

**Decision No. R/59/135/2019 ON
R/59/088/2019 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.127 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.127 of the Act
in respect of premises situated at **2-4
Tramway Road, Kirwee** known as
“The Kirwee Tavern”.

BEFORE THE SELWYN DISTRICT LICENSING COMMITTEE

Chairman: Mrs S Griffin
Members: Mrs R Kilworth
Mr G Lee

HEARING at Lincoln on 8, 9, 10 July 2019

SUBMISSIONS : Agencies by 16 August; Applicant 30 August 2019

APPEARANCES

Mr John Young, on behalf of the applicant
Mr Steven Evans, Director and shareholder of the applicant company
Mr Malcolm Johnston, Selwyn District Council (SDC) Chief Alcohol Licensing Inspector – in
opposition
Constable Genevieve Craddock, Police Alcohol Harm Prevention Unit, NZ Police – in
opposition
Mr George Poole, for the Medical Officer of Health – in opposition
Ms Tania Thomson – witness for the applicant
Ms Kate McKenzie – witness for the applicant
Sergeant Alex Pickover – witness for the NZ Police
Senior Constable Andrew Grant – witness for the NZ Police
Senior Constable Paul Beaumont – witness for the NZ Police
Senior Constable Hamish Caird – witness for the NZ Police
Constable Victoria Russell – witness for the NZ Police

Mr Jack Summers – summoned witness for the NZ Police
 Ms Tracey Summers – summoned witness for the NZ Police
 Ms Amanda Matoe – summoned witness for the NZ Police
 Ms Helene Faass – former Chief Licensing Inspector – witness for the Chief Licensing Inspector
 Mr Robert Turner – Environmental Health Officer, Enforcement Officer, SDC – witness for the Chief Licensing Inspector

DECISION OF THE COMMITTEE

Decision

- [1] For the reasons which follow, the Committee has unanimously determined to refuse the renewal applications for the on-licence and the off-licence held by Evansbury Holdings Ltd for the Kirwee Tavern.
- [2] This decision relates only to this licensee and is not a decision that Kirwee should not have a tavern with similar licences in this locality. The reason for the length of time between the hearings and the issue of this decision is because of our need to carefully consider and assess all the evidence and submissions we received.

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Introduction

[3] Before the Committee are opposed applications by Evansbury Holdings Limited (hereinafter called the "applicant") for the first renewal of the on and off licences in respect of the premises described as situated at 2-4 Tramway Road, Kirwee, known as the Kirwee Tavern. This is the first renewal after what is usually a probationary year. Mr Evans is the sole director and shareholder of the applicant company, Evansbury Holdings Limited. Copies of the licences being renewed are **attached** marked **Appendix "A"** and **Appendix "B"**. The applications to renew both licences were dated 6 August 2018 and were both signed by Omega Hospitality and Retail Ltd as agent of the licensee company. Both applications indicated that no variations were sought – paragraph 11(a) for the On-Licence and paragraph 11(a) for the Off-Licence. However both applications described the address of the licensed premises as *"Cnr West Coast Rd and Courtenay Rd, Kirwee"* – paragraph 7(b) of both applications. Whilst describing the premises currently licensed we also make the following observations:

- (i) The existing licences both describe and define the licensed premises as follows:
"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."
- (ii) A copy of that plan, in colour, is **attached** to our decision is **Appendix "C"**. The green outline depicts the proposed portion of the premises sought to be licensed on the plan filed with the original applications identified by the DLC as *"Received 13 Sep 2016"*. That plan shows the entire premises were proposed to be designated supervised. The principal entrance was identified on the Courtenay Road (Eastern) side of the premises. At the hearing in 2017 it was agreed that the beer garden area, and the kitchen area, and the private area would all be excluded from the licensed premises area. Those excluded areas were indicated on the plan by the blue-line hatching and the initialled handwriting. That amended plan (**Appendix C**) depicts what comprises the licensed premises, the designation, and the Principal entrance at the time of the renewal applications, and currently.
- (iii) The applications for renewal were both accompanied by a different plan identified by a date stamp *"Received 8 Aug 2018"*. A copy is **attached** to this decision marked **Appendix "D"**. Plan D accompanying these two renewal applications:

- i. includes the entire premises without depicting the agreed exclusions from the 2017 hearing;
 - ii. shows a different address;
 - iii. shows a different *principal entrance* – on West Coast Road.
 - (iv) During the course of our renewal hearing we canvassed with Mr Evans, witness for the licensee, just exactly what the licensed premises comprised and also whether in fact the restaurant was, or was intended to be, supervised. This had been raised at the 2017 hearing. The evidence was that unaccompanied minors sometimes collected food for take away consumption from the kitchen. It was agreed at our hearing in 2019, that the restaurant area, from the end of the bar to the opposite external wall and northwards, should be undesignated if the practice of allowing unaccompanied minors to get food/meals from the kitchen was to continue. The Committee has therefore modified the current 2017 licensed premises plan (**Plan C attached as Appendix C**) to reflect what is licensed and what is proposed. **Plan "E" attached as Appendix E** shows:
 - i. the current *licensed premises* hatched in red markings, which is currently all designated *supervised*, and, in orange hatching, the restaurant area which it was proposed would remain part of the licensed premises but be *undesignated*; and
 - ii. the Principal entrance remaining on Courtenay Road side.
 - (v) At the conclusion of the 2019 hearing it is what is depicted on **Plan E (Appendix E)** that we concluded comprised the **proposed** *licensed premises* and **proposed** *designations* and **proposed** *principal entrance*.
- [4] The application was notified on the Selwyn District Council Website, 10 August 2018.
- [5] A hearing date for these applications was initially set down for 7 November 2018 then rescheduled to 27 November 2018. This later date was adjourned owing to the involvement of local police witnesses in a serious shooting incident at Darfield and injuries sustained from this.
- [6] Two further scheduled dates, 30 - 31 January 2019, and 7 – 8 March 2019, were adjourned for personal reasons pertaining to applicant's Counsel, Mr Young.
- [7] The hearing took place in Lincoln over three days, 8, 9 and 10 July 2019. The Committee, through the Commissioner, issued a series of Minutes covering these matters and other pre-hearing matters on:
- (i) 30 October 2018
 - (ii) 7 November 2018 (2)
 - (iii) 26 November 2018
 - (iv) 30 January 2019
 - (v) 4 March 2019
 - (vi) 17 April 2019
 - (vii) 15 May 2019
 - (viii) 16 May 2019
 - (ix) 18 June 2019

After the hearing, the Committee visited the premises on 10 July 2019. A Minute dated 5 August 2019 was issued recording that visit – a copy is **attached** to this decision as **Appendix F**.

- [8] The premise is located in the small rural town of Kirwee and has traded in this location for well over one hundred years. It could best be described as a “country tavern”. The town has a population of 1200. Kirwee Tavern has residential properties opposite in Courtenay Road and is positioned alongside the Canterbury-West Coast state highway (SH) 73, on a bend, in a 70kph zone. The applicant seeks the same hours as granted for the “probationary” year in 2017. These hours are within those prescribed in the Local Alcohol Policy. The tavern does not have a separate bottle store as off-sales are made over the bar.
- [9] As required under the s.103 of the Act, reports were sought from the Agencies. All three agencies reported in opposition to the renewal of the licences. The manner in which the premise have operated since the initial granting of the licences in 2017 remains of significant concern to the agencies.
- (i) In submissions, the main opposition from all three agencies is the suitability of the applicant and that to grant the renewal applications would be inconsistent with the object of the Act. Various of the agencies further oppose on grounds that the applicant does not have appropriate staff, systems and training, that the Host Responsibility Policy has not been followed relative to the object, that the trading hours should be reviewed for appropriateness and that there have been amenity and good order issues. The opposition and evidence is common to both applications.
 - (ii) There was no opposition to section 105 (1) (c), (e), (f), and (g).
- [10] There were no objections from members of the public.
- [11] Closing submissions were duly received as agreed from the agencies 16 August 2019 and from Counsel for the applicant 30 August 2019.

Background

- [12] The applicant traded on Temporary Authorities from July 2016. Issues around suitability arose during this period due to a number of breaches.
- [13] A public hearing 17 November 2016 was convened to hear an opposed special licence application. The agencies’ evidence of detailed failings and breaches of the Act between July 2016 and November 2016 was accepted by the applicant. Evidence included;
- (i) *Trading outside the hours of the licence*
 - (ii) *Trading before the company was authorised to under a Temporary Authority (A warning letter was sent by the Tri-Agency Group to the applicant)*
 - (iii) *Failing to give notice regarding a manager. (An infringement notice was issued by the Police for this offence)*
 - (iv) *The inability of the applicant to adequately control the premises,*
 - (v) *including intoxicated persons, during the ‘Roundie 500’ student event which had a stop at the premises.*
- Due to the proximity of the “special” event and the required appeal period, a special licence with conditions was issued to achieve more control of the event and the object of the Act.
- [14] A hearing was held 15 February 2017 for the off and on licences and the manager’s licence for Mr Evans. The agencies were in opposition and evidence was heard from all parties. Two of the current Committee members were members of the Committee

which considered the various applications granted during 2017. No one has raised this as an issue at any point in these renewal application processes.

- [15] The committee adjourned after the February 2017 hearing for three months, during which time the applicant was to produce a number of documents and comply with undertakings made. 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*
 - (v) *(including part-time staff)*
 - (vi) *Formalised relationship with Hospitality NZ*
 - (vii) *Formalised relationship with a mentor*
 - (viii) *Reduced opening hours as agreed*
 - (ix) *Duty manager not to work in the kitchen*
 - (x) *The applicant to receive training as an employee at another premise 1-2 days per week.*

Mr Evans started off in the hospitality trade on the wrong foot – he lied to the agencies about the appointment of a temporary Manager (himself), he went against advice of the agencies and traded when he could not under the terms of his licence, and he underestimated the impact of a student event and could not cope. Police had to intervene and move attendees on. The close proximity of SH73 was of concern to them.

- [16] When their supplementary reports were called for, the agencies sought a further hearing as they contended there were still issues with the running of the premises. The second hearing was set down for 15 June 2017.

- [17] At this resumed hearing, an application was also heard for a special licence (opposed by the Alcohol Licensing Inspector and Police) allowing for opening 2 hours earlier than authorized for a Hunt Club champagne breakfast 9 July 2017. The special licence was issued with conditions;

- (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.*

With an experienced manager running the premises, the Committee concluded that the criteria as set out in s.105 (1) could be satisfied.

- [18] Mr Evans misunderstood the direction to undertake to work on another licensed premise with an experienced licensee as mentor. Agencies' evidence was accepted at the special licence hearing and therefore accepted by the applicant at the substantive licence hearing. The committee granted the On and Off Licences in its decision 22 August 2017. The Licences issued 8 September 2017, for 12 months until 8 September 2018. The 22 August 2017 decision is **attached** to this decision as **Appendix G**.

- [19] The committee in 2017 remained unconvinced that Mr Evans had the required experience to be the holder of a manager's certificate. This was adjourned a further 6 months to allow Mr Evans to complete a mentoring programme. The manager's certificate was granted 22 June 2018, on the papers.

The Hearing

- [20] A hearing date for the two applications for renewal was initially set down for 7 November 2018 then rescheduled several times as previously mentioned following requests by the Police and the applicant.
- [21] The hearing took place at Lincoln 8, 9 and 10 July, 2019.
- [22] As a preliminary matter and in the interest of transparency, the chair advised attendees (at the hearing on 8 July 2019) that applicant's counsel had provided the DLC with two cases 16 November 2018, both were heard by ARLA. Counsel requested that these not be shared with other parties at that particular time. A Minute was issued subsequently to Mr Young, 30 January 2019, agreeing to hold the case authorities but advised that when presented at the hearing, the Committee may provide the other parties with the opportunity to consider these and that this may include an adjournment. However, parties had the opportunity to consider these cases as Mr Young quoted them in his submission for the February hearing dates. The chair further advised¹ in clarification that the cases were **Go Go Bar Limited** and **Vava'u Lahi Night Club Limited**.
- [23] The chair also advised that with summoned witnesses, notified availability for some other witnesses, particularly the police, the agenda provided for the hearing could be compromised at times. The parties co-operation and understanding was sought.
- [24] The chair reminded the parties that this hearing was for the On and Off licences in respect of the Kirwee Tavern.
- [25] Prior to the close of the hearing 10 July and as a result of the many issues that had arisen during the hearing, and following discussion, the Committee, the agencies and Counsel agreed that Mr Young would discuss and complete a suite of possible undertakings and conditions with Mr Evans (who had left the hearing to open the tavern), which might address these issues, and provide these to the Committee and to the parties the following week. The agencies had discussed the considering of undertakings during a break, but were not of a mind to consider any. The Licensing Inspector raised the ARLA *Lyger* decision and its stance on the object of the Act. The Committee reiterated that no decision had been considered or discussed by them at that time, so there was no question of any decision or any pre-determination. However, having a suite of undertakings and conditions to consider would allow the Committee to be fully informed as to all options available when evaluating the evidence, forming their opinions and making their decisions. The Committee reinforced that the receiving of this suite would in no way be an indication of granting the renewals with conditions or undertakings. It was agreed that the agencies could respond to the suite in closing submissions required by 16 August. Mr Young's Memorandum dated 17 July 2019, containing a suite of conditions and undertaking is **attached** to our decision as **Appendix H**.
- [26] A Minute from the chair dated 5 August 2019 was circulated to the parties summarising the DLC visit to the Kirwee Tavern at the conclusion of the hearing. Parties were aware of this visit. Mr Evans and Ms Thomson were present during the visit and were helpful in answering several questions.
- [27] Constable Genevieve Craddock provided the report requested by the Committee during the hearing, the Assessment of "Calls for Service" from the Canterbury Police

¹ On 8 July 2019 at the hearing.

Intelligence Section, on 15 August 2019. The data sought related to calls for service within a 500 metre radius of the Kirwee Tavern. While the report was restricted, Sergeant Robertson, Supervisor AHPU, was satisfied the report could be released to the SDC DLC and relevant parties without compromising imposed restrictions. The report was circulated to the parties. On 10 October 2019 the Committee issued a Minute making an Interim non publication order in relation to this report pursuant to section 203 of the Act. We return to that later.

