

ON LICENCE

Sections 14-16 and 24, Sale and Supply of Alcohol Act 2012

ARLA Ref: 59/ON/059/2017

Pursuant to the Sale and Supply of Alcohol Act 2012, (the Act), **EVANSBURY HOLDINGS LIMITED** is authorised to sell and supply alcohol, on the premises situated at **2-4 Tramway Road, Kirwee** and known as "**The Kirwee Tavern**", to any person for consumption on the premises, and to let people consume alcohol there. The authority conferred by this licence must be exercised through a manager or managers appointed by the licensee in accordance with Subpart 7 of Part 2 of the Act.

CONDITIONS – SECTION 110 (2)

- (a) No Alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on ANZAC Day to any person who is not present on the premises to dine.
- (c) Alcohol may only be sold on the following days and during the following hours the premises are being operated as a Tavern:
Monday to Sunday 11.00am to 2.00am the following day.
- (d) Water will be freely available to customers on the premises while the premises are open for business.
- (e) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (f) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.
- (g) The following steps must be taken to promote the responsible consumption of alcohol:
 - The licensee must implement and maintain the steps proposed in their host responsibility policy aimed at promoting the reasonable consumption of alcohol.
- (h) The whole of the premises shall be designated as a **Supervised** area.

OTHER RESTRICTIONS AND REQUIREMENTS

Section 51 - Non-alcoholic drinks to be available
 Section 52 – Low alcoholic drinks to be available
 Section 53 – Food to be available
 Section 54 – Help with information about transport to be available
 Section 57 – Display of licences
 Section 214 – Manager to be on duty at all times and responsible for compliance

THE LICENSED PREMISES

The premises situated at 2-4 Tramway Road, Kirwee are more precisely identified as outlined in a plan agreed to at the hearing on the 15th June 2017.

DISPLAY OF LICENCE AND PRINCIPAL ENTRANCE/S

A copy of this licence must be displayed at the principal entrance to the premises. The entrance from Courtenay Road is designated as the principal entrance.

DURATION

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

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

Subject to the requirements above, **the licence expires on the 8th day of September 2018**, unless again renewed.

DATED at Rolleston this 8th day of September 2017

Secretary
 Selwyn District Licensing Committee



OFF LICENCE

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

ARLA Ref: 59/OFF/040/2017

Pursuant to the Sale and Supply of Alcohol Act 2012 (the Act), **EVANSBURY HOLDINGS LIMITED** (the licensee) is authorised to sell or deliver alcohol on or from the premises situated at **2-4 Tramway Road, Kirwee** and known as "**The Kirwee Tavern**", to any person for consumption off the premises and to supply complimentary samples of alcohol on the premises.

The authority conferred by this licence must be exercised through a manager or managers appointed by the licensee in accordance with Subpart 7 of Part 2 of the Act.

CONDITIONS – SECTION 116 (2)

(a) No alcohol may be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1pm on ANZAC Day.

(b) Alcohol may only be sold or delivered on the following days and during the following hours

Monday to Sunday 11.00am to 9.00pm.

(c) Signage must be displayed stating (directly or by description) a place or places on the premises at which drinking water is freely available to customers, while alcohol is being supplied free as a sample on the premises.

(d) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:

- Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.

(e) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:

- Alcohol must only be sold, supplied within the area marked on the plan submitted with the application.

(f) The whole of the premises shall be designated as a **Supervised** area.

OTHER RESTRICTIONS AND REQUIREMENTS

Section 56 – Display of signs

Section 57 – Display of licences

Section 214 – Manager to be on duty at all times and responsible for compliance

THE LICENSED PREMISES

The premises situated at 2-4 Tramway Road, Kirwee are more precisely identified as outlined in a plan agreed to at the hearing on the 15th June 2017.

DISPLAY OF LICENCE AND PRINCIPAL ENTRANCE/S

A copy of this licence must be displayed at the principal entrance to the premises. The entrance from Courtenay Road is designated as the principal entrance.

DURATION

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

(a) either -

(i) until the close of the period for which it was last renewed; or

(ii) if it has never been renewed, until the close of the period of 12 months after the day it was issued; but

(b) if an application for the renewal of the licence is duly made before the licence would otherwise expire, either -

(i) until the close of the period of 3 years after the period for which it was last renewed; or

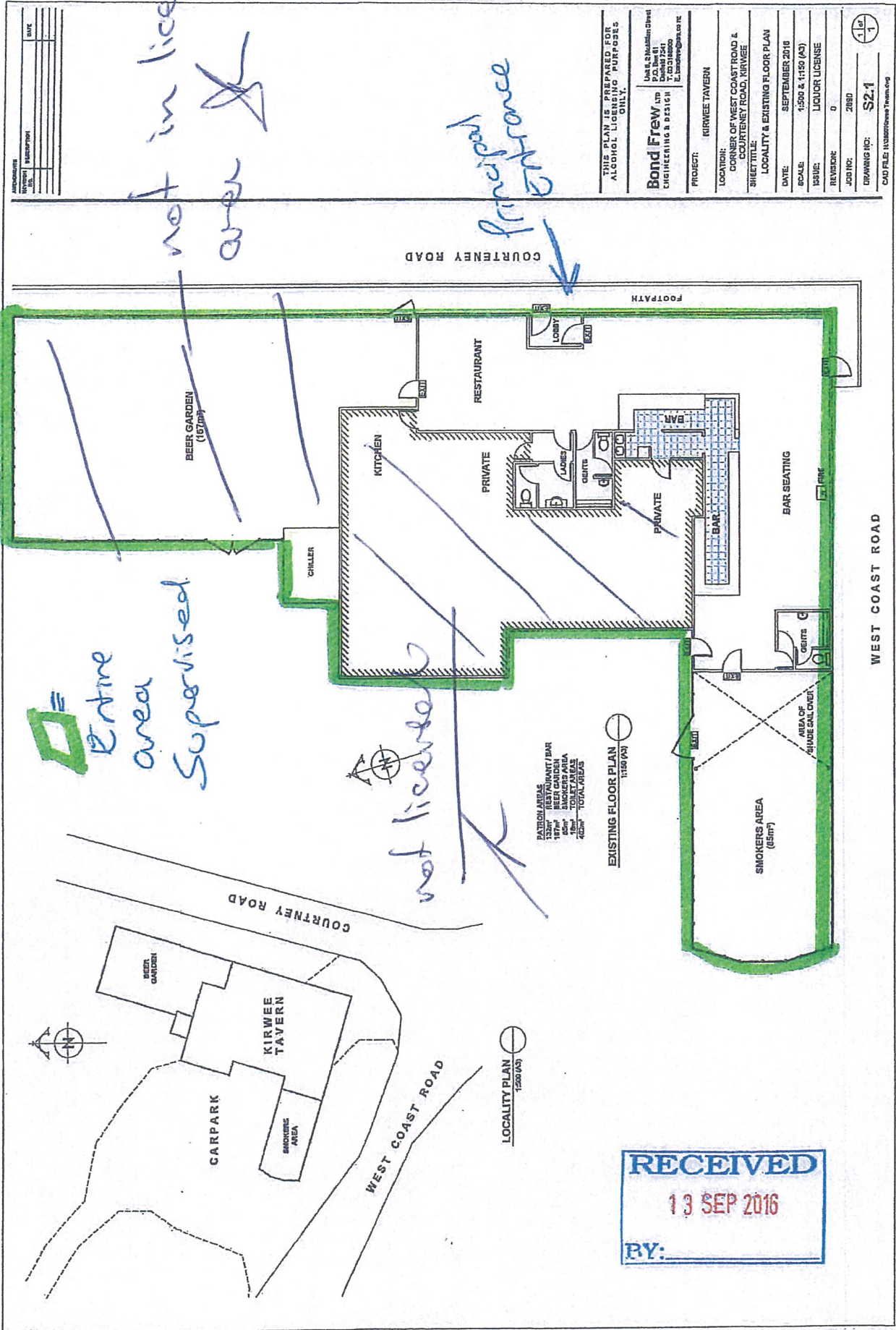
(ii) if it has never been renewed, until the close of the period of 4 years after the day it was issued.

Subject to the requirements above, the licence expires on the 8th September 2018, unless again renewed.

DATED at Rolleston this 8th day of September 2017

Secretary
Selwyn District Licensing Committee





AMENDMENTS	NO.	DESCRIPTION	DATE

RECEIVED
8 AUG 2018
 BY: _____

THIS PLAN IS PREPARED FOR
 ALCOHOL LICENSING PURPOSES
 ONLY.

