

Notice of Decision



Decision No. 57/OFF/399/2021

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by General Distributors Limited for renewal of off-licence pursuant to s.127 of the Act in respect of premises situated at 121 Carters Road, Amberley, and known as "Countdown Amberley"

BEFORE THE Hurunui District Licensing Committee

Chairperson: Mayor Marie Black
Members: Councillor Michael Ward
Mr Winton Dalley

HEARING at Amberley from 10am on Wednesday 24 March 2021.

APPEARANCES

Mr Paul Radich – Alcohol Responsibility Officer for the applicant company
Ms Allison Arthur-Young – Counsel for the applicant
Ms Dianne Morrison – Chief Licensing Inspector – in opposition
Constable Genevieve Craddock – New Zealand Police – in opposition
Ms Paula Williams – Representative for the Medical Officer of Health – to assist

DECISION OF THE COMMITTEE

DECISION

1. The application for renewal of off-licence is granted, subject to the imposition of the following condition:
 - a. No shelf on an outward-facing end-of-aisle display, in the single alcohol area, is to be fitted at a height exceeding 1.4 meters from floor level.

(For the purposes of clarity this condition refers to the height of the shelf itself and excludes the product on the shelf)

SUMMARY

2. The Hurunui District Licensing Committee received an application by General Distributors Limited for renewal of an off-licence, at the premises situated at 121 Carters Road, Amberley, and known as "Countdown Amberley".

3. The application is not opposed by the Medical Officer of Health. Opposition was received from the Licensing Inspector and Police.
4. The primary concerns presented by the Licensing Inspector and Police are deficiencies with the applicant's staff systems and training, particularly relating to the notification of management changes under s231 and the display of the licence on the licensee's website, and that the manner in which the applicant has used outward facing end-of-aisle displays, as well as floor stacks of alcohol products adjacent to ends of aisles, does not limit, as far as reasonably practicable, the exposure of shoppers to displays and promotions of alcohol.
5. For the reasons we will set out below, we conclude that the renewal of off-licence should be granted.

BACKGROUND

6. An application was filed with the Committee on 16 September 2019 by General Distributors Limited (GDL), for renewal of off-licence, for the premises situated at 121 Carters Road Amberley and known as "Countdown Amberley".
7. No public objection to the renewal application was received during the notification period.
8. The licence was previously renewed on 5 November 2018. In response to concerns raised by the Inspector the licence was renewed for a shortened period of 18 months (with the agreement of GDL) to allow the applicant to demonstrate improvement in its internal procedures and inn-house systems.
9. In addition to the shortened renewal period GDL provided an undertaking that it would not hang large price signage above the Single Alcohol Area (SAA), and a memorandum stating that GDL would encourage the store to use floor stacks in the SAA sparingly.
10. The Licensing Inspector submitted a report in opposition to this current renewal application in respect of ongoing systems failures that have resulted in non-compliance with the Act; and the use of floor stacks at end-of-aisles in the SAA, which she said does not limit exposure of shoppers to alcohol as required pursuant to s. 112(1) of the Act.
11. The Police submitted a report in opposition to the renewal application relating to the apparent failure by the applicant to give proper notice of the appointment of managers under s231 of the Act.
12. Given the opposition by the Licensing Inspector and Police, the application is required to be heard before the District Licensing Committee by way of public hearing, in accordance with s. 202(3) of the Act.
13. A hearing was scheduled for 22 February 2021, however due to COVID-19 government restrictions, it was further postponed to Wednesday 24 March 2021. The hearing was convened at the Hurunui District Council Chambers, 66 Carters Road Amberley.

14. Following the hearing the Committee made a site visit to Countdown Amberley to view the store and SAA.

EVIDENCE AND SUBMISSIONS

OPENING SUBMISSIONS

15. Ms Arthur-Young, counsel for the applicant, provided written legal submissions, which she spoke to at the hearing.
16. Ms Arthur-Young submitted that the SAA is compliant with the Act, that it does limit (as far as reasonably practicable) the exposure of shoppers to alcohol, and that the conditions sought by the Inspector are unreasonable and unnecessary. Ms Arthur young cited that there is a lack of any evidence of a risk that these conditions sought to abate, and the there is a cost to GDL of making changes to the shelving.
17. Further, Ms Arthur-Young submitted that GDL does have appropriate systems in place to comply with Act, including the requirement for notification of appointment and termination of managers. She acknowledged that there had been a delay in notification of a small number of managers.
18. Ms Arthur-Young submitted that the Committee must approach comparisons with other stores with caution, and that the correct approach was that the application for each store must be considered in light of the particular circumstances of that store.
19. In reference to the Inspector's comparisons between Countdown Amberley and Countdown Bureta Park, and while noting her submission that comparisons must be made with caution, Ms Arthur-Young, highlighted several differences between the SAA areas and displays at the two stores. Ms Arthur-Young submitted that:
 - Countdown Amberley has three aisles in its SAA, as opposed to four at Bureta Park
 - Only two of the Amberley aisles have end of aisle shelving
 - Countdown Amberley's end of aisle racking is lower than Bureta Park
 - The SAA at Amberley has a smaller footprint than Bureta Park.
20. In regard to limiting exposure so far as reasonably practicable Ms Arthur Young referred to the High Court decision *Christchurch Medical Officer of Health v J & C Vaudrey Ltd [2015] NZHC 2759*. Ms Arthur-Young submits that the Committee needs to be conscious of the language used in section 112(1), stating the that to "limit" exposure means to "circumscribe, restrict or reduce – it does not mandate prohibition".
21. Ms Arthur-Young also submitted in relation to the phrase "so far as reasonably practicable" stating:

"So far as reasonably practicable is not the same as asking what is possible or feasible. It imports the concept proportionality, requiring a balancing between the benefit sought to be secured and the resulting sacrifices (for example, cost, time, difficulty, and

inconvenience). In other words, operators are not required to take every possible step to limit exposure or to do so at all costs”.

22. Ms Arthur-Young submitted that although the Committee does have the ability to tell GDL what type of shelving to have on its end of aisle displays, any decision to do so must be directly linked to the issue of exposure.

