

10 March 2020

Notice of Decision of the District Licensing Committee in the matter of:

the application by SOUTHERN SUN DISTILLERY 2012 LIMITED for renewal of Off-licence pursuant to s127 of the Sale and Supply of Alcohol Act 2012 in respect of premises situated at 1/21 Aldwins Road, Christchurch, known as Thirsty Liquor Linwood

Following the hearing of the above application on **12 February 2020**, please find enclosed the decision of the Christchurch District Licensing Committee.

Decisions of the District Licensing Committee may be subject to appeal under Section 154 of the *Sale and Supply of Alcohol Act 2012*. Any party to the proceedings before a licensing committee who is dissatisfied with the decision may appeal to the Alcohol Regulatory and Licensing Authority (ARLA). Such an appeal must be made within 10 working days of this notice of decision.

Please note that the licence cannot be issued until any clearances have been received, all required fees paid, and not until after the end of any appeal period.

Please find below a link to the relevant area of ARLA's website:

<http://www.justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority/appeals-to-the-alcohol-regulatory-and-licensing-authority>

Please contact me if you have any queries.

Yours Faithfully



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IN THE MATTER OF The Sale & Supply of Alcohol
Act 2012

AND

IN THE MATTER OF an application by
Southern Sun Distillery
2012 Limited
for renewal of an Off-
Licence pursuant to
s127 of the Act in respect
of premises known as
Thirsty Liquor Linwood
situated at 1/21 Aldwins
Road, Christchurch

RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING
COMMITTEE

Chairperson Mr D.L. Blackwell, OSM
Members Ms A Keir
Ms C.E. Robinson

HEARING at Christchurch on 12th February 2020

APPEARANCES Mr P.J. Egden, Counsel for the applicant.
Mr S. Joseph, Southern Sun Distillery 2012 Limited, the
applicant.
Ms A. Lavery, District Licensing Inspector, CCC, to assist.
Mr M. Ferguson, Senior Alcohol Licensing Inspector, CCC, to
assist.
Constable G. Jolliffe, New Zealand Police, to assist.
Sergeant D. Robertson, New Zealand Police, to assist.
Ms P. Williams for the Medical Officer of Health, to assist.
(Ms Williams did not attend the hearing).

Mr W. Hawker, Public Objector.
Ms L. Cowe, Public Objector.
Mr P. McMahon, Witness for Mr Hawker.
Reverend J. Carr, Witness for Mr Hawker.
Mr R. Edmundson, Witness for Mr Hawker.
Mr M. Saunders, Hearings Adviser, CCC

INTRODUCTION

- [1] This is an application for renewal of an Off-Licence pursuant to s127 of the Sale and Supply of Alcohol Act 2012 (the Act) by Southern Sun Distillery 2012 Limited (the applicant) for premises known as Thirsty Liquor Linwood situated at 1/21 Aldwins Road, Christchurch (the premises). The application is opposed by two public objectors, Mr Hawker and Ms Cowe. The Inspector, the New Zealand Police and the Medical Officer of Health (the Agencies) did not oppose the application.
- [2] The Off-Licence in respect of the premises was last renewed without opposition in 2016. This bottle store has traded in this area, without incident, since 2012. The application is seeking the same terms and conditions as the previous licence (albeit with minor modification to the instore layout) with the hours Monday to Sunday 8.00am to 11.00pm. We note that, as in many similar premises, the actual trading hours are less.

PRELIMINARY MATTER

- [3] In the weeks leading up to the hearing the Inspector, Ms Lavery, submitted a memorandum questioning the status of the objectors, Mr Hawker and Ms Cowe, and in particular pointing out matters relating to Section 128(3) which states that no objection can be made in relation to any matter other than those stated in section 131. Mr Egden filed legal submissions which generally supported Ms Lavery's view. Mr Hawker and Ms Cowe filed submissions supporting their status.
- [4] The normal practice of the District Licensing Committee (the Committee) is to hear matters relating to status just prior to the start of the substantive hearing, however, due to a request from Mr Egden and considerable uncertainty in the minds of the objectors, the Committee

decided to deal with the preliminary matter on the papers. The parties were given time to make submissions prior to the matter being considered by the Committee.

- [5] The Committee's preliminary decision, dated December 10th 2019, accepted Mr Hawker and Ms Cowe as having status as a party to this application.

Substantive Hearing – Additional Preliminary Matters

- [6] The Chair introduced the Committee and all parties and outlined the procedure for the hearing. The parties were advised that closing statements would be given orally at the conclusion of all the evidence and cross examination if time permitted.
- [7] Mr Hawker wished to record his disappointment that the Medical Officer of Health's representative was not in attendance to answer questions.
- [8] Mr Egden sought leave to call an additional witness, Mr Singh. Mr Singh is an employee of the applicant and his proposed evidence was to respond to the evidence of Reverend Carr about the woman with an unsteady gait leaving the premises. Mr Singh's draft brief had been circulated to the parties a few days before the hearing.
- [9] Mr Hawker had no objection to Mr Egden calling Mr Singh, but noted that if CCTV footage was available it would clear up the issue. Mr Egden stated that CCTV footage is no longer available as it rolls over on a regular basis, this was confirmed in the evidence of Mr Singh.
- [10] Ms Cowe did not object to Mr Singh's evidence being given. Ms Cowe had no preliminary matters.
- [11] The Committee accepted Mr Singh being called as a witness.
- [12] Mr Egden and the Licensing Inspector both raised additional preliminary matters questioning the relevance of the briefs of evidence filed by the objectors and their witnesses. Their concern was that the evidence generally did not have relevance to section 131 and much of it was of matters not to be determined by the Committee.
- [13] The Chair reminded the Inspector and Mr Egden that the objectors were laypersons and having granted them status, the Committee was willing to

hear the evidence and let the Committee determine the relevance and weight of the evidence. The Chair also noted that all the briefs of evidence had been pre-circulated and all of them were relatively short.

