

**Form 10
Off-licence**

Sections 17 to 20, and 64, Sale and Supply of Alcohol Act 2012

Pursuant to the Sale and Supply of Alcohol Act 2012 (the **Act**), **Joamari Hanneke van der Walt** (the licensee) is authorised to sell by remote sale under Section 40 of the Act, alcohol (wine only) from the premises situated at **181-183 Victoria Avenue, Whanganui**, to be known as '**Joa's Wines**', to any person for consumption off the premises and to deliver it or have it delivered by some other person somewhere else.

Endorsement

Section 40 of the Act applies to this licence; and the licensee is authorised to sell alcohol from (but not on) the premises and deliver it somewhere else.

Conditions

This licence is subject to the following conditions:

- (a) Alcohol (Wine only – Fruit, Vegetable and Grape) may be sold from the premises at any time on any day and delivered somewhere else for consumption off the premises
- (b) No alcohol (Wine only – Fruit, Vegetable and Grape) is to be delivered from the premises on **Good Friday, Easter Sunday or Christmas Day or before 1.00pm on Anzac Day**
Or delivered generally outside of the hours of Monday to Friday between 7:00am and 5:00pm.
- (c) Alcohol (Wine Only – Fruit, Vegetable and Grape) may only be delivered from the premises, and delivered somewhere else, for consumption off the premises, on the following days and during the following hours:
Monday to Friday 7.00am to 5.00pm.
- (d) There must be a certificated manager properly appointed to the business by the licensee.
- (e) The licensee must state the licensee's name, licence number and date the licence expires:
 - i) On every receipt issued for alcohol sold remotely;
 - ii) In every catalogue, if alcohol is sold by remote sale using catalogues;
 - iii) On the internet site, if alcohol is sold by remote sale using an internet site;
 - iv) If alcohol is sold by remote sale using an internet site, the site must also display either a legible image of the licence, or a clearly identified link to such an image.
- (f) The Licensee must follow the procedures set out in Regulation 14 and 15 of the Sale and Supply of Alcohol Regulations 2013 to ensure the neither the purchaser nor the person to whom alcohol is delivered is a minor:
 - i) The licensee must take reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale (and, if a person other than the buyer is to receive it, to verify that the receiver) is not under the purchase age.
 - ii) The licensee when selling alcohol by remote sale via the Internet must comply with any regulations made under the Act requiring information to be visible on the holder's website when people browse, enter, or otherwise access it.
 - iii) The licensee when selling alcohol by remote sale by mail order must comply with any regulations made under the Act requiring information to be published in the holder's catalogues.
 - iv) The licensee when selling alcohol by remote sale by telephone must comply with

Duration

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

- (a) either—
 - (i) until the close of the period for which it was last renewed; or
 - (ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; **this licence expires on the 25th day of October 2024;** but
- (b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either—
 - (i) until the close of the period of 3 years after the period for which it was last renewed; or
 - (ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

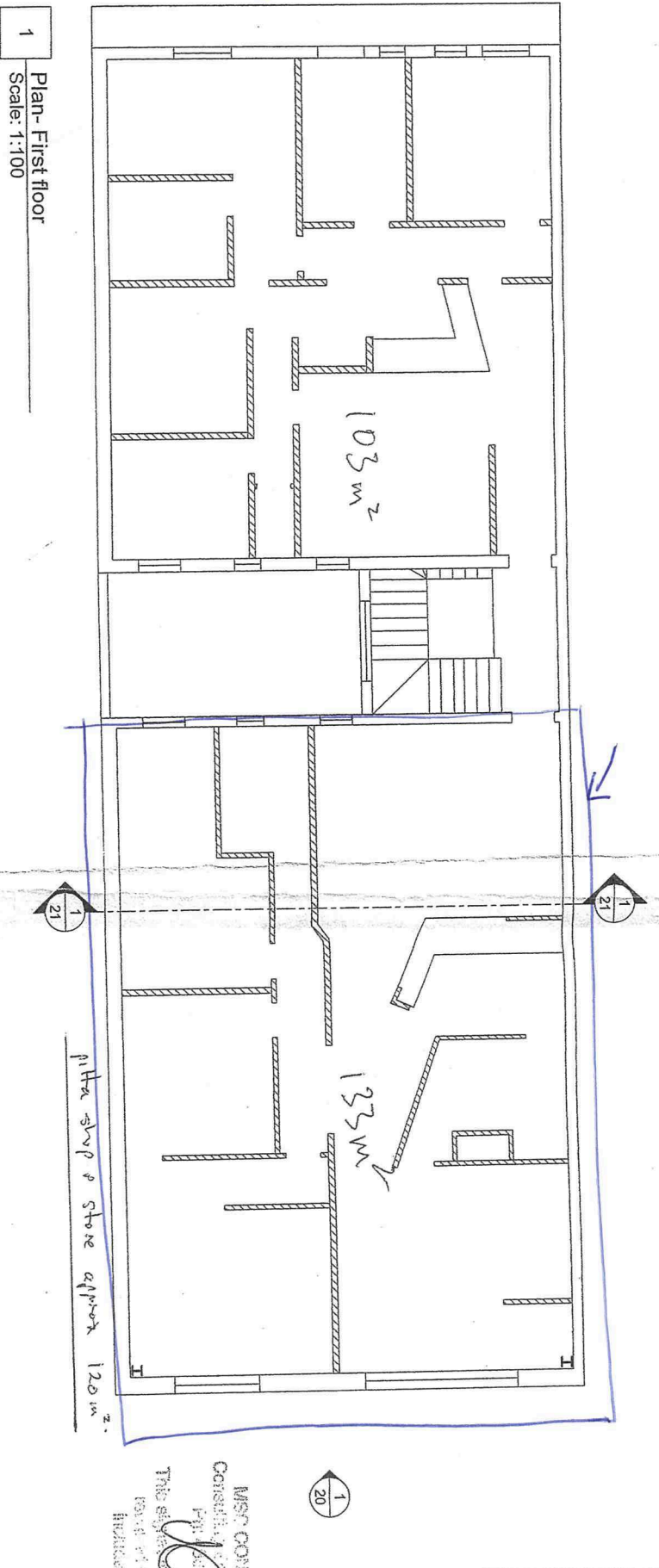
Dated at Wanganui this the 27th day of October 2023.



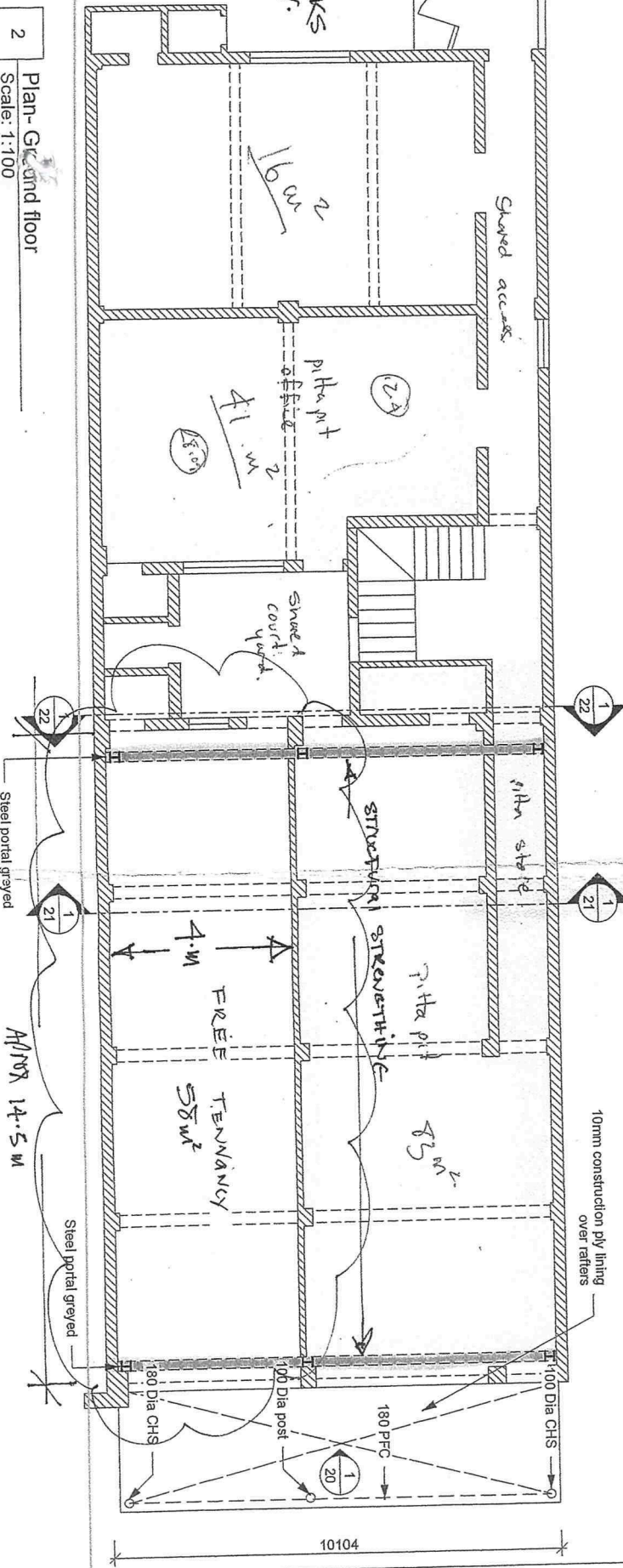
**Secretary,
Whanganui District Licensing Committee**



1st Floor 181-183 Victoria Avenue
 & Victoria Avenue facing



1 Plan-First floor
 Scale: 1:100



2 Plan-Ground floor
 Scale: 1:100

REVISIONS

A	Details	01/02/2013
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Notes

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The signatories on these drawings are fully qualified and registered as per the Engineering Council (UK) and are members of the Institution of Engineers, Australia (IEAust).

