

Decision No.

OFF

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by **TOWNILL LIMITED** for an OFF-Licence pursuant to s.99 of the Act in respect of premises situated at **114 Railway Terrace West Rakaia** known as **“Thirsty Liquor Rakaia”**.

BEFORE THE ASHBURTON DISTRICT LICENSING COMMITTEE

Chairman: Mrs S Griffin
Members: Mrs R Kilworth
Mr G Clapp

HEARING at Ashburton on 23 October 2019

SUBMISSIONS : Objector by 13 November; Applicant 25 November 2019

APPEARANCES

Mr Peter Egden, on behalf of the applicant
Mr Michael Brown, Director and shareholder of the applicant company
Mr Leo Ratten, Ashburton District Council (ADC) Alcohol Licensing Inspector
Acting Sergeant Melissa Harper, Alcohol Harm Reduction Officer, NZ Police
Mrs Susan Newton, Representative of the Medical Officer of Health
Mr Neil Pluck, Rakaia Community Association, objector
Ms Sina Mead, resident - witness for the objector
Mr Tyrone Burrowes – resident - witness for the objector
Ms Tania Scott, resident – witness for the objector
Ms Lynette Campbell, resident – witness for the objector
Mr Alistair Drye, resident - witness for the objector

DECISION OF THE COMMITTEE

Decision

- [1] For the reasons which follow, the Committee has unanimously determined to grant the application for the new off-licence sought by Townill Limited Ltd for the premises to be known as Thirsty Liquor Rakaia.
- [2] The Committee determined that this decision is subject to agreed undertakings which were raised in the hearing and circulated in the Minute, 24 October 2019 and to the

unchallenged licence conditions in the Licensing Inspector's report. We needed to carefully consider and assess all the evidence and submissions, stand back and make the decision to grant, prior to considering and deciding on undertakings and conditions.

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Introduction

- [3] Before the Committee is a publicly opposed application by Townill Limited (hereinafter called the "applicant") for a new off licence in respect of the premises described as situated at 114 Tramway Terrace, Rakaia, known as Thirsty Liquor Rakaia. Mr Michael Brown is the sole director and shareholder of the applicant company, Townill Limited. Public notification was made on the Ashburton District Council website on 8 August, 2019.
- [4] An interim objection from the Representative of the Medical Officer of Health was included in the hearing documents. A letter dated 19 August 2019 was not received

- by the Secretary of the Ashburton District Licensing Committee until 17 September 2019 after the official reporting deadline had passed. Mrs Newton confirmed that the letter was posted 19 August 2019. Submissions were received in accordance with advised deadlines.
- [5] Mrs Newton subsequently advised in a letter dated 14 October 2019 that she had sighted the proposed premise Thirsty Liquor Rakaia with the applicant Mr Brown and was withdrawing the interim objection.
- [6] A copy of the plan of the proposed interior of the premises is **attached** to our decision as **Appendix "A"**.
- [7] The Committee, through the Commissioner, issued Minutes covering pre-hearing matters on:
- (i) 10 October 2019
 - (ii) 11 October 2019 (2)
 - (iii) 24 October 2019
 - (iv) 24 October 2019
- [8] Members of the Committee visited Rakaia to see the location of the proposed Thirsty Liquor premises, the actual building in its environment and to view various properties mentioned in the hearing. A Minute, 5 November 2019, advised the parties – a copy is **attached** to this decision as **Appendix "B"**.
- [9] The premise is located in the small rural town of Rakaia on SH1, some 25 kilometres north of Ashburton. The town has a population of approximately 1250-1300. The Applicant wishes to establish a new stand alone bottle store in the former Rakaia Four Square which closed in early 2018. The previous off licence was not renewed. The applicant seeks trading hours which are within those prescribed in the Local Alcohol Policy.
- [10] As required under s.103 of the Act, reports were sought from the Agencies:
- (i) There was no opposition reported by the Police
 - (ii) The Medical Officer of Health representative reported and lodged an Interim Opposition, later withdrawn, effectively not opposing the application
 - (iii) The Licensing Inspector did not raise any matters in opposition and prepared a report on the application in accordance with s.103, including licence conditions.
- [11] Public Notification attracted one written objection. The Objector was allowed additional time, until 15 October 2019, to file witnesses statements in support to the Secretary. The Objector was reminded that statements made in his own Brief of Evidence were not a Brief of Evidence from each person mentioned.
- [12] The Objector is Mr Neil Pluck on behalf of the Rakaia Community Association.
- [13] Witnesses for the Objector:
- Sina Mead, resident
 - Tyrone Burrowes, resident (Fire Chief)
 - Tania Scott, resident
 - Lynette Campbell, resident
 - Mr Alistair Drye, resident

- [14] The Applicant, Mr Michael Brown was represented by legal Counsel Mr Peter Egden. Mr Brown gave evidence in relation to the application.
- [15] The Committee called the Licensing Inspector to read his report and be questioned. Mr Ratten raised undertakings which he put to Mr Brown. These would be considered by the Committee if it was of a mind to grant the licence. The undertakings were sent to the parties in a Minute, 24 October 2019 - a copy is **attached** to this decision as **Appendix “C”**.
- [16] Closing submissions were received as agreed from the Objector by 13 November 2019 and from Counsel for the Applicant by 25 November 2019.

The Hearing

- [17] The hearing took place at Ashburton on 23 October, 2019.
- [18] As a preliminary matter the chair advised the Objector and the witnesses in support that they would be given the opportunity to explain and expand on the content of their written statements but could not introduce new matters.

Evidence of the Applicant

- [19] In opening, Counsel for the applicant, Mr Egden, noted that there was one objector and five witnesses. He sought an order excluding the witnesses from the hearing as the questions to be asked of these witnesses would be of a similar nature. It was preferable that witnesses did not hear the questions prior to their evidence and have the opportunity to formulate answers. Mr Pluck should not discuss matters discussed in the room with other witnesses nor may witnesses speak with each other about matters discussed within the room. The Chair granted the request and stated that witnesses may remain in the room following their giving evidence.
- [20] Mr Egden reminded the hearing of the role of the decision maker, summarised as follows:¹
“is the decision maker satisfied, having regard to all the relevant factors set out in s.105 (1)(b) – (k) that the grant of the licence is consistent with the object of the Act?”
- [21] The duty to “*have regard to*” requires that the Committee turn its mind to the listed criteria. The weight to be attached to each is for the Committee to decide. In Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited [2018] NZHC 1123, Clark J said at [43]:
“The factors to be considered in the course of assessing an application or for a renewal, as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol related harm.”
- [22] Mr Egden submitted that s.105(1) requires the Committee to have regard to each of the matters set out in that subsection, but clearly the key issue for this particular case is s.105(1)(h) – amenity and good order.
- [23] Counsel noted that if this application were granted, there is no evidence which could infer that breaches of the Act are likely to occur. Consideration of the object of the Act involves an assessment of the suitability of the applicant to manage the premises in a proper manner and to consider any particular issues in the community. He noted the

¹ *Re Venus NZ Limited* [2015] NZHC 1377.

high threshold that needed to be met by the Objector in order to displace the absence of concerns regarding suitability from the Agencies.²

- [24] In this case, Mr Brown has had many years experience in owning and managing licensed premises. He is a responsible operator, accepted by the reporting agencies as suitable in terms of the Act.
- [25] Mr Egden referred to the proposed days and hours sought and stated that they are permitted by the Ashburton District Council local alcohol policy (LAP) and the resource consent. They are consistent with other premises in the area.
- [26] Mr Brown's experience with rural township premises and the systems and training currently used, indicate that alcohol will be sold safely and responsibly if the application is granted
- [27] To the best of the Applicant's knowledge, there have been no complaints in the immediate vicinity regarding nuisance, vandalism or graffiti. There is no evidence leading to an inference that these may become an issue if the application is granted. The number of premises is relevant to the township and it's servicing of the surrounding rural community. The NZTA evidence of over 14,000 vehicles passing through the town on a daily basis is significant. The Applicant operates two comparable rural businesses where many customers live outside a 10km radius of those premises and there is passing traffic. The proposed premises are a permitted activity in this commercial zone. Counsel submits that the amenity and good order of the locality would not be reduced by more than a minor extent by the effect of the issuing of the licence sought.
- [28] Counsel called the director and sole shareholder of the applicant company Townill Limited, Mr Michael David Brown.

