

**IN THE MATTER**

of the Sale and Supply of Alcohol  
Act 2012.

**AND**

**IN THE MATTER**

of an application by  
KIWI LIQUOR LIMITED pursuant  
to s. 99 of the Act for the grant of  
an off-licence in respect of  
premises located at 100 High  
Street, Picton, to be known as;  
The Bottle-O Picton.

**BEFORE THE MARLBOROUGH DISTRICT LICENSING COMMITTEE**

Chairperson: John Leggett

Members: Nadine Taylor  
Graeme Barsanti

**HEARING** at Blenheim, 28<sup>th</sup> day of April 2021

**APPEARANCES**

Mr Young – counsel for the Applicant

Mr Jagdeep Singh – for the Applicant

Mr Tajinder Janagal – for the Applicant

Ms Karen Winter – Marlborough District Council Licensing Inspector – in opposition

Ms Coral Hedley – for the Medical Officer of Health – in opposition

Dr Andrew Lindsay – in support of Ms Hedley

Ms Coral McIntosh – in support of Ms Hedley

Ms Vanessa Eade representing Te Ātiawa O Te Waka-a-Māui Trust – witness for Medical Office of Health

Ms Gemma McKinley – Māori Warden – witness for Medical Officer of Health

Ms Robyn Rodgers – Secretary of Marlborough Creative Artisan Cooperative – in opposition

Mrs Helen Powell – in opposition

Ms Marianne Govaerts – Shop manager for St Vincent de Paul – in opposition



## DECISION OF THE MARLBOROUGH DISTRICT LICENSING COMMITTEE

### Introduction

1. Before the Marlborough District Licensing Committee (the Committee) is an application for the grant of an off-licence pursuant to section 99 of the Sale and Supply of Alcohol Act 2012 (the Act), in respect of premises situated at 100 High Street, Picton (the premises), to be known as The Bottle-O.
2. The Applicant is Kiwi Liquor Limited (the Applicant). The application was filed with Marlborough District Council on the 22<sup>nd</sup> day of September 2020. The company known as Kiwi Liquor Limited has two (2) directors (both shareholders) who are – Jagdeep Singh and Tajinder Janagal, both of Auckland. An off-licence may be issued for this kind of premise because it meets the description found at section 32(1)(b) of the Act. Mr Singh holds a current managers certificate issued by Auckland Council on 14 December 2020. The Applicant's experience with licensed premises is subject to challenge by the agencies.
3. The premises are located at 100 High Street, Picton.
4. The premises form part of the complex known as Mariners' Mall. The mall contains a supermarket outlet (which has an off-licence), retail shop, a café, children's play area and business known as 'Shipwrecks'.
5. The proposed site is located near a number of sensitive sites which were identified by the applicant in its application:

| <u>Site</u>                   | <u>Distance from the premises (Applicants estimates)</u> |
|-------------------------------|--|
| • Picton Medical Centre       | 127 metres from the proposed premises                    |
| • Picton Kindergarten         | 294 metres from the proposed premises                    |
| • St Joseph's Catholic Church | 197 metres from the proposed premises                    |

6. The Licensing Inspector identified other sensitive sites:
- Shipwrecks' playground and after school care – immediately adjacent
  - St Vincent de Paul shop – 120 metres
  - Picton Library – 52 metres
  - Te Atiawa Pouwhenua – 33 metres
  - Picton Skate Park – 223 metres
7. There is off-road parking immediately adjacent to the premises including the mall carpark.
8. The premises has three doors fitted to the exterior. One of these doors opens to the footpath on High Street and an adjacent sliding door also opens to the footpath on High Street. The third door opens onto an accessway into the mall.
9. The proposed premises is not within the Alcohol Control Area as described in the Alcohol Control Bylaw 2018.
10. A Building Certificate has been issued for the premises. The proposed use of the premises meets the requirements of the Resource Management Act 1991 and the Building Code.
11. The Inspector filed a report with the Committee dated the 5<sup>th</sup> of February 2021 in opposition to the grant of the off-licence. The Inspector in the report, lists her opposition to the grant of the off-licence as pursuant to;
- s. 105(1)(a) object of the Act,
  - s. 105(1)(b) suitability of the Applicant
  - s. 105(1)(d) the days on which and the hours during which the applicant proposes to sell alcohol
  - s. 105(1)(h) amenity and good order

12. The Medical Officer of Health (MOH) filed a report with the Inspectorate dated the 21st of December 2020, in opposition to the grant of the off-licence. The MOH in its report, listed the grounds for their opposition to the grant of the off-licence as:

s. 105(1)(a) object of the Act

s. 105(1)(b) suitability of the Applicant

s. 105(1)(d) days on which and the hours during which the applicant proposes to sell alcohol

s. 105(1)(e) the design and layout of the premises

s. 105(1)(h) amenity and good order

13. The New Zealand Police (the Police) advised the Licensing Officer that it has no objection to the grant of the off-licence. The Police made no appearance at the hearing.