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Project: Pita Pit Wanganui
 Number: 40/NBS
 Sheet: Seismic upgrade to 40/NBS
 Reference plan
 SCALE @ A3 as shown

Date: Feb 2013
 Drawing Marker: 03
 Revision: (C)

DO NOT SCALE OFF DRAWINGS.
 CONTRACTOR SHALL VERIFY AND BE RESPONSIBLE FOR ALL DIMENSIONS ON THE DRAWING AND ANY VARIATION BETWEEN THE DIMENSIONS AND THOSE ON PLANS, SPECIFICATIONS, MEMOS AND OTHER RELEVANT DOCUMENTS.

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 (“Act”).

AND

IN THE MATTER

of an application by **Joamari Van Der Walt** for a new Off-licence pursuant to s.100 of the Sale and Supply of Alcohol Act 2012 (“Act”), in relation to the premises situated at 181-183 Victoria Avenue, Whanganui, to be known as “Joa’s Wines”.

BEFORE THE WHANGANUI DISTRICT LICENSING COMMITTEE

Chairman: Stuart Hylton
Member: Rob Moore
Member: Annette Main

HEARING at the Cooks Gardens Event Centre Function Room on Friday 29 September, 2023.

APPEARANCES

Joamari Van Der Walt	Applicant
Steve Turfrey	Whanganui District Council Chief Alcohol Licensing Inspector – In opposition
Alan Thomson	Senior Constable, NZ Police – In opposition
Jill Job	Delegated Authority to act on behalf of the Medical Officer of Health – In opposition

DECISION OF THE COMMITTEE

Application

[1] On the 9 July 2023, **Joamari Van Der Walt**, “Applicant” made application for a new Off-licence (s. 40 endorsed remote seller type) in relation to the premises situated on the first floor of 181-183 Victoria Avenue, Whanganui, to be known as “Joa’s Wines”.

[2] The premise is a north facing office space located on the first floor of a commercial building. It will be used only for storage and then distribution of wine as required. Wine purchases are made via on-line enquiry or following orders made at wine tasting experiences provided by the applicant and for delivery and consumption (off-site) at a later date.

[3] The applicant is an individual who will take personal responsibility for operation of the business. The Inspector reports the *“applicant is a Solicitor in good standing, and subject to many layers of professional scrutiny. The applicant has a significant personal interest in ongoing compliance and safety and thereby, this license’s success if issued. The applicant has significant experience related to licensed events (Special Licences for On Licence events) and has extensive International hospitality and industry experience particularly related to wine. The applicant has supplied significant references as to qualification, skill and standing”*.

[4] The applicant sought the (delivery) hours of **Monday to Friday, between 7.00am and 5.00pm**. This is significantly less than that allowed under the Act to remote sellers i.e. Monday to Sunday 6.00am to 11.00pm, except on Good Friday, Christmas Day or before 1,00pm on Anzac Day. Remote sellers can sell alcohol on any day and at any time and must comply with s. 59 delivery requirements for the remote sales aspect of the application.

Public Notification of Application

[5] The application was publically notified in accordance with s. 101 of the Act. One public **objection** was received which was deemed by the Committee to have ‘status’ in that it was received on time, was in relation to s. 105 criteria matters and was from an organisation with an interest in the application greater than that of the public generally.

[6] The **objection** was received from the Safer Whanganui Alcohol and Other Drugs Reference Group. The letter of opposition from the Group states *“We...strongly object to the remote off-licence application submitted by Joa’s Wines, on the grounds that it fails to uphold the core objectives of the Sale and Supply of Alcohol Act 2012”*.

Agency Reports

[7] The application was sent to the Inspector, Medical Officer of Health and NZ Police for their statutory reports. All three reporting agencies filed reports of **opposition**. All three reporting agencies stated their opposition relates to the application not according with the current Local Alcohol Policy “LAP” ‘cap’ for Off-

licence premises (excluding Supermarkets and Grocery Stores) for Whanganui i.e. the 'cap' is thirteen Off-licence premises which is currently exceeded.

[8] The Inspectors report also concluded that where there is conflict with the purpose of the Local Alcohol Policy (LAP) there is conflict with the object of the Act. Namely; to minimize alcohol related harm and that if granted it will provide a precedent within the Whanganui District and that further Remote Style-Off licences may follow despite the LAP's cap.

LAP Development

[9] Whilst there was no LAP development documents made available to the hearing from any of the submitters, the Committee is well versed and have available to us all of the Council procedures, reports, research, surveys, minutes and decisions that went into developing and passing the LAP. This documentation was previously supplied to the Committee during hearings for M7 Limited's and Whanganui Distilling Company Limited's off licence applications.

[10] The Committee notes that at Council's Strategy and Policy Committee Meeting held on 8 August 2023, Councillors considered both the annual LAP Cap clause 2.4 review and whether to bring forward or not a full review of the LAP, as requested in writing, by this Committee.

[11] At the August meeting Council, based on officer advice, resolved that the cap was not inconsistent with development potential and objectives in the Whanganui district. The advice to Council from officers when making this decision was that *"although the cap does apply to boutique distilleries and breweries which were not considered at the time the LAP was put in place, the fact that these businesses have continued to open, after the cap has been in place, suggests that the cap is not creating a barrier to their development."* (our emphasis)

[12] On the matter of full LAP review, Council determined to not bring forward the LAP review on the advice that the Sale and Supply of Alcohol (Community Participation) Amendment Bill was currently progressing through the house and if passed will remove the ability for submitters to appeal a provisional LAP, which would have the effect of significantly reducing the potential time and financial investment required to develop and implement a LAP.

[13] Further Council were advised the *"financial risk of a LAP review is something that needs to be carefully considered. If the decision were made to remove or alter the cap without changing the remainder of the LAP, a full policy review process would still be needed and would still be at risk of appeal under the Act. The risk then is that undertaking a review of the cap may result in a loss of the LAP entirely, and the additional protections it affords our district. This is because any review of the policy risks legal proceedings which may require us to abandon to the LAP entirely to avoid significant financial burden and/or time"*.

[14] Council decided to leave the LAP as it stands until the legislative changes are complete, and instruct the Chief Executive to start a review by June 2024, on the basis

the cost and uncertainty of a policy review is out of proportion and that the cap is not providing a barrier to development and potential in the district.

[15] This Committee noted the following comments made during Council's discussion on the LAP review/s:

- (a) The off-licence cap when developed did not take into account off-licence types such as boutique distilleries and breweries;
- (b) The current cap is 'blunt' and 'not suitable in a perfect world';
- (c) Boutique distilleries and breweries were low level in terms of 'harm';
- (d) Attending a hearing to obtain an off-licence was a 'reasonable limitation and safe guard'.

We were left with the impression that Council was happy with this Committee considering and approving boutique distillery and brewery type off-licences despite it being in conflict with their LAP 'cap' and that in the not too distant future this matter would be reconsidered during a LAP review.

Hearing in General

Applicant's Evidence

[16] The applicant spoke to her application reiterating that she was a practising lawyer in Whanganui and had completed various wine courses and studies in South Africa and the UK. This continued in NZ as she continues to grow her knowledge in wine and run pop up events using special licences to offer fundraising educational wine tasting.

[17] Following positive comments from these events and an obvious gap in the market, the idea for remote sales of high quality wines, mostly to people that attend her educational events, was born.

[18] The applicant advised her proposed remote sales wine business would be boutique in nature, higher in price, aiming to educate buyers about the wine including how to drink in a responsible manner. She would start with a small number of wines that would be rotated depending on monthly features. She hoped her business would encourage tourists to Whanganui and that she could partner with like-minded people for events.

[19] The applicant stated that she thought her proposed operation was low risk in terms of harm and that she couldn't see how the Safer Whanganui objection could say it would lead to 'excessive consumption' or 'normalisation of alcohol'. In any event she said there was no evidence provided to support these claims and she could not do anything about the LAP's cap.

[20] Under questioning the applicant advised that her application was to sell 'wine only' and deliveries would be limited to 7.00am to 5.00pm daily, more restrictive than that allowed for under the Act. She advised her wines would cost anywhere between \$30 and \$100, higher than supermarkets prices. When asked what her likely turnover

per annum would be, the applicant was unsure but said it would be small scale as 'I still have a day job'.

[21] When asked how her education events contributed to safe consumption, the applicant stated that customers were less likely to gulp their drinks if they were taught to enjoy the wine more for its depth of flavour etc and encouraged discussion around the wines including eating complementary food. To another question she said her customers are more likely to be educated professionals with disposable income to afford her more expensive wines.

Inspector's Evidence

[22] Chief Alcohol Licensing Inspector, Mr Turfrey, filed a report offering opposition to the application which are generally explained in paragraphs [7] and [8].

