

11 May 2018

Dear [REDACTED]

Local Government Official Information and Meeting Act (LGOIMA) request for information about the draft alcohol policy

I am writing in response to your LGOIMA request dated 11 April 2018, asking for minutes of any and all meetings held between the DCC, including both staff and elected members relating to the draft alcohol policy. You asked that this includes any minutes, emails, notes of any meetings or reports of any meetings between Progressive Enterprises and Foodstuffs and the DCC and / or Kevin Mechen where the views about closing and opening hours Progressive and Foodstuffs were expressed.

We have searched through our documentation, and attach for your information the following:

- Minutes of the Local Alcohol Policy hearing –
 - noting page 5, Kate Porter for Progressive
 - noting page 32, Greg Harford for NZ Retailers (where Foodstuffs is mentioned).
- Legal submission from Progressive at the appeal hearing, with reference to 4.10 re closing hours.
- Transcript from the appeal hearing where there are several references made by Progressive re the acceptance of the 10.00 p.m. closing, including:
 - Page 9
 - Page 11
 - Page 22
 - Page 45
- A presentation made to Foodstuffs in August 2017. This meeting was not minuted.
- An email from Foodstuffs dated 1 September 2017.
- An extract from the minutes of an ELT meeting.

Yours sincerely



Sharon Bodeker
Team Leader Civic

MINUTES OF A MEETING OF THE DRAFT LOCAL ALCOHOL POLICY HEARINGS COMMITTEE, HELD IN THE EDINBURGH ROOM, MUNICIPAL CHAMBERS, ON 11,12,13 AND 19 NOVEMBER 2014 AND 2, 3 AND 4 DECEMBER 2014 COMMENCING AT 9.03 AM

PRESENT:

Mayor Dave Cull (Chairperson), Councillors Aaron Hawkins, Mike Lord, Jinty MacTavish, Neville Peat, Andrew Whiley and Lee Vandervis

IN ATTENDANCE:

Simon Pickford (General Manager Services and Development), Sandy Graham (Group Manager Corporate Services), Adrian Blair (Acting Manager Regulatory Services), Kevin Mechen (Liquor Licencing Coordinator), Anne Grey (Policy Analyst), Wendy Collard (Governance Support Officer) and Lynne Robins (Governance Support Officers)

PART A:

The Mayor opened the meeting and outlined the context for the hearings.

1 APOLOGIES

There were no apologies.

2 CONFIRMATION OF AGENDA

It was moved (The Mayor/):

"That the agenda be confirmed."

Motion carried

3 DRAFT LOCAL ALCOHOL POLICY

A report from the Acting Manager Regulatory Services (Adrian Blair) presented a summary of the 4,262 submissions received on the draft DCC Local Alcohol Policy which was circulated for formal public consultation and feedback from 1 September 2014 until 10 October 2014.

4 SUBMISSIONS

Submitter 101398 – Colin and Andrew

Powerpoint presentation

AH asked about unopposed applications

KM – 80% would be unopposed

CW responded to questions from the committee

Anne Gray advised on clarification on page 1.16 of analysis relates to single unit sales. With the exception of boutique handcrafted beer and cider were excluded by mistake. Not on Dunedin Inner City and hospitality forms.

Questions on GUFB

103117 Brendan Christie

Had ideas on

Austin Texas and New Orleans pictures passed around, strong music cultures
Different approach for consumption. Encourage people to drink less by providing them with more events that aren't prioritising alcohol consumption. Distraction that isn't all about the alcohol. Things to do e.g. encourage arts and culture in different venues around town.

BC responded to questions on the change of culture

Restrictions on single units, buy nothing or buy 6 beers and drink all of them

Drinking culture would go for six beer option

102903 Megan

Submitted as wanted to share views and experience. Doesn't agree with OUSA as they have generalised.

Shots and one way door policy. People in that mode aren't in the mode to make the best decision. Takes choice away but needs to be done.

ML – you suggesting more than economic values need to be taken into effect

Megan – Bars may take hit with changes but greater movement would be worth it.

10588 David Bridgman

Tabled and spoke to his written evidence.

101261 Duncan Robertson and Richard Newcombe

RN spoke of the submission form and takes offence by accusation that an incentive was given to get people to fill out the form.

DR – spoke of the difference between off premise purchase and on premise and cost and obligations under host responsibility.

80% sold off premises, 20% on

Off premises no supervision.

LV price increase and limited hours

DR – that's what we should do. Council should nut it out with supermarkets

NP – outside dining numbers

DR- can't give it but tourists like dining after 10.30 at night.

AW – security budget

RN about \$60k per year.

102080 – Mark Scully

Spoke to his written evidence.

Owner of Speights, Salt and Brew

One way door policy wouldn't be affected

Preloading and side loading

Some come from suburban bars and restaurants.

Patrons then head home but some come to town.

AH – you are happy with 3am closing time

MS – yes. We are only licenced until 12 at suburban ones, 3am in town.

AH – comfortable with outdoor areas licenced

MS – as long as they comply with all other rules. If it doesn't shut the outdoor bar. If they operate within act they should be allowed to sell.

The meeting adjourned at 10.12 am and reconvened at 10.53 am.

104148 - Jillian Haig – Dunedin Inner City Licencee Forum

Concern about closing at 11.00 pm – pushing people out – people coming into town. Have a jukebox, make sure doors are closed. People sit down and have a drink. If something is under control and not causing trouble leave it alone. Directly adjacent to residential

103753 – Chris Neilson, Crofters Pub/Valley Lodge Hotel

Some areas need to be taken into consideration – one way door policy won't work – don't have security staff and don't want them – would have to pay someone to start work at 1.00 am. One size rule doesn't fit all. Shots to finish evening at 60th birthday with all ages. Discretionary tradition. Have a good working relationship with Tony Mole – with changes is staff some things may become an issue. Most of harm from alcohol comes from pre-loading. Council shouldn't over-react. Govt needs to hit supermarkets. Make people use controlled premises. Supermarkets selling alcohol cheaper than he can buy it. Employs 20 people between 2 premises, all pay tax. Don't write everybody off as trying to line their own pockets. Main issues one way door and shots.

Comment on closing times and demographics of each premises in response to questions.

100984 – Cathy Bruce – Health Promotion Agency

Crown Entity – formed 2012 – aim to prevent and reduce harm – work funded by levy on alcohol. Support DCC and work undertaken so far. Congratulations on developing LAP. Improving public input important. Communities can do a lot to reduce alcohol related harm. Councils have a crucial role. Consumption should be undertaken safely. Pleased to see Dunedin has involved third parties such as police, iwi etc – ensure policy meets community desires.

Decrease in harm when trading hours are reduced. Support consistent approach to all off-licence hours. Disappointing that Council wouldn't take opportunity to reduce hours further.

Pleased to see limit on location near sensitive sites.

Support the use of discretionary conditions – listed types of conditions in submission.

Need to ensure policy reflects community.

Various questions. Peter Miller research work in Australia – reduced trading hours one of consistently best ways to reduce harm.

Things other Councils have looked eg stand-alone bottle stores – supermarkets more difficult.

Education alone won't make a difference – has to be an across the board effort.

Any areas leading the country? – LAPs different around the country – all councils done a good job.

103398 – Robert Dale, Frederick Street Management Ltd, Tanacod Ltd, Urban Factory, Boogie Nights, Capone

Own student bars that operate late at night. Believe that alcohol related harm in community will only be increased by policy. People don't understand how students will react – go out to meet each other, not because bars are there. Without bars open there will be much larger effects. Students impoverished, which is why they pre-load – drink cheaper stuff fist. Vast majority of young people can't get drunk in bars any more. Making a mistake – long term consequences for everyone. Been in industry for 25 years. One way door policy a mistake – people go to bars for atmosphere – as soon as people start moving out and people can't come in lose atmosphere – if want to have all bars closed by 1.30 pm call it that and enforce it.

Young people will be left to walk home by themselves in a dangerous environment.

Shots – effect of alcohol the same no matter how it is ingested – shot size not a double.

Different types of shots.

Commented on types of bar he operated.

When kids come in 1/3 turned away at door because too intoxicated – the other 2/3 leave less intoxicated than they arrive.

AH – does he accept that assaults and harm are already happening – yes. Harm is going down. Hasn't been thought through what students are going to do.

JM – trend over time of young people arriving drunk – is there something Council could do to reduce that problem? – don't think so – people coming out later and later – if bottle stores in north end didn't exist

Commented on food offered.

20 in bar at midnight, 500 by 12.30 pm. Start music at 10.00 pm.
LV – alcohol a necessary evil? Probably one person in around 200 shouldn't drink – react badly.
Commented on party pills.
Rare to have physical altercation. Students changed over last 15-20 years. If asked to leave mostly do so.
ML - suggested visit to be arranged to bars.

The meeting adjourned at 12.00 noon and reconvened at 1.40 pm.
Cr Vandervis is absent.

Submitter

100183 Allan Wishart
Reminded committee of what they were here for. Read the act.
Focused on safety.
Alcohol is neuro toxin that goes to the brain. Spoke of the damage it can do to the brain and the damage it can cause.
Reminded it is a drug. Class b same as morphine.

Cr Vandervis entered the meeting at 1.41 pm during the course of the submission.
Spoke of the cost spent on alcohol and the amount spent on the clean up.

AH – 5+ solution given that we can only influence 1 out of 5, how effective can that be.
If we can't control other 4 things.
AW – would like to see 5+ but government won't put in so 5+ solution promoted. Report emphasised it, govt won't because of influence and as Nigel Latta pointed out, alcohol and beer and wineries controlled by multinational corps.

104716 Catherine Maaka, Mosgiel Tavern

Spoke to key points in her submission.
Concerned with trading hours and one size fits all policy.
Communities have input, within Dunedin input there are other communities, each community is individual. They are community orientated with youth and other ages, endorse within the community and like to support the community. Don't want to be in situation where they are dismissed and issues that could happen would increase.
Don't want young people heading away at 11.30 – 12 into town.

AW – Oamaru

CM – they are not putting up the LAP, defaulted to national trading hours. Not looking at this type of lap
Different bars have different trading hours. Move people on nicely and quietly has different effect.

NP – incidents of drunkenness

CM – wouldn't say its an issue, we are everyones parent. We are legislated heavily and we have to ensure it doesn't happen. If they arrive drunk we give them water and put them in the van and take them home. There is always the potential for drunken behaviour, our role is to minimise.

AH – one size fits all approach, appreciate but need consistency. Is it possible to have something across suburban areas.

CM – we currently do and it works.

AH still option to close.

CM – midnight is unreasonable.

ML current hours

CM – 2am. 10pm on Sundays

JM trading

CM – Friday and Saturday fluctuates sometimes stop at 12.30 sometimes until 2.

We can keep people inside they may not be drinking. Courtesy coach, couldn't work as people have to be off the premises.

ML – if you closed at 12 would they bring drinking forward a bit

CM – it would have an affect. People wouldn't stay locally. Some may change drinking habits.

Youth like their local establishment.

100040 Thomas Wilson

101708 Kate Porter – Progressive Enterprises Limited

Stuart Wilson – area manager

Spoke to her written evidence.

Operate Countdown, Fresh Choice and Supervalu stores.

Support the Sale and Supply of Alcohol Act.

Spoke of the measures they have in place.

Stores are being reconfigured to comply with new restrictions.

DC – single bottle sales over restricted. We omitted in feedback form to omit craft beers and ciders.

KP – what defines a craft beer etc

DC – clarify, impact on general business. If we didn't sell alcohol people would come at different times. People still bought food.

KP – we support 7 – 10 but our customer majority buying other items so if she can't do her full shop, she will do it at a different time. It's the sale of all the other goods that are the concern.

Spoke of the impact of not having a licence at supermarket if different

AH – a lot of comment from submitters, can buy beer for sale cheaper through supermarkets than from wholesalers

KP – we have a policy that specifically says that. LAP can't look at price.

AH – difference with Nelson

AW – Stores stopping liquor sales at 9pm yet others stay till 10 or 11. Obviously benefit to stay open.

KP hours are primarily determined by customers.

AW- would you lose customers if you stopped selling at 9pm or would customers come earlier.

KP – customers doing normal shop at 9pm.

JM – Statistics on page 3 – 2.6 in relation to 1.6% of purchases that contain beer or wine only. Is there a point through the day at which they spike.

KP – not really. It basically directly affects customer patterns. Busiest times is 3-7. Same happens with alcohol, more people more increase. Just people in the stores.

JM – purchases that are only alcohol.

KP – no impact. Most would be in same time as busy period. Spoke of comparison with what is happening e.g. Mt Eden

AH – graph on page 4, focuses on specific demographic

KP – this information is publically available for anyone to buy. 18-24 year olds are spending money on alcohol in other places not just supermarkets.

LV – you are very different to alcohol only based premises. Given graph on page 4, supermarket and retailing graphs

KP – they are two separate things. This is showing where people are spending their money

AW – data in 2.8 can you provide info on Dunedin only

KP no data at local level.

AW- Hospitality NZ got data specific to Dunedin. 60,000 alcohol purchased at 5ish whereas bars have 10m000. Dunedin different.

KP we have looked at it but can't provide because it is not a confidential process.

This is conditions to buying not what people are buying

AW – preloading contributed to your supermarkets

KP different scenarios. We do it as responsibly as we can.

AW – why would you want extra time at Countdown in the city.

KP we don't want an hours difference, completely comfortable with 10pm

AH- consumption habits are price sensitive

KP – consumption has gone down and alcohol has gotten cheaper so they are two facts. We don't have a view on price.

DC – if you offer cheaper alcohol do you sell more of it

101443 Lyndon Weggery

Tabled information on the Background information on a call for action on Alcohol and court notice

We have high rate of alcohol related emergency department problems.

Supports the lap but would like closing time back to 2.

Pleased Kate comfortable with 10pm closing.

Don't want to fall over drunk people, broken glass or louts when coming out of movies.

ODT last Saturday court notice. Alcohol abuse.

Commends the LAP bringing closing back to 3.

JM – Paper came from your mothers church?

LW – Salvation Army commissioned it

LW we make it hard for the police to police octagon at night. Would do them a favour if we bought it back. Note from your report that the legislation looks at a review of the LAP in 6 years.

AW – if people are going to drink, a lot of harm

LW gets back to preloading. They buy from the supermarkets and come out. Spoke of 8 hours sleep, doesn't happen now.

101678 Ian Loughran

Has entertainment background but also supports the LAP

Sydney adopted same policy

Diverse scene, different type of music for people.

Manly due to transport and geographics is similar to Dunedin.

Support and knows bar owners, know how hard it is to make money.

We have our most money made in our last hour, is correct but would be the same if the bar closed earlier.

Nightlife enhanced with earlier closing time.

AH – they are saying reduction in clientele and reduction in

IL – people presently going to bars didn't stop but went earlier. It polices itself as more diverse people.

AH – affluent in Sydney

IL – yes but also backpackers there.

We are not taking away their right to drink just cutting down to more manageable timeframe.

102276 Jamie Hughes – Toast Bar

Tabled evidence and spoke to his submission.

DC – line in the sand, new laws, new requirements of bar owners,. Are you saying we need to give it a chance to work.

JH – yes, started in December but never got full copy until June.

Jamie spoke of his life experience and experience working in bars and drinking culture.

101839 Shane Simpson Craft Bar

Spoke to his submission and reiterated the points made

Moving from house to house and noise issues. Safer at a bar in a supervised environment.

102046 Joff Riley – Manos Holdings Ltd

Safer for people to be in licenced premises than drinking elsewhere

What will Octagon look at at 11pm

Dunedin needs to grow the businesses like website and strategy says

One way door policy will mean 1.30 closing.

Dunedin will not be vital pumping city.

Should we be adopting it but don't think we can afford to be pioneer in that area.

LAP does not align with DCC strategy which is one of the worlds great small cities, outlined the goals and business vitality and tourism. Is that aligning with the strategy, no.

This is excessive control. People need to be accountable for their own decisions.

Spoke of the need to have data to back up any changes.

NP 6% harm where did it come from

JR – another submission

JM – Are you familiar with the Sale of Alcohol Act and the constraints we have. Concerns about jobs do not fall within that gambit.

You talked about economic growth, we may not be able to consider those.

JR – LAP is optional. This is not the solution to the problem. Supermarkets

JM – re supermarkets, we can't influence at local level, are you comfortable for trading hours

JR – they should be controlled from Central government. Shouldn't be able

JM we have no ability to change price but we can change trading hours

JR – trading hours should be less.

The meeting adjourned at 3.21 pm and reconvened at 3.33 pm

102654 Trish McCarthy

Speaking on behalf of her bottle stores not Super Liquor.

Outlook location

In LAP it refers to new licences in close proximity to schools etc

Imperative existing businesses are not disadvantaged.

New licence to be for premises previously unlicensed.

Have been in Mosgiel for 13 years but borders Taieri College. No issues. There are a lot of places around like that. Secondary school children can't get on the premises or into them.

Single sales

What determines a craft beer, how can anyone decipher that

No mls in there, no maximum ml you are including.

Wine is not mentioned in there.

You can buy a small bottle of wine could be 14%.

Councillor Vandervis entered the meeting at 3.36 pm.

Forces customer to buy larger pack e.g. speights do not supply 6 packs.

Prejudices elderly who want one or two drinks to sit in the sun with mates

Don't want to see 18 year old who doesn't want to drink, just to feel they are in the group, have to purchase 12 pack when only want a bottle to feel part.

Can't find any convincing reasons to implement.,

11pm closing more suitable.

Don't want to open at 7am but believe 11pm remain as per national plan.
Must be the same for all off premises so none are disadvantaged.
We disagree with supermarkets selling alcohol below cost. They have other products they can put ticket on. Would like alcohol price increase.
WE have small café bar in Mosgiel bordering on residential area. Cater for weddings etc, licence goes to 1am, would disadvantage us if it was pulled back./

Cr Lord left the meeting at 3.39 pm

Doesn't agree that onlicence is safe environment. Feels at home is safer. Drink spiked and then expensive taxi ride home.
Environment and injuries, more emphasis on personal responsibility. Blame the people drinking to excess.

AW – on licence sales. What is peak time for sales.

TM – small café bar, depending on night, latest would be 8.30

AW – off licence

TM – bear in mind she has 6, depends on store, day of the week and weather. The better the weather the later the sales.

Cr Lord returned at 3.42 pm

TM seeking status quo on closing hours.

104124 Sarah Donald – South Dunedin Social Sector Trials Base
Initiative that involves 5 different organisations.

There are three who are members of the committee, so they have to sit back.
AH, Jinty and Dave will sit back

LV chaired now

Sarah will email her presentation to me.

ML – previous submitter said liquor shop near Taieri College. Do you think there should be some discretion.

SD – only applies to new licences. Would be beneficial in future to have 20m limit.

LV – should foetal alcohol syndrome be added to list

SD – not sure LAP

The Mayor took over the chair

103962 Davinia Thornley
Represents herself, teaches at University.
Felt strongly about the policy.

1.	Personal
2.	Teacher
3.	Citizen

Grew up in alcoholic household. Would not have happened if her parents had not been able to buy alcohol in

Nationwide denial about our reliance on alcohol and our acceptance, it is a drug that changes peoples behaviour.

Damage that alcohol does. The ones that get through are the exception rather than the norm.

Teacher of Uni students. Studies are negatively affected by ability to get hold of alcohol.
They will grow up to be negative adults

Do not come to Octagon any later than 10pm on some nights like the Dr and her husband permanently injured.
People can't enjoy nights out because of the badly behaved people out drunk,

DC thanked her for expressing herself.

JM – thank you

DT – our alcohol problem is Americas gun problem, anything that can be done to help that

AH – alcohol trading

DT – why do you need to drink at 11am, why do places need to be open first thing in the morning.

LV – reminded him of his childhood and children in the street

Jinty would like Auckland, Wellington, Christchurch and Manly policies.
Kevin to circulate links

The meeting adjourned at 4.12 pm and reconvened at 9.00 am on Tuesday 12 November

An apology for lateness was received from Cr Vandervis

100825

Katie Jahnke – Southern Primary Health Organisation

Katie read her evidence and will email to me

DC – recommendation re off licence times, in submission you propose closing time of 10 and you say 9 now

KJ – ideally would like 9 – 9 but do support 10pm

DC – stressed less availability less harm, have you teased out relationship between the harm and where the alcohol is available. Might be disorder outside onlicence, have you looked at where the alcohol was purchased that caused the harm

KJ – difficult and research not always clear, would have to report back

DC – if you could conclude time restrictions might be on onlicence where disorder happening, but if somewhere else you need to look elsewhere

KJ – we recommend 9am as opening time because of school children might be going in to buy something for their lunch and it sits beside bread and milk. Evidence shows every hour of reduced opening time = reduced harm.

JM – Had submitters from semi rural pubs who are directly adjacent to residential – view was reduced harm from them closing early esp on weekends would be significant. Young people would head into town and potentially not get home safely and be exposed to environment in town which is different

Do you see distinction between pubs and onlicence operating

Do you see difference

KJ – wouldn't be the case, have to be organised beforehand to have somebody drive them into town. Wouldn't have big impact

JM – Do you have evidence in relation to restricting shop sales after midnight and reduction of harm. Lockout. No links to research

KJ – there is some research, in terms to shots, its common sense. Intention is to drink quickly, quicker you drink the more you become intoxicated.

AH – Concern is people wouldn't plan sober drivers and would drive drunk from rural areas

KJ – that is for Police

Ah – do you accept a lot of affected levels are in the hands of Central Govt and they chose not to do it

KJ – great opportunity for local government to have effect on residents in our community.

25% of residents that have hazardous drinking, that's Southland and Otago

KJ – yes

JM – can we have more detailed breakdown, is there any information on age groups etc, would be hel

DC – difference between Invercargill and Dunedin. Connection between availability and harm would be good to know the difference in not having alcohol available in supermarkets and the harm ratio

100147

Greg Paterson

Draft targets safe environment.

Should target the off licence uncontrolled enviroments. Far bigger issue.

People can't afford to get drunk in bars.

Students go to town with under \$10, this is reality. Drunken behaviour that submitters complain of and blame on bars is not a result of drinking in the bars. Bars are babysitters.

They drink liquor in uncontrolled environment

People incorrect yesterday, they blame bars

The Cook, Gardys etc have been desimated from alcohol in supermarkets

Street parties, and the harm they cause

If you want to reduce alcohol harm you want to have it in controlled environments

Either controlled or in streets. Need to reduce compliance price on bars and allow them to supply drinks at lower prices and support them.

Looked in 3 supermarkets, got to over 100 specials in each one.

Bottle stores beside supermarkets

The place you have to buy your food to feed your family is as sensitive as a school, understand supermarkets are powerful and will throw money at being able to sell alcohol.

If not drunk why can't you have a shot

Not being able to sit outside at 11pm is uncivilised.

Result will be uncontrolled street parties over town.

Owns property and has property interest, important is that both religious and health people are desperate to do something to reduce alcohol harm.

DC – exposure of people buying groceries to alcohol. Are you suggesting we restrict new alcohol placements no closer than 200m to where you buy groceries.

GP – everyone has to go to the supermarket. They make their money by pushing as much out the door at low prices as possible including alcohol.

Showed picture of alcohol that you had to walk past to get to the meat section at supermarket.

ML vested interest, should health board and police have same interest

GP – consequence of wrong thing, making bars. Bars are controlled environment. 18 year old daughter that chooses to go to bar and dance, would rather she went to a bar rather than an uncontrolled street party where glass is thrown. Health consequences, she is safer there.

NP – Invercargill scenario, is that something you would support

Break at 9.41 to 9.44 am

102219

Grace Ockwell

1. Not all submissions are created equal, please use common sense to differentiate through
2. Decisions that are best for our community
3. Police and Medical Officer of Health are not the fun police.

100505 Sue MacKay – The Kensington

Feel we are good operators, everyone who comes in deserves to be able to enjoy themselves safely and have a good night out and a good meal.

Run bar accordingly and comply by legislation.

If there was more enforcement, if everyone was doing their job properly we would not have this problem.

We have a garden bar

If it was to close, it is a fire exit and would be illegal.

If we can get everyone on same page and look after people that come onto their premises they don't see need for changed.

If we see people drinking too quickly and too much we contact them. Do have backlash from 30-50 age group who don't like

Don't have issues.

Changing too much will

AW – What time do you close Friday and Saturday night

SM – depends as function room upstairs,

AW – noise issues from garden bar

SM – we quieten them down if problem

AW – ages there

SM – all

JM – is garden bar viewable from outside or enclosed

SM – enclosed

102850 Claire Grenfell The Craic Bar

November 2005 operating

The other one 2012 November

Before legislation we had 24 hour licence

Comply with all the

Live music 4 nights a week, employ all

\$60K in live music in last year

Sales of Liquor Act, have seen change over last 9 years.

Dramatic increase in people coming into town preloaded.

Competing against liquor stores

Rather buy 1 litre bottle of vodka.

Spoke of controlled environment

Sitting outside is controlled

One way door has been trialled and

Conflict between those

Younger generation will not go home at 1am, they will move to situation where it isn't safe and is uncontrolled.

Stay open late – small bar and it is viable on street nights

Rarely go past 3.30 am but great to have later close time for important nights e.g. league

Lack of transportation to get home. Busy night could be an hour waiting for taxis.

Start operating one way door system about 30-45 minutes before closing.

JM – if Council still felt one way door of merit but safely then bars could operate 30 mins before

CG – would support

ML – 3am implication would have to business

CG- would have impact on turnover e.g. test weekends

AW – how do you think this would be seen by tourists

CG – Dunedin would seem to be closed and not an enjoyable place to be some don't arrive in town till 10.30 at night. Different body clock, want to sit outside.

AW- what percentage comes from outside business

CG – on third

CG – tools for sale of liquor act. We notify people that last drinks are coming up and ease them into it. Avoid issues

AH – how long do people have to vacate

CG – 30 mins from last drink.

CG – older market, some people want to sit outside and listen to the music. Would have major impact not having outside area as small bar

AW – Do you all work from main security pool
CG we and a lot use SS Security.

AW – security moved across when issue came up.
CG – yes there is communication across the Octagon
They have high vi vests. Good cohesion between Police and security

AW – what do you spend on security
CG – about \$17k per year.

100964 Joanna Kidston – Careys Bay
Will email presentation
NP – You said one way door from 2am
Do you have garden bar
JK – yes
Different to Octagon bars and doesn't want to discuss them
Can't see whats wrong to go outside to have a drink on nice night

AH – Outdoor – front terrace, if you are open to 3am, those spaces are still open to people and there has been no hassle with noise
JK – none at all.

103837 Bill Brown, Vision Port Chalmers
The Mayor left the meeting at 10.19 am and returned 10.20 am

The meeting adjourned at 10.21 am and reconvened at 10.54 am
Cr Vandervis entered the meeting at 10.54 am

101586 Laura Black Methodist Mission
Tabled and read her written information

JM – evidence from client base which is responsible for more of the drinking
LB – client base can't afford to drink on onlicence environment. Lower than cost alcohol price at supermarket chains. Policy is not evaluating that, it is doing onlicence.
Damage done by alcohol, restricting at the margins

DC – Centre of town but provisions in draft around suburban and small centre on licences and a proposal that hours for them be more restricted than the middle of town. Comment on the outcomes or impact of restricting hours in the suburbs would have on inner city.
LB – can not comment on that but would like to see restrictions around sensitive sites.

AH – spoke of the 9.5 m Octagon
How many did you read
LB – 5

ML – would alcohol related harm be large cause why you are working with those people
LB – alcohol related harm is from poor family
ML – LAP doesn't target all of the issues but you would agree that low cost liquor in supermarkets is the problem
LB – it is part of the problem but won't weight it. Preloading part of problem.
Does seem to be considerable harm associated with onlicence supply of alcohol. Not comfortable in saying we should let one off the hook. Need to look at all places and look at mediation. Considerable harm attached to onlicence.

101854 Paul Hunt OUSA and Darryl General Manager

Tabled and read his written evidence

DC clarified that this process would take its own time and after deliberations there will be no opportunity to submit further.

PH wants to know timeline

DC – we didn't know how long it would take to get through the submissions, we will deliberate and come up with a provisional lap. Will not open process for further submissions

JM – additional information circulated, can you comment on that

PH – has gone through 10 factors about on licence

Alcohol consumption would be better in on licence premises

JM – one way door policy is to try and get people to disperse not all at once

Is your opposition to it based on 1am time or fact that you are just opposed. How do

PH – staggered closing time between 3 and 4. 1am too early given current numbers in town.

Opposed to blanket freezes on entering establishment.

JM – Sensitive establishments. Is a tertiary establishment a sensitive area that should have a buffer.

PH – have not considered that. Would say no. Did support restrictions on off licences.

PH – price disparity causes people to preload, don't think closing times will have impact on that. Even if some responsive behaviour, not necessarily change intoxication levels. We have looked at research on preloading which he hasn't presented yet but price disparity being the main one.

AH – did OUSA submit in support of minimum pricing when Act went through

PH – not sure, Council should consider this.

AH – minimum pricing is not open to us because of Sale and Supply of Liquor Act which was the time to do that.

AH – restrict supply of shops and bars after midnight

PH – there may not be in town at that time but will cause tension

AH – if one way door framed differently and there are models internationally, establishments do use them now, it would address issues

PH – spoke of what they support

AH – supply of alcohol thru supermarket rather than other outlets. Further restrictions on supermarkets, have you considered.

PH – haven't considered it but can see where you are coming from. Hopefully submission supports argument.

AH – density which we haven't addressed, should we explore through this process

Have talked to students from Canty where they have implemented LAP, and a lot has formed the basis of OUSA submission.

AW – after ChCh earthquake there was dramatic effect on alcohol when centre city shut down. How does it compare with Auckland and Wellington.

PH – wgtn has advocated for 5am closing time,. No further comment on what is happening elsewhere. Auckland pushed back.

JM – if you could choose one thing to improve health outcomes for students what would that be

PH – Price disparity is main driver. Working on strategy to address that

DR – Hyde Street, ensure there are choices people can take. Take a moral decision like the Are you Okay team. Not a legal requirement but a moral requirement. Take drunk student and give them food etc remove them from situation. Interventions set, lots of authorities involved.

LV – Spoke of temporary bars set up in the past. Marked major change in the Act. Major change in the structure. Result of harm coming from that has been incremental. What do you know in terms of how much \$ the university sells on campus.

DR – very little. Two bars with restrictions and staff club. Not major. University needs to speak for themselves.

100094 Barry Timmings
Provided his background
Owns The Bund and Customhouse

Lived in North America, Vancouver, NY and Boston.
Patterns of socialisation similar.
NY and Vancouver handle alcohol consumption very well.
Behaviour in public areas, to mitigate, to design
Octagon very open, you could stand close to middle of the area and be hard to see
Lots of hard services, not hospitable
Lower Octagon not that hospitable in day time.

Customhouse heritage building in neglect, that part of the city valuable and should be developed.

The Bund, somewhere to have civilised drink.

Customhouse is out on its own so probably doesn't suffer.

The Bund has 3am liquor licence, don't have a lot of desire to be open past 1.

11 and 12.30 nice time to close up.

Draft policy, we are trying to give civilised drink option, food – drink 50:50, alcohol 1/3.

Light in middle of summer until 10.30, people like sitting out having a drink and food

Talked about stacking outdoor furniture inside nowhere for people to sit inside.

11pm is not late in international context.

LV – if stage reinstated in lower octagon would it cause concerns about people lingering or affect your business

BT – some higher stage area is a good idea. Mix and multiple use important to have there. Its about the form of it and softening the edges. Create harsh line between inside and outside. Lovely quarter of the Octagon, mixed pedestrian and vehicle, the more mixed and multiple area you can get the better. Stage would be good as long as it softened the area.

LV – do you think stage wouldn't have negative impact on drunken behaviour

BT – disgrace around the area in rugby weekend disgrace, minimises harm but looks shocking. We have one of the most beautiful CBD's and we do that to it marquees, tents, portaloos etc.

We don't generally have a lot of problems

Would like to see stage at the top, there are rings of licenced premises looking into Octagon.

Bars have toilets etc.

AH – share concerns. There is value in thinking

Too much talking,

NP – shots and difficult to define what a shot is.

You would rather have no time

BT – someone has to line up the shots, no matter time

Sale of Liquor Act very strict

Line at 12 gets people to put them in earlier and puts bar in difficult position.

We have enough legislation.

Hip flasks all around the city. Is the shot really the problem.

The meeting adjourned at 12.00 noon and reconvened at 1.14 pm

100852 Janice Turoa Starters Bar

Read written evidence in support of her submission

DC – shot flasks

JT – same as normal shot class there are now sachets of alcohol

DC – will single sales limit these

JT – they come in a six pack

DC – restricting single bottle sales influenced if stronger drinks available in bigger packs

AW – Your business is for sale on Trade Me is it because of LAP

JT – 3 young children. We have intoxication and can be shut down at any time despite efforts to keep on top of it. Good operators but feeling the pinch.

AW – events at the stadium

JT – a lot of business from the stadium, lines in each way. Wouldn't get that if we loose our hours

JT can't sell a drink for cheap enough. Drinks have to be more expensive. Not saying \$2 drinks are good but we have to put prices up yet students don't get much money than when she was at uni.

JM – preloading, do you have a sense of where students are being purchased

JT – just around the corner. We have policy that we don't let anyone in that we have seen skulling. 200 line hard to monitor.

They can go to countdown till midnight.

JT we search bags but half are not drinking in the bar they are in toilets etc. They can't afford to drink in the bar so they drink before they get there.

Kids fine at the door. 10 minutes later they are off their head and haven't had a drink at the bar.

NP – off licence 10, do you think it should be earlier

JT – you can go to supermarket and can buy cheap wine. Should be more expensive.

Would help lowering the hours.

NP- closing hours, what would you choose

JT – they can buy from Leith Liquor, should be 8-9 pm

DC – what can you do re discounted drinks

JT – never less than \$4 as we have responsibility

DC – onlicence has minimum price off licence doesn't

JT – yes.

Students are affected by pricing.

The meeting adjourned at 1.30 pm and reconvened at 2.27 pm

Councillors MacTavish, Peat and Whiley absent

101073 Olivier Lequeux

Bars are part of the problem. Could make transformation.

Different sort of regime.

A café or restaurant has to go through same process as nightclub or bar.

Different licences for different uses.

Café in Maori Hill different risk than Bar in the Octagon.

Different licences depending on population

Would enable vibrancy to be maintained

Nightclub licence

Alcohol more acceptable. It is part of our culture. Limiting consumption or restricting it through hard core policy will change anything mainly on health side.

Supermarkets do good job. Richard Newcombe ex rep of Speights

AH – no issuing any further licences, is it your intention to have sinking lid approach or if licence holder gave it up it could go to new

OL – we should set x amount of off licences and x amount of on licence and cafes and restaurants treated differently than nightclubs.

A lot pay minimum wage

Bottle of beer \$1.50 sold for \$8 or \$9

DC – limiting number of certain types of venues. Interested in outcome of that.

If you limited to two or three, if there was more demand, why wouldn't you allow more and favour the few owners

OL – alcohol consumption is terrible. The more you make it available the more addiction.

Each licence meets a certain purpose.

LV – how many categories given there is a spectrum of cafes to dance bars.

OL – groups of licences, could go three. Night time is not very well catered for.

The meeting adjourned at 2.44 pm and reconvened at 9.00 am on Thursday 13 November

Cr Hawkins an apology for today

101722 Rosie Crozier

Need to think about how important the Dunedin nightlife is to us, our colony and Dunedin. Changes will have huge impact on the number of students that come here. People come for nightlife as well. Need to focus on people drinking more responsibly.

This will just create a lot of street parties, boredom creates violence.

Bars responsibility to look after customers and have security there whereas at the house down the road they don't have that.

Important as a young person to be able to go out and dance with their friends.

Changes will cause outside problems.

LV – Govt as a whole should address it. Have you considered talking to your MP or trying to get Govt to do something

RC – small person in big population. Doesn't think she will have a lot of effect but if we step up in front of the rest of the country, we can get that across.

LV – some MP's are worth talking to.

ML – Told by previous submitters that students would rather buy cheap booze and not drink at a bar

RC – agree, get hammered before town but end their night in a populated area with security and controlled. Positive.

House parties end at 10.30 ish and they head into town,

ML – how much would students spend in clubs

RC – maybe one or two drinks. Average probably only a drink.

NP – Binge drinking do you mean preloading or other form

RC – sits and has a glass of wine with dinner, healthy. When you have parties to get drunk in days in a row, that's binge drinking. Safely and in moderation is where it looks at.

NP – do you have suggestions

RC – not a lot we can do for certain groups of people, lower socio economic groups. Doesn't know message but does need it sent.

102601 NZ Police, Ian Paulin, Mel and ?

Andrew Coster – District Commander

58% residents considered Dunedin a safe city

Ian provided CD footage of fighting

Andrew tabled and read his information.

Police support 10pm off licence

Significant reductions in violence and a safer more enjoyable centre city.

Unknowns and knowns.

One way doors, internationally reduce crime

ML – Impact from one way door policy

AC – One way door by itself may not have massive impact but when combined with other things could be very effective

Lee left the meeting at 10.26 am

AC – after midnight we have in each hour band equal amounts of assaults etc to 5am so any hour you can knock off people being in the streets, it significantly reduces the risk of people on the street and violence

Would be an embedding time. Need to communicate the change.

Once done would be positive in its impact.

Review period would be needed.

ML – how would LAP affect off licence drinking as compared with onlicence

AC – LAP mainly shifts online drinking. Off licence, hours of trading, placement density.

Reshaping onlicence will see impact on off licence.

End point at closing time, people go home, some may party on but

Reduce preloading with bringing people in earlier.

The later people purchase from off licence the bigger impact.

People buy late at night because they have run out of booze and/or to preload.

ML – Licence to 3am but never later on special occasions, could we do LAP 3am closing but those half dozen days that we could have extension to 4 or 5 where these bar owners don't need special licences, it's a fair plan, there will be an extension

AC – trade off decision, not sure of legality. If you have a licence you have a licence. The longer you allow people to drink the more harm you have. People drinking to 4-5am the price is the results. Special licence allows it to be tested on merit

IP – level playing field, what premises would be able to be open later for special event.

Industry would say they like a level playing field.

JM – You talk about Timaru and drop in offending etc. QLDC is there a drop in offending there.

IP – Spoke of the Queenstown trading hours.

AC – we could look at that but experience across the country 4am closing has had impact on violence.

JM – one way door trial here, curious about the effect

AC It was an agreement with Police and licensees. Once one person breaks, everyone breaks. There were drops in violence and licensees having problem.

JM – what time

IP – 6 month trial. One way door at 3am he thinks.

AC – research is mixed on one way doors. Voluntary not consistently applied

JM – curious about time of day when that occurred as bar owners already say they do that. Issue not having it but when it kicks in and implications.

AC – one way door benefit is graduating of people out the door, 2 hours is a good period of time. If it was between one way door from one and closing at 2, you would close at 2 as it would have bigger impact.

JM – would it be of concern having an earlier closure without a one way door. Spoke of implication of everyone on the street at one time.

AC – you see it now. There was scare tactic. Don't think there is evidence to say it eventuated. People do adapt. WE can be standing in metres of people and they still fight, drunk people lead to poor judgement.

JM – Submitters are concerned about potential impact on suite of measures and cost on town. Restricted hours – charging more for drinks and snowball effect that has. What we hear is the impact of that would be more uncontrolled drinking on uncontrolled premises. Potential a lot of students in town, separation of friends, might result in kids going home on their own. Suite at once would be concerns.

AC – smart operators make good businesses in the new environment. There are some bars that are struggling. They are trading very late to get last of the market. Many people have consumed large amount before they come in. Spend very little. Drinking experience after midnight in Dunedin is not sophisticated, not pleasant. People don't come into town because of it.

Smart operators will pitch it. Small operators that are running pretty loose operations will have to adjust. You can't rely on people at the end of the night coming in not fussed over whether they are drinking in a safe environment or not.

Opportunity to improve the quality of bars.

Incredible how many young women you see walking around by themselves carrying high heel shoes, so intoxicated they can't look after themselves. Many sexual assaults are people who get so drunk they do not know how to look after themselves.

Public transport is overloaded

Level of domestic violence reducing. Different scenario around family violence, they have dropped 9% on YTD figures.

Sacrosanct days where people can't trade people go home early.

JM – idea of ceasing sales at certain time. Interested in exploring that. Not in LAP

AC – stop serving drinks but allow bars to remain open

JM- people could go in and out but not purchase alcohol after a certain time.

AC – once people are intoxicated, their level goes up. Drink heavily until the time stops. Business that stops the violence is getting people out of town and heading back home. If you allow them to stay on for another hour they will be more intoxicated. Can't see that being a way of minimising alcohol.

IP – Newcastle suite of measures.

JM – Suburban bars and pubs in outlining semi rural areas. They fall under adjacent to residential properties, means earlier closing for new premises. Jinty spoke of the issues. Would earlier closing in suburbs have negative impact.

AC – young people come to town, that's where the action is. Locals would most likely go home at closing time. Not from set going on to next bar. Doesn't think young people drink in local bars. Rural drinking establishments are always problematic on how you get there safely.

IP – difference between hours premises are licenced and hours they are used. Go around at 11-12 and there are 3-4 people in them. Most struggle financially.

NP – Picture on the incidents of violence in Octagon verses outside

AC – Friday and Saturday night, a lot of calls for service come from Octagon area. Alcohol often factor in family violence. Off premise drinking with family violence will not be impacted with LAP.

IP spoke of spikes in other parts of the city.

NP – what is the split between violence inside and outside the bar

AC – inside the bar 5%

AC queues on footpath, defacto areas encroached, people spill onto the streets. Need to minimise people walking on the road and running into each other. Need to minimise people drinking on the footpath.

NP – Outside drinking closure 11pm. Wondering to what extent people drinking on the footpath promotes harm.

AC – space issue. Interaction you see between people drinking in roped off area and people walking past. Dream idea is people sitting enjoying, reality, people standing, not as well monitored. Dynamics around test match, large outside drinking areas and keeping the staff on.

IP – definitely interaction of people standing on bench and people walking back. Fences get moved etc. Talked about grey area of licenced v unlicenced areas.

NP – preloading big issue, difficulty addressing.

AC- with off premise, people purchasing after 10pm have usually consumed and are buying more. If people are preloaded to the extent they are not buying in the bar, they should not be admitted anyway. If you can bring people into town earlier, less time to preload. LAP can

affect preloading in that respect. To say off premise drinking is the problem is not right. Significant amount comes from drinking on premise.

ML – comment on whether the social good. If we create LAP that would create loss of jobs would that be outweighed with

AC – LAP does not allow you to consider economic impact. There is a huge social alcohol harm that is very difficult to quantify.

AC – there is a social good from alcohol consumption but there is a tipping point and it is earlier than we are talking about, its about midnight and goes downhill from there. In some ways coming to this we are being realistic. If you were serious, midnight is when the balance shifts. The number of young women who have been involved in some sort of sexual activity and the regrets and shame, emotional harm (they don't remember what). While in the bar they might be having a great time, its afterwards.

The factory worker that turns up with a hangover etc.

Impacts

AC – don't believe there are premises making a lot of large amounts of money. A need for the industry to take a fresh look at how the environment works. New approach.

AW – No. 1 issue with LAP, No. 1 goal.

AC – reducing the hours of drinking – period of time. Determined by closing time and to some extent one way door.

AW – how do stats compare with other university cities.

AC – haven't done that comparison. Big problems in Auckland. We are not alone but it doesn't make it okay.

AW – Dn v Invercargill, what is difference in drinking culture

IP – Liquorland etc significantly bigger.

AC – Southern DHB has very high rate of drinking per capita, highest in the country. Not just a dunedin thing, its Queenstown and Invercargill. In Dunedin you have mix with students etc. Southland have more off premise and higher rates of domestic violence. Doesn't solve the issues.

AW – a lot of harm comes from offlicence.

AC – family violence, socio economic factors, life experience. No. 1 priority at the moment. Don't believe there is a huge amount the LAP will do to impact family violence. The ability to walk down the road and get cheap alcohol would be contributor to family violence. More comes into treatment for alcohol problems.

AW – why, where and when does acute. Only 6% come from onlicence

AC – only 6% occur in a bar, they occur in Central City, general behaviour in a bar isn't too bad, its when they end up on the footpath. It misses the point, it's not the bar, it's the level of intoxication.

AW – saw how Police work with security teams

IP – professional bunch of security guards. Interact with them very well. They were high vis so presence always there. We could communicate more with them but they are good.

AW – could you put Police by Knox Church and stop people coming into town

AC – we can talk to them but can't make them go home. Monitoring a good one but is migration that occurs. Practical impact, not sure they would listen unless they were getting arrested.

IP – Police patrol all around the area, not just the Octagon.

DC – Acknowledged issue of preloading and side loading. We have had submissions that customers have been observed buying wine from liquor store then drinking it and downing it prior to walking in bar. Goes to issue of off licence. Would you support even earlier time of off licences. Some suggestions even as early as 7.

AC – Being pragmatic in submission. By reducing the hours of off licence trading you will impact the risky purchases that will occur. People don't normally buy when drunk from supermarket. Later you get more likely risk.

DC – problems of imposing single bottle sales.

DC – banning of shots after midnight and banning any spirit over 30%. There are some shots not over that.

IP – you don't sit and sip a shot, it will have an impact.

AC – people buying shots after midnight, shell out money

DC – shots cover a number of drinks, some lots of sugar, some high alcohol

IP – why would you buy a non alcoholic shot

DC – comparison of cocktail and shot

AC – expectation with a shot that you will consumer straight away. You don't get that with a cocktail. Students drink massive amounts with drinking games.

JM – if you ban shots, people will order a double with no split or ice

IP – The range of initiatives Newcastle bought in, 37% reduction in violence. Removing shots will not remove alcohol harm but it will have effect.

The meeting adjourned at 11.25 am and reconvened at 11.33 am

102108 Kim Gotlieb Deb Fraser (Mirror Services)

Tabled and spoke to her written evidence

KG – significant amounts of research support the police evidence, reduce the hours reduces harm.

JM – re young people you work with. Do you have comment on issues they are suffering stemmed from onlicence or offlicence.

DF – access and availability. If alcohol is available and easily accessible they will use it.

Parents are suppliers but so are older siblings and parents etc

More harm 18-22 age group. They are the ones on licenced premises.

NP – Wondering about suggestion to restrict off licence and why you support 10pm closure but 7-8 am. Why

KG – we would support earlier than 10pm but it is wider social issue about drinking culture.

We encourage people to purchase at 7am???? Now common

We are talking about modelling behaviour to young people why sell so early.

DC – proximity to sites, off licences and linking to availability of alcohol to supermarkets, Position on fact alcohol sold in supermarkets at all

KG – serious mistake. Children at the park watch coming and going of alcohol and consumption. We can limit the amount of time it is available.

DC – various have supported the proximity around sensitive sites. Why wouldn't we define where you buy your food as sensitive site. It is not only model to children but to vulnerable people.

DF – We opposed when it was put into supermarkets.

103719 Amy Robinson, Health Promotion Advisor Alcohol Policy and Planning

Provided brief background to who Alcohol Healthwatch was.

Reduce alcohol harm throughout NZ.

Provided PowerPoint presentation of her evidence.

Tables came from Alcohol no ordinary commodity, they have covered all research from 18 top alcohol scientists in the world

NP – global perspective

AR – do have a NZr on the panel. In ratings they were rated on ability to work across cultures. Australia are so different to us.

NP – why is there so little research

AR – we are getting better, alcohol polarising topic

Icap study showed drinkers purchasing alcohol after 2am are heavier drinkers same for those purchasing after 10pm on off licence.

JM – recommended maximum trading hours identified in submission, suburban publicans talk about possibility of earlier closing time for them effectively promoting people going into town and impact on drink driving culture.

Any research or comment

AR – not aware of any research. Reason why we recommend shorter hours is because of community aspect. We hold regional and national forums and that was feedback from communities. Limit hours further in the suburbs.

JM – our suburban areas are quite distant from public transport links.

AR – you will get excuses from every sector of the community. You need to be focussed on the act. If you can reduce trading hours you will be doing good to the health of community.

AW – what would you say to bar owners

AR – Gvt probably has no idea of how this would go. Difference between those who work to make money from alcohol and those who don't make a profit from it.

No advice.

JM – off licence provision. Suggest trimming at morning end but not so at evening end. Not much depth

AR – feedback. Tried to come up with compromise between research on reduction of the hours. Something we think will get through. Morning – impact on alcohol shops has on young people and children walking to school. Bought hours back to after they will already be at school.

NP – one way door. Any trials elsewhere in Country.

AR – ChCh

The meeting adjourned at 12.15pm and reconvened at 1.05 pm

Councillor Vandervis was an apology for lateness

Lee entered the meeting at 1.35 pm.

101681 Allan Travers

Re outside areas, see no difference to sell alcohol and have it consumed inside or outside.

Regulations have been set and shouldn't change at any time of day or night.

If a licenced outlet is allowed to sell alcohol how can you limit patrons entering the premises.

It would have to be closed or patron drunk.

Support reduction in hours of trading. Preferred 1am Friday and Saturday and other days closing at 11pm, permit to stay open.

Bulk sales not encouraged. In favour of people being able to buy 1-2 bottles and not 4.

Banning shots after midnight, responsible hosts should determine how alcohol is sold not the type.

Policy should be flexible for different situations.

28-29 years in Invercargill in drug and alcohol clinic

12 months doing Christian Fellowship home detox programme.

LV – your belief easy availability contributing problem

AT – yes.

People will get alcohol if they want it.

LV – flexibility how rules are applied to different premises.

Always an issue when you look at different categories. Submitter said cafes, restaurants and bars.

AT needs to be more flexible.

Bought place in Mosgiel, their drinking circumstances are completely different to middle of Dunedin.

Not hard and fast issue, can't give standard outcome, too many variables.

LV – different drinking circumstances for outlets extensively in same class. Bars but not appropriate for one not the other. Would you welcome having discretion or would you want hard and fast guidelines.

KM – Act does allow LAP to differentiate different parts of the district. With LAP set of guidelines with DLC. Have to have regard to the policy

AT – a nurse not a businessman so can't comment on trading hours.

NP – Invercargill comparing with Dunedin is there less harm

AT – no. If people want alcohol they will get alcohol. Not having it available in supermarkets they will just go elsewhere to buy it. In favour of licensing trust because of the return it generates the community.

ML – What drove you to put a submission in

AT – Work in drug and alcohol field. The effects of alcohol on people is something he has an interest in.

ML – where did you hear about it

AT – initially at the pub he frequents. Took interest from there.

103160 Natasha Callister

Sales Manager at NZ Media Entertainment – Radio Network, NZ Herald

Tabled and read her written evidence

App called kickon

NP –Form you said you agreed with ban on shots after midnight

NC – doesn't think it will cause a great change. People will either take it or leave it, doesn't address the real issue.

NP – you agreed restricting off licence trading hours

NC – off licence – availability of low priced alcohol, they buy exorbitant amounts of alcohol, other areas still have problems though.

LV asked for research

Prohibition has never been acceptable, you said education and rewriting beliefs

Given that historically prohibition has never been successful, can you give example of when education etc was

NC – no but when people are more educated to deal with situations

NC – you have educated and non educated people that drink. Look at smoking stats. A lot to do with education.

LV – massively increased price and decreased availability has encouraged it

NC – no decreased availability

Pricing has some factor but kids can still get cigarettes.

JM – clarified individual or organisation

NC – individual

JM Alcohol healthwatch

NC – no don't know the study

AW – do bars do enough marketing as safe place to drink

NC- they spend a lot of time trying to work out safe place. Bars more responsible than they are given credit for. Any licenced premise it is easy to see notice.

2.35 pm

The meeting reconvened at 10.25 am on Wednesday 19 November 2014

An apology for lateness was received from Councillor Vandervis.

Colin Weatherall and Andrew Noone

Tabled and read his evidence in support of his comments made to the LAP on 11 November.

DC – all submissions will be considered on their evidence and substance of them. The numbers are irrelevant as it is the content of the submissions that counts but take on board your comments.

Jeremy Livingston, Larise from the Mill in Anderson Bay 100454 and 101004
The Mill and Independent Liquor

Provided background, the Mill has 35 stores. 21 years.
Independent Liquor purchased last year and has done a lot of work in terms of compliance and different councils on LAP across the country.

LAP – great document, clarification
Commend for getting to where we are

Glossary – new licence definition is important and should be a premise that has been previously unlicensed.

Sensitive sites – too broad and ambiguous. Needs to be better addressed in LAP.

Off licence trading hours, agree with conditions 7 – 10 is fair but needs to be applied to all off licences including supermarket off licences.

Cr Whiley entered at 10.33 am

Trading hours should all remain the same. Commercial disadvantage otherwise.
Kinds of alcohol to be sold and protocol around single serves.
Believe this condition to places that sell more than just alcohol.
Reinforced
Person who only wanted to buy one unit is pushed into buying a pack.
Single can is controlled method and buying more would put them at more risk.
More harmful than less harmful.

Independent Liquor
Some clientele only after small unit of alcohol.
Law commission and alcohol in our lives.
Strong arguments not to ban RTDs
Risk with RTD no greater than other products
Alcohol is alcohol and consumed in

Trading hours and a couple of terminology and single serve.

DC – in 2 submissions from Ms Robertson, there is inconsistency, your greater concern is consistency.

JL – yes as long as applied to everyone.

DC – alcohol being alcohol, it's a matter of the strength of the RTD. Assume you would understand the concerns around RTD's 7,8,9%.

JL – last year the maximum RTD is 7% was introduced and no RTD has more than 2 drinks in a can. We don't hear there is a problem with single serve. Our concern is more that people have to buy 4 cans rather than one can. We don't have age data but most of the single serve customers are over 30. So trying to attack an issue

DC – we have been told there are sachets of spirits
JL – we don't sell those.

ML – LAP is a draft and we have had a strong representation from pubs etc saying off licences are the problem. If hours are changed, what would you accept. We have had people asking for 9am – 9pm

JL – no issue with later start as long as its finished. 9pm – off licence is all about taking it somewhere to consume later. 9pm is a restrictive. 10pm is okay however 9pm is customer inconvenience and makes them buy more rather than less.

Larissa – concert or event people come in earlier to prebuy. 10pm fair but anything earlier is challenge.

ML – when an event

L – not buy more but buy it so they don't have to get it later on.

ML – struggling why if you were going out

L depends on who is purchasing

JL – or they might buy a 12 pack but only want a 6 pack, but buy more just in case.

Brings an inconvenience and punishes a greater bunch of people.

ML – by closing earlier the view would be that you are trying to fix up the spontaneous things.

AH – you sell single units, do you have an idea of how that breaks down, how many people are breaking

JL – not commercial, less than .5% of sales. Small but across network of stores. It is subjective and may cause more harm.

If young person was going to buy 1 or 2, but only other option is to buy 4 pack or hipflask.

AH – that market is generally over 30.

JL – single serve sales are spread out throughout the day.

AH – potential greater harm for young people yet you say older people buying

JL – puts the same harm young or old. Not

AH – discretionary conditions

JL – should be discretionary. The purpose is to stop people going out of the shop and drinking it. Auckland issue, people go out buy from bottle store, drink and back to bar

JL – people who plan it is best but its those who don't

JM – Understand the off licence. How do they work.

JL – Super Liquor is large national banner, Liquorland, national, Henry's south island, The Mill, national. We pride ourselves on compliance.

Independents could be part of a national banner, e.g. Thirsty Liquor, Bottle O. They are part of national banner but are franchise whereas we are national network.

JL – promotional activity under the banner.

JM – ownership

Independent the Mill

Lion – Super King and

Foodstuffs – Liquorland and Henrys

JM – The Mill submission – closing phrase, 2.1 deals with 100m

JL – linking the sensitive site to the 100m proximity. Consistency around wording. Can come back to you with it

AW – Hours of trading. Submission that it was important to sell at 8am. Yours don't open early.

JL – 9 or 10am start is fine as long as it is consistent. It is a convenience thing or nightshift people who want to shop then go home to bed but he is happy with that start. 8am start does not disadvantage anyone.

Rob Thomson – Dunedin Collaboration Against Family Violence 102381
Rob tabled and read his written evidence.

Spoke of binge drinking
Spoke of the success with smoking bans
We need to do the same for alcohol.
Reintroduce public drunkenness as an offence. Need to address as a community.
Make bars and clubs responsible for this.

DC – we are developing local alcohol policy. What can we put in this policy.
RT – Shots are dangerous, limit them after 12, why not ban them altogether, they are just to get drunk. You don't chuck back single malt whiskey or fine wine.
Stop the quantity of alcohol. Bars and pubs do not accept people that are drunk. Hours that alcohol is sold wouldn't be an issue then.

RT – we need greater powers to tackle the issue rather than dabbling around the edges.

AH – interested in comparison with tobacco. A lot of those tools aren't available to us for alcohol. Interested that we didn't say chain smoking is bad but casual smoking is okay. You are not saying that to drinking. Wonder if this is barrier to getting cultural changes made.
RT- minimal smoking is hazardous but the idea of preventing other people being affected by smoking

RT – we need to create community where public drunkenness is not acceptable.

AH – outside of this process, given scope we have, what can we do to facilitate the changes
RT – Council needs to support the community finding ways to address public drunkenness

RT – bylaws and restrictions about public consumption of alcohol to decrease drunkenness in public.

JM – online alcohol purchasing, is it because its cheaper or better quality or specific lines you can't purchase elsewhere
RT – purchases fine wine and single malt whiskey online because you can get better quality. Whiskey outlet in ChCh and buys wine direct from wineries.

AW – Where is best place for people to drink
RT – with other people in social situations
Refuge and Policy calls increase following large sporting event

AW – should there be a limit
RT – yes, can't understand the idea that people can't purchase one unit.

Mike McLeod – Chicks Hotel 102976
Spoke to his submission
Wants to make Dunedin safer and more enjoyable place to live.
Main aim is to focus on a couple of smaller points
Spoke of the reputation of Chicks Hotel. His interest is nothing to do with its prior reputation rather than the interest in music.
Changed culture, enforce the current Act very strictly.
Speculates that if people plan on staying up till 5 or 6am but will continue to do so in unsupervised environment. Hamilton situation.
2 matters for clarification
Outdoor areas and earlier closing times for smoking areas
Outdoor area sheltered area for smokers or non smokers to have safe environment. Nice to pop outside for break, smoker or not. Smokers have addiction to nicotine and need to get their fix

Non CBD areas. Chicks is zoned industrial so red herring for him. No direct residential neighbours but not sure how early residential bar closing will be.

No history of sound complaints or problems

Bars outside CBD.

Drink driving will increase if suburban bars close earlier.

If there are going to be earlier closing hours, need consideration to public transport to take people to CBD. No public transport after 9pm most nights.

Mike lessee

NP – do you go to 3am

MM – generally close by 1 or 2 except New Year etc

NP – have you had problems with drunk etc

MM – we are stringent on enforcement of sale of liquor act so have asked people to leave etc.

AH – thanked Mike for bringing artists to the city. Is Chicks mainly entertainment focussed

MM – primary focus

AH – can you comment on bar trade and compare times of bands playing and sales

MM- rush early on in the night then slower drinking during live acts then a couple of brief periods of busy ness in breaks etc.

AH – live entertainment does slow down alcohol consumption

MM= yes and our events are ticketed, they are there to watch a band not just get drunk.

Have pretty healthy drinking culture.

AH – other submitters have talked that we as a community should be more supportive of those. Another way of supporting alcohol harm

MM – yes

AH – dead in Octagon till midnight and look at ways to encourage behavioural change

MM – has lived and played in the city for 13 years. Dunedin has been notorious for late night entertainment. Have made effort to adopt that. We hire a bus and transport safely to town.

ML – enclosed courtyard not the same as tables on footpaths

JM – what time do you start your gigs

MM – depends on Acts playing. Generally 9 or 9.15, spoke of bus timetable.

JM – did you trade without the bus

MM – think bus ran from start other owner did not though.

DC – how many do you get on that bus on Friday or Saturday night

MM – have had up to 100 people, had to run multiple trips on busiest nights. We have 20 and 34 seater buses we can hire. Generally the 20 seater bus.

Dave Lamont – Cableways 100804

Tabled his evidence

Make smaller bars easier to establish and attract students back into their own environment

AW – what are your hours of trading

DL – off licence 9am – 8.30 – 9 on a Sunday, 10 or 10.30 on Friday. Supports closing time.

Thursday, Friday, Saturday biggest onlicence time

AW – 8am buying booze

DL – only people we get at that time of the morning have drinking problems

JM – What are your current hours

DL – standard ones

JM – off licence selling shots in flexible plastic packets

DL – don't stock them

If somebody came in to sell that he would get kicked out of the store.

DL – re one way door. Would create problems for people who want a smoke, bars that have furniture outside and want to put it somewhere. Transport problem

One way door policy

Spoke to someone in Melbourne and asked. He indicated earlier times tended to go back to their flat or house and drink rather than stay in town. If you stay with late hours you will still have the problem of preloading into town. Need to get them in town earlier. Cost of drinking in inner city bars expensive. \$8 - \$10 for stubbie for beer you buy at supermarket for \$2. People will preload unless pricing cheaper.

We have outside smoking area that people go out to. Surrounded by glass.

Finbarr Piere Nobel 101015

Opposes the policy

Opposes changing the onlicence closing time

Young people do it because they have lost all the safe areas to drink so they preload which costs safe and enjoyable venues money. Adults shouldn't have curfew as wayward children.

Offlicences 11pm till 10pm, will inconvenience the majority for the convenience of the minority. 7 – 10. Acceptable to buy at 7am yet closing earlier.

Some people who propose the policy haven't had a drink in their lives

Shutting down the footpath and would you shut down smoking areas.

Not pleasant to push people all back into the bar

Nice to be outside and have conversation with someone, nice to have smoke over a beer and get to know them.

12am ban on shots and 1am one way door policy

As it gets near 12 will have obnoxious drinker grabbing shots quickly. Will pop outside and can't get back in.

He said some Councillors may remember 6pm closing.

Opposes ban on off licence single bottle sales.

Quoted about woman with dill, chicken and brown rice and single beer in her basket.

Those most prone to drinking 40 – 60 backyard BBQ

Increase of licencing fees has had to be passed on to patrons.

DC – DCC closing down bars

FN – pubs and bars closing in North Dunedin is from University, not sure if in cahoots with DCC. They have nowhere to go and need safe and affordable places in which to drink.

DC – what mechanisms were used for DCC to close bars

FN – throw away comment. Pubs and clubs are not economically viable to remain open.

AH – how do you balance the problem with the reality of the situation

FN- would compare with what we managed to do with smoking. Advertising campaigns. Costs money to do counter advertising campaign, less money to prohibit.

AH – the idea that you are punishing the majority on actions of the minority. Is that not the fundamental role of regulation to balance these

FN – is there any way this can be solved. Rather than reduce options available to adults.

24 hour licensing. Went to have a few drinks with old friend. Friend went to the supermarket at 11.01, he couldn't purchase beer, prevented friends having fun.

Jinty – online purchasing. Would like clarification on any provisions that stop immediate delivery.

KM – The Act allows purchase 24 hr but delivery limited. They have deliveries limited.

DC – can you get immediate delivery
KM – unfortunately probably

JM – the Mill will require ID on delivery

Discussion on the footpath area
Trying to reduce conflict.
Courtyard area behind fence is okay.

Poorly worded in document, needs fixed.

DC – is the LAP when developed able to give some parameters to DLC around discretionary conditions.
KM – yes

Conditions for neighbour bars and guidance discussed.
Get the feeling we will not just lay down one size fits all rules if we want buy in.
KM – beauty of discretionary conditions.

Cr Vandervis entered the meeting at 12.25 pm

101926 Kathy Jansen – Emergency Department, Dunedin Hospital
Powerpoint

AH – Do stats capture if I had been drinking and had something done to me, I would be stat even if not in the wrong.
KJ – Years ago nobody was followed up, trying to help because of that. Provide education. At student health they ring everyone and make an appointment for them, might just be one off but often lots of things identified. Trying to educate about safe drinking.

JM – in relation to comment you just made, can you elaborate about general nature of problems
KJ – University is problems within the home before university. First year, no support systems. Good programme works, people don't come back. Brief intervention at that point helps.

NP – Data for 2013 and 2014, do you have longer runs
KJ – have been doing that from 2007, pretty standard. Trend
Overwhelmingly 18-25 with alcohol related problems

\$2.5m – estimate looking at amount of people presenting and bed stay in emergency department.

JM – there may be extra costs e.g. Ear Nose and Throat clinic not captured

KJ – no

All head injuries referred. 90% of cases are referred on
Most cases require ongoing treatment, physiotherapy, ear nose and throat ongoing surgery.

JM – Graph student health seemed smaller than Greg

KJ – same age group

Explained student health

KJ – goes through all cases on Monday. Predominately student health. The Hyde Party, higher referral.

ML – Re case study 14/15, 15 is unconscious

KJ – not quite right but a bit confused but because of alcohol and head injury you have to CT

ML – Case study, not extreme, do you have higher costs

KJ – At least 1-2 times a year people end up in ICU too much alcohol but becoming more frequent.

ML – are there people with no other person concerned and they do it to themselves
KJ – especially the older age group. Younger ones get into fights.
Spoke of the antics drunk people get up to.
Person who died outside MacD's, he wasn't intoxicated but those around him were

AH – Do we know capacity or incapacity of the perpetrator
KJ - no

AH – is it not fair to attribute all cost on the drunk person if they weren't at fault
KJ – we are just putting the word out for people to drink safely. Not saying don't drink, just do it responsibly. It is a small group you are dealing with compared with those working hard. Not saying don't drink just advocating safe drinking.

KJ – don't get into dynamics of whose fault it is, we just do the treatment.

AH commented on incident he was involved in.
NP – hazardous drinking in Southern district. In that light have you compared notes with ED alcohol admissions
KJ – Marion Poore collected the information which included all

NP – is Dunedin a stand out compared with Invercargill
KJ – problem with data

AW – Did ambulance run and have experienced it first hand. Do you ever look at whether on licence or off licence.
KJ – Police have asked that but we haven't got time to ask the information

AW- have you seen much difference in alcohol abuse with synthetic drugs off the

Craig – Emergency care in city from 1970s., synthetic cannabis has made difference in aggression and lack of ambition. Has eased
Spoke of incidents

AW – type of alcohol etc
KJ – RTD's the biggest problem. Back in the day, you got full or bloated. RTD's taste like soft drinks.

AW – do you see increase of incidents with events
KJ – yes. Improving though.

AW – peak time for alcohol related harm
KJ – from 11pm onwards
Craig – 11pm – 3am Thursday and Saturday nights. Friday quieter because of sport
AW – 25%
KJ – 10% of people going to University have drinking problem before they get there.

ML – Police said – if we bought closure of bars forward to 3am, people would modify their behaviour and reduce harm. Going back to 1983 ish were there still problems or has peoples behaviour changed.

Craig – combination of two things, behaviours where attitude of young persons is different to authority and the nature of the way people drink. RTD which people can drink large amounts of. Behaviour 11.30 – midnight people heading into town and doing a lot of damage on the way.

Carly – sit on professional body of nurses for new Zealand emergency medicine. Working to raise issue of violence to staff. A lot related to alcohol harm. Staff subjected to physical, verbal abuse. Need security as everyone goes

AH – Are those incidents followed up with prosecution. If nurse assaulted,
Carly – they are followed up.

The meeting adjourned at 1.03 pm and reconvened at 2.43 pm

Andrew apology for lateness

Josh Hannagan Submitter 103711
Tabled and read his written evidence.

JM – off licences – targeting off licences, are you saying we should be tighter or are you saying we liberalise the on licence and leave off licence.

JH – Off licence is not main focus. Off licence should be tighter, agree with changes but could be more so looked at.

JM – what is problem with off licences

JH – price is a lot cheaper and readily available and can be taken to other places and consumed in unsafe ways. Heavy consumption, preloading. Easy access that can be bought long hours very early and late at night. Bring back to 10pm.

Cr Whiley entered the meeting at 2.56 pm.

JM – we should look more closely at off licence hours and density

JH – doesn't know enough to speak about off licence. More interested in onlicence being safe place.

LV – DJ's play 10pm – 4am, new 3am closure, social culture would survive

JH – don't believe that is the case. Don't get a busy crowd until well after midnight.

LV – do you think people would come earlier

JH – no

LV – real problem is not in premises but off licence parties. On licence premises people looked after. You suggested 4am closing, allows people to naturally stagger off into the night. Do licenced premises really ensure people are not drinking too much and are not severely impaired.

JH – heavy regulations around bars, onus on them to pick up intoxication.

AH – if bars were to close at 3am, everyone would be forced onto the street at the same time, wouldn't it be the same now but at 4am.

Kevin gave clarification on bars and doors being open in residential area because of noise

Discussion on closing time and everyone leaving at 3am.

The meeting adjourned at 3.07 pm and reconvened at 9.00 am on Wednesday 3 December 2014.

Present: The Mayor, Jinty, Andrew, Mike, Aaron

In attendance: Kevin, Lynne

Apology - Lee

100676 Tim Donaldson, Foodstuffs

Tabled and read his information in support of his submission.

JM – Opening hours, evidence that at risk individuals preplanned

TM – no actual evidence and not qualified to discuss. They are purchasing for a need not an opportunity. If we restrict hours, the need is still there but they will purchase at the time we are open. Understanding to restrict hours earlier, we hear about preloading etc, they are not our target.

JM – Restricting sales outside those times and keeping away from schools is about restricting exposure.

TM – Would ask for good analysis of that evidence. Have been involved in fields and looked at that evidence. Most bar one part is on licence. Spoke of restriction hours. Have looked at all evidence. Have not seen any that hours of availability relates to harm.

JM – exposure of young people to visibility as consideration

TM – haven't been exposed

AH – excessive drinkers aren't preplanners

TM – did not say that - we have not seen any evidence that relates hours of availability to inappropriate excessive consumption causing harm. Accept alcohol causes harm but have not seen any evidence that suggests that further restriction causes this.

AH – problem drinkers will preplan

TM – talking about people who have a problem with alcohol. Very unfortunate that we have people like that. If we change drinking hours they will change shopping.

AH – Alcoholism, have a need. We have responsibility to reduce harm across the board not the extreme part of the spectrum, what should we do.

TM – Foodstuffs suggestion is that we allow the new Act as it is written and the restriction within the act to be implemented. As new Act does restrict trading hours, requires supermarkets to have single areas and restrictions on promotion – go with it.

AH – part of weekly shop unhealthy balance – we should allow it to happen rather than this is a problem

TM – your decision. From Foodstuffs it is a product that is legally allowed to be sold. We don't treat it as a normal product, restrictions and the way we sell it. We sell within the law. Peoples behaviour is that those who choose to purchase it, purchase it in the main as with other products. Less than 2% of transactions is alcohol alone.

AH – how many between 10 and 11am knew that morning they would make that purchase

TM – do not have that information. ?Did in Richmond 9-10 and ChCh between 10 and 11, one in two were purchases of alcohol in the last hour of opening were 18-25.

TM – supermarkets is a one stop shop. Alcohol small part of volume sold but key to total spend so they will choose to shop at another time.

AH – wouldn't it be good for business to do same trade in shorter hours

TM – not good for the community

AH – when did they get Henrys and Liquorland

TM – Henrys Queenstown coming up 8 years ago. Liquorland 5 years ago.

ML – Pak n Save cheap beer. 18-24 year olds are the only alcohol related harm. Could be any age having harm. Cheap beer = spontaneous buying. No information on the harm.

TM – Not suggesting harm is related to those clients. Police and Health are suggesting that. Harm is right across the spectrum. 80% of the alcohol is between 11am and 6pm at night. Don't know when they drink so playing with the hours at extreme ends won't contribute to the harm.

ML – If we restrict you will only loose 20% of hours

TM – won't loose any, you will restrict the community. If we restricted trading hours, it would restrict employment. Will not reduce harm from excessive consumption and that is the point of the act.

JM – Sales at Henrys between 9 and 11 pm and early hours of the morning would be of interest

TM – can look at that.

AW – how do they get on in Southland

TM – they trade very well. The fact is that in Southland customers have to make two stops.

AW – you said it would effect employment, does it in Southland

TM – what I am saying is that in Southland a customer has to go to a bottlestore. In Dunedin they would continue to do one stop shop within the hours they have available. Customer can not do a one stop shop in Invercargill.

AW – Supermarket in Invercargill and Supermarket in Dunedin would turn over the same amount of people.

TM – yes but amount of people is turnover based but if hours are further restricted, trading hours would be restricted.

AW – Trading hours??

TM – would probably align with the sale of alcohol. Would stay status quo at the moment but if they didn't have clients, would trim

AW – percentage of alcohol sales between 7am and 9am

TM only did evening. Between 7am and 9am would be less than 2%, in the evening would Happy to provide exact numbers. Want to be clear, certainly in the morning between 7 and 9 we do a lot of grocery turnover and that is because of lifestyle. Percentage of alcohol is percentage of sales. If people choose to shop

AW – asked hours of operation for liquorland and henrys
 TM – Henrys are usually 9 or 10pm closing
 AW – 7 – 9am would be doing as part of grocery shopping
 TM – yes. And for bottle stores not economic to open in the morning a lot of the time. Owner operator business.
 AW – Went to New World Centre City last night. Complimented staff member and interested in set up. Interested in accessibility to alcohol and how it was presented. Asked about suitable alcohol to sell in the supermarket. Talked about low cost for possum drinking.
 TM – not sure it is part of the process. Turn away a great range because of who they are aimed at. Do feel that the range they provide is suitable. Get offered a wide range that we will not stock.
 AW – clause 2.1 – do you have any further comment.
 TM – would mean you can't start business that has sensitive facility close to it.
 Question on stocking
 TM – advised of RTDs etc
 AH – On licence are stating cheaper to buy from supermarkets than own suppliers, is that factual or helpful in reducing the harm
 TM – doesn't know cost price so can't comment
 AH – healthy or unhealthy
 TM – not sure
 AH – do you sell alcohol for less than you buy it
 TM – no we have policy
 DC – people buying in Dunedin would be considerably younger than Richmond or ChCh
 TM – Riccarton pak n Save is in heart of University
 DC – 20% of Dunedin's population are tertiary students and the youngest suburb int eh world
 DC – The likely effects of purchasing between those hours could be exaggerated in Dunedin with lower age demographic. Do you accept that given this is local alcohol policy we would be appropriately addressing factors in this community
 TM – agree that for LAP you should address LA issues. You should rely on local research and evidence.

100939 Greg Harford NZ Retailers Association
 What are the problems in Dunedin caused by off licence hours
 Recommend national closing hours
 Doesn't think will affect

DC – your position is that restricting alcohol sales will not achieve the objectives and restrict choices of shopping for consumers, specifically compare why we should be affected more than the others.
 GH – whole point of legislation. Dunedin
 Trading hours doesn't reduce harm. No strong evidence in off licence in reduction of harm. Late night activity tends to be on licence which causes harm more.
 People will still buy from off licence premises, it doesn't alter. If you restrict hours, you affect large number of consumers that don't have alcohol related harm
 Am here representing retail sector but our work is consumer focussed.
 JM – if you suggest that the hours of sale of your members doesn't have an impact, what are you suggesting could be changed to reduce harm.
 GH – talking about hours for restriction
 AH – Any particular measure will address overall problems
 GH – what is specifically different in Dunedin
 AH – we need to accommodate shift workers etc. Surely they get time off within trading hours
 GH – yes
 AH – its not about people being able to do weekly shop its about flexibility
 GH – yes
 AW – where do you live
 GH – Wellington.
 AW – their horus
 GH – 7 – 11 the national hours.
 AW – you listened to Tim, how would you comment in relation to him saying they are comfortable with 7 – 10.

GH – ours are in general

AW – have you looked at preloading in Dunedin. Former president OUSA said they would buy bottle of wine, drink in 15mins and go to bar

Some stuff said but not sure what

GH – They will continue to buy.

This is the default policy it is not necessary the hours shops will open. Its default framework.

AW – you speaking to all LAPs

NP – Your organisation is large with 5,000 members, 150 in Dunedin. Have you done any research to support your case re trading hours and purchase.

GH – haven't done survey to best of his knowledge.

In talking in general people who want to buy alcohol will buy it. Question is where. If you accept that

NP – liquor stores

GH – number of stores. Can provide details

DC – need for evidence base to justify putting further restrictions in place. We can't get evidence if we can't put restrictions in place

GH – What makes Dunedin problem specifically different to national problem. What levers have you got at local level to deal with that.

DC – if we can only gain evidence by putting measures in place

ML – we shouldn't penalise majority by

As member of public I am prepared to have some restrictions on me used spray paint example. Consequence I am happy to have penalties and restrictions and greater percentage of population may feel the same to save some

GH – hardware shop, the policy is the impact of consumers having full service available. Consumers don't go to shop the hours it is open. Flow on impact.

JM – Difficult to assume that consumers would shift their time of purchase rather than reduce their consumption. Would like survey work and what the consumer would do if it was changed.

100130 - Stephen Hannaghan
Bacchas and POP bars

Read evidence in support of his submission.

JM – People won't change their behaviour in respect of coming to town. If it closed earlier they wouldn't come to town early

SH – yes

JM – one way door, do you do it

SH – yes, half an hour before closing

Social habits are to preload. Migration of Octagon at 1am, they are pretty smart kids, spoke of preloading. Should be able to look at pricing structure.

AH – if all the bars closed earlier people may come out earlier and you said no. If we talk about closing off licences earlier you are saying people will change their behaviour accordingly.

SH – don't believe it will have a bearing on what time they come to town.

10pm wouldn't make a great deal of difference to the cheap alcohol

AH – what if 7pm or 5pm

SH – may, price is the big thing

AH – you can't advertise discounted liquor

SH – we can advertise inside but not outside.

AW – Pop Bar, what would average spend be per customer

SH – varies, would be 4 drinks \$50 per person

AW – shots till 2am, if they went to midnight, would you see people line them up

SH – Very much 6pm school mentality. Can't imagine going out for dinner and lining up shots. Unproactive as the latter. Consumption would be strong before 12.

AW – security costs

SH – up to \$35k per year.

NP – Happy with 2am for shots

SH – needs to be compromise.

Doesn't have to be high alcohol consumption, may be a beer then nice shot of whiskey at end of night.

NP – you are busy to 4am

SH - yes

DC – shots and one way door. Should timing be same across the city or should it be tailored to the particular premises or business. One way door half an hour before closing

SH – perfect world yes but don't know how you could get everyone to agree. Some should have later licences to have natural leaving of patrons around the city.

DC – Same for timing around shots, in one bar it might be appropriate to be earlier another later.

SH – yes

ML – previous submitter said supermarket sell below buying price. What are your rules around sale prices, do you put your own mark up on.

You could buy at Pak n Save and sell at whatever you want

SH – could go to the Supermarket and buy it there.

ML – talking about your mark up

SH – Compliance costs associated with the business. Compliance and running costs hard. To sell Speights for \$3 no never, would have all sorts of problems.

General pricing similar around most of the bars.

Hard to police people coming in with their own drinks. Is a problem but hard to monitor.

The meeting adjourned at 10.41 am and reconvened at 10.57 am

Submitter 101911 – Phil Ellis – Ellis Hospitality Group

Tabled and read his written evidence in support of his submission.

DC – One way door policy, a number have an informal one. Can you comment on the use of that by bars

PE – depends on the evening itself, the perceived level of intoxication by the Duty manager who will close things down if things getting messy, test or concert night. Could be 20 – 30 minutes, no more than that.

DC – thorts on possibility of lap being more along the lines of an example having a requirement on bars to have a one way door policy and allowing them to decide what was appropriate

PE =- it is a tool of many we use to look after our bars. We have a responsibility and are highly regulated to protect our bars and patrons. To include that it is voluntary is no problem as it is used now.

AH – You mentioned that the draft doesn't do anything about the cause of the problem, what is that.

PE – the cause has been supermarkets selling alcohol.

AH – is it a coincidence or are you pointing finger

PE – don't know, yes he is pointing finger but consequence of 18 year olds drinking etc.

AH would you support higher drinking age

PE – yes

AH – did you submit that

PE yes

We have since 18 December, we close at 4 instead of 5,6 or 7. Notice as a consequence how we all stuff not sure.

AH what do you notice

PE – Seeing a lot of functions closed down because birthday person has become intoxicated. In terms of intoxication and identifying. Police send squads in at nights.

AH – would you accept that admissions to A & E would be another key measure

PE – it can be but is open to interpretation.

AH – doesn't appear to be dropping off since December

PE – k

NP – Footpath and one way door,

PE – was joint venture between volunteer bars, driven by licencing police and ACC. Buses provided from inner city to outer suburbs. Saw at the time when there was a problem with inner city assaults and we took the view that we wanted to do something about it. Police

advocated because of O week. Buses weren't well attended. Most popular was one to Mosgiel. He rode the buses, weren't many on there. Security was fine. For whatever reason found himself with bars acting on policy and police numbers were dropping off.

NP – what times were applied for one way door

PE – 4.00 am

NP – empty by

PE – 4.30

NP – Police didn't come to party

PE – no follow up meetings, never asked how things were going.

NP – linkage to skulling and spiking

PE – if person wants to go outside and they are told to leave drink behind, they will consume it, they will down it before they go outside. Spiking prevalent, take strong watch, any unattended drinks are removed. If they go outside and we don't remove the drink, it could be spiked with date rape drug.

NP – you oppose restriction on closure of footpaths

PE – yes, it's a fun place to be on a nice night. Ambiance is great, why not enjoy it.

DC – Meniton of conflict of patrons at table and people turned away because of intoxication

PE – very minimal, we have security so dealt with quickly.

AW – age range

PE 18 – 60.

AW – average closing time

PE – Thursday not before midnight, Saturday usually 4am unless cold and horrible then 3am.

AW – trading time for off licence.

PE – changing from 11 to 10 is no big deal. All he sees is something to appease the public that the policy is trying to restrict off premises and on premises.

AW – security cost

PE – 77k a year. 8 per night

AW – do you see anything in LAP that needs to change

PE – whole lot

JM – re shots after midnight, would you see any value that doesn't necessarily see a restriction in the time it is allowed but the alcohol strength

PE – It has merit. Spoke of standard double and strength. What is the definition of a shot, needs to be sorted.

JM – in principal you might be supportive of restricting

PE – already have that in place when we don't have high octane available after midnight. If you wanted to restrict to 40% or below it would work.

JM – security on outside, one submission says they could be passed over fence

PE – size of fence has been governed by local govt law. At moment only 1200 but

Odd problem with interaction of people in and out of barriers. At height of O week, when lots of people around there is significant event in the city.

JM – would you have one person patrolling

PE – depends on size of bar, normally one person. Other bars may be different, depends on perimeter.

JM – would check ID and perimeter

PE yes

Submitter 101911 – John Devereux

Read information in support of his submission.

Concerned about extreme draft.

Has strong impact on provisional LAP. Onus to take this out.

Wellington has taken mature approach and the Police is the appellant. Onus on him.

Prevents Police driven document. They didn't bring up stats of the areas with 3am closing.

You will pressure cook town. We went back from 24 hour to 4am. Illegal taxis goes well.

Tactic is shotgun approach, if you throw enough out.

Would like 4am closing remain

Would like 6am for bonefide night clubs. Should have that when you open at 9 or no earlier than 9 you can go through to 6.

Serious assaults will increase.

Transprot problems.

At 4am we have some ability for natural attrition. You can look at turnover from 3 – 4, we don't have a lot but control how much goes out in last hour.
 Spoke of voluntary one way door used.
 It should reduce harm not increase it. Clear support that policy will not reduce harm. One way doors create problems.
 Outdoor area licencing-
 Mainly use of public space
 Use of DCC footpaths doesn't affect him. Went with camera and interviewed lots of people
 Don't have problems
 Don't see any reason to shut down footpaths unless you want Dunedin to look dead which is what Police want.
 Will affect vitality of Dunedin. If there are problems they police it.
 Policing is just to find alcohol related harm.
 People in queues well behaved because they want to get in.
 We respond to Policing. Didn't see it until December last year. Not cooperative approach, they are gunning for us.
 They are trying to exercise their right well meaning
 Shots – responsibility to serve people safely. Happy with under 40%.
 Wants 4am remain
 One way door 3.30 or not at all, if 3am closing don't do it at all
 Not going back to 1980s, kids have more money
 Reduction of hours creates pressure cook effect on city
 3am will make it a circus
 Bad look for Dunedin
 Concerned with process that you stick with it for 6 years.
 Look at better proactive approach with bars
 We have responded,
 We can move on and Police will have clear mandate, they will appeal unless they get 3am.
 Won't take in any clear characteristics.
 You will be signing up and get poor look for Dunedin.

JM – 3am closing in Nelson and Palmerston North. Police gave examples of Timaru, Invercargill reduced incidents. Are you saying it doesn't happen across the country.
 JD – Timaru not enough people, Hamilton, Palmerston North etc. DJ's gave feedback. Haven't got access to actual evidence.
 AH – stated expectations
 JD – Bath St, 3am on Saturday evening as Sunday started at 3am. People turned up at 1am, Turned on Frank Sinatra at 3am for 5 years. People rebelled.
 It won't keep going back at the other end. 60% of business is on Saturday night. Will affect him financially. People will still preload. Called having drinks, we all did it and it will still go on. Concerned that North End doesn't have a lot catering for students so more come into town. Would like something done down there.
 Doesn't have problem with \$1 drinks at student
 AH – what did you say would happen when times pulled back to 4am
 JD – didn't say anything, wasn't as bad as expected. Worse than when we had discretion.
 Bigger economy now.
 AH – provision of later licences for genuine night club venues. Bath St was largely ticketed events and charged entry.
 JD – went to point that we could no longer charge unless major acts.
 AH – no objection
 JD – people would pay door charge for something to go to.
 AW – market age
 JD – generally bulk is youth market. To add to any night is to put DJ on and wait for people to turn up. Tuesday Wednesday they don't close until 12. Other nights till 4am.
 AW – 90% of purchases off licence
 JD – going from economic impact report. Hard to find ARH stats relevant to Dunedi.
 AW – one way door policy
 JD – 1 June to current. 11-1 – 29%. 1 – 4 is over 40% of turnover
 ML – students have a lot more money than days gone by
 JD – yes

JD – Cook Bros said 1/3 on a Saturday night don't spend anything. Some preload because of the type of venue.

ML – has to be reasonable, reading Tasman deal. They found 3am was reasonable. Appellant is not happy.

JD – Nelson has been 3am for a long time. Judge will not change something in place easily.

ML – if you don't think would make a difference to alcohol related harm, what should we put in place.

JD – allow supermarkets to serve until mid day then other off licences after that. It is within your power. We buy beer at the supermarkets.

NP – Intoxication levels dropping the longer we stay at home. Partly due to drinking less as the night goes on.

JD – spoke of nice people being there. Fan of 24 hour. Plan was easier to get one and easier to lose one.

NP – 3am closure would increase violence

JD – sheer volume of how many would go onto the street, taxi queues, takeaway outlets, people hanging around not wanting to go anywhere cos its too early.

JM – re off licences, do you have any views about online trading. Closing off licence early would get people to buy online.

JD – doesn't know enough about it.

100237 Belinda Symons – Super Liquor

Supports JD recant of Wellington.

Provided background on Super Liquor

Banned highs being sold in stores before authorities did

Have banned the packets of alcohol in sachet.

Do regard themselves as being proactive not reactive.

Document should not be ambiguous

New laws came into effect. Have been significant changes. Need to give the laws time to bed in to see true difference.

A lot more laws restricting that help alcohol harm.

Retailers Assn acting on behalf of members. We are a member but they weren't acting on our behalf.

Clarity on wording. Object of LAP, not envisaged that the policy will be retrospective, if licensee wants to sell business if the clause comes in it will come under new laws. It could be that they don't have the ability to sell licence.

Single sales – we do not support restriction of single sales. Ambiguous and will cause more harm and unintended consequences. They came about because Len Brown went into Queen St, saw people scraping together money counting out 10 cent pieces to buy a can. It started there and got on a roll. Believe it will cause more harm as that person that uses 10 cent now buys Meth.

No sale of single shots, define single shot, no clarity.

RTD's in less than 445 ml. The consequences of what is happening around the country that hasn't put into LAP but have now seen black tape around bottles saying they have to buy two. Beer and RTD's coming out in smaller cans. 445 will make manufacturers to up the millage which will cause more harm.

Preloading is issue. In Wellington they talk about Courtney Place. Preloading and purchases before 6pm. Rational decisions being made of those who had purchased and wanted to buy more. It is illegal to sell somebody alcohol if they are intoxicated. You have to show two symptoms. One is you have red eyes, you can't get your card out. Doesn't take much. You have to be sober to be served policy in positive manner.

Sober does not mean you have not had anything to drink

Support trading hours.

Needs it to be consistent with all off licences, 10pm closing.

3.41 c – may impose any reasonable condition it sees fit. Loose sentence.

AW – hours

BS – spoke of hours and the different stores

BS – spoke of analysing through the store. Very few sales between 10 and 11.

AH – very little harm caused by sale of liquor between 10 and 11 based on quantity and types

BS – yes

AH – Spoke of age limit

BS – supervised licences which allows you to bring a child in
AH – are you saying bottle stores are safest outlet re single bottles
BS – that was happening in Auckland
AH – not safer to not sell
BS – absolutely, we are looking at ways to let them get help
Spoke of those who drink what they buy. May come in every day and buy 2 minis as that restricts them.
Law says they can't serve intoxicated people not those who have a problem.
Served somebody a trespass notice as they believed they had a problem. Had significant negative impact. Working with Sallies because of it.
First to do it and will have visible presence.

NP – RTD's going down in popularity and ciders coming up. How do your stores interpret that.

JM – types of alcohol sold do not give you cause for concern, do you have breakdown
BS – can send it through. Will be percentage of sales in volume
JM – Issues with preloading and particularly those catering to students early in night
BS – they do cause issues and some will be bought from our stores.
They have become very strict on alcohol ban areas and fines are \$250. They have found that has become a deterrent.
Wellington most purchases between 4 and 6

JM – any other product you have banned like sachets
BS – only hearsay. Most if they want to take a product somewhere they shouldn't they will find another way to take them in.

BS – Responsibility on the person selling, should be personal responsibility too. We educate all our stores on the changes.
Parents love RTD as its measured and they know how much alcohol they have. We predicted RTD would go down and spirits go up. Young ones love sweet drinks.

Tim Donaldson – percentage of liquor sold in centre city.
It is in the bottom third of alcohol sale. May be difference in behaviour but out of 38 new worlds in south island is 32nd lowest percentage of alcohol sales.

Dave – start off with deliberations, clarification around legalities, what they can consider. Wonder whether it may pay to have lawyer her. Good understanding.
Most efficient way is to deal with series of issues and measures that we can deal with. Start with closing time, one way door etc and revisit as package.
JM – one possible approach as used in mobile trading, agree to high level principles identify clearly what it was we could deal with under the statutory framework then identify other things but couldn't be dealt with.
Andrew – selling business and licence continuing on.
KM – LL authority when considering new premises. Changed premises to be considered allows opportunity for it to be readdressed.
Ambiguity interesting, could interpret that not being retrospectively protects a current business.
KM – more the

The meeting adjourned at 12.49 pm and reconvened at 9.09 am on Thursday 4 December 2014.

Present: The Mayor, Mike, Neville, Andrew

Apologies – Aaron for absence and Andrew for lateness

Submitter 101717 – Steven Collins
Spoke in support of drinking outside
NP – use of footpath and experiences and how customers interact with passerbys.
SC – Never have had a problem.

NP – One Way door – you are opposed
 SC – We don't tend to open too late, usually 1 – 1.30
 NP – busiest time
 SC – Friday after work a good crowd and then 10 -12
 DC – No shots after 12 proposal, interested in comment, variety of views. Each bar is different and has different clientele.
 SC – What defines a shot, is a double whiskey one in a whiskey glass. Can't have it because it is defined as a shot. Grey area
 JM – Re staff – 3am isn't a sufficient time for them to have a drink
 SC – if one way door from 1am they couldn't go anywhere.
 JM – if one way door not in place but 3am closure would that be sufficient
 SC – Pretty early if staff don't finish till 1.30 or 2

Andrew Whiley entered at 9.13 am

Richard Michael
 20 years
 Owns Commercial Tavern
 Established in 1876, few continuous licences left in Dunedin. Long history as meeting place for community.
 Seen significant changes
 Opening up of liquor industry with supermarkets selling beer and wine.
 Serving 18 year olds.
 Significant increase in alcohol in society.
 180 licences when he started now more than 425.
 Speights sold same price 15 years ago.

Government had opportunity to reduce harm.
 Everyday retail price, walk into stores and beer price
 Problem will continue unless action is taken by government
 Re LAP – on off hours should remain the same 7am – 11pm
 Shift workers, people go to town and on the way home stop in to buy a bottle of wine or six pack.
 From time previous law introduced staff has lost wages due to reduced hours.
 Loss of jobs
 Produced RTDs in 250 ml and 500 ml
 Beers shown
 Speights set up in craft beer in 1876.
 Will manufacturers come out with twin pack
 Customers that purchase a can of speights or guiness to take to partner in rest home.
 Cider 275ml and also 500ml
 Can't sell single bottles but can sell single bottle of Lindeaur.
 Shots – does double whiskey constitute a shot, need clarification.
 On premise sales, one way doors don't work. Closure of suburban bars at 11pm and 12 will have impact of migration of customers into the city. Not all bars close at 12 – Mosgiel have 3am licence, so do they.
 Provide music for local community and ensure they are in a safe and happy environment.
 Courtesy vans take them home.
 Will create more problems for inner city.
 AW – Busiest time
 RM – Friday Saturday. Saturday till 2am. Don't usually stay open until 3am but want to be able to. Stop serving 30-45 mins before licence expires.
 ML - \$26.99 you can't buy for that. Not suggesting supermarket misleading
 RM – too many ducking for cover.
 ML – both leading supermarkets refuse to loose money on beer
 ML – they are buying larger volumes
 RM – free market they can do what they want
 RM – we can buy at good prices too
 JM – demographic of customers going to off licence
 RM – we range from 18 – 70 – 90 year olds
 DC – off licence open until 11, what proportion after 9pm

RM – approximately 10%. Providing a service
DC – Supermarket sells the same?
RM – 9pm
DC – Closing time for suburban hotels, would you advocate closing times particular to an area. Some wouldn't want to be open that late
RM – Yes, we do good service, we provide entertainment, food, safe environment.
NP – One way doors, its been proven
RM – ChCh. One way door doesn't work. Additional staff, additional staff to monitor, haven't needed security but would do so. Family bar, our community is our family.

Cr Vandervis entered at 9.40 am

103402 – George Eason
Powerpoint presentation
AW – LAP in comparison
GE- about the same. Good thing is that you do have a lot more contact with authorities. Regular contact with Ian and Tony. Re LAP other Councils have proposed similar
AW – economics of running a bar, do you see it economical going forward
GE – is it worth doing in Dunedin? We won't invest more money, its too hard
AW – why
GE – Auckland and CHCh there is growth, you put a bar in and there are people coming to visit and the towns are growing so even if not viable now it will be in 5 years time.
Busy night at Alibi \$15k, way more in ChCh and Auckland. Strength has been coming from Dunedin and operating on smell of oily rag which is why they are so good in other centres.
JM – do you have anything you would like to highlight about proposed closing times and one way door
GE – one way door, haven't done enough research but a lot of people don't have security staff so will be added cost. We have security in place. Part of the fun is bar hopping. Puts people off coming to town in general. Not a good thing. If evening intoxication is high around town, something that can be self policed. One way door used at own discretion.
JM – 3am closure and the impact on Velvet Burger.
GE – changing licence at Velvet Burger to Restaurant licence. Will mean we can serve alcohol to 1am or midnight and keep serving food. Will cover fridges and manage alcohol on display.
AW – capacity for Alibi
GE – 250 inside and small number outside
DC – good points about viability of bars in Dunedin. Affected by a number of things including population growth. Large student population having low income does that effect
GE – Yes that is one factor. Student allowance has remained the same. Student habits have changed too. Spending more money on looks etc. Lots of different factors.
DC – Differential between price of alcohol in off and on licences. Low disposable income, conclusion alcohol related harm is the differential. Some nights there is no trade yet alcohol is being consumed
GE – think 76% of alcohol consumed is off licence
DC – students as a customer base adapt very quickly. How would they change in differential to alcohol pricing and changed closing hours. Some say the habit of starting late won't change.
GE – Not one of the points he is totally against. Lull between 11 and 2. If reduced helps cause. Balance. Don't want town to be perceived as being too undesirable.
JM – Age limit. Can't touch age or price
GE – you say you can't touch price
DC – in context of LAP we can't

101582 – Richard McLeod – Cook Brothers also NZ Think
Tabled and spoke to his written evidence
JM – Are you seeing split in other centres
RM – changes globally and nationally. Food as average price of meal dropping to give incentive to go out.
More customers want cheaper price point on food, craft beer, wine, ciders, more responsible and discerning. Suggesting that if LAP introduced, rather than migration we will have for lease and empty premises. Trend will continue and become stronger.

JM – how does it sit alongside submission that regardless of on licences and the way they operate, off licence and cheapness will drive the harm.

RM – yes

JM – suggestions – anything you would change in terms of timing, you can influence off licence and on licence.

RM – you want to see mix of restaurant licences increases and balance of later night licences stay stable

DC – Earlier in the evening. Increase in restaurants, would mean an earlier start for people socialising.

RM – definitely earlier than 12.30. Dining out becomes part of the night out, instead of preloading and hitting town. Doesn't think students will sit at restaurants at 1am but over time it will start happening.

LV – NZ Think

RM – don't work for cook brothers. Investment Funding, we leant money.

LV – 2 holes in the boat and which one you would fix first, would you fix anyone you could

RM – accept that. Believe you have a small hole to fix,
No objection to trying to fix it.

AW – how important are outdoor seating areas

RM – outdoor socialising makes the city feel better. Would be a shame that nobody would be outside. Major step backwards. We try and build outdoor area into every hospitality area we build. Smoking laws etc. Lesser part of the reason, people enjoy being outside.

Submitter 100785 – mark Scully, Fiona Morton and ??

Powerpoint presentation.

76% of all alcohol purchased nationally is from off licence.

10 years ago it was 60 – 40. Declined

Earlier closing hours, all off licences have the same trading hours.

Mark – a lot of this work has been done at national level. Important that we focus on Dunedin and are not looking after downtown Auckland etc. We have good relationships with the Police, Ian Tony and Kevin. Well served in that regard. Do have massive proportion of students we enjoy.

LAP v Sale of Liquor Act. A lot of the tools are already in place to be used. You think this is the only law. LAP can define the tools good for city but as an organisation we have never looked to represent or support bad operators. If someone is offending, deal with them, shut their bars, if there are regular outlets the Police are being call to , deal with them. Need to put kids in safe environment. More active, remove managers certificates, close earlier. Doesn't mean everyone has to be tarred with same brush.

Can't control minimum pricing but when LAP is implemented, would like Council to discuss pricing etc and submit to Gvt.

DC – Off licences peak purchases around 5pm 18-24 year olds but you support same hours.

If peak at 5pm and we work that 11pm alcohol harm, why not pull offlicences back in.

Sarah – Not sure of sales between 10 and 11, by pulling it back you are penalising people who want to purchase later.

DC – might not be a huge amount, because they are opportunistic

Sarah – side loading

DC – one bar, people would walk into bottle store, buy a bottle of wine and drink on way to bar, arrive sober but 10 minutes later drunk.

S – vast bulk of it sold early in night.

MS – harmful drinking between 10 and 11.

DC – if felt that because supermarkets cause harm, stop them selling earlier than off licence

MS – would be hypercritical, needs to be one for all, fair. Spoke of the smoking when you could smoke in casino.

S – you would end up in an appeal court. Arose in Hutt Valley, supermarkets got 2 hour. Would need rationale.

JM – interested in understanding if there has been robust debate on off licence v on licence re alcohol related harm. As you represent both.

S – On premise members, intense frustration with preloading. Dynamics have changed in last decade. Price differential has been driven by supermarket. On licence premises find

supermarket pricing frustrating. A lot have bottle stores attached. Not opposed to slightly earlier closing time so long as equal playing field.

