

Decision Number: R/59/257/2023

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by **ALPINE 182 DEGREES LIMITED** trading as **SPRINGFIELD HOTEL** for renewal of **ON and OFF Licences** pursuant to s.127 of the Sale and Supply of Alcohol Act 2012 in respect of premises situated at **5675 West Coast Road, Springfield.**

AND

IN THE MATTER

of an application **Blair Nathan Wallace** for the renewal of a Manager's Certificate pursuant to s.224 of the Act.

BEFORE THE SELWYN DISTRICT LICENSING COMMITTEE

Chairperson: Mr G Clapp
Members: Mrs S Griffin
Ms T McIlraith

HEARING at Tai Tapu, 31 May 2022

West Melton, 1 August 2022

West Melton, 28 February 2023

West Melton, 1 March 2023

APPEARANCES

Mr C Lange - Counsel for the Applicant, withdrawal 22 December 2022

Ms P Kaur – Counsel for the Applicant, notification of appointment 5 February 2023

Mr Blair Nathan Wallace - the applicant

Senior Constable G Craddock – Police Alcohol Harm Prevention Unit - in opposition

Constable H Caird - witness for the Police

Ms M Suchley - witness for the Police

M. T Tahuhu - witness for the Police

Ms K Roche – witness for the Police

Mr J Innes - witness for the Police

Ms O Ensor and Ms P Williams - Medical Officer of Health representatives - in opposition

Mr M Gaskin – Fire and Emergency New Zealand – in opposition

Mr M Johnston - Chief Licensing Inspector - in opposition

RESERVED DECISION OF THE COMMITTEE

DECISION

- 1) For the reasons which follow, the Committee has unanimously determined to refuse the applications for (a) the renewal of the On-licence and the Off-licence for Alpine 182 Degrees Limited, in respect of premises known as Springfield Hotel and (b) the renewal of a manager's certificate for Blair Nathan Wallace.
- 2) This decision relates only to this licensee and is not a decision that Springfield Hotel should not have similar licences in this locality in the future. The length of time between the initial Notice of Hearing and the completion of the hearing is now in excess of two years following the expiry of the On and Off licences 30 April 2021. Covid-19 has contributed to the delay in the process.

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INTRODUCTION

- 3) Before the Committee are applications by Alpine 182 Degrees Limited (the applicant) for the renewal of the On-licence (**59/ON/144/202**) and Off-licence (**59/OFF/096/2020**) in respect of the premises situated at 5675 West Coast Road, Springfield, known as Springfield Hotel and for a renewal of a manager's certificate (**59/CERT/1008/2021**) for Blair Nathan Wallace. All applications will be heard at the same time.
- 4) A copy of the licences for which renewals are sought are **attached** marked **Appendix "A"**. The applications to renew the On-licence and Off-licence (to expire 30 April 2021) were received by the Selwyn District Licensing Committee 21 April 2021. The application for a renewal of a manager's certificate (to expire 21 January 2022) was received by the Selwyn District Licensing Committee 3 January 2022.
- 5) In April 2019 the Applicant took over the Springfield Hotel apparently using his company Walking the Dog. The applicant changed the ownership company shortly after to Alpine 182 Degrees Limited, incorporated on 25 March 2019. Blair Nathan Wallace is the sole director and shareholder of Alpine 182 Degrees Limited.
- 6) The applications state that the nature of the business is that of a Hotel with a restaurant, accommodation, and over-the-counter off sales.
- 7) As required under s.129 of the Act, reports were sought from the Agencies in respect of the On-licence and Off-licence renewals. The three agencies and FENZ reported in opposition to these renewals. The manner in which the premises had operated during and since the probation year remained of significant concern to the agencies. All three agencies have concerns over the suitability of the Applicant to hold a Manager's Certificate.
- 8) As required under s.225 of the Act, reports were sought from the Agencies in respect of the renewal of the manager's certificate. The NZ Police and the Chief Licensing Inspector reported in opposition to the renewal of the manager's certificate. The agencies have concerns over the suitability of the Applicant to run this business.
- 9) Public notification of the renewal applications did not attract any public objections.

THE PREMISES

- 10) The premises, situated at 5675 West Coast Road, Springfield, may best be described as a "country hotel" with a restaurant and accommodation rooms. The hotel was built in 1882 and is a historic two-storey wooden building. Springfield is a small rural town, some 80 kms from Christchurch in the Selwyn District. It is situated in the foothills of the Southern Alps and is the most westerly town on

the Canterbury Plains. The Hotel itself is located on state highway 73 heading towards Arthurs Pass. The village is popular with tourists, locals, and winter skiers.

- 11) A plan of the premises was date stamped as received by the Selwyn District Licensing Committee on 21 April 2021. This plan (**Appendix B**) shows designations that are different to those in the initial and current licence for the licensed premises. The Chief Licensing Inspector's report has some different designations. There is no request for change in terms of the designations.
- 12) The Committee refers to the designations as granted in the initial and current On licence in 2020; the main bar area is Supervised, the patio, deck area and beer garden are Undesignated. The designation for the Off licence; the main bar area is Supervised. The principal entrance is directly from West Coast Road via a concrete paved area.
- 13) The trading hours sought are the same as the Springfield Hotel currently operates. These hours are within those prescribed in the Local Alcohol Policy;
On-Licence: Monday to Sunday from 10:00 am until 2:00 am (the following day),
Off-licence: Monday to Sunday from 9:00 am until 9:00 pm.
- 14) The Chief Licensing Inspector reported in opposition, based on concerns regarding the applicant's suitability. In the three to four years the applicant has operated, the licensing administration team and the agencies have been continually frustrated with the ongoing lack of urgency and adherence to timeliness by the applicant in submitting the required paperwork including applications and notifications. The Inspector now challenges the applicant's suitability to hold On and Off licences.
- 15) The NZ Police reported in opposition including on the basis of serious criminal offending occurring at the address, adjacent to the premises. The Applicant has been convicted in respect of this criminal offending. Further opposition was on the grounds that the Applicant did not have appropriate staff, systems and training to comply with the law, and that to grant the renewal application would be inconsistent with the object of the Act.
- 16) The Medical Officer of Health reported in opposition to two principal areas of concern being (a) staff, systems and training to comply with the law, including concerns that there may be insufficient qualified staff to comply with the conditions of the licence and the object of the act, and (b) suitability, in that the applicant had failed to comply with the requirements for the appointment of Managers. MOH reported in opposition, dated 21 May 2021.
- 17) FENZ reported that the premises did not currently have an approved and maintained evacuation scheme and was therefore non-compliant with the Fire and Emergency New Zealand Act 2017. A trial evacuation was conducted in 2020 as required to have the initial licence issued. Opposition to the licence renewals was advised by FENZ, 21 October 2021.
- 18) There was no agency opposition to section 105 (1), (d), (e), (f), and section 106 of the Act.
- 19) The Police opposed the renewal of the manager's certificate application with respect to suitability and the potential alcohol related harm due to poor management practices and breaches of the Act.
- 20) The Chief Licensing Inspector supports the Police opposition to the renewal of the manager's certificate on the following grounds:
 - (i) s.222(a) the applicant's suitability to be a manager;
 - (ii) s.222(b) any convictions recorded against the applicant;
 - (iii) s.222(c) any experience, in particular recent experience, that the applicant has had in controlling any premises for which a licence was in force;
 - (iv) s.222(e) any matters dealt with in any report made under section 220;
 - (v) s.4(1) (a) and (b), the object of the Act.

PRE-HEARING

- 21) By Notice of Hearing dated 26 October 2021 the matters were set down for hearing 16 November 2021.
- 22) A memorandum seeking an extension of the submission date was received from Police on 27 October 2021.
- 23) In an email on 3 November 2021 the representative of the Medical Officer of Health (MOH) requested to be excused from attending the hearing - permission granted.
- 24) Mr Gaskin, FENZ submitted a report in opposition dated 27 October 2021. On 3 November 2021 the Committee advised Mr Gaskin that they would like him to attend the hearing.
- 25) The Committee, through the Commissioner, issued a series of Minutes covering various pre-hearing matters from Minute #1, 11 November 2021 through to Minute #23, 15 February 2023. Minute #24 was issued 28 March 2023 in respect of the Committee's intended visit to the location and premises.
- 26) Closing submissions were duly received from the Licensing Inspector, on 10 March 2023, the Police on 14 March 2023, the Medical Officer of Health on 15 March 2023 and Counsel for the Applicant on 20 March 2023.

BACKGROUND

- 27) 23 Minutes issued by the Selwyn District Licensing Committee Commissioner prior to the hearing taking place record a lengthy journey with the Applicant Alpine 182 Degrees Limited and the sole director Blair Nathan Wallace. Minute #24 records the site visit after the hearing.
- 28) The hearing was arranged for Tuesday 16 November 2011. On Thursday 4 November 2021, Mr Craig White, director of Pinnacle Hospitality advised that he had been engaged to assist with the applications and systems for the hotel. Mr White sought a 3-week adjournment for preparation and advised that Mr Wallace was facing criminal charges in the Christchurch District Court. Proceeding with the hearing may jeopardise court appearances. The Committee noted that the applicant had reasonable preparation time as opposition had been filed including Police opposition prior to the date of the criminal charges.
- 29) Minute #1; 11 November 2021, the hearing was set down for 16 November 2021. Mr White confirmed that Mr Wallace was to appear in the District Court 25 January 2022. The Committee discussed the matter. The hearing would be rescheduled for February 2022.
- 30) Minute #2; 9 February 2022, the Committee was advised Mr Wallace had appeared in the District Court and was remanded until 8 March 2022. The Inspector's report stated that he had spoken with Mr Wallace 1 February 2022 and Mr Wallace intended to plead guilty to 6 criminal charges and 2 would be withdrawn by police. The Manager's Certificate renewal application for Mr Wallace was received 3 January 2022, during Council's down period. The Manager's Certificate renewal would be heard at the same time as the Alpine 182 Degrees applications. Police reported 2 February 2022 in opposition. The Chief Licensing Inspector reported in opposition 2 February 2022. The hearing 15 and 16 February 2022 would not proceed.
- 31) Minute #3; 11 March 2022, the Committee noted that the court date had passed and the sought the outcome of the court appearance. The Committee asked what charges were dealt with, any penalties and if any other parties were involved.
- 32) Minute #4; 8 April 2022, parties had been issued with the Notice of Hearing 5 April 2022 which confirmed that the renewal applications for the On and Off Licenses would be heard in conjunction with the Manager's Certificate renewal application.

