

Khandallah

Decision number:

49B/2019/NZDLCWN/1654

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Plenitude Limited in respect of an application for a new off-licence for premises situated at 5 Ganges Road, Khandallah, Wellington, to trade as "Bottle-O Khandallah" SR 429010

HEARING DATES

13, 14, 15 and 16 August 2019

COMMITTEE

Mr Woodhouse (Commissioner)
Ms Thomson (Member)
Mr Tuffs (Member)

DECISION OF THE WELLINGTON DISTRICT LICENSING COMMITTEE

APPEARANCES

Mr Badiyani (Director of the applicant company)
Mr Young (Counsel for the applicant)
Mr Whelan (Licensing Inspector)
Ms Young (For Medical Officer of Health)
Dr Palmer (Medical Officer of Health)
Mr MacKenzie (Counsel for the Khandallah Comerstone Resource Centre Trust Board)
Ms Pears (Co-counsel with Mr MacKenzie)
Ms Giselle Bareta (Objector)
Mr Allen Johnson (Objector)
Dr Nick Lambrecht (Objector)

Ms Evelyn Dawson (Objector)
Mr John Dawson (Objector)
Ms Viv Chapple (Objector)
Mr Keith Newell (Objector)
Ms Carol Stigley (Objector)
Mr Paul Stigley (Objector)
Mr Warren Honeyfield (Objector)
Ms Jenny Leith (Objector)
Councillor Simon Woolf (Objector)
Mr Lawrence Collingbourne (Objector)
Mayor Justin Lester (Objector)
Councillor Diane Calvert (Objector)
Mr Paul Thomas (Expert witness called by objectors)
Dr Eric Crampton (Expert witness called by applicant)

DECISION

1. The application for a new off-licence is declined.

SUMMARY

2. The Wellington District Licensing Committee must consider an application from Plenitude Ltd, seeking a new off-licence for premises that would be located in the Khandallah Village, at 5 Ganges Road, Khandallah.
3. The application is not opposed by any of the reporting agencies, but attracted some 538 written notices of objection. However, the Committee recognised of these only 178 objectors as having standing to object.
4. The primary concern presented by the objectors, related to amenity and good order concerns that the premises would present to the Khandallah village. During the course of the application and hearing, a further issue arose with respect to suitability.
5. For the reasons as we will set out below, we conclude that this new off-licence should not be granted. We consider that if this new off-licence was granted, there would be more than a minor impact on the amenity and good order of the locality. We have also been unable to satisfy ourselves that the applicant is suitable to be granted a new off-licence.

BACKGROUND

6. An application was filed with the Committee on 28 February 2019 by Omega Hospitality, on behalf of Plenitude Ltd. The application was for a new off-licence for premises to trade as a bottle store.

7. Soon after the application was publicly notified, significant public opposition to the application arose.
8. Mr Badiyani, director of the applicant company, attended a public meeting in Khandallah to discuss the application. The Committee was advised that approximately 200 to 300 members of the community attended, and that the attendees were unsupportive of a new off-licence opening in the village. Mr Badiyani made offers and undertakings to the community, such as funding a further community defibrillator, as well as undertakings in relation to hours, and how the exterior of the store would be branded. The community remained resolute in objecting to this application.
9. Given the application was the subject of public objection, a hearing of the DLC was required. After confirming the objectors with standing, a hearing was scheduled and convened in Wellington over a four-day period between 13 and 16 August 2019. The hearing concluded around mid-day on 16 February 2019, following which the Committee undertook a site visit both in Khandallah, and at a store run by Mr Badiyani in Petone (albeit via trading under a different company).

EVIDENCE AND SUBMISSIONS

PUBLIC OBJECTIONS

10. The Committee has, as noted, received some 538 notices of public objection. Of these, 178 were deemed to have standing, meeting the criteria set out in section 128 of the Act. At the hearing, the Committee heard oral evidence and submissions over the first two days, from 15 objectors present personally (one objector being overseas, requested that a statement be read out).
11. The objectors, save for one, had submitted statements in writing in advance which had been provided to the applicant and reporting agencies. These were generally taken as read and are not fully detailed in this decision. All objectors who were heard were available for questioning by the applicant, the Committee, the Medical Officer of Health, the Licensing Inspector and other objectors.
12. Given the volume of objections, the Committee will proceed by summarising the key areas of objection. We have set out at appendix 1 to this decision, a summary of the evidence and submissions provided by the 15 individual objectors at the hearing.
13. A large group of objectors, 88 of the 178, were represented at the hearing by the Khandallah Cornerstone Resource Centre Trust Board (the Trust). The Trust's legal representative presented written submissions to the Committee at the conclusion of the hearing, and some of the objectors represented by the Trust gave oral evidence at the start of the hearing.
14. As is normally the case, the Committee applies more weight to the evidence and submissions for objectors who attend the hearing and provided evidence

personally, thereby making themselves available for cross-examination at the same time.

15. The overwhelming concern of the objectors centred around the adverse impact this bottle store would have on the amenity and good order of their village. Concerns around the proposed days and hours of operation and the suitability of the applicant were also raised by a number of objectors. Some objectors took issue with the design and layout of the proposed premises.
16. The objectors confirmed to the Committee that they view the village as a treasure, which is unique and needs to be protected. Put simply, the objectors do not want a bottle store in their village. Some suggesting, including Mayor Lester, that there was a lack of "social licence" to operate a bottle store at this locality.
17. The village was described as set back from the main road, having a 30 kilometre speed limit, and a Town Hall, and presenting a real sense of community.
18. A large number of objectors described the village as a community hub comprising many community based amenities very close to the proposed premises, including, but not limited to:
 - a. The Khandallah Town Hall;
 - b. Public library;
 - c. PostShop/Kiwibank;
 - d. Community creche;
 - e. Plunket rooms;
 - f. Pocket park;
 - g. Dairy;
 - h. Churches;
 - i. Important commercial premises such as a pharmacy, cafes, takeaway outlets;
 - j. Kindergartens;
 - k. Schools;
 - l. Public transport hub; and
 - m. Medical centre.
19. A common theme was that many community based activities are conducted in and around the village, being a gathering place for locals.

The proximity of the proposed store to a number of sensitive sites and to other licensed outlets was concerning to many objectors. Many were concerned about the community notice board being located directly outside the proposed store's entrance.

20. Some considered the community was best placed to comment on the current amenity and good order of their community.
21. A large number of the objectors consider that a liquor store is not compatible with the village. It does not fit. The objectors believe their village should reflect who they are, and what they want to be.
22. Many objectors believe that alcohol undeniably has the potential to cause social harm. Many noted that the village has relatively limited alcohol-related trouble and crime. However, some objectors gave specific evidence of alcohol-related harm they had experienced including theft, rubbish, nuisance, damage and disorder, vandalism, drinking in the park, robberies, disease and in one instance a death related to alcohol abuse.
23. Some objectors were concerned that a Bottle-O selling spirits and RTDs would have a negative impact on minors. The availability of a fuller range of alcohol product that appeals to young people was concerning. Others expressed concern that the bottle store would expose young children to alcohol, and would normalise alcohol consumption in the community.
24. A large number of objectors believed Khandallah already had enough retail liquor outlets, and there were other bottle stores in close proximity that could be accessed should the community wish to obtain alcohol products.
25. A number of objectors did not believe that the store would be a "boutique" store as suggested by the applicant, but rather would be an ordinary discount chain liquor store.

PAUL THOMAS EVIDENCE

26. Mr Paul Thomas was called as an expert witness engaged by the Khandallah Cornerstone Resource Centre Trust Board and other objectors. Mr Thomas had provided a comprehensive written brief in advance of some 24 pages, dated 30 July 2019.
27. Mr Thomas confirmed that he is a resource management planner with some 40 years professional experience, which included a position as a director of Environmental Management Services Ltd between 1997 and 2016, a company with 15 to 20 professional staff throughout the North Island. Mr Thomas advised he has a degree in urban and regional planning, and is a member of the New Zealand Planning Institute, Resource Management Law Association, and former member of the Royal Town Planning Institute. Mr Thomas is an independent Commissioner accredited as a chair by the Ministry for the Environment.
28. Mr Thomas advised that in his opinion, the Khandallah area has the highest level of amenity, compared with any similar sized centre in Wellington. That relates to

a combination of local road access, as well as high quality buildings, with community and health services as well as a range of shopping and commercial services available. In the executive summary, Mr Thomas states that:

While the proposal is modest in scale, the position, shared entrance, frosted glass and livery of the proposed Bottle-O off licence can reasonably be expected to have more than a minor effect on the amenity of the locality.

There is a low risk of increased noise nuisance and vandalism which in this vulnerable environment would have significant amenity consequences if it arose.

29. In relation to the off-licence proposed, Mr Thomas appears to have approached the proposed premises on the understanding it was a higher end operation, noting in relation to the applicant's proposal that:

His evidence is that the shop will operate with a premium high end focus rather than a cut price bulk outlet. This will include tasting nights for certain product classes.

30. Mr Thomas noted the proposed hours of operation, and the branding on the windows including the shop veranda being painted green, with the bottom half of the front windows frosted to restrict visibility.

31. Mr Thomas notes the relevant legal consideration as it relates to amenity and good order, noting particularly section 105 and 106 definitions. The witness states that:

The critical judgement to be made is whether the effect on the locality will be more than minor. This requires careful consideration of the circumstances of each case and I endeavour to address this below. Predicting effect on amenity and good order is very much a risk assessment. Risk is a combination of the likelihood of effects occurring and the consequences of that effect in the particular circumstances.

32. Mr Thomas then sets out in reasonable detail, including with supporting photographs, the buildings and services around the premises' proposed location. In relation to the amenity of the locality, Mr Thomas acknowledged that the assessment is different to that provided in a Resource Management Act consideration, in that the assessment for licensing purposes is more subjective. Mr Thomas notes that:

The centre also provides a strong social function through the cafes, post office, wide ranging groups and activities at the Khandallah Town Hall, the Playcentre, Plunket rooms and the church and associated activities.

While other comparable centres may offer some of these services and facilities there is one telling difference that sets Khandallah apart. That's is [sic] that the centre provides solely a local access function and is not functionally a through route.

33. Mr Thomas identified that various activities occur in the evening including the supermarket being open until 9.00 pm, activities involving the church and town

hall, as well as at the local restaurant and Khandallah traders. Mr Thomas considers that:

This means that there are activities and people around the centre in the evenings. The mapping of crime statistics by suburb between 2014 and 2017 on the website ... indicates a generally low level of crime in this part of Wellington. Similarly I am not aware of any nuisance based activities currently occurring with groups of youths or boy racers.

All these factors contribute together to Khandallah having, in my assessment, the highest overall amenity of any comparable sized centre in Wellington.

The proposed Bottle-O will introduce a new element to the mix of activities in the centre although it is important to recognise that wine and beer off sales are available from the New World supermarket.

34. In relation to noise, Mr Thomas considered the locality would be expected to have generally low background noise levels when compared with other centres, noting that:

The levels are therefore vulnerable to small changes. I do not anticipate anything more than minor change during daytime as a result of the proposal. However, there is somewhat greater risk of noise in the evening particularly if this should become a location for youths who don't have other social opportunities. I note that while the Cornerstone Community Centre provides a wide range of group activities it does not include any form of youth targeted activities.

The risk of this occurring is somewhat higher because of the seating and pocket parks in the vicinity, and also the free Wi-Fi available from the Spark phone booth located immediately in front of the premises.

There is therefore in my opinion a low risk of increased noise levels which would have significant consequences for the quiet night time environment of the locality.

35. The report notes also that:

The nearest dwellings are only 50 metres from this site to the north. So increased night time people noise has the potential to cause nuisance to the owners or occupiers of these properties. Having said this the Khandallah Trading Co is similarly close to residential properties and presents a nuisance risk from people leaving the pub in the later evening.

As with noise I consider the risk of increased levels of nuisance and vandalism to be low but with high consequences for the amenity of the centre.

36. As far as other licences are concerned, Mr Thomas notes the local New World supermarket selling beer and wine, and also that the nearest alternate off licences are in Ngaio and Khandallah, concluding that:

While the wider area is well served with outlets and beer and wine are available at Khandallah, I do not consider that one additional off

licence in this location represents a dominance of this type of outlet in the centre.

37. Mr Thomas then assesses the compatibility of neighbouring land uses, noting the bright green livery used by Bottle-O, and intention to paint the veranda the bright green colour, also noting the shared entranceway with the Post Shop. Given the proposal to use a half-frosted window, Mr Thomas considered that presented a closed inactive frontage to the street. Mr Thomas concludes:

I consider that the proposal sits as being moderately incompatible with the neighbouring activities having regard to both adjacent activities wider centre activities and nearby residential activities.

This is due to:

- The general appearance of the premises including restricted visibility, and
- The shared entrance area with the Post Shop, and
- The risk of younger groups collecting to use free Wi-Fi and the pocket parks, and
- Any noise affecting nearby residents.

38. Mr Thomas concludes:

My evidence concludes that Khandallah centre has a very high level of amenity and likely the highest level of amenity of any similar sized centre in Wellington.

This is because of the combination of local road access, parking, land marked buildings, high quality public realm, community and health services and the range of shops and commercial activities.

While the proposal is modest in scale, the position, shared entrance, frosted glass and livery will have more than a minor effect on the amenity of the locality.

There is a low risk of increase noise nuisance and vandalism which in this vulnerable environment would have significant amenity consequences if it arose.

39. At the hearing, Mr Thomas summarised the key findings and conclusions that he reached, again noting the high level of existing amenity, meaning that minimal increases in adverse effects in this area, could have large effects resulting.
40. Under examination from the objectors, Mr Thomas advised that he lived in the neighbouring suburb Ngaio, and therefore was well familiar with the Khandallah village, noting also that he had spent a Thursday evening in the village when compiling his opinion.
41. Mr Whelan raised with Mr Thomas, that he had used the word 'vulnerable' on a number of occasions. Mr Thomas advised that he considered the location to be vulnerable, not the community.

42. Mr Young extensively cross-examined Mr Thomas. Mr Thomas confirmed that he is not an expert in alcohol-related harm, nor did he profess to be, but advised that he was looking at the amenity of the location, and neighbouring land uses, given the statutory considerations in the Sale and Supply of Alcohol Act 2012.
43. In relation to vandalism arising from bottle stores, Mr Thomas again considered that due to the high level of amenity in this location, any such vandalism would have a greater effect on the locality.
44. Mr Young asked whether Mr Thomas would quantify the level of impact if he were undertaking a Resource Management Act consideration. Mr Thomas confirmed that he would not necessarily undertake such an evaluation, and that in this case his assessment had been made based on what information he had available when providing his opinion.
45. Mr Thomas confirmed he had no evidence that people congregate outside bottle stores in Wellington, excepting that the risk of people congregating outside these premises to use free Wi-Fi, while drinking, would be low.
46. In relation to Dr Crampton's evidence, where Dr Crampton stated that there would be only one violent crime in addition, over 27 years, Mr Thomas accepted that would probably be a minor impact on the village overall, over that timeframe, but that it would not be a minor impact for the individuals involved. When asked how often a violent crime would need to occur, in order to present with more than a minor impact, Mr Thomas considered that it would be in the vicinity of three to four events, over a two or three year period.
47. Mr Thomas confirmed that he had considered some licensing cases but could not recall whether any of those related to areas that were non-socially deprived.
48. Mr Thomas accepted that day-to-day alcohol purchases from a bottle store would not cause unreasonable noise, particularly if the store was small.
49. Mr Young asked about the zoning of the area, and whether the proposed operation would pass the necessary Resource Management Act restrictions. Mr Thomas advised that given the area is zoned commercial, resource consent is not necessary, so it would not be considered an application within the Resource Management Act.
50. Mr Thomas provided a written summary of his evidence at the hearing. The expert's evidence is summarised in conclusion as follows:

My evidence concludes that:

- Khandallah centre has a very high level of amenity and likely the highest level of amenity of any similar size centre in Wellington.
- This is because of the combination of local road access, parking, landmark buildings, high quality public realm, community and health services and the range of shops and commercial services.

- While the proposal is modest in scale, the position, shared entrance, frosted glass and delivery of the proposed Bottle-O off-licence can reasonably be expected to have more than a minor effect on the amenity of the locality.
- There is a low risk of increased noise, nuisance and vandalism which in this vulnerable environment would have significant amenity consequences if it arose.

51. The Committee records that we found Mr Thomas to be a convincing witness. We accept Mr Thomas as an expert, and we could not see that any of his opinion evidence had been shown to be flawed.

DR ERIC CRAMPTON'S EVIDENCE

52. A written brief of evidence was provided by Dr Eric Crampton, on behalf of Plenitude Ltd, dated 6 August 2019.

53. The brief begins by setting out Dr Crampton's qualifications and experience, which are in economics, with Dr Crampton being a university lecturer. Dr Crampton states that he works for 'the New Zealand Initiative' and is currently supervising a masters student in relation to local alcohol policy. Dr Crampton states that he lives in Khandallah, some 650 m from the proposed premises, and stating that:

I have previously submitted to the District Licensing Committee in support of the application, and attended the community meeting of 17 March 2019.

54. Dr Crampton confirms that:

I have read the Code of Conduct for expert witnesses contained in the High Court Rules 2016 and agree to comply with it.

55. Dr Crampton states that he had been engaged by Plenitude Ltd to review and comment on the brief provided by Ms Bareta (one of the objectors), noting that Ms Bareta had raised three particular grounds in opposition to the application. Dr Crampton then goes on to address those grounds, and in particular some of the studies that Ms Bareta had referred to.

56. The first ground of opposition related to days and hours, and exposure to children and young people, to alcohol and alcohol advertising.

57. Dr Crampton does not consider that children and young people are realistically exposed to the premises given one primary school is 550 metres from the proposed premises, the second 800 metres.

58. In relation to one study cited by Ms Bareta, *Pasch et al*, Dr Crampton considered that the effect on children to alcohol exposure from that study, was low, and even if there was extensive advertising by the Bottle-O on the exterior premises, that the effect on children would be imperceptible. Dr Crampton expressed a view

that the study had several weaknesses, and he was uncertain whether it would be relevant in the New Zealand context:

In summary, Pasch et al finds statistically significant but absolute miniscule effects on advertising on stated youth intentions to drink alcohol, and no effect on actual youth drinking behaviour, in a study with some methodological flaws. Even if the study had been conducted without weakness, it could be difficult to extrapolate from the results in Chicago, to Khandallah ...

59. In relation to a second study, *Chambers*, Dr Crampton did not consider that was of close relevance given the lack of social deprivation in Khandallah. Dr Crampton also addressed various other studies and reports, including a report from the World Health Organisation (2009) cited by the New Zealand Medical Association, but with limited discussion.
60. Dr Crampton states that Ms Bareta had proposed sweet and fruity alcohol drinks had been developed, and are marketed to appeal to young people, but states "she provides no evidence that these beverages are linked to specific harms". Furthermore, Dr Crampton states that he understood the proposed Bottle-O for Khandallah, would not be serving or focussing on sales of products like RTDs:

I understand that the proposed bottle shop in Khandallah, is expected given the market it would be serving, would not focus on sales of products like RTDs rather the more expensive premium products, given the demographics of the local community.

