not have an impact on vehicular noise or traffic more than what is already experienced.

[28] In closing he said he and his partner are experienced Off-licence managers and the impact on the community will be minimal. Their aim was to provide alternative products with a range focussed on the high end consumer and this would not increase alcohol consumption.

CROSS EXAMINATION OF APPLICANT

Cross examination by the Inspector

[29] The Inspector cross examined the applicant as to the definition of intoxicated contained in the Act. The applicant was vague and was not able to give a definition to the satisfaction of the Committee. When asked what he would do if customers just wanted cheap RTD's he said he would not sell them. He drew the Committee's attention to the Brews product list he had produced for their information and said he could sell other products not on their core product list.

[30] The applicant stated he intended to sell high end wines and craft beers as listed on the Brew's list. Craft beer would be different to what is stocked by the supermarket. He stated there would be no dump stacks of RTD's. The Inspector questioned him concerning his Alcohol Management Plan and the lack of attention to amenity and good order (AMGO). She suggested that more prominence was placed on the AMGO within the store and hardly any on the environment around the store. The Alcohol Management Plan (AMP) only mentioned the issue of the drinking in the park under 'Intoxication' and stated that staff would check around the store and the park during quiet times when there were two or more working.

[31] The applicant said he did not know of any alcohol dependant residents living in the area but admitted he had seen drinking in the park. The Inspector put it to the applicant that the nearby Super Liquor Store had a view of the park and yet people still drink in the park. She asked why his store would not affect this. He replied that he would know the persons and will not serve them. He said he would speak to the persons in the area but in his view the amount of drinking in the park was not a concern. He did admit to finding bottles and cans sometimes. The Inspector then asked why would she have found more than he had and he replied, "what I found is what I found".

[32] When questioned over the behaviours mentioned in s. 4(2) of the Act he had a vague knowledge but under cross examination his knowledge of sub section (1), the object of the Act, was almost verbatim.

[33] When asked how he was going to make money he replied, by selling different products, and that labour costs will be lower than say Super Liquor as the two directors can work seven days a week. Keeping labour costs down will make money. He did admit they may have to look at part time staff in the future.

[34] It was put to him by the Inspector that the area was adequately serviced with alcohol suppliers, and he was asked why was another bottle store needed. He replied customers will get better options by having high quality products in the store. People will come to the store because of what we stock.

[35] The Inspector covered with the applicant the types of harms as described in s.4 of the Act and asked whether he understood that it was any type of harm. He replied that yes, he did. The Inspector put it to him how, with their store 200 metres from another store, that would not cause additional harm. He replied he would be able to see what sort of customers were coming into the store. The applicant became confused under the direct questioning on this point.

Cross examination by the Police

[36] The Sergeant put it to the applicant that it was just 10 minute parking around the store and he agreed. It was put to him that there were quite a number of businesses and not many car parks. He replied he was just aiming at capturing people going home and they tended to stay no more that 5 to 10 minutes making their purchase.

[37] The Sergeant then cross examined the applicant at length on the Brews franchise agreement and that he could only stock those products approved by Brews. He replied it was not hard to get approval. The applicant had stated he intended to stock 50 different craft beers and the Sergeant questioned whether there was enough room in the plan as produced and the chiller shown on the plan to stock that amount of alcohol along with the other items on the stock list he had produced.

[38] When questioned about advertising the Committee was told it would be done by Brews, but under cross examination the applicant said he would use Facebook and other forms of social media to raise the awareness of his business. The applicant would also obtain customers' email addresses when opening an account and thought it would take 3 to 6 months to build up a customer base.

Cross examination by representative of the Medical Officer of Health – Mr Shaw

[39] Mr Shaw questioned the financial viability of the business and why the applicant chose this address and was told they had looked at other addresses and the rent for this premise was reasonable and it was close to home.

[40] When asked the question, will you sell to customers what they want to buy, he replied yes.

Cross examination by objectors

[41] Lois Wells asked where would the delivery truck park and the applicant replied there is a private car park at the rear of the premises. When asked about disposal of cardboard he replied there would be a container for cardboard and this would be in his parking space.

[42] Graeme Donaldson spoke as the owner of some of the shops and said it was too tight to unload in the car park at the rear. The applicant said the suppliers could send a smaller van.

[43] Diana McCoy spoke for the Spreydon Community Network and asked the applicant how would he cope on his own and he replied 5 to 7 pm was the busy time. For busy times there could be more staff working.

[44] Natacha Maher asked the applicant whether he knew the average income of the locality and that at the last census it was \$29,800. She also asked him what was the average age of people living in the area. The applicant replied that he would be catching people from other areas in his target age group of 30 to 60 years. Ms Maher put it to him that the census showed that 36% of the population is in the 15 to 30 year age group and this group could not afford his products.

[45] He was then asked how he would control behaviours outside the store and he replied he would keep a watch outside the store. Asked what his biggest seller would be he replied spirits.

[46] Mark Wilson, Headmaster of Cashmere High School asked what would be in the chiller and he replied RTD's, beer, wine, the bulk of sales would be in the chillers. Mr Wilson told the applicant that on the date of 24 November 2017, when the applicant had given evidence of carrying out a count of students walking past the proposed store, 70 senior students were on study leave on that day. He suggested that the numbers walking past would be more like 150 not the number the applicant had given.

[47] Mr Wilson asked him if he had looked at the research on alcohol use during adolescence, he replied no. Mr Wilson then queried his intention to use social media, as school age children would see this and that the applicant would have no control over it. The applicant's response was that he would monitor his social media but he gave no information as to how he would do this.

[48] Lisa Dermot questioned the applicant on the number of premises that sell high end products in the area. He replied that he would not be competing with the supermarket.

[49] Angela Wasley put it to him that alcohol outlet density was a risk factor as more people purchase and replied they buy if they want to buy. He denied, when it was put to him, that there would be a price war and said there would not be as he would be stocking a different selection.