- 33) Minute #5; 4 May 2022, the Committee advised that on Friday 19 April 2022 Mr Lange requested an adjournment. He was a household contact and was required to self-isolate. He would be absent until 4 May 2022. New hearing dates would be provided.
- 34) Minute #6; 25 May 2022, the Committee advised that the Secretary had not had any correspondence from Mr Wallace or Counsel, Mr Lange. The hearing was set down for 31 May 2022 and 1 June 2022. The date for the receiving of submissions/evidence was 4pm, 27 May 2022. Specific items were required to be produced at the hearing – staff rosters for the last 3 months and for the coming month, the manager’s register, and incident log. The Committee provided 4 cases for comment at the hearing – these were Ecstasy Plus 1993, Enzo Entertainment 2003, Hoyts Cinema 2008, Le Box 2017, after the Inspector reported that he could not find any case law around notifications. The Committee advised of its intention to visit the premises at a date to be advised. Mr Mike Gaskin, FENZ was given leave to attend the hearing.
- 35) Minute #7; 31 May 2022, further summarised the journey up to the hearing Tuesday 31 May 2022 at Tai Tapu. The Committee had not been notified of any non-availability for this hearing. Mr Wallace was not in attendance one hour after the scheduled start time and did not attend the hearing. The hearing started and Mr Lange sought an adjournment. Mr Wallace had contacted him that morning after testing positive for Covid. Counsel acknowledged (a) the matter needed to be heard and (b) the Police pointed out the absence of Mr Wallace’s written statement that was required to be submitted by Friday 27 May 2022. Mr Lange confirmed that Mr Wallace’s Brief had been prepared for him and he had planned for Mr Wallace to sign the Brief that morning. The Committee discussed options open to them. Ms Williams had advised that RAT test lines can change after a time and that the test result should be reported online. The Committee decided to request a photograph of the positive RAT test with its serial number and a medical certificate from his/a registered medical practitioner confirming lodging. After a brief dialogue with the parties, the hearing adjourned.
- 36) Minute #8; 31 May 2022, following the adjournment, the Committee directed by Minute, that Senior Constable Craddock and Mr Johnston visit the Springfield Hotel. They were to check the weekend and Monday rosters to see who had worked and their hours and to obtain copies of these for the Committee. Matters around the RAT test results were conveyed.
- 37) Minute #9, 28 June 2022, the hearing would reconvene at 10am, 1 August 2022 at the West Melton Community Centre. Supplementary submissions would be accepted and should be received by 4pm, 18 July 2022. Wage timesheets and leave records for Ms Kathleen Roche for the duration of her employment were to be provided to the Committee Administrator. Any paid-out report from the till for the period 20 May until 25 June 2022 was to be produced.
- 38) Minute #10, 20 July 2022, Mr Gaskin advised he was not able to attend the hearing scheduled for 1,2,3 August. The Committee would accept an affidavit and determine the weight to be placed on that at the appropriate time.
- 39) Minute #11, 28 July 2022, the Committee had previously requested the provision of specific documents, including rosters, manager’s register, incident log, and documentation required for Ms Roche - Mr Wallace was reminded that he needed to produce them. The Committee also requested the chef’s roster covering hours worked during visits by Police and the Inspector in May.
- 40) Minute #12, 17 August 2022, a Committee member advised after day one of the hearing 1 August 2022, that her husband had tested positive for Covid. The hearing was adjourned until the Committee had a full complement.
- 41) Minute #13, 26 August 2022, the hearing would resume 30 August 2022 and continue on 31 August 2022.

- 42) Minute #14, 26 August 2022, Mr Lange advised he was not available 30 and 31 August, hearing to be rescheduled.
- 43) Minute #15, 14 September 2022, Mr Lange had advised that realistically he would not be available until December and if this created an issue for the Committee, he would seek alternative counsel to be engaged. The Committee met and decided that in fairness to all parties, the hearing should proceed as soon as possible. Mr Lange should arrange for alternative counsel. A transcript of day one would be made available to the parties.
- 44) Minute #16, 20 October 2022, the Committee had not had a response from Mr Lange. The parties were told that submissions should be received by 11 November 2022 for the reconvening of the hearing 29 and 30 November 2022 at West Melton Community Centre.
- 45) Minute #17, 22 November 2022, the Committee acknowledged that while Mr Lange needed to consult with his client, no correspondence had been received from the Applicant or from Counsel in respect of the change of Counsel. The Committee reiterated that the hearing would proceed 29 and 30 November 2022.
- 46) Minute #18, 25 November 2022, Counsel Mr Lange advised that he would not be available until the week of 5 December and sought leave from the Committee to withdraw from the hearing – this was granted. The Applicant was reminded that the hearing would proceed 29 and 30 November 2022.
- 47) Minute #19, 29 November 2022, the Committee stated that these applications and proceedings have had a prolonged history as the Minutes indicated. Minutes #14 to #18 particularly, recorded the legal representation issues faced by the Committee. Significantly additional information concerning the licensee's business and a recent determination of the Employment Relations Authority (ERA) were filed with the Committee the previous week. Notably also, Mr Lange was advised he should consider alternate counsel in September. Mr Lange was granted leave to withdraw 25 November. However, on 28 November 2022, Mr Wallace sought a further adjournment for reasons including time to respond to the new files and to have a hearing date allowing Mr Lange to act for them as alternative Counsel was not available that week. Police, the Inspector and MOH believed the hearing should proceed as scheduled – the Inspector made his displeasure very clear should a further adjournment be granted. The Committee balanced two things in considering a further adjournment – specifically; (a) fairness and natural justice to the Applicant, including time to instruct Counsel concerning the new material filed recently; and (b) fairness to the agencies. There was a responsibility to administer the Act and its processes reasonably, pursuant to section 3, if the Committee was to achieve section 4, the object of the Act. Weighing these matters and being cognisant that Mr Lange may be available the first week of December, the Committee determined (a) to adjourn the applications to be heard to 13 and 14 December 2022, to enable Applicant representation by Mr Lange following completion of his trial, or failing that, to engage and instruct alternative Counsel; and (b) any further evidence in response to the ERA material should be filed by 3pm, Friday 9 December 2022. Parties were advised that the Committee was unlikely to grant any further adjournments. The hearing was scheduled for 13 and 14 December 2022.
- 48) Minute #20, 12 December 2022, Mr Lange who believed he would be free for the hearing was no longer available, advising that he was committed for 3 months. The Applicants had failed to engage replacement Counsel. Reluctantly, the Committee granted a further adjournment. The agencies were asked to indicate dates they were not available between 16 January 2023 and 17 February 2023.
- 49) Minute #21, 18 December 2022, the Committee would set down a date for late February 2023 for the hearing to reconvene. This allowed the Applicants 8 weeks to engage alternative Counsel.

- 50) Minute #22, 14 February 2023, the journey of the scheduled hearing dates from 16 November 2021 was detailed. This Minute advised that the Committee would convene a judicial conference on 15 February 2023 at 9am. By Memorandum dated 13 February 2023, the Committee was advised of a change of representation and new Counsel Ms Kaur requested a further adjournment to *“review disclosure and prepare submissions and evidence in response to the matter as necessary.”* The Committee noted that Mr Lange had advised of his pending withdrawal late November 2022. The Committee was concerned to receive another request for an adjournment on behalf of the Applicants. The Committee was not aware of any new disclosure since the adjournment of the hearing in December 2022. Accordingly, the Committee convened a judicial conference with the parties.
- 51) Minute #23, 15 February 2023, following new Counsel Ms Kaur’s request for a further adjournment by Memorandum dated 13 February 2023, the Committee convened a judicial conference with the parties at 9am, 15 February 2023. Attending the Zoom conference were the 3 Committee members, DLC Secretary Atherton, Police Sergeant Robertson, Senior Constable Craddock, MOH representative Ms Williams, Inspectors Johnston and Shaw, Counsel for the Applicant Ms Kaur, and Counsel for the Committee Mr Sherriff. Ms Kaur sought an adjournment to obtain all documents. She believed she had a High Court trial covering the next hearing dates. All agencies and Counsel had the opportunity to comment. The agencies objected strongly to another adjournment. Ms Kaur then said she could appear on the proposed dates of 28 February 2023 and 1 March 2023. Close-off for submissions was 3pm, 10 February 2023 – no submissions had been received for the Applicants. The Committee then considered the application for adjournment. Given that Ms Kaur was now available, the Committee did not see any basis for a further adjournment and declined to grant one.
- 52) Minute #24, 28 March 2023, the Committee intended to visit the premises and would advise the date to the parties prior to the visit.
- 53) Compliance has been a significant issue for Mr Wallace and breaches of the law have occurred under the following:
- (i) the Sale and Supply of Alcohol Act 2012
 - (ii) the Employment Relations Act
 - (iii) the Crimes Act
 - (iv) the Fire and Emergency Act
 - (v) the Building Act
 - (vi) the Food Act,
- and as referred to in evidence, the Human Rights Act, the Holidays Act, the Minimum Wage Act, and the Arms Act.
- 54) Mr Wallace started off this process on the wrong foot in terms of the Sale and Supply of Alcohol Act 2012. He traded initially without a licence and subsequently when he should not have under the terms of his licence.
- 55) When supplementary reports were called for the Police and the Chief Licensing Inspector provided reports which covered the period from the lodging of their evidence.
- 56) The District Licensing Committee (Committee) has summarised the seemingly slow progress in its journey with Mr Wallace in detail, in the significant number of Minutes issued from 2021 until the hearing in 2023. The processing of these applications has been beset with delays, not all attributable to COVID-19.