61. Dr Crampton concluded that Ms Bareta had failed to establish a credible case, arguing for any harms associated with outdoor advertising from alcohol.
62. The second ground considered by Dr Crampton, related to amenity and good order.
63. In relation to the demographics of the suburb, Dr Crampton states:

Khandallah has more children under the age of 14, fewer people aged 15 to 39, and more people over the age of 40. This is unsurprising for a very expensive suburb: people cannot afford to buy a home in Khandallah until they have established themselves professionally, which excludes young workers. While there are relatively more young children, they will consequentially disproportionately be in households with older parents.

64. Dr Crampton considered that Khandallah's demographic, meant that young adults who he considered would predominate police statistics, were unlikely to be a feature of crime statistics in Khandallah:

I note here because of Ms Bareta's characterisation of Khandallah as a quiet family suburb is incomplete: it is a quiet family suburb with a disproportionately small number of people in age cohorts more associated with criminal offending. Few people with demographics consistent with higher rates of offending can afford to live in Khandallah.

65. Dr Crampton disagreed that Khandallah was sufficiently served with licensed premises as proposed by Ms Bareta, as if that were the case, Dr Crampton did not consider that an entrepreneur like Mr Badiyani would "find Khandallah an inviting locale for a new bottle shop".
66. Dr Crampton also addressed a further study cited by Ms Bareta, *Cameron et al* (2017) which considered the interrelationship between alcohol outlets and harm in New Zealand between 2007, and 2014. Ultimately Dr Crampton considered that the paper from *Cameron* supported an increase in harm with a greater number of off-licences, although Dr Crampton did not consider that the study was sufficient to establish with certainty what the outcome would be, shifting from an area with one off licence to two. That was particularly given Dr Crampton asserted that given likely rents in Khandallah, that these proposed premises would be unlikely to compete with other off-licences on price. Based on the *Cameron* study, Dr Crampton considered that there would only be one additional violent offence occurring every 21 years as a worst case scenario, if the new licence for the premises was approved.
67. Dr Crampton noted Ms Bareta's reference to violent offending at six other bottle stores, but discounted that as being a likely scenario in Khandallah given the demographics of those living in Khandallah. Dr Crampton considered that "it is unlikely that anyone would drive all the way to Khandallah to rob a bottle shop".
68. Dr Crampton did not consider that Ms Bareta had established that there would be any noticeable effect on amenity and good order for this community.
69. Dr Crampton did not consider that any issues arose with design and layout.
70. Dr Crampton concluded by noting that he had rarely heard intoxicated young people in Khandallah, and confirming he would be comfortable with a bottle store opening in his community.
71. At the hearing on 15 August 2019, Dr Crampton attended and provided oral evidence.
72. Dr Crampton confirmed that he is an economist, qualified to the PhD level, specialising in price theory. Dr Crampton confirmed that he had reviewed the studies cited by Ms Bareta, with the exception of a particular book, that he did not have access to.
73. In relation to the exposure to alcohol, Dr Crampton confirmed that he was not able to identify any studies that were on point, for children in Khandallah. Furthermore, Dr Crampton was unconvinced that international studies would be of direct relevance in any event.
74. Dr Crampton considered that youth drinking had been dropping substantially over time.
75. In relation to amenity and good order, again Dr Crampton emphasised that he did not consider that the demographics of people living in Khandallah, were consistent with crime statistics, noting that criminality is normally associated with young men, who are not prevalent in the Khandallah community.

76. Reference was made to 'Nelsons Meta Study' from 2011, which concluded that there were limited effects from external advertising on drinking. Reference was made to a particular study from California, that concluded that bottle stores resulted in a reduction of drink driving.
77. The Committee inquired what Dr Crampton's expertise was in relation to alcohol-related harm. Dr Crampton advised that he had lectured on a paper regarding the economics of crime, and wrote a paper that was published by the New Zealand Medical Journal (in the opinion section). The Committee asked whether that report had been peer reviewed, but Dr Crampton was uncertain whether it had.
78. Dr Crampton was specifically asked whether he was presenting himself as an expert in alcohol-related harm. Dr Crampton advised that he was presenting himself as an expert in reading reports, but confirmed that he had not undertaken significant work in relation to alcohol-related harm.
79. The Committee noted Dr Crampton's evidence that the applicant was not going to be focussing on RTD products, and inquired whether he had read the applicant's brief, and whether he was aware of the proportion of RTDs intended to be sold. Dr Crampton did not know what that proportion was, stating that it would not make sense to focus on low margin products, but acknowledged also that he did not know what the respective margins were.
80. The Committee asked whether Dr Crampton was aware if some bottle stores in the central city had security guards, but Dr Crampton was uncertain whether that was the case.
81. The Committee asked if Dr Crampton had a view of where people who burgle houses in Khandallah come from, but again Dr Crampton did not know.
82. Dr Crampton accepted that there would probably be some increase in consumption of alcohol with a new off-licence, but he was not sure what that consumption would be, and he had also not considered what the health burden from any additional store would present.
83. Ms Bareta asked whether Dr Crampton was aware that the PostShop (which neighbours the proposed premises) had been subject to an aggravated robbery. Dr Crampton was unaware of that.
84. Mr Whelan asked whether any of Dr Crampton's professional work had been undertaken with alcohol industry funding. Dr Crampton confirmed some work had been funded by the alcohol industry, which included work undertaken at the university (for which any payment was also made to the university). Dr Crampton confirmed that his usual work is for the New Zealand Initiative, and one of the members of that organisation is Lion.
85. Mr Whelan asked why Dr Crampton was at the hearing, to which Dr Crampton confirmed it was because Mr Young had requested that he attend as a paid witness.
86. In relation to alcohol advertising, Dr Crampton considered there were only minimal effects proven on children.

87. In relation to price, Dr Crampton confirmed there was a symmetrical association between price and consumption. That is, an increase in price will lead to a reduction of consumption, and equally a decrease in price will result in an increase in consumption. However, Dr Crampton did not consider that bringing in another bottle store would affect alcohol prices in the area.
88. Dr Crampton was then cross-examined by Mr MacKenzie, who challenged Dr Crampton's impartiality. Mr MacKenzie produced a letter that Dr Crampton had provided addressed to the Secretary of the Wellington District Licensing Committee dated 11 March 2019. The letter begins:

Dear DLC,

I am writing in support of the application to open a bottle store at 5 Ganges Road, Khandallah.

89. Dr Crampton states in that letter that he is a Khandallah resident, and sets out where he would purchase alcohol from, stating that:

I expect a Khandallah-based shop will provide a range and selection that suits the local market, and I will appreciate having access to that within an easy walk. ... A bottle shop in the village will do no harm and will be great for those, like me, who like to do our shopping while walking from home.

I also strongly urge that the DLC weigh customer access against the inevitable police or medical officer objections demanding more limited hours. Khandallah town centre runs until about 9.00 pm; the application requests that the shop is open until 9.00 pm. The shop should be allowed to run until 9.00 pm, which matches the hours of the local New World. Professionals like me will often do their shopping after getting the kids to bed - so in the 8-9.00 pm period. I am generally rushing through at quarter to nine. Earlier closing times would be an undue burden.

Since the Council website provides a lot of information about how to object to things and no particular way for those who don't want to object to make their views known, I thought it worthwhile to send in this note. I hope to be a happy customer of the shop, one of the countless moderate drinkers who impose no harm on anyone, who pay far more in excise than we should, and whose views are rarely heard when these sorts of applications are made.

Yes in my backyard, please. And perhaps consider making some changes to your consultation website so you might hear more from those of us who welcome things like this.

90. Mr MacKenzie asked whether Dr Crampton had written that letter in support, which Dr Crampton confirmed he had.
91. Mr MacKenzie also referred to the High Court Code of Conduct for Expert Witnesses, which Dr Crampton confirmed that he had read, with reference to the requirement in that Code, that the expert be impartial. Mr MacKenzie put it to Dr Crampton, that he was not impartial given the letter of support. In response Dr Crampton stated that he believes he is impartial.

92. Under cross-examination from Ms Young, Dr Crampton was asked whether the proposed store would be a high-end store. Dr Crampton did not consider that it would, but advised it would target a higher end of the market.
93. Ms Young also noted that Dr Crampton had stated that he would not expect too many children passing the premises, and asked whether Dr Crampton had seen the applicant's brief of evidence, setting out a count of passing children. Dr Crampton replied that he was only considering the geographical situation between the schools and the premises, on a map.
94. There was no re-examination of Dr Crampton, by Mr Young.

Committee's assessment of Dr Crampton's evidence

95. The Committee must determine whether Dr Crampton's evidence should be approached as expert opinion evidence, or simply evidence as a Khandallah resident in support of the application.
96. The Committee is entirely satisfied that Dr Crampton is a well-qualified economist. To that extent, we would have no difficulty in accepting that Dr Crampton would be well able to review particularly economic studies and reports, and express an professional view. However, we do not recognise Dr Crampton as an expert in alcohol-related harm. Certainly Dr Crampton has had some limited professional involvement with the effects of alcohol on society, such as undertaking lectures for a paper, regarding the economic impact on crime, and also supervising a masters student undertaking a study surrounding a local alcohol policy. In relation to the paper published by the New Zealand Medical Journal, there is no evidence before the Committee that paper was peer reviewed, and it appears to have been approached by the Medical Association, as an opinion piece.
97. We considered that a plain reading of Dr Crampton's brief of evidence, had a tone of advocacy for the applicant.
98. The challenge brought by Mr MacKenzie was along the lines that given the letter of support dated 11 March 2019, that Dr Crampton is not impartial. We note the High Court Code of Conduct for Expert Witnesses (that Dr Crampton confirms he has considered) confirms that:

Duty to the Court

1. An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.
 2. An expert witness is not an advocate for the party who engages the witness.
 3. ...
99. Mr Young submitted that the High Court Code of Conduct for Expert Witnesses is not a requirement for District Licensing Committees to apply, and that we could accept evidence that a court may be unable to accept. That is entirely correct, but in our view, the importance of an expert being truly impartial, is of

such significant moment, that if there was a risk an expert witness was not impartial, then a Licensing Committee would be unlikely to recognise that evidence, as expert opinion evidence.

100. Overall, it is our view that the evidence presented by Dr Crampton, should be viewed in the context of a Khandallah resident, supportive of the application, as opposed to the evidence of an expert in alcohol-related harm.

LICENSING INSPECTOR'S EVIDENCE

101. The Inspector in this case, is Mr Whelan. As is normally the case with licensing applications, early on the Inspector provided the Committee a report, which in this case is dated 15 July 2019. The Inspector's report sets out wide-ranging facts concerning the application itself, the proposed premises, and the statutory considerations.
102. In the Inspector's report, Mr Whelan notes that Mr Badiyani runs a number of licensed premises, which he sets out as follows:
- The Bottle-O Tawa
 - The Bottle-O Stoke Valley
 - The Bottle-O Naenae
 - The Bottle-O Petone
 - The Bottle-O Wairoa
 - The Bottle-O Hutt Park
 - The Mangatera Hotel (on and off licence)
 - The Bottle-O Mangatera
103. In addition to those eight licensed premises, Mr Whelan noted that Mr Badiyani also had an interest in Thirsty Liquor Cambridge Terrace, which had recently been purchased, which is currently operating under a temporary authority.
104. Mr Whelan considered that if this application were to be granted, that conditions should be applied to avoid any future risk of alcohol-related harm.
105. The Inspector also noted that the applicant had only provided two names who would be managers in the premises, being Mr Badiyani himself, and Mayank Pandya.
106. The Inspector was not concerned in relation to the design and layout of the premises, the hours, the services and goods provided, and no issues of concern were identified in relation to amenity and good order. The policies and procedures were not commented on adversely.

107. In discussion, the Inspector notes that the high level of amenity in Khandallah, and the fact that the area had the second lowest deprivation score in Wellington City, stating:

The natural corollary of the above, would be to think that areas of lower socio-economic harm are less likely to experience harmful effects from their drinking. Could it be that the reason there is a low picture of alcohol related harm in the area is precisely because there is no cut rate or discount liquor bottle store currently situated in Khandallah?

Is the correct response then, taking in the huge outpouring of community concern/objections, to grant the licence and then test if there will be a corresponding increase in ARH [Alcohol Related Harm] in Khandallah?

Of course balanced against this is the notion that the licence if issued will be operating under a 'probationary year' and if issues have been generated by having this bottle store in Khandallah, then those should properly be raised by the reporting agencies or local residents come renewal time.

...

Perhaps the applicant may feel emboldened by the lack of opposition from the reporting agencies - I think this would be a mistake. I see nothing from the police or medical officer of health supporting this application, and my lack of opposition should not be read as support.

108. In his oral evidence at the hearing, the Inspector emphasised particular portions of his report. The Inspector also noted that recent High Court decisions have confirmed there must be consideration toward the future risk of premises, if licences are granted.
109. Ms Baretta asked Mr Whelan to comment on his reference in the report, to the applicant having reneged on undertakings for his Petone store. Mr Whelan advised that this comment arose from concerns raised in communications from the Police.
110. The Committee asked Mr Whelan what inquiries he had made, as to whether Mr Badiyani could realistically be a duty manager at these premises, at the same time as managing ten premises including in Wairoa and Dannevirke. Mr Whelan advised that he did not make any such inquiries, and he did not know how Mr Badiyani managed his business.
111. Under cross-examination from Mr Young, Mr Whelan advised that it was his view that the premises would trade as a cut price, or discount branded liquor store. In relation to the extent of the products sold, and whether they would be premium products, Mr Whelan advised that he could not say whether the range would be extensive.
112. Ms Thomson raised with Mr Whelan what the likely picture of alcohol-related harm would be in the Khandallah region. Mr Whelan agreed that it would be a

different picture of harm as often seen in other areas, and much of the harm would occur behind closed doors.

113. Commissioner Woodhouse noted that the premises had been described in various ways, including as 'boutique', and referred to the Oxford English Dictionary definition of boutique, as "a business or establishment that is small and sophisticated or fashionable". The Commissioner asked whether a Bottle-O or Merchants Liquor Store¹ would meet that definition, to which Mr Whelan advised that it would not.

POLICE EVIDENCE

114. There was no appearance by the Police at any of the hearing days. The Police have not filed a brief of evidence.
115. We note for completeness, that when the Police were initially notified of the application for a new off-licence, the Police advised that further inquiries were required, and on 4 April 2019, confirmed there was no opposition to the licence application.

MEDICAL OFFICER OF HEALTH EVIDENCE

116. The Medical Officer of Health also does not oppose the application. However, at the hearing on 14 August 2019, Dr Palmer (the Medical Officer of Health) attended, providing some documentary evidence, and also oral evidence.
117. The documentary evidence comprised principally graphs setting out the alcohol related emergency department attendances between 2010 and 2019 for Wellington Hospital, as well as the top 50 Wellington area census units for alcohol-related hospital admissions between 2014, and 2019.
118. The Committee noted that the data presented by Dr Palmer had not been filed in advance of the hearing, as requested for any documentary evidence. The Committee confirmed that it would only be admitted if the applicant consented to its admission, given the late provision. Mr Young confirmed that the applicant did not oppose the graphs being introduced, and they were accordingly distributed and considered.
119. In summary, those graphs are 'tornado' shaped, and show very significant attendances to the emergency department (ED), particularly around the central Wellington and Newtown regions. The attendances by community then taper off and there is then little difference in attendances. The Khandallah area is classed as 'Te Kainga' and to put that into perspective (as far as alcohol related ED attendances are concerned) sits with similar numbers to areas such as Tawa, Karori, Johnsonville, Wadestown and Miramar.

¹ As discussed further below, 'Merchants' is an associated trading name and brand used by the group the applicant is associated to.

120. At the hearing, the Committee asked whether Dr Palmer would be addressing Dr Crampton's brief of evidence. Dr Palmer advised that he had not read Dr Crampton's brief, and was therefore unable to address that evidence.
121. Dr Palmer stated that the reason the Medical Officer of Health did not oppose this application, was simply due to workload. Dr Palmer explained that when applications for new licences are considered, that the Medical Officer of Health would look to the rates of hospital admissions, and will only engage in applications in areas within the top 25% of presentations. Given that hospital attendances for people in the Khandallah area did not fall within the top 25%, then no opposition was filed. However, the Medical Officer of Health advised that if the resources were available, then he would likely oppose all liquor stores.
122. Dr Palmer confirmed that the applicant premises would fall within a least deprived area, but confirmed that to varying degrees, all areas suffer from alcohol-related harm.

MR BADIYANI'S EVIDENCE

123. Mr Badiyani provided a written statement of evidence dated 23 July 2019.
124. Mr Badiyani confirmed that he is a resident in Churton Park², and is the sole director of Plenitude Ltd.
125. Mr Badiyani advised that his stores always sell alcohol safely and responsibly, and that:

I also consider that Khandallah is a community where I can focus on promoting quality products and my customers will purchase and consume alcohol sensibly.

126. Mr Badiyani advised that he (at the time of writing the statement) owned and operated eight liquor stores in Wellington, Dannevirke and Wairoa, as well as a nine-room hotel in Dannevirke.
127. Mr Badiyani considered that the hours requested were reasonable for premises in this location, noting also that it would be less trading hours than other licensed businesses around the premises.
128. In relation to the target market, Mr Badiyani stated:

The aesthetic of my store is along the lines of a boutique alcohol shop in the sense that it is relatively small and will promote higher end products where quality is important, not quantity. My target market is a discerning customer who appreciates fine wine, beer and spirits.

129. Mr Badiyani confirmed that product tasting nights would be undertaken "to showcase our premium products".

² A Wellington suburb, around 5 km from Khandallah.

130. In terms of price, Mr Badiyani advised:

The price of products at the premises will be more expensive than other stores in the Wellington area. From my experience in the bottle store industry, the discount liquor stores are Black Bull, Big Barrel, Liquor Centre and Thirsty Liquor.

131. Mr Badiyani referred to an appendix setting out a comparison of prices between his store and other providers, stating that "it shows that we are more expensive on almost all products even when specials are offered". Mr Badiyani stated that he would not be competing with supermarkets on price, because he was not able to.

132. The design and layout of the premises were described, which included a front window designed to ensure an unobstructed view into the store, but noting also that the bottom half of the window will be frosted "to prevent small children looking into the store".