MR PAUL RADICH'S EVIDENCE

23. Mr Paul Radich provided a written brief of evidence dated 16 February 2021. He appeared at the hearing to answer questions.
24. Mr Radich said that he is the Alcohol Responsibility Manager for Woolworths New Zealand Limited (Woolworths), of which General Distributors is a wholly owned subsidiary company of Woolworths.
25. Mr Radich gave his experience in the industry, explaining that as Alcohol Regulatory Manager, he seeks to ensure that GDL's supermarkets across the country comply with the Act and their licence conditions. As part of his role, he is responsible for developing and overseeing the implementation of their Alcohol Responsibility Policy.
26. Mr Radich has worked at Woolworths for four years, and before that, held the roles of a Senior Advisor, and Alcohol Licensing Inspector in the Alcohol Licensing Department at Auckland Council.
27. Mr Radich's evidence gave some background to the current renewal application. He said that Countdown Amberley was built in 2014 and designed to include a purpose-built alcove SAA, in accordance with what the company considers to be best practice in terms of meeting the requirements of the Act. Countdown Amberley was first granted an off-licence on 14 May 2014.
28. Mr Radich said that licence was subsequently renewed on 13 May 2015, with an expiry date of 14 May 2018. In April 2018 GDL applied to renew the licence. This application was opposed by the inspector based on concerns with the notification of changes of management, incomplete manager renewal applications, and staff collaboration of Manager's Certificate renewal questionnaire forms.
29. Mr Radich said that prior to the 2018 renewal hearing, GDL proposed a range of measures to address these issues and accepted a shortened renewal period of 18 months to show a commitment to get things right.
30. There was also opposition from the Medical Officer of Health and Police to the 2018 renewal. Their opposition related to concerns about the single alcohol area. To address these concerns GDL provided an undertaking, dated 30 October 2018, to remove and not reinstall hanging price posters from above the end of the alcohol aisles.

31. Separately to the 30 October 2018 undertaking, GDL provided a memorandum seeking to clarify a commitment made by Mr Radich in September 2018 to use floor stacks in the SAA “sparingly”. In the memorandum GDL said:

"Sparingly"

4. On or about 11 September 2018, Paul Radich, Alcohol Responsibility Manager for GDL, confirmed that Countdown Amberley will be encouraged to use floor stacks sparingly in the Countdown Amberley SAA.

5. The Inspector in her Supplementary Report of 20 September 2018 acknowledged GDL's intent to limit the practice of using floor stacks. The Inspector has withdrawn her opposition to the renewal of the off-licence.

6. The creation of the SAA has meant that GDL has a limited number of options available should additional, temporary space be needed within the SAA. Due to the limited size and space of the area, during times of high demand, additional space for product is found by using floor stacking. GDL considers that this is the best option, when compared to the alternative of expanding the footprint of the SAA, which GDL endeavours to avoid where possible.

7. The intent of the term "sparingly" was to affirm that GDL intends to maintain the current level of floor stacking that it uses, as this is already kept to a minimum. While GDL is free to change the layout and arrangement of alcohol in the SAA, including creating and using floor displays, GDL's practice is to limit as far as practicable the use of these displays. Floor stacks are not part of the normal store layout or design, but are only used when required.

32. In his evidence Mr Radich points out that the commitment to encourage Countdown Amberley to use floor stacks in the single alcohol area sparingly was a memorandum and was not an undertaking, as it has been referred to at times in the Inspector’s report.

Appointment and notification of managers

33. In relation to the appointment and notification of managers Mr Radich, in his evidence, said that GDL has approximately 4500 qualified managers nationally. Mr Radich said that GDL has been developing an automated computer system to improve internal processes, including the notification of management changes. Mr Radich said that this system is currently being piloted in Countdown stores in Hamilton, and it is planned to use this system nationwide.
34. Mr Radich advised that while an employee may hold a Manager’s Certificate they may not necessarily be appointed or employed as a manager. Where these employees are not working as managers the Act does not require GDL to notify the Committee under Section 231.

35. Mr Radich said that where these staff are required to fill the roster due to illness or absence GDL notifies the Committee of the temporary or acting manager appointment.
36. Mr Radich advised that GDL has made changes to its internal procedures which ensure their head office is made aware of any new managers being appointed at stores around the country.

Managers at Countdown Amberley

37. In relation to the notification (under Section 231) of two managers who had left Countdown Amberley, Mr Radich's evidence is that GDL did provide notification to the Committee in both instances. Mr Radich said that notification was provided on 18 September 2020 in the case of Ms Ruddick.
38. Mr Radich detailed that significant postal delays and the pressure on GDL's operation during the COVID-19 lockdown period were factors in the late application for the renewal of Zoe Edwards' Managers Certificate.

Single Alcohol Area

39. In his evidence Mr Radich stated that in his opinion the SAA at Countdown Amberley is compliant with the requirements of the Act.
40. At the hearing Mr Radich said that he did not accept that the display of alcohol at the SAA was pronounced or confronting. Despite this opinion he said that he was willing for the end of aisle shelving on the two ends with shelves to be reduced from their current five shelf configuration to four shelves, and to have this included as a condition on the licence.

Cross Examination

Cross examination from Inspector

41. Under cross examination, Chief Licensing Inspector Dianne Morrison asked for further details about the automated system currently being piloted in Hamilton Countdown stores. Mr Radich explained, among other things, that the system will be linked to the payroll records and will be able to identify upcoming certificate expiry dates and generate notifications to the company and to the certificate holder. Mr Radich advised that the system will include a dashboard which allows GDL to monitor the progress of applications with Councils.
42. When asked about milestones for the project, Mr Radich said that the results of the pilot would be reviewed in April, and if the results were successful the next phase of the project was to roll the system out in Auckland. If the Auckland pilot proves to be successful GDL intends to roll the system out nationwide. Mr Radich noted that there were challenges in doing this due to the different forms and methods of accepting payment at different Councils.

43. When asked how far in advance of a manager's certificate expiry the system will create a notification, Mr Radich said that the initial notification is four months prior to the expiry. A process is then commenced to apply for a renewal of the certificate. This process includes a further alert at two months prior to the certificate expiry and an escalation process to the local zone manager.
44. Ms Morrison asked whether the system is robust enough to deal with staff moving between districts, and able to manage documents such as LCQ certificates. Mr Radich confirmed that the specs of the system were that it could do those things, but that the purpose of the pilot programmes were to test it.
45. Ms Morrison asked Mr Radich for clarification about the statement at Paragraph 4.4 of his evidence that employees were required to send their Manager's Certificate applications to head office "before the employee can access their Licence Controller Qualification". Mr Radich explained that when GDL paid for an employee to go on a LCQ course they held the certificates at head office. He said this process was initiated to ensure head office was notified of all GDL staff who were applying for Manager's Certificates.
46. Ms Morrison asked what the timeframe for the new automated system to flag that an employee had been appointed as a manager and notify the agencies. Mr Radich said that it was 24 hours.
47. Ms Morrison asked whether there was a step in the process to ensure the store manager knows who in the store holds a manager certificate. Mr Radich noted that the list of every staff member in the store who holds a manager's certificate is currently provided by the store manager. Mr Radich noted that there may be some confusion, because at the time of a licence renewal, GDL will provide a list of all staff working at the store who hold a manager's certificate in order to demonstrate that they have sufficient qualified staff to operate the store. Mr Radich stated that not all staff who hold manager's certificates are used as managers, and that notification under Section 231 is only made if they are appointed.
48. Ms Morrison said that she would only expect to see those staff who GDL were proposing to use as managers listed on the application form. Mr Radich said that this was not his understanding, and that it was different to what is required in other districts. Mr Radich said that if this was the expectation in the Hurunui District he could adjust his process to provide that information. Mr Radich said that he only became aware that this was the inspector's expectation upon reading her report.
49. Ms Morrison asked Mr Radich what the height of the end-of-aisle shelving at Countdown Amberley is. Mr Radich said that he hadn't been given the exact measurements, but he understood the shelving was 1.6m high. Mr Radich said that if it was the top shelf that was the concern he is happy to take it off.
50. In response to questions from Ms Morrison, Mr Radich confirmed that he had visited Countdown Bureta Park in Tauranga and that it is bigger than Countdown Amberley.