THE HEARING

- 57) The journey with the Applicant is detailed in the 23 Minutes issued by the Committee between 11 November 2021 and 28 March 2023 and reiterated further in paragraphs in this decision. Minute 24 relates to a site visit.
- 58) The hearing was initially set down for 21 November 2021, then rescheduled to 15 & 16 February 2022. After a further delay the hearing was set down 31 May 2022 at Tai Tapu Community Centre and subsequently adjourned. The hearing resumed on 1 August 2022 at West Melton Community Centre prior to a further adjournment and was finally completed at West Melton 28 February 2023 and 1 March 2023.
- 59) Mr Wallace tested positive 31 May 2022 and informed Mr Lange that he was unable to appear that day. The Committee had no warning that the applicant was not going to attend at the time the hearing was scheduled to begin. The hearing began an hour late and submissions from Mr Lange were circulated. All parties spoke and the hearing was adjourned.
- 60) Following the adjournment 31 May 2022, the Committee met and discussed the situation. The Committee then issued Minute #8. The Committee directed the Chief Licensing Inspector and the Police to travel to Springfield that day, to visit the Springfield Hotel and ascertain who had worked at the premises over the weekend and on the previous day (Monday 30 May), to obtain copies of the rosters and evidence of Mr Wallace's Covid positive test results. In directing this, the Committee considered the adjournments to date - the ongoing concerns from Police particularly about qualified managers, a qualified manager not always being present on duty during trading hours, an incorrect name on the duty manager board, concerns about rosters and other matters which had inconvenienced the parties leading up to day one of the hearing on 31 May 2022. The Committee was entitled to understand that the premises were being properly run while Mr Wallace was isolating as required with Covid. The Committee also had the MOH representative's assistance in respect of RAT testing.
- 61) When the hearing reconvened on 1 August 2022, Mr Lange addressed the Committee stating that from the previous Minute of direction, Minute #8, from the Committee to Police and the Chief Inspector, it may appear that the Committee believed Mr Wallace to be working. Further, Mr Lange said members of the Committee had formed a view about Mr Wallace's honesty averse to his interest in this case and that this was an important case to his client. The Committee should consider whether they should recuse themselves.
- 62) The Committee adjourned. Each member declared that they had no bias. In essence the Committee was required to be and wanted to be, fully informed, and to take appropriate steps to ensure this occurred. They needed to have the full facts to consider and fully evaluate this matter on its merits while remaining fair-minded and impartial. The Committee considered that there was no risk of their forming a view about Mr Wallace's honesty which may be averse to his interest in this matter. The Committee acknowledged the varied delays which had prevented the hearing from taking place. The Committee considered the adjournment, the availability and reporting of RAT test results, the operational concerns previously considered 31 May 2022 prior to issuing Minute #8 and other licensing matters which were relevant to the parties leading up to day one of the hearing. The Committee was rightfully entitled to understand and verify that the premises were being properly run and were compliant while Mr Wallace had Covid.
- 63) The committee then returned and asked the agencies for their opinion – did they believe there was any bias on the part of the Committee in respect of the actions required in Minute #8. All agencies confirmed that they did not believe there was bias on the part of the Committee. The Committee

adjourned again, had further discussion, and sought legal advice. *"The test for an apparent bias is whether the fair-minded reasonable lay observer who is presumed to be intelligent and view matters objectively and who is reasonably informed about the process the DLC/Committee as a commission of inquiry operates by would apprehend all of them would not be able to bring an impartial mind to the merits-based evaluation of the applications and the evidence. The test is rigorous as parties cannot lightly throw the biased ball in the air. The DLC/Committee is inquisitorial and can be expected to ask questions and occasionally seek verification of information. That does not constitute evidence of bias."* This was explained to all parties present, and the Commissioner stated that the hearing would continue.

- 64) The Commissioner recorded appearances.
- 65) As preliminary matters and in the interest of transparency, the Commissioner advised attendees that the journey to date in respect of the Applicants was predominantly recorded in the 24 Minutes circulated previously.
- 66) Judge T J Gilbert provided his sentencing notes from the court hearing 8 March 2023 to the Committee and parties. Mr Wallace pleaded guilty to a *"miscellany of offences,"* in the words of Mr Huda for the Defendant. Mr Wallace pleaded guilty to 6 charges. Offending was aggravated by the range of drugs in Mr Wallace's possession. Paragraph 5 in the Judge's notes refers to Mr Wallace's being a licensee and the licence related to that. The sentence imposed - supervision for 6 months on condition that an alcohol and drug-related intervention was attended to the satisfaction of the probation officer, which Judge Gilbert stated may assist him in his endeavours with the licensing authority, but it may not. Mr Wallace was fined on the charge of cultivating cannabis and also to pay court costs.

THE APPLICANT: BLAIR NATHAN WALLACE

- 67) In her opening 28 February 2023, replacement Counsel Ms Kaur spoke of the object of the Act in relation to the On and Off Licences and referred to Justice Heath's decision where the approach to be undertaken was an evaluated exercise involving the facts, section 105 (1) and any relevant considerations. Ms Kaur then referred to the suitability of the Applicant by criteria and the need to assess the risk of future misconduct or harm and the consideration whether past conduct remained relevant and any relevance looking forward.

Evidence of the Applicant: Mr Blair Nathan Wallace

- 68) Mr Wallace confirmed that he is the director of Alpine 182 Degrees Limited, Applicant for the renewal of On & Off licences issued 30 April 2020. He is also the Applicant for the renewal of a Manager's Certificate issued 21 January 2021. The Chief Licensing Inspector, Police and FENZ opposed all applications. The Medical Officer of Health opposed the renewal of the On and Off licences.
- 69) Mr Wallace did not submit a Brief of Evidence for the adjourned hearing 31 May 2022. Mr Lange had brought the Brief for Mr Wallace to sign prior to the beginning of the hearing.
- 70) At the resumed hearing 1 August 2022 Mr Wallace read his Brief of Evidence provided one working day before the hearing, dated as received 29 July 2022 and after the required date for submissions. He also responded to cross examination. Mr Wallace did not have any witnesses for reasons provided in cross examination.
- 71) Mr Wallace's evidence primarily addressed:
 - (i) His background: a career in hospitality, working internationally for some years, returning to New Zealand for family reasons and to take up what he saw as an opportunity - the Springfield Hotel;

- (ii) Initial licence: the 3-6 months assistance from the previous owners did not occur. He traded without a licence and was directed to cease trading. He closed for 5 weeks for renovations and until a temporary licence was acquired;
- (iii) Unforeseen challenges and poor health during the first 12 months: he accepted administration errors occurred, including with temporary authorities. He had health issues. Covid impacted the tourist industry. Staff issues included dishonesty. There were no major incidents or fights, drink driving or domestic violence, and no confirmed neighbour disturbance;
- (iv) Improvement of trade: trade improved with food offerings, 6 months later becoming what he regarded as a vibrant country pub. Recent provision of a courtesy coach, investment in refurbishing and developing the hotel;
- (v) Operating in accordance with the objects of the Act: in paragraph 27, Mr Wallace said that the sale and supply of alcohol was undertaken safely and responsibly, and the harm caused by excessive alcohol minimised;
- (vi) Notifications: he accepted notifications should have been handled better. Issues with initial notifications to appoint Temporary and Acting Managers rested with him;
- (vii) Obligation to comply with NZ licensing requirements: the obligation to comply with the Act rested with him;
- (viii) Agency contact: he compared operations to his experience in Australia. Here, he had more regular meetings with the Inspector than Police, discussing issues raised by the Police with the Chief Inspector about nine months ago;
- (ix) Infringement Notice: issued by Police for failing to comply with the conditions of his alcohol licence. On 23 January 2021, he left the premises at 3.40pm to go home. He was away less than 20 minutes. Two officers arrived at the premises. Tracy Tahuu was working, her husband and son were present. The visit was not handled well by the bar staff member. Senior Constable Craddock advised of a fine for failing to have a duty manager present, she considered this insufficient knowledge of the Act. He had not changed the duty manager signage. He had not known of a fine being issued from one strike. With his CCTV camera system and its coverage for monitoring, it would be standard practice in hotel chains and he believed sufficient for him to leave the hotel briefly to attend to Shelley and the baby – he considered there was a low risk of harm. Tracy was doing her LCQ. They had never had a licence check from Police during drop-ins;
- (x) Duty Manager coverage: his view is that Police apply the allocation of managers to the licensed hours. His is a total 60-70 hours of operation, allowing suitable coverage with two duty managers, about to increase to three. The Licensing Inspector's report 16 June 2021 commented that staff were trained and sufficient duty managers appointed;
- (xi) Noise complaints and Facebook posts: in 2020, there were 3 events for Porter's ski field staff on Monday nights. Aware of one noise complaint via Mr Johnston, he purchased a decibel metre;
- (xii) Evacuation scheme: he had prepared a scheme and conducted trial evacuations. There were issues in the scheme submitted;
- (xiii) His arrest for criminal charges: on 9 July 2021 he was arrested, 8 criminal charges. He subsequently pleaded guilty to 6 charges, sentenced in March 2022. An old building alongside the hotel had been set up as a grow room before he took over. He had 6 Cannabis plants there, using Cannabis for personal medicinal use. His partner was not aware of his growing Cannabis. Police located Cannabis, a small quantity of methamphetamine, MDMA, two glass pipes, and twelve rounds of .243 ammunition at his home address in Springfield. Shelley was in Australia. The ammunition

was from a hunting trip with his father. He regretted obtaining the methamphetamine (meth) and MDMA which were in the same bag. He consumed those while Shelley was away;