Mr Michael Brown

- [29] The Committee heard oral evidence from Mr Brown, presented from his written brief and in response to examination by Counsel for the Applicant. He also responded to questions from the Committee and to cross examination from the Objector and the Licensing Inspector.
- [30] Mr Brown provided additional documents as suggested prior to the hearing for those present to peruse:
- (i) Off licence tool kit
 - (ii) Monthly flyer specials for the last 4 months, would be one A4 sheet in the store window facing outward
 - (iii) Incident book
 - (iv) Guide for signs of intoxication
 - (v) Under 25 age signage, will be asked for ID
 - (vi) Manager's guide, always available on premise
 - (vii) Daily diary, which summarises the day, including noting refusals
- [31] Mr Brown has been involved in the industry for some 20 years, holding a manager's certificate since 2001. He currently operates the Waimak Tavern, Thirsty Liquor Darfield and Thirsty Liquor Waimak. He chose the Thirsty Liquor brand as it provides more flexibility and he does not necessarily have to fix minimum/recommended prices or stock the specials on offer at any given time.

² *British Isles Inn Limited* LLA PHG406/2006

- [32] He has estimated that Rakaia will be similar in catchment to Darfield and Waimak, which is a 5 kilometre radius from the premises. The proposed Rakaia premises are located in a commercial zone. There are no sensitive sites in the immediate vicinity.
- [33] Mr Brown's evidence also addressed:
- (i) Suitability
 - (ii) Days and Hours
 - (iii) Staff, Systems and Training
 - (iv) Design and Layout of Premises
 - (v) Amenity and Good Order
- [34] Mr Brown spoke of his good relationship with the local police. There have not been any issues with police or the health or licensing authorities in respect of the other two stores. He stated that to the best of his knowledge there has been no increase in alcohol related harm as a result of opening the other two stores.
- [35] He sees Rakaia operating similarly to Waimak and Darfield, stocking the same high end products and providing the same high quality service. A store in Rakaia will provide the area with a service that is not available presently and he firmly believes that the good order and amenity of the locality will not be detrimentally affected by the opening of the store.
- [36] The proposed design and layout is on the plan submitted and is similar to the two other Thirsty Liquor stores that the Applicant operates. The service counter is located near the entrance, allowing vetting of customers entering the store and observation of customers while in- store. Mr Brown's evidence is that the "high end" product will be more prominently displayed while the RTDs will be less conspicuous and located near the rear of the store.
- [37] On the exterior store windows only an A4 sheet showing monthly specials will be visible from the outside. A film on these windows will prevent people on the outside from seeing into the premises.
- [38] From his enquiries, Mr Brown does not expect good order and amenity to be impacted by the proposed standalone bottlestore which will be the only one in Rakaia.

Cross examination of Mr Brown

- [39] Mr Pluck asked Mr Brown how familiar he was with the area and to describe any visits made. Mr Brown explained his visits over the past year, visiting three times weekly at different times of the day to observe traffic and people flows. Once he had decided to proceed he visited more often. He has also undertaken research on population data, statistics for the catchment area he hopes to serve, eg NZTA average daily traffic count through Rakaia is in excess of 14,000 vehicles, data included in Mr Brown's evidence. There are similarities with his Waimakariri store as it is not positioned on the state highway.
- [40] Mr Brown responded to Mr Pluck, that from his experience in his two other stores, people take their purchases home and do not drink straight away on leaving. If staff saw this occurring, they would stop them.
- [41] Staff would deal with any trouble outside from people leaving other licensed premises by having cameras inside and outside and also speaking with hotel operators if

required. It is his intention to operate this store similarly to his other two stores – safely and responsibly.

- [42] Mr Brown explained his point of difference to the Licensing Inspector as more variety in stock. His focus will be the high end malt whiskeys and the variety of low to zero percentage alcohol drinks.
- [43] Security measures include the CCTV cameras and a pull down shutter to minimise break-ins and the store interior will not be visible from the outside.

Questions from the Committee

- [44] The Committee asked about advertising other than the A4 sheet. Mr Brown advised that Thirsty Liquor advertises in newspapers 3-4 times a year and that word of mouth in the rural communities works well. Younger drinkers will not be targeted as the store will specialise in high end whiskeys, at \$70 -100 per bottle. They have a strict identification process.
- [45] Mr Brown confirmed that they will sell tobacco and cigarettes.
- [46] He did not necessarily see a dilution of current spend rather more people coming to the township and being able to get all of their needs.
- [47] Mr Brown explained various business processes that will be in place. These include:
- (i) the types of incidents recorded in the incident book – he reviews the book and decides on any follow up action
 - (ii) the bluey book (trespassing)- he had not issued any blueys to date, but he had spoken to an underage person's parents
 - (iii) till prompt for checking age - they are strict on ID
 - (iv) single sales are from broken boxes only
 - (v) the SCAB tool is used to identify intoxicated behaviour
 - (vi) any sampling is managed from the counter and limited to one per person
 - (vii) staff will monitor litter outside the store – they will also check the seating area on the grass directly across the road
 - (viii) any “events” occurring during the week are used for staff training
 - (ix) the key objective around training is no sale or supply to underage people
- [48] Mr Brown confirmed his willingness to consult with the local community, Licensing Inspector and the MOH representative over the store facade, signage and other external branding matters. He considers the locality pleasant.
- [49] He said to the Committee that if an age compliant person was purchasing alcohol and young people were waiting outside (assumed under age), staff will go outside and investigate. If they suspect the young people will be supplied, service will be refused and this is noted in the incident book. How an issue is managed is then used in weekly training. He intends to be present on the premises for some time after opening if the licence is granted and he will seek local staff.

Evidence of the Objector

Mr Pluck, Chair of the Rakaia Community Association

- [50] Mr Pluck owns a second generation family business in Rakaia. He is also a member and current Chair of the Rakaia Community Association (RCA), which has an office some 125 metres from the premises.

- [51] Mr Pluck voiced his concern at witnesses not hearing Mr Brown's responses. The Chair explained the reasoning behind their exclusion.
- [52] The RCA objects to the application on the grounds that there is no need for another liquor outlet in the town. The number of premises for which licences of the kind are currently held is three – two hotels and a grocery store hold off-licences.
- [53] Mr Pluck states that competition will see the price of strong liquor decrease very quickly and remain down. He compares Rakaia to Methven in this respect.
- [54] Younger and more vulnerable people, those who would not normally drink hard liquor will be encouraged to purchase it – easily led by aggressive and smart advertising. He likened the effect to that of a legal highs store that used to be on the main street. He is concerned about what he perceives as "some sort of a threat, even if only small," from the introduction of a "cheap liquor outlet in our town."

Cross examination of Mr Pluck

- [55] Counsel said it was noted from the minutes of the Rakaia Community Association with Mr Pluck's objection that there was no reference to the objection being supported by the RCA, or of nominating him as the spokesperson. Mr Pluck responded that it is an unfair process with a very short turnaround period from the advertising of the proposed store to the closing date. He received authority to lodge the submission on behalf of the RCA from email correspondence with the members and this will be noted in the next set of minutes. The Chair explained that the process timelines are set out in the Act and must be complied with.
- [56] Mr Egden referred to Mr Pluck's "sweeping statements," without evidence like "liquor prices will drop." Mr Pluck answered that he saw what happened in Methven when Super Cheap Liquor opened.
- [57] Counsel questioned Mr Pluck about his concern for younger and more vulnerable members of the community by aggressive advertising and had he researched any of Mr Brown's other businesses. Mr Pluck said that his research was minimal and it "is an observation on how other cheap liquor stores operate."
- [58] Mr Egden asked Mr Pluck if he thought one standalone bottle store servicing 6-8,000 people was excessive – Mr Pluck's opinion is that they have outlets now, they don't need a cheap liquor store.
- [59] Mr Pluck agreed with Counsel that his own business services both the locals and people coming in from the outer area. It is worrying to him that the Agencies do not share his concerns. He agreed with Mr Egden that the majority of outlets selling and supplying alcohol do so in a safe and responsible manner.

Questions from the Committee

- [60] Mr Pluck confirmed to the Committee that all concerns conveyed to him are in the evidence.
- [61] His believes that prices will lower and stay down. He lives in Methven and saw it there. He bases his statement that there is no need for another liquor outlet in Rakaia on personal opinion and fact. He has not seen current outlets offer specials.

- [62] Mr Pluck confirmed that he had looked at the Host Responsibility Policy with the application and “the intention seems good.”
- [63] His greatest concern about this stand alone off licence is that the cheap sale of liquor into the greater area of Rakaia exposes and encourages people to buy hard liquor that they would not otherwise. His concern is on behalf of the community - Ashburton District does not need more outlets. He agreed that legal highs mentioned in his statement at 10.4, have nothing to do with alcohol.
- [64] Mr Pluck told the Committee that there may be an increase in sales to people “with a natural weakness”, but he has no data to back this.

