

# TASMAN DISTRICT LICENSING COMMITTEE

Decision No. 005/OF0217/2023

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **Nelson Holdings Limited** for a new off-licence Licence at 151 Aranui Road, Mapua to be known as Super Liquor, Mapua pursuant to Sections 17, 32(1)(b), and 100, Sale and Supply of Alcohol Act 2012.

**BEFORE THE TASMAN DISTRICT LICENSING COMMITTEE**

**Chairman:** Brent Maru

**Members:** David Lewis

Laurie Gabites

**Hearing at Hills Community Church, Mapua on 18 – 21 July 2023**

**Appearances**

Mr J D Young	Counsel for the Applicant
Mr Alastair Sherriff	Counsel for Te Whatu Ora
Ms Kate Mitchell	Counsel for Mr and Mrs Mitchell
Dr Liz Gordon	Counsel for Dr Vause
Ms Tracy Waddington	Licensing Inspector at Tasman District Council
Sergeant Olivia Gibson	Alcohol Harm Prevention – Nelson Bays Police

**RESERVED DECISION OF THE TASMAN DISTRICT LICENSING COMMITTEE**

## INTRODUCTION

1. There is one application before the District Licensing Committee (“the Committee”) for the issue of an off-licence under section 32 (1) (b) of the Sale and Supply of Alcohol Act 2012. The Applicant is Nelson Holdings Ltd and for premises to be known as Super Liquor Mapua situated at 151 Aranui Road Mapua.
2. Nelson Holdings Ltd (NHL) applied for this off-licence in respect to these premises in April 2022.
3. This application was forwarded to the agencies in accordance with section 103, Sale and Supply of Alcohol Act 2012 and attracted opposition from the Police, the Medical Officer of Health, and the Licensing Inspector. The application was advertised as prescribed in section 101 Sale and Supply of Alcohol Act 2012 and attracted 88 objections. Each of the agencies have provided a report to the Committee prior to the hearing and as well the applicant has provided written opening submissions. This is an application where the tri-agencies are all in accord with their opposition to this application.
4. The Committee acknowledges the commitment this community has made to this hearing in terms of providing information and presenting their evidence. There were two (2) late objectors as set out in minute 002/OF0217/2023. Of the 90 Objectors, 77 were recognised by The Committee as having a greater interest in the application [for the licence] than the general public, s102(1). Of those Objectors 27 appeared before the Committee at the hearing.

### ***The Applicant.***

5. The Applicant is represented by Mr J Young, and he called two witnesses - Mr Hall, and Mr Webster. They did not call anyone in support of the application.
6. Counsel was invited to provide some opening submissions before calling witnesses. These written submissions were provided to the Committee prior to the hearing.

7. Counsel asked the Committee to consider several matters in reaching a decision on whether or not to issue the licence. He firstly asked the Committee to note that there appeared some misunderstanding regarding the Tasman Local Alcohol Policy, and he noted the relevance of congestion and parking issues.
8. Counsel went on to outline the community consultation and a subsequent meeting with the school and two members of the Mapua and District Community Association Incorporated (MDCA). He said Mr Hall would, in his evidence, outline some suggested changes to the application associated with branding. He then provided the detail of the application to the Committee with references to previous cases which he indicated would show there was no real risk of harm in relation to this application.
9. Mr Young further outlined for the Committee the findings of the Birthcare Case <sup>1</sup> and the recent Riccarton <sup>2</sup> decision involving evidence from Christchurch Girls High School relating specifically to the Object of the Act.
10. Mr Young suggested to the Committee that NHL was trustworthy and therefore suitability was not in question. He also outlined the resolution of the issue raised by the Department of Labour investigation.
11. Mr Young further advised the Committee that the proliferation of premises was not in itself a ground for an objection relating to amenity and good order. He suggested the Committee consider the recent Pleasant Point <sup>3</sup> decision involving an appeal by St Joseph's School. He went onto suggest that the theme of the objectors submissions is a view that 'Mapua shouldn't have a bottle store' but he submitted that was not something that would assist the Committee's evaluation of this application. He was confident that the application meets the criteria in section 105 of the Act.
12. Counsel called the first witness, Mr David Hall, who is the Operations Director at NHL and a minor shareholder. Mr Hall is responsible for five licensed bottle stores and has been with NHL for the last two years and holds a current Managers

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<sup>1</sup> Auckland Medical Officer of Health v Birthcare Auckland Limited 2015] NZHC2689

<sup>2</sup> [2019] NZARLA 93

<sup>3</sup> St Josephs School Pleasant Point v Singh Trading (2016) Limited [2021] NZARLA 123

Certificate. Along with others he oversaw the preparation of this application. He advised the Committee that he had read the public objections and opposition reports and he considered the main issues were amenity and good order of the area and the location of Mapua School.

13. Mr Hall stated that NHL had looked at various sites in Mapua and considered the proposed site as the most appropriate. Mr Hall provided the Committee with additional matters considered by NHL given the concerns raised. These included:
  - Reduce opening time to 10am
  - Use of muted colours on the building
  - No exterior advertising apart from the company logo
14. He then advised the Committee that NHL already operated off-licence premises and had spoken with some customers who have repeatedly asked why they didn't open a store in Mapua. This feedback was a reason why NHL lodged this application.
15. Mr Hall advised the Committee of the review by Super Liquor of the demographics which indicated there were fewer residents aged 15-29 years in Mapua than the wider Tasman region or nationally. They identified from the report that there was low deprivation in the Mapua area.
16. Mr Hall then explained how NHL undertook community engagement and met with two (2) members of the MDCA, held representatives of the Mapua School and a publicly notified meeting on 7 April 2023. Mr Hall felt that the meetings were positive and productive.
17. Mr Hall further advised the Committee that he believed in such a small place as Mapua it was difficult, if not impossible, to find a tenancy that was not near a site considered sensitive. It was felt that given the history of the site (having previously been a tavern) being near the school would not be a significant issue. NHL considered two other sites 65 Aranui Road and the Mapua wharf area. Mr Hall informed the Committee that during the community consultation the landlord of 65 Aranui Road offered that site but NHL decided not to pursue it because:

- It was near other licensed premises.
- It was near healthcare services.
- It was near a childcare facility.
- It was near the main playground, pump track, skate park and playing field.

It was, in NHL's view, that 65 Aranui Road presented more potential risks than 151 Aranui Road.

18. Mr Hall then provide the Committee with a view pertaining to the suitability issue and outlined NHL's operation in their stores, including not having failed a controlled purchase operation in the last decade. He further provided the Committee with an outline of how NHL dealt with the inquiry by the Labour Inspectorate and how that was now resolved. He considered it came about because of a genuine mistake.
19. Mr Hall then went on to the concerns raised in relation to the proximity to Mapua School, which was an issue raised by objectors and the agencies. He advised the Committee that he had met with the Principal and the Board of Trustees Chairman, who both indicated that while they had no problem with NHL, it was the exposure of alcohol to children that was the issue. Mr Hall provided the Committee with his observations of the number of children crossing the road towards the proposed site and stated there were 8 – 10 students. He also observed that several parents parked in the car park across the road. He believed the suggested changes to the paint colour and reduction in signage would reduce some of those issues.
20. Mr Hall indicated that as the objectors had raised issues around disorder and rubbish in Aranui Park, he proposed to have regular 'sweeps' of the reserve to assess any problems.
21. Mr Hall informed the Committee that if the application was granted NHL would not be selling vapes or cigarettes at their Mapua store. He also provided the Committee with an assurance there would be no external brand advertising on the building. The Committee was informed that Mr Webster would provide to the Committee a copy of the training and support manual.

22. Under cross examination Mr Sherriff asked Mr Hall if NHL had any interaction with Mana Whenua. Mr Hall replied that it had held a community consultation meeting earlier in the process. Mr Sherriff drew Mr Hall's attention to Dr Lindsay evidence regarding the high number of Tamariki in Mapua and the likely increase in harm with another bottle store in the area. Mr Hall confirmed that he had read it. When asked if he disputed the information provided by Dr Lindsay regarding the likely increase in harm, Mr Hall stated that he felt that as the population grew then harm will increase. NHL works hard at ensuring they have training and processes in place to manage any risk. Mr Hall did not know of any community where a new bottle store was added and harm went down.
23. Mr Sherriff then referred to page 828 of the agenda from Ms Price's evidence at paragraph 11 regarding sensitive sites. Mr Hall agreed all but the tennis court were sensitive sites. In response to a question from Mr Sherriff regarding shoplifting loss Mr Hall confirmed it was very low. Staff are trained how to deal with any shoplifting incidents. Questioned about how many hours would there be one person in the store, Mr Hall said it would follow the roster.
24. In answer to a question from Sergeant Gibson relating to security issues, Mr Hall confirmed they planned to look at either bars on the windows or some other protection such as strengthened glass.
25. In answer to a question from Dr Gordon relating to company shareholding, Mr Hall confirmed that the Director of NHL was Julie Durham, she lived in Australia and wasn't present at the hearing. He confirmed that he, along with other directors, worked closely together. Part of that work is to look for new opportunities in the area. Although staff do carry out a few deliveries to the Mapua area Mr Hall indicated that staff at Motueka and Richmond stores had customers asking why they didn't open in Mapua. Mr Hall declined to name any of those people. Mr Hall also explained the issues that had been resolved with the Labour Directorate of the Ministry of Business, Innovation and Employment (MBIE).

26. Mr Hall confirmed that discussions with the agencies had resulted in NHL's suggested changes around hours, colour, and advertising. He advised, in his view, training for staff provided by Super Liquor ensured staff were informed around alcohol related harm.
27. In response to questions from Objectors Mr Hall said that the Super Liquor brand was important and part of their place in the community was to provide some sponsorship. He also confirmed that given NHL already operate across the region there is enough staff available to fill any absences. Mr Hall responded to a question regarding numbers of people at the community meeting which he felt was around 40 people. To a further question regarding amenity and good order as it related to rubbish left in Aranui Reserve. Mr Hall advised the hearing that staff would do regular sweeps of the area to check on any rubbish and would be able to identify if it came from the proposed Mapua store.
28. In answer to how NHL would minimise harm once people had left the store. Mr Hall confirmed their training would assist but NHL planned to do everything it could to minimise harm both inside and outside the store. Mr Hall also confirmed that NHL had signed a lease on the proposed site in Mapua.
29. In re-examination by Mr Young, Mr Hall advised that the engagement with the community had been by way of the Super Liquor Facebook page. He also confirmed that NHL would consider changes of hours to include closing in the afternoon as students finish at school. He also confirmed that if successful there would be no remote sales from a store in Mapua.
30. Mr Hall was recalled to the witness box following questions raised regarding the business case created by NHL and reference to the bus stop outside the proposed site. The Committee ruled, in respect to the business case, that given the commercial sensitivity an unredacted copy is to be made available only to the Committee and to Mr Sherriff to allow him to cross examine the witness on behalf of his client, Te Whatu Ora. This ruling is made pursuant to section 203 (5) (6), and 203 (9) of the Sale and Supply of Alcohol Act 2012.
31. Mr Hall confirmed an initial business plan had been submitted by NHL to Super Liquor which was produced prior to Mr Hall joining the company but became

familiar with it. It also included a profit and loss report. Mr Hall also confirmed that the proposed sign dimension for the building be 3.760 m in length and 0.963m in height.

32. Mr Sherriff provided his understanding of what Mr Young was requesting in respect to the business plan and he agreed with his view. It was important for his client that he could ask questions around the business plan.
33. In response to a question from Mr Sherriff, regarding the non- redacted copy of the business plan, Mr Hall confirmed he started at NHL about 2 years ago and the business plan was written before his time. He knew who wrote it and was conversant with the plan. He was familiar with the executive summary and confirmed the location of current outlets. Mr Hall confirmed that NHL discovered in 2020 that another party was wanting to put a bottle store in Mapua. He further confirmed if that happened it would likely have a negative financial effect on Motueka and Richmond outlets. NHL was aware that someone was also looking at the site now proposed by them for a bottle store and NHL was aware that other approaches had been made. Given this information, discussions followed regarding the lease of the proposed premises. NHL secured the lease, and the other parties withdrew.
34. In answer to a statement from Mr Sherriff, Mr Hall confirmed the action by NHL was a defensive move to prevent others coming into the area. This application was to protect their business. NHL has already experienced the effect of a new operator in the market and wanted to avoid this happening a fourth time. Mr Sherriff referred Mr Hall to the closing comments within the business case and asked if they were disrespectful to the community of Mapua. Mr Hall felt they were accurate comments.
35. Mr Hall provided information around the profit and loss document that he confirmed had been prepared about two (2) years ago. He also confirmed the figures in the document regarding the proposed Mapua store. Mr Hall was asked why staff training line was at zero. He responded that it was because training was carried out on-line by Super Liquor Holdings. Mr Sherriff asked about profitability as set out in the Profit and Loss and Mr Hall, clarified that he had a



plan in respect to profit. Mr Hall was unable to clarify the exact figures around wages, but he confirmed they paid staff at several rates.