- [14] Mr Egden also proposed that the objectors' witnesses be excluded from the hearing while Mr Joseph gives his evidence to protect against collusion.
- [15] The Chair noted that it was not our normal practice to exclude witnesses from the hearing and that in this case all the briefs of evidence had been circulated to the parties prior to the hearing. The Chair ruled that the witnesses could remain in the hearing room on this occasion.
- [16] Mr Hawker and Ms Cowe asked about the questions they had for the agencies.
- [17] In the Preliminary Decision dated December 10th 2019 the Chair advised the objectors that if the agencies were not giving evidence then there is no right to cross examine them. There is no requirement for the Committee to look behind an agency decision not oppose an application.¹ The Chair indicated that if the objectors had any questions for the agencies then they should send them to the Chair who would then decide if the questions are relevant to the inquiry.
- [18] The Chair advised he had received a number of questions and a number of them were questions the Committee would have asked anyway while others are not relevant to the hearing.
- [19] The hearing proceeded on the basis that these matters would be resolved through the evidence and cross examination process. Some questions were related to the interpretation of the Act and were addressed in submissions from the parties.

Substantive Hearing

- [20] Mr Egden made an opening statement for the applicant advising that Southern Sun Distillery 2012 Limited had made an application under s127 of the Act for the renewal of the premises at 1/21 Aldwins Road. The application had been made on the prescribed form and duly advertised.

¹ Smith v Kiwano [2016] NZARLA 497

- [21] Mr Egden emphasized that the renewal is not opposed by the Inspector, the Police or the Medical Officer of Health. It had, however, drawn two objections – from Ms Lisa Cowe and Mr Wayne Hawker.
- [22] Mr Egden briefly spoke to his opening submissions that had been circulated prior to the hearing. He stated that Mr Joseph, following a discussion with the Inspector and following the Yankee Bourbon decision, offered to stop selling bulk spirits. There was some misunderstanding of when this would stop but Mr Joseph would be willing to give an undertaking not to sell bulk spirits and would consent to making it a condition of the licence.

Evidence of Mr Joseph

- [23] Mr Joseph explained that he and his wife, Roshni Joseph, are the two directors and shareholders of Southern Sun Distillery 2012 Limited.
- [24] The Off-Licence is located at 1/21 Aldwins Road, Christchurch and they have held the licence since 2012. The current licensing hours are from 8.00 am to 11.00 pm Monday to Sunday.
- [25] Mr Joseph said that he considered that they had a good relationship with the Inspectors, Medical Officer of Health and the Police. He said there have been no incidents involving the premises, prosecutions or enforcement orders. Neither he, his wife nor any of their staff had ever failed a Controlled Purchase Operation (CPO).
- [26] Mr Joseph said that through working in the industry since 2012 he had acquired a detailed knowledge of the alcohol business and that he was fully aware of the responsibilities that go with holding a licence to sell alcohol. He noted that the Inspector, the Medical Officer of Health and the Police did not oppose this application for renewal.
- [27] He said they made some relatively minor changes to the layout of the store in 2017. They moved the service counter to the front of the store closer to the entranceway as they considered it gave them better control over persons entering the store and a better view of those persons in the store. The other change was to reduce the size of the chiller at the street end. The changes were notified to the Licensing Agency.

- [28] He had attached a copy of the plans showing the old and new layout of the store and he sought formal approval from the Committee for this change.
- [29] Mr Joseph said he accepted that good design and layout is important to minimise potential harm and to ensure a safe environment. He had adopted many of the Crime Prevention Through Environmental Design Guidelines produced by the New Zealand Police and the Health Promotion Agency.
- [30] These guidelines include windows around the building and a glass door at the front to provide good visibility to and from the wider area. The building is well lit which allows customers to be seen as they enter the premises and identification documents easily read. The cash registers and counter are positioned at the entrance of the store for staff to be able to view customers inside the store and immediately outside. A number of cameras have been installed aimed at minimising any illegal or inappropriate behavior in the store or immediately outside.
- [31] Mr Joseph stressed that the design and layout is clearly fit for purpose.
- [32] Mr Joseph then addressed matters relating to amenity and good order and advised the Committee that they must have regard to current and possible future noise levels and current and possible future levels of nuisance and vandalism.
- [33] He said in the past there had been no incidents or issues with noise levels generated from the premises which could adversely affect the amenity and good order of the locality. He said that generally the only noise is from vehicles arriving and leaving the store.
- [34] He also said there had been no incidents of nuisance or vandalism, to his knowledge that were linked to his premises. He said that any signs of vandalism in or near the premises would be quickly corrected, including any graffiti removed. He confirmed that nuisance behaviour in or near the premises would not be tolerated by the company or the staff. He considers they set high standards to ensure tidiness, cleanliness, appropriate advertising and use of till systems. His staff were trained to

ensure that the area outside the store and its immediate surroundings are clear of rubbish and kept tidy at all times.

[35] Mr Joseph said he considers the amenity and good order of the locality is not likely to increase by the effects of a refusal to renew the licence.

[36] Mr Joseph then outlined his systems and staff training saying that he is very conscious of the need to maintain high standards and he understands this depends to a large extent on having good systems and processes and well trained staff.

[37] He said his "cash registers" verify the age of all customers who appear to be under the age of 25 years.

[38] Mr Joseph indicated that he currently has four staff, including himself and his wife, and all of them hold manager's certificates. During the day there will be one person on duty with the number increasing during busy times. He said he is fully aware of the importance of ensuring that all staff are fully trained to comply with the requirements of the Act and the need for training to be refreshed on a regular basis.

[39] Mr Joseph said he appreciated that the bottle store was in a lower socio-economic part of Christchurch and that there are issues relating to liquor abuse in the area as there are throughout New Zealand to a lesser or greater degree. He accepts that he has a responsibility to operate the business in a manner that they undertake the sale and supply of alcohol safely and responsibly and minimise the harm caused by excessive and inappropriate consumption of alcohol.