[50] Patricia Siatago said to the applicant her chief concern was the traffic in the area and the Church across the road. She told him that she finds cans outside her house and he agreed he would not like to find cans outside his house.

Questions from the Committee

[51] The Committee sought clarification from Mr Sachdeva about his use of social media and referred to the section of the franchise agreement which prohibited all but the franchisor from using a social media account to advertise the store. Mr Sachdeva agreed that the franchise agreement prohibited him from using his own social media platform to promote his store. When asked who controlled prices he replied the franchisee. When asked what percentage of fine wine he would sell he replied 30% in the \$50 to \$60 and upwards range. With craft beer the turnover

would be in the 20 to 25% range. When asked how long it would take to reach that target he replied 6 to 8 months. It was put to him that until he reaches that target he is just another bottle store. He replied I will stock high end wines and craft beer and the target market is people in the 30 to 60 years age bracket. He commented that other people will not be able to afford it.

[52] The applicant was asked how he was going to stop issues arising and he replied, I see them drinking in the park I will just not sell to them.

[53] The applicant replied to a question that there would be no advertising of alcohol outside the store or on the window other than the Brews brand.

[54] The Committee enquired how long would it take to become profitable and the applicant replied 3 years. He indicated the turnover would increase year by year until they saw a turnover of a million dollars in 3 years. Asked about a market share of alcohol sales in the area he replied he would be creating one in craft beer and high value wines. Asked what he considered would be his sales of RTD's, he thought it would be about 15%.

[55] The applicant was asked how he was going to build his stock of craft beer up to the 50 brands he had mentioned and he replied that the craft beer companies would come to him with their products. Questioned as to what happened when a particular craft beer did not sell well, and whether it would be discounted, he replied that they would just not sell it.

Re-examination by Counsel.

[56] Counsel asked the applicant about his knowledge of intoxication and he described what is known as the SCAB tool and the signs of intoxication. Counsel had then asked the applicant explain why they had wanted to proceed to a Hearing and he explained that he had been given an extension to the lease, which was conditional on them getting a licence.

EVIDENCE OF LICENSING INSPECTOR

[57] Jennifer Ramsay, Licensing Inspector, gave evidence, her report having been taken as read. She said she had been in the role for 6 years. In her report she had the following comments to make concerning s.105 (1)(a), namely she had concerns that the proposed bottle store may increase alcohol related harms, the question being to what extent. will it be more than a minor amount? She said the proposed premise is close to another bottle store, Super Liquor, and a supermarket, Fresh Choice Barrington. Super Liquor is next the Library and Barrington Park. She produced a map of the location.

[58] The Inspector stated she was surprised by the evidence she found in Barrington Park. Every time she went there she found evidence of alcohol consumption and people drinking from packs of alcohol in the park. She said that from her observations and conversations with the community and library staff this area may already have a higher than normal occurrence of people consuming alcohol in public areas.

[59] She had concerns with two bottle stores being located close together (about 180 metres) and prices may become a way to compete. She commented that in a number of places in the application and other papers supplied, the applicant had referred to a wish to sell fine wine, craft beer and spirits. In conversations with the

applicants they did not appear to realise that they would be held to this. The two directors had stated they intended to also sell cheaper beers and RTD's.

[60] The Inspector had concerns over the business plan and the application had relatively little information on how they would manage the amenity and good order of the locality.

[61] The Inspector referred to a visit she paid to the area on 24 November 2017 when she counted the number of school children pass the premises and this came to 70.

[62] The witness said the applicant was prepared to sign an undertaking in relation to single sales. There were concerns at the relative size of the chillers as it appears there will be a large chiller for display of RTD's the same size as for beer and wine.

[63] In relation to s.105(1)(h) the Inspector had the following to say. She has concerns over the application as the community have been concerned for some years about people drinking in Barrington Park. A reading of the objections reinforces this. When she visited the park in August 2017 along with Police and Ministry of Health (MOH), she said she was surprised to see so much evidence of alcohol consumption and produced in her bundle of documents, evidence to support this. The toilets were checked and an empty alcohol bottle was found.

[64] When she spoke to library staff they advised that they regularly have to clear empty alcohol bottle from the vicinity of the library. She visited the area on 23 September and saw a discarded box of wine and some lids of Soju bottles (Korean rice wine). On the 2 October, about 2.30 pm, she visited and took some photographs of the area and of litter from alcohol products on the western side of the park. The witness then approached a female and asked how her day was, noticing she had an open can of Woodstock RTD in her bag. The Inspector then walked on past the playground which is next to the library and saw there were a lot of children with parents at the playground. She then walked around the park and saw more alcohol related litter and a male drinking RTDs from a box nearby.

[65] The Inspector visited the park again on 28 November and saw people under a tree by the library. She spoke to them and saw they were drinking cans of alcohol. She sat and spoke to them and explained who she was. The males said they purchased either from Super Liquor or the supermarket and they commented that there were a lot of Off-licences in the area.

[66] The Inspector produced a photograph of a text message from City Care who services the toilets in the park. They had responded to her question that the toilets were cleaned everyday including at weekends.

[67] The Inspector gave evidence of what she had found during her enquiries into this application. She stated the current premises already appear to be having an effect on the amenity and good order of the area and she believed an additional premise would mean the amenity and good order would be reduced further but to what extent is hard to quantify. In reference to s.106(1)(a)(ii) the Inspector adduced evidence that the amenity of the area in close proximity to the established off-licence was affected by issues such as vandalism and graffiti. Her evidence included regular damage occurring to the library, and attached toilets.

[68] The Inspector produced the following figures relating to the distance between the proposed bottle store and other Off-licences: Barrington Super Liquor 170 metres, Bottle O Selwyn Street 1400 metres, Super Liquor Colombo 1700 metres, Liquor Land Beckenham 2000 metres. The inspector was concerned that if an intoxicated person was refused service at one of the bottle stores they would then go to another one, not having far to walk. This additional premise, in the words of the Inspector, has the potential to have detrimental effect on the area in relation to both alcohol related harm and amenity and good order.

