



**Decision No. N/53/803/2021**

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **SDSS LIMITED** for a new OFF-Licence pursuant to s.100 of the Act in respect of premises situated at **77 Beach Road, Kaikōura** known as “**Super Liquor Kaikōura**”.

**BEFORE THE KAIKŌURA DISTRICT LICENSING COMMITTEE**

Chairman: Mrs S Griffin  
Members: Ms V Gulleford  
Mr R Roche

**HEARING** at Kaikōura on 25 May 2021

**SUBMISSIONS** : Objectors by 1 June 2021; Applicant 4 June 2021

**APPEARANCES**

Mr John Young, on behalf of the applicant  
Mr Simran Singh, Director and shareholder of the applicant company  
Mr Rob Turner, Alcohol Licensing Inspector, Kaikōura District Council  
Sergeant Matt Boyce, Officer in Charge, Kaikōura, NZ Police  
Ms Helen Barbour, Representative of the Medical Officer of Health (MOH)  
Ms Colleen Cowan-Lee, public objector  
Mr Hoar, Super Liquor, witness for the applicant  
Mr Tait, Headmaster Kaikōura High School, witness for the Medical Officer of Health

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## DECISION OF THE COMMITTEE

### Decision

- [1] For the reasons which follow, the Kaikōura District Council Licensing Committee (DLC) has unanimously determined to grant the application for the off-licence sought by SDSS Limited for the premises to be known as Super Liquor Kaikōura.
- [2] The Committee determined that this decision is subject to undertakings which were raised in the hearing and recorded as agreed in the closing submission of Counsel. However, we needed to carefully consider and assess all the evidence and submissions, stand back and make the decision to grant, prior to considering and deciding on undertakings, including commitments made by the Applicant during the hearing.

### Introduction

- [3] Before the Committee is a publicly opposed application by SDSS Limited (hereinafter called the Applicant) for a new off licence in respect of the premises described as situated at 77 Beach Road, Kaikōura, known as Super Liquor Kaikōura (the premises). Mr Simran Singh is one of two directors and shareholders of the applicant company, SDSS Limited, and will oversee the establishment and initial operation of the premises should the application be granted. Public notification was made on the Kaikōura District Council website on 3<sup>rd</sup> June, 2020.
- [4] An updated plan of the proposed interior of the premises was submitted by the Applicant and his witness as an appendix to their evidence.
- [5] The Committee, through the Commissioner (Chair), issued Minutes covering pre-hearing matters on 13<sup>th</sup> May and 14<sup>th</sup> May 2021.
- [6] Members of the Committee visited the proposed premise to see its location, the actual building in its environment and to view various other properties mentioned in documentation. A Minute, 13th May 2021, advised the parties of a visit to the site and general area on 24<sup>th</sup> May – a copy is **attached** to this decision as **Appendix “A”**. The

- directors offered to open the proposed premise at 3pm, 24<sup>th</sup> May. The DLC viewed the premise and sought clarification of some matters relating to the positioning of shelving, the fridges, advertising, the kerbside garden.
- [7] A copy of the Minute, 14<sup>th</sup> May 2021, of Kaikōura Police advising of their reconsideration to “No opposition,” is attached to this decision as **Appendix “B”**.
- [8] The premise is located in the business area of Kaikōura on SH1. The town has a population of approximately 4,220 (2020). The Applicant wishes to establish a new stand alone off-licence (bottlestore) in a vacant property previously a second-hand goods retail shop. The applicant seeks trading hours which are within those prescribed in the Local Alcohol Policy.
- [9] As required under s.103 of the Act, reports were sought from the Agencies:  
(i) The Licensing Inspector did not raise any matters in opposition and prepared a report on the application in accordance with s.103;  
(ii) The NZ Police reported in opposition, reconsidering 14<sup>th</sup> May 2021;  
(iii) The Medical Officer of Health representative reported in opposition.
- [10] Public Notification attracted four written objections on the form provided.
- [11] The public objector who advised that she would attend is Ms Colleen Cowan-Lee, a resident. Ms Cowan- Lee duly provided a Brief of Evidence.
- [12] The Applicant, Mr Simran Singh was represented by legal Counsel Mr John Young. Mr Singh gave evidence in relation to the application.
- [13] Closing submissions were received as agreed from the Licensing Inspector and the Medical Officer, Community and Public Health, Dr Brunton 1<sup>st</sup> June 2021 and from Counsel for the Applicant 4<sup>th</sup> June, 2021.
- [14] The “Kaikōura journey” – Kaikōura was impacted geographically, demographically, economically and socially by a large earthquake in November 2016. Following this, several off-licensed premises closed. As evidenced, the arrival of some 15,000 workers for the rebuild project, living in what was effectively an isolated community, created a “them” and “us” attitude until reasonable numbers of local people were also employed to contribute to the large temporary workforce or to provide services and supplies to this group. Only in recent times has the population started to settle into the new “normal” which includes an acceptance of new people and new businesses into the town, albeit in a seemingly cautious way.

### **The Hearing**

- [15] The hearing took place at Kaikōura on 25 May, 2021.
- [16] As preliminary matters the Chair raised the following:  
(a) a reminder of the Minute 14<sup>th</sup> May 2021, advising of the reconsideration of the position of the NZ Police, Kaikōura Station, and the change to “No Opposition”;  
(b) the two witnesses in support, Mr Hoar from Super Liquor for the Applicant and Mr Tait headmaster of Kaikōura High School for the Medical Officer of Health;  
(c) the DLC visit to the proposed premise included discussing with the two directors the planned internal layout, the outside signage, exterior colours and there being no advertising on the external windows. The DLC also viewed the carpark and garden alongside the footpath which partially screens the Heartland Centre, the Heartland Centre itself and other places of interest;

(d) the Chair advised that in respect of transparency and perceived conflict of interest there are two publicly elected councillors as members of this DLC. The Chair acknowledged that councillors in a small community will have social or business contact with a wide variety of constituents. They should understand this community and have the skills and knowledge to better undertake the role while putting aside personal feelings about particular matters. The Chair was satisfied that the two members are well qualified to undertake their role on this DLC impartially and independently. When put to the parties for comment, all were in agreement with the Chair.

### **Evidence of the Applicant**

- [17] In opening, Counsel for the applicant, Mr Young, noted that the Applicant has two directors – Simran Singh and Reuben Singh. Simran Singh will take the lead role in establishing the bottlestore, the second in Kaikōura should the licence be granted.
- [18] Mr Young noted that the Medical Officer of Health (MOH) opposes the application. Neither the Inspector nor the Police oppose. There is one public objector appearing.
- [19] The Medical Officer of Health opposes the application on grounds of suitability s.105(1)(b), design and layout s.105(1)(e) and proliferation s.106(1)(a)(iii). Mr Young submits that the MOH has not raised the object of the Act as an opposition ground and cannot seek to belatedly raise the object of the Act as an opposition ground. In **Sargent v Kapiti Supermarket Limited**<sup>1</sup> the Authority stated:

*[16] After the expiration of the 15 day period and at the hearing before the DLC, the Police were not entitled to alter their original stance. Further, the DLC should have assumed that the Police had no matters in opposition to the application – s.103(4) of the Act. In this case, the change of stance occurred approximately three weeks after the original indication of no opposition and arguably the respondent did have time to appreciate the nature of the Police opposition and answer it. However, it is important that District Licensing Committees and the Authority require compliance with the statutory obligations of the reporting agencies. Too often recently have reporting agencies failed in this regard and as a result breaches of natural justice have occurred. This must not be permitted to continue. Finally, the waiver provisions contained in s.208 of the Act will seldom apply as the neglect or omission will usually be wilful.*

- [20] Mr Young submitted that the amenity and good order challenge is unformulated. In cases where vulnerability is raised, section 105(1)(i) is usually invoked. There is no evidence to support the claim that the amenity and good order of the locality are already badly affected particularly given the absence of Police opposition. The police are the lead agency in respect of the amenity and good order statutory criteria.
- [21] Mr Young submitted the opposition is far too generalised to provide a reasonable basis upon which to decline the application. He referred to **Mangere Otahuhu Local Board v Level Eighteen Limited**<sup>2</sup>

#### *Amenity*

*[33] Paragraph [10] of the notice of appeal alleges that the DLC erred by failing to consider the evidence relating to the amenity and good order of the locality (s105(1)(h) and (i)). As indicated previously, the DLC did consider the appellant's evidence in this regard and noted the absence of problems associated with the grocery off-licence (held by the respondent). In this regard, the*

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<sup>1</sup> [2015] NZARLA 194 (25 March 2015)

<sup>2</sup> [2014] NZARLA 628.

*Board's evidence and that of the opposing reporting agencies (particularly the Medical Officer of Health) was vague and unspecific to the premise.*

*[36] The evidence of social problems in the locality was too generalised to be of assistance as it did not relate specifically to the premises. The Board's submissions do not satisfy the Authority that the DLC's decision was wrong.*

- [22] The Act is not a prohibition statute but rather is one of reasonableness. The goal is to minimise harm caused by excessive or inappropriate consumption of alcohol, not eliminate it. The DLC should not intrude on the responsible and appropriate consumption of alcohol. In that regard, the High Court<sup>3</sup> has recently recognised the balance to be struck under the Act:

*"[53] Section 4(2) defines the harm caused by excessive or inappropriate consumption of alcohol to include:*

*(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).*

*[54] Accordingly, the SSA strikes a balance between allowing safe and responsible consumption of alcohol and minimising the harm caused by excessive or inappropriate consumption. In this way, the SSA recognises a freedom to sell, supply or consume alcohol, in a reasonably safe and responsible way, while at the same time recognising a community freedom to take reasonable steps to protect its members from the harms caused by excessive or inappropriate consumption of alcohol, all of which are a cost and burden to the community as well as harmful to the individual consumer. This view is consistent with the view ARLA expressed on the SSA's purpose and object.*

- [23] Mr Young stated that the evidence must be assessed on the balance of probabilities. He quoted **Kaiti Club Hotel Limited**<sup>4</sup> where the Authority described the decision-makers task. Generalised evidence is inadequate.

- [24] It is Mr Young's view that the challenge to the Applicant's suitability, advanced by MOH is based on an alleged lack of knowledge of the local community and the detail of the application. There are none of the usual indicators of a lack of suitability such as previous criminal convictions, previous poor management of premises and insolvency. Both directors have considerable experience and there are no reported issues with the existing premises they operate<sup>5</sup>. Mr Young quoted **Re Sheard**<sup>6</sup>

*"The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that are to go with the holding of a licence."*

- [25] Mr Young stated that the application, lodged in Tasman District for an off-licence in Mapua by the applicant and raised in Ms Barbour's Brief of Evidence as "other matters," has been withdrawn.

- [26] The application provided detail in relation to the design and layout of the premises including adoption of various CPTED principles - clear windows, good natural and internal light, internal shelving height and confirmation of internal and external CCTV.

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<sup>3</sup> Woolworths New Zealand Limited [2020] NZHC 293

<sup>4</sup> [2018] NZARLA 225 (at [74] [75] [76])

<sup>5</sup> Paragraph 8 of Inspector's evidence

<sup>6</sup> [1996] 1 NZLR (HC) Holland J stated (at 758)

- [27] The Kaikōura District Local Alcohol Policy (LAP) does not list sensitive sites, and does not restrict the location or density of licenced premises. Mr Young referred to the newly released **Townill Limited**<sup>7</sup> decision which states:

*[196] Section 105 does not lend itself to an approach where a DLC, or the Authority on appeal, can adopt a 'population-based' view, or what the Authority considers might better be expressed as a policy position about applications. The only such provision for a policy based approach for evaluating an application is in the context of a local alcohol policy (s 105(1)(c)). In the present case, as Mr Egden for Townill rightly submits, the Hurunui LAP recognises that it may provide for certain matters including the location of licensed premises near certain types of facilities, and the density of licensed premises but the Hurunui District Council, for whatever reason, has chosen not to restrict the location or density of licensed premises in its LAP. As a result it is not possible to read this into s 105(1)(c).*

- [28] Mr Young referred to the **Masterton Liquor Limited v Jaquier**<sup>8</sup> decision and its mention of the national average number of one off-licence per 1000 people. He submitted that this decision should be treated with caution and referred to the **Townill Limited** decision:

*[170] Much has been made of the so-called national average of off-license premises per 1000 people,<sup>9</sup> but the Authority takes little regard of that ratio for the simple reason that there is no evidence that this average remains accurate some seven years after that case*

- [29] Mr Young stated that the LAP is the voice of the community and referred to **Townill Limited**:<sup>10</sup>

*[204] In the present case, the risk is low and effectively amounts to a mere concern that things might deteriorate in the future. In the absence of a provision in the LAP restricting the location of licensed premises relative to certain types of facilities, or restricting the density of licensed premises (again noting that there is no density issue in Amberley), it would not be reasonable to refuse an application which meets the criteria in s 105 when the amenity and good order of the locality is unlikely to be impacted to more than a minor extent by the issue of the licence. It is through the LAP that the voice of the community about whether further licences should be issued for premises in the district is best heard (s 77(1)(d)). To seek to do this through this application would effectively amount to a cap being imposed on future off-licences when s 105 requires any such applications to be considered on their merits.*

- [30] Four public objections were lodged, all referring to amenity and good order and proliferation. The object of the Act is not raised. One public objector Ms Colleen Cowan-Lee intends to appear. The weight to be assigned to the three non-appearing objectors will be a matter for the DLC<sup>11</sup>.

#### **Witness for the Applicant - Mr Greg Hoar**

- [31] The Committee heard oral evidence from Mr Hoar, National Operations Manager for Super Liquor as witness for the applicant. Mr Hoar presented from his written brief and in response to examination by Counsel.
- [32] Mr Hoar asserted that the applicants, Mr Reuben Singh and Mr Simran Singh are well known and established franchisees in the Super Liquor Group.
- [33] Super Liquor is a New Zealand franchisor with approximately 150 stores across New Zealand. Each store is a locally operated business. Super Liquor is very selective about

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<sup>7</sup> [2021] NZARLA 50.

<sup>8</sup> [2014] NZARLA 881 (19 November 2014)

<sup>9</sup> Per Masterton Liquor Limited v Jaquier [2014] NZARLA 881 at [10]

<sup>10</sup> [2021] NZARLA 50.

<sup>11</sup> Re Sapphire Dreams Ltd [2014] NZARLA 92 (at 3).

