

**IN THE ALCOHOL REGULATORY AND LICENSING AUTHORITY  
TE MANA WAETURE TAKE WAIPIRO**

[2021] NZARLA 50

UNDER the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an appeal pursuant to s 154 of the Act  
against a decision of the Hurunui  
District Licensing Committee declining  
an application for a new off-licence for  
premises situated at 86 Carters Road,  
Amberley, to be known as 'Thirsty  
Liquor Amberley'

BETWEEN TOWNILL LIMITED

Appellant

AND ALCOHOL WISE HURUNUI  
INCORPORATED & OTHERS

Respondents

Hearing: 19 April 2021  
at Christchurch

Authority: Judge K D Kelly  
Ms J D Moorhead  
Mr R S Miller

Counsel: Mr P J Egden for the Appellant  
Mr T J Mackenzie for the Respondent

Judgment: 17 May 2021

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**DECISION OF THE AUTHORITY**

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## **Introduction & Background**

[1] On 16 January 2020, Mr Michael Brown, a shareholder and the sole director of Townill Limited (Townill) applied to the Hurunui District Licensing Committee (DLC) for a new off-licence for premises to be situated at 86 Carters Road, Amberley,<sup>1</sup> and to be known as 'Thirsty Liquor Amberley'.

[2] This application was subsequently withdrawn following advice from the Licensing Inspector that based on the incomplete nature of the information in the application, it would likely to be opposed by reporting agencies. As a result, the application was withdrawn and a fresh, more fulsome application was filed on 10 February 2020. This second application was re-advertised and objections were filed in relation to it.<sup>2</sup>

[3] The application was heard over three days on 14 – 16 September 2020 and by way of a decision dated 27 November 2020, the DLC declined to grant the application.

[4] On 8 December 2020 Townill appealed against the decision of the DLC.

## **Summary of result**

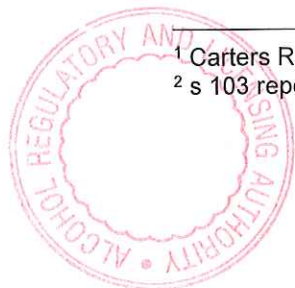
[5] The appeal is allowed. Pursuant to s 158 of the Act the decision of the DLC is reversed. The Secretary of the DLC is directed to issue the licence subject to the imposition of the following additional conditions:

- (a) the exterior of the building is to be painted black with the Thirsty Liquor logos and trading names over the top;
- (b) apart from an A3 sheet showing current specials, no liquor advertising is to be placed in the window facing outwards;
- (c) the licensee is to ensure that the carpark and area within 100m of the premises is checked and cleared of litter on a weekly basis; and
- (d) single sales of craft beers are permitted but there shall be no single sales of RTDs or mainstream beer, except as a result of broken packaging.

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<sup>1</sup> Carters Road is the name of State Highway 1 as it passes through Amberley

<sup>2</sup> s 103 report by Licensing Inspector Dianne Morrison dated 14 May 2020 at [2.1] – [2.3]



## The application

[6] In his application for a new off-licence, Mr Brown says that he operates two other off-licences, the 'Thirsty Liquor Waimak'(2012), and the 'Thirsty Liquor Darfield' (2015). Between filing his application and the hearing before the DLC, Mr Brown has also been issued an off-licence for Thirsty Liquor Rakaia (March 2020). Mr Brown says, amongst other things:

My intention is to operate the Amberley bottle shop along the same lines as the Waimak and Darfield stores, stocking the same high end products and providing the same high quality service. I intend to support local vineyards and stock their variety of wines.

I firmly believe that there is an opportunity in Amberley for a well-managed stand alone bottle store. I firmly believe that the good order and amenity of the locality will not be detrimentally affected by the opening of the store. I have researched the project carefully and I firmly believe the business will be successful and at the same time will not have a negative impact on the town.

[7] The bottle store is intended to occupy premises previously occupied by 'Mumma T Trading Lounge', pursuant to a lease from Vistel Limited should the licence be granted.

[8] The proposed licence hours sought are Monday to Sunday 9.00am to 10.00pm.

## Amberley Township

[9] As the Chief Licensing Inspector, Ms Dianne Morrison, reports:<sup>3</sup>

Amberley township is a residential township with businesses servicing the wider Hurunui District. This includes nearby smaller residential communities, including Leithfield village, Leithfield Beach, Amberley Beach and Waipara township.

Amberley is situated on State Highway 1, approximately 40 minutes north of Christchurch. SH1 is the main route north to Kaikoura, Blenheim and Picton. It also directs traffic from the Waipara turn-off to the West Coast and the Nelson area. This is also the route to the Hurunui District's major tourist destination of Hanmer Springs.

SH1 (Carters Road in the township) divides the Amberley community from east to west. This can make crossing the State Highway difficult at times of high traffic flows.

Amberley has a resident population of 2067 (2018 Census data)....

The 2018 NZ Census data includes the Deprivation Index for Amberley ranges from 1 to 8...the older established areas of the town have higher deprivation indexes, than the more recently developed areas.

...

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<sup>3</sup> above n 2, at [4.0]





Amberley has one primary school and three pre-schools. The Amberley Primary School's decile rating is 7 indicating students are from a higher than average socio-economic community.

...

The Inspector has been a resident of the Hurunui District since late 2006, and has lived in Amberley since 2014. The Inspector's impressions of the township are that it is agreeable and not adversely affected by noise, vandalism or significant alcohol related harm.

[10] The morning after hearing the appeal, the Authority visited Amberley to view the proposed premises and the surrounding locality. This included driving both to the east and west of Carter's Road. To the extent that Amberley may have once been a small residential township, the Authority notes that there are considerable residential subdivisions (notably to the east) and that the town is clearly growing. The Authority anticipates that the 2018 Census data referred to may be somewhat out of date as a result. The Authority visited the site of the Super Liquor bottle store, the Countdown supermarket, Brew Moon Brewery, the Railway Tavern, and the Amberley Hotel. The Authority walked through the nearby Chamberlain Park, and drove through Amberley Domain making stops as it did so.

### **Relevant statutory provisions**

[11] Section 105 sets out the criteria to which a DLC (and the Authority on appeal) must have regard when deciding whether to issue a licence:

- (1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
  - (a) the object of this Act;
  - (b) the suitability of the applicant;
  - (c) any relevant local alcohol policy;
  - (d) the days on which and the hours during which the applicant proposes to sell alcohol;
  - (e) the design and layout of any proposed premises;
  - (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods;
  - (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services;
  - (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.
- (2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

[12] In respect of s 105(1)(h), s 106(1) provides a ‘legislative aid, detailing the factors to which decision makers must have regard in forming an opinion as to the amenity and good order of the locality’.<sup>4</sup>

- (1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—
  - (a) the following matters (as they relate to the locality):
    - (i) current, and possible future, noise levels;
    - (ii) current, and possible future, levels of nuisance and vandalism;
    - (iii) the number of premises for which licences of the kind concerned are already held; and
  - (b) the extent to which the following purposes are compatible:
    - (i) the purposes for which land near the premises concerned is used;
    - (ii) the purposes for which those premises will be used if the licence is issued.

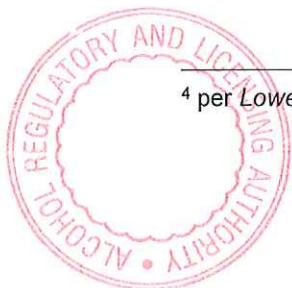
[13] Section 3 of the Act sets out the Act’s purpose:

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

[14] Relevant to s 3 and s 105(1)(a), s 4 sets out the object of the Act as follows:

- (1) The object of this Act is that—
  - (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
  - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

<sup>4</sup> per *Lower Hutt Liquormart Ltd v Shady Lady Lighting* [2018] NZHC 3100 [28 November 2018] at [66]



- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
- (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
  - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

## **Objections and attitude of reporting agencies**

### *Objections*

[15] The applications were the subject of ninety-three public objections. The Licensing Inspector reports: “there were multiple objections lodged from the same objectors partially due to the two applications that were lodged for the bottle store. These have been reconciled as one objection per objector.”<sup>5</sup> Two community groups lodged objections, namely the Amberley District Residents Association and Alcohol Wise Hurunui Incorporated. A rural based general practitioner also lodged an objection. Some of these objections follow a common template and they are identical, in whole, or in part.

[16] The DLC determined that only 56 objectors had status to object. The DLC said in its decision that: “the primary concern presented by the objectors, related to amenity and good order concerns that the premises would present to the Amberley township, the proliferation of alcohol outlets within Amberley and the alcohol-related harm in the community.”

[17] Having read each of the 56 objections which were accepted by the DLC, this is a fair reflection of the objections. As a number of template objections put it:

If this liquor license is approved there will be a total of 9 liquor outlets available to sell & supply alcohol to our community of less than 1800 which I believe to be excessive not only for our Amberley community but also to the wider Hurunui.

...

The location of this proposal is amongst other retail businesses, there will be an increase in rubbish, cigarette butts, noise, and other disturbance such as neighbouring businesses becoming a toilet. Bearing all this in mind I believe this high traffic pedestrian area will feel uncomfortable for families to walk past. The existing good order of the locality would be likely to be reduced to more than a minor extent if this licence is issued.

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<sup>5</sup> above n 2, at [21.3]





[18] The predominant tenor of objections is that Amberley is an agreeable place to live that is not adversely affected by significant alcohol-related harm and that objectors want to keep it that way. As one objector put it:<sup>6</sup>

Amberley is an up and coming boutique town. It is known for its growing healthy community, as evidenced by the recent Markham Street Festival, the Sharing Shed, (where the community shares their local produce with each other), the little community book exchange in Markham Street, The Time Bank and Learning Exchange and many other community initiatives, such as the alcohol free winter family barn dance. Amberley is known as a boutique café and shopping destination and to allow the addition of Thirsty Liquor on our Main Street would significantly spoil the looks & good character of central Amberley

[19] Other objectors, however, consider that Amberley is already affected by alcohol related harm notably litter or nuisance, and vandalism. Others yet are concerned with the density of licences and say that another bottle store is unnecessary, and that Amberley is already well served by outlets that sell alcohol.<sup>7</sup>

#### *New Zealand Police*

[20] By way of a report dated 11 February 2020 Constable Genevieve Craddock, of the Alcohol Harm Prevention Unit of the Christchurch Central Police Station, initially reported that the New Zealand Police oppose the application on the basis of s 105(1)(j) of the Act (i.e. whether the applicant has appropriate systems, staff and training to comply with the law), and s 105(1)(k) (any other matters). In the case of the latter, the Police initially reported that:

The applicant has listed three Managers including himself of which they work at other licensed premises he owns.

Police question how they will manage this new premises and the current ones given the geographical distance the premises are from each other.

The application is accompanied by a Management plan that is applicable to a On Licence.

[21] Further:

The applicant owns other licensed premises but yet he has submitted a very basic and incomplete application. In some questions he has put n/a and has not answered the questions. He has not listed all the licensed premises in the area and as mentioned above has submitted an On Licence management plan and basic floor plan.

<sup>6</sup> e.g. objection from Mr Richard Neale dated 15 February 2020

<sup>7</sup> e.g. objection from Ms Nicola Drake dated 12 February 2020; objections from Mr Robert and Ms Sandra Honeybone dated 10 February 2020





[22] Notably, the Police raise no issues in relation to whether 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; or whether the amenity and good order of the locality is so badly affected by the effects of existing licences that it is desirable not to issue any further licences (per s 105(1)(h) and (i) of the Act).

[23] Subsequently, the Police withdrew their opposition stating: “Police have been told the applicant will seek more staff to manage the premises and since the opposition a more comprehensive application has been lodged.”<sup>8</sup>

[24] In her closing submissions before the DLC, Constable Craddock said: “Police submit that there are a number of issues within the Community that are not brought to the Local Police attention and because the Police did not oppose this application does not reflect that there are no issues within the Community regarding harm related to alcohol. Police submits the questions the Committee must consider are:”<sup>9</sup>

- (a) “Will this application help to achieve the safe and responsible sale, supply and consumption of alcohol in accordance with the object of the Act?

AND

- (b) Will this application help to achieve the minimisation of alcohol related harm in accordance with the object?”

[25] Constable Craddock said further that: <sup>10</sup>

Police did not oppose the application and I respectfully submit that had Police been aware of this alcohol related harm in the Community, it is highly likely this application would have been opposed. In effect this is new information to the Police reporting agency.

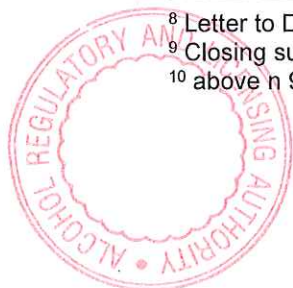
I respectfully suggest the committee should carefully consider the strong community voice in this instance.