[69] In her evidence the Inspector commented that the nearby supermarket has a wide range of craft beer. She acknowledged that sales of craft beer were on the increase, but there were other specialised craft beer shops quite nearby. The applicant had produced an Alcohol Management Plan and she described it as the worst she had ever seen; it does not identify actual risks and could not be used as a working document.

[70] When questioned over the CTV cameras the applicant was going to install, the Inspector commented that it was very difficult to pick signs of intoxication on a camera.

Cross examination of Inspector

[71] Mr Riches asked the Inspector whether the person she saw on her visit to the park was doing anything wrong and noted that it was not a breach of the Act to drink in the park. The Inspector agreed but stated that the harms can be from members of the public seeing other people drinking.

[72] Mr Riches put it to the Inspector that she expecting the applicant to go round taking alcohol out of their hands, and she replied she was not saying that.

EVIDENCE OF POLICE

[73] Sergeant Robertson is the officer in charge of the Canterbury District Police Alcohol Harm Reduction Unit. He received the application from Brothers Enterprises Limited in respect of premises at 238 Barrington Street and later learnt that the premises intended to operate under a Brews franchise alcohol outlet.

[74] He gave evidence of visiting the area surrounding the premises, including Barrington Park, with the other Agency members. He noticed clear signs of alcohol consumption in the area around the library and playground. There were a number of discarded alcohol containers or packaging.

[75] The Sergeant was aware the Police had received reports of persons consuming alcohol in this area and there had been regular 'calls for service' as a result. The witness said he had requested the Police Intelligence Section to produce reports covering a period 1 January to 31 December 2016. These were produced to the Committee. He stated the system recorded the calls for service for incidents including disorder, drunken persons, intimidation and assaults, domestic disputes and sexual assaults. He explained that the records do not specifically record whether the incident involved alcohol and as such the report is a statistical report of those events deemed likely by the Police to involve alcohol.

[76] In the 12 month period there were 99 calls for service of the type of incident specified within a 500 metre radius of the proposed premises. The Sergeant explained that this was just raw data and that these incidents had not been

examined in any further detail. He said there could be duplicate calls and that he was not sure whether each of the calls involved alcohol or not. He said in his experience 30 to 40% of such events would actually involve alcohol. In respect of this particular data the Sergeant said he had reviewed about half of the incidents and out of 50, 18 involved alcohol, the bulk of these from the area of the Mall, Library and Park.

[77] A number of the alcohol events involved intoxicated persons and he submitted that it was reasonable to assume these person were or had been drinking in the park and coming into conflict with others. The Sergeant explained there was currently no Community Constable specifically covering this area but he had spoken to the other community constables who provide some cover for the area. They informed him that they had been called to attend a number of incidents in the area in question arising from people drinking in the park.

[78] He then commented that the situation could be best addressed by having an alcohol ban implemented in the area. However he said the key consideration for the Police regarding this application was the concern over amenity and good order.

[79] The Sergeant said he emailed the applicant's lawyer with his concerns over Barrington Mall, Barrington Park and the surrounding area and the evidence of alcohol consumption in public areas. Amongst other questions he asked whether the applicant had an Alcohol Management Plan to minimise some of the issues identified. The Sergeant said he was unable to find any clear indication of the processes and systems by which the applicant could demonstrate an ability to mitigate the risks of alcohol related harm in and around the area of the Mall and Park.

[80] Sergeant Robertson was sceptical of the applicant's ability to mitigate any adverse events of a further Off-licence in the area even though an AMP was produced by the applicant.

Cross examination by Mr Riches.

[81] Mr Riches questioned the sergeant over his concerns about the franchise agreement and the Sergeant replied that he was concerned the applicant would sell what Brews wanted him to. It was put to him that the Mall would be the focus of the statistics that he produced and the Sergeant accepted that they could well have been bundled together by the staff reporting the calls with the Mall being a convenient way of recording a location.

EVIDENCE OF THE MEDICAL OFFICER OF HEALTH

[82] Mr. Peter Shaw is a licensing officer and represents the Medical Officer of Health. He holds delegations under section 151 of the Act. He produced for the benefit of the Committee a map of the area one kilometre from the proposed premises. The map showed the deprivation data from 1 to 10 with one being the least deprived and 10 the most.

Evidence of Sam Ludemann – witness for the Inspector

[83] Sam Ludemann Team Leader Christchurch City Council Spreydon Library, stated he had been employed by the libraries for 8 years. During this time he has worked at Upper Riccarton, Christchurch South and Parklands libraries. He described his role as working on the floor of the library assisting customers and had

at some time or other worked in nearly every library in the city. This role includes resourcing and providing the services they must supply and assisting customers.

[84] The witness stressed he was not at the Hearing as an employee of the Council and was giving evidence on his own behalf.

[85] He became aware that Brothers Enterprises Limited was applying for an Off-licence at a new site at 238 Barrington Street which he described as very close to the Spreydon Library and Barrington Park.

[86] Part of his duties involve responding to behaviour, such as persons consuming alcohol in the immediate vicinity which might affect the library and library users. On one occasion a customer complained as he saw someone drinking alcohol in the library. He had also had to deal with rubbish being left in the vicinity of the library and persons drinking at the entrance. In his opinion this may be intimidating to some customers. He had also had people comment to him about having to pass people drinking in the park on their way to the library.

[87] He described the situation of intoxicated persons within the library and the immediate vicinity as having to be actively managed. This was something that surprised him when he started work at the Spreydon library, not having experienced it anywhere to the same degree in other libraries where he had worked. He went on to say he had observed empty and broken bottles of alcohol and people drinking alcohol in the park. He would pick up empty alcohol containers on an average of once a week.