Bond Frew LTD
 ENGINEERING & DESIGN
 Unit 6, 2 McMillan Street
 P.O. Box 61
 Courtenay Road
 T. 03 3168900
 E. bondfrew@bfa.co.nz

PROJECT: **KIRWEE TAVERN**

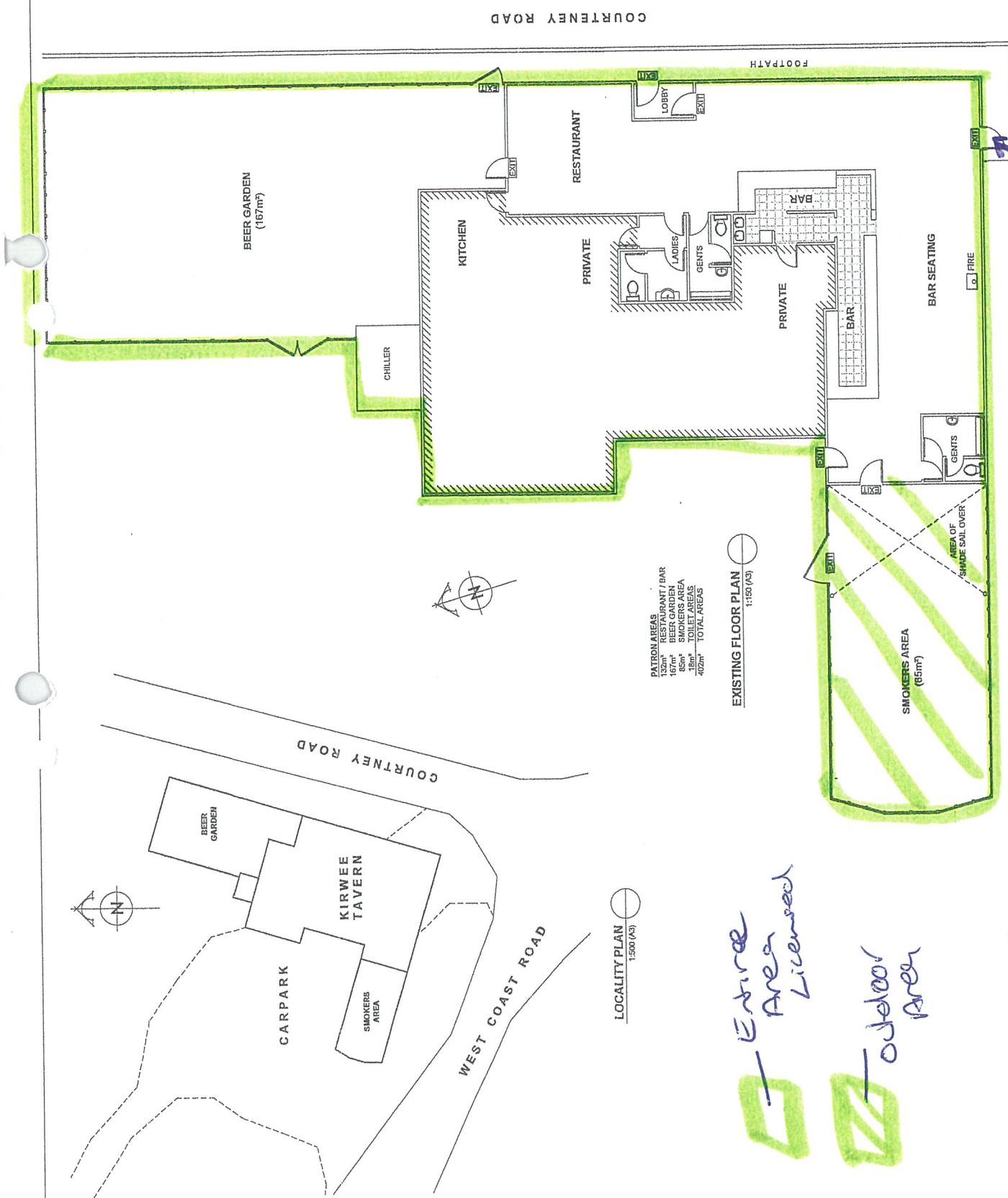
LOCATION:
 CORNER OF WEST COAST ROAD &
 COURTENAY ROAD, KIRWEE

SHEET TITLE:
 LOCALITY & EXISTING FLOOR PLAN

DATE:	SEPTEMBER 2016
SCALE:	1:500 & 1:150 (A3)
ISSUE:	LIQUOR LICENSE
REVISION:	0

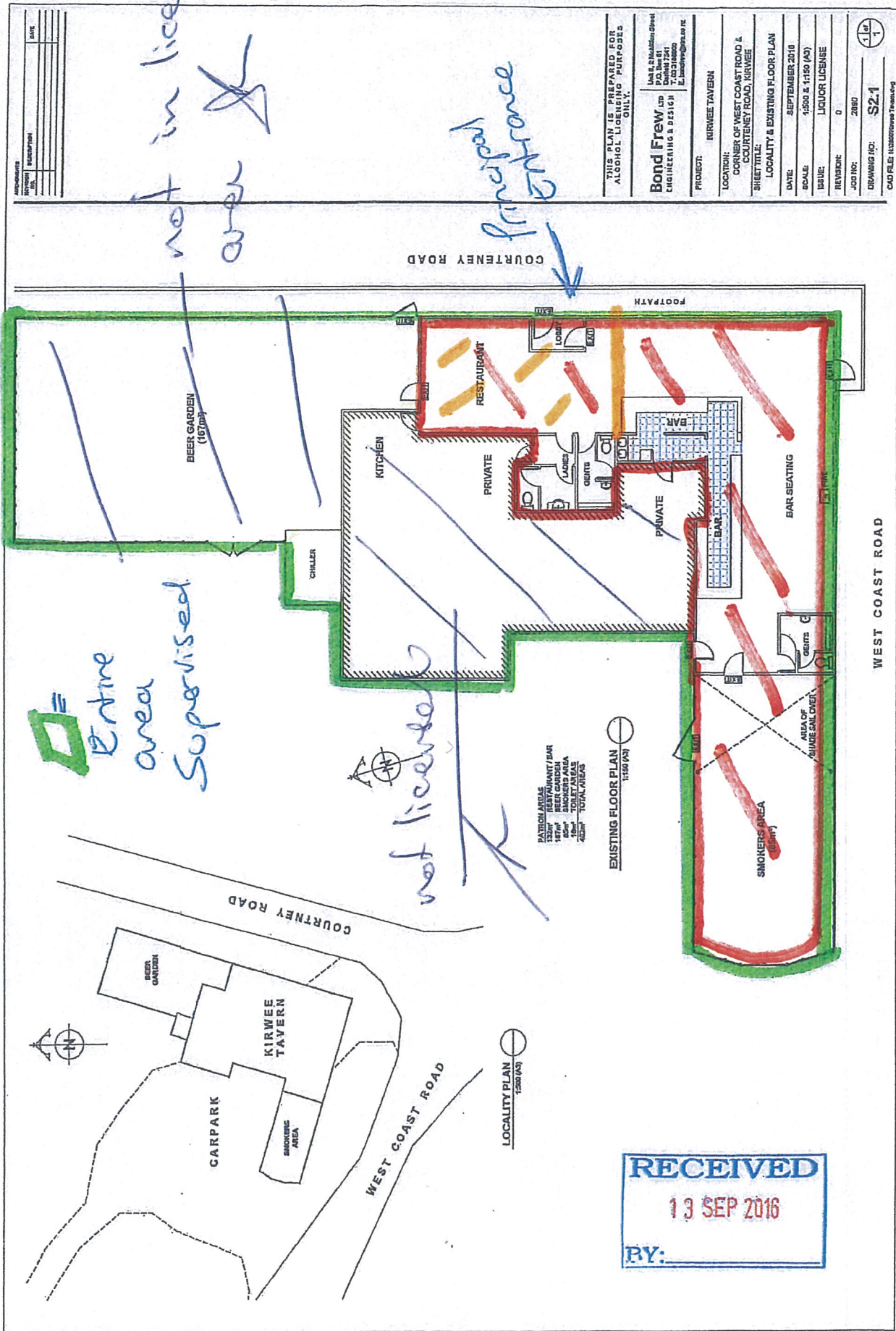
JOB NO:	2890
DRAWING NO:	S2.1
CAD FILE:	N38800Kirwee Tavern.dwg

Entire Area Supervised
 WEST COAST ROAD
Principal Entrance



LOCALITY PLAN
 1:500 (A3)

Entire Area Licensed
Outdoor Area



IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

ANDIN THE MATTER

of an application by **Evansbury Holdings** for an Off and On Licence pursuant to s.127 of the Act in respect of the premises situated at **Corner of West Coast Road and Courtenay Road** to be known as "**Kirwee Tavern**".