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<sup>8</sup> Letter to DLC dated 20 February 2020

<sup>9</sup> Closing submissions of Constable Genevieve Craddock at [11] – [12]

<sup>10</sup> above n 9, at [16] – [17]



*Medical Officer of Health*

[26] By way of a letter dated 24 February 2019, Ms Paula Williams of Community & Public Health, Christchurch District Health Board, reported that the Medical Officer of Health opposes the application. This opposition is based on there being “already a significant number of licensed premises in Amberley, including 5 off licence premises within 311 metres of the proposed premises.”

[27] Ms Williams says:

According to the 2018 New Zealand Census, the usually resident population of the Amberley statistical area is 2067 people. (Map attached). The statistics for “off licensed premises only”, currently five in total, would be one off licence for every 413 people, and should this application be granted, meaning 6 off licence premises in total, there would be one off licence for every 344 people. This is far above the national average, which is not necessarily desirable, of one licensed premises for every 1000 people.

[28] Ms William continues:

Whilst the applicant mentions that he resides in North Canterbury and has played rugby in the area, the applicant is silent on local knowledge of the community and proximity of the intended premises to schools, pre-schools, sports clubs, public facilities, parks and playgrounds. This may imply a lack of knowledge of [the] locality, and also a lack of interest or regard for the locality in which the applicant wishes to establish this business.

[29] Further:

The alcohol management plan provided with the application would appear to be focussed on a bar or tavern rather than an off licence, therefore the proposed systems may be insufficient for an off licence premises. It also notes there is no LAP in Hurunui, which is clearly not the case.

[30] In her closing submissions before the DLC, Ms Williams said:<sup>11</sup>

It is my submission that the community has strongly voiced their objection to this application and that their evidence must be considered carefully by the Committee. I submit to you that those who live and work in the community are best placed to advise the Committee on alcohol related harm in the community.

...

Although the reporting agencies have their role in enquiring into and reporting on applications, it is my submission that the evidence of the community is first hand and therefore carries greater weight in this particular application.

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<sup>11</sup> Closing Submission of the Medical Officer of Health Representative dated 11 September 2020 at [11]–[16]



...

It is apparent that there is a significant groundswell of opposition to the proposed premises from within the local community and it was their clear belief in evidence given that a further Off licence premises would add to the significant existing social issues in the locality.

[31] Ms Williams summarised her position in this way: “It is my submission that, whilst the alcohol related harm cannot be laid at an off licence that does not yet exist, the Committee should be in no doubt from the evidence produced of the very real alcohol related harm already in this community.”<sup>12</sup>

[32] Ms Williams added: “It is my submission, the risk of that probationary year based on the already evident alcohol related harm is a risk that the community of Amberley cannot afford to take. The community are objecting now and should be regarded. I respectfully submit that the DLC should not entertain the grant of this licence for a probationary year.”<sup>13</sup>

*Licensing Inspector*

[33] In her s 103 report on the application, the Licensing Inspector noted that the public objections: “generally lacked evidence or supporting statements on the impact of alcohol related harm on the community. The Inspector considers objectors will need to attend the public hearing and provide evidence to support their concerns.”<sup>14</sup>

[34] While the Licensing Inspector had concerns over the level of information provided with the first application, the Inspector was satisfied from the second application; from discussions with the applicant; and from a site visit to Thirsty Liquor Darfield (where systems could be inspected), that Townill is suitable to hold an off-licence for the Amberley premises.<sup>15</sup>

[35] The Licensing Inspector reported as well that: “Objectors to Townill Limited’s Amberley bottle store application did not raise specific issues as to the suitability of the applicant. Rather they commented on the availability of ‘cheap alcohol,’ the franchise advertising which they considered was focused on younger people, and the applicant’s lack of knowledge of the local community.”<sup>16</sup>

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<sup>12</sup> above n 11, at [36]

<sup>13</sup> above n 11, addendum, at page 4

<sup>14</sup> above n 2, at [5.7]

<sup>15</sup> above n 2, at [6.8]

<sup>16</sup> above n 2, at [6.11]





[36] The Licensing Inspector noted that the hours sought are permitted by the Hurunui Local Alcohol Policy (LAP) and said that the LAP states that stand-alone bottle stores should have 'supervised' licence areas and that "the application meets this criteria (sic)".<sup>17</sup>

[37] The Licensing Inspector said that the hours sought are appropriate for the type of premises,<sup>18</sup> although she noted that some objectors consider the hours to be 'excessive' out of concern that the hours raise risk factors associated with alcohol sales, and long opening hours and advertising aimed at young people is more likely to create new problems.<sup>19</sup>

[38] The Licensing Inspector also noted the concerns of some objectors about school and pre-school children walking past the premises twice a day but said: "It is unclear from these objections, whether the concern is the children will walk past when the premises are open, or simply that the premises will be there. The premises will not open until 9am. It is expected that both primary and secondary school aged children would be at school by 9am."<sup>20</sup>

[39] The Licensing Inspector notes that Crime Prevention Through Environmental Design (CPTED) principles will be incorporated into the premises and that the application was amended so that the building will not be painted bright orange, which is a concern for objectors. The Licensing Inspector suggested that the DLC might consider the imposition of conditions on the licence in relation to its appearance which could include conditions on the use (more precisely the lack thereof) of sandwich boards, flags, and the display of specials on the building or in window displays.<sup>21</sup>

[40] In terms of the amenity and good order of the locality (i.e. s 105(1)(h) and (i)), the Licensing Inspector noted that "some objectors mentioned positive amenity and good order aspects of living in Amberley and seek to maintain these, mainly through not issuing this further licence", while "other objectors raised issues that were 'speculative' in that they referred to the potential to decrease the amenity and good order of the locality" through such things as poor behaviour, noise, vandalism, loitering amongst other things. Other objectors "cited first-hand experience of anti-social behaviour in Amberley, noise and littering including broken glass."<sup>22</sup>

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<sup>17</sup> above n 2, at [7.0]

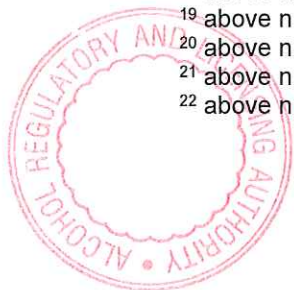
<sup>18</sup> above n 2, at [8.4]

<sup>19</sup> above n 2, at [8.6]

<sup>20</sup> above n 2, at [8.6] – [8.7]

<sup>21</sup> above n 2, at [9.11] – [9.13]

<sup>22</sup> above n 2, at [12.0]



[41] According to the Licensing Inspector:<sup>23</sup>

Amberley does not have the problems faced by some communities that have been associated with licensed premises, including groups of youth congregating in parking lots, or parks and reserves where they drink alcohol, cause damage and make the area feel unsafe for the general community.

The Inspector does not consider Amberley has the general appearance of being littered with rubbish, or that there is regularly broken glass or vomit on the streets or in parks and reserves. The Council's Amberley townships maintenance and gardening officer reported, he and his staff do not regularly encounter rubbish or broken glass in Chamberlain Park and the Amberley Domain. Staff visit these areas 2 to 3 times per week. Rubbish is more often ✓ cans, soft drink bottles, coffee cups and lids, and rubbish from takeaways from local food outlets and franchised fast food outlets.

Local Police comments indicated that Amberley is a typical town regarding alcohol related harm. The effects of alcohol related incidents are seen in relation to domestic/family violence and drink driving in the district. There are periodic incidents of nuisance and vandalism, although this is not considered to be a major concern in Amberley. There are crime incidents, including property theft and break-ins, with these considered to be often perpetrated by people outside of the local community. Police had not observed any significant changes in amenity and good order, or alcohol related harm, since the opening of Countdown Amberley in 2014.

Scion undertake street cleaning in Amberley twice each week. The operator reported there are no real issues with litter in Amberley and more specifically on the commercial block where the bottle store is proposed to be established.

The Inspector considers the objectors have not raised substantive evidence that the amenity and good order of the locality is already badly affected by the effects of the issue of the existing licences. Neither have they provided supporting information on how the amenity and good order would be reduced further by the effects of the issue of the licence.

[42] In relation to current and possible noise levels (s 106(1)(a)(i)), the Licensing Inspector reports that she: "is not aware of a history of complaints of noise disturbances on Carters Road in the vicinity of the proposed bottle store. The Inspector's inquiries did not identify any Service requests relating to noise or nuisance in the main street of Amberley in the past 2 years."<sup>24</sup>

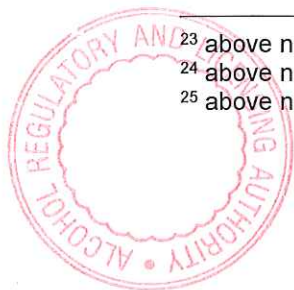
[43] In relation to current and possible noise levels of nuisance and vandalism (s 106(1)(a)(ii)), the Licensing Inspector "considers there are isolated, periodic incidents of nuisance and vandalism as within all communities, however, these are not regular, on-going issues in Amberley."<sup>25</sup>

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<sup>23</sup> above n 2, at [13.2] – [13.6]

<sup>24</sup> above n 2, at [17.3]

<sup>25</sup> above n 2, at [17.5]





[44] In terms of the numbers of premises for which licenses of the kind concerned are already held, the Licensing Inspector reports that there are five off-licences premises in the Amberley township namely:

- a supermarket;
- a grocery store;
- a tavern;
- a hotel; and
- a stand-alone bottle store.

[45] The Authority notes that the grocery store, Pam's Pantry, closed before the DLC hearing. During the hearing before it, and confirmed during the Authority's site visit, the Authority heard that the Amberley Hotel was not operating. Upon the Authority requesting further advice about this, the Licensing Inspector confirmed that the Amberley Hotel had been sold and the licensee surrendered its licences from 5 November 2020. The premises are currently undergoing earthquake strengthening and the new owner has advised the Licensing Inspector that he intends to seek an on- and off-licences for the premises later this year.<sup>26</sup> The Authority also understands that the remote-sales-only premises is no longer operating.

[46] This means that at the time of the appeal, the off-licences in Amberley are the:

- (a) Countdown supermarket;
- (b) Brew Moon brewery; and
- (c) Super Liquor bottle store.

[47] There are six club or on-license premises (i.e. the Amberley Rugby Club, Kafal Indian Restaurant, Curry N Kebabs Indian Restaurant, Nor'Wester Café, Railway tavern, and Brew Moon brewery).

[48] In terms of the extent to which land nearby the premises concerned is used, the Licensing Inspector confirms that the neighbouring land is business/retail.

[49] In terms of density, the Licensing Inspector notes that the Hurunui District is a large territorial authority albeit with a relatively small population. Along SH1 and SH7 are Cheviot and Culverden which provide for the local community and the travelling public. Hanmer Springs, the Licensing Inspector says: "is a nationally significant tourist destination with a total of 17 licensed premises and a population of 960 (ratio of 1 licensed premises per 56

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<sup>26</sup> Supplementary Inspector's Report dated 23 April 2021





people/resident population). These premises are a mix of licence types to serve the local community and visitors.”<sup>27</sup> The Licensing Inspector questions the relevance of density assessment criteria to rural towns as “Rural towns act as service centres or hubs for the resident population and surrounding rural population. This can result in a concentration of premises in these towns, thereby increasing the ratio of premises to people. The towns also often have a range of premises types, such as supermarkets/grocery stores, cafes, restaurants, hotels taverns and bottle stores.”<sup>28</sup>

[50] The Licensing Inspector reports that Amberley has two parks, a medical centre, a pharmacy, one school, three pre-schools, two rest homes, social/pensioner housing, and three churches. It is: “a typical town of its size, located on a state highway in a rural location.”<sup>29</sup>

[51] As regards the issues raised by objectors, the Licensing Inspector reports that: “The main issues raised relating to sensitive sites were: people, particularly children and the elderly walking past the premises, and the litter and broken glass observed when people are out walking, and in Chamberlain Park and the Amberley Domain.”<sup>30</sup>

[52] The Licensing Inspector notes that since 2010 there have been new licenses issued and only two objections: one in relation to the Countdown Amberley in February 2014, and one for *Curry En Route* in December 2014 (this was subsequently withdrawn when the objector was advised that the premises had previously been a Thai restaurant and were to become an Indian restaurant).<sup>31</sup>

[53] There were no objections about the sale of goods or the provision of services other than alcohol or food.<sup>32</sup>

[54] The Licensing Inspector said that she was not aware of any issues with the proposed managers for the premises in relation to the sale and supply of alcohol. It is also the applicant’s intention to find two qualified and experienced managers who live in the district to run the premises with part time assistance from the applicant’s other staff.<sup>33</sup>

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<sup>27</sup> above n 2, at [18.2]

<sup>28</sup> above n 2, at [18.10]

<sup>29</sup> above n 2, at [19.1]

<sup>30</sup> above n 2, at [19.5]

<sup>31</sup> above n 2, at [20]

<sup>32</sup> above n 2, at [10] – [11]

<sup>33</sup> above n 2, at [14.2] – [14.3]



[55] In terms of training and systems, the Licensing Inspector noted that the Alcohol Management Plan (AMP) included with the application appears to be for on-licensed premises and that this was discussed with Mr Brown. The Inspector reports that: “he explained that he uses the same AMP for all of his premises as it covers both on and off-licensed premises management issues. As Mr Brown’s staff may work at his various premises, he considers having one AMP more appropriate for all licence types and premises. The Licensing Inspector says: “The AMP covers the main management elements that would be required at off-licensed premises.”<sup>34</sup>

[56] The Licensing Inspector concluded that the application is complete and appears to meet the criteria for the issue of an off-licence, and the application is not contrary to the Hurunui LAP. The Inspector does not oppose the application but notes that there are issues raised that require consideration.<sup>35</sup>

[57] In her closing submissions before the DLC, the Licensing Inspector expressed her conclusion in positive terms, namely that: “The application be granted, subject to conditions to ensure clarity relating to the licensed areas, the exterior appearance of the building, the use of logos and externally visible advertising of alcohol products.”<sup>36</sup>

#### **DLC decision**

[58] The DLC concluded that: “this new off-licence should not be granted. We have formed the opinion that if this new off-licence was granted, there would be more than a minor impact (reduction) on the amenity and good order of the locality and, that contrary to the object of the Act, alcohol-related harm would not be minimised.”<sup>37</sup>

[59] In its decision, the DLC canvassed the public objections, noting that:<sup>38</sup>

Many of the objectors confirmed to the Committee that they view Amberley as a pleasant and peaceful town. Put simply, the objectors do not want another bottle store in their community.