Evidence of the Applicant

- [28] In opening, counsel for the applicant, Mr Young, summarised Mr Evans' journey including the previous fulfilling of suites of undertakings designed to improve his overall hospitality knowledge, resulting in the granting of the initial On and Off licences in August 2017 and in the issuing of his manager's certificate in June 2018. The improvement made by Mr Evans at the resumed hearing in 2017 enabled the granting of those licences, he submitted.
- [29] Mr Young submitted that a balanced reasonable approach should be taken and account of the positive changes made, the many nights the tavern had been operated without issue, not ignored. In respect to this, he referred to the *Vava'u Lahi* case.²
- [30] Counsel submitted that opposition against Evansbury was almost exclusively advanced by Police. He submitted the close monitoring by the police over the last eighteen months and the little first hand analysis or evidence from the Inspector or the Ministry of Health (MOH) was what confronted the Committee.
- [31] Mr Young submitted that whilst suitability is an issue, all section 131 or 105 matters are in the mix, leading to the need of testing the overall picture against the object of the Act. *GoGo Bar Limited*³ had also been provided as a useful summary of the suitability evaluation as is the test of suitability by Holland J in **Re Sheard** (1996), page 77.
- [32] There was also an issue in respect of noise where there was a delay in advising Mr Evans of the first excessive noise direction (END). Mr Young referred to *Ponda Holdings Limited*⁴ in which the Authority referred to *British Isles Inn Limited*⁵ and *The Narrows Landing Limited* cases.
- [33] Mr Young submitted that the key issues are;
- (i) *The failed Evidential Breath Alcohol (EBA) offences by patrons of the Kirwee Tavern and the need to utilise best-practice intoxication assessments, the other side of this being Mr Evans's provision of a courtesy van*
 - (ii) *The noise complaints from the neighbour and the Excessive Noise Directions (ENDS) 24 November and 2 December 2018*
 - (iii) *The alleged assault 27 July 2018 which was subject to a police investigation*
 - (iv) *The management of the birthday/Karaoke night 29 July 2017 where more Lincoln students arrived for the 4 girls joint birthday celebration than expected and the bar was closed down*
- Mr Young submitted other matters raised in opposition were more technical and minor;

² *Vava'u Lahi Night Club Ltd* [2018] NZARLA 284.

³ *GoGo Bar Ltd* [2016] NZARLA PH 279-283.

⁴ [2014] NZARLA 558.

⁵ NZLLA PH406/2006.

- (i) *An All Black jersey Facebook promotion involving tickets for purchasing alcohol and the jerseys as prizes*
- (ii) *Mr Evans' denial that a police officer and the former licensing inspector saw him dancing on the pool table 16 February 2019*
- (iii) *The neighbour overstating the issues concerning fighting outside the tavern by Courtenay Road*
- (iv) *Mr Evans' denies that a police officer and the neighbour's adult son saw him making a "gun" gesture across the road towards the neighbour towards midnight on 22 December 2018 and shouting abusive comments across the road to her, while he was on duty. He also denies being intoxicated.*

[34] Mr Young called three witnesses for the applicant. Firstly we heard from the director and sole shareholder of the applicant company Evansbury Holdings Limited, Mr Steven David Evans.

Mr Steven Evans

- [35] The Committee heard extensive oral evidence from Mr Evans, presented from a written brief and in response to examination by Counsel for the Applicant. He also responded to questions from the Committee and to cross examination from the reporting agencies.
- [36] Mr Evans advised of the improvements made to the tavern, including painting the exterior, adding flower boxes around the frontage, a courtesy van, the updated full menu and bar menu, the recently installed sensor lights in the back car park. Trading had improved since he took over the tavern.
- [37] Mr Evans spoke of his good relationship with the local police (3 officers based in Darfield) and also with the Rolleston police. There had been regular monitoring of the premises by Police over the last 18 months. He read detailed notes of the 11 times Senior Constable Grant was present in the vicinity of the tavern. He had no issues with the premises being subject to monitoring and he and his staff worked vigilantly with the police around the community.
- [38] Mr Evans' evidence primarily addressed the issues raised in opposition reports:
- (i) Karaoke evening: Joint birthday party for 4 girls, 29 July 2017, expected 50 but many more Lincoln students arrived, a local took exception to a student's behaviour, a disagreement occurred, later escalating into a fight. Staff dealt with the issue swiftly, the bar was closed and the students were moved out to the front car park to leave with their sober drivers. Locals were moved to the back of the bar and taken home by courtesy van.
 - (ii) 7 July 2018 incident: Mr Evans knew all of those persons involved. An altercation occurred earlier in the evening and later a fight, involving the same small group. He was concerned at the time of the fight that closing the bar would annoy customers who had done nothing wrong. The Duty Manager and he did agree to close the bar. He tried to get the two women from the group to leave, as a staff member asked him to do this, but they were being difficult. He advised the decision to close was not his as he was not working.
 - (iii) Drinking and socialising on the premises: Mr Evans lives on the premises with his son but this was planned to change soon. He did not always consume alcohol when he was a patron. The claim he made things difficult 7 July 2018 was not supported by evidence in his view.
 - (iv) Days and Hours: Mr Evans believes closing at midnight would be a disaster and would encourage patrons to drive further afield to a bar remaining open. It

was safer he said for the community to have a night out at the tavern and use the courtesy van.

- (v) Staff, Systems and Training: Staff received extensive training in 2017 based on Hospitality New Zealand resources and his new training manual. He held regular refresher training mainly in the form of weekly meetings. Any new staff received full training, but no new staff had been employed. A back-up manager was not trained by the tavern as she worked fulltime at another premise and only occasionally filled in.
- (vi) Noise: The inspector referred to a noise complaint that was not raised with him at the time. He was careful to work with nearby residents. Ongoing complaints resulted in the current manufacture of acoustic inner window frames for windows facing Courtenay Road and an automatic door close mechanism would be installed on the Courtenay Road door.
- (vii) Community Involvement: Mr Evans was proud of the tavern's sponsorship of six local charities and the meal vouchers given to local fundraising events.
- (viii) Excess Breath Alcohol: A local constable visited the tavern 20 October to advise of a person caught drink-driving the night before. Staff did not think patrons were approaching intoxication.
- (ix) Statements made by Ms Summers and Mr Summers: Mr Evans was clearing glasses, monitoring behaviour and intoxication on the 24 November 2018, the night of the local A&P Show. Ms Summers' evidence referred to noise that night. A small crowd of 10 youths gathered outside the front door, corner Courtenay Road and SH 73. Mr Evans asked them to move on because of the noise. Security advised they had been having man hugs. Police arrived, investigating a complaint from one of the Summers. Police asked about a reported fight. Mr Evans stated there had not been a fight.
Mr Evans advised that the people who took Ms Summers' bagged fertiliser were not from the tavern. On 22 November 2018 he gave Ms Summers about 10-12 sheets of roofing iron from the old roof on the tavern, after she asked.
An incident occurred 22 December 2018, his annual Christmas party for patrons, when slight force had to be used to remove a patron, known to Mr Evans. The patron was not happy and tried to kick the pub signs outside. Mr Evans had a forceful conversation with him and he was taken home. Mr Evans stated he himself was not intoxicated. Police arrived. He stated that while outside with police he did not make a gun gesture to his head towards Ms Summers across Courtenay Road. The volume of the DJ music reported by Ms Summers was reduced and he did not raise the level later.
The incident of the two young local patrons playing "jump the donkey" with the signs outside while waiting for the courtesy van had been seen by Ms Summers. Mr Evans stated they were not intoxicated. While he was watching, one patron missed, damaging the sign and in a humorous manner tried to hide it across the road (SH73). Mr Evans told him not to be silly and he brought it back.
Mr Evans stated the allegation by Jack Summers concerning 22 October 2018 when his little brother was seen consuming alcohol with Mr Evans' son at Mr Summer's house, the alcohol allegedly from the premises, was incorrect. His son did not have access to alcohol on site and was not in Kirwee that weekend.
Mr Evans' evidence included some things he had seen occurring at Ms Summer's property as he felt he had no choice because Ms Summers had accused him. These included the smell of marijuana, Calendar Girls vans at the property and people visiting who looked like gang members.
- (x) 16 February 2019: The Police Alcohol Harm Reduction Unit's Constable Craddock visited the premises with Licensing Inspector Mrs Faass. Mr Evans

stated that he was not dancing on the pool table. Nor was it him in the video footage of this that was taken by the constable.

- (xi) 26 May 2019: People arrived from the rugby club from 10.30pm. The club's and tavern's vans were running. Mr Evans located a man in the car park around 11.45pm. The courtesy vans were out. He was put in the outside smoker's area as a place of safety and monitored.

When the bar closed at midnight, some 20 patrons were still waiting on the vans. Local officer Senior Constable Grant, arrived, asked Mr Evans if the bar was closed and stood by the door. Mr Evans stated that the officer saw the man come back into the bar from the outside and fall over. The constable took a video of the man. Mr Evans did not see the man fall over but stated that he came inside to see about the van. The Duty Manager and Mr Evans told the constable that the man had not been served alcohol.

- [39] Mr Evans's view was that the premises are very well run and he had learned a lot in the last 18 plus months. The incident on the karaoke night was unfortunate but he thought they managed the best they could. The alleged assault this year was also unfortunate. He does not accept the criticism made of him by police. He did not accept that they made excessive noise from the tavern or did not manage the behaviour of their customers.

Cross examination of Mr Evans

- [40] The Constable asked Mr Evans why he thought we were here today – he replied that it was to discuss the application for the On and Off licences of the Kirwee Tavern.
- [41] Constable Craddock asked Mr Evans if he had completed his licence controller qualification, which he agreed he had, but he did not know about section 237, irresponsible promotion. Mr Evans said the Facebook promotion was a mistake but other local taverns had also done this. The constable said to Mr Evans she had checked at the time and there were not any other premises doing similar promotions, but Mr Evans insisted there were two.
- [42] In response to questioning about notifications of managers' appointments Mr Evans said he carried out his responsibility to advise of the appointment of a temporary manager by advising Food and Health, not the police. He suggested that Constable Craddock might need to talk to Food and Health as they were to forward this to the police.
- [43] The Constable asked Mr Evans if he had a record or register of managers at the premises, as required under section 232. Mr Evans explained initially that it was "all in the wages and salary packages". Mr Young explained that if information would assist they could provide that. Mr Evans stated that Food and Health had that on file anyway and this would be accessible to the police. The Constable reminded Mr Evans that under section 231, notice of appointment, he had to give notice. Constable Craddock asked why a new manager Mr Scobie rather than himself as licensee emailed Food and Health direct. Mr Scobie was to be a backup manager. Mr Evans provided a reference with a supporting letter, as a semi-regular part-time appointment, for Mr Scobie's application to renew his certificate. Mr Evans originally stated it was for a renewal, changing his mind later as it was out of time. The Constable suggested he should know when he was employing a person what their status was, to which Mr Evans advised he was not actually employing him, Mr Scobie was actually helping him out, as backup duty manager on Mondays and Tuesdays on a semi-regular basis when he himself was to be working but could not.

- [44] The Constable asked Mr Evans about his brief at paragraph 3.11, where he stated he understood there were no convictions in reference to the fighting incident in the tavern on 7 July 2018. She reminded him that the incident did happen and there was alcohol related harm. Mr Evans agreed there was a dispute but said there was no intoxication. The Constable said that she was not referring to intoxication but to alcohol related harm. Mr Evans responded that alcohol was not a factor of that incident. The Constable referred to Mr Evans' statement, at paragraph 3.13, where he said he was concerned that closing the bar would penalise customers who had done nothing. Tania and he discussed it and it was closed. His personal opinion was that it was a shame they closed it as there were a lot of people enjoying themselves. Mr Evans stated that he was not seeking to minimise the incident. He then confirmed to Constable Craddock that he did not report it to police when they attended.
- [45] Constable Craddock asked if there had been four fights at his premises. Mr Evans advised that there was the karaoke one and the July 2018 one, making two not four. The Constable asked about a scuffle 24 November 2018, mentioned to Sergeant Pickover by Mr Evans's mentor Mike Evans. Mr Evans advised it was not mentioned to him and his staff did not mention it so he presumed it was rub shoulders and that was it. Mr Young interjected and pointed out that the Sergeant's evidence at paragraph 31 refers to "some pushing and shoving outside the bar".
- [46] Mr Evans referred to the Constable's three visits to the premises including her visit with the Licensing Inspector when she entered the bar and did not approach bar staff or himself. Constable Craddock spoke of being approachable from the start, of advising Mr Evans to contact the police if not sure of anything, her offer of one hour's free training not taken up. Mr Evans responded that they welcomed police into the premises at any time.
- [47] When asked if he thought a licensee should consume alcohol on their premises regularly, Mr Evans' view was that socialising with customers made them feel included. Constable Craddock referred to his brief at paragraph 3.21, where he noted that police never claimed that he was intoxicated 22 December 2018. She pointed to Constable Russell's evidence when she was outside close to Mr Evans, which stated that he was intoxicated while he was yelling across the road and abusing Ms Summers. He answered that he was not intoxicated that day, he was not drinking, he was working.
- [48] Mr Evans confirmed Ms Matoe did not receive any training because she had formal training on a regular basis in her prior job (The Terrace Restaurant & Bar) and the Act is the same. He did not feel she needed any further training in spite of his premises being different.
- [49] The Constable asked about the list of times Senior Constable Grant had been in the vicinity of the tavern. Mr Evans answered that staff made them. When asked why they would do that when SC Grant was just doing his job, Mr Evans' responded that they were frustrated that he was not actually calling in and asking if everything was alright. Other police in the area called in. SC Grant came in but he did not talk. Mr Evans called Senior Sergeant Peter Stills to discuss what he saw as a lack of communication from SC Grant.
- [50] When asked how the Constable had cancelled Ms Matoe's appointment, in reference to his evidence at paragraph 5.6, Mr Evans advised that something had come through from Food and Health for a cancelled manager. He stated that he spoke to Food and Health and was advised that Ms Matoe's registration was cancelled by

police. Mr Evans had no documentation or evidence to support this cancellation. Constable Craddock was unsure as to how she would achieve this.