- the people it accepts as franchisees. Over the last 12 months approximately 37 interested parties were declined.
- [34] Super Liquor actively seeks input from franchisee members and provides opportunities for these members to share insights and knowledge with each other. Franchise Managers provide a local avenue for franchisees to talk to about their businesses on a one-on-one basis, as they visit regularly.
- [35] Super Liquor 2.0 standards will be launched in July 2021 and existing stores will need to meet these new standards, Kaikōura will need to meet these standards on opening, if granted. The new store standards are to improve the shopping experience of its customers. These include:
- (i) No external supplier branding;
  - (ii) Ensuring that lighting within the store has a minimum illumination of 700LUX;
  - (iii) Wider aisles for ease of shopping;
  - (iv) Category signage to provide clear navigation in store;
  - (v) Floor plans have specific areas on the retail floor which leads to less clutter and a better shopping experience.
- [36] Mr Hoar showed a power point printout with mock-ups of the proposed Kaikōura Super Liquor store including external imaging, internal layout, branding components.
- [37] Super Liquor is committed to minimising risk to their members and alcohol related harm in the communities where their stores are located. Extensive training and compliance resources, systems and processes have been developed for its franchisees. Members are updated on requirements around compliance, standards, licensing, health and safety, together with other systems and processes including measures to put in place to prevent robberies.
- [38] All stores are required to use point of sale systems to assist with preventing sales to minors. The point of sale system prompts the staff member to ask for a customer's date of birth before a transaction commences if they appear to be under the age of 25.
- [39] Franchisees are required to maintain a high standard through a 9-step compliance system, audits conducted on a quarterly basis. Areas audited include:
- (i) External store presentation;
  - (ii) Internal store presentation;
  - (iii) Sale and Supply of Alcohol Act 2012;
  - (iv) Chiller presentation;
  - (v) Ranging and pricing;
  - (vi) People;
  - (vii) Back of house;
  - (viii) Communication and marketing;
  - (ix) Critical questions.
- [40] There is a financial incentive to comply. Mr Hoar shared copies of audit documents, policies, training manual with the Committee. As these documents are commercially sensitive they were viewed by the Committee only.
- [41] The increase in the minimum lighting illumination to 700LUX meets several requirements including improving the shopper experience in a clear bright store and for security reasons. The "clear" store requirement is reasonably rigid. The store imagery has been downplayed as a better fit for communities even with this light commercial area location. The shelving mid-floor pictured in the Super Liquor 2.0 plan is 1.36m for security purposes and in-store viewing.

- [42] Super Liquor has engaged with the Health Promotion Agency to produce in-house material such as Host Responsibility and House Rules. These materials comprise posters for customers and staff.
- [43] Super Liquor Holdings has zero tolerance for breaches of fundamental employment law obligations by franchisees. Lane Neave lawyers have been retained to provide free and confidential advice to franchisees on areas including; Employment Law, Health & Safety Law, ACC and Immigration Law. Inquiries about hours of work and covering breaks are examples. Mr Hoar states they will do everything that they reasonably can to ensure that the wider community has confidence in the workplace practices of franchisees.
- [44] Mr Hoar explained that the group uses MBIE modules on employment and pay for training for franchisees as part of the application process. Senior managers and head office staff at Super Liquor also receive training from MBIE.
- [45] Super Liquor has systems in place to ensure that its stores sell alcohol safely and responsibly, and alcohol related harm is minimised. Systems include:
- (i) Doing background checks on franchisees;
  - (ii) Providing training to franchisees;
  - (iii) Ensuring that all nationally advertise promotions are not sold at a price less than 25% of the average market price;
  - (iv) Carrying out quarterly audits of stores to support stores to operate in accordance with the Act.
- [46] Mr Hoar spoke of the audit results for Super Liquor stores owned by the SDSS Limited directors. Simran owns Super Liquor Pegasus, Reuben owns Super Liquor Wellsford and together they own Super Liquor Woodville and Super Liquor Westport. Their compliance history indicates that they have consistently operated their stores in accordance with the conditions of their off-licences and the Act and to a high standard.
- [47] All franchisees are required to keep their shop fronts clean and tidy. The proposed store, while in the business area, is located approximately 100m away from residential properties. In Mr Hoar's experience, bottle shops do not generate a lot of noise, and complaints are very rare and he does not expect there to be any noise issues. He considers that the amenity and good order of the locality will not decrease, by more than a minor extent, if the off-licence is granted.

#### **Cross examination of Mr Hoar**

- [48] In response to Counsel Mr Hoar told us that quarterly audit results in the stores owned by the Singhs are very good. Mr Simran Singh has achieved a 100% result. The audits measure consistency for both operators and the group.
- [49] The Pegasus incident book was provided – the Super Liquor representative stamps this when they visit. The incident book also notes that recently a boy in school uniform was turned away from the store.
- [50] Ms Barbour asked if the corporate body dispersed profit, paid incentives and bonuses. Mr Hoar responded that the profit was reinvested and stated that should audits not achieve 85% there is a cost penalty to the store.
- [51] Mr Hoar told Ms Barbour that they did not have or use scouts. The group did not find locations. Super Liquor review the proposed site when a prospective franchisee applies. In 2020, there were 15 new stores and 37 turned down.



- [52] In response to Ms Barbour, Mr Hoar explained the role of the Franchise Manager in the first year of a licence – they ensure group standards are met, they are present when the store first opens, they visit for example 6 times within the first 6 weeks plus they make phone calls, email. Then quarterly calls and audits come into play.
- [53] Sergeant Boyce commented that he particularly liked what Mr Hoar had explained around the group support available to franchisees and the use of the audit system for consistency.
- [54] Mr Turner asked Mr Hoar, if in his experience with Super Liquor did he have any reservations with the applicant's ability to run the premises – he answered, No.

### **Questions from the Committee**

- [55] Ms Gulleford sought clarification about the location of the branded pictured sign shown in the powerpoint – whether it would be on the footpath or side of the road. The response was that there will be no signage on the road, it will be positioned by the garden, not on the footpath. Mr Hoar could provide the dimensions of the drive thru sign. Ms Gulleford asked if this sign would meet the signage by-law. Mr Hoar responded that this would be ensured.
- [56] Mr Roche asked if the front garden would remain as it partially screened the angled view of the Heartland building. Mr Singh confirmed that the garden would stay with its screen type plantings.
- [57] Mr Roche asked about the plan around external lighting. Mr Hoar said that the front and the back of the store would be lit as you need to see people in the carpark and at the back of the premises too. This is for safety, including staff safety and for security.
- [58] Local breweries and wineries can have products sold by Super Liquor. Stores stock a core range of products and the franchisor runs national advertising programmes. Other than products in this promotion, stores have the flexibility to promote products themselves providing they meet the pricing requirements set down in the Act. In response to the Chair's question about any auditing or reporting of what an individual store does in this respect, Mr Hoar stated that this is covered in the audits and Super Liquor marketing would monitor what is in the papers and on-line.
- [59] The training system covering operating policies and procedures uses the intranet. The Super Liquor Academy E-Learning system has created learning pathways and encourages upskilling and encourages staff to consider retail as a career. Mr Hoar told the Chair that he believes the Academy is an industry first, dating back 5 years. It was put in place to encourage a liquor store career and address a perceived gap in the industry, allowing staff to learn more, achieve certificates and enjoy participation. It is mandatory for staff to complete the SSA Act module. Certificates can be displayed and vouchers are also utilised in terms of engagement.
- [60] Mr Hoar explained that the "broad cross-section" of each store's catchment (in 2.5 of his evidence) is determined by a 12 step process including Gapmaps (demographics, distances) and statistics about spend per household.
- [61] The Chair asked Mr Hoar about the "bespoke design" required for the store because of its irregular shape and the new Super Liquor design and was anything in the version 2.0 design not being included. The response was – No.

- [62] Mr Hoar's response to the question about how stores met the commitment to minimising alcohol related harm in communities, how did extensive training and compliance resources systems and processes achieve this when alcohol purchased is consumed elsewhere, was that they do as much as they can control – such as group policy and the till system for people under 25 years.
- [63] The Chair asked Mr Hoar if they worked with agencies dealing with people vulnerable to alcohol. They did work with agencies dealing with individuals and a “no provision of alcohol.” Barring can be requested. As an example – Super Liquor had a meeting with the Senior Licensing Officer in Auckland and his team so that they could understand what Super Liquor does as a business, they are already involved with MBIE, Police, MOH – they want to engage with all agencies.
- [64] Mr Hoar explained that aisle ends in the stores having “super deals” were often features and not always cheap but they change out for the likes of Mothers Day.
- [65] When asked about consequences for any individual store breaching employment law, Mr Hoar stated that any deliberate break of employment or minimum wage obligations would be dealt with “firm, fair and fast” – there would be zero tolerance. They “operate with a straight bat.”

#### **The Applicant - Mr Simran Singh**

- [66] The Committee heard oral evidence from Mr Singh, presented from his written brief and in response to examination by Counsel for the Applicant.
- [67] Mr Singh is a very experienced off-licence operator and has a blemish free record over 9 years. He assisted Ignition Group with the application and knew its detail. He had met with Craig Shearer from Ignition at his Pegasus store the week prior to the hearing to discuss this application.
- [68] Simran Singh was attracted to Kaikōura and had been looking to find a good location since 2018. He thought it was like the other small towns they like to live and work in and be part of the community. They like to get to know the customers personally.
- [69] Mr Simran Singh and Mr Reuben Singh own solely or together, 4 Super Liquor stores, Pegasus, Wellsford, Westport and Woodville. Both have worked in the industry since 2012 and have good records. Together they have an application to open this Super Liquor store in Beach Road.
- [70] He has visited Kaikōura many times and had spoken with various people. They noticed that the town has started to get busy again after the earthquake and he has read articles about the tourism industry continuing to recover. He mentioned articles in the Otago Daily Times and one on 15 March 2021 about the construction of a hotel. On one visit Reuben and he spoke with around 5 people working locally about their thoughts on a new bottle store. One person came on site to talk with them. He thought people were generally friendly and everyone was positive about a new store, including food retailers. He sees the store contributing to Kaikōura's recovery, serving locals and tourists.
- [71] With every visit of the ten made in the last two years, they noticed that infrastructure was being rebuilt very fast. They also saw Chorus laying the fibre network in the town. The town seems to be attracting more people. During their last visit, restaurant staff mentioned that ANZAC day was busier than Christmas. On no occasion in the morning or evening did they see any violence or drunken behaviour.

- [72] Mr Singh referred to the 4 off-licences in the Licensing Inspector's report in his Brief at 3.3. He considers that there is only one traditional bottle store in Kaikōura at the moment. At 3.7 he states that if granted, there will still be less off-licences than before the earthquake. He does not think that two bottlestores serving a population of 3,912 (2018) is excessive.
- [73] At 3.15, Mr Singh has committed to not selling single RTDs or break down pre-packaged beer to sell as single serves. Craft beers are sold singly. The store front will be clean of alcohol brand promotions. Super Liquor does not use loss leading or low margin pricing strategies. At 4.16, Mr Singh states that they will not display RTDs near the front entrance.
- [74] Mr Singh has also made a commitment at 3.12 about using less of the red and blue colour on the store front than usual and will use grey to help "the store blend in." He stood at the entrance to the Heartland Centre and found that the store is partly obscured. The Centre closes at 4pm. Their experience should mean that they can operate the store without impacting on people using the Centre. Mr Singh is used to operating across from a Heartland Centre as this was the situation in Hokitika. There were no issues with that store. He would like to have support service information, like drug and alcohol helplines displayed in the store.
- [75] In answering Mr Young about whether Super Liquor was "high end" in the market, Mr Singh replied that they were not the cheapest. He also explained that other products sold were cigarettes and snack food.
- [76] Both directors like to become involved in communities where they have stores. At 3.10, Mr Singh lists the sponsorship for the Pegasus, Westport and Wellsford stores. He does not require branding to be used in return.
- [77] Mr Singh spoke of using Ignition Group previously as they were one of two recommended by Super Liquor. He agreed that they were preferred suppliers.
- [78] Stock displays will be low enough so that these areas will be visible from the register. All inside areas will be monitored using CCTV footage and a viewing screen will be next to the front counter.

#### **Cross examination of Mr Singh**

- [79] Mr Singh finds the Super Liquor support, audit and training to be comprehensive. Mr Singh has an incentive plan based on vouchers for his staff if they pass an on-line course by more than 80%. It is more about the staff passing than the store.
- [80] Mr Singh said that the application complies with the LAP and that their proposed trading hours are less than those in the LAP (Policy 3.2). He proposes to open at 10am rather than 8am.
- [81] Mr Singh was questioned by Ms Barbour about having knowledge of all levels of alcohol related harm and harm in Kaikōura. He answered that he had not observed any issues during his many visits – no graffiti, no vandalism or evidence of disorder like broken bottles but he had not spoken to anyone about issues. They have spent three years looking around Kaikōura for a suitable premise – they like the smaller stores, relate to smaller communities, all customers knowing him and him knowing them, being part of the local community.

- [82] He said that he was familiar with the issues of supplying to minors and his view is that if not all people in a group have ID, no-one in the group is served. "If they look under 25, we don't serve anyone."
- [83] When asked by Ms Barbour about dealing with "addicted" customers or one customer coming in multiple times in a day, Mr Singh replied that he had such a customer in Westport. She was coming in every day, morning and evening. Mr Singh spoke with her and reduced the number of times she would be served each week.
- [84] Replying to a question about visiting Henry's and their prices and those of Super Liquor, Mr Singh said that the current pricing was similar. He told Ms Barbour that he had no say over Henry's and he said that he would not drop prices with opposition as in his experience it was not a sensible thing to do. A successful business needs to keep at least 17-20% GP. They had a similar experience in Hokitika. It's his view that a good level of service needs to be upheld to attract customers.
- [85] In response to a question from MOH, Mr Singh said that in terms of sponsoring community events he did not require his brand to be included in event advertising or otherwise promoted. Support is two way and generally, sponsorship entailed vouchers or money. He saw it as giving some of his profit back to the community.
- [86] Mr Singh in response to Ms Barbour advised that the off licence application for the Mapua bottlestore, raised by the Medical Officer of Health in evidence, had been withdrawn.
- [87] Ms Barbour asked if the till prompt could be overridden – the reply was no, if the transaction was cancelled, the sale could not be made.
- [88] Mr Singh was asked if he accepted that not all alcohol related harm is presented to police, council or the medical office, that it can just happen in the community without them knowing. He responded that "if something happened", his view was that Police, MOH, Council will have some knowledge about what is happening in the community. Some tolerance to signs may result from regular drinking depending on age.
- [89] Mr Singh confirmed to Sergeant Boyce that he will have CCTV outside the store - the outside cameras with the screen by the register would pick up activity in the carpark area. The chiller would also be covered.
- [90] Mr Singh said that yes, he was aware of "others trying to encourage others", to purchase alcohol.
- [91] Replying to the Sergeant, Mr Singh stated that Super Liquor would provide some support with signage/branding and the setting up. He agreed that there was a lot on the line and yes, it was a case of an "individual's money where his mouth is." Super Liquor did not provide financial support.
- [92] Mr Turner asked if Mr Singh had spoken to other hospitality businesses about the availability of duty managers in Kaikōura, Mr Singh replied that he hadn't but if needed they could bring a manager or staff from Pegasus. Their preference was for local staff, understanding that training may be required and they would pay for managers certificates and LCQ training.
- [93] Mr Turner asked about flexibility for travelling to Kaikōura. Mr Singh replied that they hoped to have two full-time staff and two part-time which would allow him to come and go but they needed to get to that position first. Both Reuben and himself had discussed

not being able to find suitable staff – they were not willing to take risks and they would close the store rather than take risks with staff.