(xiii) Christchurch District Court sentence: Mr Wallace plead guilty to 6 criminal charges. Judge Gilbert sentenced him to six months of supervision and to complete an alcohol and drug-related intervention to the satisfaction of his probation officer. He was fined and had court costs;

(xv) Documents requested: items requested previously by the Committee were produced, including incident registers, rosters, temporary and acting managers notifications. Kathleen Roche, employed by the previous owners, did not have an employment contract. He was remiss in not giving her a new one.

Supplementary Brief dated 20 February 2023: matters raised on/after his initial Brief;

(i) The Licensing Inspector's supplementary brief 10 February 2023 said, *"the Hotel does not have a current BWOFF."* A "Notice to Fix" issued 10 February 2023. Mr Johnston noted *"Notices to Fix are issued when property owners have continually failed to take steps to secure a BWOFF."* They leased the property until the purchase was completed in November 2022 and did not deal with council matters or with any other professional outfit. SGS Building Services had been engaged to do the necessary work to get the BWOFF;

(ii) Police filed Tracy Tahuu's evidence in November 2022, after Mr Wallace had given evidence at the August 2022 hearing. Paragraphs 10-23 of the supplementary brief include at #17; *"I reject her statement entirely. They are simply not true."* He reflects at #21, that he *"probably should have defended our position as her allegations simply present a one-sided story."* They made a commercial/financial decision not to defend the proceedings before the Employment Relations Authority (ERA).

Cross Examination: Counsel - Mr Lange

- 72) Mr Wallace confirmed that he had provided a copy of the probation officer's letter recording compliance with the supervision and that documentation produced included the tool kit, Google reviews, timesheets for Kathleen Roche from 15 May until 17 August, but no employment agreement for her. Ms Roche was employed by the previous owners but *"it was remiss of me, with everything going on with life at that stage, I did not give Kathleen a new employment contract."* (transcript). Current employees now have them. As some items had not been provided earlier, time was given for the agencies to consider these and prepare any questions.

Cross Examination: Police – Senior Constable Craddock

- 73) Mr Wallace confirmed he was the sole director and shareholder of Alpine 182 Degrees Limited, operating the Springfield Hotel. They were leasing to buy the premises at 5675 West Coast Road, Springfield. They had the "paperwork" digitally. His chosen career path with an active busy schedule was not conducive to the family life he realised he wanted.
- 74) In response to further cross examination;
- (i) he believed he had prepared his Briefs mid-May prior to the last adjourned hearing, with changes since. The brief was not disclosed prior to the 31 May hearing as Chris (Counsel) and he was not able to meet until 4 – 5 days prior, when he provided all the information;
- (ii) he explained the reason for his Brief only being submitted the Friday afternoon prior to the hearing of 1 August 2022. They thought it in June, but Chris's court schedule meant the meeting arranged to review it was put off. This gave limited time for the parties to consider it. *"I acknowledge that it is a challenge, I believe my statement was submitted prior to 31 May, the initial one. I*

acknowledge you had limited time to review it.” (transcript). Ultimately the responsibility for ensuring the submitting of his Brief remained with himself, the Licensee;

(iii) asked if the Licensing Inspector would agree that he had respect for urgency and expectations around timelines, Mr Wallace thought there would be some restrictions given the timelines in submissions but since Malcolm Johnston had spoken to him, he believed they had been compliant;

(iv) he confirmed the hotel did not have a building warrant of fitness (BWOFF) and therefore no approved fire evacuation scheme. He had engaged SGS Building Services. A traffic management plan was also needed as the mustering point was across the road (State Highway 73) from the hotel;

(v) the decision not to defend the ERA proceedings for Tracy Tahuu was a decision by the business – by himself and Shelley. He said, *“we made a commercial and financial decision,”* and they did not attend mediation as they refuted Tracy’s claims. They saw the point of mediation as paying money. He agreed he could not prove that Tracy’s sister was the author of the Facebook message to Shelley;

(vi) in respect of his brief at point 56, Mr Wallace and his dad who had a firearms licence went hunting for a day and his dad stayed overnight and the ammunition was in a drawer in that room. He managed the hotel even with Shelley away by going that afternoon and coming back the next day;

(vii) Mr Wallace now understood the requirements of Temporary and Acting Managers (point 31). Asked about 2 further notifications not sent to Police, he wrote and signed them, and he believed Shelley sent them to Police and Food & Health. Asked why notifications were not sent to the Police address for two years when it clearly showed the Police address on the form, and within the 2 days as required in the Act, his response was - *“Something that has been an oversight.” (transcript);*

(viii) noise complaints for the hotel prompted the purchase of an electronic noise meter. Mr Wallace where he thought the complaint came from - an ex-employee who lived 100 metres away. Malcolm Johnston explained the complaint process;

(ix) there were three events in 2020 for staff from the Porter’s Pass ski field. The video on Facebook was made. Mr Wallace worked that night, and they were visited by Police. Shelley did Facebook;

(x) in the first 6 months the officer would come most Fridays and he knew most in the bar. He expected more Police presence saying that the Licensing Inspector visited more (points 31, 32). The Constable pointed out that a number of those were to remind him to complete and file paperwork. He agreed he would not expect the Police to attend when the Inspector was visiting about that;

(xi) he confirmed that James Bennett did not hold a manager’s certificate when appointed acting manager to cover leave 26 February 2020 until 9 March 2020. Availability made it difficult to appoint an acting manager for 14 days, but it was necessary. James had never held a licensing qualification, but he had worked at a bar in town. Mr Wallace said that he would not think Police should have been concerned if that person was of suitable character and experience even without an LCQ qualification for potentially 5 shifts over the 2 weeks;

(xii) Constable Craddock raised specific issues about the times when there were no suitable qualified staff managing the premises, including - Mr Collins had not received any training around serving alcohol, the numerous 231 notifications at issue, Police receiving a new managers certificate from Shelley five months after she had been appointed as a temporary manager. Mr Wallace said he would have to consult but they had qualified staff. The Constable questioned this statement as he had sought Shelley’s appointment as a temporary manager 5 months prior to her receiving her manager’s certificate;

(xiii) When the Senior Constable carried out an inspection 23 January 2021, Abi was the only person present. In his Brief Mr Wallace stated that on 23 January 2021, Tracy was working, her husband and son were present, and he had left 5 minutes before. After receiving the hearing paperwork, Constable

Craddock contacted Tracy who said she worked for two hours that morning cleaning – she was employed at that time as a cleaner. Mr Wallace said perhaps he was remembering wrong. He started training Tracy in the bar two weeks before 23 January. He made a mistake. He was surprised that the Constable and her colleague did not leave business cards when she got Abi to ring him and say that she was in the premises. Via Abi, Constable Craddock had asked him to return to the bar, but his reply was that he could not. He said it wasn't handled well on the day by staff, he thought Abi said he was shopping. The acting manager was prior to the phone call was Craig Collins and he was at the supermarket in Darfield. Constable Craddock then asked Abi to ring Mr Wallace and ask him to return. Mr Wallace's response was *"Yeah. Which is what I meant; she told some lies there. I was attending to the baby. I just left. She couldn't reach me immediately. As soon as I saw missed calls, I phoned back."* (transcript). Constable Craddock replied that her evidence is that Abi called him in front of her & Abi was talking to him on the phone. He then said *"It doesn't matter. I did not receive the phone call at all."* Constable Craddock reiterated that he was told on the phone she was there and she asked Abi to tell him to return. His response was he could not come back because he was attending to the baby. Mr Wallace said that he did not know if it mattered at that point; but when he spoke to Abi, Constable Craddock was not present and that was what was relayed to him;

(xiv) the Senior Constable stated that he could have confirmed she was present during the conversation as he had the cameras and audio. He had not checked the cameras. He did not put much credence on it other than they were at fault. He was frustrated as he thought the fine was unnecessary based on the extenuating circumstances and he had not changed the name on the board. The Constable's evidence is that he was angry and argumentative on the phone when she was clarifying the situation. She had said she would talk to her supervisor, if she was in error in issuing the infringement, she would get back to him. Her supervisor did not think she was in error hence she did not get back to him. Mr Wallace replied that he did not believe he was argumentative;

(xv) Mr Wallace accepted that he must have a duty manager present at all times during sale and supply opening hours, but he thought there should be leeway if there were extenuating circumstances and a manager was not present. He was frustrated on the phone because he did not put acting manager on the board. There was low to no risk at that time of day, they were pretty much an empty hotel;