[40] Mr Joseph said that over the past seven years they have operated the business in a safe and responsible manner.

[41] He considered that he has proved himself to be a knowledgeable and responsible operator having successfully managed compliance with the Act since the off-licence was granted in 2012.

[42] Mr Egden asked Mr Joseph to respond to Reverend Carr's evidence that there was no labelling on the store's bulk spirits. Mr Joseph said they were listed on a blackboard and he produced a photograph of the blackboard. He accepted that on the day of the Reverend's visit they may have been obscured by the bulk alcohol containers.

- [43] Mr Egden asked Mr Joseph about Mr McMahon's claim that a beer he is selling, Hunter Green, does not adhere to the required labelling standards. Mr Egden produced a can of Hunter beer. Mr Joseph pointed out the labelling on the side and bottom of the can.
- [44] Mr Joseph said he had about 5-6 items in the higher alcohol beer range, 30-40 varieties in the normal range, 5-6 varieties in the low alcohol range and 2-3 in the zero range.
- [45] Mr Egden asked him to explain the cardboard box a customer was seen leaving the premises with. He said with the phasing out of plastic bags he often used cardboard boxes for customers to carry their product in.
- [46] Mr Joseph also explained his proposal to offer money transfers in the future. He said they were transfers not exchanges and were the result of requests from immigrant customers to offer this service.
- [47] Sergeant Robertson asked what percentage of turnover was represented by the higher alcohol beers. Mr Joseph stated that a box of 24 cans would probably last him 2-3 months. They were not a significant part of his turnover.
- [48] Mr Hawker asked Mr Joseph about his selling of bulk spirits. He said he started distilling in 2012. He had agreed in a discussion with the Inspector to stop selling bulk spirits when his current stock was exhausted which he thought would be about the end of 2019. He said he rang the Inspector in mid-January to say he still had some product left to sell and asked if he could continue until stock ran out. He said that the Inspector had authorised that.
- [49] Mr Hawker asked what the total number of cameras in the store was. Mr Joseph said twelve were installed in 2017. Mr Hawker also asked if there were cameras covering the carpark. Mr Joseph said they needed to be pointed there and they were not there currently. He said there were screens on the counter.
- [50] Mr Hawker noted that there were times when only one staff member was on duty and asked Mr Joseph about what staff were told to do if there was a disturbance outside. Mr Joseph said they were all trained to close the door and lock themselves in the rear of the store and call the Police.

- [51] Mr Hawker also questioned about some graffiti that was on the store at some stage. Mr Joseph said he tried to take it off but the offenders did it again. He had removed it all recently, maybe two weeks ago.
- [52] Mr Hawker asked Mr Joseph about issues in the community. He said he did not know what they were but he did know there were alcohol related issues. He said he went to a meeting with the community when the Liquorland application for a new outlet was lodged a year or two ago.
- [53] Mr Hawker noted that the company was in default of filing their annual details to the Companies Office. Mr Joseph said he understood his accountant had lodged an extension but he was not sure if he had done it.
- [54] Mr Joseph confirmed that there was no CCTV footage still available around the time Mr Hawker was seeking it.
- [55] Ms Cowe asked about the trading hours. Mr Joseph said that his maximum closing time was 11.00 pm but on Sunday and Monday he closed at 8.00 pm, Tuesday to Thursday he closed at 9.00 pm and Friday and Saturday closer to the permitted time.
- [56] Ms Cowe asked if he was changing hours due to problems. He said he was closing due to lack of demand at that time and to give his staff more family time.
- [57] Ms Cowe questioned Mr Joseph's suitability because he was selling three products that were addictive - alcohol, tobacco and vaping products.
- [58] In response to a question from Ms Cowe, Mr Joseph said he distilled the bulk products next door to his store.
- [59] Commissioner Robinson noted the current licence allows on-line sales and asked whether that was part of the business. Mr Joseph said he had no on-line sales, only sales through the door. Commissioner Robinson asked how he advertises his products and he replied he never advertises and has one footpath sign advertising the store not products. No stock was visible through the window.
- [60] The Committee asked if he was aware of any vulnerable regular customers. He said he had not come across any but pointed out that he does not work there every day.

- [61] The Committee asked what was behind the decision to agree not to sell bulk spirits. Mr Joseph said there were not a lot of people buying the bulk alcohol and when he met with Licensing Inspector Martin Ferguson in May and July Mr Ferguson had suggested it. Mr Ferguson said the Council did not want alcohol being sold in bulk and referred to the recent Yankee Bourbon case. Mr Joseph was aware of the Yankee Bourbon decision and agreed to stop selling alcohol in bulk.
- [62] Commissioner Keir asked about his proposal to offer money transfer services. He said he had recently been approved by Ria but had not started offering the service as yet. He said it was his understanding he could receive money as well but he was a little unsure.
- [63] Mr Joseph said he did not receive a commission just a \$6 fee for each transaction. He intended to advertise through a sticker on the window or a flag. He had noted earlier in the hearing that money transfer customers were required to be over 18 years of age.
- [64] The Chair asked if he had any school pupils coming into the store. Mr Joseph said not really. He said he had once had a boy come in and he could see other boys outside the store. The boy was not served.
- [65] The Chair also asked about possible flyer advertising on the windows. Mr Joseph said there was no flyer advertising on the windows.