- [51] Constable Craddock questioned Mr Evans about his evidence of the strong smell of marijuana coming from Ms Summers' house, the vehicles coming and going including a Calendar Girls van and people visiting who look like gang members. In explanation Mr Evans described gang members as people wearing leather jackets, tattoos on their face, neck, arms and bald heads. He had no video or photographs of vehicles coming and going as they were not spies. He did not mention his concerns to police as he did not see any point because nothing would get done, that's why it had been brought up today.
- [52] In his evidence at paragraph 8.2, Mr Evans stated that he was not dancing on the pool table. In 8.4 Mr Evans assumed the video footage of this was taken after the constable left the premises. He stated that the velvet was sacred and if anyone touched that velvet there would be holy hell to pay. Constable Craddock put to Mr Evans that she was watching through the window before she started filming, prior to entering the tavern, which drew the response from Mr Evans that it was odd, it was not him. In paragraph 8.5 he had stated that dancing on a pool table was just a bit of fun and he had seen this in numerous bars in the Selwyn District but would not name them as he was not going to drop those bars in it. He was aware the Licensing Inspector had raised her safety concerns about dancing on the pool table with the duty manager Ms Thomson.
- [53] When questioned about his evidence at paragraph 9.3 where Mr Evans stated that he had found the man in the video taken by Senior Constable Grant early Sunday morning 26 May 2019, in the tavern carpark, he confirmed the man had come from the rugby clubrooms, he was intoxicated, and he brought him inside the premises. The Constable said that Ms Thomson's evidence was that two men came in after they had been at the clubrooms, one was intoxicated and one was influenced. Mr Evans replied that there was miscommunication between himself and Ms Thomson and she was not aware he had been out in the carpark and brought him in.
- [54] Mr Poole, for the Medical Officer of Health, referred to the host responsibility policy, to clarify its purpose with Mr Evans and asked him why excessive breath alcohol incidences have occurred on his premises if his policy stated those who drive should not drink. Mr Evans' response was that they have the courtesy van and patrons are aware of this. They promote the courtesy van every hour, every minute they're open. Transcript page 156; *"you can take a horse to the water tank but you can't make him drink"*. It was definitely not a staff fault. *"We cannot control people's decisions in life"*.
- [55] Mr Poole asked how often Mr Evans was a patron of the tavern. Mr Evans answered that it was probably once a fortnight on a Friday or Saturday. Mr Evans said that there was no blurring with his staff between him as a licensee and him as a patron. In regards to the 7 July incident, he reiterated there was no miscommunication going on.
- [56] In response to Mr Poole's question about having appropriate systems in place, and his staff's correct application of these to prevent intoxication occurring in the premises, following Sergeant Pickover's alluding to a young male who was drunk, one of the victims of the assault claiming that he had six or seven drinks and the excess breath alcohol incidents, Mr Evans answered that they were not getting intoxicated in the Kirwee tavern as there were occasions when they come to the Kirwee tavern intoxicated. When asked if his staff were selling alcohol conducive with the object of the Act, given these incidents occurred, Mr Evans responded, no.

Mr Evans then queried if it was to intoxicated people. Mr Poole said that it was to minimise alcohol related harm and Mr Evans replied that the staff followed the rules.

- [57] The Licensing Inspector, Mr Johnston asked if Mr Evans was aware that Selwyn Police met weekly to discuss policing issues and concerns - Mr Evans confirmed he was aware. Was Mr Evans further aware that Senior Sergeant Stills tasked his staff accordingly, depending on the issues at the time, and that Senior Constable Andy Grant had a portfolio for traffic policing – Mr Evans answered that he was not aware of that. Mr Evans was aware that New Zealand Police had an operational prevention strategy, including crime prevention. Referring to the list of visits to the vicinity by Senior Constable Grant, the Licensing Inspector stated that the first one, at 7.40pm, Friday 30 March, was Easter, a long weekend, and would Mr Evans expect the police to be out in force accepting the Kirwee Tavern is situated at the end of a rather large straight travelling from Christchurch – Mr Evans stated they were parked in the pub car park at the time facing the pub and would not see the main road traffic. Mr Evans was not aware that on Saturday 21 April, when Senior Constable Grant was recorded arriving at 2am, the Constable had processed a drunk driver leaving the tavern car park about 1am. Mr Evans' response was that the constable did not communicate with them but he was reminded by Mr Johnston that in his evidence Mr Evans stated that Senior Constable Grant arrived just after 2am, talked to staff about drunk drivers and how the remaining patrons were going home. He definitely did not recall the Constable mentioning apprehending a drunk driver but then stated he could have. Of the three dates listed in October, Mr Evans was aware that Senior Constable Grant apprehended two drink drivers leaving the tavern car park in October. Mr Evans then stated that he was fully supportive of the crime prevention strategy and of Senior Sergeant Stills tasking Senior Constable Grant with sorting out drink driving around hotels and taverns.
- [58] With reference to Mr Evans' evidence that he did not make excessive noise the Licensing Inspector, Mr Johnston questioned Mr Evans about Constable Craddock's and Helene Faass's visit to the premises 16 February (2019). Mr Evans replied it was an occasion where they did exceed it with the base and Selwyn District Council came around.
- [59] Mr Evans confirmed that he was served excessive noise direction (END) notices 23 December (2018) and 20 January (2019) and that the neighbour's complaints were upheld.
- [60] Mr Johnston read Constable Russell's evidence at paragraph 8, referring to 22 December 2018, that the publican she knew to be Steve Evans came out of the tavern and that "*he was visibly intoxicated*". Mr Evans confirmed he was working but he stated he had no alcohol all day.
- [61] Mr Evans believed it would be problematic to close before 2.00 am as patrons would migrate to other venues. He added that 98% of the time, they actually closed the bar at 1.00am, especially when there was larger crowd. The courtesy van could be used and staff could clear up in the hour to 2am.
- [62] Mr Evans said that there was a one way door restriction condition on his licence but he did not know if this policy was in Selwyn's LAP. He had been operating a one way door policy but thought it allowed patrons who went outside to have a smoke to be readmitted.
- [63] Mr Evans said he knew Mrs Faass, the previous licensing inspector and saw her by the bar 16 February. He disagreed with the proposition that before Mrs Faass and

Constable Craddock walked into the bar, they saw him dancing on the pool table. Mr Evans further stated that both were wrong in saying he was dancing on the pool table.

- [64] Mr Evans said he first heard about Constable Russell's alleging he put two fingers up to his head the evening of 22 December 2018, when Constable Craddock's paperwork came through. Tracey Summers was across the road, outside her property when Constable Russell at paragraphs 8 and 9 in her evidence stated that Mr Evans was speaking to Ms Summers in a rather derogatory way and "he was visibly intoxicated". He replied that he was getting verbally abused, he may have retaliated and been a bit abrupt but he was certainly not abusive. Transcript page 170; *"I had no alcohol all day"*.
- [65] Mr Johnston reminded Mr Evans of Constable Russell's evidence at paragraphs 10 and 11, where she stated that she was watching Mr Evans while this was happening, she was next to Senior Constables Beaumont and Manning who were watching Ms Summers. She detailed the gesture he made, which in her opinion was that of a gun being placed to the head and the trigger pulled. Further, this was directed towards the female in a threatening manner as he was watching her the entire time and appeared to be in an agitated and angry state towards her with verbal outbursts.
- [66] Mr Evans recalled being told by SC Beaumont to go back inside and turn the music down. When put to him that Constable Russell in paragraph 15 of her evidence stated that he continued to yell at the female, at which point SC Manning intervened by putting his body in front of him and directed him with purpose to go inside and turn the music down, Mr Evans refuted this. He went straight back inside when told by SC Beaumont.
- [67] Mr Johnston asked if Mr Evans was aware that Jack Summer's brief of evidence also included the two fingers pointed to the head incident. His response was, transcript page 178; *"Well, wouldn't a son lie for his mother?"* Mr Johnston queried why Mr Summers would describe the gesture in that fashion which reflected very closely the description that Constable Russell provided. Mr Evans' reply was – and he referred back to his own statement – the constant odour of marijuana coming from that property. The Licensing Inspector, Mr Johnston then asked if he believed the constable had been smoking that night. Mr Evans hoped not, no. Mr Evans had no idea and he could not comment whether the Constable had any motive to come up with the two fingers to the head statement. Mr Evans reiterated that Constable Russell was wrong, and that he was only scratching his head.

Questions from the Committee

- [68] When asked by the Committee if he had ever called the police to a fight in his bar, Mr Evans said they had called police on several occasions but not to a fight. He recalled the previous Saturday, understood to be 6 July 2019, some skinheads came in at 11.40pm, wanted a drink and said they had run out of petrol. They were escorted out. SC Grant entered through the back carpark before they could ring the police. Mr Evans took him to the individuals. SC Grant spoke with them for a while before taking them to Rolleston.
- [69] Mr Evans was asked why he would not have called the police for some of the incidents that the average observer would think would be a case for the police. He responded - like the night Constable Craddock keeps going on about, where there was a fight, he knew the people, there was no intoxication, so he took it upon himself not to call.

- [70] The times he is a patron, not the duty manager, not in the role of licensee from what is understood, and he drinks, did he pay for his drinks? He responded that they have a little book. To the question, if the duty manager was asked would this be confirmed and also show how many drinks he had, he responded that he would hope so, then when prompted, he was sure. Asked about the blurring of roles for his managers and had they found it difficult to slow his drinking down or prevent him from drinking, he referred to a night about eighteen months ago when the duty manager told him to slow down. If he had the night off and he was drinking with his mates in the pub, he would be treated the same as everybody else. Mr Evans did not think that his presence in the tavern as a patron affected the duty manager's decision making, she was responsible and he respected any decision she made. He said that the last controlled purchase operation was January.
- [71] The Committee referred to balancing the positive with the negative, and asked what would he understand to be so negative as to deem him unsuitable for a licence or to have broken the liquor law. Mr Evans replied that he was hoping to find out by the end of the hearing as he had no idea, no understanding why he was considered unsuitable. When reminded that this was yet to be decided, he acknowledged that, but he was being questioned as being "maybe unsuitable".
- [72] The Committee asked Mr Evans to explain his self imposed standards as a licensee, and in accordance with the Act. He replied that he did not get himself intoxicated, or involved in fights or arguments, he sat and enjoyed himself with his mates.
- [73] When asked to describe his management style during licensed hours, he replied - open and relaxed but fully alert and aware of the rules, and what was going on in the premises. His behaviour while a patron was no different.
- [74] Mr Evans agreed he could not argue the fact that it would be correct to say that there had been more than a few issues with disorderly behaviour on the premises in the last 12-18 months. Transcript page 191; *"Yes I can't argue that fact"*. He advised that all issues entered into the incident book were an accurate reflection of the actual situation at the time. The major learnings that have assisted him positively in his management of the tavern are the responsible sale and supply of liquor, the safety of patrons and the object of the Sale and Supply Act.
- [75] Mr Evans was aware that past conduct was relevant to the consideration of suitability and also to the Committee's confidence that he would properly carry out the obligations that go with holding on and off licences. Since he gained the licences he had reduced alcohol related harm by preventing intoxication, promoting hot food towards the end of the night, water, getting people into the courtesy van and listening to them. They took 90% of people home in the van. In total, four people have been trespassed from the tavern.
- [76] When asked why he had not turned the speakers away from the residences across the road when first asked by Ms Summers, Mr Evans stated that she had never asked for the speakers to be turned around.
- [77] Mr Evans submitted that if the licensing hours were reduced, his ability to close early and use licensed hours to transport people home would be compromised. Transcript page 196; *"And ideally we need to keep the bar open till 1am because that's when everybody's at the end of the night, whereas 12 o'clock people would get irritated that you're closing early when they've come out for a great night"*. 98% of the time or 95%, they close at 1am - 1.15am latest.

- [78] Mr Evans advised training for a new staff member came from Hospitality New Zealand training records. He would bring that and the training records the next day.
- [79] Mr Evans agreed that it would be reasonable to say that initially the agencies assisted in getting him off on the right footing in his journey with the Kirwee Tavern. He also agreed that he did not have any issues dealing with those perceived to be in authority.
- [80] The Committee asked if the statement by Ms Thomson, dated 14 July 2018 in respect of the 7 July 2018 incident while she was duty manager, was an accurate version of events. Mr Evans replied that it was her version and he abided by what her version was. He did not witness this event where a staff member, also a qualified manager, stated that one patron stomped on another patron's head maybe four or five times, but he was told after the event. When asked what the staff member should have done when they saw that, Mr Evans replied that it all happened so fast, their priority was to calm the situation, relax everybody, get everybody home and resolve – as he had said earlier, they were hoping it was a storm in a teacup. He would not say some of the patrons were out of control but they took it too far for what it should have been. He did agree that it was unacceptable behaviour.
- [81] When asked, from his experience, the likely result of serving a male nine vodka cruisers over several hours, without food, Mr Evans stated that you would not let them get that far. In a smaller country pub where you have regular customers you knew their limits, you knew the signs where you say, no more. He admitted he would be devastated if a person was served nine vodka cruisers at the Kirwee and then drove a vehicle on the state highway. To the question should staff have understood this person was about to leave and suggested the courtesy van, he answered that everybody was told all night at the bar that the courtesy van was going.
- [82] The Committee asked what action he would take if he was duty manager and intoxication levels were high to moderate across 70 to 80 patrons. He replied that he would have to close the bar and not give an opportunity for last drinks.
- [83] Mr Evans' opinion was that the renewal of the licences was necessary and desirable for the community. In explanation as to why, he stated that the community depended on the tavern as a local meeting place. The tavern met the pleasantness and agreeableness criteria by following the object of the Act, providing good service, good food at a reasonable price, having the courtesy van and looking after everybody.
- [84] Mr Evans was asked how he knew that a neighbour had complained about every landlord who had run the tavern. He responded that the previous landlord advised him to watch out for Summers, she complained on every occasion. Mr Evans added that Jack Summers did not actually live there. Transcript page 206; *"He just comes home to see his mummy"*. He told us that the police should have records of complaints made.
- [85] Mr Evans was asked why his application stated that the entire tavern was designated supervised. He answered that the whole area had previously been supervised. The Committee recalled that this same discussion had taken place last time because he had minors coming inside to collect takeaways. Mr Evans then stated, undesignated from the lobby/door to the kitchen door so that the kids could pick up takeaways. The side door (Courtenay Road) and the restaurant would be undesignated with the remainder being supervised. Transcript pages 208-209; *"after our last hearing that was probably an oversight on my behalf, not relaying that to Omega Hospitality for*

this application that the side door and the restaurant be undesignated with the remainder being supervised". Minors would wait for takeaways in the restaurant area, "they'll come through the side door on Courtenay Road, take a right turn straight up to the kitchen door which is through the dining room, and then they...there's usually a table there which nobody actually eats off and if their fish and chips is five minutes away they'll just sit there", and wait for the kitchen staff.

