

- (i) Liquor Licensing asked him to photograph pages for 27,28,29,30 June from the incident book at the tavern. These were produced as exhibits. He noted Friday 29 June 2018 had the diary note for the 7 July fight. While there, he also asked to see the notice to stay off premises book. The tavern record for trespassed persons was an A4 sheet of paper attached to the wall. SC Grant advised Mr Evans to obtain a book from Hospitality NZ. He later emailed a copy of a blank notice from another premise, outlined how it worked and offered to run through it with Mr Evans. He was not required to do so.
- (ii) Early Sunday morning 26 May 2019, he conducted a licensed premise check, recorded on a compliance check form. Two intoxicated patrons were in the bar, one sitting on a bar stool near the bar. SC Grant had spent several minutes observing when the man fell off the bar stool, ended up under the table and could not stand up. He took a video. Duty Manager Tania Thomson made a comment directly to SC Grant which he would not divulge to the hearing. The man stated that he had been in the tavern for 15 minutes. SC Grant asked the duty manager two questions. Ms Thomson did not tell him that the man was from the rugby club and was in a safe place. He advised her to get him home safely. The Constable was in the premises for 17 minutes.
- (iii) 4 October 2018: With his lights flashing, SC Grant followed a car that left the rear carpark. The car sped on West Coast Road and turned in to a residential driveway on the town outskirts. The driver was not known to the occupants. The man had glazed and bloodshot eyes, his breath smelled of alcohol, he admitted to drinking in the tavern. His breath screening test was 570 micrograms of alcohol per litre of breath.
- (iv) 19 January 2019: A utility left the rear carpark, was weaving between the lines travelling towards Darfield, on SH73, the driver had very glazed eyes, slurred speech, smelled of alcohol, tested at 518 mcg.

[302] SC Grant showed a recorded copy of the licensed premise compliance check form for 26 May 2019, exhibits 14 and 15. He recorded the intoxicated male, one of two inside the bar and answered questions about the footage, exhibit 16. The man was very intoxicated, sitting on the bar stool with his back to the wall. A patron was talking with SC Grant, when the man crashed off the stool, ended up under the table and was incapable of standing up. He took the video of the man. He did not know whose glass was on the leaner.

[303] The Constable took the man outside the rear door nearby to speak with him. The man had been in the tavern for 20 minutes. He was extremely unstable on his feet, stumbling, his eyes were glazed, bloodshot, not focussed, his speech was loud, very slurred, repetitive, unintelligible, losing train of thought, he had trouble forming words and putting sentences together.

[304] SC Grant asked the duty manager two questions about the man's state of sobriety and if she noticed anything about his speech. Her reply was he was definitely ready to go home, his speech was slurred.

Cross examination of Senior Constable Grant

[305] Mr Poole asked the Constable about his police training and the object of the sale and supply of alcohol – he replied that he has run CPOs and about 7 years ago he did an alcohol harm reduction course. He had been stationed in Selwyn for almost 6 years.

- [306] SC Grant agreed that since Mr Evans has been the licensee of the Kirwee Tavern there is an ongoing issue of inappropriate consumption or excessive consumption of alcohol at the premises.
- [307] The Constable has offered assistance around the management of the premises while Mr Evans has been licensee and that every time he does a licensing inspection of any premise in his area, one of the first things he does when he speaks with the duty manager is to advise them to make sure the courtesy van is running. He has also given advice on CCTV cameras, as he does with all his premises in the Darfield area.
- [308] Given the rural locality and its positioning on a state highway route, SC Grant agreed that the Kirwee Tavern has a higher risk of drink driving. He has stopped three people he has witnessed leaving the tavern for drink driving. He does not consider this a good reflection for the premise with drink drivers being apprehended when they have a courtesy van. He agreed that this is not minimising alcohol related harm.
- [309] He considers that the patrons could do a lot better than the current practice in terms of drinking in a responsible manner.
- [310] SC Grant confirmed that it was Mr Evans' voice in the video saying, transcript page 438, *"No need to take a video, grow up"*.
- [311] The attitude Mr Evans has towards the police monitoring the premises, in the Constable's view, is that Mr Evans regards it as a bit of an affront when police go in to do a licensing check and that he tries to ignore them. Mr Evans does not generally come up and talk. SC Grant does not believe there is a communication issue and stated he is quite easy to talk to.
- [312] The use of the courtesy van is a very good thing for the Kirwee Tavern – it is used and they see it working. SC Grant returned to the tavern around 2.00am after he had processed a driver 22 April 2019 and had the vehicle taken to the parent's address for safety. He went back to the tavern at 2.00 am after the EBA incident and spoke with Mr Evans about the drink driver and also discussed keeping the courtesy van going because a drink driver had been processed leaving the premises. He does this as, transcript page 443; *"it's a working relationship and the last thing we need is potentially Kirwee people leaving the premises and a fatal accident. It is a prevention tool"*.
- [313] He attends the weekly Thursday in Rolleston with Sergeant Stills. They pair up and are given tasks to patrol hotspot locations for crime. He confirmed the Kirwee Tavern has featured in these discussions. When working late shift Friday and Saturday nights, SC Grant makes a habit of visiting premises so that the public sees you. He sees this as preventing issues later on. In the last year, he personally has done more licensed premise inspections on other premises. In the Constable's policing area there are numerous bars. Transcript page 440; *"The Kirwee Tavern is the one that's causing us issues"*.
- [314] Referring to paragraph 48 of his brief, SC Grant confirmed the comment directed to him was a personal one in relation to a potentially critical work incident from seven months earlier.
- [315] In his statement at paragraph 55, referencing the discussion with Ms Thomson and the intoxicated person 26 May, the Constable agreed that the duty manager did not come up to him and explain about the man during the licensed premise inspection. The man was there when he entered and when he left, 17 minutes later.

- [316] SC Grant spoke of the incident in Mr Evans' evidence about the previous weekend and two persons Mr Evans was concerned about. He drove from Darfield and heard loud raised voices when he entered the tavern. Mr Evans came up to him and it appeared he had been drinking as his eyes were a little glazed. Mr Evans was not the duty manager. SC Grant went out the Courtenay Road door and was told by Mr Evans, transcript page 449 *"to get these c.... out of here" or "away from here"*. Mr Evans explained that a vehicle had broken down and two people had pushed it to in front of his tavern – he did not want them in the premises and there had obviously been some words. Mr Evans said, transcript page 449; *"do your job, get these c.... out of here"*. SC Grant spoke with the men, told Mr Evans what he intended to do and took the men to Christchurch.
- [317] He finds it confusing at times when going to the Kirwee Tavern as you are not sure if the lady behind the bar is duty manager, or a bar lady, and Mr Evans is there dealing with things – not duty manager but he is there drinking – transcript page 451; *"it sort of creates a bit of conflict"*.
- [318] SC Grant told Mr Young that over the last six months he found the management at the Darfield easier to speak to. However, he noted that on one of the occasions recorded by Mr Evans, talking about a police car driving past him early in the morning and not talking to him, the Constable was parked by the service station on the main road, waiting for a stolen car from Christchurch.
- [319] He confirmed the hot spot locations include other licensed premises. Police patrol the car parks to try and reduce crime, potential vehicle break-ins and other crimes. On a personal level, SC Grant answered that personally, in the last 12 months he had pulled over 5 drivers who failed an evidential breath assessment. Darfield staff patrol from West Melton to Arthurs Pass and between the Waimak to the Rakaia rivers. He confirmed that excess breath alcohol is a countrywide issue.
- [320] On 25 October 2018, he was first to arrive when Mr Evans called police about a man who appeared confused. The man had been given food and put him at the end of the bar by the restaurant. The Constable took the man to Christchurch Hospital. Tania Thomson was duty manager, Mr Evans a patron.
- [321] SC Grant confirmed that he had spoken to Mr Evans about the trespass form available from Hospitality NZ while he was taking photos of the incident book in respect of the 7 July incident. He had sourced a page from another premise and emailed that to Mr Evans to use in the meantime and offered training in the use of the forms.
- [322] Under the Land Transport Act, SC Grant agreed someone can be convicted of an excess breath alcohol charge, depending on the person, and that intoxication under the Sale and Supply of Alcohol Act is a different threshold. He considered they are different things but interrelated to an extent. In paragraph 36 in his brief, SC Grant refers to a man who blew 570 and had glazed, bloodshot eyes, his breath smelled of alcohol – he considered two of the SCAB indicators required for intoxication. The man was 2-3 metres away and he was confident that he was intoxicated.
- [323] SC Grant stated when he entered the tavern 26 May (2019), neither Tania or Mr Evans spoke to him about the man in question. When the Constable walked in, the man was seated by the door near the rear entrance. A man came up to him and asked if he could do a handstand. He confirmed that no staff member came up to him, said the man was from the rugby club, they had not served him and we will get

him home. He only learned what the licensee said had occurred when he spoke to Constable Craddock. In response to Mr Young's question about his making an enquiry to the rugby club about how their evening had gone and the time people left, SC Grant said that he had done a 3H, a licence inspection at the club earlier in the evening.

- [324] He thought the explanation given by Mr Evans was possible. When he spoke with the man outside, he said that he had been there for 20 minutes. He himself was there 17 minutes and did not see him consume alcohol. SC Grant stated that he could not verify Mr Evans' explanation of the incident. He had not asked if the man had been served.
- [325] The Constable remembered driving through to Rolleston one afternoon and stopping a utility leaving the carpark on Courtenay Road. As he does occasionally he stopped the vehicle and tested the driver. He was not aware it was Mr Evans' vehicle. He passed the test.
- [326] SC Grant's view is that courtesy vans are a good tool for all premises, especially in rural communities.
- [327] He could understand that Mr Evans feels under pressure in terms of these proceedings and his business. Mr Young's referred to the Constable's evidence about the working relationship not being as good as he had hoped. He thought the interaction when Mr Evans sought police help to remove the individuals should have occurred with the duty manager rather than an owner who is in the bar and consuming alcohol. However, Mr Evans was right to be concerned at the two individuals being on his premises. SC Grant spoke of the offers of assistance he had made and which he is happy to do with licensed premises in his area.

Questions from the Committee

- [328] SC Grant stated to the Committee that the Kirwee Tavern has been targeted by police carrying out agreed duties. Darfield is a three person station, it's team policing. If SC Grant is not carrying out licensed premise checks at the Kirwee Tavern, another constable would. If someone was away, a member from Leeston or Lincoln would cover.
- [329] The Constable spoke to Mr Evans about the armed robbery of Springston Hotel and the value of CCTV in capturing potential offenders, disorder in a bar, or as extra security. He has used footage in investigating an assault as it graphically shows what is happening.
- [330] The Committee asked if the close proximity of SH73 was an additional responsibility for the licensee. SC Grant responded in the affirmative. It was high use for tourists, the criminal element, members of the public passing through from and to Christchurch – transcript page 491; *"So, like I say, you'll get a cross section of society passing through and potentially stopping"*.
- [331] In describing the speed limits close to the tavern, the Constable stated that it is 70kph through the township and roughly 1kilometre to the east and 1 to 1.4 kilometres to the west, there are the 100kph zones.
- [332] SC Grant answered that the renewal of these licences would not minimise alcohol related harm from the inappropriate or excessive consumption of alcohol in the Kirwee community. In his opinion drunk driving has been the most serious issue in

terms of alcohol related harm from Mr Evans' tavern that he has been party to. And the person falling off a bar stool being intoxicated on the premises. He thought alcohol was sold and supplied at times that maybe other managers would not have continued that supply because of the person's state of sobriety.

- [333] He said that sometimes there have been bottles behind a vehicle in the Kirwee Tavern carpark but not on a regular basis. Police also patrol premise car parks.
- [334] When asked if Mr Evans displayed poor judgment and is more disposed to be a good bloke than to comply with the requirements of the Act, SC Grant believed yes to both. He explained that from his observations of the premises, Mr Evans wants to be in the bar, friends with everyone in the bar and there appears to be some confusion - transcript page 497, 498: *"for the police and patrons when you've got a gentleman who's an owner, also sometimes a manager, and very frequently a patron in the bar who's consuming alcohol , a big area of confusion around that of who's actually duty manager at any time"*. He could step in earlier, manage signs of intoxication and remove a person from the bar area.
- [335] He would not expect an on or off duty licensee in his own establishment to dance on a pool table. He would describe this behaviour as skylarking for want of a better word, the type of behaviour you would expect maybe from a patron who was under the influence of alcohol, and certainly not from a duty manager or bar owner in their own premises. In his experience, drinking and socialising on the premises when off duty portrays a negative image.
- [336] In spite of Mr Evans' experience with past hearings, the conditions and requirements that he had to do, the Constable stated that his observation is that we were still seeing the same behaviour. Mr Evans is unlikely to carry out the responsibilities that go with holding on and off licences.
- [337] SC Grant does not ignore the positive changes made by Mr Evans and his team. He agreed the presentation was a big improvement from what it was before.

Sergeant Alex Pickover

- [338] Sergeant Pickover read his evidence. He is based at Rolleston Police Station.
- [339] At the direction of police communications at 11.52pm Saturday 24 November, the Sergeant arrived at Kirwee Tavern at about ten past midnight. The disco music inside was loud. He carried out a walk-through with Constable Caird. A male was staggering and unsteady on the pavement, held up by a female. After briefing another police unit, the male staggered over to him and began talking. His eyes were glazed, speech slurred, he was drunk. The male was told numerous times to leave until he was advised if he did not, he would be arrested.
- [340] A further police unit arrived. Two senior constables and the Sergeant entered the tavern and he spoke with the duty manager. He explained they received a call of people fighting outside. They would carry out a walk – through and assess intoxication levels of patrons and call her over if anybody else was deemed to be intoxicated. He ascertained that food was available.
- [341] He determined that intoxication levels were moderate to high. He advised Tania Thomson, duty manager that if any further calls of disorder were received after they left, the tavern would be closed. She agreed with this course of action.

- [342] While the officers were talking outside, the owner of the Greta Valley Tavern who was helping at the Kirwee that night, approached them and stated that there had been some pushing and shoving outside the bar. A staff member at the main entrance indicated for them to come over and advised that a male was refusing to leave after being asked to. While talking to this male, the Sergeant noticed that his eyes were glazed, speech slurred, and he was unsteady on his feet. He was drunk. When questioned, the man stated that he had consumed nine vodka cruisers, had been at the tavern since 6pm and he had not eaten while at the Kirwee. The man was told to leave and if he came back he would be arrested.