- [94] Mr Singh told Mr Turner that he could monitor cameras for all stores from his phone.  
[95] He reiterated to Mr Turner that consumption issues, like Westport, meant that specific people would not be served. He was willing to meet people around these issues – some self exclude.

#### **Questions from the Committee**

- [96] The Chair raised the DLC visit to the premises the afternoon before and how helpful that had been, especially viewing the shape of the interior space. As the design and layout is an issue for the agencies the Chair asked Mr Singh if he was agreeable to meeting with the agencies on site, if granted, for them to view the final layout. (This solution was raised by the Licensing Inspector in his report.) Mr Singh agreed to this should the application be granted. The applicant, with Mr Hoar, will invite the agencies to view the premises fitout once completed and prior to opening. Mr Young offered to record an undertaking to meet what is described and confirm this in closing submissions.
- [97] Ms Gulleford asked Mr Singh to explain how, based on the draft roster supplied, an employee working six hours on their own in the store is able to take their rest and meal breaks. Mr Singh stated that the signed employment agreement can delay breaks until after the shift eg work from 10am to 4pm, take half an hour unpaid break then resume work at 4.30pm until 9pm.
- [98] Mr Singh replied to Ms Gulleford that staff will monitor CTV screens positioned in the chiller and counter areas from the counter. He did not anticipate that the store would be so busy that this could not be done.
- [99] Mr Roche asked if Mr Singh was willing to retain the bushes and trees in the front garden to screen the Heartland Centre – Yes.
- [100] In response to Mr Roche, Mr Singh said that broken cartons of alcohol would be returned to the supplier for a credit – no single sales.
- [101] When the Chair asked whether he had read the LAP, he answered that he had and added that he could not understand why a bottlestore would open at 8.00am, unless there is some event. He thought that 10.00am was early enough. An improvement to the LAP, in his experience, would be that 10am was early enough for an off-licence to open.
- [102] Mr Singh said that the achievement in the last two years that he was most proud of, was achieving a 100% in an audit and he was looking forward to doing that again.
- [103] He told the Chair that he would warn any customer displaying behaviour that might escalate, in a nice way, or ask them to leave. Calling the Police was also an option.
- [104] When asked if he had any part to play in dealing with binge drinking, Mr Singh stated that he would co-operate with Police. He would not serve anyone intoxicated. He has not had to deal with any serious alcohol abuse issues to date, but he would start off by dealing with people quietly and in a non threatening way. His management style is to try and have a good relationship with everyone, know his customers, and be a good listener.

[105] Mr Singh advised that while he has not needed to issue any trespass notices for any of his premises. He said the place to record this is in the manager's register.

**Medical Officer of Health representative – Ms Helen Barbour**

[106] Ms Barbour read her brief of evidence. Her key task in her Alcohol Licensing Officer role for CDHB, is to enquire into applications for new and renewal of On, Off, Club and Special Licences made in several areas, including the Kaikōura District Licensing Committee. She then prepares reports on behalf of the Medical Officer of Health and she also carries out monitoring of licensed premises in these areas.

[107] Mr Young asked Ms Barbour to confirm that she hasn't raised any opposition in relation to the object of the Act criteria, that it isn't a ground for her opposition. Ms Barbour stated "it is not in my report, no."

[108] Ms Barbour states that the Applicant used a third-party agent to complete the application and this makes it hard for them "to assess his knowledge and experience when everything is prepared for him by people who are experienced and skilled in knowing what usually gets a licence granted." Ms Barbour told Counsel that she had not asked for an interview with Mr Singh, she had dealt with Mr Shearer.

[109] Ms Barbour stated she still has concerns today. She had not heard of Mr Singh having any interaction with the community prior to making the application. He had looked for signs of alcohol related harm, he didn't have a conversation with the community and "he didn't seem to understand what binge drinking was" and she had concerns about his quiet approach. Mr Young asked Ms Barbour if she accepted that the matters raised in her report have been dealt with – those she has spoken of were not in her report.

[110] She said in her report she couldn't judge his suitability prior to the hearing but has judged it based on his evidence at the hearing and finds him not suitable to hold a licence. Mr Young asked Ms Barbour if Mr Singh's nine years experience, no criminal convictions, his exemplary systems, support from Super Liquor, no issues at his stores, the Super Liquor support, that some answers aren't quite as good as she would have hoped, under the pressure of cross examination and this has led to her saying he is unsuitable to hold an off-licence?

[111] Ms Barbour answered that she "found his answers is him speaking from his experience, rather than the preparation work of a well-constructed application and system staff training documentation, when we're actually stripping all that back, or we're just talking to the applicant about his experience that raises concerns for me."

[112] Ms Barbour agreed that the design and layout criteria is no longer opposed by MOH.

[113] Ms Barbour stated that in regard to s.106: noise, nuisance, vandalism impacts – she has no concerns regarding these. Her sole concern is the number of licences in the locality – proliferation. Counsel reminded Ms Barbour that if that is the case in terms of the law, there is no good order and amenity challenge and was she familiar with the Black Bull case? She was not aware of this when doing her report. Her concern was two bottlestores in the same area. She had not seen anything in relation to the existing bottlestore that would impact amenity and good order. It was looking at the 2018 census data that painted a picture for the committee to weigh up whether it would have an impact – she confirmed that the deprivation data informs the likelihood of noise nuisance or vandalism for the purpose of amenity and good order but she did not have case law or studies to support this proposition.

- [114] In respect of amenity and good order, section 106, Ms Barbour agreed that she did not identify the Heartland Centre as a sensitive site.
- [115] The MOH representative agreed that the Police are the lead agency for Amenity and Good Order. She considered that deprivation data informs to noise, nuisance and vandalism. Counsel suggested that there was no case law in support of this and that deprivation and vulnerability go to the Object which she had not included.
- [116] The MOH representative told Mr Young he was correct when he said there was no data on Amenity and Good Order provided from Police and that she has not provided any.
- [117] Ms Barbour advised that she did not prepare the deprivation data and could not talk to it further. She confirmed with the information team prior to the hearing that the data provided showed the population and the deprivation score.
- [118] Deprivation was shown on map HB2 and when asked if maps 7,8, and 9 were showing a kilometre radius, Ms Barbour was sure they did. Counsel thought the “locality” looked wider than that. She did not accept that amenity and good order was 1 km, maybe up to 2km, harm much wider.
- [119] Ms Barbour accepted that unemployment data showed that Kaikōura was below the national average and that median incomes were about the national average, reasonable signs of a stable community.
- [120] Ms Barbour recommends that if the licence is granted, an undertaking to operate in accordance with the application footprint plan is made, especially in regard to the position of RTDs towards the rear of the store.
- [121] Mr Young asked if there was evidence that Henrys prices had risen since 2016. Ms Barbour response was, No. She accepts that if price is the key driver the supermarket is where you would look for cheap beer and wine.
- [122] She agreed with Counsel that Super Liquor’s training programme was good.
- [123] When asked if she had looked inside Henry’s as part of this application, to see if they sold single RTDs, Ms Barbour replied that she had not and she did not know if they did.
- [124] Ms Barbour confirmed to Counsel that she was not part of the LAP process and that it was up to the policy team to seek to put a cap on off-licences in the district. There is no cap.
- [125] Ms Barbour also agreed that there were no sensitive sites listed in the LAP. She had not enquired why there weren’t sensitive sites included in LAP plan formulation as she does not deal with that. Ms Barbour agreed that the ARLA decision for Amberley states that sensitive sites are the province of the LAP<sup>12</sup>. She stated committees and councils decided to go with a very bland approach to an LAP because they didn’t want supermarkets to raise the game, take it to appeal and then be thrown out altogether.

### **Cross Examination of Ms Barbour**

- [126] Sergeant Boyce had no questions for Ms Barbour.

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<sup>12</sup> [2021] NZARLA 50 Townill Limited at [204]

[127] The Licensing Inspector had no questions for Ms Barbour.

[128] Ms Cowan-Lee had no questions for Ms Barbour.

### **Questions from the Committee**

[129] Ms Gulleford asked if MOH raised any concerns or opposition for Henry's renewal. Ms Barbour replied, No.

[130] Ms Gulleford was told that MOH has no statistics for Kaikōura in relation to alcohol related harm – it is too difficult to collect and assess. Other parts of the country gather this data, but not Kaikōura/Canterbury.

[131] Mr Roche asked Ms Barbour how addiction was identified as she had asked Mr Singh. Intoxication had the SCAB tool. Mr Singh had spoken of his experience with repeat buying and although there was no policy, he had dealt with it well in his Westport example. She could not give an answer or example other than to say it is someone who makes multiple purchases.

[132] The Chair asked Ms Barbour if the deprivation data, HB1 included in her report was from the CDHB system – Yes. Exhibit 1 is 2013. She did not update it earlier but had included 2018 data now. The person who updates the data onto the server said "if something is going to a hearing, I'm able to provide the 2018 data."

[133] Ms Barbour agreed that there were more off-licences in 2013 and that now with a larger population in the 2018 data there were less off-licences.

[134] Ms Barbour confirmed to the Chair that the application form for the off-licence is Mr Singh's (for his business). When asked how using an agency hit at suitability, Ms Barbour stated that she was not able to understand which answers were Mr Shearer's and which were Mr Singh's - it was harder to ascertain suitability from the form. Mr Shearer had made a mistake about training documents which she pointed out and it was corrected. Ms Barbour thought that the form was straightforward and that she thinks "how well or how little an applicant has filled out demonstrates the input they have into their business," and confirmed to the Chair that this was what she used as a basis.

[135] The list of licensed premises provided did not appear to be a complete list – missing the Rugby Club for example. Ms Barbour confirmed it was just the ones in their database.

[136] She stated that the evidence about types and ways of dealing with alcohol related harm from Super Liquor has been very well spoken to and documented, the training for staff, the compliance monitoring was very good as well.

[137] Ms Barbour thought there would be some research but she did not know if the alcohol spend would be spread in a deprived community or if spend would increase.

[138] Ms Barbour told us that she hasn't monitored Kaikōura premises much recently; half her time is taken up with Covid-19 response. Kaikōura has had a long and harder journey than a lot of NZ, and longer ongoing harms and hardship. "You'd have to go back to 2015 and 2016 to see what normal looks like in this area."

### **Witness for Medical Officer of Health - Mr John Tait**



- [139] Mr Tait read his brief of evidence. He provided information about the Kaikōura High School health programme, part of which deals with alcohol consumption and the health and safety issues which it can cause.
- [140] He stated that discussions teachers have with students often raise personal issues and questions which enable the school to gain a picture of the alcohol based situations their adolescent students encounter. They know there is a binge drinking adolescent culture in Kaikōura, which leads to dangerous drinking.
- [141] A discussion in a health class revealed one 15 year old student had recently consumed most of a bottle of vodka. This led to a detailed discussion about death by alcohol poisoning.
- [142] Students are starting to drink younger, and a concerning number of year 10 students (age 14) are accessing alcohol and consuming it regularly. With a relatively small adolescent cohort, friend groups are more diverse in age in Kaikōura, compared to larger centres. Younger students frequently mix with older youth who can access alcohol.
- [143] Mr Tait states this drinking behaviour sits within a wider binge drinking culture in Kaikōura, which is intergenerational.
- [144] As principal of the school, Mr Tait is party to a range of professional information about life outside of school for students through a variety of avenues. A significant proportion of the problems which impact families and their children, have alcohol abuse in the mix.
- [145] Mr Tait states the impact on local business and employment and the post earthquake impact of trauma on the community has resulted in more alcohol related harm, more domestic violence and more mental health issues. These issues are frequently discussed within community wellbeing groups. The current environment is one where the potential for alcohol harm needs to be contained not expanded.

#### **Cross examination of Mr Tait**

- [146] Mr Tait confirmed to Mr Young that he did not object on behalf of the High School and that he doesn't normally make objections to licence applications. He stated that he has not read the MOH evidence.
- [147] Approximately 95% of eligible local children attend Kaikōura High School. He believes about 6-8 attend school elsewhere. The school roll is currently 221.
- [148] Mr Tait understood that the development of the LAP was a public process but while he knew he could participate he did not, nor was he invited to.
- [149] Mr Tait spoke of the mixed age group cohort in school that exists in smaller centres and said that a similar cohort grouping carries on. He accepted that other smaller towns of a similar size might have a similar cohort phenomenon.
- [150] In response to Counsel, Mr Tait stated that he is opposed to any new off-licence application in any location, not specifically this one. He has not read the application or any of the pre-filed evidence.

- [151] Mr Tait said that just under 50% of the pupils at the school are Maori. He told Mr Young that the Maori-Pacific grouping is concentrated in the lower age groups and he agreed it is significantly different to the overall demographic.
- [152] Mr Young asked if the information he gets through the school process in confidence, is that mirrored by whanau or other parents – from time to time he gets comments from parents concerned about teenage drinking.
- [153] Ms Barbour had a question that referred to the Applicant's evidence – a new topic, Mr Tait had not read the evidence – hence this was left.
- [154] Prior to asking his questions, Sergeant Boyce declared that he is the Kaikōura High School Board of Trustees Chairperson.
- [155] Sergeant Boyce asked Mr Tait what the population of Maori students attending the school was – Mr Tait replied it was just under 50%.
- [156] Sergeant Boyce asked if the information Mr Tait gets through school processes, in confidence, is mirrored by whanau or parents. Mr Tait replied that from time to time he did have comments from parents, concerned about teenage drinking.
- [157] Counsel asked to clarify the population of Maori at the school of about 50% yet the overall population of the District is 19%. Mr Tait explained that this is correct, there are larger numbers of Maori within the school age cohort.
- [158] Mr Turner had no questions.