SELWYN DISTRICT LICENSING COMMITTEE:

Commissioner: Sue Griffin

MINUTE:

Record of DLC visit to the Kirwee Tavern.

This Minute relates to an application by Evansbury Holdings Limited for a renewal of the both the On and Off Licences. The hearing took place 8-10 July 2019. During the hearing the committee advised of it's intention to visit the premises, the Kirwee Tavern, as part of the proceedings. This visit took place on 10 July.

The committee were provided with the incident book and training records to view following the close of the public hearing. The committee viewed and discussed these and returned them upon entering the premises.

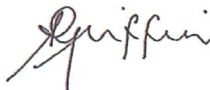
Mr Evans and Ms Thomson were present at the premises during our visit and were helpful in answering several specific questions eg the location of the safe areas both inside and outside.

Summary of the committee's visit:

- Approached the tavern from State Highway 73 (SH 73) noted the overall presentation of the tavern front and side adjacent to the state highway, parked on Courtenay Road in the angle park layby in front of the tavern
- Walked along the tavern frontage on Courtenay Road which faces across the road to Ms Summers' and a neighbouring home on her north boundary, noted the footpath area and the angle parking layby, also the small grass area on the south side of the tavern alongside SH 73 and the bend on SH73 as it tracks west of the tavern
- Walked across the road and viewed the tavern from Ms Summers' gate, from the driveway and from along the footpath, looked at the tavern in general from the footpath area, noted the entry, windows and road lighting, property position alongside SH 73 and on Courtenay Road
- Viewed Ms Summers' property from outside the fence along the property frontage, the house front faces the tavern, the south side runs alongside SH73

- Looked at the other properties close by the tavern, including those backing on to the back carpark
- Viewed the SH 73 intersection, the railway line, creek, grass area, position of lighting, proximity of the tavern to SH 73 particularly on the south side
- Exited the tavern through the door from the outside beer garden area, into the back carpark, looked at the gravelled parking area extending back from the tavern, the nearby street/main road, the rear of the premise building
- Noted the position of the kitchen, restaurant, the porch entry from Courtenay Road, the end of the bar in close proximity, the table (as advised at the time) where minors wait for/pick up takeaways, the exit to the private outdoor area from the restaurant, noted the position and condition of the pool table, noted the cover, the general layout of the entire bar area – patrons' seating and tables, the front and side of the bar, location of toilets, the entrances
- A committee member took several photos during the visit and shared these by email with the other committee members at the time
- The committee left the premises at 6.00pm.
There were no points of clarification required from the parties from the committee's visit.

DATED at CHRISTCHURCH this 5th day of August 2019.



Sue Griffin
Commissioner
Selwyn District Licensing Committee

**Decision No. N/59/059/2017 ON
N/59/040/2017 OFF**

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an application by **EVANSBURY
HOLDINGS LIMITED** for an ON-
Licence pursuant to s.99 of the
Act in respect of premises situated
at **2-4 Tramway Road, Kirwee**
known as "**The Kirwee Tavern**".

AND

IN THE MATTER

of an application by **EVANSBURY
HOLDINGS LIMITED** for an OFF-
Licence pursuant to s.99 of the
Act in respect of premises situated
at **2-4 Tramway Road, Kirwee**
known as "**The Kirwee Tavern**".

AND

IN THE MATTER

of an application by **STEVEN
DAVID EVANS** for a manager's
certificate pursuant to s.219 of the
Act.

BEFORE THE SELWYN DISTRICT LICENSING COMMITTEE

Chairman: Mr A J Lawn.
Members: Mrs R Kilworth
Mrs S Griffin

HEARING at Rolleston on 15 February 2017 and further to this, on 15 June 2017

APPEARANCES

Mr D M Jackson on behalf of applicant
Mr Steven Evans, Director and shareholder of the applicant company
Mrs H Faass- Selwyn District Council Alcohol Licensing Inspector – In opposition
Constable G M B Craddock- NZ Police – In opposition
Miss P A Williams – for Medical Officer of Health – In opposition

DECISION OF THE COMMITTEE

Introduction

- [1] Before the Committee is an opposed application by Evansbury Holdings Limited for an on and off licence in respect to premises at 2-4 Tramway Road, Kirwee as well as an application by Steven David Evans for a manager's certificate. Mr Evans is the sole director and shareholder of the applicant company, Evansbury Holdings Limited.
- [2] The premise is located in the small rural town of Kirwee and has traded in this location for a large number of years. It is on the main West Coast highway and has some residential properties across the road. The premise could be described as a 'country tavern'. The applicant originally sought the same terms and conditions as the underlying licence but during the hearing sought to vary these by reducing the hours of the off licence to comply with the proposed Local Alcohol Policy for the Selwyn District.
- [3] The applicant currently trades pursuant to its third Temporary Authority. The second application for a Temporary Authority was not opposed by the agencies but they did signal in their reports that the on and off licences had been opposed.
- [4] All three agencies reported in opposition to the substantive licence, and manager, applications. The main issue is the suitability of the applicant due to a number of breaches of the licence whilst trading on a Temporary Authority since July 2016. The opposition and evidence is common to all applications.
- [5] On 17 November 2016 a public hearing was convened to hear an opposed special licence application by the applicant. That application was granted with a number of conditions and undertakings.
- [6] Evidence was adduced by the Police, which was accepted by the applicant. It detailed numerous failings and breaches of the Act by the applicant including;
- trading outside the hours of the licence
 - trading before the company was authorised to under a Temporary Authority
(A warning letter was sent by the Tri-Agency Group to the applicant)
 - Failing to give notice regarding a manager. (An infringement notice was issued by the Police for this offence)
 - The inability of the applicant to adequately control the premises, including intoxicated persons, during the 'Roundie 500' student event which had a stop at the premises
- [7] Due to the proximity of the hearing to the event, and the required appeal period, the agencies waived their right to appeal thus allowing the event to take place under a special licence as it was more likely than not the event would take place in any case within the hours and conditions of the current licence. They were of the opinion, and the Committee agrees, that a special licence with conditions would give more control at the event and would more likely than not help to achieve the object of the Act.

The Hearings

- [8] A hearing date for these applications was originally set down for 1 December 2016 but was adjourned due to the Kaikoura Hurunui Earthquake and the unavailability of a committee member. A new date was set in the New Year, 15 February 2017.
- [9] This decision covers two public hearings, the first was held on 15 February 2017 at Rolleston and after evidence was heard from all parties the committee decided to adjourn the matter for three months. During the adjournment the applicant was to produce a number of documents and comply with undertakings made. At the end of the three month period further reports would be called from the agencies and if no matters arose the applications could be decided on the papers without need for a further public hearing. The undertakings and requirements included:
- (i) *To provide a training manual*
 - (ii) *Mr Evans to repeat his LCQ*
 - (iii) *All staff to attend ServeWise training (including part-time staff)*
 - (iv) *All staff to attend tri agency training in Christchurch within one month (including part-time staff)*
 - (v) *Formalised relationship with Hospitality NZ*
 - (vi) *Formalised relationship with mentor*
 - (vii) *Reduced opening hours as agreed*
 - (viii) *Duty manager not to work in the kitchen*
 - (ix) *The applicant to receive training as an employee at another premise 1-2 days per week*
- [10] When reports were called for at the end of the adjournment the agencies sought a further hearing as they alleged there were still issues with the running of the premises. The Police indicated that they would be calling witnesses in relation to the alleged breaches of the Act. A second public hearing was notified and set down for 15 June 2017 at Rolleston.
- [11] At the June 2017 hearing an application was also heard in relation to a special licence to allow the applicant to open two hours earlier than is authorised by the licence. The Alcohol Licensing Inspector, and Police, opposed the application. The Medical Officer of Health reported no opposition but made some relevant comments. The event was a champagne breakfast for a Hunt Club on 9 July 2017. This application was granted with strict conditions. The decision was issued orally at the hearing and a written decision confirming the oral decision was issued on 6 July 2017. The conditions included;
- i) *The manager for the event shall be Tania Thomson*
 - (ii) *The whole of the premises will be undesignated for the duration of the event*
 - (iii) *The bar shall be closed and the only alcohol that shall be served will be one glass of Champagne per person*
 - (iv) *The event is restricted to members of the 'Hunt Club' only*
- [12] On 15 June 2017 the hearing was resumed and evidence adduced by the applicant. No Police witnesses were called and no further evidence was adduced by the agencies. An oral decision was given granting the applications

for the on and off licences if a number of conditions were met within ten working days. The application for Mr Evan's manager's certificate was adjourned for a further six months.