Witnesses for the Objector

Sina Mead - resident

- [65] Mrs Mead read her statement.
- [66] Mrs Mead is involved with Keas and Cubs, all of whom are picked up from the scout den probably some 500 metres from the proposed premises. She did not object herself. In her opinion the good order and amenity is likely to be reduced, to more than a minor extent by the issuing of the licence. Mrs Mead does not agree with Mr Egden that exposure will not be significant with another licence as there are currently quite a few.
- [67] Mrs Mead agreed with Mr Egden that the basis for her objection is that another liquor licence will result in young children being exposed to even more liquor. While there is not a liquor store per se, her concern is the children she interacts with already know that the pubs and grocery store sell liquor. She understood children could go in to the grocery store and be exposed to alcohol but not go into these proposed premises without an adult. Outward advertising will be limited to one A4 sheet on the window.
- [68] Her Kea and Cub groups had picked up rubbish from the grassed area along the railway line – the majority of the rubbish was empty bottles and cans.
- [69] The Licensing Inspector clarified with Mrs Mead where the scout den is in relation to the proposed premises – up to and around the roundabout and 500 metres to the north at the far end of Railway Terrace.
- [70] Mrs Mead agreed with the Committee that there was no doubt that a franchise bottlestore with good staff, proven systems and training, till prompts, intoxication/minor signage will be responsibly run, but her concern “is the fallout for my community.”
- [71] She spoke to the Committee about two incidents in her statement;
(i) it was reported to her by one of her group that a minor and his friends were drinking alcohol - she did not raise this with anyone
(ii) the other she read about in the Guardian and she did not know if drugs were also involved – a young man was killed on the railway line some time ago.
Mrs Mead told the Committee that three of her Kea and Cub group live in homes disrupted and separated by alcohol addiction.
- [72] Mrs Mead is not a member of the RCA. Mrs Mead agreed with the Committee, that the alcohol legislation is important as that is how it is administered.

Tyrone Burrowes – resident (Fire Chief)

- [73] Mr Burrowes read his statement.
- [74] Mr Burrowes is a Company Director and the Chief Fire Officer of the Rakaia Volunteer Fire Brigade. He has served in the Fire Brigade for 24 years.
- [75] During this time, he has attended “several vehicle crashes” that have been alcohol related and resulted in fatalities and very serious injuries. Accidents can also cause property damage and can shut down roads for long periods.
- [76] In Mr Burrowes statement he opposes the application on the grounds of good order and amenity. Further access to alcohol will increase the risk of traffic accidents involving alcohol and domestic violence. Another licence will result in increased hard liquor being drunk although a reduction in hours may reduce the likelihood of exposure.
- [77] Mr Egden sought clarification about Mr Burrowes’ objection, that opening a standalone bottlestore would increase alcohol consumption in the district. Mr Burrowes stated that “yes, because they have access to more – surely the amount of sales would go up”. Mr Egden said that these were unsubstantiated opinions. Mr Burrowes had no evidence that there would be an increase in the drinking of hard liquor but believed there would be more exposure.
- [78] He agreed with Mr Egden that more competition created choice but also in his opinion, more issues. Mr Burrowes believed there would be more nuisance and vandalism. He admitted that his research on this “nuisance” was minimal.
- [79] While he had no statistics for local alcohol related fatal accidents, about 50% of those in the Ashburton District involved alcohol. These involved a mix of local people and those coming through the district on SH1. Mr Burrowes told the Committee that he was unsure if any of these were drug related.

Mrs Tania Scott – resident

- [80] Mrs Scott read her statement.
- [81] Mrs Scott’s interest in the application is as the editor of the *Rakaia News*.
- [82] In terms of amenity and good order as affected by current alcohol sales, her experience is as a witness to the mess on their streets, by the railway line and along the river bank. She believes the lower pricing will be attractive to consumers and promote more unregulated drinking. This will generate more mess due to packaging and containers.
- [83] In her opinion an off licence is less supervised than an on licence. There will be a risk of greater levels of intoxication and more driving under the influence as there is no courtesy vehicle available.
- [84] In response to Mr Egden, Mrs Scott said that when an additional outlet with lower prices opens, more alcohol will be sold. She confirmed that was her own opinion.
- [85] The Licensing Inspector asked Mrs Scott about her interest as a health promoter for ACADS. She is interested in reducing harm from alcohol and other drugs in the Rakaia community, giving advice and looking at research at a local level.

- [86] She accepted that a standalone store would enable more alcohol free and low alcohol products to be available. Mrs Scott said that greater accessibility and lower prices meant larger consumption.
- [87] Mrs Scott accepted that a standalone enterprise operated in a commercial manner would probably want the outside of the premises looking clean and tidy.
- [88] In response to the Committee, Mrs Scott stated that the 2013 socio economic maps pointed to the area being relatively lower decile. She had concerns that lower pricing might pick up a market not already consuming and perhaps not being able to afford to consume. She also told the Committee that the Health Promotion Agency view was that increased competition meant an increase in sales.
- [89] Mrs Scott stated that she has a personal and biased view through her adult son to whom alcohol is harmful.
- [90] In her opinion, more men in Rakaia drive after drinking at home, at the hotels, at sports clubs and in sports related activity that includes bike riding in the river bed. She believed wine from the supermarket was a popular choice for general consumption.
- [91] If issued, she would want a reduction in hours to reduce the likelihood of children seeing advertising material.
- [92] Mrs Scott is not a member of the Rakaia Community Association.

Mrs Lynette Campbell – resident

- [93] Mrs Campbell read her statement.
- [94] When Mrs Campbell was a social worker she experienced working with those who were vulnerable and at risk due to domestic situations involving alcohol. She agreed that family violence was not necessarily solely alcohol related harm. Mrs Campbell last provided social work and support to a parent three years ago.
- [95] In her opinion, increased availability of “easy accessed” alcohol in the centre of the town will be detrimental to wellbeing and lead to greater consumption. Mrs Campbell believes there will be cheaper alcohol and product that is aimed at younger clientele. She admitted to Mr Egden that she had made an assumption about reduced price levels being aimed at younger age groups and that she did not know Mr Brown or how he operated.
- [96] Mrs Campbell said that she was sure that a large number of people are responsible in terms of consuming alcohol and that they had a right to be catered for. In her opinion there was sufficient supply in Rakaia.
- [97] She is not a signed member of the Rakaia Community Association.

Mr Alistair Drye – resident

- [98] Mr Drye is a volunteer firefighter and a local minister.
- [99] His opposition is based on the amenity and good order of the locality.

- [100] In replying to Mr Egden about what he meant by stating “if such instances can occur already with the tighter restrictions on the current purveyors, incidents will increase”, Mr Drye said that “more alcohol being sold in the area, from cheaper outlets, will result in more incidents”. But that was an assumption on his part.
- [101] Mr Drye thought the “pie” would possibly be split differently. He agreed with Mr Pluck that more opportunity allowed for drinking without responsibility. This included RTDs.

Licensing Inspector Report and Evidence

- [102] At the request of the Committee, the Licensing Inspector, Mr Leo Ratten took the stand and read his report. He reiterated that he did not oppose the application and stood by this original stance. His report also includes conditions for consideration should the licence be granted.
- [103] If this licence was granted he, as Licensing Inspector, would seek confirmation that the applicant would work with the Medical Officer of Health, himself and Mr Pluck as representative of the Rakaia Community over the layout of the interior, the store facade, signage, the overall appearance of the store, to achieve an agreed standard. The Chair confirmed that Mr Pluck could be involved in discussions but that he would not have the ability to override decisions made by the two agencies with Mr Brown. The applicant agreed to work within these parameters.
- [104] Questioned, Mr Ratten confirmed he had stated that the number of outlets was not excessive. He explained for example, that Methven with a population of 1880 has 17 on-licences and 3 off-licences servicing the local and seasonal population.
- [105] Mr Ratten advised the Committee that he had spoken with the owner of the Four Square and she did not feel that the proposed outlet would be in competition with their beer and wine.
- [106] He told the Committee that he thought about the proximity of the takeaway when completing his report but there is already a hotel off-licence in close proximity on the south side. It is acknowledged that the two hotels have quite small off-licence selections.
- [107] Mr Pluck asked the Licensing Inspector how he would monitor the premise to ensure they adhered to the rules and carried out what they have promised today. Mr Ratten said that his position is a privileged one, he can monitor with MOH and the Police – and also the community. He said that monitoring needs to be responsibly carried out. His view of monitoring as currently undertaken is that there is always room to improve, not just in Rakaia but across the district. He pointed out that it is the abuse of alcohol that causes problems not a bottlestore.
- [108] Mr Pluck asked Mr Ratten about the meaning of “to a minor extent”. Mr Ratten stated that it is negligible, minor is not significant.

