

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE

CIV-2024-404-002422
[2025] NZHC 2868

UNDER the Sale and Supply of Alcohol Act 2012

BETWEEN ALCOHOL LICENSING INSPECTOR,
AUCKLAND COUNCIL
Appellant

AND SINGH 13 INVESTMENTS LIMITED
Respondent

BELINDA MERIEL FOWLER
First Section 163 Party

MĀNGERE-ŌTĀHUHU LOCAL BOARD
(AUCKLAND COUNCIL)
Second Section 163 Party

MEDICAL OFFICER OF HEALTH

Hearing: 18 February 2025

Appearances: A Cumming for the Appellant
J Wiles for the Respondent
G Hewison and J Sontier for the First Section 163 Party
K Morrison for the Second Section 163 Party

Judgment: 30 September 2025

JUDGMENT OF GARDINER J

*This judgment was delivered by me on 30 September 2025 at 4.30 pm pursuant to Rule 11.5
of the High Court Rules*

Registrar/Deputy Registrar

Introduction

[1] The Thirsty Liquor off-licence is situated in a suburban block of shops at the intersection of Wickman Way and Garus Avenue in Māngere East. The premises had been operating as an off-licence since 2014. Singh 13 Investments Ltd (Singh 13) bought the business and premises and, on 13 December 2021, applied for a licence to operate the off-licence pursuant to s 99 of the Sale and Supply of Alcohol Act 2012 (the Act).

[2] The application came before the District Licensing Committee's (DLC). The DLC heard objections from the Medical Officer of Health (MOH), the Alcohol Licensing Inspector of the Auckland Council (Inspector) and 227 members of the public. The public objectors comprised local school leaders, residents, representatives from the Māngere-Ōtāhuhu Local Board and alcohol harm support organisations. Objectors submitted that the location of the off-licence in a low socioeconomic area near to schools, a childcare centre and a church was inappropriate. The DLC heard evidence from the police. On 4 July 2023, the DLC approved Singh 13's application for a period of one year.¹

[3] The Inspector appealed to the Alcohol Regulatory and Licensing Authority (ARLA). In a decision released on 20 August 2024, ARLA upheld the DLC's decision.²

[4] The Inspector appeals on the grounds that ARLA incorrectly applied the legal tests, made findings that are unsupported on the evidence, dismissed relevant evidence and failed to have regard to the object of the Act.

[5] The Māngere-Ōtāhuhu Local Board and Belinda Fowler, a resident in the area, were parties to the proceeding before ARLA and were heard on the appeal.

[6] In this decision, I have concluded that ARLA made an error of law. ARLA failed to have regard to the object of the Act as a standalone criterion. Specifically, ARLA failed to ask the essential question of whether issuing a licence to the premises

¹ *Re Singh 13 Investment Ltd* [2023] ADLC 8220078032.

² *Alcohol Licensing Inspector of Auckland v Singh 13 Investments Ltd* [2024] NZARLA 151–154.

was consistent with the object of minimising alcohol-related harm, considering the location of the off-licence opposite two schools, the high intensity of existing off-licences in the locality, the social deprivation of the community, and the evidence of alcohol-related harm in the form of crime and medical incidents where alcohol was a factor.

[7] Instead, ARLA conflated the concept of alcohol-related harm with amenity and good order, a separate consideration focused on the pleasantness of the environment. This led ARLA to require proof of a direct causative link between the operation of the premises and alcohol-related harm, such as evidence of alcohol being sold to school students. The legislation does not require such a causative link. It is sufficient for there to be an evidential foundation to suggest that there is a real risk of harm from the grant of the licence. If there is a real risk of harm from the grant of the licence, the object of minimising harm is engaged, meaning reduced to the smallest possible degree.

Background

[8] The premises is located on the first floor of a suburban block of shops at the intersection of Wickman Way and Garus Avenue, which includes a budget superette, vegetable shop, takeaway outlet, laundromat, bakery and vape shop. Singh 13 also owns the vegetable shop and the vape shop. The premises are painted charcoal black and orange. The stairway to the premises is located on Garus Avenue, opposite the Saint Theresa Catholic Church.

[9] The premises is close to two bus stops and a pedestrian crossing over Wickman Way. Over the crossing is a main entrance to one of three schools in the vicinity, the Southern Cross Campus. A short distance away, along Wickman Way, is the other school, Te Kura Māori o Ngā Tapuwae. Next to Saint Theresa Catholic Church is St Mary McKillip Catholic School catering to children in years 1 to 8. There are two childcare centres in the close vicinity operated by the Goods Seed Trust. The remainder of the surrounding area is residential.

[10] The application faced considerable opposition from the community. The DLC received 227 public objections. At the hearing, the DLC heard from seven objectors:

- (a) the Māngere-Ōtāhuhu Local Board represented by its Chair, Tauanu'u Nanai Nick Bakulich;
- (b) Ms Fowler, a local resident, member of Communities Against Alcohol Harm (CAAH) and a Māori warden;
- (c) Glenn McCutcheon, associated with CAAH;
- (d) Grace Ikiua, Chief Executive Officer of the Good Seed Trust;
- (e) Karen Moses, Director of Southern Cross Campus Junior School, representing Southern Cross Campus School;
- (f) Arihia Sterling, Principal of Te Kura Māori o Ngā Tapuwae; and
- (g) Emily Worman, a resident of Māngere East.

[11] There was recurring evidence which referred to the distinct vulnerabilities of the local area. The Chair of the Māngere-Ōtāhuhu Local Board spoke to the area's high levels of deprivation (with a Deprivation Index Score of 10) and unemployment, low levels of education, low household income and home ownership rates, alarming health statistics, and the high proportion of young and Pacific people living in the area. The Chair said that alcohol contributes to many of the broad social issues which concern the community. The Board sees evidence of alcohol misuse when looking at the community's high rates of imprisonment, domestic violence, poor educational achievement, and comparatively high rate of youth suicide. The Chair referred to the Māngere-Ōtāhuhu Local Board Plan 2011 which stated:

Alcohol abuse is the cause of many of our communities' social and medical ills which in many cases impact on both the families of problem drinkers and the wider community. Heavy drinkers cause considerable collateral damage that can be observed at the local hospital emergency department, a visit to Women's Refuge or to an addiction clinic.

[12] The Southern Cross Campus caters for students from year one to 13. The school also has as a pre-school onsite. There are approximately 1,500 students enrolled and almost all the students have Māori or Pacific backgrounds. Ms Moses explained that the roll is expected to grow to 2,000 in the short term and to 5,000 in the long term due to housing intensification in the area. Ms Moses said that the school considers that it is entirely inappropriate for an off-licence to be located opposite a school. She outlined concerns regarding access to and use of alcohol by students, referring to instances where students have been stood down due to alcohol-related incidents.

[13] Te Kura Māori o Ngā Tapuwae is a composite wharekura catering for students from years one to 13. Ms Sterling, the wharekura's principal, also submitted that the proximity of the store to young people was inappropriate. She said that the store with its distinctive colour could be seen from the school's football fields. She also referred to the high number of young people in Māngere, the high deprivation index, the large number of alcohol stores and alcohol-related harm.

[14] The Good Seed Trust operates two sites in the area: an early childhood centre and an after-school care provider. The Shiloh Community Church is based at the same location as the early childhood centre. Ms Ikiua said alcohol litter is an ongoing issue at and around the centre, worse on Mondays and getting worse over the last few years. Staff regularly must clean up the rubbish. Ms Ikiua presented photographs showing the alcohol litter and an email from a board member and caretaker of the church, describing alcohol cans, bottles and boxes strewn across the area.

[15] The DLC noted the unusual step of requiring the police to appear, even though they had submitted a report without opposition and initially declined its invitation to appear at the hearing. The police answered a series of questions which were adduced as appendix A to the decision.

Issues on appeal

[16] The Inspector raises these issues on appeal:

- (a) Did ARLA fail to apply the heightened standard of suitability to Singh 13, having accepted it applied in the circumstances?
- (b) Was ARLA wrong to prefer its own observations made on a single site visit over the evidence of witnesses on the current or likely future effect of the premises on amenity and good order? Was there evidence capable of supporting ARLA's findings on amenity and good order?
- (c) Did ARLA require a higher standard of evidence from agencies and objectors than that anticipated or expected by the Act and in doing so overlook or dismiss matters relevant to its decision?
- (d) Did ARLA apply an incorrect legal test in placing the onus on the agencies and objectors to prove Singh 13 did not satisfy the s 105 criteria?
- (e) Did ARLA confuse or conflate alcohol-related harm with amenity and good order, such that it failed to correctly assess and consider how the amenity of the area is affected by existing licences and the effects caused by the respondent's licence?
- (f) Did ARLA incorrectly apply the legal test relating to existing amenity such that it failed to consider whether it was nevertheless desirable to not issue the licence to the respondent in circumstances where it was required to do so?
- (g) Did ARLA fail to properly recognise and apply the mandate in the object of the Act that alcohol-related harm should be minimised?