Evidence of Mr Amritpal Singh

- [66] Mr Singh said he had been working in the liquor industry for nine years as duty manager and/or store manager. He believed he was a trained person to know whether a person was intoxicated or not. He said staff at Thirsty Liquor regularly update their knowledge.
- [67] Mr Singh said all staff at Thirsty Liquor are aware of the strict policy of not serving intoxicated persons or underage persons.
- [68] Mr Singh said on 21st of January he was the duty manager and he served the customer referred to in Reverend Carr's evidence. He said in his judgement the customer was neither intoxicated nor influenced by alcohol. He said he spoke to her and there was no indication she was affected by alcohol or any other drugs, nor was there any smell on her

breath. Mr Singh did recall she was in a hurry and had to leave the store to get something before returning to make her purchase.

[69] Mr Singh said he utterly refuted Reverend Carr's allegation that he made no attempt to assess her level of intoxication. He said he did not consider her co-ordination was impaired by alcohol.

[70] Sergeant Robertson asked how long Mr Singh had had his manager's certificate. Mr Singh said since 2010.

[71] Mr Hawker asked how long did Mr Singh interact with the lady. Mr Singh said just enough time to say 'hi, how are you'. A very short time.

[72] Mr Hawker asked if Reverend Carr was offered water when sampling the product. Mr Singh said he was busy with the lady but water was available.

Evidence of Sergeant Robertson

[73] The NZ Police were not opposed to the renewal and had not filed a report in opposition. However, as is common practice, the Police made available to the Committee an Intelligence Notification Report for Thirsty Liquor 21b Aldwins Road dated 17 December 2019 (the Police Report). The Police Report reviews annual Police Calls for Service within in a 1km radius of the premises. The Police Report was pre-circulated to the parties on the basis that it be used for these proceedings only. Sergeant Robertson formerly produced the Police Intelligence Report and answered questions.

[74] Sergeant Roberson explained the Police Report and the calls for service. The Police Report contained a list of the types of offences that are likely to involve alcohol. Unless Police are attending every incident results can only be relied upon to a degree. Approximately 45% of the 1400 calls were liquor related.

[75] Ms Lavery asked if the Police had any concerns and Sergeant Robertson said no.

[76] Mr Egden sought clarification about calls for service that did not go beyond the phone call. He asked if they were on the list. Sergeant Robertson confirmed they were.

- [77] Ms Cowe noted the graph was showing an increase in calls. Sergeant Robertson said as things became closer to Christmas there was always a spike. He explained that when they deal with an incident they always ask where they consumed their last drink.
- [78] The Committee asked if it could receive the report on the basis that it showed that the area is a higher than average risk. Sergeant said yes. We also asked about whether the fact the Police had no concerns related to the way the store was managed. We understood Sergeant Robertson to say that it wasn't possible to draw that conclusion because the Police only react to incidents and are unable to be proactive about visiting the store to check on management. There had been no incidents in relation to this store.
- [79] The Committee asked about the hot spots of calls for service showing near the store on the heat map in the Police Report. Sergeant Robertson said there are a couple of high call spots being Edmonds Park and the Mad Butcher (shop lifting).
- [80] Sergeant Robertson, in answering a question from the Chair, said the Police Special Policing Team was still operating in the area.
- [81] Mr Egden asked the Chair for a ruling on what questions could be put to the agencies. The Chair directed that only points of clarification and matters relating to the Police Report.
- [82] The Committee asked the Inspector to clarify risk and how it relates to this application. The Inspector referred to regulations under the Act that set the fees for applications. She said that the regulations rated outlets as per their closing times.
- [83] Ms Lavery said that she did not expect any issues from the renewal of the licence but covered herself by saying the amenity and good order may increase by more than a minor amount. Mr Egden sought clarification as to whether the conclusion could also be the reverse, that is it equally may not, to which she agreed.
- [84] The Chair asked if the regular inspections were announced or unannounced. Ms Lavery said they were all unannounced.

Evidence of Mr Wayne Hawker

- [85] Mr Hawker proceeded to summarise his brief of evidence, previously circulated, and talked initially about the minimisation of harm as required by the Act. He pointed to the Lion Liquor² case which says harm only needs to be proven in the community. He said he was seeking information through LGOIMA³ and the information could be relevant.
- [86] Mr Hawker did express his concern that the agencies were not, in his opinion, always doing what they could to reduce alcohol harm.
- [87] Mr Hawker told the Committee that he had lived in the area for around forty years and had been very active in the community on a number of causes. He had been a trustee of the previous community centre and was a major force against the merging of the Phillipstown School out of the area. He noted it was a battle he eventually lost. He also vigorously opposed the proposal by Liquorland for a new off-licence almost next door to this site.
- [88] He also questioned the need to put a money transfer facility in a liquor store.
- [89] He believed that a major contributor to the rejuvenation of the community was the rebuilding of Linwood College which between 2015 and 2019 had an increase in student numbers of 40%. He would be calling the school principal to give evidence.
- [90] Mr Hawker then stated his concern on the suitability of the applicant. He stated that Mr Joseph supplied information to the community to assist them oppose the application by Liquorland. He believes this was self-interest and not a concern for the community.
- [91] He also noted the applicant sells cigarettes, vaping equipment, a range of snacks and intends to offer money transfers in the future but still insists that alcohol makes up over 90% of his sales. He was concerned by the added security risk to the community with the proposed money transfer service.

² Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd [2018] NZHC 1123.

³ Local Government Official Information and Meetings Act 1987.

- [92] Mr Egden questioned Mr Hawker on his concern about the proximity to Linwood College. He asked him how long the College had been there and Mr Hawker thought 50-60 years.
- [93] Mr Egden pointed out to Mr Hawker that the agencies were not opposing this application. Mr Hawker said he had not tried to drum up objectors and that he had asked on social media for evidence of litter. He had just put it on his Facebook page and the Philipstown page.
- [94] Mr Egden then produced several pages from his Facebook page of which only one was in support of his opposition to the renewal.
- [95] Mr Hawker said it was very difficult for objectors to find information as it can only be found on the Council website. He had objected to 3-4 applications. He had suffered personal physical harm from alcohol but it was not a personal crusade for him. He confirmed he did not object to the Yankee Bourbon renewal and had not read the full decision but was aware of the agreement to stop bulk sales.