Closing Submissions

- [109] At the conclusion of the evidence, it was agreed that the Objector would have until 13 November 2019 to file and serve any closing submissions and the Applicant would have until 25 November, 2019. Submissions were received from Mr Pluck, and from Mr Egden as Counsel for the applicant.

The Objector’s closing submissions

- [110] Mr Pluck filed a written closing submission on behalf of the Rakaia Community Association. He referenced evidence that we heard from his five witnesses. This evidence pointed to several past issues and examples of incidents, including serious road accidents and a railway incident. Mr Pluck told us of a common theme from the Association and the witnesses – a “cheap liquor outlet” and with that, greater accessibility.
- [111] Mr Pluck tells us that they cannot see how another outlet will minimise harm caused by alcohol and thus meet the object of the Act.
- [112] The proposal for this store is strongly opposed.

The Applicant's closing submissions

- [113] Mr Egden filed closing submissions in reply. He referred to his earlier submissions, requesting that these be taken into account with the closing submission.
- [114] Mr Egden emphasised the difficulties faced by an objector when there is no unfavourable comment and a lack of concern from the reporting agencies.
- [115] His argument in closing, as in his opening, was that the Committee must consider and evaluate all the evidence against the statutory criteria in Section 105 and Section 106 of the Act.
- [116] Mr Egden submitted that Mr Pluck purported to speak on behalf of the Rakaia Community Association but did not produce any documented evidence of this authorisation or evidence of any discussion of the issue of the licence from meetings or by its Executive Committee.
- [117] Mr Pluck's grounds of opposition as documented in his Notice of Objection are:
- (i) There are enough liquor outlets in Rakaia
 - (ii) Public sales of alcohol already occur at either end of the main shopping street
 - (iii) He considers the bulk purchase and sale of alcohol would help drive down prices in the town
 - (iv) A standalone bottle store would encourage more young people into drinking alcohol through the promotion of RTDS
- Mr Egden stated that Mr Pluck and his witnesses did not confine themselves to these grounds and that Mr Pluck attempted to broaden his objection to include the grounds of Amenity and Good Order.
- [118] In paragraph 10(a),(b),(c),(d),(e), he has submitted a summary of each of the witnesses evidence.
- [119] Mr Egden points out to us that in Mr Pluck's submissions he refers to a discussion he had with Dr Alistair Humphries, the Canterbury Medical Officer of Health. He further points out that this is an attempt to introduce after the hearing hearsay evidence which cannot be tested. Mr Egden also noted that the Medical Officer of Health did not oppose this application.
- [120] Mr Brown's evidence, which Mr Egden puts to us is largely uncontested, establishes him as an experienced and responsible licensee. Mr Brown has addressed all of the factors to be considered under s105 and s106. Challenges are restricted to Amenity and Good Order and the Object of the Act.

- [121] Mr Egden submitted a number of cases in his earlier submissions and set out why he considered these to have relevance to us:
- (i) The approach when considering a licence application is summarised in *Re Venus NZ Limited* [2015] NZHC 1377
 - (ii) The duty to “have regard to” and the applicable principles, in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123. Further, at [43], the Committee is entitled to apply the equivalent of the precautionary principle under environmental law.
- [122] In addressing Amenity and Good Order, Mr Egden refers to S105 and the extent to which and the ways in which the locality is pleasant and agreeable and also S106.
- [123] It is understood that while there is limited evidence about litter along the railway line, there is no acceptable evidence which would infer that nuisance and vandalism in the immediate vicinity may become an issue.
- [124] When considering the number of premises with off-licences, Mr Brown’s evidence highlights the extent of the area serviced by Rakaia. His market research and his experience led him to believe that a large proportion of his customers will live outside the immediate vicinity of the premises.
- [125] In standing back and considering the object of the Act in the light of the other matters, Counsel reminds the Committee of the lack of concern from the reporting agencies.
- [126] Mr Egden also confirmed in his closing that Mr Brown on behalf of the applicant gives his assurance that the undertakings, as set out in the Minute of the Committee of 24 October 2019, would be complied with.

Our Decision

- [127] We must determine whether or not to grant an off-licence to the applicant company for Thirsty Liquor Rakaia. We have approached our task as being to carefully consider and evaluate what we have read and heard in respect of this application.
- [128] We find that the experience of the applicant and his proposed but tested systems and training are such that alcohol will be sold safely and responsibly. What led us to our unanimous decision to grant the off-licence with the agreed undertakings and licence conditions includes our risk assessment for going forward based on what we have heard and read.

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

- [129] An off-licence may be issued to specified types of premises.³ We have considered whether we are authorised to issue an off-licence for the proposed retail premises.
- [130] During the hearing the Applicant answered a question from the Committee stating that he intended to sell tobacco and cigarettes. We noted that in completing the ADC Amenity and Good Order Questionnaire when applying for the licence, at 8(c) which relates to s.105(f), the Applicant has filled in the “No” box. Had he answered “Yes”, he was required to explain the nature of those other goods or services. The incorrect completion of the questionnaire form required by Ashburton District Council

³ SSAA s32(a)-(f), which included hotels, taverns, retail premises, supermarkets, grocery stores and manufacturers of alcohol.

for this process and the question response at the hearing raised a potential issue for us.

- [131] The Applicant has submitted that the sale of alcohol is intended to be the principal purpose of the business. We would then expect 85% of the annual sales revenue to be earned from the sale of alcohol for consumption elsewhere. In evidence Mr Brown explained that his business focus will be on higher quality and higher priced products including whiskey, to offer high quality service and to be well presented. Our expectation is that the Licensing Inspector would monitor sales records to ensure that the percentage is maintained and that this “probation year” percentage is included in reporting for any renewal. We have formed an opinion that the requirement of 85% sales revenue from alcohol sales can be met by the applicant.
- [132] We have taken into account that the Applicant does not propose to sell exclusively, these higher end products and that there will be a range of lower priced alcohol brands. Mr Brown has told us that single sales will be limited to broken boxes and that discounting RTDs is “not worth it”. He explained that RTDs will be at the rear of the bottlestore. We would expect the Licensing Inspector to include checking this as part of overall monitoring.
- [133] The style of bottlestore and its focus, its business plan, plus the range of products intending to be sold are relevant to our evaluation of the S105 criteria. The risks associated with the application and whether the two arms of the object of the Act can be met are relevant to our evaluation.
- [134] We have considered the application on the basis that what is proposed in Mr Brown’s evidence and we are satisfied that the Committee is authorised to issue an off-licence for this particular retail premise. The Applicant meets the requirements for an off-licence retail store at this time.

Decision and reasons

- [135] The legislative framework for the issue of licences is set out in sections 105(1) of the Act and some of these are the matters that the Committee must take into account in determining whether to renew a licence.
- [136] Section 105(1) provides as follows:

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

- (a) the object of this Act:*
- (b) the suitability of the applicant:*
- (c) any relevant local alcohol policy:*
- (d) the days on which and the hours during which the applicant proposes to sell alcohol:*
- (e) the design and layout of any proposed premises:*
- (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
- (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-*

- alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:
- (j) whether the applicant has appropriate systems, staff, and training to comply with the law:
- (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103."

[137] Section 106(1) provides:

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

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

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

"3 Purpose

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

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

"4 Object

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

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

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

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

“alcohol-related harm—

- (a) *means the harm caused by the excessive or inappropriate consumption of alcohol; and*
- (b) *includes—*
 - (i) *any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
 - (ii) *any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in subparagraph (i)."*

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

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

How we see our task in the light of the law

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

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

- (i) Our role is an evaluative one, in an inquisitorial sense. That is to say we are required to evaluate all the evidence before us, both in support of the applications and in opposition to the applications.
- (ii) After evaluating the evidence we must make a merits based determination as to whether or not the applications should be granted.
- (iii) We must have regard to the matters in section 105(1). This in turn requires us to have regard to the matters in section 106(1).