133. In relation to RTD products, Mr Badiyani states:

We are aware that some people consider RTDs to be attractive to youth and a higher risk form of alcohol. While I consider that RTD products have progressed to include options attractive to an older and more discerning market (for example low calorie options) I am careful to ensure that RTDs are not sold in a manner that may attract young persons into the store. I do not intend to have any RTDs or beer (other than craft beer) on the shop floor. Wine and other premium or craft products will be presented in these areas. RTDs and beer will be stocked in the chiller located at the rear of the premises.³

Of the approximately 220 shelves in the store, only 15-20% of the shelving will contain RTDs ...

134. Mr Badiyani included a table setting out the proportion of products sold in his Tawa store, as well as Bottle-O in the lower North Island. As far as RTDs were concerned, that was 23% and 26% respectively. However, Mr Badiyani concluded that:

I estimate that the proportion of sales for RTDs will be similar or lower than Bottle O Tawa at the Khandallah store (approximately 15-20% of total sales) because it is a wealthier area and I believe that the customer demand will be focussed more on our premium range of products rather than RTDs.

135. Mr Badiyani explained that he had undertaken a survey of children walking past the premises between 2.30 pm and 5.30 pm on 1 July 2019 to 5 July 2019,

³ Our understanding is that the proposed premises in Khandallah would use the same chiller system used in Petone. A customer does not in fact need to walk into the chiller to access products. The chiller has glass doors displaying product that the customer can see and select from inside the store.

showing that between 36 and 127 school children walk past each day. In order to address exposure of alcohol, the lower half of the windows would be frosted.

136. Mr Badiyani confirmed that he had attended a meeting with objectors on 17 March 2019, hoping to alleviate the community's concerns over his premises:

As an experienced and responsible business owner, it is my goal to work with the local community and to listen to and address any concerns they may have. I know that with the policies and procedures that we will put in place, our store can be a positive addition to the local community.

137. Mr Badiyani proposed that to ensure the community's concerns were being heard and addressed, that over the first year of the licence, that quarterly meetings would be convened with the reporting agencies and community representatives to identify and discuss any concerns. Mr Badiyani also advised that he had offered to install an emergency defibrillator outside the Khandallah community hall, as a gesture of goodwill towards the community.
138. Mr Badiyani provided a rebuttal statement addressing some of the other evidence and concerns that had been presented in the interim, that dated 16 August 2019.
139. Mr Badiyani noted that he was familiar with the Ngaio village (which has an off-licence operating on the main road) noting that he had not seen any graffiti, or empty bottles or cans, or anyone drinking from the street at that location. Similarly no such problems have been identified in the Johnsonville area. Mr Badiyani also notes that such adverse effects have not been noted in any of his other Bottle-O stores.
140. In relation to robberies, Mr Badiyani confirmed that since 2010 he had experienced two attempted robberies in stores in Wairoa and Stokes Valley "which are lower socio-economic areas" and stating that "in my experience, crime such as this only occurs in lower socio-economic areas, which is one of the reasons I am attempting to grow my business in more affluent and stable areas such as Khandallah". Mr Badiyani disagreed that his proposed store would change the character of the village, considering that the branding would be in keeping with other businesses operating. The bright green colour used by the Bottle-O brand, was not considered to be significantly different to other vibrant colours used in branding in other local businesses.
141. However, Mr Badiyani advised that if there were concerns in relation to the Bottle-O branding, that he would be willing to operate under the associated 'Merchants' brand, if the community believed that such branding would be more in keeping with the village.
142. At the hearing on 15 August 2019, Mr Badiyani also provided comprehensive oral evidence.
143. In that oral evidence, Mr Badiyani confirmed a view that Khandallah is an affluent and safe community, where he considers quality to be more important to customers than quantity.

144. In order to address the concerns raised, Mr Badiyani stated that he would work for 20 hours per week in the store in order to allow the community to visit him and directly raise any concerns.
145. To the issue of whether the premises would be boutique in nature, Mr Badiyani advised that to him, that definition meant 'classy', clean and elegant. The fixtures and fittings inside the store were described as being high quality melamine, and that the front of the store would stock premium products.
146. The product selection would be based on some seasonality, but Mr Badiyani also confirmed that there would be a range of products that he was required by the franchisor to stock, but that there would be some discretion in relation to the non-compulsory products.
147. In relation to products sold at New World, Mr Badiyani considered that the most expensive alcohol product would be around \$40 in the supermarket, but noting that he stocks products in his Petone store, in excess of \$100.
148. Mr Badiyani confirmed that he would not stock single shots, as he did not consider those would fit with the boutique nature of the operation. While tobacco would be sold, that would be located behind the counter.
149. Again Mr Badiyani confirmed that if necessary he would trade under the Merchants brand if the community would prefer that, but made that offer for only a four year period. However, Mr Badiyani also advised that if he were to change that branding prior, that he would firstly seek the community's opinion before doing so.
150. In relation to other bottle stores, Mr Badiyani explained that in his view there were four tiers of bottle stores being:
 1. Discount bottle stores such as the Discount Liquor Centre, Thirsty Liquor and Black Bull.
 2. Bottle-O and Super Liquor stores.
 3. More specialist alcohol stores.
 4. Supermarkets.
151. Mr Badiyani did not consider that the amenity of the area would be affected by his store opening.
152. One of the objectors asked Mr Badiyani whether he was aware that the Ngaio Liquor Centre had been robbed at knife point on two occasions over the preceding four years. Mr Badiyani advised he was unaware of that. Mr Badiyani was also asked whether he was aware that there had been seven "drive offs" where people had come in to the Ngaio store, taken alcohol, and driven off with it. Mr Badiyani advised again that he was not aware of that, but accepted that could happen in a liquor store business. I record at this juncture, that in the course of the hearing Mr Young quite properly noted that no evidence had been presented confirming these events or frequency in fact.

153. Mr Badiyani was also asked the question, of whether he considered the store to be boutique, while at the same time running in excess of 60 specials at any one time, to which Mr Badiyani advised that would be correct, that the store was boutique.
154. Mr Badiyani was also asked whether he would reduce the price of products to customers given his buying power. Mr Badiyani replied that he would not be promoting beer or RTDs.
155. Ms Baretta asked whether Mr Badiyani was aware that the neighbouring post office had been robbed, given his evidence that crime occurs in low socio-economic areas. Mr Badiyani was unaware of that robbery.⁴ However, Mr Badiyani acknowledged that to a degree, robberies if they occur, would affect amenity and good order.
156. Ms Thomson asked what research Mr Badiyani had done, before electing to apply to open these premises. Mr Badiyani confirmed that he had attended the local New World supermarket, and ultimately considered that the premises suited a boutique off licence operation.
157. The Committee referred Mr Badiyani to the decision issued by the Lower Hutt District Licensing Committee, for his Petone store, which required as a condition that the premises be branded in a particular way - as a Merchants outlet. The Committee noted that Mr Badiyani had changed that branding. Mr Badiyani advised that the Lower Hutt Licensing Inspector had been contacted, and approved him changing the branding.
158. The Committee asked whether Mr Badiyani believed he could just ignore a condition on a liquor licence, because a Licensing Inspector says he was able to. Mr Badiyani's reply was that he was on a learning curve, but later advised the Committee that it was in fact his licensing agent, Omega Hospitality, who had contacted the Inspector, approving the branding change.
159. The Committee also asked where Mr Badiyani found staff for his stores. Mr Badiyani confirmed that they were both local and immigrant workers, but states that for this store, he would transfer an experienced manager from another store.
160. The Committee also asked whether moving staff would impact other stores. Mr Badiyani confirmed that if he needed to work in other stores, he would. Particular reference was made to the store in Cambridge Terrace, with Mr Badiyani stating that he was not committing to work in those premises. Ms Thomson noted that the risks for alcohol related harm from the Cambridge Terrace bottle store was different to that in Khandallah, to which Mr Badiyani confirmed that the residents in Khandallah were generally better educated, and that his business would not be directed toward shots.

⁴ The Committee has been provided with a press release from the New Zealand Police, recording that a man from Upper Hutt had been charged with aggravated robbery of the Khandallah Post Shop on 7 February 2012.

161. Mr Badiyani was asked what type of alcohol-related harm he had seen in Khandallah. Mr Badiyani responded that he had not seen any, but he acknowledged that it would largely occur behind closed doors.
162. The Committee asked why Mr Badiyani was dedicating 20 hours weekly to the Khandallah store, if he considered that other stores presented more risk of alcohol related harm, which would only leave him 25 hours per week to supervise the other premises. Mr Badiyani stated that he had committed to working six months in the Khandallah operation for 20 hours per week, every Thursday, Friday and Saturday. However, the Committee posed the question to Mr Badiyani what he would do, if some other pressing matter occurred in any of his other stores. Mr Badiyani confirmed that he would attend those stores, and then stated he would make up the allotted time in the Khandallah store, on another day.
163. The Committee asked what stores Mr Badiyani was recorded as a duty manager for, to which Mr Badiyani confirmed it was all of them.
164. The Committee inquired as to how Mr Badiyani manages all of the licensed premises that he does. Mr Badiyani confirmed that he does not employ any additional business managers, that he manages all of the business operation solely himself.
165. The Committee noted Mr Badiyani's statement that his target market was the 'discerning customer who appreciates fine wine, beer and spirits', and questioned whether that would be consistent with the store having up to 20% of its shelving for RTDs. Mr Badiyani responded by saying that he would not be promoting those products.
166. The Committee asked whether Mr Badiyani believed that opening another liquor store in Khandallah, would add additional alcohol into that area. Mr Badiyani disagreed that would be the case.
167. The Committee asked whether there was any difference between the products sold in a Bottle-O, and Merchants store. Mr Badiyani responded that there was not any difference. However, the Committee referred Mr Badiyani to paragraph 6 of the Lower Hutt District Licensing Committee decision for the Petone store, in which that decision records:

Mr Badiyani said that his proposed store would not be as high end as the nearby liquor store, Il Doge, which did not sell any low priced mainstream products. Merchants Liquor would be a boutique store, halfway between Il Doge and Bottle-O, with a focus on high end products.

168. In response, Mr Badiyani states that the products selected are higher end products.
169. The Committee noted Mr Badiyani's statement that if he saw loitering outside his store, that it would not be tolerated. The Committee asked how Mr Badiyani would address any loitering, to which Mr Badiyani advised that he would call the police. However, when asked, Mr Badiyani was not certain whether loitering on a street would or would not be illegal.

170. The Committee noted Mr Badiyani's statement that his products sold are premium products, and referred to the Dominion Post advertisement (that had been presented by one of the objectors at the hearing)⁵. The Committee acknowledged that five of the whiskey products shown could be accepted as premium products, and asked Mr Badiyani what of the other products would be premium, but Mr Badiyani was not able to identify any additional premium products.
171. To the question of how often thefts occur from his stores, he answered that the figure was around once per month on average.
172. Ms Thomson asked whether Mr Badiyani considered that his stores contribute to alcohol-related harm. Mr Badiyani advised that he had never noticed any, and he is not aware of anyone complaining about alcohol-related harm arising from his stores.
173. Ms Thomson then asked whether Mr Badiyani was saying that all of the alcohol-related harm in the community was coming from other premises that are not so well run, but Mr Badiyani was not able to provide an answer to that question.
174. Commissioner Woodhouse asked Mr Badiyani what sorts of harm arises from alcohol. Mr Badiyani was not able to provide an immediate answer to that question, and elected to check notes on his cellphone, before advising that there would be various adverse events such as road crashes, heart disease, violence and sexual assault.
175. The Committee asked the basis upon which Mr Badiyani believed that there would be no increased consumption of alcohol should his bottle store open, to which Mr Badiyani advised that was based on his business experience, but noted that he otherwise did not have any evidence in relation to alcohol consumption in the Khandallah area.
176. Under cross-examination Mr Whelan asked what conditions Mr Badiyani had recently sought to have removed from the Petone store licence, to which Mr Badiyani confirmed (with the assistance of Mr Young) that it was meeting with the reporting agents quarterly, and not having stacks of bulk RTDs or mainstream beer on the shop floor.
177. Mr Whelan asked whether Mr Badiyani had contacted any of the objectors in Petone when he applied for the recent variation, to which Mr Badiyani advised that it was only the public notice that he had provided.
178. Mr Whelan also asked whether Mr Badiyani believed that there would be more spirits sold in the community if his off-licence was granted. Mr Badiyani did not consider that would be the case, stating that people would be purchasing those products from other liquor stores anyway, his store would just be more convenient for local residents.
179. Mr Whelan asked whether it would make sense, that if there were currently no RTDs available in the Khandallah area, whether more would be sold into the area if they were to become available for purchase there. Mr Badiyani did not

⁵ Produced by Mr Johnstone, and found at appendix 2 of this decision.

consider that was likely to be the situation. Mr Badiyani further stated that if there were any concerns, that he would address that risk at the time.

180. Mr Whelan read out a portion of the content from the recent Alcohol Regulatory Licensing Authority decision for a new bottle store in the Aro Valley (Patels Superette case), in which the authority indicated that it was unimpressed at an applicant who believed that an additional liquor store, would do no more than split the market.⁶ Mr Badiyani maintained that is simply what would happen if his store was to open, that the market would be split.
181. Mr Whelan also referred to paragraph 20 of the Petone store decision, where Mr Badiyani said that he would sooner exit the market than sell mainstream or discounted products. In response Mr Badiyani stated that he had simply asked the Inspector for approval, to change the branding of the store, to Bottle-O.
182. Under cross-examination from Mr MacKenzie, Mr Badiyani confirmed that he was prepared to trade as a Bottle-O or Merchants, and that he would leave that for the Committee to decide.
183. Mr Badiyani considered that his store in Khandallah would be like other stores which have children walking past, also located in community hubs, and to that extent this store would be no different.
184. Mr MacKenzie asked what would happen if Mr Badiyani did not work in the store 20 hours, as he stated he would do. Mr Badiyani advised he was prepared to make an undertaking requiring him to do so.
185. Under re-examination, Mr Badiyani confirmed that there were different margins on different products, the lowest margins arose on beer, then cider, then RTDs, then craft beer, wine, spirits and then premium spirits.
186. In relation to the Tawa store, as an example, that has some 2,000 products. The core range (that has to be stocked) comprise 350 to 400 products, then there are recommendations from other suppliers for a further 350 to 400 products, and beyond that Mr Badiyani has discretion as to what products he wishes to stock and sell.
187. Finally, Mr Badiyani confirmed that in his Petone store, he has had 'snatch and grab' thefts, "a couple of times" over the preceding 18 month period.

Petone store

Lower Hutt District Licensing Committee decision

188. A matter which has become of relevance in this case, is a decision issued for an associated store owned by Mr Badiyani, situated in Petone. The decision was

⁶ *Patels Superette 2000 Limited - Aro Liquor v Muir* [2019] NZARLA 75 (8 May 2019).

issued by the Lower Hutt District Licensing Committee, following a hearing on 15 August 2017, being *Dream Power Limited T/A Merchants Liquor* [2017] NZDLCLH 331.

189. The Committee's decision records that the application for the store was opposed by the Police and Medical Officer of Health. The opposition was based on the ability of the applicant to meet the object of the Act, suitability, hours, amenity and good order, location, proliferation, and systems used by the applicant. The application was also the subject of six public notices of objection from neighbouring businesses and residents. One objector spoke to her submissions at the hearing.
190. The decision records that Mr Badiyani had made the "business decision to join the 'Merchants' Group which is part of Tasman Liquor".
191. In relation to Merchants Liquor, the decision records:

There are only seven Merchants liquor stores around New Zealand which have high quality products in comparison to the Bottle-O stores. Both Merchants Liquor and Bottle-O are part of Tasman Liquor. Mr Badiyani said that his proposed store would not be as high end as the nearby liquor store, Il Doge, which did not sell any low priced mainstream products. Merchants liquor would be a boutique store, halfway between Il Doge and Bottle-O, with the focus on high end products.

192. The decision notes that Mr Badiyani had not engaged with the community, nor taken up offers to meet the Medical Officer of Health.
193. The premises were described in the following terms:

The proposed store would predominantly focus on a quality range of high end spirits; New Zealand, Australian, Italian, Argentinian wines; and craft beer. The store would also sell ready to drink beverages (RTDs) and low priced mainstream beers. However, the RTDs and low priced mainstream beers would not be put out on bulk display on the shop floor. Cheaper products would be placed on lower shelves and in the fridges at the back of the store.

194. Mr Badiyani was reported as saying that the store would have a "boutique nature", apparent from the small floor area of 120 cubic metres, quality products and Merchants Liquor branding.
195. Paragraph 15 records that:

Mr Badiyani gave an undertaking that the outside of the shop would be substantially the same as attached to Appendix 2 of this decision. Half of the windows would have Merchants Liquor designs and the other half of the windows would be clear glass. There would be no signs covering the clear glass.

Sergeant Bengé said that he considered the Merchants Liquor branding to be more upmarket than Bottle-O and that 'Merchants' would be more in keeping with Jackson Street than a Bottle-O.

196. Paragraph 20 records that:

Mr Badiyani said that if the market showed that a high end store was not viable then he would exit the business, rather than change his business model to predominantly sell low priced mainstream products. His agreement with the landlord contained an early exit clause for the first year, should he need to exercise it.

197. The Committee concluded that the proposed store would be boutique given its small size, external and internal appearance. Further the Committee accepted that management of the premises would be designed to enhance customer appreciation "of a better quality of product".

198. At paragraph 51, the Committee accepted that:

The application is for a high end boutique liquor store. A full range of products will be available, but the emphasis will be on quality products.

199. Ultimately the Committee went on to grant the application for a new off-licence. A range of conditions were included, we will not set out the full range, but the conditions of relevance included that:

- b) The owner will meet quarterly with the reporting agencies for the first year of the licence;
- c) There will be no stacks of bulk RTDs or mainstream beer on the shop floor;
- d) Cheaper products will be on the lower shelves;
- e) ...
- j) Merchants will be a small boutique store, not a cheap liquor store, with the branding substantially the same as the pictures attached at Appendix 1 to this decision.

200. Appendix 1 of the Lower Hutt DLC decision comprises three pages, with a photograph on each page showing an artist's impression of the interior and exterior branding. The branding is clearly for Merchants Liquor. The colour appears from the photographs to be black or very dark grey, with the name of the premises, 'Merchants Liquor'.

201. The applicant opened the store under the Merchants branding, but subsequently proceeded to change that branding to the Bottle-O. There was no dispute from the applicant that approval to change the branding had not been provided by the District Licencing Committee, that is relevant given the branding was a condition of the licence, with the Committee going as far as to set out the artist's impression of the Merchants branding in its decision. As noted above, Mr Badiyani says that the Lower Hutt licencing inspector had approved the change of branding. Mr Badiyani also says that it was in fact his licencing agent, Omega Hospitality, that had the conversation with the Lower Hutt licencing inspector, at which approval was given.

202. We note for completeness, that we have received no evidence from the licencing inspector in Lower Hutt supporting that version of events.