[88] Over the Christmas period he had to move people on twice from outside the library and one of these persons was visibly intoxicated. They had empty alcohol containers and he described the symptoms of intoxication. On average he has to move people on for drinking in the immediate vicinity of the library about once a month but sometimes it is more frequent.

[89] He described that there is a children's playground next to the library and sated that he had seen people drinking alcohol in the playground. On one occasion he had to call the Police due to an alcohol related incident when one of the persons threatened to assault him. He commented that it is often the same persons that he has to move on. He said that he knows of other library staff members having to move people on, but he was not directly involved in those incidents.

[90] The witness commented that of the group he sees he would recognise about eight to ten people who he sees drinking in the vicinity of the library, some of them being library users. He said he sees these problems more in the warmer weather.

[91] During his evidence the witness stated that the library is widely used by the community including some that he would consider vulnerable. That they are vulnerable becomes apparent when they discuss their issues such as housing and life issues and demonstrate unusual behaviours with him and other staff. The witness felt that there were a disproportionate number of people who use the library exhibiting signs of mental health issues based on his interaction and conversations with them.

EVIDENCE OF OBJECTORS

Evidence from the Principal of Cashmere High School Mark Wilson

[92] Mr Wilson gave evidence that there are about 2000 students at his school and, as stated in his letter of objection, the research that into adolescent drinking, reported binge drinking by the age of 25 years. He also has concerns about the saturation of outlets leading to competition and price wars. He stated businessmen are there to make money. He struggled to understand the placing of the chillers in the proposed premises and it seemed to him that the primary target was the youth market and the storage of RTD's. Given the number of craft beers the applicant said he was going to stock, he didn't see how it was all going to fit in.

Cross examination by Counsel.

[93] Mr Riches put it to him that his chief concern was another store in the area and he replied yes, as there would be more retail outlets pushing their product. It was put to the witness that the research concerned consumption and he replied that no, it also covers the need for greater regulation of alcohol outlets. "We don't need any more and I am here to oppose it." He was then asked whether he was aware of students purchasing from Super Liquor and he replied that he was not aware that students in uniform were purchasing alcohol, however the school may be aware of students out of school time purchasing alcohol.

Evidence of Natacha Maher

[94] Ms Maher gave evidence of being a registered nurse and of having issues with alcoholism in her family home when growing up. Her view was that alcohol leads to antisocial behaviour which includes the harms mentioned in s.4 of the Act. She referred the Committee to a study undertaken looking at impact of alcohol related presentations at the Christchurch Hospital Emergency Department in 2013.

[95] She stated there were already 14 Off-licence premises within 30 minutes by car, of each other. Her concerns over this application related to the social and financial burdens as a result of the consequences of an increase in the accessibility of alcohol in the Spreydon community and the impact of traffic congestion in the area. She gave figures of the 15 to 24 year olds that make up 15% of the Christchurch population and 75% of the alcohol consumed by that group was purchased from Off-licence premises. She quoted figures that a third of males that attend the Christchurch Hospital are there due to drinking to excess.

[96] The witness expressed concerns about traffic and parking issues in the area and the increase in vehicle traffic coming and going from the proposed store. Ms Maher closed her evidence by saying she believed the Sale and Supply of Alcohol Act 2012 was passed to moderate the drinking culture and limit the harm caused by alcohol.

Evidence of Graeme Donaldson

[97] Mr Donaldson was the owner of shops next to the proposed store. He had seen an increase in broken glass, graffiti, etching of glass and similar wilful damage and referred to a smashed 8mm toughened glass window in one of his shops. It was his contention that another bottle store in the area will only bring more problems.

Evidence of Sue Bye for Lower Cashmere Residents Association

[98] Mrs Bye in evidence stated the Lower Cashmere Residents Association had 60 to 80 members. She also gave evidence of being involved as co-ordinator of the South Security Patrol. From what she had seen the community did not need another alcohol outlet. She believed that the existing outlets are causing alcohol harm. As far as the applicant specialising in craft beer there are other outlets specialising in craft beer, one being close by at Beckenham. The Residents' Association, which she represents, promotes neighbourhood wellbeing and believes mental health and alcohol are big issues. She considered this to be a safe and settled community and the residents' group wanted to retain the character of the area. She doubted whether people would go to this premise as other outlets are more accessible. She spoke of the patrol coming across graffiti and that it can be a consequence of inappropriate behaviour.

[99] In cross examination Mr Riches suggested there was no evidence that graffiti was as a result of consuming alcohol. Mrs Bye agreed but stated that one needed to look at it in the wider context. She then confirmed to him the area covered by the Lower Cashmere Residents' Association. She was asked whether she had seen evidence of alcohol abuse and she replied she has seen intoxicated people and knew of one that had to be removed from Barrington Mall.

[100] Angela Wasley, an objector asked her what the role of the Patrols was and Mrs Bye replied we are the eyes and ears for the Police.

Evidence of Diana McCoy for the Spreydon Community Network

[101] Ms McCoy gave evidence that the Spreydon Community Network, which she represents, sends out 300 newsletters to households in the area. She said she had lived in the area for 50 years. She believed another alcohol outlet could well make the area feel unsafe for the young and the elderly pedestrians and also increase traffic congestion. Ms McCoy commented that the area had a number of streets that contained social housing, including Hohepa facility (a disability service provider, catering for special needs children, and adults with an intellectual disability).

[102] The witness produced a petition headed "STOP the Barrington/Milton Street Liquor Store" and this was signed by 532 people.

[103] In conclusion she said she believed, if granted, this application would affect the amenity and good order and that persons with psychiatric problems, disaffected young adults and young families would be those most affected.

[104] When questioned by Mr Riches it was put to her that the area was near the average compared with the rest of Christchurch and she disagreed, saying that was not true and that while there are pockets of residents with high incomes, most are not in that group.