Hearing 15 February 2017.

Evidence of the applicant

- [13] As previously mentioned the main opposition from all three agencies was the suitability of the applicant due to the manner in which the premises had been run whilst trading under a Temporary Authority. The majority of the agencies evidence was accepted at the special licence hearing and therefore accepted by the applicant in the substantive licence hearing.
- [14] In opening, counsel for the applicant, Mr Jackson, advised that during the past few months, whilst holding a temporary licence, the applicant has had an opportunity to trade and learn. He noted that Mr Evans is enthusiastic and willing to learn. Since the special hearing, he has taken the ServeWise course and has joined Hospitality NZ.
- [15] Mr Jackson stated that he understands that the basis for objection is Mr Evans' suitability as a manager. Mr Evans has emphasised to Mr Jackson that he has learned a lot since the special licence hearing in November last year. Mr Jackson also stated that Mr Evans is not seeking to get a licence for the beer garden area at this time and access via Courtenay Road is open for gas delivery only during the day and is locked in the evenings. The area is not used otherwise for patrons and it is not part of this application.
- [16] Counsel also advised that a further amendment to be made to the application is a reduction in hours for the off licence. In acknowledging the Local Alcohol Policy, he proposes to amend the application by reducing his opening hours from 11pm to 9pm. It was noted that there is no separate bottle store, and purchases are made over the bar counter. There will be a sign on the bar to this effect. Mr Evans will also ensure that anyone purchasing alcohol from the off licence will remove their items from the premises. Mr Evans has advised Mr Jackson that he will do what it takes to ensure that he meets the conditions set by the Committee.
- [17] Mr Steven David Evans gave evidence for the applicant. He is the sole director and shareholder of the applicant company.
- [18] In answer to questioning by counsel Mr Evans stated that he felt trading over the last few months had gone well. He also felt he had learned a lot about the control of alcohol and intoxication since joining Hospitality NZ & doing his ServeWise training. Mr Evans stated that he receives weekly updates from Hospitality NZ which provides lots of useful information which he reads and then passes onto his staff. He also stated that he meets with his staff once a week for 10-15 minutes and at this time gives them the Hospitality NZ newsletter and makes himself available to staff to discuss any issues.

- [19] Mr Evans advised that he has done the ServeWise online training which took approximately one hour to complete. It gave him information on all ways to identify intoxication and the rules and procedures on how to deal with this. Mr Evans confirmed that the tavern provide a courtesy van if customers arrive intoxicated in their own vehicles. He felt that the ServeWise course had been very useful. He was asked if he had any issues with staff since the course and he advised that his staff are very attentive and educated on rules and regulations.
- [20] When asked by Mr Jackson if the applications were granted, what his plans are for the next 6 months and Mr Evans stated that he would like to expand the restaurant menu. This was a small part of the business when he took on the tavern and he is looking to have a more family friendly dining area. He has purchased a bouncy castle and is procuring play equipment which he would like to have set up for spring in the outdoor area next to the restaurant.
- [21] In questioning from Mr Jackson about whether there were any issues with the special licence event (19 November 2016) Mr Evans confirmed that one customer was removed by security around 11.50pm. Mr Evans further stated that during the evening it was announced every 15 minutes or so that there was a courtesy van available. He noted that the intoxicated person evicted from the tavern was spotted later driving after having walked away from the tavern. He said he has learned that he needs to do more preparation, engage security and have the courtesy van available. Mr Evans stated that the special licence event catered for around 70% more customers that would be usual in the tavern on that night of the week.

Cross examination

- [22] When cross examined by Constable Craddock she mentioned that he had told her on 13 August 2016 that he had put a 231 notification in when he had not. She queried why it took so long to put through his notification? She then asked if he remembered seeing her at ARA for his LCQ and did he remember her telling the group that they still needed to apply for their licence. Mr Evans stated he was confused.
- [23] Constable Craddock then asked what he meant when he told an intoxicated customer on 19th November 2016 to take a walk and come back. He said he meant for them to go and get some food and then they would be reviewed when they came back.
- [24] The Constable then queried why the beer garden was not licenced at present? Mr Evans advised that he wants to ensure everything else is organised before he applies for this. She queried whether there was much trade after 12am and he advised that there is very little during the week but around 15 to 20% from 12am – 1am at the weekend.
- [25] Ms Williams for the Medical Officer of Health then asked Mr Evans if he understood the Host Responsibility policy and he stated it was the sale and supply of alcohol safely and responsibly to avoid excessive intake of alcohol. He thought he had a copy of the policy by the back door near the car park and

another one on the board near the men's toilets. She then asked who wrote the Host Responsibility policy and he advised it was prepared by Omega Hospitality, however he reviewed what's on it. He noted the key factors are to ensure safe passage, means of transport, having water available and control of the sale of alcohol to ensure no intoxication.

[26] Mr Evans confirmed that he has undertaken staff training and provides ongoing weekly meetings, however he did not bring any of the staff training information with him.

[27] Ms Williams then questioned him about the Alcohol Management Plan for the special licence and he confirmed it was written by Omega Hospitality too, with input from him. He advised that they came up with the key points which he then approved.

[28] Ms Williams asked about the happy hour discounts. Mr Evans stated that it runs for one hour with a 25% discount. She questioned how it was promoted and he responded that every Thursday it is advertised on their Facebook page, they also advertise what they are doing at the weekend, their menu, special events and specials. The 25% discount is not promoted on their page, just that it is happy hour.

[29] Mr Evans further stated that they have copies of the Intoxication Assessment Tool with three placed behind bar, including a copy above the main till, and all new staff are given a copy. He also has a handwritten piece of paper with dates of birth next to till so those under 18 can't be served however there is no till prompt. He was queried about his understanding of the Intoxication Assessment Tool and advised it was a case of observing that person and reviewing behaviour, and if intoxicated suggest they have some food. Ms Williams asked how he would identify an intoxicated person and Mr Evans stated it would be through speech and eyes. He was asked how many signs there are and he replied there are four.

[30] Ms Williams then asked what extra steps Mr Evans will put in place to maintain good order for the themed nights? He advised that the last one was held on the Friday before Christmas and he employed security (the same people as for the A&P show night). She then asked if he brought the Hospitality NZ information with him which he advised he had not. She then asked him the name of the Act that he needs to adhere to but he couldn't remember it. He did advise that the object of the Act is to ensure the safe supply and consumption of alcohol.

[31] Ms Williams queried whether he has an incident book and Mr Evans advised that yes he does but he had not brought it with him today. If there is an incident the name of the individual is written in the book. She then questioned if he has a place of safety at the tavern for intoxicated customers if you can't take them home immediately and he advised that there are two settees next to the lobby door that can be used during trading hours. If the bar is closed they can be monitored in the private lounge. This is also included in the incident book. He then advised that the off licence prices are not competitive compared to the likes of Super Liquor. Ms Williams also asked him if he is aware of any patrons drinking in the car park, he said it is monitored so there shouldn't be

any. He then commented that the current managers, Sharron Fodie and Jan Norriss want to increase food sales, however he didn't bring any record of sales figures with him today.

[32] The Alcohol Licensing Inspector, Mrs Faass, cross examined Mr Evans and questioned Mr Evans on why there are no written contracts in place for the two duty managers? He advised that they are currently verbal but working on getting written contracts soon. The verbal contracts have been in place since June 2016. She then questioned if there is a manager's register behind the counter and Mr Evans confirmed that there is but he had but not brought it with him.

[33] Mrs Faass queried why the map in his application includes the kitchen and private areas. He stated that this needs to be revised to come round the inside of restaurant, round the bar and down to the toilets as the kitchen and private areas are not to be included.

[34] He was asked if he remembered receiving reports from Mrs Faass and Health about his second temporary authority in which the Agencies stated that they signalled their intentions in regards to the substantive licence applications and stated that there were concerns regarding the manner in which the applicant was running the premises, he acknowledged receiving the reports and was also give a copy for reference.

[35] Mr Evans' stated that the current On Licence application was submitted on the basis of the premises being a tavern, however he is hoping to provide accommodation in due course. He confirmed it has been done on his behalf by Omega Hospitality. He wishes to ensure he is applying for the correct application. He is happy for the bar to close at 1.30am for hotel guests as well as other customers and he confirmed that he is happy with an 11.00am opening time.