203. It is also not disputed that an application for variation has been made to the Lower Hutt District Licencing Committee, seeking to remove two of the licence

conditions that relates to the quarterly meetings with reporting agencies, and that there be no stacks of bulk RTDs or mainstream beer on the shop floor.⁷

Petone store site visit

204. On 16 August 2019, the Committee undertook a site visit at the Petone store. Mr Badiyani had advised that the intention of the Khandallah store was that those new premises would look very similar to those in Petone. Mr Badiyani invited the Committee to undertake a site visit. We record for completeness that we had offered to the applicant, the reporting agencies and objectors, to accompany the Committee at any site visit in Petone or Khandallah, but quite reasonably all parties were satisfied with the Committee proceeding unaccompanied.
205. The premises in Petone were branded with the bright green Bottle-O livery, externally. On entering the premises, the first impression is of wines in front of the door, and around to the right is the shop counter, and moving away from the shop counter the right hand wall stocks spirits. Behind the wine shelves is a walk-in chiller. What is notable about the chiller, is that it can be accessed either by opening one of the glass doors from the inside of the store, or the shopper is able to walk into the chiller through a main entry door to select product. The chiller is stocked principally with beer and RTDs. There were some products that could only be accessed when inside the chiller itself, but the significant range of RTDs were able to be obtained when standing inside the store, simply by opening one of the the 'fridge like' glass doors, and selecting the product. We note that the applicant has provided an impression for the chiller that will be placed in Khandallah being:



⁷ During the period of deliberation, Mr Young provided the Committee with a joint memorandum between the applicant and the reporting agencies, in order to resolve the inconsistency between the branding of the Petone store, and its licence. The agreement was that store would be rebranded to a Merchants store, as required by the licence, and it was agreed that the reporting agencies would not oppose renewal of the licence.

206. We record that the premises were very tidy. The range of items stocked in the store were consistent with what we would expect to see in a general bottle store. Certainly there were 'high end' products on sale, but there was a much more significant volume of low cost and mainstream products.
207. Our overall impression was that the premises were simply a very tidy general bottle store.

Committee's impression as to whether the proposed premises are premium or boutique.

208. One of the matters canvassed extensively in the hearing and also in the documentation from the objectors, was whether the premises were a premium or boutique operation as the applicant proposes it to be, or whether the premises are simply a discount general bottle store. During the course of the hearing, the Committee has been provided with various external photographs of Bottle-O stores around New Zealand. The overwhelming impression of those photographs is of lower end, discount operation.
209. We also note the record from the Lower Hutt District Licencing Committee, at which Mr Badiyani had indicated that the Bottle-O franchise was at a level below Merchants Liquor.⁸
210. Our impression was that the reason Mr Badiyani wanted to open a Bottle-O store in Khandallah, was because that branding matched the same branding he was using in his other stores, and there is obviously a benefit in terms of marketing one brand rather than two.
211. Mr Badiyani also placed considerable emphasis on his view that the price he would sell his products at, would be materially higher than outlets that he classed as discount bottle stores.
212. At the hearing, one of the objectors provided a large advertisement found in the Dominion Post from 8 August 2019.⁹ The advertisement relates to six off-licence bottle stores owned by Mr Badiyani trading around Wellington.
213. The advertisement features specials on 51 individual products. Five of those products were whiskies ranging from \$69.99 to \$89.99, which the Committee indicated that we would expect as premium products. We asked Mr Badiyani to identify which of the remaining products he considered to be premium products. Mr Badiyani was unable to identify any further premium products in that offering. That was our assessment also. The products promoted are (with the exception of the five whiskies) very mainstream products. The wines (seven bottles) range in price between \$9.99 and \$19.99. There are a range of mainstream spirits (for example Jack Daniels, Southern Comfort) at \$39.99 each. There are also

⁸ That was inconsistent with Mr Badiyani's evidence at the hearing that the only thing that had changed when he rebranded the Petone store, was to alter the Merchants branding for Bottle-O branding.

⁹ Found at appendix 2 of this decision.

mainstream beers (Haagen, Flame, DB, Tui, Steinlager, Corona, Tuatara, and Black Dog). We also note that the headline special is an offer to purchase any three bottles of specific spirits for \$100, that included Black Heart rum, Woodstock bourbon, Teachers whisky, Kalua, Malibu, Seagers gin and Ivanov vodka.

214. During the hearing the Committee referred to the website for Big Barrel, that Mr Badiyani asserted to be a budget operator. The Committee selected a range of products that were advertised specials for Mr Badiyani's bottle store chain, and compared those to prices shown as specials on the Big Barrel website. That confirmed that some products were cheaper at Big Barrel, some products were more expensive and some were the same. There was certainly not a sense of any obvious difference between either store pricewise, at least in relation to specials.
215. We also note that having considered a perfunctory review of the prices in the Bottle-O Petone during our site visit, again we did not form the impression that the prices were more expensive than any of the 'discount liquor stores'.
216. We also noted that we were unaware of any legal definition of what a 'boutique' liquor store or a 'premium' liquor store would be, and therefore when considering those descriptions we would need to undertake a plain English interpretation. We noted that the dictionary definition for 'boutique' was:

A business or establishment that is small and sophisticated or fashionable.

217. Taking that definition into account, arguably the Khandallah and Petone stores are moderately sized (we would not say they were small), but we do not consider they could reasonably be described as sophisticated or fashionable.
218. We are left with the impression that the proposed Bottle-O store is simply a general discount bottle store, taking a position in the market alongside a number of other chains, offering the consuming public a range of predominantly mainstream, low priced, and price comparative products. It would not in our estimation be incorrect to consider the proposed Bottle-O store to be a discount bottle store.

Proposed premises, and location

Proposed premises

219. The proposed premises would be located at 5 Ganges Road in Khandallah. The premises have previously been a video store, and at the time of the hearing, was empty. This store is described as 110 metres square in size. The proposed store is glass-fronted. What is notable is that the door to the store is not flush with the front glass window, but is offset on an angle of around 45 degrees approximately, and there is a mirrored appearance with the PostShop next door, which also has an adjoining angled door. In that 'notched' common entrance way is a large community notice board, which we saw from our site visit was well-utilised by the community.

220. The applicant proposes that there be a walk-in chiller, and based on our site visit at the Petone store (which we are told is similar to the intended presentation of the Khandallah store) has a chiller that can be accessed from glass doors in the body of the store, or alternately from entering the chiller itself.

Location

221. Khandallah is a very well-established community in Wellington, around 4 km from central Wellington. There is no dispute that Khandallah is a generally affluent area. The suburb is extensively residential. There are very few commercial premises in the greater Khandallah area, with the exception of the Khandallah Village. QV.co.nz record that 65% of the residents of Khandallah are over 30 years of age, with 13% in their teens, and 13% under 10 years of age. The median house price is \$1,040,250.
222. On the immediate left-hand side of the proposed premises is a PostShop and Kiwibank outlet. The entryways for both premises are closely situated. Next to the PostShop is a Hell Pizza outlet.
223. To the right of the proposed premises are various retail outlets, including a takeaway outlet, butcher's store, and dairy. Next comes the Khandallah town hall, which has an adjoining exterior public toilet. Next to the town hall is a building with apartments and some businesses, including a physiotherapist. Next to that is the local pharmacy and a café. Beside the café is the Khandallah Presbyterian Church. We note that Google maps records the distance between the premises and Presbyterian Church to be a total of 110 metres.
224. On the other side of the road from the Khandallah Presbyterian Church is the Khandallah New World. The New World is a modest-sized supermarket operation, but certainly an operation providing a wide range of products that would be anticipated in a supermarket operation. That includes an off-licence selling beer, wine and cider. Staying on the southern side of the road and moving back towards the proposed store, a pedestrian would pass various stores, including a gift store and St Vincent de Paul outlet. Beside the St Vincent de Paul premises is an Asian takeaway and other professional offices, including offices for two consultant psychiatrists across the road from the proposed premises. Almost directly across the road from the premises is the Khandallah public library. Behind the Khandallah library is the local Plunket rooms. Next to the library is a free-standing building, including a veterinary clinic and ATM bank machine.
225. On the corner of Ganges Road and Agra Crescent is the Taste restaurant.
226. In the same building envelope as the proposed premises, but below the premises, is the Khandallah Trading Company being a restaurant / tavern. However, that business can only be accessed via Agra Crescent.
227. On Dekka Street, which runs off Ganges Road (by the New World Supermarket), is the Khandallah medical centre. Google maps records the walking distance from the medical centre to the proposed premises to be 160 metres.

Khandallah site visit

228. The Committee attended the Khandallah Village for a site visit, on the afternoon of 16 August 2019. The Committee is familiar with the Khandallah Village, and we were reminded very soon after our arrival of the exceptional degree of pleasantness the village presents. The village was active, with people going about their daily business, meeting in the café, etc. The overwhelming appearance was of a clean and tidy location, and we did not see any graffiti or vandalism. The Committee noted that many of the businesses, including the licensed premises like the tavern and Taste restaurant, had minimal and discrete signage/branding. In particular, we noticed the even the dairy had very little signage/branding advertising on the exterior of the premises.
229. The Committee also noted that the premises were directly across the road from a pocket park, with a park bench. Behind the Khandallah library are the local Plunket rooms, which would afford an ideal place for surreptitious drinking or milling about.
230. One of the particular impressions we gained was the close proximity of the PostShop door and community notice board, to the door for the proposed off-licence premises. It would be virtually impossible for a person entering the PostShop / Kiwibank outlet, not to be presented with the off-licence door or seeing into the premises, even with the bottom half of the windows frosted.

SUBMISSIONS

Applicant's submissions

231. Written submissions were provided by Mr Young, and those were traversed orally. Mr Young submitted that the community objections are generalised in nature, and related to matters that would normally be found in areas of socioeconomic deprivation, which are either entirely absent in this community or insignificant.
232. Note was made that the reporting agencies had not opposed the application, with the submission that the lack of opposition reflected favourably on the applicant, the content of the application, and locality.
233. In relation to the Petone store, Mr Young submitted that Mr Badiyani had been candid around matters surrounding the licence and further submitted that any issues surrounding that licence should not be counted against him.
234. Mr Young submits that obtaining a licence is 'not a numbers game' and that there is no such consideration as to concepts regarding 'social licence' in section 105 of the Act. Having said that, Mr Young submitted that the applicant accepts that concerns held by some objectors may be genuinely held, but nevertheless the concerns were 'fuelled' by some extreme and catastrophizing views of alcohol and its impact, including an alleged or inferred inevitability of potential harm or disorder arising from the mere presence of a new store.

235. Note was made that the statutory scheme looks to minimise but not eliminate harm.
236. Mr Young addressed the issues that arose over use of the words 'boutique' and 'discount' in this application. Mr Young submitted that the applicant had not intended to use those words in a misleading or disingenuous way, but had referred to the store being 'boutique' due to its small size, product placement, and quality fit out.
237. In relation to the word 'discount' that was used to say that the store is not a cheap store and stating that the store would not operate as a 'booze barn', as one objector had described it.
238. Mr Young submitted that the local market in Khandallah will demand a premium product and that would be a reasonable assumption given the demographic.
239. Mr Young submitted that Mr Badiyani has extensive training and systems available, noting that he has not previously failed any controlled purchase operations or other enforcement actions in any of the eight liquor stores that he owns.
240. In relation to the Committee's questioning regarding Mr Badiyani's ability to manage nine premises simultaneously, it was submitted that Mr Badiyani's had provided a confident response, that he had the people and systems in place to manage the operation.
241. It was further submitted that Mr Badiyani is respectful of the local community and wishes to work with, not against, the community.
242. In relation to the evidence from Dr Crampton, Mr Young submitted that Dr Crampton had vehemently denied any suggestion that he was not impartial, submitting that his evidence clearly was impartial, and a careful and detailed review of the presenting data set out in Ms Bareta's brief of evidence. Mr Young noted the authorities' decision of *Waihi Wholesale Liquor* [2012] NZLAA 1370, in which the Authority relied on retailing evidence from an objector, who had expertise in the area, who was also the Mayor.
243. In any event, it was submitted Dr Crampton's evidence was adduced to provide some indication of the potential magnitude of impacts on amenity and good order, which it was submitted was absent from Ms Bareta and Mr Thomas' evidence.
244. Quite appropriately, Mr Young noted that the object of the Act is to present a statutory scheme that is reasonable in application. Reference was made to the High Court decision of *Auckland Medical Officer of Health v Birth Care Auckland Limited* [2015] NZHC 2689, which confirmed that:

Taking the criteria and statutory object into account, the Authority's decision to review Birth Care's licence was entirely reasonable. Given Birth Care's operation the risk of harm was minimised albeit not eliminated.

245. Furthermore, in relation to reasonableness, reference was made to the decision in *New Zealand Police v Absolute Caterers Limited* [2013] NZ ARLA 946, which confirmed that:

As to a reasonable licencing system, the controls of which should not be oppressive or excessive, remain good law under the regime introduced by the 2012 Act.

246. Mr Young submitted that the evidence presented against the applicant was generalised and highly speculative, and based on the opinion of Dr Crampton, was considerably overstated.
247. In relation to Mr Thomas' evidence, Mr Young submitted that the expert had not identified the type of behaviour that might arise, causing more than a minor impact on amenity and good order, nor did he identify the severity or frequency that such behaviour would occur. It was further submitted that Mr Thomas accepted that neither a weekly occurrence of an empty bottle or can on the street would be more than a minor impact on amenity and good order, nor would a violent offence occurring once every 21 years.

248. Mr Young submits:

In summary, the overarching theme evidence in the objector's case that Khandallah is of such high amenity that it could not absorb any impact from the proposed premises was not corroborated by Mr Thomas. The 'no risk' or 'elimination of risk' argument advanced by the objectors could not be sustained by Mr Thomas and, in my submission, is contrary to the minimisation object of the Act.

Further, the lay evidence alleging alcohol fueled crime and disorder in the locality was rarely supported by incidents in similarly neighbourhoods and is almost always aligned to incidents in communities with completely different demographics and vulnerabilities. It was largely fueled by mainstream media articles from other parts of the country (such as Rotorua).

249. In relation to health effects:

It is accepted that the evidence of a local woman's death from cirrhosis of the liver is tragic. However, it is sadly something that most likely touches all communities to some extent. Dr Palmer's evidence indicates that Khandallah experienced relatively low levels of harm. Further, it is submitted that harm of this ilk is not a matter that is relevant to amenity and good impacts, which was the core issue advanced by the objectors.

250. Mr Young set out various general legal considerations that the Committee must undertake, including that there is no onus sitting with the applicant to establish any of the section 105 criteria, perhaps with the exception of suitability.
251. The submission was made to the extent that the more serious the allegation presented, the higher standard of evidence that would be needed to establish an adverse finding. To that extent, broad assertions of harm would not be sufficient to find against the grant of a licence.

252. Note was made of the absence of reporting agency objections. The Committee was referred to the decision on *Ponda Holdings Limited* [2014] NZARLA 558, in which the authority observed that:

Where there are no adverse comments by the reporting agencies it is unlikely that an objector will satisfy the authority that 'the amenity and good order' of the locality would be likely to be increased, by more than minor extent, by the effects of a refusal to renew the licence.

253. Ultimately it was submitted that any impact on amenity and good order would be no more than minor, noting that there are already issues with graffiti and nuisance in the Khandallah village, and the rare occurrence of criminality. Granting the licence to these premises, would not cause any discernible change.
254. In relation to Mr Thomas' evidence, it was submitted that the expert identified no more than a low risk of noise, nuisance or vandalism, which would be the equivalent of indicating that such an effect would be unlikely to occur.
255. In relation to the Patel's off-licence application in Aro Valley, Mr Young quite correctly noted the significant difference in demographics between that locality and Khandallah, and in that vein:

Mr Badiyani has given extensive consideration to the locality and community, and the absence of such issues has encouraged him to seek to establish a store in Khandallah. The issues in Patel's do not arise here.

256. Reference was also made to another case cited by the other parties, *Nishchay's Liquor Centre* [2013] NZARLA 837, in which the Authority was critical towards suitability, as the applicant had not considered the history of the location.
257. Ultimately, Mr Young submitted that if an application was granted, it would only be for the 'probationary first year' which would provide an opportunity for the community and reporting agencies to evaluate the application's operation, and for the matter to be revisited in a year's time. Should the premises fail to meet the obligations under the Act, then its licence could at that time be declined renewal, or more harsh conditions imposed.
258. Mr Young submitted that there was no genuine challenge to suitability, and that Mr Badiyani's record speaks for itself.
259. Noting that the premises are not placed in a main arterial route, it is submitted that the premises would not be an obvious destination store.
260. As far as alcohol-related harm is concerned:

Mr Badiyani was also asked about his stores' contribution to harm. He acknowledged that his stores must contribute in some way, but could not say with any certainty how much or in what way. However, he made it clear that his staff get to know customers and monitor buyer behavior. He certainly never maintained that alcohol was not harmful.

261. In conclusion, Mr Young submitted that it would be difficult to conceive a location where a new off-licence could be granted, if this application in such an area of low social deprivation, was not granted.
262. Mr Young submitted that various undertakings would be acceptable to the applicant, including an undertaking that the store be branded a Bottle-O or Merchants outlet. Again, the undertaking to work in the store for 20 hours per week was confirmed.
263. The Committee asked Mr Young whether he would agree that a reduction of amenity and good order in itself, is alcohol-related harm. Mr Young acknowledged there is an overlap, and that harm has broad factors, but noting that one does not cancel out the other.
264. In relation to the two limbs found in section 106, it was submitted that they must be viewed together, in that (a) relates to the actions, and (b) relates to the receiving environment, that is that the considerations are conjunctive. Reference was made to the Authority's decision of *PK* [2019] NZARLA 38, supporting that you must consider the effect of alcohol in the context of amenity and good order.

Licensing Inspector's submissions

265. Mr Whelan provided oral submissions at the hearing.
266. It was submitted that the application of the Act should be reasonable, but that reasonableness should apply to expectations of both the applicant, and community.
267. Mr Whelan acknowledged that Mr Badiyani was a hardworking family and businessman, but submitted that it was difficult to understand why he would think that introducing alcohol into this area, would not increase the volume of alcohol sold into the community. It was submitted that given the applicant's evidence, that all another off-licence store would do would be to split the market, that would not support his application.
268. Mr Whelan noted that this is a community that has spent a lifetime of hard work in building their community, and noted also that discount liquor stores cut into the fabric of society, irrespective of how those stores are dressed up.

Submissions for the Medical Officer of Health

269. Ms Young was in attendance through the hearing on behalf of the Medical Officer of Health but presented no submissions.