### **The Law**

14. Section 3 states the purpose of the Act as follows:

*(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.*

*(c) The characteristics of the new system are that—*

*(d) it is reasonable; and*

*(e) its administration helps to achieve the object of this Act.*

15. Section 4 states 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.*

*(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 and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).*

16. Section 105 of the Act states;

*(1) In deciding whether to issue a license, 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*

### **The Agencies Position**

17. The Agencies remain unchanged in their respective positions.

## Objectors

18. The application was publically notified pursuant to s. 101 of the Act and attracted a number of public objections. Mr Young for the applicant challenged the standing of a number of these objectors, accepting the objections from

(i) Mrs Helen Powell

(ii) St Vincent de Paul

(iii) Marlborough Creative Artisan Cooperative.

Mr Young also accepted Ms Vanessa Eade from Te Ātiawa o Te Waka-a-Māui Trust and Gemma McKinley, Māori Warden as witness for MOH.

19. There is no general right of objection in s. 102 of the Act. An objector must establish that he/she has an interest in the application greater than the public generally. We accept that the following objectors have no standing for the reasons stated:

a) No evidence that the objector resides in geographic proximity:

Sharlanarue Ormandy; Angela Cairns, Susan Banyard, Natalie Houlahan,  
Peter Love, Angela Larrington, Joe Larrington, Toni Brown,  
Philip Ogg, Holly Spriggs, Cain Woodford, Cheryl Marie T.Villarta,  
Mohammad Shafiullan, Sandip Keur, Kathy Sewell

b) Failing to specify which application their objection pertains to:

Alistair Drakes, Lisa Henare

c) Failing to provide adequate address information:

Carol Davies, Gina Williams

20. None of these objectors (other than those listed in paragraphs 18(i), (ii) and (iii) above) made an appearance nor provided any explanation for their non-appearance. No weight has been given to these objections.



## **Details**

21. Accordingly, and pursuant to s. 202(3) of the Act, the matter was set for determination by the Committee.

## **The Objectors Position**

22. Three of the objectors appeared before us,

- (a) Mrs Helen Powell who confirmed her address as Marina Cove, 53 Waikawa Road, Picton. The distance between the premises and her home address is approximately 700 metres.
- (b) Mrs Robyn Rodgers appeared on behalf of the Marlborough Creative Artisan Cooperative who are a tenant of Mariners Mall.
- (c) Ms Marianne Govaerts on behalf of St Vincent de Paul which operates from premises 120 metres from the proposed premises.

## **Submissions and Evidence**

23. For the sake of expediency and clarity we have mostly paraphrased the submissions, evidence and cross examination of that, where it is relevant to our decision.

## **Case for the Applicant**

24. Mr Singh gave evidence on behalf of the applicant. Mr Singh is a Director and 50% shareholder of the applicant.

25. From the outset it became clear to the Committee that there were a number of significant changes proposed to the management of the premises, the hours of business, the layout of the premises and use of the exterior walls for advertising when compared to the application filed by the applicant in September 2020. We will deal with this in more detail in this decision.



26. Mr Singh gave evidence that the management of the premises and day to day operation of the business would be in his care and that where necessary he would be relying on mentoring from others.
27. Mr Singh holds a Manager's Certificate and stated that he is currently working at his brother's bottle store located in Auckland to gain experience and had been managing the Auckland store since November 2020. His brother was mentoring him on alcohol licensing and business related matters.
28. Mr Singh obtained his Manager's Certificate in November 2020 and provided a copy of his certificate. He has also undertaken LCQ training. Mr Singh explained the Picton Bottle-O Business Model and its target market at local residents between 18 and 49 years of age. The business was expected to create at least four new jobs in Picton. He spoke of the existing bottle store operating in Picton currently enjoying a monopoly and he expected to take business off the existing store and hopefully some of the business from the supermarkets.
29. In response to concerns raised by objectors he advised the business proposed the following:
- a) No sales of single RTD products or single main stream beers;
  - b) No sales of single shots;
  - c) No advertising of alcohol products or brands outside the premises by way of sandwich boards, bill boards displaying brands or images, flags or similar forms of advertising except for the trading name of the premises in one A0 sized poster.
30. Mr Singh considered he was a suitable person to hold an off-licence.