#### **Questions from the Committee**

- [159] Mr Roche asked Mr Tait if the student in his Brief at 10 was in the class he refers to when this was discussed. Mr Tait did not know.
- [160] Mr Roche asked if Mr Tait had evidence from the recent hui and other agencies for the parties to look at – No, that information was confidential.
- [161] Mr Tait said that there are records of cases at Oranga Tamariki, school has case history through their social worker outlining the issues discussed but these are confidential.
- [162] In response to Mr Roche, Mr Tait stated that some agencies deal with parents about issues outside of school and the school becomes involved if there is an incident at school or the pupils outside activities impact in a behavioural context at school - he keeps records only if an issue arises through behavioural issues. Pastoral Care meetings include Police and other welfare groups. Information about family life is part of the meetings.
- [163] The purpose of Pastoral Care meetings is to make strategies and plans for student success at school. Sometimes parents are invited or an outside expert is used to help a student for issues such as anger management, counselling. Mr Tait was unable to tell the Chair how many of these cases were the result of alcohol in the home. While he could not provide numbers, alcohol related harm at home is not infrequent.
- [164] Mr Tait told the Chair that the school is a decile 6.

- [165] Mr Tait referred to the school health programme (his Brief at 7). It is a compulsory broad programme and covers; smoking, alcohol, sleep, diet, sex education, gender. Students participate well in the classes and most want to talk.
- [166] When asked to talk about the “alcohol based situations which our adolescents encounter” (in his brief at 8), Mr Tait told us that students drink alcohol at parties and social events. Evidence of these is gained via social media. Senior students report of junior students drinking. Alcohol is obtained from older siblings, parents, friends.
- [167] Do students come to school intoxicated – Mr Tait said, No.
- [168] He answered that he did not know if students purchased via remote sellers.
- [169] Referring to Mr Tait’s Brief at 11, the Chair asked if he was saying that 14 year olds are purchasing alcohol – he did not know. The Deputy Principal has children who are teenagers and they tell their Mum. When the Chair asked about his reference to consuming it regularly, all he knew was that it was at parties.
- [170] Referring to the 15 year old student consuming about a bottle of vodka and where this was consumed – Mr Tait said at a party, he didn’t know specifically. He did not have any idea who supplied the vodka. Was this raised with the boy’s parents – not to his knowledge, it was brought up in another student discussion.
- [171] In his Brief at 12, Mr Tait says that the “younger students frequently mix with the older youth who can access alcohol”. Very few are of purchase age while at school, by the time they are 18 it is later in the year.
- [172] The Chair asked if they had issues with senior pupils playing in the senior club team and exposed to the use of alcohol by adult team members, Mr Tait answered that some senior boys are part of the Kaikōura Rugby Club senior team and the club is responsible for any alcohol related matters with players. The school doesn’t get involved in out of school life. The Rugby Club is aware of the issue.
- [173] When asked if his statement in his Brief at 14, was the result of research on his part or an assumption. Mr Tait thought that it was “likely” - commercial competition, a limited market.
- [174] The Chair asked for some guidance as to numbers of children in respect of the Brief at 17 and the reference to significant family problems and “alcohol in the mix” - his response was five or greater. But it was a guess. He knows that the caseloads of the Youth Social Worker and the Guidance Counsellor are huge and have increased markedly since the earthquake. There are a number of factors contributing to dysfunction within families. There is an increase in mental issues - stress, anxiety, sleeplessness from the earthquake. There is now economic uncertainty on top of earthquake trauma. The Kaikōura Youth Council has directly reported this.
- [175] The trauma of the earthquake itself and Covid 19 has brought about a marked change – his observation is that the big issue is uncertainty, a loss of confidence in the future, he knows successful students who are almost demotivated by the prospect of the future.
- [176] Mr Tait agreed the earthquake trauma in the community resulted in more ARH, domestic violence and mental health issues.

- [177] Mr Tait confirmed that more parents were employed, had some economic security for a period of time post earthquake but the local economy was almost back to itself and there is now uncertainty. Evidence of this, is his principal's fund. He has bought more uniforms, helped pupils with money for school activities – more this year, than ever. Self pride means they struggle on. This fund is not used for any outcome from alcohol for families. But he reiterated that they use school funds to access greater expertise, like counselling, as would all high schools. Mt Tait is on the Covid 19 Urgent Relief Fund Panel for the Ministry of Education Nelson Marlborough West Coast Region. All schools applying have needed extra counselling support.
- [178] Mr Tait said that we cannot assume that school families have limited discretionary income to spend – some do, not most.
- [179] The Chair asked what percentage or numbers leaving high school took up jobs locally, went to University or left for work in Blenheim or Christchurch – Mr Tait replied that it differs with cohorts, in 2019 the leavers left the District, in 2020 it was 50-50 leaving and staying.
- [180] Students who left, who had a chequered interaction with the high school in terms of alcohol, did grow out of it, did grow up in terms of behaviour.
- [181] Mr Tait did not know if the alcohol issue was worse prior to 2016 when there were more off-licences. He had not long arrived.

#### **Kaikōura Police - Sergeant Matt Boyce**

- [182] Sergeant Boyce, the Officer in Charge of the Kaikōura Station provided the Police report 24 September 2020, in opposition to the application.
- [183] The Sergeant advised by email, that as of 14 May 2021, Kaikōura Police are in a position of No Opposition.
- [184] The report of 24 September 2020, stated that consideration to Section 105(1)(e) could not be made at that time. Section 105(1)(k) was provided in explanation of past experience and superior working relationships with owner operators 'involved in day to day running,' when they live in Kaikōura. He noted that one director would operate the business for 12 months and reside in the town.
- [185] Sergeant Boyce stated that design and layout as raised in his report had been discussed and solved.
- [186] The Sergeant explained the significance of building a working relationship with an owner operator. His mandate is prevention and being face to face with licensees helps with acknowledging the rules and where to draw the line and he does this with the person who has the control, the financial freedom to make changes.
- [187] He liked what he was hearing about the operating of the proposed premise and thought the "back room" support sounded "fantastic."
- [188] Sergeant Boyce provided some crime statistics and drink driving data – which the Chair allowed in the absence of evidence and opposition from Police. The Chair understood that the parties had not had time to understand these but allowed their provision as a possible aid to the Committee.

- [189] In response to statistics of reported crime compared to crime not reported, the Sergeant stated that he would say 1/3 crime is reported. The stats from 2020 raw data show 2986 occurrences; absolutely alcohol 373 (13%), absolutely no alcohol 792, not applicable 581, 1240 were reported after the fact probably by a neighbour. 2021 year to date showed 94 of 749 as an absolute yes.
- [190] Drink drivers: (a) 2020, 44 drivers over the limit prosecuted, all age groups; (b) 2021 year to date, 15 drink drivers over the limit, all age groups. Police cannot separate out the young ones. And the data is for Kaikōura District.
- [191] There were problems with thousands of workers coming in to the town and until locals started being employed, it was very much a “them” and “us” situation. To that extent the Sergeant talked to the establishments and asked that they did not allow the wearing of Hi-Vis jackets in the West End (of town) bars. This helped the situation.
- [192] Serious assaults up to date, 29, bearing in mind that one person can cause several people to be affected – thus data is a little skewed. There was an increase in serious assaults post quakes. In terms of what he would class as incidents in 2020 there were 60 and year to date 2021, 28.

### **Cross examination of Sergeant Boyce**

- [193] Mr Young did not cross on the data as he had not seen it before. It can be difficult to distil exactly what Police data shows. The context is that the data is to assist the DLC as Police are not opposed.
- [194] Sergeant Boyce agreed with Counsel that Mr Singh is committed, including financially, that he’s backed up his application – “he’s actually going to give it a good nudge because he’s financially invested in himself,” and the assistance from Super Liquor is excellent.
- [195] The Sergeant told Counsel that the reinvestment and new people, the lights and activity coming into Kaikōura brings an element of good.
- [196] Sergeant Boyce made it his business to engage with the landlord, asking about the length of lease.
- [197] The Sergeant said that Police want to engage with the licensee and not necessarily only by a formal avenue. The Tri-Agency group is good. He would see a two way relationship, the Police and the licensee – CCTV footage is often very useful to Police as an example of co-operation around local crime.
- [198] The Sergeant spoke about the hotspot issues and the hotel visits while contractors were in town – some 607 (visits) in 18 months, possibly 3 per night. Sergeant Boyce said that the Police “babysat the bars,” in the West End and at “silly o’clock” they would have a car outside. He said that Police are “patient people” and utilised an engagement and talking position to keep the hotel area in the West End safe around closing.
- [199] The Sergeant likes Super Liquor’s use of CPTED principles as Police use these too as they’re good principles.
- [200] There were no questions from the other agencies.

### **Questions from the Committee**

- [201] In answering Ms Gulleford, the Sergeant stated that he had not compared the District's alcohol related harm statistics to other districts. Kaikōura reports to Marlborough which in turn reports to Tasman.
- [202] Mobilised workers were identified – they watched the monthly drink driving figures and could focus responses if there was an obvious issue. Police knew the “ratbags” during Covid, the ones breaching the rules.
- [203] From the Police perspective, two off-licences close by would be easier to monitor.
- [204] The Sergeant stated to Ms Gulleford that some of the harm has been eliminated by not hosting big events. They used to have 4500 people come for one day, Seafest, and one focus was alcohol. Police delivered local alcohol ban area pamphlets. Most came from off-licences, Police said – this is where you cannot drink it.
- [205] Education for locals and knowledge gained over time has made alcohol ban areas an easy conversation to have – tip it out or there's an alternative.
- [206] The Police are interested in incident books as identifying potential issues of interest – to the point where a car could be stopped or a spot breath test carried out. The sharing of information is key for Police.
- [207] Responding to Mr Roche, Sergeant Boyce stated that harm can be reduced, for example they have eliminated some by not hosting big events with a lot of outside people and busy off-licences. Police are not here to hammer people. Tourism was increasing markedly but the quakes and Covid have meant a different set of issues.
- [208] As part of the recent hui, was there any data that could be accessed from community groups – the Sergeant responded that unfortunately its not available to the public.
- [209] The Sergeant told Mr Roche that the Kaikōura Violence Free Network (newly formed before he came to the District) has sought funding for specific projects for example, a certificate for crowd controllers (rather than bouncers), posters for the It's Not OK campaigns, not just alcohol but for all problems. Another group, community networkers, can be a reference but doesn't provide data. The Sergeant has also had conversations with the Rugby Club and the younger group playing with adults in senior teams and the Club is working to change. It's part of the Police building bridges approach which suits the town and becomes like the “It's Not OK,” programme.
- [210] When asked about the Alcohol Ban Areas, the Sergeant stated that they are working well and there are no arguments now – tip it out or there's an alternative. The more education, the more compliance there's been. They know the local establishments do not sell some of the cans they see, that they've come from outside the District. The proposed off-licence, like the existing bottlestore, is in the Alcohol Ban Area.
- [211] The Sergeant told Mr Roche that “communication is key.” Like the “babysitting,” in the West End, it's a silent communication book or perhaps a phone call.
- [212] Responding to the Chair, the Sergeant said that bottlestores can identify people who may pose a risk to themselves or others, or a pattern, and Police and Licensees working co-operatively is ideal for the town. Sharing information is important. He likes to look at the Incident Book so that he can see what the store is dealing with.
- [213] Sergeant Boyce told the Chair about some of the hotspots which includes drinking in cars. The town carpark is in the Alcohol Ban Area, they also park by the overbridge

and the freedom camping spot, and there is also drinking on the beach. When there can be fires in summer, they sort out the beach particularly.

- [214] He had looked up the Police database, he missed the granting of Westport but he knew Reuben Singh had a robbery at Wellsford. Reuben confirmed to the Sergeant that the young man was now 21 and OK, and yes, knowing the families in Wellsford did help.
- [215] Sergeant Boyce told the Chair that alcohol related nuisance, intimidation, threats, is minimal. Over the years since 2016, the West End has had the 3 main bars within a 300m radius. An increase in graffiti, vandalism, vomit, food waste occurred following the quakes. There were 15,000 registered as working on repairs, about 1,000 of them were out every night. Now they are back to some semblance of order and there is less demand for Police presence around there at closing time. The bars are even shutting before closing time.
- [216] In describing the binge drinking culture as he sees it to the Chair, the Sergeant said that in the District 15 people is a party. A mother approached the Sergeant about being a responsible host for her son's 15<sup>th</sup> birthday party. He asked why she was having alcohol. The reply was, they would sneak it in anyway. Police are using education more as there are pressures on parents, it's having a "high level on prevention." When 15 year olds have a party, it's more a case of – who's supplying and understanding the pressure to have alcohol. Another example, the school dance has the school preparing for it as others, not from the High School, come as partners.
- [217] The Sergeant said that he would support Colleen (Cowan-Lee) and be willing to lead a conversation as Police were pushing in to this space, it's not about blame but it's a community problem – family harm/abuse is not an "okay thing."
- [218] The Chair asked about the police officers daily and nightly observations alerting them to any concerns in respect of alcohol abuse issues – his observations in this respect confirm anti social issues, family violence and alcohol harm. Statistics show some of this.

### **Licensing Inspector – Mr Rob Turner**

- [219] Mr Turner has held the role of Licensing Inspector for Kaikōura District Council for 3 years. He submitted his report to the DLC for the application by SDSS Limited, 12 February 2021. The reasons for the delay in reporting was Epidemic Preparedness and a request by the agencies for further information as the initial application contained information that related to a restaurant.
- [220] The Licensing Inspector does not oppose this application for a new off-licence. His report detailed his responses to the criteria.
- [221] The proposed hours, location, designation, proximity to another and, addition of another off-licence premises in Kaikōura do not contravene the Local Alcohol Policy (LAP).
- [222] In the Licensing Inspector's opinion, another licensed premises in Kaikōura is unlikely to see a noticeable increase in alcohol related harm. There is only one other off-licence that operates as a bottlestore, Henrys BWS. Kaikōura New World and The Emporium operate reasonably busy off-licences and the Lobster Inn uses its off-licence infrequently. The remaining 4 sell craft or boutique products at premium prices. Kaikōura now has at least 4 less off-licences that operate as bottlestores than there were in 2016. The 2020 population is the highest in recent times at an estimated 4220.