Evidence of Julie Tobbell for Somerfield Residents' Association

[105] Ms Tobbell stated that she is the Chairperson of the Somerfield Residents' Association. The association's objections were in three parts, firstly that another alcohol outlet could lead to detrimental effect on the whole community, secondly there are 2 – 3 schools in the area and students would frequently walk past these premises, and thirdly that the proposed bottle store would create less parking for other businesses.

Evidence of Angela Wasley

[106] Ms Wasley stated that she had not seen drinking at other parks around Christchurch like what she had seen at Barrington Park. She referred to parks in the New Brighton area and wondered whether that was as a result of an alcohol ban there. The witness thought the proposed premises were in the wrong location. She gave evidence that she had seen lots of broken glass and people who appeared to be homeless sleeping in the park. The witness was not familiar with welfare groups in the area but was aware that it was close to Hillmorton Hospital which caters for people with mental health issues.

[107] When questioned by Mr Riches she appeared to believe that drinking in the Barrington Park was illegal. Mr Riches put it to her that the park was not covered with broken glass and that her evidence was not consistent with that given by others. Ms Wasley disagreed.

Evidence of Objectors Anna Woolman, Lisa Dermott, Lois Wells, Pat McGarva and Patricia Siataga

[108] Anna Woolman who owns a pre-loved clothing shop nearby gave evidence of a drunk coming into her shop carrying a bottle and going into one of the changing rooms. Lisa Dermot who has a bridal business about a 100 metres from the proposed store gave evidence of her concerns. Lois Wells a long-time resident lives very near the proposed premises. Pat McGarva, who lives nearby, has first-hand experience of drunks on her property. She stated that the church directly across the road was used every day. Patricia Siataga confirmed that the church across the road was very well utilized. All these witnesses gave evidence that mirrored the evidence given by other objectors and covered the same grounds. The main concerns were the amenity and good order of the park and the immediate area around it and the safety and wellbeing of those in the area.

SUBMISSIONS OF THE AGENCIES

[109] The Licensing Inspector and the Police made a joint submission. The submission referred to the law the Committee should consider. They submitted that the Committee had heard evidence of people consuming alcohol in the nearby park and of the harm from inappropriate or excessive consumption of alcohol which occurs in that area. Their submission stated that each locality in the city is unique and the Committee had heard evidence that the residents in this community valued their amenity; it is neither extremely high or extremely low, but in relation to calls for service, Police had given evidence that they receive a third more calls for service for incidents that are more likely than not to include alcohol than is the case for Hornby. It was further submitted that the Committee must find, based on the evidence of all the parties, that the area is already badly affected by the current licenced premises in the locality and referred us to s. 105(1)(i). While the addition of this premise,

should the licence be granted, is unlikely to increase the amount of people purchasing alcohol in the area, those customers will be split between the two bottle stores.

[110] The Inspector and the Police submitted that the Committee had heard evidence that these customers are already causing a variety of harms to society and this community from the excessive or inappropriate consumption of alcohol, to the point that it is unlikely that the amenity and good order will be reduced further by more than a minor extent but that it is still undesirable to issue any further licences.

[111] They further went on to submit that evidence had been given concerning alcohol consumption or the remnants of it in the park, namely cartons, cans etc. The evidence showed that the people drinking in the park were not enjoying a family picnic, but in the main consuming RTD's. They submitted that, on the balance of probabilities, these were vulnerable people including the mentally disabled and that this is not the appropriate consumption of alcohol.

[112] In the view of the Inspector and Police the applicant was dismissive of the objectors' and Agencies' concerns about alcohol consumption. For example he stated he would manage risk by making efforts to see who was drinking in the park and by not selling alcohol to them. He stated that he wished to focus on craft beer, fine wine and spirits. However the evidence was that the Brews Franchise agreement required the applicant to stock the core product list and that includes 67 brands of beers and 40 RTD's.

[113] They submitted that the applicant's start-up costs were unclear and that in their view the financial viability of the applicant is vital for compliance with the object of the Act.

[114] The Licensing Inspector and the Police submitted that the Alcohol Management Plan was poor and that the applicant's answer to many of the questions put to him was that he would do whatever anyone wants him to do and he would do his best. This, they submitted, is an industry where you must have systems in place to minimise the harms.

[115] The submitters stated that there is another bottle store and a supermarket less than 200 metres from the proposed premise and there is no evidence as to how he intends to minimise harm.

[116] In the view of the submitters, the applicant had potentially misled the Committee in that his application and evidence painted a picture of a specialty store catering for discerning customers. This was in direct odds with the franchise agreement, core product list, and location.

[117] In conclusion the Inspector and the Police submitted that that they believed that the applicant would say anything to get this licence but in the harsh environment of a competitive market place, would discount products and lawfully sell to any person to survive.

SUBMISSIONS OF THE SPREYDON NEIGHBOURHOOD NETWORK

[118] The Network submitted that the community would be affected over time and that bottle stores are for consumption of alcohol away from the point of sale. There were concerns that the applicant's Business Plan did not allow for the welfare of the

applicants and other staff as there were no allowances made for meals, holidays etc. The Network also had concerns about traffic volumes in the area.

SUBMISSIONS OF THE APPLICANT

[119] The applicant has submitted that he appreciated the concerns of the community relating to this application and whilst accepting the applicant has to establish his own suitability, the burden of proof is on the balance of probabilities. He does not have an obligation to satisfy the Committee that on the balance of probabilities, the establishing of a further bottle store would not reduce the amenity of the area by more than a minor extent. Counsel pointed the Committee to **Re Venus** when Justice Heath at paragraph 53 made comment on the difficulties inherent in proving a negative.

[120] Counsel pointed out that the Committee must come to its own decision and can be guided by the evidence put forward.