A common theme of the evidence we heard was that many community-based activities and services are conducted in and around the township, being a gathering place for locals and forming a ‘hub’ for the community. Activities and amenities include, for example,

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<sup>34</sup> above n 2, at [14.9]

<sup>35</sup> above n 2, at [22]

<sup>36</sup> Closing Submissions of Hurunui Chief Licensing Inspector, at [28]

<sup>37</sup> DLC decision at [5] (Summary)

<sup>38</sup> DLC Decision at [21] – [25]



the parks, the library, the school and preschools, the retail stores, the cafes, the sports clubs and community groups, the churches and the farmers market.

The proximity of the proposed premises to a number of sensitive sites and to the other licensed outlets was concerning to many objectors.

Some considered that the members of the existing community were best placed to comment on the current amenity and good order of their community.

A large number of objectors consider that another bottle store is not compatible with the pleasantness and character of the township, and there is no need for a second outlet and a further off-licence. The objectors believe their community should reflect who they are, and what they want to be.

Many objectors believe that alcohol undeniably has the potential to cause harm. Many noted that the community has relatively low levels of alcohol-related trouble (i.e. crime, vandalism, noise). However, other objectors gave specific evidence of alcohol-related harm they had experienced or encountered, whether directly or indirectly. This included rubbish, nuisance, alcoholism, damage and vandalism, motor vehicle incidents involving alcohol, drinking of alcohol in parks and public places, and alcohol-related incidents at the local school.

[60] The DLC then summarised the evidence before it including from the objectors who appeared before it, the Medical Officer of Health, and the Licensing Inspector. The Police chose not to give evidence.<sup>39</sup>

[61] The DLC then summarised the submissions of the various parties, the relevant sections of the Act, the approach it is to take when evaluating the application, and the applicable legal tests.<sup>40</sup>

[62] In relation to the Townill's suitability (s 105(1)(b), despite being disappointed with the quality of the initial application, the DLC concluded: "that the applicant has established itself as being suitable."<sup>41</sup> The DLC found no issues with the application in terms of any inconsistency with the LAP (s 105(1)(c));<sup>42</sup> the days and hours proposed for the sale of alcohol (s 105(1)(d));<sup>43</sup> or the sale of goods and services other than alcohol and food (s 105(1)(f) and (g)).<sup>44</sup>

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<sup>39</sup> DLC decision at [30] – [186]

<sup>40</sup> DLC decision [187] – [353]

<sup>41</sup> DLC decision at [364] – [365]

<sup>42</sup> DLC decision at [368]

<sup>43</sup> DLC decision at [372];

<sup>44</sup> DLC decision at [379] – [381]





[63] The concerns of the DLC are primarily focused on the effect that the issue of the licence will have on the amenity and good order of the locality (s 105(1)(h))<sup>45</sup> and what that means for achieving the object of the Act (s 105(1)(a)). To a lesser extent, the DLC is also concerned about the design and layout of the premises (s 105(1)(e)); and systems, staff and training (s 105(1)(j)).

[64] In relation to the design and layout of the premises, the DLC considered that if the licence were to issue, conditions would need to be imposed:<sup>46</sup>

- (a) prohibiting 'dump stacks' of RTDs at the end of the wine end-of-aisle displays at the front of the store;
- (b) limiting advertising and the promotion of alcohol (including on *Facebook*); and
- (c) prohibiting single sales of RTDs or beer from broken packaging.

[65] In terms of systems, staff and training, the DLC shares the concerns of the Medical Officer of Health that the applicant is spreading himself too thin and said if the licence issues it would expect there to be at least three people (including part-time staff) for the premises.<sup>47</sup> The DLC also considers that the AMP should be specific to the premises.<sup>48</sup>

[66] In terms of the amenity and good order of the locality, the DLC considers Amberley township to be the 'locality' relevant to its consideration of the application. The DLC said: "While the Committee do (sic) not dispute the fact that Amberley is, in fact, a service town, we recognise that a robust community has been established by the residents and businesses of this town."<sup>49</sup>

[67] The DLC says in relation to the amenity and good order of the locality:<sup>50</sup>

The fact of this existing level of amenity (pleasantness and agreeableness) is no accident. It is a result of ongoing work from the residents of Amberley, building it to become a community that they want to live in. As can be seen with the level of opposition to this application, the community has spoken decisively that they do not consider another standalone bottle store is a consistent activity with how they view their community and the *amenity and good order* of their township's locality. The opposition could be viewed

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<sup>45</sup> The DLC does not consider Amberley to be significantly impacted by other licensed premises and therefore s 105(1)(i) is not relevant – see DCL decision at [383]

<sup>46</sup> DLC decision at [375] – 378]

<sup>47</sup> DLC decision at [410]

<sup>48</sup> DLC decision at [411]

<sup>49</sup> DLC decision at [389] – [390]

<sup>50</sup> DLC decision at [391] – [393]



as the continuation of the work that has occurred over the years, in building and maintaining the community or 'hub' as they want it to be in Amberley.

Put into the words of the s 5 definition of *amenity and good order of the locality*, the resounding voice of the community, is that if a bottle store was opened, that it would lessen and reduce the degree to which their community is pleasant and agreeable by more than a minor extent. In our view significant weight must be placed on this evidence, from local folk, which we have accepted. We have summarised the evidence in Appendix 1 but relevant here, particularly, is the evidence of Mr Porter, Mr Green, Ms McKenzie, Ms Barbour, Ms Mckenzie, Mr McGirr, Ms Turnbull, Ms Welch and Ms Gould.

Having done so we unanimously formed the opinion that if we were to grant the licence, there would be a likely impact on the amenity and good order of the locality by way of reduction by more than a minor extent.

[68] The reasons for this opinion, the DLC said, are:

- (a) “the prevailing approach with alcohol-related harm internationally” is that “an increase in alcohol outlets has the effect of lowering prices and introducing into the receiving community higher (additional) volumes of alcohol”,<sup>51</sup>
- (b) “there would likely be ‘aggressive promotion and competition on price’ if the application were granted”,<sup>52</sup>
- (c) Mr Brown’s opinion that “the business will be successful and at the same time will not have a negative impact on the town” was not sufficiently supported by evidence to satisfy the DLC that it is “based on anything substantive particularly in view of Mr Brown’s acknowledgement he made very few local enquiries and had a limited local knowledge and awareness of the locality in comparison with the evidence of local residents;”<sup>53</sup> and
- (d) the current density is one off-licence per 516.75 persons, and “If the Committee granted the issue of a licence to the applicant, the density of off-licence premises would increase [to] one per 413.4 persons” against the national average of off-licences per capita of one per 1000 persons, and that the grant of the application would double the number of bottle stores and increase by 50% (from 2-3) the number of outlets selling a full range of spirits and RTDs with a resulting increase in nuisance and alcohol-related harm in the locality.<sup>54</sup>

[69] The DLC said it was entitled to take a precautionary approach and to apply a forward-looking risk assessment when evaluating the evidence and when forming its opinion on the amenity and good order of the locality. The DLC said: “In our opinion this effect on the existing *amenity and good order* would be more likely than not to be exacerbated by the issue of a

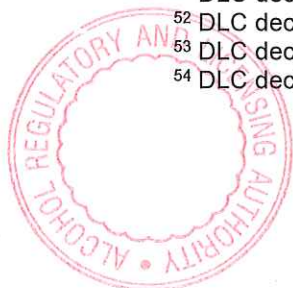
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<sup>51</sup> DLC decision at [394]

<sup>52</sup> DLC decision at [394]–[396]

<sup>53</sup> DLC decision at [397]

<sup>54</sup> DLC decision at [401]–[403]





further bottle store licence at this site in Amberley. By exacerbated, we mean worsened or reduced by much more than a minor extent.”<sup>55</sup>

[70] In relation to the object of the Act, the DLC said that the first hand evidence of alcohol-related harm in the community was “cogent and persuasive and locally based empirical and experiential evidence.”<sup>56</sup> The DLC also considers that the granting of a new off-licence will result in additional alcohol-related harm in the Amberley township and surrounding areas, increasing the exposure of alcohol to more vulnerable members of the community and making some forms of alcohol (RTDs and spirits) more accessible.<sup>57</sup>

[71] The DLC concluded:<sup>58</sup>

In making our forward-facing risk assessment on whether or not granting this new off-licence would be consistent with section 4 we are entitled to take a precautionary approach for Amberley. With the number and range of existing off-licences, we concluded that to grant this application would not be consistent with the object of the Act – we agree with the evidence of Mr Healey and Rev Doctor Missen and conclude that refusing to grant this application is consistent with our desire to minimise alcohol related harm in our community as much as we can.

### Grounds of Appeal

[72] The grounds of appeal are that the DLC:<sup>59</sup>

- (a) failed to interpret and correctly apply the provisions of s 4, s 105, s 106 of the Act;
- (b) wrongly determined that the views of the objectors were representative of the Amberly community;
- (c) failed to give sufficient weight to the Licensing Inspector’s report;
- (d) failed to give sufficient weight to the non-opposition of the Police, particularly the lack of concern over amenity and good order and alcohol- related harm;
- (e) failed to give sufficient weight to the Medical Officer’s report and its lack of opposition on the grounds of amenity and good order and the object of the Act;
- (f) when considering the density of licences in the locality, it placed undue weight on the population of Amberley township in the census and insufficient weight

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<sup>55</sup> DLC decision at [405]

<sup>56</sup> DLC decision at [416]

<sup>57</sup> DLC decision at [418]

<sup>58</sup> DLC decision at [418]

<sup>59</sup> Notice of Appeal dated 8 December 2020





on the population of the surrounding rural areas and the high traffic volume through the township;

- (g) failed to give proper consideration to the Purpose of the Act and its inter-relationship with the Object of the Act;
- (h) placed undue weight on the opinion of “experts” as to the effect of the grant of licences under the Act on alcohol-related harm;
- (i) did not give sufficient weight to the applicant’s past good record with the ownership and management of licensed premises when considering the issue of alcohol related harm and good order and amenity;
- (j) by placing undue weight on the objectors’ evidence of alcohol-related harm and good order and amenity;
- (k) failed to consider the weight to be given to the evidence of three objectors who were each involved in the liquor industry in and near Amberley; and
- (l) failed to consider the weight to be given to the evidence of Mr Green, the Principal of Amberley Primary School when he was unable to produce any school records corroborating his evidence.

[73] Before the Authority, Mr Peter Egden, counsel for Townill said that essentially: “the grounds of appeal come down to a submissions that the DLC’s findings that the amenity and good order would be reduced by more than a minor extent by the issue of the licence and that the harm caused by excessive or inappropriate consumption of alcohol would not be minimised were not supported on the evidence and were plainly wrong.”

#### *Relief Sought*

[74] Townill seeks that the decision of the DLC be reversed and the licence application granted. Before the Authority, Townill submits that “the risk of an increase in alcohol-related harm or a reduction in amenity and good order is low and that it would be appropriate to issue the licence on conditions”.

#### **Submissions for Townill**

[75] Mr Egden for Townill submits that to the best of the applicant’s knowledge, the business owners in the area of the premises, save for one who held a remote sales off-licence (which has since been surrendered), had no issues with the application. Other objectors, it is submitted, have connections to other off-licence premises in Amberley.



[76] It is submitted that the DLC determined that the application meets all of the criteria in s 105(1), other than (a) (the object of the Act), and (h) (amenity and good order of the locality). While the objectors have differing views about whether Amberley is 'pleasant and agreeable', it is submitted that the DLC found Amberley is pleasant and agreeable and is not badly affected by the issue of existing licences.

*Local Alcohol Policy (LAP)*

[77] It is submitted that while the Hurunui LAP recognises that it may provide for certain matters including the location of licensed premises near certain types of facilities, and the density of licensed premises, the LAP does not restrict the location or density of licensed premises.