(xvi) the Senior Constable said that his business relied on the sale and supply of alcohol, he was deemed to be a high risk. He had a go at her on the telephone when she did a monitoring visit. He was not having a go at her, in his experience he said that someone in her role would come during peak hours to make sure their systems and procedures are coping with the influx. He agreed premises he had worked at previously had not relied on the sale of alcohol. Flooding meant they had not attended SDC training the year before;

(xvii) the infringement fine was not paid initially;

(xviii) he had re-established the grow room sometime after Covid. Asked if it was standard to grow the six cannabis plants he had grown and he said that there were three generic types which reacted differently depending on how they were consumed;

(xix) Mr Wallace denied that Ms Watson knew about the Cannabis operation. He agreed she knew he used cannabis and she did not question where it came from. He used the baby's room to dry when Shelley was in Australia although no dry material was found in the spare room by Police. It depended on the life cycle of the plant. He also used methamphetamine and MDMA when he was at a low point, probably in the 10-14 days leading up to the police officer knocking on his door. He was charged with 8 offences. Poor decisions put him in that situation;

(xx) his On and Off Licence applications in 2019 and the alcohol management plan for front-of-house staff given to them on Friday stated all front-house staff had undertaken Serve Wise. Mr Wallace explained he had not completed this himself, Shelley had about 10 months ago and he did not think Tracy had undergone the training. Constable Craddock called Tracy and she did not even know what it was. He replied, *"well there you go."*

(xxi) the Senior Constable asked about Kathleen's evidence of his pushing her into housekeeping when she was injured. He said, *"I say rubbish."* Kathleen's evidence included that he did not pay her properly and he docked meal breaks. In answer to Kathleen's stating that he would smoke a joint and be drunk on duty – he would say she was lying;

(xxii) none of the writers of his support letters were coming along on his behalf, as Chris (Mr Lange) did not think it was necessary. Mr Wallace said that the person in support was a customer, he was unaware of the specifics they would face in the hearing, and it was not something he would discuss with customers. He did not think of bringing Tanya Spence along, but her latest letter was submitted;

(xxiii) he said the staff rosters provided were only disclosed on Friday afternoon as they had only sent them to Chris last week. Mr Wallace began providing the roster to Police in July 2021. He explained who Joel, Bridget, Georgie and Martin were and in January 2022 Tania. Mr Wallace confirmed that on 26 January Tania worked from 6pm until close and that those were usual hours for a housekeeper;

(xxiv) the Constable's evidence would include a 231-notification terminating the employment of Tracy Tahuu as a manager and Tracy's sick leave certificates from the doctor. The roster indicated Tracy was off sick on 19 January and provided a doctor's certificate to Mr Wallace. She disappeared off the roster on 24 January yet the 231-notification terminating the appointment was dated 13 July – why had it taken so long? Mr Wallace thought communication was delayed. She had taken a PG and could not be terminated. Tracy did not go to another job. He was not sure she was coming back until she left in July. Mr Wallace had also provided a roster showing Craig Collins from 12 July 2021, but he agreed Craig started February 2022. His computers were seized by Police for about four months. On their return there were issues;

(xxv) Craig told the Senior Constable he worked for free, and he had no employment contract. Mr Wallace explained Craig was on ACC, living on-site, he assisted with duties in the bar and was used when Shelley was away. Craig stated that he did not have any training - Mr Wallace said Craig would consider training as sitting down in a classroom, he had plenty of on-the-job training. He had not considered bringing him along;

(xxvi) he tested positive for Covid at 7.30am on 31 May. He wanted to attend, respond to allegations and acknowledge the areas. He did not speak with Craig when he tested positive, but he rang Malcolm, the Food and Health office and he left a voicemail for Chris;

(xxvii) there was no appointment or expiry date for his sister Michelle Wallace in the manager's register - he confirmed the dates May 2020 to August 2021 were correct;

(xxviii) there was no appointment date or cancellation, no certificate number recorded for Catherine Hunter - she was a certified manager who worked at the Highway Café with Charlie. He had no answer other than *"well, she started the same time as Charlie."* (transcript);

(xxix) Nikita was not on the form - they had not received her certificate, it was lodged;

(xxx) referring to the alcohol management plan he said he worked on with Shelley, Constable Craddock asked what SCAB training was. It was in regard to intox, but at that point in time he could not tell her what it was, his brain was fried;

(xxxi) he agreed the house policy stated that a duty manager was always to be on-site with at least one other staff member - depending on the shift, the demand and availability apart from Monday and Tuesday;

(xxxii) Constable Craddock asked if the ERA outcome for Anton Pearce in April reflected well on him. Mr Wallace replied that it reflected a situation. He did not agree with the decision. Anton Pearce had no grounds for the claim as he abandoned his duties. No, it did not reflect well, but it was not evident of the reality of the situation. His ex-brother-in-law, an excellent chef, admitted during the ERA hearing that he abandoned his duties on a Saturday afternoon. Mr Wallace did not have a payroll system and paid Mr Pearce cash.

Cross Examination: Chief Inspector – Mr Johnston

75) Further to Police, the Inspector asked what the SCAB acronym meant. Mr Wallace replied that it was a tool to help identify behaviour that might indicate intoxication or under the influence of drugs. When asked for clarification of the "A" that he indicated stood for "attitude", it was with help from the Inspector that he then said it was appearance.

76) Responses to further cross examination included:

(i) the Inspector and Senior Constable Craddock arrived at the hotel at 4pm on 31 May 2022, when Craig Collins was acting manager. In evidence, Mr Wallace stated he had provided training to Craig, but Craig said that he did not have any training. Mr Wallace said training to Craig and all staff included fire training and fire evacuation, mixing and serving drinks, identifying bad behaviour and intoxication. During the 31 May visit Mr Collins said the chef did not start until 5:30 pm. Mr Wallace confirmed chef Bridget Hayward started between 4pm and 6pm, usually at 4pm. All staff had been told that they were not to drink on duty including Craig Collins. Craig had told Mr Wallace that the half glass of beer next to him when they had spoken with him was run off from a recently changed keg. When the Inspector visited the premises recently, Craig was acting manager again. Craig now had an employment contract;

(ii) Mr Wallace confirmed it was his handwriting in the 8-question questionnaire at the end of the application for the renewal of his manager's certificate. The Inspector asked about the hotel designations. Mr Wallace explained there were two classifications essentially in their licence, restricted and unclassified. The Inspector said that he was unfamiliar with the word 'unrestricted'. The area where the leaners and the pool table were, was unrestricted, describing it as where families could be and children move around unsupervised. The Inspector believed it was an undesignated area. Mr Wallace agreed, his was Australian terminology. The Inspector and Mr Wallace had worked on the site plan particularly around the bar area. Mr Wallace confirmed the linoleum area about 1.5 meters from the edge of the bar is designated over 18's. The Inspector reminded him that this was referred to as supervised;

(iii) Mr Wallace needed prompting from the Inspector to provide the answer to the two planks of the object of the Sale and Supply of Alcohol Act. Mr Wallace required prompting again to explain when a minor could drink on the premises;

(iv) Mr Wallace explained the key points which should be included in a host responsibility policy. The policy was on the wall as you entered the bar;

(v) the Inspector referred to the ERA's determination for Anton Pearce provided as evidence by Police. He had read the determination, but he was aware that it found in favour of Mr Pearce. The Inspector calculated over \$13,000 was awarded to Mr Pearce and the Crown and asked if the moneys owing had been paid. Mr Wallace said that he had not paid the money owing and he had no reason

for not paying it. The Inspector read from paragraph 107 of the determination which stated - *"There are no grounds to defer the effect of these orders, so the foregoing amounts are payable immediately."* Mr Wallace reiterated that he did not believe the amounts had been paid and he had never seen that letter;

(vi) the Inspector read out a paragraph from Mr Pearce's determination; *"An employer is required to keep wages and time records in a compliant form. The employer must immediately provide access to or a copy of the time and wage records upon request by the employer for a person authorised to represent the employee. Every employer who fails to comply with these obligations is liable to a penalty imposed by the authority. Mr. Pearce's request for copies of all wages and slips on 15 October 2019, by itself and read in the context of his 14 October message, was a request for access to or a copy of his time and wage records. Alpine 182 did not comply with the Statutory obligation to provide access to or copy of the records."* Anton Pearce and the ERA were provided with the information, but the manner was not timely as they were on a manual payroll system, a diary. The records were not up to the specified standard and there was no formal payslip;

(vii) the Inspector referred to paragraph 70 - the request for time and wage records made by Mr Pearce's authorised representative Mrs Boyce. These were finally sent by email 3 January. The determination stated that Alpine 182 Degrees did not comply with its statutory obligation to provide access to or copies of the records to the representative. Mr Wallace's response was that Anton Pearce was his brother-in-law at the time. He reiterated that the payroll system was manual, involving handwritten payroll records which were in a diary. The diary was provided. The Inspector then referred to paragraph 71 in the ERA decision. *"On 7 September 2020, I directed Alpine 182 Degrees to lodge and serve the wage and time records by Monday, 21 September 2020. The direction was not complied with. On 24th May 2021, Alpine 182 was directed to lodge and serve remaining relevant documents by 17 August 2021. The date was enlarged until 24 August 2021. Alpine 182 did not lodge and serve any wages and time records."*