[121] Counsel submitted that Mr Sachdeva gave evidence that, following meetings with the Agencies, he had assessed the major issue as being the nearby Barrington Park and the people drinking alcohol there. The applicant believed this could be successfully managed by maintaining a “watchful eye on the park” and identifying the persons who are known to habitually consume alcohol there.

[122] The Police and the Inspector in their submissions have criticised the applicant for having no plans to manage the local amenity. The applicant’s submission strongly rejects this as the applicant has set out how he would be in a position to refuse to sell alcohol; not merely if they are intoxicated, but by simply banning them from purchasing alcohol because he believes there is a strong likelihood they would consume alcohol in the immediate vicinity.

[123] Counsel submitted that the focus of the agencies and objectors on traffic management was excessive and strongly strayed outside the object of the Act.

[124] The applicant had been criticised for having a poor alcohol AMP, yet he had obtained the plan from alcohol.org.nz and expanded the template by adding on specific references to the issues affecting his business.

[125] Counsel rejected any conclusion that his client would be unable to comply with the object of the Act because he had limited power to control where alcohol purchased from his store was consumed. Counsel submitted that both Directors are experienced managers having worked in a number of off licenses. Counsel rejected the criticism from the agencies concerning the business model claiming that at no point had the applicant stated he would be establishing a specialty wine and craft beer store. He was however trying to establish a point of difference focusing on higher end products.

[126] Counsel rejected the criticism of the Brews contract and said if the applicants were to stock and sell cheap harmful products they would be unable to do so, because of the franchise agreement with the Brews Company.

[127] Counsel submitted that that the Inspector and the Police had conceded that the amenity of the area is unlikely to be reduced further by the addition of a further off licensed premise Is.105(h) and that the application should be assessed under s. 105(i). He submitted that this is not a community already so badly affected by the consumption of alcohol that it is desirable to issue no further licences. He submitted

that this area does not have a higher incidence of crime compared to other areas of Christchurch and that any increase of crime level is largely attributable to the shopping mall which has elevated levels of Police call outs.

[128] Counsel submitted there was no evidence of harms under s.4 of the Act namely crime, damage, death, disease, disorderly behaviour, illness, or injury direct or indirectly caused, or directly or indirectly contributed to by the excessive or inappropriate consumption of alcohol. The evidence of the objectors which could be linked directly or indirectly to alcohol fell into the category of “nuisance” within the definition of s.106 (1)(a)(i) and this generally consisted of litter.

[129] Counsel did not discount the frustration felt by the community when they saw discarded cans or bottles in a nearby park. However Counsel wished to emphasise that in making its assessment the Committee should be aware that the Act in no way attempts to ban public drinking, but rather the harms that flow from excessive or inappropriate consumption. The mere fact that a person is in a park consuming alcohol in itself is not harm.

[130] Counsel then dealt with the evidence of Mr Ludemann, Team Leader of the Spreydon Library which was mainly about seeing litter and young people walking around the area in groups but no evidence was given that these people were consuming alcohol.

[131] Other objectors gave evidence involving crime and other matters but no evidence was given of particular crimes which were linked to alcohol, or whilst persons were under the influence of alcohol. There was evidence given concerning an intoxicated man destroying a person’s letterbox but no evidence was given of him purchasing alcohol from an off licence.

[132] In conclusion Counsel submitted that Mr Sachdeva and his partner are experienced off licence managers who have put forward substantial material as to how the business would operate. Counsel submitted the applicant is suitable and has discharged the obligation to establish, on the balance of probabilities, that the granting of this licence would be consistent with the object of the Act.

DISCUSSION

[133] This application is for an Off-licence in the form of a small bottle store at 238 Barrington Street Christchurch. Before the Committee proceeds to evaluate the evidence presented, we are mindful however that arising from this exercise we are obliged to form an opinion. As discussed in **Venus NZ Limited** CIV 2014-419-420 [2015] NZHC 1377 Heath J said:

“First, s105(1)(h) and (i) of the 2012 Act, both of which deal with “amenity and good order” considerations, requires the Authority to form an “opinion”. The need for a judicial body to form an independent opinion is conceptually different from a decision that is based on whether or not an applicant has established on a balance of probabilities that a relevant fact has been proved.”

[134] All the evidence presented to the Committee was considered, and the Committee had regard to the various sections of the Act. In particular the sections listed below:

Section 4

(1) The object of this Act is that—

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

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

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

Section 105 Criteria for issue of a licence:

(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.

Section 106 - Considering effects of issue or renewal of licence on amenity and good order of locality

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

- (a) the following matters (as they relate to the locality):
 - (i) current, and possible future, noise levels:
 - (ii) current, and possible future, levels of nuisance and vandalism:

- (iii) the number of premises for which licences of the kind concerned are already held; and
 - (b) the extent to which the following purposes are compatible:
 - (i) the purposes for which land near the premises concerned is used:
 - (1) the purposes for which those premises will be used if the licence is issued.
- (2) In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):
- (a) current, and possible future, noise levels:
 - (b) current, and possible future, levels of nuisance and vandalism.

Section 3(2) The purpose of the Act.

The characteristics of the new system are that—

- (a) it is reasonable; and
- (b) its administration helps to achieve the object of this Act.

[135] The Committee heard evidence from one of the directors, Amit Sachdeva of Brothers Enterprises Limited. The other director did not appear at the Hearing and was out of the country. The Committee makes the point that it places no weight on the assertions of some of the parties that the absence of the other director somehow reduced the weight of the applicant's evidence. The applicant is a company and in our view it is quite appropriate for one director to give evidence on behalf of the company, given a reasonable excuse for the absence of the other.

[136] The applicant gave evidence of his background in the alcohol industry having worked in a number of bottle stores; his business partner likewise has a similar background. He described looking for premises with a cheap enough rent to be able to start a new bottle store business. He had approached a franchisor known as Brews Liquor Store and had signed a contract with them and said he would be selling alcohol from their core product list. In evidence he said from previous experience, selling higher end products gave a better return of profits as he intended to stock high priced wine, craft beer and spirits.

