

[2020] ADLC 8220056553

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

**AND**

**IN THE MATTER** of an application by Eight Nine & Zero Investments Ltd pursuant to section 99 of the Sale and Supply of Alcohol Act for the grant of a New Off-licence in respect of premises situated at 68 East Tamaki Road, Papatoetoe, Auckland known as "Hunters Corner Liquor"

**BEFORE THE AUCKLAND DISTRICT LICENSING COMMITTEE**

Chairperson: Hannah Cheeseman  
Members: Tim Tahapehi  
Patricia Reade

**HEARING** at Papatoetoe on 28-29 April 2021 at 9.30am

**APPEARANCES**

Alistair Sherriff	Solicitor for the applicant
Gowinder Singh Kaur	Applicant
Baljeet Singh	Applicant
Michael O'Flannigan	Alcohol Licensing
Jayraj Unka	Licensing Inspector
Sergeant Colin Thomas	NZ Police
Constable Mita Staub	NZ Police
Gerard Elwell	Solicitor for the Objector, Zaynel Sushil
Zaynel Sushil	Objector
Amandeep Singh	Objector
Sanmogam Pillay	Objector

**DECISION OF THE AUCKLAND DISTRICT LICENSING COMMITTEE**

***Introduction***

- [1] We have before us an application by Eight Nine & Zero Investments Ltd for the grant of a new off-licence in respect of premises situated at 68 East Tamaki Road, Papatoetoe, Auckland.
- [2] The application was filed on 7 July 2020.

### ***Reporting Agencies***

- [3] The inspector has filed a report opposing the Application.
- [4] Both the Medical Officer of Health and the Police oppose the application.
- [5] In short, the Agencies opposes the application pursuant to Sections 105(1) (a), (b), (d), (h), (i) and (j) of the Act.

### ***Objectors***

- [6] Public objections were received from 30 objectors.
- [7] Following challenge from the applicant, 15 objections were struck out.
- [8] A further 2 objections were withdrawn.
- [9] Three of the objectors appeared to give evidence at the hearing.
- [10] The objections relate to the following criteria in section 105 of the Act:
  - (a) The suitability of the applicant; and
  - (b) The amenity and good order of the locality would be likely to be reduced by more than a minor extent, by the effects of granting the licence;
- [11] The alcohol related harm that the objectors have raised include:
  - (a) The proliferation and density of liquor outlets in the area
  - (b) The high rate of crime in the area and the rise of crime due to the amount of alcohol outlets.
  - (c) Fighting, disorder, vandalism and rubbish caused by intoxicated persons in the area.
  - (d) The sale of alcohol leading to off and side loading drinking.
  - (e) The consumption of alcohol in the carparks in breach of the liquor ban.
  - (f) The Deprivation score for the immediate area; and
  - (g) Sensitive sites including Kindergartens in the area.

### ***The evidence and submissions***

#### **Applicant**

- [12] Mr Sherriff, Counsel for the applicant, made opening submissions. We do not intend to repeat them in full here. In short, the applicant submits that:
  - (a) The application is for an off-licence for a bottle store, under S32(1)(b) of the Act. While the application is for new off-licence, the applicant notes that there has been a bottle store on the site at 68 East Tamaki Road for many years until the previous licensee surrendered its licence.

- (b) The applicant has already demonstrated its suitability to sell and supply alcohol safely and responsibly, noting that each of the applicant's directors has a Manager's Certificate, and that they, under the auspices of another company, hold a tavern-style on-licence in Glen Innes. The Manager's Certificate and the on-licence for that premises have been granted and renewed without opposition.
- (c) The differences between an on-licence and an off-licence are noted. Namely, the additional obligations on operators of on-licences to ensure that there is not excessive or inappropriate consumption of alcohol on the licensed premises and to ensure that the consumption of alcohol on licensed premises is undertaken safely and responsibly.
- (d) It follows that the suitability requirements for an on-licence, with those additional obligations, is greater than for an off-licence and the applicant's proven track record should provide a solid evidential foundation for the Committee to have confidence in the suitability of the applicant to operate an off-licensed premise.
- (e) The vulnerability of the locality is acknowledged, and the applicant notes that Glen Innes, where the directors currently operate an on-licence, is also a vulnerable community, with a similar deprivation rating to the Papatoetoe area.
- (f) The applicant has prepared a detailed proposal to respond to the vulnerability of the Papatoetoe community which should provide additional confidence for the Committee.
- (g) The criticisms directed at the current appearance of the premises are unwarranted given the applicant intends to renovate the exterior of the building if the licence, and accordingly the lease for the premises, is granted. The applicant intends to comply with the Council signage by-laws.
- (h) The applicant and its owners intend to operate the premises themselves, rather than running the premises as absentee owner/operators.
- (i) The applicant has engaged an experienced manager, responsible for day-to-day operation, albeit under the oversight of the applicant's directors.
- (j) The trading behaviour of the immediate past or previous operators on this site will not be replicated by the applicants and the applicant's application provides a number of proposals to mitigate alcohol-related harm, namely:
  - i A suite of conditions designed to respond to the agency's concerns, including reduced hours.
  - ii Short closure on school days to minimise exposure to children.
  - iii No drive-through sales.
  - iv Restrictions on the sale of certain products such as RTDs.
  - v A pricing strategy designed to target a more affluent, and accordingly less vulnerable, target market.
  - vi Utilisation of multiple CCTV cameras inside and outside the premises.

- vii Closure of the carpark on non-trading days or hours.
  - viii A prohibition on footpath promotional activity.
  - ix And a daily rubbish sweep of the surrounding areas.
- (k) The applicant has engaged with some of the objectors in nearby institutions and the applicants are committed to leading quarterly community engagements with the agencies and other interested parties.
- (l) It is acknowledged that new bottle stores in places where there have never been bottle stores before are progressively becoming harder to obtain where there is community objection. It is noted that renewals of bottle stores are no longer automatic and that renewal of applications on sites where there have been previously off-licensed premises is also not easy. The applicant refers the Committee to decisions, such as *Nishchay's Enterprises*, *Shady Lady Lighting*, *Patel's Superette 2000*, and *Riccarton Liquor*.
- (m) However, there is no jurisprudence to indicate that a Committee can never grant a new off-licence in a vulnerable location. The applicant submits that the Authority has provided guidelines in its prior decisions, and the evidence from the applicant will address those areas of concern in such a manner that the granting of this application is appropriate.
- (n) The applicant acknowledges that the Committee's role is evaluative and includes a forward-looking risk analysis. However, the applicant notes that the initial licence only lasts for one year and that is effectively a probationary period for the applicant to prove its ability to manage a licence in this area in accordance with the Act.
- (o) That the criteria in Sections 105 and 106 of the Act are not matters that should be approached by way of a checklist, whereby if one criterion is not met, the application fails. Rather, what matters is whether, considering the conditions appropriate to impose and as offered by the applicant, the object of the Act will be satisfied.

#### Applicant's Evidence

[13] The applicant called two witnesses, Gowindar Resham Singh Kaur, one of the directors of the applicant company, and Manjinder Singh Manes, the proposed General Manager of the premises if the application is granted. In addition to the written and oral evidence the Committee was provided with a number of exhibits which, together, make up the comprehensive application lodged by the applicant.

#### *Gowindar Kaur*

[14] Ms Kaur gave evidence by way of a written statement of evidence, which was confirmed on oath at the hearing. Her evidence is that:

- (a) She is the sole director of the applicant company. She notes that she is a 50% shareholder, and the other shareholder is her husband, Baljeet Singh.

- (b) Both she and her husband are directors and shareholders in another company, Baldwin Vink Limited, and through that company they manage the Courtyard Bar in Glen Innes. Baldwin Vink has operated that premises since 2015. The on-licence for that premises was granted unopposed and subsequent renewals of the on-licence have been granted unopposed.
- (c) Both she and her husband each have a Manager's Certificate which were granted and renewed unopposed. Ms Kaur's current Manager's Certificate expires in 2023 and her husband's expires in July 2022.
- (d) The current on-licensed premises have gaming machines and has the required venue licence from the Department of Internal Affairs (DIA). She notes that there have been no issues with the on-licence or the suitability of the premises from the perspective of the DIA. Ms Kaur is the DIA approved Venue Manager for the Courtyard Bar and both she and her husband are approved as "key persons" by the DIA.
- (e) She prepared for her off-licence application by spending time in a friend's bottle store in Manurewa to watch how that off-licensed premise operated.
- (f) The premises at 68 East Tamaki Road had been licensed as a bottle store for 20 to 25 years under a number of operators. Most recently the application for renewal of the off-licence in 2018 was granted unopposed and that renewal was to allow trading until 2021.
- (g) Drip & Drop Holdings Limited purchased the business and operated under temporary authorities from 5 July 2019 until 3 February 2020. An application for a new off-licence by Drip & Drop Holdings Limited was lodged. It was not opposed by Police or the Medical Officer of Health but was opposed by the Inspector. The Inspector had applied to suspend the underlying off-licence due to claimed unlawful trading by Drip & Drop Holdings Limited. As a result, the holder of the off-licence surrendered their licence and trading ceased.
- (h) The applicant company has a conditional agreement to purchase the business and assets at the premises and a conditional agreement to lease the premises until 2031, subject to obtaining the off-licence sought.
- (i) She is aware of the locality and the community surrounding the premises. She notes that the applicant seeks to trade as a bottle store on a site which has previously had a bottle store on it for many years. Ms Kaur considers that in this sense it is not an application for a new bottle store, and if granted, the licence would be a replacement of a previously existing licence, rather than a completely new site and new licence.
- (j) In preparation for the application, she made herself aware of key features of the area, including statistics relating to the demographics of the locality. She notes that she is aware of the sensitive sites in the locality, including three religious centres, a medical centre, seven educational childcare facilities and two petrol stations.
- (k) She accepts that in alcohol licensing terms, the area is a "vulnerable area" characterised by being located within areas with a high deprivation index.

- (l) In recognition of that, the applicant company has made a number of changes to the proposed business plan. These can be conditions on the licence if the Committee grants the application. Those concessions or changes, are as follows:
  - i) The applicant proposes reduced trading hours, seeking licenced hours of 9 am to 10 pm Monday to Sunday. In addition, the applicant company proposes to close sales at least 5 minutes before closing time.
  - ii) The applicant company proposes to close for a short period between 3:15 pm and 3:45 pm on school days to reduce the risk of alcohol related harm to children.
  - iii) The applicant company has decided not to operate a drive-through sale facility as previously existed at the premises.
- (m) The applicant company invites the following conditions on their licence:
  - i) Not to sell single RTDs.
  - ii) Not to discount RTD products.
  - iii) Non-promotion of RTD products outside the premises.
  - iv) Not to break up packaged beer and not to sell single containers of packaged beer, other than Craft beers.
- (n) The applicant company proposes a business plan premised on stocking premium products at a higher price point than other surrounding bottle stores. Ms Kaur admits that this is designed to reduce the risk of alcohol-related harm by targeting a more affluent and less vulnerable demographic.
- (o) The installation of CCTV cameras inside and outside the premises.
- (p) The closing and chaining of the carpark during the non-trading hours of the premises to prevent cars using the carpark at that time.
- (q) An undertaking not to have promotional material such as sandwich boards on the footpath.
- (r) A host responsibility policy that includes an alcohol management plan. Ms Kaur's evidence was that this demonstrates the Applicant company's assessment of risk from an off-licence and her proposals to respond to that.
- (s) The applicant company has developed a social responsibility implementation plan which addresses matters such as:
  - i) Staff training.
  - ii) Minors.
  - iii) Intoxication.
  - iv) Signage.
  - v) Promotions, pricing and marketing.
  - vi) An incident logbook.

- vii) Banning and trespassing people where are appropriate.
  - viii) Security and controls including at least 5 staff on the premises at all times it is open.
  - ix) Potential staff misconduct and its consequences.
  - x) Other strategies including monitoring through the use of internal mystery shopper operation and training for armed robbery situations.
  - xi) Ensuring that the perimeter of the premises is checked for rubbish at the commencement and conclusion of each trading day but is not limited just to the carpark area but will also expand to the footpath area.
- (t) She had engaged with several of the objectors, together with a meeting with the agencies, held in September 2020. At that meeting business planning and proposed changes to the application were discussed and responses to the agencies' concerns were proposed.
  - (u) She visited many nearby businesses, a large number of whom provided letters of support of the application. Letters of Support were also provided by the local business Association from Glen Innes and Sikh Society in relation to the operation of the Courtyard Bar in Glen Innes.
  - (v) She acknowledged the obligations of any person selling alcohol, to be part of the community in which they operate. Ms Kaur outlined that in Glen Innes she donates to the local Food Bank every two months and confirmed her intention to set up a similar operation in Papatoetoe.
  - (w) In relation to the concerns expressed about the existing signage and outward appearance of the premises, Ms Kaur noted that the applicant company intends to arrange for a full repaint of the exterior of the premises, using more muted colours and signage compliant with Council by-laws.
  - (x) She visited a number of the local sensitive sites, many of which indicated no concerns with the granting of a licence at the premise.
  - (y) The applicant company has developed an Alcohol Community Engagement Plan which she intends to implement if the off-licence is granted. The applicant company is prepared to be the lead facilitator and organiser for this community engagement, which includes engagement with the Agency Inspector, and other interested parties.
  - (z) Ms Kaur was critical of the Police, Medical Officer of Health and the Inspector for seemingly overlooking that there was a bottle store at 68 East Tamaki Road for many years which was licensed unopposed.
  - (aa) Ms Kaur and her husband have proven track records of being safe and responsible sellers of alcohol, and their proposed Manager, Mr Manes, also has a proven track record as a safe and responsible manager of an off-licensed bottle store. Ms Kaur considers that there is no risk in licensing the applicant company for the probationary period, and that she does not consider that granting the applicant

company an off-licence to replace the previously surrendered licence, will adversely impact the amenity and good order of the locality at all.

- (bb) Ms Kaur gave evidence of the intention to employ 3 full-time staff and 2 part-time staff to sell alcohol. And noted that Mr Manes will manage the team under the supervision of Ms Kaur and her husband. She noted further that on Fridays and Saturdays between 5 pm and closing the company will have a security guard at the entrance, contracted from a security company.
  - (cc) Ms Kaur gave further evidence of the types of products that will be available at the premises if the off-licence is granted, including a series of low alcohol products and zero alcohol beer to be made available. Ms Kaur highlighted the types of alcohol considered 'premium' which would be available for sale.
  - (dd) Ms Kaur's evidence is that her knowledge of the types of alcohol obtained while training at the liquor store together with employing a manager with more than 10 years' experience can give the Committee confidence in applicant's ability to manage an off-licensed premises.
  - (ee) Ms Kaur assures the Committee that she can be trusted to sell alcohol safely and responsibly and asks for the grant of an initial off-licence for 1 year in order to allow the applicant company to demonstrate to the Committee, the Police and the Inspector, the Medical Officer of Health and the Papatōetoe Community that they are responsible operators for that community.
- [15] Under examination from Mr O'Flannigan, for the Inspector, Ms Kaur confirmed that the difference between an on licence and an off-licence included the supply of food at the on licensed premises and in the gaming area at that premises which also attracted customers. She accepted that when she sells alcohol at an on-licensed premises she is able to assess the customer for intoxication or any other concerns at the time of sale and supply of alcohol, and she confirmed that she only generally sells one serving of alcohol to each customer at a time. She confirms that customers can buy more than one drink but that usually happens when they are buying for a group. Ms Kaur confirms that customers don't usually buy 12 or 24 drinks at a time when purchasing at on licence premises. Ms Kaur confirmed that at an off-licence premises, people are regularly buying 4, 6, 12 or 24 drinks at a time.
- [16] Ms Kaur confirmed that she is aware of the concept of pre-loading or side-loading, outside and on licensed premises, and that she is very careful to avoid that when operating the on licensed premises as she needs to be aware not to allow intoxicated people on the premises. She stated that the best way to manage that is to ensure that all alcohol is purchased on site.
- [17] Mr O'Flannigan questioned Ms Kaur about the differences in the obligations for on licensed premises and off-licensed premises. Ms Kaur noted that the first four obligations are essentially the same between the two types of premises and reiterated that an on licence has four additional conditions.
- [18] Ms Kaur accepted that the reason for those additional obligations do not apply to an off-licence because there is no way for a licensee to control how alcohol is consumed when it is consumed away from the premises.



- [19] Again, under cross-examination, Ms Kaur did accept that this is an application for a new bottle store despite her assertion and her written evidence that it is essentially a replacement licence.
- [20] The concept of a vulnerable area was discussed with Ms Kaur and in response to Mr O’Flannigan, she noted that if the licence is granted for the premises, she does not need to sell alcohol at a cheap price. The business plan includes premium pricing to appeal to more affluent customers.
- [21] In response to a question from the Committee regarding assessing income based on appearances, Ms Kaur confirmed that the alcohol won’t be discounted “cheaply” – it will be sold at a normal price. She also confirmed that she would be unable to tell whether someone can afford it or not but noted that she has good staff and good systems in place.
- [22] In response to a follow-up question from the Committee in relation to “what is a vulnerable person”, Ms Kaur noted that she would not sell alcohol to under-aged people, to intoxicated people or to people who shouldn’t consume alcohol. An example of a “red flag” would be someone who came into the shop 3 to 4 or 5 times per day. Ms Kaur noted that this was a deprived area, with increased crime and “gangsters” and that she could tell who those people were by how they dressed and how they talked. Ms Kaur acknowledged that she could not tell which people could afford alcohol based on their appearance. She acknowledged the number of lower income families in the area as set out in the statistics made available to the Committee, and that she could not identify them from their appearance.
- [23] Mr O’Flannigan noted the reduction in trading hours sought by the applicant and Ms Kaur confirmed that that was a reduction of 1 hour per day. When asked what impact that would have on reducing alcohol-related harm, Ms Kaur noted that after 9 pm there tended to be more intoxicated people and people buying greater quantities of alcohol. It was Ms Kaur’s evidence that people who are working won’t be buying alcohol late at night.
- [24] Ms Kaur confirmed that she is aware of the sales late at night after observing her friend’s bottle store in Manurewa.
- [25] In relation to the drive-through which was previously available at the premises, Ms Kaur indicated that the roller door will be blocked off to ensure that it cannot be used for drive-through sales.
- [26] In relation to the discounting of RTDs Ms Kaur confirmed that the applicant company did not intend to discount or promote sales of RTDs and confirmed again that the applicant company would not be selling alcohol “cheap”.
- [27] In relation to the discounting of beer and other products, Ms Kaur noted that there is a 20% margin on the sale of those items but confirmed that the applicant company did not intend to have specials on those prices. She confirmed in response to questioning, that prices may increase over time but will not go down.
- [28] In relation to questions from Mr O’Flannigan about the business plan provided, Ms Kaur confirmed that it was written by her, her husband and their application advisor and that the three of them wrote the document together.

- [29] Ms Kaur confirmed that the intention was to sell to people who lived locally and confirmed that an example of a “cheap product” were some cheap RTDs. Ms Kaur further confirmed that some bottle stores do discount RTDs and other non-premium products, but that the applicant company would not be doing that.
- [30] Ms Kaur confirmed that there was no distinction between types of alcohol. That the alcohol referred to in her written evidence was types of RTDs and other alcohol they were selling and confirmed that they are ones she would describe as not “cheap”.
- [31] In relation to the marketing portions of the business plan, Ms Kaur confirmed in the cross examination that the things detailed as not being done, are things that are prohibited under the Act.
- [32] In relation to the pricing of alcohol at the proposed premises, Ms Kaur confirmed in the evidence that she intends to price items consistently higher than the opposition and that intends to do this by window shopping at the other stores so that she is aware of their prices and able to price product at her store higher.
- [33] In cross-examination Mr O’Flannigan asked Ms Kaur whether she wanted to sell to vulnerable people, Ms Kaur confirmed that she did not but went on to say “I can’t stop people from buying alcohol, if they don’t want to buy from me, they will buy from other people.”
- [34] In response to a question in cross-examination Ms Kaur accepted that the opening of this bottle store would likely result in competition lowering their prices as a means of competing. Ms Kaur went to say, “in fact, I expect they will.”
- [35] In relation to a query from the Committee as to how a business plan with a higher price point would work in practise, Ms Kaur reiterated that she does not want to sell alcohol cheap and that customers would be attracted to the premises by its convenient location and on-site parking. She confirmed that she was effectively targeting people who can afford to pay slightly more for the convenience of location and parking.
- [36] Ms Kaur confirmed that she would expect the Inspector to confirm compliance with the price point condition and stated that he would “have to do the same legwork as her”.
- [37] In response to cross-examination regarding the location of RTDs in the far corner of the store and the chiller area, Ms Kaur was asked how keeping RTDs in the chiller was going to stop people buying them? To which she replied, it would depend on the customer, and confirmed that there was nothing, in practice, to stop a customer seeking RTDs or cheaper alcohol coming in and buying it from the premises.
- [38] In relation to the Alcohol Community Engagement Plan, in response to questions from Mr O’Flannigan Ms Kaur noted that the business plan is consistent with the focus on reducing alcohol-related harm. She accepted that the availability of alcohol has adverse effects on the community but that the applicant company would respond to that by not selling alcohol to under aged people.
- [39] When asked about the adverse effects on the community which could result in the increased availability of alcohol in the community, Ms Kaur was unable to respond. She noted that other people had assisted her in writing the Alcohol Community Engagement Plan. Ms Kaur did accept that there are some effects highlighted under the bullet points

noted as “key messages”, however despite her acceptance of the alcohol harm factors that were outlined in the Alcohol Community Engagement Plan, Ms Kaur said that she considered that the granting of another off-licence would be responsible despite those factors. Ms Kaur confirmed, when asked, whether the number of licences in an area was something the Committee could consider, that that depended on the Committee, noting that there were previously 17 licences. Now there were 16 “but if I get it that will only go to 17 again”. When asked how many licences is too many Ms Kaur simply replied that this is not a new application and the premises had been licensed for a long time.

- [40] Ms Kaur was also cross-examined by Police. In response to that cross-examination, she confirmed that the neighbouring premises were approached during school hours and on weekdays with the exception of the Church which she visited on Sunday.
- [41] Ms Kaur confirmed that she had visited the locality, in which the premises are to be established if the application was granted, at night-time, noting that she did that on her way home. She stated, “if the motorway, is closed sometimes we come through Papatoetoe”. She estimated that that was around 11 pm or midnight.
- [42] In relation to the information that the availability of parking convenient to the premises was likely to attract patrons despite the higher price point, it was put to Ms Kaur that across from one of the competing bottle stores is a large public carpark. Ms Kaur accepted that that was the case.
- [43] In relation to the difference between on and off-licences and the responsibility that a licensee has in relation to the consumption of alcohol purchased on the premises, Ms Kaur indicated that her responsibility as a licensee would end at the point of service, in particular through not serving under aged people, intoxicated people or prohibited people. She clarified that by “prohibited persons”, she means those under 18 years.
- [44] Ms Kaur was also cross-examined on the role of Māori wardens in Papatoetoe, as there was reference to engage Māori wardens in the material provided with the application, particularly in relation to the use of security staff on evening shifts.
- [45] Ms Kaur was not aware, that Māori wardens are only able to deal with Māori patrons, she was not aware of the rosters utilised by the Māori wardens, and indicated that she could only commence engaging with them if the licence was approved. She further clarified, in response to a question from the Committee that she intended to take advice from the Māori wardens in relation to security as they had greater knowledge of the area than she did at present.
- [46] Ms Kaur was asked by Police why there was no mention of the 16 other off-licences in the locality in her evidence and she responded, essentially with an acknowledgement that there are a number of other off-licensed premises but that there will be both a benefit and a detriment to the community if the licence sought is granted. Again, reference was made to the fact that the site was the location of a bottle store previously, and Ms Kaur asserted that she is a good licensee and could run the business well.
- [47] In relation to the benefits to the community Ms Kaur clarified that she meant matters such as location and parking and the convenience of the premises from which she seeks to operate and she confirmed that she intends to donate to local food banks in the same

way that her other company does in Glen Innes.

- [48] In response to a question in cross-examination, Ms Kaur accepted that alcohol that wasn't being supplied from an on licensed premise must be coming from an off-licensed premise, and when asked about the consumption of alcohol in Papatoetoe after 11 pm, she noted that such consumption happens everywhere and there was no way to pinpoint which particular bottle store the alcohol is being sourced from. Ms Kaur confirmed that pre-loading and side-loading was an issue which resulted in intoxication, littering and other disorder. In response to a question about how she would minimise that harm, Ms Kaur noted that the hours sought for the licence were reduced, and she sought to close at 10 pm and confirmed again that she would not serve intoxicated people. In relation to the Police concern that a greater number of off-licensed premises may result in more alcohol and greater risk of alcohol-related harm, Ms Kaur confirmed that they would be targeting more expensive alcohol with a more affluent market rather than the "pre-loading type".
- [49] Ms Kaur was then cross-examined by the Medical Officer of Health. She confirmed that she had not owned or operated a bottle store before and that her experience in this area largely consisted of observing her friend's bottle store five to ten times to see how it operates and observe the business model. From that experience Ms Kaur learnt about customer sales and licensee obligations. She formed the view that the obligations of licensees of bottle stores was "less strict" than the obligations on the holders of on licences. Ms Kaur confirmed that the visit to the bottle store was during school hours in the afternoon rather than in the evenings or weekend times.
- [50] Ms Kaur confirmed that she obtained the statistics, referred to in the application, online with the assistance of her licensing agent. Ms Kaur confirmed in cross-examination that more than 50% of the residents in Papatoetoe earn less than \$30,000 p.a. which is less than the minimum wage period. When questioned about the feasibility of her business plan, namely a higher price point to target higher income residents, in a community where more than half of the people earn less than the minimum wage, she responded "I wanted an off-licence, and this is what I could afford. So, I like the location".
- [51] When asked whether the business model would work better elsewhere, she confirmed that she had picked this location more for people travelling from Botany, Manukau and surrounding suburbs. Ms Kaur confirmed that she had not considered the impact of increased alcohol sales on those communities.
- [52] It was put to Ms Kaur that alcohol-related harm is already occurring in the Papatoetoe area and her response to that was sought. Ms Kaur noted that alcohol-related harm is already occurring everywhere. She considered that the owners of licensed premises are to manage that and that if there is increased harm or there are mistakes being made, then those licences should be cancelled. Ms Kaur made it clear that she did not consider it fair that her application is being challenged as a result of harm caused by other people. Ms Kaur made it clear that she does not agree that declining this application would change anything and challenged the Committee, and if that is the case, then others should be shut down as 16 licences are unnecessary.
- [53] The Medical Officer of Health also cross-examined Ms Kaur on the difference between cheaper and premium products and put to her that the alcohol being sold in her store is

largely the same as those sold in other stores. Ms Kaur accepted that that is the case.

- [54] The Medical Officer of Health also cross-examined Ms Kaur on whether the signage proposed for the premises is compliant with Council by-laws. Ms Kaur indicated that that had not been done as yet, and that the material provided was an example only. She undertook to work with the District Council to ensure that any signage utilised was compliant with the by-laws.
- [55] The Medical Officer of Health also cross-examined Ms Kaur on engagement with stakeholders and the bullet points in her application in relation to alcohol-related harm. In response to a question, Ms Kaur confirmed that she had read the evidence of the Medical Officer of Health and she accepted that the concerns put forward by the Medical Officer of Health largely mirrored those set out in her own application as concerns in relation to alcohol-related harm.
- [56] Ms Kaur was cross-examined by the objectors. Cross-examination was undertaken by Mr Elwell. Ms Kaur confirmed in cross-examination this is a new application and not a renewal of an existing licence and confirmed that she was aware that the most recent new application in Papatoetoe was at least three years ago.
- [57] Ms Kaur confirmed, in response to a question in cross-examination that she was not familiar with Section 237 of the Act relating to irresponsible promotions of alcohol. She then confirmed that she would use the policies set out to manage the promotion and sale of alcohol.
- [58] In relation to some final questions from the Committee, Ms Kaur confirmed that there would be three full-time staff and two part-time staff employed at the premises. She confirmed that each employee would work no more than 8 hours per day in rotation over 7 days per week. She confirmed that it would appear more staff were required to meet her own minimum requirement of five staff in the store at any given time.
- [59] Despite mention of a policy relating to armed robbery, Ms Kaur confirmed that she had not properly looked into that at this time and acknowledged that this was an area she would need to look into further.
- [60] Ms Kaur confirmed that in relation to trespass, she was able to use verbal trespass options and descriptions. When asked by the Committee how that would be enforceable to other staff, Ms Kaur, quite reasonably, noted that CCTV footage would provide Stills.
- [61] The Committee asked Ms Kaur how the business model, relying on premium products in a higher priced point, was economically viable in a lower socio-economic demographic area and referred to the mention of travellers. Ms Kaur confirmed that those people could be anyone including those travelling from the airport.
- [62] Ms Kaur confirmed that the proposed bottle store is not her main source of income. She notes that she has a business that is currently covering her own costs and she wanted to expand and purchase another licensed premises. Ms Kaur was saying that she got this premises at a good price which is why she selected the location but she confirmed that in addition to affordability, the premise was appealing because it is close to her home.
- [63] In response to a question from the Committee as to whether if the target market was

more affluent people, was Papatoetoe really the best location, she confirmed that she thought it was, noting that “if people want to drink, they drink.” Ms Kaur confirmed that she would not serve under aged people, that she has not previously suffered from a robbery and indicated that her view was that if someone wanted to open a business, they should be given that chance.

*Manjinder Manes*

- [64] The second witness for the applicant was Manjinder Singh Manes.
- [65] Mr Manes gave evidence that he intends to be employed by the applicant as a Store Manager. His role in that job would be to ensure that the store is operating in full compliance with the requirements of the sale and supply of alcohol. Mr Manes indicated that he would be in charge of ensuring there was an adequate number of certified duty managers at the store at all times when the premises are open. Further he will be assisting the duty managers in their role in ensuring that the applicant complies with the Act, the licence conditions and all of the policy requirements of the applicant.
- [66] Mr Manes evidence is that he has 10 years of combined work experience as duty manager or store manager. He is currently employed at the Allenton Liquor Store which has helped him gain knowledge and experience in these responsibilities and insight into managing licensed premises. Mr Manes’ work was as duty manager for different bottle stores previously and he has never appeared before the Alcohol Regulatory and Licensing Authority. He has a current Manager’s Certificate which expires on 10 February 2022.
- [67] Mr Manes confirmed that he has read the application for an off-licence by the applicant company and the attached exhibits, that he is aware of the public objections and that the objectors have raised concerns about his lack of experience in managing licensed premises along with other concerns.
- [68] Mr Manes confirmed he has been briefed by the applicant directors regarding the history of the premises and he was provided with strict instructions under which the store is to operate.
- [69] It is Mr Manes’ evidence that given his wide experience in the alcohol industry combined with experience gained over the years working in various challenging communities as a Duty Manager, he is confident that he will be able to uphold the requirements of the Act at all times and maintain his clean and unblemished record as far as the management and operation of licensed premises is concerned.
- [70] Mr Manes gave evidence that he previously worked in Te Puke as a Duty Manager and that during that time he regularly visited friends in South Auckland. Accordingly, his evidence is that he is aware of the vulnerable community in Papatoetoe, and he considers that those vulnerabilities are similar to the kind of issues and challenges faced by the communities he worked in in the South Island. Based on that he considers he has the skills and experience to effectively deal with situations.
- [71] Mr Manes gave evidence of his commitment to ensuring that the risk of alcohol-related harm arising from the premises is minimised and outlined he would do this by making close relationships with nearby communities, such as churches, schools and early childhood centres once he is living and working in the area. Mr Manes is confident that

he can serve the community in a respectful and compliant manner and not allow misuse or abuse of the services provided by the applicant.

- [72] Mr Manes acknowledges that alcohol-related harm cannot be eliminated but confirmed that he is committed to ensuring that the store meets its legal obligations in full to effectively minimise the potential for alcohol-related harm.
- [73] In his oral evidence before the Committee Mr Manes drew attention to the stores with lower social-economic demographics that he has worked at, including a store in Wainoni which he considers is similar in vulnerability to the Papatoetoe area.
- [74] Under cross-examination Mr Manes confirmed that his understanding of a vulnerable community included “people who don’t have control of themselves, alcohol and drug use, fighting and violence.”
- [75] Mr Manes confirmed that the current localities that he worked in, Ashburton has “mostly old people”. In response to a question in relation to the deprivation rating, Ashburton being 9, Mr Manes indicated that he never had a problem and said that “it depends on how you deal with people”.
- [76] In response to cross-examination from Mr O’Flannigan, Mr Manes agreed that he had read the evidence of the Medical Officer of Health and Mr Aye, and he accepted that the vulnerability ratings were wider than the alcohol, and included poverty, poor housing and poor health outcomes. When it was suggested to Mr Manes that Allenton had a similar vulnerability rating to Papatoetoe, he noted that the people who frequented his store were “mostly employed people, so come in after work”. They don’t drink during the daytime, instead they drink at home. It was Mr Manes’ view that he could manage the concerns expressed by the Medical Officer of Health. As an example, he indicated that if people were attending the store multiple times per day or appeared short of money, he would direct them to alternatives.
- [77] Mr Manes was shown Facebook posts of promotions that he had undertaken at the Allenton store. He considered that these were responsible promotions and that the alcohol set out in those promotions was not cheap, compared to what the wholesalers pay for it. The example he gave was Hardy’s Wine, which was advertised at 1 litre for \$10.99. It was Mr Manes’ view that this is not “cheap” rather it is simply not a good wine.
- [78] Mr Manes was questioned about how he would deal with vulnerable people. His response was that those people would be turned away and not served. Mr Manes indicated he could identify people who are unemployed after getting to know the people in the community but indicated he would not refuse service to unemployed people.
- [79] Mr Manes was asked about the ability to identify someone with a chronic condition caused by alcohol and was asked if there was any way to diagnose that. Mr Manes’ response was that he would recognise slurring, swaying, and people being too friendly. Mr Manes indicated that he could tell whether a person had a heart condition by looking at them.
- [80] Mr Manes confirmed that promotional sales of RTDs would not occur, on the direction of Ms Kaur.
- [81] In relation to the placement of cheap products, Mr Manes confirmed that this largely

meant RTDs, Cody's or Woodstock. But confirmed that if people were looking for such RTDs they would know to look for them in the chiller. He indicated that the price point operated by the store involved knowing other stores' promotions with discounts and ensuring that they set their prices higher.

- [82] Mr Manes was specifically asked what would stop vulnerable people buying alcohol and he replied "vulnerable people don't drink Heineken. If they can afford it why not sell it to them"?
- [83] Mr Manes confirmed that there is nothing to stop other off-licensed premises in the area lowering their prices to compete with the applicant and accepted that they may compete based on price.
- [84] Mr Manes agreed that he had read the Community Alcohol Engagement Plan and applicant's exhibits and confirmed that he agreed with that and, in particular, the key messages as set out in that document. Mr Manes agreed that one strategy to prevent alcohol-related harm would be to not increase the amount of alcohol available and noted that if people were trying to buy in bulk, he could prevent this by not selling alcohol to them in large quantities. When asked whether granting a new licence will increase the amount available in Papatoetoe, Mr Manes said he thought it would not, indicating that people would buy alcohol regardless.
- [85] Mr Manes accepted that vulnerable people go beyond those that have alcohol-related dependency issues. When challenged with the proposition, "that money vulnerable people spend on alcohol couldn't then be spent on rent or food or other necessities," Mr Manes accepted the proposition but indicated that this was a matter of personal responsibility and what people spend their money on was their business and he could not stop people buying alcohol.
- [86] Under cross-examination from the Police, Mr Manes confirmed that he would maintain relationships with the local schools and other sensitive sites through visits and making sure they did not have any problems to report. The problems Mr Manes said he was expecting may occur were such as rubbish and other littering and he would assist in that by doing daily rubbish sweeps. When asked about the evidence of Mr Pillay in relation to rubbish and the reduction in rubbish since the closure of the previous off-licensed premises, Mr Manes considered that Mr Pillay was obviously friends with Mr Basra, the other owner of the other off-licensed premises, and that he was lying in relation to the amount of rubbish.
- [87] In cross-examination by the Medical Officer of Health, Mr Manes accepted that an increase in off-licensed premises would increase the availability of alcohol but did not accept that it would result in an increase in consumption of alcohol. Rather, he considered that the same amount would be spread over more stores. Mr Manes denied that there would be an increase in binge drinking as a result of the granting of the off-licence. When asked about the Medical Officer of Health's evidence that there are studies showing an increase in binge drinking of 4% per new bottle store, Mr Manes acknowledged that there may be a minimal increase in binge drinking but that he would work with authorities to manage that.
- [88] Mr Manes was asked about the specific things that he intended to do to reduce alcohol-related harm in the community and he confirmed that he would work with the community



and authorities, in the vulnerable sites and engage if there were any problems due to the off-licensed premises. Mr Manes' evidence was that while he had observed the disorder and issues mentioned by Police in their evidence, it was not near where the premises were, rather they was closer to Thirsty Liquor and Super Liquor, on Charles Street, together with the homeless people and beggars near Hunters Plaza.

[89] In re-examination Mr Manes confirmed that the predominant reason for the move to Auckland was family related and not solely for this employment opportunity.

### Objectors

[91] Three objectors appeared at the hearing to give oral evidence to the committee. Mr Zaynel Sushil, Mr Amandeep Singh, and Mr Sanmogam Pillay.

### *Zaynel Sushil*

[92] Mr Sushil's evidence was that he grew up in Papatoetoe and used to live on East Tamaki Road, very close to the proposed premises. Mr Sushil now lives approximately 1.2kms from the proposed premises and his evidence is that he is very familiar with the Papatoetoe community, environment, and issues having lived in the area for more than 20 years. Mr Sushil indicated he is an associate member of Communities Against Alcohol Harm (CAAH).

[93] Mr Sushil's evidence was that he had frequented the premises, under previous trading names, as a youth with his friends, indicating that it was where they purchased cheap alcohol before heading into the Auckland CBD.

[94] Mr Sushil opposes the granting of the license sought on the basis of the proliferation of off-licensed premises in the area, the vulnerable nature of the target market for the off-licensed premises, and the number of sensitive sites in the vicinity. Mr Sushil is also concerned about the amenity and good order of the locality and the proposed signage indicated by the applicant company. Mr Sushil opposes the application on the basis that the applicant company is not suitable to operate an off-licensed premises in a vulnerable community such as Papatoetoe.

[95] Under cross examination from Mr Sherriff, Mr Sushil stated he worked with youth in the Waitakere area and had seen the negative effects of alcohol on family life. Mr Sushil reiterated that Papatoetoe had far too many alcohol outlets and that there was an increase in antisocial behaviour and homelessness in the Papatoetoe area now.

[96] Mr Sushil confirmed that the address of the premises was a convenient, easy place to buy alcohol. That resulted in significant pre-loading and side loading going on in the car parks and streets. It was Mr Sushil's opinion that there was a reduction in alcohol related harm in the area when the previous license was surrendered.

[97] Mr Sherriff cross examined Mr Sushil about his membership with the CAAH and Mr Sushil confirmed that he was a member, that their community worked together to share information and to oppose the application. Mr Sushil confirmed that he, together with the other members of the CAAH, had a common interest in what was happening in Papatoetoe.

[98] Under cross examination Mr Sushil confirmed that he had not opposed the previous applications a license by Drip and Drop Limited, as he was living in Hamilton at that time.

[99] Cross examination from Mr O'Flannigan, Mr Sushil confirmed that he had written the portions of his objection that related to his own family history, including the experiences of being the victim of crime in the Papatoetoe area.

[100] Under cross examination from the Police, Mr Sushil confirmed that he has degree in Public Health, but that his objection relates to the wellbeing of, and his aspirations for, his community. Mr Sushil confirmed that he has witnessed vandalism including broken shop windows and he has seen fighting while driving down Great South Road late at night. Mr Sushil confirmed that he had collaborated with the CAAH as he is unfamiliar with the licensing process and sought the assistance of the CAAH when preparing his objection.

[101] Under cross examination from the Medical Officer of Health, Mr Sushil confirmed that East Tamaki Road is a busy arterial route which creates easy access to the proposed premises.

### *Sanmogam Pillay*

[102] Mr Pillay gave the evidence that he is a resident and business owner in Papatoetoe owning the automobile service on East Tamaki Road which is a mechanic workshop located very close to the proposed premises.

[103] Mr Pillay objects to the application on the basis of the proliferation of off-licensed premises in Papatoetoe and the increased traffic that was present on East Tamaki Road when the premises were previously operating as an off-licence.

[104] Mr Pillay indicated that there were ongoing issues of rubbish and littering on his own premises, generally on Friday morning and Saturday morning. He indicated that the amount of rubbish and littering has decreased significantly since the off-licensed premise had ceased trading. Mr Pillay would like the Committee to consider the safety of the community when considering the application, but in the case that the licence is granted, then there should be a condition requiring the applicant company to deal with any mess or rubbish created by the premises.

[105] Under cross-examination from Mr Sherriff, Mr Pillay denied that his objection was solely related to the drive through portion of the application and confirmed that his objection relates to the increased traffic on East Tamaki Road generally, together with the issues of rubbish created by the off-licensed premises. Mr Pillay confirmed that he was told about the application by Mr Basra who is the owner of another off-licensed premises in the Papatoetoe area. They are members of the same "business house". Mr Pillay denied that he was told to object to the application by Mr Basra. Mr Sherriff put to Mr Pillay that he told the applicant directors that he was only objecting to support Mr Basra. Mr Pillay denied that assertion and indicated that he had never met the applicant directors before and certainly had not had a conversation with them. He denied that the sole purpose of his objection was to support Mr Basra.

### *Amandeep Singh*

[106] Mr Amandeep Singh gave evidence that he lived in Papatoetoe, near the proposed premises. Mr Singh is objecting to the application on the grounds of noise pollution, a risk of increase in drink driving and the presence of intoxicated people in the streets. Mr Singh considered that there are too many liquor stores in the Papatoetoe area, and he

expressed concern for the young people he had observed drinking in public areas, especially at night. Mr Singh confirmed that the issues he had observed were mostly in the late hours of the evening around the McDonald's on Charles Street, the KFC on East Tamaki Road and the Burger King on Great South Road. He indicated that the issues were more prevalent on the weekends, particularly on Fridays and Saturday nights.

[107] Under cross-examination from Mr Sherriff, Mr Singh stated that he did not drink alcohol but had gone to the previous licensed premises on the site when he was younger, with friends. Mr Singh confirmed that he had not objected to the application for a licence by Drip & Drop but that was because he had been out of the country at the time.

[108] Mr Singh denied that he was a friend of the owner of the local Super Liquor, Mr Basra and that he was objecting to the application purely to support Mr Basra. Mr Singh stated that he did not know Mr Basra personally, he had not spoken to the applicant directors about Mr Basra, and he had not told the applicant directors that he was a friend of Mr Basra. It was Mr Singh's evidence that he had heard about the application because it was a "pop up" in a local news article that he was reading.

#### The Agencies Submissions

[109] Ms Botha made opening submissions on behalf of the Inspector, the Police and the Medical Officer of Health. In short, the agencies submit that:

- (a) The application is opposed on the basis of the object of the Act, the suitability of the applicant, the Applicant's systems staff and training, and because the amenity and good order of the locality would be reduced, by more than a minor extent, by the effects of the issue of the licence and/or because the amenity and good order are already so badly affected by the effect of the existing licenses that the amenity and good order would be unlikely to be reduced further by the issue of the licence, but it is nevertheless not desirable to issue further licences.
- (b) The proposed premises is located in an area of severe socioeconomic deprivation with significant levels of alcohol related harm, and is near a number of sensitive sites.
- (c) The application is for a new licence, irrespective of the fact that a bottle store operated on the same premises previously.
- (d) Even though the application acknowledges that the proposed premises is in a vulnerable area, the applicant wants to reintroduce an outlet for sale of alcohol, increasing the risk of unsafe and excessive consumption of alcohol and reducing the amenity and good order of the locality.
- (e) The measures proposed in the applicant's business plan and associated documents do not address the vulnerability of the locality, and largely do not go beyond what is already required under the Act.
- (f) The applicant lacks the necessary experience and training to operate an off-licence in such a high-risk location.
- (g) There is no presumption that an application for a licence will be granted, rather the

changes implemented in the 2012 Act were intended to create a robust enforcement regime under which “licenses would be hard to get and easier to lose”

- (h) Where reporting agencies oppose an application, the applicant must provide sufficient evidence to respond to and rebut that opposition. It is acknowledged that there is no onus of proof on the applicant but there is an evidential burden for an applicant to “put its best foot forward if it expects a DLC to favour the application over significant opposition which is itself supported by evidence.”
- (i) Emphasis is placed on the use of the term “minimised” which means “to reduce to the smallest possible level or amount”. This signals a change from the former Act and is intended to send a clear signal that merely reducing harm is not sufficient.
- (j) Each of the criteria in section 105 of the Act must be considered independently, and in the Committee's evaluation of an application, section 105 is not an exhaustive list of matters to which the Committee may have regard.
- (k) An application can be declined on the basis of a failure to satisfy even just one of the section 105 factors. Reference was made to the decision of the Authority in *Patels Superette 2000 Limited v Muir*<sup>1</sup>, which the Authority noted “*if the object of the Act cannot be satisfied by the application, then it cannot succeed.*”
- (l) There is particular concern from the Medical Officer of Health about the over availability of alcohol in deprived communities, because of the increase in alcohol related harm that tends to follow.
- (m) The Police have a particular concern in relation to alcohol related crime and disorder in this locality which it considers will increase if the licence is granted.
- (n) The Inspector notes the density of licenced premises in the area and is concerned that the applicant's business plan and proposals are inadequate to minimise the significant risks associated with operating an off-licence in a high-deprivation locality with so many other off-licenses.
- (o) The amenity and good order of the locality are already badly affected by low incomes, inadequate housing, and lack of opportunity, making this area particularly vulnerable to the risks posed by the applicants proposed new off-licence.
- (p) The applicant is not a suitable applicant to operate an off-licenced premises in a highly vulnerable community, where the suitability of the applicant takes on an added importance.
- (q) The Authority has recognised that a higher threshold of suitability applies to all applicants seeking to operate in areas with a higher risk of alcohol related harm or areas that are otherwise dangerous.
- (r) The agencies' position is that the applicant has failed to demonstrate that it is sufficiently experienced and has sufficient understanding of the neighbourhood, the history of this premises and the risks and responsibilities associated with operating an off-licence in this location. The agencies consider that simply

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<sup>1</sup> *Patels Superette 2000 Limited v Muir* [2019] NZARLA 75

acknowledging that this is a vulnerable community is insufficient to mitigate the harm that alcohol has caused in this community.

- (s) The fact that the applicant currently operates an on-licence premises does not mean that they are suitable to operate an off-licence premises. The applicant directors have no experience running off-licenced premises, and it does not follow from their current experience that they are suitable to run a high risk premises.
- (t) Even if it were accepted that the applicant will be model operators, the Committee would still have grounds to decline the licence on the basis of the risk of increased alcohol related harm. The agencies refer the committee to the decision in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*,<sup>2</sup> in that regard.

### Inspector's Evidence

#### *Jayraj Unka*

[110] Jayraj Unka confirmed that he is an Alcohol Licensing Inspector for Auckland Council and that he has been in this role since January 2018.

[111] Mr Unka has provided written evidence which was amended following the cross-examination of Mr Manes.

[112] Mr Unka's evidence was that:

- (a) it is his role to provide a report on alcohol licensing and Managers' Certificate applications made in his area of responsibility.
- (b) He was required to evaluate and report on the application that is the subject of this decision.
- (c) The premises had previously been licensed as a bottle store trading as Liquor Hut, Papatoetoe which ceased to trade early 2020.
- (d) This application is a new application for an off-licence lodged on 7 July 2020.
- (e) The inspector opposes the application on the grounds of section 105 of the Act, namely that it is contrary to the object of the Act the amenity and good order of the locality are already so badly affected by the existing licences; that the proposed licence is unlikely to reduce the amenity and good order by more than a minor extent, but it is nonetheless desirable not to issue further licences.
- (f) There are also concerns relating to the applicants' suitability as well as the existing staff in training taking into account the increased vulnerability of the locality.
- (g) Papatoetoe is an area which suffers high socio-economic deprivation which is supported by the New Zealand index of Deprivation indicating that Papatoetoe has a score of 8 (the highest possible score being 10 indicating in that area which is in the top 10% most deprived). Other nearby census area units have similarly high deprivation index scores.
- (h) Within 2 kms of the premises are approximately 16 other off-licensed premises.

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<sup>2</sup> *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123.

- (i) There are 5085 people residing in the Papatoetoe central area. There are currently 7 off-licences in that same area creating a ratio of 1 off-licence per 726 residents. The granting of that application will take that ratio to 1 per 636 residents.
- (j) The time to travel between the proposed premises and any of the others in the area is between 2 and 5 minutes by car and up to 24 minutes on foot.
- (k) The granting of the application would result in competition for the smaller numbers of people, resulting in price-based competition. There are also a number of premises holding an on licence in the vicinity of the proposed premises, including the Papatoetoe Club Rooms, the Weigh Bridge and Club Orator.
- (l) The Inspector had recent discussions with the owner of the Papatoetoe Club Rooms who has indicated ongoing adverse effects of people drinking and consuming alcohol in car parks before and during functions at the premises. They have had to enlist security for the wider car park area in order to mitigate the effects.
- (m) The Inspector referred us to the decision in *Masterton Liquor Limited v Jaquier* [2014] NZARLA 881 in which the Authority stated at paragraph 10 that “it is not quantum leap to conclude that with so many off-licences in the district and with another proposed in a socially deprived area where alcohol related harm exists, that increased alcohol-related harm might occur.”
- (n) The Inspector noted that this evidence also reflects his personal experience of Papatoetoe which has a reputation for alcohol-related issues. Mr Unka gave evidence that he grew up in and around Papatoetoe and noted issues with people drinking in car parks and surrounding streets when he was younger. That experience is consistent with the experience he had whilst working in a retail store in Hunters Corner and also observing fights on Great South Road and assaults in Charles Street together with issues of prostitution, consumption of alcohol in car parks and seeing alcohol-related litter and drug paraphernalia in the rubbish bins in the mornings.
- (o) On that basis Mr Unka urges the Committee to decline the application, noting that it would be “impossible” to achieve the objects of the Act by granting the application.
- (p) Mr Unka also gave evidence of the meeting between himself, Ms Kaur, Mr Singh and their licencing agent, Gail Tagaloa on 20 August 2020. That meeting was conducted by phone. There was a discussion in relation to the proposed drive through, the area in general, the application, Mr Unka’s concerns about the application and that he sought a more robust proposal.
- (q) Mr Unka was also at a meeting on 23 September 2020. The proposals given by the applicant in their application to the Committee were provided then and while Mr Unka accepts that the proposed changes are an improvement, they do not address the issues with binge drinking and other alcohol-related harm in the area.

[113] Under cross-examination by Mr Sherriff, Mr Unka confirmed that in his report, section 105(1)(a) and (i) was set out but there was no reference to (c), (j) and there was no reference to staff training.

- [114] In relation to the 16 off-licenced premises in the area, Mr Unka confirmed that he had done compliance checks for 7 of those premises and of the 7 he had done compliance checks on, only 1 of those was checked more than once. In response to a question from Mr Sherriff, Mr Unka confirmed that he did not visit every store in the area during 2020 and noted that he only took over responsibility for the Papatoetoe area in January 2020, so did not have information in relation to the number of compliance checks completed in 2019.
- [115] Mr Unka confirmed that he had undertaken one controlled purchase Operation in 2020 and none in 2021. He confirmed no enforcement action was taken in either 2020 or in 2021.
- [116] Mr Unka confirmed that he was unsure whether enforcement action had been taken against Drip & Drop for breaches of the temporary authority. He acknowledged that he would probably know if enforcement action had been taken but did not accept that that ruled out the possibility that action had been taken without him knowing.
- [117] Mr Unka confirmed that section 295 of the Act creates a duty to collaborate to monitor Compliance with the Act. Mr Sherriff asked whether the number of compliance checks that were carried out were sufficient if the issues with alcohol-related harm were considered so bad. Mr Unka indicated that he deals with more than 200 licensed premises so in those circumstances, he considered that the number of compliance checks and controlled purchase operations were sufficient. It was confirmed that none of the controlled purchase operations resulted in a failed result.
- [118] Mr Sherriff suggested that there was an obligation for the inspector to work collaboratively to reduce alcohol-related harm in Papatoetoe, and Mr Unka accepted that that was required. In relation to the plan to reduce Alcohol related harm, Mr Unka noted that when issues were raised, the Police, Council and MOH worked to resolve them. When it was suggested that that was reactive rather than pro-active, Mr Unka noted that the proactive approach was opposition to new licences and renewals. He confirmed that in his time as inspector in Papatoetoe since July 2020 only 1 application for renewal was made and it was not opposed. He confirmed that the current opposition is the first that he has done since the strategy with Police was implemented. Mr Unka confirmed that there is no written strategy, but that he works with the Police and the Medical Officer of Health.
- [119] Mr Unka confirmed that he is not aware which of the current off-licences have a 10 pm closing and confirmed that none stopped selling alcohol between 3.15 and 3.45 pm. Mr Unka confirmed that only 2 of the current off-licences opened before 9 am. He confirmed that those are the supermarkets.
- [120] Under cross-examination from Police, Mr Unka confirmed that other inspectors do controlled purchase operations in the Papatoetoe area. He confirmed that he was aware that other inspectors have done controlled purchase operations during 2020 and 2021.
- [121] He confirmed that part of his role as a Licensing Inspector is enquiring and assessing and monitoring applications which involves going out, seeing the premises, monitoring them and collaborating with the Police. He confirmed that he goes into premises to look around, speaks to the Duty Managers, checks stock and confirms compliance signage and other matters relating to the conditions of liquor licences. He confirmed that he also

visits during the preparation for a report and for a renewal of licence and also temporary authorities and new applications.

- [122] Under cross-examination from the Medical Officer of Health, Mr Unka confirmed that the collaborative strategies involve discussions with agencies about applications as they come in and includes monthly meetings with the agencies and MBIE regarding issues and alcohol-related harm.
- [123] Mr Unka confirms that the agencies do not always agree on a response to the application and further confirmed that there are a number of people in the various alcohol-related harm teams. So, there may well be further collaboration between the agencies he is not directly involved in.
- [124] Mr Unka was asked about which issues were the predominant ones in Papatoetoe and he confirmed that the predominant issues were prostitution, drug abuse, alcohol consumption in public and within liquor ban areas and he noted that as recently as the Friday prior to the hearing he witnessed a number of empty beer bottles lined up along the fence. Mr Unka confirmed that he visited licenced premises to discuss issues and ongoing concerns in relation to sales to minors, vandalism and other matters.
- [125] Under re-examination, Mr Unka confirmed the process involved in a controlled purchase operation and confirmed that the number of controlled purchase operations conducted through 2020 was significantly impacted by COVID 19 and the associated lock downs.

#### Police Evidence

##### *Senior Constable Colin Thomas*

- [126] Police called evidence from Senior Constable Colin Thomas. Senior Constable Thomas gave evidence that:
- a) That he is a Senior Constable in the New Zealand Police, and he has been a Police Officer for 19 years. He is currently assigned to the Counties Manukau District Police District Licensing Unit, and he has been a member of that unit for the past three years. Part of his duties includes monitoring of persons and premises which hold licenses and certificates pursuant to the Sale and Supply of Alcohol Act 2012.
  - b) In relation to the current application, the Police received an application on 28 July 2020 for an off-licence for the premises to be known as Hunter's Corner Liquor. Police checks were carried out using the Police National Intelligence Application, known as NIA, and no issues of concern were found in relation to Ms Kaur.
  - c) The premises were previously subject to an off-licence and had been so for a number of years.
  - d) There had been several incidences involving the premises over the years including an aggravated robbery, shop lifting and three overnight burglaries, including a ram raid.
  - e) The premises have been vacant since the previous off-licence was surrendered.
  - f) In that time the building has become overgrown, and the car park has been used by surrounding businesses.



- g) On 22 September 2020, there was a meeting at the proposed site between Senior Constable Thomas, Jayraj Unka, the Licensing Inspector, Mr Peter Aye, as Medical Officer of Health, Ms Kaur, shareholder Baljeet Singh and Mr Sherriff.
- h) The Police concerns in relation to the number of off-licensed premises were raised, together with the alcohol-related harm in the area. Police indicated that they would continue their position of opposition to the application.
- i) Papatoetoe is mostly a commercial area with residential homes nearby. It incorporates several Ministry of Social Development (MSD), accommodation providers, including the Knightsbridge Court Motor Lodge which is approximately 400 metres from the proposed bottle shop and is currently being used for emergency housing.
- j) There are four further MSD accommodation sites within a 1.2 kms radius of the proposed premises including two boarding houses 500 metres away, and the Three Palms Lodge and Grange Motor Lodge also currently being used for emergency housing.

[127] The locality includes a diverse ethnic population, including Indian, Pacific Island, and Maori residents. The Police position is that Maori and Pacific Island people are shown as being over-represented as both victims and offenders in alcohol harm statistics.

[128] Senior Constable Thomas indicated that he carried out a crime comparison using the NIA System encompassing a 1 km radius from the proposed premises. The scan identified ten crime categories, in which alcohol is known to be either a direct or contributing factor. Those categories are:

- Disorder.
- Minor assaults.
- Serious assaults.
- Detox/drunk.
- Wilful damage.
- Breach of the peace.
- Liquor offences.
- Family violence.
- Liquor offences.
- Breach of Protection Order.
- Drunk home.

[129] Senior Constable Thomas' first scan covered the period 1 January 2019 to 31 December 2019, being the last year the bottle shop operated. That scan shows 818 calls for service for the crime types listed above as being linked to alcohol consumption. Senior Constable Thomas noted that the most common cause reported were disorder and breach of the peace, constituting 510 calls and then a further 74 calls for serious assaults

excluding family violence. Family violence or domestic-related calls made up a further 330 calls to Police.

- [130] Senior Constable Thomas carried out a further scan for the period from March 2020 to March 2021. That scan identified 473 calls for service for the same offending above, excluding family violence. The statistics noted the most common calls were for disorder or breach of the peace with 403 calls for those and 7 serious assaults making up a further 70 calls. During the second scan period family violence and domestic call outs numbered 360 calls.
- [131] Senior Constable Thomas noted that there was an obvious drop in crime of the type identified as being related to alcohol with the total number of calls dropping from 818 down to 625 over a 1-year period.
- [132] Senior Constable Thomas acknowledged that family harm increased over the period with calls increasing from 330 to 360 but it was his view that this may be due to the COVID 19 lock down.
- [133] Senior Constable Thomas identified an overall decrease in offending commonly related to alcohol of 23.5%. He reiterated that this was limited to calls within a 1 km radius of the proposed premises.
- [134] Senior Constable Thomas also noted that over the past few years Papatoetoe has been subject to two fatal Police shootings. Both of those involved the consumption of alcohol prior to the event<sup>3</sup>.
- [135] It was Senior Constable Thomas' position that the Papatoetoe area would not benefit from the granting of this application. Senior Constable Thomas notes that this area is susceptible to alcohol harm already, but he is seeing an improvement in crime statistics in the proposed premises.
- [136] It is Senior Constable Thomas' opinion that alcohol-related harm and alcohol-related crime in the area would likely increase if the application were granted and the application is opposed on that basis.
- [137] In his oral evidence, Senior Constable Thomas expanded on the message set out in his material, stated that his duties in the Alcohol Harm Team involves monitoring of premises which includes checking premises, that licences displayed and compliance with conditions. Senior Constable Thomas noted that the Alcohol Harm Team try to assess all stores in their areas.
- [138] During the Covid 19 period, the Alcohol Harm Team had also been involved in health checks and controlled purchase operations. Senior Constable Thomas confirmed that each fortnight there are night visits from 6 pm to 4 am on Friday and Saturday nights. These are designed to check hours, check compliance with licensing conditions and monitor disorder in the area.
- [139] In the course of performing these duties, Senior Constable Thomas stated that he had observed significant intoxication and disorder. He has been required to break up fights,

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<sup>3</sup> Please note this evidence is the subject of a prohibition on publication for reasons which will be set out at the end of our Decision.

specifically one outside the Papatoetoe Club Rooms which is adjacent to East Tamaki Road. Senior Constable Thomas gave the evidence that people involved in those fights were generally drinking Cody's, Woodstocks and Smirnoff which are RTDs not available from supermarkets. It was Senior Constable Thomas' evidence that many people congregate in car parks and side streets and that he is aware of pre-loading and side-loading in those areas. In response, the Alcohol Harm Team approaches people and asks them to comply with liquor bans and tip out alcohol. Police also make contact with the licensed premises in the area to advise them of the issues and send intoxicated people home.

- [140] Senior Constable Thomas indicated that he approaches people with "caution" due to the risk of violence associated with intoxication. Senior Constable Thomas indicated that his experience keeps him safer than less experienced Police officers, but that this is an on-going concern for Police.
- [141] Senior Constable Thomas indicated that prior to joining the Alcohol Harm Team, he worked for 15 years in South Auckland, Papatoetoe and Otara areas in the incident car (I-Car), the family harm team and neighbourhood policing. Senior Constable Thomas gave evidence that the main issues for general duty Police officers is disorder.
- [142] Under cross-examination from Mr Sherriff, Senior Constable Thomas confirmed that there is a liquor ban in place and that covers 90% of the Papatoetoe area. Senior Constable Thomas accepted that he did not issue many infringement notices for breaches of the liquor ban but stated that was because the situations were often volatile, due to the number of people and the general demeanour made it unsafe. The preferred approach was to disperse congregations and reduce the number of people on the street.
- [143] Senior Constable Thomas accepted, under cross-examination, that his objection to the application was noted as being an objection for an "on-licence" and he said that likely to be a typo. Senior Constable Thomas did not accept Mr Sherriff's proposition that he only objected to the application under the object of the Act saying he was relying on Section 105 of the Act. Senior Constable Thomas accepted that he was aware of the requirement to particularise his objections but indicated that he was under time constraints to report and an investigation could take longer than the 15 working days allowed by the Act.
- [144] Senior Constable Thomas accepted that the vetting of the directors of the applicant company gave rise to no concerns.
- [145] When asked about the crime scan in the two 12 months periods that he analysed, he accepted that the COVID level for lockdown may well have affected the volume of crime during the second period.
- [146] Senior Constable Thomas accepted that there is no direct evidence to show that less alcohol was consumed in Papatoetoe in the 12 months since the surrender of the previous licence at the proposed premises, he indicated that he was not aware how many off-licence premises had 10pm closing times and accepted that most licences allowed trading until 11 pm.
- [147] Senior Constable Thomas accepted that there are no conditions the applicant could have offered which would result in the withdrawal of Police objection to the application.

- [148] Under cross-examination from Mr O’Flannigan, Senior Constable Thomas confirmed when he said that there were no issue of concerns relating to Ms Kaur that referred to the NIA searches only.
- [149] Senior Constable Thomas confirmed that the objection and the basis of the objection was made clear in the meeting with the applicants, the Inspector and the Medical Officer of Health in September 2020.
- [150] Senior Constable Thomas provided evidence relating to wilful damages, including damage to other property and vandalism and confirmed that while he did not use the words “amenity and good order” he did discuss crime and disorder which he considered was largely the same thing.
- [151] Under cross-examination from the Medical Officer of Health, Senior Constable Thomas confirmed there were four MSD properties being used for emergency housing in the area. It was his view that those residing in emergency housing are particularly vulnerable people.
- [152] In response to a question from the Committee, Senior Constable Thomas confirmed that during COVID (Level 3) the visits to the area in each store were largely to do with the compliance with the Level 3 requirements and compliance with the conditions of each liquor license. He was unable to provide specific evidence on disorder during that time as the Police were focussed very much on compliance with COVID requirements.
- [153] Senior Constable Thomas’ opinion is that in addition to disorder and “street” crimes, that there is a clear link between family violence and alcohol.

#### Medical Officer of Health’s Evidence

- [154] The Medical Officer of Health called evidence from two witnesses, Peter Aye and Dr Nicholas Eichler.

#### *Peter Aye*

- [155] Mr Aye gave evidence that he was employed by the Auckland Regional Public Health Service as a Compliance Officer. That role includes delegation to act on behalf of the Medical Officer of Health under section 151 of the Sale and Supply of Alcohol Act 2012. His role includes inquiring into applications and renewals for liquor licences, sent to the Medical Officer of Health pursuant to section 103(1)(c) of the Act.
- [156] The Medical Officer of Health received the current application on 9 July 2020 which was initially looked into by a colleague of Mr Aye’s but was reassigned to Mr Aye due to his colleagues ongoing secondment to the COVID 19 response team.
- [157] Mr Aye was present at the meeting on 22 September 2020. He notes that the applicant acknowledged that the area was one of high deprivation and that they seemed to be aware of the competition operating in the locality. A number of additional conditions were proposed in order to mitigate the risk posed by the application. Those were formalised by Mr Sherriff on behalf of the applicant and sent to the agencies. The Medical Officer of Health remained opposed to the application.
- [158] The Medical Officer of Health opposes the application for the following reasons:

### Deprivation of the locality

- [159] Mr Aye outlined the use of Census Area Units and Statistical areas for the purpose of gather statistics on demographics of areas within Auckland (and the rest of New Zealand). This includes collation of data on matters such as income, employment, housing, health, ethnicity, and various others. Relevant for this hearing, was the ability to categorise areas according to their relative deprivation and vulnerability.
- [160] Mr Aye indicates that within a 1 to 2 kms radius of the proposed premises are some of the most deprived areas in Auckland including Otara South which has a deprivation rating level of 10, and Otara West which also has a deprivation level of 10. Papatoetoe itself has a deprivation level of 8.
- [161] The Medical Officer of Health is particularly concerned about alcohol consumption in areas of high deprivation because people from the most deprived in the communities, who have drunk alcohol in the past year, are statistically more likely to drink hazardously than those in the least deprived communities. Additionally, Maori people are more likely than non-Maori to drink hazardously and there is a significant Maori and Pacific Island population in Papatoetoe.

### Density of off-licences

- [162] Mr Aye indicates there are approximately 16 off-licences within a 2 km radius of the proposed premises. There are approximately 4 off-licences within a 1 km radius. Further, 3 of the 4 premises are within a short walking distance of the proposed premises. Super Liquor Papatoetoe is approximately 435 metres away, Thirsty Liquor approximately 435 metres away and Countdown Papatoetoe is 491 metres away.
- [163] Mr Aye indicates that the Medical Officer of Health is concerned about density of off-licences in this area and also concerned about the surrounding area because there is an indication in the applicant company's marketing strategy that their target customers are "the local community ..." as well as those "who are already living around Papatoetoe/Manukau/Botany areas."
- [164] Mr Aye gave evidence that those other areas are already well served, with their own proliferation of off-licences, for example if a 1 km radius taken from the Westfield Manukau there are approximately 11 off-licences serving that community.
- [165] The Botany town centre is located approximately 6.1 kms away from the proposed premises. There are already a number of off-licenses catering for people living in those suburbs. Within a 2 kms radius of the Botany town centre, there are at least 7 off-licenced premises, and that count does not include off-licensed premises that are already located along East Tamaki Road, Springs Road, Te Irirangi Drive or Chapel Road.

### Suitability

- [166] Mr Aye's position is that the applicant does not have enough experience to hold an off-licence for this particular locality. His concern is that Papatoetoe and Otara contain high level vulnerable communities which required a higher level of suitability of the applicant. Mr Aye referred to the fact that the applicant director has never operated an off-licence before and it would seem that she has very limited experience in operating off-licensed

premises.

- [167] Mr Aye is also concerned that the applicant has taken a very narrow definition of “vulnerable” persons. She limits the definition of vulnerable people to a description of use of the intoxication assessment tool. Selling alcohol to intoxicated persons is already prohibited under the Act, and it is Mr Aye’s opinion that what the applicant has proposed to protect vulnerable people adds very little to what is already expected of a licensee under the Act.
- [168] It is Mr Aye’s opinion that the proposed conditions outlined by the applicant will not be sufficient to minimise alcohol-related harm for the vulnerable community and conditions such as CCTV, better lighting and painting the building a different colour do not address or reduce alcohol consumption behaviour (such as binge drinking) and its related harm on the population. Mr Aye concludes that due to the significant levels of deprivation in alcohol-related harm, the conditions proposed by the applicant are not enough to ensure that harm from alcohol can be minimised for this locality.
- [169] Under cross examination from Mr Sherriff, Mr Aye accepts that the focus of the opposition is the object of the Act and the suitability of the applicant, taking into account the vulnerable nature of the area. He also confirmed that there is no evidence available to suggest that less alcohol was consumed in the Papatoetoe area between 3 February 2020 and the present day. Mr Aye accepted that no opposition was made to the Drip & Drop application in 2019 but indicated that the application for the Blackbull Sky Liquor off-licence renewal was opposed by the Medical Officer of Health although that opposition was withdrawn prior to the hearing.
- [170] Mr Aye confirmed in cross-examination that the statistics provided by the Medical Officer of Health are unable to tell where people drinking, or where the alcohol was purchased.
- [171] Mr Aye confirmed in cross-examination that Papatoetoe doesn’t need any more licensed premises although he confirmed that the position may be different if the applicant was seeking a small grocery store with limited alcohol sales. Mr Aye did confirm that all applications are considered on merit and would not be drawn on a position without a specific application.
- [172] On re-examination from the Medical Officer of Health, Mr Aye confirmed that one of the main differences between supermarkets or grocery stores and bottle stores was the type of alcohol sold. Most importantly, supermarkets cannot sell RTDs or spirits.

*Dr Nicholas Eichler*

- [173] Dr Nicholas Eichler provided evidence that he is a Medical Officer of Health for Auckland. He is employed by the Auckland Regional Public Health Service. Dr Eichler outlined his qualifications and his role as a Medical Officer of Health at the Auckland Regional Public Health Service. This includes the alcohol harm portfolio together with tobacco harm and in COVID 19 control.
- [174] Dr Eichler states that he opposes the application sought because it is not compatible with the object of the Sale and Supply of Alcohol Act 2012 and because he considers the applicant is not suitable to operate an off-licence, especially in an Area where the proposed premises are located.

- [175] Dr Eichler provided significant amounts of health data and public health evidence, specifically evidence on alcohol-related emergency admissions in the area and also research linking the density of alcohol outlets and neighbourhood deprivation to alcohol-related harm. The material presented comes from peer reviewed journal articles and local studies.
- [176] Dr Eichler noted that as the Medical Officer of Health he is particularly concerned about the impact alcohol has on the community as a whole, and specifically the alcohol-related harm, and increases in the level of alcohol related diseases, injury and deaths. It is his opinion, after considering the specific circumstances of this application, and the national and international research that the combination of high density of alcohol outlets and high deprivation surrounding the proposed premises, that an additional licensed premises in the area carries a high risk of additional alcohol-related harm.
- [177] Dr Eichler further considered that alcohol-related emergency department admissions in the area surrounding the proposed premises are some of the highest in Auckland, indicating that this is a community already significantly impacted by alcohol-related harm and to grant the licence would result in an unsafe and irresponsible sales and consumption of alcohol rather than minimising the harm caused by inappropriate consumption of alcohol. Accordingly, it is not in accordance with the object of the Act.
- [178] It is Dr Eichler's evidence that it is well accepted in international public health literature that one of the broad areas of alcohol policy required to reduce alcohol-related harm is regulation of the availability of alcohol through restrictions on the time, place and density of alcohol outlets.
- [179] Dr Eichler referred the Committee to part of a 2010 publication by Babor et al<sup>4</sup> which reviewed all of the various evidence and alcohol research and policies development. The key finding from this research:
- (a) Strong evidence that the substantial changes in the number of alcohol outlets resulted in significant changes to alcohol consumption and related harm;
  - (b) The cost of restricting the physical availability of alcohol is low relative to the social and health costs related to drinking, especially heavy drinking; and
  - (c) Despite difficulty in establishing causation due to the number of variables involved, many of the studies show associations between higher outlet density on the one hand, and crime and anti-social behaviour on the other; strongly suggesting that the former is likely to be a contributing factor to the latter.
- [180] Dr Eichler notes there was research indicating that within New Zealand communities there appears to be a link between density of outlets, particularly off-licences, and binge drinking and alcohol-related harm even where average consumption was not affected. Research shows that adding additional outlets is particularly bad for harm, where the area has a high-risk population, for example high levels of socio-economic deprivation or areas with high Maori and Pacific Island populations.

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<sup>4</sup> Babor, T., Caetano, R., Casswell, S., Edwards, G., Giesbrecht, N., Graham, K., Grube, J., Hill, L., Holder, H., Homel, R., Livingston, M., Osterberg, E., Rehm, J., Room, R. & Rossow, I. (2010). *Alcohol: No ordinary commodity. Research and public policy*. 2<sup>nd</sup> ed. Oxford University Press, United Kingdom.

- [181] Dr Eichler indicated that the research suggested that there is a relationship between residential proximity to alcohol outlets and crime, including common assault, aggravated sexual assault, non-aggravated sexual assault and tobacco and liquor offences. That study was completed New Zealand only data. Dr Eichler states that the research found a strong relationship between living closer to off-licences and experience of higher level of violent crime.
- [182] Dr Eichler also confirmed that the research suggested that there was a link between the effective licensed outlets on the levels of alcohol-related injuries, presenting at Perth Metropolitan Emergency Department. The conclusion of that research was that there is an association, which is likely due to the effect that off-licences have on economic availability or affordability, as with more outlets there is an increased likelihood of price competition.
- [183] Based on his review of the research and the evidence presented by Mr Aye, Dr Eichler considered that this locality has an unjustifiably high density of alcohol outlets and that introducing an additional outlet is likely to increase alcohol consumption through increased availability of alcohol and price competition. The subsequent risk of harm within the area would increase by more than a minor extent.

#### Vulnerable Communities

- [184] Dr Eichler's evidence is that there are considerable inequities in the distribution of alcohol outlets in New Zealand and that studies have demonstrated a clear association between overall number of outlets and socio-economic deprivation, with more alcohol outlets situated in the poorest areas. An example provided was a national study in 2014. That found deprived areas, regardless of the geographical location, tended to have a greater concentration of alcohol outlets. In comparison to the least deprived areas, it was identified that there were 5 times more outlets and 3 times more bottle stores per 100,000 population in the most deprived areas. That confirmed a University of Otago study in 2009 which found that lower deaths in New Zealand neighbourhoods were characterised by greater outlets and even higher deaths.
- [185] In addition to the number of alcohol outlets, Dr Eichler's evidence was that he was concerned about the drinking behaviours of those who live in the poorest areas of New Zealand. He referred to a New Zealand health survey which showed that the levels of New Zealand hazardous drinking increases with neighbourhood deprivation. That study showed that adults who had drunk alcohol in the past year and lived in the most deprived areas were 1.5 times more likely to be hazardous drinkers than adults in the least deprived areas. In the most deprived areas up to 22% of adults and 32% of "past year drinkers" were hazardous drinkers.
- [186] Dr Eichler's evidence was that the level of deprivation in the areas directly surrounding the proposed premises is high. The Auckland Public Health Services identified that the deprivation scored in the 1km radius of the proposed outlet is a 9 out of a possible score of 10, where 10 represents the most deprived areas in New Zealand. Some of the areas within a 1 km radius of the proposed premises have a deprivation score of 10 indicating they are some of the poorest areas in New Zealand.
- [187] Dr Eichler concluded that the scores indicate that the neighbourhood is relatively disadvantaged and thereby particularly vulnerable to alcohol-related harm. In view of



these findings, Dr Eichler considered that the proposed premise is situated within a highly deprived and vulnerable area.

- [188] There is already high density. The high density of alcohol outlets in a locality alone is more than likely to increase harm in the area. However, Dr Eichler considered that the combination of both high density and deprivation increases harm. From that he concluded it is likely that both hazardous drinking behaviour and alcohol-related harm will be significantly increased if the license is granted.

#### Alcohol-Related Emergency Department Admissions

- [189] Dr Eicher states that alcohol continues to be a leading risk factor for deaths and disability among 15- to 49-year-olds in New Zealand. He notes that drinking alcohol and particularly using alcohol in hazardous patterns is associated with an increase of development of health problems, such as mental and behavioural disorders and including alcohol dependence and diseases such as liver cirrhosis, some cancers, cardiovascular diseases and injuries resulting from violence, accidents and road traffic crashes. Compared to all other drugs including tobacco, cocaine, cannabis and methamphetamine, alcohol causes the most harm.
- [190] Dr Eichler referred the Committee to a Counties Manukau District Health Board publication from 2019 which included an analysis of the burden of alcohol-related health harm in Middlemore Hospital. The study found that there was an average of 351 alcohol involved emergency department (ED) encounters per month in 2018, which accounted for 3.6% of the total number of ED encounters and 10% of all accidents. The analysis found that there 2877 alcohol-involved hospital admissions in 2018, accounting for 3% of all admissions to Middlemore Hospital in that year. This was equated to a cost of approximately \$15 million in the year attributable to alcohol-related harm.
- [191] To assist in understanding the impact that alcohol has in communities that are in the Auckland Regional Public Health Services Catchment area, in 2009 the Public Health Service began to analyse data relating to emergency department presentations that are linked to alcohol consumption. This was then broken down by area where the patients live. This analysis has demonstrated that there is significant-alcohol related harm amongst people who live near the proposed premises.
- [192] While alcohol involvement is a mandatory field required to be filled out by all emergency departments in New Zealand since July 2017, it remains likely to undercount all alcohol-involved ED encounters as it may not be immediately clear that alcohol is the cause of the presentation. For example, some chronic conditions such as alcoholic hepatitis or alcohol-related cancers. Dr Eichler further notes that this data only records acute alcohol-related harm such as injuries to which alcohol use was a contributing factor, for example, accidents from drink driving. The data does not include alcohol-related harm which does not result in ED presentation nor chronic disorders contributed by alcohol use such as alcohol-related cancers, liver disease, heart disease and so forth. Accordingly, that data provides a limited picture of the overall harm caused by alcohol in these communities and the reality is likely significantly worse.
- [193] Dr Eichler indicates that the residential address of patients in ED is recorded so the data is linked to residential addresses and gives a view of which communities have been affected most by alcohol harm. From an analysis of hospital admissions, the triage

scores of those presenting to ED for alcohol-related harm, Dr Eichler concluded that it is clear that in the area that the proposed premises are situated, there is a high level of alcohol-related harm. The areas that are within a 1 km radius of the proposed premises have some of the worst numbers of alcohol-related ED presentations in all of Auckland.

[194] The Auckland Regional Public Health Services also analysed the ED presentations by break-down into ethnic groups and from that it is concluded that Maori are overrepresented in all the residential areas surrounding the proposed premises in terms of Emergency Department presentations. Dr Eichler concluded that this demonstrates an increased level of alcohol-related harm in that specific population.

#### Application

[195] Dr Eichler's evidence is that he has read the proposal and the evidence for the hearing, and it is his view that what the applicant company is proposing will not minimise the alcohol-related harm that is evident in this locality.

[196] While the applicant has acknowledged in their evidence that it is a vulnerable community, it is Dr Eichler's view that there is a lack of appreciation as to the extent of the vulnerability. Dr Eichler acknowledges that minimising alcohol-related harm and exposure to children and adolescents is encouraging, but he considers that the impact of alcohol on young people is only one part of the problem faced by this locality.

[197] Dr Eichler considered that given the existing levels of alcohol off-licence density, deprivation and alcohol-related harm in the locality, it is his expert opinion that the locality is extremely vulnerable to the excess consumption of alcohol and that an additional off-licence would substantially increase the risk of alcohol-related harm from excessive and inappropriate consumption of alcohol. He further considers that an additional off-licence would cause additional inequitable harm to Maori living in the area. It was his recommendation that the application be declined.

[198] At the hearing, Dr Eichler further confirmed that he has personal experience dealing with alcohol-related harm in frontline clinical roles including working in emergency departments across the Auckland and Christchurch areas, dealing with alcohol-related injuries and violence-related harm.

[199] Dr Eichler further confirmed the vulnerability of Maori and Pacific people who are prevalent in this community. He drew attention to the Government's role in accordance with Te Tiriti o Waitangi for the protection of Maori people. Dr Eichler additionally sought to draw the Committee's attention to the concerns relating to the Pacific Island community which is also significant in this locality. He notes that the Pacific Island communities may have lower rates of consumption in terms of the number of people who consume alcohol but of those that do, there are very high rates of hazardous drinking.

[200] Dr Eichler also indicated that having heard the applicant's evidence at the hearing about price factors, he considered it important for the Committee to note that reduced cost of alcohol is very, very closely linked to increased consumption and consequently increased harm. One of the widely utilised tools for reducing harm is price measures. Accordingly, the increased risk of price competition is a concerning factor of this application.

- [201] In cross-examination Mr Sherriff challenged the use of international data in a number of these studies relied on by the Medical Officer of Health and also the age of a number of the studies which, the Committee acknowledges, as did Dr Eichler. It was Dr Eichler's view that the international research is transferable to New Zealand.
- [202] Dr Eichler's response to the challenge based on the age of the data was that while there was an updating of learning with time, that doesn't and in of itself, make the data irrelevant. Dr Eichler further confirmed in cross-examination from Mr O'Flannigan that there are no recent studies which contradict the finding in the research relied on. He confirmed in cross-examination from the Police that it is not ethical to undertake a causal study into alcohol harm, rather reliance was based on a wide variety of material and threads of evidence to reach expert panel conclusions.
- [203] In relation to the reliance on international material, Dr Eichler noted that New Zealand is too small to undertake all this research alone. He noted that the Australian context is similar to New Zealand and further indicated that there is a benefit to testing the local conclusions against international measures.
- [204] Dr Eichler also confirmed that repeating the studies to ensure that they are up to date, in terms of age, is prohibitively expensive. He also notes that it is not ethical to continue to study the same thing when the likely answer is known prior to studies commencing. In addition, there is only a limited number of resources available for research and study and that those resources should be spent on answering novel questions.
- [205] In response to cross-examination from Mr Sherriff, Dr Eichler confirmed that the research statistics provided in his evidence did not tell us where alcohol is purchased or consumed.
- [206] In response to cross-examination from Mr O'Flannigan, Dr Eichler's attention was drawn to the exhibits, in particular the alcohol harm policy and he confirmed that the applicant's exhibits are consistent with the evidence that he has provided to the Committee. However, Dr Eichler noted that his view is that the applicant's response was not adequate to deal with the risk of alcohol-related harm in this community.

### **Closing submissions**

- [207] The Applicant and the agencies made closing submissions orally at the end of the hearing.
- [208] In summary, the Inspector submits that:
- (a) The committee should not rely on the decision of *Utikere*<sup>5</sup> in the manner suggested by the applicant. While that decision did state there was no cogent evidence, in that particular case, to support a link between an increase in alcohol outlets and an increase in consumption it did not rule out the possibility that such evidence would be available in future cases.
  - (b) The inspector further distinguishes *Utikere* on the basis that there was no opposition by the agencies in that case, and the decision was under the previous Act.

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<sup>5</sup> *Utikere v IS Dhillon & Sons Limited* [2014] NZHC 270

- (c) In the present case, there is agency opposition to the application, and there is evidence from the Medical Officer of Health showing both statistical and empirical data linking increased consumption to increased harm, linking reduction in price to increased consumption, and linking an increase in outlets to an increase in consumption. There is also evidence to show that areas of increased deprivation have increased harm from alcohol consumption.
- (d) Exhibit 15 of the applicant's evidence, the Alcohol Community Engagement Plan, is a tacit admission that alcohol related harm exists, and that exists in this community.
- (e) The applicant has challenged the ability of the inspector to rely on the factors in section 106 of the Act given they oppose on the basis of section 105(1)(i). However, the factors set out in section 106 remain relevant when considering section 105(1)(i), albeit they are not mandatory. It is worth considering section 105(1)(h) and it would be legally wrong to ignore ss105 and 106 entirely.
- (f) The inspector reminds the committee that this is an application for a new licence, despite efforts to classify it as a renewal.
- (g) In relation to the applicant's business plan being based on a higher price point, with premium product, the inspector submits that this is in fact not the case as the product intended to be stocked by the applicant is the same as the product stocked in competing stores. The people of Papatoetoe cannot afford to purchase and consume more cheap alcohol.
- (h) This application will not meet the objects of the Act to minimise harm to the extent possible of this vulnerable community and conditions are not sufficient to meet the high-risk concerns of this community.

[209] In Summary, the Medical Officer of Health submits that:

- (a) When considering the weight to give to the evidence provided by the Medical Officer of Health, it is important to consider three sections:
  - i) There are some international studies, together with the Babor textbook that are not useless for the New Zealand context. We are a small country, and there simply is insufficient material to undertake the full footage within New Zealand.
  - ii) There are national studies available, including representative studies of people across the entire country. This national evidence provides a general colour of expectation and shows that higher deprivation levels result in higher harm.
  - iii) The specific research and data for Papatoetoe shows increasing levels of crime and it shows that this is a community with some of the worst levels of emergency department admissions from alcohol related harm.
- (b) Evidence of the Medical Officer of Health is supported by the evidence of frontline work from Police, indicating that vulnerable communities bear greater harm from alcohol and support the conclusion that granting this application would be against the object of the Act.

[210] In summary, the Applicant submits that:

- (a) It accepts that the 2012 Act changed the licensing regime, and that this application must be determined on the evidence before the Committee.
- (b) The decision in *Utikere* referred to “cogent” evidence, and that standard remains applicable.
- (c) The applicant does not accept that the evidence supports the conclusion that there will be increased consumption and harm from the granting of a new license.
- (d) In relation to section 105 and 106 of the Act, the law is clear that the agencies should determine the grounds of opposition and maintain them.
- (e) It is accepted that the DLC must reach its own conclusions on section 105(1)(h) and then on section 105(1)(i), and the consideration of both does mean that the Committee can evaluate all aspects of section 106.
- (f) The applicant does not argue that the evidence from the Medical Officer of Health is not relevant rather states that caution should be exercised because the data relied on is nationwide, rather than demonstrably local. The Committee must ensure that it is relevant for purpose, and that the communities are the same now as they were at the time the material was gathered.
- (g) Further, the applicant submits that the material does not support the conclusions that the Medical Officer of Health wants the Committee to form.
- (h) It is accepted comment that the Committee has an evaluative function, relating to the perspective link between the premises and alcohol related harm. It is accepted that there does not need to be a specific link to the premises so long as the premises are in the center of that perspective harm.
- (i) The question for the Committee is whether there is a risk of increased alcohol related harm that cannot be managed, and is there an evidential basis for this risk assessment?
- (j) The applicant reminds the Committee, that this is not “numbers game” in terms of witnesses or parties for or against the application, and there is no onus on either party.
- (k) The applicant has given evidence of the proposals for managing the risk of harm, including a prohibition on single sales, prohibition on the breakdowns of beer, and then a consistently higher price point. It is submitted that this will prevent the vulnerable in the community purchasing single units to meet their immediate needs.
- (l) The applicant reminds the Committee that the objectors who did not appear in person cannot be questioned, and reduced weight should be put on their objections accordingly. The applicant it goes further and submits that no weight should be put on their objections given the controversial nature of this matter.
- (m) The Medical Officer of Health, Inspector and Police cannot identify where alcohol is being purchased and where it is being consumed. There is no evidence to

conclude that the harm is attributable to off-licenced sales more than licenced sales.

- (n) The role of the Committee is evaluative in a forward-looking risk analysis. The criteria in sections 105 and 106 are not matters to be approached by way of a checklist, whereby if one criterion is not met the application must fail. The question is whether, with the conditions offered or able to be imposed, the application satisfies the object of the act.

### ***Committee's Decision and Reasons***

[211] In making a decision on the application regard must be had to section 105 which provides that the Committee must have regard to:

- (a) the object of the 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 to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods;
- (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services;
- (h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:
- (i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—
  - i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
  - ii) it is nevertheless desirable not to issue any further licences:
- (j) Whether the applicant has appropriate systems, staff, and training to comply with the law.
- (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.

[212] Section 4 of the Act sets out its object relating to safe and responsible sale, supply and consumption of alcohol; and minimisation of alcohol related harm caused by excessive or inappropriate consumption of alcohol.

[213] For the purposes of section 4(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 and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness or injury of a kind described in paragraph (a).

[214] Section 5 defines the expression “amenity and good order of the locality” as meaning:

...the extent to which, and ways in which, the locality in which the premises concerned are situated is...pleasant and agreeable.

[215] Heath J in *Re Venus NZ Limited*<sup>6</sup> said that the Act does not articulate a specific test to be applied when determining whether a licence ought to be granted. Instead, a series of criteria are identified in section 105 that the Committee, or the Authority, must take into account in determining whether to issue a licence.

[216] Gendall J in *Christchurch Medical Officer of Health v J & G Vaudrey Limited*,<sup>7</sup> said that the role of the Committee in considering the relevant criteria is an evaluative one.<sup>8</sup> As Gendall J put it:<sup>9</sup>

Thus, when the relevant body receives an application, they must consider it against s105 in deciding “whether to issue a licence”. There is no presumptive position, and certainly no foregone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

So, in my view, the position can be summarised as follows:

- (a) The role of the relevant body upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision-maker to make a merits-based determination on the application.
- (b) In considering an application, the relevant body is fundamentally required to assess whether a licence ought to issue. In so doing, it must:
  - i) consider any objections made by persons who have a greater interest in the application than the public generally;
  - ii) consider any opposition filed by the constable in charge of the Police station nearest to where the application is filed, a Licensing Inspector, and the Medical Officer of Health;

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<sup>6</sup> *Re Venus NZ Limited* [2015] NZHC 1377, [2015] NZAR 1315.

<sup>7</sup> *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749, [2016] 2 NZLR 382.

<sup>8</sup> *Christchurch Medical Officer of Health v J & G Vaudrey Limited*, at [54].

<sup>9</sup> *Christchurch Medical Officer of Health v J & G Vaudrey Limited*, at [55] – [56].

iii) have regard to the criteria stipulated in s 105 of the Act ...

[217] In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*,<sup>10</sup> Clark J summarised the applicable principles including that:

- (a) There is no presumption that an application will be granted;<sup>11</sup> and
- (b) After having regard to the criteria in the Act, the decision-maker is required to step back and consider whether there is any evidence indicating that granting the application will be contrary to statutory object in s4, or as Heath J articulated a “test”.<sup>12</sup>

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 grant of an off-licence is consistent with the object of that Act?

- (c) The application of rules involving onus of proof may be inappropriate,<sup>13</sup> and similarly, there is no onus on the reporting agencies to prove the application should not be granted;<sup>14</sup>
- (d) The criteria for the issue of licences, and for renewal, are not to be interpreted in any narrow or exhaustive sense. The decision-maker may take into account anything which, from the terms of the statute as a whole, appears to be regarded by the legislature as relevant to licence conditions and the terms on which they should be granted; “That must include the statutory object referred to in s4.”<sup>15</sup> The matters raised by section 4 are to be approached on a nationally consistent basis;<sup>16</sup> and
- (e) The decision-maker is not required to be sure that particular conditions will reduce alcohol abuse.<sup>17</sup>
- (f) It is entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective ... then it is entitled to test whether that possibility is a reality.

[218] It is clear, in our view, that the evaluative function is an assessment of risk. As Clark J put it:<sup>18</sup>

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<sup>10</sup> *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123 at [46].

<sup>11</sup> *Christchurch Medical Officer of Health v J & G Vaudrey Limited*, at [55].

<sup>12</sup> *Re Venus NZ Limited*, at [20].

<sup>13</sup> *Re Venus NZ Limited*, at [60] and *Auckland Medical Officer of Health v Birthcare Auckland Limited* [2015] NZHC 2689 at [52].

<sup>14</sup> *Auckland Medical Officer of Health v Birthcare Auckland Limited*, at [113].

<sup>15</sup> *Walker v Police*, HC Wellington AP 87/01, 31 May 2001 at [29] approved in *My Noodle Limited v Queenstown Lakes District Council* [2009] NZCA 564, [2010] NZAR 152 at [67].

<sup>16</sup> *Walker v Police*, at [38].

<sup>17</sup> *My Noodle Limited v Queenstown Lakes District Council*, at [74].

<sup>18</sup> *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, at [43] and [47 - 48].



The factors to be considered in the course of assessing an application for a licence or for renewal, as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm.

[219] The weight to be applied to each of the criteria in section 105 is a matter for the Committee.<sup>19</sup> Nevertheless, the Authority in *Smith v Kiwano* said:<sup>20</sup>

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

[220] As with any application, some of the criteria are of more relevance than others. It is appropriate that each of the criteria be considered; but not necessarily in the order they are set out in section 105 (1) of the Act.

[221] The objections centred around section 105(1)(a),(b)(h) and (i) and to a lesser extent s105(e)(j) and (k).

#### *Suitability – Section 105(1)(b)*

[222] The suitability of the applicant to operate a licence in a vulnerable locality has been challenged by the three agencies.

[223] In cases such as this, while the applicant is a company, the real focus must be on the directors of the company, who are the controlling mind of the company and whose actions will ultimately determine the applicant company's compliance, or otherwise, with the Act. Accordingly, consideration is now given to the suitability of Ms Kaur to operate an off-licensed premises.

[224] In *Re KR Entertainment Limited*,<sup>21</sup> the Authority, considered applications for Auckland premises by companies with directors who were also directors of licensed premises in Wellington. The Authority said at [36]:

Despite submissions to the contrary made by the applicant, it is disingenuous to attempt to separate what occurs in Wellington premises from activities happening in those premises that are the subject of these applications. The directors of the various companies operating the premises are the same and, as has been observed on many occasions, it is the people who direct the licensees whose conduct is under scrutiny, not the individual corporate entities they use to operate the premises: see for example, [*Chef & Brewer Bar & Cafe Ltd v Police* [1995] NZAR 158].

[225] The policy justification for the lifting of the corporate veil was well expressed by the Authority in *Whittle v W K Group Investing Limited*,<sup>22</sup> where the Authority said at [11]:

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<sup>19</sup> *Christchurch Medical Officer of Health v J & G Vaudrey Limited*, at [78] – while four questions of law were decided for appeal in the subsequent decision *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2016] NZHC 73, this did not relate to the meaning of the words “must have regard”.

<sup>20</sup> *Smith v Kiwano* [2016] NZARLA 497 at [51] et seq; see also *Wilson v Durga Sai Holdings Limited* [2016] NZARLA PH 42 and *Kaiti Club Hotel* [2018] NZARLA 225.

<sup>21</sup> *Re KR Entertainment Limited* [2014] NZARLA 167.

<sup>22</sup> *Whittle v W K Group Investing Limited* [2013] NZARLA 728.

Mr Liu has a Bachelor of Commerce degree and is aged 28. He is a young businessman in a hurry. It is obvious to the Authority that he has little regard to the restricted legislative environment in which he operates his businesses. Whilst he was unrepresented at the hearing, the Authority gained the impression that he fully understood the situation in which his companies found themselves as respondent licensees. Perhaps he was hopeful that the Authority would not lift the veil of limited liability and treat each respondent separately. The Authority is not prepared to do this as to do so would create a farcical situation and would be contrary to the object of the Act as set out in s4.

[226] The agencies challenge relates to the applicant's suitability to operate an off-licensed premises in a vulnerable community like Papatoetoe. The operation of Ms Kaur's existing on-licensed premises was not subject of any criticism.

[227] The applicant considers that there are similarities between the on-licensed premises and an off-licensed premises that the applicant's successful operation of the existing licence should provide the Committee with confidence in the applicant's ability to manage the new premises in accordance with the object of the Act.

[228] The applicant does accept that there is a higher standard of suitability for a premises in a vulnerable community, as set out by the High Court in *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited*<sup>23</sup>.

[229] In terms of suitability, as stated in *Nishchay's Enterprises Limited*:<sup>24</sup>

...suitability is a broad concept, and the assessment of it includes the character and reputation of the applicant, its previous operation of the premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also includes matters raised in reports... and those reports may raise issues pertaining to the object of the Act ... Thus, whether or not the grant of the licence will result in the reduction or increase in liquor abuse is a relevant issue.

[230] At the heart of suitability is the character of the applicant. As Holland J said in *Sheard*:<sup>25</sup>

The real issue 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 go with the holding of a licence.

[231] In our view the evidence indicates that Ms Kaur's suitability to operate an off-licence in a vulnerable community requires careful consideration.

[232] Unfortunately, there is no definition of "suitability" in the Act. The former Authority noted that there "is no special statutory meaning for 'suitability'", and accordingly, referred to the definition contained in the Concise Oxford Dictionary, which defines "suitability" as "well fitted for the purpose, appropriate".

[233] In considering the issue of "suitability" the Authority has held that "the meaning of 'suitability' has not changed as a result of the enactment of the Sale and Supply of Alcohol Act 2012". The Authority further stated, in *Re Jays* that:<sup>26</sup>

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<sup>23</sup> *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [65]

<sup>24</sup> *Nishchay's Enterprises Limited* [2013] NZARLA PH 837 at [53].

<sup>25</sup> *Sheard* [1996] 1 NZLR 751 at 758.

<sup>26</sup> LLA, 15/7/1994, Decision No 994/94.

Differing aspects of suitability will be given different weight by decisionmakers (sic) under the Act. Among them are experience in the hospitality industry, management ability, and personal integrity.

[234] In discussing the meaning of “suitability”, Holland J said in *Re Sheard*:<sup>27</sup>

Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in The Concise Oxford dictionary as ‘well fitted for the purpose, appropriate’.

I do not find it helpful to refer to other decisions on different facts as to the meaning of that word. Where a statute uses an unambiguous and well understood word or expression and chooses not to enlarge on the ordinary definition of the word or expression by a special interpretation in the statute it is usually unwise for a Court to add to the ordinary meaning of the word as a general guide for all cases, as distinct from applying the word to the particular facts before it.

[235] There has been challenge to the suitability of the Applicant by all of the Agencies. The challenge by the Objectors is less specific and we would expect that to be the case unless an Objector were to have intimate knowledge of the Applicant.

[236] Primarily, the Agencies concerns are based on the lack of experience of the Applicant’s directors, who will be the face of the operation. The Applicant admits that neither director has significant experience in working in such premises although it is noted that Ms Kaur has undertaken some part-time, voluntary work, in off-licensed premises. The argument for the Applicant, is that they have extensive business experience having owned and operated the on-licensed premises for several years without incident. Further there is reliance placed on the employment of Mr Manes, who has several years’ experience in managing an off-licensed premises.

[237] The concern of all three agencies, and indeed the Committee itself, is the narrow interpretation of “vulnerable” people expressed by both Ms Kaur and Mr Manes. They both seem to limit their consideration of vulnerable to those people suffering alcohol or other addiction issues, homeless people or those actually intoxicated when in the store. While those people are clearly vulnerable, the definition is significantly wider, including, inter alia, those with socio-economic, educational, language, health and housing disadvantages.

[238] The Committee was concerned that the details in the application, which were comprehensive, were not reflected in the oral evidence. Overall, there was a distinct impression of the application being well-dressed, but not backed up by substance. This was reflected in the lack of genuine understanding of the vulnerability of this community, and the repeated comments by the applicant, to the effect of, if people want to buy alcohol they will, and so it may as well be from her.

[239] Ms Kaur’s knowledge of the area appeared to us to be poor. Her knowledge of the area appeared to be limited to driving through the area by coincidence, when the motorway was closed, and when visiting some of the sites nearby. No comprehensive details of engagement with the objectors or the sensitive sites in the area were provided.

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<sup>27</sup> [1996] 1 NZLR 751.

[240] While the application documents, and particularly the Alcohol Community Engagement Plan, contains “key messages” about alcohol harm which acknowledge the harm caused by alcohol in the community, the oral evidence displayed a more blasé approach. Ms Kaur clearly considers that one more off-licensed premises will do no harm and that customers must take personal responsibility for their purchasing and consumption of alcohol. There was a failure, in evidence in chief, and cross examination to acknowledge the need for licensees to take responsibility for the manner in which alcohol was sold or supplied.

[241] The Committee is fortified in this impression by the submission that there are greater obligations on holders of on-licenses than off-licenses and then by the cross-examination by the applicant of Dr Eichler, the Medical Officer of Health, seeking to undermine the research and his conclusions into the risks of alcohol related harm in the community. While we are not seeking to criticize the applicant for testing the evidence through cross-examination, it did tend to undermine the purported acceptance and understanding of the levels of alcohol related harm in the community and the need to work collaboratively to minimize harm.

[242] Further, we consider that the applicant has underestimated the impact of price-based competition on the availability and consumption of alcohol in this community. Leaving aside the economic viability, and enforceability, of the applicant’s proposal to have a higher price point than the other off-licensed premises, this will not prevent the competing outlets to reduce prices to compete. In fact, Ms Kaur’s evidence was that she expects that this will happen. Given that the applicant is not proposing to have a minimum price point, rather she proposes to set her prices following “window shopping” at the competing outlets, there will be an almost inevitable downward pressure on prices. This is made worse, in the Committee’s view by the fact that while the applicant proposes to only stock “premium” products, in reality the stock in the applicant’s premises will be the same as in the other bottle stores in Papatoetoe. A fact that Ms Kaur acknowledged in evidence. So, any practical difference between the proposed premises and the existing off-licensed premises would appear to be minimal.

[243] The decision on suitability must come down to the evidence before us at the time. All of the Agencies are concerned. Mr Sherriff has urged us that ‘concern’ is insufficient to warrant withholding the grant of the off-licence.

[244] The Committee shares the concerns of the Agencies. We were unimpressed with Ms Kaur’s evidence and assertions. The stark differences between the application and the evidence and understanding of Ms Kaur gives the Committee reason for ‘pause’. We were left with the impression that the applicant simply does not have sufficient awareness or experience to operate an off-licence in a vulnerable locality. We were not persuaded that the Applicant has proven its suitability.

*LAP – Section 105(1)(c)*

[245] There is no local alcohol policy in force for the area that we able to rely upon for guidance in determining this matter.

*Days and hours - Section 105(1)(d)*

[246] The proposed operating hours have been well documented in this application and in the evidence that we have heard. The hours of operation are less than those permitted by the Act, in the absence of a Local Alcohol Policy. We acknowledge, that the Applicant had sought to further reduce the trading hours sought in the application and whilst that was meritorious, and despite the assertions of the applicant, we do not think that would have significantly reduced the impact on the amenity and good order of the area.

*The design and layout of any proposed premises - Section 105(1)(e)*

[247] We have already touched on this in our comments on the suitability of the Applicant. From what we were presented with, it would appear, that despite the assertions of the applicant that “cheap” alcohol and RTDs would not be on prominent display, the reality is that they will remain readily available to anyone seeking them.

*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 - Section 105(1)(f)*

[248] There is nothing to advise us that the Applicant intends on selling anything other alcohol and non-alcoholic drinks from the premises, with the exception of cigarettes and snack food generally associated with these types of businesses.

*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, and goods, and if so, which services - Section 105(1)(g)*

[249] No other services are intended to be offered.

*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 - Section 105(1)(h)*

[250] This was the subject of extensive evidence by the Agencies and the bulk of the concerns of the Objectors surround this criterion. We are directed to the parameters of s. 106(1) and to have regard to a series of matters, as they relate to the locality.

[251] Firstly, we consider current and possible future noise levels. There is no evidence before us that the current noise levels are unpleasant or excessive. We would doubt that the impact of granting the off-licence would unduly impact on the current noise levels in the area. There may be some contribution, but we would not think that it would be to levels that would be unacceptable.

- [252] We are then required to consider current and possible future, levels of nuisance and vandalism. With regard to the current and possible future levels of these, there is some dispute in this area. The Police and Inspector, together with the objectors indicate that there are already levels of nuisance, disorder and vandalism in the locality. It is their evidence that much of this is alcohol related. Mr Pillay, in particular, was concerned with the increase in alcohol related rubbish if the application was granted.
- [253] The premises are located in mixed shopping and residential area of Papatoetoe. A liquor ban is in place approximately 100 meters from the premises. There is currently a concern from the Inspector and Police about the levels of pre-loading and side-loading taking place in carparks and side streets in Papatoetoe. They are concerned that another off-licensed premises will create further issues. Particularly if there is an overall decrease in the cost of alcohol arising from price-based competition.
- [254] In considering the current and possible future levels of nuisance and vandalism, it is impossible for this Committee to ignore the evidence of the Police and the significant drop in the number of calls for assistance, between the period when the previous premises operated, compared to those recorded twelve months later. Despite the accepted impact of the COVID-19 lockdowns in 2021 in the opinion of the Committee such figures are compelling and cannot be ignored as solely the result of the lockdowns which only made up a small time portion of Senior Constable Thomas' second scan.
- [255] We are then further obliged to consider the number of premises for which licences of the kind concerned are already held in the area. There is a clear difference in the thinking between the Applicant and that of the Objectors and the Agencies. Simply put, the Applicant does not see that the establishment of these premises would amount to an additional licence, as the premises previously operated as a bottle store. The Objectors and the Agencies take an opposing stance. In considering the matter, the Committee is of the opinion, that there is a plethora of similar premises in the notational two (2) kilometre area that we have been referred to.
- [256] We are further required to take into account the purposes for which land near the premises concerned is used and the purposes for which the premises will be used, if the licence is issued. Again, this has not been the subject of considerable evidence unfortunately. The immediate area is that of a mixed shopping and residential area. There are a number of petrol stations and fast-food outlets in the immediate vicinity. The proposed premises have been vacant for some time, with its carpark now being utilised by people visiting the area.
- [257] The applicant's argument that there has been an off-licensed premises on this site for a number of years does not ameliorate the Committee's concerns, nor does the argument that the current levels of alcohol related harm is not attributable to the applicant. As the Authority observed in *Riccarton Liquor Limited*<sup>28</sup>:

That the current ARH in the locality is attributable to existing licensees is also of no consequence. As Clark J said in *Lion Liquor* the evaluative function is an assessment of risk and it is the risk profile which is relevant. There is no requirement to link specific ARH to specific off-licenses, or as Clark J said in the *Lion Liquor* decision, "for the premises to be at the center of the harm."

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<sup>28</sup> *Riccarton Liquor Limited v Ferguson et al* [2019] NZARLA 93

[258] The Committee is of the view that there is a very real concern around the proliferation of off-licenced premises in the area, and the existing levels of nuisance, disorder and vandalism. It is against that risk profile, that the application must be assessed.

[259] The Committee considers that there is a link between the availability of alcohol and alcohol related harm. This was accepted by the High Court in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*.<sup>29</sup>

[260] Further, taking into account the risk of price-based competition, the Committee considers that the evidence of Dr Eichler that a reduction of price also drives increased consumption of alcohol, creates further cause for concern. Those concerns are compounded when considering the vulnerability of the locality.

[261] The Committee considers that the amenity and good order of the locality would be reduced, by more than a minor extent, by the issuing of this licence.

*Whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that – It would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but It is nevertheless desirable not to issue any further licences - Section 105(1)(i)*

[262] If the Committee is wrong in its assessment of whether the amenity and good order of the locality would be reduced by more than a minor extent by the issuing of the licence, that would likely be because the amenity and good order of the locality is already so badly affected by the effects of the existing licences. Accordingly, and taking into account the extent of the alcohol related harm in the locality, we have considered this issue also.

[263] There are 16 off-licensed premises in the immediate area. The Objectors and the Agencies have drawn attention to this issue in evidence and submissions. The evidence is of a community that is overrepresented with premises of this type. We share those concerns.

[264] There is evidence of significant alcohol related harm in the area – in terms of adverse health effects, as set out by Mr Aye and Dr Eichler, and by the effects of crime, damage and disorderly behaviour, as set out by the Police and the Inspector. This issue is, in fact, accepted in the application documents filed by the Applicant, which describe alcohol related harm as being at “crisis level”.

[265] In fact, the difficulty for the Committee in considering s105(1)(h) was not so much in assessing whether the granting the licence sought would impact the amenity and good order of the locality, but rather in assessing whether, given the extent which the area is already affected by the effects of the existing licences, it was really possible for the locality to be made worse by the granting of this licence.

[266] The Committee considers that this area will simply not benefit from the granting of a further licence, the issuing of another licence would be undesirable in these circumstances.

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<sup>29</sup> *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123 at [72]

*Whether the applicant has appropriate systems, staff, and training to comply with the law - Section 105(1)(j)*

[267] The information supplied to the Committee was that the Applicant's directors, together with Mr Manes, have current managers' certificates and that they were subjected to a training regime that would ensure compliance with the Act.

[268] We note the applicant's submission that there would be five employees present in the store at all times, with additional security personnel available during high-risk periods. That submission is sensible; however, it was like other aspects of the application, not consistent with the oral evidence of Ms Kaur who indicated an intention to employ three full-time staff members and two part-time staff members. Even if Ms Kaur was working full time, this would appear insufficient to meet the targeted staffing levels in the application, given the proposed trading hours.

*Any matters dealt with in any report of the Police, an Inspector, or a Medical Officer of Health made under section 103 - Section 105(1)(k)*

[269] The Inspector has filed a comprehensive report with the Committee pursuant to section 103(2) of the Act and we are satisfied that the Inspector has applied due diligence in the submission of that report. As we noted, we also received reports in opposition from the Medical Officer of Health and the Police.

*The Object of the Act - Section 105(1)(a)*

[270] The object of the Act has changed significantly from that of the previous Act and in our view, raises the bar for all operators of licensed premises. A person who has the privilege of holding a licence, must ensure that the sale and supply of alcohol should be undertaken safely and responsibly and that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

[271] The question for the Committee is can we be satisfied, having regard to all the relevant factors set out in s105 of the Act, that the grant of the off-licence is consistent with the object of the Act?

[272] The Committee will always look to motivation for the application. We have an expectation that a clear vision for the premises is established and that the Applicant has the means, skills, systems and experience to ensure compliance with the Act. In our opinion the Applicant has not shown that it understands true vulnerability of this community and the challenges it may face meeting the obligations of the Act. While, if taken at face value, the application is thorough, there is a stark difference between the written documents and the applicant's oral evidence. Further we are concerned that the higher price based model suggested by the applicant is neither realistic, nor enforceable, and does not adequately account for the price based competition that will almost certainly occur.

[273] In considering the object of the Act, we must look to the definition of harm. It is defined as;

*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;*



[274] The Committee when looking at the definition of amenity and good order, will tend to see *crime, damage, disorderly behaviour and injury*, as a subset of the definition found at s.4 of the Act. In any application for an alcohol licence there is potential for harm. The object of the Act is 'harm minimisation'.

[275] We consider, based on the evidence that we have heard, that granting the application would almost inevitably result in considerable risk of increased alcohol harm in the community, be that directly, or indirectly.

[276] We do not accept the submission that we should consider whether there are conditions which can be imposed to reduce the risk of harm such that the application should be granted. In fact, to do so would be contrary to decisions of the Authority determining that an application which does not meet the object of the Act cannot be made compliant by the imposition of conditions.<sup>30</sup>


[277] Having considered the evidence before us and for the reasons we have outlined above, we are not satisfied, as to the matters which we must have regard to as set out in section 105(1) of the Act, that the application meets the object of the Act. Accordingly, the application is declined.

[278] We refer any party who wishes to appeal this decision or part of this decision to section 155 of the Act.

### **Non-publication**

[279] The Committee directs that, pursuant to section 203(5) of the Act, the portion of Senior Constable Thomas' evidence relating to alcohol involvement in the fatal shootings by Police are not published as those incidents are the subject of a current Coronial inquest.

**Dated** at Auckland this 7<sup>th</sup> day of July 2021



HANNAH CHEESEMAN  
Chairperson  
**Auckland District Licensing Committee**

On behalf of members:  
Patricia Reade  
Tim Tahapehi

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<sup>30</sup> *Lyger Investment Limited* [2018] NZARLA 299 and *Patels Superette*.