Evidence of Mr Richard Edmundson

- [96] Mr Edmundson is the Principal of Linwood College which is usually located on Aldwins Road about 650 metres to the north of the premises. Mr Edmundson clarified that his school was currently situated in Avonside Drive due to the school being rebuilt and they expected to return to the Aldwins Road site in 2022.
- [97] Mr Edmundson read his brief of evidence and outlined his three main concerns.
- [98] The community is currently over served with access to alcohol. He noted there were numerous licensed premises within 1.5 kilometres of Thirsty Liquor.
- [99] He is of the opinion that School students should not be exposed to the normalisation of excess liquor outlets. He said Linwood College was 650 metres from Thirsty Liquor. Te Waka Unua School, a primary school of 470 student is also in the general area. He said Linwood College was a "super sensitive site" due to the makeup of its school population which includes both intermediate age and high school students. When the School returns to Aldwins Road he said the longer term plan was to incorporate a

preschool and school facilities for teenage parents. His school was growing with 750 students in 2020, up 40% in the last four years. The roll is set to increase further in the second stage of the school rebuild to 1200 students and the third stage to 1800.

[100] Mr Edmundson told the Committee that the Linwood community was rejuvenating but there was still significant vulnerability in the community. He shared data from the school's counselling statistics. These showed that there were 560 presentations in 2019 for 'Home relationships'. 80%-90% of these were alcohol related in some form.

[101] Home relationships were the greatest single category for counselling presentations. In 2019 this category was 57% greater than the second greatest category, 'Peer relationships'. Mr Edmundson said alcohol may have been a factor in other categories such as stress, depression and anxiety. He also noted that across all presentations Māori students were 20% higher than for non-Māori.

[102] Mr Hawker asked why he did not object himself. He said the deadline went by without him noticing.

[103] Mr Edmundson expressed concern at what he saw as the unfair targeting of Mr Hawker in questions from the other parties.

[104] In answering a question from the Committee Mr Edmundson said a number of children still go to the old site each school day and are bussed to the temporary site. He thought about four buses full (40-50 children per bus) each day and that many of those children still walk past Thirsty Liquor.

[105] Mr Edmundson said some of the current issues relate to the earthquake while some probably go back to the impact of "Rogernomics".

[106] In reply to questions from the Chair, Mr Edmundson said the school had four fulltime social workers plus support from the social agencies. The school was a decile three. He thought Linwood College was the lowest or around the lowest in the South Island.

Evidence of Reverend John Carr

- [107] Reverend Carr read his brief of evidence. He explained that he was the sole pastor at the Avonside Church of Nazarene, in Kerrs Road where his home is also located. The area where he lives has a high level of alcohol harm and he frequently encounters intoxicated persons.
- [108] He said he entered the store on January 21st 2020 and while purchasing a Hunter Strong beer he asked about the cheapest alcohol items and in particular bulk alcohol.
- [109] He gave evidence that as he left the store a middle aged woman entered the store with an unsteady gait. He said he did not know for certain if she was intoxicated, but her actions seemed to indicate that she was. She purchased a RTD six pack of gin and tonic.
- [110] He was given two samples to try of the bulk spirits. He noted that there was no labelling on the bulk spirits. He then went out to his car to collect an empty 330 ml glass coke bottle which he had filled with vodka. He also purchased three more cans of high alcohol beer.
- [111] Reverend Carr said as he drove away he saw the woman on her bike in the gutter and she took some sips from an RTD. She then drank as she was riding away, slightly unsteady.
- [112] Mr Hawker asked Reverend Carr why he had not made an objection. He said that he didn't live within the 1km radius.
- [113] In another question from Mr Hawker, Reverend Carr said he had had training and experience in Northern Ireland around intoxication.
- [114] Constable Jolliffe asked him to explain unsteady gait. Reverend Carr said his training in Northern Ireland did tell him what symptoms to look for with alcohol abuse; behaviour, speech patterns, eye contact, belligerence.
- [115] Constable Jolliffe asked was she rude or obnoxious. He replied no but she did have a disheveled appearance.
- [116] Commissioner Keir asked if Mr McMahan was there with him. He stated that he, Mr McMahan, did not enter the store. He said Mr McMahan was a member of the congregation at his church and he was there at Mr McMahan's request.

Evidence of Mr McMahon

- [117] Mr McMahon read from his brief of evidence. He lives just over 1km from the store, as the crow flies. He has worked with young people throughout his adult life. He currently works on a public health contract to help communities to reduce harm to young people from alcohol and drugs.
- [118] Mr McMahon said he and a colleague visited the premises on January 16th and noted the applicant sells a large range of low price, high alcohol content drinks, the sort appealing to particularly vulnerable drinkers.
- [119] He noted with concern that the applicant is selling Hunter Strong Premium Beer, which he submitted does not adhere to New Zealand Food Standard 2.7.1. He believed this put the applicant's suitability into question.
- [120] Mr McMahon also noted the applicant was selling bulk spirits out of kegs, which he, the applicant, remarked he was ceasing in a month. Mr McMahon subsequently became aware it was agreed that bulk sales would cease at the end of 2019.
- [121] Mr McMahon said while he was there a taxi driver entered the premises with an empty glass soft drink bottle and emerged with it full.
- [122] In answer to questions from Mr Hawker, Mr McMahon said he did not file an objection because he lived just outside the 1km zone but he also had a lot on his plate at the time. He said he endorsed what Mr Edmundson had said in his evidence about the way objectors had been treated in questioning by the other parties. He was also concerned at the objection to the standing of public objectors initiated by the Inspector.
- [123] In further questioning he said he had been approached by several schools, including Linwood College, to assist them in the area of alcohol and drugs.
- [124] Mr Egden asked Mr McMahon to explain how his role was funded. He said he was funded by the Ministry of Health and his role through his contract is to facilitate community participation in the process.