*Amenity and good order of the locality*

[78] In relation to the amenity and good order of the locality, it is submitted that the DLC wrongly decided that the views of the objectors are representative of the views of the community as a whole. From a population of approximately 2300, there only 56 valid objections and only 16 of those chose to give evidence. In light of the Licensing Inspector's break down of the age of the population, it is submitted, that the 56 objectors amount to 3% of the population and the 16 objectors who gave evidence amount to 1% of the population. It is submitted that the remaining 97% either support the application; do not have a view one way or another; or do not necessarily agree but do not feel strongly enough to object.

[79] The common theme of the evidence of the objectors relied on by the DLC, it is submitted, relates to litter and nuisance, and density of licences.

[80] It is submitted that there was no acceptable evidence from which it could be inferred that if the licence were issued, noise levels in the immediate area of the proposed premises, or in Amberley generally, would increase.

[81] It is submitted further that there is very limited evidence of vandalism apart from letterboxes and road signs being knocked over in accidents, and nothing linked to alcohol consumption.

[82] It is submitted that a common theme is that there is litter generally and, in particular, alcohol containers in the vicinity of Chamberlain Park. While it is submitted that it cannot be





disputed that there is litter in Amberley, as there probably is in most (or all) other communities, it is reasonable to infer that if this is a significant problem, the Hurunui District Council could have imposed a liquor ban on Chamberlain Park.

[83] This focus for objectors, it is submitted, must be seen in context and despite the litter, the general consensus of the objector's evidence, and of the finding of the DLC, is that Amberley is pleasant and agreeable. Neither the Licensing Inspector nor the Police, it is submitted, have any issue with amenity and good order with the local Police telling the Inspector that after the opening of the Countdown Supermarket in 2014, there has been no significant change to the amenity and good order of an increase in alcohol-related harm. The evidence of the Licensing Inspector that the township is agreeable and not adversely affected by noise, nuisance, vandalism or significant alcohol-related harm, it is submitted, was ignored by the DLC when considering s 105 and s 106.

[84] In terms price cutting, it is accepted that price cutting can occur as a consequence of the proliferation of licences, however, in this case it is submitted that there is no evidence that this will happen. It is submitted that the evidence of Mr Porter was unsubstantiated evidence, and a European World Health Organisation (WHO) paper is at best generalised evidence that does not relate to Amberley specifically. It is submitted that Mr Brown's evidence is that he does not engage in price cutting, but the DLC chose to disagree with this evidence and preferred a general statement from a doctor of the WHO in Europe and a view put forward by a prospective competitor of the applicant who did not cross-examine Mr Brown on the issue of price cutting.

[85] In relation to the proliferation or density of licences, it is submitted that the number of licences in the locality is not a criterion which the DLC is to consider under s 105, and while relevant under s 106 to the criterion about amenity and good order (s 105(1)(h)), it is but one factor to consider when determining whether the issue of a licence will make the locality less pleasant and agreeable by more than a minor extent.

[86] It is submitted that part of what makes Amberley pleasant and agreeable is that it services the surrounding rural community — providing employment and attracting people to live there — in turn, enabling the town to provide amenities and services for its residents and those who live in the surrounding area.

[87] It is also submitted that part of the DLC's reasoning is that if the licence issued, the number of licences in Amberley would exceed the so called national average. It is submitted





that the DLC did not take into account that the catchment for Amberley is significantly greater than the population of the township itself. Mr Brown's estimate that the population within 15 kms of Amberley being 3000-4000 people was not challenged. This means that two standalone bottle stores would amount to a ratio of one off-licence: 1700-2100 people, not including the traffic count of 11,000 vehicles per day.

[88] In disagreeing with Mr Brown,<sup>60</sup> because he made few enquiries and has a limited knowledge of the locality, it is submitted the DLC disregarded the evidence of the Licensing Inspector and of the local Police who shared similar views to Mr Brown. In doing so, it is submitted, the DLC created an inaccurate and distorted picture of Mr Brown who has, amongst other things, lived and worked and played sport in North Canterbury all of his life and who travels to, and spends time in Amberley. Overall, it is submitted: "the conclusions reached by the DLC suggest that the DLC has picked the evidence it wants to justify its decision to decline the application and has ignored, or at least downplayed, evidence that does not support its reasoning."

#### *Object of the Act*

[89] Townill submits that only Mr Green, the Principal of Amberley Primary School, gave evidence about alcohol-related harm in Amberley. The evidence of the other objectors, it is submitted, does not establish an evidential foundation enabling a link to be drawn between a real risk of alcohol related harm and the grant of the application other than in general availability terms, which is insufficient.

[90] It is submitted that there can be no doubt that alcohol can cause harm and probably does so in varying degrees within most communities in the country. The issue, however, it is submitted, is not whether there is alcohol-related harm in a community but whether that can be minimised. The Licensing Inspector's view, it is submitted, is that there is no significant alcohol-related harm in Amberley and this is supported by the local Police. While there are periodic alcohol-related incidents, and periodic incidents of nuisance and vandalism, it is submitted that these are not of a sufficient degree or frequency to justify a finding that amenity and good order would be reduced by more than a minor extent, or that alcohol-related harm is

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<sup>60</sup> who said that his business will be successful and not have a negative effect on the town



at such a level that it can be concluded that the object of the Act will not be achieved by the issue of the licence.

### **Submissions for objectors**

[91] Mr Tim Mckenzie represents a number of objectors.<sup>61</sup>

[92] The objectors submit that Townill has not discharged the onus on it of persuading the Authority that it ought to differ from the position reached by the DLC.

### *Amenity and good order*

[93] The overall finding of the DLC that the amenity and good order of the locality would likely be decreased by more than a minor extent, it is submitted, is founded on:

- (a) the local community having spoken widely and being strongly opposed to the application;
- (b) the community considering Amberley to have high amenity value;
- (c) Mr Brown's subjective view of the community's needs being limited such that little weight was placed on it;
- (d) a further bottle store would see the amount of that type of store double (lifting Amberley higher than a national average); and
- (e) increased competition would likely lead to reduced prices, in turn, increasing consumption and harm.

[94] It is submitted that these are all reasonable findings based on a wide foundation of acceptable evidence.

[95] It is submitted that Townill's mathematical analysis of census statistics to argue that the objectors are a low percentage of the entire population is flawed in that:

- (a) of the 56 objectors, two represent local associations (namely the Amberley District Residents Association and Alcohol Wise Hurunui Incorporated); one objector, Mr Green, is the principal of the local primary school; another objector

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<sup>61</sup> Alcohol Wise Hurunui Inc, Amberley District Residents Assoc, Amberley School, Guy Porter, Yolanda Turnbull, Pamela Welch, Ross and Jenny Barkley, Sally Macdonald, Noel McGirr, Stephen Doak, Julie Doak, Dr Richard McCubbin, Kowai Parish/ St Andrews Church, Helen Barbour, Alison and Frank Meyer, Kylie Walker-Clarke, Susan Mackenzie, Christien Billante, Helen and Michael Lodge, Belinda Gould, Elisabeth Dean, Christine and Allan Knowles, Deb Wilson, Suzanna and Allan Rennie, Sally Mckenzie, Malcolm Mckenzie, and Sandy and Robert Honeybone.



is a rural general practitioner; another is a local parish; and another is a local kindergarten;

- (b) there is no test of how many objectors are required before a DLC can consider that it has heard from the community but rather the DLC is entitled to come to its conclusion based on an orthodox examination of the evidence before it;
- (c) if it is correct that a certain number of objectors is required, this would mean that near all applications might be granted if that threshold is not met, and such an approach falsely assumes every possible objector was aware of the application and chose whether to object or not;
- (d) a percentage approach would encourage objectors to object en masse which might require a DLC to hear hundreds or thousands of objections – such an approach would derail the decision maker and defeat the purposes of the Act; and
- (e) the argument falsely assumes the presence of the balance of the community in the process: it could equally be said that hundreds of people were not aware of the applications, and may have also opposed it, or they may not have – it will never be known.

[96] It is submitted that this underscores that a DLC can only decide the application on the evidence before it.

*Interested parties as objectors*

[97] Townill submits that two objectors, Mr Porter and Ms Gould, are involved in off-licences in the vicinity such that that the DLC was in error by not considering the weight to be given to their evidence.

[98] The objectors submit that Townill objected to the evidence of Mr Porter but the DLC allowed the evidence and did consider what weight it would give it. This, it is submitted, is entirely orthodox. It is also submitted that Mr Porter was not challenged for bias in cross-examination.

[99] In relation to Ms Gould, it is submitted that no objection was taken to her evidence and she was not challenged for bias in cross-examination.

[100] It is submitted that there is no reason for the DLC to discount the evidence of either objector and, in any event, their evidence is a small part of the case. It is submitted that it is difficult for Townill to say that even if their evidence ought to have been discounted, that this would have had any bearing on the ultimate outcome given the other evidence before the DLC.





*Price cutting & competition*

[101] The objectors submit that it was open for the DLC to find that price competition will see lower prices and increased sales and risk of harm. Amongst other things, it is submitted that the plea of Mr Brown that he will not reduce prices and intends to be high end, was not accepted by the DLC and that Thirsty Liquor is not a high end trader. It is submitted that to say Mr Brown is not concerned because the profit of other stores will keep him afloat is “either quite remarkable, or just not correct”. The DLC, it is submitted, took the latter view. It is also submitted that the expert opinion evidence is that increased competition generally has the effect of reducing prices, and that reduced prices can result in increased harm. This expert evidence, it is submitted, is relevant and cogent and there was very little challenge to this evidence in cross examination.

[102] In the absence of any real challenge to the evidence before the DLC, it is submitted that it is difficult on appeal to now ask the Authority to reconsider the acceptance of these witnesses and the weight given to the evidence.

*Density*

[103] In terms of density, the objectors submit that while Townill argues that the DLC should have considered the wider catchment when having regard to the number of premises for which licences are already held, what is of more moment to the DLC is that granting this application would see a doubling of bottle stores in Amberley. That, it is submitted, is a proper application of the test in s 106(1)((a)(iii).

[104] The wider catchment approach, it is submitted, is flawed in that it relies on the ‘national average’ as being the mandatory test, which it is not (and was not seen to be by the DLC). Further, it is submitted that such an approach requires the statutory test of ‘locality’ being replaced by ‘catchment’. Moreover, it is submitted that the argument could be infinite in that an applicant could cherry pick how big the catchment should be defeating the community focus of the Act.

[105] Likewise it is submitted that the number of cars that drive through Amberley is irrelevant as they are not part of the community given that the road is State Highway 1.



*No corroborative evidence from Mr Green*

[106] In terms of Mr Green not producing school records to corroborate his evidence, it is submitted that Mr Green was not challenged on this and nor could he have been expected to take, maintain and produce forensically accurate records of each incident of alcohol-related incident to which he is aware. It is also submitted that like other evidence, Mr Green's evidence 'did not make the day'. It is but one of many strands that led to the overall decision and it is not known what weight was put on it such that it cannot be said that slightly less weight would have made a difference.

*Lack of opposition from two reporting agencies*

[107] The lack of opposition from reporting agencies, it is submitted, is not determinative either way as the DLC must come to its own conclusion. The introduction of 107, it is submitted, makes it clear that a DLC should not be swayed by the lack of opposition. Section 107 reads: "The... licensing committee concerned may, having regard to any matter stated in s 105, refuse to issue a licence, even if no objection was filed against the application for it under section 102 and no report was filed under section 103 opposing that application."

[108] It is submitted, as the DLC will have been aware, that the Police commonly focus their attention on suitability (criminal convictions etc) and associated crime reports for an area. As suitability was not an issue and Amberley benefits from a low rate of alcohol-related crime, the lack of a report is nothing more than a neutral factor. It is also submitted that the DLC was entitled to depart from the Inspector's report and on the facts of this case, it was open to it to do so.

[109] By way of conclusion, the objectors submit that the DLC did not just reject the application based on a community view; or on the basis of the evidence of competitors; or on a national average; or because price competition increases harm; or because of its view of who is the community. It is submitted that the DLC thoroughly reminded itself of all the relevant legal tests and applied the applicable authorities, and made findings that were open to it on the evidence.

[110] It is submitted that Townill has failed to demonstrate any errors on the part of the DLC and therefore has not discharged the onus on it of persuading the Authority that it ought to reach



a different decision. All of the points raised, it is submitted, are attempts to re-litigate sound findings that were made on reasonable evidential foundations.

### **Submissions of Reporting Agencies**

[111] Constable Craddock was not present at the hearing before the Authority and made no submissions on behalf of the Police. Similarly, Ms Williams for the Medical Officer of Health did not appear and made no submissions.

[112] Chief Licensing Inspector Morrison appeared before the Authority to assist but made no submissions in relation to the appeal. Given the inquisitorial nature of an appeal where the Authority is often assisted by reporting agencies, the Authority is grateful that the Licensing Inspector appeared to assist.

