

**IN THE MATTER**

of the Sale and Supply of  
Alcohol Act 2012 (the Act)

**AND**

**IN THE MATTER**

of an application by **THE  
HELICOPTER LINE LIMITED**  
pursuant to S.99 of the Act for  
an application for an off-licence  
located at 29 Lucas Place,  
Frankton, Queenstown

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr G B Pay  
Members: Mr LA Cocks  
Mr N Gillespie

**HEARING** at QUEENSTOWN on 9<sup>th</sup> July 2026

**APPEARANCES**

Ms T J Surrey – Lawyer for the applicant  
Mr M Quickfall & Mr SJ Cooney– representing The Helicopter Line Limited –  
applicant  
Miss AE Smythe – representing Medical Officer of Health (MOH) – in opposition  
Ms K Burns – Queenstown Lakes Licensing Inspector – to assist  
Sergeant TD Haggart – NZ Police – in opposition

**RESERVED DECISION OF THE COMMITTEE**

***Introduction.***

1. This is an application by The Helicopter Line Limited (the Applicant), for a new off-licence in respect of premises situated at 29 Lucas Place, Frankton, Queenstown known as “The Helicopter Line”. The application was lodged on 21<sup>st</sup> July 2023.
2. There was some correspondence between Counsel for the Applicant and the Inspector before the Police and MOH received the application for their reports in November 2023. Both agencies subsequently submitted reports in opposition.
3. This triggered a meeting between the parties with a view to discuss the issues raised by the Agencies, including the Inspector who had similar concerns. The issues in brief were training, systems and certified managers. Also discussed was if the criteria under s.35 of the Act was met. Following the meeting there was a

series of communications with Counsel for the Applicant which continued into late September of 2024.

## **The Law**

### **32 KINDS OF PREMISES FOR WHICH OFF-LICENCES MAY BE ISSUED**

(1) *An off-licence may be issued only—*

(a) *to the holder of an on-licence issued for a hotel or tavern, for the premises (or part of the premises) for which the on-licence is held; or*

(b) *for retail premises where (in the opinion of the licensing authority or licensing committee concerned) at least 85% of the annual sales revenue is expected to be earned from the sale of alcohol for consumption somewhere else; or*

(c) *if—*

(i) *the premises for which it is to be issued are not retail premises; and*

(ii) *at least 85% of the annual income of the person to whom it is to be issued is (in the opinion of the licensing authority or licensing committee concerned) expected to be earned from the remote sale of alcohol; or*

(d) *for premises where (in the opinion of the licensing authority or licensing committee concerned) the principal business carried on is the manufacture of alcohol; or*

(e) *for premises that (in the opinion of the licensing authority or licensing committee concerned) are a supermarket with a floor area of at least 1 000 m<sup>2</sup> (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items); or*

(f) *for premises that (in the opinion of the licensing authority or licensing committee concerned) are a grocery store; or*

(g) *for premises that (in the opinion of the licensing authority or licensing committee concerned) are a winery cellar door.*

(2) *Premises for which (by virtue of section 350(b)(i)) an off-licence must not be issued except to a licensing trust can still be premises for which (by virtue of subsection (1)) an off-licence may be issued.*

(3) *Section 36 overrides subsection (1).*

### **35 EXCEPTION FOR CERTAIN COMPLEMENTARY SALES**

(1) *The licensing authority or licensing committee concerned may direct that an off-licence should be issued for premises not of a kind described in section 32(1) if it is satisfied that—*

(a) *the premises are a shop, but not a shop where the principal business carried on is the sale of food (whether food of a particular kind or kinds, or a range of food); and*

(b) *alcohol would be an appropriate complement to goods of the kind sold (or to be sold) in the shop.*

(2) *Subsection (1) overrides section 32(1) but is overridden by section 36.*

### **36 NO OFF-LICENCES FOR PETROL STATIONS, CERTAIN GARAGES, DAIRIES, CONVENIENCE STORES, CONVEYANCES, OR SHOPS WITHIN SHOPS**

