

Decision Number: 60E [2021] 7675

IN THE MATTER OF

the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF

an application by DESAI INVESTMENTS LIMITED for an Off-Licence in respect of premises situated at 608 Ferry Road, Christchurch to be known as 'Super Liquor Woolston'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 3 May 2021 (at Christchurch)

Committee

Chairperson: Mr D L Blackwell, QSM

Members: Mr D Ivory
Miss L Shields

Appearances: Mr H Desai, Director of the Applicant
Mrs N Desai, Director of the Applicant
Mr G Hoar, Witness for the Applicant
Ms A Lavery, Licensing Inspector, to assist
Mr P McMahon, Objector

Decision: 31 May 2021

RESERVED DECISION OF THE COMMITTEE

Contents	
Introduction	3
Non-Publication Order.....	3
Preliminary Matters.....	4
Objector status.....	4
The Hearing.....	4
The Attitude of Reporting Agencies	4
Licensing Inspector’s Opening Submissions	4
The Applicant and Application	4
Mr Hemal Desai’s Evidence	4
Cross-Examination of Mr Desai by Mr McMahon (Objector)	5
Cross-Examination of Mr Desai by Ms Lavery, (Inspector).....	6
Committee’s questions for Mr Desai	6
Mr Greg Hoar’s Evidence: National Operations Manager Super Liquor	7
Cross-Examination of Mr Hoar by Ms Lavery (Licensing Inspector).....	7
Committee’s questions for Mr Hoar	7
The Objections – Mr McMahon	8
The Witnesses for Mr McMahon Did Not Appear	8
Mr Paul McMahon’s Opening Submissions and Evidence.....	8
Committee’s questions for Mr McMahon	10
Cross-Examination of Mr McMahon by Applicant (Mr Desai).....	10
Cross-Examination of Mr McMahon by Licensing Inspector	10
Closing Submissions.....	11
Applicant’s Closing Submissions (Mr Desai)	11
Licensing Inspector’s Closing Submissions - Ms Lavery.....	11
Objector, Mr Paul McMahon’s Closing Submissions.....	13
Applicant – Response (Mr Desai)	13
Relevant Legal Considerations	13
Discussion	14
Decision	17

Introduction

[1] This is an application for an off-licence by Desai Investments Limited ('the Applicant') resulting from a change in ownership of retail premises located at 608 Ferry Road, Christchurch ('the premises'). The premises are intended to be managed by the two directors and shareholders of Desai Investments Limited, Mr Hemal Desai and his wife Mrs Neetu Desai ('the Applicants').

[2] This new licence application was received on 20 January 2021. The premises are currently trading under a Temporary Authority. A first Temporary Authority was issued on 7 December 2020, which commenced on 11 January 2021 and expired on 11 April 2021. A second Temporary Authority was issued on 30 March 2021, which commenced on 11 April 2021 and expires on 11 July 2021.

[3] The application was publicly notified on the Council's website on 20 January 2021. Two public objections were received: from Mr Paul McMahon and Mr Samuel Smith.

[4] A hearing of the application took place on 3 May 2021.

[5] The District Licensing Committee (DLC/Committee) is required to have regard in the forming of a decision to matters raised in sections 105 and 106 of the Sale and Supply of Alcohol Act 2012 ('the Act'). Section 102(4A) of the Act restricts objections to the matter of applicant suitability only when a premise is changing hands with no change in the conditions of the licence being sought.

[6] The Applicants elected to represent themselves in this matter.

[7] Mr Greg Hoar, Super Liquor – National Operations Manager, appeared as a witness for the Applicants in this matter.

[8] Ms Anneke Lavery, Licencing Inspector (the Inspector), was supported by Senior Inspector Mr Martin Ferguson. She did not call evidence or appear as a witness. Ms Lavery did question parties and presented both opening and closing submissions.