- (iv) To "*have regard to*" as a requirement means what it says. We do not have to give effect to anything and if, after having regard to a criteria, we conclude nevertheless to grant or refuse the applications that is permissible.
- (v) The weight we give to evidence is a matter for us realising that no party has any onus of proving anything.
- (vi) Whilst we must have regard to all criteria there will be some cases where some matters are so fundamental they assume an elevated mantle – here we think the following matters have assumed a fundamental significance:
 - a. the object of the Act;
 - b. the amenity and good order of the locality
- (vii) While we do not have to consider section 3 separately, so long as we are reasonable in our evaluations we likely will achieve the two aspects of the section 4 object. We approach section 4 on the basis that our decision must be consistent with both aspects in subsections (1)(a) and (1)(b).
- (viii) We must stand back at the end and reassess our earlier conclusions against attainment of the section 4 object. These two elements – the safe and responsible sale and supply and consumption of alcohol, and the minimisation of alcohol related harm – are equally important, are not to be balanced, and have precedence over the economic/commercial interests of a licensee.
- (ix) There is no presumption of an applicant having the right to a licence. The grant of a licence is a privilege.
- (x) The role of the reporting agencies is important to the licensing process and their evidence cannot and should not be ignored. A Committee is entitled to accord weight to an absence of concerns and a united lack of opposition from all agencies.
- (xi) We are required to form opinions on whether or not we consider the amenity and good order of the Rakaia locality would be likely to be reduced by more than a minor extent by the effects of the issue of the licence – in doing so we are guided by s.105, the extent to which and the ways in which the locality is pleasant and agreeable and having regard to the matters in s.106(1)(i) of current and possible future nuisance and vandalism and s.106(1)(ii) of the number of premises for which licences of the kind concerned are already held.
- (xii) In relation to conditions, we have a wide discretion (s.117) which is constrained by the need for any conditions we consider to be reasonable, proportionate, and likely to ameliorate a risk we might identify and achieve an identifiable benefit.
- (xiii) If we conclude that granting the application would be consistent with section 4 – the object of the Act – we may impose any or some of the agreed suite of undertakings and/or any conditions if we consider granting the application is consistent with the object of the Act and the imposition of undertakings or conditions will enhance that consistency. What we think that means in this case is that before we consider the suite of undertakings accepted by the applicant, and reiterated through Counsel, we must first have come to a conclusion that the Applicant is eligible to have its off-licence granted consistent with section 4 (and the other criteria). If we do not reach that positive position we need not consider the proposed undertakings or any conditions at all. If we reach positive conclusions on the criteria and section 4 then we need to turn to the agreed undertakings and to any conditions and approach them in the way outlined by Justice Gendall in *Vaudrey* [2015] NZHC2749 at [14](g), and Justice Gendall in the *Johnsonville Club* case [1999] NZAR360, (that is, they must be reasonable and proportionate).

Discussion

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

*“[20] Although the “object” of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the “object” of the legislation. It seems to me that the test may be articulated as follows:
Is the Authority satisfied, having considered all relevant factors set out in s.105(1)(b)-(k) of the 2012 Act, that the grant of an off-licence is consistent with the object of that Act?*

That is the approach I take to the appeal.”

- [144] Having set those statutory provisions and the guidelines from case law as to the correct approach we will now proceed to discuss the application and the evidence in the light of those considerations.
- [145] We can immediately dispose of some of the non-controversial criteria and considerations. We are satisfied, from our consideration and evaluation of the evidence, that this application raises no concerns in relation to the considerations set out for us in section 105(1) –
- (i) (b) – suitability of the applicant
 - (ii) (c) - any local alcohol policy
 - (iii) (d) - the days and hours of the proposed licence
 - (iv) (g) - what the licensee sells or doesn't sell by way of other services
 - (v) (j) - appropriate systems, staff, and training to comply with the law
- [146] We are minded that the agencies did not report any adverse findings in respect of the Applicant and his company. They are satisfied that Mr Brown is a competent hands-on licensee and manager. Mr Brown operates similar bottlestores in two other rural Canterbury towns, servicing comparable country areas, without a known increase in alcohol related harm. Mr Brown has training and systems for his businesses that are conducive to setting and holding to the standard required, looking after patrons, and for the responsible sale, supply and consumption of alcohol.
- [147] The opposition that has been conveyed either verbally or in writing to the Committee by the Objector, Mr Pluck focuses on;
- (i) There is no need for another liquor outlet in Rakaia. There are two taverns, a grocery store, a restaurant and sports clubs
 - (ii) Competition from a new cheap outlet, able to purchase in bulk, will help drive down prices and encourage people to purchase more alcohol based drinks
 - (iii) A standalone bottlestore will encourage young people to drink alcohol by promoting RTDS
 - (iv) Alcohol is already sold at each end of the main shopping street, the Railway Tavern at one end and the grocery shop at the other
- [148] The Committee is not of a mind to accept a broadening of the objections submitted by Mr Pluck beyond the grounds stated in his Notice of Objection.
- [149] Several witnesses also conveyed to us their concerns relating to the opening of another outlet in the town and what they view as increased availability and an increased exposure to young people.

- [150] As a result of the matters raised by the Objector and the evidence we received we consider the real concerns in this application are in relation to some considerations set out for us in section 105(1), and that these concerns involve:
- (i) s.105(1)(e) – the design and layout of the premises, subject to our comments earlier about the agreed undertakings available to us, and
 - (ii) s.105(1)(f) – what the licensee sells or doesn't sell by way of other products – with confirmation from questioning that tobacco and cigarettes will be sold, and after making our decision in respect of s.32(1)(b) in terms of retail premises, and
 - (iii) s.105(1)(h) and s.106(1) – what effect, if any, granting this licence would have on the amenity and good order of the locality, having particular regard to nuisance and vandalism factors and the number of premises for which licences of the kind concerned are already held; and
 - (iv) s.105(1)(a) and s.4 – the object of the Act.

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

The design and layout of the proposed premises

[152] The Representative of the Medical Officer of Health, Mrs Newton withdrew an interim objection, after sighting the proposed premises with the Licensing Inspector and Mr Brown. Subsequent undertakings submitted during the questioning of the Licensing Inspector were accepted by the applicant and acceptance further confirmed in the applicant's closing submission.

[153] These undertakings covered matters raised during the hearing, including from Mr Brown's brief of evidence, the Licensing Inspector's evidence at the hearing and also matters Mr Brown discussed with the representative of the MOH (Ms Newton) at the meeting at the premises 3 October 2019 when the Licensing Inspector (Mr Ratten) was also present:

- (i) Design and layout of premise interior: Mr Brown would use the CPTED principles, plan provided by MOH from earlier discussion, also submitted by applicant, to be finally agreed and then inspected by Ms Newton and Mr Ratten once completed and prior to any opening
- (ii) One way film to be attached to the street windows, so that no-one can see into the premise from the footpath
- (iii) Exterior signage to be further discussed and be similar to comparable outlets in Ashburton
- (iv) An OPEN sign only on the footpath, perhaps rotating
- (v) Thirsty Liquor monthly specials material on the window facing outwards, limited to one A4 sized sheet
- (vi) The overall exterior appearance will be further discussed with the parties, including the Logo usage on the exterior as discussed previously with the two agencies.

[154] Should the licence be granted, Mr Ratten would arrange for Ms Newton, Mr Pluck and himself to meet at the premises with Mr Brown for discussions prior to any work beginning that involves these undertakings. The parties would meet again at the premises prior to the opening of the premises for the agencies to discuss whether the undertakings have been met to their satisfaction. Mr Pluck will be included in discussions but cannot override the decision made by the two agencies.

[155] The store plan utilises the existing Darfield premises as a template. Mr Brown would use the CPTED principles, the plan provided by MOH from earlier discussion, also submitted by the applicant, to be finally agreed and then inspected by Ms Newton

and Mr Ratten once completed and prior to any opening The proposed film on the windows, limited product advertising on the windows, and the restricted exterior signage will limit exposure of alcohol to people passing the premises, particularly children. Security measures, including CCTV, alarms and exterior lighting will also be in place.

[156] We are assured that the interior layout will allow for the visibility of customers entering and also within the store particularly from the counter inside the front entry.

[157] The Committee found the position taken by Mr Brown to be realistic and in our opinion he has displayed an ongoing spirit of co-operation and commitment to involve both the community and two agencies in store layout and branding decisions.

What the applicant intends or proposes to sell on the premises by way of other products

[158] At the end of all the evidence, we considered a response made in the completing of the Good Order and Amenity Questionnaire that was contrary to the response given during questioning. We were told that the applicant intended to sell tobacco and cigarettes, yet the completed form in support of the application does not reflect this answer.

[159] We express our disappointment at the filing of an inaccurate form and while we acknowledge that we had other options open to us as to how we might deal with this matter, we chose to consider the matter under this criteria.

[160] The relevance of the sale of tobacco and cigarettes to this factor of our evaluation is that as a retail premises the applicant is limited to selling 15% non-alcohol product.

[161] We do not have any evidence that would lead us to a finding that the applicant has any intention other than to comply with s.32 of the Act.

[162] It is our considered view, following our evaluation that we will accord the applicant the benefit of the doubt. We are satisfied that the response in the questionnaire was a genuine mistake. Mr Brown's experience, particularly in operating his own rural bottlestore businesses, leads us to a conclusion that he will manage this store within the parameters that this factor requires.