*The licensing authority or licensing committee concerned must not direct that an off-licence should be issued for any premises if (in its opinion)—*

*(a) the principal business carried on there is—*

*(i) the sale of automotive fuels; or*

*(ii) the repair and servicing of motor vehicles and the sale of automotive fuels; or*

*(b) they are a shop of the kind commonly thought of as a dairy; or*

*(c) they are a shop of the kind commonly thought of as a convenience store; or*

*(d) they are a conveyance; or*

*(e) they are situated (wholly or partially) within a shop; or*

*(f) the public can reach them directly from a shop, or directly from premises where the principal business carried on is a business of a kind described in paragraph (a).*

### **105 CRITERIA FOR ISSUE OF LICENCES**

*(1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*

*(a) the object of this Act:*

*(b) the suitability of the applicant:*

*(c) any relevant local alcohol policy:*

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

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

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

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

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

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

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

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

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

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

*(2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*

## **106 Considering effects of issue or renewal of licence on amenity and good order of locality**

*(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—*

*(a) the following matters (as they relate to the locality):*

*(i) current, and possible future, noise levels:*

*(ii) current, and possible future, levels of nuisance and vandalism:*

*(iii) the number of premises for which licences of the kind concerned are already held; and*

*(b) the extent to which the following purposes are compatible:*

*(i) the purposes for which land near the premises concerned is used:*

*(ii) the purposes for which those premises will be used if the licence is issued.*

*(2) In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):*

*(a) current, and possible future, noise levels:*

*(b) current, and possible future, levels of nuisance and vandalism.*

## **The Application**

4. The Applicant company consists of a sole director - Mark Quickfall.
5. The application stated the intended nature of the business is “complementary” and the sale of alcohol will not be the principal purpose of the business. The application states the principal purpose of the business is “tourism activities predominantly scenic flights and tours”. The applicant seeks to sell alcohol between the hours of 8am until 8pm daily.
6. The premises is in a light industrial area near the Queenstown Airport, and the proposed business meets the requirements of the Resource Management Act 1991. The report from the Licensing Inspector indicates that building code compliance has been obtained. The application was correctly advertised and no objections were received.

## **The Hearing**

7. At the onset of the hearing, it was established between all parties that the previously held concerns of the reporting agencies regarding the appropriateness of the Applicant’s systems, staff, and training, in order to comply with the law, have been allayed and as such, are not in question for the purposes of this hearing.
8. All parties agreed the question to be determined by the Committee was whether s.35 of the Act applies to the application before us, namely that the premises meets an exception for certain complementary sales.

9. Mr Quickfall gave evidence for the Applicant. He is the Chief Executive and sole director of the Applicant, and he provided his background and current involvement as executive and director of several mainly tourism-oriented businesses and organisations.
10. Mr Quickfall told us the Applicant flies more than 60,000 passengers in over 12,000 helicopter flights each year.
11. The Applicant offers: *"a variety of tour packages and scenic flights. The target market is domestic and international tourists. We market to high end conference and incentive groups, weddings and other special occasions."* He went on to say *"The Helicopter Line has applied for an off-licence in order to cater to requests for a limited range and quantity of alcohol products (sic) to be pre-ordered and supplied in connection with passengers flying from our Queenstown base as part of a private or charter flight. This would be a very minor part of the overall operation but is something we seek to provide in a controlled and compliant manner on our private charters."*
12. He went on to tell us of the type of flight where the customer requests alcohol to be included as being *"....a celebratory drink to mark a special occasion or to have a glass of wine as a group in a unique location.....we receive requests to supply a bottle of champagne for events like marriage proposals and for other special occasions like birthdays."*
13. Mr Quickfall stated that currently these requests are met by the customer bringing their own alcohol, but he was of the opinion this gave the Applicant *"less control.."* and the issue of an off-licence would give the Applicant *"..a greater degree of control and a legislative framework in which to operate."* This, he believed would *"...provide a more responsible and regulated environment for the limited consumption of alcohol."* No alcohol was intended to be sold to anyone other than customers who charter a helicopter flight. When questioned, Mr Quickfall told us there had been no past problems with people who brought their own alcohol on such charters.
14. Mr Quickfall made it clear the Applicant had no intention of selling alcohol to customers on what he termed *"scenic flights"* which are taken by a group of people who are not known to each other and went to some length differentiating the type of helicopter flight hires. He also stated the range of alcoholic products the Applicant wished to sell was limited to champagne, local wine and beer. He stated there was no intention to require the customer to purchase anything other than a helicopter charter to be eligible to be sold alcohol.
15. Mr Quickfall also explained to us that alcohol would not be displayed for sale but would be included in the options for charter packages along with photographs, food hampers and the like. The intent is for alcohol ordered by the customer to be provided by the helicopter pilot on the arrival at their destination. The pilot would be expected to ensure the client was not showing any of the signs of intoxication before dispensing the drink. Pilots would all undergo sale of alcohol training.