Khandallah Cornerstone Resource Centre Trust Board submissions

270. Submissions were provided jointly by Mr McKenzie, and Ms Pears. In addition to the Khandallah Cornerstone Resources Centre Trust Board, the representatives were representing a large number of individual objectors.
271. The initial submission was to the extent that the community has spoken in overwhelming numbers, with some 538 notices of objection filed, with 178 having met the greater interest hurdle in the Act.
272. Mr McKenzie submitted that the "village is a community treasure", and that approving a bottle store to come into that village, would be an incompatible activity.
273. It was submitted that the only real criteria in section 105 that a community could object to for a new off-licence, would be on the basis of amenity and good order.
274. Reference was made to section 106, which not only looked to current and possible future disruption, but also the extent of compatibility of the proposed premises, with neighbouring land use. Mr McKenzie noted that the amenity consideration was not found in the previous statutory scheme.
275. Reference was made to the first reading of the Bill (heralding in this current statutory scheme) which records:

The Government recognises that different communities have different needs, best understood by local people. This Bill empowers communities to address local issues like concentration, location, and opening hours of alcohol outlets.

276. And furthermore, at the Committee stage:

The Bill also broadens the matters that must be considered in granting a licence. Consideration must be given to such things as the object of the law, the provisions of the aforementioned local alcohol plan, and whether the facility or good order of the area could be reduced if a licence is granted.

277. Mr McKenzie submitted that:

These two excerpts concisely capture the very heart of the objectors' concerns. Parliament's intent was to allow greater input into applications from the communities that know their localities best. ... The community is best placed to comment on the amenity and good order of its locality. The Act now empowers them to have a say on the good order of their community. They have been given a voice. It is respectfully submitted, that having been given a voice, if it chooses to use it must be heard.

278. In relation to these premises specifically, Mr McKenzie notes that the premises would be "quite simply, a liquor store, where 40% of the shelf space was devoted to hard liquor and RTDs" and that "moreover, it is a discount liquor store". Mr McKenzie submitted that these premises are not a boutique liquor store at all, it is simply a chain liquor store.

279. Mr McKenzie noted that while the premises present a business opportunity for Mr Badiyani, for the community the importance is quite different. The village has many community based amenities, reflecting the true nature of the community hub, which the community has worked very hard over many years, to make unique.

280. Reference was made to Mr Hutchens' evidence:

[which] captures the vibrancy and feel of the village. He identifies that an off-licence liquor retailer is simply not in keeping with the village - it does not fit. It does not reflect the amenity that the village represents. The people of Khandallah want their village to reflect who they are. An off-licence liquor store is not reflective of who they are and who they want to be.

281. It was submitted that the applicant has not engaged with the concerns presented by the community, and that the position taken by the reporting agencies is not supportive, but neutral at best.

282. Furthermore, in relation to amenity and good order, it was submitted that the reporting agencies would not in any event, be well placed to oppose an application on the amenity and good order consideration.

283. It was submitted that the applicant has not seriously challenged Mr Thomas' evidence surrounding his expert assessment of compatibility (s106(1)(b)).

284. Mr McKenzie noted that Dr Crampton is conflicted as an expert witness, and to that extent his evidence cannot be elevated above that of any other witness.

285. Mr McKenzie concludes:

The village is unique. The community has spoken. Its voice must be listened to under section 105(1)(h) of the Act. Not only that, but there is objective independent expert evidence to support the opposition. If the application is not denied, it is hard to image a high amenity scenario where it could be relied upon. It is submitted that the Committee can only, and should, decline the application.

Objectors' submissions

286. While many of the objectors who spoke orally at the hearing provided combined submission and evidence on the first two days of the hearing (which we have recorded above), the Committee also invited the objectors to present any final submission on the final day of hearing.

Ms Bareta

287. Ms Bareta noted that the most important thing in the world is the people. Ms Bareta's concern was the impact that the bottle store would have on the people

in this location, particularly given the many key community facilities that would otherwise be surrounding the bottle store.

288. Ms Bareta noted that the community have supported each other through the application and hearing process, with the support of the Mayor and Councillors. In addition, Ms Bareta noted that a number of the objectors have taken time off work to attend the hearing demonstrating their concerns, in her own circumstances for example, she had taken four days of annual leave which would be important time that she would have otherwise been able to spend with her family.

Mr Collingbourne

289. Mr Collingbourne submitted that he was surprised Mr Badiyani felt he continued to carry a social licence for these premises, after three days of the hearing, and listening to the community.
290. Mr Collingbourne stated it would be incorrect to say there were extremists opposed to any alcohol store because that is not the case. That submission was particularly on the basis that the community were unable to identify, hypothetically, where a store could be located in the abstract.
291. In relation to Khandallah, it is a village with a very high standard of amenity and even minor impacts on that area are unlikely to be measured by the Police or Medical Officer of Health.

Dr Lambrechsten

292. Dr Lambrechsten reminded the Committee that alcohol is a drug.

Ms Chappel

293. Ms Chappell noted that while there had been a bottle store in the vicinity previously, that closed sometime around 2004 to 2006 and that the knowledge of alcohol-related harm has advanced considerably since that time.

RELEVANT LEGAL CONSIDERATIONS

294. The Committee must determine whether a new licence to sell and supply alcohol can be granted, and if so, the conditions that would apply. The criteria for the issue of a licence is found within the Sale and Supply of Alcohol Act 2012, which we will refer to as 'the Act'.

295. It is necessary to first discuss the overarching purpose of the Act. Any interpretation of the Act must be ascertained from its text, and in light of its purpose.¹⁰

Purpose of the Act

296. The purpose of the Act is found at section 3, and holds:

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.

297. In summary, the purpose of the Act is intended to benefit the community as a whole. Any outcome achieved must be reasonable, and directed toward achieving the object of the Act, which is found at section 4.

Object of the Act

298. The Object of the Act found in section 4 is stated as follows:

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.

299. The Act provides two overarching objects. Firstly, that when alcohol is sold, supplied or consumed, it is undertaken safely and responsibly. It is important to emphasise that the object of the Act is not only around how alcohol is sold and supplied by licensees, but how its customers consume it. In the case of an off-licence, consumption occurs away from the premises.¹¹

¹⁰ Interpretation Act 1999, Section 5.

¹¹ With the exception of samples, which can be provided on the premises.

300. The second overarching object is to minimise harm which occurs from excessive or inappropriate consumption of alcohol.

Harm

301. The term 'harm' is defined in the object of the Act, section 4(2), as follows:

(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).

302. The definition of 'harm' is very wide and includes any crime, property damage, health effects, or disorderly behaviour. 'Harm' includes both the direct and indirect effects of those circumstances.

Minimisation of alcohol-related harm

303. The object of the Act looks toward the minimisation of harm caused by excessive or inappropriate consumption of alcohol. As noted by the High Court in *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980:

... both the Authority, and this Court, must have regard to reducing alcohol-related harm to the smallest amount, extent or degree, when making decisions on the grant of renewal of a licence.

Approach to be taken by the Committee on consideration of this application

304. The Committee must undertake an evaluative approach and adopt a merits based assessment of the application.¹² There is no presumption that a new licence or renewal of an existing licence will be granted.¹³

Thus, when the relevant body receives an application, they must consider it against s 105 in deciding "whether to issue a licence". There is no presumptive position, and certainly no foregone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

¹² *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, at paragraph 54.

¹³ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, paragraph 55.

305. The Committee must consider whether a causal nexus would exist between the effect of granting the application, and the harm which the object of the Act seeks to minimise. Again as stated in the *Birthcare* case:¹⁴

...the Authority is required to have regard to the s 105 criteria (or in the case of a renewal the s 105 criteria as modified by s 131) and then step back and consider whether there is any evidence to suggest that granting the application will be contrary to the object of the Act contained in s 4(1), namely that the sale, supply and consumption of alcohol should be undertaken safely and responsibly and the harm caused by the excessive or inappropriate consumption of alcohol should be minimized.

Onus of proof

306. As noted above, it is for the Committee to undertake an evaluative approach to the application. In *Re Venus NZ Limited*, Heath J confirmed that the traditional civil approach to an applicant carrying an onus, may not be appropriate in alcohol licensing applications:¹⁵ However, in relation to issues of suitability, the High Court has confirmed that there remains an onus on the applicant to establish that criteria.¹⁶
307. That approach was cited with approval in *Birthcare*, where the Court confirmed, when referring to *Re Venus NZ Limited*:¹⁷

...the Authority's role is essentially an inquisitorial one where notions of onus of proof may not be helpful or appropriate.

308. The High Court in *Re Venus NZ Limited* confirmed that the touchstone for consideration of the s105 factors, must be the object of the Act:¹⁸

Although the 'object' of the 2012 Act is stated as one of the 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 new legislation. It seems to be that the test may be articulated as follows:

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

¹⁴ *Auckland Medical Officer of Health v Birthcare Auckland Limited*, paragraph 50.

¹⁵ *Re Venus NZ Limited* [2015] NZHC 1377, paragraph 60.

¹⁶ *Page v Police* HC Christchurch AP84/98, 24 July 1998, Panckhurst J.

¹⁷ *Auckland Medical Officer of Health v Birthcare Auckland Limited*, paragraph 52.

¹⁸ *Re Venus NZ Limited* [2015] NZHC 1377, and cited with approval by the High Court in *Auckland Medical Officer of Health v Birthcare Auckland Limited*.

Statutory criteria to be applied

309. In deciding whether to grant the licence, the Committee must have regard particular criteria found in section 105 of the Act, being:
- a. Is the grant of the licence consistent with the object of the Act?
 - b. Is the applicant suitable?
 - c. Are the days and hours during which the applicant proposes to sell alcohol suitable?
 - d. Is the design and layout of the premises suitable?
 - e. Does the applicant propose to sell goods other than alcohol such as low-alcohol refreshments, non-alcoholic refreshments and food?
 - f. Does the applicant propose to provide services other than those related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?
 - g. Will the amenity and good order of the locality be decreased by more than a minor extent by granting a new on-licence?
 - h. Whether the amenity and good order of the locality is already so badly affected by other licences, and that while any further affect from a new licence will be minor, it would otherwise be desirable not to grant any further licence?
 - i. Does the applicant have appropriate systems, staff and training to comply with the law?
 - j. Have the police or medical officer of health raised any concerns?

ANALYSIS

310. We will proceed to consider the application on the basis of the above criteria, but will address the object of the Act last.

Suitability

311. The Committee must have regard to the suitability of the applicant to be granted a new off-licence.

312. The term 'suitability' is not defined in the Act. It is however well settled in this jurisdiction, that suitability is measured against the general dictionary definition of that word, meaning "well fitted for the purpose, appropriate".¹⁹

313. Wide ranging factors may be relevant for an evaluation of suitability, but when considering any matters, there must always be a causal nexus between any matters identified, and the object of the Act. For example, as confirmed by the Authority in *Re Nishchay's Enterprises Ltd* [2013] NZARLA 837:

... suitability is a broad concept and the assessment of it includes the character and reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also includes matters raised in reports filed under s 33 of the Act and those reports may raise issues pertaining to the object of the Act as set out in s 4.

314. We also note that in order to find the applicant suitable, we must make a positive finding of suitability. The applicant carries an onus to establish suitability. As confirmed by the High Court in *Page v Police*:²⁰

[Section] 13(1)(a) provides that the applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding. That implies an onus upon the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of the particular case: for example the place, the intended business (here in a difficult central city location), the nature of the business itself, the hours of operation and the intended activities, provide the basis for the assessment of the individual. Where that person is inexperienced in business generally, or in relation to the licensing industry, then it is likely that a very favourable view of their abilities will be an essential prerequisite.

315. In relation to this decision, we note that the applicant has placed significant weight on the fact of Khandallah being a community with limited social deprivation and crime. As we will discuss further below, risks from alcohol-related harm are not unique to socially deprived areas, but the presenting alcohol-related harm effects may be different. A further consideration is the fact that trade will be in off-licence alcohol, which presents a higher risk profile than on-licence trade, given consumption is not supervised by the licensee.

316. The applicant in this case is a limited liability company. The company itself does not operate any other bottle stores, but the reality of applications made by companies, is that the Committee must look to the shareholders and directors, and how the company would likely manage the premises. In effect the Committee must 'lift the corporate veil' to assess how the premises would trade in reality.²¹

¹⁹ See for example *Re Sheard* [1996] 1 NZLR 751.

²⁰ *Page v Police* HC Christchurch AP84/98, 24 July 1998, Panckhurst J.

²¹ See for example *Re KR Entertainment Ltd* [2014] NZARLA 167 and *Whittle v W K Group Investing Ltd* [2013] NZARLA 728,

317. In this case, the only representative of the company that the Committee has heard from (other than Mr Young its legal representative), is Mr Badiyani. Mr Badiyani is the director of the company, and would unquestionably be the driving force of the store.
318. Having evaluated the evidence, including hearing from Mr Badiyani in person at the hearing, our conclusion is that the applicant has not established itself as being suitable to be granted a new off-licence, and we reach that conclusion for a number of reasons.

Failure to comply with Petone store licence

319. In the course of the hearing, the issue arose as to whether Mr Badiyani, as operator of the Petone 'Bottle-O' store had breached the licence held for that store, and it is clear that he has.
320. As reflected in the decision from the Lower Hutt District Licensing Committee, this was a hotly challenged application for a new bottle store premises. It is our impression that in order to make the application more attractive, and to avoid the perception of intending to open a discount high volume bottle store, that the application was presented as a higher end or 'boutique' bottle store, and to achieve that result, the store was described as being a Merchants brand outlet, rather than a Bottle-O. In fact, it is apparent from the decision that Mr Badiyani gave evidence that the Merchants outlet would be something more boutique, or higher end, than a 'Bottle-O' premises. Again the DLC decision records:

There are only seven Merchants liquor stores around New Zealand which have **high quality products in comparison to the Bottle-O stores**. Both Merchants Liquor and Bottle-O are part of Tasman Liquor. Mr Badiyani said that his proposed store would not be as high end as the nearby liquor store, Il Doge, which did not sell any low priced mainstream products. **Merchants liquor would be a boutique store, halfway between Il Doge and Bottle-O**, with the focus on high end products.

[Committee's emphasis]

321. There is a strong indication in the decision that this evidence was persuasive to the DLC, so much so that the DLC took the very unusual approach to making it a condition of the licence that the premises be branded as a Merchants outlet, and photographs of how the premises were to be branded were even included in the decision. The decision carried the following condition:

Merchants will be a small boutique store, not a cheap liquor store, with the branding substantially the same as the pictures attached at Appendix 1 to this decision.

322. In our view, the obligation on the licence holder was clear as a bell. The store was not to operate as a "cheap liquor store", and must be branded as a Merchants outlet.
323. However, after receiving the licence, Mr Badiyani elected to chart a different course, and to rebrand the store as a Bottle-O, and to trade as a Bottle-O outlet.

In our view neither action complied with the above mentioned condition of its licence.

324. When challenged on these matters at the hearing, Mr Badiyani advised that the store was rebranded because it had been approved by the Licensing Inspector from Lower Hutt.
325. No evidence has been provided from the Licensing Inspector in Lower Hutt supporting that he or she had approved the rebranding as alleged. We note that this matter had been put in issue prior to the commencement of the hearing.
326. We have considerable difficulty in accepting that a Licensing Inspector would approve such a rebranding, which would be entirely inconsistent with an express condition in a licence. It must be an unrealistic proposition that a Licensing Inspector would believe that they would have the power to vary a licence in that way.
327. However, whether Mr Badiyani had received permission from the Inspector or not, we would have reached the same conclusion, that the fact of the rebranding is not consistent with a suitable off-licencee. That is because a suitable licensee trading under a licence would be well aware that the law required them to following the conditions set on the licence, irrespective of what they were told by a member of a reporting agency. The situation would be aggravated if a licensee was to obtain a licence, and then simply ignore the conditions which did not suit their business aims, and in the absence of having received evidence from the Lower Hutt Licensing Inspector, we consider this to be the most likely situation.
328. Mr Badiyani impressed us as being a driven and focused businessman. We were however left with the impression that Mr Badiyani would make undertakings to achieve his aims, whether those undertakings would be achievable in reality. As an example, Mr Badiyani made an undertaking that he would personally be in the Khandallah store 20 hours each week, on specific days, so that if any members of the community had concerns, they could speak to him directly. We cannot accept that such an undertaking would be realistic or achievable. When the Committee asked Mr Badiyani what he would do if an emergency arose in one of his other stores on a day when he had undertaken to be in Khandallah, Mr Badiyani accepted it would attend the other store. Furthermore, it cannot be a realistic proposition that Mr Badiyani could manage 8 other premises (if the new Cambridge Terrace off-licence premises was included that would be 9), without any business management staff, and be present in the Khandallah store over the days and hours he had promised.
329. However, if the Committee was wrong in our impression set out above, and Mr Badiyani truly believed that an inspector could waive or vary conditions on a licence, we would also have concluded that argues against a positive suitability finding. If that were the situation, then we would be unable to find that Mr Badiyani had a proper understanding of the basic obligations of a licensee (to follow the conditions on your licence), to find suitability had been established.

General suitability concerns

330. In the Committee's view, a general bottle store presents a higher risk profile for alcohol-related harm, when compared with on-license premises. With on-license premises, like a bar or tavern, all alcohol sold is consumed on the premises. Therefore, the licensee is present, and oversees that consumption. If problematic behaviours, or intoxication arise, the licensee, can simply decline the sale. That is not the case with off-licence sales, where consumption occurs away from the premises. In our view, that requires an off-licencee to have relevant policies and procedures, and also to provide oversight to the staff members selling alcohol. That is especially the case, where a proportion of staff are employed as immigrant workers (i.e. without previous experience in New Zealand in licenced premises).
331. In the course of the hearing, the Committee asked Mr Badiyani to identify harms from alcohol. In order to answer that question, Mr Badiyani needed to refer to a list of harms from his mobile phone. The Committee would not expect a licensee to have a deep understanding of medical conditions arising from alcohol use, but it would have expected a suitable licensee to have a perfunctory knowledge of some of the more common alcohol-related health impacts. That is missing here.
332. We were also unimpressed at Mr Badiyani believing that introducing an additional bottle store would not add anymore alcohol to the area and would do no more than split the existing market. Mr Badiyani maintained this position throughout the hearing, even following cross examination from Mr Whelan. The assertion of no increase in alcohol consumption from opening a new bottle store is unrealistic and does not reflect positively on Mr Badiyani's suitability to hold a new off-licence.

Ability to oversee operation

333. As the Committee understand matters, the business model applied to Mr Badiyani's chain of bottle stores, is that once the store is open, a manager is appointed, and other staff then appointed including immigrant staff from India. Of course, neither the store manager nor other staff, are directors of the company. The directors have important obligations in how the store is run. We have significant reservations as to the reality of Mr Badiyani being able to properly oversee this store, as well as the other stores he is responsible for. Mr Badiyani has not identified any other managerial staff to assist in this oversight.
334. This was a matter considered by the Authority in *Pangotra Holdings (Palmerston North) Limited v Sargent and ors* [2016] NZARLA PH73. That case involved an application for a new off-licence for premises to trade as a bottle store in Johnsonville. Similar to Mr Badiyani's business, Pangotra Holdings was a company that was expanding its off-licence premises through various locations in the North Island, by appointing managers and staff to run the stores, but at that same time, failing to develop its senior management oversight of the operation. The Authority upheld this Committees decision declining to grant a new licence, and summarised the issue as follows:

The DLC considered a factor relevant to suitability was that it considered that the appellant failed to have adequate systems, staff and training. The appellant's evidence in this regard was that it would manage the premises in exactly the same way as it manages its other nine premises. The DLC's concern, however, was that there seemed to be no recognition by the appellant that every time it adds another off-licence to its overall stable, then less attention to each off-licence can be given by its directors. In these circumstances, in time with the increase in the size of the overall business, it needs an administration which is able to cope with the increased size of the overall business to ensure that breaches of the Act do not occur. The DLC was not satisfied that the appellant had considered this and accordingly the DLC, rightly, regarded this as a factor which needed to be taken into account in the overall evaluation of the appellant's suitability.

335. This very same concern arises in this application for premises in Khandallah.
336. For the above reasons, we have been unable to find that suitability has been established in this case.

Amenity and good order

337. There are two sub-subsections in relation to the amenity and good order consideration, and we will consider those together. Section 105(1)(h) and (i) of the Act defines the amenity and good order considerations as follows:

(h) [The Committee must decide] 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) [The Committee must decide] 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:

338. The Committee records at the outset, that we find section 105(1)(i) is not relevant in this case. As well canvassed at the hearing, Khandallah is not location significantly impacted by other local licenced premises. We will therefore proceed to focus on section 105(1)(h).

339. The term 'amenity and good order' is defined in section 5 of the Act, the interpretation section, as follows:

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

340. Helpfully, the Act also set out a range of considerations at section 106, to aid in evaluating the amenity and good order consideration, as follows:

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 the issue of a licence, the licensing authority or a licensing committee must have regard to—

(a) the following matters (as they relate to the locality):

(i) current, and possible future, noise levels:

(ii) current, and possible future, levels of nuisance and vandalism:

(iii) the number of premises for which licences of the kind concerned are already held; and

(b) the extent to which the following purposes are compatible:

(i) the purposes for which land near the premises concerned is used:

(ii) the purposes for which those premises will be used if the licence is issued.

341. The Committee must form an opinion as to whether the amenity and good order of the locality would likely be reduced by more than a minor extent by the grant of the licence.²² There is no obligation on the applicant to establish this criteria.
342. The Committee has applied the interpretation of 'likely' to mean more than a mere possibility, but not so high as to be expressed as a real and substantial risk that the considered consequence would happen.²³
343. The assessment of whether any impact on the locality would likely be 'more than minor' must involve an assessment, taking into consideration the receiving environment. For example, where there proposed premises were to be located in a busy inner city area, the factors to be balanced may be different to a quiet residential area.
344. The proposition in this case, is to place a general bottle store in the centre of the Khandallah Village. There is absolutely no doubt that the Khandallah Village is at the extreme end of agreeableness and amenity. In the course of the hearing, no one suggested otherwise.

²² *Re Venus NZ Ltd* [2015] NZHC 1377.

²³ *Port Nelson Ltd v Commerce Commission* [1996] 3 NZLR 554.

345. The fact of this high level of amenity is no accident. It is the result of decades of work from the residents of Khandallah, building it to become community they want to live in. As can be seen with the level of opposition to this application, the Community has spoken decisively that they do not consider a general bottle store (in fact any bottle store), is a consistent activity with how they view their community. The opposition could be viewed as the continuation of the work that has occurred over the years, in building and maintaining the community as they want it to be.
346. Put into the context of the section 5 definition of amenity and good order, the resounding voice of the community, is that if a bottle store was opened, that it would lessen the degree to which their community is pleasant and agreeable. In our view significant weight must be placed on this view.
347. That is not to say that we must accept blindly the objectors position that a licence should not be granted on the basis that they present, because if we were to do so, we would be abdicating our responsibility in the Inquiry.²⁴ What we must do, is to consider the concerns raised by the community, and form an opinion as to whether they would result in likely impacts on the amenity and good order of the locality, as defined in the Act.
348. Having done so, we have formed the opinion that if we were to grant the licence there would be a likely impact on the amenity and good order of the locality by more than a minor extent. In fact, we would say that the impact would not simply be likely, but very likely if not certain. We reach that view for the following reasons.

Introduction of another off-licence outlet

349. We begin by noting that we do not agree with Mr Badiyani's view that if his premises were to open, it would do not more than splitting the market, or to put that another way, the same amounts of alcohol would be purchased, only some of that alcohol would be purchased from his store rather than somewhere else. That approach was not accepted by the authority in the Patels Superette case.²⁵ It is also not consistent with the Committees understanding of the prevailing approach with alcohol-related harm internationally. That is that an increase in alcohol outlets has the effect of lowering price, and introducing into the receiving community higher (additional) volumes of alcohol. For example, as noted by Dr Menabde, the Deputy Regional Director of the World Health Organisation Regional Office for Europe:²⁶

There is indisputable evidence that the price of alcohol matters. If the price of alcohol goes up, alcohol-related harm goes down. Younger drinkers are affected by price, and heavy drinkers are more affected than light drinkers;

²⁴ The Committee operates as a Commission of Inquiry, within the powers of the Commissions of Inquiries Act 1908, as required by section 201 of the Sale and Supply of Alcohol Act 2012.

²⁵ *Patels Superette 2000 Limited - Aro Liquor v Muir* [2019] NZARLA 75 (8 May 2019).

²⁶ Evidence for the effectiveness and cost-effectiveness of interventions to reduce alcohol-related harm, World Health Organisation Europe, 2009, Forward.

In fact, if a minimum price were established per gram of alcohol, light drinkers would hardly be affected at all. There is also indisputable evidence that the more readily available alcohol become, the greater the harm, and the strong evidence that the more alcohol is marketed, the greater the risk of harm.

350. Similarly, the World Health Organisation report states:²⁷

In general, the number of alcohol outlets is related to the level of alcohol-related harm, which is strongest when there are major changes in the numbers or types of such outlets. An increased density of alcohol outlets is associated with reduced social capital [referenced] and increased levels of alcohol consumption among young people, with increased levels of assault and with other harms such as homicide, child abuse and neglect, self-inflicted injury and, with less consistent evidence, road traffic accidents [referenced].

351. It was proposed for the applicant that granting the licence, would not result in any appreciable changes to existing alcohol consumption, and therefore alcohol-related harm. However that does not take into consideration the fact that granting the application would introduce forms of alcohol (spirits and RTDs) that are not currently available for off-licence sales in Khandallah. Again with reference to the World Health Organisation report, that report does relate a positive association of introducing new forms of alcohol, with alcohol-related harm.²⁸

Studies which have capitalised on natural experiments in alcohol availability have come largely from the Nordic countries, where access to alcohol has traditionally been more restricted than in many other developed countries. These studies have examined substantial changes in alcohol availability such as the opening of a store in a community that previously had none, or the introduction of outlets in villages and changes to regulations permitting grocery stores to sell beer to study the impact on changes in consumption [referenced]. The changes resulted in a marked increase in the consumption of beer, with marginalised heavy drinkers affected more than the average. Swedish studies have focused similarly on the introduction or removal of medium-strength beer (4.5% by volume) from supermarket shelves, finding substantial effects on consumption as well as alcohol-related hospitalization, particularly among teenagers [referenced].

Amenity and good order effects for Khandallah as it relates to this application

352. The Khandallah village is not large in radius. It is compact, but has services and facility that allows the community to function. It does not provide only utility to the communities day-to-day living, but is the heart of the community. We accept people use the centre by choice. It is where they go to meet friends, do their shopping, attend medical visits. Because of that, the Village is well frequented and if the licence was granted, then the exposure to members of the community to the bottle store would be inescapable. That includes the exposure of children to off-licence alcohol, and also those adults in the community battling their own

²⁷ Ibid, page 64.

²⁸ Ibid, page 66.

alcohol issues. In relation to those adults, if they elected to avoid bottle stores to manage their issues, then they may need to discontinue using the village.

353. A significant argument presented by the applicant, is that there is little serious crime in Khandallah, and therefore if you did not approve a bottle store in the village, where could you approve one? In our view, that position misses the point. Alcohol-related harm is not limited to serious crime. It is also represented by minor crime and disorder, domestic conflict, health related issues, financial difficulties, absenteeism from work etc. In the course of the hearing, the Committee heard the example of a Khandallah resident who had died from an alcohol-related disease, and the devastating impact that had on the woman's family including young children and friends. That is the very alcohol-related harm the Act intends to capture and avoid.
354. When evaluating amenity and good order, we must take into consideration neighbouring land use. In the case of this application, that neighbouring land use includes a PostShop, Medical Centre, psychiatrists offices, Plunket rooms, Child Care services, Town Hall, food and grocery outlets, library, pharmacy, children's play areas and parks. In our view, a general bottle store is not a compatible activity with those types of 'land uses', and that was also the view reached by Mr Thomas, where he reported that:

I consider that the proposal sits as being moderately incompatible with the neighbouring activities having regard to both adjacent activities wider centre activities and nearby residential activities.

355. The Committee notes the Authorities' decision of *Pangotra Holdings (Palmerston North) Limited* (which we note was a different application and decision to that quoted above).²⁹ That was also an application for an off-licence bottle store, to be situated in Palmerston North. The application was the subject of public opposition. One of the areas of objection, was that the proposed premises would be next to a 'Warehouse Stationary' store, and concern was raised that the store would be frequented by school age children, particularly around school hours.
356. The Authority accepted that premises located where children frequent, would be a factor to be considered, and in that case would reduce the amenity and good order of the premises by more than a minor extent. The Authority held at paragraph 14:³⁰

As a result of the objection, it is evident that the purposes for which the premises would be used if the licence were issued are incompatible with the purposes for which the land occupied by the "Warehouse Stationery" is used: s.106(1)(b) of the Sale and Supply of Alcohol Act 2012. This is relevant as to the forming of an opinion in terms of s.105(1)(h) of the Sale and Supply of Alcohol Act 2012. The evidence establishes that the amenity and good order of the locality would be likely to be reduced if this application were granted.

357. In that case, while the Authority accepted an incompatibility between the proposed bottle store and the store used by school children, the Authority approved the new off-licence, concluding that any adverse effects from the

²⁹ *Pangotra Holdings (Palmerston North) Limited* [2014] NZARLA PH 228.

³⁰ *Pangotra Holdings (Palmerston North) Limited* [2014] NZARLA PH 228.

incompatibility, could be managed by having a condition that two staff members be present when the Warehouse Stationery store was open, with one staff member monitoring the entrance for underage shoppers.

358. The QV.co.nz reference advised that the Khandallah population comprises 13% of people in their teens, and 13% under the age of 10 years. In effect a quarter of the population are children or young people. As confirmed by Mr Badiyani's evidence, a proportion of those children pass the store daily. Unquestionably Khandallah has a strong family focus, as reflected in the range of child care facilities and schools around the premises, including (with distance from the premises):
- Creche under Khandallah Town Hall – Ganges Road (35m)
 - Khandallah Kindergarten – Everest Street (350m)
 - Onslow Kindergarten – Delhi Crescent (500m)
 - St Benedict's School (500m)
 - Khandallah Little School – Station Road (700m)
 - Khandallah School – Clark Street (550m)
359. We agree with the evidence of Mr Hutchens, and the objectors, that an off-licence bottle store at this location is not a good fit for this village, with its community facilities. We consider it is incompatible.
360. One of the ways the statutory scheme looks to reduce alcohol-related harm, is to recognise that some forms of off-licence sales are incompatible with facilities utilised by members of a community for their necessary shopping needs. This can be seen in Act's prohibition of certain types of off-licence sales in supermarkets. We cannot see any reason the underlying policy consideration for supermarket alcohol sales, would be materially different to other necessary community facilities, of which Khandallah has many.
361. We consider that the Plenitude Limited application differs to the Palmerston North *Pangotra* application, because it is not a single neighbouring store that brings vulnerable people to the front steps of the bottle store, but wide ranging business and social facilities. Furthermore, the proximity to the Warehouse Stationery store was the only significant concern raised, which is not the case with this application.
362. It was submitted that there is already licenced premises in Khandallah. That is correct. There are on-licence premises, and an off-licence at the supermarket. However there is no bottle store. If this licence was to be granted, that would mean the introduction of forms of alcohol that are not currently sold in the village, in particular spirits and RTD's. Concern was raised by the objectors that RTD's in particular are an attractive product, popular with young people. We agree with that assessment.³¹ In fact, the applicants own estimate is that the Khandallah

³¹ The Authority has also accepted that RTD's are popular with young people. In *Re Blackbull Liquor Hastings Limited* [2013] NZARLA 579, the Authority commented:

"An issue affecting the suitability of the applicant is that it has an agreement with its liquor wholesaler to the effect that that 70 percent of the retail space of the premises and 70 percent of the chiller space must be devoted to RTDs. There was no direct evidence that RTDs are the liquor purchases of choice by young persons although this is generally believed to be the case. Any off-licensed store

store sales would comprise around 15-20% of sales from RTD's. We disagree strongly that if this licence was granted, there would only be a splitting of the market for alcohol sales in Khandallah.

363. It was further proposed by the applicant that the premises would sell premium or boutique products, which would lower the risk of alcohol-related harm in the locality. We do not accept that the premises would trade in that way, for a number of reasons, including:

- a. The applicant has confirmed that 15-20% of sales would be RTD's. The Committee is not familiar with RTD products being viewed as premium products.
- b. Much of the products the store will sell are simply mainstream products.
- c. Consideration of the Bottle-O marketing (the advertisement at appendix 2) shows only a small proportion of 'premium' products, the remainder are mainstream or discount products. The applicant has not explained how that type of marketing would not be seen by residents of Khandallah, to reflect the store as anything other than a discount chain liquor store.
- d. If the market in Khandallah was for predominantly premium products, then logically that would be demonstrated in the products sold in the Khandallah New World, however that has not been shown to be the case. Mr Badiyani advised the most expensive wine he could see in the New World supermarket was \$40.00. That is not a very expensive bottle of wine. If the market in this locality was for predominantly premium products, we would have anticipated seeing that reflected in the supermarket, which it was not.
- e. The evidence is that there was a previous high end bottle store in Khandallah, but that store was not able to compete with the beer and wine sold by New World, when the supermarket commenced trade. Mr Badiyani has not demonstrated to us how his operation would be different, to succeed in being a premium store, when an earlier store could not maintain its position in that market.
- f. Mr Badiyani's evidence was that he is required by the franchisor to sell a core range of products. To that extent, Mr Badiyani cannot

that targets young persons with cheap 'easy to drink' liquor runs the risk of an adverse finding as to the licensee's suitability. Whilst the Authority is not prepared to make an adverse finding of absence of suitability, it does express its concern in this regard. It considers that its concern in this case can be remedied by imposing a restricted designation in respect of the premises rather than the more usual supervised designation. It would not surprise the Authority if, in the future, direct evidence were adduced indicating that with such a large proportion of premises being devoted to RTDs potential breaches of s 4 of the Act may result. This would have a direct bearing on the suitability of the licensee."

control the range of products he sells, so as to ensure he is only presenting the top end products he suggests he would focus on.

364. We note the evidence from Mr Thomas, that given the current high levels of amenity in Khandallah, even small changes would have large effects. That also makes common sense. Again Mr Thomas reports:

While the proposal is modest in scale, the position, shared entrance, frosted glass and livery will have more than a minor effect on the amenity of the locality.

There is a low risk of increase noise, nuisance and vandalism which in this vulnerable environment would have significant amenity consequences if it arose.

365. Our interpretation of Mr Thomas report, is that if this bottle store was to open, there would be more than a minor impact on amenity and good order of the locality. We accept that evidence, however make the observation that Mr Thomas may in fact have underestimated the impact, given it was made on the basis of the premises being 'high end' store as proposed by the applicant, which we do not consider would be the case.
366. For the above reasons, we conclude that evaluation of the amenity and good order consideration, does not fall in favour of the grant of a new off-licence.

Days and hours of trade

367. The days and hours of the application are significant in terms of trade over the course of the week, with trade into the evening seven days per week. Overall however, we are not persuaded that the hours would be out of keeping with a general bottle store, in this location. We note that the hours are not inconsistent with the hours of trade of the neighbouring New World supermarket.

Staff, training and systems

368. As we have discussed above, the Committee does have significant concerns with the staff, systems and training consideration, as it relates to managerial oversight of the premises. We will not repeat those concerns again here.

Matters raised by the reporting agencies

369. The Inspector has raised various matters with the Committee, while not opposing the application. Those concerns relate to failure to comply with the licence conditions in the Petone store, and also the amenity of the locality. Again we have discussed those above, and will not address them further.
370. The Medical Officer of Health has provided evidence as to the overall impact of alcohol, and particularly off-licence alcohol on the community. Dr Palmer has

presented information regarding hospital attendances and admissions. Khandallah does not rate highly on presentations, but it does rate at a level broadly similar to a number of other Wellington suburbs.

Relevant Local Alcohol Policy

371. Wellington does not have a Local Alcohol Policy, and therefore this consideration is not relevant.

Design and layout of premises

372. There was nothing unusual about the interior layout of the premises, it would be consistent with most general bottle stores.

373. There is however, one aspect of the design and layout that is of concern to the Committee, and that is the fact that there is a shared entry way with the neighbouring post office, and furthermore, that there is a well-used large community notice board located at the front door of the premises (and the front door of the PostShop). Khandallah, like every other sizeable community in New Zealand, will have a proportion of the community adversely effected by alcohol. The Committee is especially concerned that people who have drinking problems could not access key community facilities, without coming into immediate contact with the front door of bottle store premises.

Sale of goods and services other than alcohol

374. There are two separate sub-subsections relating to the sale of goods (s105(1)(f)) and services (s105(1)(g)) other than alcohol from the premises. In this case, we accept that the non-alcohol products that would be sold, are entirely consistent with what would otherwise be sold from a general bottle store premises, and we have no concerns regarding these two criteria.

Object of the Act

375. The object of the Act is to reduce alcohol-related harm. Harm is defined broadly in the Act.

376. The granting of a new off-licence will result in additional alcohol-related harm in the Khandallah area. It will increase exposure of alcohol to more vulnerable members of the community, and make some forms of alcohol more available, which are not currently available in Khandallah. Even the applicants own witness (Dr Crampton) accepted that if the licence was granted, that there would be additional serious crime that would occur, albeit only rarely. However, the Act does not look to only consider serious offending, alcohol-related harm can

include much less serious disorder, it also includes health effects. It would be impossible to quantify the impact of granting the licence.