S – we lobbied for drinking age of 18 etc so understand that you can't go there. A lot of cities are talking about creating more vibrant nightlife economy. Inner city safety, is it a separate entity. LAP should be short and brief, the rest is fluffy and nice but doesn't belong in the court.

LV – Consumption of alcohol has been dropping since 1970s. Excessive consumption has not. It is cool to be drunk, same as cool to smoke. Dropping steadily consumption but excessive or inappropriate consumption is not dropping.

S – drinking patterns in 1980s still had the same harm, just different because they went to pub first then party.

LV – consumption dropping but excessive hasn't why

S – Culture we have had for a while. Some indicators from Ministry of Health that says youth culture is shifting. Non drinking youth has doubled since 1986.

WHO we are 97th in the world in terms of hazardous drinking so not as harmful

MS – total consumption easy to measure, hazardous hard to monitor. When he was student bad drinking culture. Shift now amongst younger people, to get stomach pumped etc is cool.

LV – international scene yet effects we kill many times more people on our roads because of alcohol than some European countries.

MS – no evidence. A lot of European Countries have better public transport. Kiwis drive.

ML – pricing of supermarkets compared with buy price, what

MS – only way they can get special is to go to bottle store or supermarket, \$40 for 24 pack.

Does go to the supermarket when cheap beer available. 3rd tier distribution.

AW – economics and making it viable.

MS – definitely viable to run a bar. Swing towards food good.

S – difficult to make a profit, operate under 5%. From good operators saying its getting a bit hard, why would they invest. Young managers say too hard re regulators. Squeezing so hard.

MS – positive, we have had a number of products bought to them because of new drink driving laws. European wines lower alcohol content. Lower alcohol beer.

On premise beverage is around 40% in the states. Food becoming important but not as profitable.

MS people will adapt. In Argentina – alcohol free beer.

S – strict regime already in place. 3 strikes and out

MS – once someone is drunk, they have spent the money, we don't want them. They will disrupt the ones that do spend the money. We don't want drunks. First measure is are they going to hurt my business and upset those ladies having a wine.

NP – in terms of increasing penalties for public drunkenness.

S – Have attached memorandum from public law firm on public drunkenness. Until some accountability you can keep squeezing the industry but individuals need to be responsible for themselves.

ML – In America, they have bought in lock ups. 1am lock up and 3am closing. What bar owners feared the most didn't happen. More people went out they weren't scared etc.

Do you believe there are any opportunities to change the way people are drinking etc that can come out of the LAP. Any possibility that people will change.

MS – would be nice if we cleaned up the streets people would re-enter the market.

S – young people will keep partying somewhere else.

Having apartment parties. Nothing bad has happened yet but they are in uncontrolled environment.

JM – ED presented figures and the peaks. Do you have comment on correlation on big nights in town and big nights at ED with people presenting with alcohol related programme.

S – A lot in Wellington in particular. ED guy there said If I could get people to drink in bars rather than off premise.

JM – Drunk and disorder particularly outside premises can be curtailed. Bar – alcohol related harm and sometimes death from those events.

S – that sort of offending peaks between 11 and 2am. More around personal responsibility and accountability.

The meeting adjourned at 11.16 am and reconvened at 11.30 am

Richard Newcombe

- acknowledge harm issues
- LAP does not address those concerns at all
- Could shut down good businesses and increase harm in community.
- Some understanding of what achieving as business
- Share values of Richard McLeod
- Want people to come and have fun
- Won't come back if not safe and enjoy themselves
- August 2012 did extreme make over of businesses
- After 10 years we looked at future of hospitality and where we wanted to be in the market
- Needed business that didn't rely on post 3am trade in long term
- Management group we speak on aspects
- Believe in what we do each day
- Proud of environment, service and staff
- If we just wanted to sell food and alcohol, would hve supermarket
- Provide great environment
- In line with Sof A act
- Don't want drunk people
- Student bars have been covered off
- Competition they had from supermarkets
- Avoid discounting, don't see it viable of sustaining business. Always someone who can serve cheaper.
- We add value, DJ entertainment, live music
- Pay high wages to provide environment.
- We are proud of it and want to have people go away talking about it and enjoying.
- Proposed LAP – 11pm outdoor area. Sounds like clarity now.
- Responsibility to manage that area, treat it the same as the other business
- Occasionally there have been issues but we spend time and resources managing those.
- Haven't been formally approached that there is an issue until this
- Will have impact on business if it doesn't kill inner city vibrancy entirely
- Spoke of the reality of getting people to leave outside area
- Don't see there is significant alcohol related harm because of those areas but will kill the Octagon
- Wind down the area
- One way Door – Newcastle there are arguments both ways. In Newcastle there were 14 bars affected. 9 went out of business.
- Through experience and research, about half an hour
- Bars loose vibrancy
- Operate on 3am one way door
- Impacts on 3-4 trade
- As soon as you loose 20-30 people you loose atmosphere in the bar
- Shots after midnight – implies we are unable to fulfil our legal obligation
- Those laws exist
- Talk to those who don't adhere
- 3am closing – maybe some financial benefit so would have less wages to pay but would create different mentality.
- Law changes – high profile bars, real campaign from police to catch us out.
- Want to look at intent of LAP and use evidence based decision making to make changes
- Conservative city with difficult council.
- Don't encourage people to come and invest in the city.
- Further business opportunities wouldn't be in Dunedin.

JM – 3am and one way door – would it be different scenario if everyone had it

RN – Research suggests 3am one way door would have all bars close at 3.30

JM – Wondering whether perspectives would change hearing LAP or dealing with alcohol related harm in general.

RN – Worried about implications. 11pm outdoor and 1am one way door main areas of concern and future of business. Not a lot of experience with these hearings. Surprised by engagement from subcommittee and interest.

ML – Gut feeling is if you pulled back from 4 – 3 it wouldn't kill your business. Do you think there are other businesses that are of a different market to you that do you think you could wear a 3am but they couldn't

RN – Good example, knows John, different operator. Previously business did go on late night operating. Would have big impact on his trade. Potentially R business could but his couldn't. Should be case by case and issues based. He suggested later than 4 if good operator etc, why not.

RN – expected Council to use other LAPs rather than community for ideas

AW – indoor outdoor, percentage

RN – commercial use of footpaths, daytime and nighttime plans. Small area at that time of night so 7 or 8 tables outside. During day, 17 tables, consumption lower, based on food.

AW – do you have issues at around 2am etc or people outside barriers interfering

RN – People drunk unable to get in try that way. We manage it

AW – where do you store it

RN – inside

AW – security cost

RN – Macs \$60, less at Di Lusso

AW – how many staff on Saturday night

RN – 4-6

ML – 12 months since default hours, has it affected bottom line

RN – Spoke of impact on other businesses.

Richard Newcombe – Fraser Colgrave, economist

Formed for this purpose

Bar owners concerned with lack of research

Should have been more research and consultation before this point and the hearing would have been simpler.

Genuine independent research

Focus on alcohol related harm – not acute harm.

Spoke to a graph on where does alcohol related harm occur. 46% was on a public road, street or public place.

80% of alcohol-related offences in the past three financial years were linked to private residences or public places. 20 % offences were linked to on-licences or clubs.

Key – peak timing of related harm 1am to 2 am at 20%.

Spoke to information provided in the submission.

Dunedin has no more alcohol-related harm than other centres.

Powerpoint presentation in support of economic impact

LV – why won't Police give you info

FC – no, have had 3 different lawyers ask

LV – happy to give more discretionary powers to Kevin etc

FC – some bad operators scew statistics but good operators shouldn't be penalised

New licencing rules, new criteria, new grounds for objections. Whole new ways.

ML – work a bit scewed as you have weighed up ED care against economic loss of bars, we are dealing with something a lot different than sheer economics, looking at social cost, could look at police costs for a murder etc Comparing police hours, we have to look at loss of life, lost productivity, loss to a family and to those who were there. Nervous about economic value of ED costs and economic value of bar.

FC – refer to it but can't put numbers on it. The back of report shows social worker stuff about alcohol. Is chronic alcoholism not bars being open. Can't quantify them but the LAP won't have any effect on them.

AW – Graph of alcohol spending 18 – 24 year olds. Doesn't include supermarkets

FC – would double that

AW – units of alcohol purchased

FC – explained monetary divided by blah blah

JM -

Keith and Marion Poore

Doesn't want to restrict time but has to leave so Jinty will take chair

Keith

- LAP limited
- Supportive of it
- Suite of measures to be implemented to reduce harm
- Purpose of the Act
- To benefit community on a whole
- LAP for all the community for drinkers and non drinkers and children, not aimed at one group
- Object of the Act
- Sale and Supply undertaken safely and responsibly
- Harm minimised
- Poor understanding of link between consumption and harm
- What he considers inappropriate from medical is different from consumer
- Alcohol related harm occur at lower thresholds
- National level data on effect of alcohol in New Zealand
- Single largest level for males is drink
- Single for females is breast cancer caused by drinking
- Pattern depends on age
- Cancers, breast and stomach, cardiovascular disorders, stroke, heart attacks,
- Disability is alcohol misuse disorders
- Road traffic injuries
- Potent cause of illness and death in community
- No health benefits of drinking before middle age
- Pattern very important
- Disabilities not reflected in mortality figures.
- 5 international strategies, first is reduce availability, reduce the number of outlets available and time
- 2nd increase the price
- 3rd tackling marketing
- Lower legal blood alcohol for driving
- 5th raising alcohol purchase age
- Recent guidance from ARLA in particular with Tasman
- Needs some support in minimisation of alcohol reduced harm
- Established principle that economic considerations are not covered by the LAP

Marion tabled and spoke to her evidence

Peak time purchased 5 -6 pm, could be we see flow on effects

Those people may have been drinking in homes and have decided to go out, more potential for injuries and accidents.

Have been compared, potential for conflicts.

Acute impacts information to consider.

ML what diseases are wholly c

The Mayor left the meeting at 12.50 pm and Councillor MacTavish took the Chair

Foetal alcohol syndrome not outlined as in outpatient setting rather than ED. Not captured in these stats.

JM – these are all chronic conditions

Keith – no but are acute

Supportive of LAP for Dunedin

Contribute to decrease to harm

Support spatial separation from vulnerable communities

Spoke of supports

2am closing for on licences

9am – 10pm for off licence

Early closing in residential areas

Club hours reduction

Outdoor restrictions, denormalising of alcohol

Support discretionary conditions

NP – First graph portions – 1067

MP – 35,000 presentations a year so very small sample. This is for 7 months.

MP when we do screening, information on hazardous way

NP – Dunedin – moderate level of alcohol related harm, is that your impression

MP – what is moderate. Research suggests high prevalence

NP – have you compare per capita with other areas of NZ

MP – has been in Ministry of Health survey shows prevalence of survey.

KR – Concerned of high level of harm in NZ. We are significantly worse

Hazardous drinking established at young age, people in other parts of the world grow out of it, they don't here.

ML – Do you have any details to support the claim that the bar owners are making more responsible venue, safer drinking environment = hyde st party verses pub

MP – ED not right place to establish where from, there to treat

KR – yes and yes, Hyde St associated with acute injury and alcohol consumption. Steps being taken to reduce harm. Re the Octagon, the information tends to support that it does act as hub for alcohol related harm, St John. People coming to town for what it offers.

AW – Fig 1. Do you have any other stats from June 2014 in respect to since legal highs have been removed from the market.

MP – No.

AW – when alcohol and legal highs are taken together do you contribute them to alcohol related harm or drug related.

KR – look at what the symptoms are.

AW – ED is busy between 11pm and 1 am when the students are not out.

MP – could be the flow on affects from the peak off licence purchasing.

KR – could relate to large student events which close slightly earlier. Another peak time of 4 am. Think that we need to tackle both peak times of 11 pm to 1 am and after 4 am.

Problem not what happens in the pubs but what happens outside. Need to manage the outside environment. Is complex situation. Publicans need to acknowledge that they are responsible for the community and the need for people to feel safe in the environment.

AW – Invercargill vs Dunedin. Is there much difference as compared to Queenstown.

KR – Mr Calbot report gave examples. Dunedin is slightly lower than Southland. Presence of Licensing Trust has had any affect to alcohol related harm.

LAP - Greatest impact would be to show that Dunedin seems alcohol related harm as an important issue.

ML – Do you see many repeat people coming to ED with alcohol related harm.

MP – programme that students with alcohol related harm are referred back to Student Health. Is extremely rare to see these young people back again once they are referred on.

JM – costs of treatment. Are they inflation adjusted and have a CPI adjustment added int.

MP – unsure but will get back to the Committee on this.

JM – ED presentation are high on Friday and Saturday nights along with the fact that are busy nights in town. We could still have the same amount of ED admissions even it there was not a bar scene.

Councillor Vandervis left the meeting at 1.19 pm.

KR – more people are seen in ED on Thursday, Friday and Saturday nights because this is when people are drinking. A lot of small to medium businesses were marginal before the Sale and Supply of Alcohol Act 2012 and an LAP were in place or being discussed. On occasion businesses are not open their licence trading hours as it would not be economical.

JM – comments that people will drink more at home than drink in town.

KR – if there is more things offered in town then people will still come into town.

MP – maybe businesses should rethink their business model to accommodate what people want and any changes.

JM – 7.00 am to 10.00 pm off licence – support. Impact of alcohol in supermarkets.

KR – support 10.00 pm closing time but would like to see opening times of not earlier than 8 am but preferred 9.00 am. Presence of alcohol in supermarkets normalising alcohol and the popular of brands

The meeting adjourned at 1.30 pm and reconvened at 2.17 pm.

Michael Garbett here

All here except Aaron

The Mayor, notes that the basis for everything they consider is the requirement to minimise alcohol harm and provide for safe consumption and purchase.

Given it is local alcohol policy that we would hope to reflect the broadest consensus of community. Need to base proposals on causality, will minimise alcohol related harm. If you require proof you would never put anything in place.

Conscious that more than one restriction will be difficult to measure any one because of multiple factors.

In addition to developing will want to comment on areas we don't have powers

We believe that we should be able to have some influence on pricing and areas that we aren't allowed to get involved in yet there are major areas we should be able to.

What do we want our community to look like. We want it to be vibrant, safe, less of the harm producing factors into the future. Proposals should be aimed at reaching that point. Forward looking view, long term view.

Not a bad idea to establish high level principles then work through the points of issues. When some initial decisions made, what does package look like then reconsider.

Michael with Miss Sofora Peat

Legal summarised in introduction to policy. Reiterate that the object of the act is two fold. Effectively allow alcohol to be undertaken responsibly and reduce harm.

Draft is not outside what the Act says. Could be challenged on any particular area that maybe considered outside of these.

Location, further licences – forward thinking and does not need to be actual evidence as is a Policy.

Policy is to give guidance to the Licensing Authority for when they make their decisions. Clear directive to create

DC – discretionary Conditions. How do they direct the DLC to use them. Eg one way door policy for certain conditions and reasons.

MG – link it to an outcome so the decision maker understands what is wanted to be achieved.

DC – how much evidence do they need if they are pulling back from national conditions.

MG – Evidence from what has been heard. Political decision to default from this. Ensuring that alcohol levels are at a safe level. Needs to be clear in the decision. No right or wrong answer.

DC – what is the balance of evidence should it be applied.

MG – no right or wrong answer as what might be right for Dunedin may not be right for another area. Needs to ensure that there are good reasons as to why Dunedin is different from the National average.

ML – A submitter commented that 80% of liquor sold between 11 am and 8 pm could this be used as evidence.

JM – Section 77 1(c) – if attaching discretionary conditions that it had to be for specific types of licences and not specific ones within each type.

MG – Section 75 2(c) covers this. On licence or off licence can have different conditions.

MG – clarification of on, off or club.

JM – do we have the ability to further differentiate within each licence type.

MG – within the discretionary category you could have different discretionary conditions.

SP – Other Council have different things within their LAP such as Off-licences. Supermarket hours are different from bottle stores. Is this in line with what Michael is saying.

MG – Will provide an answer to Kevin.

JM – number of submissions around the word "reasonable". Case law around this and do you have any comments as in the Act.

MG – impossible to define and depends on the circumstances. Will never have a one size fits all.

JM – Objective of the Act. Reduction of harm. Does it not exclude other harms.

MG – would agree but there is not much else that you could put in there.

JM – definition of illness such as mental illness, social problems, etc which have been caused by an addiction.

MG – disease or illness is in there, behaviour which covers social.

JM – can we consider other impacts.

MG – d talks about the harm to the community.

JM section 59 – deliver times. Is this a blanket condition or is it something we can consider.

MG – sounds like it is outside what can be considered. Not able to change these hours.

JM – discretionary clauses. Maybe able to ban certain products. Is it possible that when you are considering licences for off-licences that we want you to give consideration to banning this.

MG – yes you could if it is to do with the reduction in harm. Is within your powers.

JM – empowering the DLC to give consideration but if you want certainty then need to be clear.

DC – is there an opportunity to put the distance from schools in the discretionary basket for the DLC especially where is it impracticable such as a supermarket.

MG – is a red flag issue and you need to be mindful of this.

AW – ability to change time depending on the area.

MG – yes

AW – should we be looking at central govt regarding certain products such as shots.

MG – is an option but if you feel then you can regulate if it is within the discretionary powers. Not clear if you can link it to harm. Is an area of some risk – Act is saying that you can do that.

DC – need to enter into dialogue with the industry and may have more success throughout the industry.

NP – sensitive areas such as supermarkets.

MG – not a term defined in the Act. If you want to define this then you need to be specific about the types of business such as supermarkets.

AH – list of supermarkets or groceries as sensitive along side Churches, schools, etc in terms of setbacks

MG – to be careful.

AH – supermarkets should be a place where children go and can not avoid alcohol.

MG – need to be careful. The more places that you have then the more setbacks would be required.

AH – scope around sensitive sites only around radius can it also be hours in terms of set back.

MG – yes could be lawfully done.

DC – Wests example. 8 am to 10 am and 3.00 pm to 4.00 pm you must be closed – is that possible.

MG – technically you could but is it reasonable. Your judgement needs to come into this and would it stand up.

AH – can we make ticketed events a discretionary item.

MG – needs to be linked to harm.

AH – scope around last drinks as opposed to one door policy.

MG – limit of hours of sale as opposed to hours – could refine this a bit and a condition of licence. Discretionary or could be part of trading hours. Not focusing on the closing of doors but the ability to serve drinks.

MG – should not be basing your policy on economy. Not referring to economy stuff and talk about what is reasonable depending on the circumstances on a reasonable basis. Start with what is reasonable and justify your reasons on the minimisation of harm.

DC – well regulated on licences were the right place for people to drink as opposed to unregulated consumption.

DC – changes to the conditions under which on licences have to operate. Currently appeals against LAPs. Aware of the Tasman decision. How much precedent do previous decisions have.

MG – depends on how consistent they are with DCC's and the types of restrictions that say Wellington have to Dunedin. Needs to be on very similar issues. Our environment could be very different and would not worry about what was happening elsewhere. Wording that is consistent with others then it might pay to wait but you can change your policy down the track if things are not working.

The meeting adjourned at 3.37 pm and reconvened at 3.43 pm

Councillor Vandervis left the meeting at 3.38 pm.

Moved Cull/Jinty

That we move into non public because of something Sandy said

NON PUBLIC NOW

What we want

What the issues are that we will deal with

Opening Hours

Off on Licence

One Way Door

Shots

Then work through in context of draft

Then we make decisions and look at them as a whole

Then we will see impact of one on the other

Aspiration

LAP can only deal with it in a limited way

Need to look at big picture of what we want to aspire to

What does it look like as a LAP

Then we finalise it

Suggestions to be emailed around and worked through then we are back here

JM – some missing bits of information

1. Key evidence being tracked from St John call out
2. No evidence 3am closing time in Nelson, Hamilton and Palmerston North

Kevin will ask Police

The local Police are making a case for what they want here.

AW – Police felt they were under resourced in the octagon at 3-4 in the morning.

DC – imposing conditions on bars in the Octagon and disorder is linking the two.

Preloading, drunk people in the Octagon and not being allowed in the bars

JM – Go directly to Police in the other areas

NP – challenge from Richard Newcombe

The meeting adjourned at 4.03 pm

The meeting reconvened at 9 December 2014 in NON PUBLIC at 9.07 am
Lee Not here

Contextual framework, set of principles
Common understanding on context and where we want to end up.

NP _ Framework, scene setting
Rules , simple and clear
Discussion on reasoning

What is the context

There is a diverse range to consider
Not just focussed on CBD which allows us means to manage hours etc
ML – where a lap can influence things like chronic diseases. Not every bar owner responsible, what good LAP – there might be groups of students that never reach those chronic levels of drinking. Could have positive impact.
DC – what we need is a culture change. If provision in lap, facilitate culture change. Contribute to mindset.

AW – we create a bar scene or night scene as people are comfortable going in the area. Make it economically positive.

Focus on safe enjoyable social environments for people
We support the existence of those
ML – not our role how anyone wants to create their business.
DC – will it minimise harm and will it cripple the business.
Relationship between off and on licence.
What impact does liberalising off licence sales have on them

What is important

Safe and inclusive social environments
Minimizing alcohol related harm
Vibrant and culturally rich entertainment scene
Compact city with resilient
Resilient neighbourhoods, social hubs

AW – rugby nights etc, ED numbers are pretty consistent
JM – Thursday and Saturday are the big nights in town and big nights in ED
Note the correlations
AH – colleges have low tolerance so year 13 students go elsewhere. Wouldn't it be safe to be able to do it in dorm rooms.
ML – hostels were supportive of 3am and hoped for 2am, wanted to get kids in bed earlier.
DC – addendum commentary
JH – correlation between densities and alcohol related harm.

What do we know

DC – don't want to rest on evidential foundation when it isn't essential

What do we want

The meeting adjourned at 10.18 am and reconvened at 10.33 am
Going through draft

Existing business like Wests, were they to sell it, it becomes new licence. Is there any flexibility or do we want any. Implications

KM – legally there needs to be regard to the local policy.
100 m – Wests to boundary, is not too far.
DC – if we were of mind to potentially exempt existing businesses were they to be sold do we need to give DLC directive.
KM – Medical Officer of Health would appeal and authority in Wellington would decide.
When premises changes hands, its opportunity for committee to reassess.
Good statement at start of Policy

This is the expectation of the DCC and the community.
Firm statements.

Considerations –
Need certificate from Planners that it is okay
100m but hours can be tinkered with

DC – if we agreed with 100m directive that the DLC consider the equity of removing a licence especially and give consideration to the density in the immediate neighbourhood of alcohol availability. Could suggest they look at opening hours
Place changes hands, 100 m of school effectively new licence but when DLC considers it, they give consideration to density and restricted hours.

Hours re school etc.

Discussion over 100m school

If under 100m from school

- Nature of premises

150m from school maybe

School routes

Outside bus stops

Expand sensitive sites

- University
- Early childhood
- Addiction centres

ML – Some businesses could be affected adversely

Wouldn't want to put in rule that they would lose their licence.

DC – for new premises put it in

When a brand new premise and new licence is applied for all things can be considered.

Conditions imposed. What directives we give around conditions on new off licences.

AH – glossary – sensitive place

DC – New premises off licences.

Jinty

In principal no new premises off licences will be granted 100m however DLC will take into consideration

- Line of site

Talked of Auckland case, spoke of bus stop outside premises v hidden by trees

We do not want children or young people exposed to alcohol

The DLC will take into consideration the following for new Premises off licences

Need map of Dunedin and put circles on it.

ML – new owner of existing premises, if they agreed to same conditions as current owner, it would be okay

DC – that tells DLC end result, we can't do that, we put conditions on.

ML – worried about business resale

DC – Say we have situation of bottle store in every corner, we may reduce number but the signals alert people that it is a sinking lid. Not saying case in Dunedin but don't want hands tied and toxic situation.

DC – alcohol is a special product and is different from other products. We have normalised it. What is the difference between bottle store and someone selling synthetic cannabis. We say business rights trump community good.

ML – not saying that. Spoke of change in farming rights. Could be change in liquor outlets. Would like to measure harm. Comfortable with 100m rule.

JM – If we come back to principles and things operating next to schools creates alcohol related harm to our kids. Need to protect our kids.

KM – Auckland has assessment area of 500m. We could put in assessment of what they are proposing.

DC – we have rough idea. Kev and Lynne to do it.

DC – Density will be part of the considerations, take from Auckland.

Businesses most affect will be dedicated bottle stores.

KM – how do you define density, left to district plan.

AH – shouldn't be in this list

DC – should we put into directives for DLC to consider density.

KM – need definitions

JM – identify

Need map that shows off licences in the city.

AH – off licence higher onus than on licence

DC – we take the distance limit out of the on licence but say that all of the factors should be taken into account. More weight be given to restricting exposure to sensitive sights depending on the impact alcohol has on the sales. E.g. café verses bar

JM – exclude Café and restaurants permitted and bottle stores etc discretionary.

DC – Taverns, bars and off licences different

JM – we retain 100m rule for bars and taverns, different for off licence and no rule for restaurants or cafes but standards to be set re advertising etc.

Distinctions discussed.

The thing at the most risk to be considered.

JM – we want to put in place things like positive as well as negative, things that will support our rural

Footprint of commercial zone in small hubs

DC – want the map and how what we will come up with will impact on the business.

If we applied these rules, what would implications be.

JM – educational facility

Recreational and health facilities to be included in glossary

Density –

Discussion on the density

Supermarkets etc can survive with alcohol as potential drawcard, don't sink without it but what makes the Octagon vibrant is the number of licences.

If we restricted off licences in the North end – would you achieve less alcohol sales because of that or would those with licences benefit.

JM – visibility and price drive.

DC – density comes down to how we consider for new licence.

How do we define density and do we want to say there is enough in x area.

Do we say here is our definition of density or do we leave it to them.

Do we say at the North end there is no more.

No more new licences makes a business unsellable.

Discussion on density.

DC – concern with availability, freeze. Will give concern to availability and reduction in hours.

Six year cycle review.

What scope is there to review

KM – any time but must be within 6 years.

Consider relicence

Temporary Freeze

Then if we monitor if

Supermarkets have special rights so we play into their hands.

MAP

On Licence Premises
Different categories

Function centre

List all under 3.1 the types of on-licence premises

List of On-Licence Premises to the Committee and the conditions

Different licence and what makes them different

The meeting adjourned at 12.32 pm and reconvened at 1.21 pm

Entertainment licence

They revolve around entertainment and not the bar, no poker machines etc. Bowl line
And Regent

Residential areas – beyond midnight?

Discussion on on-licence in or adjacent to residential areas

Discussion on rezoned land which causes a hotel to become adjacent

Her hours affected because new zoning changed around her

Hours will change when business sells

Discussion on small rural towns, like Middlemarch or Outram, adjacent to residential areas so everything closed by midnight.

More than 40 minutes from the nearest town

On-licence in non-residential areas, hotels and taverns

Onlicence –

DC – 3am, not convinced 1am for one way door

One way door policy, we have discussion with publicans that they must have one

ML – agrees. 2 hours too long

DC – discretion towards determining their own one way door

AW – one way door major issue. Like 4am because a lot of the pubs close themselves down, numbers move on, they close early. Allows drip feeding out. Could compromise with 3am and no one way.

AH – On licence trading hours may depend on limited number operating for entertainment purposes. Doesn't oppose 3am for pubs and taverns, later for entertainment.

Last drinks provision rather than one way door. Means no conflict at the door.

If you are negotiating then so long as consistent.

ML – Carousel, Pequino and Pop would you give them longer hours?

AH – no. One condition could be that you charge entry.

NP – 3am supports

Acknowledging that some places want to keep open and dancing and entertainment until 4am. Some provision for them to continue, would be happy.

One Way Door – 1am too early. Likes last drink idea.

Opening hours – 8am

Evidence for 9??

3am with last drinks at 2 or 2.30 am.

JM – likes last drinks

1am one way door

Evidence round one way door less than clear and impact to implement would be substantial. Would have to be very confident it would be a workable policy.

DC – Combination of entertainment licences and giving operators the option of a one way door at their discretion or last drinks but must have one or the other.

Gives people options and filtering. Gives control back to the publicans.

AW – if you took rugby, Highlanders and South Africa, some games go into 3.30 am.

DC – really black and white and imposing the same condition will produce ill effects.

ML – last drinks or one way door if you are trading to the end of the hours you are given.

General discussion on giving them an option and power and responsibility

DC – if we say we recommend that DLC specifies one way door or time for last drinks. We are acknowledging the Police's mechanisms that will help. Giving autonomy.

Discussion on ticket selling for events.

KM – genuine entertainment areas have one way door from 2am.

JM – prebuying tickets

DC – middle ground

Would have to run idea of one way door past Carousel and Pop etc

DC – DLC requires either one way door at negotiated time or last drinks at designated time.

Charge on the door and one way door

AH – people won't buy tickets earlier in the day

JM – people at 3am going on to another premise, doesn't want this

AH – but if they are not intoxicated

- Door sale
- Willing to adopt 2.30am one way door

AH – would rather 3am closing than paying to go

ML – don't like to charge

AH – another obstacle to being defacto next stop on drinking round

JM – genuinely offering entertainment

AH – how does existing use rights affect inner city bars

Bars that currently have licences till 4am can they c

KM – 3 months

NP – 8am

KM explained tavern licence

Why are we trying to do this?

Well regulated, well managed on licences are the best places to

On licence – non residential

Garden Bars – residential areas have noise restrictions. If not on public space and well

We are not saying get rid of the table and chairs we are just saying no alcohol.

AH – fears that safety wouldn't be addressed by this, either unattended drinks or consequences

KM – Discussed spiking drinks etc

AH – In practice it's a group activity so everyone goes out then

KM – Police wanted it because of liquor ban area. Licensees have been told that they need to do something or it will be done for them.

KM – as alternative would be that we strengthen, they are using the area to consume. If they are not controlling then they will lose ability to serve drinks out there for a month.

AH – Moo and Al bar.

If the problems are around, people drinking and those queueing, are there physical ways of having a higher railing.

JM – Commercial use of footpaths determined the height of the fence.

ML – 11pm, too extreme

ML – Discussion on the drunken antics of those

DC – are we in position of specifying

JM – community and commercial use of public space.

DC – if there were able to be taller barriers

Agrees with submitters who don't want that

If we can address the harm.

AW – best part of night was having people outside
We really reluctantly don't want to change outdoor areas.

JM – barriers set low to keep Octagon vibrant
Compared Timaru and Melbourne.

The meeting adjourned at 3.03 pm and reconvened at 9.03 am on Tuesday 16 December
Jinty absent

3.1.1 – Footpaths

8.00 am to 11.00 pm

ML uncomfortable

DC – minimising alcohol related harm. What would the effect

AW – some people reaching across with alcohol

AW – prior to 11 we have higher barrier

DC – friction from people inside the barrier from Police

KM – keep system or we licence outside area. If there is an issue it has to be referred to Wellington which could be months

Jinty entered at 9.07 am

AH – your advice would be not to licence them and formalise and be vigilant

KM – formalise and make a contract with the city and make owner monitor more. Contract with DLA that if they abuse the privilege it is withdrawn. Hasn't happened so far.

DC – Commercial use of footpath would impact too.

LV – if there hasn't been a need and submitters have said we need to be more flexible. Can't we give staff the authority.

KM – Police don't realise the contract. If we are aware we can waive contract under nose.

LV – Need better feedback from police.

KM – yes, system fine as it is but need more formal contract to point out what they need to do.

DC – conditions from DLC = expectations from contract would be condition of contract.

DC – different types of barriers to get around the interaction issues. Can't do it here

KM – that's commercial use of footpaths

LV – you raise problems with high structures and glasshouse look.

AH – Commercial look of footpaths bylaw review, would it be under this.

DC – alongside

KM – if LAP can be more restrictive etc

Discussion on the commercial use of footpaths and the relevance to this process.

NP – there are rules around occupancy

KM – yes. There are studs in pavers to indicate free footprint.

NP – these around the Octagon and Stuart St are important part of vibrancy and ambience of Dunedin. We will lose something if we take them away. At the moment it is open, not a lot of evidence of harm that occurs. If we tighten up on the rules its as much as we can do.

ML – Bar owners said they had nowhere to put table and chairs, not a problem. Its about alcohol, is that really as much harm as thought. Uncomfortable with policing of that.

DC – need to clarify the risk or harm that the Police are identifying and the friction between people queuing up and people at the tables. Conditions that they have to take more control and police it.

AW – what time do they change configuration

KM – about 8.00 pm in the Octagon to stop people carrying alcohol through people walking through. Daytime plan for space out the front and a night time plan.

AH – People have said they don't feel comfortable walking through the Octagon late on Friday and Saturday nights. Isn't pleasant walk a lot of the time after 11 or 12. Feeling of intimidation, not sure we can give a lot of weight to but it does exist. Not good that people don't feel safe in their own downtown area.

KM – DLA started insisting late night premises, if they have queues they need to manage them. Ask for them as part of their application. Want to formalise and have it part of their licence.

DC – there is atmosphere in Octagon that isn't pleasant. Is it a result of alfresco drinking or people queuing or ??? If we took away all the tables would it change anything?

What makes the place uncomfortable? Not sure what the tables contribute.

KM – 10.00pm that the night time configuration kicks in.

DC – not sure if practical or desirable to say 11pm. If you leave tables there, not practical. We either say you have to go or we put conditions in to address issues the Police identified.

KM – legally you can't use area for sale and supply of alcohol if it isn't licenced. That's why contracts

JM – downsides of licencing outside

KM – if there is an issue, it has to go to Wellington. Could take 12 – 18 months to be heard.

DC – if we retain system that we have contract and we don't formally make licenced premises we retain control far more.

JM – if there is an incidence, and it is not licenced, what is the process.

KM – bring them in, they have breached contract and remove the privilege. We could remove it for 1 week first time, three times out.

KM – what we have works, police perceive it is a problem

NP – will be a time when smoking isn't allowed, this gives us opportunity to gain more formal control. Need to get more control around key management area.

AW – security pretty good. Put them on notice to monitor more carefully

DC – we want you to take responsibility for the space we enable you to use.

AH – maintenance of order in public space, prime part of Police work.

ML – Police want these areas out. Now we say we leave it in and its all your responsibility. If we are going to allow bar owners to operate, we have to expect bar owners to lift their game. We can tag them and explain that this is at our discretion and can be taken away.

DC – Police say problem with interaction. We are saying bar owners are going to take more responsibility for what happens inside the fence and Police to monitor outside.

KM – Explained Policing issues.

KM – Police is resourced properly for an average day. When something extraordinary happens it causes problems.

AW – at 3am there were only 2 police in the Octagon and 2 cars on. Until 6am.

JM – we can acknowledge and say we look forward to seeing but we can't direct.

DC – statements to central government on things they have precluded like pricing. Need to acknowledge need for Regulatory Bar owners and Police to work outside framework of strict DLC conditions. Discretionary conditions and Council's relationship with bar owners.

AW – no table can be less than 1 m from the barrier.

DC – detail of the discretionary condition. Need to work through ramifications. If DLC puts condition to licence, grey area.

JM – send advice note to whoever considering commercial use of footpaths, we think there is merit in considering wider barriers. Not convinced height is a good idea but wider barrier when they come up for renewal.

Alternative to a curfew.

No time

KM – 10.00 pm to night time configuration may be too late.

AH – under current Act you have half an hour after bar closes to clear premises. Is there any flexibility for late night venues.

KM – if a premises is used for sale of alcohol you are governed by Act. Cafes are not primarily for sale of alcohol so they can stay open because they don't sell alcohol as primary cause.

KM there are no genuine entertainment venues in Dunedin at the moment.

AH – if we set criteria and venue chooses to do that.

Talked about entertainment venues. But they would take up that offer.

Income apart from selling alcohol, would leave it up to them to determine whether they stay open without the sale of alcohol.

Discretionary conditions for those type of premises.

JM – gives extension of hours.

3.1.3

No shots after midnight

KM – not selling of shots, it's the culture around shot glasses.

Tumblar is sipped, shot glass downed in one.

KM talked about shots being given e.g. 18 shots for 18 birthday

Licencee quite often looked at yet they are absent and is manager. Still happening
 Big discussion over shots and the definition.
 If they are only 20%, it's the number. If you have one it's not the same issue.
 LV – are they really that much of a problem, not normally high alcohol
 JM – issue is terminology. Not good quality whiskey. If we said you can not sell alcohol of alcohol level of more than x% after midnight.
 ML – it's the behaviour and how people take up the opportunity.
 ML – big difference between a group having a shot or two each and one person having 18 shots.
 DC – culture of consumption of high alcohol drinks drunk in quick succession.
 Discussion on the alcohol level of shots.
 AH – ritualistic behaviour on shot glasses
 DC – vessel it is served in and alcohol content. After certain time, no 40% drinks in shot glasses.
 Standard spirit 38 – 43%.
 DC – may have to make it 35%
 KM – to capture people that have come in and settled down and decide to throw some shots back.
 NP – Host responsibility
 DC – time, alcohol content, shot glass and if you can sell at anytime in multiples of more than 2 or 3.
 JM – worry about different times. If you give people too many times, it causes confusion.
 JM – backdraft, you inhale then drink it. That's more dangerous than doing a shot. Impact significant.
 JM – more comfortable with someone having a shot at 2am than having a backdraft at midnight.
 DC – Condition of licences, bar has either last drink or one way door. In addressing this issue, do we say as a bar you have to have a policy around these types of drinks and when you will serve them and when you will not, put more onus on them.
 NP – Host responsibility
 JM – clear to DLC what committee is considering.
 DC – a number of conditions will have to be tightened up so very clear to DLC what they can do.
 KM explained Medical officer of Health's concern over drinking then having shots.
 JM – place a limit on number of shots sold in any one transaction?
 DC – where to?
 ML – something in host responsibility about consumption at the bar or limited amounts.
 DC – purpose is to minimise alcohol related harm. Multiple high alcohol shots are always harmful. To minimise harm to the individual
 It's about the glass, the number and the alcohol content and the time
 NP – it will promote rush of shots
 JM – not hung up on time but if we want to do something about shot glass culture, frame it as shot glass rather than shots. If we feel we have sufficient evidence that high alcohol or high numbers a problem we should put provisions in place to address that.
 DC – reduce the strength and the glass as its part of the culture and the number at any one purchase.

Discussions on practical way to do it e.g. no more than one of these types of drinks at any one time.
 JM – trays to tables a problem as host responsibility can't monitor.
 Instead of having a time frame, all shots have to be consumed at bar under supervision.
 AW – layback the same. How quickly the bar owners took responsibility was great. Bar owners have looked at this and said we need to take more responsibility.
 Closing time, an hour before then you can't sell shots
 Before that you can't sell more than 2 to any customer??

LV – we want to put restriction on but it isn't practical. We have limited tools and anything we do will have unintended consequences. Nothing will obviously be fixed or work.
 ML – we can do nothing why don't we say clearly that these are the concerns we have and we want limited numbers per customer, more observance and host responsibility.

AH – If they want to sell these drinks which are harmful, they need plan in place to manage this. So if asked for 18 shots it doesn't happen.

DC – most harmful binge drinking

AH – doesn't have to be at the bar but under supervision of staff

JM – culture around ordering a lot of drinks and the host delivers and walks away.

DC – one per person at any one time. 6 people, 6 drinks.

JM – no more than one per person per transaction.

AW – one drink per person per transaction.

DC – how practical to make it a rule, over 35% alcohol sold in shot glasses – no more than 1 per person per transaction.

KM – we can't do much about it but if we made a policy statement as it is a big issue and state expectations of council and feed it back to host responsibility.

DC – commentary from Wellington judge, not enforceable so no point having it in. Careful over what is in LAP and what is in policy.

KM – Policy – no promotion of shots on the bar. Limiting the number of sales per person and should be incorporated in host responsibility policy.

Every onlicence must have host responsibility policy and these would be conditions.

LV – Advice notes form part of the host responsibility.

DC – you would see DLC saying we want to view your host responsibility policy and view it was adequate.

KM – timeline – any new licence would be included and renewal times they had to attach.

Once LAP finalised put something out to licensees to explain why it has come about and the expectation of Council and what we are giving DLC. And have workshops.

DC – have workshop with bar owners and explain where we were coming from and our conclusions and wanting to have ongoing collaborative with them for all benefits.

Worried about staggered. As part of the LAP every premise has to have a host responsibility in place and not to wait for renewal of licence.

KM – insert another section on host responsibility and explain to licensees on why it has been included.

DC – we develop host responsibility policy and say what we want in for every premises. We want minimising harm and rationale for why we are expecting it.

3.1.2 – your host responsibility policy

Must have one

It must cover the following:...

DC – when we get to the end and look back over it.

NP – hip flasks

KM – concerns with squeezy shots

NP – can't bring alcohol in.

3.1.4– what has changed

Kevin explained the changes

Some BYOs have issues – ability to require manager to be present.

DC – how many do we have and is there a problem.

KM – only 4 endorsed BYO's in Dunedin. Most allow people to come in.

DC – do any of the 4 give a problem.

KM – generally no

DC – imposing a condition, how will it minimise harm

KM – just means someone who understands the law.

Its in the Act which is why it is quoted.

DC – reluctant to impose conditions if we don't get minimisation of harm.

AH – BYO of culture

DC ignore it

JM – if we are saying onlicences safest place, why would we encourage consumption of alcohol.

LV – strong focus on food

JM – would it be a big deal not to have a BYO

LV – yes it would be, birthday party celebration etc. Mess with it at your peril as they are no problem.

DC – don't see why you impose extra cost when there hasn't been any harm.

JM – certification harm, better to be consuming when manager present.

Host responsibility policy

3.2.1 – Maximum Trading hours

We can look at opening hours, can't control price.

AW – 7am – 10pm good starting place, closure at 10pm

10.00 pm closing time

Even playing field

Closing time especially re preloading and side loading.

Pricing in supermarkets extremely low, high volume at low price

ML – 10pm no argument, Supermarkets sell little between 10 and 11. Don't want to be set up for an appeal. Whats wrong with 9.30. 9 is too early. If you haven't bought by 9.30 you won't

LV – 10pm happy, don't split hours

Concerned non sale of alcohol past 10pm will have supermarkets pull their opening hours back. Shift workers a concern too. Another reason you wouldn't pull back earlier than 10.

AH – people have days off to do these things, red herring.

LV – default should be liberalising.

Discussion on 10pm

AH against

LV – trial a pull back of 1 hour

JM – two causes of harm, one is exposure of young kids to culture of alcohol being treated as normal product. Can we deal with that about visibility of alcohol in stores.

KM – its in the Act.

JM – can we make it stronger

JM – the other part is for people who have already started drinking to go back and get more and not make as good decisions as they did earlier in the night.

Some areas may have walking distances.

Would like 8.30 closing

DC – 6pm closing to late. We forgot alcohol is a bad product. Note apparent contradiction, sensitive areas acknowledged then we allowed people to sell in the middle of where people go to buy their food.

Dedicated bottle stores one set of times and supermarket more restricted but not practical.

Favour 9.00pm.

We are addressing the community culture.

We recognise exposure to alcohol in our community has gone too far and has serious harm.

We are going to be imposing extra restrictions on onlicences. We have to acknowledge there are issues with off licences. Bars will agree if we show we have heard them and acknowledge harm from off licences.

9 am – 9.00 pm

We would have a fight and ChCh have already got it in place. Should be the same with all metros and they would take us all on together.

JM – sends signal to our onlicence premises that we want people to go to them earlier. If you want to continue to drink after 9.00 pm it is safe to go online.

LV – foetal alcohol harm syndrome, huge harm 80% of females drink alcohol, 50% of pregnancies are unplanned. Biggest potential harm.

Alcohol abuse and quantity is our focus but more subtle and preventative harm.

KM – nurse tried to raise awareness and health officials slam door in her face.

JM – submissions from DHB and Mirror on foetal health syndrome

AW – to get all cities around the country on the same page

The meeting adjourned at 11.16 am and reconvened at 11.22 am

9 - 9

DC – We are last metro to develop LAP, would be interested in where others are in their process and what off licence hours they have put in their LAPs

3.2.3 single units of beer etc

Discussion on harm reduction

Single bottles that are chilled, you won't go in to buy one bottle chilled to take home.

Is it such a big problem

AW - Change of off licence hours, a lot of the side loading will be removed.

People in flatting situations, older people, can of guinness etc good comments made on that basis.

JM – People buy a single beer because they don't trust themselves with more than one.

DC – imposition on retailers to teach their employees which they can and can't sell.

Reluctant to impose conditions on commercial business.

JM – Chilled RTD's as single unit sale

DC – aren't there impacts already in place.

Out of policy

3.3 Club licences

How many clubs

89

Are they prevalent in small rural towns

No, Middlemarch has rugby and bowling clubs

What hours

KM – spoke of clubs in town that have hours outside of taverns

DC – disagrees that clubs can trade after pubs are closed

LV – smaller clubs in rural areas have higher death rates from drunken driving

KM – rural areas have conservative hours

Same hours as in town

NP – hours

KM – Southern rugby go to 1 yet a tavern across the road would have to close at midnight.

DC – maximum are same as pubs

Why 9am start?

KM – some of the bowling clubs claim for their social thing they want to have beer on table.

JM – can clubs remain open if they are not selling

KM – Difference is club and on licence, don't need manager present, young people can wander in and out.

Law treats members of the club not as members of public.

DC – do we see harm because they can sell at 9.00 am

KM – no

AW – golf club – we have active drinkers. We open bars at 10.00 am.

AH – in interest of consistency

KM – cafes can open but not sell alcohol outside their licence hours.

DC – don't see why any club needs to sell at 9.00 am but if no harm happens, why change it.

AH – same hours as hotels and taverns in residential areas.

AW – can they get special licence to open earlier

KM – yes

DC – we will be accused of victimising old people who want to have a beer with their bowls.

JM – unfair to criticise them more than countdown. More kids in countdown than at a bowling club.

3.3.4

Wasn't in new Act, up to each district to allow RSA to sell alcohol on ANZAC Day.

3.3.5 management of Club Bars
Could it be in 3.3.3 as condition

4.0 Special Licences

MoH opposing special licences because they don't believe an event is an event.
e.g. a test match at the stadium. Are there circumstances that the DLC can say this is a special event across the city.

The World Cup over in UK, bar wants to televise games outside of their hours, can DLC approve it is an event.

ML – difference between test match in the city.

Discussion over genuine big night.

DC – denying licence to Taieri Gorge Railway

AH – you can get round sacrosanct days by buying a meal

KM – yes

AW – sporting events. Highlanders – genuine event for city.

DC – in principal are we prepared to accept there are occasions when a special licence will be considered.

Taieri Gorge Railway, cruise ship passengers – Christmas day – yes

Kevin explained special licences and how some ask for a series of 12 etc

JM – Farmers market not special

Does harm reduction or normalisation come into consideration

KM – yes

Neville left the meeting at 12.15 pm.

ML – city wide event discussed

Would like dispensation for big event in city e.g. test at stadium.

We can't give hours outside default hours.

4.1 – maximum trading hours

Flexibility

Formalising what we are doing

AH – if someone established music festival, this would mean they couldn't get licence past 1am

KM – considered on their own

Glossary

JM – wait until we have new draft to look at

DC – draft to go back to bullet points and commentary around that

Appendix would form part of the LAP

For clarity it should be as brief as possible.

The meeting adjourned at 12.28 pm and reconvened on Thursday the 18 December at 11.32 am

All present and Kev and me

Went through the precirculated revised policy

Kev talked about new licence, late night student area.

Discussion on the boundary for off licences.

Discussion on licencing of footpath space.

The meeting adjourned at 12.31 and reconvened at 1.31 pm

Lee and Andrew absent

3.1.1.

We note that one of the circumstances around these are that the hotels are close to residential areas and their remoteness to commercial areas.

Crs Vandervis and Whiley entered the meeting at 1.39 pm.

We allow the maximum hours to be the same but note the proximity to those residential areas, relative distance to CBD and alternative

Tag maximum trading hours for onlicence in non metropolitan area with the requirement that the DLC take into account etc.

LV – give a lot of discretion and with guidelines

DC – allow non metropolitan the maximum trading hours till 3am but specify the time on the licence the DLC must take into account

- Closeness to neighbours
- Premises themselves

Host responsibilities outline in the application

Kevin please have you got this and link to the Act if needed

DC – All licences the DLC will be satisfied to the robustness of the XYZ policies the licensee has.

Indepth discussion over 3.1.2 – one way door policy etc

Who is responsible for enforcement of the licence.

The Police and the Licensing Inspector.

Jinty struggling with either or one way door or last drinks. Not achieving the aim of the Act. Wants blanket policy one way or the other.

Cr Vandervis left the meeting at 2.07 pm.

AH – would rather have last drinks than one way door. Problem with that is that not all establishments will be open until then.

DC – one way door and last drinks. Bar owners already operate this but we have thought better for bars to give the opportunity to move closer to closing time.

Last drinks confuses the issue

One way door

Need to be clear.

Requirement each bar has one way door policy, timing has to be at the latest half an hour before their maximum closing time. If it doesn't apply then 2.30 am would be the latest time to apply the one way door.

3.2.1

3.2

Delivery hours, we can align them with off licences 9 – 9

3.4.1

4.0 Host Responsibility

Have our policy and then another with Acts referenced

Needs our policy to be as clean and lean as possible.

Glossary – YAY

DC – Changes need to be made

Conscious of what Jinty has said

Ultimate policy won't look like this

May be rewritten in different manner

Two stage

Change this document with wording we have, circulate then next stage is word smithing stage.

Dave to think about the next steps

Jinty – if everyone commits to the ones already out there and see which one is the clearest.

Middle chunk of Invercargill is clear. Some are horrible.

Jinty thanked Kevin for all the support he did.

?Think what next part is and what we need

LTP first week

The meeting adjourned at 2.39 pm

Reconvened Thursday 19 March at 2.35 pm

Present, Dave, Jinty, Neville, Aaron, Andrew W, Lee, Mike, Kevin and me

Achieve finalisation to take to Council.

Draft Provisional LAP when it goes to Council.

Starting at top and working through

LV – brief summary of the changes.

Council ratifies then 30 day appeal period

LV would like to be part of the summary of changes.

DC – that can focus only on the changes rather than its intent as a package

LV – Introduce with an intent paragraph

Intent is and requirement is that we enact measures that minimise alcohol harm. Some changes from the previous one as x, y and z

Here is the full document

Will have a covering report with the information provided in that.

Went through the policy

JM – We have gone through and made changes to the provisions but we didn't last time about the explanation or text that was going around that. Provisions and then conversation about narrative. NP would like that too.

NP the philosophy behind it. It is a package and the provisions are meant to be how we use alcohol. Blue on page one is good but doesn't do enough of the philosophy.

DC – appropriate place in the introduction

For purposes of achieving agreement on introduction

Bullet point what isn't in here and should be in the introduction

Wellington Judge said didn't minimise harm

KM – where Wgtn screwed up was what they kept in introduction they took through the whole policy

- Minimisation of harm - Trying to avoid harm
- Acknowledge one of the world's great small city's needs to have a night life when we combine drinking with food and entertainment
- Frame it in minimising harm sense

- Evidence we have seen, controlled safe atmosphere where young people consume alcohol is the safest method
 - Accessibility of central city to young folk
- Reference to the limited restrictions we have, e.g. age and sales

Making a statement like that, whether its appropriate in the policy itself.
In report, we felt constrained.

JM – not to highlight what we weren't doing but we would do things differently if those were different. They limit what we can do.

Place in the report.

Safe, vibrant community and having off licences open after 9pm isn't conducive to that.

Kevin will draft up something around that.

DC – are you comfortable with resource.

KM – he puts guts in then goes to policy.

DC – even involve COMS people to give a hand. Flick it around at each iteration

NP – the introduction is the issue. Once that is drafted we can send it out.

Introduction and Objective

2.1 – focus on other types not new

AH – Advertising around sensitive facilities. Eg Brewery sponsoring sports club

KM – under the district plan

KM – Emersons could sponsor a kindergarten because signage not to be specific type of beer.

Can't stop a specific company logo

LV – onlicence density around the Octagon. Allowing more and more pubs is changing the character of the central city. Putting them all in one place is easier to police but having centre of city Doesn't mind one place but the centre of our city. Perception we are booze city.

Is there anyway that we recognise there is an issue but don't want upper side of the octagon to become pubs also.

DC – if we were to address that how would you implement that.

LV – just noting that there is a bit much of an onlicence density.

DC – either say there is a moratorium or not. Need to be more specific.

LV – would there be any support for moratorium of on licences in the Octagon

AH – nobody asked for it so might be heavy handed.

NP – have we reached mass now

KM – opening another bar wouldn't increase crime substantially but is creating the perception we are booze central for the country.

DC – Potential for 5 premises at the most in the Octagon

JM – we put in rule saying we will have moratorium on on licences.

LV – is it city planning

AW – Just makes current bars more valuable

AH – uncomfortable

LV – this is the centre where the tourists come, concept of Ale House Dunedin when we have so much more to offer

DC – other things are closed and during the day they are more cafes than bars

LV – night time issue worries him

LV – sad we have allowed so many bars to concentrate in that area

DC – reference our desire to have different type of onlicence premises .

NP – concerned about further proliferation of bars in the central city.

LV – trying to promote a more café style in the Octagon to control the bar situation kinda.

LV – is outlet density

JM – density won't affect licence renewals.

DC – licence is rolling over but we want you to sell cans not bottles.

ML – rural zone pub in Mosgiel. Now backing onto houses. Would like to leave one place a bit later.

KM – under the Act, when she renews she could be chopped back
ML – she is in the stage that her venue has changed because of the zoning around.

It has a very big footprint

ML – she has been historically in a rural zone

KM – Port Chalmers going to 3am so combine both at top of page 4

DC – Careys Bay and Mosgiel are the two. If we decide on an exception, what is plausible way of implementing the exception.

ML – Through no fault of her own the circumstances have changed

Nellies is in the main street

JM – Dunedin Metropolitan areas and then put Green Island, Mosgiel, Chalmers in next category.

DC – minimising alcohol harm

ML – how much alcohol harm is her trading from 12 – 1.30 resulting from her

AH – Careys Bay was function, couldn't she get special licences

KM – yes

DC – grounds of minimising alcohol related harm we have pulled the hours back across the board

She may not cause any harm but it starts others wanting to be the same

JM – still have 30 minute to clear the bar

KM – yes

DC – impact is that Careys Bay and Mosgiel one are pulled back an hour. Functions they can get a licence

Querying Macandrew Bay
Evansdale

Have non metropolitan in its own area and have metropolitan in their own.
Page break stuff

Discussion on non metropolitan e.g. Warrington

Get a map of the city and put metropolitan and non and reference 2GP at appropriate time
Metropolitan as defined by map in schedule A

Onlicence – one way door.

Host responsibility policy

Do we leave it here, take it out or put in host responsibility

Not genuine entertainment discussed

Conditions of use included in the host responsibility policy.

Why specify – take it out

Take full section out

Discussion on breach of footpaths section

DC – we set the conditions and DLC has to do the monitoring

KM – yes

JM – DLC will take into account the record

KM – all part of the renewal process set in statute

Discretionary Conditions

Need to be clear on compulsory and discretionary.

If required we don't want DLC to have to list discretionary

Opening them up to challenge so we are protecting DLC by setting them

JM – could all 4 discretionary conditions go in HR policy and make it clear which ones we want every premise to include and which discretionary we could get rid of this

DC what conditions will be discretionary
KM – do a commentary document for the DLC
DC – can't be challenged if in the policy
KV thinks he knows discretionary and required conditions
JM – Slightly different host responsibility section for each type of licence i.e. off and on
On licence HR and Off licence HR

Make online hours in line with off line hours
Time of departure
Deliveries before 9pm for online orders

Clubs HR responsibilities

3.3.4 – subset of club

5.1 – Event Management Plan
What is large scale event be specific
Do we need to give DLC direction
Yes
150

Kevin to send draft round and then meet with final version
Do on email and agree if needs to be bought back

JM – Reason we have to give to take position
The reasons why we have decided to do this or evidence

Introduction
Objectives
Reasons

This is the logic we have followed to endeavour to minimise alcohol related harm

The meeting adjourned at 4.50 pm

BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY
AT DUNEDIN

UNDER

of the Sale and Supply of
Alcohol Act 2012 ("**the Act**")

AND

IN THE MATTER

of an appeal under section
81 of the Act by
**PROGRESSIVE
ENTERPRISES LIMITED** in
respect of decisions of the
Dunedin City Council on the
Dunedin Provisional Local
Alcohol Policy

CLOSING SUBMISSIONS OF PROGRESSIVE ENTERPRISES LIMITED

DATED 14 DECEMBER 2016

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MAY IT PLEASE THE AUTHORITY

1. INTRODUCTION

- 1.1 These submissions address a number of legal issues that have arisen throughout the hearing, and address the evidence presented in light of Progressive's appeal.
- 1.2 These submissions do not address the cross-examination of Dr Kelly. That matter will be dealt with by way of reply following the Council's closing.
- 1.3 The following sections from the opening submissions remain applicable and should still be considered by the Authority in making its decision:¹
 - (a) Section 3 – LAP Background
 - (b) Section 4 – The Act and Relevant Tests on Appeal
 - (c) Section 5 – Evidence Based Policy Requirements

2. SUMMARY

- 2.1 Paragraphs [1.1] to [1.5] of my opening submissions remain relevant. Additionally, the Authority should find the following elements unreasonable in the light of the object of the Act for the following key reasons:

Maximum trading hours overall

- 2.2 Cumulatively, the restrictions in the morning and the evening across the city every day of the week represent an unreasonable and disproportionate response to the identified alcohol related harm in the PLAP (exhibit 1), and excessive / inappropriate drinking trends in Dunedin.

Opening Hours' (7am - 9am)

- 2.3 The restriction on sales between 7am and 9am will provide no discernible benefit in terms of reducing ARH.
- 2.4 The restriction has been implemented in an attempt to recalibrate the default hours in the Act, which already address any issue with sales in the 7am – 9am period.
- 2.5 There is no local evidence supporting the 7am – 9am restriction.

¹ Submissions of Progressive Enterprises Limited, pages 4 – 16.

Regarding 'Closing Hours' (9pm – 10pm)

- 2.6 The studies and reports which the Council relies on to draw inferences about what type of behaviour to target (off-licence purchases after 9pm) consistently show that on-licence purchases after 2am are a greater source of harm. The Council has acted irrationally in relying on these reports in order to justify a 7 day a week restriction on off-licences, but no comparable restriction on on-licences and has created a partial and unequal PLAP. For example:
- (a) The Public Health South Report (Mechen bundle, tab 3), recommends off licence hours of 8am to 10pm, but the PLAP is more restrictive at either end of the day.² By comparison it recommends 2am for on-licences and the PLAP is more lenient than that;
 - (b) The Caswell Report (Mechen bundle, tab 14)³ identified a greater frequency of drinking quantity and frequency associated with drinking after 2am at an on-licence (compared to pre-2am) than buying alcohol after 10pm from an off-licence);
 - (c) Dr Kelly's evidence is that the research for the availability theory in relation to evening hours is that the majority of the research relates to on-licence hours;
 - (d) The PLAP allows extended on-licence hours (for some on-licences) on Friday and Saturday nights when ARH is greater; and
 - (e) The Council removed the discretionary condition of banning shots after a certain time of night.
- 2.7 The restriction on sale between 9pm and 10pm was an error in law in that the Council was mistaken as to the legal effect of maximum trading hours in the PLAP.
- 2.8 None of the studies or evidence relied on by the Council directly support a restriction on sales between 9pm and 10pm for off-licenses. Any inference of the benefits arising from such a restriction can only be made in relation to the Council's stated objective which is to target pre-loading and topping up (exhibit 2, page 3, para (v)) which is generally accepted to primarily occur on Friday and Saturday nights, in the city.

² Mechen EIC at page 86

³ Mechen EIC at page 201

- 2.9 A 9pm restriction across every night of the week and all of the City is unreasonable in light of when and where the alcohol related harm intended to be minimised by the PLAP occurs.

Regarding the proposed 'Moratorium'

- 2.10 The moratorium is unworkable on the Council's evidence –students are very mobile and will travel to get the best deal, irrespective of whether a favoured store is within or outside of the Moratorium Area.
- 2.11 The Council failed to rationally apply the key study it relied on to support the moratorium – by providing exemptions for wine stores and brewery type licences. In doing so it created a partial and unequal system which is unlikely to achieve the results anticipated. For example Mr Mechen acknowledged that the carve out for 'specialist, premium wine stores and breweries' selling their own product, would present too many confounding variables.
- 2.12 Other studies relating to the density effects of off-licences in NZ show large local variation⁴ and no association between new supermarkets establishing and increased alcohol related harm.
- 2.13 The Council says that the Moratorium is intended to reduce alcohol related harm in an area of the city where there is a high proportion of students, but has not sought to restrict taverns, cafes, club licences, breweries or premium wine stores in that same area. All of the studies which the Council relies on to draw an inference that the Moratorium might be successful in reducing ARH, indicate that similar (or worse) trends are associated with on-licenses or club licences (which is significant given the high density of on-licences in the proposed moratorium area). This inconsistency suggests that the policy is manifestly unjust and perhaps borders on bad faith in that an ulterior motive, (price control), is sought to be achieved as no reasonable council would draw such a distinction on the basis of the reports relied on. It appears the moratorium has been imposed in an attempt to control price, despite it being likely Councillors were aware they could not impose price controls through an LAP.
- 2.14 In any event there is unlikely to be a proliferation of supermarkets in the proposed moratorium area.

⁴ Hampson EIC at section 4

Alcohol Management Plans' and 'Discretionary Conditions

2.15 The Council has conceded that the requirement for Alcohol Management Plans is *ultra vires* and consequently unreasonable.

2.16 The imposition of mandatory conditions is *ultra vires* and unreasonable.

Remote Sellers

2.17 Imposing a proposed restriction on delivery times for remote sales is *ultra vires* and therefore unreasonable.

3. LEGAL ISSUES

A Precautionary Approach

3.1 The Council's reasons for the PLAP do not refer to the precautionary approach and neither does Mr Mechen's evidence refer to it as a reason for the Council's decision. Notwithstanding that background, the Council's opening legal submissions seek to put forward the precautionary approach as a reason why the Authority should not find that various elements of the PLAP are unreasonable in the light of the object of the Act.

3.2 With respect, it is submitted that the Council's approach is not correct because:

- (a) The essence of the precautionary approach is already found in the object of the Act and the test for succeeding on appeal. Applying the precautionary approach as an additional layer distorts the assessment of an appeal and double-counts the approach;
- (b) If the precautionary approach can apply, then it should only do so when the elected representatives of a council have identified that they are seeking to adopt a precautionary approach in their reasons for the PLAP.

3.3 In support of this submission, set out below is an analysis of:

- (a) The precautionary approach under the Act and the Sale of Liquor Act 1989;
- (b) The precautionary principle in international and NZ environmental law.

- (c) The proper assessment and application of the precautionary approach under the Act, as it applies to PLAPs.

Application of the precautionary principle to PLAPs

- 3.4 The precautionary principle was first applied to an appeal under the Act regarding a PLAP in *Hospitality New Zealand Inc v Tasman District Council*, where the Authority stated:⁵

"The territorial authority does not need to be sure that a particular element of its PLAP will minimise alcohol-related harm. This can be deduced from the judgment of the Court of Appeal in My Noodle Ltd v Queenstown-Lakes District Council [2009] NZCA 564, [2010] NZAR 152 at [74]]. A precautionary approach can be used to see if it will achieve the statutory object.

...

Further, the proportionality approach is weighted against an appellant because the PLAP does not have to achieve the statutory object: rather it must constitute an attempt to do so and can employ the precautionary principle described in My Noodle (above) at [74]."

- 3.5 This approach was qualified in *B & M Entertainment v Wellington City Council*, where the Authority stated:⁶

*"[18] A territorial authority is not required to be sure that a particular element of its PLAP will minimise alcohol-related harm. **A precautionary approach, provided there is an evidential basis supporting it, can be used to see if a PLAP will achieve the statutory object.** It was argued that employing a precautionary approach introduces a concept not authorised by the Act. The Authority disagrees. (This is not an issue in this case although it will be noted that **the Authority has qualified what was said in Tasman by suggesting that a precautionary approach must be evidentially justified**).*

...

[80] The appellants have not satisfied the Authority that the element appealed against is unreasonable in the light of the object of the Act. There are no local

⁵ *Hospitality New Zealand Inc v Tasman District Council* [2014] NZARLA 846, [2015] NZAR 156 at [54]-[56]

⁶ *B & M Entertainment v Wellington City Council* [2015] NZARLA PH 21

issues that indicate that the default hours for off-licences are inappropriate for Wellington. Certainly, WCC could have adopted a precautionary approach such as suggested in *My Noodle Limited v Queenstown Lakes District Council* [2009] NZCA 564 ([2010] NZAR 152); **but arguably, without a credible evidential foundation such an approach could well have been unreasonable.**"

[Emphasis added]

- 3.6 In *Foodstuffs North Island Ltd v Thames-Coromandel District Council*, the Authority noted the qualification on the precautionary principle in the Wellington decision, which required an evidential basis.⁷ The Authority stated:

"[25] In this context, if there is a sufficient evidential foundation to determine that there is a possibility of meeting the statutory objective, then the respondent was **entitled to test whether that possibility could become a reality**. That evidential basis does not require evidence of a conclusive link between the alcohol-related harm and the proposed remedy. The circumstantial evidence adduced in these proceedings is quite adequate.

[26] The strength of that circumstantial evidence is relevant as any lack of certainty in the outcome is a factor that must be taken into account when applying the proportionality principle. **That evidence is weighed against the strength of the evidence of the adverse effects of the proposed measures on those opposing the PLAP element;** in this case the adverse effects on "Whangamata New World"."

[Emphasis added]

Development of the precautionary principle in decisions of the Authority under the Sale of Liquor Act 1989

- 3.7 Given that the Authority's reliance on the precautionary principle (also referred to as the precautionary approach) is a continuation of the decision

⁷ *Foodstuffs North Island Ltd v Thames-Coromandel District Council* [2015] NZARLA 129 at [14](c), page 5

of the Court of Appeal in *My Noodle*, it is appropriate to consider the context of that case. The Court in *My Noodle* stated:⁸

"[37] *The Authority stated that, in its view, "the reduction of liquor abuse may well be achieved if there is a common closing time for all licensed premises in Queenstown rather than allowing premises to make their own decisions about when to cease trading". The restriction in trading hours alone would not, however, be sufficient to solve any perceived problems of liquor abuse. **The Council and the police would monitor the situation to be able to give an informed report on the efficacy of the policy. The Authority said that it intended to review the way that the changes had been implemented by way of a public hearing 12 months after the orders had been implemented.***

...

[74] *In our view, the Authority is not required to be sure that particular conditions will reduce liquor abuse. It is entitled to apply the equivalent of the precautionary principle in environmental law. **If there is a possibility of meeting the statutory objective** (as the Authority found there was in this case), **then it is entitled to test whether that possibility is a reality. In this case, it clearly intended to test its hypothesis and keep the matter under review:** see above at [37]."*

[Emphasis added]

3.8 The Court of Appeal's application of the precautionary principle in *My Noodle* was therefore dependent on two factors:

- (a) That the Authority had found that "the reduction of liquor abuse may well be achieved if there is a common closing time for all licensed premises in Queenstown" and that therefore (i.e. linked to that finding) there was a possibility of meeting the statutory objective through application of the policy in question; and
- (b) That this possibility would be tested through ongoing review of the policy.

⁸ *My Noodle Ltd v Queenstown Lakes District Council* [2009] NZCA 564, [2010] NZAR 152

- 3.9 Citing *My Noodle*, the Authority applied the precautionary principle in *Imperial Discount Liquor Ltd*, where it imposed a condition requiring a bottle store to close for an hour when students were going home after school. This condition was to be "reviewed after hard evidence is obtained during the 'probationary year'".⁹ The Authority stated:

"[30] An example of the "precautionary principle" operating in practice are the two decisions in Vishal Holdings Limited NZLLA PH 1261/2009 and [2011] NZLLA PH 246. Initially in Vishal Holdings Limited, a condition was imposed closing a bottle store when it was anticipated that school pupils would be passing by the store on their way home. Subsequently, upon renewal, the evidence established that there was no need for the condition to remain."

- 3.10 In *Vishal Holdings Ltd* the Authority was critical of the District Licensing Agency and its Inspectors as they had "not monitored the operation of the licence in any way" during the probationary year when an afternoon closing condition applied.¹⁰ The Authority therefore determined that the variation of conditions sought by the applicant should be granted, but that the renewal period would be a probationary period of 15 months. During this time, the:

"District Licensing Agency Inspector is expected to actively monitor the operation of the licence so that a comprehensive report can be prepared for the District Licensing Agency at the next renewal date."

- 3.11 Citing *My Noodle* for its application of the precautionary approach, the Authority in *Re Bank Street Investments Ltd* stated:¹¹

"The Authority recognises that the proposed one-way door condition is in the nature of a precautionary or trial measure. It anticipates that when the draft Local Alcohol Policy for the Whangarei District Council is being considered, the Council will take into account such evidence as there may be as to whether the one-way door policy is actually working effectively in the Whangarei CBD. If there is evidence that it is not making a contribution to the minimisation of alcohol-related harm but is creating other problems then whether or not such a restriction should be continued in the draft Local Alcohol Policy will need reconsideration."

⁹ *Imperial Discount Liquor Ltd* [2012] NZLLA 242

¹⁰ *Vishal Holdings Ltd* [2011] NZLLA PH 246 at [10]

¹¹ *Re Bank Street Investments Ltd* [2014] NZARLA 942 at [17]

Consideration of the precautionary principle in the development of the Act

3.12 In its Report *Alcohol in our lives: curbing the harm*, the Law Commission considered the precautionary principle as follows:¹²

"4.13 *Alcohol's status as a legalised drug with the potential to cause serious harms must be a founding principle of any regulatory regime and the rationale for government's long-standing responsibility for controlling its use. That no one may sell alcohol without a licence signals the seriousness with which alcohol regulation is regarded.*

4.14 *However, we have seen ample evidence to support the view that, **under the present light regulatory regime, alcohol is too often marketed and sold in a manner at odds with this precautionary approach.** In the retail market particularly, with the exception of the minimum purchase age restriction, alcohol is now treated much like any other commodity.*

...

4.49 *Numerous submitters to this review have encouraged us to adopt an evidential approach to policy development. In our view, **the evidence is clear: a recalibration of the laws governing the sale of alcohol is required.** Given the speed of research advances concerning the effects of alcohol on the human body, and the requirement in our terms of reference to **future proof our recommendations by "having regard to present and future social conditions and needs", we believe new laws must adopt a more precautionary approach than is currently applied.***

...

7.21 *The approach taken by the Court of Appeal in *My Noodle* favours an interpretation that includes consideration of the object of the Act in addition to the particular statutory criteria for the granting or renewal of a licence. The Court of Appeal held:*

'In our view, the Authority was entitled to give precedence to the overriding statutory object in s

¹² *Alcohol in our lives: curbing the harm* (NZLC R114, 2010)

4. The specific statutory criteria must be interpreted having regard to that purpose. ...

[T]he Authority is not required to be sure that particular conditions will reduce liquor abuse. It is entitled to apply the equivalent of the precautionary principle in environmental law.”

[Emphasis added]

3.13 This Report informed the development of the Act. It is submitted that the precautionary principle was clearly in the mind of the Law Commission when it proposed the legislative framework, and the government when it passed the framework. With that in mind and given the brevity of the commentary of the Court of Appeal, it is appropriate to consider what the precautionary approach is, in environmental law. Two aspects are addressed;

- (a) The precautionary principle in international law; and
- (b) The precautionary principle in NZ environmental law.

THE PRECAUTIONARY PRINCIPLE IN INTERNATIONAL LAW

3.14 The precautionary principle was developed in Europe in the 1970s. It first received broad international recognition at the United Nations Conference on Environment and Development in 1992, where it was codified in Principle 15 of the Rio Declaration. Principle 15 is as follows:

*“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. **Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.**”*

[our emphasis]

3.15 The principle recognises that environmental decision making frequently operates in an arena of uncertainty, because ecosystems and environmental processes are complex and unpredictable. It provide a means of approaching environmental decision making where there are uncertain and unquantifiable but possibly catastrophic risks associated with human action.¹³

¹³ *The Precautionary Principle*, World Commission on the Ethics of Scientific Knowledge and Technology (COMEST), United Nations, 2005.

- 3.16 In the years since the Rio Declaration was adopted, the precautionary principle has been incorporated into a wide range of international instruments relating to sustainable development, environment, health, trade and food safety. As a result, many variations on the definition set out in the Rio Declaration have arisen.
- 3.17 The precautionary principle has been criticised for its lack of clarity in respect of key questions, such as when it should apply, whether it imposes a positive obligation to act or simply permission to do so and where the burden of proof rests to show the existence or absence of harm.
- 3.18 The various formulations of the precautionary principle adopted in the international sphere reach different answers to these questions. As a result, the various versions of the principle can be categorised as weak, moderate or strong:¹⁴
- (a) Weak versions allow preventive measures to be taken in the face of uncertainty, but do not require them. To satisfy the threshold of harm, there must be some evidence relating to both the likelihood of occurrence and the severity of consequences. The requirement to justify the need for action (the burden of proof) generally falls on those advocating precautionary action.
 - (b) Moderate versions provide that the presence of an uncertain threat is a positive basis for action, once it has been established that a sufficiently serious threat exists. The burden of proof generally remains with those advocating precautionary action.
 - (c) Strong versions justify or require precautionary measures when knowledge is limited, placing the burden of proof on those who argue that a proposed activity will not cause significant harm. This requires those proposing an activity to prove the activity is "safe" before approval is granted.

APPLICATION OF THE PRECAUTIONARY PRINCIPLE IN NEW ZEALAND

- 3.19 Since the adoption of the Rio Declaration in 1992, the precautionary principle has been applied in New Zealand in a range of environmental policy areas.
- 3.20 New Zealand's pre-eminent environmental statute, the Resource Management Act, was promulgated in 1991 and does not include express

¹⁴ *Environmental Risk Management in New Zealand - is there scope to apply a more generic framework?* New Zealand Treasury, July 2006.

reference to it. Subsequently, however, a body of case law has developed which makes clear that application of the precautionary principle is implicit in the way that the RMA is implemented¹⁵ and, where the proponent of a policy wishes to have the precautionary approach applied – the policy will say so expressly. For example, the New Zealand Coastal Policy Statement 2012 provides in Policy 3:

- "(1) Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood but potentially significantly adverse.*
- (2) In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change so that:*
 - (a) Avoidable social and economic loss and harm to communities does not occur;*
 - (b) Natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and*
 - (c) The natural character, public access, amenity and other values of the coastal environment meets the needs of future generations."*

3.21 A range of other environmental / natural resource legislation passed in the last two decades has included express reference to the precautionary principle. For example, section 10 of the Fisheries Act 1996 specifies four information principles, which encompass the precautionary principle, which must be taken into account in decision making under the Act:

"10 Information principles

All persons exercising or performing functions, duties or powers under the Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following information principles:

¹⁵ *Eyre Community Environmental Safety Society Incorporated v Christchurch Regional Council* [2016] NZ EnvC 178; *Friends of Nelson Haven and Tasman Bay Inc v Marlborough District Council* [2016] NZEnvC 151.

- (a) *Decisions should be based on the best available information.*
- (b) *Decision-makers should consider any uncertainty in the information available in any case.*
- (c) *Decision-makers should be cautious when information is uncertain, unreliable or inadequate.*
- (d) *The absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act.*

3.22 Section 7 of the Hazardous Substances and New Organisms Act 1996 contains the following expression of the precautionary principle:

"7 *Precautionary approach*

All persons exercising functions, powers and duties under this Act ...shall take into account the need for caution in managing adverse effects where there is scientific and technical uncertainty about those effects."

3.23 Finally, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 includes the following (together with an equivalent provision in section 34 relating to the development of regulations):

"61 *Information principles*

- (1) *When considering an application for a marine consent, the Environmental protection Authority must –*
 - (a) *make full use of its powers to request information from the applicant, obtain advice and commission a review or a report;*
 - (b) *base decisions on the best available information and*
 - (c) *take into account any uncertainty or inadequacy in the information available.*
- (2) *If, in relation to making a decision under this Act, the information available is uncertain or inadequate,*

the EPA must favour caution and environmental protection.

- (3) *If favouring caution and environmental protection means that an activity is likely to be refused, the EPA must first consider whether taking an adaptive management approach would allow the activity to be undertaken."*

- 3.24 Since 1992, the precautionary principle has become well established as an important tool for environmental regulation in New Zealand. It is frequently expressly provided for in new environmental legislation. Indeed, its ubiquity means that its *absence* from an environmental statute may serve as an indication of legislative intent in the same way as its inclusion.
- 3.25 As a result, it is reasonable to infer that the legislature's intent in terms of whether (and how) the precautionary principle should be applied to the implementation of a particular statute should be inherent in the text of the statute itself – particularly when the concept was a live issue raised by the Law Commission

Application to the Act

- 3.26 It follows from the above analysis that the Government could have, but chose not to, expressly provide for (or require) the precautionary approach within the legislation. This interpretation is borne out by
- (a) The lack of express mention in the Act;
 - (b) The lack of an obligation to have a local alcohol policy if the Council does not want one (s75(1));
 - (c) The inability for an appellant to challenge the lack of an element in a PLAP; which must therefore preclude an argument that a council failed to adopt the precautionary approach or was insufficiently precautionary;
- 3.27 It is submitted that the essence of the precautionary principle is already incorporated into the provisions of the Act through the setting of a high threshold for a successful appeal (s83), and to apply the precautionary principle again to individual policies in a PLAP would essentially amount to "double counting" of the concept, distorting the assessment of the balance of probabilities, burden of proof and the assessment of reasonableness and therefore would not be consistent with the purpose of the Act.

- 3.28 Importantly, that is not to say that that a council cannot develop a policy approach that it believes will work and wishes to test; but the testing of that theory must be against the statutory criteria and not a hybridisation of section 83 as well as the concepts found in *My Noodle*.

Application to the Dunedin PLAP

- 3.29 In the event that the Authority considers that the precautionary approach applies over and above section 83, the following sections address the precautionary approach as it applies to the Dunedin PLAP.
- 3.30 An evidential basis is required to support inclusion of a particular policy in a PLAP through application of the precautionary principle.
- 3.31 A policy included in a PLAP through application of the precautionary principle is meant to be reviewed after information regarding its effect on ARH becomes available. This was easier to do when considering individual policies or licences as in *My Noodle*, *Imperial Discount Liquor Ltd*, *Vishal Holdings Ltd*, and *Re Bank Street Investments Ltd*. However, in this case – and in stark contrast to *My Noodle*:
- (a) The Council in explaining the reasons for its PLAP did not say that it was being precautionary, or that it was adopting a precautionary approach;
 - (b) Has not called any evidence that it was being precautionary;
 - (c) Has not established any baseline or local effects which it will measure the success or failure of its policies against. Indeed the only current and relevant information about when and where ARH across Dunedin has been produced by Progressive (the Police report (exhibit 2) only relates to part of Dunedin;
 - (d) Has no approach of monitoring, review or adapting to any information. Indeed there is no evidence that the Council has given thought to how success or failure of its PLAP would be assessed, or reviewed and/or when it would be reviewed.
- 3.32 In these circumstances, it appears that the Council is endeavouring to retrospectively anchor the PLAP by reference to the precautionary approach. Doing so undermines the integrity of the PLAP, the object of the Act and the Council's decision. The Authority should send a clear message that the misuse of the precautionary approach in this manner is not acceptable and is inconsistent with the purpose and object of the Act.

- 3.33 A PLAP is a council policy and, with respect, it should not be for ARLA to determine whether the policy seeks to implement the precautionary approach. A council may develop a theory that it wishes to test in implementing its PLAP. If it does so, it should be able to clearly identify its theory and develop a coherent and consistent policy package responding to that theory. That is the least that the Local Government Act 2002 requires and that this Authority should expect from a Council which chooses to develop a PLAP. It is important that these issues are bedded into the reasons for a PLAP because those reasons will ultimately guide a DLC when considering the LAP and how to apply it in the event that an application is made to breach a policy in the LAP (for example – in this case an application for a new off-licence in the Moratorium Area).
- 3.34 Where a council does not do that, the Authority should be slow to accept council staff evidence or submissions that suggest that the council intended to apply the precautionary approach and proposing new reasons why the PLAP should be upheld in support of the precautionary approach. The correct approach should be to test the policy against the criteria in the Act and if it fails that test, ask the Council to reconsider the policy. Then, if the elected councillors decide – following further consultation – to adopt a precautionary approach then they can expressly say that they have and identify their theory for all of the community to consider and understand.

B Ability for Council to introduce new reasons

- 3.35 While it is appreciated that this is a *de novo* hearing, there is always the possibility that the Authority will be presented with new information by the Council to 'backfill' the decisions that were made in respect of the PLAP, particularly in circumstances where there is a lack of information supporting the decision imposed.
- 3.36 It is submitted that there are 2 categories of new information:
- (a) Information relevant to the reasons given for the element of the PLAP under appeal;
 - (b) Information proposing to support the element of the PLAP under appeal for new reasons
- 3.37 The Authority should be wary of such information relating to or establishing new reasons for a PLAP element which was not identified by the elected

Councillors that made the decision.¹⁶ It is submitted that the 'reasonableness' of specific PLAP provisions must be assessed in relation to the council's reasons. If the element is found to be unreasonable in relation to those reasons, it should be for the council to reconsider the element after re-consulting with the community to create new reasons.

3.38 In that context, the Authority should also be wary of information tendered by Council staff that purports to reinterpret and state what information the Councillors relied upon in making their decision on the PLAP. The PLAP decision should stand, or fall, on the reasons given within the policy document.¹⁷

3.39 One example of this is Mr Mechen's evidence at paragraph 66 where he suggests that a reason for the moratorium is that it allows the council to monitor the effectiveness of the LAP – even though this was not a reason that the council identified. Ultimately Mr Mechen recognises that the PLAP allows so many confounding variables that this reason would not work.¹⁸

C Vires Issues

3.40 In ***B & M Entertainment*** the Authority stated that:¹⁹

"if an element of a PLAP is ultra vires the empowering provision of the statute (in this case, s.77 of the Act) then that element will always be deemed to be unreasonable in light of the object of the Act. Illegality must always be evidence of unreasonableness in this context." (emphasis added)

3.41 Consequently if an element is illegal it is always unreasonable.

3.42 This is supported by the statutory wording in section 77 of the Act which explicitly sets out what matters relating to licensing a LAP policy may address. In specifying those matters section 77 states "*and no others*", while also stating "*A local alcohol policy must not include policies on any matter not relating to licensing*".²⁰ All matters a policy can address are contained in section 77 of the Act.

¹⁶ Further detail on the decision making process is set out in the Submissions of Progressive Enterprises Limited at [5.7] and [5.8].

¹⁷ This is to ensure compliance with the principles stated in *B & M Entertainment* at [15].

¹⁸ Transcript, line 22-24, page 404.

¹⁹ At [20].

²⁰ Section 77(3), the Act.

3.43 The PLAP imposes two mandatory requirements that Progressive submits are *ultra vires* and therefore unreasonable in light of the object of the Act. These are:

- (a) The requirement that all license applications **must** be accompanied by an alcohol management plan;²¹ and
- (b) The statement that "*The DLC **will** apply conditions to all off-licences issued or renewed that relate to:...[conditions specified]*".²²

(**bold** emphasis added)

Alcohol Management Plan

3.44 The Council has correctly conceded that the PLAP's mandatory requirement to provide an alcohol management plan with license applications is not provided for in the Act and is *ultra vires*.²³ Consequently the Authority must find the requirement unreasonable.

Mandatory conditions

3.45 The PLAP also seeks to impose mandatory conditions on off-licences that are issued or renewed.²⁴ It uses the words "*The DLC will apply conditions to all off-licences issued or renewed...*"²⁵ The wording used leaves no room for interpretation, the conditions are not discretionary but mandatory.²⁶ As they are mandatory they fall outside the scope of matters an LAP can address²⁷, are *ultra vires*, illegal and therefore unreasonable on the grounds noted in *B & M Entertainment* above.²⁸

3.46 These matters were addressed in the written submissions of Counsel for the Council where they correctly identified that conditions can be discretionary,²⁹ however under questioning Counsel stated that "*I think in light of the object of the Act and what the council can control through a local alcohol policy, I think there is jurisdiction for a council to specify*

²¹ Refer page 13, PLAP.

²² Refer 5.2.2, PLAP.

²³ Ms Irving's Oral Submission, Transcript at line 17-19, page 351; lines 5-6, page 352; lines 1-2, page 353.

²⁴ Refer [5.2.2], PLAP.

²⁵ Ibid.

²⁶ This was addressed in questions by Member Moorhead, Transcript at lines 5-20, page 352.

²⁷ Specifically refer to section 77(1)(f) which authorises 'discretionary conditions' not 'mandatory conditions'.

²⁸ Refer to paragraph [3.4] above.

²⁹ Legal Submissions of Counsel for the Respondent at [57].

*whether a discretionary condition under the Act can, in fact, be a mandatory condition under a local alcohol policy...*³⁰

- 3.47 It is submitted that mandatory conditions cannot be imposed under the local alcohol policy. The Council has provided no authority for that approach and the statutory wording is clear, section 77 does not allow for the imposition of mandatory conditions in a PLAP.
- 3.48 However, the Council has requested guidance from the Authority as to “*whether or not the provision of the alcohol management plan can be a mandatory criteria for a licence?*”.³¹ It is submitted that the Authority cannot do that as part of this appeal. The Council is asking the Authority to provide guidance on the lawfulness of a potential provision in the PLAP, which has not been tested in evidence. The Authority’s determination in these proceedings is binary, the mandatory criteria is either lawful or it is not. With respect, is not for the Authority to provide guidance as to whether a potential policy element in the Plan may or may not be reasonable in light of the object of the Act in the absence of evidence and / or submissions on that element and / or to pre-empt the reconsideration and appeal process associated with an amended element.

D Error of Law

- 3.49 The decisions the Council made on the PLAP in relation to operating hours, suffer from an error of law, specifically being a misunderstanding of the correct law, which goes to the reasonableness of the decision.
- 3.50 The Council clearly considered that they were entitled to set maximum trading hours in the Act, but then depart from those hours (by extending those hours), if desired, as part of an individual licence.³²
- 3.51 Mr Mechen has been involved in preparing the draft LAP and PLAP and providing advice to Council throughout all aspects of the PLAP’s development.³³ He was the draftsman at each stage of the LAP, was relied upon by the subcommittee as their primary Council officer giving them guidance and advice.³⁴
- 3.52 On the basis of his written evidence, (and evidence given under cross examination specified below), it is clear Mr Mechen presumed, up until the

³⁰ Ms Irving’s Oral Submission, Transcript at lines 4-7, page 353.

³¹ Transcript at line 15-21, page 353.

³² Refer to the written evidence of Kevin Mechen at [49] and Ms Irving’s Oral Submission, Transcript at line 10, page 359.

³³ Written Evidence of Kevin Mechen, at [4] – [11].

³⁴ Mr Mechen, Transcript at lines 4-17, page 392.

hearing, that the DLC could grant licences that specified trading hours in excess of those specified in the PLAP.

3.53 As stated at the hearing, that position is incorrect at law pursuant to section 45 of the Act.³⁵ Further Mr Mechen stated in cross-examination that:

- (a) The Council did not know that they could not go more expansive than the hours in an LAP, and that this was a misunderstanding that had carried over into fact;³⁶
- (b) Despite the misunderstanding the Council would have been aware that at the time the DLC looks at any application for a licence, or for a renewal of a licence, it's obliged to have regard to the object of the Act.³⁷
- (c) That this misunderstanding was a fundamental issue³⁸, and specifically that is was pretty fundamental to understanding how the LAP applies on the ground and whether it has any flexibility or not.³⁹
- (d) He dealt with the DLC weekly and the misunderstanding was something they had in their mind, as well as something that he had in his own mind;⁴⁰
- (e) He agreed it was something the Authority should take into account in considering whether the approach taken by Council is reasonable or not;⁴¹

3.54 It is submitted that this error is significant to any determination as to whether the Council's decision on hours was reasonable. Despite the fact that we can never know exactly what the Councillors were thinking, it is clear from the evidence that the Council, throughout its development of the draft LAP and PLAP proceeded on a misunderstanding of the correct law as it relates to sale hours.

3.55 Further Mr Mechen gave evidence that:

³⁵ As set out in the discussion between Member Moorhead, Mr Braggins and Mr Thain, Transcript at pages 360-362.

³⁶ Transcript at lines 4-20, page 455.

³⁷ Transcript at lines 21-24, page 455.

³⁸ Transcript at lines 15-19, page 460.

³⁹ Transcript at lines 25-27, page 392.

⁴⁰ Transcript at lines 15-19, page 460.

⁴¹ Transcript at line 2-5, page 461.

- (a) There was no analysis done by Council as to why the draft LAP started at 10pm for off-licences and then was restricted to 9pm in the PLAP;⁴²
 - (b) That the change in hours wasn't consulted on broadly with the community but was as a result of oral submissions;⁴³
 - (c) 98% of submitters on the PLAP supported either the default hours or the ones proposed in the draft LAP;⁴⁴
- 3.56 The Council's decision to restrict off licence sale hours to 9pm in the evening proceeded on an error of law. They, and their advisors did not correctly understand how restriction on sale hours worked, nor seemed to be aware of section 45 of the Act.

4. **KEY EVIDENCE AND CROSS EXAMINATION**

A Introduction

- 4.1 Progressive's appeal contains a number of specific appeal points that can be summarised under the following headings:
- (a) Opening Hours (7am - 9am);⁴⁵
 - (b) Closing Hours (9pm - 10pm);⁴⁶
 - (c) Moratorium;⁴⁷ and
 - (d) Discretionary conditions.⁴⁸
- 4.2 We address these below by reference to the key evidence presented at hearing and during cross examination.

B Opening Hours (7am - 9am)

- 4.3 The PLAP sets maximum trading hours for all off-license premises in the Dunedin district as 9am - 9pm.⁴⁹ These hours constitute a further restriction from the Act's default hours of 7am - 11pm.⁵⁰

⁴² Transcript at page 431 and 432.

⁴³ Transcript at lines 26-29, page 446.

⁴⁴ Transcript at lines 26-28, page 445.

⁴⁵ Progressive's Notice of Appeal at 4.1(d).

⁴⁶ Ibid.

⁴⁷ Ibid at 4.1(b).

⁴⁸ Ibid at 4.1(c).

⁴⁹ Refer PLAP at [5.2.1].

⁵⁰ Section 43(1)(b) of the Act.

- 4.4 The PLAP provides no reasons to support the restriction of morning alcohol sales between 7am – 9am. It cannot be determined why the restriction is proposed, what ARH it is intended to address, or how the restriction is reasonable in light of the object of the Act.
- 4.5 The evidence provided by Council⁵¹ in support of this issue sheds little light on the matter, or their reasoning for the restriction, and can be summarised into two points:
- (a) To address the concerns about the exposure of young people to alcohol before school and the marketing of alcohol as an ordinary grocery effectively normalising it;⁵² and
 - (b) The commercial impact of restricting off-license sales between 7am and 9am would have little commercial impact on businesses, and was considered to be small and therefore reasonable when balanced against the submitters concerns.⁵³
- 4.6 In response Progressive submits that:
- (a) There is no evidence that restricting off-license morning hours of sale between 7am and 9am is relevant to the prevalence of ARH.⁵⁴ This is consistent with the analysis undertaken by Natalie Hampson which shows that ARI's are at their lowest levels between 7am and 9am when compared to the rest of the day.⁵⁵
 - (b) Concern about the exposure of young people before school appears primarily based on one submission, David Bridgeman, who is concerned about children being less exposed to alcohol promotions.⁵⁶ We note the exposure of children, (and the public) to alcohol in supermarkets is addressed through single alcohol areas at sections 112-114 of the Act, with the promotion of alcohol controlled through section 237.⁵⁷
 - (c) Mr Mechen accepted that while various concerns were raised regarding the exposure of children to alcohol between 7am and 9am,⁵⁸ the Alcohol Healthwatch submission was the only place

⁵¹ Mr Mechen, Bundle of Evidence, p15, at [55] and [56].

⁵² Ibid at [55].

⁵³ Ibid at [56].

⁵⁴ Dr Francesca Kelly, Rebuttal Evidence, Bundle of Evidence Volume 2, p127 at [2.27].

⁵⁵ Natalie Hampson, Statement of Evidence, Bundle of Evidence Volume 1, p21-22, at [3.10].

⁵⁶ Dr Francesca Kelly, Rebuttal Evidence, Bundle of Evidence Volume 2 at p126-127 at [2.24]-[2.26].

⁵⁷ Also refer to the Evidence of Mike Foster, Rebuttal Evidence, Bundle of Evidence Volume 2, p336 at [2.22]-[2.23].

⁵⁸ Transcript at lines 6-26, page 422 and lines 1-19, page 423.

where an actual study was cited.⁵⁹ Progressive's witnesses were not questioned on this point, and that study relates to alcohol advertising and the link between the uptake of drinking among non-drinking youth, it does not address the exposure of children to alcohol during 7am and 9am.

- (d) There is no evidence, and in particular local evidence, that the sale of alcohol between 7am and 9am exposes children to excessive or inappropriate drinking⁶⁰ despite there being various other ways in which children may be exposed to alcohol, and the consumption of alcohol.⁶¹ It was accepted by Mr Mechen that this may occur:
 - (i) On getting up in the morning children may see alcohol advertising in the morning newspaper that Mum and Dad are reading;⁶²
 - (ii) On driving to the supermarket, children may pass a billboard with alcohol advertising,⁶³ pass a bottle store/shop with the external advertising of alcohol,⁶⁴ or pass an on-license with people having a champagne breakfast at 8am because the PLAP allows that;⁶⁵
 - (iii) In the supermarket they'd still see alcohol on display in the single alcohol area;⁶⁶ and
 - (iv) On the next day Mum shops, perhaps later in the afternoon, they would still see Mum buying a bottle of wine from the supermarket.⁶⁷
- (e) There is nothing local about the policy to restrict morning sale hours, apart from the opinions of the Councillors that listened to the evidence, and the 7am – 9am is just the Council seeking to reconfigure the default hours in the Act.⁶⁸

⁵⁹ Transcript at lines 17-19, page 423

⁶⁰ Kevin Mechen, Transcript at lines 1-9, at page 424.

⁶¹ Kevin Mechen, Transcript at lines 10-28, page 424 and lines 1-10 at page 425.

⁶² Kevin Mechen, Transcript at lines 10-13, page 424.

⁶³ Kevin Mechen, Transcript at lines 16-18, page 424.

⁶⁴ Kevin Mechen, Transcript at lines 21-27, page 424.

⁶⁵ Kevin Mechen, Transcript at lines 1-4, page 424.

⁶⁶ Kevin Mechen, Transcript at lines 5-7, page 425.

⁶⁷ Kevin Mechen, Transcript at lines 8-10, page 425.

⁶⁸ Kevin Mechen, Transcript at line 11-15, page 425.

- (f) The Acts default morning sale hours are reasonable, unless a Council wishes to respond to a local issue, which the Dunedin City Council has not done.⁶⁹
- (g) The 7am - 9am restriction almost solely impacts supermarkets and grocery stores which cannot sell RTD's or spirits, yet no restriction is imposed on taverns and bars which can sell all forms of alcohol from 8am.⁷⁰ The restriction will have no material effect on exposure to alcohol, address excessive or inappropriate drinking, or the harm caused by that drinking.⁷¹
- (h) The key behaviours of concern (pre-loading and topping up) that the Council seeks to address in the PLAP, are not identified as being associated with purchases between 7am and 9am and because there is a significant intervening time period (9am through the day) it is illogical that a 9am restriction would limit this behaviour.⁷²
- (i) The proposed sale restrictions between 7am and 9am are likely to adversely affect approximately 18,000 – 19,000 shopper visits to the 11 main brand supermarkets in Dunedin City.⁷³ This was not challenged by Council.
- (j) The restriction will predominantly affect those shoppers undertaking quite standard supermarket visits, prevent shoppers from doing so at a time that is convenient to their needs, and may mean shoppers have to make additional trips to the supermarket to purchase beer and wine.⁷⁴
- (k) Restricting sale hours in the morning period will have very limited, if any effect in pre-loading and ARH.⁷⁵

4.7 The sale restrictions between 7am and 9am provide no discernible benefit in terms of reducing ARH, have been implemented to address matters that are already addressed through statutory provisions in the Act, and have been implemented with no local evidence.

⁶⁹ Kevin Mechen, Transcript at lines 24-26, page 423 and lines 1-9, page 424.

⁷⁰ Mike Foster, Statement of Evidence, Bundle of Evidence Volume 1, p299 at [12.1(d)]. Mr Mechen stated in practice the restriction only targeted supermarkets, Transcript at lines 16-18 at page 425.

⁷¹ Mike Foster, Rebuttal Evidence, Bundle of Evidence Volume 2, p332 at [2.9].

⁷² Ibid at [12.1(b)].

⁷³ Dr Douglas Fairgray, Statement of Rebuttal Evidence, Bundle of Evidence, Volume 1, p83 at [2.10]; Transcript at lines 1-7, page 200.

⁷⁴ Ibid at [2.4]-[2.12].

⁷⁵ Dr Douglas Fairgray, Statement of Evidence, Bundle of Evidence, Volume 1, p76-77 at [3.2]-[3.5].

- 4.8 The restrictions will predominantly affect normal everyday shoppers who prefer to undertake their grocery shop between 7am and 9am and wish to purchase alcohol as part of that shop.
- 4.9 Progressive submits that policy 5.2.1 in the PLAP and its restriction on sale hours between 7am and 9am must be unreasonable in light of the object of the Act.

C Closing Hours (9pm – 10pm)

- 4.10 As stated, the PLAP sets maximum trading hours for all off-license premises in the Dunedin district as 9am – 9pm.⁷⁶ This approach means off-licences must close at 9pm, despite the Act's default hours of 11pm.⁷⁷ Notably the draft LAP proposed closing hours of 10pm which all appellants, (and the Medical Officer of Health), agreed to at that time.
- 4.11 It is common ground that concerns about the purchase of alcohol by 18-24 year olds is the reason Council seeks to restrict evening alcohol sales between 9pm and 10pm.⁷⁸ It cannot be determined why the restriction is proposed, how it relates to or addresses ARH, or how the restriction is reasonable in light of the object of the Act. That said, the PLAP does state that "Analysis of police data indicates that: ... about 76% of alcohol purchased is consumed in off-license settings for drinking in off-licence settings for drinking in situations where there is little or no control".
- 4.12 The evidence provided by Council⁷⁹ in support of the restriction introduces new studies to support Council's decision, despite these studies not being referenced in the PLAP decision. I set out the reasons given in evidence for imposing the restriction,⁸⁰ and Progressive's response in relation to each reason below:
- (a) Regarding the Council's view that there are significant levels of ARH within Dunedin, particularly within the North Dunedin area and in the 18-24 year old age bracket;⁸¹

⁷⁶ Refer PLAP at [5.2.1].

⁷⁷ Refer s43(1)(b) of the Act.

⁷⁸ The discussion at the hearing was dominated by the purchasing and drinking habits of 18-24 year olds.

⁷⁹ Kevin Mechen, Bundle of Evidence, p14-17, at paragraphs [51]-[54] and [57]-[65].

⁸⁰ Noting that the position is summarised in Kevin Mechen's evidence, Bundle of Evidence, p17, at [65].

⁸¹ Kevin Mechen, Bundle of Evidence, p14, at paragraph [51].