- [86] Asked to explain his statement to Mr Turner, noise control, that the only way to run his business and cover costs was to have a party night once a month, Mr Evans stated that it previously had involved loud music but it would not going forward. The Committee wanted to know how, looking at the object of the Act, *alcohol related harm* in the Kirwee community would be minimised by having a party night once a month. His view was that patrons were all in a safe area, being monitored and had safe transport home.
- [87] Mr Evans answered the query about the percentage of turnover for the off licence, as sort of up to 15%, because they did not actually promote the off - sales but that would happen next year as they needed to increase to 30% by mid 2020.
- [88] When asked how mentoring worked, Mr Evans responded that it was actually good, it definitely had some value.
- [89] When asked what he thought the real test of *suitability* was for a licence in terms of the applicant, he responded, transcript page 217; *"A full understanding of the Liquor Licensing Act and being responsible and...respected by the patrons. If you get respect of the patrons you'll get behaviour by the patrons"*.
- [90] In response to the question about anything that he would change for better in the LAP, Mr Evans stated that we only had two days. He would go back to the old days and extend the takeaway off licence to 10pm and he explained his reasoning. In terms of the LAP, this impacted on his business most.
- [91] Mr Evans stated that his view of the safe and respectful environment in his host responsibility policy was working alongside staff to ensure no intoxication, no patron was put in danger, safe transportation home, access to food that met the criteria whilst the bar was open. When asked if there was anything in his policy he would look to update or change, he replied, transcript page 385; *"At this moment in time there's nothing that comes to mind"*.
- [92] Mr Evans indicated that he has had the opportunity over the last 18 months to 2 years to remedy the matters raised in the granting of the original licences and with the exception of the two incidents that had been raised, they have gone a long way. His best achievements had been the growth of the restaurant, better knowledge of customers and reducing intoxication. When asked what in the host responsibility policy might still be a work-on, he responded that they're working on noise reduction.
- [93] The Committee asked when he had the biggest number of people in the bar, to which Mr Evans answered it was when they had functions, although they could be a bit hit and miss too. The greatest part of his takings, some 80%, came from weekends, Friday included. Saturdays vary, depending on the age of customers, they usually called last orders about 12.45am. On Fridays and Saturdays up to 25% of takings were taken after midnight and they rarely shut before 1.00am on those nights. He stated that closing at midnight would be a disaster for the business as patrons would drive further to other bars and it was safer to provide the courtesy van and remain open beyond midnight. His busiest time was Friday evening overall.

- [94] In response to the question, did he sell alcohol to take away from the tavern after 9pm – Mr Evans answered, no.
- [95] The Committee asked what customers did with off licence alcohol when they bought it at 8pm – Mr Evans presumed they took it home. And if they purchased off licence alcohol and stayed and had a drink at the bar, Mr Evans responded, transcript, page 199; “yes, *someone will come n and – I don’t know – buy a box of Lion Brown and is like, ‘Hi, How are you John’? Perhaps they’ll have a quick handle with John or they’ve got it by their side and, if we see him having a social handle and it’s 8.57, he has to either go outside and out it in his car and come back in and finish his handle or leave*”. Mr Evans said to the Committee that, transcript, page 195; “*certainly no alcohol leaves through our doors after 9pm*”.
- [96] Mr Evans stated that one improvement for the LAP would be extending the off licence close time to 10pm so that patrons who might decide to go to a party for example did not have to make that decision and purchase from the off licence quite early in the night. Despite Mr Evans saying that, there was no application made to vary the off licence hours before the Committee, so the Committee makes no further comment about his suggestion that the off-licence hours be extended until 10pm.
- [97] Mr Evans was asked if he was aware of the staff member, also a qualified manager stated that, transcript, page 199; “Matt had stomped in Mike’s head maybe four or five times”. Mr Evans told the committee that he was told after the event but he did not witness the stomping.
- [98] The Committee asked if it would be correct to say that he did not appear to want to criticise anyone, that he was prepared to let patron behaviour slide even when it could possibly jeopardise his business. Mr Evans explained that patrons known to him get treated harder than strangers, they did not push the limits, they had respect. Staff stomp on escalating bad behaviour, they were instructed to avoid wrestling or verbal disagreements. By wrestling he meant pushing.
- [99] The Committee put to Mr Evans that looking at the incidents in the briefs of evidence, it seemed that there was *intoxication* on the premises to a significant degree, not a lot of *influence*, but when patrons were at the *influence* stage it was not being picked up by staff. It seemed to be all or nothing, signs were being missed along the way until it reached something extreme, like people being stomped on the head, pushing and shoving which would suggest behaviour had progressed and deteriorated over a period of time, to the point where there were unacceptable physical stouches. Whether or not these were personal issues or anything else, this progression did not seem to be monitored, it became extreme and he and his staff had to scramble to deal with something that by then, was quite out of hand. Mr Evans was requested to respond. He stated that on the night of the assault, he was there, he saw the majority of it and of the five people involved in the scuffle, none of them was *intoxicated*. When put to him that evidence from a number of people suggested to the contrary, Mr Evans responded that the view from a scanned report, maybe different to how he viewed it. He did not allow intoxication.
- [100] Mr Evans was asked to tell the Committee about the occasion when a safe haven was provided. He described how he found the gentleman in the car park. His mates were in the tavern. He was put out in the outside smokers’ area on the settee and given water. SC Grant came in as the man came in to check on the van.
- [101] The Committee asked Mr Evans if it would be correct to say that he liked to be seen as influential in the community. He denied this.

- [102] Mr Evans did not think that his presence in the tavern as a patron affected the duty manager's decision making, she was responsible and he respected any decision she made. The last controlled purchase operation was January.
- [103] When asked if he thought there was an obligation for a DLC to make a licensing decision for the purpose of giving a licensee economical financial protection, that is, not take his business out from underneath him, Mr Evans answered that he had to respect the decision made by the Committee. He took on board that some improvements needed to be made with the new licensing inspector and police inspector. Transcript page 399: *"I just think that maybe better communication and maybe better understanding so we're both...both myself and my team and the licensing inspector are on the same page"*. When it was pointed out that the previous licensing inspector gave evidence that it was a bit more than that and would he agree, he stated to a certain extent but with Mrs Faass he felt she took everything on board negatively, not positively. It was not Mrs Faass's fault. Asked to comment what he could have done better in dealing with Mrs Faass, he stated a bi-monthly meeting with police and licensing inspectors, he should have supported them more with what was going on in his tavern and they should have supported as well to correct things. Mr Evans' response to the support police had already offered around training on several occasions and not taken up, was that he thought he was okay. Police also offered assistance around the blue book and offered training at the same time which he declined. Mr Evans said that the blue book was a great help and that it was up and running.
- [104] Mr Evans confirmed to the Committee that he used a professional security firm on a semi-regular basis, especially when they knew it was going to be really busy, like the A&P show.
- [105] He confirmed that the timeframe for the noise reduction frame manufacturing process was not certain. The Council would check the frames once installed.
- [106] In reference to the application form and Constable Craddock's questions about compliance training, Mr Young asked Mr Evans in re-examination if he had participated in the discussions Tania Thomson and the team had when talking things over. Mr Evans did have input if he had made any changes, for example the price of a new product on the shelf. Meetings occurred once a fortnight unless there was anything to discuss. There were no minutes or discussion records of meetings but he thought it was a good idea going forward.
- [107] In terms of amenity and good order, Constable Craddock had questioned Mr Evans about CCTV. Mr Evans confirmed to Mr Young that he did the painting of the tavern and contractors did the reroofing at a cost to the business of \$63,000.
- [108] When asked by Mr Young to describe the duty manager handover process, Mr Evans answered that mostly he made those talking over a cup of tea and he briefed them on which patrons might have a credit, general housekeeping and advised them of his plans for the evening.
- [109] Mr Evans stated in answer to a question from Mr Young that off the top of his head that they took car keys off people once every six months, but this was not recorded in any book. Mr Evans agreed that it would be a good idea to do so. The condition of the tavern was not good when he took over and his view was that the improvements to the tavern had resulted in better behaviour from patrons.

- [110] In re-clarifying the designations of the premises in response to questions from Mr Young, Mr Evans stated that from the corner of the bar, through the restaurant up to the kitchen is undesignated. Then from the corner of the bar, the full length of the bar, the pool table and bar area, the smoking outdoor area, are supervised. [The Committee records here that it is on the basis of this evidence that the Committee has produced the floor plan **attached as Appendix E**].
- [111] Mr Evans responded to a question from Mr Young about ticketing in relation to the 24 November incident. Mr Evans stated they pre-sold tickets for the Courtenay A&P Show and ID checks were carried out.
- [112] When asked by Mr Young if he had ever had an enforcement action taken against his premises, Mr Evans responded that he had not.

Ms Tania Thomson

- [113] Ms Thomson was the next witness. She read her statement of evidence. She has worked as duty manager at the Kirwee Tavern for over two years, working from Wednesday to Saturday managing the bar and overall operation of the bar and restaurant. Her evidence was as follows.
- [114] On 7 July 2018, she was duty manager, she made the decision to close the bar and Mr Evans agreed.
- (i) 24 November 2018, the A&P Show night, Ms Thomson was duty manager.
 - (ii) There was not any fighting. Steve worked with security. Quite a few people were refused service or removed because they were approaching intoxication.
 - (iii) There were 3-4 people outside and they were a bit loud. She had a brief discussion with Sergeant Pickover. They managed the night well.
 - (iv) The night of 22-23 December 2018, they needed to be forceful with a patron who was removed. She spoke with a patron jumping over signs outside and put him in the van. She would have known if several young men had damaged signs about 12.30am as Ms Summers had said. She did not see Steve point two fingers to his head. Ms Thomson did not see Steve consume any alcohol that night.
 - (v) Ms Thomson worked the night of the rugby club event. It was a slow day/night. A couple of men came in from the rugby club rooms, they were under the influence when they arrived, were refused service. One was intoxicated. She sat them in the safe zone with water, while waiting for the van to get back. SC Grant arrived and videoed one of the men waiting for the van as he had fallen over. SC Grant asked her what state she thought the man was in and her response was that he was waiting on the van and that was why he was in a safe place.
- [115] Ms Thomson had received training during her time at the Kirwee. She knew her responsibilities under the Act. They were monitored regularly by police.
- [116] They always managed their noise and had issues only with Ms Summers.
- (i) Some of the things she saw at Ms Summers' house concerned her. A lot of cars came and went and people that looked like gang members. A smell of marijuana often came from Ms Summers' house. They never allow people to take drinks outside. When incidents occurred, they managed them well.

Cross examination of Ms Thomson

- [117] In response to Mr Johnston's question about training received at the tavern, Ms Thomson stated that they had the HANZ training every month, they sat down with staff and had debriefs. She said that Steve and her ran the training normally together. Her role as duty manager was to update staff for the evening, check IDs and take care of the whole premises.
- [118] The plan when Steve was in the bar not working, was that he would butt out and let her do her job. Theme nights generally went off without a hitch and were good for the community. She believed in any bar there was always room for improvement and she was happy to do whatever they needed to do to bring it up to being a great little country pub.
- [119] As a patron, if Steve needed to be cut off, she would do that. She stated that generally he was pretty good. To Mr Johnston's question about how often Mr Evans drank in the bar, Ms Thomson wanted to know whether he was talking about a casual drink or a night on the booze. In either instance he came in once a week or fortnight.
- [120] Mostly on theme nights, over half attending would be locals. When trouble happened from time to time she did not expect Mr Evans as a patron to step in as she dealt with issues quickly. She knew if she needed him he would step in. On theme nights they generally moved the pool table out of the way.
- [121] With a country pub you knew the limits of locals but occasionally one might slip under the radar. On theme nights she had extra staff and she circulated and assessed patrons. She explained about how she would deal with anyone coming in who was intoxicated. They would not be served, would be given a courtesy glass of water and they would get them home safely. Generally she liked to have them in a place where she could see them and the last man on the night in question was down the end of the bar where she could monitor him.
- [122] In replying to Mr Johnston's question about the process when a police officer came in, Ms Thomson stated that the Kirwee was a bit different to other places she had worked, as police would come up and let them know why they had come in. The Darfield police and police out there, stand there and do not do anything - she expected them to go to her and talk to her. Mr Johnston reminded Ms Thomson that Constable Craddock had explained the police procedure that morning in evidence. She did not know if Steve had issues with police in the past but they were not her issues.
- [123] Ms Thomson stated that she was aware of Ms Summers approaching Mr Evans about noise and disorder outside on the street. She added that generally they turned the music down. Mr Johnston queried whether it was not just music as some of the complaints related to people congregating outside. Ms Thomson stated that in the last couple of months they had actually stopped that, to an extent, for that reason.
- [124] The Licensing Inspector stated that SC Beaumont in his evidence the day before had said that when he arrived at the tavern a couple of hours after the assault 7 July 2018, when she was duty manager, no one mentioned the assault to him. Ms Thomson agreed that was correct. When asked if she saw her role as briefing the local cops that there had been an incident or bringing it to their attention, she answered "yes and no". They had the situation under control, she did not feel the need especially with all the flack on the Kirwee and with Steve, transcript page 818; "*basically because I had it all under control*". She added that there was no need for police presence or for them to do anything and in her mind it made them look good,

that they had sorted the situation. If she had needed police she would have called them.

- [125] When asked about the incident about the unavailability of food as mentioned by another member of the police in evidence, Ms Thomson replied that she found that hard to believe.
- [126] To the question, had she heard that SC Caird and Sergeant Pickover in evidence had described a couple of people leaving the tavern as grossly intoxicated and had Mr Evans discussed this with her? – Ms Thomson replied that she knew he had found out and whenever he heard something like that he came to discuss it with her. Sometimes she was surprised as some of the people had only been in for a jug or two and if they were intoxicated they would not have been served. Transcript page 819 and 820; *“and then for them to go and get in the car and read a crazy-arse reading, when they’ve only had two jugs from us, they’ve come from somewhere else. Do you know what I mean”? ...”And I guess at the end of the day, the Kirwee Tavern’s been the last spot, so it fell on us”.*
- [127] Ms Thomson said she understood and had heard that some of the drink driving incidents had been vehicles seen by police leaving the premises or carpark, having had a drink in the tavern.
- [128] In respect of the 24 November 2018 incident, the Licensing Inspector referred to Sergeant Pickover’s evidence from the day before concerning the male who had walked out of the bar, staggered on the footpath and was intoxicated. Mr Johnston put it to the witness that despite her best intentions and the processes in place at the tavern, there was intoxication from time to time. Ms Thomson replied, *“absolutely”*. But when aware of it, they deal with it. She stated further, that there were eyes everywhere at the moment, they did the best job they could to try to make this all work for everybody.
- [129] She vaguely remembered Helene Faass and Constable Craddock speaking with her, 16 February (2019), when she was duty manager. Ms Thomson responded to the accuracy of Mrs Faass’s evidence at paragraph 45 about Mr Evans dancing on the pool table and Ms Thomson’s comment that there was nothing wrong with that, by saying that she did not recall what she had said. She vaguely remembered but could not recall as her mind was on other things and it was generally busy when Mrs Faass turned up.
- [130] Ms Thomson recalled the intoxication incident 26 May, not June as she had quoted earlier and the rugby man. SC Grant had given evidence that he had taken notes, videoed him and noted that she had not spoken to him. She stated that she had spoken to SC Grant when he came in and told him why the man was sitting there and that he was waiting on the van. She confirmed that her memory of this was different to what the constable had said.
- [131] Mr Poole questioned Ms Thomson how she would describe her management of the premises overall. She stated that she thought she was an okay manager, but listening to everything you would think she was not. Transcript page 827; *“But in – in any situation there’s always room for improvement with any...with any business, with anything. At the end of the day if that’s more training, that’s more whatever, let’s do it”.*
- [132] She thought past issues or behaviours from the premises had been fixed and mentioned the lighting and the carpark. Mr Poole asked about staff systems and

training - documentation, logging minutes, incidents of intoxication, recording staff training. Ms Thomson answered that she guessed, that like anything, there was room for improvement everywhere. Transcript page 830; *"But I do believe that we are starting to put a lot of those concerns in place"*.