16. Mr Quickfall stated the product being sold by the Applicant was the “experience” of the helicopter charter package i.e.: the experience of being on a remote mountain-top to celebrate a personal occasion.
17. Mr Cooney gave evidence that he has been employed as the Base Manager for the Applicant for the last six years. He told us he previously held a General Manager’s certificate under the 1989 Act. He will be the person responsible for “*..managing the sale and supply of alcohol and supervising all staff involved in this process*” should a licence be issued. He told us he has applied for a manager’s certificate and gave us information on how the staffing and systems would be established and maintained with relation to a licence.
18. Mr Cooney confirmed that the booking office counter area is the area to be licensed and within this area there are a small amount of branded merchandise items such as hoodies, padded vests and sunglasses. He confirmed this is the area where customers gather prior to boarding flights.
19. Mr Cooney confirmed that helicopter charters with the Applicant can be booked using a third-party provider. When questioned about this he stated that due to the uncertain nature of the business, credit cards are only transacted when the flight is confirmed as going ahead because poor weather can often cause cancellations.
20. Ms Surrey made submissions on behalf of the Applicant. She told us that s.35 of the Act does not impose a test of exceptional circumstances. She also referred to the *Poore v Wests (NZ) Limited* (2016) NZARLA decision referred to by Miss Smythe (para 21) and submits the nature of business on the applicant’s premises meets the definition of a “shop”, thereby satisfying s.35(1)(a).
21. Ms Surrey’s submissions with regard to s.35(1)(b) was in essence that the Committee should think of the “goods” sold (or to be sold) by the Applicant as souvenirs, photo packs, picnic hampers, gift and celebration package items that are items associated with the privately chartered helicopter experiences. It is these items, she asserts, that alcohol sold by the Applicant would be complementary to.
22. Ms Surrey offered the following conditions should a licence be granted –
  - a) *Only champagne, Central Otago wine & beer may be sold pursuant to the off-licence*
  - b) *Alcohol may only be sold as part of a pre-ordered private charter, picnic hamper, gift or celebration package and must not be sold as a standalone item*
  - c) *Alcohol must not be displayed in any public area of the premises*
  - d) *No spirits or liquor may be sold*
  - e) *Staff involved in the sale, supply or delivery of alcohol must complete in-house alcohol licensing training approved by the Licensing Inspector (and must complete refresher training annually)*
  - f) *BYO alcohol must not be permitted on any private charter or package to which alcohol supplied under the off-licence relates*

g) *Alcohol must not be sold as a stand-alone item and must not be sold to customers who are not purchasing an eligible package*

h) *No alcohol may be sold or supplied for consumption on licensed premises.*

23. Sergeant Haggart spoke to us and stated she was opposing the application on the grounds that the premises do not meet the definition of a “shop” and therefore cannot satisfy s.35.

24. The Sergeant did not offer us a definition to consider. She also stated “*Police hold concerns that the small amount of merchandise items that the applicant sells within the premises do not fall within appropriate items that alcohol can complement. Police believe that the flights and packages offered by the applicant are services and not goods.*”

25. Sergeant Haggart confirmed that matters of alcohol related harm were not thought to be a concern with the operating model suggested by the Applicant.

26. Miss Smythe on behalf of the MOH also opposed the application on the grounds s.35 have not been met. First, she told us the floor plan of the premises that accompanied the application “*..shows a premises layout centred on customer reception and operational processing rather than retail activity*” and that photographs of the area reinforce this impression. Therefore, the premises do not present as a shop “*in any ordinary sense.*” She told us she believed the premises should be more correctly termed an operations base.”

27. Secondly, Miss Smythe told us the principal business carried out from the premises is the provision of helicopter experiences, flights, landings and charter packages. She told us the Applicant’s intent to tie alcohol sales to the “*flight experience rather than to the sale of goods from the premises.*” She believes the evidence indicates that the alcohol is intended to compliment the services provided rather than the goods sold.

28. Miss Smythe referred us to the Authority decision *Gladding v Glenorchy Marketplace* (2018) NZARLA 209 para (54) –

*In deciding whether to issue an off-licence, a DLC must have regard to the criteria in s.105 of the Act. A logically prior question, however, is whether the premises are one for which an off-licence can be issued. Sections 32, 34 and 35 (and the prohibition in s.36), define the kinds of premises for which an off-licence may issue. Put simply, if the premises are not eligible, no matter how well the application satisfies the criteria in s.105, a licence cannot issue.*

29. Miss Smythe pointed to the dual test in s.35 and referred us to the Authority decision *Poore v Wests (NZ) Limited* (2016) NZARLA 348 para (50) –

*...While the term “shop” is not defined in the Act, the ordinary meaning of the term “shop” is building, room etc for retail sale of some commodity or service (Concise Oxford Dictionary 7th Ed.)*

Her submission is that s.35(1)(a) is not satisfied as the premises is not a shop.

30. Miss Smythe also submits that s.35(1)(b) is not satisfied by the application because the goods that are sold from the premises are “*limited, secondary and incidental...*”

and “*The premises operates principally as a service provider. The core business is the sale of scenic helicopter flights and experiences.*” Her submission is that helicopter flights are not “goods”.

31. She stated that if Parliament had intended for business that provide services to be allowed an off-licence, they would have used the term “goods and services” in s.35(1)(b). She submits that the Applicant has a problem with the approach taken by the Act where ss.32-36 proscribes a restrictive approach to the type of business that may be granted an off-licence. She submits “*There may not be a licensing solution to what is a commercial problem.*”
32. In relation to the definition of “goods” (which is not defined within the Act) Miss Smyth directs us to the definition provided in the Goods and Services Tax Act 1985 –

*s.2 goods means all kinds of personal or real property; but does not include choses in action, money, cryptocurrency, or a product that is transmitted by means of a wire, cable, radio, optical or other electromagnetic system or by means of a similar technical system*

*s.2 services means anything which is not goods or money or cryptocurrency*

33. Further case decisions were referred to by Miss Smyth – namely *Combined Rural Traders Society Ltd v Batcheler*, HC Christchurch 2008-409-1813 and *The Warehouse Limited* LLA PH1673/2008. These decisions were quoted in relation to her argument that the sale of liquor would not be an appropriate complement to goods sold in the premises. We note these decisions were made pursuant to the Sale of Liquor Act 1989 s.57 which set the restrictions and exemptions for who could hold an off-licence. However, the wording of s.57(2)(b) of that Act was worded ***That the sale of liquor would be an appropriate complement to the kind of goods sold in the premises.*** (our emphasis). The similar provision is s.35(1)(b) of the Sale and Supply of Alcohol Act 2012 has different wording - ***alcohol would be an appropriate complement to goods of the kind sold (or to be sold) in the shop*** (our emphasis). The effect of that change in wording is that the term is now an objective one as opposed to the previous subjective term.
34. Ms Burns presented her report and furnished a submission to the Committee. The Inspectorate was not supportive of the application. Ms Burns questioned the Applicant’s ability to satisfy either limb of s.35 however she did state in her final submission at paragraph 9 that the “*...the premises may demonstrate some characteristics associated with a shop.*” Regarding s.35(1)(b), she stated:
 

*“The applicant’s principal business is the provision of helicopter flights, charters, and tourism experiences. A flight ticket is not, in substance, a good. It is evidence of a booking and a contractual entitlement to receive a service. The ticket itself has no intrinsic value beyond confirming that the holder has purchased, or is entitled to receive, a helicopter flight or charter experience. The underlying transaction is therefore the purchase of a service, not the purchase of a good.”*
35. To assist the Committee with what constitutes a “good” and how this differed from a “service”, she drew our attention to the Consumer Guarantees Act 1993, s.2 –

*goods—*

*(a) means personal property of every kind (whether tangible or intangible), other than money and choses in action; and*

*(b) includes—*

*(i) goods attached to, or incorporated in, any real or personal property:*

*(ii) ships, aircraft, and vehicles:*

*(iii) animals, including fish:*

*(iv) minerals, trees, and crops, whether on, under, or attached to land or not:*

*(v) non-reticulated gas:*

*(vi) to avoid doubt, water and computer software; but*

*(c) despite paragraph (b)(i), does not include a whole building, or part of a whole building, attached to land unless the building is a structure that is easily removable and is not designed for residential accommodation*

*services—*

*(a) includes any rights (including rights in relation to, and interests in, personal property), benefits, privileges, or facilities that are, or are to be, provided, granted, or conferred by a supplier; and*

*(b) includes (without limitation) the rights, benefits, privileges, or facilities that are, or are to be, provided, granted, or conferred by a supplier under any of the following classes of contract:*

*(i) a contract for, or in relation to, the performance of work (including work of a professional nature), whether with or without the supply of goods:*

*(ii) a contract for, or in relation to, the provision in trade of facilities for accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking, or recreation:*

*(iii) a contract of insurance, including life assurance and life reinsurance:*

*(iv) a contract between a bank and a customer of the bank:*

*(v) a contract for, or in relation to, the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits:*

*(vi) a contract for, or in relation to, the supply of telecommunications or water, or the removal of wastewater:*

*(vii) a contract relating to (but not for) the supply of gas or electricity, other than line function services; but*

*(c) does not include—*

*(i) any rights, benefits, privileges, or facilities that are, or are to be, provided, granted, or conferred by a supplier by simply paying or crediting any money to the consumer without the performance of any other task (other than one that is merely incidental to the making of the payment or credit); and*

*(ii) rights or benefits in the form of the supply of goods or the performance of work under a contract of service*

36. Ms Burns made a submission that conditions should not be imposed on a licence for the sole purpose of allaying the concerns of the Committee and says the Committee *“...must first determine whether the applicant satisfies both limbs of s.35 before considering whether any discretionary conditions are appropriate.”* She then addressed the matter of third-party booking agencies and questioned if this constituted a transaction in the nature of a sale (of alcohol).
37. Ms Burns referred us to ARLA decision *Asahi Ventures Limited t/a Smugglers Liquor Nawton v Police* [2023] NZARLA 187 para 56 –

*“The Authority considers that the opposition from the tri-agencies who represent the community is not to be lightly disregarded”.*

She also stated:

*“During the hearing, the applicant submitted that customised or “bespoke” packages may be offered to customers. This was the first time this proposal had been raised, and it was not referred to in the original application. In my opinion, the proposal appears to have arisen in response to the Inspector’s Report and questioning from the Committee.”*

38. The Applicant was given the opportunity to make a final submission and did so through Ms Surrey. She argued that s.35(1)(a) has no fetter on what may be sold from a premises to establish it as being a “shop” other than to prohibit issuing an off-licence to those shops that where the principal business carried on is the sale of food (whether food of a particular kind or kinds, or a range of food). Therefore, she states, s.35(1)(a) is satisfied.
39. Regarding s.35(1)(b), Ms Surrey also covers the question raised by the Inspector over the “bespoke packages” offered at the hearing. She stated “...

*“The alcohol and the specified celebratory packages including picnic hampers, gifts, photo packs and souvenirs are deliberately selected and sold together as components of the same curated offering.*

*The relationship is intrinsic to the package, not an unrelated item added to a transaction.[28] Section 35 does not require the alcohol to complement every item sold in the shop. It is sufficient that the alcohol is an appropriate complement to goods of the kind with which it will be sold.*

*The Committee can impose conditions to ensure that every alcohol sale is tied to those specified goods....[30] The Inspector submits that the concept of bespoke packages was raised for the first time at the hearing and was insufficiently defined. The concern can be addressed without treating the proposal as open-ended. [31]*

*The term “bespoke” does not mean that THL seeks authority to assemble any package it chooses after the licence is granted. It means that a customer may select from a finite*

*range of identified components, including the flight, specified tangible goods and a limited alcohol offering. [32]*

*The evidence given at the hearing narrows the original proposal. It does not increase the range of alcohol instead; it limits what the Applicant is seeking. It does not alter the essential nature of the application.”*

40. Regarding the third-party booking system, Ms Surrey referred us to the NZ Supreme Court decision *Dollars & Sense Finance Limited 2008* (NZSC 20) where she states it held

*“An authorised agent may conclude a transaction and receive the consideration on behalf of its principal. [36] The customer’s payment does not make the agent the seller. Nor does the agent’s retention of an agreed commission convert the transaction into a purchase and resale. The commission is the agent’s remuneration for arranging the principal’s transaction. [37] There would be a separate retail sale by the agent only if the agent acquired the package or alcohol from THL and then resold it to the customer on its own account. The Inspector identifies no evidence of any transfer of title to the agent or any independent resale.”*

41. Ms Surrey suggests further conditions would be acceptable to the Applicant – namely: *The Applicant set out proposed conditions at paragraph [63] of its submissions dated 3 July 2026. These proposed conditions could be further refined to state that:*

*[a] Alcohol may be sold only as part of a pre-ordered package containing at least one of the specified non-alcohol goods;*

*[b] No alcohol may be sold as a standalone product.*

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

42. The Committee is grateful for the well-researched and well written submissions from all parties to this hearing. The application is unusual for the district and the various viewpoints helped with the decision.
43. The approach to be taken by the Committee is first, to consider the Applicant’s eligibility to be issued an off-licence pursuant to s.32 of the Act, and secondly, to see whether the Applicant is correct that the premises meets the definition of a shop for the purpose of an exception under s35.

### **Eligibility**

44. It is clear the application does not meet any of the criteria set out at s32 for an off-licence. There is no argument about this from the Applicant, and this is not contentious.
45. Likewise, s.34 and s.36 do not apply for this application. All parties agree that we are to decide if s.35 of the Act enables us to issue a licence.

### **Is the premises a “shop”?**

46. To come to a decision on whether this application meets the exception set out at s35(1)(a) for complementary sales, the Act requires the Committee to be satisfied that:

*(a) the premises are a shop, but not a shop where the principal business carried on is the sale of food (whether food of a particular kind or kinds, or a range of food); and*

*(b) alcohol would be an appropriate complement to goods of the kind sold (or to be sold) in the shop.*

The Committee has considered what “*satisfied*” means and is guided by a Court of Appeal decision in *R v Leitch* to properly guide us.

*“The need to be ‘satisfied’ calls for the exercise of judgment by the [decision-maker]. It is inapt to import notions of the burden of proof and of setting a particular standard, eg beyond reasonable doubt ... . The phrase, ‘is satisfied’ means simply ‘makes up its mind’ and is indicative of a state where the [decision-maker] on the evidence comes to a judicial decision. There is no need or justification for adding any adverbial qualification.” R v Leitch [1998] 1 NZLR 420 (CA), at 428 ([30]–[36])*

47. We are guided by *Poore v Wests (NZ) Limited* (2016) NZARLA 348 para (50) referred to in para 21 of this decision and in the submissions and evidence provided at the hearing.

48. From that it is clear a shop may sell services as well as commodities. Further to this, as the term “shop” is not defined under the Act, we have accepted and adopted a reasonable definition of the term as set out by the Applicant.