- (i) Progressive's evidence is that Dunedin is not significantly worse than other parts of the Otago Region.⁸²;
 - (ii) Progressive agrees ARH occurs at a higher rate in 18-24 year olds in Dunedin, (on the same basis that it occurs to some extent everywhere in New Zealand); and
 - (iii) The relevant aspect is to understand where / when the bad drinking behaviours occur which is primarily in the CBD on a Friday and Saturday night.
- (b) Regarding the Police 'Last Drinks' survey, 2002/2003 indicated 40% of people arrested consumed their last drink at an off-license location (public place or home) relative to 32% who reported their last drink as taking place at a licensed premises;⁸³
- (i) The Police 'Last Drinks' survey is historic, has little academic weight, and has little relevance as it was undertaken at a time when the regulation of alcohol consumption in Dunedin was quite different to the current situation.⁸⁴
- (c) Regarding research indicating that alcohol purchased later in the evening is more likely to be consumed irresponsibly, (citing the Casswell 2014 study), the Council decided to further restrict the trading hours for off-licence premises.⁸⁵
- (i) This study is not evidence linking alcohol purchased between 9pm and 10pm in the evening to irresponsible consumption.
 - (ii) The Caswell 2014 study presents nationwide data, does not provide any local context for Dunedin and was undertaken using the assessment criteria "before or after 10pm".⁸⁶ It has no relevance to a 9pm restriction.
 - (iii) The Caswell 2014 study relies on data collected prior to the Act coming into force and so includes off-licence alcohol purchases after 11pm which can no longer occur in Dunedin.

⁸² Refer to Mike Foster's analysis of the Insight Report, Bundle of Evidence, Volume 2, p294-296, at paragraphs [9.1]-[9.4].

⁸³ Ibid at [52].

⁸⁴ The study is nearly 15 years old (Kevin Mechen, Transcript at line 17, page 426).

⁸⁵ Ibid at [53].

⁸⁶ Dr Francesca Kelly, Statement of Evidence, Bundle of Evidence Volume 2, p106 at [2.21].

- (iv) The Council has cherry-picked from the Casswell study. To the extent that the study can be interpreted as providing information about young adult drinking behaviour in Dunedin, the Council has chosen to impose tighter restrictions on off-licences, but less restrictive provisions for on-licences even though purchasing on-licence alcohol after 2am was more associated with heavier drinking than off-licence purchases after 10pm. That is not a precautionary approach.
- (d) In relation to the alleged link between the sale of alcohol from off-licence premises and alcohol related offences at home and private residences (citing Ministry of Justice research).⁸⁷
 - (i) The Ministry of Justice study cited in support for this proposition is not relevant, had a methodology undertaken for a different purpose than developing a local alcohol policy, and stated "risk factor analysis cannot be carried out for off-licence premises as available data does not link offences to off-licence premises".⁸⁸ Mr Mechen agrees the Ministry of Justice report cannot be used for harm relating to off-licences despite the Council trying to do so.⁸⁹
- (e) In relation to the growing differential in prices between off-licence and on-licence premises has led to the phenomenon of pre-loading and side-loading and off-licence premises with later trading hours are more likely to be associated with pre-loading and side-loading and thus contributing to alcohol related harm (citing Ministry of Justice research);⁹⁰
 - (i) The proposed restriction is an attempt to address a price differential which is not a matter for control, or to be controlled under the Act.⁹¹
 - (ii) Mr Mechen noted that Councillors do not always follow advice⁹² which is consistent with the view that Councillors knew that they were not allowed to try to control price, but

⁸⁷ Ibid at [57].

⁸⁸ Dr Francesca Kelly, Rebuttal Evidence, Bundle of Evidence, Volume 2, p128-129 at [2.29]-[2.31].

⁸⁹ Kevin Mechen, Transcript at lines 4-7, page 426.

⁹⁰ Kevin Mechen, Bundle of Evidence, p15-16, at paragraphs [57].

⁹¹ Mike Foster, Rebuttal Evidence, Bundle of Evidence, Volume 2, p332 at [2.11].

⁹² The Council relied on Mr Mechen as the primary council officer giving guidance and advice. It is clear the Council may not have taken all advice on board as Mr Mechen said he gave advice "as much as they would listen", Transcript at lines 14-17, page 392.

sought to do so in any event. This issue has been addressed in detail in the opening submissions and the analysis is not repeated here.

(f) Regarding the 'Insight Economics Report' (Mechen, EIC tab 18):

(i) The Council suggests that;

(aa) The data showed the prevalence of pre-loading, especially amongst Dunedin's youth;⁹³

(ab) Sales from off-licences (liquors stores) between 7pm to 10pm overlaying a peaking purchase times from bars suggest pre and side-loading.⁹⁴

(ac) That sales from liquor stores and supermarkets to city youths from off-license premises would easily exceed 90% of total purchases.⁹⁵

(ii) The Insight Economics' report does not show that there is a prevalence of pre-loading amongst Dunedin's youth⁹⁶ and the Council has misunderstood the report, particularly the statistics. Specifically:

(aa) The report did not have information to support the proposition that there is a prevalence of pre-loading among Dunedin's youth, and it was fairly clear from the report that it did not have information to support that.⁹⁷ Mr Mechen accepted that Dr Fairgray had made a good point.⁹⁸

⁹³ Kevin Mechen, Bundle of Evidence, p16, at [58].

⁹⁴ Ibid at p17, at [62]. Noting that Mr Mechen's statement is incorrect. He refers to "*strong sales from off-licences overlaying a peaking purchase time from bars and liquor stores suggesting pre and side loading*". However, the graph referred to does not include supermarkets, and his statement suggests that sales from off-licences (supermarkets) is distinct to sales from bars and liquor stores.

⁹⁵ Kevin Mechen, Bundle of Evidence, p17 at [61].

⁹⁶ Dr Doug Fairgray, Rebuttal Evidence, Bundle of Evidence, Volume 1, p84-86, at [2.13]-[2.28].

⁹⁷ Dr Doug Fairgray, Transcript at 21-25, page 228.

⁹⁸ Mr Mechen, Transcript at line 1-29, page 428 and line 1-2, page 429.

- (ab) The date used in the report shows the time and location of alcohol purchases, not consumption patterns.⁹⁹
 - (ac) It does not show where alcohol purchased from liquor stores was subsequently consumed.¹⁰⁰
 - (ad) The methodology used to calculate the 'units of alcohol purchased' is unknown and does not list the assumptions applied to derive the units purchased figures. Electronic card data only shows the \$ amount of the transaction not an itemised breakdown of the purchase.¹⁰¹
 - (ae) The lack of specificity in the report makes it difficult to draw any robust conclusions on alcohol purchasing patterns, yet Mr Mechen relies on this information to reach conclusions about the consumption of alcohol which is erroneous and incorrect.¹⁰²
 - (af) The claims about 'pre-loading' are not made from a sound evidential base.¹⁰³
- (iii) Dr Fairgray has undertaken a detailed analysis of purchasing patterns to look at whether an anecdotal sequence relating to pre-loading occurs.¹⁰⁴ This analysis found:
- (aa) The information indicates that the anecdotal sequence of later evening off-licence purchases leading to pre-loading and then to off licence purchases, is not a prevalent behaviour among young adults.¹⁰⁵

⁹⁹ Ibid at [2.14].

¹⁰⁰ Ibid at [2.16].

¹⁰¹ Ibid at [2.20]-[2.22].

¹⁰² Ibid at [2.25]-[2.26].

¹⁰³ Ibid at [2.28].

¹⁰⁴ Dr Doug Fairgray, Rebuttal Evidence, Bundle of Evidence, Volume 1, p87-95 at [2.29]-[2.56]. It is accepted that there are limitations with the card data used, but it is currently the best information we have, Transcript at lines 18-26, page 230.

¹⁰⁵ Dr Doug Fairgray, Rebuttal Evidence, Bundle of Evidence, Volume 2, p2.52 at [2.52].

- (ab) The available data shows very low shares of young adults undertaking the alcohol purchasing behaviour which is the target of the proposed restriction on sales hours.¹⁰⁶
 - (ac) The proposed restriction of off-licence sales after 9pm is likely to have little effect on the incidence of pre-loading, because of the very small proportions of the target age groups who potentially follow the anecdotal sequence at
 - (g) Regarding the suggestion that alcohol sales between 9pm and 10pm increased an opportunity for pre and side loading¹⁰⁷ and the associated 2013 Wellington City Council study.¹⁰⁸
 - (i) The 2013 Wellington City Council study was a local study looking at Wellington specific issues. It is not relevant to alcohol consumption patterns, particularly pre-loading or side-loading in Dunedin and no studies were undertaken to see if the data is in any way applicable to Dunedin.¹⁰⁹
- 4.13 Even if pre-loading was occurring as a result of alcohol sales from off-licences between 9pm and 10pm, restricting that sale would have no effect on that behaviour, those consumers simply adjust their purchasing behaviour. This is supported by Dr Doug Fairgray¹¹⁰ and as the Authority held in *B & M Entertainment*, *"if off-licences were required to cease selling and supplying alcohol at 9.00 pm then most of those persons who would otherwise have purchased alcohol between 9.00 pm and 11.00 pm would simply acquire their alcohol earlier"* and *"highly motivated consumers of alcohol who are frustrated by off-license hours will simply adjust their behaviour"*.¹¹¹
- 4.14 The information provided by Council and the analysis undertaken by Dr Doug Fairgray shows that there is no 'prevalence of preloading' by young adults that can be addressed by restricting off licence alcohol sale hours after 9pm. The perceived 'pre-loading', 'side loading' and associated ARH that Mr Mechen contends will be addressed through the 9pm sale

¹⁰⁶ Ibid at [2.55].

¹⁰⁷ Kevin Mechen, Bundle of Evidence, p17 at [63].

¹⁰⁸ Kevin Mechen, Bundle of Evidence, p17 at [64].

¹⁰⁹ Dr Francesca Kelly, Rebuttal Evidence, Bundle of Evidence Volume 2, p129 at [2.33].

¹¹⁰ Dr Doug Fairgray, Statement of Evidence, Bundle of Evidence, Volume 1, p74 at [2.12]. Also refer Transcript at lines 27-30, page 276 and lines 1-28, page 276 and lines 1-27, page 277.

¹¹¹ *B & M Entertainment* at [77].

restriction, appears to be based on anecdotal evidence, and the policy has no credible reasonable or evidential basis.

- 4.15 Fundamentally it is a regulatory overreach – seeking to restrict hours every night across the city when it is clear that the issue of concern is contained temporally and geographically.¹¹² The issues of concern are localised around the CBD and should not result in a district wide restriction.
- 4.16 Mr Mechen for the Council agreed that a reasonable informed bystander would think it ridiculous that someone could not buy wine shortly after 9pm on a weeknight out of the CBD on the basis that students might be pre-loading could think that was ridiculous.¹¹³ It is noted that the Police Report (Exhibit 2) also showed very low activity in the CBD for a number of days of the week and the extent of ARH was quite geographically limited.
- 4.17 Progressive submits that policy 5.2.1 in the PLAP and its restriction on the sale of alcohol from 9pm must be unreasonable in light of the object of the Act.

D Moratorium

- 4.18 The PLAP imposes a moratorium on new off license premises, with the exception of specialist, premium wine stores and breweries selling their own product, in the area north of the Octagon bound by Stuart Street and Moray Place (south), Filleul and Queens Streets, the Gardens Village and Anzac Avenue until the first review of this policy.¹¹⁴
- 4.19 The PLAP lists a number of reasons for the moratorium being imposed, these are:
- (a) Research indicates that outlet density has a significant influence on alcohol-related harm (citing the Kypri 2008 study in support);
 - (b) North Dunedin has a significantly higher density of young people (18-24yr olds) than other parts of the city and that age group has demonstrated a higher rate of alcohol misuse and abuse when compared to other groups (citing Kypri 2005, an oral presentation in support); and
 - (c) There has been concern expressed at the number of off-license premises in North Dunedin where alcohol may be purchased more

¹¹² Transcript at lines 1-18, page 390.

¹¹³ The full proposition which Mr Mechen accepted is set out in the Transcript at lines 3-28, page 436 and lines 1-6, page 437.

¹¹⁴ Refer PLAP at [3].

cheaply than from premises in other parts of Dunedin (Progressive notes that no information is provided in support of this statement).

4.20 Similarly to the 7am to 9am sale hour restriction, the Council's evidence restates some of the reasoning already provided in the PLAP and provides limited new evidence. The Council's evidence can be summarised as:

- (a) There are a high proportion of 18-24 year olds in the Moratorium Area;¹¹⁵
- (b) The area encompasses the CBD which has the highest density of licensed premises within Dunedin;
- (c) The Agency information demonstrated a reasonably high proportion of ARH incidences occur within the Moratorium Area;¹¹⁶
- (d) The Moratorium puts a lid on the number of off-license premises within the Moratorium Area and will allow the Council to monitor the effectiveness of the other methods adopted in the PLAP whilst preventing a proliferation of licensed premises; and¹¹⁷
- (e) Research indicates that outlet density is directly correlated with ARH arising in the university student population, the correlation being particularly strong for off-licence premises.¹¹⁸

4.21 In response Progressive submits that:

- (a) Students are very mobile and are more than happy to travel to get the best deal.¹¹⁹ On that basis the proposed moratorium will not achieve anything.
- (b) The Council did not apply the study that it relied on. There are no proposed restrictions on on-licences though applying the Kypri 2008 study it appears that on-licences are responsible for a much greater burden of ARH (to the extent that density is associated with ARH) and the study applied to all forms of off-licences – yet the council has provided a range of carve-outs.
- (c) In relation to the 'carve out' for 'specialist, premium wine stores and breweries' selling their own product, these types of stores are

¹¹⁵ Mr Mechen, Bundle of Evidence, p18, paragraph [66].

¹¹⁶ Mr Mechen, Bundle of Evidence, p18 at [66].

¹¹⁷ Ibid.

¹¹⁸ Ibid at [67].

¹¹⁹ Mr Mechen, Transcript at line 9-17, page 463.

not defined in the PLAP,¹²⁰ and may be determined on, (a currently undefined), price point.¹²¹ This is despite the fact the PLAP does not currently impose price controls to define these stores,¹²² and that specialist breweries may make and sell,¹²³ and some in fact do sell cheap 'own brewed' alcohol.¹²⁴

- (d) There are a number of difficulties with using the Kypri 2008 research in the Dunedin context.¹²⁵ Amongst others, the research suffers from its use of historic data, its limited sampling sizes (representativeness), and does not establish a link between the types of premises the students purchase alcohol from and their reported drinking levels.¹²⁶
- (e) Comparatively there is no statistically significant link (positive or negative) between an increase in supermarket or grocery store density and social harm in Hamilton or Palmerston North (which were assessed as they are comparable to Dunedin).¹²⁷
- (f) The correlation is not "particularly strong for off-license premises" as claimed by Mr Mechen, even if the Kypri 2008 research was to be accepted.¹²⁸
- (g) There are a high proportion of 18-24 year olds within the proposed Moratorium Area. This occurs due to a number of factors, but predominantly due to the location of Otago University within North Dunedin.
- (h) The academic research cited by the Council in the PLAP (Kypri 2005) does not demonstrate that the 18-24 year old age group has demonstrated a higher rate of alcohol abuse and misuse when compared to other groups.¹²⁹ In fact, it is questionable as to how the Council relied on the Kypri 2005 study as it was an oral presentation for which only an abstract was available. It was not attached to Mr Mechen's evidence.

¹²⁰ Transcript at line 24-25, page 461, noting that the discussion was about 'premium wine stores'.

¹²¹ Transcript at line 10-20, page 462.

¹²² Transcript at line 13-16, page 402.

¹²³ Transcript at line 2-15, page 403.

¹²⁴ Transcript at line 1-5, page 292.

¹²⁵ Dr Francesca Kelly, Bundle of Evidence, Volume 2, p107-110 at [4.1]-[4.9].

¹²⁶ Natalie Hampson, Bundle of Evidence, Volume 1, p49-54 at [2.9(a)]-[2.10(d)].

¹²⁷ Natalie Hampson, Bundle of Evidence, Volume 1, p26-29 at [4.1]-[4.11].

¹²⁸ Natalie Hampson, Rebuttal Evidence, Volume 1, p51 at [2.7(f)(ii)].

¹²⁹ Dr Francesca Kelly, Bundle of Evidence, Volume 2, p107-110 at [4.2]-[4.4].

- (i) The CBD does contain a high proportion of licensed premises, however these are dominated by on-licensed premises not off-licensed premises, yet the Moratorium is only imposed in relation to off-licenses.
- (j) The Council's evidence does state what a 'reasonably high' proportion of ARH incidences are within the moratorium area. The Police raw data shows that:¹³⁰
 - (i) The trend in ARI in the Moratorium area is decreasing;
 - (ii) The ARI in the Moratorium area accounts for less than a third of all incidences in Dunedin City.
- (k) A Moratorium 'lid' is not required. The population-density ratios within Dunedin show that the city is undersupplied with regard to main brand supermarkets and population growth with exacerbate this issue.¹³¹ Mr Mechen agreed that the Moratorium would not create a suitable basis for assessing the impact of restrictions as there were too many confounding variables.¹³²
- (l) It is entirely unclear as to what 'proliferation of licensed premises' is expected or how this would occur? Supermarkets are large commercial businesses which do not 'proliferate' nor could within the Moratorium area due to space, capacity and cost constraints. At best/worst the Moratorium area can only likely support one additional supermarket. Noting that in all major New Zealand cities there appears to be a low variability in the number of supermarkets near universities.¹³³
- (m) The Moratorium based approach conflicts with the 2GP's 'centres based' approach¹³⁴ which suggests the Council in imposing the moratorium failed to have regard to section 78(2)(a) of the Act.
- (n) The Moratorium appears to have been imposed due to the fact "there has been concern expressed at the number off-license premises in North Dunedin where alcohol may be purchased more cheaply than from premises in other parts of Dunedin"¹³⁵

¹³⁰ Natalie Hampson, Statement of Evidence, Bundle of Evidence, Volume 1, p25 at [3.16].

¹³¹ Natalie Hampson, Statement of Evidence, Bundle of Evidence, Volume 1, p15 at [2.25].

¹³² Transcript at lines 22-29, page 404 and lines 1-6, page 405.

¹³³ Mr Mechen,, Transcript at line 17-29, page 401, and at line 1-24, page 411.

¹³⁴ Mike Foster, Statement of Evidence, Bundle of Evidence, Volume 2, p307 at [14.6].

¹³⁵ PLAP at p10, at [3.0].

notwithstanding that pricing is not a matter to be considered in the PLAP,¹³⁶ nor a matter controlled under the Act.

- (o) The Council did not consider how many licences would be appropriate in the moratorium area, rather they just decided they did not want any more based on the feeling of the Councillors.¹³⁷ Further Ms Hampson's criticisms of the Kypri 2003 report were accepted by Mr Mechen.¹³⁸

4.22 The proposed Moratorium is unjustified, based on unreliable and incorrect evidence and appears to have been imposed, in part, to address matters that are *ultra vires* under the Act. Consequently and in accordance with the discussion in *B & M Entertainment* relating to *ultra vires* considerations,¹³⁹ the proposed Moratorium in the PLAP must be unreasonable in light of the object of the Act and should be deleted.

4.23 We note the Council's criticisms of Mike Foster's assessment, particularly Counsel's contention that Mr Foster's assessment starts from the wrong place, based on his resource management experience, as set out in Appendix 2 to his EIC.¹⁴⁰ In response:

- (a) Appendix 2 is provided to give context and background to Mr Foster's evidence;
- (b) It is clear from Mr Foster's EIC and Mr Foster's questions in cross examination¹⁴¹ that he understands the assessment required under the Act; and
- (c) Counsel for the Council did not question Mr Foster as to his qualifications or his Appendix 2 in cross-examination, but alternatively sought to raise the issues after cross examination was completed.¹⁴²

E Alcohol Management Plan and Discretionary Conditions

4.24 I refer to my submission above at paragraphs [3.44]-[3.48] on both these matters.

¹³⁶ Mike Foster, Statement of Evidence, Bundle of Evidence, Volume 2, p307 at [14.7]-[14.8].

¹³⁷ Mr Mechen, Transcript at line 17-26, page 414.

¹³⁸ Mr Mechen, Transcript at line 12-25, page 408, and line 1-29, page 409, and line 1-9, page 410.

¹³⁹ *B & M Entertainment* at [20].

¹⁴⁰ Transcript at lines 27-29, page 348, and lines 1-29, page 349, and lines 1-3, page 350.

¹⁴¹ Transcript at lines 2-15, page 291.

¹⁴² Transcript at lines 6-15, page 350.

F Proposed Restrictions for Remote Sellers

- 4.25 The power in section 77 to impose a restriction on maximum trading hours does not apply to remote sellers. This is clear from the heading to section 49, which is "remote sales exempted from trading hours restriction". Section 5(3) of the Interpretation Act 1999 provides that headings can be used to assist with the interpretation of legislation and it is submitted that the intent of section 49 is clear on its face.
- 4.26 Section 59 of the Act sets the timeframes for when alcohol may be delivered, but that is not a trading hour restriction and section 59 sits outside of the Act's framework for setting maximum trading hours which are ss 46 to 49 – all of which sit under the heading "permitted trading hours".
- 4.27 As a result the proposed restriction on the delivery for remote sales is *ultra vires* the Act and therefore unreasonable.

5. FINDINGS REQUESTED AND RELIEF SOUGHT

- 5.1 It is respectfully requested, that in its decision on these appeals, the Authority find that Progressive Enterprises Limited made a submission as part of the special consultative procedure on the draft local alcohol policy and that the following elements are unreasonable in light of the object of the Act:
- (a) The requirement that applications be accompanied by a planning certificate (element 2.0) because they seek to re-state the Act but do so inaccurately by not referring to matters such as the power to grant a waiver;
 - (b) The Outlet Density element (element 3.0);
 - (c) Maximum trading hours for off-licences and restrictions on the delivery for remote sellers (element 5.2.1);
 - (d) Conditions (element 5.2.2), particularly:
 - (i) The mandatory – not discretionary nature of conditions;
 - (ii) The requirement to file a management plan with the application;

- 5.2 Pursuant to section 83 of the Act Progressive seeks that the Authority asks the Dunedin City Council to reconsider the above elements.

14 December 2016

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

A W Braggins / C F Timbs

Counsel for Progressive Enterprises Limited

IN THE DISPUTES TRIBUNAL
AT DUNEDIN

PLAP 287003/2015
PLAP 287060/2015
PLAP 287062/2015
PLAP 287093/2015
PLAP 287115/2015
PLAP287166/2016

BETWEEN

**FOODSTUFFS SOUTH ISLAND LIMITED
PROGRESSIVE ENTERPRISES
DUNEDIN HOSPITALITY GROUP
IGNITION GROUP
THE MILL RETAIL HOLDINGS
INDEPENDENT LIQUOR NZ LIMITED**

APPLICANTS

AND

**DUNEDIN CITY COUNCIL
NEW ZEALAND POLICE**

RESPONDENTS

ELLIS HOSPITALITY GROUP LIMITED

INTERESTED PARTY

Hearing Commenced:

21 November 2016

Tribunal Members:

J Moorhead

R Miller

Appearances:

A Braggins And J Young for the Applicant
Progressive Enterprises

I Thain for the Applicant Foodstuffs South Island
Limited

B Irving, K J Logan And D P Robinson for the
Respondent Dunedin City Council

Sergeant R J Panting for the Respondent
New Zealand Police

**TRANSCRIPT OF PROCEEDINGS
BEFORE JUDGE K D KELLY**

MR BRAGGINS:

Good morning, Your Honour. Mr Braggins for Progressive Enterprises and Mr Young has also asked that they enter an appearance for him on behalf of I think it's the (inaudible 10:04:09) and Independent Liquor. I think just temporarily, he's on
5 his way from the airport.

THE COURT:

No, that's fine. Thank you, Mr Braggins.

MR THAIN:

10 May it please the Authority, Thain for the Foodstuffs South Island Limited.

THE COURT:

Yes, thank you, Mr Thain.

MS IRVING:

15 Good morning, Your Honour. Ms Irving for Dunedin City Council and I appear with Ms Logan and Mr Robinson.

THE COURT:

Thank you all.

MR PANTING:

20 Your Honour, Detective Sergeant Panting for the Alcohol Harm Prevention, Dunedin Police (inaudible 10:04:40), thank you.

THE COURT:

Right, thanks very much. Now you have agreed the order this morning?

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MR BRAGGINS:

We have had a bit of a discussion with Mr Thain (inaudible 10:04:53) suppose indirectly I suppose a discussion with my friends, with counsel, and the way that Mr Thain and I thought that we might run the case is that if I do my opening legal submissions, then Mr Thain thought that he would do his, so the case for the appellants will go first.

THE COURT:

Yes.

10 **MR BRAGGINS:**

Myself mainly and Mr Thain. We also have I think Mr Young is just doing a watching brief, so we're not sure.

THE COURT:

Correct.

15

MR BRAGGINS:

He's already filed his submission.

THE COURT:

He has.

20

MR BRAGGINS:

So I'm not expecting him to need to say anything more.

THE COURT:

Okay. Well we'll give him that opportunity when it comes.

25

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MR BRAGGINS:

And then there's Hospitality New Zealand presumably would also –

THE COURT:

Hospitality New Zealand I understand has withdrawn.

5

MR BRAGGINS:

Right, okay.

THE COURT:

So we're all good, it's only the police.

10

MR BRAGGINS:

So there was a representative, sorry, there was a representative from Hospitality here – sorry, outside in the foyer which is – sorry, that's –

THE COURT:

15 Right. Not a problem.

MR BRAGGINS:

And then I thought we would move into the evidence for Progressive Enterprises.

20 **THE COURT:**

We might because the police, you filed some submissions as well.

MR PANTING:

25 Yes, our submissions are evidence-based. It's purely for the protection of the police on this side, yes.

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THE COURT:

Okay. No, well I think that sounds sensible, so if you want to proceed on that basis and you're agreeable, great. Thank you.

5 **MR BRAGGINS:**

We haven't had a discussion about what we might do in terms of closing arguments and exactly where we're at. My gut feeling was that we would have a discussion some time towards the end of the day once we know where we're at.

THE COURT:

10 Yes, I think that that sounds fine. Let's see where we get to and play it a bit by ear.

MR BRAGGINS:

Great.

THE COURT:

15 Now are you handing up your submissions this morning?

MR BRAGGINS:

Yes, Your Honour.

THE COURT:

20 Great, okay.

MS IRVING:

Excuse me, Sir, just before my friend gets started. We have Mr Mechen here, the District Council representative. I'd like to seek leave for him to sit with us if that's
25 okay?

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THE COURT:

Q. Yes, I have no problem with that, that's fine.

A. Thank you, Sir.

Q. Yes.

5

MR BRAGGINS:

Your Honour, I'm handing up three documents. This is the submissions and the
10 bundle of authorities for Progressive Enterprises.

THE COURT:

I think we may have – have we got the bundle of authorities?

MR BRAGGINS:

15 Oh you have received that?

THE COURT:

Two bundles, yes.

MR BRAGGINS:

20 Oh excellent.

THE COURT:

Pages 1 to 339?

MR BRAGGINS:

25 No, sorry, I think that's the second bundle of evidence.

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THE COURT:

Oh, that's the second, that's right, sorry. No, we haven't got it. Thank you.

MR BRAGGINS:

- 5 And Your Honour, as is sometimes the ways of these things, the critical document that – proposed by the local alcohol policy wasn't actually in any of the submissions or the evidence so I thought I might hand that up to you so you have that reasonably conveniently accessible unless –

10 **MEMBER MOORHEAD:**

We do, we do have a copy.

THE COURT:

We do have a copy, yes, dated 29 June.

15 **MR BRAGGINS:**

Yes, that's the –

THE COURT:

Correct.

20 **MR BRAGGINS:**

If it's acceptable to the Authority, Your Honour, what I propose to do is go about half way through my submissions to cover off the introduction and then the law and then take you to some of the key materials that are going to be the focus of the case, and then I'll do a bit of a wrap up in terms of what the evidence for Progressive says.

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THE COURT:

Great, thank you. And given we haven't had the opportunity to read this, just take us through slowly.

5 MR BRAGGINS:

Yes.

MR BRAGGINS BEGINS OPENING SUBMISSIONS:

10 So I start off with a summary and then a little bit about Progressive Enterprises, a background to the LAP, the Act and the relevant tests on appeal, and the evidence-based policy requirements. And then at that point, that's where I'll take you to some of the key evidence and then the evidence for Progressive Enterprises and you'll find that's requested and the relief sought.

1010

15 So a local alcohol policy must respond to local issues associated with the safe and responsible sale and supply and consumption of alcohol, and the harm caused by the excessive or inappropriate consumption of alcohol. The provisions of a local alcohol policy need to be evidence-based rather than emotion-based and must relate to the object of the Act, not ulterior purposes. Whether an element of the PLAP is
20 unreasonable in the light of the object of the Act is to be determined objectively, the informed bystander test, as against the reasons given by the relevant council and the evidence before the Alcohol Regulatory and Licensing Authority. In this case, the appellant, Progressive Enterprises Limited, has called evidence, showing that the council either did not know or misdirected itself as to the harm caused by the
25 excessive or inappropriate consumption of alcohol and the specific trends and the mandatory relevant considerations which the council was required to consider when adopting the PLAP. Showing that the council has adopted elements of its PLAP for purposes outside the scope of the act, including a restriction on morning off-licence hours in order to reduce the unnecessary exposure of young people, minors, to

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alcohol prior to school, a restriction on new off-licences establishing in the CBD in order to effect a control on the price of alcohol. In showing that there are elements which are ultra vires a LAP by seeking to alter the information which must be submitted with an off-licence application which is prescribed in section 100 of the Act, imposing mandatory conditions and proposing conditions which are inconsistent with sections 112 to 115 of the Act. Progressive's case is not that the council cannot ever restrict off-licence hours through a LAP, and Progressive agreed to 10.00 pm in Dunedin. In the draft LAP process, council proposed 10.00 pm. Progressive did not object to that. However, because the framework of appeals on PLAPs, Progressive has had to focus its evidence on the unreasonableness of the current element and the current evidence, not what an appropriate alternative might be. So Progressive Enterprises, one of New Zealand's leading supermarket operators, currently operates 184 licenced Countdown supermarkets across New Zealand, also the franchisor of SuperValue and Fresh Choice brands in New Zealand, with a further 56 SuperValue stores that are independently operated. It holds off-licences for its Countdown supermarkets through its land-owning subsidiary General Distributors Limited. Employs a team of around 18,000 staff and provides around 2.7 million customer transactions per week through its Countdown stores and Fresh Choice and SuperValue franchises nationwide. As a grocery business with a limited proportion, 10 percent, of its sales being beer and wine, no spirits or RTDs, it's committed to high standards of social responsibility. It has a responsible service of alcohol policy and as noted in its submission to the council, Progressive Enterprises does not sell at a low cost. These are all matters that were contained in Progressive's submission on the draft LAP to Dunedin City Council, and which is attached to Mr Mechen's evidence. Nationally, off-licence hours have reduced considerably from what they were only a few years ago. The Authority will be aware that supermarkets often used to be licenced in Auckland until 1.00 am or in some cases, 24 hours. It would be incorrect to characterise off-licence hours as not having already undergone significant tightening.

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In terms of the LAP background, Dunedin's one of New Zealand's great small cities. It's the largest city in the southern region of New Zealand. It is well-known for the highly-regarded Otago University, heritage and wildlife attractions largely defined by the university which influences the demographic of the city's residents. In terms of

5 the draft LAP, section 79 of the Act sets out the consultation obligations on the council that wishes to develop a local alcohol policy. Once a draft LAP has been prepared, the council must consult using the special consultative procedure under the Local Government Act. So section 83 of the Local Government Act sets out what the special consultative procedure is. It requires the preparation of a statement of

10 proposal and I'm going to take you to the council's statement of proposal that's attached to Mr Mechen's evidence and if they consider it on reasonable grounds, they need to provide a summary of the information. They need to provide the following publicly-available information, a proposal of description of how the local authority will provide the persons interested with the opportunity to present their

15 views, and a statement of the period in which views may be provided. There needs to be a summary of the information contained and there needs to be an opportunity for persons to present their views. Sure that any person who wishes to present his or her views to the local authority, given a reasonable opportunity to do so, is informed about how and when he or she may take up that opportunity." So a copy of

20 that statement and proposal on the draft LAP is attached to tab 7 to Mr Mechen's evidence.

1015

In relation to the matters under appeal by Progressive Enterprises, the only options identified in relation to off-licence hours were a suggested changed from 7.00 am to

25 11 pm, which is the national default, to 7.00 am to 10.00 pm. The reason for this change was to encourage the safe and responsible sale and supply and consumption of alcohol and a proposed restriction is in clause 3.2.1 of the draft LAP. No general restriction was proposed for off-licence location because location was adequately regulated by the district plan. No alternative options for imposing a

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general restriction on off-licences were identified. Outlet density is addressed at clause 2.2 and no restriction was proposed because Dunedin does not have a lot of new premises being opened. Stores which are opening tend to be café and restaurant. They are considered low risk. The district plan regulates the location of premises and therefore the policy will not consider outlet density generally. A new restriction was proposed in relation to proximity to a range of potentially sensitive activities and facilities. This applies to all off-licences and was a general directive but not a prohibition, and that's at clause 2.1 of the draft LAP. Discretionary conditions were set out at clause 3.2.3 and related to the kinds of alcohol to be sold, single sales, security requirements, external lighting, and other reasonable conditions. Progressive submissions at tab 15 of Mr Mechen's evidence, progressive submission did not oppose 7.00 am to 10.00 pm. Sought to differentiate supermarkets and grocery stores from bottle stores in relation to the sensitive site restriction on the basis that the council's concern was external advertising of alcohol. The supermarkets and grocery stores have specific restrictions on the exposure of alcohol to customers. Those are the section 112 to 114 provisions. It queried the single service restriction as requiring customers to buy more alcohol than they wished to purchase seemed illogical. The police and medical officer of health submissions did not oppose 7.00 am to 10.00 pm either. Turning now to the council's decision on the draft LAP. So the council's PLAP was immaterially different from the draft. Morning hours were set at 9.00 am every day across the district. Evening hours were set at 9.00 pm every day across the district. A new restriction on all off-licences and a CBD moratorium area was proposed. New off-licence conditions were not imposed but a new requirement to split applications with the management plan was introduced, indicating that if a management plan did not accompany an application, it would not be accepted. The council did not extend or alter its consultation framework when it decided to make the significant changes. It did not provide Progressive with notice of the changes, the reasons for them, or any opportunity to engage on them. This is concerning to Progressive. It is important

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that local alcohol policies are implemented to address valid concerns that are borne out by accurate background information and evidence. On that basis we must have evidence-based policy rather than fear-based policy dominated by the loudest commentator perceived rather than actual issues. Progressive filed its notice of appeal and expressly proposed mediation twice. That request was declined by the council, which is the council's prerogative. As a result, this appeal is the first opportunity Progressive has had a real opportunity to discuss the reasonableness of the changes to the LAP. The authority will be familiar with the three existing PLAP decisions: Tasman, Wellington, Thames, Coromandel. While progressive was a party in each of those appeals, each time it appeared in support of the council, having reached agreement with the council on all aspects of the appeal. While Progressive may have had initially held views about nationally consistent hours when the Act first came into force, it has modified that approach and agreed locally specific differential hours across the country: 9.00 pm, 9.30 pm, 10.00 pm and 11.00 pm. We've even consented to Hutt City Council changing its hours from 11.00 pm to 10.00 pm on an appeal from the police and the Medical Officer of Health. The point not so subtly made, Your Honour, is that Progressive is willing to look at sites on a case-by-case basis and does try and work with the other parties to reach an agreement, to reach consensus.

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So the Act and relevant tests on appeal of section 4. The purpose of the Act is important as an aid to cross-check the interpretation of provisions of the Act as the Supreme Court requires, and that's Commerce Commission and Fonterra. Progressive submits that the combined object and purpose set out in section 3 and 4 is to strike a balance in New Zealand between, on the one hand, enabling the purchase of alcohol for responsible consumption and on the other hand, minimising the harm that can result from excessive or inappropriate consumption.

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The balance has been set by Parliament and the object of the Act is not about minimising the purchase of alcohol. It's not about minimising the consumption of alcohol, and it's not about minimising the harm which can occur from the moderate and appropriate consumption of alcohol. The object of the Act is not about altering the price of alcohol. This balance is evident in the text of sections 3 and 4, the scheme of the Act as a whole, Parliamentary debates and its passage and the Law Commission report that was integral to the development of the Act. The Law Commission explicitly recognised, with respect to supermarkets and grocery stores, that the continued association between alcohol and food retailing is valid in order to foster a more responsible and moderate drinking culture. In introducing the bill to the house, the Ministry of Justice explicitly recognised the balanced nature of the bill's object when stated, "You must achieve a balance. Addressing harm must be weighed against the positive benefits associated with responsible drinking and the government's approach is therefore a considered, integrated and balanced package that targets harm without penalising responsible drinkers." The text of section 3 explicitly recognises that the controls over the sale and supply of alcohol must be reasonable and recognised as the desire to attain the object of the Act in section 4 which, in itself, reflects a balance between the sale and supply of alcohol and the minimisation of the harm that it can cause. The object of the Act in section 4 is focused on a specific type of harm that results from excessive or inappropriate consumption of alcohol. I'm probably repeating some of the points that I made slightly earlier. So at 4.8, the Authority's decision in Tasman implicitly accepts both sides of the balance of purpose and object by quoting those sections and noting that one characteristic is that it must be reasonable. In that regard, as the Authority recognised in Tasman, the Court of Appeal's observation in Mead Brothers remain applicable. The balanced nature of the purpose and object of the Act is also implicit in the Authority's observation in Tasman that it will be an indicator that a particular element of a PLAP is unreasonable if those wishing to purchase or consume alcohol in a safe and responsible manner find that the element is a disproportionate

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response to possible alcohol-related harm. This position was confirmed in BNN Entertainment and Wellington City where the Authority stated, “In reasonableness must always be cross-checked against the object of the Act if the due requirements of section 81(4) of the Act are to be met.” Progressive Enterprises submit that it is

5 important that the Authority recognise that the object and purpose of the Act are balanced, enabling the purchase of alcohol for safe and responsible consumption while minimising harm that can result from excessive or inappropriate consumption. The next section talks about the localness or the local focus of alcohol policies. So Parliament has determined that the default national standards for control on the sale

10 and supply of alcohol. LAPs that vary these standards must do so because of a particular local factor in particular communities related to the object of the act. Progressive Enterprises submits that it is important that the considerations relevant to the formulation of a LAP concern the local area which the LAP is to apply. The Authority’s Tasman decision, which was cited with approval in BNN Entertainment

15 makes the point so it’s not laboured here. The Authority says, “A local alcohol policy is just that. It is not a national policy and evidence of national characteristics will seldom be of value except to provide background for evidence of local issues. It is a local policy prepared by local people who know and understand the local problems in their locality. The criteria in section 78(2) reinforce this view.” BNN Entertainment,

20 the Authority confirmed that when preparing a PLAP, the territorial authority must consider what must be incorporated in the PLAP to achieve the object of the Act in this locality. The Authority also clarify the importance of local context in regard to the evidence. The Authority considered that the assistance of evidence relied on in support for opposition to an LAP and its relevance turned on its connection with what

25 occurs in the district. It further stated that the national and international research was of little assistance in determining whether a PLAP was unreasonable in light of the object of the Act because it is the local issues that are relevant.

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Consistently in *Tasman* the authority also notes that the local authority's reasons for each element of an LAP will be scrutinised in any appeal. Progressive Enterprises submit that these reasons are important because they show why the LAP was created, and the evidence of the local context being applied. The importance of the local context is reinforced by a council's discretionary power to have an LAP within its district. The Acts integrated relationship with the Local Government Act 2002, the requirement to comply with the LGA special consultative procedure when developing an LAP and the requirements on a local authority in section 11 of the LGA to give effect to the purpose of local Government in relation to its district or region. The authorities' adoption of proportionality between those in a locality wishing to drink safely and responsibly and the minimisation of ARH in the locality. While local alcohol policies are local the Act does provide a starting point for what is reasonable in terms of opening hours. The default operating hours for off-licences are set out in s 43 of the Act. The default position is that these hours are reasonable in the light of the object of the Act, particularly where licensees have those licensed hours and are trading them. In Dunedin that is the case for Progressive, with the number of stores open and trading from 7.00 am, for example Andersons Bay, Dunedin Central, Dunedin South and a number of stores open and trading past 9.00 pm, for example Andersons Bay, Dunedin Central and Dunedin South. Significant attention was devoted in the *Tasman* at Wellington LAP hearings to the meaning of the ground of appeal in section 81(4). It is unreasonable in the light of the object of the Act. The Authority's *Tasman* decision traverses these points in a manner which is generally consistent with Progressive's enterprises submission and Progressive does not propose to rehearse them, rehear them (inaudible 10:27:37) in further detail in these submissions. Progressive also notes that that the Authority's position in *Tasman* are still good law and was applied in BNN Entertainment. So in light of those decisions, Progressive focuses its submission on the ground of appeal the following points, and agrees that "unreasonable" has its ordinary, everyday meaning, which is judged by the informed objective bystander; the concept of unreasonableness is wider than that

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adopted in the bylaw situation and that a PLAP is not presumed or deemed to be reasonable. To test whether or not an element of the PLAP is unreasonable in the light of the object of the Act combines the two: concept of reasonableness and the object of the Act. An indicator that an element of the PLAP is unreasonable,” and

5 I’ve covered off that test before, paragraph 420, “Progressive also cautiously accepts the following parts of the *Tasman* decision. The Authority is correct insofar as it goes in *Tasman* that an element of a PLAP that is manifestly unjust or discloses bad faith, or is in oppressive or gratuitous interference with the rights of those affected, then it is likely that the measure will be unreasonable in light of the object of the Act.

10 However, unreasonableness is not only confined to those situations. For example, to those circumstances, the following circumstances of unreasonableness can be added. Circumstance where an element of a PLAP is not rationally connected with the balanced object of the Act, and whether the evidence before the authority justifies the council’s findings in respect of the mandatory considerations in s 78.

15 The authority is also correct insofar as it goes in being BNN Entertainment, when it restated provisions in the *Tasman* decision, elicited a number of situations in which a PLAP is likely to be unreasonable. While not exhaustive these are the proposed measures constitute a disproportionate or excessive response to the perceived problems. Its proposed measures are partial or unequal in the operation between

20 licence holders and element of a PLAP is manifestly unjust or discloses bad faith, or it’s oppressive or gratuitous. With respect, it is submitted that the Authorities are not necessarily correct in *Tasman* or when citing *Tasman* with approval of Bruce Herbert Williamson in Christchurch City Council, suggesting that if the reasoning of the authorities shows a carefully weighted concerns of submitters as to the effects of

25 policies upon them and the general community against minimisation of alcohol-related harm, then it is unlikely that the Authority will determine that the PLAP is unreasonable. That test appears to be more akin to a reasonable test in a judicial review context rather than a de novo hearing. An authority may undertake such weighting but it must come to its own decision on the evidence before it. The

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distinction may not matter in this case because Progressive considers that the council failed the test which ALA has set out in any event.

1030

So that brings us to evidence-based policy requirements. Territorial authorities are
 5 entitled to impose policies in their LAP to address alcohol-related harm in their district. In doing so, they must consider what must be incorporated in the PLAP to achieve the object of the Act in its locality. In preparing the PLAP, the Act specifies an evidential-based framework to give effect to the object of the Act. That's evident from the requirement for the council to use the special consultative procedure and
 10 the decision making framework set out at section 76 to 79 of that Act which requires the identification and assessment of options in a consideration of views of persons who are affected by the decision, the statutory directive to have regard to relevant matters, and the case law directives for the territorial authority to provide reasons for its decisions. Community views are appropriately considered by the Authority but
 15 must be balanced by the Authority's own professional assessment of the evidence requirements of good quality regulation and the nature and severity of alcohol-related problems in the district. The decision to impose policies within the Act's framework cannot be made in a vacuum and there must be an evidential basis for decisions made which are supported by reasons. In BNN Entertainment, the
 20 Authority stated that, "A PLAP should contain the reasons for its policies. Fundamentally, the reasons provide transparency, indicate that the authors of the PLAP took into account appropriate considerations when drafting the Act, provide great assistance to parties when considering appealing the PLAP and explain to the Authority what was in the mind of the territorial authority when preparing the PLAP."
 25 It is submitted that the following either should be added to the above list or is a direct consequence of the list. The reasons allow the community, including licensees, to understand the rationale and then later assess where the policy has been effective. We note that the word "should" is not a strict mandatory requirement as, for example, if the word "must" was used, but Progressive submits that it must be interpreted as if

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it were. This is due to the explanation given by the authority in support of the reasons being given for the policies implemented in the PLAP. Fundamentally, the reasons enable the appeal provisions in the Act to be implemented and help the Authority to determine whether an appealed element of the Act is unreasonable in light of the object of the Act. LAPs are prepared by democratically-elected councillors following public consultation process. The democratic process is underpinned by the idea that everyone has a chance to participate in making important decisions. However, the authority has determined that whether the LAP is the best policy solution to the harm or mischief sought to be addressed is for the territorial authority alone. The importance of the reasons and evidence-based approach is highlighted by the fact that the ultimate decision on the PLAP is made by councillors, although recognising that a council must also be properly informed and aware of the section 78 criteria in the Act. The council alone determines what may be implemented in the LAP and as their decisions are made under a democratic process, it is vital that the decisions are transparent, understandable, take into account all relevant information and disregard erroneous information. This is particularly important in respect of LAPs where a disproportionate response to a perceived alcohol-related harm, whether made in the absence of information or erroneous information, has the potential to adversely affect large proportions of responsible and reasonable consumers of alcohol. So the Authority needs to be cognisant of the PLAP process. It's consultative, not evidence-based. Submitters are typically given five to 10 minutes to present an oral submission in respect of their views on the draft LAP. They're not necessarily advised of the content of other submissions, nor is there necessarily any analysis available of the submissions and evidence presented to respond to, certainly not in an informed manner. There is a real risk the council's complying with only minor requests will breach natural justice – sorry, the minimum requirements of consultation will breach natural justice and will rely on submitter information which has not been scrutinised and is not past scrutiny.

1035

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Progressive notes that if the proposals in place under the PLAP were in place when the draft LAP was notified and hearings held, for example, the PLAP's 9.00 pm off-licence sale or restriction which was promoted as 10.00 pm, then the submission presented would've been different and the evidence provided would've been significantly different. Those are my submissions on the law, Your Honour. I'm happy to answer any questions that might have come up about those but I thought I might take you to the materials now because there are sort of half a dozen documents that are –

MEMBER MOORHEAD:

Just one point, Mr Braggins, your 5.6. You seem to be inviting the Authority to change its stance where it's previously said that councils should give reasons. You're saying that they must give reasons as part of their plan. Doesn't that just mean, though, that if they don't give reasons, it's more likely to be feasible?

MR BRAGGINS:

Ultimately, yes.

MEMBER MOORHEAD:

Isn't that overstating it, to say that they must give reasons?

MR BRAGGINS:

My submission is that if a council doesn't give reasons, then it is very, very close to being automatically unreasonable because no one can actually decipher why that's the case. Here, I suppose, on reflection, the council has set out its reasons so it's perhaps not all that critical and Mr Mechen's identified the key reasons why the council made the decisions that it did, and so really here, what we're doing is testing whether the local evidence justifies those reasons.

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MEMBER MOORHOUSE

Thank you, that clarifies it.

THE COURT:

No questions for us either, thank you.

5 MR BRAGGINS:

So I might take you to Mr Mechen's evidence at tab 7. This is the draft LAP. So you've got tab 7 there in front of you?

THE COURT:

Oh, and Mr Mechen's, thank you, tab 7. The draft policy, yes.

10 MR BRAGGINS:

So on page 3 of that document which is 153 of Mr Mechen's evidence there's the summary of information under the – and then the first topic is "location," and the suggestion is, "No change, retain existing proposals for new alcohol licences. LAP will not consider outlet density or the general location for premises because it's regulated by the RMA and the district plan." And then over the page, 154, we have "trading" at the top-left, we have, "Trading hours, off-licence premises, eg bottle stores and supermarkets. Closing off-licence premises earlier is suggested. This is supported by tertiary sector representatives, public views, alcohol-related offending from the police and alcohol-related harm from Dunedin Hospital," and that's, the suggestion is a change by one hour. Interestingly, on the right-hand side, we have the serving –

THE COURT:

Sorry, there is nothing on 153?

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MR BRAGGINS:

Sorry, 154, it's there at the top.

THE COURT:

And there's nothing at 153 you wanted to draw our attention to?

5

MR BRAGGINS:

No.

THE COURT:

It was just the 154, yes, thank you.

10 1040

MR BRAGGINS:

The PLAP is consistent with this but – oh, no I'll deal with that as part of the proposed local alcohol policy. So on page 154, we've got the trading hours for off-licences and then on the right-hand side, we've got the serving of shots, so there's a proposed discretionary condition that on-licences can't serve shots after midnight, and then on page 155, we have the summary table of suggestions. The first column is the current, so that's the default provisions. The second row up from the bottom is off-licence premises, hours set at Monday to Sunday, 7.00 am to 11.00 pm. The proposal is for one hour restriction to encourage safe and responsible sale, supply and consumption of alcohol. Up the top, under "location," the second row down, we have the location, new alcohol premises in relation to other off-licence premises, so there's a proposed restriction there to address issues of exposure, and the reason given is to address issues of exposure to alcohol and the effects of alcohol on young people. The LAP proposes new restrictions on alcohol premises in relation to other premises. And then over on page 157, so that's the introductory document that tells the community in brief what's going on and then we move on page 157 to the actual

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draft document itself, and at 2.2 is the section on outlet density, “In determining a license application, the DLC must consider the amenity and good order of the area in which the premises is situated.” It goes on to say, “Outlet density may be considered as part of this but only so far as the possible impact of a licensed premises at that location will have on the environment,” and then, “Although premises change ownership, Dunedin does not have a lot of new premises being opened. Those that are opening tend to be café and restaurant-style premises that are considered low-risk in terms of harm.” Turning over the page to page 158, I’d just like to highlight the on-licence premises trading hours as an interesting comparison, so that’s the table at the bottom-left of page 158. So on-licences in or adjacent to residential areas are controlled Sunday to Thursday, 9.00 am to 11.00 pm, and then Fridays and Saturdays 9.00 am to midnight, and then down the bottom, at least the next three columns are on-licences. They all have the default of 8.00 am start. Then on page 159 is the maximum trading hours for off-licences and that’s Monday to Sunday – that’s under 3.2.1, Monday to Sunday, 7.00 am to 10.00 pm.

1044

And then 3.2.2, conditions, and the introductory word here is quite relevant: “The DLC may apply conditions to all off-licences issued or renewed that relate to the following.” And then 3.2.3, “Discretionary conditions: the following conditions may be included.” So as Your Honour will appreciate, the word “may” is a discretionary word. Then if I take you to tab 8, which is the submission from the Southern District Health Board, and if we look at page 173, under number 4, that’s the trading hours of off-licence premises, bottle stores and supermarkets, and the second bold heading, “Do you support the maximum trading hours?” “We support the proposed end time of 10.00 pm.” They also say later on that they recommend that off-licence hours start no earlier than 8.00 am but preferably 9.00 am to align with the Law Commission report recommendations.

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Now, I'll come back to Mr Mechen's evidence in just a moment, but I wanted to take you through the local alcohol policy, sorry, PLAP, which is the decision that came after the council had gone through its consultation. So on page 2 of the document, paragraph 11, and I suppose this comes back to...

5 THE COURT:

I'm not sure we're looking at the same one. We've got the draft as approved by the council on 29 June, starting at page 8.

MR BRAGGINS:

10 Ah. I have the full document. I can hand that up to you.

THE COURT:

That would be great, thank you. Yes, I think we've just got the attachment.

FULL COPY OF REPORT ADMITTED BY CONSENT

15 THE COURT:

Page 2?

MR BRAGGINS:

That's, if I take you to page 2 of that document.

20

MR BRAGGINS CONTINUES OPENING SUBMISSIONS:

So this first part really sets out the council's analysis and reasoning, though some of it is also included later on within the LAP itself. But if we look at paragraph – or should I give you a minute? If you haven't seen the whole document before, I'm
25 wondering if I just give you a minute to...

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THE COURT:

Walk us through it, but the structure of this is obviously we've got the council considerations and the, you know, the executive summary of the discussion and then the attachment is where the actual policy is at. So look, I think if you point us in the right direction on that.

MR BRAGGINS:

Right. So there's the beginnings of discussions setting out the framework, what a LAP can include, what they have to have regard to, and then at paragraph 7 there's an explanation of the number of submissions, various things that they considered, so paragraph 11: at the conclusion of the deliberations, after the hearings, provisional LAP has been developed. The main points are, and number 2: outlet density. Research indicates outlet density has a significant influence on alcohol-related harm. North Dunedin has a significantly high density of young people in other parts of the city and this age demographic has higher rates of alcohol misuse and abuse when compared to other groups. Concern has been expressed at the relatively high number of off-licence premises in the area. There will therefore be a moratorium on the new off-licence premises, and then it describes it by words, and then the last time, "The exception to this will be specialist premium wine stores and breweries selling their own product." Then we have maximum occupancy and then trading hours, so we have again this set of on-licence trading hours, we have Sunday to Thursday where they are restricted, and then you can have Fridays and Saturdays which is longer, even though that's when more alcohol-related harm occurs as set out in the evidence of Ms Hampson. Progressive isn't appealing that aspect, but it's just an interesting part of the context that the council chose to provide longer hours for on-licences on Friday and Saturday nights.

1050

Then on page 3, that table continues, "Then off-licence premises Sunday to Monday 9.00 am to 9.00 pm," which obviously starts later than the on-licences and finishes

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earlier than them. Subparagraph v, “Off-licence premises do not have the same constraints as on-licence premises in that there is no limit on the amount of alcohol that can be sold to people, nor is there any restriction on pricing.” These are two of the contributing factors in pre-loading, where people consume cheaper alcohol away from licensed premises. Later in the evening, groups sometimes buy alcohol to top up what they have had and it was suggested by some submitters that this is often done while in an impaired state. Then, the conclusion is, “The subcommittee has considered this and does not see a need to have alcohol available for on-licence sales after 9.00 pm.” And then over the page, so that’s page 4, paragraph 12, “The subcommittee would like to emphasise that research has demonstrated that one of the most effective methods of reducing alcohol-related harm is by controlling the price at which alcohol is sold. While there are now some regulations around the promotion of alcohol, the subcommittee believes it’s regrettable that prices cannot be set. The council has no control over this aspect of the sale and supply of alcohol but believe the LAP it has developed will help achieve a reduction in harm.” It continues this thinking about price being a motivating concern. And then we get to the options, so that’s paragraphs 14 through 18, we have the option assessment with some advantages and disadvantages. It doesn’t really look at any individual element, whether it should or shouldn’t be included, doesn’t look at the particular criteria. So we turn through to page 8, this is when we get into the attachment A which is the PLAP itself, and the last paragraph of that correctly identifies that the Act is prescriptive about the aspects of the sale and supply of alcohol that a local alcohol policy can influence. Then we have over the page, 1.3, the local context. At the second paragraph, “Dunedin has a compact urban core with the location of a high proportion of the city’s licensed premises clustered around the Octagon and CBD. The Octagon operates as the main hospitality hub for the late night economy, concentrating both vibrancy and the problems associated with evening drinking. For the members, the word “vibrancy” often comes up in the context of this night time economy, as it did in Wellington. We then have a number of relevant broad statistics

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about Dunedin, hospital reports, the high proportion of young people in Dunedin and then some of the other statistics. I would just like to dwell on the last paragraph before we get to section 2. “As the night becomes later, offences become more serious and the age of the offenders increases,” which is interesting because we’re

5 primarily concerned about university students but actually, the later it goes on, the less university student focus there seems to be. “73% of those arrested for violent offences and 93% arrested for disorderly offences were affected by alcohol, and then about 76% of alcohol purchased is consumed in off-licence settings for drinking in situations where there is little or no control.”

10 1055

That sounds quite significant when you just read it as those words stand but what we’re actually going to delve into is that some of those statistics are more than 13 years old. So section 2, the location, an application for a licence. We’ve now gone to section 2, location, so, “An application for a licence must be accompanied by a

15 certificate from the DCC’s planning department stating that the activity at that location meets the requirements of the Resource Management Act 1991 and the Dunedin District Plan.” That’s not actually something that this – that’s part of the law but that’s not something that an LAP can control, and there are a number of checks and balances in terms of the way that the Act is structured, for example, provision for

20 the grant of a waiver that simply don’t appear in this LAP. It’s written as if this is part of the LAP, not that the LAP is simply recording what the statutory requirements are.

MEMBER MOORHEAD:

You’re bringing up the whole Hauraki situation all over again, aren’t you, Mr Braggins, which caused problems there?

25 **MR BRAGGINS:**

I’m endeavouring not to re-litigate that but the point is that section 100 has a number of things that a licensee has to supply and there is a whole framework in the Act that

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says what you have to do to make an application. I'm not saying that this LAP should have a reference to waivers. I'm simply saying it's pulled out part of the Act and written it as gospel of an element of an LAP when the LAP is not supposed to do that. The LAP is not supposed to control what you have to have when you make an application.

MEMBER MOORHEAD:

Is it not just stating what the law is anyway?

MR BRAGGINS:

It doesn't say that it's stating what the law is. It's saying what this LAP says.

10 MEMBER MOORHEAD:

How strong a point are you making of this in your appeal?

MR BRAGGINS:

That's less important but it's part of the context, and it becomes more important when we look at the so-called discretionary conditions because the council seems to be expanding the range of things that you have to include. I'll come back to this point in just a minute. Section 3, outlet density, so this is the next page, page 10, "Research demonstrates that outlet density has a significant influence on alcohol-related harm." It then goes on to say that each licence is set on its merits, setting the amenity, and then it says, "Dunedin does not have many new premises being opened, although premises to change ownership. Those that are opening tend to be restaurant, café style licensed premises and are considered a low risk of harm." We then have a reference to North Dunedin, significantly higher density of young people than other parts of the city. The age group has demonstrated a high rate of alcohol misuse and abuse when compared to other groups. There has been concern expressed at the number of off-licence premises in North Dunedin where alcohol

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may be purchased more cheaply than from premises in other parts of Dunedin. Therefore, there will be a moratorium on new off-licence premises, so there's no moratorium on on-licences, even bars, taverns. With that same exception are premium wine stores and breweries selling their own product. I would've thought

5 that a brewery selling its own product would be a fairly cheap way to buy alcohol but I'm not a fan of beer so I don't know. I'll ask Mr Mechen that point. And then we have a plan that shows the area that it applies to which is broadly the same as where the liquor ban area is. I don't think it's exactly the same but it's very, very similar. And then section 5, premises. 5.1.1, the maximum trading hours. I've sort of

10 covered this point. We've got differential hours across the week for on-licences, longer on a Friday and Saturday night, and you get to kick off at 8.00 am in the morning. 5.1.2 on the next page, so these are the conditions that apply to on-licences. I'm simply observing that there's no condition relating to shots after midnight so that restriction on shots got lost through the consultative procedure. I

15 don't say that the council can't have done that. That's just, again, part of the context.

1100

And then 5.2.1, maximum trading hours. So we've got Monday to Sunday, 9.00 to 9.00 pm, so this is page 13.

THE COURT:

20 Say that again?

MR BRAGGINS:

Sorry, page 13, we have section 5.2.1, maximum trading hours for off-licences, so that's 9.00 am to 9.00 pm. Then we have our conditions, so 5.2.2 has changed a bit. We're now into, "The DLC will apply conditions relating to all off-licences or renew or

25 relate to the following things," so we've moved from a "may" to a "will" and we have a number of new things in here, including the last bullet-point, "Adherence to the

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alcohol management plan submitted with the application.” So the next subheading, alcohol –

THE COURT:

Sorry, you’re saying the last bullet-point was new?

5 MR BRAGGINS:

That’s a new one, yes. So we then have a bit of an explanation about off-licence premises do not have the same issues as on-licence premises. I don’t have any issue with that, that’s entirely correct. And then it goes on to say a second paragraph, “All applications for licences must be accompanied by an alcohol
10 management plan. It needs to be premises-specific and appropriate to the business which it applies. The points to be addressed in the plan should include, but are not limited to, the matters that categorise it as a high-risk premises.” I’d take you to what that means but it’s not anywhere in the PLAP so I don’t know. And then we have a number of points which are generally not very contentious. We’ve got some CCTV
15 and lighting steps to promote the safe and responsible sale and supply of alcohol – I think that must be a typo there. “Steps proposed to promote, ensure the safe and responsible sale and supply of alcohol to prohibited people.” I’m sure that’s not right. Types of promotion likely to take on the premises and then how it is proposed to limit the exposure of children to alcohol messages. The concern there is the conflict
20 between that requirement and the fairly prescriptive requirements we already have in section 112 to 114, and the potential duplication of what that means. The Act has codified what supermarkets have to do. But the primary point is that an alcohol management plan has to be submitted with your application and then that becomes a mandatory condition.

25 THE COURT:

So is the mandatory nature, that is your primary point?

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MR BRAGGINS:

That's the two aspects. One, that it has to be submitted with the application and then two, the mandatory nature, and I suppose I always get in trouble for referring back to the Resource Management Act but we have a lot of trouble with councils

5 deciding what you have to have in order to file an application and rejecting applications and this Act doesn't intend to have that fight. The Act says what you have to include. Obviously, if it's a discretionary condition, you'll need to include it in your material or prepare it after you've submitted but before you have your hearing or to get the sign-off but that's a different aspect. And then at the back, I'm not going

10 to take you through these but paragraph – sorry, page 18 is a glossary of terms. I simply observe that there's no definition of "high risk" so it's difficult to know what a high risk application might be or what the risk criteria would be. I'd like to now take you to tab 9 of Mr Mechen's evidence. So this is – how are we going for time? I haven't –

15 1105

THE COURT:

Look, I think we'll find a natural break somewhere between now and 11.30.

MR BRAGGINS:

20 Okay.

THE COURT:

So just, we're in your hands a little bit about where the natural break is, but...

MR BRAGGINS:

25 Right. Well at least I've found the clock now, Sir, yes.

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THE COURT:

Yes, that's (inaudible 11:05:45).

MR BRAGGINS:

- 5 So the importance of this report is this is the report that the council says, "This is why we're having a moratorium area. We've got a lot of students who live near the university, and we're concerned about the alcohol-related harm. We're going to put it back on any new off-licence." So even if one off-licence closes, you can't get a relocation of an existing premises because that would be a new store, so effectively
- 10 it's a sinking (inaudible 11:06:21). And both Dr Kelly and Ms Hampson have looked at this report to try and understand what it means and what it says. Have you had much of a chance to read this or I'm not sure how fast or slow, or?

THE COURT:

- 15 They, yes, had had an earlier look, but I think if you want to point us particular directions given the research nature of it.

MR BRAGGINS:

- Right. So conceptually what it did is it said, "Right, we're going to go out to universities and we want to interview university students to understand their drinking behaviours, aligned with a number of other attributes." You know, did they drink a lot, were they Binge-drinking at High School, where are they living, what is near them where they're living in terms of outlets? There's various other things and then –

THE COURT:

Yes, the variables.

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MR BRAGGINS:

– but we’re not told which university is which, so we have six campuses that aren’t defined, that have a range of characteristics to see if we can, or the authors say to see if we can identify a trend between how many licences there are in a particular location to how much alcohol-related harm is happening. That’s the broad context of this report as I understand it. So on page 181...

THE COURT:

- Q. So if I understand what you’re saying your evidence is going to be challenging the correlations in that report?
- A. Yes, but we say that it is – firstly it is a national, to the extent that it doesn’t say which one is demeaning, it is a national report –
- Q. Yes, yes.
- A. – giving an indication of potential trends that you might find.
- Q. Yes.
- A. The second thing that we’re saying, and I’ll come to this in a second, is that it showed quite a different – yes, it was quite a variable relationship. The numbers on the graphs were up and down. There is a rough P value but it’s a line drawn between a lot of different dots, so, and the report acknowledges that there were different relationships going on. So it’s certainly not linear. And then ultimately it comes to a conclusion. It says, well, if you increase the number of off-licences by 10, there is a percentage increase of alcohol related harm in those students. But when you look at Dunedin, and the numbers that we’re talking about, there are only 10 off-licences in the Dunedin moratorium area. So you’d actually need to double the number of licences to have the sorts of effect that the study is talking about. And so we say that it is – because it doesn’t relate specifically to Dunedin and the margins are so small,

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significantly smaller than the likelihood of having alcohol – I'll take you to the paragraph so I don't get it wrong.

Q. Yes. No, that's right. We'll get to it. Yes.

1110

5 MR BRAGGINS:

So page 181, on the left-hand column, the second, the bottom end of the second to last paragraph, so this is talking about the potential limitations of the report. It is possible, for example, that people select the places they live at least partly on the basis of their drinking preferences, heavy drinkers preferring areas with access to plenty of alcohol outlets; light drinkers and abstainers preferring quieter areas. Observed associations may therefore not completely support the supposed causal chain described above, but instead would be at least partly the product of selection processes.

THE COURT:

15 Sorry, what paragraph is that? 181?

MR BRAGGINS:

181, the left-hand column.

THE COURT:

20 Yes.

MR BRAGGINS:

The second to last paragraph. The paragraph starts, "Because outlet density" –

THE COURT:

25 Yes.

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MR BRAGGINS:

– and then it's the second half of that paragraph. So it's the last sort of eight lines. It is possible.

THE COURT:

5 It is possible, starting with the – yes.

MR BRAGGINS:

And then under the, still on page 181, "methods" it says, "setting" and so they invited that, this is where they described that they invite all eight universities, which include
 10 twelve campuses to participate, and five of them including six campuses agreed. So we're not actually told that Dunedin was one of the participants in this study. I think everyone assumes that it was. And then on page 182 under the subheading, "Alcohol-related personal problems" so respondents were presented with the alcohol problem scale, a 14 item checklist of problems experienced due to their drinking. So
 15 this describes what, when people, when the students are interviewed, how do we know whether they've experienced an alcohol problem or not? We're not just going to ask them that one line question. We're going to give them a checklist of sorts of things to, you know, push them into thinking about what they've experienced, so e.g. a sexual encounter you later regretted in the preceding four weeks, and possible
 20 responses were "yes/no" and "prefer not to answer" which was coded as missing, and then second-hand effects, so the first topic is where you have been drinking yourself, and you might've regretted having a sexual encounter, that you've regretted. The second topic or second-hand effects where somebody else had been drinking. So respondents were presented with a list of 11 negative consequences
 25 that they experienced as a result of the students drinking, e.g. being pushed and/or otherwise assaulted in the previous four weeks. Possible responses were, "None, once, two or three times, four or more times, prefer not to answer".

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In relation to that, that second test, that's a fairly low threshold for alcohol-related offending, just being pushed. I'm not saying necessarily that it's not alcohol-related harm. We have such a very, very broad definition, but that is a – about the lowest end of the scale that there is. And then on page 182 under the heading, "Outlet density" a list of on-licence pubs, bars, clubs and restaurants, and off-licence bottle shops, supermarkets, convenience stores, alcohol outlets that were operational in the first half of 2005, i.e. in the month prior to ensuring the time of the survey was obtained by the Ministry of Justice. So that's, it's just over 10 years old, now. Perhaps, perhaps more importantly, though, the members might recall this better than Your Honour, as I understand 2005 was when convenience stores were in a transition period. There were some decisions of the Authority that said, that started to open the gate for the dairy type premises to open and then the case law changed and they weren't allowed to open. So we, for a period of time around then we had a much larger range of stores that were licenced that are no longer allowed to be licenced under current laws, and then in fact we're no longer allowed to be licenced under, even under the old laws. It's, we're not in a position to determine what that was or how many there were or how that might have influenced, but it does change the, potentially the number of off-licences in any particular location.

1115

And then at the third paragraph under "outlet density", the term time residential address given at the time of enrolment by each respondent was also mapped. Four respondents, whose addresses were within 25 kilometres of the university clock tower, or central administration building, the number of alcohol outlets within one kilometre and three kilometres of their home address was used as an explanatory variable in student-level models described below. Now it took me a little while to appreciate the significance of that statement. What it means is that when the study looks at a student-level analysis that I'm going to come to, it's looking at how many outlets were around where that person lived. So there are two parts to the study. Part of the study looks at how many off-licences were around a student clock tower,

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which is the ecological analysis, and then there's a student level analysis that looks at how many outlets were around where the students were living. Which may be up to 25 kilometres from the university.

THE COURT:

5 So there's two variables in there, they're discussing?

MR BRAGGINS:

Well, there's actually two –

THE COURT:

10 Two analyses?

MR BRAGGINS:

They're two completely different analyses. It's important not to mix them up, because I didn't really appreciate the nature of the different analysis because you – it sounds great with study, about universities, about how many alcohol outlets in the university, about how much time that the students caused, that's fantastic. It gives us some good information, but when you actually read it carefully there are two different analyses and the second one, the student-level models, is actually about how many outlets are around where the students are living.

20 **THE COURT:**

Okay, so we've got the point.

MR BRAGGINS:

Yes.

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THE COURT:

There's two analyses there and you'll explain the relevance as we go on.

MR BRAGGINS:

- 5 So then in terms of the results, so this is page 183, sorry, and then if we – sorry. The heading results is on page 183, but the passage I want to take you to is on at the end, sorry it was on –

THE COURT:

The next page?"

10

MR BRAGGINS:

- sort of top left-hand side of 184. So this is the page where we've got a number of graphs at the top and it says, "There were large differences between campuses and the proportion of students who reported frequent binge drinking in high school. Table 1 shows that across the six campus areas, there were 2032 outlets including 515 off-licences and 1517 on-licence outlets, and there was marked variation in the number of outlets near campuses, range 1, 2, 507." So we have pretty much the – well, we have a very significant range of the number of outlets, and then in the tables above you'll see the variation in terms of harm and the number of outlets, and the dots are sort of scattered across the page with the line drawn in the middle of them, but there are certainly lines that are, or dots that are above or below the line.
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THE COURT:

So it's the point that we're noting here is just the large differences, the variation.

25

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MR BRAGGINS:

Well, yes. There's two points. Firstly, that this study covers a huge range from one all the way to 500 licences around the university. So there is a very significant range there, and in a case of Dunedin the numbers are towards the lower end of the spectrum as I understand it, particularly for off licences, where there are 10 off-licences and the moratorium area.

THE COURT:

That's your second point?

MR BRAGGINS:

10 Yes.

THE COURT:

Yes.

MR BRAGGINS:

And then the third point is that the – you can do a statistical analysis and you get a number but that is not, it is a number of probability, that is not a guarantee of what's going on. Each university had their own particular number and you can see that from the graphs where there are numbers above and below the line. So we're not dealing with an absolute prediction. We're dealing with aggregating a number of different universities to come up with a theory. And at the bottom of page 184 on the right-hand column under "Outlet density affects sizes" the second to last sentence there provides a little bit more explanation at the sorts of things that they're asking students about. So if we start at the fifth line up we have examples of blackouts, episodes of physical aggression and then 10,130 additional second hand effects, e.g. being insulted or humiliated, or having property damaged. I'm not sure that insulted comes within the definition of alcohol related harm in the Act. That might be

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a step too far. Then if we turn over the page to 185 we get into the discussion of the results, and on the right-hand column of page 185 starting at the first full sentence. “The small number of campuses limits our ability to make strong inferences about associations. The dramatic contrasts in physical availability around campus’ are, however, worthy of note. If campus E, which has extremely high availability, is excluded there is a steep positive association between the number of outlets and drinks per student, although it should be noticed that campus B students drank less than those at campus C despite being exposed to considerably greater availability. The relationship for problems – ” because that first passage is about drinking not problems. The second passage we then get on to problems. “The relationship for problems is less compelling. Campuses B and E having fewer problems per student than campuses with greater availability. These differences potentially reflect variation in the drinking propensities of students at the various campuses, i.e. what drinking habits they bring to university. For this reason a capacity to account for individual variance within contextual units is required and analytical models,” and so that’s when they move on to the student analysis. For the student level models just following this same, because this is sort of the key of the discussion. “The student level models which use students’ addresses as a of enquiry showed consistently positive associations between outlet densities and the outcome variables.” Here’s, this is the interesting part. “High school binge drinking was the strongest predictor of consumption and problems, but when this was controlled a multi-variant analysis outlet density remained.” So the most significant affect was whether you had, whether you were drinking at high school.

1125

Now, it then says, “Effects were considerably stronger for off-licence outlets, e.g. supermarkets and liquor stores, than for on-licence outlets.” And I’m anticipating that the council will, you know, highlight that that is a particular part of their theory and which they relied on. Ms Hampson’s evidence says, well, it’s not, you know, the variation isn’t necessarily that big, and I’d like to take you to the table at the top of

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page 186 just so we can get a bit of an understanding about these numbers. I'm sorry that this is – now I might finish on this table, then we might take a break –

THE COURT:

Yes, take a break after that, I think, yes.

5

MR BRAGGINS:

– and then come back which would be good to break this thing up.

THE COURT:

Yes.

10

MR BRAGGINS:

So in the footnote to the table it says, "Rate ratios shown are per 10 outlets." It's the first line of the footnote there. So this is not a "per outlet" this is per 10 which, as I've explained, 10 more outlets in Dunedin means doubling the number of off-licences because there's 10, oh, sorry, in the moratorium area there are 10 off-licences, so these numbers effectively relate to a doubling of the number of off-licences in Dunedin. And as the council has said, in their PLAP, there's not a lot of growth in off-licences as it is. So the table, the column that you need to look at is the adjusted rate ratio, which is the third one in from the right-hand side. And so within a one kilometre density we have a figure of 1.069 which is effectively a 6.9% increase, but that's for 10 of them. And I'm not sure about whether you need 10 to make a significant enough difference in the density to get a chunk up the line. It's interesting that they chose not to express it in individual licence numbers. You actually need a jump of 10 to get the figures that they're talking about. I might stop there and we could come back to the rest of this report. There's not too much more to go on this one.

25

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THE COURT:

No, that's correct. Thank you very much. Look, we'll take a 15 minute break and we'll come back and carry on from there. Thank you.

COURT ADJOURNS: 11.28 AM

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COURT RESUMES: 11:54 AM

MR BRAGGINS:

Thank you Your Honour.

THE COURT:

5 Thank you.

MR BRAGGINS:

Find that anything further on this report to just two small points –

THE COURT:

Okay, great.

10 **MR BRAGGINS:**

– which I'll make briefly and then we can move along.

THE COURT:

No, take your time.

MR BRAGGINS:

15 So, on page, looking back a little step, page 183. The table there, if you look at the bottom of that table, that shows the number of off licences, to be fair, within three kilometres. So have got off licences –

THE COURT:

Yes.

20

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MR BRAGGINS:

– to campus area A0231431002694. That's that, I suppose, the precise extent of the variation that I've been talking about. We're not given the amount of variation at the one kilometre level.

5 **THE COURT:**

So that's right across from the campus areas A through F, yes.

MR BRAGGINS:

Yes.

THE COURT:

10 Okay.

MR BRAGGINS:

I can't remember whether I took you to this passage, but on page 186 on the left-hand column are the second year, so the first full paragraph on the left-hand column, half – there's a footnote there, 36, and then the sentence after that, "Results
15 suggest that students who were heavy drinkers in high school tended to cluster in certain universities. The effect of this clustering has to be accounted for when attempting to identify possible environmental influences on drinking such as physical availability. It should be noted that a measure of high school binge drinking along with demographic variability's may not have controlled completely for this effect.

20 **THE COURT:**

Okay, thank you

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MR BRAGGINS:

You might think that Dunedin might be one of those examples. Tab 11, I've mentioned evidence, so this is the Barbor book *Alcohol: No Ordinary Commodity*.

THE COURT:

5 Yes, page 190?

MR BRAGGINS:

Yes, if you turn over to page 191 which is the second side of that, the first full paragraph on the left-hand side says, "In general it is clear that dramatic changes in the number of outlets can have a substantial influence on consumption and problem
10 levels, but the overall effects of marginal changes when there are already a substantial number of outlets are much less clear," and I should add that statement is related to licences in general, both on licences and off licences.

THE COURT:

Thank you.

15 MR BRAGGINS:

And Ms Kelly makes the point, sorry, Dr Kelly makes the point that the evidence is a lot stronger for on licences. So while you can make that statement for on licences, it's much more difficult to make that same statement for off licences. If we turn to tab 14 in Mr Mechan's evidence, and page – so the relevance of this report, I might just
20 put it in a little bit of context. So this is one of the reports that Mr Mechan relies on when he say, "We looked at the international literature. We found that people make worse decisions late at night, and that's why we've decided to move from 10.00 pm to 9.00 pm." I'm paraphrasing, but that's the gist of what he said. It was the reasons for moving from the draft (inaudible 11:58:21) to the (inaudible 11:58:23). But if we
25 turn to page 199, on the right-hand side under the heading "Predictions of daily and

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heavier quantity drinking”, the third paragraph there says, “The times drink is purchased alcohol from on and off licence premises were entered separately as one before 2.00 am and after 2.00 am for on licence premises and 2.00 before 10.00 pm and after 10.00 pm for off licences premises.” So this study was all about the difference before and after 10.00 pm, and we say it's not a bad report in relation to 10.00 pm, but it doesn't then give you the knowledge to be able to move from 10.00 pm to 9.00 pm. We were happy with ten – well, we accepted 10.00 pm. The next tab is tab 15 which is progressive submission on the local alcohol policy. I'm not proposing to take you anything in particular there. I've covered off the bits that I wanted in my submissions.

1200

THE COURT:

Thank you.

MR BRAGGINS:

And then tab 18 is the insight report, so this is a report prepared for the Dunedin Inner City Licensed forum. That's effectively the on-licence grouping and this is their submission, well, this is a report filed in support of their submission and it's one of the reports that Mr Mechen says the council relied on and if I take you to page 261 of this report...

MEMBER MILLER:

Page?

MR BRAGGINS:

261 of this report, section 3.3. So this is, it talks about binge drinking in a general, New Zealand context sense, and then over the page, 262, and in particular, 263, and this, the graph on 263 is one of the key parts of evidence that's in dispute between

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Progressive and the council. So the explanation, so what Insight did – I'll just provide a little bit of context, is that they got the card data from banks and it's helpful information because the banks know how old someone is and they know exactly when that person is spending and they also know what kind of, within certain groupings, store they're in. So the banks can say, "Right, this number of people were shopping at a supermarket or a grocery store at 6 o'clock in the evening. This number of people were at a bottle store at an off-licence and we can understand a little bit about the purchasing patterns." Both this report and Dr Fairgray, purchase information broadly from the same it's called market view data. There is a difference in the data sets that Mr Fairgray has and Insight have and I'll explain that now because it's relevant. Progressive is interested in supermarkets and grocery stores and there aren't that many of them, so the banks say, "Well, we're not going to give you the Dunedin data for supermarkets because you know your own supermarkets. You'll know who the other supermarkets are and you can work out, there's too much confidential information because there's too small a packet of licences," so the information that Progressive and Dr Fairgray has is nationwide, so it's not Dunedin-specific because – but it includes information for supermarkets and bottle stores and on-licences because at that level of aggregation, the confidentiality concerns didn't arise. In some ways, the Insight information is more local. Because there are so many more bottle stores and on-licences in Dunedin, they actually could get the Dunedin-specific information for what is happening with the purchasing patterns in Dunedin, but they weren't allowed the supermarket data so they've made some assumptions about that. So what figure 5 does is it graphs what Insight say is the number of units of alcohol that are bought across the evening period. There are a few important points about this. The information that the banks hand out is a dollar figure so there were 40 transactions at however many dollars, there was, you know, \$10,000 that passed through the tills at this time of day, so they've taken that \$10,000 and then backtracked to work out what it would be in terms of units of alcohol using assumptions about how much alcohol costs at bottle stores compared

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to on-licences, and they say that's because if we just look at a dollar figure, the dollar figure might be quite similar but you get, they say, more alcohol from an off-licence, "So we want to show much alcohol is being traded across the evening rather than the actual dollar figure." We're more interested in the amount of alcohol that's being

5 traded.
1205

Those things are fairly uncontentious. The contentious part of this is this introductory sentence and I might just read it out, "Using this data, we are able to create the following graph which shows the times of the day at which 18 to 24 year olds purchase from liquor stores and bars and pubs." That's accepted. The conclusion, then, is clearly liquor store purchases peak much earlier than those from pubs and bars, thus providing direct evidence of pre-loading. And that is the bit were Dr Fairgray has a significant issue with this graph and what it says. There are two parts. He says, well, they've guesstimated how much alcohol is being sold; they've guesstimated what proportion of – you know, you can buy your chips and your drink from an off-licence. You can, if you're in a restaurant there's going to be food and stuff as well, so there's some, a lot of estimation that needs to go into there that's not actually identified. That's not the most important thing. The more important thing is understanding what preloading behaviour is and defining it and assessing it. And so what Dr Fairgray says is, pre-loading is when somebody has shopped at the bottle store between nine and 11, because that's the time that we're concerned about, and then ended up shopping at an on-licence at the bar, the – because that's what this particular LAP is concerned about. We're not going to completely buy from an off-licence after nine, because you might buy your alcohol in an off-licence, top up, or pre-load, and then be in the bar buying alcohol. So the people who just go to an off-licence and then go home are not who we're concerned with, and the people who don't go to the bottle store but do go to an on-licence, are people that we're not concerned about, because neither of those behaviours are pre-loading. So Dr Fairgray says you need to do a more – you can't just say, "One big lump and a small

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lump. That means pre-loading” because they are different human behaviours. There might be some overlap, but there might also not be a lot of overlap. We need to know what happens. And so he has done an analysis of that in his evidence, in his rebuttal, responding to this. And accepting it is a national data set, so this is not

5 Dunedin-specific, he’s looked at who buys, at 9.00 pm, and then ends up in a bar. So it’s a much bigger data set, and the overlap is around 5% of people who buy at either a supermarket or a bottle store and end up shopping at an on-licence later that night. So when we talk about the incidence of pre-loading and that it is almost an

10 endemic problem that is widespread, the actual – when you talk about it being a 5% of actually matching that pattern that’s talked about, that gives you a much, much different story of what’s going on than this particular graph. And it shows that you can’t just say, look at this graph and say, “Here is really good proof of pre-loading” because it’s not proof of pre-loading. It’s proof of two independent human

15 behaviours. Or largely independent: it doesn’t tell you what overlap there is. And that’s a large part of Progressive’s case in terms of the relevance of this. Now, Dr Fairgray acknowledges his data is national, so he’s not in a position to say what’s happening in Dunedin, because we don’t have that distinction because we weren’t allowed it. And if I just take you to page 266 of the same report. Mr Mike Foster refers to this graph, so this is the annual rate of ED presentations per 10,000

20 population, and if you compare that graph with the graph on page 264, if you look at – sorry, if you look at the graph on page 264 and you see a very big spike in young adults in Dunedin. It’s a big cause for alarm. Dunedin is out of sync with Southland and Queenstown. Then you turn over the page and say, well, as a proportion of the population, once we adjust for that, what happens? And the result is quite markedly

25 different. That’s not to say that there isn’t alcohol-related harm happening in the region, but it shows how important context is.

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MEMBER MOORHEAD:

But whichever way you read it, it's still a big issue for that group: 18 to 24 year olds.

MR BRAGGINS:

It is an issue. Nationally, young people, that 18 to 24 cohort is the cohort that
 5 exhibits significantly worse alcohol-related harm than other aged cohorts, and we
 don't dispute that, but what we do note with that particular graph is that once you
 adjust it for the population makeup it is not out of sync with other districts in the
 region that don't have the high university campus. I mean I am away that Invercargill
 has a – and the media has made a significant run of having free university fees, but
 10 as far as I'm aware, neither Queenstown nor Invercargill have nearly the height, the,
 I suppose, significant proportion of young adults in their districts, and then finally, I've
 – I'm sorry, I'm moving around here. Take you to tab 6 of Mr Mechan's evidence.

THE COURT:

Sorry, can I just ask a quick question?

15 MR BRAGGINS:

Sure.

THE COURT:

That last sentence on 265, you may get to it, but the point that you've just made is,
 there is the point there that it becomes clear that when, the city's youth does not
 20 cause higher rates of ARH than adjacent districts. In fact the youth rates appear to
 be lower than elsewhere. That not in reliance on this graph, is it? That's reliance on
 something else?

MR BRAGGINS:

No, I think –

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THE COURT:

Oh, maybe it may be over the page.

MR BRAGGINS:

No, I think that's the precursor to the following graph –

5 **THE COURT:**

I got it.

MR BRAGGINS:

– that says once you actually adjust it for the number of people in those different districts –

10 **THE COURT:**

I see, okay.

MR BRAGGINS:

– then you actually get a different range of numbers, and again we're not saying that

15 it's bad, it's about context that –

THE COURT:

Yes.

MR BRAGGINS:

– that the young adults in Dunedin –

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THE COURT:

There's a problem but it's not as – it's not out of sync with other areas, they way you're saying it.

MR BRAGGINS:

5 Yes and that's as far as the issue can be taken, and again –

THE COURT:

Figure 8 is quite helpful.

MR BRAGGINS:

– we're not – it is a big rate and the, you know, part of the question is what do we do
 10 about that, and we've said that we're comfortable with 10.00 pm. We can, we understand the logic. The issue is the 9.00 pm and the moratorium area. If I take you to tab 6 which is police report, alcohol related crime and fires during orientation periods. This is the lower point on the scale. I just wanted to provide a little bit of context. It seems to have come up in the evidence. So this is a report that the
 15 police did looking at what's happening.

THE COURT:

Sorry, what page are we on?

MR BRAGGINS:

Sorry, if we start off at page 141. So this is a report that the police prepared
 20 analysing the crime and fires during the orientation period. So Mr Mechan makes the point that, yes, bad stuff happens during orientation period. There's a spike in crime and couches burning, and alcohol related harm, which is all true. But when you look at page 144 and 145, and what you see is a significant reduction in the number of charges between 2011 to 2015. There's a graph there.

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THE COURT:

Yes.

MR BRAGGINS:

And then on page 147 it talks about the prevention opportunities that the police have proposed, so ensure employment status is captured on charge sheets to improve the capture of data for future analysis, consider building relationships with students prior to orientation period, identify problem flats with the assistance of Campus Watch, and monitor social media to identify any planned parties in the area. Reduce the fuel material available to start fires, identify events where alcohol will be sold, consider wristband system, permanent liquor ban in Dunedin North, and increase high visibility patrols. So those are all sensible recommendations but none of them identify a moratorium or a restriction on off-licence hours, and I don't think that that's unsurprising, really. What we're talking about is a period of a few weeks of very planned activity that restricting off-licence hours is unlikely to change in light of the comments from the, in terms of the Wellington decision.

MEMBER MOORHEAD:

Would you accept that there have been changes from 2011 to 2015 that may affect things like charges, such as the ability to issue infringement notices?

MR BRAGGINS:

Absolutely, and I think that probably has a very significant impact. I mean, we, having carparks in central urban – in urban locations means that sometimes, people can and do turn up at carparks and drink and we support and actively work with the police to have liquor bans in areas where there are problems. We have no issue with liquor bans at all, we think that they are highly effective, particularly for preloading and sideloading activity where there's sort of people trying to either top up or take their alcohol with them and that's a good way of targeting the issue.

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So I thought I might, if it's acceptable to the Authority, I thought I might take you through some – having put the LAP decision in a bit of context and talked a little bit about some of the key bits of evidence that I know are going to go backwards and forwards, I thought I might take you through the Progressive evidence, try and pull out the key issues and putting some of the graphs and so on in context, if that's acceptable. So I might start on volume 1 of the Progressive evidence. Tab 1 is the evidence of Natalie Hampson. So in a broad sense, she has mapped a lot of the GIS data to give us, what we would say, much better insight as to what's actually happening on the ground in Dunedin in terms of the trends, the alcohol-related harm trend. We've got a large Excel spreadsheet from the police which has fantastic information but you can't make head nor tail of it unless you actually put some pictures on the ground and put it into graphs and so that's what Ms Hampson's evidence primarily does, to start with. So if I take you through to page 6, there's graph 1 there, shows the count of licences by type in the main urban area of Dunedin city which is the, effectively, the moratorium area, and we see that it's trending downwards slowly over time, I think predominantly, by the reduction in on-licences, seeing a number of the main licences, you know, The Gardies and some of the others close over that period of time, and then page 8, we have graph 2, "Trends in the number of selected licence categories within Dunedin city." So this looks at the whole of Dunedin over the 2011 to 2016 period just to see what's actually happening with the licensees across the district, and the two bottom ones, the grey and the orange, are the grocery store and the supermarkets and you see them, the grocery store actually has a significant decline, I think, following the Act coming into force in 2012.

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There might've been some more dairies coming out of the mix, and then supermarkets being fairly static. We then have the other licensees. There a lot more of them and they change around a little bit more. Then if we turn to page 11

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we see that same graph but in the moratorium area, and you'll see the bottom grey line, almost a flat line at somewhere between zero and five, so I think it's two, maybe one, the number of grocery stores and supermarkets, so a very low level of those licences. The blue line is the off licences which is again fairly static, and then we

5 have, obviously, many more cafés, restaurants and taverns in the area. So the first part of Ms Hampson's analysis just looks at the bare numbers, just to give us a picture of what's going on, and then she moves into an analysis of – in terms of the population. So what is happening as against the changes in population? Now, these graphs so the population per licence, so they're not a – they're the inverse of a

10 density graph. So the more it goes up the more people we have per licence and the less dense the licences are. So upward is not a proliferation of licences, it's the opposite and, again, we see, if we turn over to page 13 we have the population per licence inside the moratorium. It's fairly low and static, and this is estimated population to on licences per annum, and then over the page on page 14, population

15 per off licences 2012 to 2016. So you'll see those licences going up, that is those numbers going up as we go on. That shows, I suppose, less density. At page 15 the key findings are set out in 2.5(b) based on the New Zealand average store population ratios, the Dunedin market slightly under supplied with regard to main brand supermarkets, and corresponding over supplied with regards to smaller

20 supermarkets and large grocery stores. Population growth in the city will further exacerbate the under supply of main brand supermarkets. There are significantly more on licences in the moratorium area than off licences, and the number of off licences in the moratorium area has decreased slightly over the past five years. We turn over to page 17. So that looks at the total alcohol related incidents per year

25 which we see slowly declining, and then she's mapped them on pages 18 showing that alcohol related incidents occur across the city. Page 21 and this is, I suppose, significant and relevant. Graph 10 on page 21. So we have the total ARI in Dunedin City by date of the week. Now, you've probably seen some graphs like this previously. What Ms Hampson did is just tweak the cut off because the natural

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inclination is to go, "Let's look at Tuesday," and you look at all of the incidents on Tues – well, actually, it's Friday, as a good example. So you pick up Friday day actually means the back end of Thursday night and the front end of Friday night. So because the peaks are always at night, so you actually have this distortion, so effectively this graph, actually, is adjusted to look at the nights, so the first line is Monday night, 18 Monday to 18 Tuesday.

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That's helpful because it shows, again there's a peak on Friday and Saturdays, but that Monday through to Thursday and Sunday are a lot lower. Which is an interesting contrast to the extended hours for on-licences on Friday and Saturdays and the shorter hours on the rest of the week. And then on page 21 there's a greater power breakdown, a more specific hourly breakdown which again shows what we know that the peaks late at night. Interestingly at the far right-hand corner we've got our 6.00 am to 7.00 am, 7.00 am to 8.00 am, and then back to the start again, 8.00 am to 9.00 am. That's the lowest time for alcohol-related harm. So that's when, it's when the morning hours, the 7.00 am to 9.00 am restriction kicks in and really hits off-licences, particularly supermarkets, even though you can buy alcohol from an on-licence at that time. I might leap forward. So I don't want to take you through everything, but that was, it was important to give you some context of the local alcohol-related harm. So section 4 of Ms Hampson's evidence on page 26 talks about the HPA data regarding the impact of additional licences on criminal offences. So this is a report that the Health Promotion Agency Commission. So it's a North Island study, so it's not directly applicable to Dunedin, but what Ms Hampson does is she says, well, what do we have in the North Island that's a little bit like Dunedin to give us maybe a sense of what might be happening, and so – well I suppose the first point that she makes is at 4.7. The research shows that all of the perimeter estimates vary greatly across the North Island and are statistically significant in some areas, and statistically insignificant in other areas. The relationship between social harm and additional supermarkets and grocery stores is

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highly variable. We accept that. There is different stuff happens in different districts, and I mean while that's just the North Island you see quite a different variation across different parts of the North Island even in those graphs, and we say there's no reason to suspect the same doesn't happen in the South Island. So at 4.9, but nevertheless we've got this information. Let's see what it might potentially tell us about the Dunedin context. So at 4.9 Ms Hampson says, well, she selects Hamilton and Palmerston North, and those cities are selected because they have similar sized populations relative to other councils. Similar high shares of young adults, because they both have universities in them, and have tertiary institutes that play a strong role in their economies and have similar issues at population per (inaudible 12:29:13) brand of supermarket." And she compares that to all of the social harms associated with an increase in supermarket and grocery store density for those two North Island cities. She acknowledges that there's no certainty that the results shown would be the same in Dunedin, but she says that all of the data that we have in the North Island for those two shows up as being statistically insignificant. And in fact when you look at the Hamilton City, although it's outside of Hamilton, that purple shows a negative number, so that means that additional supermarkets actually reduce drug and alcohol offences on that side of Hamilton City. Obviously that's not in Hamilton itself.

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And the crucial finding at 4.11 is that the research highlights that it should not be assume that increased outlet density for supermarkets and grocery stores is associated with increased alcohol related harm, and that careful analysis of local conditions is required, and if I can take you to page 35, which shows, is one of the appendices to her evidence, and so she shows there the New Zealand average, and then below the New Zealand average we have Palmerston North City, Hamilton City and Dunedin City which shows that they have a similar proportion of supermarkets to population, and then at the various other graphs show the count of – sorry, appendix 5 is the count of 15 to 24 years olds' by local authority and, again, Hamilton City and

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Palmerston North, they're not as extreme as Dunedin, but they are definitely on the elevated levels of young adults, and then finally on page 39 she's looked at a depravation index around main brand supermarket locations, and the reason for doing this is there's a fair amount of literature out there that says these off licences, they go and they concentrate in low-socio economic areas, and that's where you get the worse harm and the worse effects, and so, and appreciate that in the Dunedin context we're not looking at low-socio economic areas, but what she's, what this research is intended to look at is do supermarkets agglomerate together in one particular area so that we might expect, potentially, a proliferation of them, and the clear answer from her evidence is no. They spread out. They like to have their own catchments. They don't – you might get them in pairs because they're competitive. There might be a New World and a Countdown, but Countdown's not going – but you're not going to get too many of them close to each other because they are primarily about selling food and groceries, and that limits how close that they can be to each other. Then turning to her rebuttal evidence there's a section in here about the car data in the orientation week. I'm not proposing to talk about that anymore. I don't think it's really a significant reason for the restrictions that Progressive is concerned about but at page 48, section 2.7 Ms Hampson talks about the moratorium area and the evidence relating to that. At 2.9 she talks about her comments on that CAPRi research, so confirming that it's based on the 2005 data, the number of people that, the concerns about the number of people that were sampled, nothing that the research does not distinguish between a category of licensed premises between on and off licensed premises, sorry, within on an off licence premises, so we don't, we're not told what happens with supermarkets compared to bottle stores or different sorts of restaurants compared to taverns. She knows that the research does not establish a link between the types of premises the student purchase alcohol from, and their reported drinking levels and, by association, the ARH experienced. That is which types of premises contribute to their excessive drinking and resulted problems.

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I won't read all this out but at the next page over, 51, sub paragraph (f). So this is in relation to the student level analysis. So this is the critical one that the council seems to rely on. She notes that the high school binge drinking is the strongest predictor. She disagrees with the correlation that particularly strong for off licences premises as claimed by Mr Mechan. The variance in rate ratios is just 1.2% between on and off licence density within three kilometres of their residence and 4.2 in the same relationship with one kilometre. So she says that that's only slightly higher in terms of the difference and that's needing 10 of them to actually establish that number as well. We mustn't forget that, which is her point in (iii) in there. Page 52 sets out an analysis of the campus, and so, I suppose, this is a slightly different variation of what I've been saying to you. What Ms Hampson has looked at is to say, "Well, if the report says that for 10 licences we are going to get an increase of X percent in alcohol related harm, how much growth of off licences is required to get to that number that the report's told us. So in the Dunedin, because it doesn't tell us about Dunedin, but in Dunedin we have 10. So if we need another 10 for Dunedin it would be 100% growth. If you had a city like Auckland where there are a lot more, 10 might be only 10%, but if you had a university that was on the very outskirts of town, maybe like Lincoln were there might only be one, 10 would actually be a 1000% growth. So this table looks at – tries to put that number 10 in context for the number of licences within that particular area. So for campus A you needed a 9000% increase in off licences. So this is the bottom column, and for off licences, A is N/A because I don't think that there were any off licences there, but B you needed 391%, for C you needed 9000%, for D you needed 209%. For E you needed 90% and for F you needed 346%. So the point is we're talking about very – needing to have very significant increases in the amount of licences before you get the relationship that the report talks about, and I would venture to suggest that it's, that any of those numbers are probably unrealistic within the life of local alcohol policy.

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You're not going to find an extra 200% of licences turning up, or even an extra 90% of licences turning up within a six year period.

MEMBER MOORHEAD:

Mr Braggins, that's all very theoretical, but if you're looking at the Dunedin context,
5 which we are –

MR BRAGGINS:

Yes.

MEMBER MOORHEAD:

– and the moratorium area which is what you're focussing on, you said there were 10
10 off licences currently in the area, is that correct?

MR BRAGGINS:

Yes.

MEMBER MOORHEAD:

You don't think that area is quite well served by having 10 off licences in that area
15 currently?

MR BRAGGINS:

We say that one more supermarket is needed in that area, and the part of the issue
is that for bottle stores they have much shorter, much smaller catchments. So
people go to a bottle store because that's the one down the road close to them. I
20 suppose people always go to whatever shop is most convenient for them, but
supermarkets have a much larger catchment, and a much larger draw. So the
catchment for a supermarket will extend far beyond the moratorium area. It might be
reasonable for an off – for a bottle store, for two reasons, they have a smaller

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catchment. You can have more, they – you can support more of them at any particular location there.

1240

We, when we look at the graphs that I'll take you to we have one or two
 5 supermarkets and we have nine bottle stores, and that's symptomatic across the country. You can generally, the economy can support more bottle stores because they are smaller stores, more targeted at a specialist niche thing, whereas a supermarket needs to sell 90% food. If all of the people in that area are buying food from somewhere else then there's no room for another supermarket. So what we're
 10 talking about is one more supermarket that this, that the policy –

MEMBER MOORHEAD:

Right, so you want one more supermarket. So are you really saying that there shouldn't be a moratorium, or are you saying a supermarket should be an exception
 15 along with those other exceptions?

MR BRAGGINS:

Well, I'm forced to, by the law, to say that the current element in its current configuration is unreasonable because that is all I can tell you, and I say that it is
 20 unreasonably because a supermarket is not allowed in there even though we have a large catchment, but a brewery selling its own beer is. Now that seems to me to be impartial, unfair, unequal. A premium wine store is allowed in there because they sell more expensive products, so what we say is that this element is not really about alcohol-related harm, it's about price, because if you're going to spend at a premium
 25 wine store, you can go into the moratorium no questions asked. If you are going to set up a brewery and sell your own beer, you can set up, no questions asked. If you want to set up an on-licence, a tavern, even, you can set up, no questions asked. But a supermarket – sorry, we've got this report that relates to the whole country, not just Dunedin. It doesn't actually identify which area Dunedin is, so you can't actually

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apply this to Dunedin because it's not local information because you're not given that information.

THE COURT:

It may be a little unfair, but what is a premium wine store? It's not defined in the glossary, is it?

MR BRAGGINS:

Sorry?

THE COURT:

What constitutes as premium wine store –

MR BRAGGINS:

I have no idea.

THE COURT:

– because It's not defined in the glossary?

MR BRAGGINS:

No. So I mean supermarkets sell some premium wine. There's some moët and some deutz. You know, there are some premium wines in there, 20, \$30, \$40 bottles of wine, but I don't know whether a supermarket would qualify or not, and we can't – we can't afford to test that at a licensing scenario, and Mr Foster explains why. We have to go in. We've got to buy a site, not just a small existing store and entering an agreement to lease, we've need a store that's almost, you know, a bit of land that's almost a hectare. We've got to go and we've got to get our resource consent because we invariably need one. We've got to go and get a building consent, so we're going to spend the thick end of \$3 million before we can even ask

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the question, “Are we a premium wine store? Are we good enough to get through this licence?” So it’s not, it’s actually imposes such a hurdle that for us it’s a prohibition. We’re not going to spend the – it would be madness to invest and sink that much money in a site and not know whether or not you’re going to have a
5 licence because you can’t compete with the supermarket down the road.