- [133] Ms Thomson was asked about the victim statement taken by police, 10 July 2018 at Darfield, exhibit HC1. Mr Poole asked if she thought serving 9 vodka cruisers or 6-7 pints of beer to a patron could cause *alcohol related harm* – transcript page 834; *"Potentially yes, but also depending on, as I say, the size of the person, what they've eaten"*.
- [134] Ms Thomson agreed that she was duty manager Wednesday through to Sunday. She was asked if she was duty manager on the occasion of the assault and a number of EBAs, was shown the relevant data, and she agreed she was pretty sure she was.
- [135] Mr Poole asked Ms Thomson if given all of the incidents had she adhered to her premises host responsibility policy. She stated transcript page 838; *"Well, when you look at this, no"*. Was Mr Poole saying that even a noise complaint was bad management - he said this had been alluded to by the police and inspectors. It was clarified what an END was and that the excessive noise complaint 30 June, was made by Ms Summers. Transcript page 840; *"But I don't see how noise complaints are a sign of bad management"*.
- [136] Referring to Ms Thomson's statement to police 14.29 pm, 14 July 2018, Ms Thomson was asked if she felt that she had control of the situation on 7 July. Mr Poole also pointed out that Ms Matoe, bar staff that night, had approached Steve asking him to handle the situation as it was felt you would "get slapped by the two individuals", Jackie and Sharon. Ms Thomson responded to these matters, that she did have control in the end.
- [137] She agreed that in approaching Steve as licensee and even if he was a patron that evening, the onus was then on him to resolve the situation as it had escalated. Her view was that removing the person called Matt from the premises given he had had a lot to drink, as stated in paragraph 17 of her statement to Police, would not have prevented the incident. She said that he (the patron who was stomping on another person's head) was not intoxicated.
- [138] Mr Poole stated to Ms Thomson that Mr Young had suggested to Constable Craddock that the persons involved in this incident 7 July, were not intoxicated. In paragraph 96 of Ms Matoe's police statement (dated 14 July 2019) there was discussion between Ms Matoe and Ms Thomson to close the bar because of the *"loss of control of intoxication and fighting"*. Ms Thomson did not agree it was through loss of control, it was the safest and best thing to do for the situation. She agreed it was possible alcohol was a factor in the fight occurring, it could have contributed, but they were not at a level that she would have thought would have been an issue. Ms Thomson also said that alcohol possibly magnified or exacerbated an underlying grievance among some of those involved.
- [139] She agreed with Mr Poole that communication, such as that between police and staff, is reciprocal, goes both ways. She also said she believed that at certain times she should engage first if the police were not engaging with her.
- [140] Ms Thomson said she did not record training in the training record or any meetings in a log book. Actual training other than the weekly or monthly meetings was recorded in a folder kept under the side bar. She thought that Steve had done this for Katie

who was currently being trained. Ms Thomson thought that given the DLC was visiting the premise that day and training was an issue raised by all three agencies, all required documentation should be up to date.

- [141] Constable Craddock had stated there was a fight or two males had an altercation earlier on prior to the assault, but despite that Ms Thomson's view was still that she ran a tight ship at Kirwee. To a question about telling staff about incidents when they came on duty and Ms Matoe's evidence that she was unaware of the earlier incident where the two males had an altercation, Ms Thomson did not recall that and could not confirm or deny that she had told Ms Matoe.
- [142] As for the two men who had the earlier altercation, 7 July, she considered that they had perhaps had a beer before that as they had not long been in the bar and as it was not much of an altercation, she allowed them to continue to drink.
- [143] In answer to questions about Ms Thomson stating that the agencies did not go up and talk with her, the Constable had referred to the night of the A&P Show when Sergeant Pickover had a conversation with her about addressing the moderate to high intoxication in the bar and Mrs Faass spoke with her. It was also put to Ms Thomson that Mrs Faass also spoke with her on 16 February. Ms Thomson replied that she was not saying all of them did not converse.
- [144] When asked why she had mentioned her concern about things she saw at Ms Summers' house, Ms Thomson answered that Ms Summers was trying to cause a lot of trouble for them and that was just the way it was. When asked to describe what a gang member was, she felt she did not need evidence that dodgy looking people were at the Summers house. She also said that the smell of marijuana was coming from there and that they had walked across the road to prove it.
- [145] When requested to clarify who took training as Mr Evans had stated that only Ms Thomson did, she answered that they were both there, they were both involved in it.
- [146] As the Kirwee Tavern did not have many underage people going there, Ms Thomson was asked if it was relatively easy to pass a CPO (controlled purchase operation), she replied that it was her who had passed that.

Questions from the Committee

- [147] Ms Thomson agreed that she had said that she could not possibly be aware of everything going on, in answering a question put by the Licensing Inspector. The Committee asked what her understanding of her role as duty manager was if she could not be aware of every patron who was influenced or intoxicated, to which she replied, transcript page 857; *"No, you're right, that is the role, yes"*.
- [148] She told us that her last formal training was three years ago, a training day with an outside training organisation with her previous employer. She had not had any formal training at the Kirwee but that further formal training would address changes and allow them to get up with the times.
- [149] The Committee asked if it was difficult having the person she described as the overseer, her boss, on the other side of the bar when she was doing her job and technically in charge and did that create boss/staff relationship problems? Ms Thomson replied, transcript page 860; *"Generally not"*. She had not had to cut her boss off or ever had to put him on water.

- [150] Ms Thomson said she had not recorded the number of people who had been refused service at the pub, nor the number of people transported home because of intoxication. She admitted it would be a guess as to how many people had been intoxicated or refused service when she was manager. She told us she had bought a big diary the day before and all of that was going to start being documented.
- [151] Responding to a further question about lack of communication as claimed in this hearing by police, Constable Craddock, and herself in a different way, Ms Thomson agreed that it was the role of the duty manager or a licensee to be aware of who was in the police force, the personnel who might come into the bar, who agency members were.
- [152] Ms Thomson confirmed that Mr Evans did the roster, and that Ms Thomson was usually duty manager when she was on and Mr Evans was duty manager when she was unwell or not able to work.
- [153] In response to what was discussed at training, which earlier was said to have gone from weekly to monthly training, she said the training is communication, coming together with their ideas, improvements and what training they should be having. She admitted they had probably been a bit slack on that, she was happy to do whatever it took to really get them up to that level if that was that they needed to do. They did discuss incidents.
- [154] She said that Mr Evans worked quite regularly on theme nights and she was generally duty manager on those nights. To the question, did Mr Evans drink while he was at work, she replied, transcript page 865; *"No, not while he's working, no"*. When he was a patron, he did not pay for drinks and, transcript page 866; *"Generally I know what we've served him"*.
- [155] Ms Thomson agreed that she had seen people dancing on the pool table without the cover on. She further said that Mr Evans did not regularly dance on the pool table. The pool table was covered when it was not in use.
- [156] Ms Thomson confirmed that she was a permanent employee but only had a verbal employment agreement.
- [157] In her statement at paragraph 2.2, Ms Thomson stated she considered that on 7 July 2018, the bar should be closed and Mr Evans agreed. She agreed that she and Ms Matoe had a talk when things were getting out of hand. She said it was her who made the decision and she informed Ms Matoe when she came back in from outside.
- [158] Actual training other than the weekly or monthly meetings was recorded in a folder kept under the side bar. It would be available for the DLC visit that day.
- [159] Ms Thomson told us that she could see across to Ms Summers' place through the tavern front window and through the side window on Courtenay Road. She could see Courtenay Road from the bar, the car parking at the front, but not the back carpark.
- [160] The notes of SC Grant's visits to the vicinity of the tavern, itemised as (a) through to (k) were provided [taken from paragraph 6.3 of Mr Evans' statement of evidence]. Ms Thomson was asked who had made the meticulous notes relating to a number of Fridays and Saturdays in the main. Ms Thomson answered that Mr Evans would have made the notes. She added that it would be her or Steve, probably Steve. She agreed that the notes were very good and a lot of them were done by Steve, even

when he was not working he would diary things down as well, he was pretty good at that.

- [161] The Committee stated that they were attempting to understand who had compiled the notes of SC Grant being observed in the area on 11 occasions, notes that somebody in the tavern had made, transcript page 877; *"Oh. So it'll be Steve"*. Who kept the notes or who was looking out for...transcript page 877: *"Well, generally, Steve or myself. Probably Steve"*. The Committee said, so her or Steve? She said, transcript page 877; *"Yes, it would've been"*. When told that Mr Evans had responded in evidence the day before that he had not done them, Ms Thomson responded, transcript page 878; *"really"*? Mr Young advised the Committee that his understanding was that they were predominantly Mr Evans'; and Constable Craddock added that Mr Evans had said that there were a couple he did not write as he was not present.
- [162] Ms Thomson was requested to explain the location of the safe place in the premises as the understanding of the Committee was that the safe place was near the restaurant. The answer from Mr Thomson was that it had been there before, by the couches, but she had wanted to keep an eye on the man who had come back inside looking for the van, and had placed him on a bar stool at the other end of the bar. He had originally been put on the couch outside the back door in the beer garden. He stumbled when he came back inside, and he fell on the floor or tripped over the stool. SC Grant was there. Ms Thomson confirmed the man had been sitting up on the bar stool leaning against the wall.
- [163] In her evidence at paragraph 3.2, Ms Thomson referred to Steve working on 24 November 2018. She said, transcript page 885; *"Steve was working that night, fullstop. So he was working with...as ..for us, stocking fridges, glasses, working with security if needed, if they needed any extra help or there were issues or whatever"*. She said he was a bit of a jack of all trades that night.
- [164] As she stated in her evidence paragraph 3.2, quite a few people were refused service that night and were removed because they were approaching intoxication. When requested by the Committee to look at 24 November 2018 in the tavern's incident book, Ms Thomson agreed it did not tell us a lot. It mentioned the staff on but she agreed that it did not state that they had refused service to anyone or that people had been removed for intoxication or approaching intoxication. When asked further, Ms Thomson said that they did not generally record this information. Ms Thomson's response to the question, did these sorts of questions from the Committee indicate to her that record keeping was important? She replied, transcript page 891; *"Absolutely yes. More so than ever, because the brain doesn't always remember it"*. She then agreed that she should not have to remember.
- [165] In reference to her evidence at paragraph 4.2 Ms Thomson agreed that the person jumping over the signs outside was under the influence of alcohol.
- [166] She stated that Mr Scobie worked when needed, he was not used often. She assumed Steve had given him an induction but she had not.
- [167] In relation to paragraph 7.1 of her evidence Ms Thomson confirmed that there were a lot of cars coming and going at Ms Summers' house as she could see through the tavern window. When asked what a gang member looked like her response was: skinheads, tattoos with swear words on the necks, all that sort of stuff, real dodgy looking characters. To the question, could she see the words on their tattoos through the window, she replied that they had been there in daylight too. She then agreed

that she did not know that they belonged to a gang. They looked worse than Mr Summers.

Ms Kate McKenzie

- [168] Ms McKenzie read her statement of evidence. She told us she had worked for the Kirwee Tavern for four months, on Friday and Saturday nights. Mr Evans did not work these nights but was usually at the pub on a Saturday. She drove the courtesy van when needed. This had ranged from two people to three van loads.
- [169] Since she had worked at the Kirwee, Steve (Evans) had not been asked to help on a Saturday when he was a patron. She did not know what hours she would be working each night. Her hours varied.
- [170] When asked if she been given any training since starting at the Kirwee, she responded that she had. Tania told her every shift to make sure she checked IDs and read the SCAB tool above the till. Usually Steve was her boss on the night and when she went in, as she did not work that much, he would yell at her if Tania had told him she had done something wrong. She had worked on one theme night. She confirmed that she had worked with Steve when Tania had been sick and she was called in to help.
- [171] Mr Poole asked Ms McKenzie if she believed that the Kirwee Tavern adhered to its host responsibility policy. She believed that the food and the van did adhere, but she added that the other aspects of the policy could be worked on. In light of sitting her LCQ qualification, she agreed that serving a patron 6 or 7 alcoholic drinks would potentially cause alcohol related harm and that it would take roughly nine hours to metabolise. There was potential for minor or major *alcohol related harm*.
- [172] If she was to be duty manager for the premises she believed the premises had adequate tools to minimise *alcohol related harm*, like training, signage, food options, non-alcoholic drinks.

Questions from the Committee

- [173] Ms McKenzie stated that unless Mr Evans had been drinking as a patron that night, he would help out when asked, including serving behind the bar.
- [174] Ms McKenzie agreed that she had both refused and slowed patrons down since working at the Kirwee.
- [175] She responded that a major issue for her would be someone who was overly intoxicated or a fight that broke out. She told the Committee that she could feel or see signs that things were not okay, like arguing, pushing, people getting in each other's faces.
- [176] Her work days were agreed, the hours not so much, she was a part-time worker, she did not have an employment agreement in writing and she did not think she needed one as she trusted Steve's word. It was her fault as she had not asked for one.
- [177] The Committee asked if she had worked when there was disorderly behaviour in the tavern. She responded that she had. She worked 24 November 2018. She could not remember what caused the problem.

- [178] We asked about how far away patrons using the van lived from her experience as a van driver. She replied that they did not have many patrons who needed a ride to Sheffield (about 25km) or Rolleston (about 20km), the furthest places she had driven to drop someone off. About half of the people in the van on Friday and Saturday nights were locals.

Evidence of the Agencies

Medical Officer of Health Submissions

- [179] The representative of the Medical Officer of Health for this application initially was Ms Williams, who withdrew 24 October 2018 and then Mr Poole took over the application. Submissions only were provided, no evidence was adduced. A notice of opposition was filed for the Medical Officer on 30 August on the basis of:
- (i) Inconsistency with the Object of the Act
 - (ii) Tri Agency group raises concerns, apparent lack of willingness to discuss
 - i. incidents of concern at the premises to the extent that when Police visited
 - ii. shortly after a serious incident, the incident was not mentioned to Police by the
 - iii. licensee or staff (suitability)
 - (iii) Hours of operation sought; noise complaints on the night of the July
 - i. 2018 incident, one at 10.05pm and a further complaint at 11.15pm.
 - ii. With residential neighbours timely to review the hours of operation for
 - iii. Appropriateness (changes to trading hours sought)
 - (iv) Training may be insufficient to comply with the Act; MOH assistance
 - i. was provided to set up systems and training originally, statements
 - ii. made in relation to staff actions and the licensee's behaviour July 2018
 - iii. indicate these systems are insufficient for staff to comply with
 - iv. the Act (staff, systems and training)
- [180] Included with Mr Poole's (opening submissions) were a site visit file note, some photographs, and some material downloaded from the web in February and May 2019. Because none of this material was produced as evidence we have not relied on it in our consideration of the evidence in the case.