[137] This is where, in the Committee's view the evidence of the applicant started to unravel. He appeared to be unaware until under cross examination where he confirmed that the franchise agreement meant that he could not stock items outside of the core product list without the express approval of the franchisor. While he said that would be no problem to obtain, no evidence of this being so was given.

[138] Likewise he was unaware, until it was pointed out to him, that he was prohibited from undertaking social media marketing without the approval of the Brews Franchise.

[139] The Committee formed the opinion that the applicant was not fully aware of the restrictions that were placed upon him in the franchise agreement. On a number of occasions he stated that it was easy to get the franchisor's agreement to add further products to those which must be stocked, but this evidence was not confirmed by the franchisor at the hearing. The evidence of the applicant seemed at odds with the overall intent of the franchise agreement which quite clearly anticipated what could be described as a normal bottlestore selling the normal range of beer, wine and RTD's, not what the applicant described as a more upmarket craft beer and higher value wine store.

[140] Despite Counsel's assertion to the contrary, the business plan, the Alcohol Management Plan and the applicant's knowledge of the franchisor contract, was poor. He was aware of the issues raised by the Agencies and the Objectors and while it is true that he had spent some time looking at the issues in the park it was pointed out that this was over the holiday period.

[141] In the Committee's view he had a poor appreciation of the concept in relation to s. 4 of the Act and did not appreciate the positive role he should take to minimise the harms mentioned in s. 4. He had learnt verbatim s. 4(1) but had only a vague knowledge of s. 4(2).

[142] The Inspector called as a witness the team leader from the Spreydon Library, who gave very compelling first hand evidence of dealing with alcohol harms in and around the library. He said he had worked in most if not all of the libraries in Christchurch and had never struck a situation like the situation he found at the Spreydon Library, - to the extent that part of his role was the management of alcohol issues relating to alcohol affected persons coming into the library and, also from time to time having to move on intoxicated people sitting outside and in the vicinity of the library. Mr Ludemann said there was also an issue of alcohol related litter. He gave evidence that some of the persons he was dealing with on a regular basis were mentally disabled and a good number of these were of the same group that were regularly consuming alcohol.

[143] The Committee formed the view that these people were not in the park having a picnic. While it could be said they may be socialising it seemed to the Committee the reason they were there, was to drink alcohol most likely bought either at Super Liquor or Fresh Choice Barrington in the nearby mall. The Super Liquor is only about 40 to 50 metres from the library.

[144] Many submitters gave evidence about the high percentage of vulnerable people in the locality due to the number of half way type housing in the area and some thought this was as a result of the close proximity to Hillmorton Hospital. The hospital is the principal site for Mental Health Services in Canterbury, with some of the services being at the nearby Princess Margaret Hospital. This evidence was backed up by evidence from the Police.

[145] We now turn to the evidence of the Police concerning the crime figures and what was termed 'calls for service'. The area around Barrington and Milton Streets was compared to a Christchurch suburb known as Hornby. Hornby has a large mall and is on a busy intersection on the Main South Road. From the data submitted by the Police it appears that the Hornby Mall gets less calls for service for what are considered possible alcohol related incidents than Barrington Mall. This leads the Committee to the belief, as one submitter said, that "things are not as rosy as they seem" in the locality of the proposed store.

[146] Many objectors and the Police focussed on the traffic issues at this busy intersection and while we have sympathy for these concerns, we do not believe that this is an issue which fits within the criteria we are required to have regard to under the Act. Issues of road design and traffic management are resource consent matters and should be dealt with under the Resource Management Act 1991 not the Sale and Supply of Alcohol Act 2012.

Section 105 Criteria for Issue of a Licence

[147] We now turn to s. 105, Criteria for the Issue of a Licence, and we will deal with this sub section by sub section. Starting with sub section 1(a) the Object of the Act which we have repeated below:

Object of the Act

Section 4

(1) The object of this Act is that—

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

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

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

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

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

[148] Focusing on sub section (1)(b), the harm caused by the excessive or inappropriate consumption should be minimized. The case law on this matter makes it clear that the new Act is about minimization of harm not just the reduction in the harms caused by alcohol.

[149] It is the firm view of the Committee that some members of the community in the locale of the new store are suffering from alcohol related harms.

Linwood Food Bar Limited v Davison and Ors CIV-2014-000562 [2014] NZHC 2980:

“[18] Importantly, as was emphasised in Venus NZ Ltd, the object in s 4 of the 2012 Act differs from that contained in the 1989 Act in that the aim is now minimisation of alcohol related harm, not merely is reduction. That means both the Authority and this Court, must have regard to reducing alcohol related harm to the smallest amount, extent or degree, when making decisions on the grant of renewal of a licence”.

[150] The harms caused by the excessive or inappropriate consumption of alcohol include a number of matters whether directly or indirectly caused by or directly or indirectly contributing to those harms. This includes any harm to society generally or the community including any crime, damage etc. Using the approach outlined by the High Court in ***Otara-Papatoetoe Local Board v Joban Enterprises Limited*** CIV 2011=404-007930 [2012] NZHC 1406.

[31] ...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...,

Having considered all of that information, the Authority must stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires the Authority to form a view on whether there is evidence to suggest that granting the application will be contrary to s 4 (1), increase the risk of alcohol abuse. While a causal nexus is required between such evidence and the relevant risk, it is unnecessary to qualify the nature of the link by reference to such words as 'powerful' or 'direct'.

[151] The evidence of small groups of people consuming alcohol in the park as well as the evidence of issues in and around the library of intoxicated persons, vandalism, graffiti and rubbish, brings the Committee to the conclusion that both the area and some of the people within it are vulnerable. It was clear to the Committee there appeared to be a higher number than normal of vulnerable people in the area. We believe this was due to the number of halfway houses in the locality, most likely sited to be close to Hillmorton and The Princess Margaret Hospitals, the main hospitals for treatment of mental illness in Canterbury. To place another Off-licenced premise in this area would more likely than not exacerbate the situation. The Act's purpose and object are clear. When a decision is made in relation to licenced premises the overriding intention should be to minimise alcohol related harm.