31. Mr Singh advised the days and hours of business would be 10.00 am to 9.00 pm every day. This is at variance to the off-licence application which originally sought hours of 8.00 am to 11.00 pm every day.
32. Mr Singh gave evidence as to design and layout. He identified the various businesses operating from within the mall, describing Mariner's Mall as on the edge of the town centre with the nearest residential dwellings some distance away – 70 to 100 metres.
33. He stated there would be a single customer entrance accessed from High Street. He described the entrance to Mariner's Mall as being blocked to reduce accessibility to the premises. He provided a floor plan layout and described the sale of other goods and services as including low and non-alcoholic refreshments including juices and bottled mineral water, tobacco products including vaping products and a small range of snack foods.
34. Mr Singh stated that he and Mr Tajinder Janagal would be responsible for the overall management of the premises. He would be responsible for the day to day running of the premises with Tajinder continuing to be based in Auckland but visiting the store at least monthly.
35. He stated best practice would be for a minimum of three certified Store Managers to be employed at the premises and named Lovepreet Behniwal as a second Manager who will be employed. The remaining position would be filled locally.
36. Mr Singh stated that there would be intensive training to all staff every three to six months. He then spoke of his own position with his brother Lovedeep mentoring him. Lovedeep is the current owner of the bottle store in Auckland where Mr Singh is employed.
37. Mr Singh gave evidence around amenity and good order of the locality. He stated that he had not come across or heard of any issues with anti-social behavior or nuisance in the

locality of the premises. He stated his intention to install CCTV cameras on the interior and exterior of the premises.

38. Mr Singh stated he understood that several members of the community have expressed concerns about the number of liquor stores in Picton. He recognized that the issue of liquor stores was important as Picton has a wide range of deprivation index levels including some areas that have high deprivation score. He provided a map outlining the deprivation areas. He stated it was his experience that all homes located near the centre of Picton are generally neat and smaller; on the hills to the east and west of the town are far larger properties which belong to wealthier people. He concluded his view of the data by saying that while some deprivation scores may be at the higher end, it is his observation that most people in Picton live “good lives”.

39. Mr Singh addressed concerns about the proximity of the premises to sensitive areas. He noted the following:

- a) Shipwrecks (immediately next door)
- b) Picton Library – 52 metres
- c) Te Atiawa Pouwhenua – 33 metres
- d) Picton Skate Park – 223 metres
- e) Picton Kindergarten – 294 metres
- f) St Joseph’s Catholic Church – 197 metres
- g) St Vincent de Paul shop – 120 metres
- h) Picton Medical Centre – 127 metres (approximately)

40. While he understood and respected the concerns of the community, it was his view that the premises will not impact on these sensitive sites because it is not visible from most

sensitive sites.

41. Mr Singh stated he understood that exposing children to alcohol branding and advertising is a sensitive issue. He stated that the presence of children in the area is one of the reasons why there will be limited alcohol advertising on the exterior of the premises and that the windows will be partially frosted preventing small children from looking into the store. His search of the Shipwrecks' website stated it was perfect for kids up to 11 years of old so he thought that most children going to Shipwrecks would not be able to view into the shop interior.
42. Mr Singh acknowledged a claim by MOH and some objectors that he was not familiar with the Picton area or the surrounding sensitive sites. He stated that these claims were incorrect. He believed that this view by MOH and some objectors was likely formed due to the original application not identifying all sensitive sites and accepted this was an error and oversight on his part. He believed his familiarity with the sensitive sites was demonstrated by his ability to point out the surrounding business and sensitive sites during his phone call to the Inspector on 19 January 2021. He stated that his partner Tajinder Janagal has owned and operated a convenience store in Picton since 2015, and he has been visiting Picton on a regular basis since then. He stated his visits as being every 2 to 3 months.
43. The evidence given by Mr Singh in relation to the management and day to day running of the business varies substantially from the information contained in the original application lodged in September 2020. Mr Singh was clear in his evidence that he will be responsible for the overall management of the business.
44. The application for an off-licence dated 22 September 2020 (the application) states the following (inter alia):
  - a) Both Directors will be responsible for the overall management of the premises with Mr Singh moving to Picton and Tajinder visiting the store at least once a month.