[113] The value of having reporting agencies in attendance to assist is all the more important where a reporting agency chooses to oppose an application before a DLC and subsequently makes submissions in opposition before the DLC, as the Medical Officer of Health did in this case. Should the Authority have any questions for that reporting agency based on its opposition, the failure to appear not only raises the spectre of potential delay in obtaining a response, but it also tends to diminish the weight that might otherwise be given to the views of that reporting agency.

### **Decision and reasons**

#### *Legal Principles*

[114] As the Authority has stated before,<sup>62</sup> on appeal the appellant is required to satisfy the Authority that the decision of the DLC is wrong. This position reflects what the Supreme Court said in *Austin, Nichols & Co Inc v Stichting Lodestar*; namely: "... the appellant bears an onus of satisfying the appeal court that it should differ from the decision under appeal."<sup>63</sup>

[115] In relation to this, Townill does not take issue with the approach taken, or the case law referred to by the DLC. Rather, what is in issue is whether the evidence supports the findings reached by the DLC.

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<sup>62</sup> e.g. *Shady Lady Lighting v Lower Hutt Liquormart Ltd* [2018] NZARLA 198

<sup>63</sup> *Austin, Nichols & Co Inc v Stichting Lodestar* [2008] 2 NZLR 141 at [146]





[116] Notwithstanding that there is no issue taken with the approach taken by the DLC, the Authority briefly repeats the relevant principles applicable to this appeal.

[117] First, as Gendall J said in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*,<sup>64</sup> the role of the DLC or the Authority in considering the relevant factors of the Act is an evaluative one. The approach we must take on appeal is this:<sup>65</sup>

..., when the relevant body receives an application, [the Authority] must consider it against s 105 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;
  - (iii) have regard to the criteria stipulated in s 105 of the Act ...; and
- (c) The relevant body must finally cross-check whether the application is capable of meeting the object of the Act.
- (d) ...

[118] Secondly, contrary to the position taken by the DLC, there is no onus on an applicant to prove its suitability. As we recently reiterated in *McCutcheon v Level Eighteen Limited*:<sup>66</sup>

While that may have been considered to be the position in the past, the correct position has been subsequently clarified by the superior courts. As Gendall J said in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*,<sup>67</sup> the role of the DLC or the Authority in considering the relevant factors in s 105 of the Act is an evaluative one, requiring the decision maker to make a merits-based determination on the application.<sup>68</sup> In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* Clark J summarised the applicable principles

<sup>64</sup> *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382

<sup>65</sup> above n 64, at [55] – [56]

<sup>66</sup> *McCutcheon v Level Eighteen Limited* [2021] NZARLA 26 at [62]

<sup>67</sup> above n 64

<sup>68</sup> above n 64, at [54] – [56]



in respect of the renewal of a licence.<sup>69</sup> Citing Heath J in *Re Venus NZ Ltd*,<sup>70</sup> and Moore J in *Auckland Medical Officer of Health v Birthcare Auckland Ltd*,<sup>71</sup> Clark J confirmed that the breadth of the decision-maker's functions suggest that the application of rules involving onus of proof may be inappropriate, and similarly there is no onus on the reporting agencies to prove the application should not be granted.<sup>72</sup> Subsequently, in *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd*, (albeit in the context of an appeal brought under s 162 of the Act in relation to a decision of the Authority to decline a new off-licence) Churchman J said: "the case law clearly indicates that rules as to onus of proof will be of little relevance."<sup>73</sup>

[119] Thirdly, the evaluative function of the DLC, and now Authority on appeal, is an assessment of risk: "The factors to be considered in the course of assessing an application for a licence or for renewal, ..., stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm."<sup>74</sup>

[120] A causal nexus is required between the evidence to suggest that the grant of the application, contrary to the object of the Act, will increase the risk of alcohol abuse.<sup>75</sup> As the evaluative function is an assessment of risk and it is the risk profile which is relevant, however, there is no requirement to link specific alcohol-related harm to specific off-licences, or as Clark J said in *Lion Liquor*, 'for the premises to be at the centre of the harm'.<sup>76</sup> As Clark J put it: "The Act looks to minimise alcohol-related harm. Where there is an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant or renewal of a licence, the harm must be minimised not ignored or condoned."<sup>77</sup>

[121] Fourthly, while in *Mangere-Otahuhu Local Board v Level Eighteen Limited* the Authority said that it will be slow to draw different factual conclusions from a DLC as the DLC will have had the advantage of hearing the evidence at first instance,<sup>78</sup> in *Rainger v General Distributors Limited* Davison J made clear that there is less need for the Authority to hesitate in such circumstances as the Authority is as much a specialist body as the DLC in the field of alcohol regulation.<sup>79</sup> That is to say that what the Authority is required to do on appeal is to make

<sup>69</sup> *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, [2018] NZHC 1123 at [46]

<sup>70</sup> *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315 at [60]

<sup>71</sup> *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689 at [52]

<sup>72</sup> above n 71, at [113]

<sup>73</sup> above n 4 at [39]

<sup>74</sup> above n 69, at [43] and [47],

<sup>75</sup> *Otara-Papatoetoe Local Board v John Enterprises Ltd* [2012] NZHC 1406, [2012] NZAR 717 at [31], *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 71 at [50] and *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 69 at [60]

<sup>76</sup> above n 69 at [64]

<sup>77</sup> above n 69 at [67]

<sup>78</sup> *Mangere-Otahuhu Local Board v Level Eighteen Limited*, above n 2 at [17]

<sup>79</sup> *Rainger v General Distributors Limited* [2019] NZHC 3483 at [58]





its own assessment of the merits of the application. It is not sufficient for the Authority to simply decide that the DLC's decision was one which was open to it on the evidence. Instead what the Authority is required to do is to independently assess the evidence and the merits of the application and to reach its own conclusion.

[122] Fifthly, the weight to be applied to each of the relevant criteria is a matter for the decision-maker. As Gendall J said in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, the principles relating to the requirement to 'have regard to' can be summarised as these:<sup>80</sup>

- (a) the phrase "have regard to" bears its ordinary meaning;
- (b) the decision maker must actively and thoughtfully consider the relevant matters;
- (c) to do so requires the decision maker to correctly understand the matters to which he or she is having regard;
- (d) the weight to be given to such matters is generally within the discretion of the decision maker;
- (e) there will be cases where the matter(s) to which the decision maker is required to have regard are so fundamental or critical that they assume an elevated mantle.

[123] To these principles the Authority would add that the Act does not require the Authority to concern itself with whether or not there is a good business case for a new bottle store in Amberley. Rather, the focus of the Authority is on whether, having regard to the criteria in s 105, the application is likely to be consistent with the object of the Act.

[124] It is the third of these principles that comes to the fore in this appeal. That is, the issue on appeal is about whether there is a causal nexus between the evidence to suggest that the grant of the application, contrary to the object of the Act, will increase the risk of alcohol abuse and in this case, that the amenity and good order of the locality will be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence. Given that the licence has not yet issued, what the Authority is required to consider is the potential risk profile in relation to the locality.<sup>81</sup>

#### *Locality*

[125] In *Gisborne Liquormart Limited v Ka Pai Kaiti Trust*,<sup>82</sup> the Authority considered the term 'locality' for the purposes of s 105(1)(h) of the Act (relating to amenity and good order).

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<sup>80</sup> above n 64 at [78]

<sup>81</sup> above n 69 at [64]

<sup>82</sup> *Gisborne Liquormart Limited v Ka Pai Kaiti Trust* [2018] NZARLA 316 at [120]





There the Authority did not agree that because the premises served a wider catchment beyond the central business district that consideration of the amenity and good order should be read in the context of the wider Gisborne city or district that will potentially be served by the bottle store. There we said that the requirement is to look at the amenity and good order of the 'locality'. That is, the requirement in s 106(1)(a)(iii) was to consider the number of off-licences in the locality rather than the number of bottle stores in Gisborne generally.

[126] Similarly in *Selby v Kiw-E Otaki Limited*<sup>83</sup> the Authority said:

In terms of the what constitutes 'the locality' for the purposes of s 105(1)(h) and (i), in *Re A Karambayev Limited* the Licensing Inspector sought clarification on some legal issues including the meaning of the expression 'the locality':<sup>84</sup>

*He also inquired as to the meaning of "the locality" referred to in s 105(1)(h) and (i) of the Act. In the context of this application, was the locality restricted to that portion of Albert Street which might be affected by the granting of the application; or did it encompass the wider central business district of Auckland? In this regard, the applicant submitted that "the locality" equated with the area where persons live if they had the status to object to an application in terms of s 102 of the Act. While status to object is not entirely dependent upon the location of an objector, normally this is the case. A person usually has a greater interest in the application than the public generally because that person will be affected in some way by the granting of the application. The Authority agrees with the applicant's submissions in this regard and is inclined to give the expression "the locality" the more restricted meaning.*

In *Liquor World Limited*, a decision under the 1989 Act, a circle with a radius of one kilometre within which an objector must reside or have a business that could be affected was considered a 'fair and realistic' suggestion for determining whether persons have status to object to an application in terms of s 102 of the Act. *Liquor World Limited* was applied by the Authority more recently in *Gisborne Liquormart Limited v Ka Pai Kaiti Trust*.<sup>85</sup>

Notwithstanding that *Liquor World Limited* and *Gisborne Liquormart Limited* relate to the determination of the status of an objector, as was the case in *Re A Karambayev Limited*, the two concepts have a certain mutuality such that the Authority remains inclined to give the expression 'the locality' a restricted meaning parallel to the area used for determining an objector's status for the purposes of s 102(1). In saying this, we acknowledge that what constitutes a locality for amenity and good order purposes should not be defined by reference to an overly prescriptive rule, but nor ought the locality be subjectively defined based on the nature of the objections raised. The benchmark for determining locality for assessing amenity and good order is that part of some place which will proximately be affected by the grant of the application. In the present case that is not all of Ōtaki simply by virtue of Ōtaki being a vulnerable town but is the area within a radius of about one kilometre around the premises.

<sup>83</sup> *Selby v Kiw-E Otaki Limited* [2020] NZARLA 210 at [81]-[83]

<sup>84</sup> *Re A Karambayev Limited* [2013] NZARLA PH 1214-1215 at [33]

<sup>85</sup> above n 82 at [78]



[127] In the present case, the DLC determined that the ‘locality’ is Amberley notwithstanding that Amberley is a service town. The DLC considered Amberley to be a robust community established by its residents and businesses. The Authority agrees. It is the township itself, and not the wider catchment served by Amberley that will proximately be affected by the grant of the application in terms of its impact on amenity and good order.

[128] We now turn to the criterion in issue in this appeal, namely s 105(1)(h) of the Act. As already noted, s 106(1) provides a ‘legislative aid, detailing the factors to which decision makers must have regard in forming an opinion as to the amenity and good order of the locality.

*Current, and possible future, noise levels*

[129] When speaking to his application, Mr Brown said: “I have researched this project carefully and I firmly believe that the business will be successful and at the same time will not have a negative impact on the town.”<sup>86</sup> Mr Brown said further: “From my enquiries I understand there are no significant issues in Amberley from noise levels, nuisance or vandalism and I would not expect the situation to change if this application were granted.”<sup>87</sup> Mr Brown said that he did not expect that there would be any issue with noise “because it is normally just people come in, get their purchase and then leave.”<sup>88</sup>

[130] The Licensing Inspector reports that Amberley is agreeable and not adversely affected by noise.<sup>89</sup>

[131] Mr Thomas Guy Porter says in his evidence that due to its location in a high traffic area, there will be an increase in rubbish, noise and other disturbance to the community. Under cross examination, however, Mr Porter accepted “that noise may be a relatively minor part.”<sup>90</sup>

[132] Mr Roy Myers, the Chairperson of the Amberley District Residents Association, expressed concern that passing trade could lead to people stopping at the premises and then proceed “to drink their purchases on the street or around the town. Any public drinking could result in rowdiness and the disposal of bottles or other waste irresponsibly. The store would

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<sup>86</sup> DLC Transcript, Day One, at page 29 of 239

<sup>87</sup> DLC Transcript, Day One, at page 32 of 239

<sup>88</sup> DLC Transcript, Day One, at page 34 of 239

<sup>89</sup> above n 2, at [4.8]

<sup>90</sup> DLC Transcript, Day Two, at page 33 of 240





have a large chiller room which RTDs, beer and cider could be selected, chilled and ready to be consumed. That temptation may be too much for some.”<sup>91</sup>

[133] Ms Nicola Drake similarly said that she was concerned about noise, and potential vandalism from the store although her main objection is that another bottle store is not needed in Amberley.<sup>92</sup>

[134] The Authority is satisfied that noise is not currently an issue. Further, the Authority agrees with the applicant that people entering the premises to buy alcohol, and then exiting, is not likely to be noisy. Whether or not people might become rowdy outside of the premises is also considered to be unlikely given the proximity of the premises to the Police Station approximately 200m down the road, amongst other things. That people will become rowdy on leaving the premises is more likely to be a feature of on-licence premises than off-licence premises. The Authority agrees with Mr Porter that noise is a relatively minor issue with this application.