Suitability of Applicant

[152] Turning to Sub section (b) Suitability of the Applicant the Committee acknowledges that the Directors are suitable in relation to their background and experience having held a Manager's Certificate for about seven years. The Committee however is mindful of the following case law:

[153] Looking at the issues raised in the **Page decision** – *Pankhurst J HC A84/98*.

"That implies an onus upon the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of the particular case: for example the place, the intended business (here in a difficult central city location), the nature of the business itself, the hours of operation and the intended activities, provide the basis for the assessment of the individual".

Anchorage Frankton Limited [2013] NZARLA PH 212:

"Issues such as noise and poor patron behaviour (relevant matters contained in the objections) go to the suitability of the applicant. They are matters germane to the Authority's inquiry. Thus, whilst the location of a premises and issues arising from that location are resource management issues, how a licensee deals with those issues is a matter for the Authority".

Tony's Liquor Upper Hutt Limited [2014] NZARLA 253428

"[20] When considering s.106(1)(a)(iii), it is not so much the number of licences that creates the concern but rather 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 was 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.

[154] Looking at the above cases, it is clear suitability is not just about character, it is about the whole application, and this includes the location of the premises in relation to amenity and good order and other factors. The applicant must prove its case in relation to suitability. While commercial considerations may indicate the proposed location of the premises is a good one, when we consider the criteria set out in s. 105(1)(i) the Committee concludes that the location is inappropriate.

[155] The evidence is that the applicant found a premise with cheap rent, then proceeded to lodge an application and only after he committed himself, did he look at the amenity and good order of the locality and the local issues. We believe this was when the large number of objections came in, as well as questions raised by the Agencies.

[156] This Hearing is similar to the **Tony's Liquor** case, where the applicant stated he wished to sell very high quality product. The applicant in this matter has made much of the fact that up to 60% of his business would be made up from more expensive wines and craft beer. His underlying operation though appears to be the sale of Brews core products which will put it in direct competition with the already established Super Liquor Bottlestore. We do not believe that the applicant, whilst stocking some \$50 to \$60 bottles of wine and some craft beers, will in reality have these as 60% of his business.

[157] In this instance, while the applicant said that was his aim, he has signed a franchise agreement with Brews Holdings Ltd and he is going to be catering to the rest of the bottle store market. We do not believe the applicant, and whilst he might stock a \$50 - \$60 bottle of wine, in reality we see this as being only a small part of his turnover. The **Tony's Liquor** case is particularly appropriate and Judge Hole had the following comment to make.

“[33] An applicant for a liquor licence must prove its case. The onus is upon it. Whilst commercial considerations would indicate that the proposed location of the premises is a good one, when one considers the criteria set out in s.105(1)(h) the Authority concludes that the location is inappropriate. If the proposal was simply to sell a very high quality product without attempting to cater for the rest of the market, then it is possible that the amenity and good order of the locality would be reduced by only a minor extent. However, as the proposed business is intended to cater for the total market, the Authority considers that the applicant has failed to establish that the amenity and good order of the locality would be likely to be reduced by more than a minor extent. The evidence establishes that the effects of the issue of the licence will reduce the amenity and good order of the locality by more than a minor extent.”

[158] It appears to this committee that the business plan submitted by the applicant to sell higher priced wines and craft beer is far from what would be the reality. The proposed store would for reasons of viability, be forced to be just another Off-licence selling the usual range of alcoholic products. This would then place it in direct competition with the existing bottle store.

[159] It is our belief, that the amenity and good order of this locality is already affected by more than a minor extent, and to issue yet another licence for a premise within 200 metres of two other off-licenses would be unwise.

[160] We are entitled, in circumstances as these, to take a precautionary approach. We do so on this occasion as it is the community in which this store seeks to establish which will bear the brunt if the object of the Act is not upheld.

[161] The Committee heard compelling and direct evidence from Mr Ludemann of how alcohol is affecting his workplace and the immediate environment. The Committee would not be following the intent of s. 3, that the purpose of the Act is for the benefit of the community as a whole and that the new system should have the characteristics of being reasonable and its administration help achieve the object of the Act. In the Committee’s view it would not be reasonable under s. 3(1)(2)(a), given the evidence produced.

Section 105(1)(h)

[162] Turning now to sub section 105(1)(h) it seems accepted and in our opinion we agree that this area has already had its amenity and good order reduced by more than a minor extent. As a result the Committee turned to sub section 105(1)(i) in that the amenity and good order of the locality is so badly affected, it is nevertheless desirable not to issue any further licenses.

DECISION

[163] Mr Sachdeva and his business partner, appear to have the experience and the character to manage a bottle store. However, the Committee do not believe they have shown suitability in the siting of the store. As quoted in **Tony’s Liquor**, location of the store can go to suitability and it is for the applicant to prove his suitability. It is the opinion of the Committee he failed to do this and we find the location not suitable.

[164] The Committee takes a precautionary approach in this matter. There is clear evidence of alcohol related issues in this locality. The applicant has failed to convince us that the grant of this application will not reduce the amenity and good order of this community. In fact it is clear to us that if the licence were to be granted it is more likely than not to be in direct competition with the established off-licences and therefore alcohol related harm is likely to increase. To grant a licence in these circumstances would therefore be in direct opposition to both the purpose and object of the Act.

[165] The Application is declined.

DATED at Christchurch this 20 March 2018.

A handwritten signature in blue ink, appearing to read 'P R Rogers', is centered on the page. The signature is fluid and cursive.

P R Rogers

Chairperson

CHRISTCHURCH DISTRICT LICENSING COMMITTEE