[125] Mr Egden also asked had he liaised with the Medical Officer of Health. He said he did have some discussions with the Medical Officer of Health's office, but not to the Medical Officer personally. He spoke to someone else there.

[126] Mr Egden pointed out that his brief was incorrect regarding the alcohol content of Hunter Strong Beer and Mr McMahan agreed and apologised for the typo. Mr McMahan said he accepted the alcohol content was on the bottom of the can but was concerned it was on the bottom of the can.

[127] Ms Cowe asked why the alcohol content is printed on the can. Mr McMahan said so people can see what they are drinking.

Evidence of Ms Lisa Cowe

[128] Ms Cowe filed her evidence through an affidavit dated 31 January 2020. The affidavit attached her signed brief of evidence of the same date. Ms Cowe explained that she had filed her evidence through an affidavit because she had concerns that in previous cases where she had appeared that Committee and the Alcohol Licensing Authority had not specifically referred to the matters she had raised and she wanted to make sure her concerns were taken into account.

[129] She read from her brief of evidence. She said she visited the store on January 18th and immediately noticed a strong smell of alcohol. She said she could not help but see the large keg/vats that were on the counter which had taps on the them facing the customer. She said the labelling was not complete but there was a blackboard next to them listing the prices. She did not see any freely available water.

[130] She noticed tobacco and vaping products, which along with alcohol are all addictive products. For this reason she deems the applicant not to be suitable.

[131] Ms Cowe said she herself has had some experience of alcohol harm.

[132] Ms Cowe expressed concern around the website advertising of the Thirsty Liquor group, of which this store was a beneficiary. She said there was no mention on the website that persons must be over 18 years of age to enter the website. She noted the Inspector had told her that the applicant has no obligation to how the website is displayed. She had

contacted the Advertising Standards Association regarding the website. She attached several attachments to her brief of evidence relating to the website.

[133] Ms Cowe said that the Inspector seems to have taken action over the website and Facebook page since she raised the issue.

[134] Ms Cowe noted in the Police report that there appeared to be a substantial increase in the number of serious assaults in the month of November. She said this Police data proved there was substantial alcohol related harm in the area within at least 1km of Thirsty Liquor.

[135] Ms Lavery asked what concerns she had directly with the applicant store. She said she was concerned with the alcohol harm in the area generally. She believed reducing harm could happen by reducing hours. Ms Cowe said the purpose of the Act was to reduce alcohol harm.

[136] Mr Egden asked Ms Cowe how far she lived from the store. She replied within 1km and noted that she had been accepted as an objector in other notified applications which were further from her home.

[137] She said the applicant was not suitable because of the other addictive products his store sold. Ms Cowe also said that the offer to stop bulk sales of alcohol would not have been given if the two objectors had not objected to this application.

Closing submissions

[138] Mr Egden said that the application would have been granted had it not been for the two objectors. He said that Mr Hawker was unable to raise any evidence for these particular premises. The best evidence of the Linwood College Principal was that there were too many licenced premises in area, which is a broad concept. He submitted that there was an insufficient nexus between potential harm and these premises. Mr Egden responded to the objections put forward by Mr Hawker and Ms Cowe. He submitted:

- a. Mr Hawker raised matters of suitability because the applicant assisted the community opposing the Liquorland application. There is no grounds for in that.

- b. Ms Cowe raised the issue of bulk alcohol sales however the applicant has offered for bulk sales to not be sold in the store and for that to be a condition should the licence be renewed.
- c. Ms Cowe raised nothing that would show that the amenity and good order of the area would improve by more than a minor amount should the licence not be renewed.

[139] Mr Egden said that the promotion of alcohol through the website/social media was not a s131 item. Commissioner Robinson queried Mr Egden on this matter referring to s131(d) and asking him if he was suggesting a member of a franchise could hide behind the franchisers advertising. He accepted that it was an applicant's choice to be a member of the franchise and the applicant could leave if he did not agree to the manner of advertising, however he said that to not issue a licence on this matter would create a precedent around the country.

[140] Ms Lavery read a very lengthy final submission. She referred the Committee to several sections of the Act in particular ss131 & 105. She referred to several cases she thought relevant - Venus, Ponda Holdings, Black Bull, Lion Liquor and Narrows Landing.⁴

[141] Ms Lavery reminded the Committee that opinions are not relevant to this application and can be afforded little weight.

[142] Constable Jolliffe said that the premises had been operating for eight years and had not come to the attention of the Police in that time. There was an absence of specific evidence to relate this store to alcohol harm in the area.

[143] Mr Hawker told the Committee that supermarkets cannot be compared with bottle stores as they do not sell high alcohol products and certainly not RTDs. He said the hearing has shown how difficult it is to object to an application and that even his status was challenged.

⁴ Re Venus NZ Ltd [2015] NZHC 1377
Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd [2018] NZHC 1123
Ponda Holdings Ltd [2014] NZARLA PH 558
The Narrows Landing Ltd NZLLA PH 479/2003
Black Bull Gisborne [2018] NZARLA 316

[144] Mr Hawker said alcohol harm caused by the premises has been questioned but he believed that it should be a two way street and the applicant should be required to show there is no harm from the premises.

[145] Ms Cowe said it was very confusing to her as to what can be put into evidence. She said there was a huge issue around the bulk sale of alcohol and that at least action has been taken since their objections were lodged. She disapproved of motor sport drifting being used in advertising as that sport attracted younger drivers.

[146] Ms Cowe also said she did not like vaping products being sold in the premises and that the community would be better off if the licence was not renewed.

Discussion and decision.

[147] We are dealing with an application for renewal of an Off-Licence which has now been in place for around eight years with the current applicant and for a further ten years or so with previous owners. The previous application for renewal in 2016, which was under the new Act, was not opposed and no evidence was produced that any other applications for renewal or the original application were opposed. It is, however, a given that there can be no presumption that a licence will be renewed.