36. Additional information on the demographics in the application was put together before Mr Hall joined. The power point was part of the meeting with the community. The slide in the presentation is an example of a generic store layout. Mr Hall confirmed 'impulse' on the plan related to products such as chips. Mr Sherriff asked Mr Hall regarding the number of locations whereby RTDs would be offered. Mr Hall responded this is a generic plan and not a final indication of where product will be displayed.
37. Mr Hall advised that in the evidence of Mr Trew regarding the bus stop outside 151 Aranui Road and in an email written by Mr Hall to Council from NHL, that NHL believed the location of the bus stop was inappropriate.
38. Dr Gordon indicated that a few of the objectors are concerned about how this application came about. There are a few questions that are unanswered regarding aspirations by NHL. She does not want to know the inner workings of NHL just how this application came about. Dr Gordon was happy that the Committee had a different version than others. The view expressed by others (including Ms Kate Mitchell) is that it is important that the Committee take note of the business case. Mr Struthers expressed concern that objectors had placed their stories before the Committee and NHL had requested non-publication of the business case.
39. The Applicant called a second witness, Paul Webster, who is employed by Super Liquor Holdings as a Franchise Manager, based in Christchurch. Mr Webster outlined his role and the relationship with the previous witness and NHL. He explained there are 174 Super Liquor stores across the country with each store entering into a franchise agreement. They comply with the obligations of participating in the branded system including a requirement to stock a core range of products. Beyond that franchisees tailor their products to the local market.
40. Mr Webster went on to outline how the brand offered convenience and choice along with taking the obligation to minimise alcohol harm in the community seriously. He went on to explain how each store was regularly audited against

nine (9) key areas and training of staff was included in that audit process. The Applicant provided a copy of audit and the training material for only the Committee to view as it was commercially sensitive.

41. Mr Webster went on to outline for the Committee how Super Liquor worked with franchisees and how he had observed the operation of NHL premises in the area. He advised that all NHL premises had all passed compliance audits and there were no issues about their suitability.
42. In cross examination from Mr Sherriff, Mr Webster advised as part of the selection process he was aware Super Liquor had declined 32 applicants to become franchisees. In answer to a further question, Mr Webster agreed that a Statement of Evidence by Greg Hoar in support of an application for Super Liquor Karaka was very similar to the one he presented at this hearing. He confirmed to Mr Sherriff that he was responsible for his Statement of Evidence. The evidence is that of support for Super Liquor for franchisees. He confirmed to Mr Sherriff he was aware of Big Barrell withdrawing an application in Linwood. He confirmed that he was not aware of Super Liquor withdrawing an application after meeting with community objectors.
43. In response to a further question from Mr Sherriff, Mr Webster said that each store had to carry the core products which totalled around 450, 60 of those products were RTDs. He also confirmed that the website for each franchise was, along with the Facebook page, essentially controlled by Super Liquor Holdings. Local stores can have some input with approval from Head Office. He was not aware of any discussion with Mana Whenua.
44. In response to further questioning regarding an application for a licence this process is jointly run by NHL and Super Liquor Holdings.
45. In answer to a question Mr Webster explained about brand standards and how the store was presented.

46. In response to questions from Objectors Mr Webster explained some of the content in selection and training. He explained the reason for colour bearing in mind it was important in brand recognition. There are two other stores in the charcoal colour. Super Liquor could be open to other colours.
47. In answer to a question from Dr Gordon, Mr Webster stated that as of today, there are 175 Super Liquor outlets and around 112 franchisees. In some areas Super Liquor decided not to take on a new licence. While it is planned there will be other stores there is a joining fee and annual fee to be part of the Super Liquor Group. Dr Gordon raised the issue of compliance in respect to Super Liquor stores. The Chairman asked Dr Gordon to keep her questions to the evidence of Mr Webster. Mr Webster indicated, given the numbers of people in the area and the number of objectors, that did not mean people did not support a bottle store in the area. As a company Super Liquor are concerned about alcohol related harm and want to do everything it can to minimise harm. It is not just a convenience opportunity.
48. In response to further questions from objectors around the audit process it was advised it was carried out by the franchise manager. Compliance has a financial penalty of non-compliance. There are processes in place to make any changes because of audit processes. Mr Webster confirmed that colour changes offered would be as the shown visuals provided to the hearing. Mr Webster also provided an outline of the way training was delivered and the frequency.
49. In answer to a question regarding community engagement and other locations, Mr Webster stated that Super Liquor worked with the community around employing locally, sponsorship and other actions. He was unable to respond to question relating to Super Liquor making a submission on community involvement in applications. Mr Webster supported the review of LAP in Tasman and in other locations. In answer to a question from the Committee Mr Webster stated Nelson stores have never scored below 92% with an average score of 96% relating to audit scores for this franchise.

### ***The Objectors***

50. Objector Dr Andre Bonny is a medical practitioner at the Mapua Health Centre. It was agreed to hear his evidence out of sequence due to his role at the Medical Centre and time constraints. He has 2 children at Mapua Primary School and lives close by and has done so for the last few years He is engaged in the Mapua Community. Dr Bonny advised that the practice has 5000 patients who live within a 12.5 km radius of the practice. He felt it was important to inform the Committee of some of the issues associated with the practice. Of the patients, 430 of them have consumed more than the recommended standard drinks per week and this is probably an under estimation based on WHO guidelines. Some of the information gathered around diminished liver function shows alcohol is a significant contributor.
51. Dr Bonny stated that when you look further into our practice, we can see that around 1% of our patients, (approximately 50 in total), have had a serious problem with alcohol. That poses a significant health risk around the use of alcohol. Many of these people have been in an out of rehabilitation due to alcohol use and who have problems including interaction with Police. They also have problems with impulse around their consumption of alcohol. Dr Bonny went on to say his concern with greater access to alcohol especially higher alcohol products will negatively impact on this group of people. In his view adding another outlet will just increase these problems.
52. Several people he had spoken to in the practice were fine discussing alcohol concerns with him but did not feel comfortable addressing a public forum. It is his view the impact on children at Mapua Primary School, which will be spoken to by others, is that he believes that an addition of another outlet in Mapua would increase problems from a health perspective.
53. Mr Sherriff asked Dr Bonny if those people who spoke to him were aware that if they give evidence their identity could be protected. He told the hearing he did not know that, nor did those he spoke to.
54. Mr Young asked Dr Bonny if his objection was around the object of the act and in particular the Local Alcohol Policy. Dr Bonny replied that his objection relates to harm and his concern about visibility of alcohol while balancing against

responsible use of alcohol. A reduction in branding does make a small contribution. The risk is that alcohol is there at all. By being there the harm will be there, that is the line in the sand. Mr Young asked given the concerns, when could a licence be granted, and Dr Bonny suggested it shouldn't as it will increase the harm. If it was decided not to issue any licences, then there would be considerable health benefits for the country.

55. Rachel Stanton, Chair of the Mapua Primary School Board of Trustees told the Committee that the Board had at a meeting discussed NHL's application and remained strongly opposed to the issuing of a licence on the site opposite Mapua Primary School. The Board believes the proposed premises right opposite the school will result in increased costs of vandalism for both the school and the community. The Board was also concerned about the impact on young people being exposed to alcohol whenever children arrive or leave the school. Ms Stanton stated that Mapua Primary School has a "no alcohol policy" for school events and events held on school grounds.
56. Ms Stanton went on to say that the Board were concerned about increased harm based on a study published in the Journal of Epidemiology and Community Health, (the lead author was Professor Jennie Connor) <sup>4</sup>which stated that the odds of binge drinking increased by 4% with each extra off-licence.
57. In an answer to Mr Young, Ms Stanton confirmed the decision to object is contained in the minutes of the School Board of Trustees. Mr Young asked if the Board had objected to the other off-licence application in the Village Centre and Ms Stanton said they concentrated on this application as it directly impacted on the school and having attention on the other application would have watered it down. She went on to say that Mapua was a safe place and the goal of the Local Alcohol Policy supports that. As well the goal is to reflect the character, amenity and values of the local communities. Ms Stanton also responded to a question about conditions and said that no vapes and cigarettes was a good move but RTDs would still be a problem in her view. The Board of Trustees would be happy

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<sup>4</sup> Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study

[Jennie L Connor](#)<sup>1</sup>, [Kypros Kypri](#), [Melanie L Bell](#), [Kimberly Cousins](#)

to engage with NHL if the licence was granted to discuss any issues, but reiterated that the Board remained strongly opposed.

58. Dr Jim Vause, represented by Dr Gordon, gave his evidence. Dr Vause is a retired medical practitioner (who did not practice in Mapua) but now lives locally. He informed the Committee that he is regularly in Mapua and drives or cycles past the proposed site and shops at the local vegetable shop. After reading the application he is of the opinion that the Applicant has little awareness of alcohol related harm. His concern also related to the staffing levels proposed, and the daily exposure of an off-licence to young children. He expressed concern that the director of NHL (Julie Durham) was not at the hearing and supporting this application. Dr Vause, as many objectors did, expressed concern that the bottle store would be at odds with the goal of the Local Alcohol Policy.
59. Dr Vause went on to speak about amenity and good order telling the Committee that, in his view, introducing another outlet selling spirits and RTDs would encourage harmful drinking, normalise alcohol to young children at Mapua School and increase problems in areas such as the Aranui Park.
60. As a retired physician Dr Vause had concerns around public health issues associated with alcohol consumption and told the Committee of the long list of health harms associated with the amount of alcohol consumed. This included liver disease including cancer, kidney disease, bowel cancer and a number of others. Of concern was brain diseases which are particularly harmful as they cause at times substantial derangement of personality and behaviour and have an impact on family and community. He advised the Committee that the harms from alcohol extend beyond those who consume alcohol. The harm of alcohol is directly proportionate to the amount of alcohol consumed over time.
61. Dr Vause drew the Committee's attention to research from Waikato University around density of off-licences showing that the addition of one licence increases in incidence of anti-social behaviour and other offending. For all these reasons Dr Vause was opposed to the issue of the licence at this location. He confirmed to Mr Sherriff that the graphs he provided were those in the Waikato University research.

62. In cross-examination, from Mr Young, Dr Vause gave an explanation regarding the graphs provided in his evidence. In an ideal situation the rate would be flat. Dr Vause stated that he was giving evidence as a retired physician who has experience in interpreting graphs and their meaning. In relation to Dr Vause's understanding of the LAP, stated that he believed the application does not contravene the LAP. His concerns relate to the goals of the LAP and that the Committee is not constrained by the LAP. Dr Vause agreed under cross-examination that the LAP allows for an off-licence and that it can be located at this location. Dr Vause confirmed that he felt the mitigating factors referred to in his evidence related to those associated with an on-licence where there is a degree of supervision. Dr Vause acknowledged there was other locations in Mapua selling alcohol including spirits, but he believed that there is no benefit from a bottle store in terms of health. Dr Vause provided a view associated with on-line purchases. He reiterated his concerns around exposure to alcohol and the way in which people might see into the premises. He also told the Committee that the hours proposed would contribute to problems.
63. Dr Susan Hassell provided written evidence but was unable to appear before the Committee. Her written submission was received and the Committee would consider the information and the weight it would apply.
64. Margaret Cotter resides close to the proposed site. She reiterated, as many objectors did, that the premises are not needed. She has not heard of anyone who said they thought it was needed in Mapua. Ms Cotter was concerned about the location opposite the school which would normalise alcohol for those young students. She could not understand why the Applicant said the site at 65 Aranui Road wasn't suitable. She was also concerned about the closeness of the site to Aranui Park. Ms Cotter felt that the Applicant was an outsider and did not really appreciate the local community. It is, in her view, a very special place to live.
65. Mr Bruce Struthers, a local resident, objected to the granting of an off-licence to NHL at 151 Aranui Rd, Mapua. His objection was about the significant concerns of the effects it would have on the amenity and good order. He felt the company applying for this application had no connection with the community and the listed director lives in Australia and is not present. Mr Struthers also drew the Committee's attention to the goal of the Local Alcohol Policy regarding reflecting

the local community's character. Mr Struthers raised issues associated with the hours of trade and its location at the gateway to Mapua. He also pointed to the location of the school, Aranui Park and other amenities in the area. Mr Struthers asked the Committee to consider the responsibility it must place on public safety especially to children above all other considerations.