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

[163] In *Progressive Enterprises Ltd v North Shore City Council* (2005) 11ELRNZ 421, [2006] NZRMA 72 (HC), the Court considered the meaning of "minor" in the context of the Resource Management Act 1991 and concluded that it must bear a meaning consistent with the general policy of participation which lies at the heart of the Resource Management Act. The Court considered that the dictionary senses of "petty", "comparatively unimportant", "relatively small or unimportant.... of little significance or consequence" captured the legislative purpose.

[164] The applicant and indeed, those we heard from within the community acknowledge that the locality around the proposed premises is agreeable and pleasant. Rakaia is enjoyed by long term residents and families, tourists and visitors to the area. Mr Pluck provided us with a copy of the Rakaia Community Association constitution and we note that the mission statement speaks of "working together to develop the Rakaia

area as a great place to live, work, do business and enjoy recreation". To us, this reflects pride and a proactive caring in the community.

- [165] We accept Mr Pluck's assertion of time constraints in respect of gaining authorisation through an RCA meeting and his telling us that the next meeting of the RCA will confirm and record their authorisation for his objection on their behalf. We accept that a number of emails, although not produced, supported the objection.
- [166] Mr Pluck lives in Methven and referenced the proposed business a number of times to a super cheap liquor outlet in Methven, not of the same franchise, and his understanding of that store has formed to a large extent, the view that he has projected towards this application. We are of the view that Rakaia has its own unique rural demographic which cannot be readily compared to the seasonal visitor numbers that a successful skifield town attracts. Mr Brown is proposing a business based in Rakaia which will service the same catchment potentially as Mr Pluck's own business, providing customers with a choice as to travelling further afield or not.
- [167] We have been guided by having regard to the matters in s.106(1)(ii) of current and possible future nuisance and vandalism. Mr Brown is not aware of complaints of nuisance and vandalism in the immediate vicinity. He has committed to keeping the exterior of the premises and footpath clean and tidy as well as offering to collect rubbish from the grassed area around the outdoor table opposite the premises by the railway line. The litter in railway line area was of concern to one of the witnesses. While nuisance was also a concern of Mr Burrowes he admitted that his research was minimal.
- [168] We noted Mr Brown's initiatives and willingness in offering to look after the recreational grassed area across the road from the premises. This will assist in reducing risk in terms of an increase in litter should the licence be granted. We were impressed by the efforts, voiced by a witness, that members of a community group undertakes, to keep this public grassed area alongside the railway line through the town tidy and litter free.
- [169] Currently there is not an issue with noise levels and it is not inferred that the proposed business is likely to affect noise levels adversely going forward. The proximity of residential housing is not a factor in this application.
- [170] The MOH representative and the Licensing Inspector did not report adversely. The Licensing Inspector views the premises as a destination, looking to service the wider area similar to the applicant's Darfield store. The reporting agencies did not express any concerns about sensitive areas that could be impacted by this application.
- [171] We have also had regard to the matters in s.106(1)(iii), of the number of premises for which licences of the kind concerned are already held. The Objector and some of his witnesses do not see a need for another licensed premises in Rakaia. Currently the Four Square holds an off-licence, for sales of wine and beer. The owner informed the Licensing Inspector that she does not see a bottlestore being competitive with wine and beer. Two taverns each hold off-licences for a small and limited range of alcohol for sale for consumption off the premises. The applicant intends to stock upper end of the market products not readily available currently, including wines and spirits and also a range of low alcohol products. Mr Pluck confirmed that the majority of outlets sell and supply liquor in a safe and responsible manner.
- [172] The Committee has considered the evidence of competition resulting in lower prices for alcohol from the other three off-licences in a rural town, including a witness's

statement of the Health Promotion Agency position that increased competition results in increased sales. We are guided by *Tony's Liquor Upper Hutt Ltd [2014]* NZARLA PH171, at [24];no intention that the applicant "*will compete against its competitors on price, does not mean however that the competitors will not compete on price when a new bottlestore enters the market*". The effect of a new entrant to a confined marketplace is not an issue for the Committee to consider unless the proposal offends against the Act.

[173] We have considered and evaluated Mr Pluck's views that a standalone off-licence will encourage those who do not usually drink hard liquor to start buying it, that the store will make alcohol more tempting and expose young people to alcohol. No evidence was produced in support of these claims. The presence of on and off-licences in the town over many years, including a readily accessed licensed grocery store, leads us to believe that any novelty effect would likely be of short duration.

[174] In considering the number of premises in the town for which licences of a kind are already held, we have had regard to all relevant considerations. Rakaia, while its population is in the vicinity of 1300, services a rural community estimated by Mr Brown to have a catchment of around 7,000. SH1 daily traffic count is some 14,000 vehicles. The applicant has advised that his experience with his other two semi rural off-licence bottlestores is that a large proportion of his customers live outside the immediate vicinity. He has this same expectation for a bottlestore in Rakaia.

[175] In our opinion, for the reasons discussed after evaluating the evidence and the matters in s.106(1)(a) in particular, the amenity and good order of the locality would be likely to be reduced to more than a minor extent by the effects of this applicant company operating a standalone bottlestore on the proposed site.

The Object of the Act

[176] Our approach to section 4 has been on the basis that our decision must be consistent with both aspects in subsection (1)(a) and (1)(b).

[177] We have made a merits based determination as to whether or not the application should be granted. We have had regard to the matters identified in section 105(1) and in turn with matters in section 106(1)(a)(ii) and (iii). We have had regard to the matters which we considered held a fundamental significance. We understand that our role is an evaluative one, in an inquisitorial sense.

[178] The Applicant has had the opportunity of operating similar premises to bring positive experiences to this application. He has also displayed a corresponding acceptance of individual and company responsibility, demonstrating to the Committee that the holding of these licences is indeed viewed as an earned privilege and not a right.

[179] The lack of matters of concern from the agencies coupled with an assessment of the past and potential issues raised by the Mr Pluck on behalf of the Rakaia Community Association give rise to an inevitable conclusion for us in terms of future risk. In our opinion the sale and supply of alcohol will be undertaken safely and responsibly at the proposed standalone bottlestore with the grant of this off- licence.

[180] We listened to Mr Pluck and his witnesses express their concerns for the Rakaia community to us. This same community has the right to expect that all of the premises in the town operate within the "rules", in this case, within the Sale and Supply of Alcohol Act 2012 and minimise alcohol related harm. We also note that Mr Brown appears to be encouraging of an effective working relationship with the

agencies and of including the community via Mr Pluck in the layout, store branding and appearance.

- [181] The Licensing Inspector and the MOH representative do not believe that there will be an increase in the level of alcohol related harm in the area through the establishment of this standalone bottlestore.
- [182] We have accorded weight to the united lack of opposition and lack of concern of the reporting agencies. We are persuaded by the report and evidence by the Licensing Inspector that is convincing and cogent - including a suite of undertakings raised for consideration and licence conditions which were not challenged. We have no evidence that the Applicant has done other than engage in responsible trade in his existing rural bottlestores, in line with legal requirements and intends to do so in Rakaia should the off-licence be granted. It is our view that there is no doubt that there is an adequate understanding, current and past experience of the safe and responsible sale and supply of alcohol for the proposed premises to operate within the Object of the Act.
- [183] In our opinion, the premises do not present an elevated risk picture – the sale and supply of alcohol should be undertaken safely and responsibly. We are satisfied that any alcohol related harm from the excessive and inappropriate consumption of alcohol that may be attributed to the introduction of this licensed premises will be minimised.

Summary

- [184] For the reasons summarised we find this applicant is suitable to hold an off-licence under the Act.
- [185] We stand back and we weigh everything before us. We conclude this Applicant is able to comply with the object of the Act. In particular – we are satisfied that:
- (i) The sale and supply and consumption of alcohol would be undertaken safely or responsibly in the future at the standalone bottlestore;
- AND
- (ii) That harm caused by excessive or inappropriate consumption of alcohol would be minimised if we grant this off-licence for this applicant.
- [186] As we have concluded that the Applicant is able to comply with the object of the Act, consideration of the suite of undertakings and of the licence conditions for an off-licence is open to us.
- [187] We accept the undertakings given and the licence conditions provided and have factored these into our evaluation. We view these undertakings as a sign of good faith on the applicant's part and Mr Pluck's inclusion in the related discussions as positive for the community.
- [188] The Committee unanimously determined to grant the application for the off-licence to Townill Limited for the premises to be known as Thirsty Liquor Rakaia, with the following agreed undertakings and licence conditions, for a period of 12 months.
The Committee refers to the ARLA Lyger decision and it's stance on the object of the Act. The Committee reiterates that there was no question of any pre-determination. We reinforced that the existence of this suite would in no way be an indication of granting the licence with these undertakings, rather we acknowledge that they allowed the Committee to be fully informed as to all options open to us when

evaluating the evidence, forming opinions and making decisions and in our standing back.