MEMBER MOORHEAD:

And so even though any policy would have to be reviewed in six years, is that part of your client’s property as well because of the large lead-in period of time?
10

MR BRAGGINS:

Yeah, and that goes to the reasonableness of the element. Now in some ways this is more reasonable than a policy that says that they – at least we know, you know, if we’re on the left-hand side of the line we’re okay; if we’re on the right-hand side of
15 the line we’re not. But then you say, “Well, what’s the size of the supermarket catchment?” Well, it’s the whole of the moratorium area anyway, so what’s kind of – what’s the difference? The problem is that the moratorium area forces us to go into, if we’re looking at the north of Dunedin, into zoning, that the council zoning says that we shouldn’t be there because they’re residential areas. Not supermarkets aren’t
20 allowed to compete with the heart of the city and that the vibrance of the city, because they want the retail businesses in the CBD area and keeping the businesses alive and not competing with the vibrancy of the city.

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MEMBER MOORHEAD:

25 So is there a mismatch as well with the district plan –

MR BRAGGINS:

Yes.

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MEMBER MOORHEAD:

– as to where it says the supermarkets could be located?

MR BRAGGINS:

Yes. Notably Foodstuffs haven't appealed. They've got enough supermarkets in the moratorium area, so they don't mind. So turning to page 53(viii) of Ms Hampson's evidence, "Achieving significant increases in the number density of licence premises in Dunedin would seem particularly unlikely. By way of context, the count of licences in Dunedin has been declining since 2012, not increasing. Total off-licences have reduced by 23% and total on-licences have reduced by 2%," and so when Mr Mechen says, "The council is concerned about proliferation as the reason for this policy," we say – well, we acknowledge Mr Mechen is appearing on behalf of the council but when you remember all the discussion about price in the council's decision, we say, "Actually, this is about controlling price." It doesn't make sense for it to be proliferation because if it was, you wouldn't allow premium wine stores and breweries to establish. So at page 61 of Ms Hampson's evidence, we've got a few maps and I might just take a minute to explain what those maps mean and the context of them. So because we didn't know which universities the study looked at, we thought, "Well, let's look – there's only so many universities in Auckland, let's look at them and let's look at how many supermarkets are actually in close proximity to the, what was called the clock tower or the central administration building. Is there an issue with supermarkets concentrating near universities?" So first is Massey University. We have a couple of dots there on, one within the one kilometre range and one just on the edge of it, so that shows two supermarkets within one kilometre and then there's a couple more within three kilometres. Over the page to page 62, this is Auckland, and even in Auckland city, we've only got three supermarkets within that one kilometre range and it gives you a perspective about how far that three kilometre range goes out. That takes you all the way to Devonport so this is a large area within an urban context. I won't take you through all of them. I'm going to talk

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to Mr Mechen about a few of these but page 68 is Dunedin, so there's one, so this is – the black dots are the supermarkets and large grocery stores. There's one within the one kilometre circle. There's one just to the edge of the north, I think that's the New World Gardens store and then there's a few more down at the CBD end.

5 1250

And now we're onto Dr Fairgray's evidence. I'm not going to spend really any time on Dr Fairgray's evidence-in-chief. It's fairly self-explanatory and it's a fairly easy read. The concepts aren't too dense or confusing. I'd highlight paragraph 3.4 on page 76, where he says, "Given the substantial lag between the morning LAP
10 restriction and the time at which most AHR occurs, with the flexibility to purchase during the rest of the day, there's no clear nexus between limiting the morning hours of trade and seeking to reduce AHR. Accordingly, there's no clear nexus that limiting availability in the morning hours will result in a benefit in the form of reduced consumption and AHR," and to be fair, I don't think Mr Mechen disagrees with that.
15 He says that it's about restricting minors from seeing alcohol being bought and normalising the sale of alcohol which is a different concept. I'm paraphrasing him a little bit but I think that's, I don't think that particular issue is in dispute. And then tab 4 is Dr Fairgray, page 80. The first part, page 82, 2.2 to 2.5, I think he notes that Mr Mechen seems to misinterpret part of the Progressive submission. So part of
20 Progressive's submission said, "Young adults don't really come into our stores between 7.00 and 9.00. They're only about 0.5% of the sales at that time," and so that's the number that Mr Mechen relied on in his evidence when he says, "Well, there's actually, there's no economic effect on Progressive, it's a very small 0.5%," and Mr Fairgray makes two points in terms of that. Firstly, he misunderstood what
25 had been said. The number's higher because that's just a small proportion of the young adults at that time but young adults are either at university or working. They're not a big cohort of the shopping between 7.00 and 9.00. That's the parents that are at home, doing their weekly shops that are in there. Then Dr Fairgray goes on and says, "Well, actually, when you look at the numbers at 2.10," he says,

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“There’s about 165,000 to 185,000 shopping visits per annum in the Dunedin supermarket stores at that time period.” That’s including, he’s making some proxy assumptions about Foodstuffs, and then if we assume a certain amount, around 10%, involves alcohol of some description, that’s about 18,000 to 19,000 shopping trips, so I appreciate the council says, “Well, the economic effect on Progressive is small. It doesn’t really matter. Why are Progressive whinging?” and what we say in terms of the morning restriction is, firstly, that the restriction is consistent with the purpose of the Act, and secondly, it’s not about Progressive, it’s actually about the convenience of customers who are choosing to shop at that time, whether they have been working two jobs or split jobs, they’ve got daycare responsibilities, they’re shopping between 7.00 and 9.00 because that’s convenient for them. So the next section from paragraph 2.13 of Dr Fairgray’s evidence is – I can probably accelerate this point because I’ve covered it off when I was talking about the Insight report, so this is where Dr Fairgray looks at that Insight report –

MEMBER MILLER:

Sorry, what paragraph?

MR BRAGGINS:

2.13, so it’s kind of the bulk of the rest of his evidence is explaining his concerns about the use of that Insight data and then explaining the work that he did to explain why it was wrong, so at 2.14 he says, “The data to which Mr Mechen refers does not show a prevalence of preloading. The electronic sales data used by Insight shows the time and location of alcohol purchases from bottle stores and bars in Dunedin. It does not identify alcohol consumption behaviours,” and that, we say, is the critical aspect, and then at the end of 2.16, “The claim by Insight Economics that the difference in time purchase provides direct evidence of preloading is not accurate.”

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And to kind of explain – I asked him to put this in here, I might take you to page 96 because it, I must say, I found it a little bit hard to digest all of these different groupings and so on and I've put it in a table at page 96 just to explain how the analysis –

5 MEMBER MOORHEAD:

Can you give me a paragraph number? My page numberings are different to yours.

MR BRAGGINS:

Sorry, page number 96.

MEMBER MOORHEAD:

10 Mine is not set out like that.

MR BRAGGINS:

It's at the very end of Dr Fairgray's, it's like the last, second, the last two pages. So group 1 is off-licence purchases but no subsequent on-licence purchases, so you go to your bottle store or your supermarket but you don't end up spending any money at the on-licence later on. Dr Fairgray acknowledges how this assumes that people are using their same card at one place and the other, it assumes that people aren't swapping cash and card so there are some limitations to this but it's the best – cash transactions aren't recorded in that way so this is the best data that we have. So group 1 is the people that go to an off-licence but then don't seem to end up at an on-licence, and then there are three different types there, so there's those that purchased at a supermarket, those that purchased at a liquor store, and those that purchased at both a supermarket and a liquor store but in no circumstances ended up at an on-licence. Group 2, so this is where we do have some, that it's potentially indicating preloading. You've been to, you've gone to either a supermarket or a bottle store and then you've ended up at your on-licence and there's lots of different

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types here. Because of the way the data is separated, you need to account for every permutation and every pattern. So group 2, we have type C – I'm not going to read all of these out but the – you can see that there are a lot of different combinations that have been looked at, and then group 3 is the on-licence purchases, so this is

5 page 98, on-licence purchases with no previous off-licence purchases, so that's types I, J and O. I found that an easier way to understand all of these different numbers that are going on. Fundamentally, there's three groups. The first groups is the people that don't end up in an on-licence. The last group is people that do but haven't co-shopped and it's the middle group, group 2, that is potentially the

10 evidence of preloading. There are two points on preloading that I think I need to highlight. It is a term that is used very extensively in a lot of literature but it's used in different ways and it has different meanings. This looks at the broadest level of preloading which is simply having shopped at one and shopped at the other. Just because you bought at – for example, you might have gone to a supermarket, as I

15 did on Saturday night, and bought a friend a present, a bottle of champagne, wrapped that up and then went off to dinner and gave them that present which they didn't then drink that night because that was the present for them to drink later on so it doesn't necessarily capture actual drinking behaviour but it gives us a sense of the key behaviour going from one to the other. Then secondly –

20 **THE COURT:**

That is just showing purchases in both?

MR BRAGGINS:

It's showing purchases in both, but at least it puts them in the right place to exhibit preloading because they've been in an off-licence and then they've been to an on-

25 licence, and then the second aspect is simply drinking, having a drink with friends at dinner, at a BYO or at home and then going into town and having a drink, that is preloading under the broad definition, but that is not necessarily a harmful behaviour.

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The harmful behaviour is a subset of that, the people that are doing that excessively or inappropriately, and to be fair to Mr Mechen, he does note that a couple of times in his evidence but we just, I worry that the term gets bandied around too widely that it is inevitably harmful drinking but actually, when you look at it, the harmful drinking is a subset of that, and to be fair, we need to kind of assume if we look at behaviours, we make predictions based on those behaviours assuming that that is a risk factor, but that's what it is. This is about a risk factor. The people that were at bottle stores, then at on licences. They're in the right place to be pre-loading and there's a risk factor that some of those will be drinking excessively or appropriately, and in that context I, you know, we accept that information but that's all it is on a national basis. Just before we go for lunch I just want to find the actual numbers so I can direct you to that particular paragraph. So that's page 92, paragraph 2.49. So the key patterns, and these are the key national patterns because we don't, like I said, we don't have the Dunedin data. Of those who made a purchase in an off licence outlet after 9.00 pm, 92.7% made no other purchase at an on licence outlet. Some 7.3% did make a purchase at a licence outlet. So that indicates a low overlap between off licences and subsequent on licence purchasing and it indicates a low incidence of young adults. So this is just targeted at that 18 to 24 year old age group. So we're not contaminating this date with people like me who are old and boring, and don't actually, you know, well this is targeting at the age group that the council is concerned about, and then paragraph B, sorry, paragraph C. "Of those who made a purchase at a restaurant in the period after 9.00 pm until 7.00 am the following day, only 3.8% had made a previous purchase at an off licence outlet after 9.00 pm, and of those who'd made a purchase at a bar, tavern or club in the period after 9.00 pm until 7.00 am the following day, 7.6% had made a previous purchase at an off licence outlet," and then the conclusion effectively there's a low overlap.

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THE COURT:

So those are just the patterns relative to those categories you referred to in the annexure.

MR BRAGGINS:

5 Yes, so that's effectively A, B -

THE COURT:

A, B and C.

MR BRAGGINS:

– 1, 2, and 3, or A, B, yes. 1, 2, 3. So, yes, and he's done some graphs of that but
10 I'm not going to talk to you, I mean that's the – you've –

THE COURT:

The essence of it.

MR BRAGGINS:

So that's Mr Fairgray's evidence and it's – do want to have –

15 **THE COURT:**

Great. Look I think it's an appropriate time to break and we'll take a break for lunch and come back and you'll walk us through the rest of your evidence briefly.

MR BRAGGINS:

Yes, and then I probably won't, I mean, well my submissions, the last part of my
20 submissions kind of covers off what I'm taking you to anyway. So I don't think I need to re-read that to you.

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THE COURT:

Yes, okay.

MR BRAGGINS:

It's a bit of a, Sir, contents page for directing you to the key bits and pieces.

5 THE COURT:

So after lunch you'll take us through Dr Kelly's and Mr Foster's –

MR BRAGGINS:

Yes.

THE COURT:

10 Okay, great. Thank you, and then we'll turn over to Mr Thain when you're finished from there. Thank you. We'll break for lunch now.

COURT ADJOURNS: 1.03 PM

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COURT RESUMES: 2.14 PM

MR BRAGGINS:

Thank you, Your Honour. So if I move on to bundle 2, volume 2 of the evidence, so this is the evidence of Francesca Kelly and Michael Foster, for Progressive
 5 Enterprises, volume 2. It's not, I know it's very big and it looks heavy and (inaudible 14:15:14) but that's largely because of a couple of attachments that I thought I should put there in full. I think there's probably an argument I probably could've just slipped in a single page but, and I'm not expecting you to read. I'll tell you which –

THE COURT:

10 Well, you'll focus us on it.

MR BRAGGINS:

Yes, yes.

THE COURT:

15 Yes.

MR BRAGGINS:

So Dr Francesca Kelly. She is a public health physician. So she has, in particular, looked at the research relating to the availability theory and the various other areas
 20 that are employed. Based on the Authority's views in *Tasman* and *Wellington*, we didn't have her present all of the studies that she's looked at. It was simply a matter of that she has done, she's undertaken her exercise and looked at everything and found that her conclusions that she presented in Wellington which was you need to extrapolate the on-licence theory to off-licences in order to reach a view about the
 25 availability theory for off-licences still holds true, because Wellington was a couple of years ago. So in essence, that's what s 2 of her evidence is and what it does. While

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I haven't presented you with the studies, the – my friends have asked for copies and been supplied with various 101 reports that she had to look at, so if someone wants to they have access to those reports; they can present them and cross-examine her on them, but it was just going to be another Eastlight folder if I'd given you all of them, so that's why they're not there. If she'd found something relevant then obviously we would've brought that to your attention.

THE COURT:

Yes.

10 MR BRAGGINS:

So her conclusion there is at 2.9. Overall she finds that the international literature selected by Barbor – that she does not find that the international literature selected by Barbor contributes to our knowledge of what, if any, change in ARH will happen if sales of wine, beer, and mead in supermarkets are restricted to 9.00 pm instead of 11.00 pm. To apply the availability theory to Dunedin would require an extrapolation of the conclusions from the on-licence studies to off-licence studies. And then from 2.10 onwards she looks at that Caswell study. That's the New Zealand-based study that had the 10.00 pm cut-off that we discussed. That's attached to Mr Mechen's evidence, and at 2.12 she just confirms that that is the cut-off and that's what they were looking at: the difference between buying after 10.00 pm and buying before 10.00 pm. And then section 3, she discusses preloading and sideloading. That's page 106. And she makes the point at 3.3 they've discussed with you before, sort of just being careful about defining what preloading is and that the harmful preloading the people are concerned about is a subset of the more general preloading that is often referred to. At section 4 she assesses the university student drinking paper, so that's that outlet density study that is quite important in relation to the moratorium area. At 4.6 on page 108 she notes the market variation of the number of outlets near campuses. The range 1 to 507. And then I might take you to 4.9 on page 110.

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So what Dr Kelly is looking at here is the research that underpinned that CAPRi 2008 paper, the university drinking paper, do the background studies have any extra relevance or assistance to us in understanding what it means and what's going on.

And at 4.9 she indicates that the approach required requires a degree of inference

5 that may not be warranted for difference communities with different social and physical neighbourhoods.

1420

She notes that the theories remain unproven particularly in relation to Dunedin and evidence of supermarkets not clustering, and then these are the more important

10 ones. At 4.13 she looks at a range of studies by Livingstone. So this is at the top of page 111 and the author, so the second half of 4.13, "The author reports no

significant association between packaged licence density and domestic violence rates. Further, the author comments that this does not fit the theory which suggests

15 which may increase to risk of incidence of domestic violence, and I suppose the council's answer to that is, "Well, we're not talking about domestic violence, we're

concerned about pre-loading," and I would accept that. That's what their stated concern is, and that's what we need to think about in the context of that moratorium

area, and then workload move on to Dr Kelly's rebuttal evidence, and I might start

20 again page 121 here. I'm moving a little bit faster now because I've covered the, I suppose, the more grunty things that needed a more attention, and I'm just trying to

pick the eyes out of this. So section 2 she deals with the CAPRi 2003 report. I think that's at tab 2 of Mr Mechen's evidence. It notes that it is a 2003 report and

analyses it. The analysis is fairly straight forward so I don't think I need to drill down

25 into that particularly closely, and then at 2.5 she talks about the Dunedin context. So that's Mr Mechen's evidence at 14 – 22, and this important because this is where the council starts to pull out some of the stats about how Dunedin is the prevalence of

alcohol related harm in Dunedin is so bad that the, what the – the way that the young people are behaving is very bad, you know, the statistics of 83% and so on are quite

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alarming when you see them written into the LAP and so what Dr Kelly does in these paragraphs is actually look at what are those numbers? Where did they come from and what was actually, what was studied, and it's important because the numbers are actually subsets of subsets, which is why the numbers are so high. So at 2.6

5 Dr Kelly says at paragraph 16, "Mr Mechen appears to take his statement about the relatively high levels of hazardous drinking directly from the CAPRi 2003 statement referred to in my paragraph 2.3(a), and that information derives from limited data obtained prior to 2003." So, firstly it's quite old, and then secondly when we look at the way that it's reported, it seems to be a little bit distorted. So at 2.8 she says at

10 paragraph 18, Mr Mechen states, "Studies have shown that up to 83% of students participating in binge drinking episodes each week with 71% of those students experiencing alcohol related problems as a result," and again she goes back to the CAPRi 2003 report. But when you look at what was said, she analyses that further at 2.9, that 83% is not a percentage of students. Some student percentage drinking

15 patterns are presented in table 4 CAPRi 2003, page 14, but note that this table only includes students who consumed alcohol in the past four weeks, and it's not a presentation of overall drinking habits amongst all students. In relation to the 83% and binge drinking Mr Mechen states with 71% of those students experience alcohol related problems. Mechen's paragraphs at 18 references CAPRi 2003 in 16. Table

20 6 at page 16 presents 71% as a proportion of all student respondents excluding non-drinkers who reported experiencing a hangover in the past three months. The exclusion of non-drinking minors is likely to significantly distort the analysis.

1425

I think this is a similar point to the health data. Once you see the data in context it

25 starts to change shape and we looked at that table that shows the difference between looking at pure student numbers involved at hospital, and you put that in a context of the number of students in that particular area and suddenly the meaning of those graphs changes quite a lot. I'm sure Dr Kelly will be asked about her work on this further. The next section "Off-licence Trading Hours General". So that's

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Mr Mechen's evidence at 51 to 54, and Dr Kelly at paragraph 2.14 on page 125 looks at that Caswell Study and, again, just reiterating, that a study about 10.00 pm. The next section of evidence (inaudible 14:26:36) 7.00 am to 9.00 am, so this is just before paragraph 2.16 on page 125. So here Dr Kelly looks at the submissions that

5 were seeking a restriction in the morning. So, well the counsel's explanation is that they are concerned about young people being exposed to the sale of alcohol at that time in the morning. Now, irrespective of whether that's consistent with the Act, let's look at what the submissions were actually seeking and the next of section of her evidence says, well actually, when you look at it it's not necessary what the

10 submissions say. At 2.18 the footnote refers to the health promotion agency rather than the Southern PHO. The HPA submission do not mention monitoring morning sales between 7.00 am and 9.00 am. They do not discuss the exposure of young children to alcohol before school or marketing, I think that should say "After school" as, or "Marketing alcohol as an ordinary grocery," and then we have the public health

15 submission. That again doesn't discuss the exposure of young children to alcohol. I won't read all of that out but the point is that when you look at the attachments to Mr Mechen's evidence, they don't align all the well with the council's reasoning for that new restriction. The next sub-topic is at 2.28 on page 127 which is the appeal point of 9.00 pm to 10.00 pm, and over the next page on page 128, at the top there,

20 subsections D and E, Dr Kelly refers to the Dunedin Study. Sorry, refers to the Wellington Study which Mr Mechen refers to, and then at 2.29 a second hand citation to the Ministry of Justice analysis as stated by the HPA, and I suppose, this is a little bugbear. So the Ministry of Justice went and did a lot of good research around trying to work out how the Government might go about setting price based

25 fees for licences. So rather than everyone paying the standard two or \$300, let's try and introduce a risk component into that, and so that's the study that's attached to Dr Kelly's report, and there's a lot of good detailed analysis in there at a national level, but the fundamental point of that is set out at paragraph 2.31 of Dr Kelly's evidence on page 129.

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Now, I'll read that out because it's quite important because the council seems to rely on the study. "Risk factor analysis cannot be carried out for off-licence premises as available data does not link offences to off-licence premises. However, risk factors to be considered in the off-licence risk-based licensing framework include latest closing hour, compliance history. An additional potential risk factor to the New Zealand context is the size of single alcohol areas for supermarkets and grocery stores. Location, (inaudible 14:30:35) density and volume of alcohol sold were excluded as risk factors. Stakeholder consultation will be required to determine the regulatory effect and relative risk factors of off-licence premises." So the detailed work that the Ministry of Justice did was all in relation to on-licences because they could link a specific on-licence with specific events and then they could do their statistical wizardry to work out what the risks were and how you look at those risks, and then they had to say, "Well, for off-licences we're going to try and apply it but we're actually doing that in the dark," and so you simply can't use the Ministry of Justice commentary as applying to off-licences because they just didn't do that work. They didn't have the data. And then finally, at 2.37, sorry, for my next one, at the very bottom of page 129 we're onto the moratorium area, and there's some references at page, at paragraph 237 to the conclusions in CAPRi and the uncertainties that arise from that. Interestingly – sorry, the numbering's gone – paragraph 2.38 on page 131, Dr Kelly refers to the P values not being significant and having some issues, so the P value is the quality of the trend. So that is the quality of the fit. Effectively, how well does the line represent the data that we see so that we can make other conclusions on the basis of that line? Page 145 –

25 THE COURT:

So this is the risk-based fee report?

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MR BRAGGINS:

Yes, yes. So that report, I should actually take you to the very start of this. That report starts on page 134. It's a very long report, but I'll just take you to the most notable of the – this is the quote that we'd referred to, page 145 under the heading,

5 “Key of imitations of the risk factor analysis.

THE COURT:

Sorry, can I just stop you for a second, just to make sure my colleagues have got a copy of that report.

10 **MEMBER MILLER:**

I don't.

THE COURT:

You don't have a copy of it?

15 **MEMBER MOORHOUSE:**

No, nor do I.

THE COURT:

I've got a copy of it, but I'm just wondering have you got another bundle there, Emma?

20

MR BRAGGANS:

Oh, I've got a spare bundle.

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THE COURT:

If you've got a spare bundle and we've got a spare bundle that'll just make sure we're following, because we've got an earlier loose version as well that doesn't have – if you've got both of them, then...

5

MEMBER MOORHOUSE:

Yes, Mr Miller and I don't have the bundles.

THE COURT:

Okay. We've got an earlier version which doesn't have the page numbers, so if you've got an extra bundle, that would be...

10

MEMBER MOORHOUSE:

(inaudible 14:34:24) by the looks.

THE COURT:

She's got the other one as well. Great, thank you. I'll just make sure. It's easier to follow if we're following the same page, yes.
So 134 is the start of that?

15

MR BRAGGINS:

Yes, and if I just speak to 145.

20

THE COURT:

Thank you.

1435

MR BRAGGINS:

So the subheading down the bottom is, "Key limitations of the risk factor analysis." And that's where it says, "Risk factor analysis cannot be carried out for off-licence

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premises and special licences and alcohol link data does not link offences to these licences.

THE COURT:

Thank you.

5

MR BRAGGINS:

So I'll now move on to the evidence of Mr Foster. So that's at tab 7. So at page 281, Mr Foster sets out in the introduction into the community role which supermarkets play, and the difficulty in finding suitable sites. I won't – I sort of covered that off. It just explains that it's more difficult for a bigger supermarket with lots of District Plan requirements to comply with to find places. Over the page on 10 282, the heading, "Supermarket Density and location is not determined by alcohol sales." That sort of pulls together a number of the strands that the other witnesses set out, which is effectively supermarkets. The location of supermarkets is 15 determined by where they sell groceries. They happen to also sell alcohol, but they're not driven by the (inaudible 14:36:54) for selling alcohol in any location. Over the page – well, then it continues on into the difficulty of confining and consenting supermarkets generally, and in specifically in Dunedin. 283 – sorry, section 5 is headed, "Summary of relevant district plan provisions," which relate to supermarkets. 20 Mr Foster has done this because the objectives and policies of the district plan is a relevant mandatory consideration. He has referred to what's called the 2GP which is the Dunedin Second Generation Plan which is, effectively, the planning framework for the future rather than the old one, and in my submission, that's the – if we go into the legal technicalities of the definitions, maybe it's the old plan that should be 25 referred to but that doesn't make a lot of sense, given that both the LAP and the district plan are forward-looking documents. Mr Mechen doesn't seem to raise an issue with that so I don't think that's a problem.

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On page 285, at the top there, so this is a quote from the district plan and it reiterates what I'd explained further. Policy 2.3.2.2 is to maintain, enhance the density and productivity of economic activity in the CBD and centres in order to provide sufficient supply for the projected needs for retail and office development for a 15 year period while avoiding over-supply and decentralisation of these activities and locations outside of centres unless they are thought unlikely to contribute to, or may detract from, the vibrancy of centres, through zoning and rules that restrict the distribution of retail and office activities outside these areas, and we say that's a key policy of the district plan which is why supermarkets are directed to establish, in this area, within the moratorium area, and the council would be deeply unhappy with Progressive if it proposed a supermarket on the northern fringe of the moratorium area. Bottle stores tend not to have the same issues because they're a lot smaller. They're not a key part of the retail fabric of the city. That's the essential point of section 5. Section 6 begins on page 287, and there, he looks at the number of licences of each kind held for premises in the district plan. So there, he's really taking Ms Hampson's evidence about the numbers and putting that into a bit of context about why there's room for another supermarket in the moratorium area. Page 289 is the opening hours and there, Mr Foster has just looked at the opening hours of bottle stores and simply confirming, really, that the restriction on morning hours mainly targets supermarkets because the bottle stores, at least within the moratorium area, aren't open prior to 9.00, so there's no effect on them. I suppose there are two parts to that. Not only is there no effect on them, but you don't need to impose a local alcohol policy element to control children going into those bottle stores because they're not open for business. And then on page 292 at paragraph 6.8, he has a similar look in terms of on-licences and note that there are a number of them that are open that are licensed from either 8.00 am or 7.00 am. He hasn't gone through to see whether or not their licence is that early but given that the business is trading those hours, if they wanted to apply a licence at 8.00 am then they'd be allowed to under the LAP.

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Section 7, that just covers off the bylaws prohibiting alcohol in public places that are in force, so that's page 293, and I'd note that at 7.4, he notes that liquor bans are an essential part of the means of addressing ARH, so he's quite a big supporter of local alcohol bans. Section 8 deals with the demography of the city's residents and visitors, and then section 9, the overall health indicators of the district's residents, and I've covered most of that off with you previously. Section 10 is where we get, I suppose, into a bit more of the nitty-gritty, so that's on page 296, and that's the nature and severity of the alcohol-related problems arising in the district. In 10.1, he notes that it's highly variable by time of day, day of the week and month of the year. It peaks late at night, increasing from 10.00 pm but predominantly from midnight. Peaks the nights before the public and in particular, young adults, generally do not have to work or study the next day, Friday and Saturday nights, and is focused within the entertainment precinct of the CBD, and then he goes on and notes some of the trends in terms of the reduction in alcohol-related harm over time. It's not necessarily concentrated in the moratorium area and incidents are at their lowest between 7.00 am, 9.00 am, that's all in paragraph 10.3. Section 11 covers the history of the development of the PLAP. I've covered that off in my submissions, and then on page 299, section 12, there's a critique of council's reasons for restricting 7.00 am to 9.00 am, and then on 13, page 300, that's the critique of council's reasons for restricting 9.00 pm to 11.00 pm. He notes on page 301, at paragraph 13.3, Ms Hampson's evidence identifies that the particular type of harm identified as being of concern has been consistently reducing since 2012 and it's surprising that the council has not identified this trend, nor has it undertaken any analysis to understand what factors might be influencing it.

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I'm not going too fast, am I?

THE COURT:

No, no, it's good.

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MR BRAGGINS:

Page 303, paragraph 13.7, he makes the point that on the basis of the submissions presented there appears to be little evidence of peaks of similar magnitude in ARH
 5 between a Sunday and a Thursday so it is unclear why the council consider that a restriction in off-licence hours is appropriate outside of Friday and Saturday nights. It seemed excessive and disproportionate and I'd make the point that the LAP extends on-licence hours on the Friday and the Saturday nights. Then page 306, section 14 is the critique of council's reasons for the moratorium. He goes through and tries to
 10 pull together Dr Kelly's reasons and Ms Hampson's and Mr Fairgray's and makes the point at 14.8 at page 307 and then onto page 308 that it does seem that pricings was a significant influencing factor in the council's decision. Finally, he does make the point that, at page 308 at paragraph 14.10, there are, and sometimes you can lose sight of this, we're talking about the maximum hours that you can ever have here, so
 15 what this LAP says is that there's no discretion, so no off-licence can ever open past 9.00 pm and that's the maximum but Mr Foster makes the point at 14.10 that you can have individual – if you have a problem about a licence or even a particular area, you can go in and apply lesser hours than the maximum and DLCs are doing that relatively regularly these days. The most recent example for Progressive was the
 20 recent General Distributors application for Countdown in Cable Car Lane which he refers to, which actually has 8.00 pm. That was volunteered by Progressive, by GDL, as part of a licence application process. And then section 15 further down, the critique of discretionary conditions. I won't take you through the appendices. There's a couple of maps and other examples of how other councils have dealt with
 25 – there's the Dunedin, sorry, page 321 is the Dunedin police submission for the local alcohol policy. Maximum trading hours – sorry, that's, in fact he says at the front, 8.00 am to 10.00 pm is what they support for the off-licence. And then page 328 is Mr Foster's rebuttal evidence. Page 329, he addresses the rebuttal of the 2003 CAPRi report.

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I think the most relevant is page 330 sub paragraph (f) because the CAPRi report is 2003, so that's 13 years ago and Mr Foster points out that there's a number of changes that have happened in Dunedin since then. We've had a trend of reducing alcohol related harm in the city at least since 2011. Significant reduction in charges associated with the orientation period. Changing the number of on and off licences in the CBD, and some of the famous student bars have also stopped trading. May infamous might be a better word, and he also makes the point that the council doesn't seem to have implemented many of the report's recommendations. Then he moves on to the 7.00 am to 9.00 am aspect, and in 2.6 he makes the point that he says, with respect, "Whether there's little commercial impact is not the point. The focus of Act is to minimise harm caused by the excessive or inappropriate consumption of alcohol." It is clear to me from Progressive's evidence that there's no elevation of excessive or inappropriate consumption of alcohol during the hours of 7.00 am to 9.00 am that the council seeks to control through this element. Over the page 332, at paragraph 210 is the 9.00 pm to 10.00 pm period that he covers off, and then page 334 the appeal point, the moratorium evidence, sorry, the moratorium area. At 2.16 is probably is the key, the aspect there at C, "For the foreseeable future there's probably only capacity for one more supermarket within the moratorium area." It's notable that Foodstuffs have not appealed, and then if the one study which the council refers to as good enough evidence to impose a moratorium now, then from a policy perspective, do we know what an appropriate density of licences is, and when will it be appropriate to remove the moratorium? We just don't, we don't know, and I suppose the other point is if that study in and of itself is good enough to apply to Dunedin, does it then also apply to Palmerston North and Hamilton, and half the country without us really understanding what's going on in any of those particular cities, and that's the concern, whereas by comparison if it arises in the context of a particular licence application you can have a debate about a particular licence and a particular study. Then finally at 335, paragraph 2.19 there's

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the Alcohol Management Plan and he makes some comments on that, and then his conclusions. I don't propose taking you through the rest of my submissions. Effectively, I've done that by actually taking you to the relevant aspects. My conclusion, I suppose, I don't have a conclusion because my summary sets that out, and I'll still have a closing and the final section simply sets out the relief which is the only thing I'm allowed to ask for, which is to have you ask, well firstly, have you find that Progressive did make a submission on the local alcohol policy and, secondly, that the elements appealed are unreasonable in light of the objective of the Act, and (inaudible 14:53:51) to send it back.

10 THE COURT:

Right, thank you. Is this an appropriate time for a few minutes break before we move on?

MR BRAGGINS:

Yes, I think that's probably spot on.

15 THE COURT:

Right, thank you.

COURT ADJOURNS: 2.54 PM

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AUDIO MISSING – STARTS AT 15:10:37 WITH DISCUSSIONS ALREADY IN PROGRESS

MR BRAGGINS:

- 5 ...clear out the opening submissions of Mr Thain, my friend Mr Young, and the police now in one hit and then get the witnesses going in. That's –

THE COURT:

Yes.

10 **MEMBER MOORHOUSE:**

You want to run it that way?

MR BRAGGINS:

I'm just trying to make everyone happy.

15 **THE COURT:**

Look, if that's your preference I'm comfortable with that, and then at least we get all the arguments out and then we go back and go through the evidence.

MR BRAGGINS:

- 20 Yes. I don't think – I mean, I think it's probably only going to take all of 10 minutes. Mr Thain's told me that he'll be about three, so it just seemed short, Your Honour.

THE COURT:

Okay. Why don't we do that then? Thank you. I thought that was the intent from this morning, so that's great.

25

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MR THAIN:

I can be brief because it seemed to me that at this point the only thing of any value is to just map out exactly what elements of the PLAP that Foodstuffs South Island is appealing against, so that you know where Foodstuffs South Island sits in the puzzle
 5 of the case, but I don't anticipate there's any value in me going back through all the material that my friend Mr Braggins has already gone through, much of which Foodstuffs relies on and will rely on when we come round to the end of this hearing. So firstly, just in terms of documents, I hope that the authority has as copy of Foodstuffs' notice of appeal?

10 **THE COURT:**

Got the notice of appeal, yes.

MR THAIN:

And so that means you will have...

15 **THE COURT:**

So we've got the notice of appeal and we've got the submissions of October 14 to the council but don't have any separate submissions?

MR THAIN:

20 That's right.

THE COURT:

Great.

MR THAIN:

25 That's exactly right. So that means you have all the documents there are.

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THE COURT:

Good, okay.

MR THAIN:

- 5 And so the first part of the case, the submission that was made by Foodstuffs on the draft lap –

THE COURT:

Yes.

10 **MR THAIN:**

You had that, so that's hurdle number one done for me.

THE COURT:

Good.

15 **MR THAIN:**

Hurdle number 2 is the only one there is, of course. I then have to persuade you that the two elements that Foodstuffs appeals against are unreasonable in light of the object of the act and the only two elements that are appealed against are as set out in paragraph 2 in the notice of appeal. You'll see that's the typewritten attachment to
20 the notice of appeal.

THE COURT:

Yes.

MR THAIN:

- 25 So there are just the two elements. They are the maximum trading hours for off-licence premises. That's the 9.00 am to 9.00 pm that's proposed in the PLAP, and

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then this issue around a proposal in the PLAP for a requirement that an applicant for an off-licence needs to front, at the time of the application, with a alcohol management plan.

THE COURT:

5 Yes.

MR THAIN:

If you've then got the PLAP itself in front of you.

THE COURT:

10 Yes.

MR THAIN:

Starting with the maximum trading hours, they sit in – you see the section that's numbered 5.2.1?

15 **THE COURT:**

Yes.

MR THAIN:

20 You'll see that there it's just to the right of where the top punch hole would go if you have –

THE COURT:

Yes.

25

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MR THAIN:

– yours punched. So that's the element that's appealed. The maximum trading hours for all off-licence premises in the Dunedin district shall not exceed the following: Monday to Sunday, 9.00 am to 9.00 pm. It is important for Foodstuffs' appeal that that is the element that's appealed. It's the whole of that element and there are several aspects to that. The first aspect being that it is all off-licences, so it's all types of premises, all premises, all off-licences. The second aspect is that it is all over the district. Another aspect is that it is every day of the week, and then there is the 9.00 am to 9.00 pm trading period. So Foodstuffs says that when you look at whether or not this element is unreasonable in light of the object of the Act, you've got to look at it in its entirety, this element.

1515

THE COURT:

So are you looking at – do you count that as four elements or five elements in terms of the all off licence premises?

MR THAIN:

It's one element.

THE COURT:

Yes.

MR THAIN:

And it is that element that is appealed.

THE COURT:

Yes.

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MR THAIN:

It has a number of aspects to that element.

THE COURT:

Yes.

5 **MR THAIN:**

And you must put all those aspects into the consideration when you determine whether the element is unreasonable.

THE COURT:

Thank you.

10 **MR THAIN:**

The second element that is appealed by Foodstuffs is down there on that same page just opposite the bottom of the two punches holes, if you've got your copy in a ring binder, "Alcohol Management Plan", and that particular aspect that is challenged is the first sentence in the second paragraph under the heading "Alcohol Management Plan". "All applications for licences," and this is in a section related to off licence premises of the PLAP, section 5.2 relates to off licence premises. "All applications for licences must be accompanied by an alcohol management plan." Foodstuffs says that is unreasonable in light of the object of the Act without even having to worry ourselves too much about the object of the Act, it's unreasonable because it's simply ultra (inaudible 15:16:53) the Act. The starting point for that is section 77 of the Act which sets out in an exclusive list what a local alcohol policy can contain. Section 77(1), "A local alcohol policy may include policies on all or any of the following matters related to licensing and no others. So it's an exclusive list and by the time you get to the bottom of that list you will not have found one that deals with what an applicant for a licence must provide with their application. So you simply can't do

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what the Dunedin City Council is proposing to do. The reason that local alcohol policies don't have to specify this, and indeed I imagine the reason why Parliament didn't allow local council to interfere here is because the Act specifies very clearly, precisely what must be provided with an application for a licence, and that's done by way of section 100, and then form 4, to the regulations, and then neither of those, "Is it required to provide an alcohol management plan?" So it can't be said that this element in the PLAP is a statement of what is already the law because it's not. So it can't be saved on that theory. It's just simply (inaudible 15:18:46) it should go. When it goes there will be some consequential changes required to the LAP. If you have a look on that page of the PLAP under 5.2.2 right between the two punch holes –

THE COURT:

Yes.

MR THAIN:

There's this provision, or proposed provision that my friend Mr Braggins referred you to the deal (inaudible 15:19:20) will apply conditions to all off licences issued or renewed that relate to, and he raises a concern about that mandatory language. But the particular point that I raise at this stage is simply that the last of the bullet points there, "Adherence to the alcohol management plan submitted with the application," well, that would disappear consequentially because there won't be a requirement for such a thing, and just so that it's all clear for the authority, over on the preceding page in the PLAP, that's page 12 in the middle of the page there, there's also a reference to alcohol management plan, the heading there. That's in the section that relates to on-licensed premises and the same concept is used there by the city council. Foodstuffs hasn't appealed it there because Foodstuff doesn't ever get engaged in on-licence applications but it's the same concept and seems to me the same would flow.

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THE COURT:

But you are not making a submission about –

MR THAIN:

- 5 Well, there's no need for me to do so and in fact, there's no jurisdiction, really, no standing for me to do so because Foodstuffs has not appealed the element as it relates to on-licence premises because Foodstuffs has no interest in that and Foodstuffs isn't interested in meddling for the sake of it. It only appeals where it matters to Foodstuffs. So the alcohol management plan part of Foodstuffs' appeal,
- 10 that element seems an easy one and there won't be anything more really that I will say about that when I come round to closing submissions at the end of this hearing because it is what it is. But the hours, therefore, is the much more interesting part of the appeal and as I've said, the case for Foodstuffs requires the Authority to look at the element in all its attributes, to look at how broad-ranging it is when considering
- 15 whether or not it's unreasonable in light of the object of the Act, but I imagine, and certainly as my friend Mr Braggins has opened for Progressive, there will inevitably be focus through the course of the evidence on the particular aspects of the element. Why is the element all-encompassing in terms of geographic coverage? Why is the element all-encompassing in terms of every type of off-licenced premises? And not
- 20 just every type of off-licenced premise but in every particular individual off-licenced premise? Why is it all-encompassing for every day of the week? And you'll hear evidence that shows what you would imagine anyway, that the particular types of alcohol-related harm that the council has had in mind when developing this PLAP occur far more on Friday night through to Saturday morning and Saturday night
- 25 through to Sunday morning than on any other days of the week. Indeed, it's not just the particular kinds of alcohol-related harm that the council has had regard to. It's all kinds of alcohol-related harm seem to spike at that period of the week. And yet, the

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element is broader than that. And then there'll be evidence that directs to why are we looking at 9.00 am to 9.00 pm? And it will be natural for the witnesses, as my friend Mr Braggins has made clear, the witnesses to look at the morning session and to also look at the evening session, rather than to look at what's left in between. It's natural to look at it that way, I guess, because this sort of starting point is, "What did we have in Dunedin before?" Well, what do we have now? And that's the national default hours, 7.00 am to 11.00 pm and they're being proposed anyway. The proposal is to truncate those on each end and end up with a bit in the middle, and I guess it's natural for the witnesses to look at each end as though they're separate but my submission is really, they must be looked at together. It's a change to allowing alcohol to be sold in off-licences only for a smaller window of time during a day. Start at the beginning of that day, and I won't now go through the evidence that you'll hear because you'll hear that and I imagine you're keener to hear it from the witnesses rather than from me but just so that you can see where Foodstuffs sees the really crucial parts of the evidence.

1525

In that morning time, the proposal by the council to squeeze the hours from the morning, from 7.00 am through 'til 9.00 am, there are a number of issues that arise. The first is that there's no statement by the council with the PLAP itself of any reason for that. Mr Braggins took you through the early pages, the executive summary and so on and precede the PLAP itself, and you'll recall that there is no explanation for the 9.00 am starting point for these maximum hours. The council hasn't given us one. That's important because the Authority, in the previous decisions in relation to PLAP appeals, has said that where a council states its reasons in the PLAP, it is those reasons which will form the starting point for considering whether or not the PLAP itself is unreasonable but in our case, for at least this aspect of the hours element, we have no statement of reasons. That, in itself, quite apart from what the Authority has said about that being the starting point, the lack of a statement of reasons there, in itself, starts to make one wonder how reasonable the decision was

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if a reason couldn't be stated. You'll hear evidence, I understand, from the council aimed at now trying to explain that 9 o'clock starting point and the evidence seems to be that it's not about targeting alcohol-related harm as defined in the Act at all. As you're well aware, alcohol-related harm, as it's set out in the object of the Act, the thing that we are to have the light on when considering this question in the appeal, is not just anything we don't like about the sale of alcohol. It's a specifically-defined type of harm being that type of harm that comes from the excessive or inappropriate consumption of alcohol, and as I understand it, the evidence for the council will be that the reason for that 9 o'clock starting time is not directed to any such alcohol-related harm minimisation. Instead, it's directed to just a general feeling that before schools open at 9 o'clock, it would be good if the off-licence premises were shut without any reference back to alcohol-related harm, and you heard me mistakenly there start by saying on-licence instead of off-licence, well, that's because this council saw fit to allow on-licences to be open before school starts in the morning. So it's okay for kids who might be walking somewhere through the non-residential parts of town to see people actually drinking before school but for some reason that's not explained, it's said to be not okay for children to see that supermarkets are open before school, and I say supermarkets there because this is an aspect of this element which bites only on supermarkets, as I understand it. The evidence from, or at least the understanding the council had at the time, was that the only off-licence premises that, in fact, open before 9.00 am are supermarkets. The reason for that's obvious, there's no demand, it seems, before 9 o'clock in the morning for people to just buy alcohol. The demand is for people who are buying a family shop, they're buying groceries and buying alcohol with that family shop.

1530

When I come to close once we've heard the actual evidence, and I'll hold my powder dry until then in case I've misunderstood what the council's evidence will be, but I anticipate that you'll hear me making submissions, the obvious ones you'll probably groan because they are so obvious.

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What can be gained from not having the supermarkets open before nine when they are open after three? They're open on Saturdays and Sundays. These children who somehow will, well I don't know because the council hasn't told us but something will happen if they see that supermarkets sell beer and wine. Well they're going to see that anyway. So the 9 o'clock hour doesn't achieve anything, and even if it achieved something it doesn't achieve a minimisation of alcohol related harm as defined by the Act. It achieves something else, and there's one more aspect to this part of the puzzle, and that's that, of course, this is always a balancing exercise. With any element in a PLAB it's not good enough for a council to describe an element. To write it down without first having some kind of consideration to what the implications of that might be on the other side of the ledger. What are the implications of the element for those people who wish to responsibly sell or purchase, or consume alcohol, and that's not me making that up, that's the authority's law coming right back from the Tasman case. The council must give consideration to what the implications will be on the other side of the ledger, and in this case the consideration that the council apparently gave to the other side of the 9.00 am ledger was simply misconceived. As I understand the evidence, and my friend Mr Braggins mentioned this briefly in his opening, the council simply wrongly read some information that had been provided to it in a submission on the DLAP by Progressive. So when I council purported to be weighing up the implications it wrongly considered that .5% of people by alcohol before 9.00 am in the morning. In fact, the statistic that Progressive provided was that .5% of all the alcohol purchased by the cohort of 18 to 24 years olds', that the council considered to be the problem people it's .5% of the alcohol that those problem people purchased was before seven till nine. So by misunderstanding that figure the council thought, "Oh, we don't need to worry about this. No one will be hurt, when in fact if they'd correctly understood the statistic they should've realised nothing will be gained. Hardly any of the troublesome people purchase any alcohol at all at that time of the morning and, of course, they've also

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got not a jot of evidence and even, not even a suggestion that those people then go on to cause alcohol related harm in the morning, or as a result of having purchased their alcohol at that time. The problem time is in the evening. So the council, by misunderstanding the data and it seems not bothering to get its own data on this point, it failed to weigh up the implications for responsible sellers and purchasers of alcohol and, again, that seems to me perhaps not the most interest part of the case from the point of view of the authority in terms of the part that's the hardest for you because in that morning it seems it's relatively simple, what's gone on, and I think the answer should be quite straight forward.

10 1535

The more complex part on this hour's element is the evening and all that it's worth me saying at this point about that really given you're yet to hear to evidence is that the test is the one that you'll be more familiar with than I am. You are obliged, of course, to look at the information that the council had. You're obliged to look at the element and you're obliged to determine as a reasonable bystander whether that element is unreasonable in light of the object of the Act. It's a broad analysis and, as I say, it's premature for me to try and direct that. At the moment you'll hear the evidence and then we can talk about that when we know exactly what that evidence actually is. Last, I think I probably told Mr Braggins I'd be three minutes, I've obviously been longer than three minutes, but you will be pleased to hear the very last thing I wish to mention just in these opening submissions, just in terms of a road map for issues that might crop up is that it is the issue of how an element might affect different types of licensee, and I know this is an issue for one of the appellants, and it's an issue that pops up in a couple of ways in the appeals before the authority, but it doesn't actually pop up in the most obvious way, the most direct way in relation to Foodstuffs' appeal against the hours, and that's because the current proposed element doesn't treat licensee differently on paper. So it's not a situation where the council has proposed an element that says, "Well, we're going to have one thing for this type of licensee and a different thing for another." You've got an example of that

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before you, the moratorium. The moratorium element specifically treats different licensees differently. Although it doesn't define those licensees who are exempt. It just says, "You're exempt if you are a high brow wine supplier," or your own brewery." So there's the more obvious, more direct, and I think what was envisaged

5 by the authority back in Tasman where it was said that if an element bites on different types of licensees, or different licensees differently, then it may be unreasonable. I've got a classic example of that on the moratorium. With the hours you've got a slightly more nuanced example of the same thing, because to the council's knowledge at the time it put forward that element, the off licence hours

10 element in the PLAP, it knew that the only licensees who would actually be affected by it are the supermarkets. So it's a slightly different part of it, a different way in which this is applied, but it will be an issue that will need to be addressed by the authority, and we can come back to it in detail in closing once you've heard the evidence. The only thing I will say on it at this point is just that it is an interesting

15 concept that this suggestion that a PLAP can or can't deal with licensees differently, but what is, it seems to me, important and unarguable is that the purpose of any PLAP element, any element in a LAP must be to deal not with the lowest common denominator, not with, not to set the bar to apply for the worst licensees, the most high risk types of premises. The most troublesome spots in town, the job of an

20 element in a PLAP and for that element to ever be reasonable, it seems to me, it must reflect the fact that it is setting the bar for the best licensee in the best least risky premises and in the safest part of town. Because an element in a PLAP sets something for hours that cannot be changed. Everyone is stuck with that and yet, of course, the DLC on any given licence application can go down from there. So the

25 district licensing committees are already empowered to deal with the troublesome areas where, for a particular reason, they need to narrow things, but they can't ever expand so an element in a PLAP, if it is to be reasonable, must appreciate that point. It's setting the top bar, the bar for the very best licensees.

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I don't have any witnesses to call for this hearing. You'll be pleased to hear that. I will seek to rely on much of the evidence that Progressive is calling in relation to the hours element that they also appeal, but don't wish to call any additional witnesses for Foodstuffs. The Foodstuff case relies, really, on what the council has done and what the council has not done, rather than anything about any particular details of people shopping the Foodstuffs stores. That's not the point. A case about PLAP elements should, at least in part, start from matters of principle and in this case, I say those matters of principle lead to the conclusion that the element is unreasonable. So unless you have any questions for me, that is the opening submission for Foodstuffs.

THE COURT:

No, thank you very much, that is good. Mr Young, did you want to make some opening comments in light of your submission?

MR YOUNG:

Well, Sir, I did file something on the 14th of November and –

THE COURT:

You did.

MR YOUNG:

– I assume you've got that?

THE COURT:

Yes.

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MR YOUNG:

And really, all Super Liquor and Independent are doing is maintaining a watching brief here that the significance of this case is not lost on them. We kept our appeals in so as to retain status but I'm not calling the evidence or actively advancing those
 5 appeals. Super Liquor and Independent will live with where the council got to but it understands the issues for Progressive and Foodstuffs and whatever happens, if elements are to be sent back, it seeks to ensure that the whole element is sent back so that the council can look broadly at off-licence issues based on your decision. So that's it, Sir. I may cross-examine – you never give up a chance to ask Mr Foster
 10 some questions, Sir, so I might cross-examine Mr Foster briefly but other than that, I don't think I'll be participating, perhaps in opposing submissions.

MEMBER MOORHEAD:

Mr Young, just in terms of summarising your position, would you say you are going to abide the decision of the Authority? You are not withdrawing, obviously?
 15

MR YOUNG:

Yes, we would. The only thing I might come back to you on in closing is what you might send back in whole or in part, and I've made that submission about section 83 that the whole element will go in part. But yes, we'd abide the decision of the
 20 Authority.

MEMBER MOORHEAD:

I am just wondering in terms of writing a decision, whether we actually need to address your appeal or not?

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THE COURT:

No, I don't think you do. I don't think you need to rely on it for relief I don't think you need to address it in the sense of us pursuing that relief so abiding the decision of the Authority is perhaps the best way to capture that.

5 THE COURT:

And in terms of that whole or part, I think Mr Thain has made the same submission in terms of submitting, if I have understood that correctly?

MR THAIN:

That's correct.

10 MR YOUNG:

Thankfully, we seem thus far to be on the same page amongst counsel so far. Thank you, Sir.

THE COURT:

And we have got Dunedin Hospitality and the police, did you want to make
15 submissions now or did you want to wait? I know the police, you made some initial comments?

SERGEANT PANTING:

Yes, so our submissions have been submitted, I believe. That's by my partner in
crime. It's very succinct and focused on quite a different aspect compared to what,
20 obviously, the off-licence industry has and so it would be at your discretion whether or not you feel it's beneficial to be now or later in the piece.

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THE COURT:

Well, it is really up to you in terms of this is your appeal so if you wanted to say something now or we can come to it when we deal with Progressive and Foodstuffs?

5 SERGEANT PANTING:

We may as well put it in the mix now, then.

THE COURT:

Great. And then I will ask the same question of Dunedin Hospitality.

SERGEANT PANTING:

10 As the submission's already before you, I won't overindulge and read my way the full way through it but I'll draw us to the effective points of the police's opposition to this, and that will be directed straight to section 5.1.1 in relation to the maximum trading hours in the PLAP. The serious concerns that the police have with this is that it doesn't go with the Act, but actually goes against it and may, in fact, increase harm
15 caused by the excessive consumption of alcohol. The primary issue that we've raised throughout this is that by creating this entertainment licence, that there is a risk of a honey-potting syndrome where people will agglomerate or hang around the venues which are given that discretionary extra hour from 3.00 am to 4.00 am and as a result, will see a marked increase in harm around those areas. We accept that the
20 one-way door is beneficial, however, we've got issues with the fact of the live entertainment and the definition of it not being defined. Within the nature of that, it's very difficult to ascertain what venues will be able to actually ascertain this classification for the licence. That, as is raised within the submission, is a – point 16, is a DJ who has invested a prolonged period of time in training deemed as live
25 entertainment, or is a poet, or is it an acoustical guitarist? And so within us, if it was broadened to a DJ, that would be most of the Octagon from that three to four hour window would, theoretically, be able to apply for this, which we believe goes against

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the objective of what the council and the police have submitted earlier. Beyond that, there is also a note within there about the requirements of the door charge but no direction about the value of that. If it's a door charge for a concert, that makes sense. It's \$50, it's quite a high fee, but if it's a poet in a corner and the mandate is actually selling alcohol, then a 50 cent cover charge would still represent a cover charge but we just don't have any understanding about what is presented there. Within this theme today when I turned up to work, I straight away received an email in which there supports this philosophy that we're talking about from one of my colleagues who, in the weekend, had been using a non-alcohol venue but with the exact same effect. The Night 'n Day at 4.15, again, people agglomerate there because it's open late at the end of all the other licensed premises and fights currently occur at that location. We just perceive this current entertainment aspect, I guess, exaggerating this current problem and it's the only area we appeal on. The rest of the LAP we will happily run with and in six years' time, provide further data to try and work on it.

THE COURT:

Great, thank you.

SERGEANT PANTING:

Any questions?

MEMBER MOORHEAD:

Just one comment, sorry, Sergeant. You query the door charge situation but then you have actually given examples yourself of how that might actually differ, depending on what the entertainment was.

SERGEANT PANTING

If –

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MEMBER MOORHEAD:

So, I mean, is it really realistic to actually try and specify a particular restriction there?

5 SERGEANT PANTING:

I believe if there were definitions, clearer definitions about what that live entertainment was, that would then automatically determine the door charge component or is the door charge component required by proxy? I think the aspect of having the door charge is designed to make them believe that they're not there for drinking, they're there for the entertainment and that, from reading through it, is the perceived intention of it but it's just still not clear and we believe it's open to sort of very subjective interpretation.

MEMBER MOORHEAD:

15 Are these not things that the applicant is being put on notice, they have to put in their application and then it's a question for the DLC to assess on a case by case basis as to what's being applied for?

SERGEANT PANTING:

20 Potentially, and – however, from our line – sorry, a level playing field of 3.00 am would just mitigate a lot of these problems so even if there was an entertainment licence, then having it closing at the same time as the other competitors to make it, reducing that honey-pot effect I think would be the reason for us raising it in this manner.

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MEMBER MOORHEAD:

So really, the police position is you want blanket 3.00 am closing?

SERGEANT PANTING:

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Yes, you are reading between these grey lines very clearly.

MEMBER MOORHEAD:

Thank you.

5 MEMBER MILLER:

You referred in your, in the grounds to the number of premises would likely be small. Would you like to just quantify for me the word “small”? Because I don’t see it in...

1550

SERGEANT PANTING:

- 10 Yeah. I guess currently the licences which tend to get these are the strip clubs, which there’s relatively one strip club, but then it’s very hard for us to actually physically quantify “small”. At the moment there’s a couple of venues which I would foresee with a DJ component looking at as an option, so we’re looking at two or three venues. It’s not – if you apply it directly like that then there shouldn’t be many.
- 15 However, with a clear definition it could broadened and we could end up with more venues opening, so again it’s very difficult to discern that without.

THE COURT:

Mr Newcombe. Look, this is your opportunity and your choice as to whether or not you want to make an opening submission now or as we go.

20

MR NEWCOMBE:

Yeah, it make sense, (inaudible 15:51:03) following on from the police, so –

THE COURT:

Great.

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MR NEWCOMBE:

– it's probably good timing.

THE COURT:

Thank you. And are you intending, if you could advise as well if you're intending to
5 call any evidence?

MR NEWCOMBE:

No. No further evidence, no.

THE COURT:

10 No? Okay, good, that helps us. Thank you.

MR NEWCOMBE:

So yeah, we were just relying on our initial grounds of the submission in our appeal.

THE COURT:

15 Yes.

MR NEWCOMBE:

And we're pretty much filing the same line as the police here. So it's quite a specific
point, I guess, about the 4.00 am entertainment premises licence essentially being a
20 new type of licence, and this was just introduced at the PLAP stage of the process
and there wasn't any discussion about this earlier. So this is the first time we've had
to address it. So we're coming from a licensed on-premise perspective, and I guess
our issue with this type of licence is that it's unreasonable in the light of the object of
the Act. I guess we've gone through sort of what's being expected from this licensed
25 premise that they have to trade from 5.00 pm or later. They have to have a cover
charge, but that's not defined and they can trade until 4.00 am. It doesn't say what

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time the cover charge has to cover, whether that's the whole time that they're open or just specific times of the day and that they have to have entertainment on, so I guess we're coving the same ground as the police there, but I guess no part of this policy for creating this new type of licence addresses either part of the object of the Act, and then, I guess, there isn't any evidence to suggest that these types of licence cause less alcohol-related harm than every other type of on-licence, so it gives no regard whatsoever to the proportion of alcohol-related harm that this trading is likely to cause. It places no additional conditions to encourage responsible and safe alcohol consumption and it gives no regard to the compliance history of trading premises, so as it stands in the PLAP, anybody can apply under these grounds and I agree with the police that potentially these businesses that might be marginal on when they trade, might want to convert themselves into this type of premise in addition, so they get the advantage, the trading advantage, over other licensed premises. So I guess I've commented on the one-way door as well. It really just, in regards to this entertainment premise. Otherwise we don't have an issue with the 2C one-way door, it's just that it will open a whole another set of issues with the honey pot effect that these later trading premises will have. Essentially you can, it'll also have an economic disadvantage on the other traditional licensed on-premise where people will have, if they want to continue their evening on until after 3.00 am they will have to exit other premises and get into these later trading premises even earlier to meet with the one-way door policy. So it's going to have a negative economic impact on those other licensed premises. So yes, this new proposed entertainment premises liquor licence doesn't address the object of the Act and minimise alcohol-related harm, and potential consequences increase alcohol-related harm, and there's a significant unintended economic impact on established businesses, and these issues are amplified with a 2.30 one-way door policy. I guess that's in essence it's the same sort of arguments the police have got.

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THE COURT:

So, can I just ask just a question on that? Sorry. In terms of the one way door policy, if I heard you correctly you're, because I think you said you didn't have a concern around the 2.30 with a kind of a honey pot effect. Is that, I mean you're still,
 5 you're appealing on that ground?

MR NEWCOMBE:

Yes so, just that with 3 o'clock blanket closing, if you like, I don't, I think that the intention of the one way door at 2.30, while I don't necessarily agree on it, it's going to have minimal economic impact of licensees, so just with 3 o'clock blanket closing
 10 and 2.30 one way door, I don't have an issue. If we were to introduce a new type of entertainment premises that are trading until 4 o'clock, then the 2.30 one way door policy becomes an issue for not just the 4 o'clock licences but also the 3 o'clock one.

THE COURT:

So is it fair to say it's the combination of those two rather than – I'm trying to be clear
 15 in my mind is whether you're finding the one way door policy in and of itself unreasonable?

MR NEWCOMBE:

No, that it – only in the scenario that we have if a 4.00 am one way – entertainment premises.

20 THE COURT:

So it's in conjunction with that?

MR NEWCOMBE:

In conjunction, yes.

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THE COURT:

Okay. Yes.

MR NEWCOMBE:

That's right.

5 **THE COURT:**

Anything else. Any questions?

MEMBER MOORHEAD:

I'm not quite sure how you say it's going to affect premises that close at 3.00 am if there's a one way door and the entertainment type licence?

10 **MR NEWCOMBE:**

Sure, so I think that there's, this – there is a limited number of premises in the city that actually trade probably even till 3 o'clock. I think you've raised some. There's quite a limited sort of market, but of that number there are right now quite a few that trade past 3 o'clock and see the economic advantage in doing that. So there's still a
 15 reasonable large number of people out at that time of the day. Now, if they were wanting to continue to party or do what they're going to – drinking and see entertainment after 3 o'clock then they're going to need to make sure that there in one of these entertainment premises prior to 2.30. So that's going to increase demand on those premises. So what ends up happening is that people will leave the
 20 premises that are closing at 3.00. They'll leave those premises earlier and earlier and earlier to make sure that they get in to these 4 o'clock closing premises because if they're stuck in a queue at 2.30 then they're not going to be allowed in. So therefore there's an, I mean, the 3 o'clock closing premises are likely to have an economic impact for their last hour or so of trade.

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MEMBER MOORHEAD:

So that's the concern for you is if that scenario plays out you see your customers leaving at 2 o'clock.

MR NEWCOMBE:

5 That's right. Yep, yep.

MEMBER MOORHEAD:

Thank you.

THE COURT:

And I'm still just struggling trying to get a sense of the scale of this. As it stands right
 10 now how many premises current in existence, do you believe would be applying for such a licence given the requirement that they cannot trade before 5.00 pm?

MR NEWCOMBE:

That, I mean, that's a bit of a tough one, but you can think of, as you say, there's probably, I can think of, sort of, three or four that would almost, sort of, fit into that.
 15 So it would be pretty easy conversion. But then there's several others as well, including a licensed premise that we have that it might make economic sense to make a decision to that currently starts trading at 4 o'clock, make a decision to change our trading pattern to fit and comply with that entertainment category. There might be an economic advantage to doing that because we become one of the few
 20 that have the advantage of trading for that extra hour, and there doesn't seem to be any reason for that, for the distinction between, for instance, our other licensed premise which would certainly only fit into the 3 o'clock. There doesn't seem to be any other reason. For all the other intents and purposes these, a lot of these premises that are trading that late at night, they all have entertainment on, but very
 25 few of them ever have cover charges, but it would be very easy for them just to start

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charge a nominal cover charge. But I don't – I can't think of any licensed premise in Dunedin that currently trades past probably 2 o'clock that doesn't have entertainment on. But the fact that they trade during the day and essentially a restaurant environment during the day and earlier part of the evenings means that they wouldn't be eligible for this.

1600

So it's kind of like you're punishing them for, I guess, in other aspects of the Act, they're encourage to provide food and, you know, and all those other sort of services that go around it but then if we do that for these entertainment premises, if we try and encourage them to foster that side of the business, they no longer qualify for the 4.00 am so it would sort of, kind of counterintuitive to creating a model of broader spectrum of hospitality rather than just getting them in to listen to a DJ and being able to drink 'til 4 o'clock in the morning. It starts to get a bit more philosophical then, not really on the point.

15 THE COURT:

Mr Braggins, we are at 4 o'clock and I guess we have got another hour in terms of hearing some evidence so if you wanted to start into that, but if you think you are going to be unduly interrupted in the middle of that...

MR BRAGGINS:

20 Yeah, we should be done with our lead today.

MR BRAGGINS CALLS

NATALIE DIANNE HAMPSON (AFFIRMED)

Q. Can you please state your full name for the Authority?

A. Natalie Dianne Hampson.

25 Q. And you're an associate director, consultant at Market Economics?

A. Yes, I am.

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Q. And did you prepare a statement of evidence dated 21 September 2016?

A. Yes.

Q. And did you also prepare a rebuttal statement of evidence dated 14 November 2016?

5 A. I did.

Q. Are statements in those briefs of evidence true and correct to the best of your knowledge?

A. They are.

10 Q. And I recall your rebuttal statement misses out the reference to the expert code of conduct. Can I just confirm that your rebuttal statement also complies with the High Court code of conduct for expert witnesses?

A. Yes, it does.

MR BRAGGINS:

15 Your Honour, presumably, in terms of order for cross-examination, the council aren't...

THE COURT:

I wonder if you could ask your witnesses just to read her brief, just in light of the fact that – I am sorry about that.

WITNESS:

20 That's okay.

THE COURT:

And then we will lead the order.

MR BRAGGINS:

Sorry, start reading from the beginning of the brief?

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THE COURT:

I think you have taken us through the qualifications so if you work – we are in your hands, but I think...

MR BRAGGINS:

5 Okay. Sorry, you caught me off –

THE COURT:

I am sorry about that, it's –

MR BRAGGINS:

– I assumed that we were going to be taken the briefs as read.

10 **THE COURT:**

– just to make sure that we're on the same page.

EXAMINATION CONTINUES: MR BRAGGINS

Q. Can you perhaps then start reading from section 2 of your?

WITNESS READS BRIEF OF EVIDENCE

15 A. So the purpose of my evidence was really to provide some contextual analysis that I felt that was absent, given that there was some local data, so I've covered all aspects. So section 2, location and density of licences in Dunedin. Annual liquor licence data has been supplied by the council and it describes licences as at the year end June 30th for the years 2012 through to 2016. In
20 summary, the council supplied that data in Excel format. It did not contain any coordinates to allow me to map that. They provided another file which was 2016 licences that did have coordinates. Through a process of merging those two files, I managed to assign coordinates to many of the licences in the time series dataset and then I manually geo-coded, or found the coordinate, of the

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balance of the licences, and with that information, I was then able to map the licences using GIS software. And having the ability to map them has allowed me to do an analysis identifying which licences fall within the moratorium and which fall without, so that's just a summary of that first section. So taking to paragraph 2.6, graph 1 shows the count of liquor licenses and each licence type and overall in Dunedin city between 2012 and 16. Total licences have decreased from 424 in 2012 down to 388 presently. This is driven mostly by the decrease in off-licences. Off-licences have decreased from 94 in 2012 down to 72 presently, which equates to a decrease of 22 licences or 23%. So currently, off-licences account for 19% of total licences in Dunedin. On-licences have shown only a slight reduction, so a reduction of five in quantum terms or minus 2% over time, and they currently account for 60% of total licences in the district. Club licences account for 22% of licences currently and they have decreased about 10% over that time period. So in map 1, this shows the licences by type in the main urban area, Dunedin city. So I did map the full extent of the district, I've just zoomed in to show you where the majority of those licences sit. Paragraph 2.8, graph 2 shows the count of liquor licences in six prominent licence categories in Dunedin city within that time period. The number of on-licence restaurants, cafés and taverns is high relative to the number of off-licence bottle stores, grocery stores and supermarkets. Since 2012, on-licence restaurants have been increasing and on-licence taverns have been decreasing. The remaining licence categories in this group have shown little net change in the past five years, and I've provided a full breakdown of the licences by type and category in appendix 1. So as you can see in graph 2, the top line in 2016 is the licence category with the highest number of licences and that is the on-licence restaurants which has been a little undulating but generally increasing over time. The green line is the taverns which have been generally decreasing, and the rest have been relatively stable with minor variation over time. So paragraph 2.9, in 2016,

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licences in the proposed moratorium area accounted for 31% of total Dunedin licences, and this year has been steady since 2012. The moratorium area accounts for 43% of the city's on-licences, 18% of the city's off-licences and 9% of the city's club licences. So map 2 shows licences by type in the vicinity of the proposed moratorium area and this map also shows the mesh block-defined boundary of the moratorium area underpinning my analysis. I just will clarify that I've defined that following mesh block boundaries as very similar to the actual boundary of the moratorium. So graph 3 shows the count of liquor licences in each licence type and overall inside the moratorium between 2012 and 16. Total licences have shown a small decrease from 133 down to 120 presently, and this is driven mostly by a decrease in on-licences. So on-licences within the moratorium have decreased from 109 down to 99, which equates to a decrease of 9%. Currently, on-licences account for 83% of the total licences in the moratorium area. Off-licences have shown little change, minus two, or so a change of two licences or a minus 13% over time. They currently account for 11% of total licences in the moratorium, and club licences a corresponding 7%. So graph 3 just highlights the dominance of on-licences within the moratorium area, with the off-licences in green accounting for 11%. Paragraph 2.12, graph 4 shows the count of liquor licences in six prominent licence areas in the moratorium area, so this graph is the same as the one I showed you for the total district. So on-licence restaurants, cafés and taverns, again, dominate the licensed premises, and off-licence grocery stores, of which there are one, supermarkets two, they make up a very small share of the total and since 2012, on-licensed restaurants have shown variation each year but still a small net increase. On-licence taverns have grown slightly and decreased again with no real net change in five years, and on-licence cafés have declined slightly, so the remaining licence categories in this group, ie the off-licences, have shown little net change in the past five years. 2.13, I have

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considered the change in licence numbers relative to population change in the city overall and within the moratorium area.

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5 An increase in population per licence equates to a reduction in outlet density when measured according to a population ratio. In order to analyse changes each year I've relied on Stats New Zealand annual population estimates, including the extrapolation out to 2016. The population of the moratorium area is approximate only in that the estimate data is limited to census area units and not mesh blocks, so I've identified three CRUs that cover the moratorium area

10 although slightly wider in extent and I just clarify that to calculate the population of the rest of the district, I've just simply taken the rest of the CRUs excluding those three moratorium ones. Graph 5 shows the ratio of estimated population to total licences in each year and location. It shows that licence density, when measured according to a population ratio is four times lower outside the

15 moratorium area than inside it. It is, however, important to recognise that the moratorium area includes part of the CBD and it therefore contains a disproportionate share of licensed premises as the CBD serves a city-wide hospitality and employment role. Of more relevance is the trend in density over time. Graph 5 shows that the total Dunedin population is growing while

20 licences are decreasing. This means that overall the density of licences city-wide is decreasing. This is mainly occurring outside the moratorium area where the ratio of population per licence has increased from 383 people to an estimate 426 over that time period. Inside the moratorium area the density of licences has been relatively stable over the past five years, so no real change

25 in the density of licences. Graph 6 shows the ratio of estimated population to total on-licences in each year and location, so from here I just, having covered total licences I look specifically at the density of on-licences using the same method. It shows that licence density when measured according to a population ratio is approximately seven times lower outside the moratorium

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area than inside it. Again the hospitality role of the CBD, which is partially covered by the moratorium, is strongly influencing these ratios. Graph 6 shows that there has been little net change in the density of on-licences city-wide in the past five years. That is, the ratio of population per on-licence has remained relatively constant. Graph 7 shows the ratio of estimated population per total off-licences. It shows that licence density, when measured in the same way, is approximately two times lower outside the moratorium area than inside it. Graph 7 shows that the density of off-licences city wide is decreasing, and this is mainly occurring outside the moratorium area where the ratio of population per licence, per off-licence, has increased from 1410 to an estimated 1933. Inside the moratorium the density of off-licences has been decreasing slightly over the past five years. I think that's relevant considering the concerns about an increase in density. The ratio of main brand supermarkets per capita. On a related matter, I have considered the ratio of main brand supermarkets per capita examine whether Dunedin is under or over-supplied relative to the national average, and for this analysis I have calculated the number of main brand supermarkets in each TA in 2016, and compared that with the 2013 usually resident population. I consider the main brand supermarkets to be full service stores falling under the Countdown, Fresh Choice, Super Value, New World and Pak'nSave brands, and based on my estimates there are 434 of those stores currently operating in New Zealand, serving a population of 4.429 million. A summary of my analysis is shown in the graph in appendix 3, which while this is a very simplistic analysis it does not fully demonstrate the spacial relationships between stores and the resident and non-resident market, including the role of large grocery stores and serving demand. It does show that on average across New Zealand there are 10,200 people for every main brand supermarket, and by comparison, in Dunedin City, there are 11,220 people for every main brand store. So this suggests that the density of main brand stores is lower than the

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New Zealand average, and there are 50 TAs in New Zealand which have a higher count of main brand supermarkets relative to the size of the population in those TAs. So when smaller supermarkets, not main brand, and larger grocery stores like Four Squares and Night n Day are included, Dunedin has a similar ratio of population per store to the New Zealand average, and this is because there is a slight oversupply of smaller supermarkets and large grocery stores relative to the New Zealand average, which offsets slight under supply of main brand supermarkets in the Dunedin market. So there's 47 TAs at are higher combined count supermarkets and grocery stores relative to the size of the population in those TAs, and that's just to put Dunedin in perspective.

1615

So the key findings of that section in that analysis are that the number of licence supermarkets and grocery stores in Dunedin has been reasonably statistic in recent years and there has been a slight reduction in the number of licence grocery stores since 2012. I understand that this may be due to dairies no longer being able to sell under the Act, and based on the New Zealand average store to population ratios the Dunedin market is slightly undersupplied with the regards to main brand supermarkets. Population growth in the city will further exacerbate that undersupply. There are significantly more on licences in the moratorium area than off licences, and the number of off licences in the moratorium area has decreased slightly over the past five years, albeit the number of total licences involved is small. The density of total licences inside the moratorium area is higher per capita than in the rest of the city but this is expected given the role of the CBD in serving city demand, particularly for entertainment and hospitality, and accommodating a large workforce. The density of total on licences inside the moratorium area is seven times that than the rest of the city, while the density of total off licences is two times that of the rest of the city. The density of total on licences per capita inside the moratorium area has been stable between 2012 and 2016, and the density of

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total off licences per capita has decreased slightly over time. I turn now to the analysis I did of data supplied by the police. This section describes an analysis that measures the change in the number of alcohol related incidents, or ARI, over time in the Dunedin city TA. The data used for this analysis is identified as card data and it corresponds to the data included in the intelligence report supplied by the police entitled "Dunedin Liquor Ban Areas" released in 18th July. It also analyses car data, although, only the data falling within the current and proposed liquor ban areas and not the total TA. So definitions and other relevant information about the car data can be found in that intelligence report. The data relates to those codes considered as alcohol related. Each incident relates to a call for service received by police, and it covers a period from the 1st of January 2011 to the last day of December 2015. So each incident is recorded by time, date, location, and the type of incident offence. The extent of the data is the total Dunedin City TA, and I've appended a number of columns to assist with my analysis. I note that the data is based on call information and that the data in and particular occurrence may or may not involve alcohol. For example I accept that events where the police are called to deal with an incident may often involve alcohol but any particular situation might not, and therefore some care does need to be taken when looking at specific numbers. Rather, it is the trends and comparisons that provide useful information. So graph 8 shows that the count of ARI in Dunedin overall has fluctuated slightly each year and the count has decreased in two consecutive years following a peak in 2013. Given the short time series care must be taken in inferring a trend of declining incidence. Overall, however, there were approximately 4840 incident in 2011 and there were slightly less in 2015 at 4500. So, in short, we are seeing an average of 13 incidents a day in 2011 down to 12 incidents a day in 2012. Map 3 shows a location of total incidents in the main urban extent of Dunedin City in 2011, and map 4 shows the same incidents in 2015. So both maps show the ARI are not limited to the

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CBD and are concentrated in a number of urban areas. It takes a little while to notice the changes in these maps but there are some evident changes just visually. I think if you stare at those long enough you can see them. If you wish me to point them out, I'm not very familiar with the names of some of the places, but there are definitely some areas where you can see the decline that has occurred, and the only area where it's particularly evident where there are more, given the style of the map that I've selected, is – I don't know what that area's called.

1620

10 THE COURT:

That is all right. We will start over for a bit and...

EXAMINATION CONTINUES: MR BRAGGINS

A. Yeah, cool. I think you'll see them. And I just point out there's a number of ways I could've mapped this data and they all have different merits. I think – I chose this one because it just highlights – sometimes when you look at the concentration in the mesh block level, the size of the mesh block can be a little distorting in drawing your attention to areas and I just felt that this was a more balanced view. So graph 9 shows the count of incidents in Dunedin city by type and year, and it shows that disorder incidents significantly outweigh other incidents. So disorder incidents have, however, been declining steadily since 2011 and 2015. In 2015, they accounted for 54% of all incidents in the city and the next most prominent incident is intimidation and threats, from 16%. So map 5 shows the location of total disorder incidents between 2011 and 15, and then I've shown map 6 is just a zoomed-in view of where I got that same map, which shows more the extent of the proposed moratorium area. I think one of the interesting things about that map is that the moratorium is focused from the CBD north but there is a considerable concentration, or an equal

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concentration, of that disorder south of the CBD which is excluded. Graph 10 shows the count of incidents in Dunedin city by day of the week. I know Mr Braggins has taken you through this and as he's explained, I've classified the days from an 8.00 am start to – 8.00 am in the morning to 8.00 am the following day, and it shows that incidents are lowest on Sundays, that they rise steadily during the week to a peak on Saturday before dropping sharply again on Sunday. The Friday period or the Friday evening period accounts for 19% of ARI on average during that period. In contrast, the 8.00 am Saturday to 8.00 am Sunday accounts for 32%, so definitely the dominant share, Sundays dropping right down to just 8% of the average week, and this weekly trend is driven by disorder events or incidents, which show the same steady weekly profile. Drunk custody, detox centre and minor assaults show a similar build-up to an 8.00 am Saturday to 8.00 am Sunday peak but other ARI generally shows similar levels irrespective of the day of the week. My analysis of alcohol-related incidents by month shows that, on average over the 2011 to 15 period, March accounts for slightly above average share of annual incidents at 10%, and all other months vary between 7 to 9%. This monthly trend is driven by disorder incidents which show the same mark peak profile and other types of alcohol-related incidents are generally even pattern throughout the year. I've also analysed the car data by hour of day. Again, Mr Braggins has shown you this graph, I believe, in his summary. It shows a gradual increase in incidents leading up to 4.00 to 5.00 pm, followed by a small reduction before increasing steadily to a peak around 11.00 pm and midnight, and after midnight, the number of ARI decreases rapidly to a daily low between 7.00 and 8.00 am, and just to clarify that that graph is an average across all days. So again, this hourly trend is driven by disorder incidents which show the same profile. Minor incidents show a slight increase in the early evening and late at night. Intimidation threats are relatively high during the day but they decline after 6.00 pm, and drunk custody, detox peak at about 2.00 am, so they have a

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later peak. So just looking at incidents within the moratorium area, I have included a summary of incidents for the total five year period by location inside the moratorium and the rest of the city in appendix 4. In summary, it shows that there were a total of 6540 incidents inside the moratorium area between those years, compared to 17,050 in the rest of the city during that period, and graph 12 provides a summary by type of incident. So the pink area in each bar is the proportion of those incidents that fall within the moratorium or occurred in the moratorium, and the blue is the ones that occurred outside in the rest of the city. You can also see from this graph which of the alcohol-related incidents are more significant in quantum terms and which are fairly inconsequential.

1625

Not saying that they're any less important, just that they don't account for a large proportion of the total. So the moratorium area accounts for 28% of total alcohol-related incidents on average. It accounts for an above average share of liquor offences, unlawful assembly and crime against personal privacy incidents, but all of those are insignificant in terms of quantum, and the moratorium accounts for a below average share of intimidation threats, harassment and breach of the peace incidents, of which only intimidation threats are significant in quantum. So an average of 31% of disorder incidents occurred in the moratorium area. Graph 13 shows the change in ARI in the moratorium and the rest of the city. It shows that the moratorium has experienced a slow but steady decline in alcohol-related incidents between 2011 and 2015. The trend is more consistent than in the rest of the city. Overall, the annual count of ARI in the moratorium has decreased by 223 incidents between 2011 and 2015, so that's a reduction of 16%. In contrast, the annual count of ARI in the rest of the city has decreased by 3%. Graph 14, which is on the following page, compares the total count of ARI occurring inside the moratorium area by hour of day, and the data shows the average hourly trend for 2012 compared to 2013, so before and after the enactment. It

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also is limited to ARI occurring on Friday, Saturday or Sunday in those years, just to focus on those peak days. Noticeable differences between these two profiles include a reduction in 2013 between 10.00 and 11.00 am, a later but smaller peak of ARI in the early evening, ie the minor evening peak occurred between 5.00 to 6.00 in 2013 compared to 4.00 to 5.00 in 2012. ARI spread over a longer time period in the late night, early morning peak in 2013 compared to a more concentrated peak in 2012. So the findings from that analysis of the car data that ARI are spread throughout the Dunedin urban area. Overall, the moratorium area accounts for less than a third of all incidents in the city. There is a peak in disorder incidents in March. Total ARI occur more frequently during the period 8.00 am Saturday to Sunday and between 11.00 pm and 3.00 am, and this is primarily driven by disorder incidents. There has been a noticeable decline in disorder incidents since 2011, the most significant alcohol-related incident in Dunedin in quantum terms. Generally, other types of ARI have shown less variation by month, day, day of week or hour of day, and ARI have decreased more in quantum and percentage terms inside the moratorium area than in the rest of the city. So the third analysis that I've included for you is a discussion about the report that HPA produced, and Mr Braggins also introduced this. This is a North Island study, you may recall, that we have looked at to see if there's any implications or inferences that can be drawn for Dunedin. So this is a 2013 report by the HPA called the *Locally Specific Impacts of Alcohol Outlet Density in the North Island of New Zealand*, and it looked at trends between 2006 and 11. The research aimed to explore the relationship between the density of supermarket and grocery stores and other off-licences, so predominantly bottle stores, bars and nightclubs and other on-licences, and eight different incidents of social harm. The HPA research relied on data at the census area unit between 2006 and 11. The methodology does not provide evidence that particular incidents are linked to the purchase of alcohol from any particular licence type or that an

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increase in incidents was specifically related to the increase in density of any particular licence type. It simply examines trends in licence numbers of time and the trends in social harm incidents at a suburb level and looks for statistical relationships between those trends. Any relationships established by the research do not establish cause and effect. The HPA research is nevertheless helpful in looking at overall geographic trends in a New Zealand context. Along with the research report, the HPA released a GIS file that contained the data and just to summarise the following two paragraphs, I've taken that data, I've replicated the methodology and that has allowed me to reproduce the maps in the research report and I've looked at these maps for supermarket and grocery stores and the other licence types for the patterns and trends across the whole of the North Island.

1630

So if I jump to perhaps paragraph 4.7. Overall, this particular research shows that all of the parameter estimates vary greatly across the North Island and are statistically significant in some areas and statistically insignificant in others. The relationship between social harm and additional supermarket and grocery stores is highly variable. So, map 7 shows what the research looks like when mapped, and this map shows the inferred relationship between one additional supermarket, or grocery store, and the associated increase, or decrease, in the case of the negative relationship in drug and alcohol offences. So this just shows one of the offences out of the eight that the research covered. Research is limited to the North Island and so cannot be directly relied upon for Dunedin City. However, I have considered the results for the supermarket and grocery store density in two comparable cities. So Hamilton City and Palmerston North, and I think you'll recall Mr Braggins said that I selected these because they have a similar population, a similar tertiary age group within their population mix.

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So I've compared the research results for all social harms associated with an increase in one supermarket or grocery store for these two North Island cities, and while there is no certainty that the results shown in these two cities would be the same for Dunedin if they were modelled, the research reveals that of all social harms both cities have statistically insignificant relationships. This means that the results were not statistically significant enough to confirm a positive or negative relationship exists between an increase in supermarket and grocery density, and social harm in Hamilton and Palmerston North. So this research just highlights that it should not be assumed that increased outlet density for supermarkets or grocery stores is associated with increased alcohol related harm, and the careful analysis of local conditions is required. This next section of my evidence covered in analysis focussed on the location of supermarkets and social deprivation. So the higher density of off licensed premises in lower socio economic neighbourhoods is often sighted in academic research has been associated with higher levels of alcohol related harm in those neighbourhoods. I have not examined such research in any detail and cannot comment specifically on that topic. However, I have been asked to examine the proximity of all main brand supermarkets to areas of higher and lower deprivation throughout New Zealand using the Statistics New Zealand Deprivation Index from 2013. The following describes that analysis and my findings. The Social Deprivation Index is an effective statistical tool to assess whether main brand supermarkets tend to aggregate in lower social economic neighbourhoods. Lower social economic neighbourhoods are also known as areas of higher deprivation and some other studies use this term "Interchangeable". Deprivation is scored on an ordinal scale from one to 10, where one represents the areas with the least deprivation and 10 areas with the most deprivation. Statistics New Zealand have calculated the average score that represents each mesh lock in New Zealand, and at a national level there are broadly equal numbers of

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people measured according to the 2013 population in each of the 10 categories. The question of proximity is not straight forward because supermarkets are in effect a point location while socio economic status relates to mesh blocks rather than points. This means that proximity will depend on whichever distance is selected to define proximity, and for this assessment I've examined the incidence of areas of lower social economic status and high social deprivation within three distance bands of a main brand supermarket. So looking at half a kilometre, one kilometre and two kilometres, and I've provided a discussion of relevant issues associated with this analysis in my appendix 6, and this includes an overview of the analysis at a national level. So in terms of interpreting the results of that analysis it's useful to consider that if stores were located closer to higher deprivation index areas, which is lower social economic areas, then the lines of the graph, which we will look at shortly, would dip below the average and lie in the area of the graph labelled "Higher Deprivation than the New Zealand Mean", and if store were located closer to a lower social deprivation areas, or higher socio economic areas, then the lines of the graphs will trend about the average line in the area of the graph labelled "Lower Deprivation than New Zealand Mean".

1635

So the line for all New Zealand main brand stores in aggregate is very close to the average STI population profile line, particularly at a deprivation index of eight or above, and this indicates that the main brand supermarkets, as a combined network, are distributed across New Zealand in a pattern which is generally similar to the population as a whole; that is that patterns show no material concentration towards areas of high social deprivation. Maybe it's appropriate just to quickly have a look at that map just so you can see. If you turn to page 39 of my evidence you can see, so this is a national summary within two kilometres for all main brand supermarkets. The black line is the, if you like, it's an increment of 10% of the population in each deprivation

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category, and you can see the orange line is the way that supermarkets are located. So very similar, and there is – from that we draw that supermarkets don't – there is no evidence that supermarkets are attracted to low deprivation areas. I've looked specifically at this analysis for the supermarkets located in Dunedin and those graphs are shown in appendix 7 and four things stand out from the map that I have shown, so if you turn to page 40 of my evidence. This is a map showing at mesh block level the social deprivation of Dunedin city, and then overlaid on that map is the location of the main brand supermarkets which are the black hexagons, pentagons. And I've shown the buffer area around each one showing the relative distances that I've considered in my graphs. So if you consider that map, the supermarkets are distributed quite systematically across the city, although sometimes in pairs, with locations influenced by the proximity to and accessibility for the resident population in the catchment as well as suitably-zoned sites. The map shows clearly that there are concentrations of high social deprivation index, or most deprived populations in certain urban areas, such as the inner city, St Clair, Dunedin South, Ravensbourne, North East Valley, Brockville and Mosgiel. Rural Dunedin, generally, has a low SDI or is the least deprived, but due to the low population density do not make suitable locations for main brand supermarkets, so that's all the bright green areas around the map, and there is no visual indication that main order supermarkets show any concentration towards the areas of high socioeconomic deprivation. More so, a concentration in urban centres, locations, or areas in close proximity to their competitors. So I've examined the distribution of social deprivation index categories in areas close to each of the main brand supermarkets in Dunedin, and the resulting graphs are shown in appendix 8. But each store have examined the population by SDI score, which are resident in mesh box within half a kilometre, one kilometre, and two kilometre straight line distance of each store, and the simple measure is applied to see whether there is any indication

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of main brand supermarkets specifically in Dunedin City as opposed to nationally, are concentrated towards high social deprivation locations. If that were the case then the catchment lines in the graphs for each store would all, or at least mostly, be trending below the New Zealand average line. However, the graphs show that this is not the case. For three supermarkets the graphs indicate the stores are located in the areas of higher social deprivation, so lower socio-economic areas. For five of the supermarkets, the graphs indicate the stores are located in areas of medium social deprivation index, and the other three stores are located within areas which show a relatively low social deprivation index or are higher socioeconomic areas. So in other words they show just as much variability as the location of social deprivation itself. So the combined network of main brand supermarkets in Dunedin City covers a range of socio-economic areas. The stores have varying catchment characteristics just as different parts of the city have different socioeconomic conditions. The analysis shows that there is no concentration of supermarkets in lower socioeconomic areas.

THE COURT:

Thank you for that. Mr Braggins, recognising the time, and again I did say I didn't want to cut you off mid-stream in the middle of this, but given that we required your witness to read her statement...

MR BRAGGINS:

No, no. That's fine. There's still the rebuttal to go.

THE COURT:

Yes.

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MR BRAGGINS:

I suppose I'm in your hands, I suppose, and I'm, or I suppose I'm relaxed about whatever is the most convenient and the best way for you to receive the evidence, so –

5 THE COURT:

Well, I think at the – if we do not need to have your witness read her rebuttal evidence, we can avoid that but I am just conscious to make sure that, you know, you have had a chance to read it, and I am wondering if we adjourn for the cross-examination in the morning if that suits you and your witness?

10 1640

MR BRAGGINS:

Yeah, that's fine, and then you guys have a bit more time read the –

THE COURT:

15 Absolutely, and then unless there is any objections to that, I think starting now and giving a quarter of an hour is really going to do you a disservice in terms of that cross-examination to all the parties so – and there is a fair bit of material here. Council, city council, any views?

MR ROBINSON:

20 I've drawn the short straw in relation to this witness, Your Honour. I'm pretty relaxed about the matter being dealt with tomorrow in terms of cross-examination. What I was interested to address with you is the particular order in which you would have council or parties cross-examined?

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THE COURT:

Have you got a view on that that you would like to put forward? I want to make sure it works and what I was thinking is potentially in terms of the order that we took this morning and leave the council the opportunity to bring up the rear, if you like, in
 5 terms of our cross-examination.

MR ROBINSON:

That's effectively what I was going to suggest, Sir.

THE COURT:

Great, okay. Unless there is any objection to that, why don't we do that, and then it
 10 gives the council the opportunity for it to before we get into rebuttal.

MS IRVING:

And if I may, Sir, is it intended that the balance of the evidence will be taken as read?

THE COURT:

15 It will, and I think that that is the opportunity of this adjournment just to make sure that everybody has had a chance to do that so we do not have to put all of our witnesses through that, and we appreciate your indulgence on that, thank you.

MS IRVING:

Thank you, Sir.

20 THE COURT:

I think, unless there is anything further, we will adjourn until 10.00 am tomorrow.

WITNESS EXCUSED

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COURT ADJOURNS: 4.42 PM

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COURT RESUMES ON TUESDAY 22 NOVEMBER 2016 AT 10.03 AM

THE COURT:

Right. Mr Braggins.

MR BRAGGINS:

5 Good morning, Your Honour. So where were you or that ever had a chance to –

THE COURT:

So look, when we were at, obviously, we've read the brief of evidence, and we'll take that as read, but if there's anything that you want to focus on in your examination, that would be, obviously, of assistance. So, I think, over to you now in terms of –

10 **MR BRAGGINS:**

I think I've just got a couple of brief questions for Ms Hampson just to tease out, I think, potentially some, hopefully clarifying this CAPRi report.

THE COURT:

Yes.

15 **MR BRAGGINS:**

When I was going back through to my notes yesterday, I think, in my submissions I was talking about there being 10 off licences in the moratorium area than there are 13.

THE COURT:

20 13, yes.

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MR BRAGGINS:

And I did get that, yes. So my apologies for that.

MEMBER MOORHEAD:

Thanks Mr Braggins.

5 **THE COURT:**

No, not at all.

MR BRAGGINS:

She had 10 on the brain for some reason.

THE COURT:

10 Yes.

EXAMINATION CONTINUES: MR BRAGGINS

Q. Ms Hampson do you have the CAPRi Report there with you? That's the tab 9 of Mr Mechen's evidence. Can you just, because the CAPRi Report as I understand it contains two separate analyses, an ecological analysis and a student legal analysis. Can you explain for the Court what the difference or what those two separate analyses mean in the context of Dunedin?

A. So the ecological analysis was an analysis of student drink behaviour and problem experiences that lived within three kilometres of the university campus, and the student level analysis was an analysis of those same student level problems and drinking habits based on the density of outlets within three kilometres of where they lived, so not necessarily tied to the campus. They could live up to 25 kilometres away from the campus and it was about understanding the relationship between outlets surrounding their residential address. Now, of the two analyses, in Dunedin we have, obviously, the

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student population lives very close to the campus, the majority of them, and I have a map in my evidence that shows you where students are concentrated, and on that basis the ecological analysis would seem the most relevant of the two analyses in terms of representing the Dunedin geography.

5 Q. And in terms of the student analysis can you, oh, I think that you've probably covered enough. In terms of the ecological analysis, what statistical significance was found in relation of off licences?

A. The analysis – the research doesn't actually report any statistical relationship or correlation between off licence density and for students living within
10 three kilometres. It does report a relationship exists between outlet density for all licences and the strength of that relationship it says it's about 77% of the variable is explained by outlet density. It then says that the result is exactly the same for on licence density, but the research doesn't report any findings for a correlation between off licence density and the drinking problems, and drinking
15 habits of students.

Q. Can I take you to table 2 on page 1136 of the report, 185 of Mr Mechen's evidence? Is the, effectively, what you're saying in terms of table 2 and the line density in table 2?

A. So table 2 is a result from the student level analysis. So both table 2 and 3 are
20 from the part of the research that is focussed on the density around students' residential address. So only a portion of the results from this aspect of the research could possibly be inferred as applying to Dunedin. Only the portion, perhaps, live within three kilometres of the campus and not beyond three kilometres. So these results actually don't relate to the ecological analysis at
25 all.

Q. I have no further questions, Your Honour.

THE COURT:

Thank you. Mr Thain.

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CROSS-EXAMINATION: MR THAIN

Q. Ms Hampson do you have a copy of your first brief of evidence with you?

A. Yes I do.

Q. Can you turn then please to graph number 9, that's on page 19?

5 THE COURT:

Is that graph 9?

MR THAIN:

Yes, Sir.

MS HAMPSON:

10 Yes.

CROSS-EXAMINATION CONTINUES: MR THAIN

Q. Do you have that there?

A. Yes.

15 Q. So as I understand it, this is a graph of all the alcohol related incidents in Dunedin, and you've split them out by the various types of incident, and also across the years 2011 through to 2015. Is that right?

A. That's correct. It's all the incidents contained in the car data set provided by the police, which they imply are generally alcohol related.

20 Q. So they – that's material where the police have determined that the callouts are of the kind which are typically alcohol related. Is that right?

A. Yes, typically.

Q. The years, so, for instance, 2011, is that the calendar years, the first of January 2011 to the 31st of December 2011?

A. Yes.

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Q. So that 2013 year would be from the 1st of January 2013 through to the end of December 2013?

1010

A. Yes, correct.

5 Q. And so on for all the rest?

A. Yes.

Q. Now on my copy of this the colours are a little hard to read so I just wanted to check that I've got it right. The red line right up at the top, that's "disorder" isn't it?

10 A. Mhm, yes.

Q. So that's the one that's code 3530, is it?

A. That's right.

Q. And then the yellow line, the line that's been rising since 2011 and has continued to rise at about the same sort of rate after 2013 through into 2014 and 2015, that's intimidation threats, is that right?

15

A. Yes, correct.

Q. The next one down if I'm looking on the 2015, the blue, that's trunk custody/detox centre, right?

A. Yes, correct.

20 Q. So that one, that continued to rise in 2014? It was higher in 2014 than it had been in 2013, right?

A. Yes.

Q. The one after that, the sort of dark-coloured one below that one, is that minor assaults.

25 A. You're right, those colours are quite similar. Um, yes, I believe it is, and I can actually cross-check that.

Q. You're cross-checking from –

A. I'm cross-checking from –

Q. – graph 12?

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- A. – graph 12, which shows the total quantum overall, and yes I would agree that that is minor assaults and not the other one that is a similar colour: breach of (inaudible 10:11:15). It's not that one.
- Q. And then the orangey-coloured line below that one, that's serious assaults, correct?
- 5 A. Correct, yeah.
- Q. And that line, that was rising from 2011 to 2012, rising a little bit to 2013, carried on rising a little bit to 2014, and then has carried on rising, perhaps at an even slightly greater rate, through into 2015, is that right?
- 10 A. Yes, correct.
- Q. Now can you turn, please, in your second brief to graph 1, in the second brief. That's on page 47 in the bundle, I think.
- A. Yes.
- Q. Am I right that this graph is again of all the alcohol-related incidents from that police car data?
- 15 A. Yes, it's the sum total.
- Q. But this is only in the moratorium area.
- A. Yes.
- Q. And it's specifically just the periods of the three university events that you've looked at.
- 20 A. Yes, including the shoulder period either side.
- Q. Yes, you've extended each period a little bit, and the three events being the orientation week, which is in February of each year, is it?
- A. Yes, I think so.
- 25 Q. And then the Hyde Street party period, is that some time during the academic year?
- A. That is specifically, it varies between March and April depending on the year in which it's being held.

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Q. And extended the “re-ori” week is presumably when the students come back after the first semester so that’s around the middle of the year, is it?

A. Yes, it’s normally around July. It’s in July.

Q. So this data, again the years 2011, 2012, 2013, they’re calendar years, right?

5 A. Yes, they are.

Q. Just like for the last one?

A. Yes, it’s the same data set.

Q. So if I’ve read it right, and I just want to check that I have read it right, for instance the number of alcohol-related incidents from the police data around
10 the orientation week period between 2013 and 2014, stayed almost the same with a slight fall?

A. Yes, it changed from 82 down to 77.

Q. And you’re checking there, are you, the details are in your appendix, is that right?

15 A. That’s right.

Q. It’s at page 55?

A. 55 of the bundle.

1015

Q. So a slight fall from 2013 to 2014, and then a slight rise again in 2015 back up
20 to almost where it was, there’s one difference, is that right, in 2015 we’re back up to 81 for the extended orientation week period?

A. Yes. In terms of callouts on the car data base, yes.

Q. The police data?

A. Yes.

25 Q. So I’d be right, wouldn’t I, that as between 2013 and 2014, or 2015 there’s a negligible shift in the callout data for the extended orientation week period?

A. Correct.

Q. The Hyde Street party area, that the, looking back at your graph 1 on page 47, that’s the blue chunks of each column, aren’t they?

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- A. Yes.
- Q. So as between 2013 and 2014 the number of callouts there went up a little bit, right?
- A. Yes.
- 5 Q. From 18 to 25?
- A. That's right.
- Q. And then for 2015 down a little bit back to 19 but still higher by one than it was in 2013, right?
- A. Yes, correct.
- 10 Q. And then looking again at your chart on page 47, the green, that's the reorientation week period, the one in July, the extended period there, and again it shows, doesn't it that as between 2013 and 2014 the number of callouts went up?
- A. Yes.
- 15 Q. And when I look at your chart on page 47, on that graph, would it be fair to say that in the period 2011 to 2013, so that's the period starting at the 1st of January 2011 to the end of December 2013, there's a pretty steady downward fall in the total. So looking at the very top of your bars –
- A. Yes.
- 20 Q. – it's falling in a nice steady downward pattern, isn't it?
- A. Yes.
- Q. And then that pattern seems to stop from the beginning of 2014 through to 2015, and it goes up and then back to about where it started.
- A. That's correct.
- 25 Q. That's right, isn't it?
- A. There is a slight rise.
- Q. Thank you Ms Hampson, I have no further questions.
- A. You're welcome.
- Q. Thank you, Sir.

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THE COURT:

Thank you. Mr Young.

CROSS-EXAMINATION: MR YOUNG – NIL

No questions thank you, Sir.

5 THE COURT:

Constable?

CROSS-EXAMINATION: SERGEANT PANTING

Q. Just staying on that same graph there.

WITNESS REFERRED TO GRAPHS

10 Q. As statistics can paint a picture (inaudible 10:18:41) car event incident, so you're aware that that's a call to service the police to go into a job.

A. Yes.

Q. However, when we attend that job it can present a very different picture, so just looking at the 2013 data set for the Hyde Street (inaudible 10:18:55) party –

15 A. Mhm.

Q. So during that incident just from Googling the *Otago Daily Times* as I recall, there were 35 St Johns staff required on the scene. 60 patients treated. Within that data set it looks like it's less than 20 data sets. However, they were greater than that arrested, 21 people arrested, 14 people were given pre-charge warnings, and five of them were put before the Courts and two for detox. So do you accept that although this is a lovely statistical graph, it may not actually paint the full picture about what's going on in relation to alcohol related harm in these incidents?