Cross examination of Sergeant Pickover

- [343] The Sergeant indicated to the Licensing Inspector that he had been in the police for almost 18 years, including 7 years in the Metropolitan Police in London before coming to NZ in 2001. He did 6 years on a team policing unit in Christchurch city, dealing with disorder and carrying out hotel visits mainly in the CBD. He considered himself well versed with issues around alcohol and assessing consumption. The sale and supply of alcohol is a subject studied for promotion. This is followed up by training from Liquor Licensing. He is familiar with the object and purpose of the Act. Part of their training is the assessing and identification of intoxicated patrons.
- [344] He agreed that the Selwyn police have concerns with the operation of the Kirwee Tavern and they are informed by Darfield staff of high intoxication levels and drink driving from the premises.
- [345] In his time on the team policing unit he had not seen a licensee dancing on a pool table. It was not common to see and he had not seen an off duty licensee drinking with patrons.
- [346] On 24 November 2018, the Sergeant believed that the music when he arrived was excessive. When he came to NZ, he worked at ADT Armourguard and took calls from noise complaints. Then in the team policing unit, he experienced noisy parties in Christchurch, working alongside noise control officers, numerous events where alcohol is involved. Transcript page 558; *"On that night, my personal opinion, I believed that to be excessive"*.
- [347] The man in paragraph 37 of his statement was a different male to the man he first described as drunk. During the walk-through when he joined SCs Harker and Caird after talking with Ms Thomson, he observed people and their appearance. In his visual assessment he noted their mannerisms, behaviour, their overall appearance, glazed eyes and how they came across, using the SCAB tool.
- [348] Personally, he deemed nine vodka cruisers an excessive and harmful amount of alcohol to be consumed, when he had not eaten any food and he assessed the man as drunk. He believed the patron should have been offered food or non-alcoholic beverages.
- [349] In answer to the question – in his experience in policing in the area, did he believe there are ongoing issues of inappropriate or excessive consumption of alcohol at the Kirwee Tavern, Sergeant Pickover stated, transcript, page 561; *"From what I saw on that night and from what I get told by the staff from Darfield, I believe there is"*. This was a first impression and what his police colleagues were telling him.
- [350] Having an EBA being seen leaving the tavern, he believed that this contravened the object of the Act. Transcript page 562; *"Well, it's the Alcohol Act, because they've"*

been intoxicated on premises, but they're also breaking the law under the Land Transport Act as well". He believed the two can be linked together.

- [351] He cannot recollect any other taverns with the same issues that have been raised in this hearing in regards to the Kirwee Tavern.
- [352] In answer to the question does he think that the management are adhering to the law at all times, he responded – no.
- [353] In replying to Mr Young, Sergeant Pickover stated that in his experience, people who blow high under the Land Transport Act are intoxicated and in his perspective, this is over the legal limit. They are unsafe to be behind a car because of the alcohol inside them. He believed they were intoxicated for the purposes of the Sale and Supply of Alcohol Act 2012.
- [354] When he arrived at the tavern from Lincoln, a long way from Kirwee, there were a few people milling around the outside of the tavern but not thirty people. SC Caird had said in evidence they had left. He confirmed with Mr Young that in the walk-through in the bar he had not seen evidence of fighting through state of dress or appearance, or blood or ripped clothes, red knuckles.
- [355] The Sergeant agreed with Mr Young that he found Ms Thomson, duty manager, to be approachable and receptive to what he was saying that night when he brought the intoxication levels to her attention.
- [356] He stated that there were 70-80 people in the bar, it was quite packed and he did not go around and observe everybody. Transcript page 568; *"the people I saw appeared to be intoxicated to a moderate to high level"*. He stated further that to him, intoxicated was going through the SCAB tool, moderate to high – eyes glazed, unsteady on their feet, unkempt dress, speech slurred, breath smelling of intoxicating liquor. To him, that was intoxicated, not influenced. He then spoke to Ms Thomson about this and also to SC Caird. He answered that he dealt solely with Ms Thomson before the walk-through and after the walk-through, not other staff. He identified and assessed the patrons, he did not do this assessment with a staff member, he brought it to Ms Thomson's attention.
- [357] Mr Young asked the Sergeant if he saw evidence of 30 or 15 people fighting and going back inside, any evidence of a 30 person brawl at the front of the tavern. He answered that in his statement, the gentleman helping the owner of the Kirwee Tavern said there had been an incident outside, some pushing and shoving. Counsel asked if pushing and shoving is different to a 30 person fight, the Sergeant answered it is interpretation, but that was the information from police communications. He clarified that you could normally tell if there had been a fight in an environment like that, if people were still on the scene. In response to Counsel, that if people had left, did he usually find evidence, whether you could tell someone had been on the ground, stones kicked away or a scuff mark on the grass, the Sergeant stated that it would depend on the environment. He agreed with Counsel, that in terms of whether or not there had been a fight or brawl, they should rely on SC Caird's evidence.

Questions from the Committee

- [358] Sergeant Pickover stated that he had asked the male who was staggering on the pavement before walking over to him, to leave three or four times. He believed the man was leaving of his own accord.

- [359] He answered that the number of the 70-80 people he assessed in the bar, as it was pretty jam-packed, was probably ten people as he snaked his way through. He confirmed these ten were intoxicated. He believed they were at a stage which was passed slowing them down, they were at a stage when they were or should have been prevented from purchasing more.
- [360] He stated that his words to the duty manager were, transcript page 577; *"From my opinion, what I've seen is there's ... the intoxication levels are quite high, moderate to high"*, and it needed to slow down. She replied that they were closing shortly.
- [361] When asked if his advice to Ms Thomson was normal procedure, that if further calls of disorder were received after the police had gone, the hotel would be closed, he answered yes. The Sergeant stated, if there was ongoing disorder, or an ongoing or a serious incident, a risk to the public, they would speak to the duty manager and look at closing them down for the night.
- [362] Sergeant Pickover agreed that the nine vodka cruiser man had been there about six hours when he arrived at the Kirwee. He had been asked to leave and was refusing. When they were called over he was being argumentative to door staff but he took notice of the police. In his opinion, the male should have been stopped before the nine vodka cruisers, given food or water. In regards to being over the limit with this amount, he said that it depends on age, sex, last time eaten, stress levels.
- [363] He thought being asked if the renewal of these licences would minimise alcohol related harm for inappropriate or excessive alcohol consumption in the community, was an interesting question. He agreed it was one the Committee have to consider. From his experience and that of Darfield staff, there have been a lot of issues. If it wasn't renewed it would certainly reduce their calls of service to the area and the risk of drink-drivers – then in his opinion it would minimise the risk to people and reduce the service to the hotel to deal with the incidences there.
- [364] In response to the question; in his experience are increased levels of intoxication directly attributable to the type of management style – he stated yes. There are rules in place and you have to abide by those rules. Transcript page 581; *"To me, the legislation is there, they're the rules. There's the expectation and that's what you've got to work by. It's like in our role, we have legislation we've got to work by and work towards and that's to maintain trust and confidence for the public. You can't..you can't be everybody's friend You've got to set the standard and you've got to look after people"*.
- [365] In terms of licensing responsibility, a licensee needed to look out for intoxication with the very close proximity of a state highway. If people speed you have the risk of an accident and there are other considerations. Transcript page 582; *"At the end of the day, to me the licensee has to ensure the safety of the patrons inside the premises and directly outside"*. By directly outside he meant the footpaths at the front.
- [366] When asked if he thought Mr Evans is more disposed to being a good bloke than to comply with the Act, he answered – yes. From what he understands, he tries to be friends with everybody. And in his view, you can't do that. You have to have that distinction if you're trying to impose rules. You are there to be custodian and you have to know the rules and you have to abide by the rules.
- [367] The Sergeant confirmed to the Licensing Inspector that he had met Mr Evans about three years ago when he came voluntarily to the Rolleston Police Station and they had a lengthy chat about an incident in relation to the Kirwee Tavern which the

Sergeant had not attended. Then after the Darfield incident last November, he had met Mr Evans in Rolleston where Mr Evans wished all the officers involved in that incident, best wishes.

Constable Victoria Russell

- [368] Constable Russell read her evidence. At the time of writing her brief, she was based at Rolleston Police Station, but currently she is working at Christchurch Central Police Station.
- [369] At about 11.40pm on 22 December 2018, she heard SC Beaumont of Darfield Police Station despatched to a disorder incident at the Kirwee Tavern. With SC Manning of Lincoln Station, she went to support SC Beaumont, arriving about 11.55pm. SC Beaumont was near the front entrance to the tavern and she noted a male and female standing across the road outside a residence. The publican she now knows as Steven Evans, came out of the tavern and spoke with SC Beaumont. He was visibly intoxicated.
- [370] Mr Evans and the female exchanged words across the road. She recalled Mr Evans speaking to her in a derogatory way. She was watching Mr Evans while this was happening. He was standing next to SCs Beaumont and Manning who were looking at the female. Mr Evans put two fingers to his head with his thumbs up and tilted his wrist back, causing the fingers to lift at an upwards angle. Transcript page 587; *"In her opinion, this was to gesture of a gun being placed to the head and pulling the trigger. I believe this was directed towards the female in a threatening manner, as Evans was watching the female the entire time and appeared to be in an agitated and angry state towards her, with verbal outbursts"*.
- [371] She stated SC Beaumont told Mr Evans to stop the behaviour and go inside and turn down the music. Evans continued to yell at the female. Then SC Manning put his body in front of Evans and directed him, with purpose, to go inside and turn the music down. Mr Evans complied. She told the Senior Constables that she had witnessed. She went to talk to the female, Ms Summers who was the informant. I confirmed that I had seen the gun gesture. Ms Summers told the Constable that she believed he had meant it to be threatening towards her and that there had been ongoing issues with disorder outside the tavern and with Evans. Constable Craddock from the Alcohol Harm Team was involved.

Cross examination of Constable Russell

- [372] Constable Russell confirmed that the incident had taken place on the corner of Courtenay road and the main state highway just outside the tavern.
- [373] The Licensing Inspector referred to the Constable's evidence where she said Mr Evans was visibly intoxicated. She stated that she based this on using the SCAB assessment tool. Transcript pages 588-9; *"so in terms of me saying that he was visibly intoxicated, that is in relation to the way he was behaving towards Ms Summers across the road, so his speech was very loud in the way in which he was yelling. He was also very belligerent, very loud, very derogatory towards her, seemed to be quite irrational in his outburst and what he was saying towards her, very agitated and aggressive"*.
- [374] She did not recall the words he used but at the time remembered being there and thinking, transcript page 589; *"Where is all this coming from? This is just completely*

strange. There's obviously a bit of a back story here", because it seemed very directed.

- [375] In response to the question about the two Constables seeing the incident with the fingers, she answered – no, absolutely not. They were standing to either side of Mr Evans or just in front to the side. She advised that she was standing probably 1 ½ to 2 meters from him, and if Mr Evans had his 12 o'clock directly in front of him, she would have been standing at about his 4 o'clock. She saw that the two constables and Mr Evans were facing across the road with their bodies. She had an overview of the three in front of her.
- [376] She agreed that Mr Evans was staring directly at the two people across the road when he made the gesture. In her opinion, she did not believe SC Beaumont was in a position to have seen what she believed was a gesture before he told Mr Evans to stop the behaviour, go inside and turn the music down. Transcript page 591; *"What SC Beaumont was trying to stop was the verbal outbursts because they were loud and the way in which he was speaking, like I said, was very derogatory and, quite frankly, was completely inappropriate"*. She agreed that despite the request from the Constable, Mr Evans continued to yell and completely ignored him. It was the presence of SC Manning standing in front of Mr Evans which stopped Mr Evans from seeing Ms Summers and when directed again, he finally complied and went inside.
- [377] When asked if the behaviour adopted by Mr Evans in this incident made him suitable to be a licensee or publican, Constable Russell answered - in her opinion, no. Putting context around it and seeing what it was on the night, transcript page 592; *"I guess if you were to put that into a metro environment, let's say in the city, where there are a number of bars, if every bar manager or duty licence-holder behaved in that way, we would have absolute mayhem on our hands"*. She answered that she had never experienced this whilst policing in Christchurch, transcript, page 592; *"never, never, either from a duty manager or from bar staff or security"*. She confirmed it was a rare occurrence.
- [378] She did not enter the premises, she did not see the original incident, what they were called for in terms of the damage to the sign and the altercation. The only person she had any contact with or observed from the tavern, was Mr Evans.
- [379] Constable Russell stated that she had been a police officer for seven years and in Selwyn for approximately one year. Given the gun gesture she now has a basic knowledge of the ongoing back story. Transcript page 595; *"If I was to put myself in her shoes, I would feel the same way that Ms Summers does. I would not feel comfortable living across the road knowing that is the behaviour of the owner or the publican across the road"*.
- [380] In answering Mr Young, the Constable stated that she did not discuss her assessment with either of the two SCs Beaumont or Manning because she felt that she did not need to, she was confident in her own assessment. To Mr Young's question about Mr Evans' behaviour, had she relied on this behaviour being loud, shouting and aggressive in making her assessment, she replied that you would find in the SCAB tool, under speech, "loud", and certainly an assessment of being intoxicated in terms of speech. In behaviour, you have "agitated, aggressive, belligerent", so yes, she believed that he met the intoxicated. She believed the two things needed on the SCAB tool, were met.
- [381] Constable Russell stated that when she saw Mr Evans' behaviour at the time, she had no knowledge of the back story, therefore she did not believe that the back story

could have contributed to his behaviour from what she saw. She took his behaviour purely on what she saw at the time. She confirmed that she did not speak to Mr Evans that night.

- [382] She answered Mr Young's question about which hand Mr Evans raised in making the gesture as the right hand. She also confirmed that the two officers were too far forward to see or notice the gesture. She described SC Manning being on Mr Evans' left at 9-10 o'clock, SC Beaumont was to his right at approximately the 2 o'clock position, both having their bodies facing towards the road. Looking at Ms Summers because of the interaction taking place. These positions were with Mr Evans' front being the 12 o'clock position.
- [383] Her recollection and impression of the words spoken by Ms Summers to her, was like – "I've had enough of this" sort of thing. She thought Ms Summers was trying to shut everything down, not have a go.
- [384] In terms of suitability under the Act, would she consider that one incident of this sort of behaviour would deem someone unsuitable per se – her response to Mr Young was that as an isolated incident and she did not work in the Alcohol Harm Team, her perspective it would be something that you would potentially give advice on and give guidance as to how to be a better duty manager or a publican. But again, that was purely looking at what she saw in maybe ten minutes that she was there without actually speaking with Mr Evans.

Questions from the Committee

- [385] Constable Russell explained her experience in seeing people who were visibly intoxicated. In her role, if working a late shift, there used to be prevention weeks, conducting hotel visits, making sure everyone was complying and the patrons were safe. She stated that she is very familiar with dealing with intoxicated people, not only from a licensing perspective but also going into people's homes, domestic situations and is well aware when someone is intoxicated.
- [386] She told the Committee that she was absolutely not mistaken in her detailed description of Mr Evans' gesture. As a sworn police officer, here today giving evidence, it is a 100% accurate that this was Mr Evans' action.
- [387] In her opinion, when the Constable went across the road, the reaction from Ms Summers after being told what had happened by Jack, was absolutely what she would expect from something like that.
- [388] She agreed that the behaviour from Mr Evans was best described as a direct attempt to intimidate, that he absolutely meant for that to happen. She would not expect this behaviour from an experienced licensee.
- [389] She remembered the music being quite loud.