[17] I have structured the analysis of the appeal around the three decision-making criteria that they concern: suitability, amenity and good order, and the object of the Act.

Approach on appeal

[18] Section 162(1) the Act provides:

162 Appeal against decision of licensing authority on question of law

- (1) Subject to subsection (3), where any party to any proceedings before the licensing authority (whether the proceedings commenced in a licensing committee or the licensing authority) is dissatisfied with any determination of the licensing authority in the proceedings as being erroneous in point of law, that party may appeal to the High Court on the question of law concerned.

[19] The approach to appeals under s 162 was summarised by Gendall J in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*:³

This is an appeal pursuant to s 162 of the Act. It is limited to points of law alone. This Court will not interfere with a decision unless it can be shown that the decision maker erred in law, accounted for irrelevant matters, failed to account for relevant matters, or was plainly wrong. Factual challenges, whether raised squarely or obliquely, will not be entertained on appeals of this kind, save to the extent they are capable of establishing that the decision appealed is plainly wrong. This is necessarily a very high threshold.

(footnotes omitted)

[20] Appeals under s 162 proceed by way of rehearing.⁴ The appellant bears the onus of satisfying the appellate court that it should reach a different conclusion from the decision under appeal.⁵

[21] *Auckland Medical Officer of Health v Birthcare Auckland Ltd* clarified the role of the court on appeal from the Authority's specialist jurisdiction:⁶

... while the scope on appeal may be limited and the Court is bound to reach its own independent conclusion, I am entitled to take into account

³ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] NZLR 382 at [17].

⁴ Sale and Supply of Alcohol Act 2012, s 161(1).

⁵ *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141.

⁶ *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689, [2016] NZAR 287 at [32].

the Authority’s view in recognition of its specialised role in the area of liquor licensing. However, the conclusions which I reach are to be my own.

Statutory framework

Background

[22] The Supreme Court described the background to the Act in *Woolworths New Zealand Ltd v Auckland Council*:⁷

The Sale of Liquor Act 1989 (the 1989 Act), the precursor to the 2012 Act, marked a shift in the legislative policies that had previously been adopted in relation to the sale of alcohol. The earlier legislation had been premised on an understanding that restrictions on selling alcohol (and particularly in relation to licences to do so) would reduce alcohol abuse and related harm. Under the 1989 Act, applicants seeking a licence were no longer required to show that the licence was “necessary or desirable”. Rather, any applicant and premises that met the 1989 Act’s criteria might be licensed.

In a 2010 Report, the Law Commission | Te Aka Matua o te Ture concluded that the 1989 Act had not reduced alcohol-related harm. Indeed, problems associated with alcohol-related harm had become worse, with the proliferation of outlets identified as a likely contributing factor. Levels of such harm were high, for both those consuming alcohol and those affected directly or indirectly by the consumption of alcohol by others

The Commission was of the view that:

... a new focus is needed if New Zealand is to achieve a reduction in alcohol-related harms. We consider it to be essential that the object of the new Act sets out aims that relate directly to the broad spectrum of alcohol-related harms. We are convinced that the current state of alcohol-related harms means a new approach is warranted. The object of the new Act should signal this. The legislation needs to take a wider focus than that of simply contributing to the reduction of liquor abuse. Preventing liquor abuse is clearly important, but there are wider effects of alcohol use and misuse that should be emphasised, such as crime, disorder, public health, accidents, the amenity of public places and the resource use of our public services. The problems related to alcohol in New Zealand are at a point where a more proactive approach to addressing harms is needed.

(footnotes omitted)

⁷ *Woolworths New Zealand Ltd v Auckland Council* [2023] NZSC 45, [2023] 1 NZLR 113 at [7]–[9].

[23] The Commission proposed reforms which included a fundamentally different object, restricting opening hours and allowing more local input into licensing policy and decisions.

[24] The Commission's proposals were largely reflected in the 2012 Act.⁸

The Act

[25] The purpose and object of the Act are stated in ss 3 and 4:

3 Purpose

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

4 Object

- (1) The object of this Act is that—
 - (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
 - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
 - (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or

⁸ The explanatory note to the Alcohol Reform Bill 2010 (236-1) which later became the 2012 Act records that the Bill draws on the Law Commission's 2010 Report and implements the Government's decisions in relation to the recommendations advanced in that Report. This is consistent with a Cabinet Paper in which, the Minister of Justice, Hon Simon Power, proposed to accept most of the Law Commission's 153 recommendations in whole or in part: see Office of the Minister of Justice "Alcohol Law Reform" (5 August 2010).

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).

[26] Part 2 of the Act provides for the sale and supply of alcohol generally. The licensing process is provided for in subpt 3 which applies to on-licences, off-licences and club licences. An application for a licence is made to a licensing committee. A licensing committee must send a copy of every application for a licence to the police, MOH and the Licensing Inspector appointed in the territorial authority's district.⁹ The police and MOH may, and the Inspector must, report on every application.

[27] Any person may object to an application for a licence.¹⁰ However, when the licence is sought for premises that is of the same kind as the licence currently in force for those premises, and in which the conditions sought are the same as apply to that licence, the only ground for objection is the suitability of the applicant.¹¹ The agencies are not so restricted.

[28] The criteria for the issue of licenses are set out in s 105:

105 Criteria for issue of licences

- (1) In deciding whether to issue a licence, the licensing authority or the DLC concerned must have regard to the following matters:
 - (a) the object of this Act:
 - (b) the suitability of the applicant:
 - (c) any relevant local alcohol policy:
 - (d) the days on which and the hours during which the applicant proposes to sell alcohol:
 - (e) the design and layout of any proposed premises:
 - (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol,

⁹ Section 103.

¹⁰ Section 102.

¹¹ Section 102(4) and (4A).

low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:

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

[29] In terms of s 105(1)(h), s 106 states:

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.

...

[30] Discretionary and compulsory conditions for off-licences are provided in s 116. Every off-licence issued must be subject to a condition stating the days on which and the hours during which alcohol may be sold.¹² Conditions may be varied under s 120 of the Act.

[31] Applications for renewal of a licence are made under s 127. As for applications for a licence, there may be objections to renewal,¹³ and enquiries by the police, MOH and Inspector.¹⁴

[32] The criteria for renewal are set out in s 131 and are substantially the same as the criteria for issue of a licence in s 105. Necessarily, for a renewal, the licencing decision-maker has regard to whether the amenity and good order of the locality would likely be increased by refusing to renew the licence (rather than whether the amenity and good order would likely be reduced by issuing the licence). Rather than having regard to whether the applicant has appropriate systems, staff, and training to comply with the law, the licencing decision-maker has regard to the way the applicant has sold, supplied, displayed, advertised, or promoted alcohol.

[33] Conditions on renewed licences are imposed under s 132.

New owner applications

[34] This is an application for a new licence for an existing off-licence that is necessary because the ownership has changed. The premises have been operating as

¹² Section 116(2)(a).

¹³ Section 128.

¹⁴ Section 129.

an off-licence since 2014. Singh 13 took over ownership and applied for the licence in December 2021. It has been granted successive temporary licenses since then.

[35] Whereas the legislation draws a distinction between new licenses and renewals, no distinction is made for “new owner” applications in relation to existing licensed premises. It is common ground that the application is for a new licence and, accordingly, must be evaluated against the mandatory criteria in s 105 in the same way as an application concerning new premises. A “new owner” applicant does not have any advantage — there is no presumption that an application for a new licence will be granted because the previous owner held a licence for the premises or because the applicant has been operating under a temporary licence. That position is reinforced by the fact that, even for a renewal to the same license owner and same premises, the legislation is explicit that the committee or authority must consider the application against almost the same criteria. Practically, however, the track record of an applicant over the period they have been operating under temporary authorities may be relevant to assessing their suitability.

[36] As noted, when the licence is sought for premises that are of the same kind as the licence currently in force for those premises, and on the same conditions, the only ground for objection by public objectors is the suitability of the applicant. Here, the application that was made and notified did not apply for the same conditions (omitting that the premises would continue to close between 3 and 4 pm on weekdays). Therefore, public objectors addressed issues beyond suitability. The application was amended just prior to the DLC hearing to reinstate the same conditions which the applicant said had been excluded in error.

[37] The DLC applied little weight to the public objectors who did not appear at the hearing. It considered the submissions and evidence of the seven objectors who appeared at the hearing in terms of the applicant’s suitability. ARLA adopted a similar approach, noting that suitability is a broad concept.

Suitability of the applicant

DLC's decision

[38] The DLC noted that the Inspector, MOH and objectors challenged the suitability of the applicant.

[39] The Inspector had reported that the vulnerability of the area raised the threshold of suitability, requiring the applicant to engage with the community and demonstrate how they proposed to respond to its vulnerable aspects. According to the Inspector, Mr Singh was unfamiliar with Māngere, could not identify examples of alcohol-related harm in the area, had not engaged meaningfully with the community and had no plans to address the issues the community had raised. The Inspector claimed that a letter from the applicants' lawyer misrepresented the position of the schools.

[40] The Inspector also outlined concerns that the named duty manager was not present when she undertook site visits. Furthermore, the applicant was not familiar with and could not speak to the host responsibility policy submitted with the application. The Inspector concluded that the applicant was not suitable to operate an off-licence in the locality.

[41] The MOH identified in its report that the premises were in a vulnerable community with high deprivation and high levels of alcohol-related harm as measured by emergency data admissions. The MOH concurred with the Inspector that this vulnerability raised the threshold of suitability required of the applicant.

[42] The DLC noted the concerns raised by the Inspector and the MOH but observed that the police had not raised any issues with the personal character of the applicant.

[43] The DLC noted the time that had elapsed since the application was made, meaning the applicant had been operating the premises on successive temporary authorities for almost two years. The DLC noted that the agencies had not challenged the multiple applications for temporary authorities and said:

[105] ... We find that it is impossible for us to look at the application without considering the amount of time that the premises have been operated by the Applicant without cause for alarm, other than the concerns of the Inspector and Objectors. In our opinion it would be wrong for us to do so given the unusual circumstances.

[44] The DLC noted that one of the directors of Singh 13 had operated a bottle store in neighbouring Ōtāhuhu for a considerable period and the other director was employed at that premises for at least a year. The DLC acknowledged however that Mr Singh did not help his case when giving evidence and his knowledge of the area and interaction with the Inspector had been lacking.

[45] The DLC then turned to “direct alcohol-related harm or related to the premises”. The DLC said:

[108] The evidence of the Inspector and Objectors was that of a premises that did not present well and had an unhealthy effect on the community. There was considerable emphasis placed before us by all parties on the not insignificant number of similar outlets in the Mangere East area. The application before us is for the grant of a new off-licence, for an existing premises. *We would doubt that any application for additional premises, to increase the number of similar licenses in the immediate area, would survive beyond a cursory exploration. Nevertheless, the Applicant having purchased the business, is both entitled, and obligated to have the matter placed before the Committee for determination.*

[109] The evidence before us, is that the Applicant passed a recent CPO test, and although the information on that was vague, we are nevertheless comfortable with that. There have been, in our opinion, no more or less calls for Police service than we would expect for these types of premises in the time the Applicant have operated them. There is no additional emphasis by Police in their approach to education in the schools, even though, the evidence is that the Southern Cross campus is extraordinarily large and growing. Given all of the circumstances and acknowledging that there has been significant delay, then we are unable to say that the Applicant is not a suitable entity to operate such premises in this location.

(emphasis added)

The Authority's decision

[46] ARLA considered the DLC's approach to suitability. It noted that the DLC had considered the significant delay since the application was made and the fact that the applicant had been operating on successive temporary authorities for almost two years without challenges to those applications. ARLA accepted that delay did not go to

suitability but considered that the length of operation without any challenges to temporary applications was relevant.

[47] ARLA noted that the DLC erroneously recorded that the police gave no evidence of direct alcohol-related harm relating to the premises. In fact, Inspector Ross Ellwood gave evidence at the hearing that, since 1 January 2021, there had been 14 callouts to the address of the liquor outlet and grocery store. This included one of aggravated robbery involving threat of a firearm in the off-licence in May 2022 and another of threatening behaviour against staff in February 2023. ARLA said that while this evidence does not relate to alcohol-ingested harm, it was relevant.

[48] ARLA found that the DLC erred in requiring “direct alcohol-related harm related to the premises”. However, ARLA noted that it nevertheless appeared that the DLC was satisfied overall with the store’s operation and management and found the applicant suitable.

[49] After considering the DLC’s analysis, ARLA stated:

[135] The Authority emphasises that the statutory provision requires that the applicant is assessed to be suitable to hold the licence. It is a positive finding as submitted by counsel for MOH. Significant delay is not part of the assessment of whether a licensee is suitable or not. Neither is it the role of the police alone to establish alcohol-related harm though evidence relating to the premises was presented.

[136] Nevertheless, the Authority finds there was nothing of significance that the DLC was not satisfied with as far as suitability is concerned. The key consideration of the DLC was the applicant’s operation and management of the premises for about two years without issue and that is largely what led the DLC finding the applicant suitable. The Authority finds no particular fault with that assessment.

[50] Despite reaching that conclusion, ARLA undertook a re-evaluation of the suitability of the applicant in view of the submissions of the Inspector, the MOH and the applicant.

[51] ARLA noted the evidence from the Inspector and the MOH about the vulnerability of the community and the intensity of alcohol outlets in the vicinity, which the Inspector characterised as “very high”. ARLA acknowledged that vulnerability of an area raises the threshold of suitability as it observed in *Shady Lady*

Lighting Ltd v Lower Hutt Liquormart Limited.¹⁵ ARLA referred to a further decision, *Capital Liquor Limited v Police*, in which it expanded on this higher threshold:¹⁶

[120] As suitability is ultimately about how well the appellant will operate the premises in light of the twin object in s 4, it is necessary for a DLC to consider the appellant's suitability relative to the premises including both in nature of those premises and operation of the business and the characteristics of their location. Suitability cannot be assessed in a vacuum.

[52] ARLA expressed concern about the photographs of alcohol-related rubbish and vandalism at the daycare centre close to the premises, but noted that some of the areas photographed, such as the David Lange Park, were some distance away from the premises and closer to other outlets. Hence, "not all the rubbish in the photographic evidence could be attributed to the applicant's premises, though some could be".

[53] ARLA described a site visit it undertook where it found only one beer bottle close to the premises and no other alcohol-related debris up to the bus stops in opposite either direction of the premises. It said it saw no striking visual of any graffiti, vandalism or alcohol-related rubbish.

[54] ARLA said it did not place much weight on the Inspector's concerns about duty managers not being at the premises in the past, or that staffing might be an issue, as there had been no breaches recorded against the licence conditions or the Act.

[55] ARLA said that, in terms of concerns for students of both Southern Cross campuses and Te Kura Māori o Ngā Tapuwae, this was "generic evidence of alcohol-related harm". ARLA noted that the only specific evidence related to an incident in August 2022 when a student left the school grounds, joined a group of people behind the shops at Wickman Way and returned to school in an aggressive and out of control state. ARLA said this was the only recorded incident involving the school and there was nothing to suggest that it was alcohol-related. The representative of the school was unable to say for certain how prevalent alcohol use was or where the students got their alcohol from.

¹⁵ *Shady Lady Lighting Ltd v Lower Hutt Liquormart Ltd* [2018] NZARLA 198-199 at [127].

¹⁶ *Capital Liquor Ltd v Police* [2018] NZARLA 335.

[56] ARLA went on to say:

[194] ... Evidence of proper school records of incidents involving alcohol which result in suspensions and expulsions would have been extremely helpful.

[195] On the other hand, there is evidence that the respondent had passed a controlled purchase operation at the store in October 2022. There is also evidence that it does not sell alcohol to minors and an intoxicated person.

[57] As to the applicant's temporary authority applications not being opposed, ARLA said it understood the practicalities but did not consider that agencies were prevented from opposing temporary authority applications. It confirmed that it had considered the application afresh as an application for a new licence.

[58] ARLA concluded:

[204] The Authority considers that there are two matters which stand out as far as vulnerability is concerned. First is the fact that two schools are directly across the road. Secondly, the high alcohol-related medical incidents in this highly deprived locality.

[205] Against that consideration is the fact that there is no evidence that the respondent is selling alcohol to the students of the two schools across the road or to any minor for that matter. There is also no evidence that the respondent is irresponsible in meeting its obligations under the Act.

[206] To the contrary, it has been operating the premises for more than two years without committing any breach and has passed a controlled purchase operation. This is what makes this application finally balanced as far as suitability is concerned. For this reason, the Authority has decided to find the respondent suitable to hold the licence, as of now.

[207] The authority puts it on record for future reference the respondent has accepted responsibility for not checking the accuracy of the details in the application, that it has more likely than not tried to hide the fact of the aggravated robbery and that it must have safety plans in place to ensure the safety of its employees.

Appellants' submissions

[59] The Inspector submits that ARLA erred in its application of the heightened suitability requirement, having identified that this applied given the vulnerability of the Māngere area. ARLA failed to remedy the errors made by the DLC and repeated and exacerbated them.

[60] The Inspector submits that considerable evidence was put before ARLA by the Inspector and the MOH showing why the applicant was unsuitable to hold a licence in a vulnerable area. This included the following:

- (a) Mr Singh exhibited limited relevant knowledge of the Māngere area. He could not list any examples of alcohol-related harm, had no plans to address the concerns of objectors and could not speak to the host responsibility policy submitted with the application.
- (b) Mr Singh omitted mention of an aggravated robbery which occurred at the premises, instead falsely representing in written evidence that there had been no serious incidents at the premises since he had been operating it. There were also no steps taken to increase security or ensure that staff members were safe.
- (c) The training and system documents lacked details, were not specific to the premises and did not address the challenges of operating in a vulnerable locality.
- (d) Mr Singh showed little interest in the concerns of objectors.
- (e) At each renewal, additional conditions had been placed on the off-licence and yet it has continued to face challenges from the authorities and local community.
- (f) Evidence from local representatives, such as the two schools located across the road from the premises, of availability of alcohol to students, single sales of high strength alcohol, and the applicant failing to ask for identification.

[61] The Inspector submits that ARLA failed to have regard to this evidence. Furthermore, it failed to make a positive finding as to suitability, which it accepted was required, and instead found that the threshold was met because the premises had been operational for two years without issue.

[62] ARLA dismissed as “generic” evidence which amounted to genuine concerns, including evidence that students had to be stood down for being inebriated on school premises, saying that there was no evidence of the applicant selling alcohol to school students. In doing so, ARLA required a causative link between the operation of the off-licence and specific alcohol-related harm, which it acknowledged elsewhere was not required, as previous authorities have recognised.¹⁷

[63] Further, ARLA based its findings on the lack of breaches, which is contrary to previous authority that the test is much wider than whether an applicant will comply with the penal provisions of the Act. ARLA’s finding of suitability was also qualified in terms of the applicant needing to take steps to ameliorate the concerns raised by the objectors. This qualified finding is insufficient to meet the ordinary threshold of suitability, much less the heightened requirement.

[64] Ms Fowler supports the Inspector’s position that ARLA’s finding of suitability was unsupported by the evidence. To this point, Ms Fowler refers to ARLA’s conclusions as to the vulnerability of the community and the evidence that the applicant did not engage with the residents of the area.

[65] The Māngere-Ōtāhuhu Local Board also submits that ARLA failed to appropriately apply the heightened standard considering the identified vulnerability of the locality. The Board submits that ARLA made its findings on the minimum standard of suitability — with reference to the lack of evidence regarding any sale of alcohol to minors and no breaches of the penal provisions of the Act — rather than the heightened requirement. It is apparent from previous authorities that what is required to meet this standard is for the applicant to demonstrate an understanding of the vulnerability and engage with the agencies and community to address these vulnerabilities.

[66] Further, the Board submits that ARLA reached its conclusion despite making several factual findings illustrating that the applicant did not understand the vulnerabilities of the locality and had not engaged with the community in relation to

¹⁷ See *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd* [2018] NZHC 1123, [2018] NZAR 882 at [68].

minimising alcohol-related harm. In relation to knowledge of the locality, ARLA noted that Mr Singh “had trouble naming nearby streets and could not explain how a licensed premises might be run differently in a high deprivation area”. It also referred to the DLC finding that Mr Singh “had limited familiarity with the area and its surrounds” and unchallenged evidence of the Inspector that Mr Singh “had no plans to address the concerns of the objectors”.

[67] Accordingly, the Board submits that any finding of suitability by ARLA was not supported by the evidence.

Respondent’s submissions

[68] For the respondent, Mr Wiles essentially submits there was no error in ARLA’s decision. A high threshold must be applied on appeal and interference can only be justified where ARLA acts on evidence that is weak to the point of non-existence or irrationality. Mr Wiles submits this is not the case here. ARLA clearly identified that a heightened test for suitability was engaged in the circumstances.

[69] The evidence was assessed according to this standard: ARLA considered the evidence of objectors and traversed it in detail, particularly the evidence from school staff; it also noted the specific vulnerability of the locality as reported by the agencies, referring to crime and health statistics. ARLA merely concluded that there were countervailing evidence to strike the balance in favour of the licensee’s suitability, focusing on the premises’ operation for two years without issue and the passing of the controlled purchase operation.

Analysis

[70] The idea that a heightened test for suitability applies where the licence is sought in a vulnerable community appears to have originated in *Lower Hutt Liquormart v Shady Lady Lighting*.¹⁸ In the decision under appeal, ARLA had concluded that the vulnerability of the area raised the threshold for suitability. On

¹⁸ *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd* [2018] NZHC 3100, [2019] NZAR 403.

appeal, the applicant disputed both that the area was vulnerable, and that any vulnerability raised the threshold for suitability.

[71] Discussing the criteria of applicant suitability, Churchman J observed that, as long ago as 1998, Panckhurst J said:¹⁹

[T]he 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.

[72] Churchman J noted that, in the decision under appeal, ARLA had quoted the following passage from *Re Nischay's Enterprises Limited*:²⁰

Traditionally, [the test of suitability] is being interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibility that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus, it includes the object of the Act as set out in s 4. The Sheard test is not simply about how a business is likely to operate in the future. It is dependent on an assessment of the more generalised factors referred to in the previous paragraph.²¹ It includes how a licensee will deal with liquor abuse issues that may arise in the establishment of the business.

[73] Churchman J found no fault with ARLA's reasoning and conclusion that the area in which the proposed premises was to be located was one which could be categorised as vulnerable. Furthermore, the Judge found that the applicant's lack of engagement with the community, beyond businesses in the immediate proximity, was a factor that ARLA was entitled to count against the applicant's suitability to hold an off-licence. He concluded that he found no error of law arising from ARLA's conclusion that the vulnerability of the area raised the threshold for suitability, nor the finding that the applicant's failure to engage with the residents of that vulnerable area contributed to them not being a suitable person to hold an off-licence.

¹⁹ At [59], citing *Page v Police* HC Christchurch AP 84/98, 24 July 1998 at 9.

²⁰ At [61], citing *Re Nischay's Enterprises Limited* [2013] NZARLA 837 at [54].

²¹ i.e. the character and the reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions, matters raised in reports from reporting agencies and whether the grant of a licence will result in the reduction or an increase in liquor abuse.

[74] I do not consider that ARLA made an error when assessing the suitability of the applicant. The question for the licencing decision-maker is whether the applicant has a suitable character to operate the licenced premises, taking into account the context. The context will include factors such as the nature of the intended business, the intended hours of operation, the location, and the features of the surrounding community. As per *Shady Lady*, whether an applicant understands and has engaged with the relevant community, particularly a vulnerable community, is *a factor* that the decision-maker is entitled to consider when assessing suitability. A lack of understanding of or consultation with a vulnerable community may count against an applicant's suitability, but this is one consideration for the decision-maker, not a bottom line.

[75] Here, ARLA appeared to accept that the community was vulnerable, expressing particular concern about the two schools nearby and the data showing high alcohol-related medical incidents in the area. ARLA considered it important that there was no evidence of the applicant having sold alcohol to school students or any other minor; and that the applicant had complied with its legal obligations and passed a controlled purchase operation. While ARLA did not explicitly weigh the applicant's apparent lack of understanding of or engagement with the vulnerable community, I infer from its characterisation of the question of suitability as "finely balanced" that it did not ignore this countervailing consideration. Ultimately, ARLA weighed the factors relevant to suitability and assessed the applicant as suitable "on balance". I see no error of law in this assessment — as I have said, the deficiency in the applicant's awareness of the vulnerabilities and concerns of the community is a factor to be weighed by the decision-maker.

[76] I observe that it is important that the criterion of suitability is not expanded to provide an avenue for objections that are concerned with wider issues *unrelated to the applicant's suitability*, such as the potential of the licence to contribute to alcohol-related harm in the community. This happened under the former statutory regime. The Law Commission concluded in its report that a central problem with the Sale of Liquor Act 1989 was the narrow scope upon which local communities could object to a licence application and upon which the liquor licensing authority could

refuse to grant applications. The only criteria were suitability and that the applicant would uphold the law. The Law Commission noted:²²

As there is no statutory definition of “suitability” of the licence applicant, and this is the only licence criterion that does not go towards the particulars of how the premises will operate, “suitability” has developed into the ground on which the widest consideration can come into a decision in a licence application... It appears that in some decisions of the LLA in the last few years, the suitability of the applicant has been used as the ground through which wider concerns have been addressed.

[77] Among the suite of reforms that led to the current Act, the Commission recommended the insertion of additional criteria to allow licensing decision-makers to refuse the licence on wider grounds. The additional criteria carried through to the current legislation were: the object of the Act, the effect of granting the licence on the amenity and good order of the locality, and any local alcohol policy in place.

[78] The Commission observed:²³

If the grounds are widened on which an application for a licence may be declined, the need to use the suitability ground for a wider purpose than that for which it was intended is removed. In our view, it is necessary and reasonable to maintain a licensing criterion that addresses the personal characteristics of the applicant and allows an application to be declined where it is envisaged the harm could be because of a personal characteristic of a licensed applicant.

[79] It is not necessary, and confuses the analysis, if the suitability criterion is distorted to address matters going beyond the question of the suitability of the applicant to operate the licenced premises. For this reason, care should be taken in relying on earlier authorities under the old regime (such as *Re Nischay's Enterprises*). Wider concerns about alcohol-related harm *unrelated to suitability* can and should be addressed when considering the criteria at s 105(1)(a): the object of the Act. An operator could be a model operator, but if it is reasonable to infer that alcohol purchased at the premises is being consumed after sale in a way that is causing or contributing to harm, the licence may be refused on that ground.

²² Law Commission *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010) at [7.15] [Law Commission Report].

²³ At [7.35].

Amenity and good order

DLC's decision

[80] The Inspector presented photographs of alcohol-related rubbish discarded around the shops, at the bus stops, along Wickman Way and Garus Avenue. She presented evidence of large quantities of alcohol rubbish in David Lange Park, where there is an alcohol ban, including discarded RTD cans and boxes. She described smashed windows and walls, a vandalised disability ramp, and broken bottles discovered by staff at the Good Seeds Children's Centre located 700 m from the premises, the closest off-licence.

[81] The MOH undertook three site visits between December 2021 and February 2023. During these visits, the MOH interviewed the duty manager of Thirsty Liquor about the operation of the premises. The MOH also produced photographs of the premises and immediate surrounding area, taken during the first and third site visits. These depicted extensive graffiti and discarded alcohol containers. The MOH concluded that the group of shops was in a very poor state and visually detracted from the overall area. The MOH observed that even compared to other groups of shops in South Auckland, the appearance was very poor.

[82] Ms Fowler also presented photographs showing alcohol-related litter at various locations in the vicinity of the premises including immediately outside, on Buckland Road outside the Southern Cross campus and the Good Seeds Trust, at the bus stops and in the nearby parks. The photographs were taken between November 2021 and December 2022.

[83] The DLC assessed whether the amenity and good order of the locality was likely to be reduced to a more than minor extent by the effects of the issue of the licence. It said:

115. There has been no evidence of noise matters, either current or potential attributed to the premises, and there is little evidence of nuisance or vandalism over and above the issue of debris and graffiti. It is our observation, that the entire shopping centre seems to be a target for that and to apportion blame for that solely to the alcohol outlet would be unwise. Whilst there was attention to the amenity and good order of the area in the evidence from Objectors, more

specifically alcohol related litter and the physical appearance of the premises, we are aware that the evidence of the Objectors was largely confined by s. 102(4A) of the Act, to matters of suitability given that the application was amended.

116. *Nevertheless, it is apparent that both the immediate area and the wider environs are unduly affected by the amount of alcohol related detritus. We found the photographic evidence presented to be particularly disturbing and more so, when that detritus was located in and near the learning facilities as outlined. However, whilst it is possible and in relation to the immediate area, probable, that some of the alcohol related litter is attributable to the applicant premises, the fact that there are a large number of similar outlets in the area as brought to our attention by Mr Wiles, must give us the opportunity to consider that the applicant premises is not the sole contributor to this issue. Apart from being one of the premises in the area, we are reluctant on the evidence before us, to find that the Applicant is responsible for a greater proportion of the debris in the greater area generally.*
117. We are also required to consider the purposes for which land near the premises is used. The premises are a franchise of the Thirsty Liquor Group. The branding of that franchisor is predominantly orange and black. The Committee is aware that branding is an important part of retail and is common practice amongst chain operators, including alcohol retail. Nevertheless, we were concerned given the evidence of Ms Stirling where she spoke to the negative comments of visiting sporting teams to Southern Cross campus in respect to the Applicants premises and the proximity of those. In our opinion, this is an example where such use of colour branding can have a negative connotation and we would urge the Applicant, to carefully consider how the premises might present a more muted profile going forward.
118. In considering the evidence against those matters found in s. 106 of the Act, then we are of the opinion, that there is no direct evidence before us to indicate that 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.

(emphasis added)

[84] The DLC then considered s 105(1)(i), whether the amenity and good order of the locality was already so badly affected by the effects of the existing licences that it would be unlikely to be reduced further (or only by a minor extent) by the effect of the issue of the licence. The DLC said:

119. The application arises as a result of change of ownership and there (if the application were to be granted) is no increase in the number of off-licenced premises in the vicinity. *We have noted that the area, and that is, the wider area, has a large number of alcohol outlets and that alcohol related debris and the general appearance of the area is unkempt. We have considered the matter carefully against this*

criterion. Whilst it may be beneficial to lessen the number of premises in the general vicinity, in this matter and looking to the evidence before us in its totality and in fairness to the Applicant, we are of the opinion that this would best be achieved by other means and not through the denial of the application. The evidence is that the premises is a contributor to those issues and not the sole cause.

(emphasis added)

ARLA's decision

[85] ARLA appeared to accept that the DLC had erred in its assessment of the application against this criterion. Having found that the immediate area was unduly affected by alcohol-related debris, the DLC based its decision on that fact that the applicant not responsible for the “greater portion” of this debris. ARLA noted that there is no requirement for evidence of greater or sole responsibility as otherwise this will be analogous to being “at the centre of the harm”, a standard that the High Court has rejected.²⁴

[86] ARLA agreed with the MOH that “direct evidence” is not required and that the DLC erred by referring to “no direct evidence”. However, ARLA went on to say:

[153] ...the DLC cannot be said to have erred in its opinion that the amenity and good order of the locality would not be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence when considering the evidence as a whole given that there was no evidence of students actually purchasing alcohol before the DLC, there is nothing in the police evidence which points to alcohol-related harm over and above that expected and any particular issues given the proximity of sensitive sites except that this particular premises is a contributor to the issue of debris and graffiti which the entire shopping complex is subject to.

[87] ARLA also agreed with the submission that the DLC failed to undertake the assessment required under s 105(1)(i). The DLC drew a distinction between a licence for an existing premises and a new one, when s 105 does not draw any such distinction. Furthermore, the DLC restricted its assessment of this criteria to the issue of alcohol-related debris, failing to properly consider and give weight to evidence of the existing amenity and good order in the locality, including “the vulnerability of the locality resulting from socio-economic deprivation, off-licence density, existing crime and alcohol-related harm”.

²⁴ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*, above n 17, at [68].

[88] ARLA criticised the DLC for determining that, whilst it may be beneficial to lessen the number of licenced premises in the vicinity because of the large number of alcohol outlets, the alcohol-related debris, and the general unkempt appearance of the area, it also had to consider what was fair to the applicant. ARLA said this was an error — fairness to applicants is not part of the assessment under this provision. ARLA clarified that, under this provision, there is no particular advantage to an applicant for an existing licenced premises over a new one. ARLA also considered that the DLC erred by concluding that these effects would best be addressed by other means and not through the denial of the application, without identifying what these other means might be.

[89] ARLA revaluated the application in terms of amenity and good order. ARLA said its main concern was the two schools across the road. But, unlike the *Riccarton* case, there was no evidence of incidents where students had bought alcohol from the premises.²⁵ ARLA noted that the applicant had passed a controlled purchase operation and had not been operating the outlet between 3 pm and 4 pm since it took over the premises in July 2021.

[90] In terms of rubbish and graffiti, ARLA undertook a site visit and did not find the appearance of the premises or its surrounding area “particularly concerning”. It said that it did not observe any alcohol-related rubbish aside from one beer bottle. ARLA concluded that the amenity and good order of the locality would not be likely to be reduced, by more than a minor extent, by the effects of the issue of the licence.

[91] Despite that opinion, ARLA went on to consider s 105(1)(i). It again cited the locality’s very high score on the socioeconomic deprivation index and the high density of off-licences in the area. It referred to the health statistics, especially around emergency department admissions. It also referred to crime statistics, which it said “do not raise alcohol related harm as a particular contributor or raise any concerns for the Police.” ARLA concluded that the amenity and good order of the locality was not already badly affected by the effects of the existing licences.

²⁵ *Riccarton Liquor Ltd v Ferguson* [2019] NZARLA 93.

[92] Ultimately, ARLA found that:

[225] Even if the Authority came to the view that the amenity and good order of the locality is already so badly affected based on the health statistics alone, there is nothing to suggest that the locality is unlikely to be reduced further or only to a minor extent by the effects of the issue of the licence to the applicant. The Authority notes that there is no evidence that the locality has deteriorated since the applicant's temporary licence was granted in 2021 or that Mr Singh's operations have somehow increased alcohol related harm in the locality, be it in terms of the amenity, the impact on health or increase in crime statistics.

Appellants' submissions

[93] The Inspector submits that ARLA's findings are based on a lack of direct evidence regarding the risks posed to the school students in the area, which is not the required standard. Further, ARLA appears to have heavily relied on a single recent controlled purchaser operation, although no date or detail was provided, and it would not be relevant to the objectors' concerns about students over the age of 18 obtaining and sharing alcohol.

[94] The Inspector also submits, regarding s 105(1)(i), that the only reasonable conclusion is that the locality is already badly affected by existing licences.

[95] Further, ARLA erred in preferring its own observations made through the single site visit over those presented by people based in the locality and who had witnessed the effects of the operation of the premises on amenity and good order over a long period of time.

Respondent's submissions

[96] Mr Wiles emphasises the police's conclusion that there was no direct evidence of alcohol-related harm relating to the premises and accordingly did not register an objection against the application. Mr Wiles recognised this is just one factor but refers to ARLA's comment that the area received no more or less policing than any other in South Auckland. Also, as already mentioned, the premises passed the controlled purchase operation and had only five service calls directly linked it. Only one call related to a serious incident, while the others concerned attempted shoplifting and a trespassed customer refusing to leave.

[97] Again, Mr Wiles emphasises that there is no evidence of students obtaining alcohol from the premises and that the measures taken to ensure this is the case, such as closing between 3 and 4 pm. What evidence is available can only be characterised as generic.

[98] Mr Wiles comments on the “unremarkable” amount of litter that is truly present in the locality, as evidenced by the photographs provided by the Inspector herself. This was reflected in ARLA’s decision following its own site visit. Although there was a concern about the alcohol-related rubbish and vandalism at the daycare centre, some of the photographs were of some distance away from the premises and in an area which had other outlets closer to it.

[99] To the point that ARLA erred in preferring evidence gathered on a singular site visit, the opposing evidence was reasonably historic (due to delays), and ARLA was entitled to exercise its discretion and look at the overall picture.

Analysis

[100] I consider that ARLA erred in its analysis of the ‘amenity and good order’ criterion by conflating alcohol-related harm with amenity and good order. It considered concerns about alcohol-related harm under the heading of amenity and good order, confusing its analysis of this criterion. Moreover, this confusion led it to require a direct causative link between the operation of the premises and alcohol-related harm; and to overlook the object of minimising harm from inappropriate or excessive consumption, meaning to reduce it to the smallest possible degree.

[101] The Act requires the decision-maker to assess whether the amenity and good order of the locality will be reduced if a new licence is issued (or improved, if a renewal is refused) by a more than minor degree. Necessarily, this involves the decision-maker forming a view on the contribution or likely contribution of the premises to the amenity and good order of the locality.

[102] The amenity and good order of the locality is concerned with the pleasantness of the environment. The phrase is defined in the Act as:²⁶

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

[103] Section 106 sets out matters to which the licencing decision-maker must have regard in considering the amenity and good order of a locality:

- (a) current, and possible future, noise levels;
- (b) current, and possible future, levels of nuisance and vandalism;
- (c) the number of premises for which licences of the kind concerned are already held; and
- (d) the compatibility of the purposes for which land near the premises, and the premises themselves, is used or will be used.

[104] So, issues such as noise, vandalism, rubbish, loitering, disorderly behaviour near the premises, and the visual effects of the premises might be considered under this heading. They are effects that relate to the operation of the premises that are amenable to being assessed in terms of a likely increase or decrease attributable to the licence. For example, it is conceivably possible to assess whether rubbish levels, or graffiti, disorderly behaviour immediately around a premises are likely to be materially improved by refusing to renew a licence (or, as in this case, refusing a new licence where the operator has been operating under temporary authorities).

[105] In contrast, it is more difficult to draw a direct causative link between a particular off-licence and harms caused or contributed to by the inappropriate or excessive consumption of alcohol bought from that outlet and consumed elsewhere: alcohol-related crime, alcohol-related deaths and illnesses, and alcohol-related social harms such as domestic violence, unemployment, and poor educational outcomes. The Act does not call for objectors or the licencing decision-maker to prove such a

²⁶ Section 5.

direct causative link. It is evident from the broad definition of harm in s 4 that any harm directly or indirectly caused or contributed to by the excessive or inappropriate consumption of alcohol, and any secondary harm to society or a community, is within the reach of the Act and the object of harm minimisation. I return to this point below.

[106] Besides this error, ARLA's reasoning is difficult to follow. ARLA appears to accept the evidence of alcohol-related harm in the community presented by the agencies, including in crime statistics and emergency admissions. Yet it then concludes that there "was no multi-layered issues as were present in the *Riccarton* case that cumulatively drew a foundational link between a real risk of harm in that locality" and that "the crime statistics here do not raise alcohol related harm as a particular contributor or raise any concerns for the Police". These conclusions are plainly wrong based on the evidence before the Authority.

[107] ARLA notes with some concern the risk posed to young people by the proximity to two schools, but ultimately rejects this concern because the schools did not present records of alcohol-related incidents and there was no evidence of the applicant selling alcohol to young people. This, despite identifying that the DLC had erred by requiring "direct evidence".

[108] In terms of rubbish and graffiti, ARLA noted the DLC's conclusion that the photographic evidence presented was "particularly disturbing", especially when the detritus was in and near the learning facilities as outlined. ARLA also noted that the DLC was satisfied that the premises was a contributor to the alcohol-related debris and the unkempt appearance of the area. ARLA found that the DLC was wrong to require the applicant's premises to be the main cause of this situation. However, rather than correct that error, it undertook its own site visit which caused it to conclude, contrary to all the other prevailing evidence, that the appearance of the premises and the surrounding areas was not concerning.

[109] In terms of s 105(1)(i), ARLA's analysis was entirely focused on alcohol-related harm rather than the existing amenity and good order of the locality.

Object of the Act

DLC's decision

[110] The DLC said:

122. The object of the Act has changed significantly from that of the previous Act and in our view, raises the bar for all operators of licensed premises. We have repeatedly said that; *A person who has privilege of holding a licence, must ensure that the sale and supply of alcohol should be undertaken safely and responsibly and that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.* The question for the Committee is; can we be satisfied, having regard to all the relevant factors set out in s 105 of the Act, that the grant of the off-licence is consistent with the object of the Act?
123. *The Committee will always look to motivation for the application.* We have an expectation, that a clear vision for the premises is established and that the Applicant has the means, skills, systems, and experience to ensure compliance with the Act. In our opinion, the Applicant has shown only that it meets the minimum requirements and there is room for improvement.
124. We were concerned that the operation of the other businesses associated with the alcohol outlet, may have distracted the Applicant somewhat. The Applicant has indicated there will be investment in the premises should the off-licence be granted. Should that be the case, we expect the Applicant will ensure that commitment is adhered to. The Committee notes that subsequent to the Hearing, some attention has been applied to the exterior presentation of the shopping complex.
125. In considering the object of the Act, we must look to the definition of harm...
126. When looking at the definition of amenity and good order, the Committee will tend to see crime, damage, disorderly behaviour, and injury as a subset of the definition found at s 4 of the Act. *The evidence of the Police in cross examination, was that there is no evidence of direct alcohol related harm in the vicinity. In our opinion, without a direct causal connection to 'alcohol-related harm', then the application of that to amenity and good order matters is difficult.* We have previously said, that in any application for the grant of, or renewal of, an alcohol licence, there is potential for harm and undue impact on amenity.
127. We have further commented on the amenity of the area, including the appearance of the premises, its corporate branding and our expectations going forward. It will be for the Applicant to demonstrate that it has addressed those concerns in due course, or it faces the very real prospect, that if the premises cannot function in the

neighbourhood without detriment to amenity and good order, then it may no longer be permitted to do so.

128. Accordingly, we grant the Applicant an off-licence for the sale and supply of alcohol for consumption off the premises for an initial period of one year.

(emphasis added)

ARLA's decision

[111] ARLA considered the DLC's consideration of the object and said:

[179] Given the errors noted in the DLC's assessment under s 105, the Authority is not in a position to say with confidence that the grant of the decision was one that was available to it. Nevertheless, the Authority is of the view that the DLC has weighed up the competing factors. Those were weighed against the delay and the fact the applicant has been operating this business on temporary authorities for around two years without breaching the Act. Although they by no means create a right or entitlement to a licence, they are matters which can be taken into account in the overall assessment as to whether a licence should be granted or not, just as matters of opposition are.

[112] ARLA then reevaluated the application in terms of its consideration of the object of the Act:

[230] In terms of the object of the Act, as stated earlier, the Authority must be satisfied that the sale and supply of alcohol by the respondent is to be undertaken safely and responsibly, and harm caused by accessible inappropriate consumption of alcohol should be minimised, not eliminated.

[231] With the evidence presented, the Authority is satisfied that the respondent has thus far demonstrated that it is quite capable of selling and supplying alcohol safely and responsibly *and alcohol-related harm minimised by complying with the Act, in particular by ensuring that alcohol is not sold to minors.*

[232] The toning down of the bright orange to a charcoal colour to the exterior of the building is a positive and indeed part of putting its best foot forward. The Authority expects that the respondent will continue to make positive changes and as to the warning given by the DLC that should the respondent become complacent or indeed breach the Act, then given the number of licences in the locality, losing the licence would be a real possibility.

(emphasis added)

Appellants' submissions

[113] The Inspector submits that ARLA failed to have regard to the object of the Act in incorrectly assessing the evidence of existing alcohol-related harm in the locality. ARLA criticised the DLC's cursory assessment of this point, but it similarly made its decision having found the minimum requirements satisfied in the circumstances, with no consideration for the primary object of the Act. This is apparent in the Authority's finding that this evidence did not point to "alcohol-related harm over and above that expected".

[114] The Inspector submits that the Authority's conclusion that the minimisation of alcohol-related harm would be achieved by Singh 13 complying with the legislation, in particular by ensuring that alcohol is not sold to minors and toning down the colour scheme of the premises, was inadequate and does not demonstrate consideration of the object of the Act. The Inspector submits that merely complying with the penal provisions of the Act is insufficient to ensure that alcohol-related harm is minimised.

Respondent's submission

[115] Singh 13 submits that ARLA properly considered that granting the licence would meet the object of the Act, it being satisfied that sale and supply would be undertaken safely and responsibly, and alcohol-related harm minimised. Singh 13 draws attention to the Authority's statement at [205] that "there is no evidence that the respondent is irresponsible in meeting its obligations under the Act".

Analysis

[116] As I have said, in my view, ARLA erred in its approach to the object of the Act. The Act requires the licensing decision-maker to consider the object as a standalone criterion.²⁷ ARLA incorrectly conflated concerns relating to alcohol-related harm in the Māngere East community with amenity and good order. This conflation led it to require proof of a direct causative link between the licenced premises and alcohol-related harm that the Act does not require.

²⁷ Section 105(1)(a).

[117] When it came to consider the object of the Act, ARLA failed to engage properly with both limbs of the object: that alcohol is sold, supplied, and consumed safely and responsibly; and that the harm caused by the excessive or inappropriate consumption of alcohol is minimised. ARLA confined its analysis to the first limb, considering the object met merely because it was confident that the operator would comply with its legal obligations (such as by not selling alcohol to minors or intoxicated persons). I agree with the Inspector that this was an error.

[118] A review of the legislative history reveals the intention behind the object of the Act, the broad definition of alcohol-related harm within the second limb of the object, and the inclusion of the object of the Act as a specific decision-making criterion in ss 105 and 131.

[119] Under the Sale of Liquor Act 1989, the object of the Act was:²⁸

... to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.

[120] The Law Commission recommended a fundamentally different object:²⁹

... our review has shown us that fundamental changes are needed to the way in which we regulate the sale, supply and consumption of alcohol. Many sectors of New Zealand society have told us clearly that there are problems with alcohol-related harms that are not adequately addressed by the current regime. While several elements of the proposed scheme are consistent with the existing legislation, a new focus is needed if New Zealand is to achieve a reduction in alcohol-related harms. We consider it to be essential that the object of the new Act sets out aims that relate directly to the broad spectrum of alcohol-related harms. We are convinced that the current state of alcohol-related harms means a new approach is warranted. The object of the new Act should signal this. The legislation needs to take a wider focus than that of simply contributing to the reduction of liquor abuse. Preventing liquor abuse is clearly important, but there are wider effects of alcohol use and misuse that should be emphasised, such as crime, disorder, public health, accidents, the amenity of public places and the resource use of our public services.

[121] Earlier in the report, the Commission identified the categories of serious harm that excessive consumption of alcohol can cause or contribute to:³⁰

²⁸ Sale of Liquor Act 1989, s 4.

²⁹ Law Commission Report, above n 22, at [5.42].

³⁰ See the summary at [10].

- (a) criminal offences including homicides, assaults, sexual assaults, domestic violence and public disorder;
- (b) diseases, including alcohol-related cancers, mental health disorders, dependence, foetal alcohol spectrum disorder, and sexually transmitted infections;
- (c) alcohol poisoning and accidental injury due to intoxication, sometimes causing death;
- (d) secondary harms visited upon third parties as a result of others' excessive alcohol consumption, such as victims of crime and domestic violence and children whose lives are marred, sometimes before birth, by their dependence on adults who drink to excess;
- (e) harmful effects on educational outcomes, workplace productivity, friendships, social life, home life and the financial position of households; and
- (f) public nuisance: litter, glass, noise, the damage and destruction of property and the costs associated with rectifying these nuisances.

[122] The Law Commission also identified several fundamental problems with the existing licensing regime. On an application for a new off-licence, the decision-maker was obliged to have regard to the following criteria:

35 Criteria for off-licences

- (1) In considering any application for an off-licence, the Licensing Authority or District Licensing Agency, as the case may be, must have regard to the following matters:
 - (a) the suitability of the applicant:
 - (b) the days on which and the hours during which the applicant proposes to sell liquor:
 - (c) the areas of the premises, if any, that the applicant proposes should be designated as restricted areas or supervised areas:

- (d) the steps proposed to be taken by the applicant to ensure that the requirements of this Act in relation to the sale of liquor to prohibited persons are observed:
 - (e) whether the applicant is engaged, or proposes to engage, in—
 - (i) the sale or supply of any other goods besides liquor; or
 - (ii) the provision of any services other than those directly related to the sale and supply of liquor,—and, if so, the nature of those goods or services:
 - (f) any matters dealt with in any report made under section 33.
- (2) The Licensing Authority or District Licensing Agency, as the case may be, must not take into account any prejudicial effect that the grant of the licence may have on the business conducted pursuant to any other licence.

[123] People living in the neighbourhood of the premises were unable to object to the licence application other than in relation to the suitability of the applicant.³¹ That the community had alcohol-related problems and that locals did not want any more alcohol outlets in the area was no basis for an objection.³²

[124] The Commission noted a further problem with the regime was an inability of decision-makers to take into account issues arising from the number of outlets already in a particular area when considering new licence applications. In an earlier chapter, the Commission discussed the relationship between the availability of alcohol, in terms of alcohol outlet numbers and density, alcohol consumption, alcohol-related harms and community degradation. The Commission concluded that high outlet density may result in high levels of neighbourhood alcohol consumption, particularly for young people. Furthermore, a growing body of research indicated that outlet density is associated with high levels of harmful drinking, as well as with a variety of secondary harms that pose risks to community wellbeing.

[125] The Commission said:³³

³¹ Law Commission Report, above n 22, at [7.11].

³² At [7.11].

³³ At [6.41].

It is the strong view of the Law Commission that New Zealand's liquor laws must provide for two things. First, communities must be able to voice their views about outlet density and have those views taken into account when licensing decisions are made. Second, the licensing decision-maker must be able to decline a liquor licence on the basis, amongst other grounds, of the risks posed to a community by outlet density in terms of increased local levels of alcohol consumption, alcohol-related crime or anti-social behaviours, or community degradation.

[126] Another issue was that the status of the object of the Act was unclear, with conflicting judicial decisions on the role of the object of the Act with respect to the specific statutory criteria for the granting or renewal of a licence.³⁴ Ultimately, the Court of Appeal favoured an interpretation that included consideration of the object of the Act *in addition to* the particular statutory criteria for the granting or renewal of a licence. In *My Noodle Ltd*, the Court of Appeal held:³⁵

In our view, the Authority was entitled to give precedence to the overriding statutory object in s 4. The specific statutory criteria must be interpreted having regard to that purpose...

[127] To address these problems, the Commission recommended the addition of further criteria to allow decision-makers to refuse a licence on wider grounds than was permitted under the 1989 Act. These included that granting the licence would be inconsistent with the object of the Act; the amenity, quiet or good order of the locality would be lessened by the granting of the licence; or the licence would be inconsistent with the local alcohol policy.³⁶

[128] As discussed, the object of the Act was fundamentally changed to set out the aim of minimising the broad spectrum of alcohol-related harms, including primary and secondary harms at a community and society level.

[129] Although the ambiguity concerning the relationship between the object of the Act and the licence criteria had largely been clarified by the Court of Appeal, the Commission recommended the legislation specifically require the licensing decision-maker to take the new object of the Act into account when determining any

³⁴ Compare *Re Goldcoast Supermarket Limited* LLA PH801/2000, 31 March 2000 and *Walker v Police HC Wellington* AP 87/01, 31 May 2001.

³⁵ *My Noodle Ltd v Queenstown-Lakes District Council* [2009] NZCA 564, [2010] NZAR 152 at [72].

³⁶ Law Commission Report, above n 22, at [7.31].

licence applications. This would enable the licensing decision-maker to decline a licence application on the basis that granting the licence would be inconsistent with the new object of the Act. The Commission indicated that it intended that *the object would drive decisions* made under the new legislation.³⁷

[130] Returning to the present decision, the Inspector presented ARLA with evidence about the local community and alcohol-related harm or potential alcohol-related harm in the area. This evidence, which ARLA appeared to accept, included that:

- (a) In the Harania North unit of Māngere East where the premises is situated, the population is 84 per cent Pacific peoples and 14 per cent Māori.³⁸ The social deprivation score for Harania North is 10, the highest score on the socioeconomic deprivation index.
- (b) The area has a “very high” density of off-licences: there are 12 other off-licences within 2 km of the premises.
- (c) The crime rate in the area is high. The Counties Manukau Police boundary has the second highest number of police proceedings in New Zealand. There was an alcohol ban in place around 500 m away from the premises. Between 1 December 2021 and 30 November 2022, police data showed an average of 157 victimisations per week in Māngere East.
- (d) There are sensitive sites in close proximity, including a daycare, a church and two schools directly across the road, meaning the area is frequented by young people.

[131] The MOH reported on alcohol-related harm manifesting in higher rates of emergency department admissions, with an average rank in the 35th worst percentile within a range of 14 per cent to 52 per cent. The MOH cautioned that the data will under-report alcohol-related harms to health because it excludes ambulance

³⁷ At [5.39].

³⁸ As reported from the 2018 New Zealand Census in the Medical Officer of Health’s report dated 13 April 2023.

attendances which do not result in admission to the emergency department, chronic alcohol-related illnesses, and covers the 2020/2021 COVID-19 lockdown years.

[132] The MOH also presented the outcome of research showing that off-licences supply most of the alcohol into communities by volume, with one study reporting up to 84 per cent.

[133] The MOH concluded its evidence by stating:

There are already relatively high levels of alcohol harm within the locality and could be reasonably interpreted as relatively increasing.

Most of this alcohol related harm is to the residents is most likely occurring nearer to their residence rather than in other locations within the region.

The most significant volume of alcohol to communities is supplied by off-licences.

[134] While the police did not oppose the application, in its answers to questions posed by ARLA. Inspector Ross Ellwood confirmed that the information given by the Inspector on crime rates was correct. He interrogated the Alcohol Harm National Viewer database and reported 4,788 individual occurrences within 2 km of the premises with alcohol as a contributing factor over three years. In the four months since 1 January 2023, there had been 474 crime incidents within 2 km of the premises where alcohol was recorded as a contributing factor.

[135] In my view, ARLA did not engage with these broader concerns as it was required to do pursuant to s 105(1)(a). ARLA failed to consider the two limbs of the object as a standalone criterion. It failed to ask the essential question of whether issuing a licence to the premises was consistent with the object of minimising alcohol-related harm, considering the location of the off-licence opposite two schools and adjacent to a third, the low socioeconomic status of the area, the intensity of existing off-licences in the locality, and the evidence of alcohol-related harm in the community presented to it. Instead, it considered the object of the Act met on the narrow basis that the applicant would comply with its legal obligations and not sell alcohol to minors. Mere compliance by the applicant will not achieve the object of minimising alcohol-related harms of the kind identified by the agencies and objectors.

[136] Elsewhere in its decision, when considering amenity and good order, ARLA considered the high density of off-licences in the area, the health and crime statistics, and concerns raised about harm to young people because of the proximity of the premises to the school. But confusing alcohol-related harm with amenity and good order led ARLA to require proof of a direct causative link between the licenced premises and harm that the Act does not require. It dismissed concerns of harm to young people attending the two schools because there was no proof of students purchasing alcohol from the premises. It concluded that the crime statistics “do not raise alcohol related harm as a particular contributor”. That conclusion is plainly wrong.

[137] As noted earlier, harm is deliberately widely defined in the Act, to include any crime, death, disease, illness or injury, damage, or disorderly behaviour, directly or indirectly caused or contributed to by the excessive or inappropriate consumption of alcohol. Harm includes harm to others resulting from alcohol fuelled crime or domestic violence. The concept also includes any secondary harm to society or the community generally from any alcohol-related crime, death, disease, illness or injury, or damage or disorderly behaviour.

[138] It is inherent in this definition that it is not necessary to prove that a premises has caused or contributed to specific alcohol-related harm for the object of harm minimisation to be engaged. It will not usually be possible to prove that a particular premises has caused or even contributed to crime rates, alcohol-related accidents or illnesses, domestic violence, educational underachievement, or unemployment. It is sufficient for there to be an evidential foundation to suggest that there is a real risk of harm from the grant of the licence. If there is a real risk of harm from the grant of the licence, the imperative to minimise the harm is engaged, meaning reduced to the smallest possible degree.

Should the licence be granted?

[139] I consider there to be a real risk of harm to young people in the community because of the close proximity of the premises to the Southern Cross Campus and Te Kura Māori o Ngā Tapuwae schools. It is well-known that accessibility of alcohol

increases the risk of inappropriate and excessive drinking. Here, the students are presented with an off-licence, situated at one of the main pedestrian crossings to the schools. Even if the applicant complies with its legal obligations, closes between the hours of 3 and 4 pm on weekdays and does not sell to minors, the risk remains. Students, especially senior students, come and go from school outside these hours for extracurricular activities. The premises is open during school hours and is visible to students from the football fields. Many students in year 13 turn 18 during the year and can legally buy alcohol. Furthermore, there is a real risk that the daily exposure of students to the presence of an off-licence will normalise drinking and contribute to inappropriate and excessive drinking by young people in this community.

[140] I also consider there to be a real risk that this licence will contribute to harm from inappropriate and excessive drinking in the form of crime, property damage, alcohol-related medical incidents and illnesses, and secondary harms in the community. The evidence from the police is compelling: there is a high incidence of crime and of alcohol-related crime in the area. The MOH considers there to be higher than normal rates of alcohol-related medical incidents in the area. The Inspector's evidence is that the intensity of off-licences in the area is very high. The Commission noted the association between high outlet density, neighbourhood consumption, and high levels of harmful drinking, and intended to enable licensing decision-makers to refuse applications on the grounds of outlet density where that density presents a risk of alcohol-related harm. In the circumstances of this premises in this community, and considering the evidence of the agencies and objectors, I consider that granting the licence poses an unacceptable risk of alcohol-related harm.

[141] I also consider it likely that the amenity and good order of the vicinity is likely to be meaningfully improved if the licence is not granted. The consensus of evidence, including from the MOH and the Inspector, is that the group of shops housing the premises is in a very poor state and visually detracts from the area. The DLC considered the general appearance of the area to be unkempt. The photographs confirm that conclusion. The appearance of the premises contrasts with the schools directly opposite which are in a tidy and well-maintained condition.

[142] ARLA was entitled to rely on its own observation that alcohol-related debris is not an issue in the vicinity of the premises. However, this conclusion sits in contrast to the preponderance of evidence presented by the agencies and objectors based on longer periods of observation. Based on the photographs, the amenity and good order of the locality is, at times, seriously affected by alcohol-related detritus. This is a further factor weighing against the licence being granted.

Result

[143] The appeal is allowed.

[144] The decision of ARLA is revoked.

Gardiner J

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