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

[135] Before the DLC Mr Brown said that it is part of the job descriptions of his staff to “go around, across the road and they just check for litter, or around the area just to make sure there is no bottles been put around the carparks and stuff like that.”<sup>93</sup>

[136] As already noted, Mr Porter says that due to its location in a high traffic area, there will be an increase in rubbish and other disturbance to the community. Mr Porter is concerned that the area could become threatening for the community, and that young children might feel unsafe passing by.<sup>94</sup> Under cross examination by the Chief Licensing Inspector, Mr Porter said:<sup>95</sup>

... you would be aware of the large motorcycle gangs that drive through on the main road and stop and congregate on the roadside. Should one of those decide to use the applicant’s proposed shop I think that would be quite intimidating for many people and that will probably make them feel uncomfortable about walking on that side of the road.

[137] While Mr Porter said that he did not know how often this happened, he said he has observed them “from time to time in the last years and I don’t think it has to happen very many

<sup>91</sup> DLC Transcript, Day Two, at pages 81-82 of 240

<sup>92</sup> DLC Transcript, Day Two, at pages 237- 238 of 240

<sup>93</sup> DLC Transcript, Day One, at page 33 of 239

<sup>94</sup> DLC Transcript, Day Two, at pages 18, 35 and 38 of 240

<sup>95</sup> DLC Transcript, Day Two, at pages 38-39 of 240





times to be a concern.”<sup>96</sup> The reason Mr Porter thought that they would stop there as opposed to the Super Liquor or the Countdown is due to the high profile nature of the location, on the main road.<sup>97</sup> The evidence of Mr Simon Green is that on Monday mornings he does a check around the school and collects bottles, cans, and broken glass that is left over after the weekend when people might access the Domain. Mr Green says that on his morning safety checks of the playground:<sup>98</sup>

... there are alcohol-related litter and waste is the most, there’s the odd can of *V* and all sorts of things like that that makes that up, makes up a lot of that litter. And also vandalism, which I cannot obviously accredit to alcoholism but there is vandalism that’s increased at our school, to the point where we have security cameras in our school now to track that.

[138] When asked by Chief Inspector Morrison whether Mr Green saw that changing if the licence were issued, Mr Green replied: “In my opinion it would have to. If there is ... there is... whether you buy it from X, Y, or Z, the litter ... it’s the people causing the litter and not the store itself. So I accept that Thirsty Liquor aren’t responsible for the litter, it’s the people that are doing it. If there was a greater supply and more people were consuming alcohol, then there would be more litter, I would imagine.”<sup>99</sup>

[139] As already noted, Mr Roy Myers expressed concern that passing trade could lead to people stopping at the premises and then proceed “to drink their purchases on the street or around the town. Any public drinking could result in rowdiness and the disposal of bottles or other waste irresponsibly. The store would have a large chiller room which RTDs, beer and cider could be selected, chilled and ready to be consumed. That temptation may be too much for some.”<sup>100</sup> When asked under cross examination by counsel for Townill about his views on whether this could be addressed, if this turned out to be the case, after the probationary year of the licence, Mr Myers said that there is “a substantial community resistance to this where the community doesn’t want to take that risk” due to limited community resource to deal with any problems that might arise.<sup>101</sup> As Mr Myers also explained to Chief Licensing Inspector

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<sup>96</sup> DLC Transcript, Day Two, at page 39 of 240

<sup>97</sup> DLC Transcript, Day Two, at page 61 of 240

<sup>98</sup> DLC Transcript, Day Two, at page 61 of 240

<sup>99</sup> DLC Transcript, Day Two, at page 62 of 240

<sup>100</sup> DLC Transcript, Day Two, at pages 81-82 of 240

<sup>101</sup> DLC Transcript, Day Two, at pages 84 of 240



Morrison, the difference between this premises and the Super Liquor and the Countdown supermarket is that those premises are not visible from the main road.<sup>102</sup>

[140] The evidence of Ms Sally Mckenzie is that on daily walks she picks up bottles and cans discarded on Douglas Road.<sup>103</sup> Ms Mckenzie also spoke of smashed up letter boxes and road signs being flattened but these appear to be from speeding drivers.

[141] The evidence of Ms Helen Barbour is that apart from around the Railway Tavern, she has seen “no evidence of alcohol related harm in the form of wilful damage, vandalism or alcohol packaging littered around” but added that she has the other objectors to be thankful for that.<sup>104</sup> Ms Barbour spoke of the domain being generally well maintained and the beach only being littered with driftwood.<sup>105</sup>

[142] When asked under cross-examination whether Ms Barbour thought that the ‘average of five off licence premises’ in the last ten years have affected the amenity and good order of the town, Ms Barbour agreed that they had not done so to more than a minor extent.<sup>106</sup>

[143] The evidence of Mr Warren Healey, a member of Alcohol Wise Hurunui Incorporated, is of the general harm that results from alcohol consumption and of the normalisation of alcohol. Like Mr Myers, Mr Healey was asked under cross-examination about his views on whether any detrimental impact on the community could be addressed after the probationary year of the licence. Mr Healey said “ Well that’s one way it could be done. Another way it could be done is that we do an examination of how things are now and then the moment one of our existing licences collapses, and it will, we assess it again and see if the harm drops. If it drops, we made the right decision.”<sup>107</sup>

[144] The evidence of Ms Susan Mackenzie is that she regularly picks up discarded packaging and rubbish from the roadside when biking home from the library where she works. Ms Mackenzie is concerned that a bottle store in such a prominent location on SH1 will

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<sup>102</sup> DLC Transcript, Day Two, at pages 89 of 240

<sup>103</sup> DLC Transcript, Day Two, at pages 96 of 240

<sup>104</sup> DLC Transcript, Day Two, at page 111 of 240

<sup>105</sup> DLC Transcript, Day Two, at pages 112- 133 of 240

<sup>106</sup> DLC Transcript, Day Two, at page 133 of 240

<sup>107</sup> DLC Transcript, Day Two, at page 154 of 240





“increase spontaneous alcohol consumption, littering and rowdy behaviour.”<sup>108</sup> Ms Mackenzie gave evidence that the:<sup>109</sup>

Composition of litter on the roadsides is often cheap alcohol containers, fast-food packaging and largely cans. I believe a Thirsty Liquor outlet in Amberley will increase this. I am familiar with this problem already on the roads leading out of Amberley towards Mt Grey. Also down Double Corner Road to the Waipara River and along Beach Road to the beach where I do pick up rubbish.

[145] Ms Mackenzie said further: “Because I pick up rubbish along the roads and when I saw this application I did just think, “Oh no, there’s going to be more” because it is right on the State Highway and kids will buy stuff and they’ll go and have a picnic down at the beach or the river and there will just be more rubbish on my route....”<sup>110</sup>

[146] Under cross-examination, Ms Mackenzie acknowledged that this was only her opinion saying: “I can’t see into the future any more than anybody else in the room can, but it is my concern.”<sup>111</sup> While Ms Mackenzie acknowledged that much of the rubbish could easily be coming from outside the district, and not just local premises, she considered that having a Thirsty Liquor in the middle of Amberley will increase the problem.<sup>112</sup>

[147] Ms Yolanda Turnbull also gave evidence that she collects bottles and cans in Amberley township. Ms Turnbull said that this comprises mainly RTDs.<sup>113</sup>

[148] The Reverence Dr Missen gave evidence of graffiti and bottles being broken around the back of the church grounds but this was some 20 years ago.<sup>114</sup>

[149] Ms Pamela Welch provided physical and photographic evidence of the bottles and cans she has collected when she walks around Church Street, Douglas Road, and around the domain and along the inland scenic road boundary of the school.<sup>115</sup> Ms Welch says that a typical ratio of what she collects is two alcoholic bottles or cans to one non-alcoholic. Ms Welch presented evidence of a collection of 114 cans and bottles of which she says 80 or 70% had contained alcohol. A high proportion of these Ms Welch says are RTDs. Ms Welch says that she has been picking up rubbish for four and a half years and the problem is getting worse. Ms Welch also

<sup>108</sup> DLC Transcript, Day Three, at page 8 of 187

<sup>109</sup> DLC Transcript, Day Three, at page 9 of 187

<sup>110</sup> DLC Transcript, Day Three, at page 21 of 187

<sup>111</sup> DLC Transcript, Day Three, at page 14 of 187

<sup>112</sup> DLC Transcript, Day Three, at page 23 of 187

<sup>113</sup> DLC Transcript, Day Three, at page 50 of 187

<sup>114</sup> DLC Transcript, Day Three, at page 71 of 187

<sup>115</sup> DLC Transcript, Day Three, at pages 79-86 of 187





spoke of picking up bottles and cans in Chamberlain Park, and of vandalism in the park, notably the destruction of part of the Chinese Garden after dark.<sup>116</sup>

[150] Ms Welch spoke of two young men, one named Bernie and another referred to as “Prince William” who collect bottles from bins for recycling. Ms Welch said:<sup>117</sup>

So there are a lot of publicly minded people who are working very hard to try and make sure that this town retains its beauty. However, where Bernie doesn’t walk and others do not walk, the litter and the evidence of drinking builds up. The Beach Road connection that I made, I was able to make, because very few people walk along the lower part of Beach Road because there aren’t any footpaths. The majority of the bottles and cans that I collected recently were tossed out of the windows of cars onto the grass verge, which brings me to my point, that we have here not just a drinking problem but a drinking problem and driving problem. The Beach Road cans and bottles were thrown out of the windows of cars.

[151] Under cross examination Ms Welch acknowledged that she could not say what percentage of containers were purchased in Amberley and suspected it was coming from quite a distance.<sup>118</sup>

[152] When asked about Mr Brown instructing his staff to collect rubbish within a 100m radius of the premises, and whether Ms Welch was aware of other licensees doing the same, Ms Welch acknowledged this as very good but was concerned that people appeared to be going considerable distances before dropping things.<sup>119</sup>

[153] Ms Belinda Gould, a director of Brew Moon brewery, gave evidence that there is the potential for drinkers to purchase alcohol at the premises and walk to the nearest park, being Chamberlain Park next to where she lives, to drink. Ms Gould says that: “while I mostly feel quite safe walking through there at night, there have been time when I’ve taken the long way around to avoid people drinking, groups of people drinking there and there are... this is not in there, but there are also groups of youths drinking in the Countdown carpark as well, or presumably drinking. Certainly gathering.”<sup>120</sup>

[154] In response to a question from Mr Porter about whether there is evidence of drinking in the park, Ms Gould said: “Well yes there is. I mean I hear people in Chamberlain Park at night. There is quite often in the morning, quite often there’s drink bottles and cans. I think Pamela

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<sup>116</sup> DLC Transcript, Day Three, at pages 83 of 187

<sup>117</sup> DLC Transcript, Day Three, at pages 85 of 187

<sup>118</sup> DLC Transcript, Day Three, at pages 89 of 187

<sup>119</sup> DLC Transcript, Day Three, at pages 90 of 187

<sup>120</sup> DLC Transcript, Day Three, at pages 96 of 187



and Bernie do a very good job. I see Bernie go through the park and actually I picked up two cans this morning, two RTD cans on my walk, they were left by the rubbish bin for Bernie just whatever they gave them for. So there are definitely ... I hear people in there, in the morning you'll see in the grass some cans and maybe some bottles."<sup>121</sup>

[155] As with noise, the Authority is satisfied that the current levels of nuisance and vandalism in Amberley are low. The issue predominantly one of litter. While the evidence is of litter in Amberley, this evidence is somewhat contradictory given, as the Licensing Inspector reports, the Council's own maintenance and gardening officer and the street cleaners employed by the Council do not support there being rubbish or broken glass in Chamberlain Park and the Amberley Domain or in the commercial block where the store is proposed to be established. On balance, the Authority considers that the evidence is that there is litter but that it is not a significant problem in Amberley. As Ms Welch herself acknowledges, what rubbish there is appears to be coming from quite a distance and to be thrown from passing vehicles.

[156] Given the current level of litter, the issue then is whether there is an increased risk of litter or other nuisance should the bottle store be issued a licence. Given that there is already a nearby bottle store and supermarket selling alcohol nearby, and there was no reported increase in alcohol related harm with the opening of the supermarket, the Authority agrees with Townill that the risk of an increase in alcohol-related harm or a reduction in amenity and good order is low.

[157] That people make take alcohol home and consume it in private does not of itself support the proposition that public nuisance and vandalism will increase. That people might drink in Chamberlain Park and the Domain is a risk but based on the Licensing Inspector's report, and the lack of opposition by the Police (whose station is adjacent to Chamberlain Park), the Authority does not consider that the probability of this happening, to more than a minor extent, to be likely.

[158] The real concern for the objectors appears to be about the prospect of irresponsible behaviour increasing in what is an otherwise pleasant and agreeable town. The Authority acknowledges this concern but against that, the evidence is that it did not happen with the opening of the Countdown in 2014. Further, with Pam's Pantry and now the Amberley Hotel having closed, the likelihood of this is somewhat lessened. Moreover, any initial licence issued

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<sup>121</sup> DLC Transcript, Day Three, at pages 109 of 187





is for one ‘probationary’ year only. The purpose of this one year initial term is to enable the effects of the licence to be monitored by the reporting agencies and the public. Should the objectors concerns crystallise then that is a matter that should rightly be put before the DLC on renewal.