- [223] In considering the evidence that shows that greater alcohol availability leads to increased alcohol related harm (ARH), Maori carry a greater burden of ARH but the Licensing Inspector would not expect a noticeable increase with an additional bottlestore to the existing Henry's.
- [224] Mr Turner does not question the suitability of the applicant or its directors in terms of s.105(1)(b). The applicants operate other Super Liquor premises, have a combined 17 years experience, and no breaches of the Act for these other licensed premises. They have provided a sample roster. One director will work at the store for 3-4 days a week to implement proven systems and to employ competent staff. As a franchisee of Super Liquor already, they are familiar with the training systems, audit system and mentorship carried out by the franchisor.
- [225] The Inspector proposed, as a solution to being unable to assess the design and layout of the premises during the application process, that the agencies meet at the premises to resolve any issues prior to opening. He states that he does not consider this to be a significant issue that should block the grant of the licence. In the past Kaikōura has had other premises operating similarly to bottlestores, like Night 'N Day, Four Square, Big Daddy's Liquor. If this licence was granted there would still be fewer off-licences than before 2016.
- [226] The only other bottlestore is within 140 metres and the Inspector is not aware of any issues or complaints with the operation of Henry's which operates in a similar way – no unreasonable noise, vandalism. Council records show that there have been no complaints in the immediate vicinity regarding vandalism or nuisance. The Inspector does not expect any reduction in the local amenity should this licence be granted.
- [227] Heartland Centre is approximately 70 metre away, across the road and at the back of a business building. Henrys BWS is located approximately 140m away. As mentioned in his report, some of society's most vulnerable attend this facility, however the Licensing Inspector "does not believe there is concrete evidence that the addition of another licensed premises operated in compliance with the Act would result in an increase in ARH in this predominantly industrial area which is zoned *Business B*."
- [228] His opinion and that of the Licensing Inspectorate, is that the granting of this off-licence would not result in a noticeable increase in alcohol related harm in the Kaikōura District. Mr Turner did not believe that the amenity and good order of the locality would be likely to be reduced to more than a minor extent in relation to s.105(1)(h) of the Act.

#### **Cross examination - Mr Turner**

- [229] Mr Young had no questions. Sergeant Boyce had no questions.
- [230] Asked about issues with the existing bottlestore, Mr Turner said that he has not seen any amenity or good order issues at Henry's. He expects similar results with Super Liquor.
- [231] Ms Barbour asked if there was to be an increase in ARH would he recommend that the licence be declined or would he recommend conditions. Mr Turner stated that it would depend on the evidence of real significant issues and the conditions and he would consult the other agencies. That is what the first year is for.



[232] Mr Turner reiterated that he believes the applicant will find it challenging to find local duty managers to work in the store.

### **Questions from the Committee**

[233] In response to Ms Gulleford, Mr Turner said that he had had some uncertainty about how the directors would ensure compliance with the Act while managing other premises but it would not be an issue if the directors “do what they say they are going to do,” around staff – the agencies will monitor this.

[234] Mr Turner told the Chair that he was not aware of any CPOs in Kaikōura since 2018. This would not include Henry’s or businesses like New World conducting their own.

[235] In his opinion the statistics he has included in his report at page 4, from the MOH Survey 2020, tell us that Maori are far more likely to suffer from alcohol related harm than non-Maori. The survey published in November 2020 found Maori were 1.79 times more likely to be classified as hazardous drinkers. The survey does not present a specific measure for off-licences. Mr Turner’s report states that there are no local statistics available which relate to ARH associated with premises from prior to 2016 and the lesser number of off-licences since that date. The electoral roll tells us that 20% of the population is Maori.

[236] The presence of a LAP is very important as it reflects the community’s thinking.

[237] In response to the Chair, the Inspector said that he considers the mentoring and annual verifications that are part of the Super Liquor franchise requirements as worthwhile and perhaps market leading.

### **Public Objector – Ms Colleen Cowan-Lee**

[238] Ms Cowan-Lee read her brief of evidence. She is making her objection as a ratepayer and community member, but advised that she works in the field of social work, based in the Heartland Centre, and deals with the effects of alcohol on a regular basis and its impacts on families, particularly children.

[239] Ms Cowan-Lee stated most family harm incidents that are dealt with in the community are alcohol related. She questions why Kaikōura needs more places for the young people to buy alcohol.

[240] She states there is a culture of binge drinking in NZ and she believes Kaikōura is particularly bad. She experienced this as a mother whose children grew up in Kaikōura and were pressured to drink alcohol.

[241] Now as a grandmother, Ms Cowan-Lee has the same concerns about her mokopuna being exposed to drinking and the easy access to alcohol.

[242] Ms Cowan-Lee believes they have more bars than most communities the same size so there are plenty of places for people to access alcohol.

[243] She states “People before profit, especially our mokopuna” and quotes “He aha te mea nui o te ao? Maku e ki atu, he tangata, he tangata, he tangata. “What is the most important thing in the world? I tell you it is people, it is people, it is people.”

### **Cross Examination – Ms Cowan-Lee**

- [244] Ms Cowan Lee agreed with Mr Young that she would oppose any new off-licence/bottlestore in any location in Kaikōura town.
- [245] In response to Counsel Ms Cowan-Lee stated that she was not involved in the development of the LAP.
- [246] Ms Cowan-Lee did not know if there had been any price changes in off-licences when bottlestores closed before or following the earthquakes.
- [247] She thought Alcohol Related Harm in the area has reduced since 2017.
- [248] When asked what she wants for young people today, she stated that she wants safety. She wants Super Liquor to care for them too.
- [249] Before the earthquake alcohol was easier to access. They had big events like Seafest attracting people.
- [250] It is her view that people will buy alcohol regardless of the price and their own budget.
- [251] Mr Young asked if Heartland Centre had information relating to addiction, counselling services available for stores to place on counters. She explained that they had pamphlets around hazardous drinking and access to counselling. When asked if she saw some benefit in Mr Singh having that material in his store at the counter, she thought there would be.
- [252] Ms Barbour had no questions, Sergeant Boyce had no questions, Mr Turner had no questions.

#### **Questions from the Committee**

- [253] Ms Cowan-Lee described the binge drinking culture in Kaikōura to Ms Gulleford as people being encouraged to drink as much, as often, as fast as possible, especially youth. And it's almost acceptable.
- [254] Mr Roche asked if there was any evidence or data that she was aware of from her social service background around binge drinking. She wished there was.
- [255] She wanted to know that people are invested in their community and the health and safety in the community. Anything they can do to improve lives.
- [256] Ms Cowan- Lee agreed that whatever is in the town recently and currently is causing the issues that she is dealing with. She was not sure about discretionary spend on alcohol but she said "I don't think people will buy it regardless."
- [257] When asked by the Chair how many families are being dealt with in terms of ARH, Ms Cowan-Lee answered that the majority of her work includes Alcohol Related Harm. This can be 3-4 cases per week of family harm. There can be 10 cases per month. Cases can also be between siblings, partners, children are exposed to harm.
- [258] Ms Cowan-Lee said that all ages had issues with alcohol. The risks for the young centred around family harm. She did not know if this issue was related to unemployment. (8.6% of 15-24 year olds are unemployed).
- [259] The Chair asked Ms Cowan-Lee about the questioning in her Brief "why do we need more places for our young people to buy alcohol?" And did she mean those legally

able to buy alcohol in an on-licence and from an off-licence? Her reply was - Yes, but younger people buy for younger people, more opportunity.

- [260] At New World a child cannot carry it out of the shop, at Henry's they have awareness, and she believes Super Liquor will need local knowledge in their staff.
- [261] In response to the Chair, Ms Cowan-Lee said that the ages she was referring to in her experience of binge drinking as a mother – was any age from 13 years. Pressure on a parent from their kids for alcohol starts quite young, perhaps 3-4 RTDs at the After Ball. It's ongoing as they get older. Ms Cowan-Lee suggests there needs to be a community conversation about young people and alcohol, "that actually, it's okay to say no to your kids drinking". Her goal has been to do this with individual families that already work in large groups and to take care doing this.
- [262] Ms Cowan-Lee confirmed to Mr Young that she knew the owner of Henrys but that she didn't talk about her workplace with him. Mr Young asked, if in her professional capacity would there be an opportunity to meet a licensee and talk generally about things she might be having difficulties with and how they might help her. If the applicant was granted a licence and he wanted to start this communication, was that something she would like to see happen more – as it seems informally low level currently. She liked this, the idea of responsibility.

### **Three other public objectors**

- [263] Three public objectors stated that they worked close to the premises and each indicated on their objector form that they did not wish to appear, advising their grounds for objecting by the ticking of criteria listed on the form.
- [264] Objectors 1 and 2 stated that through their employment they had clients who have drug and alcohol issues. They both live on Beach Road. Objector 3 who also lives on Beach Road, indicated that her workplace was in the community support building across the road.
- [265] The grounds for objecting which were ticked, plus additional comments:
- (i) Objector 1: the effect on amenity and good order of the locality and a comment that there are enough liquor outlets for the population;
  - (ii) Objector 2: the effect on amenity and good order of the locality and additional comments that there are 13 other licensed premises within 1km, an existing bottlestore less than 200m away, another one not needed and a further comment was they are only there to make money, have no social conscience;
  - (iii) Objector 3: suitability, design and layout, effect on the amenity and good order, whether the applicant has appropriate systems, staff and training to comply with the law and a comment that there are 13 licensed premises within 1km.

### **Closing Submissions**

#### **Medical Officer of Health**

- [266] Ms Barbour presented closing submissions signed by the Medical Officer, Community and Public Health, Dr Brunton. These maintained opposition to the new off-licence based on two of the original grounds:
- (i) suitability of the Applicant;
  - (ii) amenity and good order, s.106(1)(a)(iii) proliferation.
- Ms Barbour had submitted design and layout as an original ground in opposition.

Ms Barbour did not submit the object of the Act as an original ground in opposition. Ms Barbour raises deprivation as part of amenity and good order in her Brief of Evidence.

[267] The MOH's submissions traversed the evidence in support of MOH opposition.

[268] Insofar as legal principles were concerned Ms Barbour referred to the following cases:

- (i) *Re Venus NZ Ltd* [2015] NZHC 1377 at para 53
- (ii) *Tony's Liquor Upper Hutt Ltd* [2014] NZARLA 253428 at para 11
- (iii) *Lion Liquor Retail Ltd CIV-2017-485-506* [2018] NZHC 1123 at [46]
- (iv) *Birthcare Auckland Ltd CIV-2015-404-000755* [2015] NZHC 2689 at para 113
- (v) *Nischay's Enterprises Ltd* [2013] NZARLA 837 at [54]
- (vi) *Shady Lady Lighting Ltd* [2018] NZHC 3100 at [65]
- (vii) *JM Clark 1169/99*

### **The Applicant**

[269] Mr Young filed comprehensive closing submissions in reply to the Medical Officer Community and Public Health (MOH), the witness for MOH Mr Hoar, the objector Ms Cowan-Lee and in summary of why the off-licence should be granted.

[270] Mr Young submitted that the MOH had:

- (i) not challenged Mr Singh on the actual content of the Application;
- (ii) relied on proliferation as the basis for opposing on amenity and good order grounds;
- (iii) attempted to include deprivation data in assessing the impact on amenity and good order;
- (iv) provided generalised evidence, statements and data without examples that were timely and relevant;
- (v) largely ignored the applicant's experience;
- (vi) not acknowledged the applicant's various visits to the town, nor his speaking with locals;
- (vii) not questioned the applicant directly on his evidence or the application document relating to his knowledge of the local community;
- (viii) largely ignored the absence of any of the usual indicators of unsuitability;
- (ix) inaccurately conveyed Counsel's opening as a reliance on a new decision *Townill Limited* [2021] NZARLA 50;
- (x) did not acknowledge the Heartland Centre as a sensitive site;
- (xi) not raised the object of the Act.

[271] Counsel referred to the following cases in terms of supporting legal principles:

- (i) *Townill Limited* [2021] NZARLA 50
- (ii) *Gisborne Liquormart Limited – Black Bull Gisborne v Ka Pai Kaiti Trust* [2018] NZARLA 316
- (iii) *Venus NZ Ltd* [2015] NZHC 1377
- (iv) *Nischay's Liquor Centre* [2013] NZHC 837 (29 August 2013)
- (v) *Kaiti Club Hotel Limited* – opening submissions at 2.3
- (vi) *Vaudrey* – opening submissions at 1.10
- (vii) *Ponda Holdings* [2014] NZARLA PH 558, citing *British Isles Inn Limited NZLLA PH 406/2006*, para [39]

[272] As agreed, Mr Young recorded undertakings raised during the hearing (if the application is granted);

- (a) The applicant will invite the reporting agencies to view the premises fitout/layout once it is completed and prior to opening;

- (b) The existing kerbside garden with its screen type plantings will be retained;
- (c) The Applicant will meet with Ms Cowan-Lee and the reporting agencies every 2 months to discuss the operation of the premises and share any relevant information;
- (d) The Applicant will provide his contact details to Ms Cowan-Lee.

### **The Licensing Inspector**

[273] Mr Turner filed a brief closing submission. The hearing process had confirmed his support for the application by SDSS Limited for an off-licence.

### **The Police**

[274] Sergeant Boyce did not file a closing submission.

### **The Public Objector**

[275] Ms Cowan-Lee did not file a closing submission.

### **Our Decision**

[276] We must determine whether or not to grant an off-licence to the applicant company for Super Liquor Kaikōura. We have approached our task as being to carefully consider and evaluate what we have read and heard in respect of this application.

[277] We find that the experience of the applicant and his proposed but tested systems and training are such that alcohol will be sold safely and responsibly. What led us to our unanimous decision to grant the off-licence with the agreed undertakings and licence conditions includes our risk assessment for going forward based on what we have heard and read.

### **The kinds of premises for which off-licences may be issued**

[278] An off-licence may be issued to specified types of premises, refer *SSAA s32(a)-(f)*. We have considered whether we are authorised to issue an off-licence for the proposed retail premises.

[279] The Applicant has submitted that the sale of alcohol is intended to be the principal purpose of the business. We would then expect 85% of the annual sales revenue to be earned from the sale of alcohol for consumption elsewhere. In evidence Mr Singh explained that his business focus will be on a high quality customer experience and that the store will be lit to a high standard and will meet the CPTED principles advanced in the Super Liquor 2.0 design which will be implemented for the new store.

[280] We have taken into account that the Applicant does not propose to sell single sales of RTDs or beer from broken packaging. He explained that RTDs will be displayed at the rear of the store. We would expect the Licensing Inspector in particular, to include checking this as part of overall monitoring.

[281] The style of off-licence/bottlestore and its focus, the Super Liquor business requirements and regular auditing, the concessions for the livery and signage and meetings with the Public Objector are relevant to our evaluation of the S105 criteria. The risks associated with the application and whether the two arms of the object of the Act can be met are relevant to our evaluation.

[282] We have considered the application on the basis of what is proposed in Mr Singh's evidence and the supporting evidence from Mr Hoar, Super Liquor, and we are satisfied that the Committee is authorised to issue an off-licence for this particular retail premise. The Applicant meets the requirements for an off-licence retail store at this time.

### **Decision and reasons**

[283] The legislative framework for the issue of licences is set out in sections 105(1) of the Act and some of these are the matters that the Committee must take into account in determining whether to grant a licence.

[284] Section 105(1) provides as follows:

*"105 Criteria for issue of licences (1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*

- (a) the object of this Act:*
- (b) the suitability of the applicant:*
- (c) any relevant local alcohol policy:*
- (d) the days on which and the hours during which the applicant proposes to sell alcohol:*
- (e) the design and layout of any proposed premises:*
- (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
- (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
- (j) whether the applicant has appropriate systems, staff, and training to comply with the law:*
- (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103."*

[285] In respect of Section 105(1)(h), Section 106(1) provides a "legislative aid detailing factors to which decision makers must have regard in forming an opinion as to the amenity and good order of the locality:

#### **"106 Considering effects of issue or renewal of licence on amenity and good order of locality**

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

- (a) the following matters (as they relate to the locality):*
  - (i) current, and possible future, noise levels:*
  - (ii) current, and possible future, levels of nuisance and vandalism:*
  - (iii) the number of premises for which licences of the kind concerned are already held; and*

- (b) *the extent to which the following purposes are compatible:*
  - (i) *the purposes for which land near the premises concerned is used;*
  - (ii) *the purpose for which those premises will be used if the licence is issued."*

[286] Section 3 of the Act describes its purpose:

**"3 Purpose**

- (1) *The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole,—*
  - (a) *to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and*
  - (b) *to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*
- (2) *The characteristics of the new system are that—*
  - (a) *it is reasonable; and*
  - (b) *its administration helps to achieve the object of this Act."*

[287] The object of the Act is set out in s.4 as follows:

**"4 Object**

- (1) *The object of this Act is that—*
  - (a) *the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
  - (b) *the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*
- (2) *For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—*
  - (a) *any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
  - (b) *any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a)."*

[288] There are several important definitions relevant to us.

- (i) The term "alcohol-related harm" is defined by s.5(1) of the Act.

*"alcohol-related harm—*

- (a) *means the harm caused by the excessive or inappropriate consumption of alcohol; and*
- (b) *includes—*
  - (i) *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*

- (ii) *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 subparagraph (i)."*

- (ii) The term "amenity and good order of the locality" is defined by s.5(1) of the Act.

*"amenity and good order of the locality, in relation to an application for or for the renewal of a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable."*

- (iii) The term "any relevant local alcohol policy" is defined by s.5(1) of the Act.

*Any relevant local alcohol policy,*

*" in relation to any premises, a licence for any premises, or an application for a licence for any premises, at any time, means those elements (if any) of any local alcohol policy then in force that relate to the part of the district where the premises are."*

### **How we see our task in the light of the law**

[289] We are appreciative of the assistance given to us by Counsel for the Applicant in his references to case law and precedent and similarly, to the MOH. We have mentioned these authorities earlier.

[290] We understand these lead us to some of the guiding principles which we have taken from the submissions and case law:

- (i) Our role is an evaluative one, in an inquisitorial sense. That is to say we are required to evaluate all the evidence before us, both in support of the applications and in opposition to the applications.
- (ii) After evaluating the evidence we must make a merits based determination as to whether or not the applications should be granted.
- (iii) We must have regard to the matters in section 105(1). This in turn requires us to have regard to the matters in section 106(1).
- (iv) To "have regard to" as a requirement means what it says. We do not have to give effect to anything and if, after having regard to a criteria, we conclude nevertheless to grant or refuse the applications that is permissible.
- (v) The weight we give to evidence is a matter for us realising that no party has any onus of proving anything.
- (vi) Whilst we must have regard to all criteria there will be some cases where some matters are so fundamental they assume an elevated mantle – here we think the following matters have assumed a fundamental significance:
  - a. the object of the Act;
  - b. the amenity and good order of the locality;
  - c. the suitability of the applicant.
- (vii) While we do not have to consider section 3 separately, so long as we are reasonable in our evaluations we likely will achieve the two aspects of the section 4 object. We approach section 4 on the basis that our decision must be consistent with both aspects in subsections (1)(a) and (1)(b).



- (viii) We must stand back at the end and reassess our earlier conclusions against attainment of the section 4 object. These two elements – the safe and responsible sale and supply and consumption of alcohol, and the minimisation of alcohol related harm – are equally important, are not to be balanced, and have precedence over the economic/commercial interests of a licensee.
- (ix) There is no presumption of an applicant having the right to a licence. The grant of a licence is a privilege.
- (x) The role of the reporting agencies is important to the licensing process and their evidence cannot and should not be ignored. A Committee is entitled to accord weight to an absence of concerns and a lack of opposition from all agencies. We must require compliance with the statutory obligations of the reporting agencies.
- (xi) We are required to form opinions on whether or not we consider the amenity and good order of the Kaikōura locality would be likely to be reduced by more than a minor extent by the effects of the issue of the licence – in doing so we are guided by s.105, the extent to which and the ways in which the locality is pleasant and agreeable and having regard to the matters in s.106(1).
- (xii) In relation to conditions, we have a wide discretion (s.117) which is constrained by the need for any conditions we consider to be reasonable, proportionate, and likely to ameliorate a risk we might identify and achieve an identifiable benefit.
- (xiii) If we conclude that granting the application would be consistent with section 4 – the object of the Act – we may impose any or some of the agreed suite of undertakings and/or any conditions if we consider granting the application is consistent with the object of the Act and the imposition of undertakings or conditions will enhance that consistency. What we think that means in this case is that before we consider the suite of undertakings accepted by the applicant, and reiterated through Counsel, we must first have come to a conclusion that the Applicant is eligible to have its off-licence granted consistent with section 4 (and the other criteria). If we do not reach that positive position we need not consider the proposed undertakings or any conditions at all. If we reach positive conclusions on the criteria and section 4 then we need to turn to the agreed undertakings and to any conditions and approach them in the way outlined by Justice Gendall in *Vaudrey* [2015] NZHC2749 at [14](g), and Justice Gendall in the *Johnsonville Club* case [1999] NZAR360, (that is, they must be reasonable and proportionate).

## **Discussion**

[291] The Committee adopts the analysis as described by Heath J in *Venus New Zealand Ltd* [2015] NZHC 1377.

*“[20] Although the “object” of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the “object” of the legislation. It seems to me that the test may be articulated as follows:*

*Is the Authority satisfied, having considered all relevant factors set out in s.105(1)(b)-(k) of the 2012 Act, that the grant of an off-licence is consistent with the object of that Act?*

*That is the approach I take to the appeal.”*

[292] Having set those statutory provisions and the guidelines from case law as to the correct approach we will now proceed to discuss the application and the evidence in the light of those considerations.

[293] We can immediately dispose of some of the non-controversial criteria and considerations. We are satisfied, from our consideration and evaluation of the

evidence, that this application raises no concerns in relation to the considerations set out for us in section 105(1) –

- (i) (c) - relevant local alcohol policy;
- (ii) (d) - the days and hours of the proposed licence;
- (iii) (f) - what the licensee sells or doesn't sell by way of other goods;
- (iv) (g) - what the licensee sells or doesn't sell by way of other services;
- (v) (j) - appropriate systems, staff, and training to comply with the law;
- (vi) (k) - any matters dealt with in agency reports.

[294] The opposition that has been conveyed either verbally or in writing to the Committee by the Public Objector, Ms Cowan-Lee focuses on;

- (i) There is no need for another alcohol sales outlet in Kaikōura;
- (ii) The culture of binge drinking in NZ and in Kaikōura puts pressure on young people to drink; and
- (iii) Her concern about easy access to alcohol for young people and their safety.

[295] The opposition from the MOH focuses on;

- (i) amenity and good order, s.106(1)(a)(iii) proliferation and later the including of deprivation;
- (ii) suitability, s.105(1)(b);
- (iii) design and layout, s.105(1)(b).

[296] Initially outdated deprivation data, map HB1 (2013), was provided to paint a picture for the Committee to weigh up whether it would have an impact. Ms Barbour confirmed that the data informs to the likelihood of noise, nuisance or vandalism for the purpose of amenity and good order, but she did not have any case law or studies to support this proposition. She agreed that there was no data on amenity and good order from Police and that she has not provided any. Mr Young suggested that deprivation and vulnerability go to the Object which she had not included.

[297] Ms Barbour provided updated 2018 data in evidence, telling us that “if it goes to hearing” she was advised the 2013 data in her report could be updated. She was sure that the data shown on map HB2 (2018) and indicating deprivation levels of 7,8,9, showed a kilometre radius. In her opinion amenity and good order was not limited to one kilometre, maybe up to 2km.

[298] Ms Barbour was not able to speak further to the deprivation data she provided in exhibit HB1 and HB2 as she did not prepare it and without explanation the data was not clear.

[299] HB1 and HB2 seemed to infer that the population in Kaikōura had decreased between 2013 and 2018 which is not supported by census data.

[300] MOH accepted that unemployment data for Kaikōura was below the national average and that median incomes were about the national average – reasonable signs of a stable community.

[301] MOH states in evidence that the grounds for opposition include, suitability of the applicant, design and layout of the store, amenity and good order, and other matters were raised. The “other matters” include an application lodged in Tasman District which was not raised in her report made under s.103. Ms Barbour was advised that this application had been withdrawn.

[302] As a result of the matters raised by MOH and the Objector and the evidence we received we consider the real concerns in this application are in relation to some considerations set out for us in section 105(1), and that these concerns involve:

- (i) s.105(1)(e) – the design and layout of the premises, subject to our comments earlier about the agreed undertakings and commitments available to us and Ms Barbour’s acceptance of an updated plan;
- (ii) s.106(1)(a)(iii) – what effect, if any, granting this licence would have on the amenity and good order of the locality;
- (iii) s.105(1)(b) suitability of the applicant; the well prepared application and evidence submitted, how much was contributed to by the applicant, the cross-examination responses of the applicant;
- (iv) s.105(1)(a) and s.4 – the object of the Act.

[303] We propose to discuss the application under those topics in that order.

[304] The Authority’s decision expressed in **Sargent v Kapiti Supermarket Limited** included in this decision at [18], in respect of the MOH seeking to belatedly raise the object of the Act as an opposition ground, and as put forward by Mr Young, has relevance for us.

[305] The Committee’s position, in respect of those parties in opposition, is encapsulated in the following, from Akos Acquisitions Partnership [2015] NZARLA, 320-321

*“The Committee has an expectation of objecting agencies providing specific, timely and relevant examples and supporting evidence where general statements are made. We feel that this is quite proper as the DLC is a commission of inquiry. The Committee expresses some frustration with the lack of specific and relevant examples and data from those reporting when opposing. The Committee points out that we can only make a decision on the evidence placed before us.”*

**The design and layout of the proposed premises**

[306] The initial plan as submitted lacked detail. An updated detailed plan with the new Super Liquor Series 2 design incorporating CPTED principles, was submitted was submitted by the Applicant and his witness, Mr Hoar, in their evidence. This plan satisfied the agencies. Police particularly endorsed the use of CPTED principles. The Representative of the Medical Officer of Health, Ms Barbour accepted the updated plan of the premises in cross-examination.

[307] CPTED principles include the 9 external and internal security cameras and external lighting, a well positioned front counter, monitoring of the CTV footage from the front counter, a maximum illumination of 700LUX within the store, wider aisles, lower shelving for better visibility and security within the store, no external supplier branding. Series 2.0, the updated layout as presented, will be used for this premise.

[308] The Applicant met the Committee 24 May 2021, prior to the hearing, at the store and answered clarifying questions about external branding, livery, locations of fridges, shelving, lighting and the kerbside garden.

[309] Subsequently, undertakings were agreed during questioning of the applicant and confirmed in the Applicant’s closing submission;

- (i) The applicant will invite the reporting agencies to view the premises fitout/layout (Super Liquor series 2.0 new plan) once it is completed and prior to opening;
- (ii) The existing kerbside hedge, screen type plantings will be retained;
- (iii) The applicant will offer to meet Ms Cowan-Lee and the reporting agencies every 2 months to discuss the operation of the premises and share relevant information;
- (iv) The applicant will provide his contact details to Ms Cowan-Lee.

- [310] Other matters raised during the hearing, including from Mr Singh's brief of evidence, were the basis for discussion during cross-examination:
- (i) No signage on the footpath;
  - (ii) No brand advertising externally;
  - (iii) No sale of single RTDs or beer from damaged packaging;
  - (iv) RTDs will be positioned near the rear of the display area;
  - (v) Exterior signage, external livery to be as submitted and discussed.
- [311] Should the licence be granted, Mr Singh will arrange for the agencies and himself to meet at the premises prior to the opening of the premises for the agencies to discuss whether the undertakings have been met and satisfy s.105 (1)(e) of the Act. Mr Hoar will be included in discussions. Security measures, including CCTV, alarms and exterior lighting will also be in place.
- [312] We are assured that the interior layout will allow for the visibility of customers within the store particularly from the counter inside the front entry. The monitoring of the interior and exterior CCTV cameras will also occur from the front counter. Mr Singh will have an ability to access cameras from his mobile phone.
- [313] The Committee found the position taken by Mr Singh to be realistic and in our opinion he has displayed an ongoing spirit of co-operation and commitment to involve the agencies in store layout and branding decisions.

**Whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence**

- [314] In *Progressive Enterprises Ltd v North Shore City Council* (2005) 11ELRNZ 421, [2006] NZRMA 72 (HC), the Court considered the meaning of "minor" in the context of the Resource Management Act 1991 and concluded that it must bear a meaning consistent with the general policy of participation which lies at the heart of the Resource Management Act. The Court considered that the dictionary senses of "petty", "comparatively unimportant", "relatively small or unimportant.... of little significance or consequence" captured the legislative purpose.
- [315] The Committee's attention focussed on this discrete locality and the extent to which and the ways in which it is both pleasant and agreeable. We include the wider community or public view, via the Local Alcohol Policy. All of our considerations here also contribute to the final standback evaluation.
- [316] In *Townill Limited* [2021] NZARLA 50, the Authority stated:

*[203] When a locality has high values of amenity and good order that is, when a locality is pleasant and agreeable, a community is entitled to maintain that position and the scheme of the Act provides for this. At the same time the Act recognises that once that amenity and good order is gone, it is much harder to restore and it is for this purpose that regular renewals are required. But the risk must be real.*

*[204] In the present case, the risk is low and effectively amounts to a mere concern that things might deteriorate in the future. In the absence of a provision in the LAP restricting licensed premises relative to certain types of facilities, or restricting the density of licensed premises (again noting that there is no density issue in Amberley), it would not be reasonable to refuse an application which meets the criteria in s 105 when the amenity and good order of the locality is unlikely to be impacted to more than a minor extent by the issue of the licence. It is through the LAP that the voice of the community about whether licences for further premises should be issued in the district is best heard (s 77(1)(d)). To seek to do this through an application would effectively*

*amount to a cap being imposed on future off-licences when s 105 requires any such applications to be considered on their merits.*

*Current and possible future, noise levels*

[317] Section 106 (1)(a)(i):

(a) The Applicant, agencies and those we heard from within the community agree that the proposed off-licence retail store store is not likely to cause noise related issues. The current Henry's bottlestore, 140m away from the proposed site, has not caused any noise complaints in this locality.

(b) As the site is positioned in a commercial area on State Highway 1, there is a large volume of traffic moving passed the location on a daily basis. The premise has good off-road parking and two entrances from SH1/Beach Road, allowing for a good flow of vehicle movements into and out of the off-road parking area.

[318] The Committee has considered that the reporting agencies did not express concerns about current or future noise levels should the licence be granted. No complaints have been received about the off-licensed premises in this locality.

*Current and possible future, levels of nuisance and vandalism*

[319] Section 106 (1)(a)(ii):

(a) The agencies agree that the proposed off-licence is not likely to cause nuisance or vandalism issues. The current Henry's off-licence has not caused any nuisance or vandalism complaints in this locality.

(b) The Applicant commits to keeping the site clean and tidy. Nuisance behaviour will not be tolerated as this would detract from the customer experience. Mr Singh is not aware of complaints, and has not seen evidence of nuisance or vandalism in the immediate vicinity.

(c) Police are not concerned about the proximity of Henry's. The building being occupied is positive as is the opportunity for pro-active informal arrangements to assist with safety in the community.

(d) MOH cited that deprivation scores for the locality informs to noise, nuisance and vandalism. Counsel suggested that there was no case law in support of this and that deprivation and vulnerability go to the Object which she had not included. Ms Barbour included 2013 deprivation data in her report and then included 2018 deprivation data in her evidence.

(e) The Licensing Inspector advised Council records show that there have been no complaints in the immediate area regarding vandalism or nuisance.

(f) Mr Tait, Ms Cowan-Lee and Sergeant Boyce did not speak of disorder, vandalism or public nuisance.

(g) The Police and the Licensing Inspector considered that the isolated incidents of nuisance and vandalism are what one might expect to see within all communities.

[320] We have been guided by having regard to the matters in s.106(1)(a)(ii) of current and future nuisance and vandalism. Currently there is not an issue with nuisance and vandalism and it is not inferred that the proposed business is likely to affect these adversely. The proximity of residential housing is not a factor in this application. The deprivation scores for the locality vary and the MOH suggestion that they inform to noise, nuisance and vandalism is unsubstantiated by evidence or case law.

*The number of premises for which licences of the kind concerned are already held*

[321] Section 106 (1)(a)(iii):

(a) The only basis for MOH opposition on amenity and good order was proliferation. In itself section 106(1) is a legislative aid to assist a decision maker form an opinion for the purpose of s.105(1)(h) and (i). Proliferation is not a ground of objection without

some discussion of the effects of the issue of the licence on amenity and good order which is the s.105 criterion against which the application is being evaluated.

(b) MOH relied on section 106(1)(a)(iii), the proliferation subsection and accepted that Police were the lead agency in relation to amenity and good order. Police, as the lead agency of amenity and good order criteria (section 105(1)(i) and (h), and section 106, do not oppose the application.

(c) In **Shady Lady** [2018] NZARLA 198 (2 July 2018) Dr Palmer acknowledged the limitations on the contribution that the MOH could make to the amenity and good order evaluation:

*“(96) Dr Stephen Geoffrey Palmer, is one of two medical officers of health for the Wellington region working within the alcohol portfolio with responsibilities under the Act. Dr Palmer gave evidence primarily relating to section 105(1)(a) (the object) of the Act. Dr Palmer considered that only a small set of health harm can be linked to problems associated with amenity and good order, and this is mostly exclusively confined to injury from assaults.*

....

*(106) While Dr Palmer acknowledged that the Police are the lead agency with respect to amenity and good order, he noted that the location of the premises is adjacent to the riverbank area, an area associated with previous incidence of breaches of liquor bans and other incidents. Dr Palmer noted that the Licensing Inspector’s report stated this to be of a concern of residents of the neighbouring retirement home.”*

(d) There is one other off-licence/bottlestore similar to the proposed premise within Kaikōura. The number of off-licences in the township has decreased significantly in the last 5 years compared to the number of off-licences held prior to 2016. In terms of the MOH objection based on “proliferation” Mr Young pointed to the following observations made by the Authority in **Gisborne Liquormart Limited – Black Bull Gisborne v Ka Pai Kaiti Trust** [2018] NZARLA 316:

*(89) While the number of premises of the kind concerned in a locality is a matter that goes to the DLC’s opinion of amenity and good order of the locality, an objection must relate to a matter in s 105 of the Act. The Trust’s objection relates to proliferation of alcohol outlets in Gisborne and the harm that alcohol creates in Gisborne as a result. The proliferation of outlets is a legislative aid for the DLC when forming an opinion on s 105(1)(h) and (i). In itself, proliferation is not a ground of objection without some discussion of the effects of the issue of the licence on amenity and good order which is the s 105 criterion against which the application is being evaluated.”*

(e) There are 4 off-licensed premises in the township, of 8 operating in the District. The other 4 off-licensed premises in the District produce and sell relatively high-priced boutique alcohol. The Licensing Inspector reports that 4 off-licences located in the township have expired in the recent past. These were Night ‘N Day, Four Square, Big Daddy’s Liquor Kaikoura and the Adelphi Hotel. Mr Turner reported that there are no statistics available which relate to ARH associated with these premises. If this licence was granted, there would be fewer off-licensed premises than before 2016.

(e) MOH, the MOH witness, and the Public Objector do not see a need for another off-licence in Kaikōura. The MOH witness and the Public Objector do not see a need for any new licences in the town. MOH witness, Mr Tait considered another off-licence would likely see competitive pricing between the two bottlestores. No evidence was produced to support this claim. Mr Singh did not see competing on price as a prudent business option.

(f) The Committee is guided by *Tony’s Liquor Upper Hutt Limited* [2014] NZARLA PH171, at [24];.....no intention that the applicant “*will compete against its competitors on price, does not mean however that the competitors will not compete on price when a new bottlestore enters the market.*” The effect of a new entrant to a confined marketplace is not an issue for the Committee unless the proposal offends against the Act.

[322] (g) In terms of off-licences, “where alcohol is purchased to be consumed off site,” the LAP does not cover density of licences or location. The Committee notes that the proposed hours, location, proximity to another off-licence, designation, density do not contravene the Local Alcohol Policy.

(h) The list of premises provided by MOH was confirmed to be the ones on their database only – for example the rugby club was not included.

[323] In considering the number of premises in the town for which licences of a kind are already held, we have had regard to all relevant considerations canvassed above. The lack of data presented to the Committee in support of statements and claims made, was concerning. The reliance on proliferation for amenity and good order without discussion on the effects of the licence was disappointing. MOH did not provide any amenity and good order impacts that might arise from the granting of the application. An acknowledgment that Police are the lead agency for amenity and good order and did not oppose was a key consideration for the Committee.

*The purposes for which land near the premises concerned is used; and  
The purposes for which those premises will be used if the licence is issued*

[324] Section 106 (1)(b)(i) and (ii):

(a) The proposed site is located on State Highway 1, in a predominantly commercial area. There is one residence located within 100m. Across the road from the site is the Heartland Centre. This has not been identified by MOH or the Local Alcohol Policy as a sensitive site. The proposed premise has a front garden which partially screens the view of the building from the Centre, which closes at 4.00pm.

(b) Some of society’s most vulnerable attend the facility, however the Licensing Inspector in his report “does not believe there is concrete evidence that the addition of another licensed premises operated in compliance with the Act,” would result in an increase in ARH in the predominantly commercial/industrial area zoned *Business B*.

(c) In respect of the Centre, the Applicant offered to have pamphlets provided by Ms Cowan-Lee, on the counter. The Applicant also offered their contact details to Ms Cowan-Lee and to be available to discuss issues on a regular two monthly basis.

(d) The Licensing Inspector indicated that the current and only bottlestore, Henrys, is situated approximately 140m away from the proposed premises. This is not of concern to Police in terms of the building being occupied rather than empty and the ease of monitoring two off-licences in close proximity.

(e) The proposed concessions to the external livery and signage are designed to help the bottlestore blend in to the surrounding environment.

(f) The proposed premises are set back from the road with parking in front and the front garden also partially screens the building from the road. School children from the schools some distance away and passing by the premises will not see directly into the premises. No advertising or alcohol brand advertising will be visible from the highway. The designation sought for the premises is “supervised.”

(g) The Police with their stance around prevention, have provided much local education over a period of time on alcohol ban areas - the Sergeant told us that locals understand the clear choice, empty it out or there is an (understood) alternative. The proposed premise is situated in an alcohol ban area.

[325] The Committee was guided by the co-operation from the Applicant in terms of the proposed premises operating in the locality and the lack of opposition from Police and the Licensing Inspector.

[326] In our opinion, for the reasons discussed after evaluating the evidence and the matters in s.106(1)(a) in particular, the amenity and good order of the locality is not likely to be reduced by more than a minor extent by the effects of the applicant company SDSS

Limited operating a standalone off-licence retail store on the proposed site at 75 Beach Road, Kaikōura.

**The suitability of the applicant**

- [327] The only challenge to the Applicant's suitability is that put forward by the MOH. This is based on an alleged lack of knowledge of the local community and the detail of the application. We note that not one of the recognised indicators of a lack of suitability was raised – particularly alcohol/drug offences, dishonesty offences, prior poor management of premises, insolvency, but respect Ms Barbour's right to make her claim. The Licensing Inspector, at paragraph 8 of his evidence, reported no issues with existing premises operated by the two directors.
- [328] In Re Sheard [1996] 1 NZLR (HC) Holland J stated (at 758):
- "The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that are to go with the holding of a licence."*
- [329] Ms Barbour submitted that she could not judge suitability in her report, but made a negative judgment based on evidence at the hearing and informed us that Mr Singh was speaking from his experience and not from his application and this raised concerns for her.
- [330] The MOH representative confirmed that she thought "how well or how little an applicant has filled out demonstrates the input the applicant has into their business," and that she used this as a basis. We note that Ms Barbour did not enquire into any detail in support of "how well" or "how little" the Applicant had filled out.
- [331] MOH continued to have concerns in spite of what she deemed to be "well-prepared evidence to support an equally well-prepared application." In Ms Barbour's opinion Mr Singh's verbal answers in cross examination did not reflect well on his experience or the well-prepared application and evidence. Ms Barbour did not take Mr Singh to specific paragraphs in his evidence.
- [332] Mr Singh made it clear that he actively engaged with the Ignition Group, a preferred supplier to Super Liquor, in preparing the application and that he knew the detail of his documentation. Responses to questions put by the MOH representative confirmed that the directors had visited Kaikōura on many occasions, preferred to operate in smaller towns and wanted to employ locals.
- [333] Mr Singh, in paragraphs 2.2 to 2.9 of his written evidence and section B of the application document, specifically addresses the local community. Kaikōura is continuing to attract "more people," - Infometrics advises that the population of the District is 4,220 (2020) and has been growing since 2014. Mr Singh mentioned that during their visits people were friendly. Ms Barbour did not take Mr Singh to specific paragraphs of his evidence or other documents and chose not to question him directly on material directly relating to the Kaikōura community.
- [334] We are minded that the NZ Police and the Licensing Inspector did not report any adverse findings in respect of the Applicant and his company. They are satisfied that Mr Simran Singh is a competent hands-on licensee and manager. Mr Singh operates a similar bottlestore, Pegasus Super Liquor. Fellow director Reuben Singh operates Wellsford Super Liquor, and the two jointly operate Westport and Woodville Super Liquor stores, servicing comparable country areas, without a known increase in alcohol related harm.



- [335] While the company applying for the off-licence is relatively new, both directors have significant experience in the industry. Mr Simran Singh is a very experienced off-licence operator and has a blemish free record over 9 years. Together the directors have some 17 years experience in the industry. Super Liquor audits each store quarterly and the stores owned by the directors are achieving excellent audit scores, demonstrating compliant and consistent operations in accordance with the conditions of their off-licences and the Act. Neither director has had their manager's certificate or any of their off-licences suspended or cancelled. They have committed to one director, Mr Simran Singh, operating the proposed premise for the initial 12 months preferably with local staff.
- [336] Mr Singh has Super Liquor based training and systems for his businesses that are conducive to setting and holding to the standard required, looking after patrons – a focus on the customer experience, and for the responsible sale, supply and consumption of alcohol. Super Liquor services and systems appear to continually evolve and additional services include access for both employers and employees to Lane Neave lawyers as health & safety, immigration and employment law specialists. The new store would have full support, including visits from the Franchise Manager, Super Liquor, especially in the initial 6 months.
- [337] Mr Simran Singh lives in Christchurch and will spend several days each week, acknowledging more days initially, at the proposed Kaikōura store, with the intention of hiring and training local staff.
- [338] We note that Mr Singh willingly offered his contact number to Ms Cowan-Lee, advised of his intent to meet with her on a regular basis, and to have an informal arrangement with Police.
- [339] In spite of what Ms Barbour referred to as his quiet, calm approach which she did not see in a positive light, his verbal answers in her cross-examination of him covered the matters put to him and rarely did she seek clarification or further information. He told Ms Barbour of (a) his dealing with the probably addicted woman at the Westport store, (b) if not all people in a group have ID and if they look under 25, they don't serve anyone, (c) in his 3 years of looking for a site in Kaikōura he had not observed graffiti, vandalism, or evidence of disorder, (d) he had not visited Henry's (and neither had Ms Barbour) but current pricing was similar to Super Liquor, and he had no intention of dropping prices as that did not make good business sense (e) his sponsoring of community events did not require his brand to be included in event advertising (f) support is two way and sponsorship is giving back some of his profit to the community (g) the till prompt cannot be overridden (h) and his view is that a good level of service attracts customers. He relates to smaller communities from experience and to customers knowing him and him knowing them. The incident book from the Pegasus store recorded the recent non-service of a young person in school uniform.
- [340] MOH reiterate in closing at 43, that "holding a licence to sell alcohol is a privilege and the responsibilities that go with it include ensuring that it does not have negative ramifications for the community in terms of alcohol-related harm." *J M Clark 1169/99* is referenced;

*"A liquor licence is a privilege. It may colloquially be regarded as a "package deal." Both the burden and benefit runs with the licence. Mr Clark must accept those burdens and control the sale and supply of liquor in a satisfactory manner, or he will not continue to enjoy the privilege."*

- [341] The Committee considers that the Applicant is fully aware of, and has demonstrated through several off-licence operations that they fully understand their responsibilities under the Act and that the privilege of a licence must be earned.
- [342] Mr Singh has read the LAP and could not understand why a bottlestore would open at 8.00am. His proposed hours are: Sunday to Thursday from 10.00am until 9.00pm, Friday and Saturday 10.00am until 10.00pm.
- [343] There is no prerequisite for the Applicant to complete their own application, an agent can be utilised, understanding that the application is still the Applicant's. In this case we accept that the Applicant worked with Ignition Group and has an ongoing relationship with the franchisor's preferred supplier. Our view is that a "package deal" looks at suitability in its entirety – our responsibility is to weigh all aspects of suitability.
- [344] Mr Singh understands and has experience of dealing with the mixed age cohorts present in a smaller community as referred to by Mr Tait. He has a strict approach to dealing with those who do not have ID and who look under the age of 25. Mr Singh offered to have pamphlets provided by Ms Cowan- Lee on the counter, to meet with her regularly, to assist the Police informally.
- [345] The Committee considered all the points presented to us and agreed that the Applicant has significant experience in the alcohol industry gained in smaller rural communities. The Applicant also understands the responsibility that goes with an off-licence – from banning or limiting sales to an individual to not selling or supplying those who display recognised signs of intoxication. The directors have no convictions, have not failed any CPO operations and achieve the franchisor standards when audited regularly. The Committee heard that the Applicant visited Kaikōura many times prior to making their application and had talked with various members in the community about the proposed store.
- [346] The Committee found the Applicant's answers about processes, his past conduct and management experience, including encouraging staff to use the on-line training available and gain qualifications at his cost, the willingness to provide opportunity and to work in and support smaller communities, the understanding of risk and what it means in terms of their own circumstances - the responses to questions put to him overall, to be refreshingly direct and honest.
- [347] The Committee also acknowledges that Mr Singh found the hearing to be a somewhat challenging environment. Ms Barbour considers him a "quiet, calm person." When it comes to his business he raised a delicate situation with a suspected addicted woman and limited supply to her. He also refused service to a young person in school uniform. He explained to us ways of dealing with difficult customers and escalating situations.

### **The Object of the Act**

- [348] Our approach to section 4 has been on the basis that our decision must be consistent with both aspects in subsection (1)(a) and (1)(b).
- [349] We have made a merits based determination as to whether or not the application should be granted. We have had regard to the matters in section 105, with matters in sections 105(1)(a) to (g) and (j) and (k) and in turn with matters in section 106(1)(a)(iii) and (b)(i) and (ii). We have had regard to the matters which we considered held a fundamental significance. We understand that our role is an evaluative one, in an inquisitorial sense.

- [350] The Applicant has had the opportunity to bring positive and proactive experiences to this application. Mr Singh has also displayed a corresponding acceptance of individual responsibility, demonstrating to the Committee that the holding of this licence is a privilege and not a right.
- [351] We have accorded weight to the lack of opposition from the Police and the Licensing Inspector. We are persuaded by the report and evidence by the Licensing Inspector that is convincing and cogent and fully traverses the matters relevant to the Act. The position of the Police, coupled with an assessment of the current and potential issues raised by Ms Cowan-Lee and Mr Tait give rise to an inevitable conclusion for us in terms of future risk. In our opinion the sale and supply of alcohol will be undertaken responsibly at the proposed standalone off-licence with the grant of this off-licence. In short, standing back, we have no doubt it would be consistent for achievement of the two aspects of the object of the Act for us to grant this off-licence.
- [352] We listened to the MOH representative, Ms Barbour, her witness Mr Tait and to public objector Ms Cowan-Lee express their concerns for the Kaikōura community. We have expressed our concerns about the lack of supporting data earlier.
- [353] This same community has the right to expect that all of the premises in the town operate within the “rules,” in this case, within the sale and Supply of Alcohol Act 2012 and minimise alcohol related harm. We find it encouraging that an effective working relationship with the agencies will occur and the proposed engagement and co-operation with the public objector will be positive for all parties.
- [354] Mr Tait’s and Ms Cowan-Lee’s evidence and answers to questions also conveyed to us a willingness and need to work together as a community taking into account the issues still present particularly with the younger people in the community, from the earthquake. To us, this reflects genuine pride and a necessary and developing proactive caring in the community but some continued reluctance to accept outsiders until they know “they care”.
- [355] Further to this, Sergeant Boyce took up the opportunity and offered to lead the conversation that Ms Cowan-Lee referred to as being a necessary one for the community and its approach to young people wanting alcohol and binge drinking - “it’s OK to say No.” Examples from Ms Cowan-Lee, Mr Tait, Sergeant Boyce include – a school after-ball party, a 15 year old’s birthday party, members of the younger mixed age cohort playing rugby for the town’s senior team. The Sergeant advised he has already started communicating with the rugby club.
- [356] The Licensing Inspector and the Police do not believe that there will be an increase in the level of alcohol related harm in the locality through the establishment of this standalone off-licence. In cross examination Ms Cowan-Lee thought alcohol related harm in the area has reduced since 2017. Alcohol was easier to access before the earthquake when big events like Seafest were held – she is supported by Sergeant Boyce who spoke of about 4,500 visitors for this event. Ms Cowan-Lee confirmed that there was no evidence or data around binge drinking but she wished there was.
- [357] The only other bottlestore in Kaikōura is nearby and the supermarket is also on Beach Road. There are less off-licences in Kaikōura than prior to 2016, with a population that has continued to increase in the same period. There is no evidence of price changes with the closure of other licensed premises. The proposed premises will be within the Alcohol Ban Area.

[358] We have accorded weight to and consider the recent **Townill Limited**<sup>13</sup> decision as pointed out in Mr Young's closing submission. In terms of evaluating an application against the object of the Act, the Authority stated:

*[196] Section 105 does not lend itself to an approach where a DLC, or the Authority on appeal, can adopt a 'population-based' view, or what the Authority considers might better be expressed as a policy position about applications. The only such provision for a policy based approach for evaluating an application is in the context of a local alcohol policy (s 105(1)(c)). In the present case, as Mr Egden for Townill rightly submits, the Hurunui LAP recognises that it may provide for certain matters including the location of licensed premises near certain types of facilities, and the density of licensed premises but the Hurunui District Council, for whatever reason, has chosen not to restrict the location or density of licensed premises in its LAP. As a result it is not possible to read this into s 105(1)(c).*

[359] We recognise that the Kaikōura LAP does not restrict the location or density of off-licensed premises. Both Mr Tait and Ms Cowan-Lee said they would oppose any new off-licence and their opposition was not specific to this application.

[360] We have accorded weight to the opposition put to us by the MOH that the application for the off-licence should be declined.

[361] There is a suite of undertakings for consideration and licence conditions that were not challenged. We have no evidence that the Applicant has done other than engage in responsible trade in their existing small town off-licences, in line with legal requirements and under three monthly franchisor audits. The Applicant proposes to operate similarly in Kaikōura. It is our view that there is adequate understanding, current and past experience of the safe and responsible sale and supply of alcohol for the proposed premises to operate within the Object of the Act.

[362] In our opinion, the premises do not present an elevated risk picture – the sale and supply of alcohol should be undertaken safely and responsibly. We are satisfied that any alcohol related harm from the excessive and inappropriate consumption of alcohol that may be attributed to the introduction of this licensed premises will be minimised.

### **Summary**

[363] For the reasons summarised previously we find this Applicant is suitable to hold an off-licence under the Act.

[364] We stand back and weigh everything before us. We conclude this Applicant is able to comply with the object of the Act. In particular we are satisfied that:

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

[365] As we have concluded that the Applicant is able to comply with the Object of the Act, consideration of the suite of undertakings and of the licence conditions for an off-licence is open to us.

[366] We accept the undertakings given, the commitments made by the Applicant in his evidence and during the hearing, the licence conditions provided and have factored these into our evaluation. We view these undertakings as a sign of good faith on the Applicant's part and the inclusion of commitments to Police and Ms Cowan-Lee as positive for the community.

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<sup>13</sup> [2021] NZARLA 50.

[367] We are particularly encouraged by the offer from Sergeant Boyce to lead the conversation in the community raised and deemed necessary by Ms Cowan-Lee and in a different way by Mr Tait from his evidence – under a banner similar to “It’s OK to say No”. For the Sergeant, it is about prevention and “communication is key.”

[368] The Committee unanimously determined to grant the application for the off-licence to SDSS Limited for the premises to be known as Super Liquor Kaikōura, with the following agreed undertakings and licence conditions, for a period of 12 months. The Committee refers to the ARLA Lyger decision and its stance on the object of the Act. The Committee reiterates that there was no question of pre-determination. We reinforced that the existence of this suite would in no way be an indication of granting the licence with these undertakings, rather we acknowledge that they allowed the Committee to be fully informed as to all options open to us when evaluating the evidence, forming opinions and making decisions and in our standing back.

### **Undertakings**

These undertakings covered matters raised during the hearing and recorded by Mr Young in his closing submission as agreed, and also include matters from Mr Singh’s evidence and those raised in cross-examination of him.

- (i) *The applicant will invite the reporting agencies to view the premises fitout/layout (Super Liquor series 2 new plan) once it is completed and prior to opening;*
- (ii) *The kerbside hedge, screen type plantings will be retained;*
- (iii) *The applicant will meet Ms Cowan-Lee and the reporting agencies every 2 months to discuss the operation of the premises and share relevant information;*
- (iv) *The applicant will provide his contact details to Ms Cowan-Lee;*
- (v) *Exterior signage, external livery to be as submitted and discussed;*
- (vi) *No signage on the footpath;*
- (vii) *No brand advertising externally;*
- (viii) *No sale of single RTDs or beer from damaged packaging;*
- (ix) *RTDs will be positioned near the rear of the display area.*

### **Conditions**

The applicant's attention is drawn to s.259 of the Act which makes it an offence to not comply with certain requirements and restrictions imposed by or under this Act. Specifically sections 46 to 63 and 231(1).

The applicant must comply with all conditions specified on a licence. The licence will be subject to the following conditions:-

#### **Compulsory conditions – section 116 (2):**

**(a) No Alcohol is to be sold, supplied or delivered on Good Friday, Easter Sunday, Christmas Day, or before 1pm on ANZAC Day.**

**(b) Alcohol may only be sold, supplied or delivered on the following days and during the following hours while the premises are operating as an off-licence retail store:**

**Sunday to Thursday from 10.00am until 9.00pm  
Friday and Saturday from 10.00am until 10.00pm**

(c) Water will be freely available to customers while alcohol is supplied free as a sample on the premises.

**Discretionary conditions – section 116 (1):**

(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, supplied on the premises within the area marked on the plan submitted with the application.

**Other discretionary conditions - section 117:**

(a) The following step 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.

**Restricted or supervised areas - section 119:**

The entire off-licence retail store shall be designated as Supervised.

**Remote Sales – section 59:**

**Conditions applying to all/any remote sales for the sale and supply of alcohol:**

(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 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 legible image of the licence or a clearly identified link to such image must be displayed in a prominent place on the internet site.

(b) 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 – the prospective buyer must declare by ticking an on-screen box, that 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);
  - once, when the prospective buyer first commences the order process; and
  - again, immediately before the sale of alcohol is completed.
- (ii) in the case of a telephone order, the prospective buyer is asked to declare orally that 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):
  - once when the conversation concerned begins; and
  - again, immediately before the conversation is completed.

(iii) in the case of a physical order form, the prospective buyer must sign the

form at or near its end and the form must contain 2 requests for the prospective buyer to declare by ticking a box that 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);

- one at the beginning of the form; and
- the other, immediately before the place on the form where the prospective buyer is required to sign it.

(c) In the case of any internet form, email, telephone order or physical order form, unless the prospective buyer has by declaring, or by ticking, or by signing the relevant age declarations that he or she is 18 years of age or over (and where any prospective receiver is involved, has declared, ticked or signed that the prospective receiver is 18 years of age or over), the procedure is to refuse to sell alcohol to that prospective buyer.

**Other restrictions and requirements to be noted on the licence:**

**Section 56 – Display of signs**

**Section 57 – Display of licences**

**Section 214 – Manager to be on duty at all times and responsible for compliance**

A copy of the licence setting out the conditions to which it is subject is attached to this decision.

**THE LICENSED PREMISES**

The premises are identified on the plan provided with the application for a licence and date stamped 27 May 2020. The principal entrance is from the carpark off Beach Road, Kaikōura.

**APPENDICES**

- A** **Minute 13.5.21** Proposed visit of DLC to proposed site and general area
- B** **Minute 14.5.21** Record of the reconsideration of Kaikōura Police to “No Opposition.”