49. The matter is a vexed one and is very nuanced as we accept the concerns put forward by the Agencies in respect of the definition, however, we have no doubt that the principal use of the premises (as is sought to be licensed) is the provision of services related to helicopter flights and that packages include the sale of goods including those goods related to the service itself. The sale of food is not the principal business carried on in the premises. Therefore, we find, on balance, that the application satisfies s.35(1)(a) and is a shop.

**Does the shop sell “goods” and if so, is alcohol an appropriate complement to goods of the kind sold in the shop?**

50. The Committee must also conclude that alcohol would be an appropriate complement to the goods of the kind sold (or to be sold) in the shop in accordance with s35(1)(b) because the test under s35(1)(b) is a two-limb test. Therefore, we must also decide what “goods” are being, or will be, sold.

51. The Agencies believed that alcohol was not an appropriate complement to what they termed “*the few branded merchandise items*” on display in the shop. We agree and note the Applicant’s evidence at the hearing did not put forward the premise that it was.

52. The evidence given by Mr Quickfall was that the “*experience*” of the helicopter charter was the product being sold by the Applicant and the inference this was what alcohol would appropriately complement.

53. Counsel for the Applicant submitted that the “goods” sold for the purposes of an off-licence will be souvenirs, photo packs, picnic hampers, gift and celebration package items. However, the evidence had an emphasis on the “experience” being the product being sold, not on the range of ancillary goods available to support the primary service being provided. Regardless, the legislation itself does not limit the goods to only those that are the principal business of the premises, rather it refers to whether alcohol would be an appropriate complement to goods of the kind sold in the shop.
54. In relation to this point, the Inspector has raised concerns that the Applicant has only proposed amendments to the application in response to questioning at the hearing. This is a valid point, but an alternative view is that the applicant has listened to the evidence and this provided it the opportunity to reflect on the concerns and provide clarification – the Committee considers that the Applicant responded appropriately to concerns raised that, if did not have the chance to do so, could result in an adverse decision to the Applicant.
55. In our view, the Applicant should have been afforded the opportunity to respond and propose amendments – that this was not to correct an ill-prepared application, but to clarify the points that were adduced through evidence before the Committee at the hearing.
56. It is entitled to do so, and this approach is in accordance with the principles of natural justice. We consider that the “amendments” proposed by the Applicant are genuine attempts to resolve or clarify the points raised during the hearing.
57. Each of the Agencies submitted that helicopter charters on their own cannot be considered anything but a service. The submissions provided us with guidance about what may be considered “goods” and the difference to “services”. We agree that the ordinary meaning of the term “goods” means that some form of tangible item is required to be traded, and a helicopter charter, however framed, is a service. It is also clear that “goods” i.e.: tangible physical items to be owned and transferred, are provided by the Applicant, at the premises.
58. Discussion was had over whether a ticket or other form of paper contract would be sufficient to be considered sale of a “good”. We agree with the Inspector that a ticket is merely proof of a contract and not in itself a “good”.
59. The Inspector also expressed concern that the agencies and Committee have not had the opportunity to properly assess the “packages” as submitted by the Applicant to ascertain if alcohol would be an appropriate accompaniment. The Committee believes there was sufficient opportunity to do this during the hearing.
60. Miss Smyth submitted that the LLA decision *The Warehouse Limited* PH1673/2008 requires us to consider “...the kind of goods sold at the premises, when considered as a whole...”. With respect, we believe s.35 does not require us to consider if alcohol would be an appropriate complement to all the goods sold by the Applicant. Instead, we are required to make an objective decision as to whether alcohol would be an appropriate complement to goods of a kind sold (or to be sold) in the shop.

61. We find that a helicopter charter that includes a package of goods and services (including tangible transferrable items) that are only available at the premises and are ancillary to the primary purpose of the Applicant, including the helicopter charters, photographs (taken by the Applicant or their contractor), food packages and/or souvenir items, constitute “goods”.
62. We also find that alcohol is an appropriate complement to the goods and services sold by the Applicant.