51. Ms Morrison asked whether the size of the SAA at Bureta Park as a proportion of the store was the same as the Countdown Amberley SAA. Mr Radich responded that it was not, and that the Bureta Park area was a very big alcohol area, whereas in contrast the Amberley SAA was quite a small area compared to the size of the store.
52. In response to questions from Ms Morrison about the possibility of changing the end-of-aisle shelving at Countdown Amberley, Mr Radich said he knew that there would be a high cost in doing so, but he did not know if the suggested changes were feasible. Mr Radich pointed to a number of impediments to changes such as the design and fixed lengths of available racking systems and the location of a nearby freezer.
53. In relation to the use of floor stacks, Ms Morrison asked what directions Mr Radich had given to the Amberley Countdown manager. Mr Radich said that he had given him instructions exactly as per the memorandum - that floor stacks must be used sparingly but that they are not prohibited from being used.
54. In response to a question about how often floor stacks are used Mr Radich commented that since the last licence renewal the inspector had not raised any concerns with him that the floor stacks were being used inappropriately. Mr Radich said that the current store manager told him the use of floor stacks has not been raised with him by the inspector, and that the previous store manager told him that it has been raised with her on one occasion.
55. Ms Morrison asked how Bianca Curry is used as a duty manager at the store. Mr Radich responded that whilst Ms Curry is a certificate holding manager, she acts as a duty manager infrequently and only to cover illness or absence. Mr Radich went on to say that the situation is that Ms Curry is used for cover, rather than having rostered shifts as a manager. Mr Radich said that this approach is about having high standards and having suitable people available to cover. Mr Radich pointed out that in theory a staff member who does not hold a certificate could be used to cover illness and absence under the Act.
56. Ms Morrison asked Mr Radich if it would be more appropriate to appoint Ms Curry as a manager and make the notification to the agencies under Section 231. Mr Radich responded that whilst that is not what the Act requires, he is happy to appoint Ms Curry (and any other staff in the same situation) if that is what is going to make everyone comfortable.

Cross examination from Police

57. In response to questions from Constable Craddock Mr Radich confirmed that he is the sole person in the role of Alcohol Responsibility Manager for Woolworths. He clarified that this included advising Super Value and Fresh Choice, but that his primary role was with Countdown.
58. Constable Craddock asked whether, in order to ensure each store is complying with the Act, Mr Radich relies on each store to advise him when they are seeking employment

for a manager. Mr Radich responded that they are required to, and that there is a process of regular checks by zone managers to make sure stores are doing this.

59. Constable Craddock asked Mr Radich how a manager who is not necessarily working or rostered as a manager is able to gain experience of the role, given that experience is required in order to get and retain a Manager's Certificate. Mr Radich replied that all checkout supervisor staff and all senior managers have to go through age restricted goods training annually, and that this takes them through the basics of alcohol licensing legislation, among other things.
60. Mr Radich went on to say that in terms of experience overseeing the sale and supply of alcohol, checkout supervisors are effectively doing that as part of their role and are gaining the necessary experience.
61. Constable Craddock asked Mr Radich whether GDL had changed the way they process and finalise manager's certificate applications in light of the delays experienced with COVID. Mr Radich said that there had been tweeks, but no meaningful changes. He said that things were done primarily by email, and that local store managers could now go into their local council to pay for applications. Mr Radich noted that this was primarily as a result of cheques no longer being accepted by councils, rather than in response to COVID.
62. In relation to the commitment made to use floor stacks sparingly at Amberley Countdown, Constable Craddock asked how this was policed. Mr Radich responded that he was expecting to be told if there was a problem.
63. Constable Craddock asked if this meant GDL were relying on agencies rather than carrying out checks themselves. Mr Radich responded that the zone manager was responsible for carrying out checks, but that in his view it was a matter of perception and that what GDL felt was acceptable may not be acceptable to the agencies. Mr Radich said that if the agencies felt there was an issue from a regulatory point of view he would expect them to tell him.
64. In regard to the display of the licence for remote sales Constable Craddock asked Mr Radich how the licence is input online for each store. Mr Radich explained that once GDL's legal representatives receive the new licence there is a list of people who they need to notify that the licence has been issued. One of those is E-Commerce team, who are instructed to manually update the licence online.

Cross examination from MOH

65. Ms Williams asked what GDL have done to encourage the store to use floor stacks sparingly in the single alcohol area. Mr Radich responded that GDL have told the store and the store manager about the agreement. Mr Radich said that the store manager and the zone manager feel that they are using floor stacks sparingly at the store.
66. Ms Williams asked whether, in light of Mr Radich's offer to reduce the end of aisle shelving from five to four shelves, there is a possibility of the stock from the fifth shelf

becoming a floor stack. Mr Radich said no, that he does not foresee any change to the previous commitment of GDL to use floor stacks sparingly.

Committee's questions

67. Mr Dalley asked Mr Radich to clarify his earlier statement that he had heard from the local store manager on one occasion about concerns raised by the inspector relating to the use of floor stacks. Mr Radich confirmed that this was correct.
68. Chairperson Black asked whether the new electronic system being piloted would mitigate the types of delays which resulted in Zoe Edwards manager's certificate renewal being submitted late. Mr Radich confirmed that the new system is an electronic process which will remove the reliance on manual and postal systems.
69. Mr Ward asked Mr Radich what the timetable for rolling out the currently-being-piloted system nationally. Mr Radich responded that the system will have a three-month trial in Auckland beginning in the coming month. He said that if all things go well the system could be rolled out nationally in three to four months, as a best-case scenario.
70. In response to a question from Mr Ward asking if GDL will still be relying on the previous part-manual process prior to the new system being rolled out, Mr Radich detailed steps that had been taken in the interim to improve this process. Including providing each store with a printer/scanner and paying for a scanning app on company cell phones.
71. Mr Dalley asked how GDL views the share of responsibility for renewing manager's certificates, in particular whether GDL assumes sole responsibility for it or whether they expect the certificate holders to take responsibility. Mr Radich said in his view GDL and the certificate holder were equally responsible, and that there was an expectation that certificate holders know when their certificate needs to be renewed. Mr Radich noted that GDL manage the process for certificate holders and provide them with reminders.