20

A. No, I agree that the car data is just one of the data sets that we can look at for understand alcohol related harm.

25

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Q. Yes. So within that do you believe that patient, St John's said 60 patients would present an unreasonable amount of harm in a one day event that only goes from eight in the morning till about eight at night?

A. It does seem like an excessive amount of harm occurring in one day.

5 Q. In the same article the Fire Service were quoted saying, "There were only two couch fires which was low." Do you think that a good burden to have on society? Two is seen as low?

1020

A. I can't comment on the relative significance of two, sorry.

10 Q. That's all right. I'll ask you to jump forward to the CAPRI article to, through your evidence you've indicated that the validity of this article is somewhat lacking. Is that correct?

THE COURT:

Can you refer us to a page?

15

SERGEANT PANTING:

Sorry. It's page 184 of Kevin Mechen's data.

THE COURT:

184?

20

SERGEANT PANTING:

And looking at the outlet density and effect size, so the bottom right paragraph.

THE COURT:

Thank you.

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CROSS-EXAMINATION CONTINUES: SERGEANT PANTING

Q. As the learned peer Mr Braggins has voiced, this is all referring to a, if there were 10 new premises created, that will create X problems. However, in this paragraph here, it actually goes on to outline if there was one new off-licence premise. It's got the data for 330,000 students. If we look at Dunedin discretely because we want to look at the Dunedin problem, there's approximately 25,000 students. Based on that paragraph it would extrapolate to a four week period. There will be 421 harm-related incidents and equally as much 709 incidents of antisocial behaviour. Do you feel again in a four week period, having an essence of 1100 more victims, is a positive correlation for having one new off-licence?

A. Just on that, I did struggle a bit with this paragraph in the article, given that the rate ratios provided were for an additional 10, and yet that article, that paragraph refers to an additional one, and the formula that's been provided there doesn't demonstrate how they've derived a ratio associated with one additional licence as opposed to 10, so I was struggling a little bit to replicate that based on the numbers provided. So I hadn't sought to replicate those figures in Dunedin, and the concern would be that this is, you are assigning a mean or an average across New Zealand to a very specific context within Dunedin and that their care needs to be taken in doing that.

Q. Yes. So you'd accept –

THE COURT:

Sorry, constable, can you just for my benefit please just direct me again to that, because you referred to 1100, but I'm –

SERGEANT PANTING:

Oh, sorry. So the data that you've got is that their national (inaudible 10:22:35) it would be 5570 more alcohol-related problems in young –

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THE COURT:

This is on page 183?

SERGEANT PANTING:

5 Oh, sorry, 184.

THE COURT:

184.

SERGEANT PANTING:

10 Bottom right corner.

THE COURT:

Bottom right.

SERGEANT PANTING:

15 "Outlet density" and it's the sentence starting, "In a national university student population of 333,000."

MEMBER MOORHOUSE:

Half way down, yeah.

20 **THE COURT:**

Yes.

SERGEANT PANTING:

25 Yes, and so what I've done is taken the 25,000 population of the Dunedin student mass as approximately 7% of that 333,000 and therefore applying that to 5570 it would relate to a corresponding 421 for Dunedin and for the two lines below that the

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10,130 additional second-hand effects that would correspond to 709 incidents in Dunedin, so over a four week period you'd be looking at approximately, so yes, 1100 additional incidents of harm related to alcohol through one premise in this area.

5 MEMBER MOORHOUSE:

Just while we're going through this figures, sergeant, you lost me at the very beginning when you started quoting 60 patients and 21 arrested. Where is that information that you're referring to?

10 SERGEANT PANTING:

Sorry that was just through, just before the hearing Googling the *Otago Daily Times* report on the 2013 Hyde Street party, so it should purely, the anecdotal report from the *ODT*, what they presented occurred during the 2013 Hyde Street party.

THE COURT:

15 But you're not putting that evidence before this authority?

MEMBER MOORHOUSE:

So you haven't put any of this in evidence?

20 SERGEANT PANTING:

Unfortunately I, they may have it first –

MR ROBINSON:

If it would assist, Sir, it actually appears at page 135 of Mr Mechen's evidence.

25 THE COURT:

Thank you.

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SERGEANT PANTING:

Apologies. My intention was merely to highlight that the statistics don't necessarily paint the full picture, so again, sorry, I didn't introduce that as evidence. Apologies.

5 MEMBER MOORHOUSE:

Just going forward, if you're putting things like that to the witness, for the sake of all of us can you let the witness know where the information comes from?

SERGEANT PANTING:

10 No certainly. Yeah. Apologies.

MEMBER MOORHOUSE:

Thank you.

CROSS-EXAMINATION CONTINUES: SERGEANT PANTING

15 Q. With regards to this CAPRI study once again, did you engage with the author to find that explanation or the – you've said you didn't understand how the equation portrayed?

A. No, I've not contacted him to clarify that.

1025

20 Q. Yes, that's all right. So on a more scientific level, do you believe the correct study should be some sort of randomised double-blind control that we're doing, whereby we take alcohol out of one city and not another so we can clearly study it because realistically if we're saying we can't apply this study because it's not locally, contextually applied, the only real solution would be to come to
25 the local blind control whereby we have a controlled area and non-controlled area, would that be the accepted scientific solution to the problem?

A. I think that sounds rather extreme and impractical. I think there is value in using research to draw inferences but some research is better than others and

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I found that there are significant concerns with some of the assumptions in this national level study and the degree to which we can therefore infer them down to Dunedin. And one of the things I was particularly concerned about is that the relationships between increased drinking habits or drinking problems require an increase in density of at least 10 dwellings for each increment and these increments are quite small and if one has to consider whether those increases in density can actually occur in Dunedin, then I said that, would just say that that's contrary to the trends that off licences actually have been decreasing in density and not increasing, so the relevance of research in this context maybe little, if in fact we won't see a proliferation of outlets in the moratorium.

Q. Within your research have you considered the timeframe that students actually spend in Dunedin, it's been presented as a full year situation in comparison to other stats but the students' actual academic attendance tends to be from March through to, they've already left now, November, so the amount of harm that's created is actually compressed, it's not a full 12 month calendar year that they're here and these instances occur, it's a much more compressed period; you're focused on the two, or sorry those three points but did you take that into consideration?

A. I've not specifically looked at the attendance although the police car data would show that every month of the year has a very similar count of incidents, alcohol-related incidents and so that would suggest that there are similar amounts of incidents occurring even when the student population has departed.

Q. Yes, I think there's a 79% variance was it?

A. Yes.

Q. One last question sorry, if I find my tab, no I can't...

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THE COURT:

Well I recognise that you're now putting evidence before the Authority today, as an appellant you still have that right to cross-examine. Mr Logan is it –

MR ROBINSON:

5 Robinson Sir.

THE COURT:

I'm sorry I got your names muddled.

CROSS-EXAMINATION: MR NEWCOMBE – NIL**CROSS-EXAMINATION: MR ROBINSON**

10 Q. The first question I have for you Ms Hampson is have you go to examine any statistics as to the incidence of alcohol-related harm in Dunedin by comparison to the rest of the country?

A. While I have been looking at alcohol-related harm from the same dataset as used in Dunedin for Auckland recently, I haven't drawn any direct
15 comparisons, no.

Q. So you're not in a position to say whether Dunedin's the best in the country in terms of alcohol-related harm or that it's the worst in the country?

A. No.

Q. And do I understand the theme of your evidence to be that there's no statistical
20 support for the limitations on trading hours that the DCC would seem to impose through its local alcohol policy?

A. Trading hours is not something that I've specifically addressed in my evidence, I think that's covered mostly in Dr Fairgray's evidence. Trading hours is not something that I've specifically addressed in my evidence, I think that's
25 covered mostly in Dr Fairgray's evidence. The only way that, the only thing

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that I have covered is the timing of alcohol-related incidents across the hours of the day.

Q. Do you have any experience in policy matters concerning alcohol-related harm?

5 A. I have been involved with, yes research to do with the local alcohol policies throughout New Zealand.

1030

Q. And presumably that's, in each case, that's been on behalf of Progressive?

A. No, we've been doing some research for the Health Promotion Agency.

10 Q. In terms of your analysis, would it be fair to say that you are always limited by the data that you have to work with?

A. Yes.

Q. So if we're talking about the police car data, if it's not reported to police, it doesn't feature in your analysis, correct?

15 A. If it's not included in the dataset then – I can only analyse the data that has been made available.

Q. So just to flesh that out a little, if someone's punched in the street and it's not reported to police, it won't feature in your statistics?

A. No, it won't.

20 Q. And similarly, if someone is found comatose and an ambulance is called, that person's transported to hospital, no police involvement, it doesn't feature in your analysis, correct?

A. I'm not quite sure how the 111 call works and if that maybe goes to both agencies but you're possible right that there's no overlap.

25 Q. So it would be, therefore, fair to suggest that the statistics that you have available represent the absolute minimum of alcohol-related harm that has taken place within the community, correct?

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A. There will be alcohol-related harm that's not expressed in this dataset but at the same time, alcohol-related harm is only a subset of the incidents that we see in this dataset.

Q. No, I appreciate that, but if we're solely focusing on the extent of alcohol-related harm in a community, you have to accept that there is a proportion, and we don't know what that proportion is, that is not represented in the material you're working with, correct?

A. No, that's correct.

Q. So it's correct, then, to say that the data that you are basing your analysis on can only reflect the minimum extent of alcohol-related harm? There's going to be more –

A. I'm not sure it's a minimum. I think it probably covers a significant proportion. The examples you provided are the incidents that go directly to hospital or the ones that occur but are not reported, I can't comment whether they would be a minority relative to the incidents reported in the car data or not.

Q. So if we're trying to get a feel for what the true extent of alcohol-related harm is in Dunedin, we know what has been reported to police, we know what fronts in the hospital, but there's an unknown quantity beyond that that we simply don't know about?

A. Absolutely. There's an absence of evidence in data on that.

Q. That's not to say it's not happening, though, isn't it?

A. No.

Q. In Mr Mechen's evidence, he refers to research prepared by the Southern District Health Board and that's at page 83 and following of his evidence. Do you have that in front of you?

A. No, I'm sorry, I don't. That's not something I covered. I have Mr Mechen's statement but not all of his appendices. Sorry, what page was that?

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Q. It starts at page 83 and I want you to turn over the page to page 84. Under the heading "Findings," it says that "We," being the Southern District Health Board, "have the highest prevalence of hazardous drinking amongst district health board regions and statistically higher prevalence than the national average, 25.1% compared to 17%." Are you in a position to dispute that finding?

A. No, I'm not, and I'm sorry, I haven't read this article.

Q. And the second conclusion that's expressed in bold, "The number of patient episodes, including alcohol attributable conditions, increased steadily and substantially over the five year period beyond what we might expect from population growth." That suggests quite a different trend to the car data, doesn't it?

1035

A. It implies a different trend, yes, for the Southern health district.

Q. You mentioned that there were other datasets that you could have regard to in addressing alcohol-related harm, and in your current evidence, you're simply relying on the card data. What other statistical information could you have drawn support from?

A. I was particularly interested in spatial datasets, and the only reason I selected the car data was that it was already presented by the police in their intelligence report but from a very limited and seemingly – it wasn't specifically relevant to the policies in the LAP. It was related to liquor bans, so I simply sought to obtain that data and provide a more contextual analysis of that information, seeing as that was the information that the police had chosen to submit for this hearing or for their submission. There may be other datasets of a spatial nature that could be obtained but I can't identify any off the top of my head.

Q. But if you are giving evidence as an expert attempting to provide guidance to this Authority on the extent of alcohol-related harm, isn't it incumbent upon you to examine all sources of data so that you provide a fair and balanced assessment?

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- A. It would be – the LAP provided very little evidence of any spatial analysis that was specifically linked and useful to the analysis of these proposals and policies. I have provided some analysis that I think helps tell part of that story, and I accept that it's not an exhaustive analysis of everything that could've been analysed, so I've done what I've agreed to do for my brief and that's not an exhaustive analysis.
- 5 Q. So your brief has been quite narrow?
- A. No. These are the things that I selected that I thought would contribute to the evidence base.
- 10 Q. But it's not comprehensive at all, is it?
- A. No, it's not comprehensive.
- Q. Can I take you to page 295 of the second bundle of evidence, and that should be in the evidence of Michael Foster, do you have that in front of you?
- A. Yes.
- 15 Q. And page 295 of that?
- A. Yes.
- Q. That's a graph showing the annual rate of ED presentations per 100,000 population, isn't it?
- A. Per 10,000 population.
- 20 Q. And it's comparing Lakes District at the top, Dunedin in the middle and Southland at the bottom?
- A. Yes.
- Q. Would I be correct in inferring from that that the alcohol-related harm in Dunedin in the 19 to 24 age group is proportionately less than in Queenstown and Invercargill?
- 25 A. In the 18 to 24 age group, yes.
- Q. We need to compare apples with apples with statistics, don't we?
- A. Yes.

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Q. If I'm looking at that figure for Dunedin, that is a population that is transient, isn't it? The 18 to 24 year olds, your student population, are not here for 12 months a year, are they?

A. I think they would qualify as usually resident members of the community as opposed to transient.

Q. I'm not worried about what statistical definition you give them. What I'm suggesting is that your student is going to be in Dunedin and able to drink in Dunedin and have to use health services in Dunedin for eight months of the year, correct?

A. Correct.

1040

Q. And so if we're looking at the rate of presentations in that student demographic, any statistics that are based on annual presentations needs to be adjusted for the four months that they're not in Dunedin so that you can compare it with other centres, correct?

A. Can I clarify you are suggesting that these incidents are concentrated in a lesser period of time than a full annual year?

Q. No, what I'm, what my question is is that this is, this purports to be a graph of the annual rate of ED presentations per 10,000 people.

A. Yes.

Q. The annual rate of presentation amongst the student population in Dunedin is always going to be less because they're here for only two-thirds of the time, do you agree with that?

A. No I don't. These calculations would, even if the students' incidents or presentations occur during eight months of the year, they've simply taken the total that includes those eight months and any incidents in the age group beyond that so this statistic is not limited just to the students that come to Dunedin, it's all of the 18 to 24 year olds in the district.

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Q. But if I am to compare it with a population centre such as Lakes District or Southland where there isn't the same extent of transient student population, I need to make an adjustment for Dunedin figures, don't i?

A. I think the purpose of this analysis was not to target the relationship with the students, rather the relationship between 18 to 24 year olds and I don't think you could, need to make any adjustments or should make any adjustments to it, given the purpose of the analysis was really to look at an age group and not a specific type of community member.

Q. But part of the age group that you're referring to is simply in the area to suffer harm, correct?

A. For four months of the year?

Q. Yes.

A. Yes.

Q. So that's necessarily has to impact on the annual figures, doesn't it?

A. Yes, I guess if you're suggesting that the number is really only showing eight months of data for, or what students that are only here for eight months compared to 18 to 24 year olds that might be present for the full year in the other districts, then that might be something to take into consideration.

Q. So an adjustment will need to be made which would have the effect of extending the line for Dunedin, wouldn't it?

A. You'd probably be safer to try and, potentially – I wouldn't be comfortable doing that if this was my analysis. I don't think then, there is a sufficient – it's important to recognise the 18 to 24 year olds and whether they're here for eight months of the year to cause harm or they're there for all 12 months, I think slicing and dicing the data's perhaps not advisable.

Q. Well to put it another way, you couldn't rely on that graph as indicating that Dunedin with its high proportion of students as suffering less alcohol-related harm in that demographic?

A. Sorry could you repeat that?

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- Q. What I'm suggesting is that you couldn't rely on that graph as indicating that the student population for the 18 to 24 year old demographic within which students fit is suffering less alcohol-related harm than the same demographic in Lakes District or Southland?
- 5 A. It's not about the students' suffering harm, it's about the quantum of reported harm incidents I believe in any one year.
- Q. But you can't logically take the extent of harm being suffered by students from that graph and say that it's less than everywhere else?
- A. The graph does not report about students specifically.
- 10 1045
- Q. Now you make the comment in your evidence that by reference to the card data alcohol-related harm appears to be decreasing?
- A. Yes.
- Q. If I can take you to page 85 of the, Mr Mechen's evidence, do you have that?
- 15 A. Yeah, is that the page after the executive summary?
- Q. It is, starting line at the top, "With some conditions"?
- A. Yes.
- Q. Second sentence, "On average there was a 10% annual increase in the incidence rate of alcohol poisoning in the period 2008 to 2012. Dunedin Hospital showed the most marked increase in the number of alcohol poisoning cases particularly in the 18 to 24 year old age group." And that paints quite a different picture to the card data, doesn't it?
- 20
- A. It's focused on one specific thing but yes that trend is opposing the general trend of the card data. I'd just point out too that the card data does not allow
- 25 us to distinguish the age group of those involved in the incidents.
- Q. And that's a limitation isn't it?
- A. Yes it is.

Q. And if I can take you to page 99, sorry it's the wrong page, 97. And that confirms the extent of the increase in alcohol poisoning cases being treated at Dunedin Hospital by reference to age, doesn't it?

A. Between 2008 and 2012, yes it does.

5 Q. Now I want to talk to you about paragraph 2.15 of your evidence.

A. Is this evidence-in-chief?

Q. Evidence-in-chief. Now you talk about licence density and make the comment that, "Licence density is four times lower outside the moratorium area," have you calculated the moratorium area as a proportion of the major urban extent of Dunedin City?

10

A. No I have not considered it as a geographical ratio.

Q. Isn't it, if you're comparing the what's going on inside the moratorium area versus the rest of the city, isn't it important, sorry isn't it important to know that ratio?

15 A. No, generally in academic research an analysis of this type, the densities are expressed relative to the population and not on a per hectare basis. If we were to consider the per hectare ratio outside of the moratorium area we'd be factoring on, or rural areas where there are no population and no licences.

Q. Paragraph 2.20, you make the comment that the density of off-licences is decreasing and you make a comment in your evidence-in-chief yesterday that this reduction in density was relevant because of concerns of increasing density, correct?

20

1050

A. To the effect that Mr Mechen relies on the CAPRI analysis that says, "If there is an increase in density then you will see some increment in alcohol-related harm and drinking levels." I was just pointing out that the trend has been for a decreasing density so for the CAPRI analysis to apply you would need a reversal of this trend.

25

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- Q. But surely the logic is, logic suggests that if you have a reduction in density you're probably going to have a reduction in alcohol-related harm?
- A. And that's what the card data would suggest.
- Q. And that's, that relationship between density and harm is consistent with the CAPRi report, isn't it? CAPRi effectively says without going through the finer points of it, that if you increase the density you have greater harm, correct, that's –
- 5
- A. Notwithstanding the limitations of the CAPRi report, it shows a positive relationship between density and harm and so in Dunedin we see a decrease in density and decreasing alcohol-related incidents.
- 10
- Q. That's effectively the same thing though isn't it?
- A. It is, it's still a positive relationship.
- Q. And we can take it further, have you had a look at the Ministry of Justice's thought on risk based licensing fees?
- 15
- A. No.
- Q. 2.25 you make the comment that, "Population growth in the city will further exacerbate the undersupply of main brand supermarkets," can you point to any factors that indicate Dunedin is going to experience over say the next six years, a dramatic population increase?
- 20
- A. I don't have any population projections contained in my analysis. I've just said that population will exacerbate it, I haven't necessarily stated that there is going to be population growth but yes.
- Q. No, but for us to be concerned about it being exacerbated surely there's got to be a, be a potential for population to increase?
- 25
- A. Yes I agree.
- Q. At part 3 of your evidence, paragraph 3.1 following you deal with your analysis of the police card data and you mentioned in your evidence that it derived from the police's study of the liquor ban area?
- A. It's the same dataset that I sourced directly from them, yeah.

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Q. Now the liquor ban area, more or less, reflects the moratorium area doesn't it?

A. The existing liquor ban area does not, the extended liquor ban area is a closer approximation and I think there is a little bit of overlap with the proposed liquor ban area.

5 Q. At 3.4 you graph the total alcohol-related harm in Dunedin by reference to the card data but each of those is just, reflects that the number of incidents rather than the extent of the harm as being suffered, correct?

A. Correct.

10 Q. And you can't offer any view as to why there is this reducing trend, in terms of alcohol-related incidents?

A. No I can't, I don't have any evidence of what is causing the reduction, I haven't – I'm assuming there's been a number of factors, given that we look at the university events, annual events and that there has been a reduction in association with those, that in that particular instance perhaps there is some management or control mechanisms that have been quite effective. I'm not aware or can't pinpoint anything specific on a district-wide level as to why incidents are decreasing.

1055

20 Q. The logical candidates though would be reduced density of off-licences as one candidate?

A. It may have a contributing factor.

Q. Greater resources being put into enforcement?

A. I would imagine that would assist.

Q. Reduction in trading hours?

25 A. Potentially yes, the effect of the Act may have had an influence.

Q. And maps 3 and 4 you show the alcohol-related incidents in Dunedin for 20011 and 2015.

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THE COURT: MEMBER MILLER

This is page 18?

MR ROBINSON:

Sorry page 18, yes.

5 CROSS-EXAMINATION CONTINUES: MR ROBINSON

Q. And you've described that as the main urban extent so you're excluding the portion of Dunedin that is uninhabited, farmland, that kind of thing?

A. Yes I have the full, the map for the full district but it was, in order to focus on where most of the incidents were that's where I zoomed in.

10 Q. And so each point is the geographical location of a reported incident?

A. Yes.

Q. So if there are two incidents at one point, there's what, still one dot?

A. There'll be two dots, it just it will look like one.

15 Q. So and for us trying to interpret this, particularly when you get into the proposed moratorium area, it's not actually possible to understand the extent of incidents in one particular location within that moratorium area?

1057

20 A. That's why I provided some zoomed-in maps at other locations in my evidence such as map 6, and you're quite right, one of the limitations of this style of map, as I announced yesterday, was that, you know, it doesn't necessarily reveal the full concentration where there's a, you know, a build-up of dots on the map. There are other ways that can analyse this and all styles of mapping have some limitations.

25 Q. I want to show you the police's report on which your evidence is based. Do you recognise that report?

WITNESS REFERRED TO POLICE REPORT

A. Yes.

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- Q. And you have some familiarity with it?
- A. Some familiarity, yes.
- Q. If I take you to page 5 which is the proposed extended liquor ban area, the geographic locations are colour-coded to indicate the extent of issues in a particular geographic location, correct?
- 5 A. Correct.
- Q. So whereas your dot on top of the dot doesn't indicate a number of incidents, the colour-coding here does, doesn't it?
- A. One of the key limitations of this particular map is that for the highest category of incidents, there is no way to distinguish whether there are 24 or 668 so I'd say that it has a similar level of limitations as my own maps and I did factor that in when I was deciding what to present.
- 10 Q. But surely when there is a trend of, say, 24 to 668 incidents in one location, it's better to mark it in this fashion than have a single dot, isn't it?
- 15 A. Just to clarify, the overlap of the coordinates or the incidents when coordinates of actual incidents were in exactly the same location was relatively low. If we zoomed in enough into the maps using my maps, there would be not a great deal that happened to have exactly the same coordinate. They are quite specific. So even though the extent of the maps that I've shown in my report
- 20 look like a big cluster of events, in actual fact, there's not a lot of overlap and I would argue that if one was to improve the interpretability of the map provided in this document then further categories breaking that 24 to 668 into a finer resolution of categories might perhaps a more accurate representation of where the highest levels of harm are.
- 25 Q. But isn't the difficulty for the Authority in relying on the maps that you've provided is that it doesn't allow any real assessment as to where the hotspots are?
- A. I think it shows a very similar pattern between my map and this one.

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Q. If we look at your map, isn't the difficulty that you can't really distinguish what's a dot and what's not? It's just a massive black?

A. If you look at map 6 which is more zoomed into the extent of the moratorium area, and it focuses – sorry, and that's on page 20, and this focuses on disorder incidents which account for the majority of the incidents we're seeing in the car data. I think it shows a very similar trend of high concentrations of incidents down a central road through the Octagon and in some extents, I think it actually shows, I would argue that it would show actually more detail as to where the exact location of incidents are rather than this grid methodology that's been used in this police report. There are lots of different ways that one can present information and my intent was to use one methodology in conjunction with the tables and graphs, to use those in combination throughout my evidence to try and present a story.

Q. Paragraph 3.6, this is on page 19 of your evidence, you have graphed the total alcohol-related incidents in the Dunedin territorial area by type and year?

A. Yes.

Q. Have you done a similar exercise for the moratorium area?

A. Yes.

MEMBER MOORHEAD:

Can I just ask at this point, this report that we have in front of us is a police intelligence report. How are we to treat that? I notice it is got "in confidence" on it but you are presenting it to the Authority?

MR ROBINSON:

My view is that you are entitled to have regard to it. What I will propose to do is have Mr Mechen confirm the contents of it, to the extent that he is aware of it, and produce it. You'll see that he's already produced another intelligence report that has the same noting on it in his bundle.

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MEMBER MOORHEAD:

I just wondered what the police position was. It is their report.

THE COURT:

Particularly the confidential nature.

5 SERGEANT PANTING:

Very simply, given that the predecessor has already been disclosed and I believe it presents beneficial information to the panel particularly, I see no grounds for it not to be. It's the updated version, in essence, of the other one, focusing on a proposed liquor ban so, yeah.

10 MEMBER MOORHEAD:

It just has impacts as to what we can put in our decision or not if we are referring to it.

MR ROBINSON:

You will be referring to the previous document that we've produced, would you not?

15 THE COURT:

If it has been produced before the Court, so if this is a new document or, effectively, are you waiving the in-confidence nature of it?

MR ROBINSON:

I will go on and say we'll waive the in-confidence nature of this one for you, yeah.

20 CROSS-EXAMINATION CONTINUES: MR ROBINSON

Q. Sorry, you were just going to take me to...

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A. Yeah, sorry, to be accurate, whilst I have graphed that, it's not present in my analysis, although the total decline or total trend for all incidents combined is evident in graph 13 so it's not exactly the same format of that graph, although, it can be produced if that's useful.

5 Q. While the graph at page 19 shows downwards trends in relation to the broad category of disorder, the threats and intimidation are showing an upwards trend, aren't they?

A. Yes, they are.

Q. As is serious assaults?

10 A. Yes.

1105

Q. Now photograph 3.9 of your evidence, you talk of March being a slightly above average share of annual incidents and June being the lowest?

A. Correct.

15 Q. Would you agree there's an association between the arrival of students in February/early March and their related activities, and that increase in March?

A. One could infer that it has some, yeah, relationship to the student arrival.

Q. And similarly you could infer that a quiet June is reflecting the semester break –

20 A. Yes.

Q. – and the return of students in July?

A. I think that would be fair.

Q. Now paragraph 3.12, you calculate that there have been 3580, sorry, 6540 I should say, reported incidents inside the moratorium area over the period you've studied, compared to 17,000 over the rest of the city during that period?

25

A. Correct.

Q. And that as a consequence that translates to around 28% of alcohol-related incidents taking place inside the moratorium area?

A. Correct.

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Q. As a portion of the populated area of Dunedin, though, the moratorium area will be far, far less than 28% of the Dunedin land area, wouldn't it?

A. Yes. That's not something I've calculated but it's – perhaps a more relevant statistic would be the ratio of licences in and out and if I could just check my number. I believe it's 28% of the alcohol-related incidents but 18% of the off-licences and 43% of the on-licences.

Q. If we are looking simply at the incidents within the moratorium area as a percentage of total incidents, the incidents within the moratorium area are disproportionately high, aren't they?

A. Relative to what?

Q. Relative to the general Dunedin area?

A. On a geographic density? I haven't calculated that. I would need to understand the actual measurements in order to determine that.

Q. But just looking at one of your maps and comparing the extent of the moratorium area to the Dunedin City, say for example map 19, it's fair to say that the moratorium area is –

THE COURT:

Sorry, what page is map 19?

MR ROBINSON:

So that is at page 19, I should see.

THE COURT:

So page 19? Yes.

MR ROBINSON:

19 of the bundle. Exhibit 5.

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THE COURT:

Yes, yes. Map 5, yes.

CROSS-EXAMINATION CONTINUES: MR ROBINSON

- 5 Q. So just comparing the moratorium area to the total urban extent, it's a small, small proportion of the land area involved, isn't it?
- A. That map doesn't show the full Dunedin City territorial authority.
- Q. I appreciate that –
- A. Yeah.
- 10 Q. – but it's a populated area. The most densely-populated parts of Dunedin City?
- A. You would then need to understand the hectares of the populated area or perhaps the defined urban area, and I don't have those figures to hand. So the –
- 15 Q. Just as rough and ready as we can do in the current context, you've got to agree with me that the moratorium area is a small percentage of the populated area of Dunedin? It's not 28% of the populated area, is it?
- A. I'd agree – I'm not sure what the number is, but it is a small proportion of the urban area.
- 20 Q. And of course, therefore the incidents that have taken place within that defined area are disproportionately high, aren't they?
- A. Yes. There is a concentration in the CBD.
- 1110
- 25 Q. So if we're dealing with your findings at paragraph 3.16, while you say that alcohol-related incidents are spread throughout the Dunedin urban area, and the moratorium area accounts for less than a third of the incidents, that has to be qualified by the fact that what's happening inside the moratorium area is disproportionately high compared to the rest of Dunedin, correct?

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- 5 A. From a geographic perspective, that would be correct. I think from a licence perspective, one of the reasons, we must remember, that the incidents is high is because a lot of it is associated with the CBD and that the moratorium encompasses part of the CBD and that will be influencing the higher density of incidents.
- Q. While you say at 3.16(d) that there's been a noticeable decline in disorder incidents, if we talk about the serious harm incidents, the likes of serious assaults and threats, those are the things that are increasing, aren't they?
- 10 A. They have been shown a trend to increase but they account for a small proportion of the alcohol-related incidents experienced in Dunedin.
- Q. But to the victims, those are big issues, aren't they?
- A. I'm sure they are.
- Q. Paragraph 4.7, you look at – sorry, part 4 of your evidence, you look at the impact of additional licences and your focus, I take it, has solely been on the increase in supermarket density and whether you can extrapolate from that a potential increase in alcohol-related incidents, correct?
- 15 A. Yes. The research covers all types of licences but I've focused here on the supermarket relationship.
- Q. Isn't it a little misleading to focus only on the supermarkets? Isn't the issue the density of off-licences generally, as opposed to one particular type of off-licence?
- 20 A. The relationships – I was only asked to consider the supermarket component but I have used this research extensively and there are relationships associated with bottle stores, clubs and bars and restaurants as well.
- 25 Q. And the increase in density of off-licences positively associates with the increase in alcohol-related harm, doesn't it?
- A. No. This research shows that the increase in supermarket density is highly variable across the country and in some places, it's statistically significant. In

some places, it's not, and the same applies for bottle stores which was the other category that's covered by that research for off-licences.

Q. But there is still an inference that can properly be drawn by a territorial authority that there is a positive association between increased off-licence density and alcohol-related harm, correct?

A. That particular research, the results show that there is a variable outcome and its focus is on community-level results, and some communities show a relationship and some do not.

Q. But in terms of your evidence, we're simply focusing on the supermarkets. That really doesn't tell the complete story, does it, because you need to factor in the bottle stores?

A. No, bottle stores is a separate analysis within the model and I've not reported the results for those.

1115

Q. Just in terms of your findings at paragraph 4.11, you say that it can't be assumed increased outlet density of supermarkets, grocery stores, is associated with increased alcohol-related harm. If bottle stores accept opening hours of 9.00 'til 9.00 and a supermarket was permitted to sell alcohol beyond that, would you accept that a supermarket would be contributing disproportionately to the alcohol-related harm through greater availability?

A. I don't think you could draw that conclusion, necessarily.

Q. But isn't it logical? If everywhere else is shut and supermarkets are open?

A. One would need to understand the degree to which the purchases of alcohol are translated into alcohol-related harm.

Q. But it's a fair inference that you can draw, isn't it?

A. I don't believe it's an inference. I think you need specific evidence to substantiate a correlation between purchasing alcohol at a particular time and the impact that that has on actual incidents of acute harm.

Q. You're critical of the CAPRi analysis, the CAPRi study, 2008?

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A. Yes.

Q. And that's the, Mr Mechen's bundle. Can I take you to page 186, second column? It concludes by saying that, "The study adds to an international literature showing that physical access to alcohol, measured by the number of outlets within walking distance of a person's home is associated positively with individual drinking levels and acute harms and that these associations are additional the effects of those individuals' pre-existing drinking patterns." So what he says there is that, "What I've found is supported by other literature." Have you undertaken any study to critique the other literature?

10 **WITNESS REFERRED TO CAPRI REPORT**

MR BRAGGINS:

Sorry, Ms Kelly deals with the literature review quite extensively and Ms Hampson clearly doesn't so I'm not sure that this particular question is fairly addressed to her.

MR ROBINSON:

15 The issue is going to be that she is critical of the statistics and the analysis that Mr Capri has done. My question is going to be, has she undertaken any analysis of the statistics or methodology in –

THE COURT:

Question the relationship there?

20 **MR BRAGGINS:**

Yeah.

CROSS-EXAMINATION CONTINUES: MR ROBINSON

Q. Have you reviewed any of the other studies that Mr Capri has referred to in that statement?

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A. No, I have not.

Q. So you're not in a position to make any comment on the statistical method, the data or the analysis in those other studies?

A. Not in the other studies, no.

5 Q. So you're not in a position to disagree with his broader proposition that what he's found is consistent with his national experience?

A. No, I'm not in a position to comment on that.

10 Q. If I can take you to your rebuttal evidence, paragraph 2.5, you conduct an analysis of the various activities in which the students are involved, and if I understand it correctly, you have concluded that there are, say, 21 days of student events that should be considered as contributing to alcohol-related harm specific to organised student events, correct?

15 A. I've simply identified the same three activities or events that Mr Mechen identified and I've taken the conservative approach of adding days before and after those, which is consistent with the way that the police report analysed Orientation Week.

Q. And so you're looking at 21 days of data?

A. Yes.

20 Q. In that 21 day period, 21 days out of the year, would you accept that's 5.8% of a year?

A. Yes.

1120

25 Q. Okay. So in this period, which accounts for 5.8% of the year, on your analysis hasn't that 5.8% of the year accounted for somewhere between 11 and 14% of the total alcohol-related incidents reported?

A. Within the moratorium area it has and it accounts for 3% in 2015 of all incidents on those days across the city. Sorry, all incidents across the city in that year.

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Q. But doesn't the focus need to be on the moratorium area, because that's where the students congregate, that's where the students are engaged in these activities, and where the harm occurs?

A. Not all of the harm that occurs on those days occurs inside the moratorium area.

Q. But it's a likely conclusion that the vast majority of that harm is occurring in that area, isn't it?

A. In that page, at 58 of my analysis, it shows that the moratorium area accounts for between 26 and 29% of the ARI occurring on those dates within the district.

Q. Mhm, but all I'm focussing on at the moment, page 47 of your evidence, you're saying that alcohol-related incidents in the moratorium area during these periods account for between 11 and 14% of the total alcohol-related incidents recorded in the moratorium period between those two date ranges, correct?

A. Correct.

Q. And if we're saying, well, actually in terms of the timing we're only looking at 5.8% of the year, that is, the fact that between 11 and 14% of harm is occurring is disproportionately high, isn't it?

A. It is, disproportionate to those days.

Q. Mmm. And in fact using 365 days of the year is probably going to skew things as well, because our students of course are only here for two-thirds of that, aren't they?

A. I'm not sure if it necessarily skews it, but you could look at it both ways.

Q. Major contributing population is simply not there to suffer harm?

A. I'm not sure exactly how many students are around in the intervening months, but yes, you could analyse it specifically for those periods.

Q. Now you've highlighted the reducing trends, sorry, to the trend of reducing harm and that's at graph 1, page 47. Possible to infer from that that there's a relationship between the reducing off-licence areas, so they're reducing the

number of off-licences in the moratorium area and reduction in alcohol-related harm in relation to student events?

A. It's not, I've not sought to infer a correlation.

Q. No, but the question is, if someone's reading your evidence, reading your analysis, it would not be inappropriate for them to infer that part of the reduction in alcohol-related harm can be tied back to the reduction in off-licences?

A. It would be possible to assume, yes, that there has been a reduction in off-licences in the moratorium area and that they may have contributed, and I just wanted to double check – there's also been a reduction in on-licences –

Q. Mmm.

A. – in that same period.

Q. Okay. Now, if I can just take you to below that graph at page 47 of the bundle, I'm just wondering if there is something missing from your evidence, because it starts in with these two Roman numerals but there's no paragraph above it to explain what those Roman numerals relate to.

A. Sorry, that's probably a formatting error.

Q. Yes. Can you tell us what we're not seeing, what the comment is that's missing, just to give context to those two Roman numerals?

A. There's not a comment missing; they're just the numbering should carry on. It should carry on from three and then four.

1125

Q. Oh, I see. So if I go over your key findings at page 2.6, you say that the reduction to the quantum these events account for is insignificant in decreasing share of total ARI. You'd agree that for the 135 people that have been spared harm, that is significant?

A. I think any reduction is significant and important.

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Q. And of course, it's even more important when it's the population base that is suffering disproportionately high effects of alcohol-related harm compared to the rest of the country?

A. I have done no analysis which compares Dunedin with the rest of the country.

5 Q. Paragraph 2.6(c), you make the comment that charges laid have reduced from 114 in 2011 to 37 and you make the comment that there has been a 68% reduction in the number of charges laid. Are you asking the Authority to infer that alcohol-related harm is reducing because the number of charges laid has reduced by 68%?

10 A. I'm just pointing out that there has been a reduction generally in the number of alcohol-related incidents recorded in the car database and that there has also been a reduction in the number of actual charges laid during Orientation Week over that same period.

Q. But you've got no information to explain for us why there has been a change or why there is a reduction in the number of charges, correct?

15 A. No, but the articles do suggest that Mr Mechen has relied on that there has been a number of collaborative approaches, that the management has improved, that the university has instigated a number of steps to control numbers and deal with issues on the day, and also, the police report itself suggests that perhaps on an annual basis or at least for next year's orientation week, that they have a number of specific management protocols in place to help deal with it, and I can only assume that that has been the case in previous years also, and that that may have contributed to the reduction in arrests.

25 Q. And you can't exclude the potential for the police to have changed their charging practices either?

A. I'm not familiar with police charging practices, I'm sorry.

Q. So the theme of your evidence is that alcohol-related harm is reducing and to the extent that it is reducing, it's all down to the efforts of local authorities, university and police, so there's no need for further intervention, is that it?

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A. To the extent that I've looked at these three annual university events, there is some inference to be taken from the articles provided in the evidence that there are external factors that are helping to manage that reduction.

5 Q. That's not a cost being borne by licensees, is it? The cost of the resources being put into it?

A. I'm not sure if any of the initiatives or driving factors for the reduction have been the responsibility of the licensees. There is no information on that.

Q. I'm just about to move to a different theme, so it's probably –

THE COURT:

10 Is this an appropriate time to break if you are going to do that?

MR ROBINSON:

Yeah.

THE COURT:

Let's take a break now and we will come back to that, thank you.

15 **COURT ADJOURNS: 11.29 AM**

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COURT RESUMES: 11.54 AM

CROSS-EXAMINATION CONTINUES: MR ROBINSON

- Q. Ms Hampson, just before the break, we were working through your reply evidence and if I could take you to paragraph 2.8. Do you have that in front of you?
- 5 A. Yes, I do.
- Q. The issue, as I understand it, is that you're saying that the CAPRi research in 2008 does not provide a basis for assuming a correlation between alcohol-related harm and the student population, and off-licence premises, correct?
- 10 A. The research, particularly the student-level analysis within that research, draws correlations between outlet density and harm. I have some concerns about the applicability of the research specifically to Dunedin and my main concern is the regard, the fact that it's been referenced as evidence of defending a moratorium to reduce an exacerbation of harm and the relevance of that in a Dunedin context.
- 15 Q. But it at least provides a rational basis for a concerned territorial authority to consider that a student population in close proximity to off-licences will be related to increased alcohol-related harm?
- 20 A. To the degree that it's a national research study, yes.
- Q. And it's not, the results of that study are not inconsistent with other research that's been conducted, is it?
- A. According to the author of that research, yes.
- Q. And do you have page 181 of the bundle? It's an attachment to the rebuttal letter of evidence of Dr Kelly.
- 25

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THE COURT:

What page was that again?

MR ROBINSON:

Sorry, page 181.

5 CROSS-EXAMINATION CONTINUES: MR ROBINSON

- Q. And at the top of that page, there is reference to a study that was conducted on the density of licensed premises in Manukau. The top bullet-point, "The off-licence density is significantly positively associated with violent offences, sexual offences, drug and alcohol offences and is significantly negative associated with family violence." So it's not just the CAPRi report and the international report she cites, there is New Zealand support for the proposition that density is positively associated with offences, do you accept that?
- 10 A. The research relates to Manukau City in Auckland. I'm not familiar with that particular study.
- 15 Q. And page 179, the bottom line says that, "This indirectly indicates that off-licences contribute more to alcohol-related harm relative to on-licences." Have you conducted any research or analysis that would rebut that proposition?
- A. No, I haven't.
- 20 Q. You make some criticisms based on the CAPRi report involving 2005 data and make the observation that it's not very current or representative of current alcohol sale policies. Have you undertaken any analysis to compare current alcohol sale policies now as against 2005?
- 1200
- 25 A. No, I have not, although anecdotally, I am aware that there's been a change in the drinking age, the driving limit in terms of blood alcohol, and there's also

been the introduction of the Act which has affected trading hours, grocery stores' ability to sell alcohol and I'm sure there's other examples as well.

Q. That's all really recent stuff that won't have filtered through statistics yet. That's all 2016 changes, aren't they?

5 A. No. The Act came in at 2013 and I'm not exactly sure when the drinking age changed but I think that was some time ago.

Q. Have you considered the levels of alcohol-related harm in 2005 to the present day as a comparator?

A. No, the police data was not provided that far back.

10 Q. But my question's more broadly than the police data. Have you undertaken any research to see whether your criticisms of this dataset from 2005, being dated, actually has any validity?

A. I've not compared the – well, no. I think my key concern was that the density or the number of outlets back in 2005 was not necessarily the same as the
15 number of outlets or the density that we have today.

Q. But you don't know?

A. No, but I do know that the density has at least decreased since 2011 so I can't speak to the trends prior to that period.

Q. Would you accept that the CAPRi report provides the basis for a territorial authority to be cautious in dealing with the density of licensed premises in relation to a student area?
20

A. I think to the extent that it is national research and that it should be, it could be considered alongside some local evidence.

Q. But still, if a territorial authority is looking around for the best evidence on which to make its decisions, this study is available and the territorial authority is entitled to rely on it in being cautious with the density of licensed outlets that it permits, correct?
25

A. I think that it's certainly appropriate for a council to have it in mind, although I understand that a local alcohol policy is supposed to be based, where

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possible, on local evidence. I would just suggest that it's perhaps not sufficient in and of itself to be a reliable justification of the moratorium and that's the extent that Mr Mechen has implied the correlation and its purpose.

Q. But it's certainly a factor and weight can be given to it?

5 A. To the extent that it's a national, yes.

Q. You've made the comment at page 50 that the research does not establish a link between the types of premises the students purchased alcohol from and reported drinking levels. Students, presumably, would be cost-conscious?

A. Often.

10 Q. So they're going to shop where they get the most bang for their buck, aren't they?

A. That would be reasonable, yes.

Q. Is that going to be an on-licence or an off-licence?

A. Well, I think to the extent that they're wanting to take alcohol home, they'll look for a good price, and to the extent that they're looking to drink in a bar, they'll look for a good price.

Q. If they are looking to consume quantities of alcohol, though, they're going to be going to the off-licence, aren't they, because it's significantly cheaper than buying by the glass on an on-licence, correct?

20 1205

A. Yes, but I think there's certainly evidence that students partake in both off-licence purchases and visit the bars, so they must make a decision about what proportion of their funds, or the discretionary spending, they allocate to both premises.

25 Q. It's more likely than not though, isn't it, that they're going to spend most of their money on an off-licence, isn't it?

A. I've got no statistics to verify what proportion of their spending on alcohol occurs in a off-licence as opposed to an on-licence.

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Q. So when Mr Mechen and his evidence says that 90% of purchase by this age group are from off-licences, you can't disagree with that?

A. I don't have the statistics, no.

5 Q. At the top of page 50, you make the comment that the location and density of outlets is the result of a number of market forces and locational drivers. In the student context, that's going to include a high density of students, so you've got your market, correct?

A. Students are part of the market.

10 Q. Demand? We know that students consume significant quantities, that's another factor?

A. Actually, the research I've been involved in, because, as you said, students are quite cost-conscious and they have a low discretionary spend, proportionately across society, actually, the 18 to 24 year olds spend less on alcohol than older age groups.

15 Q. But they cause more harm and they present more often at hospital, don't they?

A. That's correct.

20 Q. You make the comment at iv, your analysis indicates that a catchment centred on university is not always relevant and this has contributed to the high level of variance in outlet density in the research. Have you considered the residential density of students surrounding particular campuses in comparing the various campuses that were in the CAPRi study?

25 A. My comment there is not reflected on the density of the students but in terms of the ecological analysis, he's concerned with the density of outlets in proximity to the campus. Some of those campuses clearly show that they're not in an area where there are commercial businesses and there are very low numbers of any outlets in those catchments.

Q. You make the comment at F3 on page 51 that you would need to have 10 additional licensed premises within 1 or 3 kilometres to have even a modest increase in the alcohol-related harm?

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A. Yes.

Q. Can I take you to page 181?

A. Is this –

Q. It's an attachment to the evidence of Dr Kelly, and you'll see it has table 9,
5 estimated impact of one additional alcohol outlet in Manukau, New Zealand?

A. Yes.

Q. That suggests that the impact of one additional outlet is actually quite
significant, giving rise to between 10 to 25 additional police events and
between two and rounding at four motor vehicle accidents, just from one
10 additional outlet. Would you accept that seems to suggest a greater degree of
harm from additional outlets than in your analysis of the CAPRi report?

A. The numbers stated in this table refer to an actual quantum of incidents and to
understand how significant they would be in terms of an increase, you'd need
to understand the base number which they were added to. It's quite possible
15 that if there were a large number of incidents that an additional 10 to 25 would
actually be a very small incremental increase.

Q. But for someone who's looking at that table, at least they are entitled to be
alarmed at the potential impact of a single additional alcohol outlet?

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20 A. I think you would not be alarmed if you took that table in the context in which it
was meant by the author. I'm not alarmed.

Q. But if you're taking the approach of minimising harm, however, preventing one
additional outlet is going to remove that level of harm from the community, isn't
it?

25 A. I just would say that I am aware of some of Dr Cameron's analysis. He was
the same author of the HPA study in which I have critiqued in my evidence,
and his research as far as his wider North Island study is concerned draws no
actual association between the density or the increase in density of any
particular off-licence and the associate harm. So there is no justification that

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an increase, say, in one additional bottle store is associated with the number of harms. It's just a statistical relationship, and the author is very clear in qualifying that that inference cannot be drawn, so again I think the research – you can't look at one matter of the research in isolation; you have to consider the entire research paper.

Q. Okay. The final paragraph of your reply brief, you say "Dunedin does not exhibit escalating ARI. Rather ARI declining particularly in the area of popular student residence, correct?"

A. Yes.

Q. Do you accept that your statement is inconsistent with the evidence of the Southern District Health Board in 2013 report that shows hospital presentations for alcohol-related matters increased?

A. I agree that this is focussed on one particular data set.

Q. Mhm.

A. Yes.

Q. And the data set records actual harm to people, as shown but there is a significant increase in alcohol-related harm, correct?

A. In particular age groups, and I'm not sure if it's specifically linked to the moratorium area, but yes those two trends are in opposing directions.

Q. Yes, and you make the final comment that Mr Mechen provided no evidence of a proliferation of off-licences in the area affected by the moratorium, correct?

A. Correct.

Q. Local authority, in taking a cautionary approach, would be entitled to rely on the views of health professionals in formulating a local alcohol policy on the day.

A. I think they're one of the people they should consult, yes.

Q. And if the concern that has been expressed by health professionals is the access to alcohol via off-licences, and the training hours, then that is a concern

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that the Authority, sorry, that the local authority should properly take on board, correct?

A. I think they should weigh that up against other evidence available to them. So, for example, to the extent that their hours actually translate into acute incidents of harm, and I think there is evidence being provided on that by Dr Fairgray, to the extent that densities, if dens – if – assuming there is a relationship between increasing density and harm, whether that density trend is actually relevant to Dunedin given that we've seen a decrease in density, whether the likelihood of a proliferation of off-licences in the moratorium area is justified, so for example I've not seen any evidence that there is going to be, within the next six years of the LAP, a significant increase in market demand that would perhaps stimulate additional licences. All of those questions, I think, have not been answered in the evidence provided with the LAP.

Q. Overall, in terms of the serious harm that is being suffered through serious assaults, that's increasing?

A. Yes, the serious assaults has shown an increase.

Q. Threats are increasing?

A. Yes.

Q. Hospital admissions are increasing?

A. Yes.

Q. All related to alcohol?

A. Yes.

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MR BRAGGINS:

I didn't want to interrupt my friend while he was questioning the witness but a little bit of a moan about this police document that's just come in dated 18 July 2016, which is –

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MEMBER MOORHEAD:

I did wonder what your view was on that Mr Braggins? I'm surprised you're so quiet.

THE COURT:

That hasn't been produced by police.

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MR BRAGGINS:

Well, by police. I mean it seems – I actually thought that it was a colour copy of the document attached to Mr Mechen's evidence, but it seems to be new. It predates the circulation of the reports from the, well, I suppose, from both the counsel and also the reporting agencies. I don't have a particular concern about the information in it. I'm not scared of the statistics but I think it's a little bit fair to criticise Ms Hampson for not using a heat map on a report that should have been available to her beforehand. That's just a point I wanted to make. The main thing that I want to re-examine on is the suggestion that we compare apples with apples. I'm not sure that we have been. So let's get to the apples.

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RE-EXAMINATION: MR BRAGGINS:

Q. So 181 of the Progressive evidence, that's the table that you have just been looking at. Can you read the three lines that immediately follow the table the you've been looking at.

20 A. "However, applying these results throughout New Zealand is cautioned against at this time. The health promotion agency is currently undertaking further research, is required to analysis the effects of licence premises density at a national level."

Q. So that research that's referred to that's the HPA research that you refer to in your evidence. Is that correct?

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A. Yes. The North Island study done by Dr Cameron and HPA followed on from his initial Manukau study which is the one presented here.

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Q. And the key, one of your key findings is that the results were highly variable across the North Island. Is that fair?

A. Yes, that's correct.

5 Q. And you've had a look at what was the most comparable part of the North Island to Dunedin, being Hamilton and Palmerston North. Is that correct?

A. Yes, that's correct, and for both of those locations in as far as supermarkets density was concerned, there was no statistically significant relationship between alcohol related harm and density.

10 Q. So have – what are your thoughts about applying these Manukau statistics to Dunedin?

A. Like all research I think it needs to be taken, it needs to be considered in the local context, and I think the limitations and the caveats associated with each study need to be carefully considered.

15 Q. And in terms of that second research, did that distinguish between the effect of bottle stores and supermarkets and grocery stores?

A. Yes, it analysed them separately.

Q. And did that show the same relationship or a different one?

20 A. Can't specifically recall. I do recall that both bottle stores and supermarkets showed variability across the North Island. So again emphasising that a local context or local consideration is of most importance. I – it would depend – I don't think I can specifically recall whether Palmerston North and Hamilton, what relationship existed specifically the bottle stores.

25 Q. But across the country was the variability different for the different types of licences or the same. So did they show different things in different areas or the same things in different areas?

A. No, they showed different patterns in different locations across the North Island.

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Q. Can I take you to Mr Mechen's evidence on page 186, and my friend referred you to the last paragraph in this report, it reads, "The study adds to an international literature showing that physical access to alcohol measured by the number of outlets within walking distance of a person's home." By outlets,

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A. That statement's not specific. I would suggest it probably refers to both.

Q. And if I take you to Mr Mechen's evidence at page 266, this is the same graph that Mr Foster used in his evidence about the difference in health statistics between Dunedin and the Lakes District and Southland.

10 **MR ROBINSON:**

Sorry, what page?

MR BRAGGINS:

266.

RE-EXAMINATION CONTINUES: MR BRAGGINS

15 Q. And so my friend was suggesting to you that somehow, this graph was misleading because it didn't take account of the fact that students in Dunedin live there for eight months of the year and for the four months when they're not in Dunedin, they're not causing problems in Dunedin and therefore under-representing in your statistic, and he pointed to the fact that students in

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particular in Dunedin may move around at different times of the year. In order to actually compare apples with apples, though, wouldn't you need to also think and do a proper analysis of Southland and Dunedin and the Lakes District to figure out what proportion of their young people are moving in or out?

25 A. Yeah, I think if you're looking to isolate the impact or the results for just students, you would need to do the same in each district.

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Q. And this table doesn't relate to students, though, it relates to young adults? It's an age cohort?

A. It does not discriminate. It's looking at all 18 to 24 year olds.

Q. If I take you to Mr Mechen's evidence at page 129, so this is the news reports about Orientation Week which is the big week when students come out and cause lots of problems in Dunedin. The sixth line down, it says, "He estimated 66% of those people arrested during orientation were not students." Would that influence your thoughts about the relevance of students being in Dunedin or not being in Dunedin when looking at who's suffering alcohol-related harm?

10 A. Yes. This suggests that we need to – that targeting students as being the only troublemakers during these periods is perhaps inappropriate.

Q. Can I take you to paragraph 2.11 of your evidence-in-chief? Sorry, 3.9 on page 21, my apologies. And my friend highlighted that June is a low month for alcohol-related harm and suggested that's because when the students were on holiday and weren't around but you haven't identified that December or January are particular low months either, have you?

1225

A. No, I haven't.

Q. And those are also months when students are on holiday?

20 A. Correct, and I think that's consistent with the fact that the analysis shows that a significant amount of ARI is outside of the moratorium area and inferring from that, it's actually occurring in the general population outside of the student population area and I think that's all contributing to the fact that there is a consistent level of alcohol-related incidents occurring across the whole district at all times of the year.

25 Q. Staying on the topic of alcohol-related harm, if I take you to page 19 of your evidence-in-chief which is this graph 9, the total ARI in Dunedin city, and I'd also like you to get out Mr Mechen's evidence, page 97 of Mr Mechen's evidence, and this is one of my points about comparing apples with apples. So

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we were told that at page 97 of Mr Mechen's evidence, alcohol poisoning cases have been increasing, therefore, we have a problem of an ongoing elevation of harm in Dunedin. Can you tell me what year the health data stops?

5 A. It stops in 2012.

Q. And you were asked a question about what has happened since 2012 and you'd indicated that the Act came into force and that there were a number of changes, so then we look at your evidence on page 19, graph 9, that really starts – I mean, it includes 2011 but it actually mainly covers the period of 2012 to 2015, and so given the difference in time periods and some of the intervening occurrences, regulatory change, is it really true that these graphs are inconsistent or are they just showing different times?

10 A. They're showing different times and I think ideally, you'd report both statistics over the full period from 2008 right through to 2016 or 15 and that would tell you whether the increasing trend in the alcohol poisoning continues after 2012. Equally, it would show you what had occurred in the alcohol-related incidents prior to 2011 so unfortunately, we can't project what happened after 2012 or before 2011.

Q. And just staying on page 19 of your evidence, and this graph, the matters that you have graphed are the matters that have been given to you by the police, is that correct?

A. That's correct.

Q. And these are the matters that the police say may be related to alcohol-related harm?

25 A. I understand that they rely on the car data throughout New Zealand in association with their analysis to do with alcohol-related policies.

Q. And the criteria had been chosen because they have some relationship?

A. Yes.

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MR BRAGGINS:

I will be explaining this with the constable but I need to put it to this witness in light of the questions that have been raised.

RE-EXAMINATION CONTINUES: MR BRAGGINS

5 Q. So if I look at drunk custody, detox centre, to me, that is something would fairly highly relate to whether someone's intoxicated or not, that they've had alcohol?

A. Yes.

Q. But then some of these other ones might be a little bit less clear, for example, the intimidation and threats and the serious assaults?

10 1230

A. Yes, we don't have data that comes with this that tells you whether alcohol was a factor or not. I am aware in I think it's Mr Foster's evidence that he references a statistic from the police that says, and I'm just going on my memory, 73% of a particular type of incident was shown to have alcohol related but I don't have similar statistics to infer the relationship for all of the incidents included in the car data.

15

Q. My friend asked you some questions about your data and the way that it was presented and asked if maybe it should have been more comprehensive. To what extent was there much data, or much analysis of data, for you to be able to consider that was available for the police or the council or the medical officer of health, either before you wrote your evidence or from Mr Mechen, in your reply?

20

A. There was very little locally-specific analysis or data that was presented, and specifically anything that substantiated the patterns and trends over time or specifically in the moratorium area, and that's partly why I felt that this analysis needed to be contributed to help tell that story. So the police data, for example, that report with the heat map in it, that was circulated. You know, that wasn't particularly relevant to the alcohol policy because it was related

25

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only to liquor bans and didn't place that analysis in any context and similarly the health admission data is not a spacial data set and does not allow us to understand the origin of where those incidents are occurring. So I felt that there was a limited amount of useful information.

5 Q. And my friend also asked you to speculate to a greater or lesser extent about the relationship between the reduction in harm that we're seeing in the moratorium area: the reduction and – sorry I've gone and lost the graph. So we look at that reduction in time over 2012. That's a good thing, and then suggested to you that that was linked to the reduction in licences, and then
10 changed the language a little bit and referred to the reduction in off-licences. I'd just like to take you to graph 4 so that we can, if we're going to think about that potential correlation, about what licences are actually changing in the moratorium area. And in your view, so this is graph 4, page 11, in your view what is the type of licence that has had the greatest amount of reduction since
15 the Act came into force at the end of 2012?

A. Well, certainly the two that have shown a large reduction are taverns, on-licence taverns, and cafes.

Q. And to what extent have supermarkets and grocery stores reduced in density?

A. Supermarkets have not changed. That's been a staple over time and the
20 grocery stores has reduced in density.

Q. Could you characterise the extent of that change in density?

A. It's a –

Q. In comparison to the other licences?

A. So there's been a reduction of one grocery store and no change in the number
25 of supermarkets in that time period relative to – not sure if I could put my finger on the calculations for the reductions for Taverns.

Q. Not as a percentage if there's a –

A. Oh.

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Q. – just as a – is it a material, well, I'm not going to take that any further, Your Honour. You can see the graph. If we go to this Dunedin liquor ban offences map.

THE COURT:

5 Is this the police report?
1235

MR BRAGGINS:

This is the police report. Are we going to call that exhibit 2, I think maybe the LAP
10 that I handed up was maybe exhibit 1?

THE COURT:

It was exhibit 1. So this would be exhibit 2, I think, Emma?

UNIDENTIFIED FEMALE VOICE:

Yes.

15 **RE-EXAMINATION CONTINUES: MR BRAGGINS**

Q. So you just need to – I just want to make sure I have read and understood this.
If we look at this heat map because my friend thinks it's the best way to
understand alcohol related harm, and then we, we have a look at, I'm just
trying to find the – can I take you to map 2
20 “The Location of Licences by Type 2016.” So, that's on page 9 of your
evidence. Now it seems to me that there is a fairly significant number of dark
brown spots which is 24 to 668 south of the Octagon. Is that a fair description?
So that's the highest number of incidents there?

A. Yes, there's certainly some spatial units south of the Octagon that are shown
25 an equally high category of incidents as north of the Octagon.

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Q. But the moratorium area on map 2, so that's the pink line on your graph, map 2, that stops at the Octagon and it doesn't go further south from there?

A. That's correct.

5 MR BRAGGINS:

I have no further questions, Your Honour, unless you –

THE COURT:

(inaudible 12:37:43)

QUESTIONS FROM THE COURT: MEMBER MOORHEAD:

10 Q. Ms Hampson you say in your key findings at paragraph 2.6 that you don't dispute that alcohol related harm occurs, particularly around the annual university events, and given that even if your supposition was correct, although I note it's limited to the alcohol related incident rather than generally alcohol related harm, you say that the alcohol related incidents are decreasing, would
15 you accept that that doesn't mean that it isn't still a high level?

A. Yes, I've only talked about the trend. But I have calculated the significance of these events on these days in the context of the total moratorium area and the total district, and in the context of the total year. So for example, the incidents inside the moratorium area account for only 3% of all alcohol related incidents
20 in the district. My concern, or the reason for putting that into context was to try shed some light on whether, when Mr Mechen draws on these events as part of his background for rationalising moratorium, and talks about reducing harm through the process of the moratorium, and I just think it's relevant to consider the context of how effective a policy like that is when the benefit is a reduction
25 in three 3% of the alcohol related harm. So it was just, I was just trying to put some context around those numbers.

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Q. And are you also aware that the object of the Act that we are considering actually talks about minimising alcohol related harm rather than reducing it?

1240

A. I wasn't familiar with the exact terminology but that makes sense.

5 Q. So what I am saying is even if a level is reducing, there is still more that could be done to minimise it further?

A. Sure.

QUESTIONS FROM THE COURT: MEMBER MILLER:

10 Q. Mine are general questions directed to you as a researcher. My first question is, when does research become dated?

A. I think it depends on the research. I think when there are, you can show in a time series that trends have not changed and that the situation and the context of the research is the same, then I think it is more relevant to consider older research, but when things are changing quickly and the forces and drivers of change are apparent then I think data can quickly get out of date.

Q. So in the evidence, we have that alcohol research paper which refers back to studies done in 2008. Is that dated?

A. The research was published in 2008 and relates to 2005 data.

Q. Yes.

20 A. I would say, considering the number of factors that that researcher has considered, there have been some fundamental changes in the market and the policy environment that might have had an influence on the results if that research was repeated today.

25 Q. And in the context of the Dunedin PLAP, how much store – because we have a lot of evidence, both national and international evidence in front of us, how much store are we entitled to place on national and international evidence?

A. I've not considered any international evidence and I have looked at a few of the national studies. I think all research has a place in building up a picture but

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5 it needs to be carefully contextualised for the local situation and some research
 studies perhaps are more applicable at a local level and others are not. I think
 they should all be given some regard to because there is no perfect piece of
 research that answers every question and we do need to piece together the
 puzzle from lots of different research so I think it's relevant to consider them
 but just to consider them very carefully, and I think that combining them with
 local-level analysis is perhaps very important.

THE COURT:

10 Mr Braggins, did you have anything in light of what we have asked? No? Thank you
 for that.

WITNESS EXCUSED

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THE COURT:

In light of the time, Mr Braggins, did you want to move onto your next witness now or?

MR BRAGGINS:

- 5 I'm fairly relaxed. I think we may as well, I mean, we've still got quarter of an hour, 20 minutes to go so yeah.

MR BRAGGINS CALLS**JAMES DOUGLAS MARSHALL FAIRGRAY (SWORN)**

Q. Is your full name Douglas Marshall Fairgray?

10 A. James Marshall –

Q. Sorry, James Douglas Marshall Fairgray?

A. Yeah.

Q. And you prepared a statement of evidence dated 14 November 2016?

A. Yes, I have.

15 Q. And a statement of rebuttal evidence?

A. Yes, I have.

1245

Q. And to the best of your knowledge, the contents of those statements' evidence remain true and correct?

20 A. Yes, there's one typo I've noticed which I'll point out at this point. In my rebuttal, 2.1(d), where I've mentioned, Mr Mechen mentions reliance on the Wellington City Council study, I haven't really gone into that in any detail so I'll strike that part out, we haven't covered that, and then on 2.1(d), the last part of that paragraph in my rebuttal, I've noted I haven't really focused on

25 Mr Mechen's coverage of the Wellington City Council study and also I'd note on paragraph 2.42 in my rebuttal statement where on the first line I have a list

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of types and the last type identified there is O. It should be N. Otherwise, other changes.

Q. Sorry, that's at 2.42?

A. 2.42, yes.

5 Q. I don't see an O. It mentions an L.

A. L, okay. Take away L and insert N.

Q. My friend asked Ms Hampson a question about the Manukau report that Mr Cameron produced, I think it was for the HBA, that was at 181 of the Progressive evidence. Just wondered whether you had done more work because Ms Hampson hadn't really had much of a look at that report but I wondered whether you had and might be able to provide any greater context about what that report was?

A. Mainly along the lines that Ms Hampson has already covered. That was an early, it was the first of a number of studies by Dr Cameron and it focused on Manukau City and subsequently, their research approach has evolved and developed and so the most recent research which they've undertaken for the HBA reflects an improvement on the sort of analysis they are able to do in Manukau City, so – and my understanding is that the more recent research gives a somewhat more reliable indication than the earlier research. But, again, you've already noted the underlying lines, "Supplying these results throughout New Zealand is cautioned against at this time," and I would support that.

CROSS-EXAMINATION: MR THAIN

Q. Dr Fairgray, the study you were just talking about with my friend Mr Braggins, that's in Progressive's bundle of documents around about page 181. Do you have that with you?

1250

A. You're talking the Manukau study not the subsequent one?

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Q. Yes. Yes the early one.

A. Yes.

Q. And in your last answer to my friend Mr Braggins you talked about how that study recorded within itself that applying that results throughout New Zealand was cautioned against –

A. Yes.

Q. – back at the time this study was written?

A. That's right. Yes.

Q. And it's just that if you look down the page just below the heading immediately under that part where it says "Limitations"?

A. Yes.

Q. Do you see it said that Cameron and some others from 2012 had noted there are difficulties in separating out the chain of causality, i.e. whether high density reflects high levels of demand and consumption such that inflated levels of alcohol related harm would be present in the neighbourhood even without increased alcohol outlet density? Am I right that what that means is that Mr and Ms Cameron and the others had pointed out that the mere fact of a statistical correlation between alcohol related harm and any particular density of outlets doesn't tell you whether an increase or decrease in density will increase or decrease harm?

A. No, it's right. I mean it's – what they're able to analysis is spatial association rather than causal connection. So spatial association is where things happen in the same, or approximately, the same place, that doesn't necessarily mean they are causally connected. So you've got to dig further to see whether you can establish that causal connection.

Q. Dr Fairgray, now do you have with you your second brief? That's in Progressive's bundle. It starts on page 80?

A. Yes I do.

Q. And I'd like to have a look at the table on page 93.

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A. Yes.

Q. Down at the bottom there, table 1?

A. Yes.

5 Q. Now, am I right that what this table relates to is part of what you found when you analysed the payment card data that you obtained?

A. Yes, that's right.

Q. So you obtained data about the use of payment cards by people between the ages of 18 and 24 in New Zealand?

10 A. Yes, and they're BNZ cardholders. Just, that's what Marketview Data is able to provide. It's not all the other banks, but it is BNZ.

Q. BNZ, and you then analysis that data and you looked at people, or the number of people who purchased an off licence using their BNZ payment card?

A. Yes.

15 Q. And then you then looked at whether or not they did or didn't go on to make a purchase at an on licence premise later on that evening?

A. Yes.

Q. And, in particular, you were looking at people who made a purchase at an off licence using their card after 9.00 pm at night?

A. Yes, yes, 9 o'clock.

20 Q. The purchases in the off licence premises. We know that supermarkets and grocery stores are off licensed?

A. Yes.

25 Q. Am I right that the data you looked at couldn't tell you though whether a person how made a purchase at a supermarket or a grocery store was purchasing alcohol?

A. No. It told you that they made a purchase but it didn't say whether it was bread and milk or alcohol, or anything else, or a mix.

Q. Or a combination?

A. Mix, yes.

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Q. So if start perhaps with this, looking at your – if I go across the page to your paragraph 2.49(a).

1255

A. Yes.

5 Q. So you've said, "Of those who made a purchase in an off-licence outlet after 9.00 pm," so that includes all the people who use their BNZ payment card in a supermarket or a grocery store?

A. Yes.

10 Q. "92.7% of them made no other purchase at an on-licence outlet," and that means that evening, doesn't it?

A. Yes, between 9.00 pm that evening and 7.00 am the next morning, and it was focused on liquor stores and supermarkets rather than necessarily grocery stores.

15 Q. So were grocery stores included or were they not included? So it's supermarkets?

A. Supermarkets, effectively, because they're identified as a major source of alcohol sales so I was trying to relate it specifically to supermarket and liquor stores as the two major sources.

20 Q. You say there in your paragraph, 7.3% of these people who use their BNZ payment card in an off-licence outlet after 9.00 pm, 7.3% of them made a purchase later on that evening in an on-licence?

A. Yes, using the same card.

Q. I'm right, aren't I, that of that 7.3%, some proportion would be people who, when they use their card in the supermarket did not buy any alcohol?

25 A. Absolutely. Normally, it would be somewhere between 80 and 85% would not have purchased alcohol.

Q. So to put that into, so I can get my head around that, about 80 or so percent of the 7.3% who purchased in an on-licence had not purchased alcohol earlier?

A. Not of the whole 7.3% because –

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Q. But of the supermarket component?

A. Oh, the supermarket component of the 7.3%?

Q. And how much is the supermarket component of the 7.3%?

A. It's slightly less than half but I would have to check that to be exact, but it's...

5 Q. Somewhere in the order of, say, 40%?

A. In that order, yes, at that time of night.

Q. So we've got 80% of about 40 to 50% comes out of the 7.3%?

A. Well, it may come out of the 7.3% because you can't necessarily just pro-rate it because it may be that people purchasing in a supermarket do so in the knowledge that they're going on to purchase in an on-licence outlet so you have to be very careful just pro-rating but a solid proportion of the people who purchased in a supermarket would not have purchased alcohol.

10 Q. And I'm right, too, aren't I, that it's probably fair to say that at least some proportion of those who purchased in the supermarket, even if they purchased alcohol, may not have drunk that alcohol that night?

A. That's correct, we have no way of knowing after the purchase when they actually consumed it.

Q. Going across the page to your table 1, the first column of figures, that's the 18 to 24 year olds, and you said there in the transaction sequence, people who'd gone to an off-licence but not to an on-licence is 37% so that's, am I right, that's in the 18 to 24 year old age bracket, it's the people who've been purchasing at an off-licence after 9.00 pm?

A. Yes.

Q. And have not gone on to an on-licence, that's 37% of them?

25 A. Of all people purchasing after 9.00 pm, yes.

Q. In that age range?

A. Yes.

Q. And another 60% who've used their card in the on-licence sometime that night but they never went to any off-licence at all?

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A. Yes.

Q. Leaving only the 3% there in the middle who have used their payment card in both an off-licence and then an on-licence on the same evening?

A. Yes, within that time period, 9.00 pm to 7.00 am.

5 Q. And it's any time after, as you say, it's any time after 9.00 pm, isn't it?

A. Yes.

Q. So that includes people who may have done it after 10.00 pm who've gone to the off-licence after 10.00 pm?

A. Yes, could do, yes.

10 Q. And I'm right again, aren't I, that of the 3%, some proportion would be people whose trip to the off-licence did not include the purchase of any alcohol?

A. Yes, in some proportion, yes.

Q. On the same basis as we discussed before?

A. That's right.

15 Q. And even of those whose trip to the off-licence did include some alcohol, some proportion won't have drunk that alcohol that night?

A. Yes.

MR THAIN:

Your Honour, I think that's probably an appropriate time to break and we're almost
20 right on 1 o'clock.

THE COURT:

We will take a lunch break now and resume at 2 o'clock.

COURT ADJOURNS: 1.01 PM

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COURT RESUMES: 2.09 PM**CROSS-EXAMINATION CONTINUES: MR THAIN:**

Q. Dr Fairgray before lunch we were talking about that chart of yours, table 1 on the bottom of page 93 in Progressive's bundle?

5 A. Yes.

Q. Now, flicking over the page please on to your page 95, and your paragraph 2.56, you've said there that in your view the proposed restriction of off licence sales after 9.00 pm is likely to have little effect on the incident of preloading because of the very small proportions of the target age groups who potentially follow the anecdotal sequence. That's the conclusion you draw from the data that you were looking at that we were discussing before lunch, isn't it?

10

A. That's correct, yes.

Q. Now I just now want to see if I can get a handle in my own mind about the other side of the equation as it were. So on one side of the equation your evidence is that it's likely to be only a very small proportion of the 18 to 24 year olds who are buying off licence alcohol after 9.00 pm and preloading with that before they move on to on licence premises?

15

A. Yes, in that we're looking in the order of that 3% for that group. I don't have any information on the extent to which they use that alcohol for preload.

20 Q. Mmm.

A. What I've done is looked at the potential for that to occur based on the patterns which we can discern.

Q. Yes, and as we said before lunch, the 3% is, sort of, the potential, as you say, because a proportion of that 3% will have purchased in an off licence supermarket and not even bought alcohol?

25

A. That's correct, yes.

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Q. So if I think of that as one side of the ledger, the other side of the ledger, I suppose, is people who purchase alcohol from supermarkets after 9.00 pm, and who do that perfectly responsibly. They don't preload or side load with it. They're just people going about their business who like to shop at a supermarket after 9.00 pm?

A. Yes, pretty much. I mean, when you say, "People like to shop," people generally shop at the time which is most convenient for them. So there's a degree of, get a quite a strong degree of utility in there. It's not necessarily just, "I like to shop after 9.00 pm." It's, "Well, this best suits my needs, to shop after 9.00 pm." So it's a bit more than just a preference.

Q. So for some of those people it will be because of when they were?

A. Yes.

Q. That they might not finish work till later in the evening?

A. That's true, yes.

Q. Or they may have childcare responsibilities or some because of a lot of other responsibilities in the home. That means they can't shop till after 9.00 pm?

A. Yes, they may do, yes.

Q. I just wonder whether you can help me with how many people in Dunedin we might be thinking of. Now, I'll start with something really simple. There's not, sort of, less than 10 people in Dunedin who shop in supermarkets after 9.00 pm is there, it's more than that?

A. Yes, there's quite a few more than that.

Q. Well, where I want to go with this is you've already given us a little bit of a clue, it seems to me, as to how many people it might be when you've analysed the numbers who shop at the other end of the day. So in your second brief of evidence on page 83 –

A. Yes.

Q. – and then paragraph 2.10?

A. Yes.

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Q. You talked about there being in the order of 165,000 to 185,000 shopper visits to the main supermarkets in Dunedin in the 7.00 am to 9.00 am period. So in that morning two hour period?

A. Yes.

5 Q. And you said of those an estimated around 18,000 to 19,000 of those shopper visits would have included a purchase of beer or wine?

A. Yes, that's correct.

Q. Do you know – can you tell me what sort of numbers we might be talking about when we look at the 9.00 pm to 11.00 pm period that's currently available for
10 full service supermarket shopping in Dunedin? Are we talking the same sort of number at that end of the day?

A. So did you say 9.00 to 11.00 pm, or 9.00 to 10.00 pm?

Q. 9.00 pm to 11.00 pm?

A. Ah –

15 Q. Because that's, I'm right, aren't I, that's the period in which in Dunedin at the moment a full service supermarket shop can be carried out at at least some of the supermarkets?

1415

A. That's some of them, yes. If that was possible at all of the supermarkets it
20 would be somewhere less than the 165 to 185 that I've identified. I haven't provided an estimate of that end of the day partly because, of course, I do have some information from Progressive but I don't have any information from the other main Countdown – sorry, the other main, you know, Foodstuffs supermarkets so it's always only an estimate from that point of view.

25 Q. And we don't need exact figures, just so that the Authority can understand the sort of order of magnitude that we're talking about?

A. It would be somewhere more than about 130,000 shoppers in the course of a year and totally using supermarkets in that period. I'd say 120,000 to 130,000,

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and those are shopper visits, they're not 120,000 to 130,000 people, it's just those are the visits based on the number of people in Dunedin.

Q. That's transactions across the checkout?

A. Yes.

5 Q. And of those, could we take it that, I don't know, the same sort of proportion of those sales would contain some alcohol?

A. Generally, you'd expect a higher proportion of those sales to contain alcohol then in the morning but generally, a somewhat lower proportion than across the whole of the day. The alcohol share of sales tends to peak in the middle of the day so it would be, I've got a figure here, about 11%, it would be, might be
10 in the order of 12, 12 to 14%.

Q. In the 9.00 pm to 11.00 pm period?

A. Yes.

Q. And you said that's lower than the average across the whole day?

15 A. It is lower than the average, generally, but it is – it's higher than in the morning period so there is a distinction between them.

Q. When you said it peaks during the middle of the day, am I right that's around the sort of 5.00 pm to 7.00 pm, is that sort of the peak? In terms of total transactions?

20 A. During the course – on a weekday it's sort of 4.00 to 6.00. On the weekends, you're getting more around the middle of the day, 12.00 to 2.00 or 3 o'clock because people are less time-constrained, they don't have to shop on the way home. They can shop because, you know, they've got the weekend available. But yeah, the general point is that it's higher than the morning, probably lower
25 than the middle of the day.

Q. So if we've got, I think you said, 120-odd thousand shopper visits between 9.00 pm and 11.00 pm and at about 11% of those including some alcohol being purchased?

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A. It would be more than 11%. It'd be in the order of say, sort of 15,000 to 20,000 out of the 120,000 to 130,000 order of magnitude and again, I don't have any figures for the Foodstuffs supermarkets so it's always only an approximation?

Q. It's a guess?

5 A. But it's an order of magnitude around that.

Q. Around 15,000 to 20,000 shopper visits between 9.00 pm and 11.00 pm that include some alcohol?

A. Yes.

10 Q. So you talked before about the effect if the stores could not sell alcohol from 9.00 pm onwards, those 15,000 to 20,000 shopper visits would have to change, wouldn't they? The shoppers would have to change what they're doing?

15 A. Yes, they could either keep shopping and not purchase alcohol or they could change their shopping time so they could visit at a time when they could purchase alcohol. It really depends on their personal circumstances and whether they have got the flexibility to change or whether they have to say, "Right, well, I can't shop on a weekday evening," for example, "I have to change my shopping time to the midday period in the weekend," something like that.

20 Q. Some of them might shift their alcohol purchases from the supermarket shop to a bottle store, I guess, if that's convenient for them?

1420

25 A. Yes, again, it's certainly possible but the structure of supermarket shopping generally seems to be that the beer and wine purchases are in a supermarket because they're quite predominantly part of a wider grocery shop. My expectation would be that people would change the time of their shopping rather than necessarily the destination. I think changing to another type of store would be much less likely because, you know, you change the time of your shopping you don't go necessarily and buy just some of your shopping

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and then go back in later on. You say, "Right, I can't shop then. I want to buy a bottle of wine. I'll do all my shopping the next day," or some other time. So it's more likely that people will change the timing of their shopping rather than the destination.

5 Q. So now looking at that issue of people changing what they do, am I right that in your view the people who currently purchase alcohol in order to preload before going on to an on-licence, if they currently purchase that after 9.00 pm, if they knew the stores were all shut at nine they're likely to change their purchasing habits and purchase before nine?

10 A. That would be my expectation because, I mean, supermarket shopping is a regular behaviour. So, you know, people are familiar with it. They've learned it as part of their weekly or even daily shopping pattern. So it's relatively straightforward to assume that, you know, that they would learn a slightly different behaviour quite quickly. It's not like you only shop there twice a year,
15 or something.

Q. Now I'm right, aren't I, that it would be perfectly fair enough to inconvenience those people who wish to purchase alcohol and then drink it to excess or inappropriately. It's perfectly fine to inconvenience them and make them move their shopping habits. You'd agree with me on that score?

20 A. If that's a way of reducing the behaviour that we're trying to change, yes, I think it's – I mean, yes, I mean as a society we're looking for ways to reduce or minimise behaviours that we're not comfortable with.

Q. The level of inconvenience that we might put on those people who wish to drink to excess or inappropriately, which is just "buy it before nine" do you think
25 that level of inconvenience is likely to stop those people drinking inappropriately or to excess?

A. I wouldn't expect so because the degree of change in behaviour is relatively small and the intent, if that is their intent, would fairly much stay unchanged. I

think the issue is if it's – it's when you get outside of the planned behaviour and it just becomes opportunistic behaviour. That seems to be the issue.

Q. Just speaking about opportunistic behaviour, factually incorrect we're thinking of students, 18 to 24 year old students, those who drink inappropriately and to excess in the form of the pre-loading before they head to on-licences, the reason they're heading to on-licences is to socialise with friends and so on, isn't it?

A. That's my understanding and I suppose my recollection, but not – I haven't researched it specifically, but anecdotally yes, definitely.

10 Q. Do you remember when you were a student?

A. Yes.

Q. And back when you were a student there was no such thing as social media, right?

A. No.

15 Q. And there was no such thing as an iPhone?

A. No.

Q. I recall that Facebook came into New Zealand – well, was available world-wide for the first time and therefore very small still, but available for the first time in 2005. Would you, do you remember that?

20 A. Not specifically, but about then. I'm happy to take that.

Q. And the first generation iPhone came in 2007.

A. Yes, I'll accept that.

Q. So you'd agree, would you, that these days with social media and mobile phones, and the combination of the two together, today's students are probably better able to hook up with their mates than you and I were when we would've had to ring around and make a lot of calls to try and find who might be having a party?

1425

A. Generally speaking, yes, I'd accept that.

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Q. It would also be fair, wouldn't it, that today's students post Facebook and iPhones probably have no difficulty working out which of their friends have some beer in the fridge. Would you agree with that?

A. To the extent that they can communicate freely, I would accept that proposition, yes.

Q. Now, in terms of my little exercise at trying to put some scales on this thing, I put in one side of the scale the proportion of 18 to 24 year olds who might do this preloading using alcohol they've purchased after 9.00 pm and on the other side of the scale I put the inconvenience that would be caused if supermarkets can't sell alcohol after 9.00 pm to all of the 15 to 20,000 shopper visits that are concerned. On that same side of the scale am I right that in your view there's also a thing that needs to be considered is the fact that implementation by the council of a proposal, if it's not got any real value can be a distraction and therefore can distract from spending energy and attention on more successful strategies for minimising alcohol related harm. Is that fair?

A. Yes, that's certainly my view, I think. You know, if you're going to take an action and you think, "Okay, I've taken an action. Things are going to get better because of it." If you've misdirected that action then you're not going to have the success or the behaviour change that you're seeking. So it's important. That's why I talked about the causal nexus. You've got to be able to think that if you do something it's going to have an effect because the whole purpose or a lot of the purpose of the proposed local alcohol policy is to have the effects that what I'd generally say is society or the community wants in terms of reducing ARH or minimising.

Q. Dr Fairgray we talked before about this situation where those who wish to drink to excess or inappropriately will adjust how they get their alcohol if they're faced with a 9.00 pm closing time. Can you have a look in the first of Progressive's volumes at page 47 please?

A. Yes, this is Ms Hampson's evidence?

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Q. Yes.

A. Yes.

Q. And that graph number 1 down the bottom there?

A. Yes.

5 Q. This is the graph that Ms Hampson talked about where she has dealt with periods of time around three particular periods in the year when the 18 to 24 year olds have a bit of a focus to use alcohol, the orientation week, the Hyde Street party and the reorientation week, and do you remember, were you in the courtroom when she was talk about this?

10 A. Yes I was.

Q. Do you remember she explained that each of those years, 2011, 2012 and 2013 are calendar years?

A. Yes.

15 Q. Are you aware that the national default off licensing hours came into effect on the 18th of December 2013?

A. Yes.

Q. And I see that on her chart the volume, the number of alcohol related incidents in the year after those national default hours came into effect was more than the year before?

20 A. Yes, that's right.

Q. That doesn't surprise you given the evidence you've given today, does it?

A. Not in relation to these figures. I mean, these are figures about three specific events which can vary, I suspect, I haven't, never participated but I suspect they can vary quite a bit from year to year. So the graph shows an indication of a trend but it certainly doesn't say that if there's a downward trend it's going to be less every subsequent year. You'd expect to get some variation around that.

25

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Q. Yes, well, they went up in a year after?

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A. Yeah, so no, it doesn't surprise me, your question.

Q. That's alcohol-related incidents generally. Have you got up there a copy of Mr Mechen's brief and all the documents that he's referred to? You do?

A. A number of his bits but I don't think I have a full set, but I'll see.

5 Q. Let's see if you've got page 141 in his bundle.

THE COURT:

131?

MR THAIN:

141, Sir.

10 CROSS-EXAMINATION CONTINUES: MR THAIN

A. No, I'm sorry, I don't have that in the – printed out, I'm sorry, I don't have that out.

Q. We can do this an easier way. Perhaps if I was to tell you that the police, in one of their intelligence reports, and this is for the Authority on page 144
15 now...

A. Sorry, I have a different page 141.

WITNESS REFERRED TO MR MECHEEN'S EVIDENCE

Q. So if you turn there to page 141 first –

A. Yes, I have that.

20 Q. – and you'll see that's a police intelligence report, is that what you've got?

A. Yes.

Q. If you turn over to page 144 –

A. Yes, I have that.

Q. – they're talking here, they've got an analysis there about the Orientation Week
25 periods for the years from 2011 through to 2015 and they're analysing charges that were laid, so this is a particularly serious part of the alcohol-related

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incidents that Ms Hampson was looking at because these are where charges are actually laid, and I see that from the chart there, chart 1, the number of charges in 2011 and 2012 was very high and then obviously, something changed between 2012 and 2013 about the way the police were doing this or the way that the event was being done, but then from 2013 to 2014 where the national default off-licence hours came into force for 2014, the number of charges stays pretty much the same, 49 to 50, and again, that doesn't surprise you, does it?

A. No. My expectation is that these changes would be a combination of a number of things, including the way the police choose to administer and other initiatives that are going on in terms of university and that sort of thing in terms of managing these events so my expectation is that it results from a number of things.

CROSS-EXAMINATION: MR YOUNG – NIL

15 CROSS-EXAMINATION: SERGEANT PANTING

Q. If I could just draw your attention to your evidence-in-chief point 3.6, this is the discussion with regards to time constraint and the need for night shift workers and things to shop at certain times.

A. Yes, I have that, thank you.

20 Q. While you were speaking with this man prior to me, you indicated there was approximately 20,000 alcohol-related sales that occurred in this key window of between 9.00 and 11 o'clock roughly in the wider Dunedin area?

A. That's a broad approximation but in that order, I think.

25 Q. Gives us a ballpark figure. If we delve that down to per day, that's 54 transactions per day. We've heard that there's approximately 10 supermarkets locally which translates to 5.4 transactions per supermarket which involve alcohol, and then per hour, that's 2.7 persons – transactions, sorry, which

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would involve alcohol. I would put it out there that it's not unreasonable to reduce the amount of harm that the sideloading, preloading that happens to have 2.7 people per hour not buying alcohol in those windows?

1435

5 A. Well, yes, but I think one of the things you'd also need to look at is who are they? Because my understanding from most of the anecdotal evidence is that it's targeting the younger people, our sons and daughters and so on, who are more predisposed to the preloading activity. If we've got 2.7 persons per hour and – say, there's three, and two out of the three are in my young age group,
10 we're not likely to be engaging in preloading. It might be 0.5 per hour or zero per hour, and in some supermarkets, depending on the location, it may well be zero per hour. But you know, it's a good way of looking at it. The way you've done it is to say, "Let's get this on the ground and let's talk specifically about the numbers of people who may be engaging in this sort of behaviour." So
15 yeah, but –

Q. Because on the other side of the ledger where you've said there's approximately 130,000 transactions in that period, that translates to 16.5 so when you're disadvantaging 2.7 people, or three we're calling it, out of 17, to me, that's not an unreasonable amount if we are limiting the amount of harm
20 caused by that sideloading, preloading, which from the police perspective causes us a lot of pain?

A. I fully accept that that causes a lot of pain and it's obviously one of the important reasons we're here but remember, those 2.7 or whatever people are not necessarily the target group, and there's also people who don't actually
25 purchase alcohol but for them, the option of purchasing alcohol is important, so it's somewhere north of the 2.7 people that you're talking about. So it's one of these issues where balance is quite important because the more people you inconvenience for little reward in terms of ARH objectives, the more people you inconvenience, that's a cost to be weighed up against the benefits of

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inconveniencing the people that we're targeting, and I think that's one of the reasons why around the country, there's been some more focus on 10 o'clock when the default is 11 o'clock. The expectation, well, yeah, if we're getting more young people purchasing after 10 o'clock, then it's perhaps more likely to have an impact on the young people we're targeting whereas if we're getting quite a few average householders, for want of a better word, purchasing in the 9.00 to 10.00 period, those are the people you're having a negative impact on, whereas the more likely benefits may accrue after 10 o'clock.

Q. Does it change your perception on this when Countdown in the central city here voluntarily relinquished its 24-hour licence in 2008 because of some of the negative effects it was getting through selling alcohol late at night?

A. I think that's a positive thing. On a case by case basis, you, operators, either corporates or individual operators can take these actions because of a notion of call it what you like, community responsibility or whatever other reason but I would see that sort of response to a specific problem as something which is quite positive, or very positive.

Q. I'll move onto a continuation of that. Have you ever worked a night shift?

A. Yes.

Q. And when you've gone home at 7.00 in the morning, do you wish to do an hour's worth of shopping, honestly, having done many night shifts?

A. I didn't work night shift long but I won't go into that. So I've worked a lot of late nights and for some people, the preference would be, "I'll get the shopping out of the way, therefore, I can sleep," as opposed to, "I'll sleep and then I know I've got to get up again and do the shopping," so it's going to vary from person to person. I can't really say. I'm sorry.

1440

Q. That's all right. I'll shunt forward to your rebuttal evidence here, looking at the discussion about the BNZ, bank account data. I think it's about point – 2.34 type area?

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WITNESS REFERRED TO REBUTTAL EVIDENCE

A. Yes.

Q. Do you know what percentage of the university market share that BNZ holds?
How relevant is it?

5 **THE COURT:**

Sorry, what page are we on?

SERGEANT PANTING:

It's in general about this data, around – he was discussing in relationship 2.34, sorry.

THE COURT:

10 Yes, thank you.

CROSS-EXAMINATION CONTINUES: SERGEANT PANTING:

Q. It's a (inaudible 14:40:44) a more general discussion. So this data is solely from BNZ?

15 A. It is solely from the BNZ and the BNZ nationally, my understanding is they have about 17% of adults have a BNZ card. Doesn't mean the BNZ card is their only card, but about 17% and the number of cards among younger age groups is generally lower than for the population as a whole. So, we may well have 17% of the younger age groups who do have a card, or it may be that they have some preference for other banks, we don't know. But enough of a
20 sample, you know, if it's between, sort of, 14 and 17% that – we get quite reliable data because it's tracking people over the course of a whole years. So it's not like a survey where you've, you know, where did you shop yesterday. It's like, you know, where did you shop last year and all that comes out. So it's quite robust (inaudible 14:41:56).

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Q. Oh, I definitely believe that. There's more in relation to the market share they if national, per say, had all the student market, does this 3% data you've got actually reflect the nation as a whole and particularly the student demograph as a whole. When I was a student National had a very good policy which all of my era signed up to. So there would've been no one in BNZ, just about, in my demograph as a student. So it's more to do with the proportions of each age group, the how, do you...

A. Well, in the data set there's a large number of people in this 18 to 24 age group. So we've got a decent chunk of people there to capture the trends.

Q. You've indicated approximately 3% of the people go on to drink from an off licence purchase or an on licence purchase?

A. Yes, I – it's probably best if I refer to that table. It might make it clear.

Q. Yes, I think that's the table on five –

A. In that table –

Q. Yes.

A. Now, I've just talked about or written about –

THE COURT:

Can you just remind me the paragraph of the table?

DR FAIRGRAY:

Tables following paragraph 2.50.

THE COURT:

Yes. Thank you.

CROSS-EXAMINATION CONTINUES: SERGEANT PANTING:

A. Okay, and just prior to that in paragraph 2.49 I've said in 2.495 92.7% who shopped in an off licence made no other purchase in an on licence, and which

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leaves the other 7.3%, and then when you come over the table 1, you've got to try and marry that 3. – 7.3% with the 3% which is in table 1. So what table 1 is showing is the total picture. It's all the purchases or the 18 to 23 year old – 4 year old purchases in that night. So, we look at all the purchases because not everybody did everything. So we've got 37% who went to an off licence but not into an on licence. 3% went to an off licence and an on licence, and 60% went to an on licence but not to an off licence, and that's the sort of, the level of overlap.

Q. And that data is a year's, like what sort of snapshot?

10 A. Yes, it was a full year, 2012.

Q. So it includes Sundays, Mondays, Tuesdays, Wednesdays when as a student you're not going to be inclined to go out drinking as much. So as a result the transaction data isn't pointed to this problem period of Friday – Saturday night, is it?

15 A. No it's not.

Q. So realistically you could assume if it was focussed on that problem area that the percentage would likely increase?

A. From the anecdotal, yes, it could well be bigger than that, and it's the sort of thing you'd need to then have a more specific analysis and see if, I mean you can focus it down on those times of the week.

1445

Q. It may be a long shot: by comparison, do you know what percentage of the population are drinking on a average night? Is 3% high or low or...

A. No, I don't know the proportion who are drinking on a night because see here, what we've got is people going to an on-licence at 60% so we can broadly assume that quite a few of those will be drinking, but that 60% is just the people who made purchases, it's not the total population, so we've got to be very careful going from the 60% of the people who are going out to 60% of the total population.

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Q. I'll draw you to a point made in the earlier discussion, is that you believe that many people would change the time they shop, not the destination they shop at, if there were a curtailing of the hours?

A. Yeah, that would be my expectation, I think, because to a degree, there's indifference between shopping choices but at present, we've got quite a lot of shopping choice so we fairly much have to assume that where people do choose to shop now reflects their preferences.

Q. So within that, again, to those 16-odd customers, it's not going to greatly adversely affect them or the business if they're shopping at the same shop. They know the store and they can go there again but a slightly different time point?

A. Well, it may well have a greater effect on them personally than it would have on the store, and that's why I've tended in my evidence to focus on the inconvenience to the people. If you leave work at 8.45 on a Friday for whatever reason and you want to do your shopping on the way home and you want to buy a bottle of wine or a half a dozen beer or whatever you want to do and you can't do that, that's something of an inconvenience to those people and it reflects a shift from their currently-preferred behaviour so therefore, it's some cost of some sort to them, and it may well be a minor cost, a minor inconvenience to them, but a lot of the work that we do sort of in the policy area is often looking at relatively small costs per individual spread over quite a large number of people which, for us as a community, builds up to quite a large cost.

Q. On the same lines, you sort of indicated that, along with some other research, that the preloaders would shift their time as well, there was sort of a belief that they'd drag forward, was that...

A. That would be my expectation, and I suppose, and I made the point before about learning behaviour. If, on a particular night, they say, "Oh, gee, the supermarket is closed, we can't get it," or, "The bottle store's closed, we can't

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get it,” they make a sort of, “Note to self, next week, we will make sure we can get it.” So people are quite adaptable in their behaviour.

Q. By inference in that, if I've got my drinker who would normally, if there's a small percentage of them, buying their drinks at 11 o'clock and it's pulled through to 9.00, that's two hours. From a toxicology standpoint, that's approximately two standard drinks that've been spread out over a longer time period if they have started earlier. As a result, the flow-on effect from that would be a reduced alcohol harm effect if they're, as it's mentioned in your notes, that it's a building up effect of alcohol. It's not a one-off effect, obviously, it's the continuous, once you drink it you have a few, so if we pulled that forward by two hours and extend their drinking window by a longer period, would see there's potential for reduction in alcohol harm due to that?

A. Well, if that was the consequence of it but that's assuming the alcohol is consumed immediately, whereas I think what we're talking about is people purchase alcohol and then they consume it at a time and place when it best suits their intentions. Yeah, I fully appreciate and agree with what you say about spreading out the alcohol consumption period but I think we've got to be very careful about assuming that the point of purchase is the same as the point of consumption. I think pretty much, the anecdotal data says that it's not.

1450

Q. One last question, what percentage of sales between 9.00 and 11.00 are alcohol only? Do you have that data?

A. No, I don't have that figure with me.

Q. Would it not seem a pertinent figure to have given we're talking about the sale of alcohol in that window and that's the point that's being discussed?

A. Yes, I mean, we've had the point that generally, around 10% of – in liquor stores, it's about 97% is alcohol and supermarkets is about 10% is alcohol. Previously answered that – you'd expect that to be pro rata across liquor stores. For supermarkets, it's probably in that order or maybe slightly higher

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but that's just total purchase. It's not alcohol-only purchases. Generally speaking, alcohol-only purchases are in the order, I think, of less than 2% and while, you know, there'll be an expectation that it would be higher the later you go in the evening, it's not greatly different in that time period.

5 Q. Because if it does elevate as the evening goes on, would that not support the opposing theory that people do buy as they use it versus buying and using it at a different time point?

A. Sorry, they use it as they buy?

10 Q. Well, yeah, buy it then use it soon after. If you look at the student demographic, they're generally, except for Hyde Street, where they start at 8.00 in the morning, they don't start at an obscure time, they start as they plan to go out. Alcohol has a limited effect, they're on an economic budget.

15 A. Yes, I think generally – there's some support for the view that if you're buying alcohol only, it's with the intention of drinking it but we don't know the time period. If somebody goes in and buys a bottle of wine and that's all they bought because they're off, you know, they want it for their meal tomorrow night or something, that's alcohol only. So often, you'll get small incidental purchases like that may be made later at night so we don't really know but I do accept that anecdotally, if you're getting young people buying alcohol only then
20 it's more likely to be associated with intention to drink within probably a relatively short time. But again, one of the things we find in this whole sequence of hearings is that there's partial information about a lot of things and we have to make some quite strong leaps to get from partial information to a causal link.

25 **CROSS-EXAMINATION: MS LOGAN**

Q. You're familiar with the object of the Act?

A. Yes, it's to minimise alcohol-related harm and to promote safe and responsible drinking.

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Q. So there's two limbs to that object. Firstly, the safe supply and consumption of alcohol?

A. Yes.

Q. And secondly, the minimisation of harm?

5 A. Yes.

Q. Paragraphs 1.6 to 1.9 of your statement, that sets out the scope of your evidence?

A. Yes.

10 Q. And you record that you've considered issues relating to alcohol-related harm and its association with the timing of alcohol purchasing?

A. Yes.

Q. And that in section 2, you deal with issues relating to alcohol-related harm and again, the timing of purchases?

A. Yes.

15 Q. And at section 3, you do a cost benefit analysis of the proposed licence hours, taking into account alcohol-related harm?

A. Well, it's not a full cost benefit analysis. It's a listing of the benefits and costs. A full cost benefit analysis is got a much more specific meaning but what I've identified there is...

20 1455

A. Well, it's not a full cost benefit analysis. It's a listing of the benefits and the costs. A full cost benefit analysis has got a much more specific meaning. But what I've identified there is benefits and costs of the restrictions on hours of sale.

25 Q. But there's nothing dealing with how the timing of sales affects the safe and responsible supply of alcohol. Your evidence is targeted to minimisation of harm.

A. It's primarily targeted to the minimisation of harm which is a large chunk of what this PLAP is about, because the focus tends to be in that on the

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focussing on the minimisation of harm. And a lot of the evidence, and certainly pretty well all of the evidence – well, the major share of the evidence from council is about minimising ARH. That's the focus.

Q. But you accept that it's a second part of the object to deal with the safe and responsible supply of alcohol?

A. Yes. I accept that.

Q. And that the timing of sales could affect whether or not that supply is safe and responsible?

A. It could do, yes.

Q. Dealing with the 7.00 am to 9.00 am period, you've said that most sales at this time are by shoppers purchasing other groceries?

A. That's right, yes.

Q. So there's few alcohol-only sales?

A. Yes.

Q. But your evidence didn't consider the effect of promoting alcohol as an ordinary consumer commodity?

A. No, I didn't look at that specifically. My understanding is there's aspects on both sides of that, so – but yes. No, I haven't specifically looked at how, the effects of how people perceive the purchase of alcohol. Sorry, I would say, though, that we're in a society where sale and consumption or sale of alcohol is certainly quite legal, and advertising of alcohol is legal, and so, you know, there's different perspectives on the – given that the sale and consumption of alcohol is therefore legal and therefore considered normal, you know, there's different perspectives on that.