Non-Publication Order

[9] A verbal non-publication order was made at the hearing on the grounds of privacy with respect to "Super Liquor Incident & communication Book" (the "incident book") used by both Applicants and staff of Super Liquor Woolston. That order is confirmed here as an order under section 203(5) of the

Act that any form or degree of publication of the incident book is prohibited (the Committee having duly considered the making of this order in terms of section 203(6) of the Act).

Preliminary Matters

Objector status

[10] Objector status was conferred on both Mr Paul McMahon and Mr Samuel Smith (the latter did not attend the hearing, so though his objection was considered, it could only be given the limited weight appropriate to him not giving his evidence in person and not being cross-examined).

The Hearing

The Attitude of Reporting Agencies

[11] There was no opposition reported by the Medical Officer of Health (MOH) or by the Police to the application. Ms Lavery did not raise any matters in opposition to the application and prepared a report to assist the Committee.

Licensing Inspector's Opening Submissions

[12] Ms Lavery outlined the role of the Inspector with respect to section 105 obligations. She referred to the experience of the Applicants who had both made "commendable progress" since taking over the premises on 10 January 2021. Reference was made to the two public objections received, and Ms Lavery noted that under section 102(4A) of the Act only matters of suitability of the applicant can be raised by the objectors.

The Applicant and Application

Mr Hemal Desai's Evidence

[13] Mr Desai made a brief opening submission and then provided evidence. He outlined the history of the premises and the purchase in January 2021. He submitted that both he and his wife were suitable to run the business. He referred to the significant financial commitment made to purchase the business, his family, and work undertaken as a Corrections Officer. Mr Desai said, "everything is at stake" and "we will run the business responsibly".

[14] Reference was made, by Mr Desai, to the employment of an experienced Duty Manager at the premises. It was stated the former owner of the premises was not always present whereas the current structure, with owner operators, was more ideal. Mr Desai explained his work as a Corrections Officer,

the compliance and regulatory skills involved, and how it provided a unique position to observe the impact of alcohol harm. Previous work experience of both Applicants was referred to, including work in hospitality and at a petrol station with related experience managing the sale of tobacco products.

[15] Mr Desai explained the support provided by Super Liquor in the operation of the business. Super Liquor is the Franchisor with Super Liquor Woolston being a licenced Franchise.

[16] The Applicant referred to the successful operation of the business over the previous four months, including not allowing school students in uniform on the premises, and removing rubbish from outside the store.

[17] In terms of the objections raised by Mr McMahon, Mr Desai said the suitability of alcohol products was the domain of the Ministry of Primary Industries (MPI), and similar alcohol sales occurred through other retailers. He talked about his pre-hearing engagement with both Mr McMahon and Mr Smith (Principal of the local primary school). His attempts at engagement to address concerns held were not successful.

Cross-Examination of Mr Desai by Mr McMahon (Objector)

[18] Mr McMahon asked if Mr Desai wrote his own submission; the response was yes. Mr Desai works 40 hours per week as a Corrections Officer. He has held this role for over a year with the initial four months been spent in a training capacity. Mr Desai talked about the "rigorous training" and how it provided insight into the harm of alcohol. There was further questioning around the assertion of Mr Desai of "who would know better than a prison officer the impacts of alcohol". Mr Desai maintained this position and stated he had not pivoted off his experience as a public servant to assist his application for a licence.

[19] Mr McMahon sought an explanation for an email sent by Mr Desai, on 29 April 2021, seeking "forbearance of process" as he worked full time. Mr Desai stated this was due to the one day required for a response. He also explained that in addition to work as a Corrections Officer (40 hours per week) around 25 to 30 hours was spent at the business. Mr Desai said he is not afraid "of hard work". Mr McMahon asked Mr Desai questions about the minimum wage level, annual and sick leave entitlements which he answered all correctly.

[20] Mr McMahon questioned the work experience/skills of the Applicants, asking if the skills of a bar tender or casino operator are the same as those required to operate an off-licence premises. Mr Desai considered the skills relevant.