(viii) Mr Wallace could not comment on the dates exactly, but he thought they submitted photocopies of the hotel diary which had the initial 5 months' payroll records. He handed his diary over to the authority. The Inspector put it to Mr Wallace that it was over a year since the ERA requested that he produce the records and he had not. Mr Wallace replied, *"well ok,"* obviously he did not have payroll records for the time Anton was there. He took his diary for the resolution meeting. A month or two after Anton's departure a payroll system was installed;

(ix) Mr Wallace agreed the ERA finding was that he had breached section 65 of the Employment Relations Act by not providing Mr Pearce with a written employment agreement, but he did not agree with it. The Inspector rephrased the question asking if Mr Wallace agreed that the ERA found that he had breached section 65. It was not relevant whether he agreed with it, he was just asking if he accepted that the ERA had found an issue. Mr Wallace agreed and said he accepted that;

(x) the Inspector asked Mr Wallace if he accepted that the Employment Relations Authority found that he had breached section 130 of the Employment Relations Act by failing to produce records on time. Mr Wallace agreed and said he accepted that;

(xi) Mr Wallace accepted the ERA finding that he had breached the Wages Protection Act through unlawful deductions from Mr Pearce's wages;

(xii) in paragraph 75, the ERA stated that they found the breaches in relation to Anton Pearce were intentional. Did Mr Wallace accept that this was one of their findings. Mr Wallace replied No, *"I do not accept that it was intentional."* Mr Wallace stated, *"I am sorry Inspector, but I can acknowledge the finding of the letter, yes, but I do not accept them necessarily;"*

(xiii) Abigail Atkins submitted a statement to Police and then her Brief of Evidence. The Inspector referred to the statement to the ERA, paragraph 1; *"I worked at the Springfield Hotel in the kitchen as a cook under the employment of Blair Wallace for two years. During this time, I had endured multiple accounts of mental and emotional abuse from Blair."* Mr Wallace refuted the statement entirely and explained how he had mentored Abi and started her apprenticeship. He had been involved with training and coaching programmes in his hospitality career. *"It just did not quite fit. She had a great deal of potential. It would not be unreasonable to state that Abi has some behavioural issues regarding her behaviour at work."* He was not that type of person. The Inspector read from Abigail's evidence that she would be giving, evidence she had given to the ERA. *"Each time Blair asked if we could chat it was constantly leaving me in tears and frightened because of his behaviour. Blair would constantly yell and throw things around the kitchen and slam microwave doors. Blair would also belittle me, calling me names to my face. These names included you are a dick and you are so effing... stupid."* Mr Wallace refuted those claims. Mr Wallace denied that he had called Abigail names, sworn or carried on like that. The Inspector added; *"On numerous occasions, I witnessed Blair bully Tracy (Tracy Tahuu). Blair would bully Tracy which would leave her crying and doubting herself."* He said; *"yes, I comment to statements issued actually against me including this statement here."* Tracy was in tears many times at work, it was nothing to do with the treatment that she received from anyone at work. *"At no point in the statements is there a factual statement of what it is I'd supposedly done, said or when it happened."* The Inspector raised paragraph 3 in the second statement given to the Police. *"Often Blair would be unable to be found as he would leave the hotel and go home. Blair's name was on the manager's board meaning he had to be on the premises which Blair was aware of. Tracy and I were informed of what to do if a Police officer would ever show up when he was not there and it was to lie. One day, two officers arrived at the hotel when Blair was not there and asked where he was. I tried calling Blair numerous times, but he would not answer so I felt very uncomfortable and told the officers that Blair had just left to go and help his partner Shelley at their house and would be back shortly which was not true as he had not shown up all day. A while later, Blair came back to the hotel and was very mad at me because I had tried ringing him multiple times when he was in the shower. He told me that I was being over dramatic after informing him that I did not feel comfortable lying to the police Officers for him."* Mr Wallace's response was that no staff member including Abigail had ever been given instructions from himself or Shelley to lie to the Police. Her statement was a lie. He was on site. At 3.42pm he received the call from Shelley who was crying down the phone. He left and was not present when the Police arrived. He was back on site within some 15 minutes and Abi and Tracy were out the back carrying on about losing their jobs. He confirmed that this was the incident for which he received an infringement;

(xiv) Mr Wallace had discussed extenuating circumstances with Malcolm including a "what if" scenario regarding the camera system - if he left to attend to Shelley and baby, 400m away, for a brief moment, which he did that day. Malcolm said something like it would be okay when the business was not busy but to change the name to an acting manager. He did not change the name on the board to Tracy's that day. Tracy was present when he left. He noticed evidence stated differently - that Abi spoke to him while Constable Craddock was present, which was not true either. He had left his phone on the dash of the car;

(xv) in Tracy Tahuu's statement; *"Blair constantly smelled of alcohol. He had bloodshot eyes and generally a red nose leading me to believe he was always drunk or on drugs."* Mr. Wallace refuted the comment. He said *"it has been purported that I am some alcoholic, raging drug-taking employer who regularly abuses and mistreats his staff. No, that's not my behaviour at all,"*

(xvi) the Inspector referred to point 28 in the Abigail Atkins' Brief. *"While I was working at the Springfield Hotel, I saw cannabis on the table in one of the hotel rooms. I took a photo of this. I now produce a copy of the photo that I took."* Mr Wallace agreed that he had seen the photo and recognised the room - it was the Springfield Hotel and looked like the caretaker's room;

(xvii) asked if he attended the ERA hearing for Abigail Atkins, Mr Wallace replied that there had not been a hearing for her. Mr Wallace explained that Tim of ERA emailed him Monday of last week, requesting the submission of documents for the hearing by 28 February. He was then advised that the member was making his decision;

(xviii) Mr Wallace confirmed he had read Joel Innes's evidence. The Inspector asked for his comments on points 16 and 17, *"I witnessed severe outbursts of rage from Blair including him throwing tools across the room, shouting at top volume at staff, and ranting loudly about locals and business partners he felt attacked by. I witnessed him yell at Tracy and Abi and make them have mental breakdowns which resulted in an incredibly toxic place to work for everyone involved."* Mr Wallace replied he refuted it. He did not yell at people. Referring to Joel's evidence that after the raid and his being charged with drug distribution all the severe outbursts, throwing things, shouting, ranting loudly at staff *"doubled to a ridiculous amount,"* he said, it did not happen. Mr Wallace confirmed Mr Innes had two generic contracts, after Joel lost his copy in the floods, he was given another one;

(xix) the Inspector asked what paragraphs 30 - 32 of Mr Innes's evidence related to. *"On drug use, Blair was nervous one night and told me, 'you need to go now.' When I was working past midnight, I saw a white van pull up outside the pub with its lights out. He hinted to me several times that the business would have failed several times over if they were not selling drugs. I saw Blair take out a bag of white powder and put it back in his pocket when he thought no one was looking. He was nervous quiet pale and sweating."* Mr. Wallace did not recall the event and he refuted those statements. The Inspector said he further stated; *"He (as in you) would smoke weed and drink alcohol and talk in the shed for hours during freak busy nights when there was only me and one other staff member working. He would come back from his hours in the shed drunk, red-nosed, and pale. He was on something or all three."* Mr Wallace replied that it was a preposterous statement. It was their only source of income. He looked forward to Joel's testimony. The Inspector read further; *"Blair was drunk one time and offered to show me the grow room. I refused. He eagerly bragged about past drug use such as coke and ketamine. Blair admitted to me that if the Police had found a device they overlooked in the drug raid, he would be going away for years as it had the data for the lights in the growing room."* Mr Wallace said perhaps Joel had an overactive imagination, he did not recall any such conversation. The Inspector wondered how Joel would know about lights if no one had told him. Mr Wallace replied that he did not know when the statement was made;

(xx) Kathleen Roche's evidence on Zoom, described him as erratic, intimidating, and threatening. Mr Wallace would not describe himself as any of those. She also described them as good friends and something changed. The Inspector had asked Ms Roche who stepped in as duty manager when she had breaks including meal breaks. Mr Wallace replied rostered crossovers were scheduled on days when shifts were going to be more than 4 hours and meals were provided for working beyond 5 hours. His sister Michelle and mother Kirsty provided cover. Ms Roche stated she was docked for meal breaks that she never took. Mr Wallace said that she also gave evidence that she was not paid, so again that was not correct;

(xxi) He agreed the ERA determination for Tracy Tahuu found in favour of her. The ERA directed that \$28,000 be paid in full by 23 December 2022. Mr Wallace told the Inspector that it had not been paid and the reason was availability of funds to pay that amount. Had Tracy or the Courts had taken

any action to recover money - Mr Wallace replied - No, not yet. Then he said, sorry yes, just after new year he had received a visitation note from Lee, a court bailiff;

(xxii) the lease to buy the premises paperwork was digital, a paper copy could be provided the next day. He would bring the infringement receipt the following day – *“the \$280 fine, yes;”*

(xxiii) the hotel failed two Food Act verifications in 2022 as the kitchen floor was non-conforming. They intended to fix it in October 2022, but a contractor was not available;

(xxiv) Mr Wallace had been at the Springfield Hotel coming up four years. He agreed the evacuation scheme was not registered with FENZ because the kitchen floor was non-conforming for the BWOFF - a current Building Warrant of Fitness (BWOFF) was needed for FENZ to accept the scheme. Further drills had been carried out other than the trial evacuation during lockdown in April 2020, but he was not aware if the notifications were sent to FENZ. He understood the importance of having the evacuation scheme registered with FENZ. He was aware of fires in other Canterbury hotels. Mr Wallace was not aware of the result of the hotel visit by FENZ and Mr Gaskin in September 2022. The Inspector said that Mr Gaskin raised 5 matters for attention in his report and asked if these had been rectified;