Lovedeep Behniwai will move to Picton to manage the day to day running of the business;

- b) Environment – there is no reason to believe that any neighbouring landowner or occupier will be disadvantaged by the issue of this licence;
- c) Within a 500 metre radius of the subject site, the following businesses have been identified:
  - Picton Medical Centre
  - Picton Kindergarten
  - St Joseph's Catholic Church
- d) The hours of business stated are Monday to Sunday, 8.00 am to 11.00 pm;
- e) The application contains a business plan which states that the business trading hours would be Sunday to Thursday, 9.00 am to 9.00 pm and Friday, Saturday 9.00 am to 10.00 pm. Further, in summer the evening weekend hours would be extended by an hour.
- f) Social Responsibility Policy – attached to the application states “During tastings water would be freely available”.

45. We note the plan showing the interior layout of the premises contained in the application is at complete odds with later verbal evidence given by Mr Singh.

46. Mr Singh was questioned by the Committee and objectors in relation to his evidence. We concluded Mr Singh's response demonstrated he had no real depth of understanding in a number of areas. He said he had read the initial application. He acknowledged that he had failed to identify a number of sensitive sites and to deal with these in his evidence.

47. Following questioning we concluded Mr Singh displayed a superficial understanding of

the social make up of Picton and had no depth of understanding of the layout of the town. He had made no effort to engage with the local community in relation to the proposal to establish a bottle store at the premises. His visits around town were no more than a social stroll. He accepted under cross examination that he has been visiting Picton since approximately 2015 around four times annually. Much of his information has been relayed to him by third parties. He was not able to identify the local Iwi.

48. We formed the view Mr Singh lacks experience in the sale and supply of liquor. He spoke of using his mentors to assist him. The mentors he referred to live in other parts of New Zealand.

49. Mr Singh was questioned by Ms Coral Hedley in relation to the census data he provided in his evidence and his understanding of ethnicity and its impact on alcohol related harm. He was unable to answer her questions. He had also quoted the wide range of deprivation levels in the area but his response to questions showed no understanding of what he was presenting.

### **Case for the Objectors**

50. Ms Winter gave evidence as the Licensing Inspector for Marlborough District Council. Her report dated 2 February 2021 was provided to the applicant and Committee. Her report concluded that the granting of the licence was not consistent with the Act for the following reasons:

- a) The likely effect of the location upon the amenity and good value of the area
- b) The sufficiency of supply

51. Ms Winter gave evidence that she conducted a site visit on 13 January 2021 and satisfied herself as to the proximity and visual amenity the proposed off-licence had with respect to existing sensitive operations. She stated that from the High Street frontage of the proposed site she observed Shipwrecks' entrance, the St Vincent de Paul shop, the

Picton Library and the Te Ātiawa Pouwhenua.

52. She stated that on 13 January 2021 she left a message for Mr Singh to call her to discuss the application. Mr Singh returned the call on 19 January 2021. Her evidence was that Mr Singh advised her of the Fresh Choice supermarket, the other bottle store nearby and the children's playground. The playground was not mentioned in the application nor was there any mention of the library or the Te Ātiawa Pouwhenua. Ms Winter stated she concluded, following discussions with Mr Singh, the applicants do not have knowledge of the community where they intend to trade, or the impact of the visual presence of their store and supply of their goods may have on the sensitive operations in the immediate proximity.
53. Ms Winter also gave evidence as to the number of outlets currently in Picton. She advised that Picton currently has four off-licences, three of which are in close proximity to the proposed site.
54. When questioned by Mr Young, Ms Winter conceded that the extent of the advertising and size of the font used in advertising the store could lessen any impact.
55. Ms Hedley provided evidence on behalf of the Medical Officer of Health. In her evidence she stated she had had communication with both Mr Tajinder and Mr Singh. She met Mr Singh onsite on 23 October 2020. She stated that during her onsite interview with Mr Singh he admitted he was inexperienced in the licensing industry and advised it was his brother who managed the licensed premises in Queenstown and would be mentoring him on the job. At the time Mr Singh was residing in Ashburton. Ms Hedley gave evidence that during the onsite interview Mr Singh did not indicate any knowledge of the area or community in which the business would be operating. Ms Hedley stated that during the interview Mr Singh admitted that he had not read the application and that their agent had submitted on their behalf. This is in variance with the evidence of Mr Singh.
56. Ms Hedley also expressed the view that during the interview with Mr Singh it was not