[148] Our task, after considering all the criteria set out in the Act relating to the renewal of an Off-Licence, is to take a step back and consider whether the dual Object of the Act would be met by the granting of a renewal.

[149] The Object of the Act as set out in s4(1) is:

- (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.

[150] s4(2) goes on to explain:

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).

[151] We are also mindful that the characteristics of the new system of control introduced by the Act as set out in s3(2) are that-

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

[152] The matters to which we must have regard when deciding whether to renew a licence are set out in s131(1) of the Act as follows:

- (a) the matters set out in paragraphs (a) to (g), (j) and (k) of section 105(1):
- (b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:
- (c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:
- (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol

[153] We shall deal with these in order:

- (a) the object of this Act –

As Heath J. said in *Re Venus NZ Ltd CIV 2014-419-420* [2015] NZHC 1377 “ having considered all the factors set out in s105(1) (b) to (k) of the 2012 Act, is the Authority satisfied that grant of an off-licence is consistent with the object of the Act? It follows that we defer this consideration to last.

- (b) the suitability of the applicant –

Both Mr Hawker and Ms Cowe raised matters of suitability. Mr Hawker raised a number of issues of general concern that we were

unable to relate to this store. He also suggested that as the applicant met with the community when another applicant sought a licence nearby this could question his suitability. The sale of bulk spirits was also raised by the objectors. The Police raised no matters of concern, nor did the Inspector.

The Committee, after considering all the evidence, could only draw the conclusion that Mr Joseph took his responsibilities in this area very seriously and was well regarded by the Agencies. The Committee noted he had never failed a CPO.

Ms Cowe suggested that the applicant's choice to sell "other addictive products" such as cigarettes and vaping apparatus went to the applicant's suitability. We do not agree that such a conclusion can be drawn on the evidence before us. The applicant sells products that it is lawfully entitled to do so and there is no evidence that the way such products are sold differs from any other similar store. We also note supermarkets sell cigarettes. Cigarette sales are separately regulated and there is no suggestion the applicant is selling cigarettes in breach of the law. Vaping is also to be subject to regulation in due course. We do not think this impacts on the applicant's suitability to hold an alcohol licence.

- (c) any relevant local alcohol policy –

Christchurch has no Local Alcohol Policy.

- (d) The days on which and the hours during which the applicant proposes to sell alcohol –

The applicant sought the same hours as his current licence 8.00am to 11.00pm Monday to Sunday. These hours are within the default hours set out in the Act. Ms Cowe did suggest, in general terms, that less hours would mean less harm in the community. No specific evidence was produced in this area. Ms Cowe did note that the actual closing times were often much earlier than permitted under the licence. We note that there is some concern about the potential exposure of students to the store as they pass by to catch busses or in the future to attend the Linwood College's Aldwins Road site. We

didn't receive any specific evidence of harm arising from the passing by of students to justify any limitation of hours. We understood the concern to be of a more general societal concern about the normalising of alcohol sales generally.

- (e) the design and layout of any proposed premises –

The applicant advised that there had been only minor changes to the design and layout of the store and these were shown on the before and after plans supplied with the application. The counter was moved nearer to the entrance to the store and the chiller was made a little smaller. No individual products could be seen from outside the store.

Following the hearing the Committee undertook a site visit to inspect the new layout. The visit was undertaken after the Committee secretary advised Mr Egden that it would take place but no time was specified. Other than the Chair introducing the Committee no other interaction took place with the manager on duty.

The Committee did not notice any matters of concern and in fact thought it was a well presented store.

- (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 –

The applicant sells tobacco products and vaping products and is proposing to offer a money transfer service in the future.

Ms Cowe in particular was most concerned that the applicant sold other products that she believed were addicted products, namely tobacco products and vaping products. Concern was also raised of his proposal to offer money transfer services.

Mr Joseph said in his evidence that 90% of his sales would be alcohol products and the Committee has no reason to doubt his evidence in this area.

The Committee has no concerns in this area as many of the matters raised would be better directed to Parliament or to a LAP.

- (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than alcohol, low alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods: -

The applicant does intend to offer money transfer services in the future. Mr Joseph told the Committee that he received a flat fee for this service and no commission. He also said persons using this service must be at least 18 years of age.

The objectors did suggest this additional service had the potential to attract additional vulnerable people to the store.

The Committee was unconvinced that any additional harm could result in this service being offered. We note that the applicant has in place security systems and protocols in the event of safety concerns if they did arise.

- (h) whether the applicant has appropriate systems, staff, and training to comply with the law –

The applicant appears to have good systems in place to cover administrative and compliance matters as well as staff training.

- (i) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under s103 –

No issues in opposition were raised by any of the agencies. At the hearing the Inspector, made submissions in support of the grant of the application and opposed the standing of the objectors. We also record that because the Inspector did not appear as a witness in these proceedings and simply submitted her Report in writing (as she is required to do under s142), the Inspector's recommendations were not able to be cross-examined, although the Committee did allow clarification of some matters. We have had regard to the Report on the basis that it is a record of the Inspector's investigation of the application up to the time the Report was written.

The Medical Officer of Health was not represented at the hearing, however, in a letter dated 27 September 2019 the MOH commented

on the price per drink from the applicant's fill your own bulk sales and said that the bulk fill provided exceptionally cheap alcohol. The MOH referred the Committee to the Yankee Bourbon Company Decision, whereby a differently constituted Committee included a condition preventing bulk sales. The MOH recommended to this Committee that we include a similar condition and, on that basis, did not oppose the grant of the renewal.

We record that Mr Egden confirmed to the Committee that his client would accept such a condition.

As referred to above the Police did not oppose the application but Sergeant Robertson produced the Police Intelligence Report and answered questions from all parties and the Committee.