Licensing Inspector Evidence and Submissions

- [181] The Licensing Inspector for this application initially was Mrs Faass, who vacated the role earlier this year, and then Mr Johnston took over the application. Mrs Faass filed the notice of opposition. Mr Johnston provided a closing submission only. Mr Johnston called two witnesses, the previous Licensing Inspector Mrs Faass, and the Selwyn District Council Environmental Health Officer, Enforcement Officer, Mr Turner. A notice of opposition dated 23 October 2018 was filed on the basis of:
- (i) Concern that the applicant does not follow the Host responsibility Policy in the day to day running of this premise (object of the Act)
 - (ii) Failure in duty of care as an owner and manager of this type of licensed premises (suitability)
 - (iii) Noise complaints and proximity of residential housing (amenity and good order)
 - (iv) Poor management of events (suitability)
 - (v) Continued inability of applicant to identify and deal with intoxication (staff, systems and training)
 - (vi) Lack of evidence of regular monthly staff meetings (staff, systems and training)

- (vii) Applicant's behaviour and lack of good management is putting the public and patrons at risk (suitability)

Mrs Helene Faass

- [182] The previous Chief Licensing Inspector, Mrs Faass, read her evidence. Mrs Faass was Licensing Inspector for Selwyn for 16 years until April 2019.
- [183] As part of her monitoring within the district, Mrs Faass told us she visited the tavern 24 November 2018, at 10.20pm and again 16 February 2019 at approximately 10.00pm. We summarise:
- (i) On 24 November 2018, when Mrs Faass visited, the front of the tavern was well lit with street lighting, people were inside and outside the tavern.
 - (ii) Mrs Faass walked through patrons inside, noticing a number of people she believed to be intoxicated - patrons were pushing each other, smelled of alcohol and two patrons started yelling abuse at each other. In approaching the bar to speak with duty manager Ms Thomson, she was pushed from behind and a drink or drinks were spilled down her back. The person who spilled the drinks was intoxicated, was swaying and had glassy eyes. She also observed a female pushing a younger male, shouting at him before they left. She appeared intoxicated, an opinion based on the fact she was loud, aggressive, unsteady on her feet.
 - (iii) Mrs Faass spoke with Ms Thomson, expressing her concerns about the high level of intoxication. Ms Thomson was busy, thought the patrons were okay but she would sort them out. Mrs Faass asked about instructions given to staff as the older gentleman serving, who Mrs Faass knew to be Mike Evans, Mr Steve Evans' mentor from Greta Valley, did not seem concerned about intoxication levels or asking for identification. He was not engaging with patrons and in her opinion had no chance of assessing them for intoxication, which she described as poor practice for any person serving alcohol. Mrs Faass noticed Mr Steve Evans drinking with other patrons but he was not listed as a duty manager.
 - (iv) Mrs Faass had received copies of two excessive noise direction notices (END) served on the Kirwee Tavern on 23 December 2018 and 20 January 2019. She was surprised as she was aware of only one other premise being served an END in Selwyn or Ashburton Districts in her years in the Inspector's role and licensees must be alert to potential noise complaints. The object of the Act talked about minimising harm. She stated noise affected the amenity and good order of the houses in close proximity and there was case law on the matter. She set out an extract from the 2001 Authority decision about noise.
 - (v) On 16 February 2019, she visited the tavern with Constable Genevieve Craddock. They arrived at approximately 10.00pm and could hear music from the tavern 200 metres down Courtenay Road. They watched the tavern from directly outside to see what was happening inside. The windows were shut but they could hear the lyrics of the song. Through the window Mrs Faass could see Mr Evans dancing on the pool table with a female. [Paragraph 38 of her statement of evidence]. She said Constable Craddock took a photo of this with her phone. At 10.45pm they entered the tavern, where there were 20-30 people. She was surprised when Mr Evans ignored them, even if off duty. Mrs Faass questioned duty manager Tania Thomson about Mr Evans dancing on the pool table and was informed there was nothing wrong with that. They (she and Constable Craddock) were disappointed Tania did not see dancing on the pool table as dangerous because of the height of the table and that people dancing on the floor were under the influence of alcohol. People started covering the pool table. Mr Evans appeared to be actively avoiding

them both. They left and walked around the back to the car park which was pitch black. Music was coming from outdoor speakers. They walked back to Courtenay Road, past the window and again observed people dancing on the pool table.

Cross examination of Mrs Faass

- [184] In response to Mr Johnston, Mrs Faass explained the national perspective was that it would not be considered good practice for a licensee to drink in their bar and while some might have an occasional drink with patrons, it would not be as a matter of course they drank with patrons all evening. It was not considered good practice.
- [185] Her expectation of bar staff when Senior Constable Beaumont visited the tavern 7 July 2018, would be that they would communicate an earlier fight to police as part of normal operating procedure and that any fight would be in the incident book. Alcohol had been spilled on her once previously during her 16 years in Selwyn.
- [186] Mr Poole asked her impression of how management ran the premises. In her experience, Mrs Faass said that any licensee appearing in earlier hearings raised a red flag to an inspector. At times when visiting she had been concerned at the level of intoxication and Mr Evans drinking on the premises, which she said also came up in the previous Committee hearing. When she visited and spoke with staff, she did not believe they had good systems in place or if they did, they were not being taught well.
- [187] It was put to Mrs Faass, as evidenced on Facebook and some of his posts, Mr Evans had a close relationship with the local community. Her opinion of this, was that it could create a blurring of the lines between staff and patrons or the licensee – and being the licensee and a patron. In her opinion it became difficult generally for a licensee to keep that slight distance and monitor clients which impacted on the licensee not being seen by patrons as the person in authority.
- [188] Mrs Faass agreed that very good management would be required to remediate intoxication issues. When asked to consider the incidents, the noise issues, the licensee being a patron, Mrs Faass agreed that the licensee would ultimately be responsible for behaviour in their premise when incidents occurred and she would expect them to step up, act as the licensee and manage that. She could not say whether that was happening or not. She confirmed to Constable Craddock that on the night of 24 November she had explained to Ms Thomson her concerns in relation to the high levels of intoxication.
- [189] Mrs Faass agreed with Mr Young in cross examination that a licensee who is drinking in the premise at the time, should not override the duty manager. Mr Young asked her whether, if the licensee was not working, they should not be contributing at all to decisions relating to the management of the bar on that night – and did she agree? She explained two scenarios, the first of a duty manager dealing with intoxication or removing a patron – no intervention or influencing that decision but secondly, transcript page 337; *"If there's serious disorder in the premises and the licensee is there and drinking, I don't think that it lets them off the hook. They are still going to be... it's their licence and they still have some influence over the behaviour of the people and patrons"*.
- [190] When asked by Mr Young about her two visits to the premises prior to the renewal, Mrs Faass explained that the agencies collaborated and all made visits that contributed. Her reasons for opposing the application were poor management of the premises by Mr Evans, evidenced by intoxication at the premises, excessive noise,

the apparent lack of staff training – all those together with the previous hearings she was involved with. She confirmed to Mr Young that she did not rely on MOH opposition for her original opposition to these applications.

- [191] She agreed with Mr Young that in her evidence at paragraph 13, the general way *influenced* is described was not *intoxicated* but it was the point before they get to *intoxicated*. She stated that patrons who smelt of alcohol could have been *influenced*, the ones pushing and yelling abuse she considered to be *intoxicated* but obviously there needed to be signs of *intoxication* and there were a number of patrons showing two or more signs. She confirmed that smelling of alcohol could be linked to *influence* but could also have been one of the signs of *intoxication* along with the other factors. She also agreed that the same factors could indicate that someone is *influenced* or *intoxicated* but *influence* was slightly down – at paragraph 13, her general statement about the types of patrons in the licensed premises was that some were *influenced* and some she considered *intoxicated*.
- [192] Mrs Faass did not consider the spilling of the drinks down her back and being pushed from behind, in paragraph 15, as merely an incident that could happen when people jostle in a busy full bar. Mrs Faass explained her concerns in general to Ms Thomson when they went around the corner to chat about patrons who were getting or were intoxicated.
- [193] In relation to her evidence in paragraph 20, she clarified that the reference was to a bar person she observed serving while she waited quite some time for Ms Thomson. This person was not in her opinion concerned about levels of intoxication or asking for identification. Mrs Faass was not aware of minors present in the bar, no-one specific, there were too many people around who looked under 25 and she was on her own on that visit. In her view, it was good practice for all servers to ask for ID for those patrons.
- [194] Passing a CPO (controlled purchase operation) told Mrs Faass that at the time that the CPOs went through, not knowing the time of the day or the duty manager, if staff were on who knew the community; it sounded like they were checking IDs which was excellent.
- [195] Mrs Faass had referred to the Paihia Saltwater case in her evidence⁶. When she visited in February 2019 there was noise from the tavern but at that time she did not consider it excessive. She did not know when the END was issued and because any response to noise is subjective, there are people who go out and monitor those noises to ensure that it is not subjective.
- [196] Mr Young asked Mrs Faass whether Mr Evans was dancing on the cover or the felt surface of the pool table. Mrs Faass responded that she did not think that was the issue. Transcript page 355; *"I think the issue was that he was up on the table dancing, not whether he was on the felt or whether he was on the ... there is no doubt in my mind that he was up there and I can be very clear about that. It was Mr Evans, no doubt in my mind"*.
- [197] In response to further cross examination Mrs Faass said that at the time when she was licensing inspector prior to April 2019, it was completely dark out the back. Brighter lighting was no longer her concern but she stated that it was always better if it was lit outside any licensed premise.

⁶ NZLLA PH391/2001

- [198] She agreed that she was aware of the annual November campaign about getting home safely when drinking in rural locations and the statement that SC Caird had made the day before that excess breath alcohol was an issue in the district and police were working to monitor, reduce or minimise.

Questions from the Committee

- [199] In paragraph 7 of her evidence Mrs Faass had commented about the good order and amenity questionnaire being completed by the applicant's agent and submitted with the application. We asked her about that evidence. When she looked at the questionnaire some of the answers were not what she would have expected if Mr Evans had input into it.
- [200] We asked her about her observations of any patrons she considered influenced or intoxicated as per the SCAB tool. Mrs Faass advised that she had seen people intoxicated or influenced on the premises prior to her visit to the tavern in November 2018 (described in paragraph 13). Intoxication had been raised with Mr Evans when she was licensing inspector. Mrs Faass clarified that judging intoxication was set out clearly, that a duty manager and a licensing inspector would not be particularly different in their judgment of high levels for this. In her view as an inspector, the duty manager on that night in November was derelict in her duty by not observing several intoxicated or influenced people in the bar who were being served. Transcript page 365,366; *"Yes, I think she should have, in her role as duty manager, actively seen it, the influence and intoxication, and then...the intoxicated people dealt with them more quickly and got rid of them, yes"*.
- [201] To a further question, Mrs Faass informed the Committee that she observed two security people on duty when she and the Constable visited earlier this year in February. One on the door outside and one within the bar. She advised that regardless of the instructions to security contractors, it did not change who was liable for any compliance issues.
- [202] In responding to the question, would the issuing of these licences benefit the community as a whole, Mrs Faass was of the opinion that there might be some conditions placed that would allow Mr Evans to better his management practices and training for his staff, transcript page 370; *"But being aware, as in my previous role, that he has appeared before this Committee on similar matters, it maybe that he has had that chance already"*.
- [203] Her view as an inspector, in describing a successful licensee in a rural community was that they would generally be pretty hands on, they would not drink to excess in their premises, they might have a quiet drink occasionally with their community, they would have a good business plan, and have really good staff training practices in place. If staff were well trained and the licensee understood the important parts of the Act then an inspector would probably not have any issue. Keeping their staff up to date, giving them a chance to put these good practices into place with their support, to set a good example, made for a good premises.
- [204] When asked to consider the terms of the established *Sheard*⁷ test for suitability (quoted) in terms of the applicant, Mrs Faass said, transcript page 372; *"My concerns are around the fact that this is not the first time that Mr Evans has been here. In fact he was given, when I was inspector at the last time he appeared before the Committee, a very clear direction about the way he should take the decision and the*

⁷ *Sheard* [1996] 1NZLR 751, Holland J, 755.

result from that hearing, go forward and make sure that he basically became a better manager and licensee. So I'm not sure that that has happened". She reiterated that from the last time, in her view as Inspector, it was a very near thing in getting his licences at all and she thought he had had to up his game to retain it. She believed the incidents until she left (April 2019) did not point to the fact that he had changed substantially from the previous hearing at all. Transcript page 373; "I would have expected not to have seen him come to the attention of the agencies at all after a hearing like his previous one".

- [205] She stated to the Committee that it was obvious there was some issue over whether the bar team could recognise intoxication and how they were serving people. They say they won't serve, they say they are trained to recognise signs of intoxication and instructed to refuse service, at their discretion with the respective signs, but in practice she said they were not doing that. On at least one of the nights she visited she did not think evidence of ID was being required for those looking under 25 years. Mr Mike Evans (the server) did not live in the community, had worked at the Kirwee only occasionally, had his own premises, transcript page 375; *"It is an industry rule that was formed by the industry for the industry so I don't see he wouldn't do that himself, I just didn't see him engaging with anybody"*.
- [206] Mrs Faass was asked by the Committee if the imposition of conditions would minimise harm, as the Committee was entitled to test that. She answered that the last hearing had imposed conditions. Transcript page 375; *"If the Committee were minded to do it again, we're just doing the same thing again. Are we going to achieve the result that we're trying to achieve or are there some other things that perhaps Mr Evans could do? I'm just unsure whether putting the same conditions that you may have put on before that achieved not the result that we wanted, would in fact end better..."?*
- [207] Mrs Faass stated that in her dealings with him, Mr Evans' reaction to the authority that the agencies had via the Act, was that it was not his problem, not his fault, it was theirs. She added that it was a wee bit difficult to deal with someone who did not see that they had any issues, that it was always other people's fault. Mr Evans had always been a little bit difficult to engage with, he did not engage with them while going on visits, or did not engage with them in the tavern when he was not duty manager. They did however, have a useful meeting on one occasion at the police station. There had been offers of assistance from the agencies on a number of occasions – with staff training, dealing with management issues, but Mr Evans was reluctant to take these up. Transcript page 377; *"I'm not sure he felt that he needed the help; that he was doing okay on his own. I don't...I can't really give a specific reason why he didn't want to engage with us within that, it was offered on a number of occasions"*.
- [208] Her professional opinion was that Mr Evans was putting the public and patrons at risk by his behaviour and lack of good management, she explained that it was as simple as the cause and effect of the mismanagement of premises and allowing intoxication – there would be disorder, fighting, people going away drunk. Fighting and disorder was a very negative sign in her opinion, transcript page 378; *"That's where intoxication takes us generally, into disorder and fighting, which there has been in some instances I imagine you've canvassed prior to my being here and one in particular on the night when I had been there earlier in the night, and I believe those were fuelled by intoxication"*. When she visited, Ms Thomson was the manager but she was concerned that Tania did not recognise the signs of intoxication. Transcript page 379; *"I would have said there were at least 3 or 4 patrons that were easily looked at, falling over, people yelling, pushing, that could clearly have shown two*

signs of intoxication and would have to an experienced bar person. It wasn't very borderline on that particular night".