clear to her how their management arrangements would work. She noted the application for the licence stated that under 'Staffing Requirements' the store will require five staff including the Store Manager and the intention would be to prioritise the employment of local staff including the Store Manager. Ms Hedley expressed concern about what she termed contradictory information noting an inaccurate or misleading application form may lead a potential objector not to pursue objection rights or result in an unnecessary objection being lodged.

57. Ms Hedley also provided evidence and quoted New Zealand and overseas research in relation to availability of alcohol increasing alcohol consumption, social deprivation and individual economic status and accepted what she believed to be the formula for off-licences in relation to population.

58. When questioned by Mr Young, Ms Hedley agreed that she had not read some of the research articles she had quoted in her evidence.

59. Gemma McKinley was called as a witness for the Medical Officer of Health and outlined her role as a Māori Warden. She described her role in the community as a Māori Warden in preventative work and the well-being of people in the community. She described working with locals and undertaking night patrols and concluded Picton to be a vulnerable town with very few services, transient people, non-Māori who have no support, vineyard workers on low incomes spending money on alcohol.

60. Under cross examination from Mr Young, Ms McKinley agreed that many of the issues with young people, particularly at night, were in the foreshore locality rather than upper High Street where the premises are located.

61. Ms Vanessa Eade on behalf of Te Ātiawa o Te Waka-a-Māui Trust also gave evidence as a witness for the Ministry of Health. Her evidence was in relation to the intended locality of the premises being next door to Shipwrecks. She outlined the number of liquor outlets already operating in Picton and the close proximity of the premises to other outlets. She

concluded by saying that Te Ātiawa o Te Waka-a-Māui Trust would like it on record that the Trust takes its role as stewardship of positive leadership, of whānau care and well-being seriously and so the Trust vehemently opposes the application.

62. Ms Marianne Govaerts gave evidence on behalf of St Vincent de Paul. She described the location of the St Vincent de Paul outlet in relation to the premises. She spoke of the purpose of St Vincent de Paul and its clientele; many with alcohol and addiction related issues. She described the location of the St Vincent de Paul shop as being where persons of no fixed abode frequent.

### **Closing Submissions**

63. By agreement, each party provided written submission:

#### **Applicant**

64. Ms Winter provided closing submissions as Licensing Inspector. Her position in relation to the application was unchanged. Her submission related to the amenity and good order of the locality. She referred to the number of existing licences. In regard to the number of off-licences she noted four, three within 200 metres of each other; with two of these three being supermarket style where only wine and beer may be sold; the other an existing bottle store. She referred to current ratios of one off-licence to 1,175 people (population of Picton being 4,700). She referred to Masterton Liquor v Jaquier decision (2014) NZARLA 801 (19 November 2014) where the national average reference was given as one off-licence per 1,000 people.

65. Ms Winter also referenced (2012) NZLLAPH1370 Tony's Liquor Upper Hutt Ltd Case where the Authority concluded that any additional outlet creates price cutting.

66. Ms Winter also referenced the evidence of Marianne Govaerts and Gemma McKinley in relation to the harm existing in Picton around alcohol consumption. Ms Winter also

expressed concern around the location of the premises and current use of the neighbouring nearby land such as Shipwrecks, library and Te Atiawa Pouwhenua. She also expressed concern regarding the location of the premises immediately adjacent to a children's playground. Further, she stated the applicant is yet to consider how deliveries to their premises will be made including how it is managed into the store and access from the store room.

### **Medical Officer of Health**

67. Ms Hedley provided a closing submission dated 4 May 2021.

68. She referred to the sensitive sites close to the proposed premises.

69. In relation to suitability of the applicant she summarised that suitability also includes the applicant's knowledge of the community and concluded that Mr Singh was unable to demonstrate his knowledge. She highlighted the number of inconsistencies in her inquiry and at the hearing which made it difficult to get a clear picture of how the premises will be managed and how the applicant intends to operate in a way to meet the objectives of the Act.