Questions of the Committee

[36] When asked if it is necessary to supply the manager's name and who is on duty and Mr Evans confirmed that it is and he has it displayed on the wall behind the bar door and it is visible to the public. He was then asked if there were any occasions since June 2016 when this notice hadn't been displayed and he advised not to his knowledge. In this application for the new On/Off Licence it stated that his manager's licence had been granted and that he was just waiting on it coming through. Mr Evans agreed this was not the case and confirmed that Omega made this mistake and it was a misinterpretation.

[37] Mr Evans was asked if prior to opening on 7 July 2016 had he had been reminded by the agencies that he needed a special licence and he confirmed that yes he was advised. He was then asked if he applied for one and he stated that he hadn't as it was too late to get an application in. He stated that they served the breakfast but no alcohol. Mr Evans was then asked about his meeting on 23 June 2016, with the Tri-Agencies, where he suggested the breakfast was for his staff and was not a booked event. Mr Evans stated that he is aware that it was an error on his part and again stated that no alcohol was served. Going forward he is aware he needs to get a special licence.

- [38] When queried if he had any discussions with police about intoxicated persons on premises which he confirmed he had. Mr Evan stated that he has learned from his experiences and that the Roundie 500 won't come back to the tavern due to crowd control issues. He was then asked if he saw drunk students arriving and he advised that the stewards and organisers had messed up and hadn't arrived prior to the students. Mr Evans was then asked if he agreed that he didn't have systems in place to deal with this event, however he felt it was the organisers fault as they weren't there on time, otherwise it would have conformed to the Act.
- [39] The Committee then commented that the application states that no promotions will take place, however it was noted that the tavern's Facebook page has been advertising rapid consumption of alcohol. Mr Evans said this was not on his page. In addition, on 6 August there was a notice regarding practice for a speed shearing event. Mr Evans advised that he did not put this on his page. When queried whether there was there any rapid consumption of alcohol Mr Evans advised that it was only one 7oz glass of beer that was to be consumed quickly as part of a team event, otherwise there was no rapid consumption promoted and that excessive alcohol was not encouraged as it was a family event and approximately 30% of customers were children with parents and no children took part in the teams.
- [40] In answer to questions Mr Evans stated that he is the manager who conducts meetings with staff on Host Responsibility etc. and has contemplated having a training manual and whilst he has looked into this he doesn't have one as yet. He does plan to hopefully address this in the next month and would include all aspects of liquor licence assessment tools, updates from Hospitality NZ and anything else relevant including first aid details in his meetings.
- [41] When asked if he would expect a manager to receive a warning and infringement notice within 3-4 months of taking on the tavern to which he replied no.
- [42] Mr Evans was also asked whether he felt it was important to maintain a good relationship with those monitoring and licencing his business and he advised that a good relationship was essential for working together. When asked if he did take up offers of assistance from agencies to which he replied he couldn't remember. He was then referred to an email sent on 23 June 2016 from Constable Craddock offering Mr Evans 1 hour's free training, however it was noted that he did not take up offer.
- [43] When asked if there were any instances logged in the incident book where customers drinking on his premises are refused alcohol. Mr Evans advised that they don't record this in their incident book. He was asked if he could recall times when he has refused to sell alcohol. He advised that since Christmas there had been one person. The patron was observed by both Mr Evans and Mrs Norriss, they were not offered food but offered water and taken home in the courtesy van. Mr Evans noted that they could walk fine but were slurring.
- [44] Mr Evans was asked whether Omega had suggested that he have a training manual but he could not recall but he did think it might be essential. Mr Evans

also stated that he is the person providing the training for his two managers. Both managers have been in the industry about 10 years each and he is providing training to them on new procedures and guidelines. When asked how quickly he could provide a training manual he advised it would take him about a week and a half to provide a proper manual.

[45] Mr Evans advised that he has nothing in writing from the Darfield pub about mentoring and currently doesn't have anyone else in the industry mentoring him. He would also like to hire a third manager to run the tavern and he could learn from them, however at present he can't afford to do this. If the business continues as it is currently he thinks this may be possible in 12-18 months. He hasn't had any meetings with Hospitality NZ as all contact is by phone/email and couldn't remember who their regional representative is.

[46] In clarification Mr Evans was asked where young people who come in for takeaway go as the whole area is designated as a supervised area. After a short discussion Mr Jackson sought a variation to the application so that the restaurant area would be amended on the application to be undesignated.

Evidence of the agencies

[47] Constable Craddock read her report and advised that the Tri-Agencies made themselves available to Mr Evans however he did not take them up on their offer of assistance. She then advised that during the ARA licencing presentation she made it clear that the LCQ did not give the attendees their manager's certificates and they still need to apply for this. She then spoke about intoxication at premises and noted that Mr Evan did contact her the next day to discuss.

[48] Mrs Faass asked Constable Craddock whether she was contacted by Mr Evans for any free training to which she replied no. She then asked if Constable Craddock still had concerns to which she advised she did. She sees no further improvement by Mr Evans. There were no arrests on the day of the special licence, however Constable Craddock didn't feel that this was a good measure of whether the tavern was being run properly.

[49] The committee asked her whether she would expect to issue a warning and infringement notice to such a new owner to which she replied no she would not. Constable Craddock said she was surprised that her offer of assistance wasn't taken up. No improvement in Mr Evans' knowledge of the Act has been seen here today from her perspective.

[50] Constable Craddock called Snr. Constable Grant.

[51] Snr. Constable Grant read his statement. The statement detailed a visit he had made to the premises on 29 August 2016. It confirmed that Mr Evans was acting as a duty manager on the premises and that this was not notified to the appropriate agencies. This breach of the Act was admitted at the 17 November 2016 hearing.

[52] The Committee asked Snr. Constable Grant's opinion of the operation of the tavern to which he replied that the sale and supply of alcohol needs to be

tightened. The management side also has room for improvement and advice has been provided to Mr Evans on this. The police have been notified that there have been patrons who are intoxicated at the tavern.

[53] The Alcohol Licensing Inspector, Mrs Faass's report was taken as read and she read her brief of evidence. She explained that the applicant is currently on its third temporary licence which was given in September 2016 and expires in April 2017. She outlined the history of the premises, its location and covered the criteria for the granting of a licence set out under section 105 of the Act. The Inspector took no issue with two of the three named managers in the application but stated that the manager's certificate application had been opposed for Mr Steven Evans, who was the third named manager.

[54] The Inspector identified two of the criteria where she commented in opposition. These were, the suitability of the applicant and also whether the applicant has the appropriate systems, staff and training. She stated

"I also oppose this application as I do not believe that Mr Evans is a suitable person to manage this type of premise. He has repeatedly ignored the advice given to him by the agencies regarding training both before he took possession of the tavern and then again during the term of his Temporary Authorities."

[55] In her evidence the Inspector also detailed the various breaches of the Act that had taken place since the applicant had taken over the premises.

[56] Mrs Williams asked Mrs Faass how usual it was for new owners not to seek support to which she replied it was very unusual. Mrs Faass opined that she doesn't believe that Mr Evans fully understands his requirements under the Act.

[57] Mrs Faass stated that she understands that some of the staff have completed ServeWise. She stated that she believes that a training manual is something that needs to be created in due course.

[58] The Committee asked her if she believes from her observations that the other duty managers at the premises apply the Act and Host Responsibilities in the appropriate way. Mrs Faass advised that she has not viewed them at work but was happy at the time of the applications for their certificates.

Discussions

[59] Mr Jackson sought an opportunity to discuss with his client a number of potential undertakings if the licences were granted. The opportunity was granted.

[60] After the adjournment Mr Jackson stated that Mr Evans is aware that he needs to do some work to get up to standard and that Mr Evans will undertake to compile and provide a training manual in conjunction with Hospitality NZ, to be provided by Friday next week for either submitting to the committee or to the agencies. Secondly regarding Mr Evans' own knowledge he will undertake further training to the satisfaction of the agencies and with the approval of the agencies for the correct training. An additional undertaking will be to pass on training responsibility to Jan Norriss, the duty manager.

[61] Mr Jackson requested deferring on a decision on the manager's certificate until Mr Evans is up to scratch and has full understanding of his obligations.

[62] The agencies were asked if they were happy with these undertakings. Mrs Faass advised that she wanted a satisfactory training manual to be provided to them within a short space of time, she doesn't want Mr Evans working as duty manager until he was up to standard and suggested that he should repeat his Licence Controller Qualification. She also stated that she would like to see a formalised relationship with Hospitality NZ and to ensure all staff, including part-time staff, have certificates for ServeWise and attend a Tri-Agency training session in Christchurch in the next month.