- the alarm control panel that the alarm system for the evacuation scheme was reliant on did not appear to be operative - was that now operative? *That was in hand with SGS;*
- the windows on the upper floor used as fire exits required signage - *that was now there;*
- were the fire action notices in situ – *these were on the walls but did not meet the standard as they were not on the correct blue paper;*
- *the exit door on the upper floor now had a compliant bolt fastener, and the dining room had correct signage;*

(xxv) the Inspector referred Mr Wallace to Mr Gaskin’s report where he stated on page 3, *“Springfield HL does not have a current, stable and maintained fire evacuation scheme in place and FENZ believes persons using the premises may be injured or their safety is likely to be endangered in the case of fire.”* Mr Wallace had not seen that. FFP (Fire Fighting Pacific) had been to the hotel to quote prior to his ownership. Mr Wallace understood his responsibilities as a tenant in relation to a fire evacuation scheme. They had a training document. All staff have been briefed on their response in the event of an alarm or an emergency;

(xxvi) Mr Wallace found the cannabis cultivation room in the old town hall building beside the hotel about the time of the lease to buy in April 2019. He did not give any thought to dismantling it or telling the Police. He had used cannabis since he was 21, he stopped for a few years, then at 36, 37 he started and continued using it again;

(xxvii) the doctor prescribed several things for burnout and stress, not medicinal cannabis. He had not considered getting it legally. He used cannabis occasionally after work, the equivalent of one to two joints through a water cone. There had been six cannabis plants growing at any time and the yield varied. Mr Wallace had read Senior Constable Caird’s brief of evidence. He said at any given time April – June there were 6 plants growing and there were another 6 previously. He also extracted oil from plants;

(xxviii) in his evidence the half gram of methamphetamine and ecstasy were just a one-off and he got the pipe with the meth from a local. He had it for a week before the Police came.

Cross Examination: Medical Officer of Health – Ms Ensor

- 77) Mr Wallace had told the Inspector that further trial evacuations had been carried out. Asked when they were or was there just one trial, he thought the last one was November last year. He would need to check, there may have been 2 or 3.
- 78) Mr Wallace agreed the private message from Tracy's sister alleging Tracy had raised a personal grievance before, was anecdotal evidence.

Cross Examination: Police – Senior Constable Craddock

- 79) Senior Constable Craddock asked Mr Wallace about his initial application where he listed himself as owner. For the renewal, he listed Michelle and Peter as the owners. He confirmed he would provide confirmation of purchasing the property in November 2022. He would also bring along the fire evacuation document which he had taken Craig through, the next day. Shelley took Craig through the fire evacuation scheme. He went through the physical procedures as well and refreshed him on it after his statements to the Constable.
- 80) Responses to further cross examination include:
- (i) Mr Wallace confirmed that they had an expired BWOFF and no approved fire evacuation scheme. They needed an active BWOFF to submit. He would bring evidence of engaging SGS Building Services the next day. They also needed a traffic management plan to muster across SH 73;
 - (ii) in his supplementary brief, he referred to Tracy Tahuu, he just had not commented on Joel Innes. He thought he referred to Abi. He had never met Maryline;
 - (iii) the Senior Constable asked if he had read all the evidence that had been produced. Mr Wallace said he had read the statements;
 - (iv) in reference to paragraph 12, he agreed that he paid for Tracy to attend LCQ, her manager's certificate. He agreed he deducted this from her final pay as she did not complete the further 1 month's employment in her agreement;
 - (v) in reference to paragraph 20, *"We made a commercial and financial decision not to defend the proceedings."* He said the *"we,"* was the business - himself and Shelley. He did not defend the proceedings, he responded to the personal grievance that was filed. They had communications with Maryline initially;
 - (vi) Mr Wallace said he did not know if he had responded to the phone conference he was invited to attend. They did not attend. They did not attend the hearing. It was a commercial decision not to;
 - (vii) he said that they did reply to the personal grievance, they did not attend the phone conference. Their position remained the same, these were false claims from Tracy. Senior Constable Craddock asked if these were false claims would he not want to deal with them at mediation. Mr Wallace said that there was nothing to mediate through because they refuted the claims. Tracy made claims the mediator had no authority to address, he said the only point of mediation was to pay a sum of money to the employee;
 - (viii) he had never met Tracy's sister, adding that he could not categorically state who the author was.

Cross Examination: Committee

- 81) Mr Wallace had an opportunity to raise the employment matters from Ms Tahuu's affidavit and statement of problem that was taken to the Employment Relations Authority, but he did not do that. Asked if that was because he had no intention of attending or he did not see the value in commenting

- he replied that they could not produce a copy of her employment contract at the time. After going through it with Anton, he thought it the correct decision financially, but with the evidence discussed it was the wrong decision. In hindsight, they should have gone.

82) He responded further to cross examination, including:

- (i) Mr Wallace agreed that the ERA found that Tracy was paid below the minimum wage;
- (ii) they could not produce her contract with her rate of pay but said Tracy was paid above the award;
- (iii) was it correct that the verbal abuse, the shouting and intimidation of Tracy were accepted as correct by the ERA. Mr Wallace replied that the ERA had no other side of the story, therefore he acknowledged that was their finding;
- (iv) asked if the unjustified dismissal was accepted by the ERA, he replied it was an unusual decision in their view as Tracy was active in their payroll system until the ERA ruled that she had been unjustifiably dismissed, entitlements continued. Her employment was not terminated until the decision was made;
- (v) Mr Wallace said they provided no alternative response to claims by Jacqueline (Lesley) Learned and Joel of erratic and aggressive behaviour on his part and that the behaviour was accepted by the ERA;
- (vi) Tracy told the ERA of Mr Wallace's excessive drinking on the premises while serving behind the bar - was this was correctly recorded by the ERA. Mr. Wallace replied that it was not correctly recorded in his opinion, but he did acknowledge it;
- (vii) he provided the private Facebook message to Shelley from Tracy's sister. Tracy's sister was not appearing and had not provided any further statement. Mr Wallace's understanding of the relationship between Tracy and her sister was one of their being estranged at that stage. He agreed that with Tracy's sister not appearing there was no way of testing anything that she had said;
- (viii) neither he or Shelley had called Tracy and threatened her or her family by phone. He had not called Tracy since her employment had ceased. On day one Kathleen Roche had said he rang Tracy and threatened her. When things turned sour and Tracy lodged a PG, they told her to clear the gear stored in the old town hall. Shelley spoke to Tracy Tahuu's husband, Ernie, when he came to clear out the locker and said - in submitting all of Tracy's payroll records, was he not concerned that there may be some fallout in regard to the ACC she was receiving;
- (ix) Mr Wallace did not allow customers behind the bar. Asked if any customers had been behind the bar - he agreed that at times someone had tried to do that;
- (x) Ms Roche stated that she saw him smoking a joint outside the laundry by the fire with Anton, his sister, and another person. Mr. Wallace said he did not recall that occurring, he did not recall the fire by the laundry, and he did not typically smoke joints. Ms Roche's statement that he was drinking behind the bar or while working was not correct;
- (xi) asked if upstairs rooms 6, or 7, or 8 were used in any shape or form, for drugs, he replied to his knowledge, none of the rooms upstairs were used for drugs;
- (xii) asked if he wrote his brief of evidence and his supplementary brief, he said he wrote them and then they were "*compiled together*," by his solicitor;
- (xiii) Mr Wallace agreed the application form at 7 (d) was correct, he was leasing to buy in 2020. The agreement with the previous owners did not require him to keep up the BWOF. In the application form dated 21 April 2021 he signed that as the owner of the building, he provided and maintained an evacuation scheme, but he had not filled in when the building warrant of fitness expired. Mr Wallace did not recall, he said – "*oversight perhaps*;"

(xiv) after two failures he said his food verifications were now every 3-6 months until they addressed the issue of the kitchen floor. The checklist showed some missing dates on food items and batch testing not corresponding;

(xv) his reason for including paragraph 16 of his supplementary evidence about Tracy having had weight loss and knee surgery was the drastic change in her behaviour after that;

(xvi) he understood that he was required to have employment contracts for employees and to produce the records that were asked for by the ERA. He was reluctant to attend mediation as it was his view that he was spending time and resources on things that were untrue and mediation communications do not carry through to the ERA;

(xvii) he described his management style as being consultative, creating a comfortable environment, certainly not yelling or swearing at staff, hospitality was about the atmosphere people drink and dine in;

(xviii) Mr Wallace agreed that observably intoxicated patrons had come into the premises. He described the courses of action, from asking them to leave or denying service, to allowing those who were borderline or coming with a group to dine, to stay and to monitor behaviour. It was up to the duty manager to determine intoxication and the duty manager filled in the incident book. The information was used to educate or defend;

(xix) they had not issued any official trespass notices. Some individuals in the community were not welcome due to their behaviour - he banned rather than trespass a male for 3 months last year because of his conduct in the bar;

(xx) asked if there was anything he would like changed in the LAP, Mr Wallace referred to individual responsibility. Asked what in the LAP impacted most on his business, he replied all of it was an impact on the business;

(xxi) the courtesy van was used Wednesday to Sunday, but primarily Friday evening and Saturday. The greatest part of their income, excluding accommodation was from Wednesday (stag) night and on Friday from 4.30pm;

(xxii) he explained the real test for suitability for an applicant for a licence as he saw it - describing how his business could contribute to a safer and more respectful environment in Springfield - a daily management plan, the courtesy van, communicating a closing time and ensuring patrons had a ride home, that they do not drive if they considered them intoxicated;