Q. And you didn't consider the impact that might have on children or young people, in particular?

A. What the sale of alcohol might have on young people, or the timing of the sale, or?

Q. The promotion of alcohol, or the sale of it as an ordinary consumer commodity.

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A. And you're predicating this on the 7.00 am to 9.00 am period, is that correct?
Or are you looking at this as a general point?

Q. It's just a question in general.

5 A. I, as a general point, sale and consumption of alcohol does have effect on the
community at large including children. I mean, a large part of the – it's like
anything. It's like driving, as well as that. It, a large part of it comes down to
the manner in which behaviours are modelled to children in terms of their
learning, so I mean that's sort of a very general point. But I haven't specifically
10 looked at, and I haven't seen any evidence that sale of alcohol at a particular
time period has any disproportionately greater effect on children or any other
group in the community. I haven't seen any evidence on that.

1500

Q. In the marketing of alcohol as an ordinary consumer commodity could affect
whether or not that sale and supply is safe and responsible?

15 A. Yes, again it's a matter of, you know, the manner in which any sort of
marketing is undertaken and, you know, and that relates to a whole range of
things, including the way it's promoted and the sort of thing, but, again I come
back to the point that while we recognise that the way in which things are
promoted and sold and in general terms marketed, while it does have an
20 effect, what we're dealing with here is whether such affects are in some way
greater in a particular time period than they are in other time periods, and
again we're left with the absence of any evidence on that being the case.

Q. You've said in your statement of – in rebuttal that liquor stores tend to open at
9.00 am?

25 A. 9.00 am or later, they tend to.

Q. And they would be the greater proportion of off licences in the city?

A. Numerically, yes, than the number of individual outlets, yes.

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Q. So, if we were talking about off licence generally, both liquor stores and supermarkets, you could say that generally off licence premises open at 9.00 am?

5 A. Well, no, we could say that liquor stores tend to open at 9.00 am or later, and supermarkets open at 7.00. But because we're talking about two quite fundamentally, or quite different types of outlet, you've got to be very careful about lumping all off licences together and say, you know, the off licence is, on average, open at 9 o'clock, or open at 8.47, or whatever the figure is, when –

Q. But numerically, the greater proportion of off licences open at 9.00 am?

10 A. 9.00 am or later. Some open at 10.00 some open at 11.00 am. But again I agree with that numerically in terms of the numbers but in terms of significance to this hearing I really question that as a valuable proposition.

Q. Paragraph 2.12 of your statement?

A. This is my rebuttal?

15 Q. No, his first statement, I think, oh.

A. Yes, I have that.

Q. That paragraph you identify two categories of pre-loaders purchasing after 9.00 pm. So those who hadn't bought enough for their night out?

A. Yes.

20 Q. And those who'd consumed more alcohol than they'd planned?

A. Yes.

Q. And you've described them as being caught out?

THE COURT:

Sorry, what paragraph are we referring to?

25 **MS LOGAN:**

2.12.

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THE COURT:

2.12 of his statement?

CROSS-EXAMINATION CONTINUES: MS LOGAN

A. Yes, those are the people who –

5 Q. We'll, would be caught out?

A. Would be caught out, yes.

Q. And you've suggested that the consumer response would be to change the behaviour in purchase earlier?

1505

10 A. Yes, that's the most likely consumer response because there's very wide opportunity to purchase earlier.

Q. But there could also be opportunistic purchases, so those people who purchase alcohol purely because they're in the store and make an impulse decision?

15 A. Yes. It's possible, but again, look I'm sorry, I don't want to, sort of, repeat the point but supermarket shopping and, you know, shopping generally is pretty widespread and common behaviour. We do it quite habitually, so most of our shopping tends to be relatively deliberate, you know, a lot of people will go to the supermarket with a list. A lot of – not everybody of course, you know,
20 some people will cruise through the supermarket thinking, "What am I going to get," and grab it.

Q. But if you've got someone say who's been at a party consuming alcohol?

A. Yes.

Q. They're heading into town, pass by the supermarket, it's 9.30, they could make
25 an impulse decision to purchase alcohol?

A. Yes, well they, well presumably it would be a deliberate decision to purchase alcohol, but yes, I mean it's a decision to purchase alcohol, yes.

Q. And they would also be caught out under the PLAP?

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A. Well, in the short term perhaps they would be caught out. In the longer term they would have it in their brain that they can't do it.

Q. But if we're talking about an impulse decision of someone who's passing by the store, sees that it's open, sees that they can buy alcohol?

5 A. Yes.

Q. So it's an opportunistic purchase. Those people would be caught out?

A. Well, those people would no longer be able to undertake that opportunistic behaviour. They'll have to do it at an earlier time, but they would, I suppose my point, the key point is that I don't think a policy is relying on catching people out unexpectedly. This is a, you know, this is a proposed structure where people undertake their behaviour based on knowing what the rules are.

10

Q. Purchase made in that type of scenario, it would be fair to say that's more likely to be linked to alcohol related harm?

A. It may be, but it also may not be, I mean, you know, that –

15

Q. Somebody's who's already been drinking stops, makes an opportunistic purchase?

A. Okay, so these are the conditions you're setting up. They've already been drinking at a party, then going somewhere else into town. They see a supermarket is open and they just decide on that basis to stop in and get some more alcohol. Is that what you're talking about?

20

Q. Yes.

A. Well, certainly that can occur. I suppose my obvious question is how many people are we talking about? We've already had evidence from sergeant – I'm sorry I've –

25 THE COURT:

Panting.

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CROSS-EXAMINATION CONTINUES: MS LOGAN

A. Yes, sorry. You know, he's done some of the number crunching and looked at, sort of, the numbers of people going into the stores in total of the supermarket, the total at this time of night. So yes, I certainly accept what, your proposition
 5 that that can happen, but in terms of a city wide policy looking to reduce alcohol related harm, you know, it's important to take into account these wider numbers about how many people's behaviour you're going to be able to influence, and then, you know, that really comes back to effectiveness of the policies.

10 Q. But those people are already in addition to others who are caught out because they didn't purchase enough alcohol in advance, or those who drank more than they had planned?

A. Yes, and those are three groups. We don't know how many there are in those groups. We can surmise quite clearly that because people understand things if
 15 there's a number caught out in those groups in week one, call it 20 or whatever, and week two it's more likely that number will be 10, and in week three it's likely that number will be one or two.

1510

Q. These are also people who would have to make a responsible decision in
 20 terms of their purchasing, aren't they?

A. Yes.

Q. To pre-plan?

A. Yes.

Q. As opposed to people who've already had a few drinks at a party?

25 A. Who are what, unable to –

Q. The decision making's impaired?

A. Okay, so is their – I fully accept that alcohol can impair decision making. Then there's always the degree to which it is impaired and what behaviours it then entails but you're putting a scenario that –

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Q. And if we look at, for example, the people who drink more than they had planned, that's a situation they hadn't planned for?

THE COURT:

Can you just clarify the scenario that we're talking about here because I have heard
5 a number of variables, somebody on the way home after going to a party, we have got decision making impaired, so can you just clarify the primaries of the question, please?

MS LOGAN:

Sorry, there's two categories of people. Firstly, I was talking about the opportunistic
10 purchases who purchase because they're passing by a store or in a store, but moving back to the categories which were identified in the evidence, being those who'd not bought enough, who drink more than planned. Does that answer your question, Sir?

THE COURT:

15 Yes, no, that is helpful, thank you. I just wanted to make clear I understood the categories. I thought I was hearing them blur a little bit, that is all.

CROSS-EXAMINATION CONTINUES: MS LOGAN

Q. If we're looking at one of the caught-out purchasers who's consumed more alcohol than they had planned, that's not a matter that planning – they're still
20 going to be caught out, aren't they? They hadn't planned for the scenario where they were going to drink more?

A. Yes. Again, there's a number of ways of –

Q. So not necessarily, then, going to change that behaviour?

A. If they've run out and the stores are closed, they don't have the option to
25 change their behaviour. That sort of follows but equally, I suppose it depends

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when they run out or if they do run out. These are the people I've identified as a group that potentially run out so it depends when they run out as to when they can do something, whether they can do anything about it.

Q. In your statement in rebuttal, you've criticised Mr Mechen's reference to 0.5% of shoppers' total weekly spend being on alcohol?

A. I pointed out that that's –

Q. Paragraph 2.3. You're familiar with the Progressive submission that was made?

A. Yes.

Q. And you're aware that that was a submission put to the DCC and that Progressive would've expected it to have been considered when the decision was made on the PLAP?

A. Yes, well, the 0.5% related to a particular subgroup in the – particular age cohort, it's the under 25 year olds.

Q. Do you have a copy of the submission with you? I've got one I can hand up if that's –

MR THAIN:

Sir, it's tab 15 of Mr Mechen's evidence.

1515

THE COURT:

Thank you. Tab 15?

MR THAIN:

Yeah. Page 209.

CROSS-EXAMINATION CONTINUES: MS LOGAN

WITNESS REFERRED TO MR MECHEEN'S EVIDENCE

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- Q. Page 209 of the bundle, paragraph 2.9 refers to the 0.5 for young adults and then says, "And a similar proportion for consumers overall"?
- A. Yes, I see that. I – certainly, my reference was to 0.5% being their total weekly spend for the young age group but I can certainly see how Mr Mechen –
- 5 Q. So it would be reasonable to infer from that that the percentage was around 0.5%?
- A. I can see that, certainly can read it from that.
- Q. Which is what Mr Mechen is saying his evidence?
- A. Yeah.
- 10 Q. Moving onto the Insight report, you've indicated in your statement that it's not appropriate to rely on the Insight report alone?
- A. That's correct, yes.
- Q. But Mr Mechen has also referred to anecdotal evidence that was given through submission?
- 15 A. Understand that, yes.
- Q. The police Last Drink survey?
- A. Yes.
- Q. Ministry of Justice report which suggests that 76% of alcohol is sold through off-licences?
- 20 A. Yes, recognise that.
- Q. Media reports?
- A. I haven't seen specific media reports but...
- Q. And the council is considering the DLAP and the PLAP would have their own familiarity with the city?
- 25 A. Yes, I accept that.
- Q. And the particular local context?
- A. Yes, I accept the counsellors would have particular local context.
- Q. So you would expect them to be reading the Insight report against – taking the Insight report into account against that background of information?

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A. Well, I would expect that but I would also say that there's some statements in the Insight report which are made which, if accepted at face value, are certainly not accurate and it seems that in his evidence, Mr Mechen has specifically quoted the Insight report and has reproduced a key graph from the Insight report and that is the focus of my rebuttal here because I believe that that evidence from the Insight Economics report is not reliable.

Q. But there's nothing to indicate the Insight report was relied on alone?

A. Not that it was relied on alone but equally, there is no – there is indication in Mr Mechen's evidence that key aspects of the Insight report were relied on.

Q. You've also –

A. He quotes it directly so it seems to be, reading his evidence, an important part of his conclusions.

Q. You've also criticised Mr Mechen for concluding that there's a prevalence of preloading in the city?

A. Yes.

Q. That that's not what his brief says?

THE COURT:

Can you point us to a paragraph, please?

MS LOGAN:

Paragraph 58 of his brief. It's page 15.

1520

CROSS-EXAMINATION CONTINUES: MS LOGAN

A. Yes, he has it there, "The report found that the data showed the prevalence of preloading, especially amongst Dunedin's youth."

Q. And that's what the report found?

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A. Well, I didn't find, actually, reference in the Insight report to the word "prevalence."

Q. And it was his reasonable conclusion based on the data that was put to the council?

5 A. Well, there's no information in the Insight report to indicate the prevalence of preloading and yet, Mr Mechen has drawn from that, so if you're writing that there is a prevalence of preloading in a statement, that's – it's reasonably important to be able to back that up, because "prevalence" is quite a strong term.

10 Q. Can I refer you to page 254 of Mr Mechen's bundle?

A. Yes, and I see there that the Insight report does make a reference to the prevalence of preloading.

Q. And that was a report you put to the council?

A. Yes, it was.

15 Q. And something the council was permitted to take into account and draw conclusions on?

A. Yes, and equally, it's important when you're taking a report like that to be able to view it for its strengths and its weaknesses and it's very important when you're drawing from another report to be able to – if you're quoting from something, it's important that you're satisfied as to its validity.

20

Q. But again, we know the Insight report wasn't taken into account in isolation?

A. No, we know it wasn't taken into account in isolation, I accept that, but it's a very strong term about preloading being prevalent when the Insight report did not have information to support that and it was fairly clear from the Insight report that it didn't have information to support that.

25

Q. If we look at your market view analysis and your statement in rebuttal, paragraph 2.32, you've divided the purchasers into three groups. Firstly, purchasers who purchase from an off-licence and go on to make no further on-licence purchase?

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A. Yes, that's the first group.

Q. Secondly, purchasers who purchase at an off-licence and then go on to purchase at an on-licence?

A. Yes.

5 1525

Q. And the last group: people who don't make any purchase at an off-licence after 9.00 pm and then go on to an on-licence?

A. Yes, that's correct.

Q. Group 1, you've described as generally inconsistent with preloading patterns?

10 A. Yes.

Q. But you've acknowledged that that group may include people who made an on-licence purchase with cash?

A. Yes, absolutely, yeah.

Q. Or with another card?

15 A. Yes.

Q. And we don't know how many of those people there are?

A. No, we don't. We don't have information on multiple card holding. We do have information on the total number of purchases which people make in the course of the year, for example, which gives some indication as to whether they're using a single card or multiple cards.

20

Q. But in relation to that group 1 we don't know?

A. But in relation to this we don't have – no.

Q. So it could be substantial?

A. Um, or a...

25 Q. Significant?

A. Again we don't know. But it did – it's material, and I've identified it there because it's an area of uncertainty.

Q. Group 1 could also include people who had their purchase at the on-licence made by a friend?

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A. Yes.

Q. And again we don't know how many people that is?

A. No, we don't, and again it's one of those situations where were all the purchases for you made by a friend or did you share them around as a group?

5 In which case it would be picked up, but if it's one person or one other person buying for a partner or a date or whatever, then it may not be picked up. So...

Q. We also know that preloading is intended to reduce the number of purchases or to avoid making any purchase at an on-licence.

A. That's, yeah, certainly that's one of the intentions of it.

10 Q. So group 1 could also include people who purchased from an off-licence, consumed alcohol, and then had no need to make a further purchase in an on-licence?

A. Yes. Could be the case. And then it becomes a, you know, there's an obvious matter of the on-licence as to whether they make, allow people in there who are not purchasing the – you know, there's very little control over that.

15 Q. But those people would also be preloading?

A. They may have preloaded. We don't know. Again, we're only basing this on purchase behaviour; we don't have any information on consumption. We're using the purchase behaviour to identify the potential for that sequence.

20 Q. So group 1 may include preloaders who later purchased alcohol on a different card –

A. Yes.

Q. – or had a purchase made for them.

A. Yes.

25 Q. Or who didn't make any further purchase.

A. Yes.

Q. Or they use cash?

A. Yes.

Q. And we don't know how many people that is?

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A. No, and the second group that you mentioned was, have had – been based on other people purchasing for them and then those people not purchasing, taking their turn, as it were, to purchase. But yes, I mean there's those places at which it cannot identify the next stage.

5 Q. And we also know that students are cost-conscious?

A. Yes.

Q. And that Dunedin has a large number of students?

A. Yes.

10 Q. And those are the people more likely to be preloading and not making a subsequent purchase?

A. I don't know that.

Q. It'd be reasonable to assume.

15 A. Well again, you know, the evidence on – the information on preloading is anecdotal. So, you know, there's a point where you have to accept anecdotal evidence that preloading occurs, but it's quite important not to say we know how much occurs or when it occurs, and everything else like that. We accept that, you know –

Q. So the card data has real limitations?

20 A. Oh yes, and as I've acknowledged it's the best information we've got at the moment, but it does have limitations and I've been quite specific about that –

Q. It's also –

A. – in 2.36 and again in 2.43.

Q. It's also national data?

25 A. Yes, it is.

1530

Q. It doesn't differentiate between urban and rural environment?

A. No, in broad terms we would expect in the order of more than 80% to be an urban environment and possibly higher because there's fewer opportunities in

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smaller towns for the sequence of purchases to occur, and it's selective in terms of its only looking at the people who have made the sequence of purchases. So it's predominantly urban.

Q. And it doesn't take into account any local peculiarities in terms of population?

5 So you've said – you said earlier that BNZ has a smaller proportion of young people compared with its market share overall?

A. Yes, and that's an indication of the number of cards which people in younger age groups have, not necessarily that BNZ is underrepresented amongst the younger age groups. But again, we've got information from the people who do
10 have cards and who are in this age group, and as to what their purchasing behaviour is, so – and we've got a large sample of that, so yes, there will be variations within this and we do have a national picture and to that extent it's quite a robust data set.

Q. Just to clarify, less people in the 18 to 24 age bracket have cards. Is that what
15 you're saying?

A. Yes, in terms – on per capita basis, yes.

Q. So they're more likely to be making cash purchases?

A. Not necessarily, they may just have fewer cards. I mean as we go through life there is something of a tendency to have more bank accounts and gather more
20 cards. You know, our asset base or our debt base as it were, widens. So we don't know but what we, again –

Q. But they could be making more cash purchases?

A. They may be, yes, and again, I've acknowledged that.

Q. So their purchases wouldn't be included in this card data?

25 A. No, the card data is a sequence of card purchases by the same card.

THE COURT:

Ms Logan, I wonder if it's an appropriate time to take a break. Don't want to put you off your line of questioning but – take a break now. Thank you.

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COURT ADJOURNS: 3.33 PM

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COURT RESUMES: 3.51 PM**CROSS-EXAMINATION CONTINUES: MS LOGAN**

Q. So before the break we were talking about the market view data –

A. Yeah.

5 Q. – and the fact that that's national data which doesn't take into account the local context?

A. Correct.

Q. It doesn't take into account the disproportionately large number of young people in Dunedin?

10 A. That would reflect that, because it's the data set which looks at the age structure of each group within the population. So it shows the patterns within each age group. If you've got a large number of 18 to 24 year olds in Dunedin, which we know you have, then some expectation that the pattern for 18 to 24 year olds nationally would be broadly reflected in the pattern for 18 to 24 year olds in Dunedin.

Q. But it doesn't take into account the scarfie town environment of Dunedin?

A. Not specifically, or certainly the – whether or not that, like scarfie – sorry.

Q. And that's something that could influence...

20 A. Sorry, that scarfie town environment doesn't just apply to Dunedin. You have other towns have there (inaudible 15:52:40) have their particular characteristics so...

Q. But the data being national data isn't going to show that distinction, is it?

25 A. No. We also don't know what that distinction may be. And we don't know the extent to which 18 to 24 year olds in Dunedin are behaving differently from 18 to 24 year olds nationally.

Q. By contrast, the insight report was local?

A. Yes. It's got data specifically on two types of outlet in Dunedin.

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Q. And used local card data?

A. Yes. Two card types, again in Dunedin, on purchasing.

Q. And the market view data that you referred to doesn't take into account the day of the week?

5 A. No.

Q. But we would expect that preloading would be greater on a Friday or Saturday evening?

A. If that's – we've got a pattern, I think, in the (inaudible 15:53:52) of data showing a higher proportion of harm occurring on Friday nights and Saturday
10 nights, so we would expect some focus in the (inaudible 15:54:02) towards that.

Q. So if that –

A. But if it was, sorry, (inaudible 15:54:05) please. At the same time, we're talking about a proposed policy which is not specific to days of the week. It's, applies
15 across the whole week and across all parts of the week.

MR BRAGGINS:

Sorry, Sir, I'm having real problems hearing the witness. I'm sure others are as well.

THE COURT:

20 Oh sorry, yes, play with your mic. Yes.

WITNESS:

Sorry. Is that better?

THE COURT:

25 Much better, thank you.

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WITNESS:

Thank you. Sorry.

CROSS-EXAMINATION CONTINUES: MS LOGAN

5 Q. But if we look at group 2, the group you've said is consistent with the preloading pattern.

A. Yes.

Q. The percentage of people who fall into that group may in fact be much larger on, say, a Saturday evening?

A. Because?

10 Q. Because the data that you've referred to –

A. Oh, is the whole week. Yes, I accept that point, yes.

Q. That's all my questions.

THE COURT:

Thank you. Mr Braggins.

15 1555

RE-EXAMINATION: MR BRAGGINS

Q. So while we're on the topic of Marketview data, can I take you to page 222 of Mr Mechen's evidence which is a brief explanation of the, what the Marketview data is?

20 **THE COURT:**

222 you say?

MR BRAGGINS:

222. Yes.

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RE-EXAMINATION CONTINUES: MR BRAGGINS

A. Yes.

Q. So how many million transactions does the Marketview data involve?

A. Well, nationally, it's 53 million transactions.

5 Q. Now, I'd like to explore with you, Dr Fairgray, just so that we understand what the Marketview data is and how you've used it in your evidence at 2.5. So you're not outlining a number of people that are exhibiting this preloading behaviour. You're not saying it's 20 or 50, or 100. You're saying within the sample set this is the proportion. That's correct?

10 A. Yes, that's correct.

Q. So when we're looking at people who thought, so that's a sample of the people that are out in the world shopping, and the sample is people with BNZ cards as they're using them?

A. Yes.

15 Q. So the suggestion is, well, there are limitations to the study because it's not the whole world, it's only a sample. To your mind do you think there's any difference in the behaviour of this group of people compared to people that use ASB cards or National Bank cards, for example?

A. Because of the size of the group we're talking about and the longevity, and I
20 think that's taken for over a year, I wouldn't expect much difference, but I'd also say that, you know, there may be demographic differences, for example, or attitudinal differences in the people who prefer ASB cards or TSB cards, or whatever. So we can't say for certain that this fully representative, but it's a very large number of cardholders.

25 Q. But the issue is whether or not those people are, and the extent to which those people are exhibiting different behaviours, not the fact that they're not within the data set. Is that a fair –

A. Yes, that that's the issue as to whether they would, in fact, exhibit different behaviours.

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Q. And we've talked a little bit about this issue of your – the Marketview data set. Now that's basically the same data set that Insight used?

A. Yes.

Q. Albeit, they pulled out different things from the data set. That's the same source, is that correct?

A. That's correct, yes.

Q. So to the extent there are any limitations, they are the same limitations?

A. Yes.

Q. And in terms of your weekly scenario and, I think, the constable as well as my friend asked you these questions, we're not looking here. You've look at all the week. The council's saying, "Well, hang on, Friday and Saturday night things are higher. That's not going to be representative of Friday and Saturday night." But if that was true then equally this is an overestimate of what happens on Sunday to Thursday. Is that – would that equally be true?

A. Yes.

Q. And also to the extent that we're concerned with the behaviour in the moratorium area, it's potentially higher in the moratorium area but lower outside. They would – we've got a – well, no actually to be fair that's not fair. This is a national study. I'm not going to take it to the moratorium area. You were also asked by my friend about the safe and responsible supply of alcohol?

A. Yes.

Q. Are you aware of any reference of studies or concern in the council's PLAP decision about that alcohol was not being sold safely and responsibly in Dunedin?

A. No, I haven't seen that, no.

1600

Q. And are you aware of any studies or analysis in Mr Mechen's evidence that alcohol was not sold safely or responsibly?

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A. No, I haven't seen any of that either.

Q. Did that influence what you've analysed in your evidence?

A. No. I was looking at, you know, trying to understand patterns of purchasing in relation to some of the behaviours that have been suggested in the evidence.

5 Q. If the council had raised a concern about the safe sell and the supply of alcohol in their PLAP or in Mr Mechen's evidence, would you have looked at that?

A. Yes, if it had been, yes. It's a relevant issue so I would've sought to consider that at least within my area of expertise.

Q. Thank you sir.

10 QUESTIONS FROM THE COURT: MEMBER MOORHEAD:

Q. Dr Fairgray, in my experience of young people, as limited as that is, they tend to not to greatly pre-plan their social encounters. Would you accept that as a general proposition? It's often last minute, to use Mr Thain's analogy, Facebook, "Where's the party happening," type time. Would you accept that just generally?

15 A. In – as a broad proposition. I mean depends, obviously, on the personality of the people, but yes I'll accept that people often make plans or make arrangements at the last minute.

Q. So, I'm just wondering how that would affect purchasing patterns for that particular young group? You said that if the hours were different you would expect people to change their behaviour and pre-plan, but I'm just wondering generally as a group how much they actually do pre-plan?

20 A. Well, I suppose that the different aspects that you would pre-plan. I mean, you know, that the last minute behaviour might be, like, "Where are we," you know, "Where are we going tonight," as opposed to, "Are we going out tonight?" So, you know, it might be an unwritten arrangement or a rule, you know, "We're going out on Friday night." The specifics of that might get arranged at the last minute but the underlying intent to go out on Friday nights rests there. So, I

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mean, there's different parts of last minute arrangements. Again, haven't – I accept that anecdotally I don't – haven't researched that specifically.

Q. So your proposition generally, though, is that you would expect them to change their behaviour to pre-plan, or not?

5 A. I would expect so. If, you know, consumption of alcohol or socialising, or whatever, is part of their intention for a Friday or Saturday night, then I would expect them to pre-plan to a degree for that, certainly. I mean, you know, they'd set aside that time, they'd think about the, perhaps, the people they want to go with and all those sorts of things. I mean that's not like the writing
10 of a plan, but I mean it's, these ideas just form up in your mind.

Q. Thank you.

THE COURT:

No, that's it from us. Thank you. Any questions in response to –

QUESTIONS ARISING: MR BRAGGINS

15 Q. So if we take a 18 to 24 year old, thinking about the weekend on a Thursday, hasn't made any plans, are there likely to be – in terms of the pre-planning that you're talking about, I'd understood you to be talking about the purchase of alcohol as opposed to who, when, where, why, is that fair?

A. Yes, that – I'm saying there's, sort of, fundamental components that probably
20 don't require specific arrangements but are still pre-planned, whereas the details as to, you know, who's invited and where you're going, and all the sort of thing, might be much more spontaneous but if purchase of alcohol is an important part of that socialising then, generally, you'd expect people to have that part of it sorted, and that's the more, sort of, nuts and bolts part of the pre-
25 planning.

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MR BRAGGINS:

I don't think I need to take that any further, Your Honour.

THE COURT:

Thank you very much.

5 **MR BRAGGINS:**

Thank you, Sir.

1605

WITNESS EXCUSED

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MR BRAGGINS:

I'll call Francesca. I don't think – Mr Foster's now decided to stay the night, so we'll stick with our same batting order.

THE COURT:

5 Okay, great.

MR BRAGGINS:

I wasn't sure that were going to get through.

MR BRAGGINS CALLS

10 **FRANCESCA KELLY (SWORN)**

Q. Is your full name Dr Francesca Kelly?

A. It is.

Q. And you provided a brief of evidence dated 21 September 2016 and a rebuttal statement dated 14 November 2016?

15 **WITNESS REFERRED TO STATEMENT**

WITNESS REFERRED TO REBUTTAL EVIDENCE

A. Yes.

Q. And, sorry Your Honour, I understand there's a couple of minor changes to your evidence. At 4.5 –

20 **THE COURT:**

Is this in chief?

MR BRAGGINS:

I'm just double-checking that.

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THE COURT:

Oh, okay.

EXAMINATION CONTINUES: MR BRAGGINS

5 Q. Yes, at your evidence-in-chief page 108, paragraph 4.5, I understand that you wish to strike out the final sentence of your evidence?

A. I do.

Q. Could you just explain?

THE COURT:

10 Sorry, is that the sentence –

MR BRAGGINS:

The last sentence.

THE COURT:

15 – “They were located”?

MR BRAGGINS:

4.5. 4.5.

THE COURT:

20 Q. Is that the sentence, “They were located in five centres”?

A. Yes, and, “The two sharing –

Q. Thank you, thank you.

A. – similar proximity are not identified,” yeah.

EXAMINATION CONTINUES: MR BRAGGINS

Q. And that’s because you’re not sure exactly the location?

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A. Well, we thought we'd inferred it, but there is some element of uncertainty because of the lack of identification among the papers that have been written.

Q. And then at page 130 of your rebuttal evidence – sorry, page 130, which is paragraph 2.37A of your rebuttal evidence?

5 A. There, that should now read, "Six campuses were included in this study, and these are not identified." And then strike out, "Two are located in the same city but are included as two separate participants in the study analysis," leaving, "Two appear to have been rural campuses remote from off-campus facilities." That last half a sentence is fine. So they're the two changes.

10 Q. And otherwise your evidence is true and correct to the best of your knowledge?

A. Yeah, it is.

Q. Now my friend asked Ms Hampson about the CAPRi report and the analysis, whether she had any concerns or comments on the other academic research
15 that had been referred to in that report. Ms Hampson hadn't done that work; that wasn't what she was looking at, but I understand that you, that's within your evidence?

A. It is, and is covered in areas in my evidence-in-chief specifically, yeah.

Q. Can you just take us to those on – I suspect that you might have some more
20 questions on them, so we may as well get them at the centre of our mind?

A. It's in section 4 and is along with other material the content of my section 4 in my evidence-in-chief.

Q. Right, and that's page 107?

A. It's seven onwards, yeah. Up to page 111.

25 Q. Okay. That's all, Your Honour.

THE COURT:

Thank you. Mr Thain.

1610

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CROSS-EXAMINATION: MR THAIN:

Q. Good afternoon Dr Kelly. I'm right, aren't I, that in relation to the potential for an effect on alcohol related harm of a change to hours of alcohol sales, you've done an analysis. You've gone looking at all the literature. Is that right?

5 A. I have.

Q. Now, my take on it is that the conclusion you've reached in relation to off licence sale hours is in your paragraph 5.2 which is on page 111 in Progressive's bundle?

A. It is. That's the conclusion paragraph.

10 Q. So you've concluded that the arguments for restrictions on off licence premises retail hours are based on extrapolating this availability theory as discussed by *Barbor* namely extrapolating the data in relation to on licences and acute alcohol related harm?

A. Yes.

15 Q. Can you tell me why it is inappropriate to extrapolate in that way?

A. Oh, it seems to me a bit of a generalisation for a very serious matter. Acute alcohol related harm is a very serious problem for society, and for the community in Dunedin, and so it's my considered view that it's important to focus efforts on evidence based actions where we can or to be careful about how to consider ones that are without an evidence base.

20

Q. So the differences between on licence and off licence seems to me the key one is that the – with off licence alcohol the time of purchase doesn't tell you the time of consumption?

A. Oh, well, that's true. Well, that's being presented in evidence by previous witnesses, and at this hearing.

25

Q. And I guess, am I also right that with an off licence purchase the amount that's purchased in a single purchase doesn't tell us anything about the amount that's consumed in a single sitting, or in a continuous period?

A. Oh, that's true. There not directly, can't be directly inferred.

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Q. Off licence alcohol, well it keeps, doesn't it? It's got a shelf life?

A. Oh, quite a long one.

Q. So if I was a – it seems to me if I was a university student, back when I was, it was called a "Varsity student." So I'm so old. If I was a "University student" I might have a fridge, and in terms of some of things that the authority was just asking that previous witness about it wouldn't be that hard to stockpile a bit of alcohol in my fridge ready for when I needed it on Friday night or Saturday night, or whenever?

A. Oh, certainly. Sure.

10 Q. And I might choose as a student, I might choose to do all the purchasing at any time of the day?

A. Yes.

Q. Or on any day of the week?

15 A. Yes, well as evidence has been given the consumer behaviour is – has habits and suits people's life.

Q. And I might also be able to communicate with my friends to find out if my fridge has run empty to find out who's got a full fridge?

A. Yes.

Q. That would be dead easy these days, in particular, wouldn't it?

20 A. Yes.

Q. A lot easier now than back prior to 2005?

A. Maybe.

Q. If prior to 2005 we didn't have social media, and we didn't all carry Smartphones?

25 A. Yes.

Q. It was a little more difficult?

A. Yes.

1615

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Q. On page 127 in Progressive's bundle, this is your second brief of evidence, and I just want to look at your paragraph 2.27, please. Do you have that there?

A. Yes.

5 Q. You say that you've systematically researched off-licence hours of sale and alcohol-related harm, so just dealing with that, am I right in my understanding that your research has not been limited to only those papers or materials that the council had referred to?

10 A. Oh, definitely not limited. We've done extensive systematic searching in the literature up to a date in September 2016 using various terms to try and capture anything to do with supermarkets, off-licence retail of alcohol and hours of sale, and then looking at the results, getting the original papers, not just the abstracts, to make certain whether or not they'd make a contribution to understanding this topic in relation to New Zealand or Dunedin.

15 Q. And just on that, that sounds like quite a big exercise.

A. Yes, it was.

Q. But would it be fair to say that it was not anything like as big an exercise to determine that there was no local research on the topic of off-licence hours?

20 A. That's true. Can I clarify? Are you asking about the relative amounts of material that were there, or?

Q. Well, I guess my question is: on the one hand it's quite a big exercise to check for everything that there might be across the planet –

A. Mmm.

Q. – and you've done that?

25 A. Mmm.

Q. But on the other hand, if I was the Dunedin City Council –

A. Mmm.

Q. – and I wanted to look for what there might be about Dunedin –

A. Mmm.

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Q. – how big an exercise would that be?

A. Um, it's a different exercise, and it's one that I would have to say I've not been able to do systematically except through access to anything that can be accessed as published material, including through websites or organisations.
5 But if somebody locally had done something and never made it available in any way that way except handing it out locally, I'd not be aware of it. Unless the council drew it to my attention.

Q. And the council hasn't drawn any such thing to your attention?

A. No.

10 Q. Back to your paragraph 2.27 there on page 27.

A. Mmm.

Q. You say you found no evidence that restricting morning hours of sale between 7.00 am and 9.00 am is relevant to the prevalence of alcohol-related harm?

A. None.

15 Q. The searching that you did, would that have been broad enough to have picked up any work that anyone had done about any potential effects on children of seeing other people purchase alcohol from an off-licence between 7.00 am and 9.00 am in the morning?

A. Well, given that this was raised as an issue, I extended the search in the last
20 couple of months to include issues of school children, schools, and alcohol, and including minors with access to alcohol or harm in case it hadn't been captured through the retail and hours of sale type searches.

Q. And you found nothing?

A. Nothing that assisted us on the seven to 9.00 am and schools, no.

25 Q. You see, as I understand it, and you can tell me whether –

A. Mmm.

Q. – my understanding's right, but if I'm a school child, I'm not myself able to buy alcohol at an off-licence because I'm too young.

A. Mmm, yes.

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Q. So the issue for me, if the hours in Dunedin prohibit off-licences from selling alcohol at that time, the only issue for me is that I won't see an adult purchase at that time.

A. If that's the issue, yeah, yes.

5 1620

Q. I'd already know, wouldn't I, as a school kid, I'd already know that alcohol's a little different than all the other products in the supermarket with the exception of tobacco?

10 A. Oh definitely because it's restricted for age purchasing and there are measures active to make that clear, yes.

Q. That's right, as an under 18 year old, I can't buy it?

A. No.

Q. And I can't buy tobacco?

A. No.

15 Q. But I can buy everything else?

A. Yes.

Q. So I'd already know it wasn't normal. It wasn't like all the other products. It was one of the only two categories of special product, wouldn't I?

A. I agree with you, yes.

20 Q. Now, just broadening that out.

A. Yes.

Q. In all of the work that you've done, all of the material you've looked at, did anyone ever suggest that there is an effect on one person of the time at which they watch someone else acquire alcohol from an off licence?

25 A. No, not that aspect of market availability, no.

Q. No one's suggested that?

A. In the literature it's actually about harm. No, but one submitter mentioned that in Mr Mechen's attachments.

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Q. I'm right, aren't I, that's the submitter that you've referred to at your paragraph 2.24 which starts at the bottom of page 126 in Progressive's bundle?

A. Yes.

5 Q. So that's Mr David Bridgeman?

A. Yes.

Q. And over at the top of page 127 in the bundle you've quoted from Mr Bridgeman's submission, is that right?

A. I have. I've abbreviated but, it I've quoted from his submission.

10 Q. And you talked about distilled spirits in that submission?

A. Yes, I got from his submission a theme of worry about alcoholics and about their presence in the community. Purchasing spirits were mentioned during time when children were going to school, and children being influenced, and a concern too, in his submission, as a remedy to restrict retail of alcohol to school hours when children were at school.

15

Q. Turning to the other end of the day. The issue in this case is around, well, really the issue is just a 9.00 pm cut off –

A. Yes, as I understand it.

Q. – for off licence alcohol. You've addressed that and reached a conclusion or set out a conclusion about it in your paragraph 2.32 of your second brief. That's on page 129 of Progressive's bundle?

20

A. Yes, there I've referred back to where I've dealt with it in my evidence-in-chief.

Q. Yes, and you've said your conclusions are that there's no evidence to support adjusting evening hours of sale for supermarkets between 9.00 pm and 11.00 pm, and especially nothing to demonstrate that a reduction from 10.00 pm to 9.00 pm will reduce alcohol related harm?

25

A. Yes.

Q. Are you in a position to explain from all of the material you've looked at, are you in a position to draw any kind of a hypothesis as to why you've found no

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evidence that a reduced, an earlier closing time will lead to a reduction in alcohol related harm?

A. Well, one of the reasons is structural among the evidence based in the literature where, well, two structural issues, one that a lot of the focus has been on bars, to put it that way, but on premises –

Q. My question is about, not about why the others who have looked at this topic haven't delivered a paper on it?

1625

A. Yeah.

Q. I'm wondering whether, from all the work you've done and all the studies you've read, whether you're in a position to set out a hypothesis as to why there's no such evidence? You see, it might at first blush just seem sort of, well, sounds reasonable that if we reduce the hours in which off-licences are able to sell alcohol it must just sort of somehow lead to less alcohol-related harm.

A. Well, it seems to me that the timing of the purchasing behaviour, especially from supermarkets but even in a dedicated bottle shop, isn't necessarily related to consuming that alcohol during that immediate next few hours; that often typically it might not, that it's a planned purchase for consumption at home, or to take to a restaurant that might be bring your own, or to take to a friend's barbecue event, or whatever.

Q. So is it – well, I'll put a proposition.

A. Yeah.

Q. You can tell me whether from all the work you've looked at whether this makes some sense: would it be right that if we focused on alcohol-related harm as defined in the Act, so the harm that flows from only excessive or inappropriate consumption excessive and inappropriate consumption of off-licence alcohol isn't driven by the time at which the alcohol is purchased, is that fair?

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A. It's possible. I mean, it's possibly true, but I've not seen enough evidence of that for the, yeah.

Q. Well, have you seen any evidence that if I – that the time at which I buy alcohol makes me drink it differently?

5 A. No.

Q. Thank you Dr Kelly. Thank you, Sir, I've no further questions.

THE COURT:

Thank you. Mr Young?

10 **MR YOUNG:**

No, Sir. And thank you for –

THE COURT:

I will keep asking you if –

15 **MR YOUNG:**

I was enquiring – you can drop me out of the loop. I've read through the evidence overnight. I don't have any questions.

THE COURT:

Great. Thank you, I didn't want to take that for granted.

20

MR YOUNG:

Yeah, questions for anyone, so I can stay seated. Thank you, Sir.

CROSS-EXAMINATION: MR YOUNG – NIL

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THE COURT:

Thank you. I assumed that but...constable.

CROSS-EXAMINATION: SERGEANT PANTING

Q. I've got three bundles of paper for you, unfortunately.

5 A. Yes.

THE COURT:

What are these bundles? Is this –

SERGEANT PANTING:

10 These are the evidence papers which Ms Kelly has used in her evidence. I just want to clarify a few points in amongst it.

THE COURT:

If you (inaudible 16:28:01) Mr Braggins?

15 **MR BRAGGINS:**

I've given Dr Kelly a copy.

THE COURT:

Okay, great.

20 **SERGEANT PANTING:**

Unfortunately the other four are still in the printer. It took too long to print eight bundles, so they're back at the station, but –

MR BRAGGINS:

25 I can share with Mr Thain.

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THE COURT:

Well, if we can kind of share as best we can.

MR BRAGGINS:

- 5 At least the council goes first and we wait. Because it's going to be a lot of sharing to go on. I just wonder whether we –

THE COURT:

I'm just conscious – it depends, really, on your reliance on these papers.

10 **SERGEANT PANTING:**

It's really to clarify a few points of her evidence-in-chief.

THE COURT:

Look, why don't we give it a go and see if we can, but council's got to have a copy. Has council got a copy?

15

MS LOGAN:

We're relaxed, Your Honour, we can get it later.

THE COURT:

Look, I think get one to council and one to us, and we'll do our best.

20

SERGEANT PANTING:

There are four more pending, they (inaudible 16:28:57).

THE COURT:

But look, if we're struggling in terms of the depth of this, I suggest that we might want to adjourn and take the opportunity.

25

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MR BRAGGINS:

Well, either that or, I mean, I don't know whether for council it's critical that – I mean the police and the council seem to be sort of on the same side and whether they
 5 swap. I mean I don't – I know it's only half an hour, but I don't really want to lose it.

THE COURT:

No, no, I understand that. I don't want to lose the half hour either. Council, do you have a view as to whether you wanted to go first and we get more copies of this, or?

10 **MR ROBINSON:**

I am going to be more than half an hour, and I am going to be asking some questions about some of this, so there might be some duplication we can avoid if the police go first, but I'm in Your Honour's hands.

THE COURT:

15 Okay, well let's give it a go with the police going first, recognising, and if we could make sure that we get the other copies so that everybody's got a copy so that we're keeping up. But look, if it's starting to get quite – yes. We'll see how it goes because then I may adjourn it on the basis that we're just simply not all looking at the same piece of paper.

20

SERGEANT PANTING:

Definitely fair. I had intended to get them to (inaudible 16:30:02) in the hour lunch break, if the printer just couldn't work that fast.

1630

25 **MEMBER MOORHOUSE:**

Perhaps if you take it quite slowly so those of us that can't see it can still comprehend what's going on.

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CROSS-EXAMINATION CONTINUES: SERGEANT PANTING:

Q. We will draw you first to 2.12 in your evidence-in-chief, I think it is. Just in relation to the article of Caswell 2014 which will be the first piece of evidence in that bundle. So the first one before a pink piece of paper. Within this here

5 your key findings were those who reported purchasing after 10.00 pm were more likely to consume a larger amount of alcohol and to report more frequent consumption of alcohol. If, when we –

A. Oh, sorry, I'm not in the right place.

Q. Sorry, apologies.

10 A. The first paper I've got in the bundle is a paper by Livingstone, not Caswell.

Q. Sorry, my system has failed then. That'd be your last one? I can go reverse order so that works. Easier then to say –

THE COURT:

Take from the bottom of pile.

15 **CROSS-EXAMINATION CONTINUES: SERGEANT PANTING:**

Q. Yes, we can go to the bottom pile.

A. No, no. That's all right. Is the bottom okay?

Q. Yes. So, I'll just jump to the end then. So, ignore that last point. So if we jump to the Livingstone paper which will be Livingstone 2010. In your

20 evidence-in-chief, and the relating point is 4.13 in the evidence-in-chief now.

MR BRAGGINS:

Sir, I think this is at page 197 of Mr Mechen's bundle.

THE COURT:

Thank you. That would be 197.

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MR BRAGGINS:

Tab 14.

THE COURT:

Yes, that's the Caswell one. We're looking at the Livingstone one.

5 **SERGEANT PANTING:**

Oh, we've jumped to Livingstone 2010, yes.

THE COURT:

No, okay. No. That's all right. Thank you. It's good to know that we've got that one. So what paragraph of the evidence?

10 **SERGEANT PANTING:**

4.13 of her evidence-in-chief.

THE COURT:

Thank you.

CROSS-EXAMINATION CONTINUES: SERGEANT PANTING:

15 Q. Within the evidence-in-chief here, I'm just a little confused as where the
reference came from. Livingstone 2010, Livingstone 2011, Livingstone 2010
investigates domestic violence incidents, and then it follows on,
Livingstone 2008, the author reports no significant association between
packaged licence density and domestic violence rates. Looking at all three of
20 those reports, but particularly Livingstone 2010, they tend to indicate there is a
significant association between packaged licence density and the domestic
violence rates, and within Livingstone 2010, which is that first document.
Sorry, get myself (inaudible 16:33:32). Then if we jump to page 12 of that

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document which will have a highlighted piece of my text in there, and then are we roughly on page 12, or on (inaudible 16:33:56)

THE COURT:

Yes.

5 CROSS-EXAMINATION CONTINUES: SERGEANT PANTING:

Q. Yes, so in the bottom of the middle paragraph on page 12 there, the most substantial affect was found in packing liquor outlets with an increase in one packaging outlet per density. So if your 1000 related to an increase of 1.36 domestic violence rate, that put it into a context of 28.6% in relation to the mean domestic violence rate. I'll be saying that they're saying, sort of, significant factor and in your summary of saying it's not significant?

A. Livingstone did two different analyses of domestic violence and they used different methods. One was cross-sectional and one used a different study design. So in their first paper they were unable to find an association and, as I said, reports those in 4.13 reports no significant association between packaged licence density and domestic violence rates. But they did find the association between the density of pubs and domestic violence. Then in 4.14, I go on to say that a different study design was then implemented and that it did find the association.

Q. But the article I'm referring is the 2010, the earlier one, they are finding a significant correlation there, along with the 2011 one which also does. Both of them seem to support that there is a strong correlation between the increase in off-premise alcohol outlets and domestic violence. New Zealand has a serious domestic violence problem and I believe this would be a critical point, although we should look at reducing the availability. Further, on page 13 of this, I think their conclusion right at the bottom, there's my scribbled highlighting which

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you've all got but the last line was of that, the most pointed bit, that the on-premises having a relatively small effect, packaged off-premises licence having a more substantial effect and that's in relation to domestic violence. I just seem to have had this paper disregarded in your summaries. It is possibly a little premature given our problems with domestic violence and this paper seems to present a good example where off-licensed premising is shown a correlation to the effect on domestic violence rates?

A. I agree with you that the second, the reworked study using the different design showed an association with domestic violence.

Q. Just seems a little, I guess, unbalanced if you've presented so strongly on one that didn't yet there's two subsequent papers which do. I don't know if that paints a fair picture of Livingston's work?

MR BRAGGINS:

Sir, I don't think that's fair. She just said that she identified –

THE COURT:

Recognised the association?

CROSS-EXAMINATION CONTINUES: SERGEANT PANTING

A. To assist the main point or focus for me when I was looking at this was not so much on the vagaries of the different study designs that had been attempted and executed, but whether or not we could interpret this material in relation to Dunedin in relation to the type of methods of retail sale of alcoholic products and I had concerns that with the Livingston studies, they packaged liquor outlets that were involved. My understanding was more similar to what we have as bottle shops, if I can use that term, rather than supermarkets, so it was the relevance or the applicability that led – the perhaps of lack of it, that led to

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me not focusing on this as important work rather than not appreciating the importance of domestic violence for Dunedin.

Q. Within their definition of harm on page 7, it encompasses off-premises, include retail liquor stores and some small grocery stores so I do appreciate there is some variance there but next, if we flip towards the Midford one which should be the next one down in your bundle.

A. This is the Norseman voluntary liquor agreement, is it?

THE COURT:

Sorry Constable –

10 CROSS-EXAMINATION CONTINUES: SERGEANT PANTING

A. Because first, the next one is another paper by Livingston, there's several of them. Was it past your pink page into the...

Q. It should've been past the pink page.

THE COURT:

15 What is the name of the report you are looking for?

SERGEANT PANTING:

It should be by Midford, 2016 in the –

THE COURT:

No, I do not have it in my bundle so I think we probably need to regroup on this and I think that if we could get these papers in order for the morning, that is probably a better bet. We are all kind of struggling to find a way through this and I think it will help sharpen the question and assist the witness if we could do that so unless there is any objection, we will adjourn a few minutes early to be able to allow that to happen.

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SERGEANT PANTING:

I think that's – we gave it a go, I'm happy to go.

THE COURT:

Yes, gave it a go and I think we are doing that so it is – I will hand those back and we
5 will get them in order.

MR BRAGGINS:

Your Honour, I was just, I suppose I'm a little, and maybe it's because there's a
number of different papers here but I'm still not, and I suppose the constable said
there's Livingston, 2011, Livingston, 2010 and I just want to make sure that the
10 witness is given an opportunity to have a look at the reports that she reviewed and
that might be more efficient to do tonight so that tomorrow, if we haven't been
looking at the right report that she's referred to, she can address that question up
front.

THE COURT:

15 I think that is fair so I think if we could kind of come back to this and you get a
chance to look at those and you have heard some of the questions already, we have
got to be able to, we do not want to put you on the spot. We have got to make sure
that we are actually getting your evidence out here so if we could do that.

MR BRAGGINS:

20 Thank you, Your Honour, and apologies for that.

MR THAIN:

Your Honour, I just thought since we've got a little bit of time, now might be a good
time just to assess how we're going against timetable and to think ahead for how the
hearing is going to finish?

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THE COURT:

Yes, we will take a few minutes to do that.

WITNESS EXCUSED**MR THAIN:**

- 5 Sir, Dr Kelly's not all that mobile so I'll be spending a bit of time with her helping her get in and out of cars and so on.

THE COURT:

Absolutely, that is fine, I understand. So do you want to take five minutes to do that or – she is finding a way.

10 **MR THAIN:**

I think she is – she is determined and balanced so I'm fine.

THE COURT:

Just in terms of the timetable, so we have obviously got a few witnesses yet to get through but your thinking?

15 **MR THAIN:**

- None of the witnesses are mine so I'm just sort of in the middle of this and not the one who has any real knowledge of how long anyone's going to take but it does seem to me we've still got Dr Kelly to complete and probably the bulk of her time in the witness box is yet to come. Then we've got one more witness for Progressive and the council's witness as well, and at least the council's witness, I suppose, could be expected to take a fair amount of time. That's going to mean, I would've thought it's looking to me like we might not – we should hopefully finish the evidence perhaps at the end of tomorrow but that might be touch and go, and so really the only issue I
- 20

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wanted to raise with Your Honour and with the other members of the Authority was just whether you have any thoughts at this stage whether you're going to want to deal with closing submissions on the hoof or whether you're going to look to adjourn and call for written submissions. In other PLAP appeals, it's tended to be that you've
 5 called for written submissions but I don't know whether that's actually just been because of timing or whether that's been the preference and it just would help me to have a bit of a heads-up on that.

MEMBER MOORHEAD:

You are right that the previous submissions for closing have been written but that
 10 has actually been at the request of the parties who have wanted to consider the evidence given at the hearing and then provide considered closing submissions so in a sense, we have been in the hands of the parties as to how they prefer to handle it.

THE COURT:

And I am very relaxed to hear the closing here but equally, if counsel want to put
 15 written submissions in instead, happy to consider those so as MEMBER MOORHEAD has said, yes, we are in your hands.

MR THAIN:

Maybe, then, we should discuss that amongst ourselves overnight and perhaps tomorrow and then we can report back to the Authority with any views we have,
 20 obviously subject to whatever the Authority would like.

THE COURT:

Yes, and look, we've still got the rest of the week and I don't know if it's going to take us through that but don't want to also to hurry this along because the council needs, as you identified, time to put their evidence and their submissions, so I mean I

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certainly can't see us getting through this before, any earlier than close of Thursday. Whether or not Friday's required, we'll know probably as we go tomorrow.

MR BRAGGINS:

5 Thank you, Sir.

THE COURT:

But Friday's available. So, but if there's any time constraints or that, I'm keen to hear that as well.

10 **MR BRAGGINS:**

Well indeed. So as I say, I think council will confer amongst ourselves and we can report back with any thoughts we have, obviously subject always to the authority's needs?

THE COURT:

15 Right, thank you. Ms Irving, anything from...?

MS IRVING:

Maybe just, I suppose where the transcript is at, because I think most of us will want to have at least some opportunity to review that in preparing our closing
20 submissions.

THE COURT:

Well, the transcript won't be available for some considerable time, so we haven't had a request for a transcript that I'm aware of. So what will happen is that that would need to be transcribed from the recording. That will take a bit of time. That's not
25 going to happen this week. And that may impact on whether you want to make closing submissions. My peck is if you require a transcript, that's probably going to

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take next week for somebody to put together, which would mean that we'd want to take written submissions sometime thereafter.

MS IRVING:

5 Mmm. Well, we'll discuss that amongst ourselves.

THE COURT:

Yes. So if that gives you any help on timing, but I expect – I know the poor people are going to have to be transcribing it, and it will be, it'll probably take them the better
10 part of next week to do that.

MS IRVING:

Thank you, Sir.

THE COURT:

15 Great. On that basis, let's adjourn till tomorrow.

MR BRAGGINS:

Till 10.00 am, Your Honour?

THE COURT:

20 10.00 am unless there's an appetite to start a little bit earlier?

MR BRAGGINS:

I'm happy with 9.30, Your Honour.

THE COURT:

25 9.30?

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MS IRVING:

Sounds (inaudible 16:47:15).

THE COURT:

5 9.30 is fine. See you at 9.30.

COURT ADJOURNS: 4.47 PM

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COURT RESUMES ON WEDNESDAY 23 NOVEMBER 2016 AT 10.45 AM

THE COURT:

All right, thank you for that. Mr Braggins?

MR BRAGGINS CALLS

5 MICHAEL JOHN FOSTER (SWORN)

Q. Is your full name Michael John Foster?

A. Yes, it is.

Q. Did you prepare a statement of evidence dated 21 September and a statement of rebuttal evidence dated 14 November 2016?

10 A. Yes, I did.

Q. And I understand that there are a few minor corrections that you have to that evidence. Do you – should I take you to them or do you have a list of them?

A. I've got a list of them.

Q. Can you take us through those corrections?

15 A. Yes, Your Honour, if you go to page 279, in 3.1(ii), the third line in (ii) has got two words missing. It should read, "When, in fact," so the word "in" gets added and then after, "Saturday nights," the word "are" should be added.

THE COURT:

Q. So, "When in fact Friday and Saturday nights are the key nights"?

20 A. Yes.

Q. Thank you.

EXAMINATION CONTINUES: MR BRAGGINS

Q. You had a couple more?

A. Yes, I'm just flicking through them, the pocket, to the next one in the minute.

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Q. It's at paragraph 10.1.

A. Yes. Page 296, in paragraph 10.1 it's got the word "policed" there. It should just be "police". So the "d" should have a strike through.

THE COURT:

5 Q. In 10.1?

A. Yes. It's the first line.

Q. Oh, the – I've got an "s".

A. Oh, sorry, yes, I've –

Q. Yes. So the "yes"?

10 A. Yeah.

Q. Thank you.

EXAMINATION CONTINUES: MR BRAGGINS

Q. Then 13.9(c) I think is the next one.

15 A. Yes, that's correct, on page 306. It just takes a little while to scroll through this evidence when it's bound. So if you go to page 306 and it's paragraph 13(a)(c)(ii), in the last line the word "are" should be inserted after the word, "nights". Now on the next page –

THE COURT:

"The first nights," yes.

20 **EXAMINATION CONTINUES: MR BRAGGINS**

A. – 307, in 14.4(a) there's, at the last line there's two words missing. It should actually say, "In terms of size."

THE COURT:

Q. Right at the very end?

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A. Sorry?

Q. Just at the end of (a)?

A. Yes. Yes, Your Honour.

EXAMINATION CONTINUES: MR BRAGGINS

5 A. Now, on page 308 in paragraph 14.9(a), and in the second line, the word “has” should be “as”.

Q. Mmm.

A. And then at the bottom of the page, at paragraph 15.1, the word “and” in the first line should be “an”. On page 309 at 15.3 in the fourth line, the word
10 “matters” is spelt wrong. So –

THE COURT:

Yes.

EXAMINATION CONTINUES: MR BRAGGINS

A. So they are the alterations in my evidence-in-chief. In the rebuttal there is also
15 a couple of things that need to be corrected. In paragraph 2.7 on page 331, there’s some words missing and it should say, “Dr Fairgray, in his rebuttal evidence, at paragraphs 2.2 to 2.12.” And I think the final one – oh no, it’s not, there’s two more. On page 333, in paragraph 213(a) in the sixth line, immediately after the brackets, the word “and” needs to be added. Now the
20 last one –

Q. Sorry, does that just turn into a full sentence, then? So, “If at all, and this variability” so it runs through? Oh, sorry. Oh, you’re talking about “after her evidence (and)”?

A. Correct.

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THE COURT:

Q. Yes. So it reads, "and in my evidence-in-chief"?

A. That's correct, Your Honour.

Q. Yes, great.

5 EXAMINATION CONTINUES: MR BRAGGINS

A. Now the last one is on, and it's a typo on page 336 in paragraph 225, it should be "licences".

THE COURT:

Q. Yes.

10 A. And that, Your Honour, is all the corrections that need to be made, and I apologise to the Court for those.

Q. Thank you, understood.

EXAMINATION CONTINUES: MR BRAGGINS

15 Q. One question for Mr Foster: yesterday Ms Hampson was asked some questions in relation to the graph at page 295 of your evidence, and that's the figure, oh, the annual rate of ED presentations per 10,000 population. And the questions in general related to what happens in June and December when all the university students leave Dunedin? Doesn't that show that there's a disproportionate effect that's lost during that time that distorts these national numbers? Now have you had some work done to look at, to test that theory?

20 A. Yes, I have, and there are some, there is a graph available, or a set of statistics, that actually explains what happens to the year and it also helps to give some support to the police's representative comment when he says that there is a variance throughout the year.

25

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MR BRAGGINS:

Q. I'd like present those as exhibit 3. I would've spoken to my friends about this but I've been a little bit distracted this morning and –

THE COURT:

5 I understand. Thank you.

EXAMINATION CONTINUES: MR BRAGGINS

Q. So this is from the car data. That's the same data set that Ms Hampson used and is the same basis. Now I understand that the first table is the table of the source data, and then that's been mapped in a bar graph.

10 **THE COURT:**

And we'll mark it as exhibit 3.

MR BRAGGINS:

Exhibit 3, yes, Your Honour.

15 **EXHIBIT 3 PRODUCED – EXPLANATORY STATISTICS**

1055

EXAMINATION CONTINUES: MR BRAGGINS

Q. And if we exclude June from your consideration, do you think that there's any significant variation between April and December that would suggest that the
20 influx or exit of students had a significant influence on the monthly dataset?

A. Not so as you'd notice, no. I mean there is a spike in March which obviously is the spike caused by orientation week and there is a dip in June but when you look at October, November and December it's surprisingly uniform even though that is, that October early November is the end of the university
25 semesters.

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CROSS-EXAMINATION: MR THAIN

Q. Mr Foster have you got in front of you please your first brief of evidence?

A. Yes I do.

Q. Could you turn in there please to page 279?

5 WITNESS REFERRED TO BRIEF OF EVIDENCE

A. Yes I have that.

Q. We're just looking at your section 3, the summary of your conclusions. You started out at paragraph 3.1, "In my view it appears that the council has adopted a need based test." Am I right that, well can you tell the Authority what you mean by a "need based test"?

A. It appears to me that the council's LAP that's currently before the Court was amended in response to submissions and not in response to verifiable evidence. And I'm, I reach that view on the basis that when you look at the nature of the submissions that were lodged and the volume of submissions that were actually, what I would call "rote submissions", then it's hardly surprising that if the committee and I can't say for certain whether the committee did or not, but whether it did planning by headcount in reaching its determination I can't be sure.

Q. That comment that you just made about response to submissions I'd be right, wouldn't I, that that is particularly relevant in relation to the moratorium?

A. Yes.

Q. And not actually relevant in relation to hours for off-licences is it, because the majority of submitters said don't change the hours of off-licences?

A. Yes, to a degree I think that's correct. Although the on-licence hours were altered particularly with the introduction of the entertainment concept which never existed in the draft, so in that sense it would seem to me that the committee took note of the fact or tried to recognise the fact that a lot of the submissions were saying that the council should be addressing the problem of cheap alcohol.

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Q. Yes in relation to on-licence hours, that's what you just talked about, on-licence?

1100

A. Yes and off-licence hours in the sense that the draft LAP had hours of seven until 10 and it seems as though, seemed as though there was a reasonable consensus, at least amongst the industry groups that that was acceptable whereas then the PLAP has 9.00 am to 9.00 pm. So the off-licences, in effect, ended up being far worse off than they were in terms of the draft LAP.

Q. And have I understood you right to say that your view is that that was, as part of the council seeking to address price?

A. Yes.

Q. Now if you turn over, please, to your page 280, and your paragraph 3.3 where you've set out some of your conclusions. You say, "I considered the parts of the PLAP that Progressive has appealed, so that's the moratorium, the proposal, plus the off-licence hours, are those the parts we're talking about?"

A. Yes, it is.

Q. Down-

A. Oh, and there's also concern about some of the discretionary conditions.

Q. So these views that you set out at (a) through to (g) relate to all three of those?

A. Yes, they do.

Q. Down at (d) I just want to clarify what you mean here. You've said, "are unlikely to be effective." You have a –

A. Oh, that should be "initiatives" not "initiates".

Q. Yes. So it's – are unlikely to be effective and have a significant – should that be "potential"?

A. Yes, that would be, that would be a better way of expressing it, yes.

Q. And then from initiatives?

A. Yeah.

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Q. Now you've listened in Court, have you, to all of the other witnesses that have gone before you?

A. Yes, I have.

Q. And is there anything that any of, anything that they've said that's caused you
5 to change your conclusions?

A. No.

Q. Can I ask you, please, to turn into your second brief of evidence to page 332, in the bundle.

THE COURT:

10 Sorry, what paragraph number? I've got –

MR BRAGGINS:

It's the second brief of evidence page 332 in the bundle.

THE COURT:

15 Oh, 32. Thank you.

MEMBER MOORHOUSE:

And if you can give us a paragraph number, that would help.

20 **MR BRAGGINS:**

Have you got that page?

THE COURT:

Yes, we have.

25 **MR BRAGGINS:**

So the paragraph right at the top, 2.9.

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EXAMINATION CONTINUES: MR BRAGGINS

A. Yes.

Q. Now, there you're talking about the 7.00 am to 9.00 am period for off-licences, right?

5 A. That's correct.

Q. You say that that will only create customer inconvenience and is not intended to address excessive or inappropriate drinking. Why do you say that?

A. Because there's no causal link between the sale of alcohol in that period to ARH. There's no statistical connection that establishes that there is reason to
10 impose a restriction in that time period.

Q. Now you said there's no causal link. That's right, no causal link?

A. Yes.

Q. And there's no statistical connection that establishes, you said?

A. That's right.

15 Q. Would it be fair to say there's actually no statistical connection that even suggests?

A. Yes, I would accept that.

Q. And again is there anything you've heard in the Court over the last few days that's caused you to change your mind about any of that?

20 A. No. In fact I think the responses that Francisca made to questions about that sort of issue yesterday, in terms of the literature research that she'd undertaken actually reinforces my view.

1105

Q. On that same page down at the bottom, paragraph 2.11, in that paragraph,
25 you're now talking about the time after 9.00 pm at night, aren't you?

A. Yes, that's correct.

Q. And right towards the bottom of the page, that last sentence that begins there, you say, "The reality is that highly motivated consumers of alcohol will simply adjust their buying behaviour in response to the council's proposed restricted

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hours,” so as I understand it, what you’re saying there is, in your view, if off-licences in Dunedin need to shut at 9 o’clock instead of their current 11 o’clock, highly motivated consumers will just make sure that they’ve purchased sometime before shutting time?

5 A. That's correct.

Q. And I’m right, aren’t I, they can purchase before shutting time that day or they can purchase before shutting time on another day or another week or another month?

10 A. Yes, that’s correct, and I think the other point to note is that in its Wellington decision, accepted and fundamentally adopted that view and that’s the reason in my primary brief of evidence that I quoted a significant part of that decision.

Q. And do you know of anything that’s changed between the time of the Wellington decision and now, anything that would suggest that the decision ALA made there was wrong or was not appropriate?

15 A. No.

Q. Are you talking here in that sentence about highly motivated consumers, why are we interested in highly motivated consumers?

20 A. I use that terminology to deliberately, on the basis that there are some people within the drinking population who do drink to excess and are more likely to be highly motivated to make sure they don’t run out of alcohol before a certain closing time, and the hospital statistics and so on clearly show that that is a phenomenon but the majority of the population don’t buy their alcohol that way.

Q. That majority of the population, do some of them nevertheless drink to excess inappropriately and cause alcohol-related harm?

25 A. I couldn’t say for certain but I would be surprised that they didn’t.

Q. So couldn’t it be said to you, and no doubt it will be by my friends for the council, that bringing the closing time for off-licences forward is going to stop the alcohol-related harm that flows from people who weren’t highly motivated

but on the spur of the moment, decided to buy alcohol after 9 o'clock and then drink it excessively and inappropriately?

A. No, I don't think so. I don't think you could make that sort of connection. Sometimes, people consume alcohol and get themselves into trouble without
5 any real intention of doing so. They just get carried away with the moment and so on. So to say that to – no, I don't agree with what the proposition you just put to me, that the majority of people who are not motivated, there would be some benefit by restricting the hours, I don't accept that.

10 Q. Would it be true to say as well that if there's a person out of an evening and sometime after the closing time of the off-licences, they get the whim to drink, even if the off-licences are closed, they can still go to an on-licence and drink, can't they?

A. Yeah.

15 Q. And they, presumably, of course, they can raid their existing supplies back in their own fridge if they've got any?

A. I suppose so, I mean, that's speculation, really.

Q. But if they've got some in their fridge, then they can still drink from their fridge, even if the off-licences are closed, can't they?

A. That's correct.

20 Q. And same thing, if they've got access to some in somebody else's fridge, a mate?

A. Yeah.

1110

25 Q. On the other side of the ledger, those consumers who don't drink to excess or inappropriately, surely they'll just adjust their buying habits as well if they're faced with a 9 o'clock closing time for the off-licences?

A. That's correct.

Q. So what's so bad about that?

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- 5 A. I consider that it is a question of convenience and there are a significant volume of customers at supermarkets in particular who choose to shop at that time of the night, and there is no substantive evidence that shows a direct causal connection between alcohol being sold between 9.00 and 10.00 at night and ARH. It's certainly abundantly clear that that's not the case during the week so, in effect, what this policy restriction does is it actually penalises a significant number of supermarket customers during the times of the week where ARH is not elevated and I just think that that's unreasonable.
- 10 Q. And just thinking back to – you will recall I pointed out to you your paragraph 3.3(d) on page 280 in the bundle, you talked there about a potential to distract from initiatives that are reducing alcohol-related harm in Dunedin?
- A. Yes, I did.
- Q. What do you mean by that?
- 15 A. Well, there are aspects of the LAP that I consider are appropriate, particularly, the endorsement of the decision to extend the alcohol ban area, and the approach to aspects of the discretionary conditions that are contained in the LAPs. A number of those make sense and in part of my evidence, I actually talked about the initiatives that had been adopted in the Tasman LAP as being sensible provisions that could be utilised in this LAP in a manner that is clearer
- 20 than the way that they're currently set out.
- Q. So is it fair to say that if, for instance, the council thinks that by reducing the hours within which off-licence alcohol can be sold, they've made a good dent in alcohol-related harm, they've ticked a positive box? They then may take their eye off the ball for looking for things that will actually work, is that what you're
- 25 saying?
- A. I don't think I can pass a view on that. That would be speculative. That's a possibility, I suppose.

CROSS-EXAMINATION: SERGEANT PANTING

Q. I'd just like you to draw your attention to your first brief of evidence at 3.1(ii). Within this, you've mentioned the unreasonable nature of a seven day approach but yet, some of the other expert evidence has been given about the correlation between O-Week, which is actually a two week event, and Re-O-Week and events like that where it isn't a full week and they do contribute to a large amount of our alcohol-related harm. With that in light, does it change your perspective in that?

A. No, because those events are one-off events and as I understand the situation, there has been quite a few initiatives put in place to try and better control the excesses that arise out of those events.

1115

Q. Of all those initiatives, are any of them being done by the part of the alcohol industry that's profiting from them?

A. Sorry, I don't understand the question.

Q. So is Progressive or Foodstuffs or the liquor industry front-footing any of these initiatives or is it all the ambulance at the bottom of the cliff, the ambulance, the police, the hospital staff, the university?

A. Well, I think Progressive has demonstrated, I can't speak for Foodstuffs, has demonstrated a very responsible approach to the sale of alcohol and in the Progressive submission, the original submission on the draft LAP that contained a description of the approach that it adopts with the sale of alcohol within the store and so on and I think that demonstrates a responsibility.

Q. But not in – so you've indicated the initiatives in relation to these types of events, though, but there's nothing you're aware of that they're taking steps to mitigate harm as a result of this obviously off-sold alcohol on those events?

A. Well, I think what you're asking me is that Progressive should be actively participating in attempting to control a student event, is that what you're asking me?

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Q. I'm just seeing if they're involved in these initiatives, from your opinion. If the alcohol which is 75% sold from off-premises which is contributing to these types of events, if they are actively trying to reduce the harm?

A. Well, I think that's the responsibility of the university in the first instance and if the university considered, together with the student association, considered that it should approach the alcohol sellers for some assistance then I wouldn't have any issue with that but I don't believe it should be front-footed by the likes of Progressive.

Q. I'll just draw you to the next point, 3.2. So in this, you state that, in your view, the evidence linking off-licence density to alcohol-related harm is generally very mixed and not nearly as coherent as for on-licence, have you reviewed the bulk of the literature out there as Dr Kelly has?

A. I have reviewed some of it but I have relied on Ms Kelly's expert advice.

Q. Within scientific literature, yesterday Mr Thain indicated that there seems to be a lack of information about the correlation between off-sales and harm. Do you agree with that?

A. Yes, I do.

Q. Do you, are you aware of how scientific literature is generally propagated?

A. I don't understand what you mean.

Q. Why a document is written on a certain subject?

A. A document's written, from an academic perspective, is written on a certain subject because someone has decided that there could be merit in exploring a particular issue.

Q. And within drugs, since alcohol is a drug in essence, the guides for how that occurs?

A. Well, I haven't cited those. You'd have to show them to me.

Q. I'm just talking in general so, the basic principle, if someone's about to produce or sell a drug, the guise is that they must prove it's safe and what harm will occur from it, and the people that normally produce that evidence are the

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companies that manufacture, sell or distribute that product, so in this case here, alcohol is that commodity. It's being sold, the void of data, I'd put the onus should be on those making the money out of that, not those dealing with the aftermath. So if, in this case, Progressive believe that there is no harm occurring due to selling alcohol between 9.00 and 11.00, should that responsibility not, to a degree, fall to you for a "Yes, my product is safe," or, "Actually, no, there are some issues"?

A. That's an interesting approach. I don't think that's correct to put the whole of the onus on the likes of Progressive because that's, in effect, what you're saying.

Q. The same principle applies within the pharmaceutical industry which this is an indirect by-product of. It will cost \$10 billion to get a drug to market and then they continuously have to prove the safety of their product but in this same sort of factor, we've got a commodity which people are profiting greatly off but yet, the onus is seemingly being pushed back to the people at the other end of the equation?

1120

A. If there is merit in what you're putting to me, I would've expected that sort of requirement to have been included in the Act.

Q. I'll just move onto point 3.3, point (a). Within this, you've indicated that you, basically not logically linked to alcohol-related harm in Dunedin in a number of the respects and you don't believe the council has adequately understood what is happening within the community, that's correct?

A. That's correct.

Q. What steps have you taken to, on the floor, see what's happened in Dunedin to give your perspective?

A. I have reviewed the literature that is available, such that it is, but it's not my role as a planner to do what you're suggesting.

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Q. Indirectly, if you're presenting evidence for Progressive that there's a, as you've said, there's nothing really that will affect this area, as a planner, wouldn't it be objective to be on the ground in Dunedin to see what those problems are so you can comment first-hand?

5

MR BRAGGINS:

I need to object. We're going to hear, we have evidence.

THE COURT:

Yes.

10

MR BRAGGINS:

The witness has said that he's read the evidence, which is what the hearing's about, and we're being challenged to have gone outside and investigated the evidence.

THE COURT:

15 Yes.

MR BRAGGINS:

The police have had an opportunity to file evidence. They chose not to file anything at all.

20 **THE COURT:**

I agree, and sergeant if we could keep it germane to the evidence that is being presented by the witness.

SERGEANT PANTING:

25 Yes.

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CROSS-EXAMINATION CONTINUES: SERGEANT PANTING

Q. I'll just draw you to point 4.6, sorry, mine doesn't have the page numbers.

A. You mean in my evidence-in-chief or in the –

Q. In your evidence-in-chief, sorry, yes, I could've indicated we've moved forward,
5 sorry. So this is your supermarket density and locations by alcohol sales, and
4.6 is at the bottom of the page there.

A. Yes.

Q. So within this, you've indicated from your experience that the location is not the
drive by alcohol primarily, which makes sense. From that, if alcohol only
10 makes up a minor part of the sales, would it be fair to say that it's not
necessary to have alcohol in that supermarket if we were to put one in the
north end?

A. I have explained elsewhere in my evidence the 21st century reality with respect
to alcohol products in supermarkets and I've now consented well in excess of
15 30 new supermarkets across New Zealand and almost without exception,
unless they're in a trust area, they'll always have provision to sell alcohol. The
reality is, with two major supermarket players in the marketplace, if one
supermarket operate does not sell alcohol, it is at a disadvantage.

THE COURT:

20 Sergeant, you are not challenging the right of a supermarket to sell alcohol, are you?

SERGEANT PANTING:

No, I'm merely questioning that if there was a moratorium in place, they could still
build a supermarket there and if alcohol is a small component of their turnover or
general GP then it's still feasible to run that supermarket, is it not?

CROSS-EXAMINATION CONTINUES: SERGEANT PANTING

A. It's feasible but the business would not do so.

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Q. Again, within your evidence-in-chief, I'll just draw you to point 6.7, it's to do with opening hours. Points F and G in relation to the FreshChoice supermarkets, both of them are operated from 7.00 until midnight, however, the licence only runs from 7.00 am until 9.00 pm. If this model is acceptable for these supermarkets, could it not theoretically be acceptable for the other eight supermarkets in Dunedin?

1125

A. There's – the supermarket liquor licence sales hours, as I understand it, for those two FreshChoices are a function of the nature of their catchment, and it has been determined that it's not necessary to offer the sale of alcohol after 9.00 pm at night. The, and the similar situation will be applied to Mosgiel. Both of those FreshChoices have opening hours that extend beyond their licenced hours. Increasingly what is being observed with a number of supermarkets across New Zealand is that they are reducing their operating hours to more closely align with their licence hours, and of course there are climatic issues associated with supermarkets, particularly in the southern part of the South Island being open in the middle of winter, beyond 9 o'clock at night. I mean, most people in Mosgiel, and Mosgiel's under construction, most people in Mosgiel who've talked to me about what their shocking habits are, they prefer to stay home beyond 9 o'clock at night because it's too cold. And I mean that's entirely understandable.

Q. So on the same guides there, wouldn't that be for the entirety of Dunedin and not just for Mosgiel which is on the flat? Countdown is on the flat in the central city, shouldn't that be the same sort of principle for shoppers?

A. Well, I mean other parts of Dunedin have a different population mix. There's more students, there's more apartments. There's a different kind of mix.

THE COURT:

Sergeant, the witness isn't aware of the of all the commercial decisions that these organisations need to make, so I think if you can keep it to the relevance of the evidence that the witness is presenting.

5 CROSS-EXAMINATION CONTINUES: SERGEANT PANTING

Q. Go to 10.3 in your evidence-in-chief, and point A: in relation this is more into the car data sort of things. So are you aware that the car data is just discrete calls to service to the police, so a 111 call about an incident will generate one of those stats, so to speak?

10 A. That's my understanding, yes.

Q. So if we are patrolling in the north end, and we come across something, often that may not generate a stat. So it is remarkably unreliable data in that sense?

A. Well, I haven't analysed the data in any detail. I'm aware of what it contains, but whether or not it is inaccurate or – I'm not, I can't – the term you used, I
15 couldn't say whether it's that or not.

Q. That's all right. In here you've noted the drop from 2011 to 2015 of 16% and that disorder and particularly drunk in custody have been reduced. Are you aware that in 2012 the pre-charge warnings were brought in and that the Courts also started to direct police to not put all of those minor offences before
20 the Courts to deal with them through alternative resolutions?

A. Yes, I'm aware of that. I'm also aware of the fact that the new Sale of Liquor Act became law in late 2012, and it's probably too early to say that the new Act has had, or is contributing to this decline. There needs to be more monitoring of background data to reach that kind of conclusion. But I'd be surprised if it
25 didn't.

Q. In your rebuttal evidence, 2.12.

WITNESS REFERRED TO REBUTTAL EVIDENCE

A. Yes.

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Q. Sorry, just finding myself here as well. Are your comments in relation to Dr Fairgrave's analysis – you've indicated here that you concur with the conclusions in point B that young adults buy from (inaudible 11:30:12) after 9.00 pm tends to be a very low correlation.

A. Yes.

Q. From Dr Kelly's evidence that the DAS paper has 19% of people actually do that, so that's not a small proportion really, is it?

A. No, it isn't, but I consider Dr Fairgrave's view to be correct.

10 Q. So the DAS paper is a Christchurch based ED presentation paper and that's reasonably locally linked? Christchurch is very close to Dunedin, it's a similar student population?

A. I don't think I've actually specifically seen that paper.

15 Q. Okay, sorry, when you'd mentioned that you'd read through the bulk of them I'd assumed you had. Sorry.

A. No, I said I'd read some of the papers, not all of them.

20 Q. And one last point, within your conclusion, .3.1 in rebuttal, you've indicated again there that Progressive has accepted a 9.00 pm closure in Gisborne. I accept that, from the evidence you gave before, that that may be influenced by the population things there, but if it's acceptable for Gisborne to have a 9.00 pm closure, why would it not be for Dunedin?

A. Gisborne has a particularly problematic ethnic mix and there are very good reasons for that, agreeing to that closure time. Dunedin does not have the same ethnic mix.

25 Q. However, we do have a much greater proportion of the 19 to 24 age group, which contributes to our problems.

A. But not manifestly excessively in comparison to other university cities.

Q. No further questions, thank you.

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THE COURT:

Thank you. Ms Irving.

MS IRVING:

5 Yes, Sir, I'll just get myself organised.

THE COURT:

That's not a problem.

CROSS-EXAMINATION: MS IRVING

Q. Morning, Mr Foster.

10 A. Morning.

Q. First I'd just like to take you back to this graph that my friend Mr Braggins put up as exhibit 3, demonstrating the monthly incidents of alcohol-related harm throughout Dunedin. And I'd just like to go through that in a little bit more detail. So looking at January, which is close to the lowest incidence of alcohol-related harm, we know that in January there are very few students in Dunedin, it's before the main part of the academic year has commenced, you agree with that?

15

A. Yes.

Q. And during the course of February we see summer school exams take place and finish, is that correct?

20

A. I don't know much about summer school.

Q. Right, well I can –

A. But I can accept what you say.

Q. Okay. The exam period happens in the week around about the 20th of February for summer school, and in that same week we begin to see the students for the main academic year arriving for orientation week. Is that your understanding?

25

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A. That's my understanding.

Q. So through late February and into March, the students have just arrived in town. Orientation fortnight, as it should probably be called, takes place, and that graph would reflect that in the sense that there's a higher level of alcohol-related harm through February and March. Do you agree with that?

A. Yes, I'd accept that.

Q. So through April and May we see that alcohol-related harm level remaining fairly steady, and then in June –

A. And I would expect that that levelling off is a result of the change in the way that university courses are run, with much greater emphasis on internal assessment.

Q. Okay, so that's fine, and then –

A. And when you look at the, apart from June when the students are not here, when you look at the months from April through to October, the rate, while not acceptable, and I freely agree with that, the rate is very similar.

1135

Q. Yes, and do you think that that mark has something to do with, as you say, the students have a consistent workload through that academic year and hopefully have, I suppose, finished the blowout that occurs in orientation fortnight, and are focusing more carefully on their studies?

A. Yes, I would – well, that's in effect what I am saying, yes.

Q. And so when November, which includes the end of the exam period, we see a small spike again, don't we?

A. Yes, you do.

Q. And what's perhaps interesting, then, is in December there isn't quite the drop off that you might expect with the students having left?

A. Well I say (inaudible 11:35:55) was that that was the approach of Christmas.

Q. Right. So that would be other phenomena like the balance of the working people in Dunedin –

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A. Staff parties and the like, yes.

Q. – staff parties, trainees day and so on?

A. Yes.

5 Q. So having worked through that in some detail, it would appear that the incidence of alcohol-related harm are influenced reasonably significantly by what's happening through the academic year?

A. Yes, they are influenced. I would accept that.

Q. I'd like to take you to paragraph 4.3 of your evidence-in-chief, please.

WITNESS REFERRED TO EVIDENCE-IN-CHIEF

10 Q. And in that paragraph you discuss the role that supermarkets play in the community.

A. Yes.

Q. And you quote from a submission which I understand to have been delivered in relation to the proposed Auckland Unitary Plan.

15 A. Yes.

Q. Now the unitary plan process was a resource management process.

A. Yes.

20 Q. And in that process the board of inquiry, as I think it was, was undertaking an assessment under s 32 of the Resource Management Act about whether or not the plan, its objectives and policies, are the most appropriate way to achieve the purpose of that Act?

A. That's correct.

Q. And the purpose of the Resource Management Act, as I'm sure you will know, is ultimately achieving sustainable management?

25 A. That is correct. This submission is about the structure of the plan relative to the different zones across Auckland, and particularly with respect to bottle stores and what their status is, in South Auckland.

Q. Right.

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A. And what the Regional Public Health Service was attempting to persuade the council and the hearings panel, was that bottle stores, in terms of their distribution and so on, should be treated differently, particularly in South Auckland, and the Auckland draft LAP does reflect that. So while they made a submission on the PAUP they also made a submission on the draft LAP along very similar lines, and as I say, we'll be hearing the Auckland in February next year, and Auckland, in terms of the social deprivation areas and so on, is rather different to most of the cities, and there certainly needs to be something done about the proliferation of some types of off-licence, and the reason I quoted from their submission in here is to demonstrate that in my view there's a difference between supermarkets and bottle stores in terms of the type of service they deliver to their respective communities.

Q. Right, but that was evidence or a submission in relation to the unitary plan in Auckland, and we're dealing with a local alcohol policy in Dunedin?

A. Yes, we are.

1140

Q. And when we're looking at an assessment of a district plan under the Resource Management Act, we're talking about sustainable management under that Act, which is about managing the effective use of development. The assessment relates to social, economic, cultural wellbeing and health and safety, is that broadly your understanding of what sustainable management includes?

A. Yes it is and of course social wellbeing has got a lot to do with what an LAP should be attempting to do and so there is, while there's no direct legislative connection, in my view a district plan and an LAP should in effect be talking to each other.

Q. Well in fact the Act requires that doesn't it?

A. Yes it does.

Q. Because a district plan must be, had regard to?

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A. And the problem with the current LAP is it doesn't talk to the district plan.

Q. Looking at the sale and supply of alcohol, it has quite a different object to the Resource Management Act, doesn't it?

A. Yes, it's about minimising harm.

5 Q. And?

A. It was quoted yesterday just, well you have to tell me, I can't remember it completely off the top of –

Q. Well the first limb of the object is about the safe and responsible sale, supply and consumption –

10 A. That's right.

Q. – of alcohol. There's two parts to the object –

A. Yes there is.

Q. – but that's a distinct object from the purpose of the Resource Management Act so whilst they might be related, they are separate, do you accept that?

15 A. Yes I accept that.

Q. Can I take you to paragraph 6.6 of your evidence-in-chief please. So here you have helpfully listed the 13 off-licence premises within the moratorium area and the various opening hours that they have and I just want to work through those in a bit of detail. Firstly looking at the Green Man Brewery, do you know
20 what the Green Man Brewery is?

WITNESS REFERRED TO EVIDENCE-IN-CHIEF

A. I've driven past it but I've never been in it.

Q. So I can tell you the Green Man is a local Dunedin craft brewery and from their store they predominantly sell the beer that they brew.

25 A. Well that's of no surprise to me, no.

Q. Looking at McDuffs Brewery, do you know anything about that?

A. Yes. I've visited it.

Q. Tell me about that. Pardon?

A. I've visited it.

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Q. Right and what does McDuff sell?

A. Alcohol they've made in house. They sell it in quite interesting different forms, you can get your flagon refilled, you can buy a plastic two litre bottle and have 4% alcohol put in it for \$10 as far as I could tell talking to the manager. I thought phew, that's actually quite inexpensive alcohol.

Q. Meenans Wine and Spirits, have you been to Meenans?

A. No I haven't.

Q. It's a speciality wine shop, I've been there myself to get advice on what wines might match well with food or speciality whiskeys and so on. Are you aware of any other similar examples of craft breweries or speciality wine shops in Dunedin?

A. Not off hand, there is a brew bar towards the southern end of the CBD, I can't remember what it's called.

Q. I'm talking about off-licence premises.

A. Well I would have thought, yes it's actually, it's probably an on-licence thinking about it. But I don't know, well I don't know what Emerson's licence is.

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Q. I can tell you. They have a tasting room where they sell Emerson's beers like McDuffs you can fill up a flagon. Their opening hours for the tasting room 10 until six Sunday to Thursday and 10 until eight on Friday and Saturday. Are you familiar at all with Wine Freedom on Vogel Street?

A. No.

Q. Another speciality wine shop with similar sorts of hours to Meenan's wine shop. So looking at those various speciality stores, if we call them that, would you agree that where there is a focus on a speciality product, that there appears to be less focus on the amount of time that those shops are open to sell that product?

A. I don't think I can answer that question because I don't know enough about each of the individual operations. What I do know about talking to the owner of

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McDuffs is that there's only two of them and the hours they operate in suit the way they want to run the business, even though their licence is until 11 o'clock at night. So you know without having a one-on-one conversation with some of these small businesses in terms of what, how they operate their business and why, I can't really answer your question.

Q. So if we look then at the balance of the list of on-licences, sorry off-licences, we've got the Bottle-O, Henrys, Leith Liquorland, they open predominantly nine or 10.00 am?

A. Yes.

Q. Most of them close early on Sunday through to Tuesday?

A. Yes.

Q. And open progressively later towards the end of the week?

A. That's correct.

Q. And you'd agree that levels of alcohol-related harm increase as we progress through the week?

A. Yes.

Q. Particularly on Fridays and Saturdays?

A. Yes.

Q. And that that coincides with the days of the week where the availability of alcohol is at its highest?

A. For bottle stores, yes. But you don't have that fluctuation in a supermarket.

Q. No, well I'd like to go over the page and to look at the opening hours of the supermarkets. So Centre City New World 7.30 in the morning until 10.00 pm, Countdown alcohol trading hours 7.00 am to 11.00 pm?

A. My understanding is it's 6.00 am.

Q. That's when it's open but their alcohol trading hours starts at 6.00 am too?

A. Okay I see what you mean.

Q. So looking at those opening hours or alcohol trading hours as you've referred to them, relative to the bottle stores and the speciality wine shops, being the 11

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out of the 13 off-licences in the moratorium area, the supermarkets are most certainly the outliers in terms of the increased availability of alcohol, do you agree with that?

A. On its face that's correct. In Progressive's submission on the PLAP it accepted a change of hours from 11 o'clock to 10 o'clock at night and of course the Cumberland Street supermarket used to be a 24 hour operation and it had a 24 hour licence, so I consider that Progressive has been quite responsible in the way that it has adjusted its alcohol trading hours. So, and it comes back to the point that I made earlier in my evidence about the convenience available to its customers.

Q. Progressive would have no chance of obtaining a 24 hour licence under the Sale and Supply of Alcohol Act, would it?

A. No.

Q. So the fact that it may have reduced its trading hours...

Q. So the fact that it may have reduced its trading hours in the future is really irrelevant in the context of the current legislation, isn't it?

A. No, I don't believe it is irrelevant. It's a response to changes in circumstances. There are other supermarkets in the Progressive chain that still operate hours up until midnight. There is one 24-hour store left, I think, but the alcohol hours have always been adjusted in response to changes in the legislation.

Q. Do you know why Progressive's agreed not or offered to give up its 24-hour licence?

A. It was, as I understand it, and I was not directly involved at that time but as I understand it, it was a response to the fact that it became too costly to maintain the store open given the size of the population and the number of customers after 12 o'clock. It just became uneconomical.

Q. You don't think it had anything to do with the fact that they were having to deal with a high portion of intoxicated people and it was giving rise to health and safety issues for their staff?

A. I am not aware of that.

5 Q. You agreed with me earlier that the safe and responsible sale and supply of alcohol was part of the object of the Act?

A. Yes.

Q. So in that context, is it necessary to have alcohol available 16 hours a day, seven days a week?

10 A. It's a function – I believe the answer is that it's a function of convenience.

Q. So you're thinking that convenience outweighs arm?

A. I think it's – well, my answer to your question is yes, I believe it's reasonable.

Q. Paragraph 6.9 of your evidence, you observe that bottle stores do not open prior to 9.00 am?

15 A. Yes.

Q. And in that sense, policy's reflecting practice, would you agree?

A. No, it's got nothing to do with policy reflecting practice. It's got everything to do with demand. There is really no demand for the purchase of spirits and RTDs before 9.00 am in the morning and that's been a consistent, generally
20 consistent across the country for years.

Q. Yes, sorry, I think you've misunderstood my question. The council's policy in restricting hours to 9.00 am for off-licences reflects the practice of the majority of the off-licences within the city?

A. The bottle store off-licences it does, yes, but not supermarkets.

25 Q. And do you think it's useful to have a policy in place that restricts those hours to help avoid the risk that hours may extend in the future?

A. At that time of the day, no.

Q. As a planner, Mr Foster, would you agree that policies should apply evenly?

A. They should be consistent.

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Q. Paragraph 8.2 –

A. And perhaps I should qualify that a bit. They need to be consistent with respect to the nature of the use that they are directed at.

Q. Right, and in this case, we're dealing with the sale of alcohol.

5 A. Well, in effect, what you're asking or suggesting is that the council wants an even – or uniform rule to apply to all types of off-licences and I'm saying I don't believe that that is justified.

Q. Even though all off-licences are selling alcohol?

A. They're selling different types of alcohol.

10 Q. Alcohol nonetheless?

A. Yes, it is alcohol.

Q. Paragraph 8.2. Would you agree with me that local alcohol policies are to focus on a local response to local issues?

A. Yes.

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Q. As you've identified in your paragraph 8.2, Dunedin has a disproportionately high group or proportion of people within that 18 to 24 year old age bracket?

A. Yes, it does. It's quite clear that Dunedin's population pyramid is skewed.

20 Q. And that 15 to 24 year old age bracket is disproportionately represented in the alcohol related harm statistics. They are the most likely to engage in that behaviour that gives rise to alcohol-related harm.

A. Yes, I would accept that.

Q. So for Dunedin, that is a particularly acute issue?

25 A. No, I wouldn't describe it as acute because the statistics that I've seen don't indicate that Dunedin has a problem significantly more serious than other provincial cities with universities.

Q. Except for the fact that we experience some of the highest levels of hospital admissions, for example.

A. Well, that's not borne out by the facts, either.

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Q. Yes, it is. Southern District Health Board records show that Dunedin Hospital receives a higher number of hospital admissions, I think in the order of 10%.

A. Well, that's not my reading of what it says. And in Mr Mechen's statement he included a document called *The impact of alcohol on the health of southern communities*.

Q. That's the Southern District Health Board?

A. Yes, and it starts at paragraph – or page 83. This document is dated July 2013, but it uses data between 2008 and 2012. Now, that data pre-dates the 2012 Act. And when you actually look at the statistics that it contains, it actually indicates that the highest level of alcohol related admissions occurs at Southland Hospital.

THE COURT:

Q. Can you refer us to that, please?

A. That's on page 85, Your Honour, in the second paragraph.

15 CROSS-EXAMINATION CONTINUES: MS IRWIN

A. Now I'm not saying that that's an acceptable situation.

Q. No.

A. But what I am saying is that the interpretation put on this information is important to make sure that the way harm is described is not over-dramatised. That's the point I'm trying to make.

Q. Right. Going to the first paragraph of that page that you referred us to, about the middle of the fourth line, "Dunedin Hospital showed the most marked increase in the number of alcohol poisoning cases, particularly in the 18 to 24 year old age group."

A. Yes, and look I saw that, and –

Q. So there has been an increasing issue.

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A. – I went looking for the statistics that actually gave me a number and a trend for that situation, and while I might've missed something I couldn't find it.

Q. But for Dunedin that is clearly an issue, and through its local alcohol policy it may choose to try and address that issue. Do you agree with that?

5 A. I would've expected the draft LAP to have picked up on that sort of issue, and of course what's very interesting about this report is that it makes two recommendations on page 86. Those recommendations pre-date the draft LAP and it says, restricts their trading hours of licenced premises, and they confirm their statement on alcohol, "restrict on-licences from selling alcohol
10 after 2.00 am." That restriction is not in the PLAP, and in fact the PLAP, apart from introducing one way door policies, which I don't have a problem with, actually introduces the idea of an entertainment licence, which extends the period beyond, well beyond 2.00 am.

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15 And it then, also then recommends restrict off-licences selling alcohol between 8.00 am and 10.00 pm. The council's, through its draft LAP, had 7.00 am to 10.00 pm. The PLAP has 9.00 am to 9.00 pm. So if this report was so important to influence and drive the composition of the PLAP, then why weren't these recommendations incorporated.

20 Q. Are you aware of how many submissions there were filed on the draft LAP?

A. Over 3000, I think.

Q. So the council in promulgating it's provisional local alcohol policy, has to have regard to all of those submissions, and weigh up the various requests for amendments in the variety of submissions that it received.

25 A. That's correct, and the minutes of those deliberations are quite clear about how the committee went about discharging its responsibilities, and the discussions in the minutes clearly indicate that the Southern Health Board had a lot to say about the trading hours and so on that I referred to in their recommendations.

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Q. So simply because the DCC didn't reflect what was requested in that Southern District Health Board report, doesn't really mean anything one way or the other?

A. Well, yes it – I think it's important, because you can't have your cake and eat it.

5 You either decide that you're going to have a policy that's evidentially based or you're going to make what appear to me to be political knee-jerk decisions. And I would've thought that an LAP that is directed towards addressing the provisions of the Act would've been sufficiently evidentially based, particularly in terms of the Southern Health Board information, to be a document that one
10 could read and understand the reasons why certain things were included in it.

Q. An LAP is a policy document, isn't it?

A. Yes, it is.

Q. And so to a certain extent, it will reflect the wishes of its community. Would you agree with that?

15 A. Yes.

Q. Can I take you to paragraph 13.8 please, and your subparagraph (d)? Now in (ii) you refer to the fact that the Act has already reduced off-licence hours. Now under the Act, local alcohol policies can also address off-licence hours, can't they?

20 A. Yes, they can.

Q. 13.9(b), this is where you comment that in putting in place the policy, the council may feel they have fixed problems and will not invest time and resources into understanding the drivers of behaviour. Now, local alcohol policies have to be reviewed on a six yearly basis, correct?

25 A. Yes, and from my own personal perspective I believe that period is too long. Particularly it –

Q. That's what the Act says, though, isn't it?

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- A. Now, hang on a minute. Particularly in terms of this period of a new Act shakedown period in terms of how the new provisions pertain, certainly the different hours across New Zealand, what impacts they're having, I would've thought it would've been sensible to have introduced a kind of monitoring regime that can actually look at what the effect of these changes are and then adjust them accordingly. Now, that's why I say I think the six year review period, particularly in terms of the first LAP for Dunedin, to be too long.
- 5
- Q. Could a council elect to review an LAP more frequently?
- A. I don't know the answer to that. I'm sure legal counsel can help you on that score. I would be surprised if it couldn't, but...
- 10
- Q. So if we assume for a moment that they can, if there was compelling information provided by Progressive, for example, that the policy implemented was not having the effect that the council had anticipated, do you think that could be used as a basis for reviewing policy?
- 15
- A. Yes, that's a possibility. The Cable Car Lane licence, liquor licence, in Wellington has a review provision in it and is predicated on the basis that the Kelburn initiative, which I've included some information on in my evidence, could have a beneficial effect, which would then mean that it would be appropriate to review the hours of that licence.
- 20
- Q. So as you –
- A. And of course the same sort of situation could apply with the moratorium.
- Q. Yes. So we can essentially put that in place and see how it goes?
- A. Well, you could, yes, but it's not in the LAP at the moment, and –
- Q. The moratorium?
- 25
- A. – and my question to the council would be, well, if that was considered to be sensible, then why not?
- Q. It's something to consider, isn't it?
- A. Yes, it is.

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Q. But at the very least, on a six-yearly basis, the council and people like your clients, will have an opportunity to look at and assess whether the policy has had the desired effect, correct?

A. Yes. Yes, that's correct.

5 Q. And if it hasn't then the policy may change?

A. Yes. It's like a district plan review. It's no different.

Q. Now, I had some questions here. I'm just trying to find the paragraph where you talk about it in your evidence. You say something along the lines of "consumption in and of itself is not harm." I wonder if you might be able to help
10 me find out where that is?

A. Yeah, it's on the page that you referred to me a moment ago. 13.9(b), page 305.

Q. And just, excessive consumption occurs when people consume too much. Do you agree?

15 A. Yes. Yes.

Q. So isn't it the case of as night follows day, if we reduce consumption we're likely to reduce excessive consumption? Is it not just that simple?

A. Well, no, it's not. Because what was interesting in the Wellington hearing was that, and while it didn't directly affect Progressive, the change in licensing
20 hours with the new default provisions, changed the travel pattern of drinkers coming into central Wellington, and they had a change in the time of arrival to reflect the reduced hours, and I found that quite fascinating. So the fact that you reduce the hours doesn't necessarily mean to say that you're going to reduce excessive drinking, because people will change their habits.

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Q. Can we now have a look at your rebuttal evidence, please? The first paragraph I'd like you to turn to is paragraph 2.3(c) where you set out the significant changes that have occurred in licensing laws.

A. Yes, I do.

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Q. Now those, as I understand them, are changes that have occurred at a national government level.

A. Yes. Well, I mean, you can't change licensing laws otherwise.

Q. Except through, perhaps, local alcohol policies.

5 A. But that's not a licensing law.

Q. It's relevant to licensing applications.

A. It is. It is authorised by licensing law.

Q. So in that sense, the Dunedin City Council has its own role to play in adopting measures to address the object of the Act. Do you agree with that?

10 A. Yes.

Q. Paragraph 2.3(b) and (d), you refer to, again, some changes that have occurred, in particular the lowering of the drinking age at the end of the 1990s and the growth in the craft beer market and particularly the ready to drink market. Would you accept that both of those changes have had adverse effects on the level of alcohol-related harm in New Zealand?

15

A. No.

Q. Really?

A. The growth in craft beer, hasn't.

Q. But –

20

A. Craft beer has actually, is still a very small proportion of the total alcohol sold. The biggest impact on New Zealand drinking culture is the growth of RTDs. Now, I haven't got the actual figures in front of me, but I think, if I remember correctly, in the evidence that I gave at Wellington (inaudible 12:12:43) a figure of around 500% compounding per annum growth has occurred in RTDs. And so in my view, the growth in the craft beer market is actually a positive for the alcohol market, because craft beer by its nature, is inherently more expensive on a per litre basis. I mean, for example, I quite like Emerson's, and the normal price of an Emerson's 500 ml bottle in a supermarket is between \$7.99 and \$7.50. If I buy a 330 ml bottle of Beck's, someone will have a calculator,

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but you pay \$20 for 12 bottles. It's easy enough to work out the difference in cost, and the craft beer, basically, in terms of a bottle of Beck's which ends up at around about \$2 or something under \$2, is about three times the price. So I don't see the growth in craft beer, in that sense, as being a detriment.

5 Q. You commented that the biggest issue, in your view, was the growth of the ready to drink market, correct?

A. Yes.

Q. Now do you know which age cohort is most likely to drink RTDs?

A. Eighteen to 24.

10 Q. Now were you in Court yesterday?

A. Yes.

Q. You would've heard cross-examination of Ms Hampson?

A. Yes.

15 Q. And her accepting that trends in hospital admissions, and the more serious types of alcohol-related harm such as intimidation and threats, serious assaults, were increasing in Dunedin?

A. Yes, she did accept that. But what she didn't provide the Court with, and I'd have to check her graphs, I don't think she actually provided the Court with actual numbers over that time period, and that's – so always important, because it's statistics/damned statistics a lot of the time: is that you can represent things in a way that look worse than they are if you don't take account of what the actual numbers are that are involved. Now, I mean, if a serious assault level, just take that for an example, say in the first year there was 20, and then the next year it was 25, that's a 20% increase. So it's about putting the numbers in their context. Now Ms Hampson was not given an opportunity to do that.

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Q. Relatively speaking, serious assault would cause a greater level of harm than, say, a disorder incident?

A. Yes, I'd agree with that.

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Q. So we're not necessarily comparing apples with apples, if you go back to that saying?

A. No, and I'm not condoning in any shape or form the growth in serious assault. It should be all appropriate steps should be taken to try and rein that kind of nonsense in.

Q. So from the council's point of view, they might be justified in being concerned about increasing trends in serious harm, despite –

A. Well then, if that was an issue –

Q. Can I just finish the question, please, Mr Foster? Despite reducing levels of more minor alcohol-related harm incidents, such as disorder. Would that be a fair position for the council to take?

A. Yes, it would, and what surprises me is that that kind of concern and position was not expressed in the draft LAP.

Q. We don't know what might've been in the minds of the panel that assessed the draft LAP and put in place provisional LAP, though, do we?

A. Well, my understanding of the process is, is the draft LAP was put together by council officers, put to the council-elected representatives, and adopted as a draft for public notification. Now, I always accept that through that public notification process you will get more applications that occur as the hearings panel responds to the submissions made. But some – my problem with the PLAP, and I've said this earlier, is that some aspects of the PLAP have emerged without any explanation as to why they were subsequently produced.

Q. Isn't the answer simple in response to submissions?

A. I don't believe that's the whole story.

Q. Can I take you to paragraph 2.4 of your rebuttal? You say that the council seems to have implemented few, if any, of the report's recommendations, and I assume that you're referring to the CAPRi report?

A. Yes.

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Q. Can I take you to that report, please, and the relevant part of it is at page 25 of Mr Mechen's bundle.

WITNESS REFERRED TO CAPRI REPORT

WITNESS REFERRED TO MR MECHEEN'S BUNDLE

5 A. Yes.

Q. So about the middle of the page, I think, is where the recommendations from the report start, and you've got, first, "The areas where the DCC has or could have direct control," and it lists five points, "Greater attention to the planning, the location for licenced premises, making sale of liquor a notifiable land use, banning billboard" blah, blah, blah. Do you know when the operative Dunedin district plan was notified?

A. The second generation district plan was notified at the end of 2014.

Q. I asked about the operative district plan.

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15 A. Oh, the operative district plan is at least 10 to 15 years old.

Q. It was notified in 1995. Do you know when the operative district plan became fully operative?

A. No, I don't.

Q. 2006. Now your –

20 A. So council would've had to have more ample opportunity in response to this report, to make changes to that operative plan, and it didn't, did t?

Q. Well no, it wouldn't have. The plan was notified in 1995. So in your experience as a planner, when would submissions have been received on the notified plan?

25 A. Probably '97.

Q. Two years for submissions?

A. Well, it depends on how the process commences. If there is a draft consultation period that would extend –

Q. So it was notified, the notified version in 1995?

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A. Well, then it would've been the end of 1995, possibly into '96.

Q. The CAPRi report that you were talking about was released in November 2003, correct?

A. Yes.

5 Q. And you will know from your experience as a resource management planner that the jurisdiction, or changes to district plans, is determined by the scope of submissions filed on the notified provision, correct?

A. That's in the period prior to it becoming operative, yes.

10 Q. Yes. So this report would not have been available to the council when it was – or even submitters, when they were setting the scope for their submissions on the notified version of the Dunedin District Plan in 1995?

A. That's correct, and what surprises me, of course, is that why are, the 2GP plan doesn't either.

Q. Doesn't it?

15 A. No.

Q. Well, let's go through that. So you said the 2GP, you think, was notified sometime last year?

A. Yes.

20 Q. And have you worked through it to see whether there are any policies or objectives relating to licenced premises?

A. There are, and licenced premises are permitted in various forms throughout all the commercial and mixed use zones in the city.

Q. Yes. So where you might expect licenced premises.

A. But there's no restriction on outlet densities or hours of trading.

25 Q. No.

A. And of course I wouldn't expect there would be on hours of trading, because that's not an RM matter, but outlet, restrictions on outlet densities can be dealt with.

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- Q. They can also be dealt with under the Sale and Supply of Alcohol Act and a local alcohol policy, can't they?
- A. Yes, they can. And of course with item 2, making the sale of liquor a notifiable land use, there are different categories of consent status for liquor facilities, through the different zones, and it varies considerably.
- 5 Q. Mmm.
- A. And there's no guarantee, necessarily, with a particular resource consent application for a liquor store, would be fully publicly notified.
- Q. That's right.
- 10 A. And there's no –
- Q. When –
- A. Hang on, I haven't finished.
- Q. Okay.
- A. And there's no signage provisions in the district plan that specifically require a banning of alcohol advertising.
- 15 Q. Do you know what the activity status of commercial advertising is under the 2GP?
- A. Restricted discretionary.
- Q. Non-compliant, throughout the 2GP.
- 20 A. Well, I don't consider that as correct. You would need to show me the portion of the plan that says exactly that.

MS IRVING:

- We can probably do that, bring it up on my computer. Would that assist the panel, or
- 25 happy to move on?

THE COURT:

I'm happy to move on.

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CROSS-EXAMINATION CONTINUES: MS IRVING

Q. Are you –

THE COURT:

Ms Irving, I'm just conscious of the time, and we don't want to interrupt you in the
 5 middle of your cross-examination, but given that we had a bit of a late start do you
 want to take a short break, or?

MS IRVING:

I mean, I'm happy to continue through to one.

10 **THE COURT:**

Okay.

MS IRVING:

If Mr Foster's happy?

15

WITNESS:

I'm always happy.

THE COURT:

Right, well let's do that: let's continue to one, then, and just see if we can...

20

MS IRVING:

I suspect I'll be pretty close to being done by then.

THE COURT:

Great, thank you.

25

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MS IRVING:

If not done already.

THE COURT:

Sorry to interrupt.

5

MS IRVING:

No, no, that's fine.

1225

CROSS-EXAMINATION CONTINUES: MS IRVING

- 10 Q. You commented, Mr Foster, that licenced premises are provided for various activity statuses through the commercial and mixed-use zone, or zones.
- A. Yes, it did.
- Q. Are you familiar with how licenced premises are dealt with in residential zones?
- 15 A. My understanding is that they are non-compliant.
- Q. That is correct. So –
- A. Which is of no surprise to me.
- Q. No, it's not. It seems entirely appropriate. But when we look at your comment about implementing the recommendations in the CAPRi report, it would be fair
- 20 to say, wouldn't it, that the council has in fact dealt with most of the things set out in those recommendations? Greater attention to the planning location, as you've said: non-complying in the residential zone and provided for in the commercial and mixed use zones.
- A. No, I don't accept that that's taken account of most of the recommendations.
- 25 Because supermarkets, for example, are a restricted discretionary activity in most zones.
- Q. Commercial and mixed use zones?

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A. Yeah.

Q. What other zones are there in the district plan?

A. There are industrial and residential zones.

Q. Rural zones?

5 A. Yes.

Q. Major facility zones?

A. Yes.

Q. So it's in fact licenced premises are only provided in some of the zones in the district plan?

10 A. That's correct.

Q. And banning billboard and hoarding advertising, commercial advertising as a non-complying activity, go somewhere to limiting where billboard advertising hoardings could be installed.

A. Well, you'd have to show me that provision in the plan, because I – that's not my understanding of what the rules allow, and I base that on the basis of the type of supermarket signage that is provided at supermarkets, and the supermarket pylon, for example, often has other listed activities available on it. That is commercial advertising. I've never encountered a situation, and maybe this is Dunedin of course, but where a Lotto sign or a description on a supermarket pylon would be deemed to be a non-complying activity.

20 Q. Yes, and we've perhaps struck on where you and I differ: I think the signs you're talking about are signs ancillary to the activity, and you're right that those have the status of the activity to which they are associated, but standalone commercial advertising is non-compliant.

25 A. So are you saying to me that nowhere in Dunedin city is the type of billboards provided by AT Media or whatever they call themselves, like in Auckland, are non-compliant throughout Dunedin?

Q. I am.

A. That's bizarre.

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Q. It may be, but that's the rules.

A. Yeah. Well hey, look: I find on that clarification I would accept what you say. If you're not going to show me the provisions, it doesn't take the case any further by me arguing the point.

5 Q. So turning to availability, would you agree that availability is a lever that regulators can pull to control sale supply of alcohol? If we look at –

A. You mean in terms of the number of off-licenses, or on-licences?

Q. Well in terms of, yes, the number, the location whether further licences can be issued. All the things that a local alcohol policy might address. Hours, for
10 example?

A. Yes, it can.

1230

Q. Can I take you to the local alcohol policy decision from the council? Do you have a copy of that?

15 **WITNESS REFERRED TO LOCAL ALCOHOL POLICY DECISION**

A. Not up here, I don't.

Q. Can I take you to page 3, paragraph 11, the second sentence?

A. Hang on a minute. On page 3 there it's roman numbering.

20 **MR BRAGGINS:**

This is the full version of it?

MS IRVING:

Yes, the full version.

25 **CROSS-EXAMINATION CONTINUES: MS IRVING**

A. Are you talking (ii)?

Q. Pardon? No, page 3, paragraph 11.

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THE COURT:

No, I don't have that either.

MEMBER MOORHOUSE:

5 No, nor do I.

MR BRAGGINS

What is the (inaudible 12:31:13)

10 **MEMBER MOORHOUSE:**

The roman numeral.

CROSS-EXAMINATION CONTINUES: MS IRVING

Q. So it's paragraph 12 in the document you're referring to.

THE COURT:

15 It's on page 4?

CROSS-EXAMINATION CONTINUES: MS IRVING

Q. Yes, and the second sentence of that paragraph, "While there are now some regulations around the promotion of alcohol, subcommittee believes it is regrettable that prices cannot be set. The council has no control over this aspect of the sale and supply of alcohol." Now, in your evidence, I think you say that you think that some of the provisions of the LAP have been imposed to deal with price.

20

A. Yes, I do.

Q. Isn't it clear from that paragraph that the council understood that they could not control price?

25

A. It appears the council did understand that it could not control price.

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Q. And so they've pulled the other levers that are available to them, such as availability, the location of licences, their location relative to other premises, whether or not further licences should be issued in an area, and trading hours. All things specified in the Act as matters to be controlled or could be controlled by a local alcohol policy?

A. Well, I stand by the opinion that I've expressed in my evidence.

Q. Paragraph 2.18 of your rebuttal. Now in this paragraph, you essentially say that there isn't a basis for banning supermarkets. Now do you believe that that is what a local alcohol policy, or this local alcohol policy does: bans supermarkets from the moratorium area?

A. Yes, it does, because a supermarket is an off-licence.

Q. Right. So let's work through –

A. And I've explained earlier in my evidence, and in questions from Mr Thain, that no supermarket operator in New Zealand in the 21st century, is going to attempt to build a supermarket without the certainty of being able to have a corresponding off-licence.

Q. Right.

A. So by association, the moratorium area has in fact excluded a supermarket.

Q. I'd like to work through the process that an applicant has to go through to get a licence. Do you have any, the provisions of the Act available to you?

A. No, and it's probably fair to say that applying for an alcohol licence is not an area that I have expertise in.

1235

Q. Do you know what matters are to be had regard to when a licence is assessed?

A. Some of them. One of the key matters is the extent to which the licence is able to demonstrate compliance with the requirements of the district plan.

Q. So the matter to be had regard to is the district plan. Is one of the matters to be had regard to the local alcohol policy?

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THE COURT:

I think – yes.

MR BRAGGINS:

5 We can play a guessing game, but...

THE COURT:

The witness has already answered that he's not familiar with it unless we put it in front of him to read it.

10 **MS IRVING:**

I'll leave it, leave that point, then and deal with that in submission.

CROSS-EXAMINATION CONTINUES: MS IRVING

Q. I have one more thing I'd like to talk to you about, Mr Foster. In questions from
I think it was my friend Sergeant Panting, you commented that in your opinion
15 Progressive was a responsible retailer of alcohol, is that correct?

A. Yes.

Q. Are you aware of Progressive Dunedin being prosecuted for any breaches of
the Sale and Supply of Alcohol Act?

A. Yes, they have been prosecuted.

20 Q. What for?

A. There was a case of selling alcohol to a minor, I think, and there is another
case to do with an incorrect method of recording alcohol sales in a flyer, I think,
or publication.

Q. I have something I'd like to pass up, please, Madam Registrar. And can you
25 describe the document that you've just been passed up, Mr Foster?

WITNESS REFERRED TO DECISION ON BREACH OF ACT

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A. It's a decision on a breach of the Act, at least I think that's what it is. I mean I don't normally get to see these sorts of things because there's no need for me to. So I'm – perhaps you should tell me what you believe it is.

Q. It's a decision of the Alcohol and Regulatory Licensing Authority in relation to General Distributors Limited, the holding company for Progressive's business, for breaching section 237 of the Sale and Supply of Alcohol Act. It's the matter you referred to relating to the promotion of alcohol.

A. Yes, and I mean these – as a consultant to Progressive who has provided them with technical advice over a number of years, these sorts of instances are regrettable and embarrassing, and the business is always, from the advice I get, always very concerned when one of its staff does not follow the protocols that are clearly set down. The other point I'd note about this particular notice is item 6(i) says, "This is the first breach of the Act for Countdown Cumberland Street." Thank goodness for that.

1240

Q. Mr Foster, are you aware of any initiatives that Progressive Enterprises had been requested to participate in with the council and the university in relation to promotions during orientation week?

A. No. My understanding is Progressive's never been approached. That's not to say it shouldn't be, either.

Q. I have no further questions, Your Honour.

THE COURT:

Thank you. Mr Braggins, we've got 20 minutes. Did you want to ask any questions now?

MR BRAGGINS:

Yes, Your Honour. My first question, and I suppose it's an issue that I have because we have the sergeant here who's not giving evidence, and I took the notes that the

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Sergeant, who represents the police, who supplied the card data, is now saying that the car data is, I think he used the words “remarkably inaccurate” as a reason why we should not use that data, and that’s a concern not just for this case but for every PLAP and licensing decision across the country that relies on that car data as being the best and most reliable information on which, you know, almost all, at a DLC level, all licensing decisions rely on this data, and I find it quite alarming that we had that kind of language used and it was a significant part of Progressive’s evidence, relying on that police data, that that was something relevant to put to the parties. Now, I can’t ask Mr Foster about that, and I’m –

10 **THE COURT:**

And we’ve got not evidence from police?

MR BRAGGINS:

And so I’m at a bit – I will ask Mr Foster some questions about that, but I think that actually has a national concern written all over it, if that is the police’s position, and I wonder if during the lunch break the sergeant might get some clarification about whether the car data is remarkably inaccurate.

THE COURT:

Yes, I think that’s good, and we’ll do that at the break rather than responding right now.

RE-EXAMINATION: MR BRAGGINS

Q. Now, Mr Foster, before – my first question is just to clarify a couple of questions that you were not asked. Do you recall being asked anything about the council taking a cautious approach?

25 A. No, I wasn’t asked any question like that.

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Q. Were you asked any questions about the council being, taking a precautionary approach?

A. No.

Q. Have you seen anything in the council's PLAP decision that refers to either of those concepts?

A. I have not.

Q. And –

MR ROBINSON:

10 Oh, sorry, Sir. It seems to me my friend is trying to introduce matters that were not raised in cross-examination. His re-examination needs to be limited to matters that have been specifically raised in cross.

THE COURT:

15 Yes, I think what he's asking is there were questions that were, used those terms and asked the witness around the precautionary approach, and so he's trying to clarify that given that it wasn't, as he said, in the LAP.

MR BRAGGINS:

20 The issue, Your Honour, is Ms Hampson was asked some questions about the precautionary approach and the council taking a precautionary approach yesterday. I followed her up with those same questions. Now, Ms Hampson's evidence is analytical. She looks at the data she has been given, and provides findings on the basis of that data. It's not evaluative in the same sense: she doesn't reach conclusions as to reasonableness or so on; she's just there to put out the information, and some questions were asked on this topic. Now, Mr Foster, who, his role is more evaluative, pulling together not just Ms Hampson's but also Ms Kelly's and Dr Fairgray's, comes to an evaluation of the reasonableness and I suspect that my friends are going to be wanting to talk about the precautionary approach and

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taking a cautious approach, but those questions were never put to Mr Foster, and I'm simply confirming that he was not asked those questions. I'm happy to –

THE COURT:

But that is new, rather than addressing the evidence that was given in clarification.

5

MR BRAGGINS:

Well, I'm just confirming that his understanding is that he was not asked questions about precautionary principle, and that he was not asked about taking, the council taking a precautionary process. That's as far as I need to take it, because if my friends aren't going to put that to Mr Foster, then he can't answer it, and it's not in the evidence from the council either, so he didn't have a chance to do a rebuttal on it. So That's the –

10

THE COURT:

You're not taking this any further?

15

MR BRAGGINS:

I'm not taking it any further. I'm simply saying Mr Foster has not had a chance to comment on that concept at all because it has not been raised in the council's evidence or the council's PLAP, or the questions of him.

20

THE COURT:

Yes. Council?

MR ROBINSON:

That sounds more submission than evidence, so he shouldn't be going there at re-examination.

25

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THE COURT:

Yes, I agree with that.

MEMBER MOORHOUSE:

- 5 I think you're trying to pre-empt what you may be submitting.

THE COURT:

Yes.

MR BRAGGINS:

- 10 I'm just – I wouldn't want there to be a misunderstanding that the council says that they did put that to Mr Foster, and I think we're all on the same page there, so I can (inaudible 12:45:41).

THE COURT:

I think that's clear.

15 **RE-EXAMINATION CONTINUES: MR BRAGGINS**

- Q. Now the sergeant asked you some questions in relation to the selling of alcohol and the selling of drugs and presumptions and so on. My understanding that he was talking about the need for – if you want to sell a drug you've got to prove that it's safe, and you've got to go off and get your
20 licences to prove that it's safe. Is it your understanding that alcohol's able to be sold legally in New Zealand?

A. Yes, it is.

Q. So the pharmaceutical analysis, does that have much relevance in your view?

A. In that sense, no.

- 25 Q. Now you were asked some questions about the sale of alcohol and whether a supermarket could establish without a licence, and my understanding is that

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that's really Dr Fairgray's expertise, a bit more than yours, but I'll see how we can go. So, we've heard evidence that supermarkets sell, or progressive supermarkets sell around 10% of their sales are through alcohol, and presumably those sales are made up of different types of sales. We've talked about alcohol only sales that are a very small percentage, and then alcohol involved in the sale of other products. Sorry, I'm just trying to work out how – I don't want to lead the witness. Are you aware of the extent to which the supermarket shops, i.e. the percentage of baskets or the percentage of transactions, involve a sale of alcohol?

10 A. Yes, I've seen the figures, but I can't recall what they are.

Q. Do you think that that would be a more relevant factor for determining whether a supermarket was going to be viable with or without a licence?

A. I can't really answer that, because that's a commercial decision. What I do know is the policy position of the company is, unless it's in a trust area, that it would not build a supermarket without an ability to sell alcohol.

15 Q. I might ask that question in a slightly different way, and maybe make it a little bit more grounded. So you've got a – Mum's going out to do the weekly shop on a Saturday. She has a choice of two places to go. She's got one supermarket with a licence, and one that doesn't. She wants to include a bottle of wine with the weekly shop because they've got some friends coming round. If that customer chose to go to one store, rather than the other, because they wanted to stop, they wanted to have a one stop shop, would that have a greater impact on the store's turnover than just a bottle of wine?

20 A. Yes, it would.

25 Q. You were asked some questions about the Christchurch study. You weren't provided a copy of that study. In light of it being a Christchurch study, to what extent have you seen any evidence of that being applicable to Dunedin?

1250

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A. I haven't looked at that study so I couldn't really answer that question, I mean what I do know in Christchurch is that the off-licence hours are virtually agreed now at 7.00 am to 10.00 pm so while that report may have existed and help shape the Christchurch situation, obviously it hasn't impinged on the sensible decision made about the hours.

Q. Just while we're talking about off-licence hours, in terms of your national experience, the hours of bottle stores opening from 9.00 am, is that a Dunedin specific?

A. No.

Q. How widespread is that?

A. Right across the country.

Q. And in terms of licence numbers, are bottle stores more common across the country than supermarkets or less common?

A. Much more common.

Q. So if a council was to adopt the view that they were going to take the mode of, release the most common opening time for licences, would that result in, or wouldn't that result in the whole country adopting a 9.00 am approach?

A. If there was serious technical merit in that, yes I would expect that to happen.

Q. I'm not asking you about the technical merit, I'm just saying if the logic is let's set our hours where the most common licensed hours are for off-licences, would we see a national change to 9.00 am, because you've accepted that there are more bottle stores than supermarkets, you've accepted that bottle stores generally open at 9.00 am?

A. Yes I suppose you could, that could happen but I know that both supermarket chains will kick up a fuss about that.

Q. Absolutely, but the point is to what extent then would that have anything to do with the local situation?

A. Well it doesn't. Because there are local differences across New Zealand and you know some districts with their LAPs have different hours because it

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NEW ZEALAND POLICE

PROGRESSIVE ENTERPRISES

DUNEDIN HOSPITALITY GROUP

IGNITION GROUP

DE MILLE RETAIL HOLDINGS

INDEPENDANT LIQUOR NZ LIMITED

PLAP 287003/2015 PLAP

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reflects the nature of the population and the characteristics of the individual environments and I mean that's to be expected, given that the local alcohol policy is supposed to have a local focus.

Q. Now my friend, my friend asked you some questions about bottle store opening hours and how they were variable and on Monday, Tuesday, Wednesday nights they were shorter, Friday, Saturday night they were longer. And then sought to raise that as a parallel to the level of harm that was occurring, so because bottle stores are open shorter hours Monday, Tuesday, Wednesday, Thursday, that suggests that those reduced hours are influencing harm. Having – and then you also referred to the brewery that you spoke to. To what extent do you feel the bottle stores set their hours to when their customers are wanting to purchase?

A. I think it's got everything to do with it. And the difference in hours on Friday and Saturday night is a reflection of the demand. I mean they wouldn't have those extended hours if there was no one coming into their store to buy their product.

1255

My friend also spoke to you about how Dunedin Hospital has the highest levels of hospital admissions, I understood her there to be talking about a number as in the number of admissions in Dunedin Hospital is more than in Southland Hospital or Queenstown Hospital. To what extent do you, when you're comparing different cities, do you think that comparing absolute numbers is an appropriate benchmark?

A. It can be appropriate, it's a bit like the diagram that is included, well the graph that's included in my evidence. Which shows a higher rate for Invercargill or the southern hospital than Dunedin and you look at that information on its face and you think that doesn't seem right but when you actually delve into it a bit more there is some logic as to why there is some sort of difference. And I mean the Lakes Hospital has a higher rate of intoxicated admissions. Well

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when you think about it, what's the characteristics of Queenstown, why would that be, well it's a tourism Mecca and you know I'm sure everybody in this room at some stage has been to Queenstown and enjoyed the social life that goes with it.

- 5 Q. My friend was also talking to you suggesting that maybe we just adopt this LAP and see what happens and if three years time it needs to be changed then the council would look at changing it. If in three years time there was no effect, nothing had happened, how motivated do you think the council would be to go ahead with the new draft LAO?

10 **OBJECTION: MR ROBINSON (12:57:17)**

It calls for a speculative answer.

THE COURT: JUDGE KELLY

I agree, I'm not sure whether that he can answer that question.

CROSS-EXAMINATION CONTINUES: MR BRAGGINS

- 15 A. I'd be sorely tempted but I won't.
- Q. You were asked some questions about serious assault data and the trends. Have you seen any information from the council about what time of night those are occurring?
- A. No.
- 20 Q. Any evidence about the location that they're occurring?
- A. No.
- Q. Any evidence of whether there's a trend over time to whether they are occurring earlier or later or in different parts of the city?
- A. No.
- 25 Q. Can I just check, you, you're not aware of the breakdown of submissions on the LAP?

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A. It's a while since I read the report but there is a report that gives you a description of, certainly those submissions that are duplicated, different people signed for.

Q. I'll just ask Mr Mechen that question. I have nothing more Your Honour.

5 THE COURT: JUDGE KELLY

Thank you, you're excused you can stand down. Did you want, I'm sorry –

THE COURT: MEMBER MOORHEAD

Yes.

THE COURT: JUDGE KELLY

10 Before I excuse you I'll ask, let my colleague ask.

THE COURT: MEMBER MOORHEAD

Q. Sorry Mr Foster, you don't get away quite that easily.

A. I never expect to.

Q. No, I just wanted to ask, your paragraph 6.6 in your evidence-in-chief, you say
15 that you've identified 13 off-licences within the proposed moratorium area, can I ask where were you able to identify them from, what was the information you based that on?

A. The information base was the council's own liquor licence records.

Q. And I know you swore this evidence two months or so ago, do you know –
20 when did you get the council records, how up to date were they?

1300

A. It was in July/August this year. That information was obtained for me by one of legal counsel's assistants, because they had to scroll through the records and try and find out where they were.

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Q. It may be something that's more appropriately directed at counsel's witnesses later, but you've set it out in your evidence, so I just wanted to check it with you. Part of the reason is because I was actually in the region, Night 'n Day grocery store yesterday and I didn't see any alcohol in there, so I don't know whether I was looking in the wrong place, or whether they don't still have a licence, or whether I'm talking about the wrong Night 'n Day store. Have you any understanding of that?

A. What the records show was what the licence provisions and conditions were. But it didn't actually disclose what their opening hours were. So some of the stores were rung up directly, and in one instance, Quicker Liquor, we were unable to contact them, even though the council records said they had a licence. So my understanding of the information we've provided is that that Night 'n Day store has a liquor licence. Whether it chooses to sell alcohol or not, I haven't checked.

Q. And you're not aware of any recent decisions affecting any of the other off-licences that you list here?

A. Not these ones, no. But I know a renewal of an entity called West being declined. But West is not in this area.

Q. You were also asked, and you had a discussion about the ability, in fact the necessity, to review the LAP every six years, and in fact it – the provision of the Act, section 97, says that the territorial authority must review it, using the special concentrative procedure, no later than six years after it came into force. So it could do it sooner, but it must do it at least six years afterwards. Given that, given that it has to be reviewed, some of the provisions that you're not happy with, given they're not going to be set in stone forever, does that change your view of the reasonableness or otherwise of those provisions?

A. No. There are some provisions that I just consider are wholly unreasonable for reasons I've set out in my evidence. And I particularly take, particularly with respect to the 7.00 am to 9.00 am in the morning.

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Q. Thank you, Mr Foster.

QUESTIONS FROM THE COURT:

Q. We have, with a previous witness, discussed the issues around dated research, and in paragraph 3(2) of your rebuttal evidence, you refer in fairly trenchant terms, to CAPRi 2003 and the masters thesis. In your view, what weight are we entitled to put on those two pieces of evidence?

A. Given their age, rather limited weight.

Q. Do you want to expand on that at all?

1305

A. It's reasonably clear to me that there are emerging trends with the advent of the Act.. And in that sense historical analysis that suggested certain trends or certain actions, I consider need to be treated with extreme care because I do expect that the LAPs are still bedding down. A number of them have been settled. We have a number of councils that haven't yet prepared LAPs, we had a situation in Christchurch where the initial LAP was, well to put it bluntly, was a bit of a nightmare; that has now bedded down to the point where there is agreement on just about every provision, there is a couple of little sticking points to deal with the distribution of licence around Victoria Street as I understand it, but the overarching provisions like the hours of sale and licence types and like are settled. You have Auckland where we go to hearing in February, now Auckland has some particular issues which are going to be quite a challenge for the Authority to work its way through in terms of the positions of the parties. The, I think they call them priority licence areas. Just about every town centre in Auckland has in effect has a moratorium on new off-licences. Now bottle store off-licences are in Manukau, South Auckland, that's a different kind of issue to supermarkets in town centres and Auckland's population is expected to increase by something over 800,000. It's not hard to do the numbers in terms of that level of growth over an X number of years, you

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need between 30 and 60 supermarkets, depending on it, across the two brands. If you've got a moratorium on supermarkets, new supermarkets establishing in town centres, well where are they going to go. So in that sense that's why I think historic research needs to be treated with considerable
 5 caution because it does pre-date this new Act and the concept of LAPs that are evolving.

Q. Thank you.

MR BRAGGINS:

Sorry just had a couple of very minor things.

10 QUESTIONS ARISING: MR BRAGGINS

Q. We were just talking, I suppose just linking the questions you've been asked by Mr Miller and MEMBER MOORHEAD, are you aware roughly how long it's taken this LAP process to get to where we are?

A. I'd have to think about that. At least two years I think.

15 Q. I have an agenda here from 2014 so, December 2014 so that sounds pretty on the mark. So if we, the review process is only the start of the LAP review process isn't it?

A. Yes it is.

Q. And it wouldn't be until the end of that process that there was actually change
 20 having effect?

A. That's as I understand how the process will work, yes.

Q. And in terms of the moratorium area and the study that the council's referred, the CAPRi 2008 study, what I'm trying to understand is, to what extent are the key characteristics that the council is concerned with going to change between
 25 now and six or eight years time. So we have a city with a high population of 18 to 24 year olds, is that going to change?

A. No it's not.

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Q. We have 18 to 24 year olds who experience a higher level of alcohol-related harm.

1310

A. That may change with greater education and greater control. And I mean control in the sense of controls that are imposed on specialist events.

Q. 18 to 24 year olds as opposed to 25 to 30 year olds, 40 to 50 year olds.

A. Well there probably wouldn't be that much change. I mean I remember my university days, I don't remember being so, alcohol deficient for any length of time, no that's the wrong way of describing it. But I certainly was not a tee-totaller when I was at university.

Q. There being a lot of students living around the, in the moratorium area, is that likely to change in the next six to eight years?

A. No.

Q. The number of, the city having a higher proportion of off-licences compared to the rest of Dunedin within the moratorium area?

A. When you say "city" I presume you mean the CBD and the answer is yes because of what The Octagon is. It's the entertainment magnet for Dunedin and that's of no surprise.

Q. So that applies to on-licences and off-licences?

A. Yes it does.

Q. That they'll continue to have a high proportion?

A. Yes.

THE COURT: JUDGE KELLY

Look we'll take a break and I suggest we take a break until say quarter past two, a reasonable break and then we'll see if we can get clarification from police on that question you were asked around the card data. So Sergeant we'll ask you after the break just to confirm what your position was on that card data.

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SERGEANT PANTING:

Yes.

THE COURT: JUDGE KELLY

Thank you.

5 COURT ADJOURNS: 1.12 PM

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AUDIO MISSING: DISCUSSION ALREADY STARTED BY 14:26:39

...and I don't know if you've got any clarification on it?

MR BRAGGINS:

5 I've got the clarification I needed.

THE COURT:

Great.

MR BRAGGINS:

10 So the position is essentially what my friend put to Ms Hampson, which is – there are, the nature and, the statistics don't capture the nature and severity of incidents. So for example, if there's a violent incident you don't know whether it's a broken leg or they almost died.

THE COURT:

15 Right.

MR BRAGGINS:

So there is that nature that is not captured and we freely accept that.

THE COURT:

20 Right.

MR BRAGGINS:

But in terms of mapping trends of patterns across geographically, days of the week, that sort of stuff, it is –

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THE COURT:

It captures that.

MR BRAGGINS:

- 5 And in Ms Hampson's evidence she says, and I think it's at 3.3 of her evidence-in-chief, "It's not about the numbers, it's about looking at the patterns to see what's changing," and that's I think consistent with what the police were saying.

THE COURT:

Right, okay, thank you.

10

MR ROBINSON:

Now, I spoke to the sergeant about this aspect as well, Sir, and –

THE COURT:

Yes.

15

MR ROBINSON:

– he gave me a couple of examples, I think, just put the appropriate perspective on what my learned friend has told you. He said that a, if the police were called to an unruly party that had, say, 50 to 100 people attending it, that's one disorder incident.

THE COURT:

Yes.

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MR ROBINSON:

Even though you might have (inaudible 14:27:57) tied up for hours –

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THE COURT:

Yes.

MR ROBINSON:

5 – and a lot of people affected by alcohol. So it's correct that it doesn't give you the quantum aspect, and that's really where I, where in my cross-examination of Ms Hampson I was –

THE COURT:

Yes.

10

MR ROBINSON:

Saying well that's, it's the bare minimum –

THE COURT:

Yes.

15

MR ROBINSON:

– of harm that's recorded.

THE COURT:

Well, it gives you a degree of quantum but it doesn't also give you the qualitative
20 kind of, the severity or the qualitative or quantitative, probably both.

MR ROBINSON:

Mmm.

THE COURT:

25 Yes.

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MR ROBINSON:

Indeed.

THE COURT:

- 5 Okay. No, that's helpful. Good. So are we comfortable with that? If we're comfortable with that we'll move on. I'm comfortable with that explanation. Judith? Make sense to you?

MEMBER MOORHOUSE:

- 10 Yes, but it sounds like the sort of thing that would have been put to a police witness if there had been one.

THE COURT:

Yes, I think that's part of the challenge.

- 15 **MR ROBINSON:**

I think the constable would volunteer to go into the box if need be.

THE COURT:

Right. Look, we'll turn over to you, Ms Irving.

- 20 **MS IRVING:**

Thank you, Sir. I have provided to the registrar some opening submissions (inaudible 14:29:01) take you through.

THE COURT:

Yes, thank you.

25

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MS IRVING:

And just, you have any questions during the course of submissions, I don't mind being interrupted.

THE COURT:

5 Good, thank you.

MS IRVING:

Or if you'd prefer to wait till the end, that's fine, too.

THE COURT:

10 Thank you.

MS IRVING BEGINS OPENING SUBMISSIONS:

So I'll perhaps just – obviously we're here. There's been a number of appeals to the Dunedin Provisional Local Alcohol Policy, and Mr Mechen through his evidence has provided you with the context and information that was available to the council at the time that it made its decisions with respect to the draft local alcohol policy. Through my submissions I'll take you very briefly through the nature of the appeal rights that we're dealing with, the Act itself and the most, I suppose, fundamental principles that I think are relevant to your assessment of these appeals, and I have set those topics out there for you.

1430

Turning to the nature of the appeal itself, the Act sets out a very narrow and specific process for appeals under the Act. Section 81 specifies the limited parties that have rights of appeal and the single ground upon which appeals may be made. That single ground is that the provisional policy is unreasonable in light of the object of the Act.

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THE COURT:

Can I interrupt you there? Isn't it in fact the element?

MS IRVING:

5 Well yes, the element, yes.

THE COURT:

The element of a policy.

MS IRVING:

10 Given that the success or otherwise of an appeal must be determined in light of the Act, it's my submission that a careful analysis of that object is the ground upon which any decision in respect of an appeal must be made. To understand the object of the Act, I think it's important to understand where it came from and what led to the enactment of the new legislation. So we know that the Act was enacted following
15 recognition that the liberalisation of alcohol regulation through the late 1980s and '90s had not worked. Alcohol consumption was increasing, and was and is continuing to result in adverse effects in terms of crime rates, injury rates, and adverse general health effects. Having reviewed the, I suppose the Law Commission report that ultimately led to the development of the Reform Act, I
20 think the thing that was quite interesting about that was the recognition of alcohol on general health. So it wasn't just about alcohol related harm from excessive consumption, but also the increasing body of information that we have about how even moderate consumption of alcohol can give rise to adverse health effects. At the time that the alcohol reform bill received its first reading in Parliament, the direct
25 cost of alcohol to the New Zealand government was pegged as high as \$1.2 billion a year. Now the bill sought to support a safe and responsible drinking culture, and usher in a new regulatory regime that gives credence to community concerns. When introducing the bill to Parliament, The Honourable Simon Power said that, "the

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Government recognises that different communities have different needs, best understood by local people. This bill empowers communities to address local issues like concentration, location, and opening hours of alcohol outlets. These are local alcohol policies.” The bill’s introduction also emphasised the need to focus on the effects of alcohol on young people. In this regard, The Honourable Simon Power stated that, “The Bill focuses strongly on the high and disproportionate harm caused by youth drinking. Risky behaviour is becoming increasingly normalised, especially among our young people. The Government is not prepared to stand by and allow excessive and harmful alcohol consumption to be further ingrained in our culture.”

As discussed in Mr Mechan’s evidence, the council had information before it identifying some troubling, to say the least, trends in youth drinking in Dunedin. And as Mr Braggins pointed out, Mr (inaudible 14:34:14) in one of his reports found that the strongest correlation for excessive consumption in university students was whether or not they had consumed alcohol while they were at school. So from the council’s point of view, one of the things that it wants to try and achieve is a reduction or minimisation of the effect or the consumption in those early years, because it seems to be, from the body of evidence, that if you start drinking early you will continue to do so, and you will continue to do so inappropriately and excessively. It is reasonable to assume that in all new legislation it is designed to change something, otherwise why would you enact it?

1435

However in relation to the Sale and Supply of Alcohol Act Parliament saw fit to actually emphasis that point by stating specifically in the purpose of the legislation that it was to put in place a new system of control. This sends a clear message that the status quo was not to prevail. One of the primary mechanisms in the Act for achieving change was the advent of local alcohol policies. Local alcohol policies provide a tool for local authorities to respond specific alcohol-related issues in their district and to put in place policy direction that reflects the demands and desires of their local community in pursuit of the safe and responsible drinking culture.

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So reflecting for a moment on what has changed relative to the Sale of Liquor Act 1989 and I think it's important to look at that for us to be able to assess the reasonableness of the PLAP. I think the place to start this assessment is section 3 of the new Act, being the purpose of it. So we know that the purpose of the Act is for the benefit of the community as a whole. As I've said it is to put in place a new system of control over the sale and supply of alcohol with the characteristics in subsection 2 and to reform more generally the law relating to the sale, supply and consumption of alcohol, so that its effect in administration help achieve the object of the Act. Now there's some telling differences in this section when we compare it to the 1989 Act. The 1989 Act was drafted in more equivocal terms. It aimed to contribute to the reduction of liquor abuse, insofar as can be achieved by legislation. I think it's almost a tacit acceptance that that legislation could do little to influence consumption. The new Act doesn't contain that same acceptance. The New Act is more definitive. Its purpose and object have been distinguished and the purpose is to provide a framework whose administration would help achieve the object for the benefit of the community as a whole. The second difference is the change from a focus on reducing abuse to the management of a sale and supply of alcohol for the benefit of the whole community. In that sense the 1989 Act was quite narrowly focused, it focused on the regulation of the sale and supply of alcohol with an expectation that the community would manage the consumption side of the equation. As acknowledged when the new legislation was put before Parliament, that has not worked. The new Act has that much broader ambit, this is apparent from the reference in section 3 to the community as a whole and specific reference to the sale, supply and consumption of alcohol in section 3, subsection 1(b). Unlike the 1989 Act this act is intended to reform our consumption patterns in addition to controlling sale and supply.

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Now cultural issues associated with the consumption of alcohol cannot be addressed by solely focusing on harm or by simply controlling sale and supply. Think past 30 plus years have taught us that. Therefore the Act must be intended to address a broad range of factors that enables safe and responsible consumption whilst also minimising direct and indirect harm. This distinction is reflected in the two elements of the object. The first one being the pursuit of a safe responsible sale and supply and consumption of alcohol. And the second limb, minimising harm caused by excessive or inappropriate consumption.

1440

10 And my friend Mr Thain in his submission focused very much of the object of the Act being about alcohol-related harm and what can be gained if there is a lack of a causative connection between an element in the PLAP and reduction in harm. Now I don't think that's what's required by the object. I think the two elements mean that we've got two things we need to be thinking about. How can we promote safe and responsible consumption, sale, supply and consumption of alcohol and at the other end of the equation, how do we minimise harm. So one is the parachute at the top, the other is the ambulance at the bottom. The purpose and object make it clear that the Act is seeking to address those more subtle elements of New Zealand's relationship with alcohol which gives rise to the unhealthy and harm causing aspects of our drinking culture. This multifaceted approach in the Act's object is continued in the harm, minimisation limb which addresses both excessive or inappropriate consumption. In my submission those two things are not synonymous and the drafting distinction is deliberate. It is possible for inappropriate consumption to occur without leading to excess. However inappropriate consumption is likely to lead to excess and therefore likely to have an indirect effect that contributes to harm and the type of thing I suppose I'm thinking about is, you know examples like if you go to Castle Street on a Saturday afternoon, a particularly warm day like yesterday, you'll find students out over the street. I recall from my own time at university we would occasionally set up a table tennis table and play beer pong. Now there were school

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children that would walk down Castle Street on their way home and who would observe that. And so I think it's that type of, I suppose inappropriate consumption, the time you see it may not be excess consumption but it sends a message about how or what's appropriate in the way that we consume alcohol and I think that's one of the things that this Act wants us to focus on, wants us to try and change. Therefore to achieve the object of the Act a local alcohol policy can include elements that address both the safe and responsible limb of the object and/or the harm and minimisation limb and that is the case in the Dunedin PLAP. Turning now to the concept of reasonableness, it's the one characteristic that I think is consistent with the 1989 Act. The concept of reasonableness I think is relatively well settled. Under the 1989 Act the Court of Appeal in *Mead Bros* said that the object envisages that the licensing system should be reasonable and this indicates that the intention that that controls that are imposed under it should be neither nor oppressive. The Court also stated that it is to be remembered that the statutory object is to establish a reasonable system of control and this envisages that at a certain point at the extreme end of the scale, the administration of the licensing may become unreasonable in its pursuit of the aim of reducing alcohol abuse. So this comment has been reiterated by the Court of Appeal and confirmed as being relevant to the assessments under the new legislation. However it is important to recognise the difference in the object of the Act relative to the 1989 Act. As I've said the object of the Act has those two limbs. This means there's more scope for policy and regulatory responses that reasonably address that broader object. Essentially, what may have been considered unreasonable under the 1989 Act may be reasonable under the new legislation.

1445

Now reasonableness under the Act was discussed extensively by the authority in *Hospitality New Zealand and Tasman District Council*, the *Tasman* decision, and the authority accepted that a provision of the PLAP could be unreasonable if it amounts to an excessive or unrealistic response to the alleged risk of alcohol-related harm,

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and impacts unreasonably on public or private rights. In the context of section 81 of the Act, unreasonableness is qualified or governed by the object. So that object is really the centre of your analysis and you have to keep coming back to that object each time you assess an element. I think that you – each time you do that you need

5 to assess whether the element reasonably pursues the first limb: safe and responsible sale, supply and consumption, and a single-minded focus of reasonableness on the measures that respond to the risk of harm ignores that other equally important object. The part of the Act that's focussed on the positive tweaks and changes to alcohol regulation that attempt to alter the undesirable aspects of our

10 culture. If the assessment of reasonableness simply focuses on the risk of harm alone, then it essentially results in that new object of the Act being read down or ignored entirely, and that would take us no further than the 1989 legislation did. It would be inconsistent with the purpose of the Act, which clearly states that the Act is to put in a new system of control, and to reform the law for the benefit of the

15 community as a whole. And that would be inconsistent with what Parliament was trying to achieve, which was change. Turning now to some of the bylaw cases, which I think provides some useful assistance. The authority has previously adopted the principle set out in the rather old, in the (inaudible 14:47:46) of *McCarthy v Madden* that reasonableness or unreasonableness of a bylaw can be

20 ascertained only by relation to the surrounding facts, including the nature and condition of the locality in which it is to take effect, the evil, danger or inconvenience which it is designed, or professes to be designed to remedy, and whether or not public/private rights are unnecessarily or unjustly invaded. However, as stated by the High Court in *Carterhill Harvey*, caution is necessary when the

25 *McCarthy v Madden* approach is applied. There are many more checks and balances now in place. Local Government decisions are now subjected to considerable public scrutiny in submission before they are enacted. Administrative law itself has developed greatly in the 20th century and a cautious approach can be discerned in relation to administrative law attacks on council decisions. Now, I

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appreciate that we're not dealing with an administrative law attack here. This is a right of appeal under the Act, but I think when you look at the threshold for judicial review and the cases that have developed in relation to unreasonableness under the Act, they're actually not that far from one another. The Court in *Carterholt* went on to agree with Heath J in *JB International v Auckland City Council*, going on to say that, "The question of whether a bylaw is unreasonable is a mixed question of fact and law. Unreasonableness cannot be considered in a vacuum of the parties' submissions and the Judge's view on what is reasonable. A bylaw is not unreasonable just because a Judge thinks it is so. The consideration of reasonableness of the bylaws can only take place in the context of the legislative background. And that's the key point here. In this case, as I suspect in most, where unreasonableness of a bylaw is alleged, the answer becomes apparent when Parliament's intention is understood.

1450

So that's why I think it's important to go back through the changes to the new legislation relative to the old legislation and look at what's different and discern from that what Parliament was trying to achieve because that will inform your assessment of whether the elements that the Dunedin City have put in place are unreasonable or not. The provisional local alcohol policy has been subject to the same checks and balances by virtue of the special consultative procedure that must be followed to develop the PLAP. The council notified the draft LAP received a significant number of submissions, spent nine days hearing from submitters and four days deliberating over the decision. The process was comprehensive. The bylaw case law suggests that where there is a comprehensive process that has been followed, higher authorities must be careful about unsettling the decisions reached. This rationale is applicable in this instance given the need to consider the reasonableness in light of the object of the Act and with respect to local alcohol policies, it is the council who is likely to be best placed to decide what measures will best achieve the object in their locally. Only where the council's decision is ultra vires or without evidential basis

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and it's including circumstantial or inferred evidence, would it be appropriate to intervene. Now, two days ago now, Mr Braggins spent some time submitting about price and what I'm anticipating is that he will suggest that if the council sought to implement policies to control price then the provision alcohol policy decision will have

5 been for an ulterior purpose, and that that is unreasonable. Now I think you will have heard me put to Mr Foster this morning the paragraph of the council's decision where they referred to price, and I think what you can see there is an expression of the council's frustration that the Government, in its infinite wisdom, sought not to exercise the one thing that has been proven to be the most effective at reducing

10 alcohol-related harm. So it has been left pulling the other levers, which we talked about with Mr Foster today around availability, and that is what the council has done. In my view, other references to cheaper alcohol price throughout the council's decision are simply pointing out the reality that off-licence alcohol can be purchased less expensively than on-licences, and in Dunedin, where we have a high proportion

15 of people within the most at-risk age group, that 15 to 24, that that is an issue. And you can see why, when you are strapped for cash, loading up on alcohol from off-licence sources, prior to attending an on-licence, is the way that that group intend to behave. Turning now to actually assessing reasonableness against the object. In my view the previous decisions of this authority have not had adequate regard to the

20 two limbs of the object, when assessing the reasonableness of an element. Instead the assessments have focused on the extent to which a PLAP element minimises harm. And I think the tendency of those decisions perhaps demonstrates the inertia that the assessment process under the 1989 act has. An example of this is paragraph 51 of the *Tasman* decision, and I'd just like to take you to that, if I may. A

25 copy of it is in your bundle.

1455

No actually I tell lies and a copy of it is in the bundle that Mr Braggins provided to you and I thought I wouldn't regurgitate that (inaudible 14:55:26) again. So it's tab 5 at page 105, that's where the decision starts, to paragraph 51 of that decision.

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THE COURT:

I did have it, just bear with me.

MS IRVING:

5 No worries.

THE COURT:

Tab?

MS IRVING:

10 Tab 5.

THE COURT:

Thank you.

MS IRVING:

15 And page 114 is where the relevant paragraph is. If you read that paragraph, so, "It follows that where an element of a PLAP can demonstrably be linked to the object of minimising alcohol related harm, then the Authority will be slow to find that the element is unreasonable." So again, the invasion of the public or private rights would need to be significant to outweigh the benefit of Minimising alcohol-related harm. However, if an element of a PLAP cannot be shown to attempt to minimise alcohol related harm, then the Authority will be more likely to find the element unreasonable. And I just think it's quite striking there isn't reference there to the other part of the object, to achieving safe and responsible sale, supply and consumption of alcohol. The same issue arises, I think, at paragraph 55. (inaudible 20 14:57:25) I'll give you a moment perhaps to review that in your own time. There's 25 sort of this idea that there needs to be a reaction perceived problems, and what I'm saying is that we can also be taking positive steps towards safe and responsible sale

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and supply, and that what Parliament was trying to achieve is an improvement in the way that we consume alcohol, that we relate to it, so that it is a positive contributor to the community rather than causing the adverse effects that we are so familiar with. Now exactly what measures they will look like within a community is of course going to vary from location to location. And that is what local alcohol policies work to achieve: to allow communities to make community level decisions about how they wanted their community to change. Turning to the precautionary principle. Now, as you will know, the precautionary principle is a process of decision-making where evidence suggests there may be harm, but there is uncertainty about what that harm might be or what the scale of it might be. It originated as an environmental principle, and was defined as principle 15 of the 1992 Rio declaration, which I've set out there for you. The precautionary principle has been accepted as an appropriate tool in the alcohol regulation context, and the Court of Appeal in *Minudel v Queenstown Lakes District Council* stated that in their view the Authority is not required to ensure that particular conditions will reduce alcohol use. It is entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective, then it is entitled to test whether that possibility is real. And I think that's particularly important here. We have a new piece of legislation designed to put in place a new system of control for the benefit of the community as a whole. It is almost inevitable that we are going to have to test new theories. If we can't do that, how on earth do we achieve change? So in that respect I perhaps find it a little bit cynical that my friends keep saying, "Well, you can't rely on those old reports because they're too old," but equally, how do we gather new information about the effectiveness of the methods that we are trying to utilise if we can't put them in place and see whether they work? And I think local alcohol policies, with their regular review processes, are designed to allow us to do that. We can, where we've got a sniff that a method or an element may work, we can apply the precautionary principle and test it out. If it doesn't work, we can withdraw it and try something else, and if we can't do that, in my view the purpose of the Act will be entirely frustrated. Now

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the authority has accepted the relevance of the precautionary principle under the Act, which was confirmed in *BNN Entertainment v Wellington City*. Again, the authority went on to say that the territorial authority is not required to be sure that a particular element of its PLAP will minimise alcohol related harm, which we've gone

5 on to say and pursue safe and responsible supply of alcohol. A precautionary approach, provided there is an evidential basis supporting it, can be used to see if a PLAP will achieve a statutory object. If I can perhaps digress slightly, there's an interesting example, I think, of this issue in the Act itself. Going back through some of the supplementary order papers and so on as the Act progressed, and the

10 inclusion of the provisions around single area display for supermarkets, and from what I could gather, I must say I couldn't get my hands on the exact cabinet paper, but that that was a response to submissions from the public through the (inaudible 15:03:16) Committee process, and expressions of concern about the normalisation of alcohol within the community, and then in relation to supermarkets that was

15 particularly an issue, because every man and his dog goes to a supermarket, sees alcohol, and the community through that process expressed concern about that and we saw the inclusion of the single display areas supermarkets. Now, I'm not sure the extent to which there wasn't, you know, I suppose a strong evidential basis for that, but from what I could gather, the Government essentially said, "Well, this is an

20 issue that the community has, so we're going to respond to that." The elements of the provisional local alcohol policy for Dunedin in some respects are the same: the community has expressed concerns and the council have sought to try and respond to those, and in the council's view there was sufficient evidential basis to suggest that those methods may be helpful, and that the council should test them out. Now

25 the Authority's approach to the application of the precautionary principle is consistent with New Zealand's resource management approach. It's determined on a case by case basis where the evidence suggests it should be applied, and it's a matter of judicial discretion as to whether the principle will be invoked in any particular instance.

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My friend Mr Thain submitted on, I think it was Monday, that a local alcohol policy should be targeted at the best operators in the most safe locations, I think was roughly what he said. With respect, I think that's incorrect. He is correct that the best operators in the safest locations are unlikely to cause a significant level of harm or to promote irresponsible consumption but I think taking that approach means that the more dubious operators cannot get pulled up by the bootstraps. I emphasise that the local alcohol policy is a matter to be had regard to when the district licensing authority considers an application for a licence. It isn't determinative. So when a district licensing authority receives an application, it has to turn its mind to, and give genuine thought and attention to, the LAP. But looking at section 108 of the Act, if an applicant can demonstrate that the operation of their premises will not be inconsistent – the consequences will not be inconsistent with what the local alcohol policy seeks to achieve, then the district licensing committee can still grant the licence. So by putting in place elements that are designed to target poor operators, pull them up by the bootstraps, what that does is where you have a good operator in a safe area, the onus sits on them to demonstrate that they are not going to give rise to effects inconsistent with the policy. Given we have an Act designed to regulate the sale and supply of alcohol for the benefit of the community as a whole, I think it's entirely appropriate that the onus is on the applicant for a licence to demonstrate that. It is not a right to sell alcohol. It is regulated. You need to get a licence for it and so I think it is – the onus should be on the applicant to demonstrate that they can do that in a way that is consistent with what the Act is designed to achieve. If you follow what Mr Thain submitted, it would be necessary for a district licensing committee to essentially say, "Well, I don't think you can achieve what is required," and decline the consent on that basis and I think the onus should be the other way around and I think it being the other way around, that more appropriately pursues the object of the Act. Just finally on the precautionary principle, I think at the early stages of such a new piece of legislation, the reasons for applying the precautionary

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principle are particularly strong. The object of the Act is supported by enabling the adoption of new methods, even where empirical evidence of the efficacy may be limited. If the opportunity to test these theories is denied, nothing will change. Turning to the elements under appeal, as you know, seven appeals have been filed, 5 challenging a variety of elements. Hospitality New Zealand has subsequently withdrawn their appeal and only Progressive Enterprises Limited has produced any evidence. To be successful on appeal under section 81, the onus is on the appellant to establish on the balance of probabilities that an element is unreasonable and under section 83, there are two bases upon which you may dismiss an appeal. 10 Firstly is really a question of standing, did the appellant file a submission? And the second is the test of unreasonableness. In this case, all of the appellants filed submissions so have standing to file an appeal and so the only basis on which the appeals may be dismissed is if the appellants fail to demonstrate that the appealed elements are unreasonable in light of the object of the Act. A number of the 15 elements that have been appealed are unsupported by any evidence from those appellants and essentially, the only evidence for the Authority on those elements will be that of Mr Mechen, setting out the information in evidence relied on by the council. The elements that this submission is relevant to, on-licence trading hours, the one-way door policy, entertainment licences and the metropolitan residential 20 interface. In assessing the various appeals, it is submitted that the process outlined by the Authority in *Foodstuffs North Island Limited v Thames Coromandel* is the correct approach to take and I've summarised it as best as I can. So firstly, the onus lies with the appellant to establish that the element is unreasonable in light of the object. You then have to ask yourself, "Is the evidence, including the circumstantial 25 or inferred evidence, relied on by the respondent sufficiently strong to provide an evidential basis for adopting the precautionary principle?" If so, a respondent is entitled to test that theory to see if it will become reality. A conclusive or causative link between the proposed element and the object of the Act is not required. My friends Mr Thain and Mr Braggins have been at pains through their examination of

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their witnesses to draw out whether or not there are causative links between what the Dunedin City Council may have been proposing and evidence. That causative link is not necessary for you to find that the element is reasonable. All you need to establish is that there is sufficient evidence for us to adopt a precautionary approach.

5 Of course, if you find there is a causative link then so much the better but that is not the threshold that needs to be reached. Finally, the strength of the evidence relied on by the council will be relevant to the assessment of proportionality of the proposed element so essentially, if the evidence is reasonably weak but the impact is significant, then it may be disproportionate with, in terms of what its, the effect that
 10 it has, but if the evidence is relatively, I suppose, weak, but the impact on public and private rights is equally relatively insignificant then the strength of that evidence may not be such an issue. I think that's important here where it's been clear, I think, from Progressive's evidence that tweaking the hours of opening times an hour here and there is actually unlikely to have a reasonably insignificant effect on people. They
 15 might be inconvenienced but as I have said, I think access to alcohol is a privilege. We don't just get to buy it. It's a regulated product and it has significant effects on the community. Is it out of proportion to think that we may be only able to get access to that at some times of the day? So where unreasonableness cannot be established, no further enquiry is required and the appeals must be dismissed.

20 1515

Turning to relevance of the matters in section 78. So these are the things that you need to consider when assessing the provisional local alcohol policy. Progressive have called evidence from planning consultant Michael Foster, and he offers commentary on the characteristics of supermarkets, the objective and policy
 25 framework that may be relevant to the establishment of a supermarket in Dunedin under the district plan. He also discusses the demography of Dunedin and the nature and the severity of alcohol related harm. In my view, Mr Foster's evidence should be treated very carefully. That is because his assessment starts from the wrong place. Mr Foster's experience is largely in resource management, and at

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appendix 2 of his evidence he sets out his experience and how that's relevant to the current regulatory regime. I think that experience is of limited relevance here. Process for developing an LAP is as follows. The council produces a draft, having regard to the matters set out in section 78(2). Under section 79, the council must then produce its provisional policy using the special consultative procedure. Section 79(2) requires the council to have regard to the matters in section 78(2). The requirements of the special consultative procedure are set out in section 83 of the Local Government Act. Section 83 is a process section. It does not add anything to the criteria for your assessment under the Sale and Supply of Alcohol Act. The criteria relevant to the assessment are in that Act itself. At paragraph 17 of his appendix 2 Mr Foster states, "I consider that my planning experiences places me in a good position to assess the restrictions that have been proposed in the PLAP, and whether these restrictions represent the most appropriate way for the council to achieve its objective of reducing alcohol related harm in Dunedin." That statement, I think, reveals a couple of problems. The test of whether a PLAP is reasonable in light of the object of the Act, the test of a PLAP is whether it is reasonable, sorry, in light of the object. Whether it is most appropriate is a test under the Resource Management Act in relation to the statutory documents produced under that Act. The term has been best interpreted, or has been interpreted as not requiring the best of all possible solutions to be adopted, and simply requires a provision to be suitable for achieving the desired result. This is an entirely different criterion than what we are dealing with under the Sale and Supply of Alcohol Act. Mr Foster, Mr Frost, sorry, also only refers to harm reduction. Now the object of the Act is not about reducing harm, nor is it just about minimising harm. As I have said, it is also about the safe and responsible sale, supply and consumption and minimisation of alcohol related harm arising from excessive or inappropriate consumption. So ultimately what I'm saying is the evaluative exercise that Mr Braggins has said that Mr Foster has completed is really not that helpful to you, because what is clear is that Mr Foster has started from the wrong place. He hasn't

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understood correctly what the assessment criteria is or what the object of the Act is. So in my view, you should give the evidence that he has presented very limited weight, if any, in your assessment of the appeals.

5 MEMBER MOORHOUSE:

Can I just raise a point there? If you were going to question the witness' qualifications, don't you think you should've put it to him when you were cross-examining him?

10 MS IRVING:

I think it's a question of weight through legal submission.

MEMBER MOORHOUSE:

I'm surprised Mr Braggins hasn't leapt to his feet, actually.

15

MS IRVING:

No, I'm not sure I want to give him the opportunity.

MS BRAGGINS:

20 Well, you've raised the issue, Ma'am, so...

1520

MS IRVING:

I think the weight to be given to the evidence that's presented to you is a matter of legal submission, which is why that point wasn't put specifically to Mr Foster. So if you don't accept that proposition, it is submitted that nothing in Mr Foster's evidence about section 78 matters establishes that the provisional policy is unreasonable for the following reasons. The threshold that council must surmount in section 78 is not a high one. The need to have regard to something simply requires the council to turn its mind to the criteria and give it genuine thought and attention. Having done

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that, the obligation in section 78 and in section 79 too is discharged. The weight to be given to the relative criteria is a matter for the decision maker. In the context of resource management, both the council and the Environment Court on appeals will be required to have regard to the same criteria because the assessments required in

5 a first instance and then on appeal are the same. It is not quite the case here. Under the Act, Parliament has deliberately limited the criteria for consideration on appeals and that criteria is unreasonableness. In Mr Foster's evidence, he concludes that the proposed moratorium is inconsistent with the 2GP. Such a conclusion is not determinative. The criteria for assessing appropriateness of a

10 district plan are considerably broader than those relevant to the assessment of the PLAP which is whether it achieves the object of the Act. In light of that narrow focus, it is entirely possible and reasonable for the PLAP measures to overlay the district plan and to be more restrictive if that is what is considered necessary to meet the object of the Sale and Supply of Alcohol Act. Turning to the conditions, I've set out

15 there what the Act permits local authorities to include in their local alcohol policy and one of those aspects is the issue of licences or particular kinds of licences, subject to discretionary conditions. I think that we have to accept that the mandatory nature of the provision of an alcohol management plan is not provided for in the Act so to that extent, I agree with Mr Thain's submission about the vires of that requirement.

20 However, perhaps by way of background, what the council sought to achieve through that element was information and a commitment from a licensee to managing their premises to minimise alcohol-related harm or to promote safe and responsible consumption and the way that the committee felt that the licensing committee would be best able to assess that would be through the provision of the

25 alcohol management plan. So I suppose what I'm asking is that putting aside for one second the vires of the provision of that plan as part of a licence application, some direction from the Authority about the reasonableness of a condition that a licence is subject to an alcohol management plan.

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MEMBER MOORHEAD:

You have got two problems in respect of this appeal though, haven't you? And we cannot set aside the vires of it so are you conceding that point?

MS IRVING:

- 5 We're conceding the point with respect to the imposition of the requirement to provide the plan in the licence. We are not conceding that an alcohol management plan requirement is a discretionary condition is reasonable.

1525

MEMBER MOORHEAD:

- 10 Except it is not discretionary. You have made it mandatory.

MS IRVING:

The condition for the provision of the plan?

MEMBER MOORHEAD:

The requirement was a mandatory one, not a discretionary one.

- 15 **MS IRVING:**

That's a slightly finer point, so –

MEMBER MOORHEAD:

Well, either it is or it is not. What is the council's position on that?

MS IRVING:

- 20 Well, I think, and I think it was perhaps Mr Thain, I think, or Mr Braggins, I can't remember, who took you through. There's sort of two parts to the alcohol management plan process. One, the plan had to be provided with the licence

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application so we're accepting that that's ultra vires because the Act doesn't give councils the discretion about what is required to be provided in local alcohol policies but the subsequent requirement is then that that alcohol management plan is imposed as a condition of a licence and must be complied with. I think that in light of

5 the object of the Act and what the council can control through a local alcohol policy, I think there is jurisdiction for a council to specify whether a discretionary condition under the Act can, in fact, be a mandatory condition in the local alcohol policy so you can require a district licensing committee to impose certain types of conditions through the local alcohol policy and what we're saying is that it would be useful to the

10 council if the Authority could provide us with some direction on that issue. Because obviously, if we've accepted it's ultra vires then that appeal –

THE COURT:

That resolves this today?

MS IRVING:

15 That resolves that element and so that will be referred back to the council for reconsideration and we've got to figure out what we're going to do so it would be helpful if you are, I suppose, willing and able to give us some direction about that.

THE COURT:

So I want to be very clear. So whether or not the provision of the alcohol

20 management plan can be a mandatory criteria for a licence?

MS IRVING:

Correct.

MEMBER MOORHEAD:

I do not know that we can do that in the context of this appeal.

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MS IRVING:

And I take that point. I think it's difficult in the context of the Act but I think certainly for the DCC and I suspect we've got some parties here from other councils who've been observing this and in terms of allowing other councils to prepare their LAPs, if
 5 you can, you can provide some overt comment on that point, that may be helpful for councils moving forward.

THE COURT:

We will consider that in our deliberation.

MS IRVING:

10 I'm sure my friends might have some thoughts on that too. One final point in relation to the alcohol management plan requirement. Mr Braggins expressed some concern about the potential for an alcohol management plan to double up on the statutory obligations that supermarkets have, particularly controls around single-area displays and so on, and I think I'd accept that to a degree, it may. However, there are a
 15 whole number of other things that could be addressed through an alcohol management plan, including the firm's policy on proof of age, sale to intoxicated people, et cetera, that could be usefully set out in an alcohol management plan to allow the council to assess the ability of licence holders to comply with their obligations under the Act and so I think alcohol management plans are a useful tool
 20 to allow councils to administer licences. So yes, there may be a bit of double up but I think in the context of what we are trying to achieve, I don't think that's significant.

1530

Turning to the issue of the planning certificate. Under section 100(f), licence applicants are required to submit a certificate from the council confirming that the
 25 activity is authorised under the Resource Management Act in whichever which way it is, whether that's resource consent, committed activity or an existing use, for example. The council's experience is that many applicants don't appreciate this and

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so they felt that it was useful to restate that in the policy so that applicants clearly understood what their obligations are. In reality, the provision goes no further than the Act and so I don't believe that it is an unreasonable element. So in conclusion, at its heart, the assessment of what is required to determine these appeals is simple.

- 5 Are the elements of the PLAP more likely than not to help achieve safe, responsible sale, supply and consumption of alcohol and minimise alcohol-related harm? To carry out this analysis, it is first necessary to recognise the broad object of the Act relative to its predecessor. The purpose of the Act was to bring in a new system of control in an effort to confront and change New Zealand's drinking culture. As a
- 10 result of this, some of the methods to do that may seem a little unorthodox or not conclusively supported by empirical evidence at this point in time. That is not determinative. Given that the Act seeks to change the system of control, methods that by inference are likely to assist Dunedin to achieve the object of the Act will be reasonable, particularly where they do not give rise to excessive fetters on people's
- 15 rights. Mere inconvenience cannot be said to meet the threshold of unreasonableness. The Dunedin City Council has made some bold decisions. However, as set out in the evidence of Mr Mechen, those decisions were made after careful consideration of the evidence. In about six years, the council will have to reflect on whether those decisions had the desired result. In the context of the Act,
- 20 how can we usher in a new system of control if new measures are not tested? That is it from me, subject to any questions.

THE COURT:

I have got a question and it is really the two limbs of the object of the Act. You are not inviting us, are you, to read that "and" between the two as an "or"?

25 MS IRVING:

No.

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THE COURT:

Because that goes to the question of the support of empirical evidence so we are relying on Mr Mechen's evidence in terms of the minimisation and then we are also looking at the first limb of the object?

5 MS IRVING:

Yeah, and I think, I suppose in terms of the object, the first limb leads to the second limb. So if you accept that an element pursues safe and responsible consumption then I think the natural conclusion is that that's going to assist in minimising alcohol-related harm. So I think one follows from the other and I don't think that that causal connection with the minimisation of alcohol-related harm is necessary for the object of the Act to be achieved in around.

THE COURT:

Hence my question because I think if we have not got the minimisation supported by evidence, am I hearing that we can still get there through the first limb?

15 MS IRVING:

Well, I suppose in the sense that safe and responsible consumption has the consequence of minimising harm, then yes, but those two things are achieved together.

1535

20 MEMBER MOORHEAD:

Along the same lines, you were critical of the Authority's previous decisions where it referred to concentrating on harm and obviously, the Authority will look at the point you make, but you do not think that those previous quotes that you referred to were in the context of talking about the precautionary principle and harm?

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MS IRVING:

I need to go back and just re-familiarise myself with where those paragraphs sat and you may well be right. I think just the point – those two paragraphs struck me as the most striking example of where the safe and responsible limb sort of just seems to

5 have been almost forgotten and that my interpretation of what the Act is trying to achieve and the reasons that Parliament considered it necessary was partly around this need to change the culture. That is likely to mean that – I suppose there are, there'll be some people who engage in excessive and inappropriate consumption and we want to stop that and there will be – and I don't mean go on and beat people

10 up or, "I'll end up in hospital with alcohol poisoning." That's right at the sort of extreme end and we all agree that that's bad and we should stop it. I think within the New Zealand culture, there is also a tacit acceptance that disorder leering up and generally being, I suppose, stupid is acceptable, and what I'm saying is we want to push everyone – the purpose of the Act is to push everyone down the continuum to a

15 place where we can consume alcohol and we do and we enjoy it, it assists with the social interactions that we all enjoy and so on, but doesn't lead to that type of activity that is currently culturally acceptable and so if we just focus our assessment on those, the problems at that sort of higher end, I think we're missing the opportunity to kind of, to change the tone of the community's relationship with alcohol and so I think

20 elements can be put in place that tackle both sides of that equation and perhaps the best example of that in the Dunedin PLAP is those morning hours. The evidence that you have heard on behalf of Progressives is that there is no link between the alcohol that is purchased at that time of day and alcohol-related harm. Yet I think there is a broader question about whether we need to be able to be buying alcohol at

25 7.00 to 9.00 am in the morning. Is, in a community where we consume alcohol safely and responsibility, and where we are wanting to set that tone for our young people, why can't that be done later in the day?

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MEMBER MOORHEAD:

You do not think the Act itself addresses that issue and particularly, with the default hours? Haven't you got a problem with that argument there in relation to the default hours specifically providing for that?

5 MS IRVING:

No, I don't think that the – the default hours set a default. That's not to say that something less than that isn't appropriate and in Dunedin, where we have evidence of high proportions of schoolchildren engaging in risky behaviour and we know that that then leads on to them consuming high levels of alcohol once they reach university that it's at that sort of early level or that early age where the relationship with alcohol begins to form and so what we're saying is, "Let's try and change that." Let's try and put in place a regime where we understand that alcohol just isn't available all the time, where you're consuming it safely and responsibly and if you're heading into town, as I think my friend Ms Logan talked about, you've already had some beers, you don't need to stop at the bottle store or the supermarket and pick up another bottle of wine to skull on your way to the pub. So it's relatively subtle but I think given what led to the reform legislation, we need to start making those subtle changes otherwise the Act really doesn't take us anywhere.

1540

20 MEMBER MOORHEAD:

What about the fact that the LAP is proposing to set maximum hours, your default framework is being shifted, as it were, but it is still open to the DLC to have more restricted hours in cases of particular applications?

MS IRVING:

25 I think that goes back to the point that I was making earlier about who should have to prove that an exception to the rule is appropriate? If you go that way, that the

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maximum hours and then the district licensing committee can peg that back, then the onus is on the district licensing committee, to an extent, to explain why that's appropriate. What I'm saying is that the policy should set a benchmark and where licensees want an indulgence, they can prove to us why they should get something
5 more than what the LAP provides for.

MEMBER MOORHEAD:

You are going the wrong way, though. They are not getting an indulgence. You are setting the maximum. They cannot get more than that.

MS IRVING:

10 But they can. Under section 105, the LAP is a matter to which the district licensing committee can have regard and that is on a list of about 11 things. So non-compliance with the LAP is not determinative of whether a licence can be declined. Under section 108, it says that the council may decline an application for a licence where it's, the title says "contrary" but then the words of the section say
15 "inconsistent." So the committee can decline where it's consistent with the policy and it's not just inconsistent with the policy per se, it's whether the consequences of the granting of the licence would be inconsistent. So I'm saying that in the application for a licence, a licensee could demonstrate that the consequences of the granting of that licence would not be inconsistent with the LAP and that might be
20 because –

MEMBER MOORHEAD:

Your LAP does not provide for that, though. I have certainly seen other LAPs that do, but yours does not.

MS IRVING:

25 How do you mean?

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MEMBER MOORHEAD:

Well, no doubt we are going to hear argument from Mr Braggins and Mr Thain on this because I saw quite a flurry in that respect but am I right in thinking that is not your understanding, Mr Braggins?

5 MR BRAGGINS:

I don't mean to interrupt but I think I need to correct the understanding of the law so that we can have a discussion. I mean, my friend is correct in terms of section 105 and having regard to a local alcohol policy but there is an exception to that in relation to hours and I forget exactly which, I think it's around 43 or 36, one of those early
 10 ones, in terms of talking about the maximum default hours that then links back to the local alcohol policy and so you can, for example in the moratorium, you could get a licence in the moratorium area notwithstanding the LAP that said that you couldn't but you can't get longer hours than the LAP provides.

MEMBER MOORHEAD:

15 Certainly the hours that I am talking about?

MR BRAGGINS:

Yes, so in terms of the hours, the LAP sets the maximum hours and you cannot get a licence for longer than that.

MEMBER MOORHEAD:

20 Well, the council's just told me something completely different. Mr Thain, did you want to join in the argument?

MR THAIN:

Why don't I do that, because I think this all rises out of something I was relying on –

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MEMBER MOORHEAD:

It is an important point.

MR THAIN:

So it's an important point but it's a very simple point. You're right.

5 MEMBER MOORHEAD:

Oh, thank you.

MR THAIN:

In relation to hours, section 45 of the Act makes it clear that the maximum hours for any off-licence premises, it's any licensed premises but I'm only interested in the off-
 10 licence, are the more restrictive of what's set in the LAP or any more restrictive hours set on the licence itself so if the Dunedin City Council's PLAP goes through and becomes a LAP then in relation to off-licence hours, the only discretion that DLCs will have is to impose more restrictive hours on any given licence, and that's the exact point that I was making the other day. I was making it only in relation to hours
 15 because that's all I'm appealing and that was why I was saying, "You've got to look at this as setting a bar that is the very top." There's no room to move above it. The point that counsel for the council has been making is a little confusing, therefore, because it's got nothing to do with hours. The point she's been making is that in relation to say, the moratorium, there's no equivalent to section 45 in relation to
 20 moratoria, so for hours, an LAP sets an absolute maximum, it's rigid, DLCs can't budge from it. But in relation to other aspects of an LAP like a moratorium, technically, a DLC is only obliged to have regard to that provision of the LAP but could still technically not apply it in any given licence application so in the moratorium, the way that would pan out is I could – notwithstanding the moratorium,
 25 I could make an application for a new licence within the moratorium area and I could have a crack at persuading the DLC that I should be immune from the moratorium

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provision. Whether or not it would pan out so well for me, who knows? That would be up to the DLC. But certainly that principle just doesn't apply for hours. And that's –

MEMBER MOORHEAD:

5 It was the hours question I was addressing –

MR THAIN:

Indeed, and that was all I was addressing.

MEMBER MOORHEAD:

– that the LAP sets the maximum hours, the DLC can only come in from that, it
10 cannot go beyond it.

MR THAIN:

That's exactly right and that's why hours is a special thing, really, when a council is writing elements into a PLAP because they don't have any flexibility, no one's got any flexibility outside of that maximum. That's the exact point I was making and as
15 you know, my appeal is limited, for now it's limited solely to hours, given that the alcohol management plan issue has changed a bit.

THE COURT:

Has been conceded, thank you.

MEMBER MOORHEAD:

20 Thank you, Mr Thain.

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MS IRVING:

I might perhaps reconsider that particular point and come back to it in closing if that's okay?

THE COURT:

5 That would be helpful, thank you.

MEMBER MILLER:

You have spent some time in your submission discussing the precautionary principle. Are you arguing that, or inviting us when considering an appeal against a particular element, that the precautionary principle should trump unreasonableness?

10 **MS IRVING:**

I think the way that I understood the assessment process that the Authority went through in the Foodstuffs decision was that the first hurdle, essentially, is for an appellant to prove that an element is unreasonable and that if they do that, you may decide that there's sufficient evidence, whether it's circumstantial or inference, that
 15 you can adopt a precautionary principle to essentially test that element, so I suppose in that sense, yes, it does trump unreasonableness. I may have misinterpreted the assessment process that the Authority undertook in Foodstuffs but that was the process that I sort of understood they followed. So you might say that, I suppose, from a causal connection point of view, you may not quite have that and that as a
 20 result of that, there's sort of an assumption that the element, as a result of that lack of causal connection, is unreasonable, but if you go the next step down and say, "Well, there's circumstantial evidence, we can infer from the evidence that we've received that this consequence will happen, that we can adopt that precautionary principle to test whether the element has the effect that the Authority hopes that it
 25 will," then the council hopes that it does and following that analysis, the appeal is not successful.

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THE COURT:

Thank you. I do have a question still unformed in my mind, so maybe I'll leave it until we go through, but it is, I want to make sure that I understand very clearly what you're saying between the relationship between the two limbs relative to the evidence for each of those limbs.

MS IRVING:

Mhm.

10 **THE COURT:**

And the kind I'm thinking about is if we – we've got to make a decision on the strength of the evidence around the minimisation of alcohol-related harm. But if the appellants have satisfied us that that limb is not made out, are you suggesting that in the absence of them not establishing that there's a – you know, we're trying to prove the negative here – but a lack of a connection between the safe and responsible sale and consumption of alcohol, particularly around that 7 o'clock period, then they haven't made up their appeal. So I'm trying to get that "and" –

MS IRVING:

20 Mmm.

THE COURT:

– you know, and not read it as an "or".

MS IRVING:

25 Mmm.

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THE COURT:

And I'm not, I don't think you're suggesting it, but I want to be very clear that because they've addressed the minimisation, are you suggesting because they haven't addressed that first limb, they haven't made up their appeal?

5

MS IRVING:

I suppose I am.

THE COURT:

Mmm.

10

MS IRVING:

I, in my view in my reading of the sort of information that led up to the reform legislation and how it's progressed its way through Parliament, and the differences between the old legislation and the new one, there has to be a reason for that and I think it is about that culture issue, and if we can implement measures that begin to change that culture, that the consequence of that down the track will be the minimisation of harm. And if we think that, you know, the, I suppose that culture begins to be ingrained in our children, and so we want to start changing the relationship that the community as a whole has with alcohol, and that as that change in culture occurs, and progresses its way through the generations, we will see a minimisation in alcohol related harm over time. And perhaps the best – I mean, the obvious example of that is cigarettes. You know, there were – I recall I was at university, I think, when cigarette smoking was banned in bars and, you know, there was outrage at the time, whereas now you'd be outraged if someone lit up a cigarette inside a bar. So that type of change has occurred over time, so in some ways the regulations can come in, and that has coloured society's relationship with cigarette smoking. And I think we're at that same point in relation to alcohol. We're going to make some decisions in this point in time that seem, I suppose, over the

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top, but as people get used to that, as generations move through, we'll look back and wonder why we didn't make that decision earlier. So I think the elements, and I suppose the LAP as a whole, needs to pursue both aspects and...

THE COURT:

5 I think it's –

MS IRVING:

I've just had a kernel of an idea, and I might come back to it around whether your assessment of the appeals needs to be elements-specific, or –

10 **THE COURT:**

Yes. Look it –

MS IRVING:

Yes.

15 1555

THE COURT:

– it is something I wouldn't want – I'll keep, it'll niggle at me for a bit, but I guess because it goes to the question of onus as well, because where there's clear evidence of alcohol related harm there's probably not so much of an issue, but
 20 where there's a paucity of evidence around alcohol related harm, and we've got to be satisfied that the element is reasonable in light of that and that is a balancing exercise, if we get to the position and say, "Actually, we think the appeal is made out on that ground," I just want to be clear that you are not, you know, what you are asking us to do is to say, "Well, notwithstanding that, the appeal is still not made out
 25 because they have not disposed of the first limb of the object," if that makes sense?

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MS IRVING:

Yeah.

THE COURT:

I am not sure you are saying that but I will be listening for it.

5 **MS IRVING:**

I think I understand the question so I'll cogitate and come back to you.

MEMBER MOORHEAD:

10 In your closing submissions, you might want to be more specific because you said that the first limb relates specifically to the morning hours so what I am wondering if you are trying to say, and you can think about this, you seem to be trying to say that the sale, supply and consumption of alcohol is not being undertaken safely and responsibly if you are selling in those early morning hours between 7.00 and 9.00.

THE COURT:

That is what I –

15 **MEMBER MOORHEAD:**

That is what I am hearing you say. Putting it all together and listening to your questions in cross-examination, that seemed to me the direction you are heading in. I do not know whether I believe you or not given the default hours but if you can think about that and perhaps be a bit more specific on that?

20 **MS IRVING:**

I understand the question.

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THE COURT:

Is this an appropriate time for a short break?

MS IRVING:

Sure.

5 THE COURT:

Great, let's do that.

COURT ADJOURNS: 3.57 PM

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COURT RESUMES: 4.16 PM**THE COURT:**

I think if we, why don't we go through your examination first and then if there is a natural pause in the cross-examination, let's try to do that. So let's at least start it, if
5 that works.

MS IRVING:

Ms Logan will be leading Mr Mechen.

THE COURT:

Great, thank you, Ms Logan.

10 MS LOGAN CALLS**KEVIN GILBERT MECHEN (SWORN)**

Q. Can I get you just to state your full name, please?

A. Kevin Gilbert Mechen.

Q. And you're the alcohol, psychoactive substances and gambling advisor at the
15 Dunedin City Council?

A. Yes.

Q. And you've got with you a document titled, "Brief of evidence of
Kevin Gilbert Mechen"?

A. Yes.

20 Q. And that's your brief of evidence?

A. It is.

Q. Were there any corrections that you wanted to make to that?

A. Yes, there are. Footnote 25 at the bottom of page 15 of my bundle refers to
the Health Promotion Agency. It should refer to the Southern PHO. There's a

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document here that was missed out of the bundle from Alcohol Health Watch.
At 6.1 on page 12 of that document –

THE COURT:

Sorry, which? We have not got that. Do you want to hand that up?

5 **MS LOGAN:**

Yes, I have copies of both the documents. I think they've both been missed in the bundle.

THE COURT:

Mr Braggins, have you, you are familiar with this?

10 **MR BRAGGINS:**

Yes, I accept that – I assume that they were documents that were submitted to the council but I don't quite understand why we're getting them now if they were omitted from the bundle. None of my witnesses are here, let alone having –

THE COURT:

15 Seen them?

MR BRAGGINS:

Seen them or understood them to be relevant. I haven't read them because they weren't part of the bundle either. I don't, I just don't know what to do with them.

THE COURT:

20 Ms Logan?

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MS LOGAN:

They were part of the data which was provided to all the parties in advance of the exchange of evidence and in terms –

1620

5 **THE COURT:**

Have all the parties had this is the question, and what I am hearing is not?

MS LOGAN:

Both the documents were included in the data which was provided to all parties.

MR BRAGGINS:

10 So there was disclosure?

MEMBER MOORHEAD:

That is a bit different from saying that the documents were provided. There will be findings in the documents and other things than data, surely?

MS LOGAN:

15 The documents were included when there was the exchange of data pursuant to the Authority's timetable. Those documents were included in what was exchanged.

THE COURT:

In this format?

MS LOGAN:

20 In that format. Well, in PDF format but...

THE COURT:

Right.

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MR BRAGGINS:

So there was a Dropbox link to three sections of document with a lot of information but I'm assuming and I suppose I have to accept my friend when she says that they were included in the disclosure package but they're not in our evidence, they're not
 5 in the council's evidence and they weren't put to any of my witnesses so I'm – I mean it's, if they were missed out in –

THE COURT:

If it was just –

MR BRAGGINS:

10 If it was missed out in, you know, two months ago, fair enough but why weren't these on Monday?

THE COURT:

Ms Logan?

MS LOGAN:

15 In terms of Progressive Enterprises' witnesses, my understanding is that it's Dr Kelly who was dealing with that aspect and she's talked about, in her rebuttal evidence, those aspects or those documents and she has not yet completed giving her evidence.

THE COURT:

20 But the other witnesses haven't had the opportunity of these either?

MS LOGAN:

I accept that, Sir, but they're not matters within the scope of their expertise but they do seem to fall within what Dr Kelly is giving evidence on.

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THE COURT:

Well, look, can we –

MS LOGAN:

And then –

5 **THE COURT:**

I was just going to say –

MS LOGAN

In terms of the documents themselves, they're footnoted to confirm what Mr Mechen has put in the body of his evidence rather than being something new.

10 **THE COURT:**

Mr Braggins, do you want to, I think if we will see where we go with these but reserving your position to re-call your –

MR BRAGGINS:

Thank you, Sir.

15 **THE COURT:**

– witnesses on that.

MR THAIN:

Your Honour, could I just, I have a much simpler little question, just an entirely housekeeping one, I'm just not clear where these two documents go. Are these – I wonder if counsel for the council could let us know whether these two documents are to be the documents referred to in footnote 25 in the brief or whether there's something else?

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THE COURT:

Yes, that would be helpful too.

MR THAIN:

Thank you.

5 **MS LOGAN:**

So the first document which is the Southern PHO submission is referred to at paragraph 55 of Mr Mechen's brief of evidence.

MR THAIN:

But which of the footnotes? There are two footnotes in paragraph 55?

10 **MS LOGAN:**

Yeah, footnote 25 refers to the Health Promotion Agency rather than the Southern PHO.

THE COURT:

So it is simply that one that aligns with the correction that was just made?

15 **MS LOGAN:**

Yes, Sir. The second document, the Alcohol Health Watch document, I understand there was a document included in the bundle at, I think it's page 231 but it doesn't appear to be the submission that was made and that's the document I've circulated just now.

20 **THE COURT:**

So 231, what does that refer to in terms of the brief, what paragraph?

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MS LOGAN:

So the same paragraph, paragraph 55 refers to Alcohol Health Watch. There was a document in the bundle...

THE COURT:

5 Which is an HPA document?

MR THAIN:

That's tab 17, I think, Your Honour, page 238.

MEMBER MOORHEAD:

Different to Alcohol Health Watch.

10 **THE COURT:**

238, sorry.

MS LOGAN:

Which is headed, "Alcohol Harm in New Zealand."

THE COURT:

15 Oh, I see.

MS LOGAN:

The document which I've circulated is submission and you'll see that Mr Mechen's evidence at paragraph 55 refers to the Alcohol Health Watch submitted, first referring to the submission.

20 1625

THE COURT:

So this was the wrong document submitted in that bundle?

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MS LOGAN:

Yes, Sir.

THE COURT:

I think if we could do the same thing, Mr Braggins, and then reserve your position on
5 that as to whether or not you re-call.

MR BRAGGINS:

I'll come back to you tomorrow morning. Let's just get on with it.

EXAMINATION CONTINUES: MS LOGAN

10 Q. So Mr Mechen, you've corrected the footnote at – sorry, you've corrected
footnote 25. Going back to paragraph 55, was there another correction to be
made?

A. Yes, in the Alcohol Health Watch submission at paragraph 6.1, it refers to the
effects of longer trading hours but it doesn't specifically mention the early
trading hours.

15 **THE COURT:**

Q. So where am I looking, again? Paragraph 55 of your brief?

A. No, in the document, that is the Alcohol Health Watch that's just been
circulated at 6.1 on page...

EXAMINATION CONTINUES: MS LOGAN

20 Q. Perhaps if we look at your brief, Mr Mechen, at paragraph 55...

A. Sorry?

Q. Second sentence?

A. Yes?

Q. Was there a correction to be made to that sentence?

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A. Yes, the document submitted by Alcohol Health Watch doesn't specifically mention morning sales.

Q. So if we remove the words "early morning sales"...

THE COURT:

5 If we remove the words "early morning sales," we have got an incomplete sentence.

MS LOGAN:

And replace that with "longer trading hours."

THE COURT:

10 So do you just want to read that sentence for us just so we are on the all same page on that?

WITNESS:

"Alcohol Health Watch submitted that longer trading hours would increase the exposure of alcohol sales to young people."

EXAMINATION CONTINUES: MS LOGAN

15 Q. Then if I can refer you to paragraph 18?

A. Paragraph 18 refers to 83% of students participate in binge drinking episodes. That's incorrect. The 83% refers the volume of alcohol consumed in the seven day period that was consumed in binge episodes. It has nothing to do with the number of people.

20 **THE COURT:**

Okay, well, we need some words. Not just an explanation, we need some actual words.

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EXAMINATION CONTINUES: MS LOGAN

Q. So if we could replace that with "83% volume of alcohol consumed by students"?

A. Yeah, in binge episodes.

5 Q. Each week?

A. Yeah.

THE COURT:

"83% volume of alcohol consumed"?

WITNESS:

10 Each week.

THE COURT:

Q. "Each week"?

A. In what are classified as binge sessions or episodes.

Q. "In what..." So can you read that from the beginning of that sentence, please?

15 A. "Studies have shown that up to 83% by volume of alcohol consumed each week are consumed in what are classified as binge episodes."

Q. Yes, carry on. Are those words "each week" now redundant?

A. Yes, you mentioned "each week" before that.

Q. So, "Studies have shown that up to 83% by volume of alcohol consumed each
20 week in what is classified as binge episodes with 71%," et cetera?

A. That's correct.

EXAMINATION CONTINUES: MS LOGAN

Q. And was that by any particular demographic?

A. That was a study of students.

25 Q. So by students?

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A. Yeah.

THE COURT:

Sorry, I am lost. Are you adding “by students” in there as well?

5 **WITNESS:**

That’s what the report – they’ve taken that from so yes, Sir, if you could include students.

THE COURT:

Counsel, if we could just, if you could just read us the words for us?

10 **MS LOGAN:**

I’ve got –

MEMBER MOORHEAD:

Or perhaps can you take us to the part of the report you are referring to and we can take it from the report?

15 **WITNESS:**

It’s page 46 of my bundle and it’s the bottom paragraph on that page.

MS LOGAN:

The words in the report are, “Of the total volume of alcohol consumed, 83% was consumed in what are classified as binge episodes.”

20 **MR THAIN:**

I’m still...

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THE COURT:

You are still lost as to the words?

MR THAIN:

Well, is that now the end of the sentence in the brief or does the brief continue to
5 say, "With 71% of those students"?

THE COURT:

I think the easiest if we could just get, if you would not mind, just slowly taking it from
the top, not an explanation but the actual words that you are intending in your brief?

WITNESS:

10 I need to try and remember what we just...

MS LOGAN:

Do you have a copy of the bundle with you?

WITNESS:

Yes.

15 **THE COURT:**

Do you want to take five minutes to confer and do that?

MS LOGAN:

That may assist, Sir.

THE COURT:

20 We will just step out while you confer.

COURT ADJOURNS: 4.32 PM

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AUDIO MISSING: WITNESS ALREADY GIVING EVIDENCE AT 16:35:56

Q. ...Mr Mechen in paragraph 18, second sentence, could I ask you to read what the sentence should say?

A. Yes. "Studies have shown that up to 83% of the volume of alcohol consumed

5 –

THE COURT:

Q. Stop, stop.

A. Sorry.

Q. Of the volume, thank you.

10 A. "Of alcohol consumed by students."

Q. Thank you, hang on.

A. "Was consumed in what are classified as –

Q. Slow down. "Was consumed by students."

A. "In what are classified" –

15 Q. In what was...

A. – as binge episodes, with 71% of those students experiencing alcohol related problems as a result."

Q. Thank you. Everybody got that? Thank you.

EXAMINATION CONTINUES: MS IRVING

20 Q. Mr Foster gave evidence this morning regarding steps Progressive Enterprises have taken to their responsible supply of alcohol. Have there been any initiatives that Progressive or Countdown has been asked to participate in to relate alcohol related harm?

25 A. Yes. In 2015, for the orientation week, all of the off-licence premises that have students as a customer base were asked if they could not promote alcohol and glass product and sort of put them aside to make them less prominent in their

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displays. All of the off-licensees except for the Countdown Central agreed to do that. The same happened beginning of this year, 2016.

Q. Thank you. Could you answer any questions from my friends?

THE COURT:

5 Mr Braggins.

MR BRAGGINS:

I've actually agreed with the constable to go first, because he is sitting on both sides of the fence and I thought it better that he goes first.

10 **THE COURT:**

Great, thank you.

CROSS-EXAMINATION: SERGEANT PANTING

Q. I'll just draw your attention to page 12 of your brief, thank you, blanketing the (inaudible 16:38:42) licences.

15 A. Sorry, the?

Q. So page 12, point 43, which should be the entertainment licences. Wishing to clarify how it was established that not many were expected to be generated in this category. You've got these types of licences are not expected to be common throughout the city. What led you to that conclusion?

20 A. The committee looking at the evidence have asked how many premises opened later in the evening, and at that time there were only four from memory.

Q. Within point 45, you've expressed that you do not believe that the extended trading hours by one hour would compromise the goal of the DLAP or PLAP
25 now. If I refer to page 188 and 189 of your brief.

WITNESS REFERRED TO BRIEF OF EVIDENCE

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WITNESS REFERRED TO BRIEF OF EVIDENCE

Q. You've got two articles: one from the very reputable *Timaru Herald*, which cited that reducing the closure time from five till three created a 50% reduction in alcohol related offending. On the second article on page 189, indicating that a reduction in opening hours in Invercargill, both with local proximity to Dunedin, from 4.30 to three resulted in a 42% reduction in the centre city crime rate. Does that not fly in the face of expecting there not to be...

A. The idea of the committee or the council was that if they've got an entertainment licence it would be genuine entertainment and people that, or the patrons of those premises would be there for the entertainment and not for the purposes of consuming alcohol. So they didn't believe that having those few places open that late for genuine people seeking entertainment would be a problem.

Q. Which draws me back to page 13 again, point 47 of our concerns with the honey pot effect. It's indicated here that you believe the one-way door policy will be effective in reducing this; however, within your experience both in policing and liquor licensing, venues like Bath Street and The Break, where they have historically had later licences than other venues, and even now with the Two Four dairy in Northtown, do you not currently see that phenomenon happening?

A. With a common one-way door time, I think yes, you're probably right. Their committee did consider having an earlier one-way door for genuine entertainment licences, but no, I can't recall why they settled on having the standard one-way door time.

Q. And within the, continuing on from Richard Newcombe's discussion yesterday, do you not think it would be disadvantageous to the other operators if all their clients need to leave the venues that close at three to go to these entertainment licences, they'll be exiting their venues somewhere between two

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and three, sorry, two and 2.30, to ensure they get into the lines? As a result the other on-licences will feel a loss of clientele and you also see an agglomeration around these venues as people try to get in at that one-way door point?

5 A. Yes, it was a good point raised by Mr Newcombe and I've made a note to take that back. However, at the time of the discussions they were quite aware that economic considerations weren't something for the LAP to consider, or for the council to consider in their thinking.

10 Q. Further on to that, would it not be fair in creating a level playing field, to have the entertainment licences still close at three, but having then the option of being alcohol-free through to four? If their primary business is entertainment and you're saying that in point 44 the alcohol sales complement the listener's enjoyment, that is there a need for alcohol sales in those times? Can we not just go with the 3 o'clock liquor licensing, but they're given an extension of
15 opening hours?

A. It's a good point. No, it wasn't considered at the time.

Q. Do you feel that the overall concept of the entertainment licence will, in its current format, help achieve the objectives of the Act?

20 A. The intention of the council was that they would cater for the group of people that are there for the entertainment and not for the drinking. If that was how it panned out, then yes it would. But the reality is we don't know. It may be, as Mr Newcombe said, that it does cause problems.

25 Q. And one last question: in relation to point 46, it draws me actually to the point of the lack of definition of the entertainment premise. The exact nature of entertainment that might be offered in particular venues will need to be assessed, and an operator seek that entertainment licence. Has there been any discussion or guidance given by the committee at this stage as to what that is likely going to entail so we can foreshadow what will come?

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A. No, the council decided to leave that to the discretion of the Licensing Committee, and with the other conditions like the latter opening focus more on entertainment not alcohol. It's really up to the Licensing Committee. But there was a lot of debate about the DJs when they get a DJ from out of town, is that a live performance or is just someone playing with electronic sort of things? So that's all to be grappled with by the licensing Committee.

1645

Q. Because that would be the area of concern for us particularly. Many of the DJs in town, even their resident DJs, are paid \$500 to \$1000 a night. What's the difference between that and an acoustic guitarist who you'd pay \$500 to, they're both providing entertainment, they're trained for a long period of time for – I suspect that this will cause a bit of grief going forward.

THE COURT:

Mr Braggins? You have got 15 minutes so discretion as to whether you want to start now or start in the morning. I do not want to break your stride, that is all.

MR BRAGGINS:

It's a little bit selfish but I did spend two and a half hours with Ms Kelly last night getting her from the hotel into the ambulance and the hospital so it was a fairly long night and then an early morning trying to work out what we were going to do, so, and since we've got all of tomorrow now, if no one else objects then it might be okay, otherwise I'm happy to keep going on to –

THE COURT:

No, I think in these circumstances we are happy to indulge your –

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MEMBER MOORHEAD:

I think you are entitled, Mr Braggins.

THE COURT:

It has been a long day and I think it is probably easier if we start afresh in the morning rather than interrupt you 15 minutes into it.

MEMBER MOORHEAD:

Can I just perhaps just clarify one issue which I was wrong on with Mr Mechen and I raised the question with Mr Foster, I was concerned about the 24-hour Night 'n Day. Mr Mechen, am I correct in thinking that there are, in fact, two 24-hour Night 'n Day stores in central Dunedin and that one of those has a licence and one of those doesn't?

WITNESS:

That's correct.

THE COURT:

Thank you. In terms of starting time in the morning, 9.30 again?

WITNESS STOOD DOWN**MR BRAGGINS:**

Yes, Sir.

THE COURT:

We will aim for that. Thank you.

COURT ADJOURNS: 4.47 PM

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COURT RESUMES ON THURSDAY 24 NOVEMBER AT 9.37 AM**CROSS-EXAMINATION: MR BRAGGINS**

Q. Can take you to paragraph 12 of your evidence, please?

A. Yes.

5 Q. And that's page 3 of your evidence. You say there that you've not omitted to consider, "Any material facts known to me that might alter or detract from the opinions that I express"?

A. Yes.

Q. And then this evidence was filed in early November 2016?

10 A. I think so, yes.

Q. I'd like to refer you to exhibit 2, I think I believe it's exhibit 2, that's the document titled, "Dunedin liquor ban breaches." Do you have a copy of that with you?

A. No, I don't.

15 Q. Now you've got this document?

WITNESS REFERRED TO EXHIBIT 2

A. Yes, I do.

Q. And you've seen this before?

A. Yes.

20 Q. And it's dated the 18th of July 2016?

A. Yes.

Q. So if you turn over to page 2, down the bottom, there's a title saying, "Distribution list," and the last line there is, "Dunedin alcohol harm reduction officer, liquor licensing." Do you know who that is?

25 A. Yes, Sergeant Ian Paulin.

0940

Q. So none of these people are council officers?

A. No, sir.

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Q. And so you haven't seen this before?

A. Yes, I have.

Q. When did you first become aware of it?

A. I asked for the information in relation to another report I'm doing with the council.

Q. So when did you first see this report?

A. Would've been soon after the date on the report.

Q. Say, August, maybe, August, September?

A. Yeah, late July, August, yeah.

Q. So do you think that this document's relevant to what we're talking about here today?

A. I haven't considered that. It wasn't requested for this LAP so yeah, I just haven't looked at the data in relation to the LAP.

Q. But it's a document relating to alcohol-related harm in the CBD?

A. Yes, there's only four offences that it relates to. It's not the whole gamut of alcohol-related incidents that the police identified.

Q. But – and so because of it only relates to four offences, that's not relevant?

A. It's relevant in that it shows a pattern if you look at the legend for each of the thematic maps, they're quite wide-ranging. I've asked for a better breakdown but that's not the purpose of it and the document wasn't originally sent out for general distribution.

Q. Can I take you to page 5 of the document, chart 2, and so this is a chart of all offences from 2011 to 2015 so that's four years of data within the key time that the council has said that it's concerned about, 4.00 pm until 6.00 am in the morning, that's correct? 1600 until 0600?

A. Yeah, 4.00 pm to 6 o'clock in the morning, yeah.

Q. Is that the key time that the council's concerned about?

A. No, that's the data that was supplied by the police and that's just showing the peak of the offending. It doesn't show, presumably, I can't speak for the

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police, but presumably, the numbers are lower in the other time and not relevant to the map.

Q. So considering the 9.00 pm hour that we're having a debate about, part of Progressive's evidence was that Sunday, Monday, Tuesday, Wednesday, there's not a lot happening in Dunedin. There's not a lot of harm going on. Why is there a 9.00 pm restriction? Do you understand that to be one of the points from Progressive's evidence?

A. Yes.

Q. So if we look at this graph and we look at Monday, all of the Monday graph is below the number 50 all the way through the evening?

A. That's right.

Q. Same with Tuesday?

A. Yes, sir.

Q. And Wednesday? There is a little bit of a blip on Wednesday, I think?

A. Yes.

Q. And given that that's over five years, if the graph doesn't exceed 50 then that means that there's less than 10 per year, doesn't it?

A. That's right.

Q. Did you not consider that this might have been relevant to Progressive's case at all?

A. They only relate to street offending, not alcohol-related harm generally, like it doesn't account for domestic violence or anything like that and it also only covers the current liquor ban area, not Dunedin generally. It doesn't include the moratorium area that we're talking about, either.

Q. It relates to – if we go to chart 1, it covers grievous assaults, so that's chart 1 on page 4? Covers grievous assaults?

A. Yeah.

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Q. Serious assaults, minor assaults, intimidation and threats, unlawful assembly and harassment. It's a fairly significant cohort of the types of alcohol-related harm that the council has said is relevant, don't you think?

0945

5 A. Yes, but as I said, it only relates to the current liquor restriction area and it only relates to street offences which, the report was only obtained for liquor restriction purposes, not for general alcohol-related harm purposes.

Q. So can I take you to map 2 on page 7? Doesn't map 2 cover a much wider area than you were talking about?

10 A. Yes.

Q. And isn't it fair to say that map 2 actually shows that there is a localised issue around the CBD and then once you move out from there, the numbers drop off significantly?

A. Yes.

15 Q. Isn't it fair to say that one of Progressive's points in this case is that issues to do with the CBD should not result in a district-wide restriction, do you understand that to be the point that Progressive's making?

A. Yes, I do.

Q. Don't you think that this map would be relevant to that?

20 A. Yes, and as I said, this map's from police request looks like restriction and the report I've just completed doesn't include that area for that reason.

Q. Even if Progressive didn't want it, don't you think the Authority might've been interested in it?

25 A. It was, as I said, I only really considered that for the LAP because it was completely unrelated to what I was dealing with at the time.

Q. I suggest that's poor judgment

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MR ROBINSON:

Sorry, Sir, I'm going to object to this line of questioning. To be frank, the report was provided to me through my friend's office so Progressive knew full well of the contents of this report. If they wanted to put an issue, they would've

5 **MR BRAGGINS:**

This isn't the report we have.

THE COURT:

This is a new report that I think has just been tabled –

MS ROBINSON:

10 No, this is the report that was supplied to me through Mr Tim's and my friend's office.

THE COURT:

So this has been on –

MR ROBINSON:

15 I made a request to his office for the car data and the car report on which it was based and this is what came through.

MR BRAGGINS:

I'll stop that line of questioning, then. I'd understood that this is the new report that –

THE COURT:

I had too but you are saying that this had been provided?

20 **MR BRAGGINS:**

I'll check that.

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THE COURT:

If we could check that, because I would be interested in that, thank you.

CROSS-EXAMINATION CONTINUES: MR BRAGGINS:

- 5 Q. Can I take you to paragraph 6 of your evidence? You say there that you were engaged in collecting data to assist the preparation of a local alcohol policy for Dunedin and then at paragraph 7, that you met with various groups and organisations and then at paragraph 10, that you attended each hearing day and deliberations at the end and from the information supplied by the hearings committee, you prepared a provisional LAP which was accepted by the
- 10 subcommittee. So it's fair to say that you had a central role in developing the LAP?
- A. I was the draftsman but at each stage, it went to the subcommittee for their editing and come back to me for tidy-up, so –
- Q. But they relied on you as their primary council officer –
- 15 A. Yes.
- Q. – giving them guidance and advice?
- A. As much as they would listen, yes.
- Q. Can I take you to paragraph 49 of your evidence? The last sentence in that paragraph says, "It is my understanding that in some circumstances, the DLC
- 20 may elect to grant licences with trading hours that differ from the LAP where appropriate"?
- A. Yes, we looked at section 45 yesterday and that will be amended.
- Q. So you agree that that's not a correct statement?
- A. I do now, yeah, after yesterday.
- 25 Q. And wouldn't you say that that's pretty fundamental to understanding how the LAP applies on that ground, whether it has any flexibility or not?
- A. Yes.

0950

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Q. And so for a supermarket operator that might want to have longer hours on a Monday or a Tuesday, you accept now that they couldn't even apply to the DLC?

A. Yes.

5 Q. Do you think that has a significant effect on the reasonableness of the LAP?

A. No.

Q. Notwithstanding that I'd just previously taken you back to chart 2 of exhibit 2 that showed that nothing's happening on Tuesday night, even the central city in Dunedin is dead. There's less than 10 events a year but still, we need to
10 impose a restriction to avoid and minimise alcohol-related harm?

A. Yes.

Q. Even if you were all the way out in Andersons Bay or Dunedin south?

A. Yes, as I said, that chart only relates to the central city area and doesn't relate to areas outside the liquor restriction area, nor does it take into account
15 domestic violence and all the spinoffs from that.

Q. You haven't mentioned domestic violence in your evidence as a reason for the LAP, though?

A. No, sir. It's just violence generally. That report, as I said, wasn't part of the LAP process.

20 Q. No, but I'm just trying to assess the LAP in the context of the reasons that we've been given. The reason was preloading?

A. Yes.

Q. Do you accept that the preloading behaviour that the council's concerned about doesn't seem to be happening much on a Tuesday, Wednesday?

25 A. Yes.

Q. Would you tend to agree that although this graph shows the CBD, that's probably the worst part of Dunedin in terms of the sorts of offences that we're looking at, Dunedin south, Andersons Bay, you're probably even sleepier, Your Honour, on a Thursday night, for example?

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A. Generally speaking, yes.

Q. So if we look at changes in the factors relating to drinking now, and the context of alcohol regulation and retailing in New Zealand. Can I take you to Mr Foster's rebuttal evidence at 2.3(c) which is page 330?

5 A. What paragraph's that, sir? I don't have the same page numbers you do.

Q. It starts at the top of the page. It's actually a carry-on from the previous paragraph there. So it's paragraph 2.3, actually starts on 329, and then follows on over the page and if we go to subparagraph (c), Mr Foster notes that there has been a significant national changes in licensing laws. I suppose that's not necessarily just licensing laws but just laws in general, aimed at changing drinking behaviours. So would you agree that the reduction of blood alcohol level for driving has been a significant change since 2003?

A. Yes.

Q. And the imposition of national default hours on on-licences and off-licences?

15 A. Yes.

Q. And the ability for the police to use infringement notices?

A. Yes, although I'm unsure how often they're used.

Q. And there's now much greater emphasis on host responsibility?

A. Yes.

20 Q. And there's new protections relating to ensuring that if parents or a guardian is supplying alcohol to a minor that it's done in a responsible way, there's a lot more focus on controlling the supply of alcohol to minors?

A. On supply, yes.

0955

25 Q. You'd also agree that there's been changes in the New Zealand drinking culture, for example, both the craft beer market which might be seen as a positive, and the growth in RTDs which might be seen as having more negative consequences, would that be fair?

A. Yeah, generally, yeah.

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Q. And there's also been changes to the way that young adults communicate with the pervasiveness of social media?

A. Yes.

5 Q. And indeed, the articles that you refer to about the Hyde Street party talk about a Facebook party that was put up and the police had to close down before it even got anywhere because of the danger sort of associated with that?

A. Yes.

10 Q. And there've also been significant local changes in Dunedin that Mr Foster, the trends for reducing alcohol-related harm in the city that Ms Hampson identifies?

A. The university during the Hyde Street party?

Q. Roman F – sorry, F(i), the trends of reducing ARH in the city that Ms Hampson identifies?

15 A. There are more initiatives but at the moment, we're still, it's trending down slowly but not quickly enough.

Q. And a significant reduction in charges associated with the Orientation period?

A. Yes, but again, the police mention pre-charge warnings and there's of an effort not to put people through the Courts, both police and I think justice departments.

20 Q. And a changing number of on- and off-licences in the CBD including places like The Gardies being shut down?

A. Yes.

Q. So with all of those factors in mind, aren't we saying that really, data prior to 2010 is getting a little bit dated, quite dated, in fact?

25 A. Yes, but it's the only data we have at that point.

Q. Can I take you to paragraph 16 of your evidence which is page 6? That data is from – data you refer to in paragraph 16 is from 2003?

A. Yeah, a report from 2003, yeah.

Q. Which predates the 2010 figure that I just referred to?

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A. Yes.

Q. And then at paragraph 18, we talk about the drinking patterns of – sorry paragraph 17, we talk about the drinking patterns of the Dunedin secondary school students. That was from a report back from 2003 as well, wasn't it, that's the Masters report that was undertaken?

A. Yes.

Q. And so the kids who are 16 to 18 now, they would've been about three or five when that report was done?

A. That's right.

Q. At paragraph 20, you refer to the public health Southern report. So can I take you to page 097 which is one of the pages on that report? So looking at these graphs, we can't tell where anyone was buying alcohol?

A. No, sir.

1000

Q. You can't tell whether they were preloading or not?

A. No, they're just the emergency department admission.

Q. And can I take you to page –

THE COURT:

Sorry, what page was it? I am just going to make sure that I am looking at the right one.

MEMBER MOORHEAD:

I am looking at the wrong Southern thing.

MR BRAGGINS:

097.

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THE COURT:

Oh, 097, thank you.

CROSS-EXAMINATION CONTINUES: MR BRAGGINS

- 5 Q. I'll take you through a little bit further onto page 103. If you look at Dunedin, there's a blue column of alcohol-related admissions and then a pink section of non-alcohol-related admissions and a green section of non-assessed. It's fair to say that weekdays are significantly lower than weekends, even though that's five days of the week?
- A. Yes.
- 10 Q. I suggest to you that that's relevant when a professor says that it's not reasonable, in light of the object of the Act, to be restricting off-licence sales outside of the Friday, Saturday night?
- A. If you look at the context of those graphs, yeah. The committee or subcommittee did consider varying it but they decided across the board hours
- 15 would be best.
- Q. And on page 86 of that same document, we've got the recommendations which Mr Foster referred to, "Restrict on-licences after 2.00 am," and the PLAP's more lenient than that, isn't it?
- A. Yes.
- 20 Q. And, "Restrict off-licences between 8.00 and 10.00 pm," and the PLAP's more restrictive than that?
- A. Yes.
- Q. Can I take you to paragraph 21 now of your evidence. I'm not a Dunedinite, I only know about the Hyde Street party from what I've read in the evidence but I
- 25 understand now that the way that the Hyde Street party works is that you have to buy a ticket for it, is that correct?
- A. Yeah, for the last three years there have, yes.
- Q. And it starts off in the morning and goes all the way through until late?

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- A. 6.00 pm.
- Q. So a restriction of hours in the LAP is unlikely to have much effect on the Hyde Street party because it's operating during, basically, normal business hours?
- A. It, again, starts at 8.00 am so it gives an opportunity for people to buy more alcohol if we stayed with the default hours. It'd give people the opportunity to buy alcohol at off-licences nearby before 9 o'clock. Once they've got a ticket, they don't have to be there at 8 o'clock. They can enter anytime.
- Q. But if they've bought a ticket, then they've planned to go, presumably some weeks in advance?
- A. Yes.
- Q. So if the LAP comes in and they've bought a ticket and they know that off-licences don't open until nine, they've got every chance in the world to buy the alcohol that they want the previous day?
- A. Yes, but it stops the impulse buying in that morning.
- Q. That's the first hour of their drinking, that eight until nine –
- A. Yeah.
- Q. – so they know that if they don't turn up with alcohol, they're not going to be drinking anything so that's not an impulse buy. That is a planned activity and then at 9.00 am, everything's open anyway?
- A. Yes.
- Q. And in any event, the council could look at the licensees in and around the Hyde Street party and look at some specific conditions to deal with that particular event?
- 1005
- A. That's where the last two years, the two Hyde Street parties, we've had them together, the licensees, and they've agreed not to promote glass and all that and hours and everything are discussed. They're a lot more vigilant on intoxicated people purchasing.

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Q. So you can deal with that by targeting the particular licensees that relate to – that are in a close proximity to that particular event?

A. Yes.

Q. I'd now like to discuss with you the submissions on the PLAP, so you discuss that at paragraph 23 of your evidence. You say there that the council received 4262 submissions and the vast majority of these were from the general public and responded to a series of questions posed in a submission form and then later on, we say at 25, "Numerous submissions were also received from alcohol sale and hospitality interests including Progressives, Foodstuffs, Independent Liquor and Hospitality New Zealand." That doesn't really paint a fair and accurate picture of the number of submissions on the PLAP and where they came from, does it?

A. In what way?

Q. Well, I'm going to suggest to you that the vast majority of submissions came from Hospitality New Zealand or the Dunedin Inner City Licensing Forum?

A. It was raised during the hearing that it was noted that some premises in the city had pro forma forms on their bars for people to fill out. There was a suggestion they got their first drink free if they filled it out and the committee, subcommittee looking at it treated those as one generally unless there was someone wanted to be heard. Most of those people didn't want to be heard at the submission hearings.

Q. I'd like to hand up a document to you that I understand you've prepared called, "A briefing sheet and key points from local alcohol policy discussion paper." So just going through those bulletpoints there, 80% from HNZ which is Hospitality NZ or the Dunedin Inner City Licensing Forum, the third bullet point, "Concern the policy will limit people's freedom and affect the vibrancy of Dunedin's nightlife," sorry, I should say, so this document – are you the author of this document?

WITNESS REFERRED TO BRIEFING SHEET DOCUMENT

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A. Co-author.

Q. So this is a document that was prepared, having received submissions but was it prior to actually having the hearings?

A. Yes.

5 Q. So this was a briefing sheet to the councils about who'd made submissions on what, in essence?

A. Yes.

10 Q. So bullet point 3, "Concern the policy will limit people's freedom and affect the vibrancy of Dunedin's nightlife. Changes will cause a loss of revenue, jobs and businesses in hospitality and retail industries," and then the final bullet point, "Call for greater nationally-set regulations, especially relating to price and access from supermarkets"?

A. Yes.

15 Q. So there was a very consistent theme in the submissions seeking to regulate the price and regulate supermarkets?

A. In the submissions, yes.

1010

Q. So let's now look at the moratorium provisions. Can I – do you have a copy of the local alcohol policy there with you? I can hand one up.

20 A. The PLAP?

Q. That's the full version I've previously handed up, the –

A. No, I've got a copy of –

Q. Oh, you've got that. And a checklist saying –

MEMBER MOORHEAD:

25 Mr Braggins, can I just check, are you producing that document through this witness?

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MR BRAGGINS:

Is that exhibit 5?

THE COURT:

I think – because if we put the Southern in a submission, there is a bit of a question
 5 about their status as to whether they were exhibits given, that they were not in the
 bundle, so for the sake of numbering, if we put that at seven, as Emma said, we are
 just clear.

MR BRAGGINS:

Hand that to the Court as the same one. I just want to make sure everyone's
 10 working off the same document.

THE COURT:

Yes, I have got that one.

MR BRAGGINS:

That is exhibit 1.

15 **MEMBER MOORHEAD:**

And I do.

CROSS-EXAMINATION CONTINUES: MR BRAGGINS

Q. So if we turn to page 10 and look at outlet density which is section 3, and we
 look at the fifth paragraph down just above the map, says, "There will be a
 20 moratorium on new off-licensed premises with the exception of specialist
 premium wine stores and breweries selling their own product." So in terms of
 this particular policy, I just want to clear the decks about what it targets and
 what it doesn't, so it doesn't restrict taverns?

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A. No, that's only off-licences.

Q. Restaurants?

A. No.

Q. Cafés? It doesn't target club licences?

5 A. No.

Q. In my experience, club licences are often not an inexpensive place to buy a bit of alcohol there, the bowls club, they generally have cheaper alcohol than a bar, for example?

A. I'm not sure. I don't frequent clubs.

10 Q. And then there's, in fact, an exception for bottle stores because if you're a specialist premium wine store, you're allowed in as well?

A. Yes.

Q. There's no restriction on them having a sale?

A. No.

15 Q. No restriction on price?

A. No.

Q. A premium wine store might not even sell exclusively premium wine, they might even have one or two cheaper ranges?

20 A. There was a case law from Dunedin, I think it was Foodcourt Distribution Limited or Distributors Limited, where a bottle store was allowed to open in the Gardens Shopping Centre which is just out of the moratorium area and the reason the Authority allowed that to open was because it sold higher price and the Authority made a statement along the lines of, "The high-priced wines and spirits weren't the target drink for the more vulnerable population," being
25 students in that area, so we do have a specialist wine shop or bottle store in that area that has been there for a long term and it's just not frequented by students.

Q. But there's nothing to say that that case necessarily relates to what this definition is?

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A. No.

Q. And then breweries selling their own product, there's no suggestion that they have to make expensive beer, is there?

A. No.

5 Q. They might even make other products?

A. Yes.

Q. Alcoholic ginger beer?

A. Yes.

Q. Alcoholic lemonade?

10 A. You're getting into the RTD area then and again, in the matter that I just referred to, they talk about RTDs not being promoted, not being a main part of their business so it all, for the DLC, they're aware of that decision and again, it would be up to the DLC to decide whether a premises was going to be a premium wine shop.

15 1015

Q. It doesn't say anything about premium or specialist, it just says, "Breweries selling their own product"?

A. Oh, breweries, yes.

Q. So I went into McDuff's the other night and they had alcoholic lemonade?

20 A. Yeah, I'll believe that.

Q. And you can also brew cider?

A. Yes.

Q. So the type of a licence targeted by this provision, almost to laser intensity, is supermarkets and grocery stores?

25 A. No, it's the, for want of a better word, the mainstream bottle stores like Liquorland, Thirsty Liquor and the like, Super Liquor and...

Q. If we take a step back and look at what might happen in the moratorium area in terms of new licences coming and the level of restriction, supermarkets are definitely out. If you're a bottle store, maybe you've got to adjust your market a

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little bit and if you're Super Liquor, well, what if you set up a microbrewery in Super Liquor? Then suddenly, you're a brewery?

A. They would have to sell their own product.

Q. It doesn't say exclusively though, does it?

5 A. No, but the Act, the DLC can limit what a premises can sell, a brewery, a manufacturer of alcohol can sell.

Q. They might or they might not?

A. Yes.

10 Q. Given – so paragraph 66 at page 18 of your evidence, the last sentence of paragraph 66, you say, “The moratorium puts a lid on the number of off-licences within this area,” which isn't quite true, or isn't quite accurate, “And will allow the council to monitor the effectiveness of the other methods adopted in the PLAP whilst preventing a proliferation of licensed premises,” but really when you say “licensed premises,” you mean supermarkets and mainstream
15 bottle stores?

A. Off-licensed premises, yes.

Q. And yet, there is a lot of evidence that taverns are associated with alcohol-related harm?

A. Yes.

20 Q. And the density of taverns within an area is related to alcohol-related harm?

A. Yes.

Q. And so we set up this framework where we're allowing multiple confounding variables of other licensees unrestricted in the moratorium area?

A. Yes.

25 Q. So really, your reason there doesn't hold water at all?

A. The amount of harm coming out of on-license premises is far less than harm coming from consumption off premises and that was a factor that they considered. Certainly, the committee, I don't recall any discussion about supermarkets wanting to be in that moratorium area because it's dominated by

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the university and student accommodation. It's unlikely they would forego student accommodation to allow a supermarket in there, or to put a supermarket in there. Has that never come up in the discussion at all? It was just, they were talking about off-licences and bottle stores generally.

5 Q. But that isn't actually listed as a reason in the LAP, is it?

A. No.

Q. The LAP actually says there's a high density of young people, they have demonstrated a high rate of alcohol misuse when compared to other groups. Both of those factors apply equally to on-licences and off-licences?

10 A. Yes.

Q. And then the third thing we're told, there has been a concern expressed at the number of off-licence premises in North Dunedin where alcohol may be purchased more cheaply than from premises in other parts of Dunedin, and when you say "premises," you mean on-licences, don't you, or doesn't it...

15 A. No, it's mainly off-licences, from memory.

1020

Q. No, sorry, just to re-read the sentence. So the concern is expressed at the number off-licence premises in North Dunedin where alcohol may be purchased more cheaply than from premises in other parts of Dunedin?

20 A. Yes.

Q. And when it talks about premises in other parts of Dunedin, you're talking about on-licences, aren't you?

A. No, we're talking about off-licences, and on-licences are considerably more expensive than off-licences, but at the time the LAP was being considered the alcohol was cheaper in the north end than it was elsewhere in the off-licence premises.

25

Q. So the concern, just so I'm clear, is that it's cheaper up North than it is further down south, south of The Octagon?

A. It was at the time of the independent liquor stores, yes.

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- Q. So for a company like Progressive that comes in and says, "Well, our prices are our national prices. Dunedin Central's going to be the same price as any other supermarket that we put in," that argument doesn't really apply, does it?
- A. No, but as that summary said that you handed out, exhibit 7, there was quite a lot of comment in the submissions about the supermarkets and the prices that they give it out at, and (inaudible 10:21:33) lot of argument, the Authorities made determinations on price leading, selling less than wholesale. Licensees around Dunedin, on-licensees are quite open that they quite often go to the supermarkets to buy their supplies because they get them through the supermarket chains, both Progressive and Foodstuffs, than they can through their own wholesalers. So I'm not sure where a lot of these submitters got their information from, but there was concern at the pricing of off –
- Q. So there were a lot of on-licences that were whinging that supermarkets should be excluded because –
- A. No, no. They come through other submissions and not just the pro forma ones that the HNZ put out.
- Q. So at paragraph 67 you refer to a correlation – sorry, I've covered that off. So you've read the CAPRi report?
- A. Yes, the 2003 one, yeah. With the –
- Q. And that report, where in that report does it say that bottle shops, or at least breweries that sell their own beer don't factor in that research?
- A. I don't recall it being stated. At the time I don't think that there was a large number –
- Q. I suggest to you it doesn't at all.
- A. Sorry?
- Q. I'd suggest to you that it doesn't at all. It puts all off-licences in the same basket. And so really the council hasn't applied that research.
- A. They took it into consideration.

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Q. So can I take you to, now, to Ms Hampson's evidence, page 9 at paragraph 2.11?

A. I don't have her evidence.

WITNESS REFERRED TO MS HAMPSON'S EVIDENCE

5 Q. Now we're going to have to work through a little bit of maths here, and I apologise for that, but I'm just trying to get a sense about the impact of on-licences compared to off-licences in this moratorium area. So Ms Hampson says, at 2.11, that we've got 99 on-licences in 2016, in about the middle of that paragraph?

10 A. Yes.

Q. Did you not agree with that number?

A. Sounds about right, yes.

Q. And off-licences, we're down to 13. Would you generally agree with that number?

15 A. Yes.

1025

Q. So there's about – a significant number more on-licences in the moratorium area than off-licences?

A. Yes.

20 Q. My maths says that there's about eight times, about, give or take. Have you considered the effect of the density of on-licences in the moratorium area?

A. No. Those 99 on-licences include cafés, restaurants and the like that are generally shut by 10, 11 o'clock in the evening. In that area, there is maybe seven or eight that are popular with the young people to go to and they're generally localised around the Octagon.

25

Q. But if we're looking at the CAPRi report, it doesn't make that distinction either?

A. No. At the time the CAPRi report was done, there was quite a few more on-licences in the varsity area. It was more accessible to the students.

Q. So if we get the CAPRi report out, that's, I think it's tab 9 of your evidence at page 180.

THE COURT:

Page 180, did you say?

5 MR BRAGGINS:

Page 180 of Mr Mechen's evidence, tab 9.

CROSS-EXAMINATION CONTINUES: MR BRAGGINS

Q. So in the abstract at the bottom line, it says, "Submitted 5 November 2007," and then initial you've completed 1 February 2008 so in terms of the date of this report, that's on the other side of 2010 by a reasonable margin, isn't it?

A. Yes.

Q. Ms Hampson has some comments at page 49 of the Progressive bundle. If at any point – Mr Hampson is a geographer, she's, I suppose, a specialist in this field so if at any point you feel that I'm asking you questions that are outside your field of expertise, that's fine, just let me know. So she, in 2.9(b), makes the point that, "The survey covers about 0.2 to 0.4% of the total tertiary students and the representativeness of the drinking patterns is therefore questionable." Would you accept that?

A. Yeah, I'd have to, yeah.

Q. That paragraph (c) over the page, on page 50, she says, "The research does not distinguish between the category of licensed premises with on- and off-licence types and, therefore, the types of premises most relevant to young adult alcohol spending," you'd agree with that?

A. Yes.

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Q. In terms of the council's concerns, what you just told me, you've said, "We're not really worried about restaurants and bars. We're worried about places like The Gardies," that's quite relevant, don't you think?

A. Yes.

5 Q. And that at (d), she says, "The research does not establish a link between the types of premises the students purchase alcohol from, including where they are located, that is, which types of premises contribute to the excessive drinking and resulting problems." Again, that's quite relevant?

A. Yes.

10 Q. Do you know anything about the difference between an ecological analysis and the other student-type analysis?

1030

A. Just what I remember from two days ago, Ms Hampson's comments.

15 Q. I've forgotten all that so I'll go back to Ms Hampson's evidence, so she says at (e)(1), "There's a significant variability in the density of on- and off-licences across the campuses sampled, as well as the drinking propensity of students at different campuses." What she's saying is each campus was quite different to each other. Do you accept that?

A. Yes.

20 Q. Do you have any – you've read her evidence?

A. No, it's the first time I've seen her evidence.

25 Q. So (e)(2), she says, "On-licences account for between 69% and 100% of the total licenses within three kilometres of the university campus. This explains why the reported correlations, the *r* values, were the same for on-licences as the total," so what she's saying is this report was heavily, heavily dominated towards the on-licences?

A. Yes.

Q. And then she says, "The research does not state any results of conclusions about the correlation between off-licence density within three kilometres of the

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campus and the drinking behaviour of students living within three kilometres of the campus,” do you accept that?

A. Yeah.

5 Q. And, “The geographic catchments, one kilometre and three kilometres, of the research are very coarse. A three kilometre radius, for example, covers an area of 28.3 square kilometres,” I’ll take her maths for that, “and as such, is an extensive catchment.” Do you agree that a three kilometre catchment is a very extensive catchment? I can take you to some maps because that might help.

A. Yeah, no, it is a big area.

10 Q. So let’s give it some local context. Can you go to page 68 of Ms Hampson’s? So you’ve got page 68 and that, hopefully, is familiar, that’s Dunedin, with the University of Otago in the middle, and so that three kilometre radius goes all the way across the harbour to the other side and I’m sorry, I don’t know Dunedin’s geography well enough to know where that is but I’m assuming
15 that’s a fair way from the CBD?

A. Yes.

Q. While we’re looking at these maps, I wanted to explore with you the – we’ve talked about how the campuses that this study looked at were highly variable. There were numbers – big numbers, small numbers, so there was a lot of
20 change there. What these maps at the end of Ms Hampson’s rebuttal evidence do is that they look at how many supermarkets are within one or three kilometres of a – from the clock tower of the central administration building which was the measuring point in the CAPRi study, and what she finds is that there’s quite similar numbers across the different university cities that
25 she looks at so page 68, we’ve got Dunedin and we’ve got one in Dunedin which I’m not sure what this – so the supermarket is a, and a large grocery store, is a black dot, so there’s, you’d agree that there’s one black dot within the one kilometre radius?

A. Yes.

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Q. And if we take one page back, page 67, there are three black dots within one kilometre but they're all very much on the far edge of that one kilometre radius?

A. Yes.

5 Q. And in Wellington, we have four black dots within close proximity to Wellington university?

A. Yes.

Q. Massey Palmerston North on page 65, we don't have any?

A. Yes.

10 Q. And then the university in Hamilton, page 64, we have one?

A. (no audible answer 10:34:44)

Q. The university of Auckland technology, Manukau, page 63, we have three?

A. Yeah.

Q. And then Auckland, page 62, we have two black dots within one kilometre?

15 A. Three.

Q. And there's one more which is page 61 which is Albany, there's one black dot clearly within the circle and one right on the edge on the right-hand side, so we've kind of gone somewhere between zero and four supermarkets within one kilometre across a very broad range of New Zealand cities, would that be fair?

20

1035

A. Yes.

Q. And that's not a very big variation, is it?

A. No.

25 **MR BRAGGINS:**

Sorry, Sir, I'm just checking in terms of a break, you were planning on?

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THE COURT:

I am relaxed but I think if this is an appropriate time to break or we could go to...

MR BRAGGINS:

It probably is, I'm about half way through and I realise that I'm going to have to give
5 the witness a calculator just to do a little bit of simple math.

THE COURT:

Okay. We will take a break now then, if that works.

UNIDENTIFIED SPEAKER:

Sir, just very quickly, I am going to rearrange flights and I have to be leaving at
10 11.30. Just seeking leave to be excused?

THE COURT:

Yes, no, that is –

UNIDENTIFIED SPEAKER:

You seem to be managing quite well without me but I'll let you know.

15 **THE COURT:**

I understood that so leave is granted.

UNIDENTIFIED SPEAKER:

Thank you, Sir.

COURT ADJOURNS: 10.36 AM

20

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AUDIO MISSING: COURT STARTS JUST BEFORE AUDIO**COURT RESUMES: 10.55 AM****CROSS-EXAMINATION CONTINUES: MR BRAGGINS**

- 5 Q. ...the break we had established that there were around 99 on-licences in the moratorium area and 13 off-licences in the moratorium area?
- A. Yes.
- Q. And can I take you to page 186 of your evidence, please? That's the CAPRI report.
- A. Yes.
- 10 Q. And this table. So – and I know this is just approximate because the CAPRI report is on a circular (inaudible 10:46:18) basis and we're talking about a moratorium area that fits the shape of Dunedin. But if we were to apply those figures; I mean, I'm not suggesting that this report is right, but I just want to get a sense of the alcohol burden in the moratorium area, according to this report
- 15 based on the density of on-licences as compared to the density of off-licences. So the first thing I think we need to do, if you look at the bottom, the left-hand corner of that table, it says "Rate ratio shown per 10 outlets." So we would need to divide our 99 by 10 to get a rate that they use. So that would, for on-licences that would give us a 9.9?
- 20 A. Yes.
- Q. And for easy maths, for the 13 that gives us a 1.3?
- A. Yes.
- Q. And then, this is the point where you might need to get your calculator out, if we look at the one kilometre density for off-licences and we use the adjusted
- 25 rate ratio, so we would then multiply our 1.3 for an off-licence by 1.069 and that gives us a figure of 1.389. Does that maths work for you?
- A. Yes.

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Q. And then if we were to take our 9.9 for the on-licences, and we multiply that by the line below, the 1.011, that gives us 10 with a couple of zeros, is that there?

A. Yes.

5 Q. So at least according to this study, because there are so many more on-licences in the moratorium area, the burden associated with the density of licences is much, much higher for on-licences than for off-licences, wouldn't you agree?

10 A. That's assuming the rate of alcohol consumption was similar across the – much similar amount of consumption of on-licences as an off-licence situation which isn't the case.

Q. But presumably this study has taken that into account because it surveyed the on-licences and the off-licences in these six other areas, so the on-licence rate simply relates to on-licences and the off-licence rate relates to off-licences. So it inherently covers that different – wouldn't you think?

15 A. I'm not in a position to answer that because I'm not aware of – I'm not a statistician and how it all works.

Q. Okay, I won't take that any further. Other than just one more point: so you didn't, when you were thinking about density in the moratorium area, you decided, "Let's just have a cap, a flat line. We don't want any more. There's
20 too much already." That was the...

A. That was the feeling of the counsellors, yes.

Q. So it wasn't a matter of, you didn't go and think how many licences would be appropriate in the moratorium area –

A. No.

25 Q. – you just said –

A. No.

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Q. All right. Can I take you to Mr Fairgray's rebuttal now, that's page 83 of the Progressive evidence at paragraph 2.10, and now Dr Fairgray in that

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paragraph talks about 165 to 185,000 shopper visits to supermarkets all across all the main brands and around 18,000 to 19,000 shopper visits would normally include a purchase of beer or wine. So what he's talking about there is the impact on the community, the people that are shopping, rather than the commercial impact on Progressive. Now, at paragraph 55 of your evidence you only refer to the impacts on Progressive Enterprises, don't you?

A. Talking about paragraph 55 of my –

Q. So paragraph 55 of your evidence, sorry, 56 of your evidence, you said, second to last sentence in paragraph 56 on page 15 of your evidence, "This suggested to the council that the commercial impact of restricting off licence sales between 7.00 and 9.00 pm would have little commercial impact on businesses." But that's just the commercial impact on Progressive, that's not the impact on the community, is it?

A. No, I don't remember at the time they were looking at that point 5% that would be inconvenienced, and I said that's a weekly spend. They were talking about .5% – 99.5% won't be inconvenienced. They didn't –

Q. But they weren't talking about actual – they didn't have a feel for the actual numbers of people, were they?

A. No, they could only go on this submission.

Q. And if you were someone who is working two jobs or has other commitments, you might be in that 0.5% or that, whatever percent a lot of the time. It's not – Dr Fairgray talked about people shopping when was convenient for them. So, I'll put this a different way. Would you accept that most people have a broad parameter of how they live their live week to week, you know, if you had a particular job you generally have to be at that job, you know, for me eight till five. Someone else might have a different – you have certain things in your life that are fixed that you have to live your life around. Would that be fair?

A. Yes.

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Q. And so for some people it's going to be quite convenient for them to do their shopping on a Saturday or in the early evening because that's how their life is structured?

A. Yes.

5 Q. And for those people they're not going to really suffer any effect at all?

A. Yes.

Q. But for someone who's life is structured in a different way, maybe with childcare responsibilities or work responsibilities, or who knows what, their day-to-day convenience, if, because of –

10 **MR ROBINSON:**

I'm sorry, Sir, I think this is getting just a little bit hypothetical. We don't actually have any evidence of the person that's going to be inconvenienced at that the particular demograph within which they fall, what their work commitments are, and the like, so really I think it's a matter of submission for my friend rather than a matter for cross-
15 examination of the witness.

THE COURT:

Well, I understand that he's trying to get to the impact of this, so –

MR BRAGGINS:

Sir, it's not – what I'm trying, I suppose, and I'll try and get there a little bit quickly but
20 I point isn't that it's just a random .5% of the population at one week you're just going to be, you're going to be the unlucky .5% and you're going to be inconvenienced. It actually affects a particular cohort of the community that have structured their lives, and whose lives are structured in a particular. Would you accept that?

MR ROBINSON:

25 That's the point.

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THE COURT:

And that's what you're saying, is more akin to a submission and I accept that.

MR BRAGGINS:

Yes, okay.

5 **MR ROBINSON:**

And there's no evidential foundation for putting that proposition.

MEMBER MOORHEAD:

Well, Mr Robinson. It's the same sort of hypotheticals in relation to students and their behaviours that you and your colleagues were putting to witnesses.

10 1105

MR ROBINSON:

Not really, no, because we have – there is demonstrated levels of harm to the students.

MR BRAGGINS:

15 Dr Fairgray's demonstrated how many people and I'm just trying to work out whether the council properly understood who they were. The answer was it was 0.5% and it didn't really matter.

THE COURT:

We have got the point.

20 **MR BRAGGINS:**

I got the point?

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THE COURT:

Yes.

CROSS-EXAMINATION CONTINUES: MR MECHEN

Q. So looking at this problem a different way, if the supermarkets are selling a lot of alcohol between 9.00 pm and 11.00 pm, we came along and said, "There are heaps and heaps of people that come in between 9.00 pm and 11.00 pm or between 7.00 am and 9.00 am and they buy tons of alcohol," surely then we would be saying, "Hang on, there's a problem that there's too much alcohol being sold," notwithstanding the commercial impact, would that be your view?

10 A. Yes.

Q. So it doesn't actually matter which way you look at it. If you don't sell a lot of alcohol, you're not inconvenienced that much, you can just move your life around in a different way, but if you sell a lot of alcohol, then there's an alcohol problem and you need to regulate notwithstanding the inconvenience?

15 A. I suppose so, yes.

Q. Can I take you to Dr Kelly's rebuttal at 2.6 at page 123 of the Progressive evidence?

THE COURT:

Sorry, what page number?

20 **MR BRAGGINS:**

123.

CROSS-EXAMINATION CONTINUES: MR MECHEN

Q. I think we can cover this point fairly quickly. There, Dr Kelly is referring to a couple of the passages from the 2003 reports and the quotes are that I think

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we corrected in your evidence, so she's correct at 2.6 and 2.8, 2.9 and 2.10 in terms of how she characterises that report, is that fair?

WITNESS REFERRED TO DR KELLY'S EVIDENCE

A. I haven't seen this evidence, just quickly scanning.

5 Q. So to go through it a little bit more methodically, at paragraph 16 of your evidence, you refer to a statement about the relatively high levels of hazardous drinking directly from CAPRi 2003 and that information derives from the limited data obtained prior to 2003 so that's how that –

A. Yes.

10 Q. And then at 2.8, again, you, at paragraph 18 of your evidence, you refer to, "Studies show that up to 83% of the students participate in binge drinking episodes each week," so that was the part of your evidence that we corrected?

A. That's corrected, yes.

15 Q. And then at 2.9, she says that 83% is not a percentage of students and then she says, she notes that the table only includes students who consumed alcohol in the past four weeks and is not a presentation of overall drinking habits, that's correct, isn't it?

A. Yeah, taking into account that correction I made, yeah.

20 Q. And then at 2.10, she refers to table 6 at page 16 of the CAPRi report and she makes the point that those, it's 71% as a proportion of all student respondents, excluding non-drinkers, who reported experiencing a hangover in the past three months, and then she says, "The exclusion of non-drinking minors is likely to significantly distort the analysis," would you agree with that?

A. Yes, talking about all students, yes, it would distort it.

25 1110

Q. And then at paragraph 2.11, the last sentence, Dr Kelly identifies that there's a definition – sorry, I'll cover the whole paragraph. So 2.11, Dr Kelly makes the point that the CAPRi 2003 report has quite a broad definition of harm about being pushed or otherwise assaulted. I'm not saying that that's not part of

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what the Act covers. Dr Kelly's point is the second part of that sentence, "This definition cannot be directly compared for prevalence with international published papers referred to in my evidence-in-chief where assaults are measured using police reports or hospital attendances," so what she's saying there is it's apples and oranges, the numbers can't be compared, would you accept that?

A. Yes. Just on that, just thinking about it, the police acknowledge that the number of reports to them is very under – well, offences are a low rate of reporting so a lot of assaults in the locale aren't reported to the police but this is self-reported.

Q. Yeah, there's a gap in the information?

A. Yes.

Q. But Dr Kelly's point was saying, "When we're comparing international studies, we need to compare apples with apples"?

A. Yes.

Q. So can I take you now to paragraph 2.14 of Dr Kelly's evidence? She refers to the Cassel study. So this is the study that looked at before 10.00 pm and post-10.00 pm harm and I believe that report's in your evidence, the relevant page is 201 of your evidence. So that's at tab 14. So we have another couple of tables here on page 2001. Table 1 on the left-hand side at the bottom, we have some – so table 1 relates to the regression of predicting typical occasion quantity and frequency at on-premise drinking locations so table 1 is the on-licence table and then on the right-hand side is table 2, that's the off-premises table and logically, because on-licences and off-licences trade at different times, down the bottom, we have the cut-off for on-licences, that's before 2.00 am and after 2.00 am, and then on the right-hand side, we've got the time of purchase at off-premises, after 10.00 pm and before 10.00 pm, do you – you're following me so far?

A. Yes.

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Q. So effectively, as I understand it, the typical occasion quantity is how much you drink, which is the left-hand column, and then the frequency, how often it happens, is in the right-hand column. So for on-licences, they use a baseline of what people are doing before 2.00 am so that's the very bottom line, that's one reference and one reference so that is the baseline. If we're starting from people who are, we're benchmarking those people that are drinking prior to 2.00 am in terms of their behaviour, so that may not be acceptable but that's something that we know and we're trying to see whether things get better or worse after 2.00 am and you'll see in the number above the one on the left-hand side there's a 2.9 and then on the right-hand side there's a 2.2 which is an elevation of both the how much people are drinking and the frequency that they do it in?

A. Yes.

1115

15 THE COURT:

Yes.

EXAMINATION CONTINUES: MR BRAGGINS

Q. And then if we do the same thing on the right-hand side after 10.00 pm and before 10.00 pm we again have a benchmark of 10.00 pm with a number. But then after we have the quantity as being 2.1 and we have the frequency at 1.8, and my point is that those numbers, the before and after 10.00 pm numbers are actually lower than the 2.00 am on licence numbers. Would you accept that?

A. Yes.

Q. And so according to this study the benchmark or tipping point from 2.00 am till after 2.00 am is worse for on licences than it is for off licences 10.00 pm and later.

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A. Yes.

Q. And the PLAP is again that's a 3.00 am for on licences?

A. Yes.

Q. But 9.00 pm for off licences?

5 A. Yes.

Q. Can I take you to Dr Kelly's evidence at 2.18? Now, at 2.18 Dr Kelly says that, "The HPA submissions do not mention morning sales between 7.00 am and 9.00 am. They also do not discuss exposure of young children to alcohol before school. Marketing alcohol as an ordinary grocery." Do you agree with that statement?

10

A. Yes, I commented on that as a correction.

Q. Yes, and then at 2.19, the public health self, although they talk about alcohol being accepted and normalised, they did not discuss the exposure of young children to alcohol before school and did not mention exposure to alcohol sales between 7.00 am and 9.00 am as a (inaudible 11:17:37) concern.

15

A. Not in their written submissions but when they spoke at the hearing they did talk about that. They didn't put a great deal of emphasis on it.

Q. And then the Southern District Health Board, they do not mention sales between 7.00 am and 9.00 am in relation to normalisation. So that's at paragraph 2.20 in Dr Kelly's evidence. We, I don't know the numbering of these two things that were handed over yesterday. This is the Southern Primary Health Organisation document, submission on the Dunedin City Council's draft local alcohol policy.

20

THE COURT:

25 That's the 31 September one?

MR BRAGGIN:

Yes, dated 31 September.

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THE COURT:

Yes, and I don't know what number to put on those but – that one six, and the submission dated 10 October was fine?

UNIDENTIFIED FEMALE VOICE:

5 Yes.

EXAMINATION CONTINUES: MR BRAGGIN:

Q. Now, do you have a copy of that submission?

A. Yes.

10 Q. So, at the bottom of page of this document it says, "Exposure to alcohol advertising has been shown to lower the age that young people start to drink and make it more likely for them to drink heavily," and then they refer to a study that talks about a link to alcohol advertising with the uptake of drinking among non-drinking youth. That increased consumption amongst their peers. Now, as I understand it, that's the only place that there's a study referred to?

15 1120

A. Yes.

Q. So everyone else is raising concerns but this is the only place where there's an actual study cited?

A. Yes.

20 Q. So just thinking about morning hours in that context, you would agree that the Act took into account risks associated with the visibility of alcohol sales when it set the default hours?

A. Yes.

25 Q. And the default position is reasonable unless a council wishes to respond to a local issue?

A. Yes.

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- Q. So let's have a look at this local information. You haven't looked at the number of young children going into supermarkets in the morning with their parents in Dunedin?
- A. Personally, no.
- 5 Q. You haven't looked at how that visibility might affect them?
- A. No.
- Q. You haven't looked at how the visibility between 7.00 am and 9.00 am affects them in comparison to the rest of the day?
- A. No.
- 10 Q. So in terms of the normalisation of alcohol, if we think about a child getting up in the morning, they might see Mum or Dad reading the paper in the morning and there's ads for alcohol in the newspaper?
- A. Yes.
- Q. And that's part of alcohol marketing?
- 15 A. Yes.
- Q. On the drive to the supermarket, they might pass a billboard with alcohol advertising?
- A. Maybe not in Dunedin but yes, possible.
- Q. And that's also alcohol advertising?
- 20 A. Yes.
- Q. They might pass a bottle store with the external advertising of alcohol?
- A. I'm just trying to think –
- Q. If they pass a bottle shop –
- A. If they pass a bottle shop with their –
- 25 Q. With their, even if they're closed, they often have the flyers out saying Speight's \$29.99 or whatever it is?
- A. Yeah, possibly, although I think the law's changed as far as advertising outside visible from a public place.

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- Q. Not as far as I'm aware, it has for supermarkets but not bottle stores. They might even pass an on-licence with people having a champagne breakfast at 8.00 am because the PLAP allows that?
- A. Possible, yes.
- 5 Q. And they'd go into a supermarket and they'd still see the alcohol on display in the single alcohol area?
- A. Yes.
- Q. And then the next day when Mum shops, maybe later in the afternoon, they'd still see Mum buying a bottle of wine from the supermarket?
- 10 A. Yes.
- Q. So there's nothing local about this policy, is there?
- A. No, apart from the opinions or the – yeah, the opinions of the councillors that listen to the evidence.
- Q. And so really, it just seeks to reconfigure the default hours in the Act?
- 15 A. Yes.
- Q. And in that regard, it's really biased towards supermarkets because they're the only stores that it targets, in practice?
- A. In practice it is, but that's not a consideration. They just considered off-licences where someone can buy alcohol and take away.
- 20 Q. I put it to you that it's going to have little to no effect on normalising alcohol exposure, this change?
- A. I can't really comment on that. It would be a long-term change. It wouldn't be something that you would see in the first 12 months. It would be something you'd see across generations.
- 25 Q. Can I take you to page 2.31 of Ms Kelly's evidence? Sorry, paragraph 2.31 of Ms Kelly's rebuttal evidence? That's page 129. Do you accept that the Ministry of Justice's paper on risk-based licensing fees didn't actually look at the risks associated with off-licences? Sorry, that the risk factor analysis could

not be carried out for off-licence premises as the available data wasn't available?

A. Yes.

Q. And so you would accept that the Ministry of Justice report cannot be used for harm relating to off-licences?

A. Yes.

1125

Q. So turning to a new topic, evening hours. If we look at your evidence on page 14 at paragraph 52, you refer to a Last Drinks survey there. That Last Drinks survey is the 2003 survey?

A. I'm not sure which year that was, sorry.

Q. Sorry, if we look at –

A. Oh, yeah, it was cited by...

Q. Page, sorry, paragraph 52, you refer to the police data from the Last Drinks survey and then your footnote –

A. As cited by CAPRI.

Q. Yeah, so that's 2003, so that's well before 2010?

A. Yes.

Q. Can I take you now to page 19 of Ms Hampson's evidence? So that's graph 9 up the top, it's got the total alcohol-related incidents by type and year?

A. Yes.

Q. And Ms Hampson was asked a number of questions about this graph, particularly in relation to the yellow line which is that line that goes up from just on 500 to – about half way between 500 and 1000 to 2015, that's the 1710, is that fair enough for you?

A. Intimidation threats, yeah.

Q. And then also then other one that people were asking about was the orange one which is the serious assaults, that climbed up a bit as well. This was – Ms Hampson was asked a series of questions about this graph and identified that

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that was a significant trend that the council was concerned about and I take it that's your view?

A. Yes.

Q. And you would've seen that graph when you received Ms Hampson's evidence
5 in September this year?

A. This is the first time I've seen her evidence.

Q. Sorry?

A. First time I've seen her evidence.

Q. So this is the first time you've seen her evidence?

10 A. Her actual evidence, yes.

Q. So, I'm just trying to get my head around this, so the council gets given some evidence that identifies an increasing trend in intimidation that my friend – that the council's lawyers think was significant but this is the first time it's been brought to your attention?

15 A. In this form, yes. The police gave evidence of that during the submission hearings.

Q. Did they map it?

A. I honestly can't remember.

Q. So we don't know the geographical trend, whether intimidation is moving to
20 different parts of Dunedin?

A. No.

Q. We don't know the time of day, whether the time of day's shifting or whether there's an increase in a particular time of day?

A. The graphs that were in, I think they report from June this year for the liquor
25 ban area, it's sort of, it's fairly consistent across the years and across the city when harm's happening.

Q. If that's the first time you've seen it in that form, there's no point – I'm not going to ask you any more questions on it.

1130

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1130 hg

Q. ...no point, I'm not going to ask you –

A. Oh.

5 Q. – any more questions on it. So can I take you to paragraph 58 of your evidence on page 16? And I also need to have you get out Mr Fairgray's rebuttal evidence at page 84. So the key graph is this graph in your evidence under paragraph 58 and Dr Fairgray at the end of 2.16 he says, "The claim by Inside Economics that the difference in time purchase provides a direct evidence of pre-loading is not accurate." Now you were here –

10 A. Yes.

Q. – when he was being cross-examined and re-examined.

A. Mmm.

Q. You've heard those arguments. Do you accept what Dr Fairgray says at 2.16?

15 A. It may not be correct, I don't know if they can say it's not accurate, but yes I accept that Dr Fairgray's made a good point.

Q. But it's two different, we have two different behaviours –

A. Yes.

Q. – one going to an off-licence, one to an off-licence.

A. Yeah.

20 Q. And what matters is understanding where they mesh up and there's a connection. That's what –

A. Yeah.

25 Q. – that's the key thing that the council's interested in. So you've, you have had a chance to read Dr Fairgray's evidence? Well then I suppose you were here, you've listened to him, so –

A. I've heard it, yeah, yeah.

Q. – I don't want to take all day. You know, I could take you through each paragraph, but –

A. No, no, it's fine.

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Q. – you’ve accepted he made a fair point?

A. Yeah.

Q. Okay. Can I take you to page 2.31 of Ms Kelly’s rebuttal evidence? Sorry, Dr Kelly. Beat me with her crutches when she gets out of hospital. Oh yes, so at paragraph 2.33 she refers to a Wellington City Council study and Mr Foster also, at page 333 at paragraph 2.13 makes reference to that study. In essence what Mr – actually, to be fair, I’ll take you to Mr Foster’s evidence. So that’s page 333. Sorry for the inconvenience. So 2.3. 2.13(a) Mr Foster highlights a few things about that Wellington report. Firstly that it was quite variable within the suburbs within Wellington, and so he didn’t think that it could just simply be applied as an average to Dunedin because you didn’t know where it was applied. Do you think that’s a fair comment?

A. So far as studies go, but personal experience, the experience of the police with the car parks outside the supermarkets, one’s very visible to the police, they were witnessing this, what the Wellington study identified, and they’re seeing it all the time.

Q. And the Wellington study – sorry, I’m just, I want to be (inaudible 11:34:58). So the police are standing outside supermarkets, interviewing people and looking in their supermarket bags?

A. No, they can observe it from their station. Their station (inaudible 11:35:09) it joins the carpark and personally going in there I –

Q. Of one supermarket?

A. Yeah, that (inaudible 11:35:20) open that late.

Q. That – yes. Even through all the shopping, all of the opaque bags?

A. No, they come out in shopping trolleys with the stuff quite visible.

Q. Would you accept that when someone is buying more produce, for example, they’re doing a larger shop, it’s going to be more difficult for someone to see from afar whether they have any alcohol or not?

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- A. Well, mostly from (inaudible 11:35:33) yes.
- Q. So from an observer's perspective that's actually going to paint a distorted picture because you're going to pick up the obvious ones and you're not going to really appreciate the normal sales?
- 5 A. Yes.
- Q. And the Wellington – Mr Foster at 2.13(b) also makes the point that that Wellington study was a Friday/Saturday night study, so it doesn't represent the Sunday through to Thursday period?
- A. No.
- 10 Q. And the example you gave which that's one supermarket that the police have a convenient line of site to from the police station is it?
- A. Yes.
- Q. But if Dunedin was variable in the same way that Wellington was then it could be quite different in a different supermarket?
- 15 A. Could be, yes.
- Q. Can I take you to Mr Foster's, oh well, so while we're on Mr Foster's evidence I just want to cover off a couple of other things with you. So, as a council officer you're, are you reasonably familiar with the decision-making criteria that I've (inaudible 11:38:46) the requirements for the council making a decision?
- 20 A. As so far as the alcohol side, yes.
- Q. And if I, I mean I can take you to the part of the Act but broadly when you're making decisions you need to identify all reasonably practical options for the achievement of your objective?
- A. Yes.
- 25 Q. And then you need to assess those options in terms of advantages and disadvantages?
- A. Yes.

Q. If I take you back to the PLAP at page 4. So this is exhibit 1. We've got the options, so this is the option assessment that the council undertook when adopting the PLAP.

MEMBER MOORHEAD:

5 Sorry, where are you Mr Braggins?
1140

MR BRAGGINS:

Sorry, page 4 of exhibit 1. Do you have it, Ma'am?

10

MEMBER MOORHOUSE:

Yes, thank you.

CROSS-EXAMINATION CONTINUES: MR BRAGGINS

Q. So the options provided, so this is the options assessment?

15 A. Yes, yeah.

Q. So option one is just adopt the PLAP as recommended, and we've got advantages: doesn't address the needs of everyone, but they believe it's a compromise, has links with the strategic framework and then there are some disadvantages in that there might be some appeals?

20 A. Yes.

Q. But it doesn't look at individual elements in terms of options and pros and cons. It's just either we adopt the PLAP or we do something different. We don't – there's no analysis about we started off at 10.00 pm for off-licences in the draft LAP, we're moving to 9.00 pm and here are some options about moving it, maybe 9.30, maybe different hours for different days of the week.
25 There's no sort of analysis like that, is there?

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A. No, that was done by the subcommittee which was half the council. Most of this report was prepared by policy people who, I assume, would have considered all that.

Q. Is there a written record of the subcommittee's –

5

MR ROBINSON:

Well, I just wonder the relevance of this line of questioning to the ultimate issue in the appeal, at least focusing on the issues of internal process within the policy and it's decision-making processes. Those are matters for judicial review, and in my
10 submission the ultimate question is what factually are the issues within the, as to consumption of alcohol in Dunedin, and in light of the purpose and objects of the Act is the response under the PLAP unreasonable? So these questions of the integral process that have ultimately given rise to it, to my mind are irrelevant.

THE COURT:

15 Outside the relevant, the question. Mr Braggins, do you have a comment on that in terms of relevance?

MR BRAGGINS:

Yes, Your Honour. Firstly, we're prohibited from taking a judicial review until we've
20 gone through this process, and secondly it comes back to the reasonableness and the reasoning in the LAP. So what we are looking for is the reasoning in the LAP and I'm trying to work out –

THE COURT:

How –

25

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MR BRAGGINS:

– how did they get to, what options did they consider in order to get to 9.00 pm, and the object was we're worried about pre-loading. What options did they consider, so that we can work out the reasonableness? And as far as I could work out, and I
5 stand to be corrected, this was the only analysis that was done of that.

THE COURT:

Well, we've got the record here, rather than going back into the process, I think is the point being made.

10 **MR BRAGGINS:**

But look, if that is the extent of the council's decision-making, and I was just simply wanting to confirm that, but the witness has told me that there's another document that's there that I've – and I don't want to take very long on it, but I just want to understand – because I don't recall having seen it.

15 **THE COURT:**

Certainly we haven't got it here in front of us.

MR BRAGGINS:

Maybe I can't take that any further.

20 **CROSS-EXAMINATION CONTINUES: MR BRAGGINS**

A. There was, just to expand on that a little bit, attachment B of that document gave a summary of everything and that was not debated but certainly discussed at the council meeting that adopted the provisional LAP. So at different points through that, different options will, were put forward and
25 (inaudible 11:44:03) was considered, and that was all part of the council debate, I suppose you call it, leading up to the adoption of the PLAP.

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Q. And once the council had gone through that process it was a one-stop shop. There was a hearing, they sat around, had deliberations, made a decision, and out came the PLAP.

A. And that went to the full council.

5 Q. That went from the –

A. Yeah.

Q. – subcommittee to the full council?

A. Yeah.

1145

10 Q. And we're working on this document, so we go to page 11, and so this lists the on-licence premises maximum trading hours and we have Sunday through to Thursday, 9.00 am to 11.00 pm and then Fridays and Saturdays, 9.00 am to 12 midnight?

A. Yes.

15 Q. And then off-licence provisions, we simply have Monday to Sunday, 9.00 am to 9.00 pm, so we have the situation where the council has decided that on-licence premises should be granted longer hours on the Friday and Saturday night which is the peak time of concern?

A. That's for on-licences in or adjacent to residential areas. It's not in the central
20 city. There –

Q. But it could be within the moratorium area, for example?

A. Yes. And the –

Q. Standing close to the, fairly close to the central city?

A. Yeah. The one or two on-licence premises in that main student
25 accommodation area are limited to those hours and it's only in the central city and CBD that have got the greater hours.

Q. So they get greater hours on the Friday, Saturday night, presumably because that's when it's busy?

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A. It's more that there's traditionally, they don't have to get up earlier the following Saturday or Sunday mornings.

Q. And so there's less – but you're not suggesting that there's less alcohol-related harm on a Friday, Saturday night?

5 A. No.

Q. So these premises have the longer hours on the Friday, Saturday night when we also have an elevation of harm in the city?

A. Yeah. The, for that particular one where you've got differential hours, that's generally outside the moratorium area, apart from, as said, the two on-licence premises in the main student area. They generally refer to the suburban areas which don't have the same issues, for want of a better word.

Q. But you're not suggesting that alcohol-related harm – sorry, are you suggesting that alcohol-related harm is mainly focused on Friday and Saturday nights in that central city area, that's the concern?

15 A. That's where the bulk of the things, incidents happen, yes.

Q. So how is it that a supermarket isn't allowed longer hours on the Monday, Tuesday, Wednesday when we don't have the elevated alcohol-related harm and it's also potentially like Anderson Bay, a considerable way from the central city?

20 A. It was a decision of the council just to have the standard hours across the week for off-licence premises. They're not saying that supermarkets need to close at those times. It's just that they're actually selling alcohol at those times.

Q. But don't you think it's inconsistent that an on-licence is allowed to trade later on a Friday and Saturday night when we have elevated alcohol-related harm and a supermarket can't trade, can't sell alcohol later on a Tuesday night when there's less alcohol-related harm?

A. Yes, I suppose I'd agree with that but the council was more concerned about off-site consumption and where they can purchase alcohol for that off-site

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consumption. The bulk of the visible harm that the community see is in the public spaces or in the central area, that's reported on by ADT and media.

Q. I know we've had a few hypotheticals but let's just get a nice, simple, narrowly-defined one. So it's 10 past nine at Countdown Anderson Bay, and Mrs Jones, who's interested in local alcohol policy, she might've been sitting in the back, she's been reading stuff, she's interested in what's going on. She's standing in one queue and then someone else comes along, it's 10 past nine, it's his wife's – maybe an anniversary the next day. He wants to buy a nice bottle of champagne because he's had a busy day and kind of forgot and he's trying to, you know, do the right thing. So he's there and he goes to the checkout and the checkout lady says, "I'm sorry, you can't buy alcohol. Our licence finishes at 9.00 pm," and he says, "Well, why is that?" and the checkout lady says, "Well, because the students might be preloading." I would suggest that Mrs Jones is standing next to this and listening in, is going to think that that's a bit ridiculous?

A. The matter you point out where someone goes up to a counter a few minutes after the close-off time was actually discussed by the council and as previous witnesses have said, people change their purchasing habits in a very short time. But it was actually discussed and they still chose 9 o'clock.

Q. But you're not answering my question. What I'm saying is that an observer on a Tuesday night at Countdown Anderson Bay is going to think it's a bit ridiculous that someone can't buy a bottle of wine for their wife's birthday the next day at 10 past nine because the students might be preloading?

A. It's not just students who preload. It's the vulnerable age groups, 18 to 24, in Dunedin it's the majority of students but –

Q. Okay, well, let's say 18 to 24? Sorry, the young adults might be preloading on a Tuesday down at Countdown Anderson Bay and isn't the lady going to think, "Isn't that ridiculous? Anderson Bay's fairly quiet and sleepy at 10 past nine on

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a Tuesday night and there's actually really no student preloading going on in that part of town on that night"?

A. Yes.

Q. And so isn't the average Mrs Jones who's paid attention to everything going to think, "Isn't that ridiculous"?

A. Oh, could do, yes.

THE COURT:

Mr Thain, looking at the clock, we started early. I do not know how many questions you have got but we could go to say, about 12.30 before taking a break if that works for everybody?

MR THAIN:

It certainly does for me. Let's get started.

THE COURT:

Great.

15 CROSS-EXAMINATION: MR THAIN

Q. Mr Mechen, just firstly, I just want to see whether I can correct one aspect of your brief of evidence, so if you've got that with you, turn in there, please, to paragraph 64?

A. Yeah.

20 Q. And you've referred there to that Wellington study that my friend Mr Braggins asked you a few questions about?

A. Yes.

25 Q. And so I'm not interested in talking about the, what you might be able to draw in terms of conclusions from a study done in Wellington but I just want to get some of the facts straight. You've said there that the study found that between

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6.00 pm and 9.00 pm. 62% of people were purchasing only alcohol. That's just flat out wrong, isn't it, that's a mistake in your brief?

A. I'd have to go back and look at the report itself that it came from.

Q. I've got one copy with me and I don't need to introduce this into evidence but would you like to have a look at it to see what I'm talking about?

A. Yes.

WITNESS REFERRED TO REPORT

Q. That's the report, isn't it?

A. Yes.

Q. You've seen it before?

A. Yes.

Q. So if you have a look on that, the page where you'll see the heading is, "Results." Do you see that page? It's right up towards the front. The top heading is "Results".

1155

A. Oh, yes, yes.

Q. Yes, and then there's a subheading below that "Purchasing behaviour".

A. Yes.

Q. And it says, "In looking at the proportion of customers who purchase alcohol, the tally shows that they are in the minority with 37% across all nights and sites purchasing alcohol and 63% not."

A. Yes.

Q. Right?

A. Yeah, I (inaudible 11:55:34) in my stuff, yeah.

Q. Yes, and I'm right too, aren't I, that what that's talking about then is the proportion of customers who purchase any alcohol, not the proportion of customers who purchase only alcohol, right?

A. Yes.

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- Q. And those two proportions, the 37% who purchase any alcohol, that's including the figures from bottle stores, isn't it? You see that in the figure below there. It says, "Percentage of customers purchasing alcohol at supermarkets and bottle stores?"
- 5 A. Yes.
- Q. So do you see the paragraph immediately underneath that figure, it says, "However, given the focus of bottle stores, it's important to distinguish the tally for supermarkets to that of bottles stores," because of course, it's not surprising that a high proportion of people who go to a bottle store might be purchasing
- 10 alcohol?
- A. Just alcohol, yeah.
- Q. Well not – it doesn't say "Just alcohol" anywhere, does it?
- A. No. No.
- Q. It's just any alcohol?
- 15 A. Yes, agreed.
- Q. And that it says, "Removing the bottle store data gives a lower rate of customers purchasing alcohol across the evening. That's any alcohol, not only alcohol, isn't it?"
- A. Yes.
- 20 Q. And then if you turn over to the next page, have a look there, there is a figure, figure 2?
- A. Yeah.
- Q. Can you see that the, that is for supermarkets, "Purchase of alcohol versus without alcohol at supermarkets by time of night."
- 25 A. Yes.
- Q. And that the line at the bottom, lower down the scale is those customers who purchased some alcohol in their shop. See that?
- A. Yes. Yeah.

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Q. And do you see that at 9 o'clock at night, that percentage goes down, doesn't it?

A. Yes.

Q. Falls from 9 o'clock.

5 A. Yeah.

Q. Thank you. As I said I don't need to introduce that into evidence. So I can have that back now. Thank you. The draft LAP, that's in one of the attachments, isn't it? It's one of the attachments to your brief.

A. Yes, yeah.

10 Q. I think it's the attachment behind tab 7? That's from page 149.

THE COURT:

139?

MR BRAGGINS:

149 in mine. It's behind tab 7 if that helps.

15 **CROSS-EXAMINATION CONTINUES: MR THAIN**

Q. And as I understand it you were involved in draft, or you were the drafts person of this –

A. Of this one, yes.

Q. Draft LAP?

20 A. Yes.

Q. Timing wise. When did you do that? It was in 2014?

A. Yeah, early 2014 from memory.

Q. And it was published for people to submit on some time around, it must've been, sort of, August-ish of 2014. Would that be right?

25 A. October. It would be when the submission period closed early October.

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Q. If you have a look on page 151 of the bundle, is that, for you is that the page in the draft LAP that's headed "Introduction"?

A. Yes.

1200

5 Q. So I, down there, I think what you're talking about is right at the bottom of that section it says, "Please tell us your views by completing the submission form at the back of this document or online before 5.00 pm Friday the 10th of October"?

A. Yes.

Q. So that's 2014?

10 A. Yes.

Q. So this must have been delivered for people, put out for submissions sometime September-ish of 2014?

A. September, yeah.

15 Q. And I'm right too, aren't I, that what you wrote at the top of the page on that same page about the purpose of an LAP is accurate, so you wrote, "It's to ensure the sale, supply and consumption of alcohol occurs in a safe and responsible way and that any adverse effects are minimised," so that was the intention?

A. Yeah.

20 Q. And you said, "The intention is to create an enabling policy that reflects all community aspirations but finding the balance between various interests is a challenge"?

A. Yes.

25 Q. And that's right, isn't it, you were looking to reflect community aspirations and you needed to find a balance between opposing views?

A. Yes.

Q. This wasn't an exercise of going to an extreme which just cut out of the loop one group of people's views?

A. No, not at all.

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- Q. It would be, in fact, unreasonable to do so, wouldn't it?
- A. Yes.
- Q. And it wouldn't be right for a city that prides itself on being one of the world's great small cities to just disenfranchise a section of the population. You don't
- 5 do that in Dunedin, do you?
- A. I try not to.
- Q. You try to have regard to all peoples' views and what they're looking to achieve in their lives?
- A. Yes.
- 10 Q. And it would be also fair to say, wouldn't it, that it's not a Dunedin culture to look at things that some people find convenient and just say, "Oh, it's just convenience." That's not something you do at the council in Dunedin, is it?
- A. No.
- Q. In fact, one of the things you are interested in is making this a great city for
- 15 people to live in?
- A. Yes.
- Q. And one of the things that makes it a great city to live in is how convenient it is. For instance, the traffic is so much more convenient than Auckland. That's a wonderful thing about Dunedin, isn't it?
- 20 A. It is, yes.
- Q. And the ability for your residents and ratepayers and your guests, the tourists, people like me, I'm not a tourist but I'm here as a guest of Dunedin at the moment, the ability for me to get around the city and to do things in the city in a convenient fashion is an important part of what the city council should be
- 25 looking to achieve, isn't it?
- A. Yes.
- Q. You called for submissions on the draft LAP?
- A. Yes.

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Q. And put out a submission form for that and that's attached to the back of the draft LAP?

A. Yeah.

5 Q. So that's in my copy of the bundle at page 163. So you asked a raft of questions, I see starting at page 164, the first question was overall, do you agree with the general direction of the Dunedin draft LAP and it was just a yes or no for people to get their view?

A. Yes.

10 Q. The general direction of the draft LAP was towards greater restrictions around how alcohol was sold, supplied and consumed, would that be fair?

A. Yes.

Q. You were doing this consultation because – seeking submissions because the Act required the council to adopt the special consultative process under the Local Government Act, right?

15 A. Yes. Even without that, though, we would've consulted on it.

Q. Yes, because of all the things I was saying before, you're not about just sort of ignoring the views of your citizens and ratepayers?

A. Yes.

20 Q. Down the bottom of page 164, question 4, trading hours of off-licence premises, bottle stores and supermarkets and you asked the question, "Do you support the maximum hours of off-licence premises being different to the default hours of 7.00 am to 11.00 pm?" and there was a question, "Yes, no, neutral." And then it said, "If you support or do not support the maximum trading hours being different to the default hours, state your preference and
25 give reasons for your view." At the time when that question was posed to people, the draft LAP, as it says in the question, suggested off-licence trading hours of 7.00 am to 10.00 pm?

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A. Yes.

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- Q. You said in your evidence that you got 4262 submissions?
- A. Yeah.
- Q. And in answer to questions from my friend Mr Braggins, you explained that a number of those submissions came in on forms that were – forms that had
- 5 been distributed by Hospitality NZ and someone else?
- A. Yeah, the Octagon –
- Q. Licensees' Association or something?
- A. Group, yeah, forum, yeah.
- Q. Forum, there you go. But I just wanted to be clear about that, I'm right, aren't I,
- 10 that while those entities distributed forms, they didn't distribute pre-printed forms with the answers pre-printed, did they?
- A. No, not that I'm aware of.
- Q. So they were getting the form out there, they were making people aware that the council was seeking submissions and they, of course, may have had a
- 15 view but they didn't just get people to just sign up to a form that they'd already filled in, did they?
- A. No, but the forms were put out late at night for patrons of premises to complete and there was evidence supplied to the hearing subcommittee that there was a premises that was offering their first drink free if they filled out the form.
- 20 Q. If they filled out the form?
- A. Yeah.
- Q. You, of the 4262 submissions, clearly the council was keen to hear what the results of that was?
- A. Yes.
- 25 Q. And there was a report prepared, wasn't there?
- A. Yeah.
- Q. You haven't given us a copy of the report?
- A. Not that report for the hearing subcommittee, no.

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Q. But you probably remember some of the stats. So I'm right, aren't I, that 87% of the respondents said they did not agree with the general direction of the draft LAP?

A. Yes.

5 Q. And in terms of those off-licence hours, would you like to have a look at the report while I ask these questions?

A. Yes, I didn't prepare that particular report.

WITNESS REFERRED TO REPORT FOR SUBCOMMITTEE

Q. So you've seen that report, though, have you?

10 A. I've seen it, yes.

Q. And that was the report prepared for the subcommittee of the council that was considering this?

A. Yes.

15 Q. So if you turn over to page 4, that's where the answer is given or the report deals with that question about whether people support a change to the default hours for off-licence trading?

A. Yes.

Q. I'm right, aren't I, that three quarters of the submitters did not support any change?

20 A. Yes.

Q. And 22% supported the suggested change, do you see that in the middle of the page?

A. Yes.

Q. And that was the change to 7.00 am to 10.00 pm?

25 A. Yeah.

Q. So when you add those two together, you get 98% of submitters supported either the default hours or the ones that you'd proposed in your draft LAP?

A. Yes.

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Q. And again, I don't think we need to introduce that into evidence so I can have that back. Now we talked a little bit earlier today, just a short while ago about the desire to try and reach balance between views?

A. Yes.

5 Q. And it seems that it's not just you and me who agree that that's a good thing to do, is it? There were other submitters who agreed that what the council was looking to do was to find a good balance?

A. Yes, yeah.

10 Q. No. your evidence you've referred a submission put in on the draft LAP by the health promotion agency?

A. Yeah.

15 Q. That one's behind my, in my volume of your evidence, it's behind tab 16. So that's at page 231 in the bundle. Turn over to page 232. You see this is, this seems to me health promotion agency was agreeing with you and me under the word "Engagement" they said they, "Encouraged and supported a territorial authority developing a policy that's well consulted and reflects local community views," and a few lines further down. "We believe this wider engagement, if reflected in the final policy, will go some way towards providing council with a policy that meets the desires of the local community." So on and so on, and
20 when you get across to page 232 their recommendation was they suggested that the desires, right at the bottom of the page, "The desires of the community were given greater weight in determining the most appropriate trading hours for off licences." And that's, so they're in agreement with you and me, aren't they?

25 A. Yes.

Q. The change that occurred in the – between the DLAP and the PLAP to shift the hours to, the hours for off licence trading to 9.00 am to 9.00 pm, that change wasn't consulted on broadly with the community, was it?

A. No. No. As a result of the submissions, oral submissions.

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Q. You'd agree with me, wouldn't you, that there's a need for an evidence based approach when looking at things such as policies like a local alcohol policy?

A. Yes.

Q. And some of the important evidence that you relied on, or at least, that the council relied on is the graph that you put in paragraph 58 in your brief.

1215

A. The council relied on that.

Q. And you put it in your brief because it was one of the central things that council sought to rely on?

10 A. Yes.

Q. And my friend Mr Braggins has asked you some questions about that already, and I don't need to ask the same questions again, but I'm just trying to confirm where that comes from. You said that came from, in your footnote, number 30 there on page 16 in your brief, it came from a paper by Colegrave and Mundy?

15 A. Yes.

Q. That's behind tab 18 in your bundle, starting on page 251. Is that right?

A. Yeah.

Q. And the particular graph, that chart, is there on page 263 in your bundle, isn't it? Is that right?

20 A. Yes.

Q. So that's the one that you've picked out and the council looked at and you've put in your brief?

A. Yes.

Q. So this report was relied on by council but there are other aspects of the report apart from just that chart, aren't there?

25 A. Yeah.

Q. And one particular thing that the authors of this report looked at was the question of whether reduced trading hours would help to minimise alcohol related harm?

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- A. Yes.
- Q. They looked at that, didn't they?
- A. Yeah.
- Q. They looked at that from their section 6 which starts on page 270 in the
5 bundle? So this, when you provided this for council you didn't, sort of, just cut out that chart, did you? You gave the whole report?
- A. No, they had the whole book. No.
- Q. They had the whole report. So they would've had this section 6?
- A. Yeah.
- 10 Q. And you'll see right there at the top under the heading "Do reduced trading hours really help?" They said the short answer is the literature as well (inaudible 12:17:42) results are far from conclusive, and that's consistent with what the witnesses that Progressive has called on this topic have said during the hearing, isn't it?
- 15 A. Yes. Yeah.
- Q. So the council was aware of that, or at least they had it brought to their attention at the time they were considering all this?
- A. Yeah.
- Q. The authors of this report said, firstly that there was no peer reviewed literature
20 of the effects of reduction in trading hours in New Zealand, and that the studies that have been done overseas subject to serious doubt over their applicability. So, what the authors of this report did, though, is they dealt with some real, a real example. Do you remember that? They were writing this report in 2014, October 2014.
- 25 A. Yeah.
- Q. And at that stage the change to the licensing hours, in other words, the national default hours –
- A. Default hours.

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Q. – had come into force. They came into force on the 18th of December 2013, right?

A. 13, yeah.

Q. So the authors of this dealt with that at section 6.2 which is on page 273 in the bundle. Do you see at the top of that page there they said, “The new national default trading hours coming into force over nine months ago. This was timely as it provides a perfect natural New Zealand specific experiment from which to assess the likely impacts of any further reductions in trading hours.” So what's happened?

10 1220

They talked about how some early media reports suggested everything was going well and then you see half way down that second paragraph, “However, those initial effects now appear short-lived and certainly are not indicative of the longer-term trend. In fact the most recent crime data tells an entirely different story, specifically the latest monthly police statistics for August show public place assaults down 1% compared to August last year, but dwelling assaults up 13% and serious assaults, it must mean, resulting in injury were up 17%.” So that's what they said and this was before the council at the time, wasn't it?

20 A. Yes.

Q. They went on to say, “At the same time alcohol sales have also risen.” So it didn't reduce sales, it hasn't reduced assaults and serious assaults. Now is, I'm right aren't I that in – I think I recall that in your brief you haven't mentioned that part of this report?

25 A. No, I haven't.

Q. Do you remember from being in the courtroom when Ms Hampson gave her evidence that she talked about how from the figures she had of alcohol-related incidents in Dunedin an increasing trend, or a trend of increasing serious

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assaults and threats and intimidation, had carried on despite the change in the change to the national default hours, do you remember that?

A. Yes, yes.

Q. And that would be consistent, wouldn't it, with what the report from Insight has said?

A. Yes, yeah.

Q. And do you remember also that Ms Hampson showed us some charts dealing specifically with the particular student events that you'd identified?

A. Yes.

Q. Orientation week, the Hyde Street party and re-orientation week?

A. Yeah.

Q. Do you remember she talked about how she'd taken the whole period of those events and then extended it as well?

A. The shoulders, yeah.

Q. And again, her chart, do you remember it showed that notwithstanding the change to the national default hours, there being no noticeable downward trend in the number of problems arising in those three?

A. Yeah.

Q. In fact a trend that had been going down seemed to stop going down at about the same time as the national default hours came into force.

A. Mmm.

Q. Do you remember that? Now I think counsel for the council yesterday, I think I'm right, put to one of Progressive's witnesses, it was probably Mr Foster, that it would be reasonable for the council to have had particular regard to the more serious types of alcohol related harm.

A. I don't remember that, but yes.

Q. Well, would you agree with me that that would be right?

A. Yes.

Q. So assaults are more serious than just some disorder?

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- A. Yes.
- Q. That's not to suggest that disorder is not important, but you'd agree with me that it would be reasonable for the council to have particular regard to the more serious types of alcohol related harm?
- 5 A. Yes, yes.
- Q. Such as assaults?
- A. Yeah.
- Q. And would you agree with me that in a situation where a reduction of trading hours seems to have led, if anything, to an increase in that serious type of harm, the council needed to take a bit of care about what it did next?
- 10 A. Yeah, they were – that's who's were national and I agree that in the nine months that they checked it looked, looked like it. There had been increases, I'm not sure what the trend is now, it's sort of two years on.
- Q. Well –
- 15 A. But when the council made their decision they would've taken that in account, I would've thought.
- Q. They certainly should've, shouldn't they?
- A. Yeah, yes.
- 1225
- 20 Q. They certainly should've, shouldn't they?
- A. Yeah, yes.
- Q. They certainly should have been careful about what they were doing in case it wasn't going to work.
- A. Mmm.
- 25 Q. Or in case it, for some reason that none of us have been able to foresee in case it was actually counterproductive?
- A. Yes, yeah.

Q. Such as, for instance, if hours are shorter maybe people drink earlier in the day and maybe they drink for longer periods, maybe. Maybe if hours in the CBD are restricted then it pushes harm out into the suburbs, maybe?

A. Maybe.

5 Q. These are all possibilities that were on the table, weren't they, and –

A. Yes.

Q. – and a bit of, it would be reasonable for the council to have taken a bit of care to just think about that and be careful about what it was doing. Do you agree?

A. Yes.

10 **MR THAIN ADDRESSES THE COURT (12:26:00)**

COURT ADJOURNS: 12.26 PM

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COURT RESUMES: 1.38 PM

MR BRAGGINS:

When I was cross-examining Mr Mechen my friend raised an objection about the line of questioning that I was taking, and I must confess I was in error. I had thought
5 there was a new document that we hadn't seen before. It was a police document, not a council document, which led to my misunderstanding in my line of questioning. So I'd like to apologise to the Court and Mr Mechen.

THE COURT:

Great. Thank you very much.

10 **MS IRVING:**

Sir, if I may, Mr Robinson has just asked me to seek leave for him to be excused this afternoon. He's just had a couple of things to attend to at the office.

THE COURT:

Yes.

15 **MS IRVING:**

He may be back or we finish a little earlier, he may not.

THE COURT:

We'll see how we go. Great, thank you. Leave granted.

CROSS-EXAMINATION CONTINUES: MR THAIN:

20 I'll try not to take it personally but my audience is dwindling, but I will –

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THE COURT:

We're here.

CROSS-EXAMINATION CONTINUES:

- 5 Q. I'll also try to not take too much more of your time. Foodstuffs franchised stores in Dunedin? My understand is the licensed ones are New World City Centre, is that right?
- A. Yeah.
- Q. New World North Dunedin?
- A. Yes.
- 10 Q. There's a New World in Mosgiel that's licensed?
- A. Yes.
- Q. There's Dunedin PAK'nSAVE?
- A. Yes.
- Q. And then there are five licensed Foursquare grocery stores. Caversham, Foodlands, St Clair, Rockfill and Mitchell's?
- 15 A. I don't think Foodlands is licensed. There's a Henry – no there's not. There used to be Henrys just next door to it. I don't think that is licensed.
- Q. Right, but the others are all licensed?
- A. Yes.
- 20 1340
- Q. My understanding is that each one of those stores would be affected in the morning if the current PLAP was to come into force.
- A. Yes.
- Q. They all open before nine.
- 25 A. Yes.
- Q. And some of them stay open 'til after 9.00 pm. That would be the New World City Centre, which goes 'til 10?
- A. Yes.

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- Q. And the Pak'nSave that goes 'til 10?
- A. Yes.
- Q. Now from discussions you had with my friend Mr Braggins earlier today, we know that the council wasn't aware at the time when it was putting together the PLAP that district licensing committees were not empowered to ever grant more expansive hours than set out in a PLAP. My question, though, as you've already covered that, my question is, I'm right aren't I, though, that the council knew that a DLC could impose more restrictive hours –
- 5 A. Yes.
- 10 Q. – than those in the PLAP?
- A. Yes.
- Q. That's what it, that was what it thought was the situation?
- A. Yes.
- Q. But it didn't know that they couldn't go more expansive?
- 15 A. No, I think that was something the chair of the DLC had indicated and it sort of carried over into fact, I suppose.
- Q. Yes, so –
- A. Yes.
- Q. – a misunderstanding?
- 20 A. Yes
- Q. The council would also have been aware though, no doubt, that at the time that a DLC looks at any application for a licence or for a renewal of a licence, it's obliged to have regard to the object of the Act?
- A. Yes.
- 25 Q. And I would be right, too, wouldn't I, that the council doesn't think, it doesn't consider, that sale of alcohol is irresponsible or unsafe just because it occurs before 9.00 am in the morning? Indeed, your PLAP provides for sale and, indeed, consumption of alcohol at on-licence premises before 9.00 am.

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A. Yes. What swayed them toward the 9.00 am was the evidence, I think it was oral evidence, of the PHO and DHB talking about the long-term effects of children being exposed to the message of alcohol, and in the morning, you know, is it appropriate for a child to witness someone purchasing alcohol with their groceries, whereas later in the day you sort of can't do much about that.

Q. Yes.

A. It's normalisation that they were more concerned about.

Q. Yes. Not a view that it was irresponsible or unsafe to sell at that time of the day?

10 A. Not per se, no.

Q. No.

A. Mmm.

Q. Thank you, Mr Mechen. Thank you, Sir, I've no further questions.

THE COURT:

15 Thank you. Ms Irving or Ms Logan? Ms Logan?

CROSS-EXAMINATION: MS LOGAN

Q. Mr Braggins asked you a series of questions regarding shopper convenience, and the impact of being unable to make grocery purchases including alcohol, outside of the period 9.00 am to 9.00 pm. Are you aware of any other ways that a shopper could complete their grocery purchase, including alcohol, outside of those hours?

A. No.

Q. Can I refer you to the PLAP?

WITNESS REFERRED TO PLAP

25 Q. Page 13 of the PLAP at 5.2.1?
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A. Yes.

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Q. That part deals with remote sellers?

A. Yes.

Q. Who would that include?

5 A. Any off-licence that has the ability to deliver, so any off-licence has the ability to deliver off the thing but the remote sellers are those that are internet-based generally or mail order type situations.

Q. So –

A. So, so far as supermarkets go, most supermarket chains offer an internet ordering service so I'd imagine they'd be classed as remote sellers.

10 Q. And what does the PLAP say in terms of the trading hours of remote sellers?

A. They can take orders at any time and any day but delivery is only between 9.00 am and 9.00 pm.

Q. What effect do you think that has on convenience?

15 A. Using the example of it being convenient to shop between those times, there is an opportunity for people to place their orders and have them delivered to their homes so that would be a convenience so I suppose it would offset any inconvenience not being able to purchase their alcohol with the groceries.

Q. I'd just like to refer to Dr Kelly's evidence at 2.31.

THE COURT:

20 Sorry, which reference?

MS LOGAN:

2.31 of Dr Kelly's evidence, I'm just looking for the page reference, Sir. Page 129 of the Progressive bundle.

THE COURT:

25 So that is in the rebuttal? Yes.

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RE-EXAMINATION CONTINUES: MS LOGAN

Q. Mr Braggins read an excerpt of that quote and asked whether or not you agree with it. I wonder if you could read the balance – read the quote in its entirety for the Authority?

5 WITNESS REFERRED TO DR KELLY'S EVIDENCE

A. "Risk factor analysis cannot be carried out for off-licence premises as available data does not link offences to off-licence premises. However, risk factors to be considered in the off-licence risk-based licensing framework include later closing hour compliance history. An additional potential risk factor specific to the New Zealand context is the size of single areas for supermarkets and grocery stores. Location, density and volume of alcohol sold were excluded as risk factors. Stakeholder consultation will be required to determine the regulatory effort and relative risk factors of off-licence premises."

Q. Mr Braggins also highlighted differences between the trading hours of on-licences and off-licences and particularly in the moratorium area. Can you describe the degree of supervision of alcohol purchasing consumption in an on-licence?

A. There are, there must be a certified manager present. In Dunedin, we also ensure that the majority of staff working in an on-licence premises is aware of the intoxication indicators and some of the later night premises also have door staff which are also very conversant with intoxication identifiers.

1350

Q. And where is that alcohol consumed?

A. In the bar itself, in the licensed premises itself under that supervision.

Q. How does that compare to an off-licence?

A. Off-licence consumption can be anywhere. It's usually in uncontrolled environments, unsupervised environments. The exception would be if it was a gathering at a dwelling where the parents are present but generally speaking, it's unsupervised and it can be either at a dwelling or some other place.

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Q. Mr Braggins also asked you some questions about hospital admissions and asked whether or not those gave an indicator of the source of alcohol. Are you aware of any studies on hospital admissions in New Zealand and studies into the amount and source of alcohol consumed prior to the admission?

5 A. I stand to be corrected but there was a study done with the Wellington ED under a Dr Paul Quigley. I'm not sure if he covered that but he certainly dealt with whether it was on-site, off-site consumption. It was just one of the questions he built into their computer program. I have no idea what the results were, though.

10 Q. Mr Braggins also asked you about the impact of the moratorium on breweries in that area. What sort of product would you expect those breweries to be selling?

A. Predominantly beer, being craft type, it's unlikely to be a low percent alcohol so they'd be a higher priced product generally but as it was pointed out, they may also sell a, in my term sub-standard quality ale.

15 Q. What sort of hours would you expect those breweries to be open, from your knowledge of the area?

A. Generally nine or 10 o'clock in the morning and go through until sort of late afternoon, early evening.

20 **MR BRAGGINS:**

Sir, that's fairly speculative.

THE COURT:

Pardon me?

MR BRAGGINS:

25 That's fairly speculative in the light of it being a future licence, not one the ones that's being existing at the moment.

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THE COURT:

Yes, I understand. Ms Logan?

MS LOGAN:

Perhaps if I just reframe the question, Sir.

5 THE COURT:

Thank you.

RE-EXAMINATION CONTINUES: MS LOGAN

Q. The breweries in that area, at present, what sort of hours are they open, generally speaking?

- 10 A. I'm not sure exactly but I'm fairly certain it's nine or 10 o'clock in the morning they open and close, as I said, sort of late afternoon, early evening. One of those breweries, the new brewery has an on-licence attached as well but the off-licence shuts at about 6.00 pm, from memory.

MEMBER MOORHEAD:

- 15 Q. Mr Mechen, paragraph 49 of your evidence, and this is the concession that you have made that the council misunderstood the position in relation to any hours that it might set in its LAP and you have been asked about this in cross-examination. It is quite a fundamental issue, isn't it?
- A. Yes. I'm dealing with the DLC weekly and they have it in their mind and as I
20 said, it's just become a misunderstanding in my own mind that they can step outside the LAP when it comes to setting conditions and it's just that small point about the hours, the more restrictive of the LAP or default hours that yeah, just slipped my mind completely.

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Q. Well, you say it is a small point, and this will be a matter for legal submission at the end of the day, but do you not agree that that is something that we should take into account in considering whether this approach by the council is reasonable or not?

5 A. Yes.

Q. In regard to the on-licence provisions, hour and the entertainment category and the one-way door, you conceded in response to questions that some very good points were made that had not been considered. Has the council changed its position in regard to those policies?

10 A. Not at the moment. I'm not in a position to talk to the chair of that subcommittee, is out of the country at the moment but it'd be something I'd do as soon as he's back.

Q. So you are unable to say whether council would want to reconsider its position on that at this point?

15 A. Yes.

Q. The exception in the moratorium area for the premium wine stores, do you anticipate there being any issues around trying to work out what might fall within the category of that exception?

A. I don't think so because during discussions when they put that in the PLAP, they're talking about premises that didn't stock any item that was attractive to the younger, more vulnerable person so they're excluding RTDs, the cheaper beers, from being in those premises. That was the understanding that I took out of the deliberations. So it was just, literally just premium wine stores.

Q. But it is not defined in the LAP anywhere?

25 A. No.

Q. Would you be surprised if I told you that the Authority's experience of hearing applications over the years has been that we have often been told that a particular premises applying for a licence will be a premium wine store and yet further down the track, that turns out not to have been the case?

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A. It doesn't surprise me at all, but I suppose in the DLC environment, there's more of an ability to keep tabs on what's going on. The decision that I referred to yesterday, I think it was the Foodcourt Distributors Limited, that was granted on the proviso that it was a premium wine, spirits place and that didn't last the first 12 months. It just didn't sustain itself, so they – I think licensees are a bit more aware of the conditions that license is granted on.

Q. Do you think it would have assisted to have had a definition of that category?

A. Yes, in hindsight.

MEMBER MILLER:

Q. Just following up on that point from my colleague, are you telling us then that, in determining what constitutes a premium wine store, it will be on price point?

A. Yes.

Q. And what is that price point?

A. It would be up to the DLC to decide on that but the DLC are Dunedin residents and they're well aware of, and they've all got older children, they're well aware of what attracts the younger or the more vulnerable purchaser. I have no idea what that tipping point is.

Q. I have heard wine defined at \$10 and below as a grocery item?

A. Yes, I've heard \$20.

Q. Okay. You have answered my question anyway, so thank you.

THE COURT:

I have got no further questions.

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MEMBER MOORHEAD:

Q. I just have one more question, Mr Mechen. We have discussed in the course of this hearing quite often particular events that occur in the student area and

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the concern around the harm associated with those. Is it fair to say, though, that the harm that occurs is associated with the event itself rather than the licensing regime that it happens within? For example, the Hyde Street party, if you are drinking to excess all day, the hours that the premises are open either side of that is not really going to have much of an impact, is it?

A. I'd agree on that. The Hyde Street party is an event in itself. The orientation events and re-orientation events are quite often under special licence or at a licensed premises but during those periods and through the acting of care, generally there are big parties and most of that is from off-licence sales. It's quite interesting, the research they use one kilometre and three kilometre – a licensee I spoke to recently has a premises in the moratorium area and one outside the moratorium area and he said the students are very mobile and are more than happy to travel to the best deal so yeah, I think the kilometre, three kilometre radii that are used are sort of a bit of a red herring, as it were, the density in that bit. But certainly, the students are mobile, they'll go to the best deal which isn't the supermarkets at the moment. There's another premises that does better than them.

Q. I did have one further question for you and you will know I was concerned to try and make sure we had the accurate number of how many off-licences currently did exist within that moratorium area. I am aware that there was supposed to be a DLC hearing in relation to a renewal of the particular premises?

A. Yes.

Q. Do I take it the hearing has occurred but there is no decision on that, would that be correct?

A. The committee's reconvening on the 6th of December for final decision.

Q. Thank you for clarifying that.

ALCOHOL REGULATORY AND LICENCING AUTHORITY AND ALICE
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NEW ZEALAND POLICE

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DUNEDIN HOSPITALITY GROUP	287060/2015	
IGNITION GROUP	PLAP 287062/2015	
DE MILLE RETAIL HOLDINGS	PLAP 287093/2015	
INDEPENDANT LIQUOR NZ LIMITED	PLAP 287115/2015	(21 Nov
	PLAP287166/2016	2016)

THE COURT:

Ms Logan, any further examination in light of our questions?

MS LOGAN:

No, Sir.

5 WITNESS EXCUSED

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NEW ZEALAND POLICE

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THE COURT:

Thank you. I think in light of the fact that we are going to adjourn because we have got another cross-examination to complete – how is she doing, by the way?

MR BRAGGINS:

- 5 Good. The last – I spoke to her daughter at lunchtime. She was due to come out of theatre so the two daughters are down in Wellington, the family is together, so that's –

THE COURT:

Right.

10 **MR BRAGGINS:**

Just because it can be – Francesca's going to be in Dunedin at least until Monday so we've arranged some flowers and some stuff.

THE COURT:

Great.

15 **MR BRAGGINS:**

I should check, can we take her off cross-examination now? I didn't actually –

THE COURT:

Oh, yes.

MEMBER MOORHEAD:

- 20 Oh, you mean you cannot talk to her?

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THE COURT:

Yes, no, we will take her off cross-examination, yes, thank you. Good point of order. So look, I think the, what we will need to do is reconvene. I suspect what we will have to do is have a teleconference just to check availability of the parties as well as

5 a venue, and we are looking at a venue. The transcript is being prepared as we speak. It is expected that they will probably have that done next week which is far more favourable than I expected but until we have it, we do not have it, so I think that probably, if we are looking in about three weeks' time is about right to allow people to have the transcript and have a look at that before we do anything, but let's have a

10 teleconference on that and just line up diaries once we have a little bit more information from each other, if that suits.

MR BRAGGINS:

Thank you, Sir.

MS LOGAN:

15 Certainly, Sir.

THE COURT:

Great, thank you. Great, we will adjourn until whatever that date is.

COURT ADJOURNS: 2.04 PM

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Notes of Evidence Legend

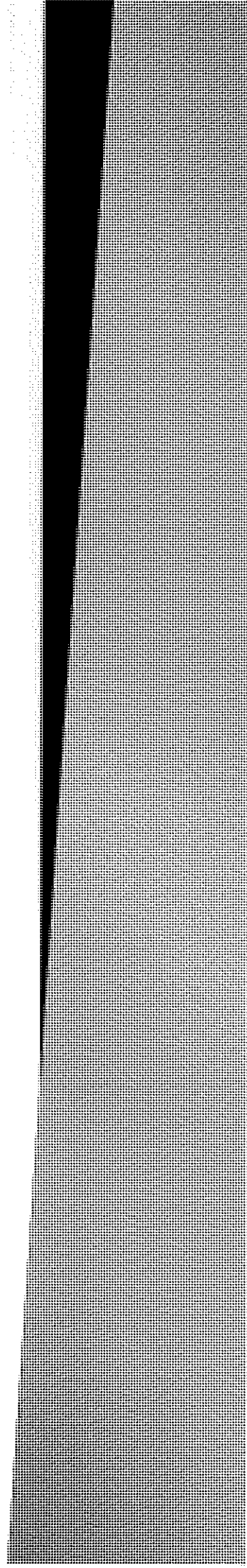
National Transcription Service

Indicator	Explanation
Long dash –	Indicates interruption: Q. I think you were – (<i>Interrupted by A.</i>) A. I was – (<i>Interrupted by Q.</i>) Q. – just saying that – (<i>First dash indicates continuation of counsel's question.</i>) A. – about to say (<i>First dash indicates continuation of witness' answer.</i>) This format could also indicate talking over by one or both parties.
Long dash (within text)	Long dash within text indicates a change of direction, either in Q or A: Q. Did you use the same tools – well first, did you see him in the car? A. I saw him through – I went over to the window and noticed him.
Long dash (part spoken word)	Long dash can indicate a part spoken word by witness: A. Yes I definitely saw a blu – red car go past.
Ellipses ... (in evidence)	Indicates speaker has trailed off: A. I suppose I was just... (<i>Generally witness has trailed off during the sentence and does not finish.</i>) Q. Okay well let's go back to the 11th.
Ellipses ... (in reading of briefs)	Indicates the witness has been asked to pause in the reading of the brief: A. "...went back home." The resumption of reading is noted by the next three words, with the ellipses repeated to signify reading continues until the end of the brief when the last three words are noted. A. "At the time...called me over."
Bold text (in evidence)	If an interpreter is present and answering for a witness, text in bold refers on all occasions to the interpreter speaking, with the <i>first</i> instance only of the interpreter speaking headed up with the word "Interpreter": Q. How many were in the car? A. Interpreter: There were six. Q. So six altogether? A. Yes six – no only five – sorry, only five. (<i>Interpreter speaking – witness speaking – interpreter speaking.</i>)
Bold text in square brackets (in evidence)	If an interpreter is present and answering for a witness, to distinguish between the interpreter's translation and the interpreter's "aside" comments, bold text is contained within square brackets: Q. So you say you were having an argument? A. Not argue, I think it is negotiation, ah, re – sorry. Negotiation, bartering. [I think that's what he meant] Yeah not argue.



Dunedin City Council Discussion

August 2017



Agenda

- ▶ Introductions
- ▶ Discussion Topics
 - Reducing sales of glass alcohol products during Orientation Week
 - Provisional Local Alcohol Policy: Off-Licence Hours
- ▶ General Discussion

Orientation Week options to reduce glass

- ▶ Limit promotional displays of Beer and RTD's to canned products only in ambient areas of the store (excludes walk in chillers)
- ▶ Display lower alcohol products/alternatives
- ▶ Only promote canned products in ODT
- ▶ Investigate job lots of canned beer
- ▶ Place full strength spirits in paper bags when sold
- ▶ No alcohol tastings
- ▶ Increase monitoring/security at checkouts/single alcohol areas later in the day
- ▶ Take a tougher stance on selling to customers who have been drinking
- ▶ Display POS from University/DCC "Look after your feet, buy cans, not bottles"
- ▶ Organise recycling bins for use by customers



Provisional LAP

- ▶ Foodstuffs supports Off-Licence trading hours of 7am – 10pm
- ▶ Aligns with maximum trading hours – makes sense both from a customer and operational perspective
- ▶ Further restriction of hours is not supported by evidence that links hours of availability with excessive consumption of alcohol causing harm
- ▶ Further restrictions of hours are an excessive and disproportionate response

Sharon Bodeker

From: Steve Anderson <Steve.Anderson@foodstuffs-si.co.nz>
Sent: Friday, 1 September 2017 02:28 p.m.
To: Simon Pickford; Tim Donaldson; Brendon Lawry (Liquorland)
Cc: Sue Bidrose; Dave Cull; Chris Staynes; proctor@otago.ac.nz; Harlene Hayne; Hugh Baird (OUSA); David Benson-Pope
Subject: RE: Following up - Foodstuffs and DCC meeting

Hi Simon

Thanks for your notes. Apologies for the delay in reply but I have been very busy with our Strategic Planning process and a Board meeting.

Tim, Brendon and I found our meeting very interesting and we believe that we can make a difference in alcohol related issues by working together.

I have the following feedback in regards to your specific questions.

- 1) We are unable to provide the data you requested as these data are not available in our systems. I can advise that for Supermarket sales between 9 and 10 pm alcohol sales are low, representing only 1.39% of daily liquor sales during the hour.
- 2) We are unable to extend any promotional or merchandising initiatives out from the two O weeks. This is due to the fact that we are managing North Dunedin issues within a South Island and national promotional plan. We are happy to extend other initiatives over a wider time line, such as any targeted marketing or educational initiatives.
- 3) Due to the fact that we are very tight in our Centre City car park we are unable to dedicate the space for a recycling facility.

We are keen to further progress and agree a set of actions for next year's O weeks. Please advise when we should next meet with the aim to agree such a plan.

Regards

Steve

From: Simon Pickford [mailto:Simon.Pickford@dcc.govt.nz]
Sent: Monday, 28 August 2017 9:42 a.m.
To: Steve Anderson <Steve.Anderson@foodstuffs-si.co.nz>; Tim Donaldson <Tim.Donaldson@foodstuffs-si.co.nz>; Brendon Lawry (Liquorland) <brendonL@liquorland.co.nz>
Cc: Sue Bidrose <Sue.Bidrose@dcc.govt.nz>; Dave Cull <Dave.Cull@dcc.govt.nz>; Chris Staynes <Chris.Staynes@dcc.govt.nz>; proctor@otago.ac.nz; Harlene Hayne <harlene.hayne@otago.ac.nz>; Hugh Baird (OUSA) <president@ousa.org.nz>; David Benson-Pope <David.Benson-Pope@dcc.govt.nz>
Subject: Re: Following up - Foodstuffs and DCC meeting

Hi Steve, Tim and Brendon,

I have spoken to DCC's Solid Waste Manager and with regard to Foodstuffs' proposals. She thought the initiatives were great and had the following feedback:

Simon Pickford
General Manager Community Services
Dunedin City Council

50 The Octagon, Dunedin; P O Box 5045, Moray Place, Dunedin 9058, New Zealand
Telephone: 03 477 4000; Mobile: 021 949 922; Fax: 03 474 3594
Email: simon.pickford@dcc.govt.nz



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Please note that the views and opinions expressed in this message may be those of the individual and not necessarily those of Foodstuffs South Island Ltd.

Thank you.

ELT Minute extract 13 March 2018

8 COUNCIL 20 MARCH 2018: DUNEDIN PROVISIONAL LOCAL ALCOHOL POLICY

Following consideration the Dunedin Provisional Local Alcohol Policy report was approved for the Council meeting of 20 March 2018 with amendment.