377. All we can do, after evaluating the statutory criteria, is to step back and ask whether granting the application would be consistent with the object of the Act, and we conclude it would not. Operating a general bottle store from this location would result in a level of alcohol-related harm, whether direct or indirect, that would go beyond that level viewed as tolerable within the statutory scheme.

Absence of reporting agency opposition

378. Mr Young fairly submitted that in this case none of the reporting agencies opposed the application. Reference was made to various decisions of the Authority, to the extent that it would be difficult to find that an application should not be granted, when the reporting agencies do not take issue with it.
379. We agree with Mr Young's assessment of the law. In *Smith v Kiwano Ltd*³² the Authority repeated the long-standing approach from *Re British Isles Inn Ltd*³³, that:

Although the onus is on the company to establish its suitability, there is a reasonably high threshold to be met by the objectors in order to displace the absence of concerns by the reporting agencies. We are on record as stating that in the absence of unfavourable comments from the reporting agencies, we are unlikely to be persuaded that an applicant is unsuitable.

380. In our view, it would be wrong to interpret the Authority as saying that in the absence of reporting agency opposition, that the licence should be granted. In fact, Parliament has confirmed that the opposite is the case. Section 107 of the Act confirms that:

107 Authority or committee may refuse licence even if application not opposed

The licensing authority or licensing committee concerned may, having regard to any matter stated in section 105, refuse to issue a licence, even if no objection was filed against the application for it under section 102 and no report was filed under section 103 opposing that application.

381. We consider that the fact of no reporting agency opposition being filed is a factor to take into account, but it is not determinative. It is also relevant to consider why there was no opposition, and the answer to that (at least as far as the Police and Medical Officer of Health are concerned), may simply be due to the high level of amenity of the Khandallah area, and the fact that the area does not feature on adverse statistics either in relation to crime or health. In fact the Medical Officer of Health explained the lack of opposition to this application, was that due to limited resources he would only oppose applications located in areas of high alcohol-related harm.

³² *Smith v Kiwano Ltd* [2016] NZARLA 497

³³ *Re British Isles Inn Ltd* LLA 406/06

382. Ultimately, this is a case where the community have established their concerns as it relates to the amenity and good order effects on the locality, and we consider that has been established by a significant margin.

CONCLUSION

383. The conclusion of the Committee is that the considerations found in the Act do not favour a new off-licence for the proposed premises being granted. Therefore the decision of the Committee is that the application is declined.



Rex Woodhouse
Commissioner
Wellington District Licensing Committee

Dated this 7th day of October 2019

APPENDIX 1

PUBLIC OBJECTIONS

Mr Alistair William Haereroa Hutchens

1. Mr Hutchens is the President and Trustee of the Khandallah Cornerstone Resource Centre Trust Board.
2. He began his evidence by stating the Trust believes the Village is a unique suburban hub and gathering place for the people of Khandallah. People congregate to attend appointments, attend community gatherings, socialise with one another, and just to meet generally. It is used by the local community seven days a week from early morning until late evening. It is frequented by children, young people and adults.
3. The Village has a number of community facilities such as schools, churches, a library, a post office, a creche, plunket rooms, dairy, hairdresser, medical centres, cafes, a restaurant, pharmacy, kindergarten and is a public transport hub. The Village is widely considered to be a safe and sociable area.
4. The Town Hall sits at the centre of the Village and its presence is a unique and striking point of difference. It is a gathering point. The Community Centre offers a number of services and activities for the community attracting, on average, over 70 people every day, year around.
5. The Village currently has relatively little alcohol-related trouble and crime. They do not want to risk putting the current amenity in jeopardy.
6. The Trust is concerned that the Bottle-O will sell hard liquor and RTDs, accounting for 40% of the applicant's total sales. They are highly sceptical about Mr Badiyanis' store being a "boutique" liquor store, as it will be part of a chain of eight stores operated by him and would be part of a hundreds of other stores nationwide.
7. Mr Hutchens concluded by saying that an off-licence liquor retailer is simply not compatible with the Village - it does not fit.

Reverend Ryhan Prasad

8. Alastair Hutchens read Reverend Prasad's Statement of Evidence at the hearing stating that Rev Prasad was currently overseas.
9. Rev Prasad is the Minister for the Khandallah Presbyterian Church which is located less than 100 metres away from the proposed premises. Rev Prasad has been a youth worker for the past 13 years and has been the Minister at the Church for the last 7 years.

10. Rev Prasad believes that the amenity and good order of the area would be substantially reduced should the licence be issued given that:

The introduction of this store to the village enables another avenue of alcohol purchase and consumption where there are already multiple vendors in a close proximity that already reduce the amenity and good order.

11. He therefore believes that it is undesirable to issue further licences in the area, noting:

At the present time the village is not a highly police monitored area in regards to public drinking, however there are people who use the Church grounds and other places in the village to drink.

12. Rev Prasad also believes that issuing the licence would not align with section 4(b) of the Act:

Also as a Presbyterian Minister who acknowledges the already reported data on how many domestic and public crimes are connected to alcohol I can also acknowledge the amount of alcohol related hurt and abuse that does not get reported and continues to occur. The provision of a specific alcohol provider in the village enables the harm from alcohol to increase.

13. Rev Prasad drew a distinction between the nature of, and type of products available via, the current licensed premises in the Village and that of a stand-alone bottle store, going on to state:

An example that springs to mind is someone who is struggling with alcohol will find it much easier from social perspective to go in to a Bottle O and order three bottles of whiskey or multiple bottles of wine and beer on their own instead of in a local supermarket where the purchasing behaviour may be noticed and people seek to help or assist. The very nature of this business enables those struggling with alcohol to consume more easily.

14. Rev Prasad concluded by stating that he believed that granting this licence does not meet the purpose of minimisation that the Act seeks to promote. Overall the introduction of a bottle store is an extremely negative action for the community and will increase rather than minimise alcohol-related harm. It will have a more than minor effect on the amenity and good order of the locality.

Allan Johnstone

15. Mr Johnstone appeared at the hearing believing he had standing having signed the original petition circulated in the neighbourhood, and as he resides within a 1 km radius of the proposed premises. Mr Young confirmed that there was no objection to Mr Johnstone being heard at the hearing.
16. Mr Johnstone stated that he has resided on Nicholson Road, approximately 300m from the proposed premises, and for the past 29 years and has been a resident of Khandallah.

17. In the course of giving his evidence, Mr Johnstone indicated he had been involved in the liquor industry having worked for a period during his career as a Regional Operations Manager for Dominion Breweries.
18. Mr Johnston began by providing some background information on two licensed premises that had previously operated in the area. Firstly, he said 'Baxters', was established as high end wine shop prior to the introduction of alcohol products being available at the supermarket. It was well patronised but it was unable to compete with the New World Supermarket once it began selling wine and beer. His second point was that the former Postman's Whistle, trading (under new operators) as The Khandallah Trading Company, was a more traditional Pub (i.e. Public Bar & Lounge Bar) with a significantly higher problematic operation in terms of alcohol related harm.
19. Mr Johnstone's produced a Bottle-O advertisement placed by the applicant in the Dominion Post on Thursday 8th August 2019. The full-page advertisement detailed the current offers available across the applicant's group of Bottle-O stores in the region (namely; Cambridge Terrace, Hutt Park, Tawa, Naenae, Petone & Stokes Valley) from 05/08/19 to 18/08/19, under the heading "SPECIALS". This can be found at appendix 2 of this decision.
20. Mr Johnstone also sought leave to produce in evidence a schedule he had produced of price comparisons between the advertisement and two other local bottle stores, namely, the Discount Liquor Centre in Ngaio and New World Khandallah. Mr Young made an application opposing this new evidence being admitted. The Chair made an oral ruling accepting as evidence the newspaper advertisement, given the applicant had prior knowledge of its existence, and ruled out admitting the price comparisons Mr Johnstone had produced.
21. Mr Johnstone asserted that across the range of products available per bottle and per can, the alcohol sold by the applicant is generally cheaper than that supplied by either the Liquor Centre or New World. He believed that his analysis pointed to the fact that the applicant is in fact a "high turnover - low margin - alcohol store".
22. In essence Mr Johnstone asserted that the applicant operates multiple stores enabling an economy of scale resulting in an ability to retail alcohol at low prices due to; (a) bulk purchasing and (b) a franchise structure which provides multiple streams for product "specials".
23. Mr Johnstone was asked what his research suggested in terms of the mechanics of the price competition amongst competitors in the Industry. He answered that he believes that there is an increased chance of a "price war" between the sellers if a competitor is allowed to enter the market. He went on say that in his opinion this potential decrease in purchase price may give rise to an increased opportunity and incidence of pre-loading in particular sections of the market.
24. Mr Johnstone stated that he believed that the applicant must meet the demands of the market and that he therefore believes that the premises will draw people in from outside of the immediate area as a client base. This was

in part due to the fact that he believed that the applicant would not be able to compete with New World in terms of wine pricing and it can logically then only compete in the wider market on the pricing of spirits, RTD's and to some extent beer.

25. Mr Johnstone believes that Khandallah would, given a choice, prefer an "Upmarket Bottle Store" as opposed to a "Bottle-O" and that he personally would not object to such a store but believes it would struggle to compete with New World.
26. In the course of the closing submissions, Mr Johnstone made reference to an operator of a nearby liquor store (Ms K Patel) being robbed at knife point in the past and sited concerns about the security of staff members at the store during "fringe times" when he believed it would only be economic to have a single member of staff rostered on.

Giselle Baretta

27. Ms Baretta has lived in Khandallah for the last 14 years with her husband and three daughters. Her residence is within 500 metres of the village. She reiterated at the hearing in response to a question from Mr Young, that she was appearing before the Committee as resident of Khandallah, not as an expert witness. Ms Baretta works in the field of alcohol-related harm reduction, and has done so for over 20 years. She is currently the regional manager in the Alcohol Harm Reduction Team at The Health Promotion Agency.
28. Ms Baretta's three grounds of objection were:
 - the days and hours of proposed operation would expose children to alcohol and alcohol advertising resulting in harm;
 - that the amenity and good order of the locality will be likely to be reduced by more than a minor extent; and
 - the design and layout of the proposed premises is likely to generate harm through exposure to advertising and will encourage crime.
29. Ms Baretta believes that a standalone bottle store operating on the proposed days and hours in the village will be detrimental to the wellbeing of children and young people in the area utilising the village amenities. She considers that increasingly research shows that childhood exposure to alcohol marketing increases the likelihood children will begin drinking and current drinkers will increase consumption. She referred the Committee to three studies in support of this proposition.³⁴
30. Ms Baretta believes that reducing access to, and availability of, alcohol (such as through controls on location, density, and trading hours), minimises alcohol-related harm by reducing violence, anti-social behaviour and sexual offences, drug and alcohol offences, property

³⁴ These studies were *Pasch et al (2007)*, *Chambers et al (2018)*, *World Health Organisation Evidence for the effectiveness and cost effectiveness of interventions to reduce alcohol-related harm*, 2009.

damage, motor vehicle crashes and associated health problems. The most effective measures to control access and availability of alcohol she considers are:

- limiting outlet density - such as addressing the clustering together of outlets in certain areas;
- reduced trading hours; and
- restricting location in sensitive areas, premises or facilities.

31. In summary, Ms Baretta opposes this application because she believes that:

- Khandallah is already well served with existing licensed premises;
- Being a Bottle-O franchise elevates by more than a minor extent the risk of violent offending;
- It will increase the availability and marketing of alcohol in the community hub;
- The proximity of the location to public amenities that are sensitive sites makes the proposed site for the bottle store unsuitable;
- The applicant has shown little understanding of the nature of the site and has not mitigated the concerns of the public.
- The exterior design of the premises is likely to contravene best practice advice on crime prevention through environmental design.
- The grant of the licence will impact the amenity and good order in the locality will be reduced by more than a minor extent.

32. Ms Baretta during cross examination from Mr Young stressed that she had only considered the application before her, believing the proposed site was not a suitable location for a bottle store. She said that it had elevated her concerns that the application had been for a branded bottle store. She noted that the Khandallah village is not immune from aggravated robberies. If the licence was to be granted she wanted there to be a condition on the licence that there were 'no sales of RTDs' or 'no single sales of RTD's'

Dr Nicolaas Lambrechsten

33. Dr Lambrechsten is a resident of Khandallah where he and his wife have raised their family and lived for 29 years. He is also a long-standing member of the Presbyterian Church, and where he served as the property manager between 1997 and 2004.
34. Dr Lambrechsten's main concern is the area which he visits nearly every day for shopping, will no longer be a safe, pleasant and agreeable area.
35. He spoke of the Community treasuring the Village. He said he was aware of several acts of vandalism to the church during his tenure as its property manager, involving broken stained-glass windows and stolen copper downpipe to the Church.

36. Dr Lambrechsten expressed concern as to the types of products potentially available in the bottle store and the role that they play in alcohol-related harm. He believes that the applicant may be downplaying the percentage that such items will make up in the sales mix. He is particularly concerned about RTD's and their attractiveness to young women and the resulting health harms.

Mr John Dawson

37. Mr Dawson is a long time resident of Khandallah moving there in 1953. He attended two local schools and the local college (Onslow).
38. His grounds for objecting to the licence are amenity and good order concerns, proximity to other licensed outlets, proximity to sensitive sites and the requested opening hours.
39. He considers that the Khandallah Village is a shopping, meeting and socialising place for the community, it is a well presented, quiet area that is a safe family area. In his experience the Khandallah Village is a unique area in Wellington and as such should be preserved. Allowing an enterprise such as that proposed will be a retrograde step and one which will not easily be reversed if it is later shown to have been a mistake.
40. Mr Dawson drew the Committee's attention to the premises proximity to what he considered to be sensitive sites in the Village, he made particular note that:

The proposed outlet will share an entry with the Khandallah Post Shop. This will result in it being adjacent to post facilities and private post boxes located on the street-front face of the building, and to an extremely well patronised community notice board. The post shop is an amenity which is accessed by people of all ages, including children, who will have no option but to walk towards the door of the proposed bottle shop to enter the post shop.

41. A photograph of the shared entry was attached to Mr Dawson's Brief. Mr Dawson then went on to outline the premises location in relation to other sites, such as; the Public Library, Plunket Rooms (Toy Library), Pocket Park, Town Hall, Creche & Church, concluding its proposed positioning will create an undesirably high exposure of alcohol products to young people in the Khandallah Community.
42. He said he is the author of an online whiskey review website, and outlined his recent visit to one of the applicant's other stores where he cast an informed and critical eye over the products on offer.
43. In answer to a question from one of his fellow objectors Mr Dawson stated that he was aware of the other licensed premises within the Village but that they were not of a similar mould to the Bottle-O. He acknowledged that the local Supermarket sold beer and wine but that the other premises were On-Licensed with, to a greater or lesser extent, the provision of food as part of

their focus. Mr Dawson saw a clear distinction between these various premises and that of the proposed bottle store.

44. On questioning by the Inspector, Mr Dawson did not consider that the applicant's range would not particularly qualify the store's offering as being "boutique" in his opinion. He did think the Tawa store had a good range of whiskey products however.

Mrs Evelyn Dawson

45. Mrs Dawson has lived in Khandallah for some 39 years. She believes that in making her objection she is being consistent with the Wellington City Council's Alcohol Management Strategy, noting that one of its priorities is to "allow communities to have a greater say on the availability of alcohol".
46. Mrs Dawson also highlighted several s.105 criteria under which she was objecting to the application, specifically the potential effect on younger adults, amenity and good order concerns, nuisance and vandalism, proximity to sensitive sites and to other licensed outlets.
47. She expressed her concern that Onslow College students do not wear a school uniform and feared they would therefore be able to purchase alcohol from the premises. She believes under age students are easily able to obtain fake ID's in order to purchase alcohol.
48. In answer to questions from Mr Young, she confirmed that she had attended both of the Community meetings, and thought that the applicant had been open and honest about his intentions.
49. She acknowledged that the applicant had reduced his potential hours of operation during the process, but stated that regardless of this concession, the site is wrong for such an operation and that there were enough similar outlets located close to the Village.
50. She stated that she had not seen the comparative brand livery samples which the applicant had put forward, but notwithstanding, she reiterated that she doesn't believe that it is a suitable location due to the proximity to sensitive community orientated sites, and the fact that school children are invariably in the area.
51. In conclusion her position is that she would like the Committee to reject the application.

Ms Vivienne Chapple

52. Ms Chapple is a long time resident of the area, living in Ngaio for approaching 30 years, and visiting Khandallah Village several times a week.
53. She said she was an active member of the Ngaio & Onslow Residents Association and that she had been granted standing by the Committee as she

was a signatory of the opposition petition which had been circulated in the community.

54. Her written statement detailed her opposition the issue of the licence on the following grounds; proximity to sensitive sites, the detrimental effect on the amenity and good order of the area, the potential effect on minors within the community, the design and layout of the premises and the addition of another licensed premises in the local area.
55. Whilst she was not against the applicant per se, in her opinion the market had clearly expressed its antipathy toward the application in that over 80 people had signed the petition in opposition and to the best of her knowledge the applicant had only found one person to support his proposition.
56. Ms Chapple has had personal experience of alcohol related harm having had family members suffer from addiction issues in the past including the death of a brother-in-law.
57. She believed the Thirsty Liquor Ngaio store (which is now closed) had lost their licence in part due to submissions to the Authority by the Residents Association members some of which who had witnessed many unrecorded events at or near those premises. She believed the licensee had not wished to report such matters since a permanent record of such negative events would not reflect favourably on their operation.
58. She considers the addition of spirits and RTD's in to the local market distinguishes Mr Badhiyani's proposal from the licenses currently operating in the Village.
59. She thought Mr Badhiyani's offer to donate a defibrillator for the Communities use was symptomatic of his lack of detailed knowledge of the area since there are already multiple units available within the Village.
60. Similarly, she pointed to his failure to recognise the importance of the Community Noticeboard in the shared space immediately outside of the premises (in the shared doorway with the Post Office), as demonstrating his misunderstanding of the needs of the locals.
61. In respect of Mr Badhiyani's assertion about the potential price for spirits available at his stores, Ms Chapple believed that one litre of economically priced spirits was very much the same at these premises as other bottle stores, and therefore the difference in their branding was essentially irrelevant.
62. In line with her written statement, Ms Chapelle concluded her evidence by asserting that her primary position is that she did not wish to see the licence granted, and urged the Committee to "listen the Community".
63. Ms Chapple would potentially support a further on-licence for the village in the form of a café, but that she believed Khandallah is well served by off-licences and "doesn't need more".

64. Finally, Ms Chapple made mention of the recent study published in The Lancet in regarding alcohol related harm amongst the Baby Boomers generation pointing out that "there are lots of Boomers in Khandallah".

Mr Keith Newell

65. Mr Newell, a Civil Celebrant and Justice of the Peace, having lived locally in Agra Crescent for 34 years.
66. Mr Newell cited his first-hand experience having been a parent of teenage children, saying he was aware that his children and their peers in their teens had accessed alcohol while under age. As most parents can attest teens do manage to acquire alcohol, whether through lax sales practices by the store, or using older purchasers on their behalf.
67. He noted the example of the nearby Thirsty Liquor store in Ngaio which had had its licence revoked in 2014 by the Alcohol Regulatory Licensing Authority, after multiple breaches.
68. Mr Newell noted that the Village is a transit hub which means that children of all ages regularly pass through before and after school. He quoted a University of Otago study which stated that there is mounting evidence that childhood exposure to alcohol marketing increases the likelihood children will begin drinking.
69. While low-key alcohol advertising is evident in the local supermarket around the products, a shop dedicated to alcohol will significantly increase the presence of alcohol and the exposure of young children to its influence.
70. His concern is that with a liquor store close by with ready access to RTD's, this currently minor problem could grow.
71. He said that there has been an occasional and transient issue of teenagers and others drinking and leaving rubbish in the grounds around the public library. People will congregate and drink around this area, undermining the safe and family atmosphere of the Khandallah Village. It has the potential to increase nuisance and vandalism in the locality. He spoke to the evidence in his brief regarding the disturbances that he and his family experience from the operation of the Khandallah Trading Company and in relation to the alcohol-related refuse which regularly has to be retrieved from their garden. Mr Newell stated that he believed that the addition of the Bottle-O could and would increase the incidents of refuse being left in his garden.
72. Under questioning from Mr Young he did not accept that an on-licensed premise would have a potentially higher impact on the levels of nuisance and vandalism in the locality.
73. He believed that small packs of RTD's will be purchased by customers, split up and used for immediate consumption, which in his submission is in effect no different to them being sold individually.

74. Mr Newell's statement detailed how he and his wife had been part of a neighbourhood group which had successfully expressed concerns in regards to the establishment of the local Tavern and its potential effect on the good order and amenity of the Village. Attached to his statement were copies of correspondence that he had had occasion to have with the current operators of the premises in regards to the behaviour of patrons disturbing the neighbourhood. Mr Newell also provided a detailed account of incidents of neighbourhood disturbances, vandalism and theft on or near his property which he believed were examples of alcohol-related harm.
75. His statement went on to list a number of "Sensitive Sites" the proximity of the proposed premises to which Mr Newell believed to be problematic to the issue of the licence, all within 1km, these being;
- Creche under Khandallah Town Hall – Ganges Road (35m)
 - Khandallah Kindergarten – Everest Street (350m)
 - Onslow Kindergarten – Delhi Crescent (500m)
 - St Benedict's School (500m)
 - Khandallah Little School – Station Road (700m)
 - St Barnabas Church – Box Hill (350m)
 - Khandallah School – Clark Street (550m)
76. Mr Newell believes that the local area is already well served by businesses where alcohol can either be purchased or consumed, and Khandallah simply does not need anymore. Mr Newell's position is quite firm in that he would like the Committee to reject the application.

Mr Paul & Mrs Carol Stigley

77. Mrs Stigley spoke on behalf on both her and her husband. She began saying they are now retired from careers covering the public service, teaching, CEO positions, and governance roles. Mrs Stigley currently assists the Police reviewing CCTV footage. They have lived in Khandallah for close to four decades and raised their family in the suburb.
78. They have been at their current address for the last 6 years and can readily be described as active and engaged members of the local Community. They acknowledge that whilst they are not experts, they are part of the community voice.
79. The Stigley's provided an extensive and comprehensive Brief of Evidence expanding on their grounds for objection, which included matters such as the object of the Act, the suitability of the applicant, the days on which and the hours during which the applicant proposes to sell alcohol, the design and layout of the premises, the proposed sale of goods other than alcohol, the amenity and good order concerns, nuisance noise and vandalism, proximity to sensitive sites, and proximity to other places that sell alcohol.
80. In response to a question from Ms Bareta regarding the proximity of the proposed premises to the public benches located near the Library, Pocket Park, Plunket & Toy Library, Mrs Stigley stated that she believed that the combination of a bottle store with these Community facilities and sensitive

sites in the vicinity was the "worst possible combination" given that they (the sites) are "all resources used by young children and families."

81. In answer to questions from Mr Wheelan, Mrs Stigley gave evidence that from her experience, as far as she could tell in her capacity as a CCTV monitor for the City, breaches of the liquor ban "usually involved RTD's or bottled beer."
82. Mrs Stigley's opinion was that it was a reasonable expectation that the risk of incidents of alcohol related harm behaviour can be expected to rise with the granting of a further licence.
83. Mr Young asked Mrs Stigley whether there was a location in the Village that she would consider to be a suitable alternative for the establishment of a Bottle-O store. She couldn't think of anywhere in the Village that would be a suitable alternative.
84. Mrs Stigley accepted that the applicant had been open and transparent, and that the proposed store are not on a main arterial road.
85. Lastly the Committee wishes to note that Mr & Mrs Stigley took the opportunity at the close of their written Brief of Evidence to provide some useful feedback as to the nature of the "processes for individuals and members of the community wishing to challenge off-licence proposals..." during the public engagement process. Feedback such as this is useful when it comes to refining the future processes for dealing with matters such as these where large numbers of public objections to licence applications are received.

Mr Warren Honeyfield

86. Mr Honeyfield is a retired pharmacist operating the Khandallah Pharmacy from 1971 to around 2013.
87. His evidence was presented on behalf of the Directors of Khandallah Properties Limited.
88. In 2016/2017 Khandallah Properties Limited removed an existing building and constructed a four level mixed use premises which includes an underground parking facility, on Ganges Road some 60 metres from the proposed premises.
89. His company has built up its property portfolio and he now considers that they own a suite of commercial properties constituting the majority of properties in the area.
90. He stated that over the years they have carefully selected their tenants, and that the company has ensured that the businesses selected do not detract from the neighbourhood amenity.
91. Mr Honeyfield stated that he has does have occasion to clear up alcohol related debris around his properties when advised of its presence by the tenants, and that he does not contact the authorities when this happens. He

expressed his concern as a Property Manager, that should the licence be approved he would be anticipating that the level of work will increase maintaining the properties, due to more litter and vomit.

92. When asked if he would consider that his other tenancies would require an additional investment in security measures were a bottle store to be located nearby he stated "I have not considered that but I would hope not."
93. He replied to a question by Ms Thomson, why he preferred not to have a bottle store in his premises, stating he didn't see them as adding anything to the shopping environment.
94. Mr Honeyfield said he had been approached in the past by a bottle store operator expressing interest in leasing his premises located at 15-17 Ganges Road (now a Gallery space), which was declined. He believed the approach had been from an operator of a chain of bottle stores, and that he had visited one of their outlets in the Hutt Valley but could not recall any further details.
95. Given his community roles, Mr Honeyfield developed a relationship with many members of the Community. He gave evidence that he had canvassed opinion amongst, approximately a dozen, of his former customers in relation to the proposed store, and had received no favourable responses.
96. Mr Honeyfield said that whilst operating the Pharmacies he had experienced two burglaries, the first in relation to drugs and the second by animal right's protestors.
97. The Inspector asked Mr Honeyfield whether he had provided drugs at the pharmacy for the treatment of alcoholism, he replied they had stocked the product the Inspector referred to, and he had dispensed it on few occasions over the years.
98. He went on to discuss his involvement in the local business association giving details of the CCTV system which has recently been installed to cover the central area of the Village, the impetus for which improved security for the area was deemed necessary. Along with initiatives like the free wifi service, he stated that these were funded by a levy on commercial rates and helped to promote the business opportunities within the Ganges Road precinct and that they had already proved to be a useful addition to the neighbourhood.
99. In his written objection, Mr Honeyfield noted the anticipated impact of an off licence on "sensitive sites", including the adjacent Community Creche, the opposite Khandallah Library, Plunket Rooms and a children's recreational area -none of which will derive any benefit from granting the licence, but would otherwise experience the effect of negative anti-social behaviour.

Ms Jennifer Leith

100. Ms Leith is a long term resident of Khandallah and values the unique nature of the village, believing that the issue of the licence would detrimentally effect the amenity and good order of the Village. She is concerned that the proximity to sensitive Community sites, including those used primarily by

families with young children, makes the proposed premise an unsuitable site for an off-license premise. She believes the inclusion of the store in to the Village will change the nature of the alcohol being supplied into the Community, as there are no existing premises in Khandallah selling spirits and RTDs. It is well known that RTDs are the introductory alcoholic drink of choice for the underage and for the vulnerable age group of consumers in the eighteen to twenty-four years age group.

101. She considers the presence of a Bottle-O store in Khandallah, targeting high volume cheap priced alcohol sales on the vulnerable with addictions, suffering from anxieties and mental health issues, and on young people aged eighteen to twenty-four years of age, the when brains are known to be still formative, would be detrimental.
102. She gave, at times graphic, evidence of having directly witnessed alcohol-related harm in the community on a spectrum from witnessing two incidents of drinking on public transport to the loss of a friend and neighbour through chronic alcoholism.
103. In response to a question from the Chair, Ms Leith informed the Committee that she had felt unsafe and vulnerable but had not contacted the Authorities as she was scared following the incidents where she had witnessed drinking on public transport.
104. She provided personal information about a friend who refused to acknowledge the addictive behaviours which had been observed by friends and herself over a long period of time. This friend was consuming large quantities of alcohol and exhibiting behaviours of a drunk person. Sadly she said this friend had died of cirrhosis of the liver eighteen months after her attempts to assist with the drinking problem: Ms Leith states:

Some years ago, I pre-arranged an appointment with the Khandallah Medical Centre doctor to meet with my friend to take advantage of addiction support services. My friend refused to acknowledge the addictive behaviours that had been observed by friends and myself over a long period of time: consuming copious amounts of alcohol at home, purchasing large quantities of alcohol, and exhibiting behaviours of a drunk person. In my friend's opinion, she was not 'down and out' and did not exhibit the traits of her late father who was an alcoholic and abused his wife. Sadly my friend died of cirrhosis of the liver eighteen months after my attempts with her to seek help; dying with a few friend aware that death was imminent. Two young daughters, aged 11 and 8, were left without one parent at such a young stage of their lives. The shock and disbelief in the Khandallah community of a parent dying at an unnaturally young age was felt keenly by many people for a long time. I reflect on how difficult it was for my friend who probably needed intervention much earlier than my action, and how difficult it was for a long-term drinker to accept her problem.

105. Her friend left behind two young daughters, aged 11 and 8 at such a young stage of their lives. The shock and disbelief in the Khandallah community of a parent dying at an unnaturally young age was felt deeply by many people for a long time.

106. In answer to a question from Mr Whelan, Ms Leith gave her opinion that middle class alcohol abuse takes place behind closed doors, and that sufferers may spread their product purchases across retail outlets in order to obscure the true picture of their purchasing and consumption habits and that amongst affluent people the normalisation of alcohol is considerable.

Councillor Simon Woolf

107. Councillor Simon Woolf represents the Onslow Western Ward, which includes the suburb of Khandallah.
108. Cr Woolf stated that he traverses the ward on a weekly basis, and that the community has expressed a deep concern as to another off-licence being established, and that that was for a number of reasons.
109. Those include the proximity to sensitive sites such as the Town Hall and the local schools, and he believes the prevailing view is that Khandallah is already well served by licensed premises.
110. Cr Woolf attended the meeting at the Town Hall, which he described as having had standing room only, estimating two to three hundred members of the Community were present. He believed with the exception of 2-3 people, those attending were overwhelmingly concerned about the harm that could be caused if this licence was granted.
111. Like Mrs Stigley, he believed that the applicant did not have a "social licence" to open the premises given that he believed there was no will in the Community for the proposal, and that he had not heard anybody strongly supporting the application at all.
112. Cr Woolf believes that the Village is the heart of the suburb, with an exceptional atmosphere and feel, and that therefore it was not a case of 'nimbyism', it is a heart of the community issue. It was a case of the heart & soul of the Village and that the Community did not wish to see the heart & soul eroded.
113. Answering a question from Mr Whelan, he confirmed that he had not had the occasion to oppose any other alcohol licence application, but has done so in this instance firmly believing the Community would be hurt or harmed by the issue of the licence. He did not think the application was fair or reasonable, and parents do not want their children exposed to alcohol, in the same way that that has occurred in other areas.
114. Cr Woolf stated that he believed that Khandallah Village is a fantastic community, close to a model of best practice for community resilience, a model of a suburban centre with levels of vibrancy and safety that are so important to the Community to maintain. He did not want what the community has established over the years to be eroded.
115. Mr Young questioned Cr Woolf about his perception towards the Bottle-O franchise. He was of the view that according to media reports there have

been problems with Bottle-O operators nationwide, and in some areas such as in South Auckland, in relation to wage issues and the treatment of staff allegedly not been up to scratch, drawing a conclusion that Bottle-O - at the top – may not be performing as they should.

Mr Lawrence Collingbourne

116. Mr Collingbourne primary concern is that the bottle store will have significant negative impacts on the area. He is concerned that any detrimental impact of the amenity and good order, will affect locals willingness to be present in the area. He is concerned that the presence of the store will potentially substantially alter the flow of community members through the Village. It is located in heart of the Village.
117. It is his assertion that the applicant referring to the business as "boutique" is meaningless in this context, and that the proposal is not at all boutique in the true definition of the word, and that an off-licence is merely a product outlet and not a service provider.
118. Mr Collingbourne believes that the applicant's business and marketing model is to employ disruptive and aggressive strategies. He believes the intention is to both create a market where there is no market and to use aggressive strategies to steal market share from competitors. His assertion is that customers will be drawn from outside of the area, citing the regional advertising material for the Bottle-O cluster group provided, which will disrupt the Community.

Mayor Justin Lester

119. Mayor Justin Lester is a resident of the nearby suburb of Johnsonville, and a former resident of Khandallah. He stated that he has an interest in the application through his role which qualifies him as a community stakeholder who takes a holistic view across the city. Mayor Lester objected to this application as the Mayor of Wellington.
120. Mayor Lester confirmed that he was a trustee of the landlord for these premises, but had withdrawn from that role, given irreconcilable differences in relation to, amongst other things, the offering of a tenancy for a bottle store in these premises.
121. Mayor Lester confirmed that he had opposed two other licence applications, in Johnsonville and Newlands. He believed that the addition of the bottle store in the Newlands shopping precinct has not added to the Community in a positive way.
122. He went on to say that ordinarily speaking, overcoming constituent apathy is an issue when trying to engage the community in matter such as this, and that he hadn't seen so many objections lodged to an application before. He believed that 550+ submissions is a significant number, and that such an outpouring of community concern gives rise to a lack of 'social licence' to operate being present in this case.

123. Mayor Lester stated that he believed that the Khandallah Village centre is a unique amongst the suburbs in Wellington, with a thriving and varied retail centre. He expressed concern that there could be an accumulative negative effect on the amenity and good order of the area if there was a significant change in the nature of the retail options there, and that there is a very real possibility for one bottle store off-license premise to precipitate others in turn.
124. Mr MacKenzie questioned Mayor Lester about the importance of building and maintaining community resilience in Wellington's suburbs and how the Khandallah village rates in relation to this concept. The Mayor explained that in the event of a natural disaster, the community will be required to band together and that the WCC, actively seeks to foster such inter community member links.
125. He stated that each community is unique, each has their own special character, in Khandallah's case, it has a 'village green' feel, being relatively compact with its slow traffic environment making it walkable and user friendly.
126. He believed that we should be moving to a position where some of those community hubs will be off limits to bottle stores, in that he thinks that alcohol and such community spaces, which he described as safe spaces, don't necessarily go together, concluding when you have a got a safe space, you try and maintain it.
127. In answer to a question from the Licensing Inspector, Mayor Lester stated that he wished that Wellington did have a Local Alcohol Policy, but that one was incredibly hard to implement, given it requires balancing the desires of the various stakeholders such as the Regional Public Health, and the Police against the Retailers, and invariably ending in a no-win situation.
128. Mr Young asked Mayor Lester where it was possible to have new bottle stores, if not in safe communities, to which he replied that more availability or access equates to more harm. He said that Wellington should not necessarily have more stores and that some areas could do with fewer.
129. He went on to say that, in his opinion, community members know their communities best, and that there is nothing that the applicant could do to assuage his concerns, adding, he would only be in favour if the community signalled that they wanted the store, concluding it is best not to issue licenses in the first instance, rather than putting an ambulance at the bottom of a cliff.
130. Mayor Lester reiterated his concern that the issuing of licenses can have a cumulative effect, and can create an oversupply to an area, and that he believes that the catchment area for the store is not just Khandallah but also encompasses Wadestown, Crofton Downs and Johnsonville. At this point he pointed to the example of the bottle store which had been added to the Newlands shopping precinct. The result of which, he believed, had had no net benefit, saying there has been a net detraction in an area in which a considerable investment of public funds had been made.

131. To conclude Mayor Lester said Khandallah is a wonderful unique community, and that he believed that the Committee should not issue the proposed licence.

Councillor Diane Calvert

132. Councillor Diane Calvert is the Councillor for the Onslow-Western Ward. She has lived locally for over 18 years raising four daughters in Khandallah.
133. Cr Calvert believes that the number of objections lodged against the application is a strong indication of that the Community cares and is deeply concerned about the proposition. She thought that the concern is widespread across the community, and especially prevalent for community members in their 30's and 40's. She stated that she had not heard of any community members calling for the premises to be approved.
134. She said the Village is a small suburban centre, which is one of the few remaining suburbs still having a local post office in the retail mix on offer. She noted that the premises were located immediately across the road from the pocket park, and that this area was scheduled to be updated.
135. She thanked the Cornerstone Trust for their role in effectively pulling the community together as one voice against the establishment of the bottle store. She believed that generally speaking the owners of the local retail premises curated the village well, and that the operators and staff of businesses tended to live locally.
136. In answer to questions from Mr Young, Cr Calvert accepted that the proposed store was smaller in footprint than some other bottle stores in the area such as the Super liquor in Johnsonville. However, she believed that the result of any external branding regardless of livery options, would have the effect of advertising the store to potential consumers, and that people will know what the store sells.
137. Finally, Cr Calvert stated that she believed that the Committee should be aware of the local amenities nearby the proposed premises, and also access the potential impact of the issue of the licence around drinking that occurs behind closed doors.

APPENDIX 2

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Tuatai Kona 330ml 13pk 811



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63 CAMBRIDGE TERRACE, TE ARO
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Bone 31 75 330ml 13pk 818



\$8999

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Johnnie Walker Green, Citrus XV,
Glenlivet Cognac, Reserve
750ml



\$3999

Hendrick's Southern Comfort,
White & Mackay
750ml



\$3999

Bottle of liquor
750ml



\$1999

Madam Sans Pinot
Noir
750ml



\$1999

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Range
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\$1999

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\$1499

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Range
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I.D. 25

Page 77