- [209] It was her view alcohol related harm had not been reduced or minimised. Transcript page 380; *"In the last two years I'd have to say no or else we wouldn't be here I don't believe. This is where the opposition is coming from, there are still some of the issues that were present when Mr Evans first took over are still there now Some of the issues that were present when Mr Evans first took over are still there now, well still there when I left".*
- [210] On one of her visits she had seen a number of people milling around outside by the security person standing on the door.
- [211] The Committee asked if there was an evidential link to be drawn between a real risk of alcohol related harm and the renewal of these licences. She replied, transcript page 381; *"Unless the management style, staff training, have changed in a significant way, then there is going to continue to be alcohol harm from the poor management in the way the premises is run. So, yes, there is still I believe a significant risk that it will continue in the way it has done..."*
- [212] Mrs Faass told the Committee that in her time as Licensing Inspector, enforcement action had been taken in respect of the premises. Mr Young sought clarification as he was not aware of any enforcement action being taken. Mrs Faass answered, transcript page 382; *"It depends what you mean by enforcement, are you talking in front of ARLA; it has been in front of ARLA".*
- [213] We took that to mean the premises had been before the Authority before Mr Evans' company acquired the business.
- [214] Mrs Faass was asked what her opinion would be as to a licensee's suitability and ability to manage a serious physical confrontation, if a member of the bar staff, a qualified manager, described pushing, shoving, jumping on people on the floor, jumping on a patron's head while he was on the floor, and two females laughing at the licensee when he tried to sort it out and refusing to do as he asked. To her, this pointed to the licensee not having good systems in place. She mentioned being asked earlier about when the licensee was not the duty manager and intervention, but whether he was duty manager or not, she felt that when it was stressful, staff looked to the licensee for direction, whether he was drinking or not, the staff looked to the boss.

Mr Robert Turner

- [215] Mr Turner read his statement of evidence. He is a warranted enforcement officer and environmental health officer contracted to Selwyn District Council (SDC). He is relatively new to the role. He regularly follows up the compliance area of noise complaints. In paragraphs 7 and 8, Mr Turner discusses the Armourguard and the testing. Armourguard are the contract noise control officers for several local councils including SDC. The officers are independent and act only on noise they had heard. Loudness and other factors are assessed. The process is a subjective test. An excessive noise direction (END) is issued if the noise is believed to be excessive. After two ENDs he visits that address with a view to preventing further complaints.
- [216] Mr Turner told us that on 23 December 2018 at 12.06am, Armourguard served an END on the Kirwee Tavern. A warning educative letter was sent as was normal practice. This letter was returned. 20 January 2019 at 1.09am, a further END was

served. Mr Turner visited the tavern 23 January 2019 and spoke with Mr Evans who told him that the tavern had been there before the houses and Mr Evans said he had a licence to run the tavern. To run the business he had to have a party night once a month. He further stated that he knew who had complained and she was a crazy bitch. Mr Evans said, according to Mr Turner, that he did not agree that it was important to be reasonable and considerate towards nearby residents. Mr Evans stated he did not make excessive noise.

- [217] Mr Turner said he had checked the Council records and six noise complaints had been made against the Kirwee Tavern. He outlined them.
- (i) The first complaint was made 7 July 2018, the second was the night of 22 December 2018 when an END was served.
 - (ii) A further complaint relating to that same night was made at 1.23am, after police and the noise control officer had left.
 - (iii) In the early hours of 20 January 2019 an END was served. Mr Turner then visited the tavern to discuss the ENDs and the noise complaints.
 - (iv) A fifth complaint was made on the evening of 16 February 2019. Armourguard failed to attend.
 - (v) The last complaint was 18 May 2019, again for loud music. There was no noise detected when Armourguard arrived.

Cross examination of Mr Turner

- [218] Mr Turner answered Mr Poole's question about the qualification required to be held for an Environmental Health Officer, by advising that a Bachelor of Science with a major in environmental health and a level seven paper entitled The Biophysical Effects of Noise Vibration was required. He considered himself well versed in noise.
- [219] He said further that Mr Shaw and himself have offered to test the acoustic properties the tavern for Mr Evans and while Mr Evans was open to this, they agreed to meet with him on the night of one of his party nights, this did not happen.
- [220] Mr Turner agreed with Mr Poole that a tavern over one hundred years old would emit more noise in comparison to a new building in Rolleston CBD. Steps in remediation could include as he had suggested to Mr Evans, some acoustic shields, which is a step towards compliance to the District Plan. Problem properties are mostly residential.
- [221] Mr Poole referred to Mr Evans' discussion with Mr Turner where Mr Evans stated that the tavern had been there prior to the residential properties but that irrespective of this, the licensee still has to comply with the Act – Mr Turner replied yes, and with the District Plan and the Resource Management Act. His reply to Mr Evans at the time of his visit was "it still does not give you the right to create excessive noise".
- [222] When asked if he thought the late frequency of these noise complaints into excessive noise directions issued within a month of each other, in very close proximity to each other, is showing consideration to his neighbours, Mr Turner responded "it is definitely a pattern of, I am going to do it because I think I can do it, and I have got a right to do it. That is kind of how it is".
- [223] To questioning from Constable Craddock, Mr Turner said that he had been an enforcement officer for 18 months, previous experience included 4 years with the Ministry of Fisheries, and prior to that, a short time at the Department of Corrections.

- [224] Constable Craddock referred to paragraph 17 of Mr Turner's evidence, where he had stated that he has not seen an END notice previously served on a licensed premises. He agreed that in the past 18 months, he had not. An END means to reduce or stop the noise, reduce it to a reasonable level. He confirmed that the records he inspected go back to 2012.
- [225] He replied to the Constable's questioning about Mr Evans' comments on his neighbour, bearing in mind this is the only licensed premises that he has seen served and had a discussion with, he did not think that Mr Evans' attitude is a nice attitude to have. Transcript page 659; *"No, I do not think it is a nice attitude to have, but that is the general attitude that people have when I tell them there is a noise complaint"*. While Mr Evans said that the tavern had been there before the houses, Mr Turner told him, transcript page 659; *"It still does not give you the right to create excessive noise"*.
- [226] Mr Turner said he had some empathy with Mr Evans when he had told Mr Turner that he had a licence to run the tavern and to run a business the only way was to have a party night once a month. When Mr Evans told him that he did not create excessive noise, he said, transcript page 660; *"I thought it was quite funny, it made me laugh"*.
- [227] Mr Turner responded to cross examination from Mr Young that he was not aware of any ENDs served on licensed premises in Selwyn District since 2012. Residential properties are the vast majority or 99.999% of ENDs. He was not aware of licensed premises being served ENDs in Christchurch or Waimakiriri, but Armourguard attend hundreds of complaints.
- [228] He agreed with Mr Young that using the ear rather than a calibrated noise monitor is purely subjective but he did not believe that Armourguard is more likely to issue an END when there are repeat complaints and they do not say, transcript page 663; *"we might not think it is excessive. If someone is not happy, we have got to do something about this"*.
- [229] His reply to Mr Young about the training Armourguard has, was that Food and Health provides training to them, including legislation and the whole subjective test practice.
- [230] Mr Turner told Mr Young that the video of the premises played on the phone to the hearing, the volume at 88, would give you an idea, but he did not know the time and he would not put a lot of weight on the video, rather, more reliance on the actual noise levels in making decisions.
- [231] In his opinion, people do become sensitised to a complaint. He had made suggestions in terms of noise mitigation that Mr Evans refused to contemplate. Transcript page 668; *"Primarily the simplest way to stop noise is to stop noise"*.
- [232] In Mr Turner's view, he is sceptical about the effectiveness of acoustic panels but does not think they will stop the complaint from happening. In answer to Mr Young's question about the door, and the speakers turned away package reducing noise, Mr Turner stated that it will reduce the noise but he did not think it will meet the District Plan levels. After 8pm it is going to be difficult for any premises to meet the noise level limit. Mr Evans had told Mr Turner that he would not have any party nights until after the measures are in place and testing has taken place at the nearest sensitive site which is Ms Summers' address.

Questions from the Committee

- [233] Mr Turner told us that traffic noise is not counted in any noise assessment. Rural environment noise was discussed. Notes are taken of other local noise at the time of assessing.
- [234] He would have expected the initial END to have produced the desired effect, that is the reason for it, that excessive noise is being created. No more loud noise. The END is a notice for 72 hours or 3 days. Mr Turner confirmed that the Council did not have to send a letter as a follow up to an END. He called it a warning educational letter that Mr Evans became aware of when Mr Turner received the second END.
- [235] Mr Turner explained that an abatement notice is serious and is generally issued after three ENDS. The notice says that if they create excessive noise, they will be fined \$750 per day that it continues.
- [236] Mr Turner told the Committee that the only way they have of knowing if the noise level stays reduced after Armourguard have gone is whether or not there is another complaint. It is not always the case that Armourguard has the resources to go back and reassess.
- [237] He said to us that if a neighbour approached a tavern and requested that the music be turned down and speakers to be turned away from facing their house, he always says to the neighbour/complainant, "ask them to be more considerate, ask them to move something". Often this works, but not in this case.
- [238] Mr Turner stated that it will take some effort on Mr Evans' behalf to manage party nights within the noise rules. When asked what this would involve, he advised turning the music off earlier, the panels, auto door close and other measures. When asked, he replied that the time could be decided between Ms Summers and Mr Evans, but perhaps 10pm would be an acceptable time for the music to be stopped or reduced to a reasonable level.
- [239] In his experience, where the licensee denied making excessive noise on 23 January this year, and to now be looking to install acoustic frames and mitigate noise, it is a step in the right direction.
- [240] Mr Turner said as well as the letter sent out, other educational material is provided. He has put this together and it includes information about a noise management plan as well as other information. He told us that he had provided this to Mr Evans on the day he met with him.

Police Evidence and Submissions

- [241] Constable Craddock, filed a notice of opposition dated 30 August 2018 on the basis of:
- (i) Inconsistency with the Object of the Act
 - (ii) A number of incidents have occurred including fights, administrative breaches of the Act, concern with the licensee drinking and socialising regularly on the premises, major concern with the applicant not reporting incidents to Police including when coming in to the premise and lack of support to staff, drivers with excess breath alcohol and signs of intoxication (suitability)
 - (iii) With incidents of disorder occurring around or after midnight, the premises should not operate after midnight, however reduction of hours does not solve problems of suitability (trading hours)
 - (iv) One listed manager has worked few hours, and on rare occasions she is bar staff for events, (staff, systems and training)

Constable Genevieve Craddock

- [242] Constable Craddock read her evidence. She has been with the Alcohol Harm Prevention Unit for 5 years and holds the portfolio for Christchurch Rural, which includes Selwyn, Waimakariri, Hurunui areas.
- [243] She said has been aware of various issues in relation to the Kirwee Tavern since a fight 29 July 2017 came to her attention. There was vomit outside, broken glasses, people waiting for the courtesy van close to SH73, a number of intoxicated people. The amenity and good order of the locality had been significantly reduced as a result of this incident. A karaoke and cocktail event in celebration of four students' birthdays had been widely advertised including on the Kirwee Tavern Facebook page, refer two screenshots, as exhibit 1.
- [244] During August 2018, she saw an advert on the Kirwee Facebook page which offered entry to win an All Black jersey through purchasing alcohol and collecting stamps to go into the draw. Refer screenshot, exhibit 3. This was in breach of s.237(1)(e) of the Act. Mr Evans was contacted by phone and given advice on the matter.
- [245] On 25 April 2018, a section 231 notice of management change was received, naming Ms Fodie as a temporary Manager, and the reason given as "awaiting the renewal of manager's certificate". Refer to form, exhibit 4. Upon checking, Ms Fodie's manager's certificate expired 10 March 2018, thus it could not be renewed, a new certificate was required.
- [246] On 5 August 2018, the tavern Facebook page advertised for a new staff member, stating "full training in accordance with the Liquor Licensing Act will be provided". Refer exhibit 10.
- [247] An email 10 August 2018 requesting a tri agency meeting with Mr Evans to discuss the July fight was sent but this meeting was unable to proceed. A request was sent to Ms Thomson and Ms Matoe for a meeting to discuss the fight. Ms Matoe was not able to attend. Ms Thomson advised she would attend but cancelled the day prior. Constable Craddock said she tried to set up two more meetings with Ms Thomson as she is the only other duty manager apart from Mr Evans, but she has not replied to these requests. On 27 August 2018, police took a statement from Ms Matoe regarding the fight and assault July 2018, refer exhibit 11.
- [248] In March 2019, Constable Craddock was informed by the police prosecutor that there was insufficient evidence to prosecute those involved in the serious assault July and that charges would have affected the small community. All parties received a bond to keep the peace.
- [249] On 16 February 2019, Licensing Inspector, Helene Faass and Constable Craddock met and parked on Courtenay Road, up from the tavern at 10.00pm. From there the lighting was reasonable. At 10.20pm, they parked closer to the tavern. They could hear the music being played. They moved to outside the closed windows and could hear the lyrics of the song. Refer exhibit 14, photo of exterior of the tavern. She could see Mr Evans dancing on the pool table and recorded this on her phone, exhibit 15. At 10.45pm they entered the tavern to carry out a licensing inspection. The music was quite loud and she could not hear the conversation the inspector was having with duty manager Ms Thomson. They moved to the end of the premises where Mrs Faass told her of Ms Thomson's comment about dancing on the pool table. At no stage did Mr Evans approach them and it appeared to the Constable that he was

actively avoiding them. In the back carpark they could hear music from outdoor speakers which she recorded on her phone as exhibit 16. They walked back to Courtenay Road and observed people dancing on the pool table again.

- [250] Constable Craddock produced several statements taken by police, photographs, court details of drink/drivers who had consumed alcohol at the premises and video evidence all of which was described in her statement of evidence.