Undertakings

These undertakings covered matters raised during the hearing, including from Mr Brown's brief of evidence and also matters Mr Brown discussed with the representative of the MOH (Ms Newton) and the Licensing Inspector (Mr Ratten) at the proposed premises 3 October 2019.

- (i) Design and layout of premise interior: Mr Brown would use the CPTED principles, plan provided by MOH from earlier discussion, also submitted by applicant, to be finally agreed and then inspected by Ms Newton and Mr Ratten once completed and prior to any opening, and*
- (ii) One way film to be attached to the street windows, so that no-one can see into the premise from the footpath, and*
- (iii) Exterior signage to be further discussed and be similar to comparable outlets in Ashburton, and*
- (iv) An OPEN sign only on the footpath, perhaps rotating, and*
- (v) Thirsty Liquor monthly specials material on the window facing outwards, limited to one A4 sized sheet, and*
- (vi) The overall exterior appearance will be further discussed with the parties, including the Logo usage on the exterior as discussed previously with the two agencies.*

Paragraph 154 herein covers the process to take place for the completing of these undertakings.

Conditions

The off-licence is subject to the following conditions:

SECTION 116 (1-2)

- (a) No alcohol may be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1pm on ANZAC Day.
- (b) Alcohol may only be sold or delivered on the following days and during the following hours

Monday to Sunday from 9.00am until 9.30pm.

- (c) Signage must be displayed stating (directly or by description) a place or places on the premises at which drinking water is freely available to customers, while alcohol is being supplied free as a sample on the premises.
- (d) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - Display of appropriate signs adjacent to any point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (e) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - Alcohol must only be sold, supplied within the area marked on the plan submitted with the application.
- (f) The whole of the premise is **Supervised**.

(g) Only the area, delineated on the plan attached to the application, is a permitted area for the display and promotion of alcohol.

SECTION 117

- (a) The following steps must be taken to promote the responsible consumption of alcohol:
- The licensee must implement and maintain the steps proposed in their host responsibility policy aimed at promoting the reasonable consumption of alcohol.

OTHER RESTRICTIONS AND REQUIREMENTS

Section 56 – Display of signs

Section 57 – Display of licences

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

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

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

The applicant must comply with all conditions on a licence.

APPENDICES

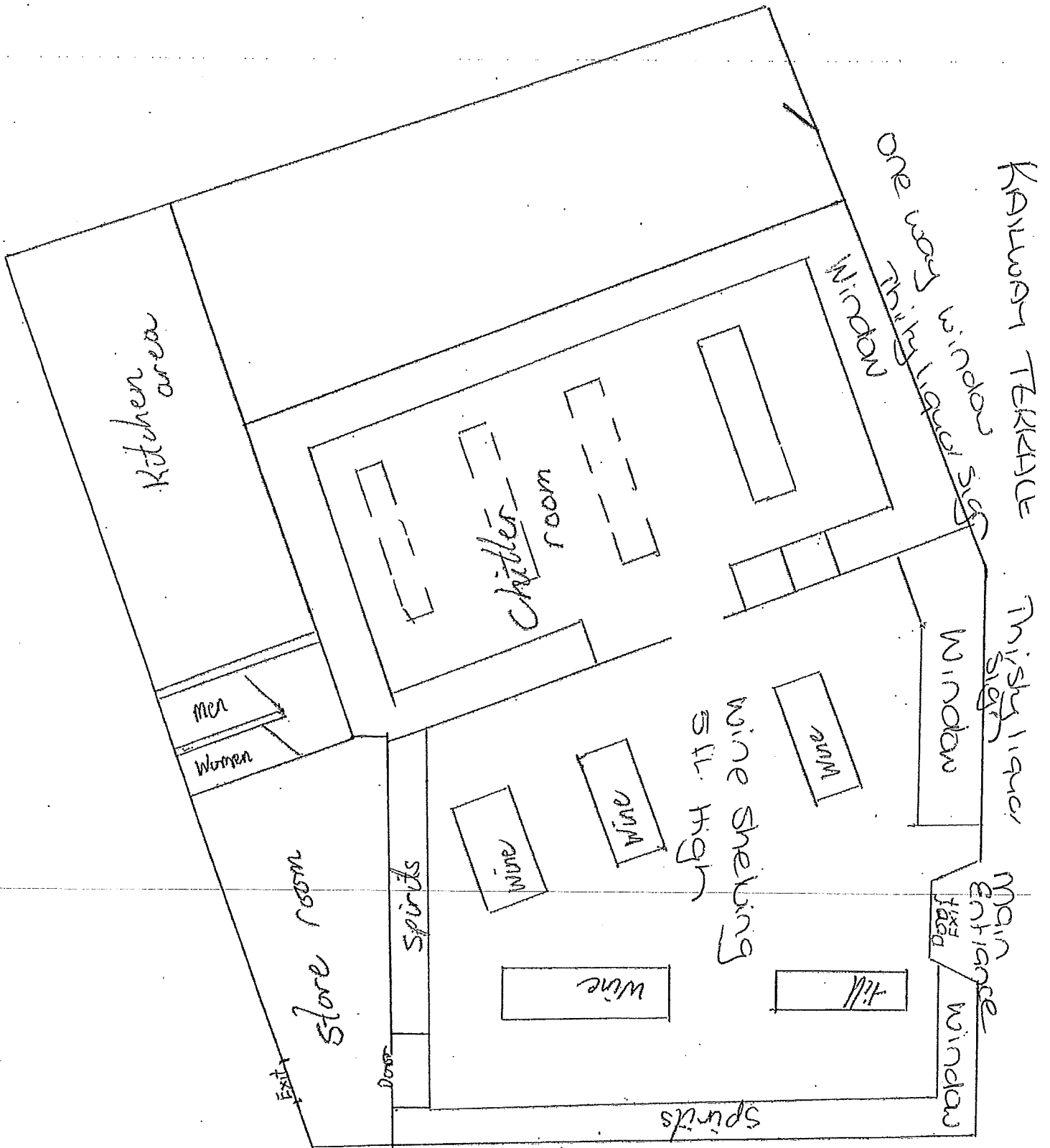
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| A | Plan of the interior of the Thirsty Liquor Rakaia premises |
| B | Minute 5.11.19 Record of DLC visiting premises |
| C | Minute 24.10.19 Record of Undertakings raised at the hearing |
| D | Memorandum 9.10.19 from the Applicant, witness Briefs of Evidence |
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| G | Email 10.10.19 MOH letter 19.8.19 posted, not received until 17.9.19 |
| H | Email 15.10.19 Chair to Secretary requesting Applicant to produce documents for parties to view at hearing |

DATED at Ashburton this 10th day of December 2019

Chairperson
Ashburton District Licensing Committee

Appendix A



IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **TOWNILL LIMITED**
for a new Off Licence pursuant to s.99 of
the Act in respect of premises situated at
114 Railway Terrace, Rakaia, known as
"Thirsty Liquor Rakaia".

MINUTE

This minute relates to an application by Townill Limited for a new off-licence. The hearing took place in Ashburton on 23 October 2019.

The members of the DLC have visited Rakaia:

Members of the DLC have been to Rakaia to see the location of the proposed Thirsty Liquor premises, the actual building in its immediate environment and to view various properties spoken about in evidence. These included but were not limited to, the scout den and its location, the two hotels, the Four Square Foodmarket, the takeaway shop and other businesses and sports clubs referred to. We also viewed neighbouring sites including the tidy area alongside the railway line with its seats and trees.

We stood by the grass area across the road from the proposed premises, watched traffic flow and movement and endeavoured to ascertain the building's visibility from the state highway.

No questions came to mind either during or following our time in Rakaia.

DATED this 5th day of November 2019



S Griffin
Chairperson
Ashburton District Licensing Committee

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **TOWNILL LIMITED**
for a new Off Licence pursuant to s.99 of
the Act in respect of premises situated at
114 Railway Terrace, Rakaia, known as
"Thirsty Liquor Rakaia".

MINUTE

This minute relates to an application by Townill Limited for a new off-licence. The hearing took place in Ashburton on 23 October 2019.

Prior to the end of the hearing Counsel for the applicant, Mr Egden, requested that undertakings raised by the Licensing Inspector and put to Mr Brown, be sent to the parties. The DLC confirmed that while there was no pre-determining the outcome of the hearing, options like undertakings previously raised and agreed may then be considered as part of the decision making process should the DLC be of a mind to grant the new off licence.