66. In response to a question from Mr Young, Mr Struthers clarified his view that the application did not contravene the LAP and went on to suggest that remote delivery of alcohol would be an option and reduce opportunities for some people to obtain alcohol.
67. Kelly Taylor was not able to be present at the hearing, and Pip Lovell represented the Friends of Mapua School which is the Parent Teacher Association for the school, (PTA). She said the PTA objected to the granting of a licence due to its primarily to the proximity to Mapua School. They believe it does not comply with the object of the Act or reflect the character of the community as set out in the goals of the LAP. They also believe that as the grounds and entrance to Mapua School is not well lit it may provide an inviting and attractive unsupervised area for some people to congregate and consume alcohol. Ms Lovell reminded the Committee of the Law Commission report setting out factors that contribute to alcohol abuse. The normalising of alcohol are factors that contribute to the harm.
68. Ms Lovell went on to say that the children treasure what they have and want to retain that. The PTA have concerns about protecting these young people. Given the history of young people drinking and the harm, especially to their development, it is important to protect them. The entrance to Mapua School is significant and acts as the official welcoming point for the school. The school grounds are a community resource and the PTA believe it could lead to inappropriate use of the facilities resulting in the grounds being off to the community. Ms Lovell was not sure if there was a resolution regarding their objection as it was before she joined the PTA.
69. Phillipa Hiles is a resident of Mapua and is also a District Nurse working in the Wakefield area. She commented on the safe, family friendly community in Mapua and believes that if this application is granted opposite the school, it will take that character away. Her concern also related to Aranui Park and the possibility of



anti-social behaviour in what is a community space that is well used. She has noticed occasional litter in the park.

70. Ms Hiles's concerns were about the lack of Police staff in the village as they were at least 20 minutes away, in her view people will feel less safe in the area. Ms Hiles also had concerns about traffic in the area and the number of young people who walk, cycle and scooter in the area increasing the risk to them. She was also concerned about the proposed site, opposite the school, would normalise alcohol for the many young people there each day. Working as a District Nurse she sees the harm caused by alcohol and does not want that to happen in Mapua. She also informed the Committee of a Facebook poll in April 2023 where 66% said no to a bottle store and 33% answered yes. (The poll was of 39 respondents from a group of 65).
71. Elaine Asquith, a Mapua resident, opposed the granting of this application as she and her husband had chosen to live in Mapua because it has a good feel and great character. It was not like some of the larger communities in the district. She was concerned about the location of the proposed site, being opposite the school and adjacent to Aranui Park. The park and other locations in the village are used regularly by families for playing, cycling and dog walking. Ms Asquith believed there were other options for people to purchase alcohol.
72. John Lister lives close to the proposed site and objects to the granting of this application. He is concerned about the location opposite the school and the closeness to Aranui Park. Mr Lister believes it will detract from the character and safe environment that Mapua currently enjoys. Having children exposed to alcohol on a daily basis in his view is not appropriate. He believes there are sufficient outlets for alcohol in the area. He also suggests that while there is little or no rubbish in the park this is because there is not bottle store next door.
73. Mr Lister and his wife live near the beach and act as Kaitiaki in the area. Mr Lister stated that there was no enforcement of the alcohol ban area within Mapua and they already see rubbish in the area and don't want that to increase. He asked the Committee when considering this application to consider, as required, the

effect on amenity and good order. He drew the Committee's attention to the Bottle-O-Khandallah<sup>5</sup> decision regarding the negative impact on the community.

74. In answer to a question from Mr Young regarding whether possible changes to colour schemes and other suggested changes would that make a difference, Mr Lister said 'if looks like a dog, and barks like a dog, it is a dog'.
75. Mrs Lyndle Lister also gave evidence to the hearing and was, like her husband, opposed to this application. Her view was its location opposite the school would have a negative impact on children and others who are in that area. She disputed the claim of the Applicant that as a licensed premises had been there previously, didn't mean the site was appropriate. Mrs Lister raised the issue that Mr Hall had indicated several customers at their Motueka and Richmond stores had talked about a store in Mapua. In her view the Applicant had not provided any evidence of that. She also questioned the demographics information provided by Mr Hall. Mrs Lister stated that whilst the conditions proposed by NHL would reduce some of her concerns, she remained opposed to the application.
76. Mrs Lister raised concerns on what happened at the community meeting, and her recollection was that only three (3) people supported the proposal of a bottle store in Mapua. She also questioned why the Applicant didn't listen to requests from members of the community to have the meeting held at a later time to allow residents to get home and attend. Mrs Lister also questioned the reasons Mr Hall provided at the meeting around 65 Aranui Road which he suggested was not suitable. In her view this did not make sense. She went on to point out the work that locals preparing meals for people who are ill and placing them in freezers that are also located in close proximity to this proposed bottle store location which adds yet more vulnerability to the community.
77. Marie-Christine Gabrielle resides in Mapua and was an experienced Domestic Violence and Rape Counsellor who objected to the proposed bottle store as it would change the character of the village and possibly bring greater harm. She shares the concern of the agencies in relation to harm and the proximity to Mapua School and was concerned the impact that a bottle store would have on the children who would be exposed to the store daily. Ms Gabrielle drew a study from

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<sup>5</sup> Wellington DLC decision 49/2019/NZDLCWN/1654

California to the Committee's attention. The study of middle school children showed increased outlets lead to increase hazardous drinking amongst young people.

78. Ms Gabrielle suggested people from Mapua already do their major shopping in Richmond or Motueka and could make alcohol purchases then or take advantage of a delivery option. She was also concerned the bottle store would create a risk to alcoholics attending Alcoholic Anonymous meetings. Ms Gabrielle was also concerned about the impact on families especially family harm incidents. This was compounded by the distance Police were from Mapua. She felt safety of the many people, including herself, who walked and cycled around the area including Aranui Park would be compromised. In answer to a question, she agreed the application did not contravene the LAP. She confirmed that she stood by her objection.
79. Penelope Corbett is a resident of Mapua, and a parishioner at Hills Community Church was opposed to the granting of an off-licence at this location. The site opposite the school and at the entrance to Mapua was not in keeping with the character of the village. Her concerns were associated with the normalisation of alcohol daily for young people and being adjacent to Aranui Park which was used by many people including young people on a regular basis.
80. Mrs Corbett is also a member of the pastoral care team at the Hills Community Church who assists vulnerable people in the community. Included in that support are community members who have alcohol related problems. The Church is not just used on a Sunday but has a variety of activities daily. The Church is a short distance from the proposed site, she believes that the vulnerable groups should not be exposed to a bottle store on the site.
81. Mrs Corbett went to say that in the application it had been stated that an offer was made to Hills Community Church to meet, and it was not accepted. The then Paster Rev John Sherlock did however attend the community meeting and felt NHL were just testing the water. In summary Mrs Corbett believed that granting the application would impact on the amenity and good order of the area and increase vandalism and levels of nuisance. Proximity to the school, community

church and Aranui Park would not meet the object of the Act. She felt strongly this application should be declined.

82. Dr Rob Corbett is a retired specialist Paediatrician who had worked in the Department of Child Health at Christchurch Hospital and was a Senior Lecturer, Department of Child Health at the University of Otago. As a paediatrician Dr Corbett had mainly treated child and adolescents with cancer. From time to time, he also dealt with child victims of family harm. Dr Corbett told the Committee that dealing with family harm was more distressing than dealing with child cancer matters. Over the past few years Dr Corbett has been receiving Police reports emailed from Constable Satherley to the community. Those reports show family harm as being the significant offending in the area. The Committee asked where the information came from and how it could be confirmed. Sergeant Gibson said she would arrange for Constable Satherley to come to the hearing.
83. Dr Corbett went to tell the Committee that, in his view, preventing and effectively responding to family violence is one of the greatest opportunities to improve wellbeing and safety. He went on to say that there was a clear causal link between family harm and alcohol abuse. As the Act says, it is an object that excessive or inappropriate consumption of alcohol should be minimised. In terms of the evidence provided by the Applicant, Dr Corbett was not reassured the training measures would achieve the object of the Act. He also questioned Mr Hall's information on demographics regarding risks to the community.
84. Dr Corbett asked the Committee to consider that family harm occurs in the home and alcohol is purchased at an off-licence by a then sober adult who then consumes it away from that environment. He suggested that in the publication 'Alcohol – No ordinary Commodity (Edition 3)' that limiting the number of alcohol outlets is highlighted as a powerful strategy to minimise alcohol related harm. It is logical in his view that harm will increase, and the number of family harm incidents will increase with an additional outlet.
85. Daniel Lister is a resident of Mapua and is opposed to the granting of this application as he believes it will affect the amenity and good order of the area. He also believes that there will be an increase in vandalism, and is concerned about the proximity to Mapua School with exposure to alcohol daily when

attending school or participating in community activities, including the use of Aranui Park. Mr Lister stated that “we all live here and as such have a greater interest”. He believed that there was an imbalance in the process against the community but was pleased the rescheduled hearing was convened in Mapua. He agreed changes to signage and advertising might offer some benefit.

86. Evan Walker is a resident of Mapua and is opposed to the granting of this licence. Mr Walker comes from a background of working in regional government. His concern related to the proximity to the school exposing young people to alcohol daily and that the area was busy especially when children are picked up and dropped off. He believes that there has been no support for a bottle store in Mapua.
87. Mr Walker suggested to the Committee that this application does not meet the object of the Act given its location close to the school and that each of the agencies have opposed this application indicating an increase in harm. He was also concerned that the Applicant had indicated the premises may have bars on the windows and in his view this means the bottle store will bring about an increase in crime. He further suggested that as the premises were in the Alcohol Ban area, this was an indication the area had already experienced problems. He also drew the Committee’s attention to the Rules relating to Advertising Standards associated with alcohol advertising.
88. Mr Walker drew the Committee’s attention to the goals of the LAP relating to the character of the area and safety. He believes Mapua has high amenity values and the addition of a bottle store will diminish that amenity. He also drew the Committee’s attention to the case Nishchay Enterprises Limited <sup>6</sup> as he questioned the suitability of the Applicant. He presented a screenshot that, in his view, was advertising for staff to work at Super Liquor Mapua. He concluded this demonstrated that the Applicant is not suitable and that this application would not meet the objects of the Act and should be declined.
89. Mr Walker called one witness, Mr Del Trew, who has a degree in sociology and was a real estate agent in the area for six years. Mr Trew questioned the evidence provided by Mr Hall regarding demographics of the Mapua area. In his

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<sup>6</sup> Nischay Enterprises Limited [2013], NZARLA PH837

view they were out of date and the area is much wider than the 2km radius Mr Hall suggested. It covers more like 5.75km radius and real estate marketing refers to this wider area as Mapua.

90. Mr Trew informed the Committee that in his view the recollection of the community meeting as presented by Mr Hall was different. He was in attendance for the whole meeting and made notes. There were not 40 people - it was more like 30. The community conveyed to NHL that the meeting should have been held in a larger hall and at 7pm and not the 5pm they had arranged. As far as he is aware no other community meetings were held. He suggested to the Committee that the meeting had a very corporate feel to it and not a community consultation. Mr Trew said that Mr Hall indicated that NHL had been offered the site at 65 Aranui Road at that meeting. Mr Trew stated that he was at the meeting with the landlord of 65 Aranui Road, (Mike Harvey) who he knows well. Mr Trew stated that at no time in that meeting did he hear any offer being made regarding 65 Aranui Road. Whilst Mr Hall claimed he had many requests from Mapua residents to open a bottle store in Mapua, Mr Trew conducted a petition which gained 187 signatures requesting the application be declined.
91. Victoria Walker is a resident of Mapua and is opposed to this application. Mrs Walker has a Bachelor of Science degree with first class honours and post graduate diploma of teaching. She was a secondary school mathematics and statistics teacher for over 25 years. Her objection related to amenity and good order. She asked the Committee to consider whether a new licence is compatible with surrounding premises. In her view a school, Aranui Park, a secondary school bus stop and a community church could not be considered compatible. In her view the evidence suggests that the presence of alcohol outlets is associated with an increase in social harms. She suggested similarities between the tobacco industry and the alcohol industry. She is particularly concerned about the effects on young people.
92. Mrs Walker stated that Mr Hall's assertion that there were only small numbers of young people crossing the road and passing the store is disingenuous. Many children and young people use the area both before and after school as well as other times. She suggested that children are exposed to alcohol marketing and advertising 4.5 times a day and a bottle store would just increase this. Mrs Walker

drew our attention to the evidence of Mr Hall where she said NHL were committed to being a good community member. This does not fit in her view with NHL continuing with the application despite significant community opposition.