Senior Constable Hamish Caird

- [390] SC Caird works at Darfield Police Station where he has been stationed for a year.
(i) On 10 July 2018, a male named Michael came in to the station to make an assault complaint in relation to a fight and later an assault by the same male and three other people at the Kirwee Tavern, 7 July 2018. The redacted statement is dated 10 July, 1700 hours, Darfield Police Station.

(ii) On 13 July 2018, 11.00am at Darfield, a male made a statement about the 7 July 2018 assault. The redacted statement is dated 13 July, 1100 hours, Darfield Police Station.

(iii) At 2.30pm, 14 July 2018, SC Caird took a statement from Tania Thomson, duty manager at the Kirwee Tavern 7 July 2018. The statement is dated 14 July 2018, 1429 hours, Darfield Police Station.

(iv) SC Grant took a statement from Amanda Matoe who was working at the Kirwee Tavern 7 July 2018. The statement is dated 14 July 2018, 2240 hours, Darfield Police Station.

(v) SC Caird charged all four people involved in the assault on the male and this matter went before the Christchurch District Court.

[391] On the night of 24 November 2018, the Constable was called out to a fight at the Tavern. No fight was in progress when he arrived and the security guard did not know of a fight. Sergeant Pickover arrived and was approached by a male and female who had just come out of the pub. The male was argumentative, slurring his words, belligerent and unsteady on his feet. He was asked to leave multiple times before being warned. Three of the police did a walk through the bar which was packed and hard to move through. SC Caird went into the beer garden and found it really dark. He was surprised there were no CCTV cameras in the tavern.

[392] A woman asked a police officer if she could be breath tested to see if she could drive. She had asked bar staff for hot food but was told they were too busy, they were not cooking. SC Caird watched patrons while the Sergeant spoke to Tania, the duty manager.

[393] On 25 November 2018, SC Caird took a statement from Jack Summers in relation to the tavern and what he had witnessed the previous night. The statement is dated 25 November 2018, 1507 hours, Darfield Police Station.

Cross examination of Senior Constable Caird

[394] Counsel questioned the Constable about the outcome of the assault charges at court. SC Caird believed that the individuals received good behaviour bonds. He was off work injured at the time but understood the prosecutor in Christchurch had considered possible division in the small community and the Constable believed that the individuals had received good behaviour bonds. The Constable considered stomping on someone's head a serious matter.

[395] On 24 November 2018, SC Caird arrived at the tavern to see six people walking down the road. He did not see anyone in the bar with ripped clothes, split lips, blood noses, blood on their knuckles or anyone who looked like they had been in a 30 person fight outside the bar as Counsel suggested. The Constable said that not all fights were of an equal outcome. He would not expect all 30 people to be walking wounded.

[396] The Police had gone inside the bar when they arrived, went outside for a chat and then did a walkthrough when the Sergeant spoke to the duty manager. SC Caird confirmed there were no broken bottles outside, no scuffed grass, but there were 70-80 patrons inside the bar and it was hard to move. He stated he could not have his head down in his notebook because it would be a safety issue. Normally he would walk around and talk to patrons to get a general feel of things but he spoke mainly with the doorman on this visit trying to see if there were any witnesses to an alleged fight outside. Usually he would talk with Tania, see what was going on and if there were any problems but on this occasion the Sergeant spoke with her. He has had no reason to doubt her professionalism. He was at the bar for around 20 minutes.

- [397] In the packed bar 7 July 2018, SC Caird was asked if he felt that staff would be able to assess intox levels in that environment. His concern around the night was how dark the beer garden was and that staff may not know what was going on out there. He advised that he had completed a university paper on crime prevention through environmental design. He was surprised that there weren't cameras at Kirwee Tavern. He had been a police officer for over 13 years, mostly in Timaru. Transcript, page 244; *"I just find it bizarre that in 2019 there's no cameras in a pub"*. In his time policing, by going back through the cameras in pubs you could find evidence in support of an alleged crime.
- [398] Transcript page 224; the Constable stated that *"I have not had to deal with any disorder or fighting at any other licensed premises in the area that I work"*. He clarified that this area was the Darfield area, including Kirwee, Springfield, Hororata, Sheffield, Coalgate, up to Porters Pass.
- [399] SC Caird confirmed that he had been to the tavern six or seven times, probably twice since he returned to duty in April 2019. Between November 2018 and April, he was off duty injured, but up until November, he would have been in there four or five times for checks in the year he had been in Selwyn.

Questions from the Committee

- [400] The Constable told the Committee that he thought the areas best covered by cameras would be the bar, anywhere alcohol is consumed, the front entrance so that there is a street view and where door staff could be covered. Generally people go out to beer gardens to smoke but he had also dealt with assaults in beer gardens. He agreed that with issues in the car park area, CCTV would be beneficial covering this in a rural area.
- [401] He viewed the most important responsibility towards patrons with the proximity of SH 73, would be duty of care over patrons, making sure they were not drink driving and providing a safe place for people to socialise. Additional risk was posed by SH73 if the bar was not managed properly. Transcript, page 253; *"if intoxication levels were too high, it would be a huge issue"*.
- [402] The Constable agreed that Mr Evans was more disposed to be seen as a good bloke rather than to comply with the requirements of the Act. In his view, transcript, page 250; *"I think you hit the nail on the head there"*. His view was that Mr Evans wanted to be everyone's friend in the pub and the really good pub owners or managers that he had dealt with had a line, they were good and courteous to everyone but they still ran their pub and people respected them. Transcript, page 250; *"so, I mean, if they told someone to get out and someone wouldn't get out, we'd be called right away to remove them".... "no, I don't believe that's the case at the Kirwee"*.
- [403] In his view, as far as attendance by himself to the Kirwee, transcript, page 251; *"it certainly rates higher on the disorder scale. I do believe there have been other pubs in the area that have had drink drivers come from them, but I haven't had to go to any of the other pubs in the district for disorder or fights"*.
- [404] When asked if the renewal of these licences would minimise alcohol related harm in the Kirwee community, he thought that some pretty drastic changes around the how managers operated would need to occur before that happened. He explained that instead of wanting to be everyone's friend - managing the pub better and having that

line, people would understand the threshold and if that was reached and they did not pull back into line, the police would be called.

[405] SC Caird would have a chat to the licensee if he found him dancing on the pool table during trading hours and on duty and get an explanation. It would be a huge problem if he was intoxicated doing it.

[406] When asked if he would expect a responsible licensee to drink regularly and socialise on the premises when off duty and the image that this would portray – he believed that these could be reasons for Mr Evans' lack of control and his taking care of disorderly patrons. He stated, transcript, page 254; *"Where's the line? Where does he stop being a patron and start being a bar manager or a bar owner?"* This could be the reason for his perceived view of Mr Evans.

[407] He believed that patrons reaction to an observedly intoxicated licensee socialising on the premises when off duty, would be that it would give them the impression of that sort of behaviour being acceptable in those premises.

Senior Constable Paul Beaumont

[408] SC Beaumont works at Darfield Police Station and has been policing there for 13 years.

(i) On 6 August 2017, at 1.15am, he was doing a hotel check at the Kirwee Tavern, where there were eight persons in the bar. Mr Evans confirmed the one way door policy was still in place. Two females had entered through the front door after 1.00am. Mr Evans stated they were outside having a smoke and had gone in the van to drop someone off, and he thought the policy applied to new customers coming in after 1.00am.

(ii) On 7 July 2018 SC Beaumont went to the tavern at 8.28pm, as he was aware of its second birthday celebrations. Mr Evans was drinking with customers and the Constable assumed he was not on duty that evening.

(iii) On 8 July 2018 at 0.58am, he returned to the tavern with three officers. The music was off and a dozen people were in the bar. He spoke to Mr Evans for up to ten minutes. At no time during this visit did Mr Evans tell SC Beaumont of any trouble and he was not approached by Tania or any other bar staff.

(iv) At 12.18am, 20 October 2018, he stopped a vehicle on the main road at Darfield due to its manner of driving. The male driver had consumed two jugs at the Kirwee Tavern and was on his way home. He blew 946mcg of alcohol per litre of breath and was summoned to court with excess breath alcohol. Refer: summary of facts; the male was showing signs of intoxication including red glassy eyes, slurring of speech and problems with fine motor skills and co-ordination.

(v) On the afternoon 21 October 2018, the Constable spoke to Mr Evans at the tavern and advised his processing of a person driving with excess breath alcohol. Mr Evans said that Tania Thomson was the duty manager, he was not present.

Cross examination of Senior Constable Beaumont

[409] In response to the Licensing Inspector, SC Beaumont explained that in a rural environment, a licensee would occasionally drink with customers, but he would not say it was normal.

[410] He was a little disappointed that the incident 7 July 2018 had occurred a couple of hours earlier than his visit and that the incident had not been notified. The Constable would normally expect that the police would be called at the time. They do like

licensees to sort out minor problems, but if it was a serious matter, he would expect the police to be called.

- [411] SC Beaumont's recollection of the drink driving incident 20 October, was that the driver may have been drinking before leaving town (the city) and he had stopped at the Kirwee where he had two jugs before heading home. He agreed that 948mcg per litre of breath was an exceptionally high level. It is four times the lower level for drink driving. In talking with Mr Evans the next day, he was keen for the Constable to talk to Tania because she was bar manager at the time, and he had the impression Mr Evans did not want to get particularly involved.
- [412] On 22 December 2018, at about 11.40pm, SC Manning and he were dispatched to an incident at the Kirwee Tavern. Mr Evans was standing on the footpath outside the tavern and Ms Summers was on the footpath directly outside her home. They were calling across the road to each other. He did not mention this incident in his evidence as he did not see the gun gesture and did not know if Mr Evans was intoxicated. Mr Evans went inside when SC Manning moved closer and insisted firmly that he went inside.
- [413] Mr Poole referred to paragraph 20 of his evidence when SC Beaumont stated that when he was at the tavern, he was not told any earlier trouble by Mr Evans, nor was he approached by Tania or the bar staff. Given the 7 July incident, Mr Poole asked the Constable if, in his opinion, Mr Evans or Ms Thomson did not communicate this as they knew it may have implications for his licence – the Constable answered, yes, he believed they did not want him to know at that stage.
- [414] SC Beaumont confirmed that he used the SCAB tool to establish that the driver who blew 948mcg was intoxicated behind the wheel of a vehicle. He agreed with Mr Poole that the object of the Act, section 4(2), would apply to an EBA and that in his opinion, this was a contravention of the object of the Act.
- [415] SC Beaumont agreed that in his experience policing in the Selwyn, compared to other taverns or sports clubs or restaurants, he would say that this premise, since Mr Evans has been the licensee, has had ongoing issues.
- [416] SC Beaumont also agreed that any experienced bar manager looking at someone who had consumed enough alcohol to blow 948mcg, should be fairly well aware that the person was intoxicated, that if the only person in the bar serving is the bar manager, then by default they should be able to pick it up, because they will have been the person who served them.
- [417] In response to Mr Young's question about intoxicated and EBAs and was it his view that excess breath alcohol, high or low, is the same as being intoxicated for the purpose of the Act – the Constable said, transcript, page 621; *"no, because some people can hold their alcohol better than others and actually look less intoxicated than others, but yes, on this occasion this man was clearly intoxicated"*. He stated that he had very seldom met anyone who could blow 950 mcg or thereabouts, that was not showing signs of intoxication. The limit to drive means that once you get to one point over that limit you should not drive – at that same one point over, some may show signs of intoxication, some may not. He agreed with Mr Young that an EBA is an offence under the Land Transport Act.
- [418] SC Beaumont stated that taverns and garages were often the lifeblood of small communities, where people met and socialised. It was better for people to travel small distances but that was presupposing that people were not going to drink and

drive because they had smaller distances to travel. As long as a tavern is run appropriately and there is no intoxication or fights or any other domestic harm, it is preferable to have a local tavern serving the local community from the harm minimisation and alcohol harm respect.

- [419] The Constable's view on the one way door policy was that it depends why it was put in place. If it was put in place because of previous breaches or non adherence to the rules they had been asked to adhere to, then he thought you needed to police it reasonably firmly.
- [420] SC Beaumont's view of the decision to remove Mr Evans from outside the tavern during the yelling backwards and forwards with Ms Summers, was that Mr Evans was being more vocal and because he had the hotel to run, the Constable thought the best course of action was to ask him to move inside.
- [421] SC Beaumont explained to Mr Young that country policing is a bit different in terms of EBAs. If they get an EBA that comes out of a hotel they will normally make a call on that hotel so they are aware and it gives them notice that people are drinking to an excessive limit. In his opinion the male who blew over 900 was honest, accommodating and the Constable saw no reason for him to lie about where he had come from. They see the full gamut of people from those who are extremely accommodating and pleasant to the other end of the spectrum.
- [422] Mr Young asked the Constable if he would accept that Mr Evans and his staff were in a difficult position on the night 7 July, in that they knew both parties and if they involved the police they might have faced backlash from the community – SC Beaumont replied that, transcript, page 631; *"I am a policeman that has lived in that community for 27 years and working in the community we know people can be difficult but at the end of the day you have a job to do and I see the same thing with Mr Evans and his staff. They have a responsibility to the community and to other patrons and they need to be upfront if there are issues at the hotel"*.
- [423] He did not agree with Mr Young that in a tight community no-one wants to be the person telling the story – transcript, page 632; *"I don't believe it to be a believable factor or a main factor"*.
- [424] While the Constable had found Mr Evans fine to talk to, over the years there have been various issues which he thought police should have been made aware of through speaking with previous officers. They had dealt with issues that should have been brought to their attention. Transcript, page 633; *"So there is always that little bit of doubt as to whether we are being told the whole truth all the time"*. He agreed that the community valued the tavern and the garage.

Questions from the Committee

- [425] The Constable advised that as he had spoken with Mr Evans as licensee in respect of the EBA 21 October, he saw no reason to also speak with Ms Thomson. He agreed that small taverns in rural communities serve a purpose outside of just serving alcohol but with that goes or should go, a heightened sense of responsibility. SC Beaumont did not see that heightened sense of responsibility as much as he would like to in the current management of the Kirwee Tavern. Transcript, page 637; *"They are a hub, they are a focal point for community events, but they have to be run properly because otherwise an improperly run tavern has the potential to cause harm for the community when in actual fact they should be there to provide a social hub and somewhere that does good for the community"*.