LICENSING INSPECTOR'S EVIDENCE

72. Ms Dianne Morrison, Chief Licensing Inspector appointed by the Hurunui District Council, was the Inspector assigned to inquire into this application. Ms Morrison has been employed by the Council as a Licensing Inspector, before moving to Chief Licensing Inspector, and has held these roles for 12 years.
73. Ms Morrison provided a report to the committee. In her report she set out the background to the licence and her concerns, which we summarise as:
 - Concerns about the suitability of the applicant due to a lack of consistency in applying internal procedures.
 - Concerns about the applicant's staff and systems, relating particularly to the notification of appointment and termination of managers
 - Concerns about the compliance of the store's website due to failure to display the most up to date licence on the website

- That the use of floor stacks at end of aisles in the SAA has not been in accordance with GDL's commitment to use them 'sparingly'.
- That the configuration of the end of aisle displays does not limit (so far as is reasonably practical) the exposure of shoppers to displays and promotions of alcohol, as required by s 112(1).

74. As a result of these concerns the Inspector opposes the application.
75. Ms Morrison does not have concerns about other aspects of the day-to-day conduct of the sale of alcohol at the premises.
76. Ms Morrison provided written submissions at the hearing and presented them orally. She emphasised certain sections of her report. We have summarised these points in the following paragraphs.
77. In relation to the suitability of the applicant, Ms Morrison commented on GDL's extensive experience, saying:

Based on this level of involvement operating licensed premises, the Inspector considers the applicant should have robust and extensive systems to oversee its licensing obligations under the Sale and Supply of Alcohol Act 2012.

It is therefore concerning that some fundamental obligations of a licensee have not been consistently demonstrated. It is accepted that at times things can go wrong, however some of these failures are recurrent and were raised at the previous licence renewal. At that time GDL gave assurances that they would demonstrate improved performance and compliance with its obligations.

78. In relation to the applicant's staff, systems and training Ms Morrison has identified instances where GDL has failed to notify the District Licensing Committee of the appointment or termination of managers under Section 231.
79. In her oral submission Ms Morrison said that she acknowledged to some extent the explanation of Mr Radich and that some of the instances of non-notification are down to a difference in interpretation about when a notification is required. She noted that not all of the notification issues raised were down to this interpretation difference.
80. In her report Ms Morrison detailed that the licence renewed in November 2018 was not updated on Countdown Amberley's website when she undertook a compliance check in May 2019. She said:

Website compliance checks of licences were undertaken in May 2019 and the non-compliance of the Countdown website was brought to Mr Paul Radich's attention by email on 2 May 2019. On 8 May 2019, Paul responded by email advising 'You read my mind. I had the conversation with the team about this last week. We are working on it and will have it rectified as soon as possible.' He was requested to advise when this had been actioned, however no further contact was made on this issue. The website non-compliance was subsequently discussed with the store manager, Sarah Ruddick, and she was requested to follow this up with Countdown head office. Further checks of the website showed that the required information had not been updated.

...

The Licensing Inspector phoned the applicant's Solicitor Paige Coulter on 7 October 2019 to advise the application was to be opposed and outlined the concerns held. A subsequent check of the website on 23 October 2019 indicated the licence details had been updated on the website.

The Inspector views this as another systems failure and a breach of the Act that was not proactively addressed when brought to the licensees attention.

81. The Inspector's Report details the decision of the Tauranga DLC, and the subsequent decision of ARLA, regarding the SAA at Countdown Bureta Park. In particular, the decision deals with end-of-aisle displays in the SAA and whether they comply with Section 112(1) of the Act.

82. In the Countdown Bureta Park decision the Tauranga DLC said:

"Having visited and evaluated the premises independently we are unanimously of the view that the four end-of-aisle displays, and promotion of alcohol is pronounced and confronting to shoppers outside the SAA"

83. The Tauranga DLC imposed a condition which reads:

"(8) The Single Alcohol Area shall contain no end-of-aisle displays of alcohol that face out from the SAA and into the main shopping area of the premises."

84. GDL appealed the decision of the Tauranga DLC to ARLA, seeking the deletion of Condition eight on the grounds that it was unreasonable and inconsistent with the Act. The appeal was dismissed by ARLA, which said it was "not satisfied that the appellant has established that Condition 8 is unreasonable and inconsistent with the Act."

85. Ms Morrison notes in her report:

There are similarities between the Countdown Bureta Park and Countdown Amberley stores:

- ***They were constructed in 2014 and each has held an off-licence since that time.***
- ***They are of a similar construction and layout, although they are essentially a mirror image of each other.***

The issues considered by the Tauranga DLC and the Authority are very similar to Countdown Amberley, i.e.:

- ***The end of aisle displays are visible from outside the store, from the foyer, when the store is entered through the "Sharks teeth", over the fruit and vegetable displays, and other displays. Attachment 1 – 3 photographs of the end-of-aisle displays (29 October 2019).***

86. At the hearing Ms Morrison suggested that the committee needed to make an independent assessment of the Countdown Amberley store, in light of the ARLA decision regarding end of aisle displays at Countdown Bureta Park. She noted that whilst in her opinion there are similarities between the stores the Committee must make a location and fact specific assessment of Countdown Amberley.

87. Ms Morrison stated that she considers that the use of outward facing end-of-aisle displays at Countdown Amberley do not limit (so far as is reasonably practicable) the exposure of shoppers to displays and promotions of alcohol and should be discontinued.
88. Ms Morrison said that in her opinion the addition of a black line on the floor to define the boundary the SAA was a good initiative.

FLOOR STACKS

89. In relation to floor stacks Ms Morrison discussed the 20 October 2018 Memorandum from GDL where it committed to use floor stacks sparingly.
90. In her evidence the Inspector said that she lives in Amberley and regularly shops at Countdown Amberley, often two to three times per week on different days. She says that it is her observation that floor stacks are used at all times, saying she *“cannot recall a time when I have visited the store and there have not been floor stacks adjacent to the outward facing end-of-aisles”*.
91. Ms Morrison said that she considers the frequency of the use of floor stacks does not honour the intent of the 20 October 2018 Memorandum to use floor stacks sparingly.
92. Ms Morrison said that she accepts the practice of floor stacks being used adjacent to the inner sections of aisles within the SAA, however it is her opinion that the use of floor stacks adjacent to the ends of aisles does not meet the requirement of Section 112(1) to limit the exposure of shoppers (as far as is reasonably practical) to displays and promotions of alcohol.

CROSS EXAMINATION

93. Under cross examination Ms Arthur-Young asked Ms Morrison if, other than the concerns she had raised about the notification of managers appointments, she had any concerns about staff systems and training matters. Ms Morrison said that she did not.
94. Ms Arthur-Young asked if Ms Morrison acknowledged that there had been some improvements at the store, giving the examples of the change in store manager and the black line on floor marking the SAA. Ms Morrison acknowledged that these are improvements.
95. Ms Arthur-Young asked Ms Morrison to confirm that, given James O’Brien had not been used as a manager at Countdown Amberley, a breach of Section 231 of the Act had not occurred. Ms Morrison agreed that a breach had not occurred.
96. Ms Morrison acknowledged that use of the word breach may have been the wrong term but that the process of notifying manager’s appointments had not been consistent and cited that there were three or four managers listed on the renewal application that

hadn't been notified, and for who Section 231 forms were not received until some months later.

97. Ms Arthur-Young asked Ms Morrison if she had any concerns with the size or location of the SAA at Countdown Amberley. Ms Morrison confirmed that she did not.
98. Ms Arthur-Young put to Ms Morrison that in forming her view of the end of aisle displays she had relied heavily on the Countdown Bureta Park decision. In response Ms Morrison said that in her submission there are a lot of similarities with the layout of the stores and that what you see when you enter the stores is the same.
99. During questioning Ms Arthur-Young established that Ms Morrison had not been to Countdown Bureta Park and asked how she had drawn her comparisons between that store and Countdown Amberley. Ms Morrison said she had based her comparison on the plans of the store layout and the location of the SAAs.
100. Ms Arthur-Young put to Ms Morrison that Bureta Park's SAA has more aisles, a bigger alcove, number of ends-of-aisles, and higher shelving at the end of aisles, and that Ms Morrison would be unable to verify that because she hasn't been to Bureta Park. In response Ms Morrison said that the displays at Amberley are clearly visible and that she considers that what you can see from the sharks teeth at Countdown Amberley is confronting.
101. Ms Arthur-Young referred to Paragraph eight of the Authority's decision on Countdown Bureta Park ([2019]NZARLA 200) where the Authority said that *"the end of aisle displays are easily visible across the low fruit and vegetable displays as one enters the store"*. She then asked Ms Morrison if she accepted that the end of aisle displays at Countdown Amberley are not easily visible across the low fruit and vegetable displays. Ms Morrison responded that she totally disagreed with that.
102. Ms Arthur-Young asked Ms Morrison to clarify that her opinion is that to someone standing, before you enter the store proper at Countdown Amberley, the end of aisle alcohol displays are easily visible across the low fruit and vegetable section. Ms Morrison confirmed that this is her opinion.
103. Ms Arthur-Young put to Ms Morrison that the only part of the end of aisle displays visible from the shark's teeth at Countdown Amberley is the fifth shelf of the two end of aisle displays. Ms Morrison responded that it would be more than just the fifth shelf and would be at least another shelf down.
104. In response to a question from Ms Arthur-Young about whether the beer stacked on the floor at the end of the third SAA aisle could be seen from the shark's teeth, Ms Morrison said it would depend how high the beer was stacked. Ms Morrison said that sometimes the beer is stacked quite high and referred to a photo (Attachment 3) in her Inspector's report showing the beer pallet stacked at the end of aisle three. Ms Morrison said that when stacked at this height she considers that it would be visible across the fruit and vegetable display from quite some distance.

105. Ms Arthur-Young asked Ms Morrison if she would accept that if the fifth shelf was taken off the ends the alcohol would not be visible from outside the store. Ms Morrison said she could not categorically say that would be the case without seeing it at the store.
106. In response to questions from Ms Arthur-Young about the locations of floor stacks within the SAA, Ms Morrison said that she doesn't have a problem with floor stacks used mid-aisle in the SAA, but thinks that they are used adjacent to the end of aisles and in a way that increases the exposure of shoppers to alcohol. Ms Morrison said that she considers the use of floor stacks at the end of aisles in a way that increases exposure as a separate issue to the overall use of floor stacks within the SAA.
107. Ms Arthur-Young asked for clarification from Ms Morrison about where, in her opinion, exposure would occur from the floor stacks adjacent to the end-of aisles. Ms Morrison agreed with Ms Arthur-Young that the end-of-aisle adjacent floor stacks could not be seen from outside the store. Ms Morrison went on to say that people within the store but still quite some distance from the SAA could face increased exposure to alcohol because of the stacks.

Committee's questions

108. Chairperson Black asked Ms Morrison to explain her interpretation of 'reasonably practicable' in the context of Section 112. Ms Morrison responded that in her opinion, having viewed how alcohol is displayed at other Countdown stores, there were options available to display alcohol in a way where there was less exposure to shoppers. The width and height of the end of aisle displays meant that there was quite a lot of alcohol on display to shoppers at Amberley, and she considered that adoption of the options seen at some other stores were reasonably practicable and would result in a reduction in exposure of shoppers to alcohol.

POLICE EVIDENCE

109. Constable Genevieve Craddock provided a written brief of evidence and submissions, received by the Committee on 28 January 2021. These were presented orally at the hearing.
110. Constable Craddock stated that she has been in the Police for 13 years, with seven years of that time in the Alcohol Harm Prevention Unit.
111. Constable Craddock explained that the previous application was issued for 18 months after the Inspector raised concerns about the failing to appoint some managers under Section 231, concerns over the completion of managers tests as part of the Manager's Certificate application process and the general management of the premises. She further explained these failings were acknowledged by Mr Radich and a proposal of a reduced renewal period to show their commitment of getting things right was given.

112. During her inquiries into the application, Constable Craddock said that there were three managers that had not previously been appointed to the premises under Section 231 of the Act. These managers were Nicola Smith, Zoe Edwards and Kyle Vandevondervoort.
113. It was also noted that the old licence was displayed and not the current licence issued. Constable Craddock produced exhibit [EXH GC01].
114. Constable Craddock said she filed a report in opposition to the application on 24 September 2019. The grounds for objection relate to Section 105(1)(j) of the Act: systems, staff and training.
115. Constable Craddock stated that on 1 July 2020, Police received an application for a new Manager's Certificate by Ms Zoe Edwards. During her inquiries, Constable Craddock noted in a letter attached to the application, Ms Edwards said she has worked at Countdown for eight years and has worked at a few stores as Duty Manager. A copy of the letter was produced as an exhibit [EXH GC02].
116. Constable Craddock stated that the renewal application for Countdown Amberley listed Ms Edwards as a Duty Manager for the store. Constable Craddock contacted Ms Morrison for further information and was advised that Council originally received a renewal application for Ms Edwards after the expiry, so she was required to submit an application for a new Manager's Certificate.
117. On 11 August 2020, Constable Craddock and Ms Morrison met with Ms Edwards at the Hurunui District Council. When asked for an explanation of why she had not filed a renewal application for her Manager's Certificate prior to it expiring, Ms Edwards answered that her certificate was issued by the Whanganui District Licensing Committee and the Council renewal reminder had been sent to her mother's address. Once she became aware that the expiry date for her Certificate was approaching, she advised her employee (Countdown Amberley). She was then asked to complete the renewal application which was forward to the head office of General Distributors Limited for processing prior to the expiry. Ms Edwards said she understood that head office would file her renewal application with Hurunui District Council on her behalf. She continued that it became apparent that head office had not filed the renewal application with Council prior to the expiry date and she subsequently had to submit a new application as a result.

Cross examination

118. Under cross-examination Ms Arthur-Young asked if Constable Craddock had any evidence that any of the three managers (Smith, Edwards, Vandevondervoort) she referred to in her evidence were being used as managers. Constable Craddock confirmed that she did not, the issue is around notification.
119. Constable Craddock was asked by Ms Arthur-Young if this was her only ground for opposition to the renewal. Constable Craddock responded that she had also raised the matter of the licence not being updated on the website, which she considered to be a staff and systems issue.

120. Ms Arthur-Young asked if Constable Craddock has concerns about the SAA at Countdown Amberley and Constable Craddock replied that she did not.

MEDICAL OFFICER OF HEALTH EVIDENCE

121. Ms Paula Williams, Alcohol Licensing Officer representing the Medical Officer of Health, was present at the hearing to assist the Committee and to support the other reporting agencies. She did not choose to give evidence during the hearing, however, was available to cross-examine any other parties to the hearing.

122. For completeness, in her report dated 4 October 2019, Ms Williams did not raise any matters in opposition to this application.

CLOSING SUBMISSIONS

Applicant's submissions

123. Ms Arthur-Young presented closing submissions at the hearing orally.

124. In closing, Ms Arthur-Young submitted, in relation to the manager notification issues, that there are clearly process improvements coming through the new system. She submitted that the current system and processes in place are compliant with the Act. She further submitted that the only evidence of an issue is the situation with Zoe Edwards renewal application. She noted there is some lack of clarification between where GDL calls someone a duty manager and uses them as such, versus when they have a statutory manager certificate. She submitted that that does not make for a breach of the Act. Ms Arthur-Young said that the Inspector clarified and confirmed that.

125. It is Ms Arthur-Young's submission that there is nothing in terms of a breakdown, breach, or systemic problem or issue in relation to GDL's systems in place, that should mean challenges around the grant of a renewal.

126. In relation to the floor stack issue Ms Arthur-Young submitted that it is important to note that in the 30 October 2018 Memorandum it was clear that the intent of the term 'sparingly' was to maintain the current level of floor stacking that it uses. Ms Arthur-Young said that GDL was very clear to manage expectations that GDL intended to continue to use floor stacks.

127. In the Memorandum GDL committed to encourage the store to use floor stacking, for example in-aisle or dump stacking, sparingly, and Ms Arthur-Young submitted that the store has done that. Ms Arthur-Young said that the SAA has been approved and that is an acknowledgment that that area can be used for the display of alcohol. Ms Arthur-Young submitted that the case law is clear that display of alcohol within that area is a matter for an applicant to consider. She went on to say that there is nothing in Act that prohibits the use of floor stacks, nor anything in the evidence or submissions before the Committee which would suggest there is any concern with the way Countdown Amberley is using the floor in its SAA to display product.

128. Ms Arthur-Young submitted that the only legal issue before the committee was around limiting exposure so far as is reasonably practicable. She said that it was relevant to both the end of aisle display discussions and the concern of the Inspector about the exposure of shoppers to alcohol in relation to floor stacks at the front of the SAA.
129. Ms Arthur-Young said it was her strong submission that there is no evidence before the committee at all that exposure is not limited as far as is reasonably practicable. She said that the Inspector's laser-like focus on the floor stacks at aisle-ends risks the other elements of the store's design and the SAA design being overlooked. Those include:
- The SAA alcove is small
 - The SAA alcove is at the back of the store
 - It has three walls and almost half of the fourth wall.
130. Ms Arthur-Young said that the absolute heart of the issue in relation to Bureta Park was around the ability of shoppers standing outside the premises or at the shark's teeth to see the end-of-aisle displays.
131. It is Ms Arthur-Young's submission that shoppers coming into Countdown Amberley do not see the floor displays at those locations that were of concern to the Authority in the Bureta Park case. She said at its most generous view, shoppers standing at the shark's teeth can see bottles of wine stacked on the fifth (top) shelf of two end-of-aisle displays.
132. Ms Arthur-Young's submission is that 'The test' is not whether the shoppers can see alcohol and that the display of alcohol at Countdown Amberley is not pronounced and confronting, that is not an exposure issue, and that the display of alcohol is appropriate and in line with the Act.
133. Ms Arthur-Young submitted that Mr Radich's offer to remove the fifth shelf on aisles one and two, and accept a discretionary condition, is generous and is not required from a legal point of view to address an exposure issue.
134. Ms Arthur-Young submitted that "so far as is reasonably practicable" does not have the same meaning as asking "what is possible" or "what is feasible". She said that the test is not about what is possible or feasible and that the concept of limiting exposure so far as is reasonably practicable necessarily imports a concept of proportionality.
135. Ms Arthur-Young expressed concern at the application of the Countdown Bureta Park decision to this current application. She submitted that the Authority has repeatedly told DLCs that they must not adopt a policy position, and that just because the SAA is an alcove which is visible from the entrance of the store does not mean that end-of-aisle displays may be automatically prohibited.
136. It is Ms Arthur-Young's submission that the fact that an alcohol area can be seen from the store's foyer is not in breach of the Act and is not something that immediately means exposure is a problem.

137. It is Ms Arthur-Young's strong submission that it is incorrect to say that the end-of-aisle displays are visible before one enters the store at Amberley. She said that one of the ends has no product on it so it can't possibly be correct that is visible outside the store, and that, at best, on the other two ends the fifth shelf is visible to people after they've entered the store.
138. Mr Arthur-Young submitted that Mr Radich and GDL had come to the hearing having carefully considered the concerns about visibility. She said that through his intimate involvement in the Bureta Park decision and appeal to the Authority, Mr Radich understands that the Authority's concerns were relating to the visibility of alcohol to customers who were outside the store. Mr Radich has offered to reduce shelf space to address these concerns. Mr Arthur-Young expressed disappointment that the Inspector and reporting agencies did not acknowledge that or discuss whether it will resolve their issues. She stated that this suggests the Inspector is seeking a Policy position on end-of-aisle displays.
139. Ms Arthur-Young submitted that the Memorandum of 20 October 2018 clearly sets out GDL's understanding and that they intended to use floor stacks at the current level. She further submitted that the Inspector is incorrect to say that GDL has not honoured its commitment to use floor stacks sparingly and that she is incorrect to describe the definition of 'sparingly' as a matter of opinion and vague.
140. It is Ms Arthur-Young's submission that GDL has honoured the intent of the commitment and does use floor stacks sparingly and that the Inspector's assertion that the use of floor stacks is excessive is incorrect.
141. Ms Arthur-Young stated she rejects the Inspector's suggestion that stacking on the beer pallet at the third end-of-aisle display be limited to a height of one metre by condition.
142. Finally, Ms Arthur-Young submitted that a shortened length of licence term, as suggested by the reporting agencies is not justified by the evidence before the Committee.

Licensing Inspector's submissions

143. Ms Morrison provided written closing submissions at the hearing, which she presented orally.
144. Ms Morrison noted that at the time of application details were not available about GDL's new software for managing the certificate holding managers and their appointments, so reporting agencies had not assessed those systems. Ms Morrison submitted that the committee should take into account how the system will operate and the rollout of the system when deliberating on the renewal period of the licence.
145. Ms Morrison submitted that the committee needed to determine an appropriate time-period for renewal, taking into account the information provided by the applicant at the

hearing. She submitted that the committee need to be mindful that previous promises from GDL to do better did not come to fruition as were expected.

146. Ms Morrison submitted that the end of aisle displays end of aisle floor stacks in use at Countdown Amberley do not meet the purpose of Section 112(1). She further submitted that there is no requirement in the Act to prove a link with Section 112(1) and alcohol related harm, referring to Paragraph 25 of the Tauranga DLC decision on Countdown Bureta Park.
147. It is Ms Morrison's submission that the costs of rearranging the end of aisle shelving have been discussed during the hearing, so the committee is able to make a decision as to whether the costs or any changes to the shelving outweigh the benefits sought.
148. Ms Morrison recommended that the committee impose a condition that there are to be no outward facing displays of alcohol on the end of aisles in the SAA. She suggested that the committee may allow the beer display at the end of aisle three to be retained subject to a condition that it not be stacked to a height of more than one metre.
149. The end of aisle displays at the store are five shelves high and Ms Morrison submitted that these should be considered high, not "mid-height shelving" as described by Mr Radich.
150. Ms Morrison submitted that GDL had not honoured the intent of their commitment to use floor stacks sparingly, and that the term 'sparingly' was vague and open to interpretation. She further submitted that the Committee needs to clearly set out its position on the use of floor stacks and asked it to impose conditions to regulate their use.
151. In conclusion Ms Morrison submitted that the application could be granted subject to conditions to ensure clarity relating to the end of aisle displays and promotion of alcohol and the use of floor stacks in the SAA.
152. Ms Morrison submitted that the licence should be renewed for a period of no greater than 9 – 12 months to enable GDL to demonstrate the timely implementation of the new administration system and assess its effectiveness.

Police submissions

153. Constable Craddock provided closing submissions at the hearing, which were presented orally.
154. Constable Craddock submitted that previously Mr Radich had acknowledged that things hadn't been done in the manner GDL expected and they agreed to a truncated 18-month licence renewal to demonstrate their commitment to resolving the issues. Constable Craddock said that in that time there had been four Section 231 notifications not submitted, the incorrect licence being displayed on the website (in regard to remote

sales), and two manager's certificate renewal applications being submitted after the certificates had expired.

155. In light of the applicant's assurances that improvements are coming Constable Craddock submitted that, if the Committee were minded to renew the licence, a further truncated one year renewal would be appropriate. Constable Craddock submitted that this time period would allow the applicant to demonstrate their new automated system and allow the agencies to assess any issues around compliance.

RELEVANT LEGAL CONSIDERATIONS

Statutory criteria to be applied

156. In deciding whether to renew a licence, the Committee must have regard to the criteria set out in Section 131 of the Act, being:

131 Criteria for renewal

- (1) *In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
- (a) *the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*
 - (b) *whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*
 - (c) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*
 - (d) *the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*
- (2) *The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.*

157. The relevant sub-sections of Section 105 are listed below:

105 Criteria for issue of licences

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

- (f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
 - (g) *whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
 - (j) *whether the applicant has appropriate systems, staff, and training to comply with the law:*
 - (k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*
- (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.*

158. The Committee has additional considerations in relation to single alcohol areas in supermarkets, specifically:

112 Compulsory conditions relating to display and promotion of alcohol in single area in supermarkets and grocery stores

- (1) *The purpose of this section and sections 113 and 114 is to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol.*
- (2) *The licensing authority or licensing committee concerned must ensure that, when it issues or renews an off-licence for premises that are a supermarket or grocery store, it imposes on the licence a condition describing one area within the premises as a permitted area for the display and promotion of alcohol.*
- (3) *On the renewal of an off-licence for premises that are a supermarket or grocery store, any single-area condition imposed when the licence was issued (or was last renewed) expires.*
- (4) *Subsection (3) is subject to section 115(4).*

ANALYSIS

159. We will proceed to consider the application on the basis of the above criteria. The object of the Act will be addressed last.

Suitability of the applicant

160. The Committee must have regard to the suitability of the applicant to hold an off-licence.

161. The term ‘suitability’ is not defined in the Act. It is however well settled in this jurisdiction, that suitability is measured against the general dictionary definition of that word, meaning “well fitted for the purpose, appropriate”.

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

"... suitability is a broad concept and the assessment of it included the character and reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also included matters raised pertaining to the object of the Act as set out in s. 4."

163. We also note that in order to find the applicant suitable, we must make a positive finding of suitability.

164. The applicant in this case is a limited liability company, which operates a nationwide supermarket chain including over 150 supermarkets with off licences and has more than 20 years' experience selling alcohol.

165. The applicant has demonstrated a commitment to investing in staff and systems to enable it to comply with the Act, and whilst there are some matters where improvement is still required, the Committee is satisfied that the applicant has established its suitability to hold a licence.

Local Alcohol Policy

166. The Hurunui Local Alcohol Policy (LAP) came into effect on 1 December 2017. It sets out the maximum hours of operation for the four kinds of licences imposed within the Hurunui District and outlines certain discretionary conditions that the Committee may apply on issue of a licence.

167. The Hurunui LAP imposes the following maximum trading hours for off-licences (all types) of *Monday to Sunday from 7.00am to 10.00pm*.

168. We consider that the hours of operation proposed in the application are not inconsistent with the Hurunui LAP.

Days and hours proposed for the sale and supply of alcohol

169. In the application dated 16 September 2019, the hours proposed for the sale and supply of alcohol are Monday to Sunday 7.00am to 10.00pm. No changes were sought to the days and hours.

170. The Committee do not have any concerns with this criterion.

Design and layout of the proposed premises

171. The design and layout of the proposed premises was discussed in detail during the hearing.
172. The Committee is satisfied that the size and location of the single alcohol area is appropriate.
173. During its site visit the Committee viewed the alcohol area from the foyer prior to passing the shark's teeth, from inside the store immediately after passing through the shark's teeth, and from various other positions in the fruit and vegetable section and bakery.
174. The Committee observed that the beer stack in front of aisle three (the left aisle of the SAA) was not visible from the shark's teeth. Wine stacked on the fifth shelf of aisle two (the middle SAA aisle) was visible. Wine stacked on the fourth and fifth shelves of aisle one was visible from the shark's teeth.
175. The Committee notes that whether alcohol is visible or not is not the test it must apply. Whilst it is true that because alcohol is visible shoppers must be exposed to it, the Committee considers that the end of aisle displays at Countdown Amberley do not result in an excessive or unreasonable level of exposure.
176. The Committee appreciates Mr Radich's offer to remove the fifth shelf from the outward-facing end of aisle displays and limit these displays to a maximum of four shelves by condition. In the Committee's view the removal of alcohol from the top shelf and the associated reduction in height of the alcohol displayed on those ends would result in a meaningful reduction in exposure of shoppers to alcohol. Accordingly, the Committee decided to include this as a discretionary condition on the licence.
177. The Committee accepts that the undertaking of GDL dated 30 October 2018 to remove and not display price posters above the ends of the alcohol aisles has been complied with. The Committee's opinion is that the removal of this suspended signage has resulted in a measured change (reduction) to the exposure of shoppers to alcohol promotions within the store.
178. The applicant submitted that the use of floor stacks within the SAA is a matter in which the store has some flexibility. The applicant has confirmed that it intends to continue to use floor stacks within the SAA in the same way as it currently does (that is to say in a way that the applicant considers 'sparingly'). The Inspector stated that she was not concerned, from the point of view of exposure, about the use of floor stacks within the aisles of the SAA. The Committee agrees that the use of floor stacks in the middle of aisles and adjacent to the rear of aisles in the SAA does not contribute to exposure of shoppers to alcohol.
179. The Committee heard evidence from the Inspector who says that the outward facing floor stacks placed adjacent to the end of aisle displays in the SAA increase the exposure of shoppers to alcohol. The applicant disagreed with this, saying that they do not increase the exposure and, again, that their use is a matter in which the Act allows licensees flexibility.

180. During its site visit the Committee observed floor stacks placed adjacent to the ends of aisles one and two of the SAA. The stacks were equivalent in height to the bottom three shelves on the end of aisle displays and did not extend beyond the bottom of the fourth shelf. The stacks were one wine box wide and turned on approximately a 45-degree angle. The Committee noted that due to their height the end-of-aisle floor stacks were not visible from the front of the store. The Committee's opinion is that the use of floor stacks in this manner did not significantly increase the exposure of shoppers to alcohol displays.
181. Overall, the Committee is of the view that the previous removal of the suspended signage above the SAA, the removal of the top end-of-aisle shelves as offered by Mr Radich, and the existing design features of the SAA contribute to meeting the purpose stated in Section 112(1) – to limit (so far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery store to displays and promotions of alcohol, and advertisements for alcohol.
182. The Committee do not have any other concerns with the design and layout of the premises.

Sale of goods and services other than alcohol and food

183. The general nature of the business is a supermarket which sells a range of products.
184. The Committee do not have any concerns with this criterion.

Amenity and good order of the locality

185. The Committee do not have any concerns with this criterion.

Appropriate staff, systems and training to comply with the law

186. The duty of licensees to notify appointment of managers is set out in Section. 231 of the Act, being:

231 Notice of appointment, etc, of manager, temporary manager, or acting manager

- (1) A licensee must give notice, in accordance with subsection (2), of the appointment, or the cancellation or termination of the appointment, of any manager, temporary manager, or acting manager.*
- (2) Notice is given in accordance with this subsection if the notice is given within 2 working days after the appointment, or the cancellation or termination of the appointment, to—*
- (a) the licensing committee with which the application for the licence was filed; and*
- (b) the constable in charge of the police station nearest to—*

- (i) *the premises, where the licence is in force for any premises; or*
 - (ii) *the office of the licensing committee with which the application was filed, where the licence is in force for a conveyance.*
- (3) *It is not necessary to comply with subsection (1) in respect of the appointment of a temporary manager or an acting manager for any period not exceeding 48 consecutive hours.*
- (4) *The licensing committee may, within 5 working days after receiving a notice of the appointment of any temporary manager or acting manager, notify the licensee that it does not approve the appointment, in which case it must give a copy of the notice to the constable referred to in subsection (2)(b).*
- (5) *On receiving notice under subsection (4), the licensee must terminate the appointment with effect from a date not later than 5 working days after the date of the notice.*

187. During the hearing the Committee heard that there is a difference in understanding between the agencies and the applicant about notification requirements. The applicant has included with its application a list of all certificate holding managers, whether or not it intends to regularly use them as managers under the Act. This has meant that the names of some managers listed on the application are not managers that GDL has previously provided notification of appointment for under Section 231.
188. There are instances identified where notifications under Section 231 have been outside the timeframe stipulated in the Act.
189. The Committee is encouraged by GDL's investment in a new automated system to manage the Section 231 notification requirements and certificate renewal process for its duty managers. The Committee anticipates that the new system, once implemented, will result in all required notifications being made within the required two working day timeframe.
190. With regard to the display of licence for remote sales on the store's website, the Committee heard that GDL has a process in place to ensure the licence displayed is the updated one. The Committee accepts that GDL has addressed this process and is making efforts in this area to ensure it complies with the law.

Any matters dealt with in any report from the reporting agencies

191. With regard to the period of renewal both the Police and Inspector have requested that the licence be renewed for a shorter period to allow the new automated system's effectiveness to be evaluated. The Committee is mindful that due to the time taken to process this licence application any shortened renewal period may, in fact, not give adequate time for such an evaluation to be made. As such the Committee consider it appropriate to renew the licence for the normal three-year period, meaning it will need to be renewed on 14 November 2022.
192. In the report dated 29 October 2019, the Licensing Inspector opposed the renewal application in respect to ongoing systems failures that have resulted in non-compliances

with the Act; and the use of floor stacks at the end-of-aisles does not limit exposure of shoppers to alcohol as required by Section 112(1) of the Act. The Committee have addressed these areas of concerns in the sections above and do not need to be discussed further.

193. In the report dated 24 September 2019, Police opposed the renewal application on the grounds of systems, staff and training. Again, these concerns have been addressed in the sections above.

194. In the report dated 4 October 2019, the Medical Officer of Health concluded that "I have no matters in opposition to report."

Object of the Act

195. The object of the Act is to reduce alcohol-related harm. The Committee has considered this while deciding on this application. No evidence has been adduced to indicate that there are concerns about alcohol-related harm associated with this application or the operation of this licence.

196. The Committee is satisfied that the application meets the object of the Act.

CONCLUSION

197. The application for renewal is granted for the full three-year period subject to the following conditions:

- a. No shelf on an outward-facing end-of-aisle display, in the single alcohol area, is to be fitted at a height exceeding 1.4 meters from floor level.

(For the purposes of clarity this condition refers to the height of the shelf itself and excludes the product on the shelf)

DATED at Amberley this 27th day of September 2021

Marie A Black

Chairperson

Hurunui District Licensing Committee