[159] On balance, the Authority considers that the risk of future levels of nuisance and vandalism increasing with the issue of the licence to be low.

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

[160] While Mr Brown is of the view that the other off-licences cater to a different market and it is only Super Liquor that is the same kind of standalone bottle store,<sup>122</sup> in *Gisborne Liquormart Ltd v Ka Pai Kaiti Trust* the Authority did not agree that a DLC is required to distinguish between particular types of off-licences or in the case of an application for a bottle store, to only look at the number of bottle stores. There we said:<sup>123</sup>

Section 13 of the Act provides that there are four kinds of licences: on-licences, off-licences, club licences, and special licences. There is nothing in s 106(1)(a)(iii) to say that when dealing with an application for a bottle store, regard must be restricted only to bottle store type off-licences. To the contrary, the words ‘of the kind concerned’ in s 106(1)(a)(iii) refer to the kind of licence and not to the kind of premises for which the off-licence is to be issued.

[161] There are three off-licences in Amberley: Brew Moon brewery; Countdown Amberley; and Super Liquor Amberley. Again, Pam’s Pantry closed prior to the DLC hearing and as already noted, the Amberley Hotel has since sold and surrendered its licences from 5 November 2020. Given the apparent growth of Amberley, it cannot be said that Amberley is awash with off-licence premises. The Authority does not consider there to be an issue of proliferation. In any event, as we noted in *Gisborne Liquormart Ltd*,<sup>124</sup> citing *IS Dhillon and Sons Ltd* (re Big Barrel Palmerston North)<sup>125</sup> and *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd*,<sup>126</sup> the proliferation of outlets is a legislative aid to assist a decision-maker form an opinion for the purposes of s 105(1)(h) and (i). In itself, proliferation is not a ground of

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<sup>122</sup> DLC Transcript, Day One, at page 65 of 239

<sup>123</sup> above n 82, at [120]

<sup>124</sup> above n 82, at [89]

<sup>125</sup> See also *I S Dhillon and Sons Ltd* (re Big Barrel Palmerston North) [2013] NZARLA 256 at [35]

<sup>126</sup> above n 4, at [66]





objection without some discussion of the effects of the issue of the licence on amenity and good order which is the s 105 criterion against which the application is being evaluated.

[162] In terms of the compatibility of the proposed bottle store with the purposes for which land near the premises concerned is used, the Licensing Inspector reports that as the applicant correctly says, “the neighbouring land is a business/retail area with a variety of existing premises types.”<sup>127</sup>

[163] The concern raised by objectors, however, is not about whether the area is appropriately zoned, but about:

- (a) general availability theory i.e. the increased availability of alcohol outlets increases alcohol-related harm;<sup>128</sup>
- (b) the number of licensed premises for Amberley’s population;<sup>129</sup>
- (c) aggressive promotion and trade competition on price and resulting increased excessive or inappropriate consumption;<sup>130</sup>
- (d) the high profile location of the premises along State Highway 1 such that if there were disturbance children might feel unsafe passing by;<sup>131</sup> and increased traffic that poses a risk to students crossing the road;<sup>132</sup>
- (e) the visual impact of a bottle store on the main road which could attract casual drinkers to congregate in the town, increased rowdiness and the potential for increased crime;<sup>133</sup>
- (f) proximity to local schools and preschools.<sup>134</sup>

[164] We discuss availability and price competition in relation to the object of the Act shortly. As already noted, there is not an issue with the proliferation of off-licences in Amberley.

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<sup>127</sup> above n 2, at [17.12]

<sup>128</sup> e.g. evidence of Ms Williams, the Medical Officer of Health representative, DLC Transcript, Day One, at page 151 of 239; evidence of Mr Green DLC Transcript, Day Two, at page 54 of 240; evidence of Mr Healey DLC Transcript, Day Two, at page 146 -147 of 240; evidence of Professor Boden DLC Transcript, Day Two, at page 204 of 240

<sup>129</sup> e.g. DLC Transcript, Day One, at page 211 of 239

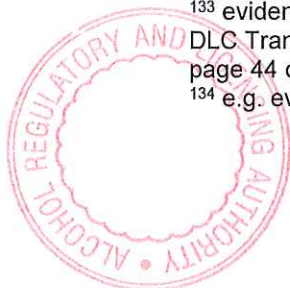
<sup>130</sup> evidence of Mr Healey, DLC Transcript, Day Two, at pages 12 and 15 of 240

<sup>131</sup> evidence of Mr Healey, DLC Transcript, Day Two, at pages 35 and 38 of 240

<sup>132</sup> Mr Green DLC Transcript, Day Two, at pages 64 – 66 of 240; see also evidence of Ms McKenzie DLC Transcript, Day Two, at page 94 of 240

<sup>133</sup> evidence of Mr Myers, DLC Transcript, Day Two, at pages 82 and 89 of 240; evidence of Ms Drake DLC Transcript, Day Two, at page 238 of 240; evidence of MS Turnbull DLC Transcript, Day Three, at page 44 of 240

<sup>134</sup> e.g. evidence of Ms Barbour, DLC Transcript, Day Two, at page 113 of 240



[165] The risk appears to be that students might be able to see into the premises and that there is a risk of increased traffic congestion making crossing Carter's Road more dangerous than it already is. The evidence of Mr Green, for example, is:<sup>135</sup>

... when I started my principalship at Amberley School I noticed concerns of the safety of the children crossing the main road. I was getting constant calls from business owners and members of the Council noticing that there were a lot of near misses on the road. So I worked with the Council Road Safety team and developed what we call a safe pathway, so key crossing points so that students could know through clear signage that these are the two places you can cross on the main road.

Also so we developed a safe pathway group with the Council and they created the signs that you ... created the key signage areas. And one of the key... one of the crossing points, as you can see from the map, is directly at the end here, which is near the corner of where the proposed Thirsty Liquor store will be.

[166] In terms of the high profile location and visual impact of the premises on Carters Road, the evidence of Mr Brown is:<sup>136</sup>

I intend to restrict signage outside the store to signs describing the nature of the business. Apart from an A3 sheet showing current specials I do not intend to have any advertising in the windows facing outwards. The premises will be fitted with security cameras, both internal and external.

The exterior of the building will be painted black with Thirsty Liquor logos and trading name over the top. ...

[167] Further, as the Licensing Inspector reports:<sup>137</sup>

The main entrance to the Amberley premises is lightly raised and set back from the footpath. The distance from the footpath to the main entrance would lessen the impact of the advertising of alcohol products, to children or the public walking past the premises. The positioning of signage at the Amberley store, such as used at the Darfield store entrance, would limit it from being read clearly from the footpath. ...

Mr Brown indicated film would be attached to the street windows similar to that shown in the photo of the Darfield store. This is in part due to the windows being blocked off internally by the installation of interior wall lining. The wall linings are also part of the strategy to prevent access to the premises in the event of attempted break-ins.

[168] On balance, the Authority is satisfied that Mr Brown has addressed concerns about the visual impact of the premises on the main road.

<sup>135</sup> DLC Transcript, Day Two at page 64 of 240

<sup>136</sup> DLC Transcript, Day One, at page 31 of 239

<sup>137</sup> above n 2, at [9.5]





[169] It is also noted that the licensed areas of the premises will be designated as ‘supervised’ such that persons under the age of 18 may only be present if accompanied by a parent or legal guardian (by virtue of the Care of Children Act 2004; s 246).

[170] Much has been made of the so-called national average of one off-license premises per 1000 people,<sup>138</sup> but the Authority takes little regard of that ratio for the simple reason that there is no evidence that this average remains accurate some seven years after that case.

[171] In Masterton too, there were 12 off-licences within 1.2 kilometres of the proposed bottle store and evidence that the location of the proposed bottle store was a socially deprived area where alcohol-related harm already exists. That is not the case here as was recognised by Ms Williams, representative of the Medical Officer, given the absence of Police statistics.<sup>139</sup>

[172] The evidence of Ms Morrison is in fact that the national average is 1 licence per 390 people, and off-licence premises in the Hurunui District is: 1: 328 people.<sup>140</sup>

[173] While the Licensing Inspector says that “When you look at the national average of 1 licence per 390 people the it still shows that Amberley has a larger number of licensed premises for its relatively small population,”<sup>141</sup> this was before Pam’s Pantry and the Amberley Hotel closed. The simple point is that there are only 3 off-licence premises in Amberley including a supermarket.

[174] In terms of road safety, as we noted in *PKNG Limited v Fluker*<sup>142</sup> there can be no doubt that road safety is a relevant consideration. But here, as in that case, the concern is about people crossing the road which may give rise to more accidents and incidents. The gist of the submission in that case, as here, is about increased congestion. As we noted in *Fluker*, in reporting the Alcohol Reform Bill back to Parliament, the Justice and Electoral Committee recommended that the Bill be passed subject to amendment and said specifically that:

**We recommend deleting clause 7 and replacing it with new clause 100A, which deals with the consideration of the effect on the amenity and good order of a locality of issuing or renewing a liquor licence. Clause 100A(1)(b) would require the decision-maker on an application for a new liquor licence to consider the**

<sup>138</sup> per *Masterton Liquor Limited v Jaquier* [2014] NZARLA PH 881 at [10]; see for example, DLC Transcript, Day One, at page 155 of 239

<sup>139</sup> DLC Transcript, Day One, at page 167 of 239

<sup>140</sup> DLC Transcript, Day One, at page 208 of 239

<sup>141</sup> DLC Transcript, Day One, at page 209 of 239

<sup>142</sup> *PKNG Limited v Fluker* [2019] NZARAL 38 at [60] and following



impact of the proposed licensed premises on neighbouring land and the compatibility of such premises with the use of that land.

To protect existing licence holders, we recommend including clause 100A(2), which would require the decision-maker to have regard to current and possible noise, and nuisance and vandalism in determining whether to renew a licence. Decision-makers would not have to consider the purposes for which the land near the premises was used. This would ensure that existing licence holders were not penalised as a result of changes to land use in the area which occurred during the term of their licence.

New clause 100A would remove clauses 7(2)(a),(b), and (e), and thus the requirement to consider the availability of car-parking facilities, the current and possible density and movements of traffic, and the harmony of the environment from the decision-making process. However clause 100A(1) would require the decision-maker to assess the current and possible noise in the area, and the current and possible incidence of nuisance and vandalism when deciding a liquor licence application. We consider that these criteria would reflect the intent of the bill more accurately; and that issues such as car parking would be dealt with more appropriately under the Resource Management Act 1991.

[175] Clause 100A was enacted as s 106. Accordingly, as we said in that case, issues about a lack of car parking and the potential for increased traffic congestion are not matters which go to the amenity and good order of a locality but are appropriately matters for the Resource Management Act 1991 for which this Authority has no jurisdiction. The premises comply with planning and resource consent requirements as is evident from the letter dated 4 March 2020 from the Hurunui District Council Planner to Townill Limited included as part of the DLC file, and the Authority has no reason to look behind that.

[176] Moreover the evidence of Ms Morrison is that the safe pathways walking routes are such that students do not need to walk directly past the premises.<sup>143</sup>

#### *Object of the Act*

[177] Aside the DLC forming the opinion that if the licence issued there would be a likely impact on the amenity and good order of the locality by way of reduction by more than a minor extent<sup>144</sup> including that existing issues with discarded packaging and rubbish comprising alcohol containers would be exacerbated;<sup>145</sup> and the density of off-licensed premises increasing and that maintaining the status quo not being a good reason to grant a new licence;<sup>146</sup> the DLC expressed concern that there would be an increased risk of increased price competition.

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<sup>143</sup> DLC Transcript. Day One at pages 198-199 of 239

<sup>144</sup> DLC decision at [394] and following

<sup>145</sup> DLC decision at [405]

<sup>146</sup> DLC decision at [403]





[178] While Mr Brown says that he will not engage in price competition, even if this is true, that does not stop other premises from lowering their prices to compete. As the Authority accepted in *Sapphire Dreams Limited*,<sup>147</sup> in retailing any additional outlet creates additional demand and that can result in price cutting. The price cutting is not necessarily by the new entrant but may be by competitors. There, the Authority concluded that price cutting would result in more liquor becoming available in an area where liquor abuse problems were rife.

[179] Otherwise the DLC expressed concern about first hand evidence of alcohol-related harm in the community, notably from Mr Green, Mr Healey, Witness A, Rev Dr Missen, Ms Thorpe and Professor Boden.<sup>148</sup> The DLC concluded that the issue of a new licence will increase exposure of alcohol to more vulnerable members of the community and make some forms of alcohol more accessible and available (RTDs and spirits).<sup>149</sup> The DLC also said: “The Act does not look to only consider serious offending, alcohol-related harm can include much less serious disorder, it also includes health effects.”<sup>150</sup>

[180] Mr Green represents Amberley School, its Board of Trustees, staff; and students. Mr Green gave evidence that in the 4 and a half years that he has been the Principal of the school, he has seen the effects of alcohol on the community. Mr Green says:<sup>151</sup>

Sadly, as alcohol becomes more widely accessible and convenient to the community, it impacts more heavily on our children. We have increasing instances of parents who are under the influence of alcohol when they drop off and collect their children from school. We have even had drunk parents fighting and verbally abusing each other outside the school gate.