The undertakings raised were:

1. Design and layout of premise interior: Mr Brown would use the CPTED principles, plan provided by MOH from earlier discussion, also submitted by applicant, to be finally agreed and then inspected by Ms Newton and Mr Ratten once completed and prior to any opening
2. One way film to be attached to the street windows, so that no-one can see into the premise from the footpath
3. Exterior signage to be further discussed and be similar to comparable outlets in Ashburton
4. An OPEN sign only on the footpath, perhaps rotating
5. Thirsty Liquor monthly specials material on the window facing outwards, limited to one A4 sized sheet
6. The overall exterior appearance will be further discussed with the parties, including the Logo usage on the exterior as discussed previously with the two agencies.

These undertakings covered matters raised during the hearing, including from Mr Brown's brief of evidence and also matters Mr Brown discussed with the representative of the MOH (Ms Newton) and the Licensing Inspector (Mr Ratten) at the premise 3 October 2019.

Should the licence be granted, Mr Ratten would arrange for Ms Newton and himself to meet at the premise with Mr Brown prior to the opening of the premise to agree that the undertakings have been met to their satisfaction. Mr Pluck would also attend.

However, discussions with Mr Pluck, the Licensing Inspector and the representative of the MOH would take place at the proposed premise with Mr Brown, prior to any work beginning that involves these undertakings.

Due dates for Closing Submissions to be received by the Secretary are as follows:

The objector, Mr Pluck on behalf of the Rakaia Community Association, to be received by 4.00pm, Wednesday 13 November, 2019;

Mr Egden, Counsel for the applicant, to be received by 4.00pm, Monday 25 November 2019.

DATED this 24th day of October 2019



S Griffin
Chairperson
Ashburton District Licensing Committee

IN THE MATTER

of the Sale & Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an Application by
TOWNILL LIMITED for
issue of an off-licence
pursuant to s99 of the Act
in respect of premises
situation at 114 Railway
Terrace, West Rakaia, to
be known as **THIRSTY
LIQUOR RAKAIA**

MEMORANDUM OF COUNSEL FOR APPLICANT

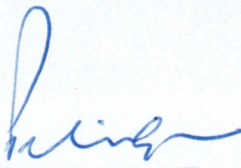
Counsel Acting:

P J Egden
Barrister
PO Box 29599, Fendalton
Christchurch
Telephone: (03) 961-4020
Facsimile: (03) 961-4021

MAY IT PLEASE THE COMMITTEE:

1. I have been served with a copy of Mr Pluck's Brief of Evidence.
2. Please note the applicant's objection to Mr Pluck calling evidence from the eight persons referred to in his Brief of Evidence. All parties were required to file Briefs of Evidence by close of business day 8 October 2019. This clearly includes evidence from potential witnesses. Mr Pluck has not complied with this direction. It is entirely inappropriate that Mr Pluck should provide his summary of what potential witnesses may say without providing written Briefs of Evidence for them.
3. Furthermore, the evidence of any witnesses called by an objector must strictly relate to the grounds of objections advanced by the objector in the objection filed within the statutory time limit. The objector's evidence and the evidence of any witnesses called by the objector must be confined to a matter specified in s105 of the Act .It is not an opportunity to argue the pros and cons of alcohol generally or how alcohol might affect particular individuals or sectors of society.

DATED this 9 day of October 2019



P J Egden

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **TOWNILL LIMITED**
for a new Off Licence pursuant to s.99 of
the Act in respect of premises situated at
114 Railway Terrace, Rakaia, known as
“Thirsty Liquor Rakaia”.

Chairman: Mrs S Griffin

MINUTE

This minute relates to an application by Townill Limited for a new off-licence. There is one public objector who has eight witnesses from the community. A hearing has been set down for 23 October 2019. The Medical Officer of Health advised in the letter of 19 August 2019 that the application is opposed until a final report is completed upon inspection of the premises.

Counsel for the applicant, Mr Egden, recorded an objection 9 October 2019 and further to that, 11 October 2019, on behalf of the applicant.

Mr Egden has rightly pointed out that the witnesses do not have the status of objectors in their own right. They remain witnesses in support.

To remove doubt, the objector wishes to call witnesses to give evidence in support of his objection. It is up to the objector to provide the Briefs of Evidence of these intended witnesses to the Secretary by 4pm, Tuesday 15 October 2019.

The Committee further points out that the statements in the objector's own Brief of Evidence are not a Brief of Evidence from each person mentioned as a witness or potential witness.

Again, we remind the objector that no objection may be made in relation to a matter other than a matter specified in section 105 of the Act.

DATED this 11th day of October 2019



Chairperson
Ashburton District Licensing Committee

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **TOWNILL LIMITED**
for a new Off Licence pursuant to s.99 of
the Act in respect of premises situated at
114 Railway Terrace, Rakaia, known as
“Thirsty Liquor Rakaia”.

Chairman: Mrs S Griffin

MINUTE

This minute relates to an application by Townill Limited for a new off-licence. There is one public objector who has eight witnesses from the community. A hearing has been set down for 23 October 2019. The Medical Officer of Health advised in the letter of 19 August 2019 that the application is opposed until a final report is completed upon inspection of the premises.

Counsel for the applicant, Mr Egden, has recorded an objection 9 October 2019 on behalf of the applicant. The objection is in respect of Mr Pluck's calling eight persons referred to in his Brief of Evidence, without each filing a written objection within the statutory time limit.

The process under the new Act has been heralded as being one where communities can have more input into the licensing regime. District Licensing Committees need to hear first-hand what communities are saying in relation to alcohol and their communities. When objections are raised they should be provided to us as evidence. In this way, the evidence can be tested at the hearing and later, evidentially weighed. The Committee believes that members of the community usually find it beneficial to have their written objection in front of them when being questioned at a hearing.

The Act requires that objections are in writing and filed in accordance with the timetabling directions in advance of the hearing. The applicant is then able to address the objections in submissions.

The Committee will allow the objector's witnesses until 4pm, Tuesday 15 October 2019, to provide their objection in writing to the Secretary. We are of the view that the granting of this extension still leaves sufficient time for the applicant and parties to respond at the hearing to any matters raised by the witnesses. We remind the objector and their witnesses that no objection may be made in relation to a matter other than a matter specified in section 105 of the Act.

An extension of time should apply to all parties.

The applicant is afforded the opportunity to respond to this minute if there are matters which it believes the Committee should be aware of in relation to the extending of time. If a response is not received by the Secretary prior to 4pm, Wednesday 16 October 2019, then the Committee will assume that the applicant has no matters to raise.

DATED this 11th day of October 2019

Chairperson
Ashburton District Licensing Committee

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by **TOWNILL LIMITED** for a new Off Licence pursuant to s.99 of the Act in respect of premises situated at **114 Railway Terrace, Rakaia**, known as “**Thirsty Liquor Rakaia**”.

Chairman: Mrs S Griffin

MINUTE

This minute relates to an application by Townill Limited for a new off-licence. There is one public objector and a hearing has been set down for 23 October 2019. The Medical Officer of Health has opposed the application and advised in the letter of 19 August 2019 that the application is opposed until a final report is completed upon inspection of the premises.

The objection from the Medical Officer of Health has been included in the hearing documents as an interim objection. The letter dated 19 August 2019 was not received by the Secretary of the Ashburton District Licensing Committee until 17 September 2019, after the reporting timeframe had passed. The representative of the Medical Officer of Health, Ms Newton, has confirmed that this letter was completed and posted on 19 August 2019. Submissions were received in accordance with timetabling directions.

The Committee accepts the explanation given.

The letter dated 19 August 2019 will be accepted as the record of initial objection for the Medical Officer of Health.

DATED this 10th day of October 2019.

Chairperson
Selwyn District Licensing Committee

Appendix H

From: Darryl Griffin <dgriffin@xtra.co.nz>
Sent: Tuesday, 15 October 2019 13:43
To: Rick Catchpowle <Rick.Catchpowle@adc.govt.nz>
Subject: RE: Urgent re ADC Hearing

Thanks Rick.

The DLC is requesting that the following documents in respect of the applicant, be brought to the hearing.

The training manual for the proposed bottlestore or one that will be the basis for this.

Copies of the monthly specials issued by Thirsty Liquor over the last 3-4 months, so that the parties can see what these might look like – the applicant has stated the monthly specials A4 sheet will be placed on the window of the proposed premises.

We want to understand what the incident book will look like new if there is one. And perhaps (copies of) several pages from the incident book from another of the applicant's premises, but not identifying full names.

Any other documentation that the applicant feels may be useful for the parties to see.

Kind regards

Sue