93. Mrs Walker concluded by suggesting that a bottle store at the location would lead to an increase in harm and its proximity to the school suggests disregard for the wishes of the community.
94. Annette Le Cren is a resident of Mapua and is opposed to this application because of the proximity to Mapua School and on a very busy corner at the entrance to Mapua. Her submission was that it did not fit with the character of Mapua and she has concerns it will lead to an increase in crime, abusive behaviour, and increased consumption. Ms Le Cren further suggests that, as alcohol purchased at the bottle store will be consumed away from the premises, it could contribute to family harm incidents in the area. She bases her concerns on her previous role as a primary school teacher who witnessed the effect of parent's alcohol abuse on children. As a retired primary school teacher, she believes that the presence of a liquor outlet will normalise alcohol for this young group of children. She drew the Committee's attention to the number of outlets already in Mapua and to people who shop outside the village who could purchase alcohol then. She advised the Committee that she had sat through the proceedings and had not heard anything to suggest any benefits.
95. Judith and David Mitchell gave evidence to the Committee and were represented by their daughter Kate Mitchell who is a qualified Lawyer working for the Ministry for the Environment. She made opening submissions regarding the family's opposition to this application. Ms Mitchell informed the Committee that the family had lived adjacent to Aranui Park since 1981 and along with her siblings had grown up there. Her mother (Mrs Judith Mitchell) worked as Secondary School teacher and later as a nurse. Mrs Mitchell is a current Justice of the Peace - a role she has had for 32 years. Her father, Mr David Mitchell, was the editor at the Nelson Evening Mail for 11 years and held several other journalism roles.
96. Mr and Mrs Mitchell's opposition is focussed on the object of the Act, matters dealt with by the agencies and that the amenity in this part of Mapua will be reduced by more than a minor extent. They will detail concerns identified in the

reports of the agencies especially relating to the Police report identifying sensitive sites and the Medical Officer of Health addressing potential harms because of increases in exposure to alcohol. Ms Mitchell drew the Committee's attention to section 106, specifically to have regard to current and possible future levels of nuisance and vandalism. As well the proximity to the school and adjacent to a route many children use is reason to question this application. Ms Mitchell also indicated Judy Mitchell's evidence would provide the Committee with the work that has been carried out by them and school groups to revitalise natural features and vegetation in the park. Their submission is the proposed liquor store is completely inappropriate and will cause community harm.

97. Mrs Mitchell informed the Committee that she had grown up in Mapua and had attended Mapua School. She trained as a primary school teacher and later trained as a nurse and spent 17 years working in mental health.
98. Mrs Mitchell outlines to the Committee with her association with Aranui Park which adjoins their property. She was concerned the application did not mention Aranui Park which is a scenic reserve, and this shows lack of understanding of the area. Over time Mrs Mitchell has been part of the Mapua Wetland Incorporated which worked on a revegetation project which has QEII status. Aranui Park was donated to the people of New Zealand in 1977 for the preservation of New Zealand's natural heritage. Since 2006 Mapua School pupils have been planting in the reserve which now has scenic reserve status. Mrs Mitchell further described the work of school children and the times they spent in the area. She also identified that it is used extensively by the community. She informed the Committee that while the amount of rubbish left in the park at present was minimal when a previous premises was at the site she had observed litter and broken bottles in the park,
99. Mrs Mitchell felt the proximity of the school exposed young people to alcohol. She further felt a bottle store at the entrance to the village detracted from the character. Mrs Mitchell believed that a liquor store would just return the problems experienced earlier from a licenced premises on this site. She believes that people will take alcohol into the park which will result in anti-social behaviour affecting the amenity of the area. Mrs Mitchell believed there was no need to have further outlets in Mapua and the location is inappropriate. In answer to



questions from Mr Young, Mrs Mitchell stated she did not oppose the Liquorland application. She also clarified boundaries of their property and the reserve. She agreed that there were not family groups in the park at night. She said any lighting in the park would affect the bird life in the reserve and would not be appropriate.

100. Mr David Mitchell told the Committee he had lived in Mapua since 1981 and had also been involved in work on their property and Aranui Park to restore the natural vegetation. He had also worked with the children from Mapua School. His concern was that the problems that occurred in Aranui Park when the previous premises was there would just be repeated. He outlined to the Committee his complaint to Tasman District Council regarding an incident that happened in 2009 when the tavern was operating. Mr Mitchell stated that cooperation from the previous licensee had ameliorated the problem.
101. Gaylene Ball has been a resident of Mapua for the last 12 years and is opposed to this application. Ms Ball is currently a registered teacher and professional leader and mentor working in education. The focus of her objection was related to object of the Act, suitability, days and hours and amenity and good order.
102. Ms Ball drew attention to concerns that have been identified and the growing information on the harm from alcohol in relation to Foetal Alcohol Syndrome, brain damage, family violence and mental health. She provided the Committee, in her brief of evidence, examples of harm especially to teenagers in the community.
103. In relation to suitability Ms Ball expressed concern regarding the community consultation, the lack of communication and the time of day it was held. She was also concerned that there has been no further consultation or discussion since that first meeting other than meeting with the School and the MDCA.
104. Lisa Hill who has lived in Mapua for 20 years opposed the application and advised the Committee that her concern related to the goal of the LAP which asked any decision made to take into account the character and needs of the local community. She was also concerned about the proximity of the proposed site to the school and the daily exposure young people would have to alcohol.

105. Melanie Allen who resides in Mapua, has a child at Mapua School and has over 23 years' experience as a Police Officer. She is currently attached to the Road Policing Unit in the Tasman area and has also spent time as an Alcohol Officer. She informed the Committee of her experience and knowledge about alcohol related harm and its effects. In her opinion Mapua residents are predominately families and the character would be altered if a bottle store was permitted at the proposed location. She considers being opposite the school will impact negatively on the children on a daily basis.
106. Ms Allen's observation as a Police Officer, has seen the harmful effects of alcohol, especially on children which often continue into their adult life. She is also concerned about the proximity to Aranui Park and the likely impact that will have on this location. As a Road Policing Officer, she is also concerned about drink drivers and those who will travel to obtain alcohol from a bottle store. In her opinion this proposed bottle store would not benefit the community especially given options that are already available in Mapua or nearby.
107. Peter Hassall a resident of Mapua also objected to the application. His objection related to the location opposite the Mapua Primary School and the impact that will have on children. It is also close to Aranui Park and a major intersection which he believed will increase harm in the area.
108. Mr Colin Walker, a resident of Mapua, was also opposed to this application. Mr Walker reminded the Committee that each of the agencies had opposed this application which he considered very important. He was also concerned about the proximity to the Mapua School and the impact that will have on children. He considered the location would create less safety for people walking in the area as it was the side of the road that had a footpath. He drew the Committees' attention to the United Nations safer programme which outlined a world free from alcohol related harm.
109. Mr Rodney Gibson provided details of an objection from the Hills Community Church Trust. The Trust is a legal entity and manages land and buildings that will grow the interest it has in the wider community and wellbeing of that community. The church is a faith-based community that provides spiritual direction with values of hope, compassion, and courage. The church encounters people with

alcohol related problems due to excessive use within the community, and through their pastoral care, provide support. The Trust operates from buildings on each side of Aranui Road. The church building hosts various Church related groups including elder care, youth groups, primary school tutoring and professional counselling. The building opposite houses a preschool group. The church is also part of the group Christians Against Poverty.

110. The concern of the Trust is the inappropriate or excessive consumption from increased availability of alcohol., They are already aware of the wider effect on the community especially on families and children. The church building hosts counselling services and it is estimated that 20% of the clients are affected by the inappropriate or excessive use of alcohol. Mr Gibson went on to provide instances from personal experience associated with alcohol related harm he had encountered. The Trust believed that one more licensed premises in Mapua does nothing to minimise the harm from inappropriate or excessive use of alcohol.
111. The MDCA is an Incorporated Society based in Mapua with a mission to ensure Mapua is a safe, responsible and forward-looking community in which to live. On 8 May 2023 a meeting of the membership passed a motion by an overwhelmingly majority of members present (42) that MDCA objects to the Committee against the application by Super Liquor on the grounds that it is consistent with the MDCA objective.
112. The MDCA opposed the application on the grounds that it will increase consumption and thereby cause increased harm and that the proposed location will adversely impact upon the amenity and good order. The MDCA believes the evidence summarised in the Chief Science Advisors report on reducing Social and Psychological Morbidity <sup>7</sup>during adolescence that identifies factors that influence the availability and accessibility of teenagers to alcohol plays an important role in the development of alcohol use and misuse.
113. The MDCA also believes that there is a direct relationship between the density of off-licences in New Zealand and the incidence of anti-social behaviour and sexual offences. An additional off-licence outlet in an area is associated with

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<sup>7</sup> Improving the Transition – Reducing Social and Psychological Morbidity During Adolescence – A report from the Prime Minister’s Chief Science Advisor – May 2011

1.3% higher incidence of anti-social behaviour and 1.9% higher incidence of sexual offences. It also contributes to other offences such as driving offences and vehicle crashes. There is also an increase in health-related diseases.

114. The MDCA are also concerned about the proximity of the proposed site to Mapua School and Aranui Park which will affect the amenity of the town and detract from the character and nature of the village.

115. The Committee Chairman thanked the objectors, many of whom had remained throughout the hearing. Although the Committee had heard from many objectors there were some, who for a variety of legitimate reasons, didn't give evidence. The Committee confirmed they had read all the documentation and would consider all the submissions and evidence. In doing that it would consider the weight it would place on each piece of evidence presented.

#### ***The Medical Officer of Health***

116. Mr Alastair Sherriff is counsel for Te Whatu Ora who have opposed this application. He will call two (2) witness to give evidence on behalf of Te Whatu Ora, Ms Anne Price and Dr Andrew Lindsay. Ms Anne Price has full delegation from the Medical Officer of Health pursuant to section 151 of the Sale and Supply of Alcohol Act 2012. Mr Sherriff sought to have Dr Lindsay heard out of sequence as he was on leave and planning to travel. It was agreed to allow this to request because of the rescheduling of the hearing as set out in decision 003/OF217/2023.

117. In his opening submission Mr Sherriff reminded the Committee that in his view the granting of such a licence is for the benefit of the community as whole. The Sale Supply of Alcohol Act 212 was to reform the law with the effect that it will help achieve the object of the Act. Recently the Court of Appeal and the Supreme Court have reaffirmed the place of (s 3) and (s 4) as the combined basis for approaching the Act.

118. The benefit of the whole community embraces the responsibility of Dr Lindsay as the Medical Officer of Health. This application has been opposed by each of the tri-agencies and reference has been made to the case at Pleasant Point and

Townhill<sup>8</sup> appeal decisions. Mr Sherriff believed that it is distinguished from this matter as in those cases the agencies were split.

119. Mr Sherriff drew the Committee's attention to Townhill<sup>9</sup> and Lion Liquor where Mr Young submitted the need to establish real risk of harm. In Mr Sherriff's view this was placing it too high, and the Supreme Court speaks of a reasonable likelihood whereas the Committee can apply a precautionary approach. It is a matter for the Committee and our common-sense approach to deciding on this application. He told the Committee there are two things in our favour. Firstly, the agencies all agree on this matter, as mentioned, unlike the other case already referred to where the agencies were divided. Secondly, you have before you evidence and material provided to you by the community. A lot of difference and variety of this community appear before you. In his road map for the Committee Mr Sherriff told the Committee that it can take into account road safety issues. Dr Lindsay has withdrawn his objection regarding the suitability of the Applicant and focusses on the object of the Act and amenity and good order.

120. The Committee needs to make a decision on the information provided and it is true that there is no research on proximity to schools locally or in the rest of New Zealand. Mr Sherriff asked the Committee to consider what they have been told and listen to the public information that has been provided by health professionals based on their experience and knowledge. He reminded the Committee that this will lead to taking a precautionary approach.

121. In concluding his opening submission Mr Sherriff suggested the Committee ask three (3) questions in coming to a decision:

- How, by granting this application, will it benefit the community?
- How likely is it alcohol related harm as set out in s4 be minimised if the application is granted?
- Is the current pleasantness and agreeableness of this Mapua community likely to be reduced more than a minor amount if this application is granted?

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<sup>8</sup> Hurunui DLC decision 57/OFF/478/2020

<sup>9</sup> 57/OFF/478/2020

122. Dr Andrew Lindsay provided the Committee with his qualifications and experience. He advised the Committee he is the Medical Officer of Health for the Nelson Marlborough Public Health Service and appointed by the Director General of Health with a legislative function under the Health Act 1956 to improve, promote and protect public health including the negative social and health impacts of alcohol exposure at a population level. His role as a public health medicine specialist relates well to advocating for the wellbeing of the community as well as endeavouring to achieve the object of the Sale and Supply of Alcohol Act 2012.
123. As the Medical Officer of Health he has responsibility to inquire into applications under the Act and take account of the object that the sale, supply, and consumption should be undertaken safely and responsibly, and harm caused by excessive or inappropriate consumption of alcohol should be minimised. He is assisted in his role by an alcohol licensing officer employed under his delegation under the Act. He draws on available public health evidence to inform his inquiry. He presents his evidence today as an expert witness and I have read the code of conduct relating to expert witnesses.
124. Dr Lindsay informed the Committee that alcohol is an established risk factor for a wide range of health and social harms. The WHO 2018 Global Status <sup>10</sup> report on alcohol and health documents presents evidence around the risk of alcohol consumption and health. Alcohol consumption is widely accepted as a risk factor related to death, a range of cancers, infectious diseases, chronic disease, and injuries.
125. With reference to injury and disease, the New Zealand Ministry of Health website states 'any drinking carries a higher risk than not drinking'. According to the statistics data Dr Lindsay identified that the population of Mapua and Ruby Bay in 2022 was 2,870. According to this information the area had a higher proportion of those aged 5-14 years.
126. In relation to the location Dr Lindsay's concern is that the proposed premises are close to Aranui Park, Mapua School, Mapua Health Centre and several other sites. Given the location of the school from the proposed site the children aged

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<sup>10</sup> <https://www.who.int/publications-detail-redirect/9789241565639>

5-13 years will be near the premises every day. Dr Lindsay also told the Committee he had spoken with the principal of the school who expressed concern for the need to preserve a current good learning environment and worried about the negative impacts should a bottle store licence be granted. He also spoke with the pharmacist at Mapua Pharmacy to establish issues associated with dispensing of methadone. Dr Lindsay shared those numbers with the Applicant, agencies and the Committee. Those numbers will not be disclosed.

127. Dr Lindsay went on to provide emergency department alcohol related data which is gathered based on there (3) elements: observation of intoxication, a patient reporting consumption, and staff assessment. From this data there were 266 alcohol related presentations at ED from Mapua, Ruby residents from 2018 to 2022. Over 5% of those were for 15 – 24 and were due to alcohol intoxication. Alcohol is a factor in one in ten presentations among Mapua and Ruby residents aged 20–24-year-old. The number of presentations due to alcohol have increased since 2018.

128. Dr Lindsay expressed concern that even though there were current alcohol outlets in the Mapua area the proposed bottle store would provide a wider range of products - notably RTDs and other spirit brands. Dr Lindsay also provided information from the Healthspace data <sup>11</sup> which shows the density, and the area is at the higher end of the scale.

129. Dr Lindsay then addressed issues around alcohol availability and harm. He outlined that the relationship between alcohol related harm and the density of alcohol outlets is complex. The consensus is that increased alcohol outlet density is a predictor of alcohol relate harm. The WHO in its global strategy to reduce harmful use of alcohol has identified the availability of alcohol as one of its recommended targets to reduce alcohol related harm.<sup>12</sup> The Health Promotion Agency position statement on alcohol access and availability states it supports to limit the location and density of licensed premises as a strategy to reduce

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<sup>11</sup> Healthspace data a visualisation tool to explore regional data for indicators about environmental health in Aotearoa.

<sup>12</sup> <https://www.who.int/docs/default-source/alcohol/working-document-for-action-web-consultation-november-202.pdf?sfvsn=6ce393160>

alcohol related harm. (4)<sup>13</sup> Further to that Te Whatu Ora, Shore Whariki University of Massey found that residents taking pride in their neighbourhood felt alcohol impacted negatively on their experiences.

130. Dr Lindsay provided information on alcohol outlets and harm affecting children. He was concerned about the site opposite the Mapua School, but the area is also home to several young people who attend secondary school along with an older youth population. Adolescence is a crucial time for brain development and it appears to be more sensitive to damage from alcohol. The location of the proposed premises is significant in his view as the environment often is a crucial risk factor for risk to alcohol related harm. Research shows that young people are particularly vulnerable to the effects of alcohol consumption.
131. New Zealand research is yet to establish the relationship between proximity of alcohol outlets to a young person's school however some evidence is provided by a prospective study in Perth. Dr Lindsay went to outline information from Youth 2000 survey which provided information on the drinking of alcohol by this age group.<sup>14</sup>
132. Dr Lindsay concluded by expressing concern that in his view, as a Medical Officer of Health, the granting of a licence would not be in the best interest of the community, would reduce the amenity and good order and would not be consistent with the objects of the Act.
133. In answer to a question from Mr Young, Dr Lindsay confirmed he had written the document he presented as evidence. He clarified what he meant by high end products such as spirits. He didn't have a price point in mind. In response to a question regarding the LAP and Dr Lindsay commented that the Committee should have regard to it. Mr Young asked does that suggest that ARLA indicated this meant 'give genuine attention to,' would you agree? Dr Lindsay indicated that it was up to the Committee to decide what to give regard to. His brief of evidence was focussed on the object of the Act.

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<sup>13</sup> <https://www.hpa.org.nz/sitesdefault/files>

<sup>14</sup> <https://www.actionpoint.org.nz/alcohol> in schools case for change



134. Dr Lindsay agreed that, given the size of Mapua, it is likely any site would be close to the sensitive sites listed. In response to a further question Dr Lindsay said that when he spoke with the Principal of Mapua School it was correct that there were not any problems, but she wished to keep it that way.
135. In answer to a further question, Dr Lindsay indicated it was possible that if the population increased then there is a likelihood that harm would increase and more people would present at ED. Dr Lindsay said that if population growth is linked to harm and the number of premises then it is clear those discussions should be part of any application. Dr Lindsay believed that any increase in harm was not a good outcome.
136. In terms of catchment area it relates to Nelson and Tasman with Marlborough being separate. Presentations relate to where people live when presented not where the incident happened. Dr Lindsay clarified how events were recorded using the three (3) elements when a person presented. He further explained how the baseline was achieved and it is at a point in time and shows trends. Even though trends are going down it does not mean that harm cannot be done. Dr Lindsay believes that the addition of another premises has the potential to increase harm.
137. Dr Lindsay, in answer to a question from Mr Young regarding the density of licensed premises showed Mapua and Ruby Bay had a density of 5.03 premises per 1000 adults which was at the higher end.
138. Mr Young provided copies of the West Australian study <sup>15</sup> regarding proximity of licensed premises to school or home and likelihood of harm. Dr Lindsay clarified this related to association into different age groups. Mr Young asked if there was any significant conclusion regarding closeness to a school and Dr Lindsay agreed the word school in his brief at paragraph 43 should be disregarded.
139. Dr Lindsay clarified that his reference to tertiary student was those attending institutions in Nelson. In answer to a question about RTDs, Dr Lindsay did not have knowledge of price, strength or sweetness associated with RTDs. His

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<sup>15</sup> American Journal of Preventive Medicine – Proximity to Liquor Stores and Adolescent Alcohol Intake: A Prospective Study

understanding was that due to strength, flavour, and cost, they were marketed to young people. In relation to the Western Pacific study, it also included New Zealand but there is no specific study in New Zealand relating to RTDs. Dr Lindsay agreed that some other alcoholic beverages were sweet. He confirmed it was their flavour that made them attractive.

140. Mr Young asked Dr Lindsay whether in his view there would be a time when a precautionary approach was not taken. Dr Lindsay stated that he believed it would be advisable for the Committee to always take such an approach especially when it relates to harm. A precautionary approach is what should always happen because it is about minimising harm. Given the closeness to the school Dr Lindsay believes it is prudent to take a precautionary approach. Dr Lindsay agreed that any increase in outlets in Mapua is likely to increase the harm from alcohol. In terms of every other community in the health area, Dr Lindsay stated that his understanding is that any licence will increase harm. When asked what circumstances could a Committee grant a licence, Dr Lindsay reiterated that the evidence shows that increase in availability, increases harm. He went on say the intention of the legislation was licences would be harder to get. Dr Lindsay stated that given the circumstance in this case he stands by his statement that the granting of the licence will increase harm.
141. The second witness called by Mr Sherriff was Ms Price who confirmed her role as an Alcohol Licensing Officer reporting to the Medical Officer of Health, a position she has held for six (6) years. She made corrections to her brief of evidence at paragraphs 15 and 20. In paragraph 13 the numbers in brackets should read “3 children on bikes and 1 walking” and in Paragraph 20 should read “28 children walking”.
142. During the evidence of Dr Lindsay some clarity was asked for around numbers provided in graphs relating to presentations to the emergency department who have consumed alcohol using the criteria already mentioned by Dr Lindsay. The original graphs presented had some double or triple counting and this has been corrected. Ms Price presented this document as evidence to the hearing and reiterated that while the numbers were small there is an increasing trend of people attending ED where it was alcohol related. The document was written by the analyst from Te Whatu Ora with Dr Lindsay.

143. Ms Price highlighted some points in her brief of evidence and that the community has highlighted their concerns. It was also important to note that there is a footpath on the side of the road where the bottle store is planned. She was also concerned about the bus stop close to the proposed site where college students disembarked. The issue raised with the council's rubbish collection showed there was evidence of drinking in the area. She felt that the proximity of the Great Taste Trail and Aranui park were not included in the application indicated to her, a lack of awareness regarding these public spaces and the community. This awareness related to the child centric nature of the area which has also been mentioned by many objectors.
144. Mr Young raised the issue regarding the exhibit produced by Ms Price given she didn't prepare the report, and that she can't answer questions about it.
145. In response to a question from Mr Young regarding Shady Lady<sup>16</sup> case Ms Price responded she did not know enough about the case to answer questions. Regarding noise levels, Ms Price confirmed in her view noise was not a public health issue. While nuisance is not a health issue, if it was occurring around a licensed premises it would feature as an issue for this premise. We are a population health based public health unit that is linked to alcohol, health and injury. We look at history and what has happened including health.
146. Mr Sherriff responded to the position regarding the piece of evidence regarding the graphs produced by the analyst and stated that the Committee take what regard they consider appropriate. Closing submissions can cover issues associated with this document.
147. Regarding the LAP Mr Young asked Ms Price if it stated there were no premises within 100 metres of the school would she report the Committee should have regard to the policy. Ms Price responded her report related to this application.
148. Mr Young asked if the information regarding ED presentations were provided by the analyst and Ms Price confirmed they were, but she accepted them as correct. She agreed with Mr Young that Nelson/Marlborough statistics were much lower

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<sup>16</sup> Shady Ladit Lighting Ltd (2018) NZARLA198-199

than the national average and that mean that the risk of harm is lower. She stated that no comparison has been carried out in respect to Mapua and the national average. She confirmed there was a meeting of the agencies and objectors after objections had been lodged and it lasted until 8.30pm. Ms Price clarified her reasons for including other sites such as the Tennis Club as a sensitive site. She explained her view of the concerns regarding RTDs from the research and on-site visits. Ms Price told Mr Young she did discuss the issue of proximity of the school with Dr Lindsay. She confirmed in answer to a question that deprivation is an issue to look at when reporting on licence applications.

149. In answer to a question from Mr Walker, an objector, Ms Price said she believed there were other studies that showed proximity to schools was an issue associated with increased harm.

### ***The Police***

150. Sergeant Olivia Gibson, Alcohol Harm Prevention Officer for Nelson Bays Police indicated part of her duties in that role was to inquire into and report on alcohol licence applications. Sergeant Gibson said she carried out inquiries into this application and reported on the matter and on behalf of the NZ Police and they oppose the application.
151. The Committee asked Sergeant Gibson would she provide confirmation of the information Dr Corbett provided regarding the area identified in his evidence. Sergeant Gibson called Community Constable Scott Satherley as a witness who confirmed that he produced a regular update of offending in the area known as the Motueka Police area. The area covered up to the top of the Takaka Hill, Motueka, Tasman and Mapua. Family violence reports for the last week where Police attended was 10.
152. Sergeant Gibson confirmed the Police, like the other agencies, do not question the suitability of the Applicant. Sergeant Gibson then went to explain, how, after receiving the application what action she took to arrive at the opposition by Police to this application.

153. Sergeant Gibson explained how information was gathered in both NIA and CARD systems. As set out in her brief of evidence Sergeant Gibson indicated that since August 2019 NIA was amended to capture whether alcohol was a contributing factor. The data captured is likely to be conservative rather than over representative. Sergeant Gibson explained how she had used the mapping tool to generate data by entering the address of 151 Aranui Road. The mapping tool zooms on that address and displays information from both National Information Application (NIA) and Computer Aided Resource Dispatch (CARD) from the radius of 2500m and 5000m. Sergeant Gibson provided detailed information to the Committee specific to this application.
154. In breaking down the data over a three (3) year period within the area, traffic offending of which drink driving is the dominant incident. The next significant incident recorded family harm. Sergeant Gibson went on to explain the difference in coding of incidents as opposed to the violence category. The material also showed that alcohol related incidents were highest on Saturday and Sunday.
155. Sergeant Gibson informed the Committee that she had nearly 20 years' experience in policing and had experienced alcohol related harm in every measure in the community. This included homelessness, family harm, mental health, road trauma and disorder. In these incidents alcohol is not only a contributing factor but a main driver. Since 2017 Sergeant Gibson has worked in the Motueka area as part of the Tasman Response Group. Part of that role includes working in the Mapua area. From her experience in attending events in Mapua it often results in delays due to distance from a Police station. Isolation of premises certainly contributes to risk of offending.
156. In answer to a question from Dr Gordon, Sergeant Gibson said in her view the addition of a premises selling RTDs and spirits will likely increase the harm. She responded further to say that in her view Mapua was a safe place and her observation of the last four (4) days was that the residents wanted to keep it that way.
157. Sergeant Gibson explained how information is added to the NIA system. The information can be added at the time at the scene or later. Family harm incidents are generally added at the scene. There is opportunity in this system to ask how

much a person has had to drink. In some cases, it is noted as a contributing factor. Family harm where no offending has occurred it is entered as an incident but in the case of offending, it becomes an offence. Sergeant Gibson provided data related to Mapua and not a comparison with other locations.

158. Sergeant Gibson further clarified that some of the offending occurred in the village wharf area. Traffic offending occurred across the area including Tasman and surrounding areas. She confirmed that offending had dropped over the 3-year period, but part was included in Covid restrictions. She further indicated that when Police attend incidents, they use a range of tools to determine alcohol in a variety of ways. Police are experienced in managing information.

159. Aranui Park is within the alcohol ban area and Sergeant Gibson confirmed none of the recorded offences happened in Aranui Park. Sergeant Gibson, in response to a question from Mr Young, said that in some of the offending, in particular ram raids, most offenders don't consider the design of premises. She confirmed to Mr Young she had reported on the renewal application for the Motueka Super Liquor, and she is opposing it.

160. In response to a question from Ms Mitchell regarding Aranui Park, Sergeant Gibson said although she did not have specific information but believed from her visits to the area it was a location that would likely attract drinking. In relation to levels of offending Sergeant Gibson believed offending was under reported due to the distance from a Police response and people thought it wasn't worth reporting it. Sergeant Gibson confirmed that the numbers of offences in the reporting period was affected by Covid lockdown and she advised the Committee that there were certainly a lot less people and vehicles around. This would have accounted for any reduction in offending.

161. In answer to a further question from Mr Young, Sergeant Gibson believed that given the location, this was considered a high-risk premises in respect to offending and could be targeted given Police are some distance away. The goal of Police is prevention, and they want to see offending come down.

### ***The Licensing Inspector***

162. Ms Tracy Waddington is an Alcohol Licensing Inspector at Tasman District Council, which is a position she has held for 15 years. Her role includes undertaking inquiries into alcohol licensing applications and reporting to the District Licensing Committee under the Sale and Supply of Alcohol Act 2012 s103(2) and 141(2). As an Inspector Ms Waddington acts independently when exercising and performing functions and powers under the Act. She reported on this application and as well provided a submission to this Committee.
163. After having completed an inquiry into this application Ms Waddington said she opposes the granting of a licence. This opposition was also from the Police and Medical Officer of Health. There was a total of 90 objections to the application and included a 187-signature petition.
164. In submitting her report after considering all the information Ms Waddington had concluded this application was not consistent with the object of the Act. She based that on the decision of Her Honour Clark in *Lion Liquor Retail*<sup>17</sup> case of which sets out the provision of applying the twin statutory objects of the Act. Clark J went onto say that in deciding, minimised and prospective harm had to be considered.
165. Ms Waddington went on to say that the proposed location of the premises, 50m from Mapua School with a principal business of a range of alcohol products would result in an increase in both availability and exposure to alcohol. Using a common-sense approach, it is clear a store such as this will introduce a prospective risk of an increase in alcohol related harm for the community and this contrary to the Act.
166. This application attracted many objections with a clear number having a strong aversion to a bottle store in their community. Many objectors have concerns around the prospective harm to their children and the community. In the *Shady Lady Lighting* case<sup>18</sup> they made it clear that objectors do not need to provide evidence that is close to a criminal standard or even on the balance of probabilities.

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<sup>17</sup> Medical Officer of Health v Lion Liquor Retail [2018] NZHC1123

<sup>18</sup> NZARLA198-199

167. Further in Liquor World <sup>19</sup> Unwin DCJ stated, it is accepted that the establishment of a new bottle store or other off-licence may impact adversely on neighbouring amenities and way of life. Ms Waddington suggested this is the concern many objectors had to this application.
168. Ms Waddington went on to say that in her view, after inquiring into this application, she considered the presence of a bottle store in this location provides the opportunity for an increase in uncontrolled drinking in public places such as the adjoining Aranui Park which will in turn lead to a reduction in the amenity and good order of the locality. A further concern was the measures proposed on the premises such as bars on the windows, is a further indication the store has a risk of vandalism and could result in a reduction of good order in Mapua.
169. Ms Waddington referred again to Clark J and reminded the Committee that there is no presumption that an application for a licence will be granted or that a licence will be renewed.
170. In conclusion Ms Waddington urged the Committee to take a precautionary approach in testing what could happen in terms of harm being a possibility. It requires the Committee after hearing all the evidence to step back and consider whether there is evidence indicating the granting of the licence will be contrary to the statutory object of the Act. As Heath J articulated a test that although the object of the 2012 Act is stated as one of the 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed other than against the object of the legislation. It seems that the test may be articulated as follows: is the authority/Committee satisfied having considered all relevant factors set out in 105(1)(b)-(k) of the 2012 Act, that granting of an off-licence is consistent with the object of the Act.
171. In answer to a question from Mr Young, Ms Waddington confirmed she was part of the development of the LAP for Tasman District and attended the hearings at the Nelson Courthouse. She confirmed that as part of the hearing a few experts called from around the country did not have their evidence included. The focus was on local. There were a small number of submissions to the LAP. The intent

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<sup>19</sup> Liquor World Limited [2009] NZLLA 1189 (16 October 2009)



of the Act was communities could have their say through LAP's but was not the only avenue for involvement. She wasn't sure whether NHL had appealed against any LAP.

172. In response to a question from Mr Young, Ms Waddington had no reservation that NHL would not comply with conditions that have been discussed with the Applicant. She confirmed the number of licences currently in Mapua. No onus is on parties to prove an application should be granted except the Applicant is expected to put their best foot forward. Ms Waddington is not aware of any other premises that have bars on their windows. Ms Waddington confirmed that as far as she could remember all bottle stores in the Tasman District are all in an Alcohol Ban area.

173. In this location she believed a bottle store will increase harm. She was only talking about this location although harm would be considered in each case. She couldn't say when it would be appropriate to add another licence as she assesses each application on the merits and information provided. Ms Waddington said she believed that there was a link between harm and high deprivation, but the inverse was not true. The increase in spirits and RTDs along with the proximity to the school and a park were the issues she considered were a risk. This was specific to this application. In terms of remote sales, there are a number operating in the Tasman District.

174. Ms Waddington confirmed she would have opposed this application even if there had been no objections from the community. She would give consideration to what additional conditions might be applied including treatment of the windows. She also considered, given the size of Aranui Park, it would be a big task for NHL to carry out monitoring of the park for any litter.

### ***Closing submissions***

175. At the conclusion of the hearing the Committee Chairman advised parties that, given the number of days of the hearing and the amount of evidence the Committee has heard, there would not be any oral closing submissions. All parties had the opportunity to submit written closing submissions and they would form part of the Committee's decision making.

176. The Committee received a total of 24 closing submissions from Objectors, Agencies, and the Applicant.
177. Mr Young in his submission on behalf of the Applicant drew the Committee's attention to some legal matters. The first was the matter raised by some objectors was regarding the Advertising Standards Authority (ASA) which he submitted was misconceived in this application. He went on to discuss the Supreme Court ruling in respect to the Auckland LAP decision particularly drawing the Committee's attention to this being specific to the development of an LAP and the consultative process. He reiterated the process of developing an LAP and noted that some objectors were dissatisfied with the Tasman LAP and the reference to non-compliance is incorrect and must be disregarded. He also drew the Committee's attention to the recent Supreme Court decision which was raised by the Medical Officer of Health regarding reasonable likelihood. He further indicated that the Supreme Court decision provided some guidance around a reasonable likelihood. In Mr Young's view a reasonable likelihood test does not always justify a precautionary approach. Mr Young also provided clarification regarding burden of proof.
178. Mr Young went onto draw attention to the Pleasant Point <sup>20</sup> case, and he noted that there is a main road separating the Mapua School from the proposed premises.
179. Mr Young then referenced the evidence of Mr Hall and Mr Webster and submitted they gave clear and concise evidence. They produced a business plan which showed modest projected profits. Further he submitted that Mr Hall had addressed the public meeting which was publicly notified and was genuine attempt the engage with local people. Mr Hall also engaged with the Mapua School and MDCA. Mr Hall said in his evidence that he had invited the Hills Community Church to meet with him and while that didn't occur, they did attend the public meeting.
180. Mr Young confirmed the evidence regarding the proposed location and considered it was a careful and cogent approach. He confirmed the audit and support processes carried out by Super Liquor in respect to all NHL premises.

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<sup>20</sup> [2021] NZARLA 123

181. Mr Young then addressed the evidence of the Medical Officer of Health and considered it to be flawed. He pointed to the inconsistency of the graphs in Dr Lindsay's original report and given it was clarified by an explanatory note introduced by Ms Price, he was unable to test or clarify the evidence. Mr Young suggested that the Committee might draw the conclusion there is little alcohol related harm in Mapua and therefore the risk is low.
182. Mr Young then questioned the evidence associated with the significant risk having a liquor store within 800m of a school, in particular potential risk and noted that Dr Lindsay removed the word school from his evidence.
183. Mr Young referred to Ms Price's evidence and suggested the MOH made limited contribution to amenity and good order evaluation and referred the Committee to the Shady Lady case<sup>21</sup> where Dr Palmer considered that only a small set of health harm can be linked to problems associated with amenity and good order. He pointed to Ms Price acknowledging that Mapua was a low deprivation area and that does not equate to a low risk of alcohol related harm. Mr Young also suggested that the issue raised by the MOH of unmet alcohol supply needs, was not mentioned in the Act. He accepted that Mapua residents could access alcohol from either Richmond or Motueka and considered this was more an issue of convenience.
184. Mr Young then went on to suggest that the Applicant had responded to ways of addressing alcohol related harm. They have considered the demographics of the community and taken the appropriate action. Mr Young further suggested that given some of the evidence this would suggest it is difficult for the Committee to issue any licence.
185. Mr Young then referred to the evidence of Sergeant Gibson and suggested to the Committee that there were some gaps in the graphs she provided, but in his view, it did not reveal a high-risk locality. He also questioned her evidence regarding the assumption that a new licence will increase harm.

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<sup>21</sup> [2018] NZARLA 198 2 July 2018)

186. Mr Young then referred to Ms Waddington's evidence and noted she confirmed that many bottle stores are in alcohol ban areas. He suggested her evidence was also generalised and while concerns were raised regarding Aranui Park and Mapua School there was very little analysis to support the concerns.
187. Mr Young suggested the amendment to Dr Lindsay's evidence was significant and while it is irrefutable that minors will be exposed to alcohol throughout their everyday life, it is already evident in other parts of Mapua. While there was comment associated with bars on windows the Applicant asserts good security measures are important to discourage crime.
188. Mr Young then addressed the onus of proof and suggested there needed to be a range of considerations which must be balanced and evaluated. He also addressed the issue of conditions, staff systems and training.
189. Mr Young then addressed the evidence and submissions of objectors and acknowledged the courageous and harrowing evidence of some submitters and personal and tragic stories which must be respected. He also noted the passion of those that presented. He went on to suggest that again this evidence was generalised and predicted on the view that an off-licence will always cause harm. Mr Young felt raising the issue of a submission on the Alcohol Bill currently before the house was unfair.
190. Mr Young also suggested that the Committee is entitled to contextualise the objections by reference to the wider Mapua community. Mr Young further discussed the community meeting, the numbers that attended and the population of the wider area. Mr Young provided a screenshot of the notice in the Waimea Weekly.
191. Mr Young claimed the business case provided by NHL showed they know how to operate a successful business. NHL would look to employ locally and engage with local groups. He further addressed issues raised and associated with Aranui Park and confirmed staff would keep an eye on the reserve.

192. While suitability of the Applicant was raised by some objectors it is not an issue for the tri-agencies. Mr Young went on to address issues such as a patch protection, bottle stores in alcohol ban areas and submitted they had little relevance.
193. Mr Young then addressed the offer by NHL to agree to a number of conditions. This in his view showed a clear commitment to responding to concerns.
194. Mr Young confirmed NHL sought an order under section 203(5) and (6) of the Act that business plan information provided to the Committee and reporting agencies is not published, inspected, or disseminated to anyone other than:
- The Committee members
  - The Hearing Advisor
  - The Secretary to the Committee
  - Ms Tracy Waddington
  - Sergeant Olivia Gibson
  - Mr Alastair Sherriff, Ms Anne Price, and Dr Andrew Lindsay
195. The first objector to provide a closing submission was Dr Vause who was represented by Dr Gordon who reminded the Committee that ARLA had stated that a licence was regarded as a privilege not a right and should be harder to get and easier to lose. Dr Gordon suggested that while there is no onus of proof on the Applicant, they should put their best foot forward.
196. Dr Gordon reminded the Committee of the Supreme Court decision associated with purpose and object of the Act. Dr Gordon also commented on the action of the Committee regarding the status of objectors which were corrected in minutes of the Committee. Dr Gordon also raised the matter of extension to filing of evidence by the Applicant and in her view, this disadvantaged the objectors.
197. Dr Gordon then addressed suitability of the Applicant and suggested that it is a broad concept including the nature of consultation with the community and an understanding of the area. Dr Gordon also addressed the role of Super Liquor and suggested they are in expansion mode. Dr Gordon also raised concern that Mr Webster's evidence was almost an exact copy of that presented to an application at Karaka.

198. Dr Gordon also addressed the concerns in the community of the way the community consultation was conducted. Dr Gordon also suggested the offer of conditions and the asking repetitive questions was aimed at showing the community in a negative light. In short Dr Gordon suggested that this application was about a defensive action and a form of patch protection. In relation to amenity and good order Dr Gordon confirmed Dr Vause submitted in this case the issue of proximity of the school and the number of children accessing the area will expose them to alcohol daily. Dr Vause further submitted that no benefit had been shown for granting this application.
199. In concluding Dr Gordon suggested that the risk of increased alcohol related harm far outweighed any potential benefit of a bottle store in Mapua. The object of the Act cannot be met as the amenity and good order would likely be reduced.
200. Mr Struthers in his closing submission reiterated what he had said in evidence at the hearing. He reminded the Committee it must weigh the evidence of the Applicant and objectors specific to this application.
201. Mr Trew who gave evidence for Mr Evan Walker had pointed out the Mapua community was bigger than suggested by the Applicant. He suggested that regardless of the conditions offered there is still potential long-term effects on children. Both the Act and the LAP aim to minimise harm and consider the benefits to the community and in his view, this has not been established in this case.
202. Both Mr and Mrs Palliser were present at the hearing and did not ask to be heard. They also provided a closing submission.
203. Mr Evan Walker continued his objection to the application citing proximity to the school and the possibility of crime, damage and disorder. He submitted that while there was criticism of a more generalised approach in his view the evidence presented was specific to this application. Mr Walker also argued that the suitability of the Applicant was in question from his point of view while but accepted the application complied with the LAP, it was the goals that had not been reached.

204. The Friends of Mapua School (PTA) continued with a strong objection to the application given the proximity to the school. In their view the Applicant failed to demonstrate demand for a bottles store and the hearing served only to highlight a broad opposition in the community.
205. Gaylene Ball reiterated her opposition as provided in her brief of evidence particularly relating to proximity to the school. She confirmed that in her view there were many sites in Mapua that are not near a sensitive site. In her view harm will not be minimised if this application is granted.
206. Mr and Mrs Mitchell submitted that this application did not achieve the object of the Act, amenity and good of the locality would be reduced. Ms Mitchell representing her parents reminded the Committee of the need to consider both the purpose and object of the Act. Further to consider what minimise means in this context, reducing to the smallest amount. Ms Mitchell reminded the Committee that an earlier premise had resulted in problems, and this would likely occur again if this application was granted.
207. Ms Mitchell further reminded the Committee of s106 of the Act when forming an opinion that amenity and good order will likely be reduced. She drew the Committee's attention to potential risk such as fires in Aranui Park during the long dry summers. She also reminded the Committee that Mapua already has seven (7) licensed premises. In the Mitchell's view the locality around the area is high amenity and its characteristics contribute to people's appreciation of the pleasantness and attributes. Ms Mitchell suggested there are no benefits to the community and likely only convenience to some.
208. Ms Mitchell reminded the Committee that each of the agencies were in accord that after reviewing the material and information concluded there was a real risk of alcohol related harm with the grant of this licence. In conclusion the Mitchell's submit that the proposed bottle store is completely inappropriate, will cause community harm in this location and should be declined. In coming to its decision, they ask the Committee to listen to the united voices of the community.
209. Mr John Lister confirmed his earlier evidence and in particular the view presented by many objectors of the unique feeling and character of Mapua. The issue of

amenity and good order was raised often and in his view the granting of the licence will affect that character and amenity. Mr Lister also commented on the lack of a business plan and the offer of conditions such as a change to the colour scheme which in his view didn't add to the showing of any need for a bottle store.

210. Dr Vause on behalf of the MDCA confirmed their objection to this application. They submitted granting this application would contribute to an increase in alcohol related harm. In the MDCA's view the evidence given by objectors and the MOH that the addition of an off license will likely increase the harm. In the view of the MDCA the Committee has been presented with several data sets which support the contention that harm will not be minimised.
211. Lyndle Lister in her submission continued in her opposition to the application submitting the collective opposition by the agencies was important as part of the Committee's considerations. Further the number of objections from community members and groups suggested there was little support for a bottle store at this proposed site. The proximity of the school makes this a place where children will be exposed daily to alcohol in their community.
212. Mrs Corbett reinforced the objection of both her and her husband, Dr Robert Corbett. She reiterated their objection with reference to the proximity to sensitive sites. She reminded the Committee of the activities at Hills Community Church and in particular some of the vulnerable people who visited for a variety of reasons. Mr and Mrs Corbett questioned the description by the Applicant of the catchment area. Dr Corbett reminded the Committee of his work as a Paediatrician and the distressing personal experience in caring for child victims of family harm fuelled by alcohol.
213. Pip Hiles submitted she objected to the application and her concern was proximity to the school and the impact that would have on children. She also reiterated the impact this would have on the wider village of Mapua. She did not consider the offer to change the colour scheme is acceptable to the village and of no benefit to the community.



214. Victoria Walker submitted that amenity and good order would not be minimised, and alcohol related harm would be increased. She was concerned about the proximity to the school and the impact that will have daily on the children.
215. The objectors, Ms Asquith, Kelly Taylor, Margaret Cotter and Colin Walker submitted their continued view that this application should not be granted and relied on their earlier evidence to the hearing.
216. In his closing submission on behalf of the Medical Officer of Health, Mr Sherriff reminded the Committee that the MOH opposition was based on the object of the Act, as set out in the opening submissions, design and layout, amenity and good order and the opposition report.
217. Mr Sherriff reminded the Committee that over the course of the hearing the totality of the evidence received including the Medical Officer of Health and the community clearly showed this application should be refused. Mr Sherriff drew the Committees attention, as he had earlier, to both the object and purpose of the Act and reminded the Committee that there is no presumption that an application for a licence will be granted or renewed. He further reminded the Committee that in assisting with a risk assessment the legislature has given reporting agencies a prominent role. He further suggested the expectation was that alcohol related harm would be minimised.
218. Mr Sherriff drew the Committees attention to the recent Supreme Court decision<sup>22</sup> which was unanimous in reinforcing the need to read both s3 and s4 together. In particular he referred to minimising harm and taking a precautionary approach, reminding the Committee that Alcohol related harm was widely defined in the Act.
219. Mr Sherriff offered the Committee some suggestions regarding an evaluation process including cost, benefit, and risk. He suggested the Committee should consider the cost or likely cost to the community and what risk of further or increased alcohol related harm in this community if the application is granted.

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<sup>22</sup> Woolworths & Foodstuffs v Auckland Council [2023] NZSC 45 (5/5/23).

220. Mr Sherriff then suggested that the hearing had heard there was little, or no control NHL had in respect to the web site or Facebook. The Applicant had not consulted with Mana Whenua and produced no one in support of the application. The Applicant further acknowledged that two of the five existing NHL premises did deliveries of alcohol to Mapua. Under cross examination Mr Hall acknowledged that the business plan showed a rationale of patch protection particularly the feared financial consequences if a competitor succeeded in obtaining a bottle store licence between Richmond and Motueka.
221. Mr Sherriff submitted to the Committee that in its evaluation of an application it must also evaluate what it did not hear. The MOH report and evidence shows Alcohol related harm already exists. Adding a wider range of alcohol related products in proximity to the school as set out in Dr Lindsay's evidence along with that of Ms Price will increase harm if this application granted. Mr Sherriff acknowledged issues of reliability that arose concerning ED data and accepted the Committee will decide the weight it applies to that evidence.
222. Mr Sherriff submitted that the number of objectors and their evidence showed an inconsistency in the application with s3 and s4. The evidence of the Licensing Inspector concludes granting the application will likely result in an increase in harm in the community and this would be contrary to s4. This was supported by the evidence of Sergeant Gibson relating alcohol related harm. The evidence of an existing level, albeit low, of alcohol related harm in his view is overwhelming.
223. Mr Sherriff then drew the Committees attention to design and layout suggesting it was not the main area the MOH was concerned with. Mr Sherriff submitted that amenity and good order was paramount and there was overwhelming evidence concerning this matter from objectors, Police, and the Licensing Inspector. Mr Sherriff suggested to the Committee this was an application it could refuse based on any of the challenged s105 criteria. In his view the Committee has the jurisdiction to not increase the availability of alcohol off-sales in Mapua and Tasman.

224. Mr Sherriff drew the Committee's attention to the ARLA decisions raised by Mr Young but submitted, as he did in opening submissions, they relate to different circumstances and what is different in this case is that all the agencies agreed in opposing the application.
225. In her closing submission Sergeant Gibson confirmed the Police opposition to this application. She reminded the Committee that agencies and large number of objectors were strongly unified in opposing this application and it should not be understated. Sergeant Gibson submitted that the Committee must ask the question whether alcohol related harm will decrease and not increase and the Police submit if the application is granted it will increase.
226. In her closing submission Ms Waddington, Licensing Inspector for Tasman District Council confirmed her opposition to this application. Ms Waddington reminded the Committee of her earlier report regarding the High Court decision in *Medical Officer of Health v Lion Retail* [2018]<sup>23</sup> when considering the object of the Act. Ms Waddington believed that the addition of a bottle store in Mapua will increase availability and therefore will increase alcohol related harm.
227. Ms Waddington submitted that amenity and good order is well defined in the Act and many objectors described the current locality as pleasant and agreeable. The expectation of those objectors was it would remain a pleasant locality.
228. Ms Waddington also reminded the Committee that the High Court had summarised the principles of the Act that there was no presumption a licence would be issued, and the Committee must step back and consider if the granting of the application would be contrary to the object of the Act.

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<sup>23</sup> [2018] NZHC 1123

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

229. This is an application by Nelson Holdings Limited for a bottle store at 151 Aranui Road to be known as Super Liquor Mapua pursuant to sections 17, 32(1)(b), and 100 Sale and Supply of Alcohol Act 2012. The Applicant is represented by Counsel, Mr J Young and called two (2) witnesses. The agencies were also present at the hearing and each of them opposed the application, and their opposition is similar in the grounds they put forward in their reports and evidence. The Committee acknowledges the work of the Applicant and agencies to present all the information to the hearing and the professional way this has been carried out.
230. The Committee also wishes to acknowledge the work of Objectors to this application and for the time they spent at the hearing indicating the commitment they had to ensuring their side of the application was heard. The professional way in which objectors presented their evidence is witness to that commitment. As Mr Sherriff pointed out the Committee has the three agencies and a large number of members of the community opposed.
231. The Chairman also acknowledged those objectors who had shared personal stories and the Committee respects that those individual issues were hard to share. The Committee gave greater weight to the evidence that was given and subject to cross examination but acknowledged that evidence of those who were unable to appear assisted in decision-making of the Committee as per s203(9).
232. In deciding whether to issue an off-licence or not the Committee are required to have regard for S105 of the Act. Prior to that we asked the question whether the premises are one which an off-licence can be issued as set out in *Abbott v Parmar and Asiata* <sup>24</sup> at paragraph 12, which said logically it makes sense to determine eligibility first.
233. For the Committee, this application does meet the eligibility criteria and is not in contravention of anything that would preclude this application proceeding. The Committee is required to consider section 105 and 106 of the Sale and Supply of Alcohol Act 2012. Mr Sherriff suggested to the Committee that a precautionary approach was the best path to follow. This view was also referred to in a recent

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<sup>24</sup> *Abbott v Parmar and Asiata Ltd* [2016] NZARLA

Supreme Court hearing in relation to the Auckland Council PLAP. The precautionary principle (or precautionary approach) is a broad epistemological, philosophical and legal approach to innovations with potential for causing harm when extensive scientific knowledge on the matter is lacking. It emphasises caution, pausing and review before leaping into new innovations.

234. Given the acceptance by the Agencies that suitability was not an issue, the Committee focussed its attention of the object of the Act as set out in s4 and amenity and good order as defined in the Act. The Committee considered the recent Supreme Court Decision.<sup>25</sup> It is clear from this unanimous decision, that as a Committee we need to consider the object of the Act, s4 but not exclude s3 which explains the purpose of the Act. In other words, the Committee has considered the Act in s3 introduces a reasonable system of sale and supply of alcohol, that seeks to achieve closely related outcomes, that alcohol is sold, supplied and consumed safely and responsibly and harm from excessive and inappropriate drinking is minimised.

235. The Committee believed it has a responsibility to look at the purpose and object at the same time. In its view it needed to ensure to meet the object of the Act it had to first achieve the purpose under s3. Alcohol related harm is widely defined in the Act and our role is to consider whether in this case the greater availability will have an associated increase in harm.

236. The Committee has taken the approach that was set out by the Minister when this legislation was introduced to Parliament. It clearly signalled a new system of control. The object of the Act was not about reduction but minimisation of harm. Oxford English Dictionary defines minimisation as harm reduced to the smallest amount, extent, or degree. Understanding harm, the Committee relied on the many views placed in front of it. This further means it has a responsibility to consider all the evidence and then be satisfied that this premises meets the requirements of the Act. It has a responsibility to reach an opinion regarding whether the application meets the object of the Act.

237. The Committee had the opportunity prior to the hearing to read the full application and supporting evidence from the Applicant along with opening submissions from

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<sup>25</sup> SC 139/2021 [2023] NZSC.45

the Applicant's counsel. The Committee also had very full and thorough reports and evidence from each of the Agencies that in its view meet the requirements of s103 of the Act. As well, prior to the hearing, the Committee, (accompanied only by the Committee Advisor, Committee Secretary and Deputy Chair of the Licensing Committee), undertook a site visit including observing traffic movements, numbers of children near the site and the closeness to proposed site. The Committee was also provided with photographs of the site and proposed colour scheme and signage. With all that information the Committee was able to apply the test of whether it was satisfied or not that a licence should be issued.

238. Counsel for the Applicant in his opening submissions drew the Committee's attention to recent cases associated with the issue of off-licence. This included reference to Townhill.<sup>26</sup> The Committee believed that the circumstance in that case differed from this application. He also drew our attention the Riccarton Bush Kilmarnock Resident Association<sup>27</sup> cautioning us around relying on national and international evidence. In the view of the Committee in taking a precautionary approach the evidence is clear that adding another licensed premises to an area will likely increase alcohol related harm. The question for the Committee is to what extent that harm will increase and what actions the Applicant has considered to reduce that harm.

239. In determining this application, the Committee is required to have regard for s105 of the Act. As set out in R BS Dhillon Ltd<sup>28</sup> the Authority said the Committee must have regard for each criterion. An Applicant for an off-licence must prove its case. In Shady Lady Lighting Ltd<sup>29</sup> the authority relied on the Vaudrey<sup>30</sup> decision which said 'have regard to' bears its ordinary meaning with the decision maker actively and thoughtfully considering the relevant matters. It requires the decision maker to correctly understand the matters and the weight to be given.

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<sup>26</sup> [2021] NZARLA at [198].

<sup>27</sup> 2023 NZARLA 18

<sup>28</sup> R BS Dhillon Ltd 2013 NZARLA 920

<sup>29</sup> [2018] NZARLA 198

<sup>30</sup> [2015] NZHC 2749

240. The Committee did have regard for each criterion set out in s105. In the first instance we looked at the object of the Act and whether that had been reached and to reach a conclusion we looked at the suitability of the Applicant. This was not questioned by the tri-agencies and the Committee accepted these criteria had been met. The Applicant has a willingness to be flexible around hours and days proposed to sell alcohol given the proximity to the school should the application be granted. Should the Committee decide to grant this application conditions would be imposed in relation to this. The Committee acknowledges again the Applicant has some flexibility regarding the design and layout. A concern of the Committee was bars on windows and the visibility of the products by those passing, including children, however these concerns of the Committee could be mitigated by specific conditions should the license be approved. It was accepted the Applicant had systems in place for training albeit they were managed generally by Super Liquor Holdings and not the Applicant. The Committee had viewed the training material and documentation of the regular audit process.

241. Several objectors and the tri-agencies discussed the Tasman District Local Alcohol Policy (2014) and while the Committee accepted this application did not contravene the policy it did impact on the goals of the policy along with the objectives. The Committee has given regard to this policy which sets out the following:

The Local Alcohol Policy provides direction for the District Licensing Committee so that licensing decisions:

- Contribute to Tasman being a safe and healthy District.
- Reflect local communities' character and amenity and their values, preferences and needs.
- Encourage licensed environments that foster positive, responsible drinking behaviour and minimise alcohol-related harm.

The objectives of the LAP are to provide a policy which:

- Reflects the views of local communities as to the appropriate location, number, hours and conditions that should apply to licensed premises within their communities.

- Provides certainty and clarity for Applicants and the public as to whether a proposed license application will meet the criteria of the LAP.
- Provides effective guidance for the decisions of the District Licensing Committee and the Alcohol Regulatory Licensing Authority.

The Committee determined that this application did not contravene the Tasman LAP.

242. The question for the Committee to consider was whether the amenity and good order would decrease. The Committee considered this through a lens of a precautionary approach and taking a common-sense view. We are not required to determine whether the proposed premises would contribute to an increase in harm just there was a likelihood that this would happen.
243. The Committee believes that given the evidence provided, the proximity of sensitive sites, specifically Mapua School and Aranui Park would reduce the amenity and good order of this location and would likely lead to an increase in alcohol related harm. The Committee was presented with sufficient evidence to conclude that harm could not be reduced.
244. The Committee looked at three questions posed earlier as a part of its decision-making process. Firstly, consideration was given to whether the granting of this application will benefit the community. There has been no evidence before the Committee of any benefit that would occur. If we take what the Authority stated in the Dhillon case that the Applicant must prove its case. It is the view of the Committee that it fell short. The Applicant did not initially provide any business case details in the application, did not have anyone provide support for this application and did not provide any evidence of need. In fact, in cross examination admitted that the action NHL took was a defensive move to prevent others coming into the area and to protect their business.
245. In this case, unlike others referred to earlier in the hearing, each of the tri-agencies opposed this application on similar grounds. As well there was strong contention from the community that this bottle store was not wanted and in fact it was not requested. As was further described NHL held a community meeting at a time Mapua residents suggested was an inappropriate time of the day. It was



also described by some as a very corporate meeting. NHL also acknowledged there had been no discussions with Mana Whenua. The Committee acknowledges attempts by the Applicant to engage with the Mapua Community but was provided with no evidence that in doing so resulted in any support to establish a new bottle store.

246. The second question the Committee asked was how likely it is alcohol related harm as set out in s4 be minimised if the application is granted. While there is some debate regarding the level of harm already occurring Dr Bonny of the Mapua Medical Practice informed the hearing that of their 5000 patients 1% have a serious alcohol issue and 430 are recorded as having more than the standards drinks in a week. He considered this was an understatement given it required self-reporting. Sergeant Gibson reported offending in the area highlighting the levels of family harm. While there had been a slight decrease in the period, she had examined much of that was during a Covid lockdown. She claimed as did others that there was still offending in areas often affected by alcohol consumption.

247. The final question asked was if this application was granted would the current pleasantness and agreeableness of this Mapua community likely to be reduced more than a minor amount. The Committee noted that Mapua is very child and family centric, and residents want it to stay that way. There is concern of the proximity of the school to the proposed premises and the exposure to alcohol that it has on children. The proposed premises are also adjacent to Aranui Park, a scenic reserve used regularly by families. The concern of the community is that it will be affected in a significant way, appears justified.

248. It is hard to put aside the views of the community who presented to the Committee. There were people from all walks of life and while there were common themes around reasons for opposing this application each objector presented their concerns in an individual way. There was no pro-forma approach taken by most of the Objectors. The Committee has a role to hear everything presented, step back and take a common-sense view of what is best for this community. There has been no evidence presented to the Committee to suggest that the granting of this application will benefit Mapua. It is further suggested that it will increase harm even if only by a small amount. This application must have

a precautionary approach acknowledging to be granted must achieve the object of the Act.

249. The Committee believes this application for the reasons set out does not meet the object of the Act and will likely decrease the amenity and good order of the community and will certainly not minimise harm.

250. It is the decision of the Committee based on all the evidence presented that the issue of this application would impact the amenity and good order of the community through increased availability of alcohol and would therefore not satisfy the object of the Act.

251. For these reasons this application is declined.

252. The Committee, as set out in paragraph 194, makes an order under section 203(5) and (6) of the Act that business plan information provided to the Committee and reporting agencies is not published, inspected, or disseminated to anyone other than:

- The Committee members
- The Hearing Advisor
- The Secretary to the Committee
- Ms Tracy Waddington
- Sergeant Olivia Gibson
- Mr Alastair Sherriff, Ms Anne Price, and Dr Andrew Lindsay

DATED at Richmond this 25<sup>th</sup> day of August 2023



**Brent Maru**  
**Chairperson**