70. Ms Hedley covered the days and hours of operation and submitted that any reduction in hours would have little impact on the users of services within the immediately vicinity.

71. Ms Hedley also took issue with the evidence of Mr Singh in relation to design and layout of the premises including the frosting line on the window facing the footpath on High Street. His evidence in relation to the one customer entry point only lacked clarity as to restocking and where loading zones for stock would be located.

72. She also submitted in relation to the management of the premises, her view being that the application contained minimal and confusing information on systems, staff and training to be implemented that would minimise alcohol related harm.

73. Ms Hedley submitted in relation to amenity and good order noting there were already four off-licences in the township of Picton. Her view being that as a rule an increase in competition can lead to lower pricing. She submitted that with regard to population deprivation and ethnicity, Mr Singh was unable to demonstrate an understanding of the accepted links between deprivation and ethnicity and their contribution to alcohol related harm.
74. She also submitted in relation to the witnesses called by the Ministry of Health, Ms Gemma McKinley (Chairperson of the Marlborough Māori Warden) and by Vanessa Eade mandated by Te Ātiawa o Te Waka-a-Māui Trust.
75. Her conclusion was that given what has been heard the Committee cannot be confident that the applicants have demonstrated they will be able to meet the criteria of s. 105 of the Act to minimise alcohol related harm.

### **Applicant's Submission**

76. Mr Young filed a submission on behalf of the applicant. He submitted the applicant has provided evidence of refinements to the application that are intended to respond to concerns set out in the Agency reports and in public objections. In summary the refinements are:
- a) There will only be one public entrance (that being from High Street);
  - b) There will be no exterior alcohol brand or product advertising with the exception of a single A0 poster which will have product and prices listed that can only be read at close range;
  - c) Windows will be partially or fully frosted;
  - d) The use of the green Bottle-O livery will be limited;
  - e) The premises will have a comprehensive CCTV network;

- f) No sales of single RTD or mainstream beers;
- g) No sales of single shots; and
- h) Reduced trading hours of 10.00 am to 9.00 pm.

Mr Young also submitted on a number of matters discussed during the hearing and confirmed:

- a) Frosting of the windows;
- b) Revised floor area;
- c) Stock deliveries from external sources received at the Superette owned and operated by Mr Tajinder Janagal. Stock will be delivered by van or private vehicle to the premises three or four times per week;
- d) Loading of stock will take place through the principal entrance or sliding door near the storage area. The sliding door will not be available as an entrance or exit to customers and will only be open for short periods when stock is being unloaded;
- e) Exterior glazing adjoining the storage area will be fully frosted;
- f) The frosting can be a plain colour without image if the Committee so prefers.

77. Mr Young submitted that for Mr Singh the hearing was challenging and he was extremely nervous when giving his evidence. Mr Young also made comment on Mr Singh's evidence during the hearing.

78. Mr Young submitted that Mr Singh was criticised in relation to the identification of sensitive sites but concluded that under cross examination the Inspector accepted that any impact on the library or pouwhenua will be minor. He submitted that in the absence of Police opposition, the amenity and good order concerns must fall away.

79. Mr Young commented on the evidence of the Inspector as limiting her opposition of the potential impact on Shipwrecks.

80. Mr Young concluded by submitting that the matters set out in his opening submissions have not been challenged and the references and some decisions referred to by opposing parties failed to acknowledge crucial factual differences with those cases.

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

81. The Committee has considered the evidence before us, including the submissions made by counsel for the Applicant. The Committee can only act on the information before us and the application of that to the criteria that we are required to consider. It is now well established that the process of considering applications is done in two-steps. First, to evaluate the application and evidence against the criteria in section 105 subsections (1)(b) to (k) and then to stand back and consider whether the grant of the application is consistent with and will achieve, the object of the Act which is the criterion in section 105 (1)(a) and section 4 of the Act.

82. For completeness, we will address the criteria that we are required to consider pursuant to the Act, in that two-part process.

### **Section 105(1)(b) Suitability of the Applicant**

83. There has been challenge to the suitability of the applicant by both Agencies. Primarily, the Agencies' concerns are based on lack of experience of the applicant Director, Mr Singh, who will be the face of the operation. The argument for Mr Singh is that he has extensive business experience having owned and operated his own businesses.