[21] The incident book, used at the business was entered as evidence. Mr Desai was asked about its use. He explained anything not happening in the normal course of business was entered into the incident book. Mr McMahon submitted the entries in the incident book were evidence of "alcohol related harm in Woolston". Discussion occurred around a proposed sale which was not concluded which was also observed during an on-site inspection by Ms Lavery. This incident was referenced in the Inspector's Report. Mr McMahon referred to another entry in the incident book, of a husband seeking the future non-sale of alcohol to his wife who was identified as an alcoholic. Mr McMahon asked questions around practice with particular reference to a breach of privacy, this view was not shared by the Applicant.

[22] Mr McMahon talked about his pre-hearing discussions with Mr Desai for the suggested removal of certain alcohol products from the premises. Mr Desai explained his right to sell such products which are deemed legal, and MPI would determine issues of product safety and legality. Mr McMahon reiterated (para 24 of his brief) the DLC can consider "willingness" of sales with respect to the application.

Cross-Examination of Mr Desai by Ms Lavery, (Inspector)

[23] Ms Lavery asked three questions of Mr Desai:

1. Do you or your wife have criminal convictions: Response – No.
2. Do persons employed by Corrections or Casino go through rigorous assessment: Response – Yes.
3. Have the agencies been in discussion around the process of obtaining a liquor licence: Response – Yes.

Committee's questions for Mr Desai

[24] The Committee asked questions around the previously referred to incident of a husband requesting no future alcohol sales to his wife (due to alcoholism). Mr Desai talked about his practice and identified no privacy matters. The Committee asked to sight the incident book, which was entered

as evidence. Mr Desai stated that all incident entries were made, by all staff members, in a timely manner. In response to a question, Mr Desai said if he made a decision to refuse a sale to a customer, he would endeavour to provide a reason.

[25] The Committee sought to pursue the suggestion raised by Mr McMahon, that certain products like some RTD's, Nitro (an energy-drink alcohol RTD which appeals to younger drinkers), and Honey Badger, and high strength beers such as Kingfisher not be sold. The Committee added single bottle sales of mainstream beers and RTDs to that list. It was suggested to Mr Desai that undertakings could be employed in this case. He agreed to consider this suggestion, but did not raise the matter again during the course of the hearing.

Mr Greg Hoar's Evidence: National Operations Manager Super Liquor

[26] Mr Hoar had previously circulated material, including a PowerPoint, on the role of Super Liquor and the support and guidance it provided to the Applicants. He went to some length to outline the nature and scope of Super Liquor operations, which has a relatively new leadership team in place. Mr Hoar spoke of the rigorous selection process for franchisees and how Super Liquor competed in areas beyond price competition. In response to questions, he stated specific employment matters rested with individual franchises, but good support and guidance was available from Lane Neave (Solicitors). Mr Hoar said Super Liquor does its best to adapt to the needs of deprived communities in which its franchisees operate and that the Applicants "want to do what they can".

Cross-Examination of Mr Hoar by Ms Lavery (Licensing Inspector)

[27] Mr Hoar affirmed the suitability of the Applicants.

Committee's questions for Mr Hoar

[28] Mr Hoar explained Super Liquor has no policy or practice around how to respond to a request to halt future alcohol sales to a specific individual, on request of another, and in the absence of consent. This question was asked as Mr Desai had asserted his response to such a situation as an example of suitability. Matters of both privacy and consent were of interest to the Committee.

[29] Mr Hoar responded that Lane Neave did not assist with renewals of licence; that role was conducted by Ignition Group. He explained that franchisees, such as Super Liquor Woolston, must stock core Super Liquor products (there are 450 of these) including spirits, RTD's, and wine. Mr Hoar

stressed that minimal exterior signage was attached to premises of franchisees and a pedestrian could not see inside from a distance.