We have children affected by family violence and alcohol as a strong presence in their home. Over the last three years we could give specific examples of Amberley students that have been taken from their home by Oranga Tamariki because parents are battling alcoholism. We have parents in rehabilitation programmes right now. We understand and appreciate this is a societal problem, not just an Amberley problem. However, making alcohol more accessible to our community will only heighten the issue.

[181] Mr Green continues:<sup>152</sup>

Amberley School does not want to see their students impacted more by the effects of alcohol than they already are. We do not want to see these issues become more prevalent in our community. We do not want to see more children being picked up by intoxicated parents. We do not want to see more children affected by family violence that has

<sup>147</sup> *Sapphire Dreams Limited* [2012] NZLLA PH 1370

<sup>148</sup> DLC decision at [416]

<sup>149</sup> DLC decision at [418]

<sup>150</sup> DLC decision at [419]

<sup>151</sup> DLC Transcript. Day Two, at page 50 of 240

<sup>152</sup> DLC Transcript. Day Two, at page 51 of 240



resulted from alcoholism. We do not want to see more children taken from their alcohol-abusive parents.

[182] Under cross-examination by counsel for Townill, however, Mr Green accepted that the reason he formed the opinion that Amberley will be less pleasant and agreeable if the licence is granted is because there is going to be an increased availability of alcohol.<sup>153</sup>

[183] The evidence of Mr Healey for Alcohol Wise Hurunui Incorporated is of general harm associated with alcohol including such things as addiction, foetal alcohol syndrome disorder, cancer and similar diseases.<sup>154</sup> Mr Healey says another liquor outlet in Amberley will further normalise alcohol which will further compromise important awareness-raising efforts to minimise alcohol harm.<sup>155</sup> Mr Healey says that the harm caused by alcohol bought at this standalone off-licence will generally not be seen by the applicant at the point of sale and that “this is a convenient case of out of sight, out of mind. And it does not reflect the reality of alcohol stigma or the harm alcohol causes in our homes and community.”<sup>156</sup>

[184] Mr Healey concludes: “There is no evidence that this will minimise the harm from the excessive or inappropriate consumption of alcohol, which is the object of the Act. On balance, there is potential that this Thirsty Liquor store will increase alcohol harm in our homes and community through further normalisation of alcohol, increased availability, increased accessibility, cheaper prices.” Mr Healey finished by pleading that the DLC remember: “We can’t un-crash a car. We can’t un-kill someone. We can’t un-hit a partner or child. You cannot un-damage a damaged brain. You can’t un-damage an unborn. You can’t un-drop a bomb.”<sup>157</sup>

[185] Witness A is an alcoholic who gave a personal account of his addiction and asked that the DLC be the “voice for addicts who don’t have the voice” and that the DLC “make it a better and not worse place for them.”<sup>158</sup>

[186] The Rev Dr Missen produced before the DLC two ‘evidence-based reports’ which he says: “expands the understanding of the prevention of alcohol harm and which offers new insights into public health recommendations.”<sup>159</sup> Rev Dr Missen, however, did not speak to

<sup>153</sup> DLC Transcript. Day Two, at pages 53-54 of 240

<sup>154</sup> DLC Transcript. Day Two, at page 146 of 240

<sup>155</sup> DLC Transcript. Day Two, at page 147 of 240

<sup>156</sup> DLC Transcript. Day Two, at page 147 of 240

<sup>157</sup> DLC Transcript. Day Two, at pages 149 – 150 of 240

<sup>158</sup> DLC Transcript. Day Two, at page 194 of 240

<sup>159</sup> DLC Transcript. Day Three, at page 54 of 187, these reports being *Regular teen drinking leads to adult alcohol problems*; Boden and Silins et al, *International Journal of Addiction*; and *Hidden Harm*:





these reports directly but spoke mainly to his own experience and awareness of alcohol and safety saying:<sup>160</sup>

... the result of research that I was involved in in my scientific career but also research that has been conducted since, is that alcohol plays a significant part in road fatalities and road injury accidents in New Zealand. The more recent probability statistic would be 30% of road fatalities would involve alcohol. Also my submissions would be that a ready supply of liquor on a major traffic route could lead to increased danger on the roads....

[187] Under cross-examination by counsel for Townill about whether there is anything in the study titled *Hidden Harm: Up to 40% of older Kiwis drink haphazardly* that seeks to justify that title, Rev Dr Missen replied that it is a longitudinal study that investigates not only the frequency of drinking but the intensity of drinking and “on the grounds of that study, probably some of us here, myself included, if we had other health conditions might be at risk. But my concern, I’m not anti-alcohol, I’m anti the abuse of alcohol.”<sup>161</sup>

[188] As already noted, the Rev Dr Missen said that he ‘quite happily’ accepts that Mr Brown is a responsible and safe operator but: “I am concerned that an extra liquor outlet in Amberley will lead to increased harm; that is my concern.”<sup>162</sup>

[189] The evidence of Ms Thorpe, who holds a PhD in Psychological Medicine from the University of Otago, Christchurch as well as Masters<sup>163</sup> degree in Social Work from Massey University, is about Foetal Alcohol Spectrum Disorder (FASD). Ms Thorpe said that it is estimated that between 600 and 3000 New Zealand babies are born with FASD every year and that there is no safe level of alcohol consumption during pregnancy. Ms Thorpe says that:<sup>164</sup>

Increasing the density of licensed premises in an area is likely to lead to an increased risk of second-hand alcohol-related harms. FASD is one such harm, amongst family violence and road accidents and these indirect harms are covered in section 4(2)(a).

In summary, it is safer for a small close-knit community, such as Amberley, to minimise the risk of alcohol-related harm by reducing the availability of alcohol for purchase in the community.

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*Up to 40% of older Kiwis drink haphazardly*, Dr A Towers, commissioned by Health Promotion Agency.

<sup>160</sup> DLC Transcript. Day Three, at page 56 of 187

<sup>161</sup> DLC Transcript. Day Three, at page 60 of 187

<sup>162</sup> DLC Transcript. Day Three, at page 59 of 187

<sup>163</sup> DLC Transcript. Day Two, at page 216 of 240

<sup>164</sup> DLC Transcript. Day Two, at page 216 of 240



[190] Under cross-examination by counsel for Townill about whether Amberley or Hurunui would be any different from any other district in New Zealand, or any other small town in New Zealand in terms of the number of children affected by FASD, Ms Thorpe said the data is unavailable but that should not be a reason to discard what is a serious health problem in our communities.<sup>165</sup> Ms Thorpe also said, however, that there is nothing to say that FASD is better or worse than the average in smaller communities.<sup>166</sup> In reply to other questions about binge drinking, Ms Thorpe said: “My evidence is about drinking during pregnancy. That is what I would like to stick with. That is what I have been asked to speak about.”<sup>167</sup>

[191] Finally, the evidence of Professor Boden is that research on the density of licensed premises and about the effects of alcohol advertising shows:

- (a) “density locations with a licence to sell alcohol plays an important role in the extent to which alcohol causes harm in society and density reduction has been shown to be a key strategy in the reduction of alcohol-related harm”,<sup>168</sup> and
- (b) “the granting of a permit would also increase the overall level of alcohol advertising in the town of Amberley as the density of alcohol advertising plays a roles in increased related harm by both helping to initiate young people in the practice of drinking alcohol and then reinforcing the idea that alcohol is an important component of socialising.”<sup>169</sup>

[192] Under cross examination, counsel for Townill asked Professor Boden whether the research dealt specifically with New Zealand to which Professor Boden agreed that they seem to quite old studies but also relate to countries other than New Zealand.<sup>170</sup>

[193] Following up on this, Mr Healey asked Professor Boden whether in his opinion, the effects of alcohol would be any different for people living overseas to people in New Zealand, to which Professor Boden replied: “I think generally when you are talking about the principles of population level effects which these are or population level interventions such as the density or reducing advertising, if they do not apply locally, we would not actually be able to use them very well.”<sup>171</sup>

<sup>165</sup> DLC Transcript. Day Two, at page 217 of 240

<sup>166</sup> DLC Transcript. Day Two, at page 219 of 240

<sup>167</sup> DLC Transcript. Day Two, at page 222 of 240

<sup>168</sup> DLC Transcript. Day Two, at page 204 of 240

<sup>169</sup> DLC Transcript. Day Two, at page 205 of 240

<sup>170</sup> DLC Transcript. Day Two, at page 210 of 240

<sup>171</sup> DLC Transcript. Day Two, at page 213 of 240





[194] The Authority does not find the generalised evidence from Mr Green, Mr Healey, Witness A, Rev Dr Missen, Ms Thorpe and Professor Boden about the harms of alcohol to be of much assistance in a specific licensing application such as this, as opposed to, for example, an appeal about an element of a local alcohol policy.

[195] The proper consideration for the Authority, as Gendall J set it out in *Vaudrey*, is whether an application is capable of meeting the object of the Act which requires an assessment of the criteria in s 105. In this respect, the scheme of the Act eschews an approach to determining whether the issue of a licence will minimise harm caused by the excessive or inappropriate consumption of alcohol independent of the other matters in s 105. The role of the decision-maker is to enquire into the facts of each application before it.

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

[197] The need to look at each application on its facts is reinforced by the requirement for reporting agencies are to inquire into the particular application before it (s 103) rather than to adopt a position about matters better suited to a LAP for which the Police and the Medical Officer of Health have a right of appeal.<sup>172</sup>

[198] The Authority agrees with Townill that there can be no doubt that alcohol can cause harm and probably does so in varying degrees within most communities in the country. As Clark J put it in *Lion Liquor*, the Act looks to minimise alcohol-related harm. Where there is an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant or renewal of a licence, the harm must be minimised not ignored or condoned.<sup>173</sup> In the present case the Authority does not consider that the evidence supports the proposition

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<sup>172</sup> s 81(2)

<sup>173</sup> above n 69, at [67]



that there is a real risk between this generalised harm discussed by Mr Green, Mr Healey, Witness A, Rev Dr Missen, Ms Thorpe and Professor Boden, and the issue of this new off-licence.

[199] The evidence is of periodic alcohol-related incidents and periodic incidents of nuisance and vandalism but the evidence does not provide a foundation for concluding that there is a real risk that alcohol-related harm will result from the grant of the application and the issue of the licence.

### **Conclusion**

[200] As noted, what the Authority is required to do on appeal is to make its own assessment of the merits of the application. It is not sufficient for the Authority to simply decide that the DLC's decision was one which was open to it on the evidence. Instead what the Authority is required to do is to independently assess the evidence and the merits of the application and to reach its own conclusion.

[201] On our evaluation of the application, the Authority is not satisfied that there is a causal nexus between the evidence to suggest that the grant of the application, contrary to the object of the Act, will increase the risk of alcohol abuse and that, in this case, the amenity and good order of the locality will be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence. The evidence is not of Amberley being rife with alcohol-related harm. Quite the opposite.

[202] While objectors may feel they ought not to have to be exposed to any risk of alcohol-related harm, the Act seeks to strike a balance through the requirement to consider the criteria in s 105, shored up by there being no presumption in favour of renewal of the licence after the first probationary year, or thereafter. Any future harm, should it ensue, is able to be, and ought to be, addressed on renewal.

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





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

[205] The Authority does not consider that there is sufficient evidence to support the DLC's conclusion that the amenity and good order will be reduced by more than a minor extent by the issue of the licence and therefore the object of the Act will not be achieved by the issue of the licence.

### **Result**

[206] For the reasons stated, the appeal is allowed. Pursuant to s 158 of the Act the decision of the DLC is reversed. The off-licence is to be issued for the area of the premises shown in the plan submitted to the DLC with the application on 10 February 2020.<sup>174</sup>

[207] In reversing the DLC decision and granting the application, the Authority imposes the following additional conditions reflecting the intentions of the applicant:<sup>175</sup>

- (a) the exterior of the building is to be painted black with the Thirsty Liquor logos and trading names over the top;
- (b) apart from an A3 sheet showing current specials, no liquor advertising is to be placed in the window facing outwards;
- (c) the licensee is to ensure that the carpark and area within 100m of the premises is checked and cleared of litter on a weekly basis; and

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<sup>174</sup> at page 34 of the amended application dated 16 January 2020 but received on 10 February 2020

<sup>175</sup> DLC Transcript. Day One, at pages 31, 33, 72-73, 95-96 and 103 of 239



- (d) single sales of craft beers are permitted but there shall be no single sales of RTDs or mainstream beer, except as a result of broken packaging.

[208] The Secretary of the DLC is directed to issue the licence subject to the imposition of these additional conditions.



K D Kelly  
District Court Judge  
Chairperson, Alcohol Regulatory and Licensing Authority