### **3<sup>rd</sup> Party Agents – are they making a sale of alcohol?**

63. The use of third party online booking agents was discussed at the hearing. This raised the question of who has *made* the sale of alcohol if the customer has paid money for a package that contains alcohol.
64. Mr Quickfall assured us that credit cards are only redeemed once it is certain the flight will go ahead. This is usually the day of the flight. Therefore, he asserts, the payment is complete only at that point. The booking agent only takes their fees and would not receive money for alcohol sales. We accept this as being fact and find third party booking agents would not be making a transaction in the nature of a direct sale. The Agent acts as an intermediary between the Service Provider and the Purchaser.

### **Section 105 Matters**

65. During the hearing it was ascertained that the Applicant has the appropriate systems, staff, and training to comply with the law. The Applicant’s provision of services other than those directly related to the sale of alcohol were also well canvassed. The Applicant told us low and non-alcoholic products would also be available for sale as well as food in the way of picnic hampers and the like. We would expect this to be well advertised to prospective clients.
66. The Committee finds the amenity and good order of the locality would be unlikely to be reduced should a licence be issued, the Applicant is a suitable person to hold a licence, and the days and hours of trade sought are reasonable. There is no LAP in effect.

### **Section 4**

67. We are obliged to consider the Application and how it complies with the Object of the Act at section 4. It is also a requirement of s.105 that the Committee *must give* regard to the Object of the Act.
68. We find the Applicant adopted a model in accordance with CAA rules, that will result in the sale, supply, and consumption of alcohol being undertaken safely and responsibly. Likewise, we find it extremely unlikely the alcohol related harm would result from an off-licence as sought. None of the matters in opposition to the application related to alcohol related harm.

69. The Committee has concluded that the application meets the objectives of the Act and is satisfied that the applicant's conditions will also contribute to the safe supply and consumption of the alcohol.
70. Conditions relating to the consumption of alcohol are outside the jurisdiction of an off-licence, but the Committee heard evidence that CAA rules and the nature of the contract between the Applicant and their clients will expressly forbid intoxicated passengers on helicopter flights. The Applicant's proposed model of delivering any alcohol when the destination is reached and having the pilot serve the product reassures us the alcohol will be consumed responsibly.

### Conditions

71. The Inspector submitted that *Otautau Hotel 2017 Ltd v Grove* [2023] NZARLA 37, is relevant. In that decision the Authority noted the High Court's warning against taking a presumptive position that an application should be granted and then tailoring conditions to meet that position. In this case we have had several conditions put forward by the Applicant.
72. As mentioned, some of the licence conditions offered by Ms Surrey are not relevant to an off-licence. We have decided on imposing conditions that were raised during the hearing, offered up by the Applicant, and were not objected to by the parties. At the end of the day, conditions are for the Committee to impose, and they must be certain, reasonable, enforceable and for a purpose related to compliance with the Act namely to minimise alcohol-related harm and to ensure the safe and responsible sale of alcohol.
73. The issue of an off-licence is granted with the following conditions –
- a. no alcohol is to be sold or delivered on Good Friday, Easter Sunday, or Christmas Day, or before 1 pm on Anzac Day, unless it is wine made—
    - (i) on the premises; or
    - (ii) from produce harvested from land on which the premises are situated:
  - b. alcohol may be sold only on the following days and during the following hours: 8am – 8pm daily
  - c. alcohol may only be sold as part of a private helicopter charter package that includes any or all of: picnic hamper, gift or celebration package, photograph package taken by the Licensee or their contractor
  - d. Only champagne, wine & beer may be sold
  - e. No alcohol may be physically displayed for sale
  - f. Alcohol sold on the premises must be delivered to the buyer
  - g. Alcohol must only be delivered on arrival at the flight destination

74. The Licence may issue after the ten working day appeal period (as per s.155(1)).

**DATED** at QUEENSTOWN this 17<sup>th</sup> day of August 2026

A handwritten signature in black ink, appearing to be 'G B Pay', written in a cursive style.

G B Pay, Chairman