[23] In his report the Inspector states that the cap limit is fourteen 'off-licensed' premises and "*it is not appropriate for Whanganui to accommodate this application for an additional off licence*". Further the Inspector argues the LAP and the object of the Act share a common goal and therefore to be in conflict with the LAP is, in his view, to be in conflict with the object of the Act – namely to minimize alcohol related harm.

[24] The Inspectors report also contained NZ Dep 2018 Index of Deprivation information for the address which was 8 out of 10. He argues Whanganui's higher than average deprivation index signifies the potential for the highest risk of harm.

[25] Further the Inspectors report noted the applicants past special licence events had not raised any concerns, she holds a certified Managers Certificate and a recent inspection of the proposed premises unearthed 'no issues...that would prevent granting of the licence'.

[26] The Inspectors report contained a number of arguments around why, in his assessment, the application was in contradiction to not only the Council's LAP 'cap' but also s.4 of the Act – the object of the Act. The Inspector put forward the following general arguments:

- That any additional licence will potentially provide for easier access to alcohol products and easier access to product can cause harm, even if in this case that increase is minimal.
- That the LAP should have a higher level of regard in this application.
- That the LAP and the 'cap' specifically, represents the sum views expressed and the will of the community and therefore does not meet the object of the Act.
- Approving the application has the potential to set precedence for similar applications.

[27] In response to questions from the Committee the Inspector advised the application is assessed as 'Low Risk' according to the Fees Regulations risk rating matrix and in his view was low risk when compared to other off-licence premises such as Bottle Stores and Supermarkets. The Inspector told the Committee it was the LAP

'cap' that was his biggest concern in opposing the application and that the Committee must give it elevated regard.

[28] Under further questioning the Inspector confirmed that boutique remote sales licences were not considered when the 'Cap' was made Policy.

Police Evidence

[29] Senior Constable Thomson reported in opposition on behalf of Police on the grounds the application is contrary to the Local Alcohol Policy s.105 (1)(c) and s. 108. The Committee took his report as read. In answer to a question he assessed this application as 'low risk'.

Medical Officer of Health Evidence

[30] The Medical Officer of Health reported in opposition to the application on the basis the application is contrary to the Local Alcohol Policy i.e. s. 108. The Committee took the report as read. The Medical Officer of Health's representative advised that if there was no LAP 'cap' in place they would not oppose the application.

Public Objection

[31] There was no-one present at the hearing to speak to the **objection** received from the Safer Whanganui Alcohol and Other Drugs Reference Group. The Alcohol Regulatory and Licensing Authority "ARLA" is very clear on how to deal with objectors who do not appear. In *Kim and Chang, (Liquor Mate) NZLLA PH 1470/2009* at paragraph [12] the Authority gave the following view on objectors who fail to turn up – *"If objectors do not appear and no explanation is received for their absence, then it is likely that their objection will have no value"*.

[32] The 'no show' from the objector fails to allow the applicant and parties to proceedings to question the objector on the content of their objection thus disallowing natural justice to occur. Therefore in line with the Authority's rulings on the matter, we are unable to give the objectors evidence much weighting, if at all. We note their concerns were no different to that of the reporting agencies.

Committee's Decision and Reasons

[33] In considering this application the Committee had regard to the criteria under s.105 and provisions of s.108 of the Act i.e.

105 Criteria for issue of licences

(a) the object of this Act:

(b) the suitability of the applicant:

(c) any relevant local alcohol policy:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(e) the design and layout of any proposed premises:

(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:

(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:

(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:

(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—

(i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but

(ii) it is nevertheless desirable not to issue any further licences:

(j) whether the applicant has appropriate systems, staff, and training to comply with the law;

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.

108 Licence may be refused if contrary to local alcohol policy

The licensing authority or licensing committee concerned may refuse to issue a licence if—

(a) there is any relevant local alcohol policy; and

(b) in its opinion, the issue of the licence, or the consequences of the issue of the licence, would be inconsistent with the policy.

[34] In terms of section 105 criteria that were in question with this application, the only issues raised with the application were the LAP (s. 105(c) and 108) and the object of the Act (s.105(a)).

[35] The application was in accordance with all other s.105 matters. Indeed, reporting agencies commented in their reports on the applicant's suitability, knowledge and systems suitable to hold such a licence. The Committee notes the applicant presented as an intelligent professional with genuine interest and knowledge in the wine industry impressing as a suitable and responsible person to hold an off-licence.

[36] This is not the first time this Committee has been asked to determine an application that does not accord with the Council's LAP 'cap'. The Committee notes the similarities between this application and other recent off-licence applications granted to M7 Limited, Whanganui Distilling Company and Lads Brewery.

[37] The application before us is for the remote sale of boutique wines of high quality, high cost and low volumes.

[38] Accordingly, our decision will reference the *M7 Limited* decision, where necessary, as this is our benchmark decision from which we must establish consistency, where warranted.

[39] As far as the Committee is aware, there is no appellate decisions by ARLA for similar applications that can guide our decision making.

The Local Alcohol Policy (LAP)

[40] Whanganui District Council's LAP came into full force on 2 December 2019 after a long development period starting in 2013. The Committee is well aware of the information that went into the LAP's development over those years including the draft LAP, PLAP and submissions process. This is detailed in our *M7 Limited* decision.

[41] The LAP clause that is captured by this application is Clause 2 – District-wide limit on off-licensed premises which states -

2 District-wide limit on off-licensed premises

Policy

2.1. From the date this policy comes into force, no further new off-licences will be considered appropriate under this policy if the grant of that further new off-licence would bring the total number of off-licences in the region to 14 or more.

2.2. For the purposes of clause 2.1 above, a new off-licence does not include a new off-licence for a supermarket or grocery store.

2.3. For the purposes of clause 2.1 above, the total number of off-licences in the region excludes off-licences for supermarkets and grocery stores.

2.4. Clause 2.1 will be reviewed by the Whanganui District Council annually to ensure that this clause is not inconsistent with development objectives and potential in the Whanganui district.

Rationale

The application of this limit will only apply to off-licences, as on-licences and club licences provide a controlled drinking environment that is sufficiently regulated by the Act and corresponding regulations. Supermarkets and grocery stores are exempt due to the provisions of the Act regulating the kinds of alcohol sold, display and single-area conditions.

[42] At the time this application was made, the number of eligible off-licences captured by this clause was already over thirteen. The applications non accordance with this LAP clause is raised by all three reporting agencies.

[43] This Committee must *have regard* to the relevant LAP (s.105 (1)(c)); and may refuse to issue a licence if, in its opinion, the issue of the licence would be inconsistent with the LAP (s.108). However, neither s.105 (1)(c) nor s.108 require the Committee to give effect to the LAP.

[44] Sections 105 and 108 of the Act provide the Committee with broad discretion that would include granting a licence that may, on face value, be inconsistent with a LAP provided that, in the Committee's view, *an active intellectual process in which relevant factors are afforded the decision makers genuine consideration.* (see High Court comments in *Vaudrey*)

[45] In having regard to the LAP the Committee is cognisant of the Authority's decision in *Shady Lady Lighting Ltd v Lower Hutt Liquormart Ltd [2018] NZARLA198* which was upheld on appeal and which is relied heavily on the High Court decision in *Christchurch MOH v J and G Vaudrey Ltd [2016] 2NZLR382*. At Para [66] the Authority held that -

(a) The phrase 'have regard to' bears its ordinary meaning;

(b) The decision maker must actively and thoughtfully consider the relevant matters;

(c) To do so requires the decision maker to correctly understand the matters to which he or she is having regard;

(d) The weight to be given to such matters is generally within the discretion of the decision maker;

(e) There will be cases where the matter(s) to which the decision maker is required to have regard are so fundamental or critical that they assume an elevated mantle.

[46] In relation to elevated mantle matters mentioned in (e) above, this Committee is of the view the object of the Act is of fundamental consideration, especially this particular applications likelihood to cause unsafe or irresponsible consumption of alcohol causing harm.

[47] Therefore the Committee does not agree with the Inspectors contention that the LAP should be given a 'higher level of regard' or elevated mantle. This is also based on our disagreement with the Inspectors other contention that failure to comply with the LAP 'cap' automatically concludes that the application fails to meet the object of the Act.

[48] The Committee also found the following comments of the High Court useful in *Christchurch MOH v J and G Vaudrey Ltd* [2015] NZHC2749:

[75] It is trite to say that having regard to something does not put the position as high as giving effect to it, which is synonymous with a directive to “implement”. Care must be taken not to elevate a requirement to “have regard to” to the standard of giving effect to. The standard “have regard to” has been described as a “jurisdictional prerequisite” to the exercise of a discretion, and involves an “active intellectual process” in which relevant factors are afforded the decision maker’s genuine consideration.

[76] In Canada it has been held that while the decision maker is not bound to follow something in relation to which it is required to have regard, it must consider that matter carefully in relation to the circumstances at hand, the objectives and statements as a whole, and what they seek to protect. In New Zealand it has been held there is not “any magic” in the words and that they require the decision maker to give genuine attention and thought to the required matters.

[77] This necessarily requires the decision maker to correctly understand the matters to which he or she is directed to have regard. However, in having regard, the weight to be given to statutory criteria will generally be a matter for the decision maker. Though in some cases it is apparent that there may be one or more factors which are “critical or fundamental” to the making of a decision. However, the requirement to have regard to a set of factors does not preclude having regard to other relevant matters, such as the purpose and object of an Act.