- [426] SC Beaumont's response on the manner in which the Kirwee Tavern sold and supplied alcohol, was, transcript, page 638; *"I think Mr Evans has a reasonably hands off approach to managing the hotel. He seems to spend more time out on the patron side of the bar than behind it and most of the time I'm in there, especially over the last few years, it's someone who is employed by Mr Evans who is behind the bar rather than Mr Evans himself"*.
- [427] He agreed that sometimes people went out to have a smoke on the front steps, out the side of the hotel and they stood there with bottles. He acknowledged that there is a beer garden for smokers, but its use depended on the weather. The Constable did not recall seeing vomit outside in the vicinity of the tavern but stated that there has been the occasional broken bottle or glass.
- [428] The Constable did not agree that reduced hours might encourage people to drive further. The majority of patrons at the Kirwee are from the local Kirwee area, and reduced hours in his opinion would only be of benefit, not causing further problems. From his knowledge, after midnight the number of patrons was reducing and he thought people would go home and not drive elsewhere.
- [429] He agreed that when the rugby club bar closed during the season, the young "chaps" sometimes go down to the pub because it was open longer. He hoped they went there by sober driver or walked the three blocks.
- [430] In attempting to put 948 mcg in to perspective for the Committee, SC Beaumont stated that it depended on the person – if it was himself or the Committee, it would probably be paralytic or into a coma. The individual concerned was showing clear signs of intoxication at the time. The Constable confirmed that the male had travelled about 12 kms on the state highway and it was his opinion that two jugs did not cause the 948 mcg. He had assumed that as a licensee Mr Evans would be keen to bring this incident up with his duty manager.

Mr Jack Summers

- [431] Mr Summers said that since the pub had changed ownership about two years ago, there had been an increase in bad behaviour happening around and coming from, the pub. Brief of evidence, paragraph 2; *"There are regularly vehicles doing burnouts as they leave the pub, people urinating on our fence and broken bottles on the road, footpath and bottles thrown on to our property. I have witnessed people drinking outside the pub opposite where I live so I know the bottles thrown over the fence are likely to have come from the pub"*.
- [432] He said that around twice a month, whenever loud music was playing, fights seem to break out, out the front door of the pub. His bedroom window looks directly at the door and big side window and as soon as he hears a commotion, he can look outside and see what is happening.
- [433] He heard a fight 24 November 2018, about 11.50pm and looked out of his window. He saw about 15 males fighting, most were pushing but there were a few fists being thrown around, The bouncer was trying to stop these people going back in to the bar. Steve approached a male who has causing the issues, spoke with him, had a smoke and then went back inside. The fights broke out again. He called police and when they arrived the people involved had walked back in to the pub. The bouncer did not appear to stop people taking bottles of alcohol outside with them throughout the

night. This was a real concern to him as their vehicles have been damaged by bottles thrown at them.

- [434] Mr Summers did not have his two children stay with him that weekend as it was show weekend and he knew there would be problems at the tavern so he did not have his kids stay. If there is an event on, there will be trouble at the pub – it was that consistent.
- [435] There had been an issue 20 October 2018 at about 10.00am when he found his young brother with some other boys including the licensee's son in their lounge with vodka RTDS, beer and some were drinking. He had asked if the alcohol had come from the pub and they all replied yes.
- [436] The family has lived in Kirwee for 7-8 years and it never used to be this bad. He stated that before long someone will be seriously hurt at the pub. He made a statement to SC Caird 25 November 2018 with these points he was now speaking about.
- [437] On 22 December 2018, there was another party at the Kirwee Tavern. He could hear the words of the songs being played, the music was so loud. His children were getting scared as there was yelling and screaming outside the pub. His mother messaged Steve to turn the music down, but had no response. She then called noise control. They then saw Steve pushing a male who appeared drunk, out of the pub. As it looked like things were getting untidy they called police. He saw Tania come out and tell the male – you're f....ing barred. In his opinion Steve appeared to be drunk but appeared to be working by pushing the male out of the bar. There was no security on. Police arrived and (brief of evidence, paragraph 29); *"I saw Steve put his hand up against his head like a gun when he was facing my mum. I thought this was really intimidating and him basically saying you are dead"*. Noise control came and the music was turned down, but half an hour after they left, the music was turned up again, which was not a surprise to him.
- [438] Jack Summers said that they were really sick of the disorder, noise, rubbish and cars coming and going from the pub and he reiterated that it was not going to be long before someone is seriously hurt at the pub. In his opinion, Steve does not care about the community, he just cares about making money.

Cross examination of Mr Summers

- [439] Mr Johnston referred to Mr Summer's brief at point 14 where he chose not to have his kids to stay as he knew there would be problems at the tavern and asked if it would be fair to say that this had struck a real chord with him – he stated, yes, that was correct.
- [440] Jack Summers' recollection was that there were at least 6 people physically fighting. There were 15-20 people actually outside and there were people trying to break it up.
- [441] Mr Summers strongly disagrees with drugs. Transcript, page 261: *"I was brought up that drugs are not acceptable to be taken or have within the vicinity of our property. I have two young kids and I do not want them to be around drugs, so therefore we do not accept drugs on our property whatsoever. My mum is very against drugs as well and that's reflected on me why I have a huge thing against it"*.

- [442] Further to SC Caird's being asked by Counsel if Mr Summers had any convictions, the Licensing Inspector asked if he wanted to share this with us – Jack Summers replied that he had a clean criminal record.
- [443] Mr Summers confirmed that he had not had cause to ring noise control or the police in relation to the previous owner.
- [444] In reference to paragraph 29 of his brief of evidence, Mr Summers confirmed that he was 100% sure that he saw Steve Evans putting his hand up towards his head as he had described.
- [445] He could not recall what was being said at the time but it was towards him and his mum standing on the opposite side of the road with a police officer. Noise control had also arrived and Jack Summers thought it would be obvious who had called them as they were talking to his mum and himself along with the police out the front of their property.
- [446] Mr Summers told Counsel that he had lived at the property in Courtenay Road for 5-6 years and he had moved back in the last two years. About three years ago he was away for about two years. He was working and living on farms then. He confirmed that he knew the previous owner and had lived across the road while the previous owner had the pub.
- [447] To Mr Young's question, was it his sworn evidence under oath that there was a fight every fortnight outside the pub - Mr Summers stated that, on average, yes. Asked again if he was saying to the Committee that he saw a fight outside the pub every two weeks, he reiterated, transcript, page 265; "*if you worked out on average, yes*". He agreed there was only one incident in his evidence. He did not accept that paragraph 5 was an overstatement. He agreed that there was nothing else in his evidence about alleged fights.
- [448] When questioned further, Jack Summers clarified that there were 6 people that he could confirm were throwing punches and 15 people in the brawl. Transcript, page 270; "*There were 15 people in total and there was a fight taking place within those 15 people*". He stated that he could see what was going on as there were street lights and from his gate to the premises it was roughly 20 metres. He was telling his mother from a distance outside while she was on the phone to police - that there were 20-30 people outside, some were fighting. Not everybody outside that night was fighting or involved in that brawl. There could have been miscommunication or she could have misunderstood what he said about actual numbers. He had not read his mother's evidence prior to the hearing. He answered Mr Young again, stating that there were 20-30 people outside, not 20-30 people fighting.
- [449] He confirmed that he saw people from the brawl walk back into the bar. Jack Summers also stated that there was a possibility that you could have a fight and not have a bleeding lip or nose or a black eye. No fight was ever the same. He told Mr Young that he was not familiar with having fights, he had played rugby.
- [450] Mr Summers told Mr Young that he did not go into the pub to see how those involved looked and whether you could tell if they had been involved in a fight. It also depended how hard you looked.
- [451] Jack Summers did not have any photographs of the damage to their vehicles from bottles thrown into the yard. He told Counsel that he did not see the point of raising a

vehicle damaged by a patron with Steve because of how difficult things had been with him.

[452] Mr Summers confirmed that he was absolutely sure that Mr Evans' son was in the lounge at his house at 10.00 am, 22 October 2018, drinking. Counsel put to Mr Summers that Mr Evans had given evidence that his son was in Christchurch with his mother and has a text to that effect. Mr Summers responded that how could we know if Mr Evans' son had arranged something else with his mum or his dad by cell phone.

[453] He confirmed that a Calendar Girls van had been to his house once.

[454] Mr Young put to Mr Summers that Mr Evans had mentioned he had seen people that he suspected or felt looked like gang associates or gang members at his house and did he have any friends that fitted that description come to his house – to which Mr Summers sought clarification as to the description of a gang person. Mr Young mentioned tattoos, insignia patches. Mr Summers told Mr Young that he did not have friends that came to his house that were associated with gangs. Transcript, page 281; *"But I myself have tattoos. My friends have tattoos, so that does not define a gang member"*. Counsel asked Mr Summers once more – did he have any friends, and he was not judging them, he was just asking him, or associates or people he associated with that were gang members or linked to gangs, to which Mr Summers replied, no.

[455] Mr Summers was the asked by Counsel if his mother had asked Mr Evans for any roofing iron in December and had felt comfortable enough to do that or had Jack felt comfortable enough with her approaching him to ask for the building material. Jack's response was, transcript, page 282; *"She would have felt comfortable because I was there and I felt comfortable because I was there"*. Mr Summers further replied to Mr Young that if he had not been there with his mother when she went over and talked to Mr Evans when she asked for the iron, it would have bothered him. He response to Mr Young when asked when he was there did he have any concerns, was, transcript, page 283; *"Because I was there in case something happened"*.

[456] Counsel asked again for confirmation that he lived at this house. Mr Summers replied that he did. During the last 12 months he had been away for approximately 6 weeks, a week here, a week there because he does go away for work. Mr Young then asked if furniture was removed from his house on or around 29 November, to which Mr Summers responded yes, that he had bought a new bedroom suite. He confirmed he was not moving out at that time, he was moving his old stuff out to put his new stuff in.

Questions from the Committee

[457] Mr Summers confirmed that he had rung police twice himself and every other time his mother had rung while he kept watching. In the last two years, this would have been three, possibly four times – making five to six times.

[458] Jack Summers said that when the gun sign was made, Steve was within four meters of the front door of the pub and he was standing on the footpath outside his house. The lighting was about the same as it was where the fight occurred but he was not further away.

[459] He was aware of a request being made by his mother about the positioning of the speakers when music was being played at the tavern. The speakers were facing their house with the windows opened. He could not recall when this request was made. Jack was asked to describe how loud the music was when music was played with

doors and windows open. He told the Committee that, transcript, page 290; *"Whether it's with the windows open or closed or the doors shut, I can be sitting in my bed in my bedroom with my TV on and I can hear the words lyric for lyric"*. He confirmed that he could hear the lyrics over the TV and his bedroom is in the front of the house.

- [460] Mr Summers stated that he had seen vomit twice in the last two years when he had looked, he has had people urinating on their fence and he has gone out and banged on the fence and asked what they were doing. They have got a fright and walked back across to the pub. There was quite often glass after a party night. The glass is in the angle car park area on Courtenay Road and is their side of the road too. Members of the community, the neighbours a few doors down, pick it up, as the Summers do from their side of the road.
- [461] Burnouts happened every weekend on State Highway 73, anytime from ten until three in the morning. Sometimes they come from Courtenay Road and turn left or right on to SH73, other times they go out to SH73 and do donuts. It happens whether there is a DJ or not.
- [462] He was asked why he said in the last sentence of his statement *"I don't think Steve cares about the community, he just cares about being popular and making money"*. Transcript, page 294; *"Because when I had lived in the Kirwee pub two owners before Steve and worked in that pub, I've seen the responsibility from the owners that they made sure everyone didn't drink/drive, they had a safe ride home, they behaved. Any nonsense and the bar was shut down immediately. Everyone knew if anything cracked on, that was it, night over"*. He was not seeing that now.
- [463] People stand out the front of the pub when there is a perfectly fine beer garden for people to go out to and smoke in and drink in, but it is not being used. He is concerned that when they do fight out the front, someone could be pushed out on to the road and run over. He did not want to see anyone hurt.
- [464] When asked if he thought that the current licensee, Mr Evans was running the tavern in such a way as to minimise alcohol related harm – his response was no.
- [465] He had seen patrons close to or on the State Highway three times after coming out of the tavern. When they are on the State Highway, they yell and scream. They have had alcohol. He had seen someone grab a sign that was on the front lawn of the pub, run across the highway with it and throw it in the creek. It is a flat metal sign that slots into a plastic bottom. They then carried on running across the train tracks.
- [466] Mr Summers stated that the morning of the 22 October 2018, when his brother and Mr Evans' son and several other boys were at their house, was a one-off. They were 16 and under. He did not know if the boys' parents knew if their sons were drinking and he was not aware if his mother had spoken to Mr Evans about this episode.
- [467] His mother had spoken to neighbours about the noise, rubbish and burnouts. One was too worried to come forward as his wife was home on her own at night.

Ms Tracey Summers

- [468] Ms Summers' home is directly across the road from the entrance to the Kirwee Tavern on the corner of State Highway 73 and Courtenay Road.
- [469] In the three years since Steve Evans has become the owner of the Kirwee Tavern, there have been ongoing problems with the tavern. Ms Summers did not say anything

during the first six months but the problems have continued and become worse. She previously worked in hospitality for 8 years and understands when somebody is intoxicated by their behaviour and their appearance. Transcript, page 301; *"The problems have been people drinking outside the tavern, fights breaking out, people urinating and vomiting on my fence, bottles being thrown and smashed on my property, vehicles doing burnouts and loud music that appears to be a monthly thing when Mr Evans has his theme nights"*.

- [470] Ms Summers has spoken with Steve Evans a number of times about the ongoing problems in an effort to resolve them – she had preferred to resolve them directly with him as opposed to going to the police. Ms Summers asked him to keep the doors and windows closed so the music was not so loud, to face the speakers away from her property and to keep people with bottles inside the tavern instead of allowing them to drink outside. Ms Summers has also asked him not to have all patrons leave at once when the tavern closes as they do not disperse and they loiter around being noisy. She stated that Steve always said yes to her suggestions but nothing has changed.
- [471] Around Christmas 2017 she had bags of horse fertiliser at her front gate where she intended to sell them. About 1.00am one morning she woke up to see a group of patrons steal four bags. A large group of patrons had come out from the tavern and some were throwing fertiliser at each other. The doorman just stood there and did nothing. She rang the tavern to speak to Steve and when there was no answer, she went over and to talk with him. He blamed the door staff and offered to reimburse her. Ms Summers just wanted the ongoing unacceptable behaviour to stop, she did not want his money.
- [472] On Friday 30 November 2018 Ms Summers made a statement to police about an incident Saturday 24 November. The DJ playing that night was so loud she could hear the words over her television. Between 11.30pm and 11.45pm her son Jack told her to call police as a group of 20-30 were fighting outside the tavern. She went out on to her driveway to see what was happening and she could see 20-30 people, mostly young males, pushing each other. Some of the group were throwing punches. The group were pretty drunk considering their behaviour and appearance. The doorman was in the entranceway, doing nothing. While her son observed what was happening, she went inside to ring police. The police response was very quick.
- [473] On 22 December 2018, there was a party at the tavern and Ms Summers had further issues. Loud music was being played. Her son and her grandchildren were at home with her. She texted Steve to turn the noise down but when there was no change to the volume, she called noise control.
- [474] On 22 December, at about 11.37pm, she heard yelling and went outside and looked over to the tavern. A male appeared to be damaging one of the flexible signs outside the hotel. Steve Evans and the bar lady came out and confronted this male. They both pushed the male who was clearly drunk and angry, quite forcefully. Ms Summers was concerned that confronting him in such a way and pushing him could lead to a violent confrontation. She could hear the bar lady yell out – transcript, page 504; *"you are f...ing barred"*. Ms Summers called police. Three officers arrived along with the noise officer. With her son Jack, she stayed and watched. Ms Summers did not see the gesture herself, but Jack told her that Steve was looking at them and put his fingers up to his head as if it was a gun and replicated a shooting action. Transcript, page 504; *"I believe he was making a threat and I felt very intimidated by this. Constable Russell then came over and I asked her if she had witnessed this. She said she had and she told me that he would be warned"*.