[63] After a brief adjournment to advise his client Mr Jackson confirmed that Mr Evans is happy with the proposal around his understanding of the Act and not working as a duty manager. It was noted that he currently works Sunday, Monday & Tuesday and suggested his hours are limited by closing early as he can't find additional staff at present. He suggested closing at 10pm on Monday – Tuesday. The remainder of the proposals were agreed.

[64] All applications were adjourned for three months. The following were undertakings and directions agreed to by the applicant;

Summary of undertakings and directions:

- (i). To provide a training manual
- (ii). Mr Evans to repeat his LCQ
- (iii). All staff to attend ServeWise training (including part-time)
- (iv). All staff to attend tri agency training in Christchurch within one month (including part-time)
- (v). Formalised relationship with Hospitality NZ
- (vi). Formalised relationship with mentor
- (vii). Reduced opening hours as agreed
- (viii). Duty manager not to work in the kitchen
- (ix). Receive training as an employee at another premise 1-2 days per week

The matter was adjourned for three months and at the end of the three months reports would be sought from the agencies and a decision would be made to either deal with the matters on the papers or to hold a further hearing.

Hearing on 15 June 2017

[65] As detailed above the applications for on, off and managers certificates were adjourned for three months to allow the applicant to complete a number of undertakings and directions.

[66] The Committee sought further reports from the agencies. All the reports indicated that there had been further issues at the premises which the agencies requested be brought before the Committee at a hearing. A hearing was set down for 15 June 2017.

[67] All those who attended the previous hearing were present at the second hearing.

Evidence of the Applicant

- [68] Mr Evans was called to give evidence for the applicant and he read from a brief of evidence.
- [69] He advised that he had worked with Mr Mike Evans at the Greta Valley Restaurant & Bar a few times and Mr Mike Evans had been down to the Kirwee Tavern two or three times as well to provide him with some support. From next week Mr Evans will be working a 3-4 hour shift once a week at the Greta Valley. Mr Evans advised that he had complied with all undertakings but he had misunderstood the mentoring undertaking, thinking that the working and mentoring was combined and not separate.
- [70] Mr Jackson asked if he had discussed with Mr Mike Evans ongoing hours and support and was advised that it he would be working 3-4 hrs per week with a monthly visit from Mr Mike Evans.
- [71] Mr Evans confirmed that ServeWise training has been completed by all staff except Ms Fodie as she has been unable to finalise this due to a technical error on their website. Mr Evans confirmed that she will complete it once the technical issue has been resolved.
- [72] Mr Evans advised that Jan Norriss left his employment around 2 months ago, and he has since employed Tania Thomson in her place. Ms Thomson has approximately 10-14 years' experience as a bar manager and had previously worked at The Rock. She was away for 2 weeks on holiday just after she started which he covered. Ms Thomson manages the front of the tavern and works Tuesday, Thursday, Friday, and Saturday. She also works occasionally on a Sunday when there is a big event on. Mr Evans helps out but sees Ms Thomson as the manager. Her days off are Sunday, Monday and Wednesday.
- [73] Mr Jackson asked who is licenced when Ms Thomson is not working and Mr Evans advised it was himself and Ms Fodie on Sundays and Wednesdays and just him on Mondays. They also have a part-time kitchen staff member working these days too.
- [74] Mr Jackson asked what his vision for the tavern was and Mr Evans said he has more time to look at other areas with Ms Thomson in charge. He would like to put a trampoline and aviary out the back in time for spring as well as further develop the tavern as a family restaurant. He recently held a charity auction to support a local resident with a 13 year old disabled child and another local with terminal cancer. He put on a free supper with a DJ and held an auction with gifts and prizes donated by local businesses. They raised \$23,000 for a cancer charity and were able to arrange a 3 night mystery trip for the 13 year old and his family. Mr Evans advised that he would like to hold more community events.
- [75] Mr Evans advised that the tavern is his job, his family's home, all his money is invested in the business and it is a part of the local community.

[76] Mr Jackson asked him what he has done since the last hearing. Mr Evans commented that he had resat his manager's licence, had received some support from Mr Mike Evans, who has shown him how to be more forceful when closing the bar, and how to go about closing up. Mr Jackson commented that there had been suggestions that he is a bit too friendly with some of his customers. Mr Evans advised that he had known a number of his patrons for around 12 years, however they know the rules. Mr Jackson then said that comments had been made that there is a younger crowd that seems to get away with bad behaviour. Mr Evans advised that 9-10 months ago he would have agreed with Mr Jackson but he feels he now has respect from them and with Ms Thomson in place this is no longer an issue. He then advised that he has worked to improve his relationship with the Tri-Agencies by adhering to the rules and has also met with Health and Police. In addition he has met with Hospitality NZ. Mr Evans has had several instances when dubious characters have turned up at the tavern but this has all been noted in the book and the police were called in on one occasion. There have been some robberies which had alarmed him, however he was provided with some reassurance and support from the Police. Mr Jackson asked him to describe his relationship with the local police to which he replied that they call in regularly when passing to talk to the locals. Mr Evans stated that he felt that he has the responsibility to ensure that everyone in the tavern leaves the pub safely and gets home in one piece and not overly intoxicated.

[77] Mr Jackson asked if Mr Evans' statement was correct, to which he advised it was, with the exception of what he has already discussed.

Cross examination

[78] Constable Craddock questioned Mr Evans on whether his new duty manager had completed her ServeWise training to which he advised she had not yet, as the site was not working. Mr Evans then said that he had been unable to get any further on the site and had followed up by email with ServeWise. She will be doing the training once the site is working again.

[79] The Constable then asked who owns the Greta Valley pub, and was advised that it is owned by Mr Mike 'Bones' Evans. When asked what dates he worked at the Greta Valley Tavern he couldn't remember but did confirm that the dates have been provided in a call by Police to Mr Mike Evans. He then noted that Mr Mike Evans comes down in the evening every fortnight to the Kirwee Tavern. When asked what he had learned as an employee at the Greta Valley and he advised that he now understood the closing down process and about how to move people out during licenced hours, he had also learned different signs of intoxication too.

[80] Constable Craddock asked why he allowed a stripper to perform in the tavern for a leaving party. He said it was not illegal and wanted to give the person a good leaving do; it was suggested by one of the locals and he personally booked the stripper. He has also attended another licenced premises whether there has been a stripper present. A collection was taken at the end of the night to cover costs, otherwise he would have covered the costs himself. The duty manager was Jan Norriss that night. Maximum capacity is 220 for the tavern and he had two security guards from Platform 4 on duty that evening.

- [81] When asked how many signs are required for someone to be defined as intoxicated he replied two. They have one courtesy van and he is able to borrow another one from the rugby club for big nights if needed. He doesn't have lock ins, however he does have friends who drink in the tavern before heading to his private home which is through the kitchen. Mr Evans provides alcohol from his private store for his guests and food is usually chips or steak, depending on the evening. Mr Evans admitted to being green as a publican due to his lack of understanding of the Act which he felt he now has a much better understanding of. He was then asked why he believe things will improve and he replied that he felt he knows what he is doing now.
- [82] In answering questions from Mrs Williams Mr Evans advised that around 39 to 40% of the takings are from food sales and if the tavern is busy at the weekend he will provide 2-3 trays of complementary food. He will go and cook any food orders from the bar.
- [83] When questioned about his training manual he stated that it was provided in March and it is behind the bar and not with him today. Mrs Williams asked if there had been any updates since then and Mr Evans confirmed that there had been and that he has gone through the manual with Ms Thomson. Any information provided gets included and he goes through it weekly with Ms Thomson. Hospitality NZ information comes through towards the end of the week so he goes through this with staff. He also noted that his LCQ certificate has not arrived as yet, he passed it second time around. Food and Health advised that there were around 20-30 questions that Mr Evans had to re-sit but he was not sure of the number.
- [84] Mrs Williams asked what date Ms Thomson started, Thursday 11 May. She worked a full week and then was off for a two week holiday that had been pre-booked. Mrs Williams asked why Ms Thomson was not listed as being the duty manager for the special licence. Mr Evans advised that she is working on the Saturday night and he thought it would be too much for her to be working late and back for an early start the next day. In answer to a question does he ever override the manager's decisions he replied no he does not. He confirmed that the incident book was started on 4 July 2016.
- [85] Miss Williams asked Mr Evans what the definition of a restricted area is. He replied that it is an area where children underage cannot be present without a parent or guardian. Children can be present but without alcohol and ideally with an adult within the designated area, and the undesignated area is where anyone can be.
- [86] Mrs Faass then asked Mr Evans if he has anything formally written down to confirm Ms Thomson as being in charge and he replied that he did not. When Mrs Faass stated that she thought it would have been useful if Ms Thomson or Mr Mike Evans could have come along today Mr Evans stated the he hadn't thought about this and hadn't felt there was a need for Mr Mike Evans to attend as he had had a discussion with the tri-agencies. Mr Mike Evans advised that

Mr Steve Evans had been to his tavern once and he had been down to watch him work once. He didn't feel that what he had said was different from what the tri-agencies had been told.

Questions from the Committee

[87] Mr Evans commented that 50% of his patrons are older, probably around retirement age. They have a mix of ages in the pool team. He keeps track of numbers in the tavern and for special events he employs security and gives them tickets to the maximum number allowed.

[88] On the Roundie 500 night he closed the bar to students and removed them. He did this with support from PC Craddock and others. Guidance had been given by tri-agencies prior to the event. With hindsight he did feel he was understaffed. The numbers were more that he had been advised and he wasn't sure how many turned up. He would not have them back again.

[89] When asked by the Committee if Mr Evans had any written agreement or correspondence with Mr Mike Evans to which he replied no he hasn't written it down.

[90] The Committee then stated that Mr Evans had said that he had only been to the Greta Valley to work once. His undertaking was to do once or twice a week. Mr Evans advised that he had misunderstood this undertaking. He has today spoken with Mr Mike Evans and as of next week, for a period of time as required by the Committee, he will work one evening a week unpaid alongside Mr Mike Evans. He confirmed that on 29 March he did see the undertakings but had misunderstood.

[91] When asked what he thinks makes him suitable now? What has he learned? Mr Evans commented that he has a greater understanding of the Act, the damage intoxication can cause and areas where patrons can go and of opening hours. He understands that the supervised area is where anyone can go but anyone underage has to be with an adult, the restricted area is for anyone over 18 only.

[92] Ms Cynthia Canavan was invited to take the witness stand and was sworn in by affirmation.

[93] Mr Jackson asked if she is employed as cleaner/part time bar staff. She agreed and then confirmed that her statement was true and correct. Ms Canavan's evidence largely pertained to evidence which was to be adduced by Police.

[94] Constable Craddock asked her what her main role is to which she replied it was cleaning and she works 15-20 hrs, Wednesday – Sunday. Mr Evans does the cleaning on Mondays and Tuesdays. She confirmed that she doesn't have her manager's certificate, however she did previously. Constable Craddock asked whether she works after midnight, to which she commented not generally. She hasn't ever worked after hours as such. She thought 12.45am is the latest she has been home. The licenced hours are until 2am. She was then asked if she was present when the stripper performed, yes she was present and she didn't think given the time of day there was a problem. Everyone was enjoying it and

she wasn't doing anything inappropriate and there were no children present. It was a bit of harmless fun as far as she was concerned. She thought there were around 100 people there that night. There were also security guys working on the main door and the other door and someone walking around the whole night so there were around two or three people checking for id. She was working as bar assistant and had a clear view of entrances. The duty manager was Ms Norriss. Ms Canavan commented that Mr Evans had taken keys off people who he felt had had too much to drink.

[95] Constable Craddock asked her what the signs of intoxication are, to which she replied dishevelled look, slurring of words and being aggressive. Mr Evans reminds everyone each day about the age limit.

[96] Mrs Sharron Fodie was invited to take the witness stand and was sworn in by affirmation.

[97] Mr Jackson asked in what capacity she was employed. Mrs Fodie advised that she was employed as a cook and occasionally to work in the bar. She also has a manager's certificate.

[98] Constable Craddock asked her where she lived to which she replied 'Darfield.

[99] Ms Fodie commented that she has worked at the tavern for four years, Wednesdays -Sundays from 1pm – until closing in the kitchen (from 9pm to include cleaning up) and then on Fridays and Saturdays to help behind the bar. She gets collected by her partner at the end of the evening. She last worked as a duty manager a few weeks ago, with the exception of when Mr Evans goes to collect his son from rugby (this is on a Wednesday evening and sometimes on a Saturday).

[100] Miss Williams then asked Ms Fodie if the menu provided with Mr Evans' application is the current one to which she replied yes, she cooks it all. She works from 1pm – 8.30pm. Toasties are available after this time and bar staff or Mr Evans can heat these themselves.

Evidence of the Agencies

[101] No evidence was adduced by the agencies and the witness who was to appear on behalf of the Police was unable to be contacted and had not turned up.

Discussions

[102] Constable Craddock confirmed that Police still oppose as other than the training there are a number of items still not being met.

[103] Miss Williams advised that Health are also still in opposition. She had taken time with Mr Evans to set up the training manual, however he hasn't brought his LCQ or training manual today. She confirmed that the training manual was provided to her late, was to a good standard, last seen in March. Would have liked to have seen it brought today.

- [104] She also noted that Mr Evans' LCQ has been repeated but she had not sighted this. All bar staff except Ms Fodie have completed training. All staff have been engaged in tri-agency training. Relationship with Hospitality NZ has improved. The mentoring relationship needs to be formalised and Mr Evans has made the effort to attend the Greta Valley tavern once.
- [105] Miss Williams has no issue with staffing changes or one way door system. Duty manager not working in the kitchen seems acceptable.
- [106] Mrs Faass advised that she still opposes as still not proving his competence. There are concerns that could have been cleared up by the Police witness who didn't show.
- [107] Mr Jackson understood that Mr Evans had merged the idea of mentoring with the working at the other tavern. He advised that Mr Evans has been in touch with Mr Mike Evans today to arrange this.
- [108] Mr Jackson proposed that written evidence is submitted of his engagement with Mr Mike Evans regarding mentoring. A copy of the LCQ certificate will be provided upon receipt. The training manual can be provided to either the committee or the tri-agencies. Mr Jackson conceded that there are still question marks but Mr Evans has made an effort to improve. Mr Jackson confirmed that written material, including Ms Thomson's manager's certificate and her CV will be provided. Mr Evans will also provide an offer letter or employment contract for Ms Thomson to the committee.

Decision and reasons

- [109] The main opposition from the agencies and the concern of the Committee is the suitability of the applicant. There were a number of breaches of the Act in the early stages of the first Temporary Authority. These included,
- trading outside the hours of the licence
 - trading before he was authorised to under a Temporary Authority (A warning letter was sent by the Tri-Agency Group to the applicant.)
 - Failing to give notice regarding a manager. (An infringement notice was issued by the Police for this offence)
 - The inability of the applicant to adequately control the premises, including intoxicated persons, during the 'Roundie 500' student event which had a stop at the premises
 - Allowing intoxicated patrons on licensed premises
- [110] The legislative framework for the issue of licences is set out in sections 105(1) of the Act and these are the matters that the Committee must take into account in determining whether to issue a licence.
- [111] [10] Section 105(1) provides as follows:
- "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.”

The Object of the Act

[112] The object of the Act is set out in s.4 as follows:

4 Object

(1) The object of this Act is that—

- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
- (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

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

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

[113] The term “alcohol-related harm” is defined by s.5(1) of the Act.

“alcohol-related harm—

- (a) means the harm caused by the excessive or inappropriate consumption of alcohol; and
- (b) includes—

- (i) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
- (ii) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in subparagraph (i)."

[114] The term "amenity and good order of the locality" is defined by s.5(1) of the Act. "amenity and good order of the locality, in relation to an application for or for the renewal of a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable."

[115] In forming an opinion on whether the amenity and good order criteria have been met, s.106 sets out relevant factors to be considered.

"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."

[116] The Committee adopts the analysis as described by Heath J in *Venus New Zealand Ltd* [2015] NZHC 1377,

"[20] Although the "object" of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the "object" of the legislation. It seems to me that the test may be articulated as follows: Is the Authority satisfied, having considered all relevant factors set out in s.105(1)(b)-(k) of the 2012 Act, that the grant of an off-licence is consistent with the object of that Act?

[117] Although the application being determined under appeal was an off licence the same criteria apply to an application for an on licence.

[118] The opposition raised by the Agencies concerned the suitability of the applicant namely its alter ego Mr Steven Evans, and his inability to run the premises whilst

trading under Temporary Authorities as well as concerns regarding the systems, staff and training of the premises.

[119] The Agencies provided evidence of breaches of the Act which were accepted by the applicant. All of the evidence related to incidents which occurred between July 2016 and November 2016 (inclusive). There was no evidence placed before the Committee, at either the February or June 2017 hearings, of further alleged breaches of the Act since November 2016.

[120] The Committee takes the approach as outlined in *Gogo Bar* [2016] NZARLA PH 283 by the Authority, especially where suitability has been squarely placed before it as an issue.

[67] While the Authority must consider all of the relevant criteria, in this case it is the suitability of the applicant that is most in issue.

[68] Section 4, the object of the Act, is also particularly relevant. In *Linwood Food Bar Limited v Davison* [2014] NZHC 2980 the High Court was considering an appeal against a decision of the Authority to refuse the renewal of a licence. Justice Dunningham said at paragraph [18]:

"[18] My attention was also drawn to the purpose and object of the 2012 Act which applied to this application even though the appeal is to be determined under the 1989 Act. Importantly, as was emphasised in Venus New Zealand Limited, the object in s.4 of the 2012 Act differs from that contained in the 1989 Act in that the aim is now minimisation of alcohol-related harm, not merely its reduction. That means both the Authority, and this Court, must have regard to reducing alcohol-related harm to the smallest amount, extent or degree, when making decisions on the grant or renewal of a licence."

And in paragraph [19]:

"[19] Finally I observe that in determining whether a licensee is suitable, a positive finding is required as to his or her suitability."

[69] The test of "suitability" is that established by Holland J in *Re Sheard* 1996] 1NZLR 751 and adopted by the Authority from the definition in the Concise Oxford Dictionary as "well fitted for the purpose; appropriate".

At page 77 His Honour said:

"Obviously, the applicant's past conduct will be very relevant to the consideration of suitability. The real issue is whether the evidence of that past conduct will indicate a lack of confidence that the applicant will properly carry out the obligations of a licence ..."

And at page 78:

"The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence."

[70] The Authority considers that the meaning of "suitability" has not changed as a result of the enactment of the Sale and Supply of Alcohol Act 2012 (see *Barcode* [2013] NZARLA PH 1214 at paragraph [17]).

[71] In *Nishchay's Liquor Centre* [2013] NZARLA PH 837 the concept of suitability was discussed by the Authority at paragraph [53] as follows:

"[53] Rather, suitability is a broad concept and the assessment of it includes the character and reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also includes matters raised and reports filed under s.33 of the Act ... and those reports may raise issues pertaining to the object of the Act as set out in s.4. thus, whether or not the grant of the licence will result in a reduction or an increase in liquor abuse is a relevant issue."

The Authority continued at paragraph [54]:

"Traditionally, that test has been interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus, it includes the object of the Act as set out in s.4."

The Sheard test is not simply about how a business is likely to operate in the future. It is dependent on an assessment of the more generalised factors referred to ... It includes how a licensee will deal with liquor abuse issues that may arise from the establishment of the business."

[121] We must assess the suitability of Mr Evans, the 'Alter Ego' of the applicant in this matter for an on and off licence as well as for a manager's certificate, using the evidence which has been placed before us and also our own assessment of him when he gave evidence before us.

[122] Mr Evans started off his sojourn into the hospitality trade on the wrong foot. He had no experience. He lied to the agencies when he said he had given notice of the appointment of a Temporary Manager, namely himself. He went against the advice of the agencies and traded when he could not under the terms of his licence. He also allowed an event, the Roundie 500, on his premises where a number of the participants were observably intoxicated. He could not cope with the event and the Police were required to move the attendees on.

[123] In the light of these failings the Committee adjourned the February 2017 hearing to allow for further improvements to take place and for a number of undertakings to be completed. Most of these were, except for one critical undertaking, to work on another licensed premises under the direction of an

experienced licensee. Mr Evans stated that he misunderstood the direction of the Committee. We give him the benefit of the doubt.

- [124] The direction was placed on Mr Evans because of the issues that had occurred and due to his obvious lack of experience in the industry. We observed this first hand when he gave evidence in February and to a lesser extent in June. We are still unconvinced that Mr Evans has the required experience to be the holder of a manager's certificate. We do however believe that with an experienced manager running the premises the criteria as set out in s.105 (1) can be satisfied.
- [125] We take heed of the concerns of the agencies, and our own observations and believe that the granting of Mr Evan's manager's certificate will be more of a journey rather than an event. He does appear to be learning and is aware that paying lip service to the advice and concerns of the agencies will not achieve a positive outcome and could place his business at risk.
- [126] In summary when the Committee stands back and evaluates the evidence placed before it in the light of the object of the Act and the criteria as set out in s. 105(1) we believe that the On and Off licence for Evansbury Holdings can be issued.
- [127] Mr Evans manager's certificate has not been granted at this time given that a number of required undertakings have not been met. Mr Evans has had three months to complete these. His certificate will be adjourned for six months and is linked to a formal mentoring contract (to the satisfaction of the agencies). A training outline is to be documented and provided. One of the agencies will sit down with Mr Evans and work out what he needs to learn over this time. Mr Evans will complete one day a week of work for six months with this mentor and this needs to be diarised.
- [128] The Manager's Certificate application of Steven Evans is adjourned for six months to allow Mr Evans to complete relevant undertakings. In six months' time the Alcohol Licensing Inspector is to provide a report and if this is positive then the certificate may be decided on the papers.
- [129] During the time that Mr Evans is completing the mentoring programme the Tavern is to close at 10pm on the days Mr Evans is manager.
- [130] The On and Off licences is granted, with the amended conditions as sought by the applicant.

DATED at CHRISTCHURCH this 22nd day of August 2017.



Chairman
Selwyn District Licensing Committee



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BEFORE THE DISTRICT LICENSING COMMITTEE
AT SELWYN

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an application pursuant to section 127 of the Act by
EVANSBURY HOLDINGS LIMITED for renewal of an
off-licence in respect of premises situated at 2-4
Tramway Road, Kirwee, known as "The Kirwee Tavern"

MEMORANDUM OF COUNSEL FOR EVANSBURY HOLDINGS LIMITED

**BROOKFIELDS
LAWYERS**
J D Young
Telephone No. 09 979 2155
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P O Box 240
DX CP24134
AUCKLAND

MAY IT PLEASE THE COMMITTEE:

1. As discussed at the hearing, the following is a suite of conditions and undertakings proffered by the applicant for consideration and comment by the reporting agencies. The applicant reserves the right to proffer a revised suite of conditions and undertaking as part of its closing submissions:
 - (a) A reduced closing hour of 1am with a one-way door at midnight (the one-way door will be operated in the manner sought by the Police);
 - (b) A maximum of 6 "theme nights" in any rolling 12-month period;
 - (c) The DJ will finish at 12 midnight on "theme nights";
 - (d) Patrons will be actively discouraged from using the front door of the premises nearest the Summer's residence after 9pm. This will be done by way of signage and monitoring by staff as the door cannot be locked for fire safety reasons;
 - (e) The courtesy van will be loaded/unloaded in the rear carpark (on the opposite side of the premises to the Summers' residence);
 - (f) The applicant will continue to work with Mr Turner to improve the acoustic performance of the premises and will submit a Noise Management Plan to the reporting agencies within 3 months of the decision of the Committee (should the licence be renewed);
 - (g) The applicant will have two half-day formal training sessions with Craig White¹ from HospoTrain². These will occur within 6 months of the decision of the Committee (should the licence be renewed) and one session will specifically address intoxication and early intervention;

¹ <https://hospotrain.com/#team>.

² The applicant sought guidance from Hospitality New Zealand in relation to external trainers. Two options were mentioned – Hospotrain and Alcohol Consulting Group. The latter is Ms Faass' consultancy and as she is a witness in respect of this renewal application the applicant has elected to engage Hospotrain. It is noted that Joanne Howard of Omega Hospitality is also a director of Hospotrain.

- (h) The applicant will use the training at (g) above to further develop and formalise its internal training systems;
 - (i) The applicant will request a bi-monthly meeting with the Police and the Inspector to discuss the performance and management of the premises;
 - (j) The applicant will formally record all matters discussed at weekly staff meetings and retain meeting minutes in a folder;
 - (k) The applicant will engage with Hospitality New Zealand Inc. on training in relation to record keeping, documentation and general administration of a licensed premises;
 - (l) Provide Ms Thomsen's contact detail to Ms Summers and have Ms Thomsen as the primary point of contact for Ms Summers; and
 - (m) No dancing on pool tables.
2. The applicant has turned its mind to a reduced period of renewal. However, it would like the opportunity to consider the closing submissions for the reporting agencies before commenting on the merits or otherwise of a truncated renewal.

DATED the 17th day of July 2019



J D Young
Counsel for the Applicant