The Objections – Mr McMahon

The Witnesses for Mr McMahon Did Not Appear

[30] The Committee acknowledges letters of support for Mr McMahon's objection were received from: Elaine Greaves, Electoral Support Office, Woolston; Eddie Haynes, Manager - Woolston Development Project, Woolston; Simon Payne, Pharmacy Operator, Woolston. The Committee gave their evidence what limited weight it could without them appearing at the hearing.

Mr Paul McMahon's Opening Submissions and Evidence

[31] Mr McMahon made a brief opening submission and then outlined his evidence objecting to the granting of a licence. He spoke of the impact of liquor stores on deprived areas. Mr McMahon talked about the Woolston area where he lives. He describes the area as "saturated in alcohol" and is also an area of socio-economic deprivation. He submitted Woolston "has a Māori population of 1599, which is 15% of the total". This was contrasted with an overall Māori population of Christchurch of 9.9%. Mr McMahon spoke of the harmful impacts of alcohol on Māori and Treaty of Waitangi obligations. Reference was made to the personal home of the Applicants, outside of the Woolston area, and his own experiences of living in Woolston including matters of crime, litter, and removal of street furniture. Mr McMahon reported on conversations with the local dairy owner, hairdresser, and community librarian, who all agreed there "is significant alcohol-related harm in the area."

[32] Mr McMahon submitted there was a need for heightened suitability with respect to the Applicants. He referred to Westlaw commentary that stated where a community or locality is vulnerable (high deprivation, high alcohol-related harm), establishing suitability is harder. As a consequence, Mr McMahon considers there is "an onus on the applicant to take certain steps. It also lays particular responsibilities on the agencies and the community and requires the decision-maker to view 'suitability' through an enhanced lens".

[33] Mr McMahon outlined Mr Desai's engagement with him prior to hearing. He considered it "adversarial". There was discussion around product suitability with no successful outcome. Mr McMahon stated Mr Desai appeared not to "understand the nature of alcohol-related harm and displays none of the awareness of vulnerabilities". Mr Desai was asked to not sell certain products, including Kingfisher (strong) beer, alcohol-mixed energy drinks. This suggestion was not adopted. Mr

McMahon submitted the DLC needs to consider this response when assessing suitability of the Applicants in operating premises in a vulnerable area; he referred the DLC to the case of *Two Brothers Wholesale Limited* [2021] NZARLA 32.

[34] Questioning occurred around the issue of Mr Desai's employment as a Corrections Officer and his held view that provided him with a good understanding the impact of alcohol harm. Mr McMahon did not agree such an understanding could be had with a short time in that role.

[35] Mr McMahon talked about Super Liquor operating at the lower end of the retail market. Mr Desai had told him he purchased the premises as it was "on the way to Sumner". Mr McMahon explained Christchurch had seen recent applications (Redcliffs, Hornby and Ferry Road Liquor land), to operate off-licences in lower socio-economic areas, with the target market being further afield. He stated, "this is not acceptable".

[36] Mr McMahon talked of employment law breaches made by the former operator of the premises. He suggested this poor record is in conflict with the "rosy picture" portrayed by Mr Hoar (Super Liquor) as to good practice and meeting legal requirements.

[37] Mr McMahon submitted, current case law shows where "high deprivation and enhanced alcohol-related harm" exist a high bar for suitability is required. Any applicant "must demonstrate a good understanding of the local community, clear plans to mitigate alcohol harm and contact with both the community and the agencies to achieve suitability".

[38] Mr McMahon talked about the non-opposition by reporting agencies. He considers this disappointing and has an interest in learning why this application was not "worthy of attention".

[39] Mr McMahon contends a "higher bar is not met by this application". He took the opportunity to remind the Committee, no onus exists to grant a licence where one has previously existed, "every licence is a new licence" – referring the Committee to the case of *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123 (18 May 2018) at [68].

[40] Mr McMahon concluded, "the applicant has not demonstrated the enhanced suitability needed in a vulnerable area". He submits "there is already significant harm in the community", and the Applicant "has demonstrated little understanding of this nor of how to mitigate it".

Committee's questions for Mr McMahon

[41] Mr McMahon was asked about his process of questioning people in the Woolston community around this matter he has reported on. He explained a systematic approach was adopted.

[42] Mr McMahon was asked how Mr Desai has breached public service standards/code of conduct with his application. Mr McMahon considered Mr Desai had pivoted or leveraged off his Corrections work to advance his application: "who would know better than a prison officer – the impacts of alcohol".

[43] Mr McMahon was asked after listening to direct evidence from Mr Desai if he had changed or softened his opposition. No change in position was reported.

[44] Mr McMahon was asked about his employer, and explained his work was part of a public health initiative, funded by the Ministry of Health. This work is undertaken in predominantly Māori communities. St John of God Hauora Trust run the project to deliver the service of which he is employed. The Committee reminded Mr McMahon if a licence is issued it will be for a period of 12 months and then will come up for renewal.

Cross-Examination of Mr McMahon by Applicant (Mr Desai)

[45] Mr McMahon was questioned about his level of engagement with the Applicant prior to hearing around matters of suitability. He reaffirmed his position about the harm of alcohol and the need to operate a business differently in a deprived community. Mr McMahon stated that the Applicants needed to show "enhanced suitability". He was asked about his focus on alcohol related litter and not fast-food packaging, also the focus on off-licences and not supermarkets. Mr McMahon restated his position on the need to reduce alcohol related harm.

Cross-Examination of Mr McMahon by Licensing Inspector

[46] Mr McMahon was questioned on the status of his objection; was it in a personal capacity or as an employee of Community Action on Youth and Drugs. He explained it was a personal objection with his employer being fully aware.

[47] Ms Lavery asked questions as to the use of extracts and cases relied upon by Mr McMahon as part of his brief. She asserted the cases presented were not relevant to the current licence application and were decided on different reasoning and circumstances. An exchange followed that reflected Ms

Lavery's and Mr McMahon's differences in their submissions (these matters were specifically covered also in the closing submissions provided by Ms Lavery).

[48] Mr McMahon expressed frustration at the approach of the agencies. It had not been clear to him that the application had received scrutiny proportionate to the vulnerability of the Woolston community, and Mr Lavery challenged Mr McMahon on this.

[49] In response to questioning aimed at clarifying Mr McMahon's objection, he explained how the reported use of the incident book raised concerns about suitability in his view relating to the requirements of the Privacy Act. He was also asked wider questions about the role Super Liquor has in minimising harm in the community. A discussion ensued in which Mr McMahon indicated that creating appropriate barriers to alcohol harm in vulnerable communities is relevant such as a possible price by volume approach and/or a prohibition on single sales or certain products attractive to young people, such as 'Nitro'. Ms Lavery also made comment on the non-appearance of Mr McMahon's witnesses.

Closing Submissions

Applicant's Closing Submissions (Mr Desai)

[50] Mr Desai explained a case had been made which "demonstrated we are both responsible people", with experience, good retail experience, and no issues with any agency. He said both he and his wife both exceeded what the law stipulates and are well supported by Super Liquor, and Lane Neave. Further, Mr Desai noted that Police, MOH, and the Inspectorate have no opposition to their application. The incident book was cited as an example of a mechanism for the reduction of alcohol harm.

Licensing Inspector's Closing Submissions - Ms Lavery

[51] Ms Lavery restated the Inspector's role in assisting the DLC to form an opinion with the assistance of facts and reports. In this matter the only permitted ground of objection is applicant suitability, where premises are changing hands.

[52] Ms Lavery explained that Police, MOH, and the Inspectorate have no objection in this matter. She went to some length to address the matter of suitability. An enhanced requirement may exist for a new outlet in a vulnerable community; "this is not the case here". Ms Lavery was clear, the current

situation involves a change of ownership of an existing premise therefore no enhanced requirement exists.

[53] Ms Lavery acknowledged a requirement for a closer look at suitability where a new establishment or premise is planned where an increase in alcohol harm could result in the community. It was asserted by Ms Lavery a change in ownership, of an existing outlet, would see little or no change in the level of alcohol harm. Comment was made on the ARLA decision *Two Brothers Ltd* [2021] NZARLA 32 (para 24 of Mr McMahon's brief). Ms Lavery explained in this case the reason to decline the licence was not on products being sold but lack of suitability due to breaches of employment law. Reference was also made to the *Nischay* decision,¹ asserted by Mr McMahon (para 30 of brief). It was stated that case was in relation to new premises. It was also argued by Ms Lavery that similar misunderstandings were "apparent" with "respect to the three Christchurch based applications" raised by Mr McMahon (para 30 of brief).

[54] Ms Lavery explained Mr Desai "provided an overall picture of his previous experience in hospitality and along with his wife, who has previous experience in the hospitality industry, intend to operate their new business to the best of their ability". It was also submitted; the Applicants provided the incident book which is evidence of sensible decision-making to prevent harm in the community.

[55] Ms Lavery talked about the difference between the harmful effects of alcohol consumption in a tavern context, where alcohol consumption occurs to closure, compared to a bottle store. It was noted this differentiation is reflected in case law: *Rapira-Davies v Patel* [2017] NZARLA 52 (2 March 2017) and *Foodstuffs South Island Ltd v Dunedin City Council* [2017] NZARLA 21 (2 February 2017).

[56] Ms Lavery referred to Mr McMahon's usage of the *Lion Liquor* ARLA decision (para 40 of brief). This case refers to the need of the Committee to set a high bar and adopt a precautionary approach. It was explained significant evidence was provided in that case of alcohol harm in a particular area. Such evidence was not provided in the current matter.

[57] Ms Lavery, concluded by explaining a licence is issued for a 12-month period. When the licence is renewed an opportunity exists, if evidence emerges, for the DLC to reject a renewal of application.

¹ *Re Nishchay's Enterprises Ltd* [2013] NZARLA 837.

Objector, Mr Paul McMahon's Closing Submissions

[58] Mr McMahon talked about case law; every application is a new one. He restated his view on the deprivation present in Woolston and the lack of area knowledge by the Applicants. He stated the Applicants are working under a Temporary Authority, with no experience, debt, alternate employment commitments, and do not meet the "enhanced levels of suitability in areas of deprivation".

[59] Mr McMahon explained an understanding of the Act and being a Corrections Officer are not enough to meet the standard required. The example was furnished again of a husband's request to deny further alcohol sales to his alcoholic wife. Mr McMahon cites this example as a lack of suitability. The example was initially raised by the Applicants to affirm good practice and suitability. Mr McMahon contends the example reflects a lack of experience, with no consent provided, and potentially breaches of both the Privacy Act and Bill of Rights.

[60] Mr McMahon talked about the lack of willingness by Mr Desai to consider restrictions on specific alcohol products. He also reported during a break in the hearing process that he witnessed the Inspectors "coaching the Applicants".

[61] Mr McMahon concludes the Committee cannot ignore case law. The Applicants do not have the "skills to mitigate the harm", and they have not satisfied this requirement.

Applicant – Response (Mr Desai)

[62] Mr Desai stated no concrete proof exists that "we are not suitable, or any non-compliance with the law".

Relevant Legal Considerations

[63] At the start of the hearing the parties agreed that the issue to be discussed and determined by the Committee is covered by section 102(4) and (4A).

Section 102 reads as follows:

102 Objections to applications

- (1) A person may object to the grant of a licence only if he or she has a greater interest in the application [for the licence] than the public generally.

- (2) An objection must be in writing and filed with the licensing committee within 15 working days after the first publication of the public notice of the making of the application.
- (3) No objection may be made in relation to a matter other than a matter specified in section 105.
- (4) This subsection applies to an application—
 - (a) for a licence for premises that is of the same kind as the licence currently in force for those premises; and
 - (b) in which the conditions sought are the same as apply to that licence.
- (4A) In the case of an application to which subsection (4) applies, the ground for an objection may not relate to any matter other than the suitability of the applicant.
- (5) The secretary of the licensing committee concerned must give a copy of every objection to the applicant.

[64] Section 105(1)(b) sets out suitability of the applicant as one of the criteria for the issue of licences.

[65] In discussing the meaning of “suitability”, Holland J said in *Re Sheard* [1996] 1 NZLR 751, [1996] NZAR 61 (HC) at 755:

Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in The Concise Oxford dictionary as ‘well fitted for the purpose, appropriate’. I do not find it helpful to refer to other decisions on different facts as to the meaning of that word. Where a statute uses an unambiguous and well understood word or expression and chooses (sic) not to enlarge on the ordinary definition of the word or expression by a special interpretation in the statute it is usually unwise for a Court to add to the ordinary meaning of the word as a general guide for all cases, as distinct from applying the word to the particular facts before it.

[66] The Authority has considered the issue and held that: “The meaning of ‘suitability’ has not changed as a result of the enactment of the Sale and Supply of Alcohol Act 2012”: *Re Karambayev Ltd* [2013] NZARLA 1214 at [17].

Discussion

[67] We proceed to evaluate the evidence to determine if the Applicants meet the ‘suitability test’.

[68] Our attention has been drawn to the decision of the then Liquor Licensing Authority in *British Isles Inn Ltd* NZLLA PH 406/2006 where the Authority stated:

Although the onus is on the company to establish its suitability, there is a reasonably high threshold to be met by the objectors in order to displace the absence of concerns by the reporting agencies. We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an applicant is unsuitable.

[65] The Applicants (Mr and Mrs Desai, through their company, Desai Investments Limited) purchased an existing business from Nekita Enterprises Limited and have been operating on a Temporary Authority with an authorised commencement date of January 11, 2021. A further Temporary Authority was issued to commence on April 11, 2021. The business has been operating since 2014 when it was separated from Woolston Tavern.

[69] The application is not opposed by the Licensing Inspector, the New Zealand Police, or the Medical Officer of Health.

[70] Since the filing of this application both Mr and Mrs Desai have obtained manager's certificates.

[71] Mr Desai detailed the previous experience of both he and Mrs Desai. The Committee was impressed with Mr Desai and he presented his case very well at the hearing. He noted that they had been operating under a Temporary Authority for several months with no issues. He detailed their previous experience dealing with people in a service station environment where they owned the operating business. He detailed his current work as a Corrections Officer and Mrs Desai's previous experience at the Casino. Mr Desai said they were both highly regulated environments with requirements similar to those under the Sale and Supply of Alcohol Act.

[72] Mr Desai stated that his wife is operating the business on a day-to-day basis with the assistance of staff members and that he is working at the store for around 20 - 30 hours per week.

[73] An incident book was produced at the hearing and this raised some concerns from Mr McMahon and the Committee. One of the entries related to a person who asked them not to sell alcohol to their spouse as they were indicated to be an alcoholic. Mr Desai confirmed that they would not sell to this person indicated to be an alcoholic.

[74] While the Committee considered Mr McMahon's argument that this reflected that the applicant is not suitable as having disregard for the person's legal rights, particularly in regard to their privacy, it was clear from the exchanges at the hearing with Mr Desai, Mr Hoar and Ms Lavery that it would not be reasonable for this to reflect on applicant suitability. The exchanges with Mr Hoar and Ms

Lavery indicated it was not a situation in which there is known in the industry to be a single, clear right course of action, and Mr Desai's evidence clearly indicated that he had intended to be responsible and diligent in his course of action.

[75] The Committee similarly considered Mr McMahon's argument that Mr Desai pivoting off his position as a Corrections Officer reflected a lack of suitability as an improper connection and form of pivoting, but also found this unreasonable after hearing from Mr Desai and judging that he was sincere, credible and transparent in the matter, which in fact, together with the background of Mrs Desai, did persuade the Committee that the Applicants are well suited to operating a bottle store in the area.

[76] The evidence of Mr Hoar was very helpful to the Committee as he outlined the systems within Super Liquor and also the regular audits they undertake with each licensee.

[77] Mr McMahon raised concerns of suitability due to the vulnerability of the area, indicating this raises the bar for licensees – that it requires enhanced suitability. We accept that the deprivation level of the locality is high and any liquor outlet in the area would need to be very well run to meet the requirements of the objects of the Act.

[78] As we said above we were impressed with Mr Desai as a person of integrity and we also believe he had a good working knowledge of the Act. We think his skills in dealing with people are ideal for a person running an off-licence in a vulnerable area. Both Mr and Mrs Desai have gained considerable experience in the four plus months they have been operating on a Temporary Authority and we believe they have the skills to run an off-licence.

[79] We understand that prior to Mr and Mrs Desai purchasing the business it was operated by employee managers being part of a large group of stores with similar owners. With Mr and Mrs Desai being owner operators we believe they have the opportunity to become part of the Woolston community which should further enhance their ability to run the business to a high level.

[80] Mr McMahon's advocacy for his community was well received by the Committee, though the restriction imposed by section 102(4A) of the Act clearly orientated that advocacy to focus on the suitability of the applicant. The Committee is satisfied with the Applicants' suitability to operate in Mr McMahon's community regardless of whether the bar is raised as he suggests, or whether the

Inspector's submissions distinguishing the present circumstances from those in the cases Mr McMahon cited denied his argument to any extent.

[81] The Applicants merit the opportunity to become part of the Woolston community; they would do well in that respect to understand Mr McMahon's concerns for the Woolston community and move in concert to address its vulnerability. It is understandable, with the orientation of the Act toward a focus on suitability in this situation, that an adversarial contest ensued, but it is not what should be fostered going forward; Mr McMahon was entitled to have his objection heard. Mr McMahon and the Committee offered opportunities for the Applicants to consider voluntarily limiting some sales to address the vulnerabilities of the Woolston community. The Committee may not have considered the Applicants' suitability undermined by not committing to such attempts to minimise alcohol harm, but the Applicants should continuously reflect on the responsibility on them in operating an off-licence in the Woolston community.

[82] After considering all the evidence presented we find the Applicants meet the suitability test (as set out in section 105 1(b)) to enable them to be given a licence to operate their business at 608 Ferry Road, Christchurch. The Committee more broadly is satisfied after standing back and evaluating all the matters placed before us, and having had regard to the criteria as set out in sections 102 and 105 (and informed by section 106) of the Act, that granting the application subject to conditions achieves the purpose and objects of the Act. The licence will be issued for twelve months (often referred to as the probationary period), and at the renewal the Applicants' performance in running the off-licence can be further assessed.

Decision

[83] Accordingly, pursuant to section 104(1) of the Act we grant the application for an off-licence for a period of one year, subject to the following conditions:

The Licensed Premises

- (a) The premises are identified on the plan provided with the application for a licence.²

² As attached to the application.

Section 116(1) Discretionary Conditions

- (b) The following steps must be taken to ensure that the provisions of the Act relating to the sale and supply 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.
- (c) The following steps must be taken to ensure 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 within the area marked on the plan submitted with the application.

Section 116(2) Compulsory Conditions

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

Section 117 – Other discretionary conditions

- (g) The following steps must be taken to promote the responsible consumption of alcohol:
- The licensee must implement and maintain the steps proposed in their host responsibility policy aimed at promoting the reasonable consumption of alcohol.

Section 119 – Restricted or supervised areas (other)

- (h) The whole of the premises is designated as a supervised area.

Other restrictions and requirements to be noted on the licence

s56 Display of signs.

s57 Display of licence.

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

[84] The licence shall be issued for one year.

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

DATED at Christchurch this 31st day of May 2021



D.L.Blackwell, QSM.

Chairperson

Christchurch District Licensing Committee