- [475] *Correction: In her earlier statement to police 23 December 2018, Ms Summers mentioned that Constable Russell was standing beside her when this happened. In fact it was Jack who was next to her at that stage. Constable Russell came over shortly after.*
- [476] When police and noise control left, it did not take long before the volume was turned up to the excessive levels that they were when she had originally called noise control.
- [477] At approximately 12.30am, 23 December 2018, she saw several young men attempting to damage the flexible signs outside the tavern. They were kicking the signs. One removed a sign and took it over towards the water race across the main road. At the time they were yelling and swearing – she took a video of this on her phone.
- [478] The video was viewed. The person running with the sign was visible. The sound was relative to the car going past. Ms Summers stated that at no time did anyone from the tavern come outside to tell them to quieten down or to stop damaging the sign. In her opinion, the behaviour at the tavern is out of control. With what is happening she felt that someone would get seriously hurt or die and that is why she is here.

Cross examination of Ms Summers

- [479] Ms Summers agreed that a number of times she had attempted to sort out issues with Mr Evans rather than immediately calling police or noise control.
- [480] Mr Johnston referred to Mr Evans evidence concerning the smell of cannabis coming from her property and asked what her attitude to drug use was. Ms Summers said that she did not do drugs, she did not have drugs on her property, she had her grandchildren on a regular basis and she has no interest in drugs.
- [481] She confirmed that a number of residents had concerns about the premises but there were no other formal complaints. Ms Summers agreed with Mr Poole, that residents had not done so because of the social implications if these licences were declined.
- [482] Ms Summers confirmed that she had worked in hospitality until 5 years ago and some of that time was under the Sale and Supply of Alcohol Act.
- [483] Ms Summers agreed that the issues she has raised in her brief of evidence and her video - the disorderly behaviour, is caused by people under the influence of alcohol or who are intoxicated coming from the Kirwee Tavern. She had worked at the Kirwee Tavern two licensees ago and she described the action taken for disorderly behaviour, intoxication by the licensee at that time. Transcript page 512; *"There had been but as soon as it started that would be it. The bar would be shut. Everybody out, gone home. It was not tolerated"*.
- [484] Ms Summers finds the current management of the premises to be reactive, not proactive. Transcript page 513; *"That thuggish behaviour happens every time there is a theme night at the pub"*. She agreed that the duty manager and staff needed to take a more proactive approach to reducing intoxication and dealing with people under the influence of alcohol within the premises, at an earlier stage.
- [485] Mr Poole asked if she felt that alcohol being sold in this premise was being done so in a good manner overall – her answer was, no.

- [486] Asked to describe her relationship with Mr Evans, her response was, transcript page 514; *"I feel very intimidated by him"....."I tried really hard with Steve after about 6 months after he'd started at the pub and I thought – oh, well, he's just going through a learning phase and feeling his feet – and then the problem just started getting worse and worse". Transcript page 514: "So, for a period of 6 to 7 months, every time there was a theme night, I would go over there the next morning and say - how can we do this better? Can you keep the doors and windows shut, place the speakers away from my house? Keep all those drunk people round the back in your beer garden, in your carpark, and then they're not on the road and they're not a problem to me. They're his problem. Because when they're all out on the road and nobody's watching what they're doing and they're not supervised, you know, my worry is they're going to get run over. They're going to have fights. Somebody's going to hit their head. Somebody's going to die. It's so horrible to listen to it. It's just.... it scares me"*.
- [487] Ms Summers was asked if the amenity and good order of the premises had been reduced by more than a minor extent since Mr Evans became the licensee, she said, transcript page 515; *"yes, it's gone downhill so bad"*.
- [488] There were positives to Mr Evans being the licensee as he had painted the pub, put a new roof on, put pretty flowers out the front and that was positive for the community. It was just a shame that it did not show inside the premises. She agreed that the improvements were merely aesthetic, cosmetic and did not include the actual running of the premises itself in terms of the sale and supply of alcohol.
- [489] Ms Summers acknowledged that Mr Evans' charity work was good as he did not have to do that, but it was easy to give money and look good.
- [490] Mr Young asked Ms Summers questions about her work in hospitality. She spoke about her experience, including her work as a functions manager at a premise where people went after the Ashburton races. Police gave them a briefing which included keeping calm and removing patrons in a quiet manner. There was no need to go out and try and push patrons over or to yell and scream. At the Kirwee she was kitchen manager and also looked after the bar at times. She had lived there for three months.
- [491] Ms Summers confirmed that she viewed alleged intoxication or intoxication from her gate, which was across the footpath and road from the tavern. The behaviour she was seeing was not in the angle carpark, it was on the road, on the street frontage by the corner door facing Courtenay and State Highway 73.
- [492] She was unsure that burnout marks would be visible on the highway when the Committee visited as it was such a busy road. Ms Summers referred to a burnout as a donut and making smoke come off the tyres. This happened every second or third weekend.
- [493] Ms Summers said to Mr Young that there had been vomit outside her property half a dozen times in two years. She did not think to photograph this at the time as she would be cleaning it up because she had little grandchildren.
- [494] Mr Young asked about her evidence of people exiting the premise all at once. Her concern was that when the music finished around 1.00am or 1.30am, transcript page 525; *"all these people get pushed out on to the roadside street frontage and they're all drunk. And the doorman stands there and he doesn't let anybody back in, and they can do whatever the hell they liked in front of him and he does nothing"*.

- [495] She said to Mr Young that it would be good if the premises closed earlier because she would not be woken up so late at night. Ms Summers said that the music started around 9pm and it was not as loud as it was at 11.00pm, 12.00am, 1.30am in the morning.
- [496] Ms Summers said that Mr Evans did not apologise to her about the bags of fertiliser being stolen and thrown around outside the pub. The offer of an \$8 payment was not going to solve everything.
- [497] When the group of mostly young males was outside pushing each other and some were throwing punches, Ms Summers was asked if Jack had said there were 20-30 people fighting outside the Kirwee Tavern. She said it was a large group of young males causing a really big ruckus and they were starting to get out of hand. She was not aware that when the police arrived there were six people walking away. Ms Summers said that five to ten minutes response time from police was really quick as they were often a long way away and could take 15 minutes from Rolleston or sometimes Arthurs Pass.
- [498] Ms Summers said that her son Jack was more often away from home during the week and he was home in the weekends.
- [499] In responding to Mr Young's wanting to understand the nature of the interaction when she asked for the roofing iron, Ms Summers explained that she had arrived home to find him outside her property looking over at his roof. They passed pleasantries and she saw an opportunity to ask for some iron. He agreed as he was only going to dump it. He offered to get the guys to carry it across the road.
- [500] On 22 December 2018, she did go in to the tavern to get takeaways and was there for about five minutes. She usually went to Rolleston or Darfield for her takeaways.
- [501] Ms Summers agreed that some changes planned for the tavern would be positive, even closing the doors and windows would be a positive step.
- [502] Mr Young asked Ms Summers if her preference would be for the courtesy van to load in the rear carpark, on the far side of the bar from her property as was now happening. Her response was that she had asked him to do that 2 ½ years ago.
- [503] Mr Young spoke of the repositioning of the speakers and was it something that would reduce the impact of noise for her? Ms Summers said that was also something she had been asking Mr Evans to do for 2 ½ years.
- [504] Asked if she would feel more comfortable speaking with Ms Thomson to try and improve communication, Ms Summers said that after going over there 6-7 times, she was done with raising issues with them. What was the point when nothing was done?

Questions from the Committee

- [505] Ms Summers confirmed that she had called police mainly, probably 6 or 7 times, about the thuggish behaviour or fights.
- [506] The Committee asked Ms Summers if she felt safe in her property and around her property since Mr Evans has been the licensee of the tavern. She replied that in the beginning she did. Transcript page 542; *"And then I kind of just, you know, went over there that 6 or 7 times and then I just kind of kept more to myself. And then he did this, you know, (gesture) and Jack and Victoria Russell and I think there was one*

other officer that (inaudible). I felt really intimidated and I have.... I love being outside with my young grandchildren but it just.... I feel like I'm just being watched. And Mr Evans and his friend John come out and stand at the corner door facing my driveway and they glare at me and my family and my friends. I've been called a bitch, you know, and it's just.... it's horrible. You know, it affects my sleeping. It affects my health. I've had a lot of ongoing health issues".

- [507] Ms Summers agreed that the intimidation detracted from the quality of life she was able to live on her property.
- [508] If she was to point to one thing that she would request Mr Evans to do, which she saw as being the root of the disruption that she finds in her life, what would that be? Ms Summers answered that it would be not allowing any of the patrons out on the street frontage, to have them all around the back of the property.
- [509] She confirmed that she was 20 metres approximately from where the trouble was and that even in the dark, she could see well enough, it was really easy to see, as the area is well lit with street lights.
- [510] In her opinion and with her experience in hospitality, Ms Summers agreed that there is inappropriate or excessive consumption at the Kirwee Tavern. To the extent that, transcript page 546: *"people are falling over when they're outside. They're yelling and screaming, swearing, just... and it... you can't make sense of it because it's just a lot of words and, you know, pushing each other, fighting, you know, trying to fight, taking the signs out, throwing them. They take their bottles out. They smash their bottles".* Ms Summers cleans up the smashed bottles, vomit/urine from her fence and outside her property.
- [511] Ms Summers confirmed that she had seen people from the tavern run across the state highway to a seat of sorts and sometimes with the sign. She can also hear them run on her side of the road. Transcript page 547; *"That's the kind of thuggish behaviour that happens every night there's a theme night".*
- [512] She agreed that the volume usually went back up after noise control or the police have left.
- [513] The Committee asked why she thought Mr Evans was intimidatory towards her. Transcript page 547; *"Because he doesn't like that I don't agree with what he's doing, that he thinks that I should, you know, just sit down. And the other thing is because I'm a single woman on my own, I'm an easy target for him, because I believe that if I had a husband or a partner, he wouldn't be like that to me because he'd be too scared to do that. I just feel like I'm the target, an easy target, because I'm outside the door and he can stand there and smoke and intimidate".*
- [514] She said her neighbour over the back fence was usually home in the evenings and the people to the side on Courtenay Road opposite the pub restaurant – his wife was often at home on her own at night as he worked shifts. They would probably move in the new year as they did not want to be there anymore.
- [515] Ms Summers agreed that Mr Evans was more disposed to be a good bloke and want to be popular than to comply with the requirements of the alcohol legislation. Never in her experience in hospitality had she seen it as good practice for a licensee to drink regularly and socialise with patrons on his days off.

- [516] She did not agree that there is no suggestion of unhappy neighbours in terms of noise, transcript page 550: *"I'd say that is not right"*.
- [517] Ms Summers explained that she thought there was a misunderstanding about her seeing the gesture from Mr Evans and this had been corrected. The Constable was across the road near Mr Evans and Jack was beside her.

Ms Amanda Matoe

- [518] Ms Matoe now lives in Aylesbury. She holds a current manager's certificate and has held this for two years.
- [519] Every 6 months Ms Matoe helps out with events at the Kirwee Tavern, but not as duty manager. Her parents are friends of Mr Evans and they drink at his tavern, as does Mr Evans at weekends when he does not work.
- [520] On 7 July 2018, she finished her fulltime role in Darfield and arrived at the Kirwee Tavern after 10.0pm. Tania was duty manager. While she was collecting glasses she heard one of the locals talking about a run-in with another local. It had not been brought to her attention when she started by Tania or other staff. She saw a cut or a scratch mark on this person's face.
- [521] Later that evening this male was being hit by other people in the bar. Ms Matoe made a statement to SC Grant on 14 July 2018, outlining what she saw and what she did. In this statement she stated that Tania and herself had lacked support from Steve Evans that night. Transcript page 84: *"It would have been nice if he had stepped up more. Mr Evans had definitely been drinking all night. He would have drunk one an hour. He was under the influence enough to not be as useful as he could have been but he was not intoxicated"*.
- [522] On 27 August 2018, Constable Craddock took a statement from her about 7 July. Ms Matoe saw Steve as a patron and they did not want his help with the fight but were disheartened when they made the decision to close the bar and he wanted to keep it open to make more money. Since 7 July 2018, there had not been any discussion about the fight and the assault. The people who were charged were known by Steve Evans. Anyone in the tavern was generally friends with him.

Cross examination of Ms Matoe

- [523] Ms Matoe confirmed to Mr Young that she had been a back-up manager rather than fulltime or part-time staff for Mr Evans when she was needed and she was happy with that arrangement.
- [524] She was not aware that prior to her discussions with Mr Evans, that perhaps he and Ms Thomson had already agreed that they would close the bar. Ms Matoe enjoyed working with Ms Thomson and thought she understood her obligations under the Act. She felt that she could make suggestions around decisions. Ms Matoe had been manager once when Ms Thomson was on leave but she was usually bar staff.
- [525] Ms Matoe said to Mr Poole that on the 7 July 2018, Mr Evans was not past the point of service. There were patrons who were under the influence but also not past the point of service.

- [526] Ms Matoe stated that Mike and Jimmy had been drinking the night of 7 July but she had not made any decision to cut them off. She was not aware of their being questioned earlier on when there had been punching, somebody getting hit.

Questions from the Committee

- [527] Her understanding with Mr Evans being a patron the night of 7 July was that he was not responsible as a duty manager or as bar staff. He had his own obligations she presumed towards the bar but Tania was duty manager and she herself was bar staff, keeping an eye on intoxication as well.
- [528] Mr Evans did not purchase his drinks from her and she did not know if he ran a tab. She did not know how many drinks Mr Evans had. She usually kept track in her head how many she served to a customer but she did not keep track of how many drinks she served anyone that night. Ms Matoe had seen the lines blurred between being a patron and being the licensee but not only at this pub.
- [529] Ms Matoe stated that she did not work at the Kirwee often enough to do training there or have updates around issues. They discussed the plan for the night for a big event. She had not recorded any incidents in the incident register and she had not witnessed anyone being trespassed from the tavern. As an experienced manager, Ms Matoe had not seen any patron obviously intoxicated who had not been required to leave the premises.
- [530] When asked if she thought it was good practice for Mr Evans to drink in the bar when off-duty, Ms Matoe had no issue with that.
- [531] In her eyes she thought alcohol was being sold and supplied safely and responsibly from the tavern and harm minimised. If someone chose to live opposite a pub, you should understand that pubs have nights when the music is up loud, that was normal.
- [532] When Mr Evans said something to Jackie and Sharon 7 July, to get them to leave and they laughed and said they were not leaving, Ms Matoe was asked if from her perspective, did that contribute to the bar being closed? Transcript page 104; *"In my eyes, yes. Yes. We had....well, I had said that if they weren't going to leave then we were to close the bar because we could not serve them after the incident, after everything that had happened"*. Ms Matoe did not really expect them to leave when asked because she knew them on a personal level. She was unsure if they were trespassed.
- [533] When asked if, in her view as a qualified bar manager, this type of behaviour impacted on other patrons, especially those who lived in the community, when they saw two women laugh at the licensee, albeit off-duty, and say they were not leaving. Ms Matoe stated that the patrons who were there obviously saw what was happening but she believed that the "laughing and everything" happened outside, so that should not have affected the rest of the community.
- [534] She agreed that patrons inside would have seen the fight. Ms Matoe confirmed to the Committee that she did discuss closing the bar for the night because of loss of control through intoxication and fighting.
- [535] Ms Matoe was asked, if Mr Evans had been drinking all night, one an hour, and he was under the influence enough not to be as useful as he could have been - how much would you need to consume to get to this point? Ms Matoe said that everyone

was different, Mr Evans had been drinking and he was not sober in the sense that she and the bar staff were.

- [536] Ms Matoe said that she did get a briefing when she started work the night of 7 July, but she was not told of the earlier run-in, a scuffle with some mark on a male's face.
- [537] She agreed that she would call what she saw that evening from the patrons involved, "disorderly behaviour".
- [538] Ms Matoe in her evidence said that Tania and herself lacked a bit of support from Steve, that "it would have been nice if he had stepped up more". She explained that by this she meant, that, transcript page 108; *"I felt that when we had decided to close the bar, that he didn't agree with that, but that was my understanding. If he had said to me it was a great idea then I presume at the time I would've thought that would be adequate support"*.
- [539] In respect of paragraph 53 of her statement to police 14 July 2018, quote; *"Steve Evans was not past the point of being intoxicated or being cut off from being served but was definitely under the influence of alcohol. Steve was just looking if everything was under control.... I tried to get Steve Evans to go back inside the pub as it does not help him having him there"*, Ms Matoe could not confirm if this had happened before, but had not while she was working there. She said further, that Mr Evans was there, transcript page 111; *"without a sober mind in the carpark while we were trying to diffuse and move people along, whereas he was out there talking to them, which was bringing more people and then the others back over, which I thought would then escalate or restart the fight, which we didn't want or need, obviously"*.

Closing Submissions

- [540] At the conclusion of the hearing of evidence at the hearings in July it was agreed that the Agencies would have until 16 August 2019 to file and serve any closing submissions and the applicant would have until 30 August 2019. Submissions were received from all three Agencies, and Mr Young as counsel for the applicant.

Medical Officer of Health

- [541] Mr Poole presented closing submissions signed by the Medical Officer Dr Humphrey. These confirmed opposition to both licence renewals based on four grounds:
- (i) the object of the Act;
 - (ii) suitability of the Applicant;
 - (iii) systems staff and training; and
 - (iv) the manner in which the Applicant has sold alcohol.
- [542] Mr Poole's submissions traversed the evidence in support of his opposition.
- [543] Insofar as legal principles were concerned Mr Poole referred to the following cases:
- (i) *Deejay Enterprises Ltd* LLA531-531/97
 - (ii) *Lyger Investments Ltd* [2018] NZARLA 299-300 at para 101
 - (iii) *Linwood Food Bar Ltd* [2014] NZARLA 511-512 at [18] and [19]
 - (iv) The earlier DLC decision granting the licences in 2017.

Police

- [544] Constable Craddock filed closing submissions for the Police. Her submissions maintained opposition to the two renewals based on:

- (i) suitability;
- (ii) multiple breaches of the Act;
- (iii) inadequate systems and staff training;
- (iv) failure to understand responsibilities as licensee; and
- (v) overall, she submitted, *"most importantly the object of the Act is not being upheld or even understood"*.

[545] The Constable referred to the following cases, linking them with her submissions:

- (i) *Liquor To Go* [2013] NZARLA PH920
- (ii) *Medical Officer of Health v Lion Liquor Retail* [2018] NZHC1123
- (iii) *Re Venus Ltd* [2015] NZHC 1377 – we note that Constable Craddock referred to that case as the *"Health"* (sic) test. We think she meant to refer to what Justice Clark said about *Venus* which was decided by Justice Heath and meant to refer to the *"Heath"* test application to s.4.
- (iv) *Linwood Food Bar* [2014] NZHC 2980
- (v) *Casino Bar (No 3) Ltd* [2013] NZHC 44
- (vi) *Page v Police* AP84/98
- (vii) *Deejay Enterprises* NZLLA 531-5322/97
- (viii) *NBT Ltd* LLA 584/585/05
- (ix) *Anchorage Frankton Ltd* [2013] NZARLA 212
- (x) *Bar Bar Black Sheep Ltd* LLA438/08 (the correct case ref = 1438/08)
- (xi) *Tonto Investments Ltd* 1210/95
- (xii) *My Noodle* LLA 1064-1071/07
- (xiii) *Liquor World* [2009] NZLLA 1189
- (xiv) *Paihia Saltwater (2001) Ltd* LLA 391/2001
- (xv) *Otara-Papatoetoe Local Board v Joban Enterprises Ltd* [2012] NZHC 1406 at [31]

[546] The Police submission contended *"the agencies have proven a risk and the Committee must respond to it."* Reference was made in closing to the Calls for Service data showing an increase in calls, on a trend basis. As to the suite of conditions offered, the Police attitude was expressed by the word *"futile"* – paragraph 68.

The Licensing Inspector

[547] Mr Johnston's closing submissions specifically concurred with the submissions on behalf of the Police and the Medical Officer of Health. He posed four questions for the Committee:

- (i) Will renewing the licences benefit the community as a whole?
- (ii) Will renewing the licences help achieve the safe and responsible sale supply and consumption of alcohol?
- (iii) Will renewing the licences help achieve the minimisation of the harm caused by the excessive or inappropriate consumption of alcohol?
- (iv) Is the renewal of the licences reasonable under the circumstances?

He submitted the answer to all four questions was *"No"*.

[548] His submissions traversed the relevant legal criteria in s.131; the evidence of the applicant, and of the police. He listed the 12 incidents between the two DLC hearings from July 2017 to May 2019. He categorised the common aggravating themes of those as intoxication, noise, and drink driving.

[549] He discussed the criteria against the evidence of various witnesses.

- [550] As to noise he referred to a recent Authority decision of *Lost Cafes Ltd* [2019] NZARLA 41.
- [551] As to systems and training he referred to the *Lyger Investments* decision.
- [552] As to suitability he referred us to the *Page v Police* case, and a more recent decision in the High Court of *Capital Liquor Ltd v Police* [2019] NZHC 1846 and *Miklos v Shen* [2015] NZARLA 285.
- [553] As to the object of the Act Mr Johnston relied on a citation from *Penoy Spirits Ltd* [2014] NZARLA 697. His conclusion, submitting that the Agencies did not have to prove anything to us, relied on *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd* [2018] NZHC 3100 at [36]-[39].

The Applicant's closing submissions

- [554] Mr Young filed comprehensive closing submissions in reply to the Agencies' and in summary of why the two licences should be renewed.
- [555] At the outset Mr Young submitted that the Agencies had:
- (i) significantly overstated the evidence in relation to issues at the premises; and
 - (ii) largely ignored the applicant's evidence.

His argument in closing, as in his opening, was that the Committee must consider and evaluate all the evidence against the statutory criteria and not just evidence adverse to the applicant. He again relied on *Vava'u Lali Night Club v Barker* [2018] NZARLA 284.

- [556] It was stressed to us that the applicant also had no onus to prove anything because our task is evaluative and inquisitorial. In this he referred us not only to the *Vava'u Lali Night Club* case but also:
- (i) *Birthcare* [2015] NZHC2689;
 - (ii) *Police v Absolute Caterers Ltd* [2013] NZARLA 946;
 - (iii) *Patels Superette 2000 Ltd* [2019] NZARLA 75;
 - (iv) *Venus NZ Ltd* [2015] NZHC 1377

He developed that point by traversing evidence lead by the applicant in relation to the incidents and the Agencies' criticisms of the tavern's operations. He described the pool table incident as "*infamous*" and "*an unnecessary distraction*" and submitted the evidence of Ms Faass and Constable Craddock about this was "*unreliable and confused*".

- [557] In paragraphs 2.2(m)(n)(o) and 2.3(b)(c)(e)(h)(i) he set out for us what he submitted were examples of the unfair way in which police witnesses portrayed matters, and in Part 3 made similar submissions in relation to Mr Poole's submissions.
- [558] Mr Young discussed a number of cases in closing and set out why he considered some of the cases referred to by the Agencies should be distinguished and not applied here in this case.
- [559] Mr Young also confirmed, in his closing, that the applicant continued to proffer all the conditions and undertakings set out in the 17 July 2019 Memorandum (**Appendix H**) as "*an appropriate and comprehensive response to the risk of harm or impacts on amenity and good order*" of the Kirwee locality.

[560] In his conclusion Mr Young finished with these submissions:

- "6.1 It is submitted that the licences should be renewed on the terms sought above.*
- 6.2 Mr Evans is not perfect. He has improved the management and operation of the premises, but further improvement is required. The proposed conditions and undertakings are intended to remove risks associated with busier nights and tighten the overall operation and management of the premises.*
- 6.3 Mr Evans is committed to making the premises a success (both financially and in terms of compliance with the law). In many ways he has already achieved this. Constable Beaumont acknowledged the premises were much more popular than before and, as noted above, the food offering has been significantly improved. The premises is a "vital" part of the Kirwee community and Mr Evans effort to improve the tavern have been critical to that.*
- 6.4 Should the licenses be refused, there (sic) premises may fall into disrepair. The previous owner struggled. A new owner may not be forthcoming. That would be disastrous for the Kirwee community and could result in locals travelling longer distances on country roads to enjoy a night out. The reporting agents simply refuse to grapple with this inconvenient truth. In my submission, it is quite clear in this case that the appropriate response to any concerns is imposition of additional conditions. Declination of the application would be a disproportionate response with potentially adverse implications for the community and a possible increase in the risk of harm (drink driving)."*

[561] In addition to our detailed evaluation of all the evidence, we also took into account all of the very comprehensive submissions we received from the agencies and Mr Young.

Summary of Incidents

[562] Between the 2017 DLC hearing and the 2019 DLC hearing we have conducted, we record, in summary format, the incidents described earlier in our decision:

- 29.7.17 : fight, party, student crowd, intoxication, police attended
- 22.4.18 : 12.18am, customer EBA
- 6.7.18 : altercation 8pm, serious assault 11pm, police attended 0.58am, no mention of fight, recorded as 29 June in incident book
- 6.7.18 : noise complaint - neighbour
- 4.10.18 : 10.09pm, customer EBA
- 21.10.18 : 12.18am, customer EBA
- 24.11.18 : intoxication, pushing and shoving outside, police
- 22.12.18 : party at tavern, loud music, noise control attend twice, END issued, police attended, abuse and threat
- 19.1.19 : 11pm, customer EBA, restricted licence
- 20.1.19 : noise complaint – neighbour, END issued
- 12.2.19 : disorderly behaviour outside
- 16.2.19 : noise complaint – neighbour, dancing on pool table
- 18.5.19 : noise complaint – neighbour
- 26.5.19 : Licensee took intoxicated male in to tavern, place of safety - fell off bar stool

[563] Police Calls for Service data, within 500 metres of Kirwee Tavern show the following information:

- The year prior to Mr Evans' taking over: 3 calls
- Trading through Temporary Authorities: 3 calls
- First year, August 2017 to August 2018: 7 calls
- August 2018 to June 2019: 10 calls

Our Decision

[564] We must determine whether or not to renew the on-licence and off-licence held by the applicant company for the Kirwee Tavern. As previously stated these are the first renewal applications following what the Act stipulates as a first year. This is often called a probationary year. In the case of this applicant company, the applicant has already been trading at the Kirwee Tavern for more than three years. We have approached our task as being to consider and evaluate what has happened in the past two of those three years – since the hearing in June 2017. In saying that we do not consider that section 131(1)(d) stops us acknowledging how alcohol was sold prior to June 2017 by this licensee when using temporary authorities. That is part of the relevant background to our evaluation of what has happened since the previous 2017 Committee hearing. However, what has led us to our unanimous decision to refuse to renew both licences is what has happened since June 2017 and our risk assessment going forward based on those past two years.

Decision and reasons

[565] The legislative framework for the issue of licences is set out in sections 105(1) of the Act and some of these are the matters that the Committee must take into account in determining whether to renew a licence.

[566] Section 105(1) provides as follows (for renewals):

- “105 Criteria for issue of licences (1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
- (a) the object of this Act:*
 - (b) the suitability of the applicant:*
 - (c) any relevant local alcohol policy:*
 - (d) the days on which and the hours during which the applicant proposes to sell alcohol:*
 - (e) the design and layout of any proposed premises:*
 - (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
 - (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
 - (j) whether the applicant has appropriate systems, staff, and training to comply with the law:*
 - (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.”*

[567] Section 106(2) provides:

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

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

[568] Section 131 of the Act provides:

"131 Criteria for renewal

- (1) *In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
- (a) *the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*
 - (b) *whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*
 - (c) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*
 - (d) *the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*
- (2) *The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence."*

[569] Section 3 of the Act describes its purpose:

"3 Purpose

- (1) *The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole,—*
- (a) *to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and*
 - (b) *to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*
- (2) *The characteristics of the new system are that—*
- (a) *it is reasonable; and*
 - (b) *its administration helps to achieve the object of this Act."*

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

"4 Object

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

[571] There are several important definitions relevant to us.

- (i) The term "*alcohol-related harm*" is defined by s.5(1) of the Act.

"alcohol-related harm—

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

- (ii) The term "*amenity and good order of the locality*" is defined by s.5(1) of the Act.

"amenity and good order of the locality, in relation to an application for or for the renewal of a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable."

- (iii) The term "*intoxicated*" is defined by s.5(1) of the Act.

"intoxicated" *means observably affected by alcohol, other drugs, or other substances (or a combination of 2 or all of those things) to such a degree that 2 or more of the following are evident:*

- (a) *appearance is affected:*
- (b) *behaviour is impaired:*
- (c) *co-ordination is impaired:*
- (d) *speech is impaired"*

- (iv) The term "*one-way door restriction*" is defined by s.5(1) of the Act.

"one-way door restriction, in relation to a licence, is a requirement that, during the hours stated in the restriction,—

(a) no person is to be admitted (or re-admitted) into the premises unless he or she is an exempt person; and

(b) no person who has been admitted (or re-admitted) into the premises while the restriction applies to the licence is to be sold or supplied with alcohol"

- (v) The term *"Principal entrance"* is defined by s.5(1) of the Act.

"principal entrance, in relation to licensed premises, means an entrance to the premises designated as the principal entrance by the licensing authority or licensing committee concerned when the licence was issued"

How we see our task in the light of the law

- [572] We are very grateful for all the assistance given to us by all parties in their references to case law and precedent. We have mentioned many of these authorities earlier.

- [573] We understand these are the guiding principles for us which we have taken from the submissions and the case law:

- (i) Our role is an evaluative one, in an inquisitorial sense. That is to say we are required to evaluate all the evidence before us, both in support of the applications and in opposition to the applications.
- (ii) After evaluating the evidence we must make a merits based determination as to whether or not the applications should be granted.
- (iii) We must have regard to the matters in section 131. This in turn requires us to have regard to the matters in s.105(1)(a) to (g) and (j) and (k).
- (iv) To *"have regard to"* as a requirement means what it says. We do not have to give effect to anything and if, after having regard to a criteria, we conclude nevertheless to grant or refuse the applications that is permissible.
- (v) The weight we give to evidence is a matter for us realising that no party has any onus of proving anything.
- (vi) Whilst we must have regard to all criteria there will be some cases where some matters are so fundamental they assume an elevated mantle – here we think the following matters have assumed a fundamental significance:
 - a. the object of the Act;
 - b. suitability;
 - c. the way in which alcohol has been sold and consumed on the premises;
 - d. the amenity and good order of the locality; and
 - e. the systems and training of the applicant.
- (vii) Whilst we do not have to consider section 3 separately, so long as we are reasonable in our evaluations we likely will achieve the two aspects of the section 4 object. We approach section 4 on the basis that our decision must be consistent with both aspects in subsections (1)(a) and (1)(b).
- (viii) We must stand back at the end and reassess our earlier conclusions against attainment of the section 4 object. These two elements – the safe and responsible sale and supply and consumption of alcohol, and the minimisation of alcohol related harm – are equally important, are not to be balanced, and have precedence over the economic/commercial interests of a licensee.
- (ix) There is no presumption of existing licences being renewed under this 2012 legislation which, in that sense, is different from the old 1989 Act.

- (x) The concept of suitability is wide and flexible and includes how a licensee gets on with their neighbours in the community, for example in relation to noise.
- (xi) The role of the reporting agencies is important to the licensing process and their evidence cannot and should not be ignored. A Committee is entitled to accord weight to a united opposition by all agencies.
- (xii) We are required to form opinions on whether or not we consider the amenity and good order of the Kirwee locality would be likely to be increased by more than a minor extent if we refused the renewals – in doing so we are guided by having regard to the matters in s.106(2) of current and possible future noise and nuisance.
- (xiii) For a private company licensee, as here, we are entitled to lift the corporate veil and consider how its director behaves in relation to the business.
- (xiv) In relation to conditions, we have a wide discretion (s.117) which is constrained by the need for any conditions we consider to be reasonable, proportionate, and likely to ameliorate a risk we might identify and achieve an identifiable benefit.
- (xv) There is an element of trustworthiness in assessing suitability in renewal situations. This is in addition to evidence of an applicant's past conduct, processes, understanding of risk, particularly future risk.
- (xvi) If we conclude that granting the applications would not be consistent with section 4 – the object of the Act – we cannot attempt to remediate that by the imposition of conditions. We may impose conditions if we consider granting the applications is consistent with the object of the Act and imposition of conditions will enhance that consistency. What we think that means in this case is that before we consider the suite of conditions proffered by the applicant, through counsel, we must first have come to a conclusion that the applicant is eligible to have its licences renewed consistent with section 4 (and the other criteria). If we do not reach that positive position we need not consider the proposed conditions at all. If we reach positive conclusions on the criteria and section 4 then we need to turn to the proposed conditions and approach them in the way outlined by Justice Gendall in *Vaudrey* [2015] NZHC2749 at [14](g), and Justice Gendall in the *Johnsonville Club* case [1999] NZAR360, (that is, they must be reasonable and proportionate).

Discussion

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

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

That is the approach I take to the appeal."

- [575] Although the application being determined under appeal there was an off licence the same criteria apply to an application for an on licence, and, taking into account section 131, renewals as well.

[576] The Committee also takes the approach to renewal as outlined in *Gogo Bar* referred to us by Mr Young [2016] NZARLA PH 279-283 by the Authority, especially where suitability has been squarely placed before us as an issue.

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

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

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

And in paragraph [19]:

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

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

At page 77 (actually p755) His Honour said:

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

And at page 758:

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

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

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

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

The Authority continued at paragraph [54]:

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

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

[577] Having set those statutory provisions and the guidelines from some of the cases as to the correct approach we will now proceed to discuss the applications and the evidence in the light of those considerations.

[578] We can immediately dispose of some of the non-controversial criteria and considerations. We are satisfied, from our consideration and evaluation of the evidence, that these applications raise no concerns in relation to the considerations set out for us in section 105(1) -

- (i) (c) – any local alcohol policy
- (ii) (d) – the days and hours of the current licence
- (iii) (e) – the design and layout of the premises – subject to our comments earlier about the location of the principal entrance, the designations, and the extent of the premises licensed set out earlier in our decision
- (iv) (f) and (g) – what the licensee sells or doesn't sell by way of other products and services.

[579] As a result of the matters raised in the three reporting agencies' reports – s.105(1)(k) – and the evidence we received we consider the real controversies in these applications involve:

- (i) s.105(1)(b) – suitability, and
- (ii) s.105(1)(j) – the systems and training of the licensee's staff; and
- (iii) s.131(1)(b) and s.106(2) – what effect, if any, renewing these licences would have on the amenity and good order of the locality, having particular regard to noise and nuisance factors; and
- (iv) s.131(1)(d) – the manner in which the licensee has sold alcohol; and
- (v) s.105(1)(a) and s.4 – the object of the Act;

- (vi) what the agencies' reports contain [s.105(1)(k) and s.131(1)(c)] are covered in those five issues above.

[580] We propose to discuss the applications under those topics in that order.

Suitability

- [581] Each of the agencies raised the issue of Mr Evans' drinking in the tavern. Mr Evans acknowledged he did so, although only when he was not working or not on duty as a duty manager. The evidence satisfies us that he does drink in the tavern on a regular basis. We are also satisfied that this is not a common occurrence within the industry. There is no evidence Mr Evans consumed alcohol in the tavern when he was working or was duty manager although we concluded that on occasion when he was present and drinking, but off duty and not working, if his assistance was required, he would be asked by a manager, and would become involved.
- [582] An example of this occurred on 7 July 2018.
- [583] The company, through Mr Evans, is obliged to take all reasonable steps to enable whoever the duty manager is each day to comply with the law and ensure the sale and supply and consumption of alcohol complies with the Act. This follows from s.214(4) of the Act. The Authority has said that it *"takes a dim view of licensees or persons associated with licensees drinking on their own premises"* – this is because of the difficulties that can cause in relation to s.214(4) and the manager's ability to manage – see *Ranfurly Hotel* [2013] NZARLA 490 at [24].
- [584] In this particular case we were left in no doubt, at the end of all the evidence, that Mr Evans' socialisation and drinking in the tavern (he owns and operates through his company) with the locals contributed significantly to the levels of intoxication and incidents of untoward behaviour associated with these premises between the two DLC hearings in 2017 and this year.
- [585] This is relevant to the suitability of the company to continue to hold licences for this tavern.
- [586] Given the sworn testimony, Police Officers expressed doubt that all the applicant says is true or whether the whole truth is being told at the time, particularly as the applicant admitted to lying in a previous hearing. *"Evidence of suitability includes not only evidence of an applicant's past conduct, processes and understanding of risk, but, importantly, evidence bearing on trustworthiness. Reporting agencies can only sporadically and infrequently supervise the supply of alcohol. Because the licensing system fundamentally turns upon honesty, or trustworthiness, the Authority has, quite rightly and not surprisingly, regarded it as one of the prime obligations"*. *Capital Liquor Limited* [2019] NZHC 1846 at [85].
- [587] Denials on Mr Evans' part include but are not limited to; dancing on the pool table, making the gun gesture at the female neighbour, turning the volume up again after noise control departed occasioning a further visit, being advised of an earlier drink driver, and not going back inside the premises when first told by police following the gun gesture. We find that it is inherently unlikely that sworn police officers, the Licensing Inspector at the time, and an adult witness would conspire to present the applicant in an inappropriate light and not be shaken in cross examination.
- [588] Mr Evans has a reason to prevaricate as his future is in jeopardy. Examples in evidence include; the licensee and staff not informing police when visiting the

premises of an earlier altercation followed later by a serious assault, the recording of a fight on an incorrect date in the incident book, confusion as to who made the extensive notes of a police officer's being in the vicinity and not informing a Police Officer conducting an assessment about a safe place for an intoxicated male who fell off the bar stool in front of the Officer. Differences in accounts of incidents and matters by staff indicate a deliberation in omission, an ongoing unfortunate and ongoing lack of honesty and a corresponding misguided lack of acceptance of individual and company responsibility.

[589] The Committee found the positions taken by Mr Evans to be unrealistic and largely self-serving and we concluded that he has displayed a casual disregard to trustworthiness in giving his evidence to us. We do not accept the denials and omissions made as reflective of reality. There is little or no understanding by Mr Evans that prevarication and a demonstrated lack of honesty reinforces to the Committee that the holding of these licences is indeed an earned privilege and not a right. It is our opinion that Mr Evans has failed to demonstrate to us the prime obligation of trustworthiness. In our evaluation, based on the totality of the evidence we listened to and read, we are satisfied, by a large margin, and certainly on the balance of probability that the evidence of the several various Police officers, the former Inspector and the two Summers was more credible and convincing than that of Mr Evans and Ms Thomson.

[590] Trustworthiness is a key obligation and relevant to the suitability of the company to continue to hold licences for this tavern.

Staff, systems and training

[591] The former Licensing Inspector's report and the Police report in opposition and the witnesses called by Police and the Inspector further confirm in evidence that the company through Mr Evans does not have appropriate and effective systems, staff and training to meet the requirements of the Act.

[592] The Committee concluded that there has been no formal training of staff in the three years since Mr Evans became licensee. There is little to no real or demonstrated understanding by Mr Evans of what constitutes training. For one staff member it is a meeting format of uncertain frequency. While some information is passed on to staff at the beginning of shift there are insufficient protocols in place to prevent the incidents or issues we heard evidence about, and which we have described earlier in our decision, from happening. A bar staff member, also a qualified manager, was not told of an earlier altercation/fight when she came on duty during the evening. These same local males were later involved in a serious assault. Police were not called at the time. The duty manager and a staff member, also a qualified manager, have differing assessments of what amounts to *influence* and *intoxication* in the incident Saturday 6 July 2018 [for the purposes of assessing whether or not a patron is *intoxicated*]. Four drivers have been stopped in the period April 2018 to January 2019, and all said they had come from the Kirwee Tavern. We concluded they were sold and supplied alcohol at the Kirwee Tavern and that they were more likely *intoxicated*, than not, when served. All displayed positive SCAB criteria. Implications in terms of the applications for these licences also determined licensee and duty manager decision making.

[593] Police and the Licensing Inspector contended before us that a good system of staff training properly put into practice could have prevented several of the incidents of fighting, disorder and drink driving. We agree. An experienced bar manager looking at someone who consumed enough alcohol to blow 948mcg at 12.18am, Sunday 21

October 2018 and was observedly intoxicated in terms of SCAB tool criteria, should recognise the signs of intoxication in the bar. A senior police officer told of witnessing a “*nine vodka cruiser man*” refusing to leave the premises and being argumentative, 24 November 2018. The increased levels of intoxication are directly attributable, in our opinion, to a management style which does not take cognisance of the legislative rules that are in place. Management of patrons and management of the premises is a reluctant and casual responsibility.

- [594] Police point to a number of supposed “minor” issues as part of a pattern of behaviour in terms of lack of systems, knowledge of the Act and a feeling that there is no requirement to comply with the “rules”. Continuing issues paint a revealing and full picture for a hands-on licensee and manager, someone who has done his LCQ more than once. We agree with that description and consider the evidence supports that submission.
- [595] In our opinion, the Host Tavern's Responsibility Policy is not adhered to. A relatively new staff member told us that the courtesy van and the food are “okay”, but the “rest need working on”. The licensee is not prepared to accept responsibility for sales relating to drink driving offences which also record the meeting of observable signs of intoxication - relevant SCAB tool criteria, directly contrary to his Host Responsibility Policy. One female patron was told by bar staff that no food was available, they were busy. In evidence Police and the Licensing Inspector raised medium to high levels intoxication levels with the duty manager during walk-throughs. Overall we conclude that the licensee, through Mr Evans and other staff, are not, and have not, taken their obligations as to intoxication at all seriously. We were left with the clear impression that intoxication on these premises is a frequent occurrence.
- [596] The Licensing Inspector's evidence included staff not understanding or applying the threshold and continuing to serve people beyond the **[SCAB tool]** *influenced* stage. There is no proactive approach utilising systems and training to reduce *intoxication* or to deal with people *influenced* within the premises at an early stage. Staff do not always engage with patrons purchasing drinks. The licensee and staff simply do not “walk the talk”.
- [597] There are few effective systems in place. The Committee notes that the incident register is lacking in detail and acceptance of responsibility, no matter which manager is on duty. It contains a broad brush approach to documenting any issue, including matters of a serious nature and does not reflect the actions of a careful or experienced and responsible operator seeking renewal. The recording of an altercation and assault on an incorrect date was also misleading to police. The casualness with which the applicant approached the renewal application, which we traversed in paragraph [3], in which the applications for renewal were filed with incorrect details as to:
- (i) the address of the premises; and
 - (ii) the principal entrance of the premises; and
 - (iii) the extent of the defined licensed premises; and
 - (iv) the designation of the premises,

was a prime example of the absence of effective systems by the applicant to operate in accordance with the DLC's original decision. We do not accept the excuse that an agent filed the renewal application papers as satisfactory. The licensee must know what it seeks to renew accurately. Effective systems would have made clear to Mr Evans there was no one-way door restriction condition on his licences. Effective training would have made clear to Mr Evans and staff, labouring under the

misapprehension there was a one-way door restriction condition, exactly what such a restriction would have meant. As set out in paragraph [565] earlier, once a patron leaves premises with such a condition in place they cannot be "*readmitted*". Smoking patrons are not *exempt persons* – another defined term. These are part of an overall picture which demonstrated to us that this company, through Mr Evans, has inadequate systems and understanding of the obligations of a licence-holder to warrant these licences being renewed. There is too much of an overlap between these inadequacies, suitability, and our assessment of the risks associated with the object of the Act if we were to renew these licences.

- [598] There are no records of staff meetings held or attendees or subject matters covered. The regularity of meetings of staff varied in evidence. There are no written employment agreements. There is no managers' register. There is no clarity in respect of rosters with some decisions made on the day. There is no record of *intoxicated* or problem patrons removed from the premises. There is no record of slowing of service. The lack of records is in spite of an admission by the duty manager that she cannot remember everything. There is also no ability to monitor trends for the licensee's own purposes or assist agencies with meaningful information. There is little or no attempt to comply with legislative requirements.
- [599] There was a rudimentary A4 record on the bar wall of people trespassed prior to a police officer suggesting an industry organisation book for that purpose and which the licensee subsequently purchased.
- [600] It is our unanimous and considered view that there is no doubt that there is an inadequate understanding and enforcement of the safe and responsible sale and supply of alcohol on the premises leading to unsafe and irresponsible consumption of alcohol on the premises including unmonitored patrons who are *influenced* and *intoxicated*.

Amenity and good order

- [601] The close proximity of residential housing has elicited noise and nuisance complaints from a neighbouring property across Courtenay Road over an extended period and usually relating to the DJ playing on the monthly or six weekly theme party nights. After allowing a period of grace when Mr Evans took over, this neighbour attempted to solve issues with Mr Evans and asked him over the following two and a half years to undertake various measures and in particular to mitigate noise, thuggish behaviour outside the premise, and not to have large groups leaving all at once when the tavern closes. Evidence has been produced which includes crowds on the road, drinking outside on the footpath, broken glass, the throwing and removing of signs, noise control and police callouts. Police remained to supervise a group of 100 people put out of the tavern at closing on to the Courtenay Road - State Highway 73 corner to await transport.
- [602] Mr Evans has always agreed to the neighbour's suggestions but changes nothing. Mr Evans denies being asked. The neighbour has worked in hospitality, including time under the current Act. She cleans up the smashed bottles, vomit/urine, detritus from her fence, inside her property and outside on the footpath reasonably quickly as she often has her grandchildren to visit and to stay. Her adult son now does not have his children to stay on party weekends because of the thuggish behaviour including fights and loud noise. This neighbour did not need to call Police or noise control under the previous licensee.

- [603] Evidence was produced about *influenced* patrons running, yelling and screaming on and across the state highway, crossing to the train tracks and general disorderly behaviour and drinking outside on the footpath and road across from and in front of the houses. There are issues with vehicles doing donuts particularly on Friday and Saturday nights. The two neighbours have concerns that someone will be injured. The amenity and good order of the locality in relation to unacceptable behaviours are concerning to the Licensing Inspector, Police witnesses and civilian witnesses.
- [604] The neighbour feels really intimidated since the gun gesture and abuse shouted at her by Mr Evans while he was working 22 December 2018. This was witnessed by Police and the adult son of the neighbour. The intimidation has detracted from the quality of life she is able to live on her property, her sleeping is affected and she has ongoing health issues. The neighbour considers there is inappropriate or excessive consumption at the Kirwee Tavern and behaviour is out of control. In evidence the Police Alcohol Harm Prevention Unit Officer told us that after the gun gesture incident she herself would not be comfortable living across the road from the current licensee.
- [605] Mr Evans has denied making excessive noise, including at the end of January 2019 to the Selwyn District Council Environmental Health Officer, Mr Turner. The neighbour and her adult son's evidence is that the music is so loud that they can hear the lyrics and not the TV, inside their home across the road. During visits on 24 November 2018, 16 February 2019 particularly the Police also considered the music excessive.
- [606] Mr Turner would expect an initial Excessive Noise Direction (END) to produce the desired effect and is not aware of any ENDs served on any other licensed premises in Selwyn District records back to 2012, nor in Christchurch or Waimakiriri District. Armourguard, the District's noise control contractors attended 4 noise complaint callouts after July 2018 and on two of these occasions, Excessive Noise Directions were also served. Mr Turner is sceptical of the effectiveness of the proposed fitting of acoustic panels in the window frames on Courtenay Road.
- [607] We have been guided by having regard to the matters in s.106(2) of current and possible future noise and nuisance. Noise and nuisance issues and outcomes are directly attributable to the premises. The Licensing Inspector, the Police and witnesses provided compelling evidence, which we accept, of increased levels of alcohol related harm in the area. The Committee acknowledges that the recent and current noise levels and nuisance arising from the premises make the locality less pleasant and agreeable.
- [608] In our opinion for the reasons discussed after evaluating the evidence we do not doubt that there will be an increase in amenity and good order if this licensee is not operating this tavern.

The manner in which the licensee has sold alcohol

- [609] At the hearing it was acknowledged that the Kirwee Tavern features in the weekly meetings of police in Selwyn District owing to concerns with its operation. Consequently the tavern is targeted along with other premises by the local team policing unit through its crime prevention initiatives which include the countrywide issue of excess breath alcohol/drink driving. The regular disorderly behaviour element is virtually confined to the Kirwee Tavern and is a disturbing and unusual aspect of these licensed premises. A patron stomping on another patron's head in the bar is a serious matter.

- [610] While the premises passed 2 controlled purchase operations in its rural setting in early 2018 and 2019, Police were sceptical of accepting this as an accurate indication of how well the business was progressing as two unknown young people going into a smaller local rural tavern during the day would be easily noticed. Police do encourage ongoing use of the tavern's courtesy van as a good initiative and as part of their monitoring. However concerns with drink driving individuals from the tavern is not an expected reflection of full acceptance of courtesy van usage. The Committee also noted the unwelcome upward trend in Calls For Service provided by the Police Intelligence Unit, for the area around the tavern.
- [611] Incidents have been documented and given in evidence which indicate that the current licensee is cavalier in attitude in the sale and supply of alcohol, regardless of which manager is on duty. A duty manager admits there is intoxication from time to time, whilst the licensee states he does not allow intoxication. At times the bar has been too crowded to undertake and monitor the sale and supply of alcohol safely and responsibly. Evidence has been presented of alcohol fuelled nights, patrons blowing extreme blood alcohol tests while being observedly intoxicated, little if any handling of patrons alcohol intake when it may give rise to objection by the patrons - the licensee not wishing to close the bar when a fight broke out because patrons would be upset is an example of this. A professional opinion proffered at the hearing was that the licensee is putting the public and patrons at risk; a recognisable sign of this is the ongoing fighting and disorder.
- [612] We heard from the Police Sergeant who could not recollect any other taverns with the same issues that have been raised in the hearing in regards to the Kirwee Tavern. In his opinion, increased levels of intoxication are directly attributable to the type of management style and non adherence to the Act. Police issued a warning to the duty manager November 2018 that if further calls of disorder were received after police left, they would close the tavern down for the night. Police and the Licensing Inspector have raised the levels of influence and intoxication with management but common aggravating themes continue, intoxication, drink driving, disorderly behaviour and noise. The manner in which alcohol has been sold, supplied and consumed has contributed to an increase in alcohol related harm, directly and indirectly.
- [613] The impression portrayed by a licensee's regular drinking and socialising contributes to a lack of control and care of disorderly or influenced patrons. This also leads to local patrons in particular, misunderstanding the behaviour that should be acceptable on these licensed premises and a disturbing culture portrayed by management. The licensee has an issue with monitoring consumption and is not willing to engage with agencies carrying out their job and continuing to offer assistance. Decision making is not conducive to setting and holding to the standard required, looking after patrons, or the responsible sale, supply and consumption of alcohol.
- [614] Mr Evans has seen and experienced the detrimental effects of the influence of alcohol from his establishment, including disorder, fights, a serious assault, poor decision making by influenced patrons, drink driving on the state highway, yet he believes that he is committed to the responsible sale, supply and consumption of alcohol and is contributing to the minimisation of alcohol related harm in the Kirwee community. The Committee does not share Mr Evans' view. His responsibility to the community is fraught with a self serving attitude.
- [615] All of the incidents and issues that have been conveyed either verbally or in writing to the Committee indicate to us that the licensee and current managers are not selling

and supplying alcohol safely and responsibly and alcohol is not being consumed safely and responsibly on the premises.

The Object of the Act

- [616] Our approach to section 4 has been on the basis that our decision must be consistent with both aspects in subsection (1)(a) and (1)(b).
- [617] We have made a merits based determination as to whether or not the applications should be granted. We have had regard to the matters in section 131 and in turn with matters in section 105(1)(a) to (g) and (j) and (k). We have had regard to the matters which we considered held a fundamental significance. We understand that our role is an evaluative one, in an inquisitorial sense.
- [618] The applicant has had an elongated probation opportunity of two years to bring positive and proactive experiences to this renewal. However the many proven incidents of concern coupled with a general view on his part that all is well, that everything can be explained away, didn't happen or it is someone else's fault, even when sworn police or the licensing inspector under oath/affirmation give evidence that it did, give rise to an inevitable conclusion for us in terms of future risk. In our opinion the sale, supply and consumption of alcohol will not be undertaken responsibly in future at the tavern nor will alcohol related harm caused by excessive and inappropriate consumption be minimised, if these licences are renewed. In short, standing back, we have no doubt it would be inconsistent for achievement of the two aspects of the object of the Act for us to grant these renewals.
- [619] In carefully evaluating the evidence placed before us we have not ignored the more positive aspects of Mr Evans' probationary period. We also look back to the start of Mr Evans' journey at the Kirwee Tavern. We find it disappointing that Mr Evans was told at an earlier hearing that he did not appear to be learning and he was aware that paying lip service to the advice and concerns of the agencies would not achieve a positive outcome and could place his business at risk. This further probationary period was an opportunity for Mr Evans to demonstrate that he has indeed learned, that he has improved his management style and that he is able to operate within the Act. Unfortunately, our opinion is that this is not the reality.
- [620] The Committee does not dispute, as put to us, the part played by the tavern and the garage in the Kirwee community. This same community however, has the right to expect that the community tavern operates within the "rules", in this case, within the Sale and Supply of Alcohol Act 2012. We also note that rather than encouraging an effective working relationship with the agencies, there has been a noticeable lack of engagement and co-operation. We acknowledge *Frith* (2005) in this respect.
- [621] The Committee has heard evidence in the course of this hearing to wide ranging alcohol related harm both in and around the premises and occasionally beyond. The direct harm includes alcohol related detritus, noise, fighting, property damage, incidents with vehicles, drink driving, disorderly and unsafe behaviour, health effects, a serious assault and the upward trend in Police Calls For Service. Indirect harm we considered harder to identify or quantify but includes for example, Mr Summer's decision to not have his children to stay on party weekends, the neighbour's attempts to restrict family exposure to alcohol related rubbish and damage, neighbours not feeling safe and not enjoying their own property and poor decision making while influenced.

[622] We have accorded weight to the united opposition of all reporting agencies that the applications for renewal should be declined. We are persuaded by evidence by Police and the Licensing Inspector that is convincing and cogent in respect of irresponsible and inappropriate sale, supply and consumption of alcohol. The Applicant has engaged in irresponsible trade and has not traded in line with legal requirements. In our opinion, the premises present an elevated risk picture – the potential for future harm in the locality cannot be ignored by us.

Summary

[623] For the reasons summarised in paragraphs [575]-[584] we find this applicant is not suitable to hold alcohol licences under the Act. For the reasons summarised in paragraphs [585]-[594] we find the licensee's systems, staffing, and training inadequate to justify renewals. For the reasons summarised in paragraphs [595]-[602] we have formed the opinion that the amenity and good order of the locality in which the Kirwee Tavern is situated will undoubtedly be increased if these renewals are refused, by more than a minor extent – we think to a considerable extent. We think there is some degree of over-lap between our findings in relation to the manner in which the applicant has sold and supplied alcohol – summarised in paragraph [609] above – with an over-all evaluation of the evidence and our findings and conclusions with respect to section 105(1)(a) and section 4 – the object of the Act. However as they are separate matters set out in section 131 [(a) and (d)] we have set out separate conclusions in paragraphs [603]-[609] and what followed in paragraphs [610]-[616].

[624] We stand back and we weigh everything before us. We conclude this licensee is not able to comply with the object of the Act. In particular – we are not satisfied that:

- (i) The sale and supply and consumption of alcohol would be undertaken safely or responsibly in future at the tavern;
- NOR
- (ii) That harm caused by excessive or inappropriate consumption of alcohol would be minimised if we renewed these licences for this licensee.

[625] As we have concluded that the Applicant is not able to comply with the object of the Act, any consideration of the applicant's suite of conditions is superfluous.

[626] It will be obvious from the evidence we have described we heard, and our findings recorded thus far, that we heard minimal direct evidence of the sale of alcohol pursuant to the off-licence, nor as to its eventual consumption. However, the evidence we heard leaves us in no doubt that because of our findings as to the sale and supply of alcohol pursuant to the on-licence, and the manner in which the licensee has permitted its consumption on the premises, and the licensee's inadequate systems and training, and lack of suitability, and failure to meet the obligations of s.4, in relation to the on-licence, it would be inconsistent with those findings to conclude the applicant:

- (i) Was suitable to have the off-licence renewed;
- (ii) Had adequate systems and training to enable us to have any confidence there would not be sales pursuant to the off-licence to intoxicated persons;
- (iii) Could or would be likely to meet the object of the Act by the renewal of an off-licence to this licensee.

Our conclusions and opinions and risk analysis for the on-licence apply equally to our evaluation and opinions and risk analysis in respect of the renewal of the off-licence.

[627] The Committee unanimously determined to refuse the renewal applications for the on-licence and the off-licence held by Evansbury Holdings Ltd for the Kirwee Tavern.

Conclusion

[628] In our administration of the Act we are required to be reasonable. We are able to fix a date in our decision from and on which our decision is to take effect. Accordingly, pursuant to section 135(2), we determine that this decision to refuse the applications for renewal of the On Licence and the Off Licence sought by the Applicant, takes effect from 11.59pm on 29 January 2020. In short, the on-licence and off-licence held by the applicant each expire at that time on that date: 11.59pm on 29 January 2020.

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DATED at CHRISTCHURCH this 26th day of November 2019



Chairperson
Selwyn District Licensing Committee