[49] The term “must have regard to” also appears in the Resource Management Act 1991, and similar statements have been made in terms of its application in that context. For example, in *Foodstuffs (South Island) Ltd v Christchurch City Council* the High Court states: *The requirement for the decision maker is to give genuine attention and thought to the matters set out in s.104, but they must not necessarily be accepted.*

[50] In the *M7 Limited 2021* application, Counsel for the Inspector submitted that this Committee “would have to identify some exceptional, or some unusual, or some distinctive feature, based on cogent and compelling evidence, to justify departure from the element in the LAP...”. The Committee agreed with Counsel to the extent that any departure from the LAP would need to be carefully justified and need to demonstrate how it is justified in terms of the object of the Act and risk of alcohol-related harm.

[51] In ‘having regard’ to the LAP the Committee’s starting position is that clearly the application is inconsistent with the plain words of Clause 2 of the LAP.

[52] All tri-agencies reports opposed the application principally on the basis of the application’s inconsistency or non-compliance with Clause 2 of the LAP. As stated in the *M7 Limited* decision this is not surprising given all submitters were party to developing the LAP, including the desire for a ‘Cap’ for off-licence type premises. Therefore, it would seem entirely appropriate and consistent that these submitters would oppose an application that is inconsistent with the LAP.

[53] Whilst the starting point is that the application is inconsistent with the LAP, as a District Licensing Committee we are an inquisitorial body with powers under the Commissions of Inquiry Act 1908. As such we endeavour to understand the intention of this specific clause of the LAP as it relates to this application before us, including against the backdrop of the object of the Act.

[54] Ultimately the LAP was Council's to develop and adopt on behalf of its community. The Committee has taken its time to consider all the background material and submissions provided to it to refine our understanding of the LAP, in particular the intent of the 'cap' clause as authorised by Council. In doing so the Committee is also mindful of the importance of maintaining the integrity of the LAP.

[55] The Committee is well aware of Council's stated views that the LAP 'cap' was not intended for boutique type off licences, including other views of the LAP previously noted in paragraphs [10] to [15].

[56] This Committee confirms its earlier views that the LAP is not determinative of the application in this instance.

Object of the Act

[57] Lastly, the Committee is required to consider the application in light of the object of the Act. That is having regard to the criteria in s.105, and having balanced the evidence before it, the Committee is required to consider whether the grant of the licence is consistent with the Act's object of minimising alcohol-related harm.

(1) The object of this Act is that —

(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—

(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and

(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[58] The High Court commented in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123 at [46], Referring to *Re Venus NZ Ltd* [2015] NZAR 1315 "... A licensing committee or Authority, after having regard to the criteria for renewal in s 131, is then to step back and consider whether there is any evidence indicating that granting the application will be contrary to the statutory object in s 4. Or, as Heath J articulated a "test": Although the "object" of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult

to see how the remaining factors can be weighed, other than against the “object” of the legislation. It seems to me that the test may be articulated as follows: is the Authority satisfied, having considered all relevant factors set out in s 105(1)(b)–(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act?” Our emphasis.

[59] Therefore, in this instance and in regards to this application, is this District Licensing Committee, having considered all the relevant factors set out in s 105(1)(b)–(k) of the 2012 Act and after considering all the evidence presented before it, satisfied that grant of this off-licence is consistent with the object of that Act?

[60] The Committee does not agree with the Inspectors contention that by association “to be in conflict with the LAP is to be in conflict with the object of the Act” on the basis both relate to alcohol related harm. Each singular element of s. 105 criteria must be evaluated and be given regard to in our decision and then we must step back and assess the application against s. 4 of the Act i.e. the object of the Act.

[61] It does not necessarily follow that if one or two aspects of the criteria (LAP included) ‘raise issues’ that the application fails the ‘Object’ test, nor vica versa. Ours is an evaluative exercise.

[62] The Committee heard at the hearing from everyone that this application is low risk. The Inspector contended that any additional licence will potentially provide for easier access to alcohol products and easier access to product can cause harm, even if in this case that increase is minimal. Whilst this argument has philosophical merit, if taken to its extreme would result in every agency report on every licence application being opposed.

[63] The natural and only conclusion to this thinking, is prohibition. The Committee is certain this was not the intention of Parliament when passing the Act, or the object of the Act. We note the purpose of the Act states that the ‘system’ should be ‘reasonable’ and further that the harm caused by excessive or inappropriate consumption of alcohol, should be minimised (s.4 Object). Not nullified or extinguished.

[64] In our view this application is at the very low end of potential harm anticipated under the Object of the Act.

[65] In our *M7 Limited decision dated 5 March 2021*, we said on the matter of ‘object of the Act’ –

[145] We agree with Council’s comment, as recorded in paragraph [45], that remote sales off-licences are inadvertently caught by the LAP and therefore the remote sales aspect of this application is considered as being at the lower risk of harm under the object of the Act given the specific regulatory controls for remote sales under s. 59 of the Act and given the lag time between online purchase and receipt of alcohol.

[146] In terms of development of the LAP in question, Council applied its lens across harm caused by alcohol in its community and concluded there was enough evidence to include limits on the number of off-licences in the District. Furthermore, Council agreed that exemptions for Supermarkets

and Grocery Stores were to be allowed due to the provisions of the Act regulating those kinds of alcohol sold, displayed and within single-area conditions i.e. s. 58, 112 and 114. To exempt Supermarkets and Grocery Stores, Council must have considered and determined that the harm from these two types of off-licences were sufficiently mitigated against to meet the object of the Act.

[147] The Committee heard enough evidence to suggest that the application before us, when considering the nature of proposed sales, type of alcohol, together with the limitations and control mechanisms proposed; is the same or less likely to cause harm when measured against Supermarkets and Grocery Store off-licences Council exempts from the 'cap'.

[148] Again, on balance and considering the evidence before it, the Committee is satisfied that grant of this licence is consistent with the Act's object

[66] The Committee reaches a similar conclusion for this application as well.

Conclusion

[67] In conclusion, for the reasons set out above, the Committee determines the application is not inconsistent with the object of the Act when taking into account the limited type and volume of alcohol (wine) being sold, its boutique and high end nature, and the remote sales aspect of the business.

[68] Whilst the application triggers the 'cap' clause of the LAP, the Committee does not believe this type of premises and operation was intentionally set out to be captured by the Council in its LAP. Coupled with the greater limitations and regulations associated with this type of application, we assess there's less potential for alcohol-related harm, than the exempted types of premises in the LAP.

[69] All reporting agencies acknowledge this application as low risk and less risk than a number of other types of licence applications they have not opposed over the years.

[70] Accordingly, the application by **Joamari Van Der Walt** for a new Off-licence (Remote Sales Wines) pursuant to s.100 of the Sale and Supply of Alcohol Act 2012 ("Act"), in relation to the premises situated at 181-183 Victoria Avenue, Whanganui, to be known as "Joa's Wines", **is approved.**

[71] The licence will not issue until the expiry of 10 working days from the date of this decision. That period is the time provided by s.155 of the Act for the lodging of a notice of appeal.

[72] The application is approved for one year and subject to the following conditions:

Applicant is authorised to sell by remote sale, alcohol (wine only) from the premises situated at 181-183 Victoria Avenue, Whanganui, to be known as “Joa’s Wines”, to any person for consumption off the premises and to deliver it or have it delivered by some other person somewhere else.

(a) Alcohol, of the wine kind, may be sold:

- **By Remote Sales: At any time on any day**

(b) No alcohol is to be **delivered** on:

**Good Friday, Easter Sunday, Christmas Day or before 1.00pm on Anzac Day, nor:
At any time after 11.00pm on any day and before 6.00am on the next day;**

**Or delivered generally outside the hours of Monday to Friday, between
7.00am and 5.00pm.**

(c) Pursuant to Regulations 14 and 15 of the Sale and Supply of Alcohol Regulations 2013:

- (i) The licensee must take reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale (and, if a person other than the buyer is to receive it, to verify that the receiver) is not under the purchase age.
- (ii) The licensee when selling alcohol by remote sale via the Internet must comply with any regulations made under the Act requiring information to be visible on the holder’s website when people browse, enter, or otherwise access it.
- (iii) The licensee when selling alcohol by remote sale by mail order must comply with any regulations made under the Act requiring information to be published in the holder’s catalogues.
- (iv) The licensee when selling alcohol by remote sale by telephone must comply with any regulations made under the Act requiring information to be given to callers.

DATED at Whanganui this the 17 day of October 2023



.....
Chairman – Stuart Hylton

036/OFF/002/2023

28 August 2023

The Secretary
Whanganui District Licensing Committee
P O Box 637
WHANGANUI 4540

Inspectors Report

Application for an Off – Licence (Section 40 Remote Sellers Endorsed) Under section 103 (2) of the Sale and Supply of Alcohol Act 2012 (the Act)

1. Introduction

This Inspector's report is prepared for the purpose of s.103 of the Act in the matter of an application made pursuant to section 100 by Joamari Hanneke van der Walt (Natural Person) for a **Section 40 Remote Sellers Endorsed Off Licence** in respect of premises situated on the first floor of 181-183 Victoria Avenue, Whanganui, and known as Joa's Wines. This application has attracted opposition from the Medical Officer of Health, New Zealand Police and one public objection (the 'Safer Whanganui' Alcohol and Other Drug Reference Group). The Inspector **opposes** this application.

The Inspector's position is formed on consideration of sections 105(1)(a) and (c), Sale and Supply of Alcohol Act 2012.

- The Object of the Act. The Inspector concludes that where there is conflict with the purpose of the Local Alcohol Policy (LAP) there is conflict with the object of the Act. Namely; to minimize alcohol related harm.
- The Inspector concludes that the (LAP) provides for a maximum of Fourteen 'Off Licence' premises (excluding Supermarket and Grocery stores) within the Whanganui District. That limit is already achieved meaning in terms of the LAP, it is not appropriate for Whanganui to accommodate this application for an additional off licence.
- The Inspector concludes that where this application is granted it will provide a precedent within the Whanganui District and that further Remote Style-Off licences may follow despite the LAP/CAP.

2. Applicant Details

2.1 Name:	JOAMARI HANNEKE VAN DER WALT
2.2 Status:	INDIVIDUAL (NATURAL PERSON).
2.3 Date of Incorporation:	NOT APPLICABLE
2.4 Address for Service:	6 GILLIGAN CLOSE, COLLEGE ESTATE, WHANGANUI 4500
2.5 Directors:	NOT APPLICABLE
2.6 Shareholders:	NOT APPLICABLE

3. Proposed Activity

3.1 Principle activity:	REMOTE STYLE – OFF-LICENCE.
3.2 Proposed trading hours:	MONDAY – FRIDAY FROM 7:00AM TO 5:00PM
3.3 Proposed trading name:	JOAS WINES
3.4 Designation sought:	RESTRICTED
3.5 Manager(s) to be employed:	JOAMARI HANNEKE VAN DER WALT
3.6 Risk rating:	LOW

4. Premises Details

4.1 Physical address:	FIRST FLOOR, 181 – 183 VICTORIA AVENUE, WHANGANUI
4.2 Premises owner:	STEPHEN BRANDON PATRICK SHAUN (PADDY) O'DONNELL
4.3 Owners consent:	YES

The proposed premises is located in an area of commercial and retail buildings above what is presently known as Pita Pit, 181-183 Victoria Avenue, Whanganui. The proposed premises will not provide for public use or occupancy but will be used to store and stock wine supplies for remote distribution. Distribution from the site will likely occur sometime after attendance at a wine appreciation/education event provided by the applicant or as maybe remotely ordered. A Certificate of Compliance has not been included with the application file although a response provided to the Inspector at a meeting with John Sherwood (Building Control Officer – Whanganui District Council) provides an assessment that the proposed use does not require formal consideration as to a 'Change in Use' and as applied for complies with the Building Act 2004. The District Planning Team (Senior Planner Carolyn McIntyre) confirms compliance with the Resource Management Act 1991.

The premises is located within an area where alcohol is permitted for sale but is banned for consumption in public spaces under the Alcohol Control Bylaw 2016. The requirement for designation does not apply in this matter. The proposed premises is located within the Central Business District and apart from a sign on the entry door the premises will not be promoted or visible to the public as a licensed premises. Other licensed premises are located nearby, namely; The Sportz Bar, Shotz Bar, the Grand Hotel and various licensed restaurants (Thai Express, Tasty India, Tandoori Bite and Banh Mi Craft).

The premises is part-owned by the applicant's partner who provides the premises as part of their combined partnership.

The defined area is more precisely identified on the plan date stamped as received by the Whanganui District Council on 27 July 2023. The premises is a north facing office space located on the first floor of a commercial building. It will be used only for storage and then distribution of wine as required. Wine purchases are made by On-Line enquiry or following orders made at wine tasting experiences provided by the applicant and for delivery (off-site) at a later date.

The principal entrance is accessed from Southern aspect of the building (and via stairs to the first floor) and comes off the car-parking area of St Hill Street (Rear entrance into the building). Owners consent to obtain and operate under an Off Licence was supplied as part of the Off Licence application (See Photo's Appendix 'C').

Environmental Scan: - The New Zealand deprivation index (NZDep2018) combines 2018 census data relating to income, home ownership, employment, qualifications, family structure, housing, access to transport and communications to give a measure of the socioeconomic deprivation of the area. Socio-economic deprivation increases the likelihood of experiencing alcohol related harm, at least in part due to consumption patterns and rates of alcohol-use disorders. Moreover, emerging evidence suggests alcohol-related harm may actually drive social and economic inequalities.

(See Appendix 'B') - The "NZDep2018 Index of Deprivation" (deprivation index) score for the address is 8. A score of 1 means the area is in the **least deprived** 10 per cent of areas in New Zealand. A score of 10 means the area is in the **most deprived** 10 per cent of areas in New Zealand. In this matter a score of 8 means the area is above average and leaning to high for being deprived.

However, in this matter alcohol is to be remotely sold locally i.e. throughout Whanganui, and potentially New Zealand wide. Whanganui specifically, as an area, shows a wider spread for risk but includes deprivation somewhat higher (10) than the specific address and it is into that demographic that alcohol is likely, or additionally, to be provided, A deprivation score of 10 is the highest level of deprivation and signifies the potential for the highest risk and harm.

Nearby sensitive sites include City College and Trinity Methodist Church.

Whanganui as an area, and on a New Zealand average, is at higher if not highest risk of experiencing alcohol related harm.

5. Inspection

An inspection of the licensed premises was most recently undertaken on the afternoon of 4 August 2023. Photos are entered into the file.

No issues were identified during that inspection that would prevent the granting of the application.

6. Public Notification and Objections

Details of the application have been published in the prescribed form in the Whanganui Chronicle on 1 August 2023 and again on 8 August 2023.

One objection or notice of desire to be heard was received during the fifteen working day period ending 22 August 2023 (Inclusive). In this matter the 'Safer Whanganui' Alcohol and Other Drug Reference Group is a collaborative network of organisations that represent the continuum of alcohol-related harm; from health promotion/prevention through to treatment. While not looking to advocate this objector's position it appears to the Inspector that 'the Safer Whanganui Alcohol and Other Drug Reference Group provide that there is conflict with the object of the Act,

to minimize alcohol related harm and that in regard to the LAP that the Off-Licence limit is already achieved and the grant of a licence in this circumstance would be in excess of that limit.

7. New Zealand Police

In accordance with section 103 (3) of the Act, on 8 August 2023 NZ Police informed the Inspector (by email) that they will provide formal opposition to the application. They inform that their matters in opposition to the granting of the application are related to the limits imposed by the LAP. Their report will be provided to the file on receipt.

On 28 August 2023 the NZ Police report was entered into the file. That file shows NZ Police opposition to the application as noted.

8. Medical Officer of Health

On 15 August 2023 the Medical Officer of Health provided an opposition to this application in accordance with section 103 (3) of the Act, that formal opposition to the application is made based on the LAP and in particular the limits of the CAP.

9. Building Certificate

The proposed premises is not for public use. For the purpose of s.100 (f) of the Act a meeting with John Sherwood (Building Compliance Officer, Whanganui District Council) confirms that the proposed use of the premises complies with the Building Act 2004 and the Building Code in force under that Act.

10. Planning Certificate

The proposed premises is not for public use. For the purpose of s.100 (f) of the Act the Inspector met with Carolyn McIntyre (Senior Planner, Whanganui District Council) on 8 August 2023 and confirmed that the proposed use of the premises complies with the Resource Management Act 1991 and with the Whanganui District Plan.

11. Trading Hours

Specific to this application:

Section 40 remote sellers:

- 1) must deliver the alcohol they sell to somewhere else
- 2) must appoint a manager but do not have to have a manager on duty at all times
- 3) are exempt from signage requirements for hours of business and the display of licences at the physical premises to which the licence is issued
- 4) must not promote or advertise discounts on alcohol in a way that leads people, or is likely to lead people, to believe that the price is 25% or more below the price at which alcohol is ordinarily sold otherwise than in the catalogue* or similar price list*.

The delivery hours described in the application are as follows:

MONDAY – FRIDAY FROM 7:00 AM TO 5:00 PM

The trading hours described in the application relate to delivery hours and are less extensive than the default National maximum trading hours prescribed at section 43 of the Act and appears to be suitable for the activity being proposed.

Remote sales Off-Licensees are able to sell 24 hours a day, seven days a week, 365 days of the year. However, they cannot deliver:

- a) Between 11:00pm and 6:00am the next day; or
- b) On Good Friday, Christmas Day or before 1:00pm on Anzac Day.

The Inspector makes this comment when looking at the proposed hours - The applicant will not be able to remove alcohol from the proposed premises for events ahead of any orders. This includes removing alcohol to take to an educational event. Orders need to be placed remotely and then processed for package and delivery post an event. This will require strict observance by the applicant. It may be that after the first year of practice (should a licence follow) that the hours for delivery require review. In this matter the applicant might follow-up wine appreciation events with delivery up to 11:00pm where presently delivery ceases at 5:00pm. These will be matters the applicant will need to consider. These matters have been discussed with the applicant and the Inspector understands that the matter of service and operational hours may be reconsidered following the period of the first licence, if approved.

12. Assessment Criteria

Object of the Act

Section (4) Object of the Act states:

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

The applicant has provided an explanatory letter (application) to the District Licensing Committee (DLC) including a 'My Values for the Service' statement. Additionally, remote sales require formal processes (imposed by Act and Regulation) being in place regarding the sale and supply of alcohol to prohibited persons etc. Where these are always followed, the object of the Act should be able (for these matters) to be met. The applicant is a certified manager with the prerequisite Licensed Controller's Qualification.

In addition to the requirements set out in the Sale and Supply of Alcohol Act 2012 (Sections 4 and 105) the applicant is aware of, and in agreement to those conditions provided by the Sale and Supply of Alcohol Regulations 2013 (SSA Regulations 2013):

- 1) Section 14 (Reasonable Steps to Verify that People not Under Purchase Age) and
- 2) Section 15 (Information to be Provided by Remote Sellers) and
- 3) Sale and Supply of Alcohol Act 2012 Section 49 (Remote Sales Exempted from Trading Hours Restrictions – (See Appendix 'A') and;
- 4) Sale and Supply of Alcohol Act 2012 Section 59 (Requirements Relating to Remote Sales by Holders of Off-Licences – (See appendix 'A')

The applicant will have mechanism in place to ensure compliance.

The following is a summary of the requirements by Act or Regulation. These include (but are not limited to):

- (a) Remote sales may be made at any time on any day.
- (b) No delivery of remote sales between 11pm and 6am or at any time on Good Friday or Christmas Day, or before 1pm on Anzac Day.
- (c) The Licensee must take reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale (and, if a person other than the buyer is to receive it, to verify that the receiver) is not under the purchase age.
- (d) The Licensee must display the information set out in regulation 15 SSA Regulations 2013. For an internet seller this means displaying a copy of their licence in a prominent place on the internet site and the licensee's name, licence number and licence expiry date (obviously all this information is available on the licence). The same information needs to be on any receipt issued.
- (e) A legible image of the remote seller's licence or a clearly identified link to such an image must be displayed on any internet site used to sell alcohol. This includes any additional website the licensee may be using to sell alcohol.

Therefore, and having regard to the above (s4), I turn to consideration of s105 (1)(a) of the Act-

I conclude, in an unsophisticated way, that any additional licence provision (not just Off-Licences) will potentially provide for easier access to alcohol products. Thereby; providing an easier access to product that can cause harm,

In consideration of this application specifically, and to making an assessment of the applications merits or otherwise, I conclude that any increase to harm would likely be minimal in the circumstances proposed in this application. To assess otherwise would be to promote a philosophical view. I am unable to conclude an increase of harm as being unequivocal, at least, in regard to s105(1)(a) of the Act. The unsophisticated premise that any extra licence for alcohol purchase provides for an easier access to a harmful ('low harm' does not equal 'no harm') product is the basic ground for the opposition I provide in respect to s105(1)(a) of the Act.

However, in regard to s105(1)(c) of the Act I conclude more definitely. In this matter specifically I submit that the Local Alcohol Policy is relevant and that a higher level of regard should be given when considering the application.

Where the Local Alcohol Policy and the CAP specifically represent the sum of the views expressed and the will of the community specifically, on this basis alone, I submit that the application does not meet the object of the Act.

I am not aware of a previous similar application set in the context of a LAP and CAP. Neither am I able to find case-law that entirely and helpfully relates. A decision by the District Licensing Committee in favour of the applicant has the potential to set a precedence that provides a pathway for more and similar applications that confront a LAP and any CAP.

The Inspector is aware of another potential similar application that may progress following the determination by the District Licensing Committee in this matter.

Suitability of the Applicant:

The applicant is a Solicitor in good standing, and subject to many layers of professional scrutiny. The applicant has a significant personal interest in ongoing compliance and safety and thereby, this license's success if issued. The applicant has significant experience related to licensed events (Special Licences for On Licence events) and has extensive International hospitality and industry experience particularly related to wine.

The applicant has supplied significant references as to qualification, skill and standing.

The applicant has willingly and generously worked with the Inspector in regard to consideration of this application. The applicant is assessed to be a suitable person (s105(1)(b)) to hold an Off-Licence. No known concern is evidenced. I believe the applicant is suitable and therefore I do not challenge her suitability. I consider that any licence issued in this circumstance would be professionally managed by the applicant.

The on-line profile is yet to be completed. That on-line presence is required to promote those conditions imposed by the Regulations.

Local Alcohol Policy (LAP):

The application is **NOT** in general accordance with the Local Alcohol Policy (LAP). In this regard the cap limiting Off-Licence sites will be exceeded (18) where the issue of a licence follows.

On 2 September 2019 the Whanganui Local Alcohol Policy 2019 (LAP) came 'into force' excluding clauses three and four which came in force on 2 December 2019.

The purpose of the Policy is-

To govern the sale, supply and consumption of alcohol so that it is undertaken safely and responsibly.

To minimise alcohol-related harm in the Whanganui District.

To support the welfare of our Community and protect our people from alcohol-related harm.

To reflect our local communities' character, amenity, values, preferences and needs.

The development of the LAP was extensive and followed a special consultative procedure. Conditions were therefore developed in response to the evidence of alcohol related harm in Whanganui and provided as a tool to support the object and purpose of the Act.

Clause two- District wide limit on off-licensed premises limits the number of off licences (excluding supermarket and grocery stores) in Whanganui to 13 which was the number of applicable off licences at the time of drafting. During the final stages of drafting the LAP and before implementation, a 14th off licence was able to be issued meaning there are 14 premises within the Whanganui District that are subject to the cap:

Premises Name	Address	Type	Cap #
Big Barrel Riverside	33 Somme Parade	Bottlestore	1
Big Barrel Victoria Avenue	379 Victoria Avenue	Bottlestore	2
Big Barrel Whanganui East	59a Jones Street	Bottlestore	3
Big Barrel	94 Puriri Street	Bottlestore	4
Blackbull Liquor	1 Polson Street	Bottlestore	5
Blackbull Liquor	129 Duncan Street	Bottlestore	6
Blackbull Liquor	13 Purnell Street	Bottlestore	7
Blackbull Liquor*	446 Victoria Avenue	Bottlestore	8
Blackbull Liquor	43a Dublin Street	Bottlestore	9
Liquorland	291 - 293 Victoria Avenue	Bottlestore	10
Roots Brewing Co.	43 SH3	Cellar Door	11
Windermere Gardens	313 SH3 North	Cellar Door	12
Wanganui East Club	101 Wakefield street	Club Off Licence	13
Castlecliff Club	4 Tennyson Street	Club Off Licence	14
M7	379 Victoria Avenue	Off Licence	15
Lads Brewing	1 Taylor Street	Off-Licence	16
Whanganui Distilling Company	454 State Highway 4	Off-Licence	17

* Blackbull Liquor 446 Victoria Avenue was issued an initial Off-licence on 31 January 2019.

This application is for a type of licence under Section 32(1)(c)(ii) for which the cap applies. The limit is already met meaning in terms of the LAP any additional licence will be contrary to the intent and purpose of the policy.

This application is made for a new off licence pursuant to Section 32(1)(c)(ii) and Section 40, Sale and Supply of Alcohol Act 2012. Such an application requires the District Licensing Committee “to have regard to” LAP and in

this instance the cap prescribed in Clause two of the Local Alcohol Policy 2019. The Whanganui District already exceeds the prescribed cap by having 17 Off-Licence premises.

At this time specifically, this report is written within the context of the progressing Sale and Supply of Alcohol (Harm Minimisation) Bill, which seeks to empower communities to have a greater say on alcohol availability in their neighbourhood and to be heard in local alcohol licensing decisions to protect them from the harms associated with alcohol. That Bill is underpinned by recommendations from previous Government-commissioned evidence-based reviews (including the 2010 Law Commission, 2014 Ministerial Forum on Alcohol Advertising and Sponsorship, 2018 Mental Health and Addiction Inquiry, 2022 Cancer Control Agency Cancer Prevention report) and by Crown agencies (2021 Alcohol Position Statement of the collective 20 District Health Boards, 2022 Te Hiringa Hauora/Health Promotion Agency Position Statements). To enable this, the Sale and Supply of Alcohol Act 2012 permitted local councils to develop a local alcohol policy (LAP) for their district. Whanganui District has enacted a Local Alcohol Policy. Regardless of any final Political positioning or how that is reflected in any future changes in law, it is the Inspector's position that matters related to Off-Licence applications (of all types) and engagement with conditions of the LAP are sufficiently important to warrant the fullest regard of the Whanganui District Licensing Committee .

I submit that the purpose of the LAP and the Object of the Act share the common goal to minimize alcohol related harm and that in this matter, to be in conflict with the LAP, is a potential for conflict with the object of the Act. In this matter and as noted in the section related to 'Assessment Criteria' and specifically s105(1)(c) I oppose the application on this matter.

Premises Design and Layout:

A floor plan was supplied with the application. The inspector has no concerns relating to the design and layout of the premises. The premises is not available for public use. In this matter no designation is required.

Details of Other Goods and Services Provided:

The applicant provides professional wine related appreciation experiences that are provided for by way of Special On-Licences.

Sale and supply of alcohol is likely to follow such events and then (hopefully for the applicant) result in follow up remote sales by internet order.

The proposal relates to wine sales only.

Staff Training and Systems:

The applicant is a Licensed Manager with the prerequisite Licence Controllers Qualification. She will be the sole operator for this venture. The applicant is professionally qualified and registered in law and legal practice and is required to maintain a contemporary understanding and practice in matters of law and legal practice. As such the applicant is subject to layers of assessment and the maintenance of contemporary knowledge, expertise and registration.

Amenity and Good Order:

The licensed premises is not accessible to the public. It is not promoted or advertised as a licensed premises. Nearby sensitive sites include City College and Trinity Methodist Church. That there is no shop frontage and obvious presence mitigates exposure in the Inspector's opinion.

It is therefore my assessment that the issue of this licence would not have any adverse effects on the nearest church, school, hospital, residential area or closest licensed premises. There is no reason to believe that the amenity and good order of the locality would be likely to decrease, by more than a minor extent, if the licence was to be granted.

Summary

I make the following comments:

- I oppose the application on the grounds s105(1)(a) - 'harm caused by the excessive or inappropriate consumption of alcohol should be minimised' and; (c) that the The Local Alcohol Policy (LAP) provides for a maximum of Fourteen 'Off Licence' premises (excluding Supermarket and Grocery stores) within the Whanganui District. That limit is already achieved (and exceeded) in terms of the LAP. Approval of this application will provide for 18 Off-Licences in the Whanganui District.
- This application if granted may provide a potential precedent within the Whanganui District for additional similar off licence applications despite the cap limit.
- Opposition for this application is provided by NZ Police in accordance with the matters presented in this report by the Inspector.
- Opposition for this application is provided by the Medical Officer of Health in accordance with the matters presented in this report by the Inspector.
- Opposition for this application is provided by the 'Safer Whanganui' Alcohol and Other Drug Reference Group in what appears to be in accordance with the matters presented in this report by the Inspector.

Further:

- There is nothing detrimental known about the character or suitability of the applicant. The Police have reported with no matters raised with respect to suitability.
- The days on which and hours during which the applicant is proposing to sell and supply alcohol are consistent with the type of licence applied for.
- The premises is not available for public use
- The design and layout of the premises is clearly defined on plans supplied with the application. The design and layout appears suitable.
- The applicant is not engaged in, and does not propose to become engaged in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food or goods in accordance with being a Remote seller.
- There is no suggestion that the amenity and good order of the locality is likely to be reduced, to more than a minor extent, by the effects of the issue of the licence.

- There is no suggestion that the amenity and good order of the locality are already badly affected by the effects of the issue of existing licences.
- Information supplied by the applicant suggests that there are appropriate systems, staff, and training to comply with the law.
- The application is complete.
- No other matters have been raised by the reporting agencies in any reports made pursuant to section 103 of the Act.

13. Licence conditions

The principle activity to be conducted under the licence is the operation of a Remote Sellers Endorsed Off-Licence. This is opposed by the Inspector.

Should the District Licensing Committee conclude these matters in favour of the applicant I provide the following conditions for consideration noting an endorsement for remote sales and for wine only (Fruit, Vegetable and Grape) where the Sale and Supply of Alcohol Act 2012 s58(3)(a)(b)) defines 'fruit or vegetable wine and grape wine to be:'

(3) In subsection (1),—

appropriate New Zealand food standard, in relation to any kind of alcohol, means the standard for alcohol of that kind that is for the time being in force under the Food Act 2014

beer means the product, characterised by the presence of hops or preparations of hops, prepared by the yeast fermentation of an aqueous extract of malted or unmalted cereals, or both

fruit or vegetable wine—

(a) means the product prepared from the complete or partial fermentation of any or all of the following:

(i) fruit, vegetables, grains, and cereals:

(ii) preparations of fruit, vegetables, grains, and cereals; but

(b) does not include grape wine

grape wine means the product of the complete or partial fermentation of fresh grapes, or a mixture of that product and products derived solely from grapes:

This Licence is to be endorsed **Section 40 applies**

- (a) Alcohol (Wine only – Fruit, Vegetable and Grape) may be sold from the premises at any time on any day and delivered somewhere else for consumption off the premises
- (b) No alcohol (Wine only – Fruit, Vegetable and Grape) is to be delivered from the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00pm on Anzac Day
- (c) Alcohol (Wine Only – Fruit, Vegetable and Grape) may only be delivered from the premises, and delivered somewhere else, for consumption off the premises, on the following days and during the following hours:
Monday to Friday 7.00am to 5.00pm.

- (d) There must be a certificated manager properly appointed to the business by the licensee.
- (e) The licensee must state the licensee's name, licence number and date the licence expires:
 - i. On every receipt issued for alcohol sold remotely;
 - ii. In every catalogue, if alcohol is sold by remote sale using catalogues;
 - iii. On the internet site, if alcohol is sold by remote sale using an internet site;
 - iv. If alcohol is sold by remote sale using an internet site, the site must also display either a legible image of the licence, or a clearly identified link to such an image.
- (f) The Licensee must follow the procedures set out in Regulation 14 and 15 of the Sale and Supply of Alcohol Regulations 2013 to ensure the neither the purchaser nor the person to whom alcohol is delivered is a minor.

14. Recommendation

It is my recommendation that the Whanganui District Licensing Committee determine this application following a hearing of the Whanganui District Licensing Committee.

With respect



.....
Steve Turrey
District Alcohol Licensing Inspector

APPENDIX 'A'

SSAA 2012 Section 49

(1) A remote sale of alcohol may be made at any time on any day.

(2) Subsection (1)—

(a) overrides the restrictions on sales imposed by [sections 46](#) and [48](#); but

(b) is subject to the restrictions on delivery imposed by [sections 48](#) and [59\(1\)](#).

SSAA 2012 Section 59

(1) The holder of an off-licence must ensure that any alcohol sold by remote sale is not delivered to the buyer (or to any other person on the buyer's behalf) at any time after 11 pm on any day and before 6 am on the next day.

(2) Subsection (1) applies whether the alcohol is delivered by the seller or by some other person.

(3) The holder of an off-licence must take reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale (and, if a person other than the buyer is to receive it, to verify that the receiver) is not under the purchase age.

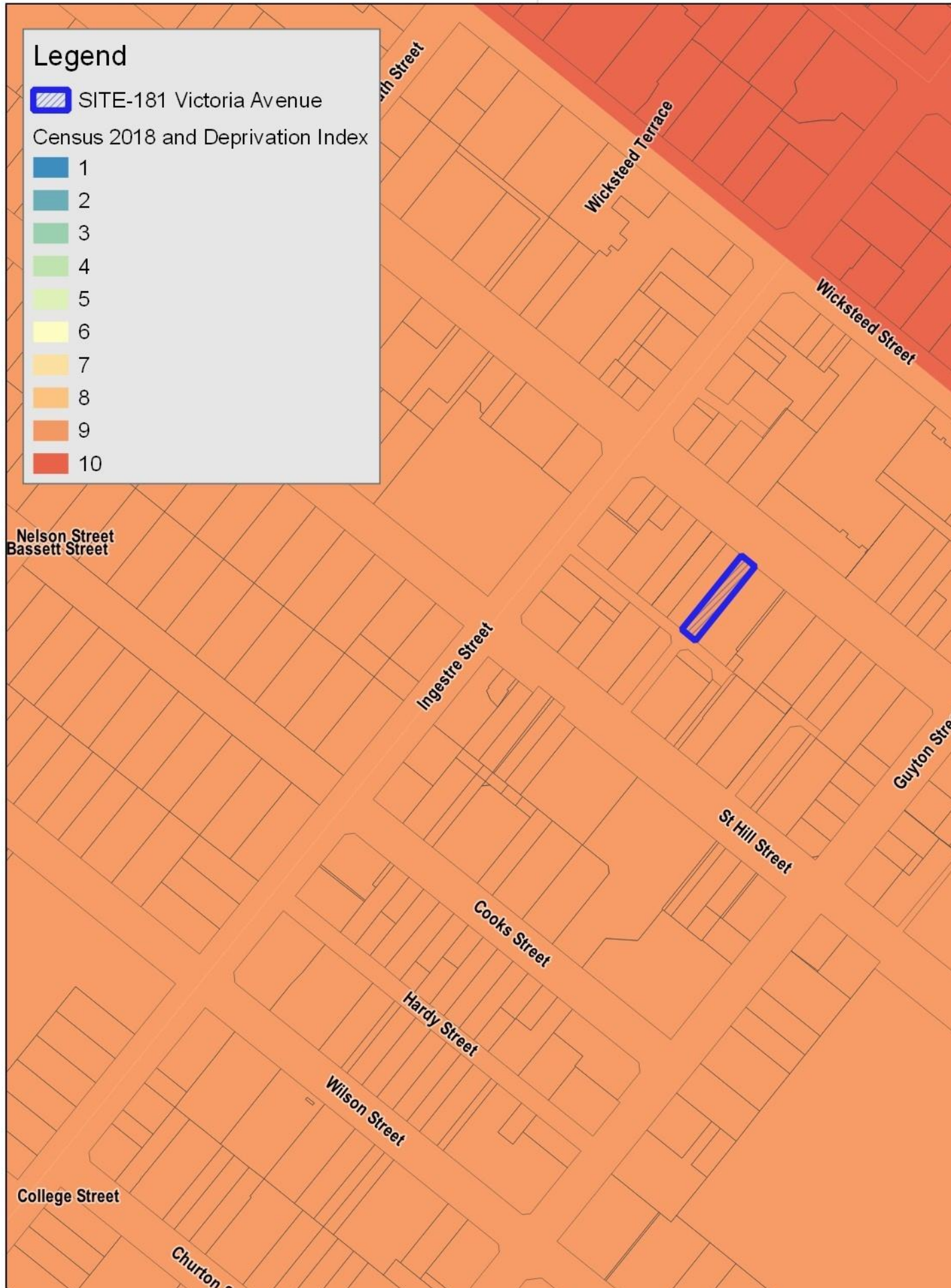
(4) The holder of an off-licence takes reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale is not under the purchase age if he or she complies with a procedure declared by regulations made under this Act to be a reasonable procedure for the purposes of complying with subsection (3).

(5) The holder of an off-licence who sells alcohol by remote sale via the Internet must comply with any regulations made under this Act requiring information to be visible on the holder's website when people browse, enter, or otherwise access it.

(6) The holder of an off-licence who sells alcohol by remote sale by mail order must comply with any regulations made under this Act requiring information to be published in the holder's catalogues.

(7) The holder of an off-licence who sells alcohol by remote sale by telephone must comply with any regulations made under this Act requiring information to be given to callers.

Appendix 'B'



Appendix 'C'











Sophie Billows

From: THOMSON, Alan (Keith) <Alan.Thomson@police.govt.nz>
Sent: Monday, 28 August 2023 8:39 am
To: Steve Turfrey
Subject: Emailing: Joamari Van Der Walt New Off License
Attachments: Joamari Van Der Walt New Off License.docx

Good morning, Steve

Please find attached

Thanks Keith

=====
WARNING

The information contained in this email message is intended for the addressee only and may contain privileged information. It may also be subject to the provisions of section 50 of the Policing Act 2008, which creates an offence to have unlawful possession of Police property. If you are not the intended recipient of this message or have received this message in error, you must not peruse, use, distribute or copy this message or any of its contents. Also note, the views expressed in this message may not necessarily reflect those of the New Zealand Police. If you have received this message in error, please email or telephone the sender immediately

7th August 2023

The Secretary
District Licensing Committee
Whanganui District Council
P O Box 637
Whanganui 4500

Dear Sir/Madam

APPLICATION FOR NEW OFF LICENCE

JOA'S WINES

(Section 40 Remote Sellers Endorsed)

APPLICANT:

PREMISES: 181-183 Victoria Avenue, Whanganui

Please receive this report on the above applicant prepared under the provisions of the Sale and Supply of Alcohol Act 2012

This report is to advise that our investigation into this application is complete and Police wish to oppose this application for a New OFF licence for the following reason:

Licence may be refused if contrary to to the Local Alcohol policy

Sale and Supply of Alcohol Act 2012

Section 105 - Criteria for issue of licences

(1)(c) – Any relevant local alcohol policy

Section 108 – Licence may be refused if contrary to local to local alcohol policy

The licensing authority or licensing committee concerned may refuse to issue a licence if—

(a) there is any relevant local alcohol policy; and

(b) in its opinion, the issue of the licence, or the consequences of the issue of the licence, would be inconsistent with the policy.

In particular this application is in conflict with the Whanganui Council's Local Alcohol policy 2019

2. District-wide limit on off-licensed premises

Policy

2.1. From the date this policy comes into force, no further new off-licences will be considered appropriate under this policy if the grant of that further new off-licence would bring the total number of off-licences in the region to 14 or more.

Yours faithfully

Senior Constable Keith Thomson
Alcohol Harm Prevention Officer
New Zealand Police

Sophie Billows

From: Neralee Malcolm <Neralee.Malcolm@midcentraldhb.govt.nz> on behalf of Liquor Licence <Liquor.Licence@midcentraldhb.govt.nz>
Sent: Tuesday, 15 August 2023 12:20 pm
To: Sophie Billows; alan.thomson (alan.thomson@police.govt.nz); Liquor Licence; ! District Licensing Committee Administration
Cc: EnviroHealth; Jill Job; John Hotter (john.hotter@fireandemergency.nz)
Subject: RE: WG2G OFF-002-2023 Application for Off Licence for Joamari Hanneke van der Walt
Attachments: Opposed Joa's Wines OFF.pdf
Importance: High
Categories: Sophie

Please find attached our Opposition for the attached remote OFF licence application.



Neralee Malcolm

Administration Compliance Support Officer | Whanganui

waea pūkoro: +6463481771 | imēra: Neralee.malcolm@midcentraldhb.govt.nz
Lambie Building | Whanganui Hospital, 100 Heads Road, | Private Bag 3003, Whanganui 4500



Te Whatu Ora
Health New Zealand

Te Whatu Ora – Health New Zealand
[TeWhatuOra.govt.nz](https://www.TeWhatuOra.govt.nz)

CAUTION: This email is confidential and may be legally privileged. If received in error please destroy it and immediately notify the Sender. Thanks.

From: Sophie Billows <Sophie.Billows@whanganui.govt.nz>
Sent: Friday, 28 July 2023 08:59 AM
To: alan.thomson (alan.thomson@police.govt.nz) <alan.thomson@police.govt.nz>; Liquor Licence <Liquor.Licence@midcentraldhb.govt.nz>
Cc: EnviroHealth <EnviroHealth@whanganui.govt.nz>
Subject: WG2G OFF-002-2023 Application for Off Licence for Joamari Hanneke van der Walt

OFF-002-2023 OFF Licence: Joamari Hanneke van der Walt

Would you please provide your report/recommendation on the attached application.

15 August 2023

The Secretary
District Licensing Committee
Whanganui District Council
P O Box 637
Whanganui 4500

Dear Sir/Madam

RE: SALE AND SUPPLY OF ALCOHOL ACT 2012 - APPLICATION FOR NEW REMOTE OFF LICENCE - Joamari Hanneke van der Walt Ref# OFF/002/2023

I refer to your request received by our office on 28 July 2023, together with the application for a New Remote Off-Licence for the above applicant, trading as Joa's Wines situated at First Floor, 181-183 Victoria Avenue Whanganui.

On 9 August 2023, Elizabeth Baty and myself visited the above premises on behalf of the Medical Officer of Health, and met with Joamari Hanneke van der Walt. During the visit the premises was assessed for compliance with the requirements of the Sale and Supply of Alcohol Act 2012, any licence conditions and strategies used to ensure a social responsibility in the supply of alcohol for offsite consumption.

This report advises that our investigation into the applicant/premises is complete and that the medical officer of Health wishes to oppose this application for a new Remote OFF licence for the following reason:

- **Licence may be refused if contrary to local alcohol policy (section 108)**
In particular, the applicant is in conflict with Policy 2.1 of the Local Alcohol Policy: "From the date this policy comes into force, no further new off-licences will be considered appropriate under this policy if the grant of that further new off-licence would bring the total number of off-licences in the region to 14 or more..

Please be advised that the application is **opposed**.

Yours faithfully



Jill Job, Compliance Officer – Public Health
For Dr Patrick O'Connor
Medical Officer of Health
National Public Health Service | Central Region
Te Pae Hauora o Ruahine o Tararua
Cc New Zealand Police, Fire and Emergency NZ

Public Health Centre, Health Protection, Lambie Hostel | Private Bag 3003, Whanganui 4541

Phone: 06 348 1775; E-mail: PHUWang@midcentraldhb.health.nz

**Application for
Off licence or renewal**
Section 100 and 127(2), Sale and Supply of
Alcohol Act 2012



**WHANGANUI
DISTRICT COUNCIL**
Te Kaunihera a Rohe o Whanganui

Fill this form out with the assistance of the Application for the Off-licence Guide—numbers on this form relate to explanatory notes in the guide.

To the Secretary
District Licensing Committee
Whanganui District Council

Please tick where applicable

Application for

Off Licence

Renewal of Off Licence

Endorsements [state (by type)
every endorsement sought or
sought to be renewed]

Remote Sales

1. Details of applicant(s)

1a. Full legal name or names to be
on licence [whom ever will profit
from the sale of liquor]

Joamari Hanneke van der Walt

1b. Licence held for any premises
or conveyance concerned?

Yes

No

Kind of licence

1c. Occupation (if applicant is an
individual)

Solicitor

1d. Date of birth
(if applicant is an individual)

12 / 08 / 1981

1e. Status of applicant

Natural person

Private company

Government department or other instrument of the Crown

Licensing Trust

Partnership

Club

Incorporated Society

Territorial authority

Trustee

Public company

Body Corporate

1f. Postal address (for service of
documents)

6 Gilligan Close, College Estate
Whanganui 4500

1g. Contact person (during normal
office hours) and date of birth

Joamari Hanneke van der Walt

12 / 08 / 1981

1h. Contact numbers

021 0563 198

Phone

Mobile

Fax

1i. Email/website address

joamari@joaswines.co.nz

1j. Has the applicant been convicted of any offence?
(Includes traffic offences, driving offences involving
drink or drugs, but not parking infringements)

Yes

No

If YES, what are the details of each offence?

Nature of offence	Date of conviction	Penalty suffered

2. Business details where the applicant is a company

2a. Date of incorporation

2b. Place of incorporation

2c. Full details of each director and the secretary

Full Name

Full Name

Address

Address

Date of Birth

/ /

Date of Birth

/ /

Place of Birth

Place of Birth

Position Held

Position Held