[154] S131(b) requires us to turn our minds to amenity and good order. We must have regard to "whether (in its opinion) the amenity and good order of the locality would likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence". S106(2) of the Act sets out the factors to which we must have regard to (as they relate to the locality) when considering amenity and good order. These include current and possible future noise levels and current and possible future levels of nuisance and vandalism.

[155] Both Mr Hawker and Ms Cowe raised issues of amenity and good order. They both pointed to the Police Report and the data which showed a spike in offences in November 2019. Sergeant Robertson's evidence said that a spike in their calls for service was normal leading up to Christmas and while the data was not exact it was likely that some of the statistics related to Edmonds Park and The Mad Butcher store. It was suggested to us that refusing renewal of the licence would mean one bottle shop less and this would help in reducing alcohol problems. We can certainly understand where that view is coming from but we are required to be reasonable in administering the Act. It would not be reasonable to hold the applicant accountable when there is no evidence of it being at fault. Likewise we heard no particular evidence of increased levels of nuisance, vandalism or noise. The Committee noted again that the agencies had no

issues in this area and we were impressed with the applicant's evidence in outlining his systems.

[156] Mr Hawker raised his concern that Linwood College was just 650 metres from the store and was a very vulnerable site being so close to the store. He was backed by the evidence of his witness, Mr Edmundson. Both Mr Hawker and Mr Edmundson talked about the rejuvenation of the area and how the school was growing at a considerable rate. The Committee carefully considered the location of the school however there was no evidence relating any issues arising from the operation of the premises by the applicant in the past. The Committee also notes that the school is currently operating from another side while its buildings are being rebuilt and will not be returning to the site until 2022. The licence will be up for renewal again in 2022 and whether any issues arise in the future will be a matter for the committee of the day.

[157] When we consider all that, we cannot form the opinion that the amenity and good order would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence. Frankly we do not think it would make any discernible difference at all. We note that the objectors, and Mr Hawker's witnesses, believe that less bottle stores would assist in lowering alcohol harm in society generally, however, that is not a matter we can address in the course of our consideration of this individual application. These views would perhaps be better directed at Parliament or in the context of a LAP.

[158] S131(1)(d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised or promoted alcohol –

Ms Cowe raised with the Committee her concerns around the website advertising for the Thirsty Liquor brand and in particular that the website did not ask if a person was over 18 years of age before they could enter.

Ms Cowe did say that since she had raised the matter action had been taken.

Mr Egden, on behalf of the applicant, told the Committee that the website was the website of the franchisor and the applicant had no control over it.

The Committee is not swayed by Mr Egden's comments and is of the strong view that a franchisee cannot hide behind the fact that the franchisor controls the website. The Committee feels that the website makes up part of the advertising/marketing for the store even though in this case Mr Joseph stated that he does not sell any products via the website.

After much consideration the Committee is unable to make a definitive finding on the matter as there was just not enough evidence produced. The Committee also noted that Ms Cowe said some action has already happened since she raised the matter.

Mr Hawker called evidence about an alleged sale of alcohol to a woman who may have been intoxicated. On that issue the evidence of Reverend Carr did not establish on the balance of probabilities that the woman was intoxicated. We prefer the evidence of Mr Singh who is a qualified and experienced duty manager who served the women in question. Reverend Carr also gave evidence that he purchased bulk alcohol in a 330ml empty coke bottle, which we agree is not desirable, however, the bulk sales of fill your own alcohol will now cease.

[159] We now take the step back as advised by Heath J. in *Re Venus NZ Ltd* and consider the dual Objects of the Act in the light of all the other matters to which we are required to have regard. Can the supply of alcohol by the Thirsty Liquor Linwood Store be undertaken safely and responsibly and should the harm caused by the excessive or inappropriate consumption of alcohol be minimised should the licence be renewed? We believe that both requirements can be met for the reasons outlined above. The renewal of the Off-Licence can be granted.

[160] We approve the amended layout of the store as submitted with the application.

DECISION OF THE CHRISTCHURCH DISTRICT LICENCING COMMITTEE

[161] The decision is that the Off-Licence for Southern Sun Distillery 2012 Limited trading as Thirsty Liquor Linwood will be renewed for a period of three years. It will be renewed subject to the following conditions:

Compulsory Conditions

- (a) No alcohol may be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1 pm on Anzac Day.
- (b) Alcohol may only be sold and delivered on the following days and during the following hours:
Monday to Sunday 8.00am to 11.00pm
- (c) Water must be freely available to customers, while alcohol is being supplied free as a sample on the premises.

Discretionary Conditions

- (a) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - Alcohol must only be sold and supplied on the premises in accordance with the premises plan submitted with the application.
 - The licensee must implement and maintain the steps proposed in their host responsibility policy.
 - There shall be no sales of bulk spirits from the store.

Section 119 Restricted or supervised areas.

The whole of the premises is designated as a supervised area.

Conditions applying to all remote sales:

- (a) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on

any receipt issued for any alcohol sold via the internet site: The licence holder's name, the licence number and the date on which the licence expires.

- (b) A copy of the licence or a clearly identified link to such an image must be displayed in a prominent place on the internet site.
- (c) The following steps must be taken to verify people are over the purchase age:
 - In the case of an order made using the internet site, telephone order or physical order- the prospective buyer must declare he or she is 18 years of age or over (and where the prospective receiver is involved that the prospective receiver is also 18 years of age or over):
 - (i) once when the prospective buyer first commences the order process, and
 - (ii) again, immediately before the sale of alcohol is completed.

Other restrictions and requirements to be noted on the licence

s56 Display of signs

s57 Display of licences

s59 Requirements relating to remote sales by holders of off-licences.

s214 Manager to be on duty at all times and responsible for compliance.

DATED at Christchurch this 10th day of March 2020



D.L. Blackwell QSM
Chairperson
Christchurch District Licensing Committee