Cross examination of Constable Craddock

- [251] In response to Mr Johnston, the Constable advised she had met Mr Evans about half a dozen times and while she should have taken the footage closer than she did, she was 100 per cent sure it was Mr Evans dancing on the pool table.
- [252] Constable Craddock said she believed Ms Fodie is no longer working at the Kirwee Tavern, but no formal notification has been received about this. It is the licensee's role to notify police.
- [253] In answer to a question from the current Licensing Inspector, she replied that she still has concerns with the manner in which the applicant has sold and supplied alcohol. She believes that the premises are not minimising harm which is direct or indirect – it can be disorderly behaviour, intoxication, harm to the community and since her report was submitted she believed there have been further incidents against the object of the Act.
- [254] Her belief is that the amenity and good order of the area would improve if the licences were refused. In explanation she added that the issues of disorder, intoxication, noise are all coming from the premises.
- [255] She still has concerns around staff, systems and training as she believes there would not be these issues if they had effective systems and training. This is a renewal and there have been two hearings prior to the granting of the licences. Based on this and all the evidence produced at the time, they would not expect further problems but there are further problems, hence we are here today, for the last three days.
- [256] Constable Craddock is still opposed to suitability of the applicant. A hands-on operator, owner, manager and patron – he is responsible overall. Mr Evans was present when a number of the incidents happened and her thinking is that he should be more proactive in seeing staff are adhering to the Act.
- [257] She finds him unsuitable because of the issues raised in the hearing, specifically, intoxication, disorder, noise issues, and the way he had dealt with these issues when brought to his attention. She agreed it all stems back to the object of the Act.
- [258] Mr Poole asked the Constable about paragraph 3 of her brief where she stated there were a number of highly intoxicated people at the karaoke night July 2017. This information came from a constable no longer with the police. Mr Evans has already admitted there were a load of people outside. In paragraph 3 she reports vomit, broken glass and 100 or so people outside the premises and advises that the constable who told her is no longer with police. She could not bring him to the hearing, but had the email. The crux of the issue remained the proximity of SH73 and the police having to look after the 100 or so people from the premises, under the influence of alcohol, until they dispersed. She said that Mr Evans agreed the bar was closed because there was a fight. She did not believe putting that number of students out on the footpath, road area was the right management response to the issue. The

bar is big enough to have had the students in one area and remove them first in the courtesy van and then sorted the others out. She did not see why everyone was removed from the bar when the students were the crux of the issue. She did not believe Mr Evans' response appropriate.

- [259] Constable Craddock described Mr Evans' management style as poor, otherwise we would not have the issues that are going on. In the Constable's opinion he has not minimised alcohol related harm since becoming licensee.
- [260] She confirmed that herself, SC Grant and other officers have given Mr Evans assistance in running his premises.
- [261] In her opinion and as alluded to in her brief of evidence, the number of minor issues, the significant issues and serious events – all the evidence produced, contributes to unsuitability.
- [262] Constable Craddock's response to the question – did she think previous behaviour is indicative of behaviour going forward if these licences are renewed and therefore they should be refused, was "but we certainly did not think we would be here today", and it needed to be taken into account. She expected from the previous hearings and all the issues brought out in those, that he would have learned. She said that although Mr Evans says he has learned a lot and had extensive training in the last twelve months but she did not see how that was possible with all the evidence we have heard.
- [263] She agreed in response to questioning that she saw a lack of accurate documentation from a now experienced licensee as an issue and that this had been mentioned in previous hearings.
- [264] Mr Young asked the Constable why have the police not taken enforcement action against Mr Evans or the Kirwee Tavern. She referred to the incident in paragraphs 5 and 6, the karaoke evening, and said that she did not have enough information on that occasion. She said that when she opposed the application back in August 2018, there were just a few incidents which she thought to be suitability issues. Since then, with the adjournments, further information had come through in evidence. In this instance it is all relevant to renewal and the Committee has heard this in the previous hearings. She has added more to her evidence in opposition. She admitted she could have taken it to ARLA irrespective of the renewal after the serious assault. Getting all the witnesses when it is hard to get them available, she decided on the renewal in front of the DLC but she had not anticipated the number of adjournments.
- [265] When asked about best practice intoxication assessments, Constable Craddock advised of SC Grant's intoxication assessment, a hotel visit and a video. The police officers do advise the duty manager of their concerns. She said the community officers do not always have time to fill out a patron report on their phones as they have so much on, they go from job to job. New officers joining the police now spend time with alcohol harm prevention officers and thus understand best practice, but not all "normal cops".
- [266] Constable Craddock stated that everything adduced as evidence in this hearing would be adequate to pursue an enforcement proceeding. She answered Mr Young's question about pursuing an enforcement application at the time of the serious assault, transcript page 718,719; *"Because it was going through the District Court and at no stage would I apply for a 280 application through ARLA when everything is still being put through the District Court"*.

- [267] In terms of assessing amenity and good order, Mr Young asked if the impact on this was an evaluation over a period of time, to which the Constable replied they would look at a number of issues but only when these came to their attention. Mr Young asked if it has not come to her attention you could assume things are probably going along just fine. Constable Craddock said, transcript page 724; *"No, we cannot assume that at all"*. Constable Craddock stated that the constable who told her about the vomit, broken glass, a number of highly intoxicated people and the 100 or so people outside the premises had left the police and could not come today. The crux of the 100 people outside when the bar was closed, was around State Highway 73. People under the influence of alcohol who could have gone out on the highway or continued to fight. Police had to stay. Mr Evans had agreed there were 100 people outside waiting.
- [268] In answer to another of Mr Young's questions, she confirmed that the premises has passed two CPOs, 12 January 2019 and 13 April 2018. The Constable stated, transcript page 731; *"It is not indicative of anything. Often rurally, premises can see us coming. I am not focussing on the negative. It is great that they passed"*. She did not see it as a favourable indication of the systems, training and management as, transcript page 732; *"It is quite easy, and especially in a tavern on the hours that we did the controlled purchase operation, to see two young ones where they would look out of place, and, as you said, most of the patrons are locals so he knows when they are of age"*. They are still positive and he has passed two. She said, transcript page 734; *"they are not an indicator of how well a business is going essentially"*.
- [269] Mr Young asked Constable Craddock to confirm whether "reduced" was the correct test under s.131, good order and amenity. She agreed she had used "significantly reduced" instead of "minimised" and she did not have her report in front of her to clarify further detail.
- [270] Constable Craddock said she had checked other premises' Facebook pages and no one in Selwyn was advertising the All Jersey promotion but Mr Evans did respond quickly.
- [271] As the only person rurally in the Unit, her situation is difficult and she needs to rely on local police for most monitoring of licensed premises.
- [272] When asked, by Mr Young the Constable advised that it is not possible for her to have cancelled Ms Matoe's appointment as manager. Mr Young put to her that she was saying there is a pattern but did she accept that those are relatively technical and minor matters in the grand scheme of the object of the Act, to which the Constable answered no. Someone who has freshly qualified as a manager, done the LCQ and a hands-on licensee should know how to fill out a 231 notification and know they send it directly to the police. On more than one occasion this has not occurred. He states he has done extensive training, it should be drummed into him.
- [273] Mr Young addressed the 7 July incident of serious assault, asking if there is any statement to suggest those involved were intoxicated. Constable Craddock answered "no", but there was a serious assault and prior to that a fight. He further asked if the Committee should attach an allegation of intoxication to the issue – to which the Constable stated that there are not any statements from police who had been there as the incident was not brought to their attention on the night. While there is no allegation of intoxication, she cannot say that those involved were not.

- [274] Constable Craddock agreed with Mr Young that the courtesy van is a good management tool.
- [275] In response to cross examination about the night of 16 February 2019, the Constable said Mrs Faass engaged with staff as she herself has bad hearing and the noise was loud but face to face would be fine. There were 20-30 patrons. She stated that regardless of whether the cover was not the pool table or not, Mr Evans was dancing on the pool table. It was clear to her that the cover was being put on the table while they were in the tavern. She reiterated that the issue is that Mr Evans was dancing on the pool table, not if the cover was on or not. He was socialising on his premises. She also reiterated that the video was taken prior to entering the premises not after and that they entered about ten minutes after that. To Mr Young's question about seeing footprints on the felt, she responded that was immaterial, he was dancing on the table. He also questioned whether her recollection was correct and whether she did in fact take the video. Constable Craddock stated it was definitely taken on the way in.
- [276] To further questioning she confirmed her concerns about the noise level and hearing the lyrics from quite a distance outside.
- [277] She regularly checks Facebook pages for premises and while some occasionally have theme nights, she does not see them as regularly as the Kirwee.
- [278] Mr Young asked Constable Craddock if she would ever give Mr Evans the benefit of the doubt – she stated that in previous hearings he admitted to lying to them so it is quite hard to give him the benefit of the doubt. Given that he has given sworn testimony, did she perceive almost anything he says or does with cynicism – she questions some things. He denied dancing on the pool table, she is 100% certain he was. He said he put through a notice of management, cease of management to Food and Health – he has not done that. He denies the gun gesture and she thinks he did that too. Some things he says she cannot accept are true.
- [279] In this incident SC Grant was close to the man in question but no-one told him that he was in a place of safety during the 17 minutes he was in the tavern doing a licensed premise check. On most occasions, the manager comes up to talk to them. When SC Grant talked to Ms Thomson about her assessment of this man she did not take that opportunity to tell him. The Constable did not agree that it was a communication issue. She did not accept that the intoxicated gentleman came inside, was not served, was given water and then taken home.
- [280] Counsel asked Constable Craddock if those patrons did arrive and someone was intoxicated to the extent the man was, would the appropriate response be to put him in a place of safety and then get him home in the next van - her response was that she did not think the man was in a place of safety as they would have mentioned that. They had said the place of safety was outside, but the man was inside the bar. She thought it was risky taking on patrons who had been potentially drinking after a rugby game. She and Counsel agreed this man could hardly walk. The Constable stated, transcript page 772, *"if he was highly intoxicated, then he should not be on the premises"*. Knowing there was a hearing, she thought staff would have gone out of their way to say that person was in a place of safety.

Questions from the Committee

- [281] The Constable was asked which issues would she give the most weight to – her answer was if there was a serious assault followed by an intoxication, the crux of all

that would then be the management of the premises and how you manage the patrons. She stated, transcript page 774, *"if there was a good system of staff training, we would not have those issues"*.

- [282] Courtesy vans are positive although some people might think they can have more than one or two because they do not have to drive. She thought drop-offs only would be ideal for premises.
- [283] Constable Craddock had not seen anyone dancing on a pool table at a licensed premises in five years of monitoring in Christchurch and the rural areas. While not an offence, she was shocked to see this and considered that it did not set a good standard to patrons.
- [284] She did not expect to have disorderly behaviour in a country tavern seemingly because the patrons are locals and know each other.
- [285] Constable Craddock did not believe sitting on a bar stool was an appropriate safe place and stated that at the previous hearing, Mr Evans had said the place of safety was in the restaurant area. In evidence Mr Evans said that the man was in the smoking area beer garden in a place of safety so she was questioning where the place of safety actually was. She did not think sitting on a bar stool was safe with the degree of intoxication.
- [286] While she was obliged to report on matters of concern she had not ignored positive changes or the nights operated without issue. The Constable referred to the painting, the garden, but thought the lighting a little too late. However, increased lighting around the back will make the area safer. Transcript, page 778; *"He is now trying to put matters in place that we have addressed in our reports and I think he had an ample opportunity to do that"*. For her, the concern is how the place operates and the report focussed on that.
- [287] The Constable, like SC Grant, would also like to see CCTV cameras installed. She did not think monetary excuse is a reason for not getting CCTV cameras as a friend of hers had just installed security cameras for minimal cost.
- [288] Constable Craddock described the efforts made by police since Mr Evans had become involved with the tavern and the assistance given including from community police. This is the first time she has dealt with a renewal where there are still issues - past conduct is relevant. She agreed that the Sheard test for suitability was relevant as with the renewal there are still issues and past conduct should be looked at. She agreed that the granting of the licences in 2017 had resulted in an increase of alcohol related harm in the Kirwee community.
- [289] In her opinion, the music on 16 February 2019 was quite loud if she could hear the lyrics of a song, outside and 50 metres away from the premises.
- [290] It was her view that if the closing hours were reduced, it would not encourage people to drive further, they would just go home.
- [291] In terms of the proximity of SH 73, for police, on the night a large group of students were out on Courtenay Road waiting on drivers, it meant that they felt they had to stay so that people would not go on to the state highway as it is quite close. There was concern of danger in a 70kph zone with the 100kph zone close by.

- [292] Constable Craddock was asked had there been any increase in crime statistics in Kirwee over the last two years – she thought that calls for service had increased. Local police state they have been called to the area more. After discussion, the Committee asked the Constable to obtain a comparative data snapshot including prevalent crime types between two periods from the intelligence unit and to provide this to the parties.
- [293] Constable Craddock did not believe the granting of the licences would be for the benefit of the community as a whole. It was reasonable for Ms Summers to request and expect that speakers be repositioned and face away from the houses across Courtenay Road and that the volume be reduced. The Constable would not expect the volume to be increased once the noise control officer had left.
- [294] The locality had become more vulnerable in terms of alcohol abuse issues increasing over the past five years, noise increasing, the large number of people waiting outside for transport home after a party but she is not aware of other neighbours complaining to police about behaviour associated with the tavern.
- [295] She agreed that the applicant has issues in dealing with those in authority. Mr Evans' evidence in regard to seeing SC Grant, indicates he has issues with monitoring, he did not accept and had an issue when told about noise complaints, he did not like being told he could potentially be wrong. Transcript, page 787; *"In his way, he, to me, actively avoids the people coming in to do their work. I do not think he is very approachable in that regard"*.
- [296] Her concerns about the trading hours are that incidents are occurring before midnight, primarily around Fridays into the evening. She did not think there was an answer as the staff are lacking in training and the way Mr Evans operates will not be remedied by any reduction in hours or days.
- [297] Constable Craddock agreed the supposed minor issues are part of a pattern of behaviour in terms of lack of systems, knowledge of the Act and the feeling that they do not need to comply with the rules. She explained, in the transcript page 789, *"some might say that it was minor things that he had done but I think it paints a full picture when you put these things together. He should know that. He is a hands-on licensee and a manager; someone who he has done his LCQ more than once"*.
- [298] It is normal practice for police to phone a licensee to notify them of the social media advertising that breaches s237(1) of the Act. Mr Evans did take action immediately and remove the All Black jersey promotion.
- [299] In referring to paragraph 44 of her evidence, the Constable stated that Police do not normally get ignored twice in response to meeting requests like those put to Ms Thomson.
- [300] If she was a neighbour living where Ms Summers lives, Constable Craddock would find the loudness of the music frustrating, when it's constant and interrupting your sleep or watching TV at night, she thought she would lose her patience.

Senior Constable Andrew Grant

- [301] Senior Constable Grant, from the Darfield Police Station read his brief of evidence and referred to various issues: