

Decision Number: 60F [2021] 8102

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

AND

IN THE MATTER OF an application by **BOTTLE O HALSWELL LIMITED** for renewal and variation of off-licence in respect of premises situated at **5/29 Ensign Street, Christchurch** to be known as '**Bottle O Halswell**'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 16 July 2021 (at Christchurch)

Committee

Chairperson: Mrs M S Redstone, JP

Members: Mr D Ivory
Mr G Clapp, JP

Appearances: Mrs Wendy Gibbons on behalf of the Applicant
Mr Marc Gibbons, Director of the Applicant
Mr Geoff and Mrs Lynda Siave - Objector
Ms Kerry Johnson - Objector
Dr David Hawke and Mr John Bennett, Halswell Residents Association - Objector
Ms Anneke Lavery, Licensing Inspector, to assist
Sergeant Dave Robertson, New Zealand Police, to assist
Mr M Mora, Community Board Delegate (leave to appear under s 204(2)(b))

Decision: 23 July 2021

RESERVED DECISION OF THE COMMITTEE

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Introduction

[1] This is an application by Bottle O Halswell Limited (the Applicant) for renewal and variation of an Off-Licence,¹ The premises is situated at 5/29 Ensign Street, Christchurch, and is known as 'Bottle O Halswell'.

[2] The Applicant seeks to vary the opening hours for the premises. The hours approved in the Decision of the District Licensing Committee issued on 17 December 2018,² ('the original decision') were:

- (i) Sunday to Thursday, between the hours of 9:00am and 9:00pm.
- (ii) Friday and Saturday, between the hours of 9:00am and 10:00pm.

The Applicant now seeks to vary those hours as follows:

Monday to Sunday, between the hours of 9:00am and 11:00pm.

These hours are consistent with the default maximum trading hours for Off-Licences.³

[3] The Applicant further seeks to have removed Discretionary Conditions (h) and (i) in the original decision:

- (h) There shall be no advertising of alcohol attached to the exterior of, or visible from outside, the premises.
- (i) No flags or sandwich boards shall be used to advertise the premises or goods for sale.

¹ 60/OFF/103/2019.

² Decision 60D [2018] 3405.

³ Section 43 of the Act.

[4] The original decision was confirmed by the Alcohol Regulatory and Licensing Authority (ARLA) on Appeal.⁴

[5] The renewal application was publicly notified on the Council's website on 23 October 2020 and remained on the website for a minimum period of 15 working days. The public notice was displayed on the front of the premises where it could clearly be seen. A total of four public objections were received.

[6] The renewal application was not opposed by the District Licensing Inspector,⁵ the New Zealand Police or the Medical Officer of Health (MOH).

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

[8] A hearing of the application took place on 16 July 2021. We received submissions from Licensing Inspector Anneke Lavery, and Police Sergeant Dave Robertson together with a report from the MOH concluding that the MOH had no information that would necessitate opposition. We heard evidence and submissions on behalf of the Applicant (Mrs Wendy Gibbons). We heard evidence and submissions from the above-listed Objectors. We heard a submission from Mr M Mora (Community Board Delegate).

Submissions and Evidence

[9] Mrs Gibbons gave a brief opening statement supporting the application. She noted that none of the agencies opposed the application. Licensing Inspector Anneke Lavery and Sergeant Robertson also gave brief opening statements.

Mrs Wendy Gibbons

[10] Mrs Gibbons on behalf of the Applicant sought a renewal of the Off-Licence together with a variation to trading hours. She said such an extension would bring them in line with other outlets in the area and put them on a level playing field. Currently both the New World Supermarket and Super Liquor hold licences to operate between the hours of 7:00am and 11:00pm every day of the week, giving them discretion over their opening hours, particularly at significant times such as Christmas, New Year and Easter. The applicant seeks trading hours from 9:00am to 11:00pm every day of the week to give them

⁴ Bottle O Halswell Limited (2019) NZARLA 168.

⁵ Inspector's report 11/05/2021.

the flexibility to open until 11:00pm at significant times. She said there was no intention to remain open until 11:00pm at times and on days when those hours were not warranted.

[11] The Applicant further sought the removal of Conditions (h) and (i) contained in the original decision disallowing advertising on the outside of the premises and the use of flags or sandwich boards. The businesses in the complex are largely invisible from Ensign Street and the Applicant would like a flag inscribed "Bottle O Halswell" to be placed at the entrance to the complex in line with similar advertising by other businesses contained within the complex.

[12] Mrs Gibbons outlined the Gibbons Family history with various On- and Off-Licences over a period of 13 years. Her son, Marc Gibbons, manages the Halswell Bottle O on a day to day basis. The family also own the Long Knight Eatery, Bar and Bottle Shoppe in Halswell. Due to Covid delays the Halswell Bottle O did not open until 25 June 2020 although it had held the Off-Licence since 18 December 2019.

[13] Mrs Gibbons outlined the operation of the business since its opening in what was a newly developing shopping complex in Ensign Street which includes a Restaurant & Bar, several Takeaway businesses, a Dairy, Pharmacy and other non-shopping related businesses.

[14] She outlined staff training to ensure all staff were aware of their obligations and responsibilities under the Sale and Supply of Alcohol Act. She said her family and staff had some 86 years' experience between them in the industry and had a strong ethic that alcohol was something to be enjoyed socially by responsible adults and the role of the business was to ensure that any of the negative effects of alcohol are minimised to the maximum extent possible. She outlined interaction with the Community in terms of sponsorship support.

[15] In support of the variations sought Mrs Gibbons relied on the applicant's excellent record of running the business since opening, the fact there had been no complaints, and the result of a survey undertaken in and around the site of the premises which, while limited to a snapshot of 308 people, showed support of an increase in hours by the general public in the area.⁶

⁶ Mrs Gibbons tore off the top of the survey sheet and produced this into the evidence at the hearing (Exhibit WLG5).

[16] She also gave evidence of being approached by Mr Andrei Moore whom she thought was a Community Board member, saying he did not agree with the Board's stance in objecting to the renewal application. She said she found this approach refreshing and answered questions he had about the business. She also, through Mr Moore, extended an invitation to the Community Board to meet with her to discuss any issues they may have.

[17] Cross-examination by Objectors centred on increased traffic and noise in the area late at night and rubbish, including empty and partially empty alcohol containers, in the area surrounding the complex. Mrs Gibbons said that increased traffic was a natural progression of businesses opening in the complex, particularly the restaurants and takeaways, all of which were open for longer hours than those operated by the Applicant. She suggested the Community Board investigate seeking a lowering of the speed limit in the area in line with similar restrictions near complexes in surrounding neighbourhoods.

[18] Mrs Gibbons was referred to photos produced by an Objector showing alcohol cans and bottles found in the area. She said the dates on the photos showed them as having been taken prior to the Applicant opening. She felt that alcohol containers found may not necessarily have a nexus to the Applicant's premises and said the Applicant's staff do check the surrounding area for rubbish each day. She expressed a willingness to meet with anyone who wished to discuss perceived problems and assist in alleviating issues as and when they may arise.

[19] Mrs Gibbons was questioned by the Committee on whether an Incident Book was kept. She confirmed that it was and that the business in fact had the best CCTV cameras in the area and had been in a position to be helpful on occasions to other businesses.

Ms Kerry Johnson

[20] Ms Johnson read her submission. She had objected to the original application and objected to the renewal. Her concerns related to the close proximity of the premises to the Lighthouse Preschool and the Oaklands School, mainly because of rubbish found and some anti-social behaviour. Although she did not give evidence of any specific anti-social behaviour she felt this would increase with an increase in trading hours which may cause disturbances in the neighbourhood late at night.

[21] Ms Johnson further objected to any signage positioned on the footpath outside the complex. She said there is limited space now for pedestrians to walk and the present

signs posed difficulty for pedestrians, particularly those with prams, young children and dogs.

[22] In cross-examination she agreed that alcohol containers found in the area could not be directly attributed to the Applicant's premises.

Mr Geoff & Mrs Lynda Siave

[23] Mr and Mrs Siave's objection related to the increase in hours, including increased traffic noise, together with a concern about alcohol containers found in the area, some still containing alcohol. They pointed to the original decision confirmed by ARLA on appeal, restricting the hours. They believed the applicant agreed to those shorter hours for the purpose of obtaining a Licence and it was "duplicitous" to now seek to have them extended. They compared the number of Halswell On- and Off-Licences in relation to other areas of Christchurch City where they believed there were fewer Licences.

[24] Mr & Mrs Siave, who live across the road from the complex were concerned about the increase in traffic and the speed of traffic in an area where there was high pedestrian use.

[25] In cross-examination they agreed that the increase in traffic did not solely relate to the Applicant's business. They held to their concerns, particularly in relation to discarded alcohol containers that could be found by children on their way to school. When pressed, they agreed these containers did not necessarily originate from the Applicant's business and could well have come from Super Liquor which is located only 750m away and is well within walking distance.

Dr David Hawke & Mr John Bennett on behalf of the Halswell Residents' Association

[26] Dr Hawke, on behalf of the Residents Association objected to the renewal of the licence and, in the alternative, objected to the extension in hours and any advertising which he said ran counter to the original decision.

[27] The Association's written submissions included lengthy criticism of the process in relation to licensing which Dr Hawke said made objecting difficult. Following his evidence it was pointed out to him that this hearing was not the forum at which such criticisms should be raised. Sgt Robertson also responded to some concerns in relation to licensing in order

to assist the community in understanding the process and these are referred to more fully in the Sergeant's final submissions.

[28] Dr Hawke pointed out the original decision restricted the hours of sale as part of its risk mitigation. He said this was consistent with the research evidence which he had made available to the DLC. His research showed that, in general, there were increased injuries following licence relaxations. He pointed to two recent robbery attempts of premises approximately 400m from the Applicant's premises. We note Sgt Robertson was able to assist the Committee by providing information about these attempted robberies and noted they were not related to alcohol and neither were they targeting alcohol. Dr Hawke also noted a broken bottle found at the entry to the Halswell Domain and general littering which raised concerns for children using the Domain.

[29] The Association was critical of the Agencies in that it was felt their reports tended to support the Applicant and Dr Hawke questioned whether sufficient inquiries were made within the community by the Agencies to support their findings and views.

[30] Dr Hawke further pointed to the Christchurch Alcohol Action Plan (CAAP) which he said had been developed in response to community concern about alcohol-related harm. He said, further, that ARLA had referred to the potential validity of the CAAP to DLC decision-making in their decision of the Appeal against granting of a licence to Bottle O Halswell.⁷ He felt restricting the hours on renewal was consistent with the CAAP which sets out at p.23:

“Supply control strategies aim to reduce the availability of alcohol. This includes supporting approaches that control and manage supply of alcohol such as ... licensing conditions and permitted trading hours ...”

Dr Hawke noted the words of Clark J in the High Court decision, *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*:

“The Act does not countenance the continuation of high levels of alcohol-related harm. The Act requires minimisation of the alcohol-related harm.”⁸

Dr Hawke said in this regard the High Court and the CAAP are in complete accord.

[31] In cross-examination Dr Hawke was asked what evidence there was of problems with the subject premises in particular. In response he referred back to the research

⁷ *Bottle O Halswell Limited* (2019) NZARLA 168.

⁸ [2018] NZHC 1123 at [68].

papers. He was asked if he was aware of the closing times of other businesses within the complex, in particular the restaurant and takeaways. He responded that whilst he may not be aware of all of them, they did not want another business opening later with the consequential rise in numbers of cars and noise. He conceded that he could not link the broken bottle directly with the Applicant's business. He further conceded that a lot of the rubbish was more likely linked to take-away premises in the area.

[32] It became apparent that Dr Hawke was confused as to when he should address questions to the Applicant, which he was now doing by making submissions on Mrs Gibbons' evidence that he had not raised in cross-examination. Mrs Gibbons agreed to be recalled to answer further questions.

Further Cross-Examination of Mrs Gibbons by Dr Hawke on behalf of the Halswell Residents Association

[33] Dr Hawke questioned Mr Moore's approach to Mrs Gibbons and asked if she had suggested any other ways that he may have obtained information. She said she had not as he had approached her directly to engage about the history of the business in relation to the community. In answer to a question she said she had not advised him to put in an objection because he said he did not support the Association's objection. She felt those questions would need to be put to Mr Moore.

[34] Dr Hawke asked about the Community Ward profile Mrs Gibbons has submitted with her Brief of Evidence and asked what relevance that had, given the spread of the Halswell area and how it related to the area in the vicinity of the Applicant's business. Mrs Gibbons responded that it was in response to the level of deprivation that was perceived in the Halswell area. She said the Ministry of Health produced this document at the original hearing and it showed the level of deprivation was 0% in the Halswell area. Dr Hawke further asked whether Mrs Gibbons felt that profile fitted the smaller area in which the premises were situated. She responded she could only go by the information available on the Council's website.

[35] Dr Hawke referred to the evidence of the Baptist Church Minister, Mr Nick Regnault, given to the original hearing that this was a middle-class neighbourhood with a strong community supporting vulnerable people and asked how Mrs Gibbons felt about that statement. She responded that she was unable to comment as the Church may come in contact with people that she does not come in contact with. In response to how she saw the Oaklands area being the locality of the area in which the business is situated, Mrs

Gibbons said it was an older, well-established area that was now well-supported by the new complex.

[36] He questioned Mrs Gibbons about the actual hours of trade of New World Halswell and Super Liquor. She responded that she knew the hours of their licences, she was aware that they did not open for all of those hours on a regular basis but at Christmas and other holidays they extended their regular hours in the same way that Bottle O Halswell hoped to do if granted the extension sought. Dr Hawke put to her that she could simply apply for extensions for those holiday periods but Mrs Gibbons responded that they could not do that under the Act. She reiterated she just wanted the flexibility to serve the community in line with the other Off-Licences in the area.

[37] In response to a question Mrs Gibbons agreed the process was difficult but felt it was equally difficult for both the Applicant and Objectors. She agreed with the contention that once a licence has been granted it is difficult to have that overturned but said she thought there must be grounds for having a licence overturned on renewal. She felt their business had shown they were established operators who also had the community at heart. She agreed there was alcohol harm in New Zealand and appreciated Dr Hawke's research but pointed out that the law allowed for the sale of alcohol in a responsible manner and the manner in which the Applicant's business was conducted reflected that they adhered to those responsibilities.

[38] In response to a question from Sgt Robertson, Mrs Gibbons agreed that their trading hours would not increase on a regular basis. She agreed the focus was on, for example, the Thursday before Easter, Christmas etc. She said they would operate every Thursday, Friday and Saturday until 11:00pm but that would depend on the demand being there and those hours being viable. She agreed the business was profitable and the extension of hours would make it more profitable.

Further Evidence and Submissions of Dr Hawke on behalf of the Residents Association

[39] Dr Hawke summarised that there were three areas the Association wanted to raise in support of their objection. The first objection was that the variation sought to the hours ran counter to the original decision. He submitted the Conditions contained in the original decision were all part of a package and should not be re-addressed by this hearing. There is nothing about the locality that has changed. Secondly, the Applicant was happy with the absence of advertising and again objected to the Applicant wishing to change that.

[40] The second objection is that the proposed changes run counter to the research evidence on the effects of operating hours of alcohol outlets on amenity and good order and that the original decision had addressed that.

[41] The third objection was that extending the trading hours run counter to the CAAP.

[42] The Committee acknowledges the work of Dr Hawke in preparing the Halswell Residents Association submission and the exhibits attached showing research to which he referred and on which he relied to support the Association's objection. The research papers were informative citing research data relating to the harm caused by alcohol in the community and while having no nexus to the premises directly they were helpful in a general sense.

Submissions of Mr Mora on behalf of the Waipuna/Halswell-Hornby-Riccarton Community Board

[43] Mr Mora made it clear that the Community Board only supported objectors in opposing applications if the Community Board considered this was appropriate. They do not appear on every application. The Board wanted to be proactive rather than reactive and he felt the CAAP supported that view and the Board used it as a tool in these circumstances.

[44] Mr Mora summarised the Board's concerns which were mostly around amenity and good order and risks that may be related to extended hours if the variation was approved. He noted that the Applicant had said the extended hours were sought for flexibility and that 11:00pm closing would be rare. He was concerned that "rarely" would become "regularly". He emphasised the cautious approach taken in the original decision in reducing the hours of trade as one of the conditions.

[45] Mr Mora noted that the complex is in the centre of a residential area that includes a church, medical centre and school, as well as houses in close proximity. He said the Board submits that the concern previously expressed is unchanged and therefore it is inappropriate to grant the operating hours extension sought.

Closing submissions

Closing Submissions of the Objectors

[46] The objectors each reiterated their concerns as to what may happen if the variations sought were granted. Mrs Siave summed up that they believed the Applicant was working hard in the community, the hours were working for the community as they were now and there was no reason to change.

[47] The Halswell Residents Association thanked the Committee for coming to the local area by holding the hearing in Halswell. He further thanked the Committee for fostering an inclusive atmosphere which had assisted all those attending the hearing, which had not always been the case in the past. He supported the other objectors in not wishing the hours to be extended and went further submitting that the licence should not be renewed.

Closing Submissions Sergeant Robertson

[48] Sergeant Robertson said hopefully during the course of the hearing he had provided answers to questions the Community may have had of the Police. He said there was clearly strong feeling in this community, as in all communities of Christchurch, around the ready availability of alcohol. He said unfortunately in the absence of a Local Alcohol Policy in Christchurch simple proliferation is not a consideration for the Committee, and therefore for Police. He said without a clear legislative pathway restricting the number of premises or the hours that premises can trade, there is no effective grounds to oppose. The Act requires the Committee to turn their minds to the criteria set out in section 105 so that is the approach the Agencies take. In the absence of strong grounds to oppose under section 105 they do not oppose but appear to assist. He acknowledged the frustration in the community in that communities often feel that by not opposing applications the Agencies are letting them down; but that is not the case; "we are just very much bound by the law and the criteria set out in section 105 are the only grounds on which they can identify issues".

[49] He further said that the Police do recognise their responsibility to engage with the community and to listen to community concerns. He said in a case such as this the Police look at what impact the issuing of the licence has had on the community in the 12 months since the Licence was issued. He said that looking at calls for service data - that is calls to the Police from within 500m of the premises - to see if they have increased within the last 12 months and he could advise that they have not. They have been consistent

over the last three years. He said looking at that from an objective point of view, it is not apparent that the existence of Bottle O Halswell, over the last 12 months since the licence was first issued, is having an impact on the community so far as the Police can measure. He said that does not mean that there are not concerns in the community who are seeing day to day issues that do not of themselves constitute a criminal offence but impacts on the amenity and good order of the community.

[50] He supported the community in appearing again today to put their concerns before the Committee. He said the original application had reflected the concerns of the community and had restricted the operating hours as a result. That was appealed to the Authority who reconsidered the matter. A strong thread of the Authority decision was that it was the Committee who heard the concerns of the community and as a result had imposed reasonably restrictive trading hours. The Authority therefore found the decision was justified and declined the appeal. He submitted that a year later you have a Licensee who is quite clearly operating within the law, is a suitable person to be operating a Licence but at the same time is a business wanting to make money and therefore wants to extend the hours. He could understand that wanting an extension now flies in the face of a community that not only wanted restricted hours but in fact opposed the licence in its entirety in the first place. He submitted that is a matter for the DLC to consider taking on board the conditions of the original decision together with the evidence received today.

Closing Submissions of Licensing Inspector

[51] Ms Lavery restated the Inspector's role in assisting the DLC to form an opinion with the assistance of facts and reports. She referred the Committee to the Object of the Act and the requirements imposed by section 105.

[52] Ms Lavery submitted that the definition of alcohol-related harm, as provided in section 5(1) of the Act made it clear that the object was minimising harm from the 'excessive and inappropriate' consumption of alcohol, not all consumption of alcohol. She referred to case law that supported the Committee giving greater weight to the absence of opposition from Police and MOH over the hypothetical concerns of the objectors in relation to the renewal and the variations sought.

[53] The Inspector submitted that objections must be specific showing a link between the premises and alcohol related harm in the community. She referred to the decision in *AKOS - NZARLA 320/321/2015* at paras 24 and 29:

(24) "... rather the research that was produced shows only a general relationship and there was nothing specific to this locality"

(29) "As to the evidence of objectors in regard to existing alcohol-related harm, it noted that, whilst no doubt well-intentioned, it was general and non-specific and that there was no evidence linking this premises to the possibility of increased alcohol-related harm in the Community."

[54] She also referred to sections 105 and 106 of the Act and noted that the Agencies had not raised any matters in relation to those sections.

[55] She submitted that no relevant objections had been received to the variations sought, that the default hours for trading in New Zealand are 7:00am to 11:00pm, that the Applicant had indicated they do not wish to stay open until 11:00pm every night of the week but that the hours were sought to allow for flexibility in operating their business. Her inquiries, and the lack of any directly-related objection, led her to believe that having operated for a year with no concerns raised the variation of the hours should be granted.

Closing Submissions of the Applicant

[56] Mrs Gibbons on behalf of the Applicant reiterated the experience and ethics of the Gibbons family in successfully operating various types of licensed premises over an extended period. She said the fact that there had been no reported incidents or any hard evidence the Objectors could point to directly related to the premises confirmed that the Gibbons family were good operators who undertook their responsibilities under the Act in a professional manner. She noted that increased traffic was not a subject to be considered under the Act.

[57] She referred to Marc Gibbons, who manages this premises, as being a hands on manager who is available to staff on a 24/7 basis and is immediately contacted if any issues arise with regards to customers or the business and surrounding area generally. She said this pointed to the Gibbons family meeting the suitability test required by section 105(1)(b) of the Act and also subsection (1)(j) in that they had appropriate systems, staff, and training to comply with the law.

[58] Mrs Gibbon pointed to Exhibit HRA3 produced by the Halswell Residents Association, "**Effectiveness of Policies Restricting Hours of Alcohol Sales in Preventing Excessive Alcohol Consumption and Related Harms**" which stated, inter alia, "The review team's initial assessment of this evidence suggested that changes of less

than 2 hours were unlikely to significantly affect excessive alcohol consumption and related harms; ...”

[59] She submitted that other Licensees in the area could operate until 11:00pm and the good record of operation by the Applicant indicated they should be allowed to operate for similar hours to others in the area. She said the Viability Study the Applicant had undertaken indicated that they were providing a good service to those in the neighbourhood who wish to purchase alcohol and the study showed support for an increase in the hours of trade.

[60] She said that the Applicant had proved that some of the evidence of discarded alcohol containers and rubbish could not have been come from their store.

[61] In summing up she believed they were good operators and there was no need to anticipate problems should the extended hours be granted. The signage will comply with the Act and the Bottle O Guidelines. She said, further, that the Agencies had raised no objections, the objectors had raised no issues relevant to section 105 and she therefore respectfully requested that the Licence be renewed and the variations sought be granted.

Considerations of the Committee

[62] Having considered the Application together with Agency Reports and Objections placed before it, together with the oral evidence and submissions received today, the Committee must now stand back and determine whether the Application for Renewal should issue and whether the Variations sought should be granted.

[63] The Committee notes the decision in *British Isles Inn Ltd* ARLA 406/2006, referred to by the Inspector, 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”

Those comments were directed to the issue of suitability and pre-date the present Act. While we accept they have some relevance to the matter of amenity and good order, the 2012 Act makes a specific provision for the Committee to form its own opinion on that subject. It provides criteria to assist it in doing so.

It follows that the Committee cannot ignore public objections simply because the Agencies have not raised any opposition to the granting of the licence. However we have to be able to identify facts that are directly relevant from the material presented. As the Alcohol Regulatory and Licensing Authority said in *Mangere-Otahuhu Local Board v Level Eighteen Ltd* [2014] NZARLA PH 627-228:

“The decision of the DLC must be based upon some material that tends logically to show the existence of facts consistent with the finding and that the reasoning is supportive of the finding. The reasoning of the DLC and the inferences drawn from the facts, need to be logically available to the DLC.”

[64] We therefore proceed to evaluate the evidence presented using the approach outlined by the High Court in *Otara-Papatoetoe Local Board v Joban Enterprises Limited CIV 2011-404-007930* [2012] NZHC 1406:

“the Authority is required to undertake an evaluative exercise. An appropriate framework would involve, in no particular order, consideration of:

- (a) the criteria set out in s35 (1);
- (b) the reports presented by the Police and Inspector...,
- (c) Public objections...,

Evaluation and findings

[65] The Committee would first like to comment on the Christchurch Alcohol Action Plan (CAAP). The Objectors and the Community Board referred the Committee to this document. The Licensing Inspector rightly pointed out that the CAAP does not have the legal status of a Local Alcohol Plan (LAP) and thus it should not be used to shape licensing decisions. At para [168] of the ARLA Appeal decision in this matter, the Authority stated:

“The Authority considers that the relevance of the CAAP is a matter that is open to challenge.” Nevertheless, given the appellant has not established that there is anything in that CAAP which would have impacted on the DLCs consideration of the application, or its final decision, the Authority need not address the matter of the CAAP further.”

This Committee is of the view that the CAAP produced by the Christchurch City Council following on from the comprehensive review of alcohol laws by the Law Commission in 2009 was for use as a tool in addressing the significant community concern about the wider alcohol-related harms that fall outside of the regulatory environments specified in the Act. To that extent the CAAP has emerged as a tool to address those wider concerns and the Committee therefore look at the strategic framework and the objectives to assist it in reaching its decision.

[66] Considering first section 105 of the Act, the Committee notes that the DLC considering the original decision had regard to all of the matters contained in section 105 and issued the licence with the Conditions contained within that decision. Nothing raised at this hearing would lead this Committee to find that the Applicant is no longer suitable or that the amenity and good order of the locality has been reduced, to more than a minor extent, by the manner in which the Applicant has operated its business.

[67] Section 106 requires the Committee to consider whether the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the renewal of this licence, and the variations sought, having regard to:

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

[68] Objectors did not raise any objections which would lead the Committee to find that the Licence should not be renewed. The Halswell Residents Association sought firstly that the application for renewal be declined but, apart from research papers did not produce any significant evidence specific to this application to support that request.

[69] The issues therefore for the Committee to address are the variation to the hours and the question of removal of Conditions (h) and (i) of the original decision in relation to advertising.

[70] Turning our minds to the variation to the hours, we have listened to the concerns of the objectors, especially around any future increase in noise and the possibility of an increase in vandalism, destruction of property, and criminal activity which would be likely to reduce the amenity and good order of the locality by more than a minor extent.

[71] Sergeant Robertson in his final submission addressed many of those concerns and the Committee appreciates his assistance in this regard and, to that end, has recorded his closing submissions quite fully in this finding.

[72] The Committee is of the opinion, after listening to all the evidence, especially relating to the hours of operation of other businesses within the site where the Halswell Bottle O is located, and the evidence of the Applicant that the extension to the existing hours would be rare, that the amenity and good order would unlikely be reduced by more than a minor amount if the variation to hours of trade were granted.

[73] The Committee continues to take a cautious approach to any such extension and this will be reflected in the period of renewal granted. For clarity, we note that on a Renewal Application with no objections, the renewal period would be for 3 years.

[74] Turning to the removal of Conditions (h) and (i) in relation to advertising, and the Committee, on an individual basis, having made a site visit to the locality, we accept that all of the Businesses within the complex, with the exception of the Applicant, presently have an advertising sandwich board located on the footpath on the Ensign Street frontage. The Applicant has requested a single flag in the company colours with the words "Bottle O Halswell" on it.

[75] We have listened to the concerns of the Objectors that the sandwich boards on the footpath of Ensign Street outside the complex are a nuisance and cause a danger to pedestrians, especially mothers with prams and young children. We concur that these sandwich boards are inclined to make the area look untidy and do pose a danger to pedestrians.

[76] The Committee, in attempting to achieve fairness with other businesses and at the same time taking note of the Objectors concerns remove Conditions (h) and (i) but insert new Conditions as imposed below.

Decision

[77] Accordingly, having regard to the matters in sections 105 and 106 of the Act together with the evidence and submissions of the Applicant, the Agencies and the Objectors we are satisfied that the grant of a renewal of licence for a period of **2 years** subject to the following conditions is consistent with the object of the Act.

The Licensed Premises

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

Restricted and Supervised Areas - section 147(2)

- (b) The licensed area is designated as a supervised area.

Discretionary conditions – section 116 (1)

- (c) 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:
 - (i) 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.
- (d) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - (i) Alcohol must only be sold and supplied within the area marked on the plan submitted with the application.

Compulsory conditions – section 116 (2)

- (e) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.
- (f) Alcohol may only be sold or delivered the following days and during the following hours:
 - (i) Monday to Sunday, between the hours 9:00am and 11:00pm.**
- (g) Drinking water is to be freely available to customers, while alcohol is being supplied free as a sample on the premises.

Section 117 – Other Discretionary conditions

- (h) The following steps must be taken to promote the responsible consumption of alcohol:
 - (i) The licensee must implement and maintain the steps proposed in The Bottle O Halswell Host Responsibility Policy⁹ aimed at promoting the reasonable consumption of alcohol.

⁹ Attached to the application.

- (i) There shall be one flag with the words “Bottle O Halswell” situated on the grassed area adjacent to the left hand side of the entrance to the complex from Ensign Street.
- (j) There will be no more than two A3 advertising signs placed on the window of the premises.

Conditions applying to all remote sales and supply of alcohol

- (k) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on every receipt issued for any alcohol sold via the internet site.
 - (i) The licence holders name, the licence number, and the date on which the licence expires.
 - (ii) A copy of the licence or a clearly identified link to such image must be displayed in a prominent place on the internet site.
- (l) The following steps must be taken to verify that people are over the purchase age:
 - (i) In the case of an order made using an internet site, telephone order, or physical order –The prospective buyer must declare that he is 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)-
 1. Once, when the prospective buyer first commences the order process;
and
 2. Again, immediately before the sale of alcohol is completed

Other restrictions and requirements

- (m) Section 56 – Display of signs
- (n) Section 57 – Display of licences
- (o) Section 59 – Requirements relating to remote sales by holders of off-licences.

(p) Section 214 – Manager to be on duty at all times and responsible for compliance

[78] The licence shall be renewed for 2 years.

[79] 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 231(1). The applicant must comply with all conditions specified on a licence.

DATED at CHRISTCHURCH this 23rd day of July 2021

A handwritten signature in black ink, appearing to read 'Merelyn Redstone', written in a cursive style.

Merelyn Redstone
Chairperson
Christchurch District Licensing Committee