84. The evidence of Ms Hedley was that Mr Singh seemed vague in his response to questions when interviewed. The Committee when it asked questions of Mr Singh at the hearing, has formed a similar opinion.

85. The Committee is concerned that the application and the evidence presented by



Mr Singh is at odds in some material ways. This relates not only to the management of the business but also to the layout of the premises. The plan of the premises contained in the application is completely different to the plan submitted by Mr Singh at the hearing. Mr Singh gave evidence that there would only be one door used in the operation of the premises but later, when questioned about deliveries, made reference to the sliding door as an appropriate entrance for deliveries. We are now told that the intention is to have deliveries made to the Superette owned and operated by Mr Tajinder Janagal and from there they will be ferried to the premises.

86. Mr Singh's knowledge and understanding of the Picton area and community appears to us as being very poor. Mr Singh did not provide any evidence of effort to obtain such information and to satisfy himself as to these matters.

87. The decision on suitability comes down to the evidence before us at the time. The view of the Committee is that we share the concern of the Agencies. We were unimpressed with Mr Singh's evidence and assertions.

#### **Section 105(1)(c) Relevant Local Alcohol Policy**

88. There is no relevant Local Alcohol Policy in existence at this stage. There is nothing to consider.

#### **Section 105(1)(d) The days and hours of operation of the licence**

89. We acknowledge the applicant has sought to further reduce the trading hours sought in the application.

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

90. Mr Singh accepted in evidence that he has not made any contact with the building owner

in relation to a proposal presented at the hearing that the door exiting on to the mall (opposite Shipwrecks) would be able to be legally secured as proposed by Mr Singh so that it can only be opened from the outside.

**Section 105(1)(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**

91. Mr Singh states he intends to sell alcohol and non-alcoholic drinks from the premises and also cigarettes and snack food generally associated with these types of businesses.

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

92. No other services are intended to be offered.

**Section 105(1)(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.**

93. This provision was the subject of extensive evidence by the Agencies and the bulk of the concerns of the other objectors surround this criterion. We are directed to the parameters of section 106(1) to have regard to a series of matters that relate to the locality.

94. Firstly we consider current and future possible noise levels. There is no evidence before us the current noise levels are unpleasant or excessive. It is unlikely that the grant of an off-licence would increase current noise levels in the immediate vicinity.

95. We are then required to consider current and future levels of nuisance and vandalism. With regard to the current and possible future levels, there is some difference of view.



**Section 105(1)(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 – It would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but It is nevertheless desirable not to issue any further licences**

96. No evidence was represented.

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

97. The information supplied to the Committee is that Mr Singh has obtained a Manager's Certificate and has completed training that would ensure compliance with the Act. Mr Singh obtained his Manager's Certificate late last year and says he is currently working for his brother in undertaking management and running of his brother's store in Auckland. Mr Singh also states that he will have another Manager working full time at the premises.

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

98. The Inspector has filed a comprehensive report with the Committee pursuant to section 103(2) of the Act. We have also received reports in opposition from the Medical Officer of Health. We heard evidence from both of these objectors in relation to the deprivation and alcohol related harm.

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

99. Holders of a licence must ensure that the sale and supply of alcohol is undertaken safely and responsibly and that the harm caused by excessive or inappropriate consumption of alcohol should be minimised. The question for the Committee is can we be satisfied having regard to the relevant factors set out in section 105 of the Act that the grant of an

off-licence is consistent with the objectives of the Act. In our opinion Mr Singh for the applicant has not shown that he understands the obligations of the Act or that the application arises from a considered business plan and approach to good management practices.

100.The Committee is not satisfied that the applicant has met the appropriate threshold as being a suitable applicant to hold an off-licence. The applicant has, in our opinion, failed to demonstrate that it has done significant research or planning, including the purposes for which the land in close proximity to the premises is used, that would allow us to advance the application.

101.Having considered the evidence before us and for the reasons outlined above we are satisfied as to the matters which we must have regard as set out in section 105(1) of the Act. We do not believe the application meets the objectives of the Act. Accordingly the application is declined.

**Dated** at Blenheim this *1st* day of *JULY* 2021.



John Leggett

Chairperson

Marlborough District Licensing

Committee On behalf of members:

Nadine Taylor

Graeme Barsanti