(xxiii) the last time the duty manager listed was not on the premises was the Saturday afternoon he left. He agreed there were times the bar was open and there was no chef on duty - when the chef was sick or had not arrived on time. The kitchen was busiest Friday between 5.30pm and 9pm, Wednesday between 6pm and 8.30 and Saturdays and Sundays;

(xxiv) Mr Wallace had numerous reminders from the Council and the Licensing Inspector about the lack of timeliness with his applications. He could not remember if the renewals of the On and Off licences were submitted within the time frames stated in the Act. Mr Wallace was reminded of the help from the Inspector, the reminders from Council, Mr Charlton from the Council writing to him about his applications not being received and the stated timeframes in the Act. Mr Wallace became confused with the licensing payment in his response – was that for the temporary authorities;

(xxv) he was told this related to the renewal of his On and Off licences. He believed it was 20 working days prior to the licence expiry - had he submitted them 20 working days prior to the expiry. He replied, yes, they did - he believed they submitted them in April. Told that he had submitted them on 21 April 2021, but they were to expire on 30 April, Mr Wallace replied that he did not submit it on time then;

(xxvi) they had not been submitted on time as there was some challenge to pay it and he said they communicated that. Had Mr Wallace applied for a waiver. He replied that he had not. When asked what should have happened as he had not applied for a waiver, Mr Wallace replied that in the Act it says 20 days before or you risk your licence being cancelled. They did communicate regularly with Food & Health and Mr Johnston, including emails;

(xxvii) Mr Wallace agreed he used the 90-day trial period with staff. In most cases his employees signed their contracts before they started. Tracy's employment pack was provided but it took some time to get the signed agreement;

(xxviii) the ERA determination for Mr Pearce found that his business did not keep the required wage records. They now had the i-payroll system and employees could access that. How had he kept accurate records of balances and rates for service-related payments like sick leave, bereavement leave and holiday pay if they were not keeping track of their employees' entitlements and hours. His said they had payroll records from signed time sheets from all employees and diary notes regarding payment. He said they were not deemed suitable. When asked who kept track of what employees were owed by way of sick leave and when that applied, the same with bereavement leave and holiday pay – Mr Wallace said it was approximately 100 days before they had a payroll system. His mother did the payroll and recorded it in the diary. Most of the staff at the time were casual employees. He explained what a casual employee meant to him. Did he provide an employment agreement for each and every time he brought them in? He replied, No. He would bring a copy of the casual agreement;

(xxix) he said it was acceptable for a duty manager to be cooking in the kitchen and out of view of the bar when it was not busy;

(xxx) in November 2021 Mr White advised that he was doing all the renewal applications, but they had stopped using him. *"Since that time, they haven't had the need for his services."* (transcript). Recently they had decided to use Corcoran and French's services administration;

(xxxi) Mr Wallace said Shelley was not aware of the drug paraphernalia and drugs in the kitchen cupboards at their house as she was overseas for seven weeks. He cleaned it all from the house, he left nothing behind. He told the Police they would find some cannabis in glass jars in the top cupboard in the kitchen and there was stuff on top of a port-a-cot. Police found items in the bedside drawer. The fan system would not have existed in their home if Shelley had been home. Was it alright while she was away? It was not okay, but he was using at home. He was not growing at home;

(xxxii) Mr Wallace confirmed he was instructed by the Police in April 2019 to cease trading until he had a TA. The previous Inspector had called him. They ceased trading immediately. He had an agreement with Ashley Richardson, not in writing that she would stay on as duty manager while he settled business affairs in Australia. The intention was to trade under her licence. Things changed;

(xxxiii) with the exception of the period of time when they traded without a licence in effect, in his view he had demonstrated the level of knowledge and experience to manage the premises within NZ law, including the Sale and Supply of Alcohol Act. He agreed the Employment Relations Act came under law that was relevant. Asked why they should have confidence and trust in him going forward when one considers the track record that he had to date - he replied on trust and assurance, he thought prior to the criminal convictions that he was charged with, he had the best intention to do things correctly. But there were examples exhibited in here, of matters around authorities that were not timely;

(xxxiv) he was reminded suitability considered past compliance, adherence to the law, the requirement to consider future risk, looking at past and present. He was the sole owner and director

so the buck stopped and started with him – the Committee could only evaluate what they had before them. How had his actions demonstrated a full working knowledge of the Act so that they could have confidence in him? Mr Wallace replied that there were some issues that were avoidable and others that were not avoidable. He accepted the initial ones that were avoidable. He referred to his poor health during the first year. He has now engaged professional services. Reminded that the issue was not just his initial trading and the lack of a TA, there were also employment relationship issues. He agreed, stating that they had been ruled on. There were issues with FENZ, with the licensing Inspector, the Police, and Health because they have opposed, and he had a bailiff on his doorstep. Mr Wallace agreed and then stated again that the employment issues had been ruled on. He did not know if the Inspector and Health had any evidence to present that day. He was confused about the opposition;

(xxxv) he said that the suspension of the On and Off licences on 3 June 2021, was for no drinking water and non-payment of annual fees. The fees were a timeline issue. He could not comment on no drinking water as they had a drinks station that they stock regularly. He agreed something seemed to have gone awry;

(xxxvi) those involved in the dishonesty issues were no longer in their employ (#21 in his Brief);

(xxxvii) Mr Wallace was asked about the effects from alcohol he saw during the Monday night parties. They happened on 3 occasions with the Porters Pass ski group about a year and a half to two years ago and they did not happen anymore. The Facebook video was intended for those occasions;

(xxxviii) Mr Wallace had a pending personal grievance from Abigail Atkins. He had been to mediation which did not work, and the matter was going to the ERA. Mr Wallace confirmed the Labour Inspectorate had not visited the premises;

(xxxix) current duty managers were Nikita Harrison, Shelley and himself. Craig Collins had completed his LCQ and would be applying for his manager's certificate;

(xxxx) Mr Wallace thought that Anton's and Tracy's cases with the ERA were financially driven;

(xxxxi) setting up a business in NZ, standing outside and looking at his business operation and with his background and experience in the hotel industry, how would he judge his performance and how well he had kept up with statutory requirements and administration. Mr Wallace would reflect on administration timelines, the daily operation of the business, the service delivery and safe supply of alcohol, the dining environment, and the transition of the business from a major beverage split to a more even split with food and into a family friendly place to dine. He had created a destination;

(xxxxii) at the time of starting the business he "*was toast*," (*transcript p.142*). He did not consider the demands of a small business to be what they were in reality. Asked if he was naïve about the requirements, he would use the word, *demands*. He agreed he and Shelley had invested a lot in the business. It was their sole income;

(xxxxiii) he agreed he was finding it difficult to answer questions – they were "*rightly stressed and concerned*," as they were in a hearing about whether they would be able to continue. A tremendous amount of information was presented. His personal view was that much of it was not "*necessarily relevant to now*," because it was "*not present*," and it was "*not forward looking*." But a lot was relevant. He understood the need to assess suitability and that depending on the conduct, off-duty conduct also reflected on suitability;

(xxxxiv) the Committee said that in relation to suitability there seemed to be a pattern; Mr Wallace accepted there was information about assurances made to the Licensing Inspector that had not been carried through, the behavioural pattern occurring included notifications, submitting various requirements – in licensing matters, FENZ, BWO and employment relations. He accepted what was

said. His top 5 did not include administration and that type of thing. He accepted what was being said, they have engaged professional help for administration;

(xxxxv) in respect of the 5 matters raised by FENZ as needing to be addressed, Mr Wallace said that the alarm system was "*in hand*." The problem with the fire alarm and while it was not fully functional, if there was a fire the alarm would sound but not switch off. Accommodation rooms offered, also had a manual smoke alarm;

(xxxxvi) resource and contract availability impacted on work required to be done. He said that the hotel would need to close for 12 days minimum as parts were sinking and the hotel needed to be jacked up. He had a contractor.

- 83) Questioned about the engagement of the law firm, the ability to pay and the owing of moneys from ERA decisions, Mr Wallace said the law firm could be paid in instalments, but the ERA needed \$26, 000 in one hit and that had not been paid. Hence the contact from the bailiff. He acknowledged it was something they would have to do.

Re Examination: Counsel - Ms Kaur

- 84) The photo that the Inspector had shown him where the cannabis was sitting on a table looked like their room on the ground floor of the hotel where the previous caretaker had lived. Mr Wallace described the caretaker's relations to Ms Atkins as quite friendly. (*transcript, p.155*).
- 85) Tracy Tahuu started with them some two and a half years ago as a cleaner. She had not worked in a bar before but progressed to bar work about a year later. Tracy offered to do training shifts after her housekeeping shifts. She went well, gave up housekeeping and became a duty manager. She was a good employee overall, really keen to work, friendly with Shelley, staff, and himself. Tracy staid she was winging it and that she had not been given any training. He said that he had given Tracy extensive training and guidance including front of house. In the last 6 months, Tracy had some personal issues, and she became emotional, slow.
- 86) Mr Wallace agreed that the findings for Anton Pearce were confined to wage and time records and no employment agreement and Ms Tahuu's claim was not defended.

EVIDENCE AND SUBMISSIONS OF THE AGENCIES

Evidence of the Police: Senior Constable Craddock

- 87) Senior Constable Craddock was sworn in and read her Brief of Evidence. She has been with Police for 15 years and the Alcohol Harm Prevention Unit for 9 years, holding the alcohol licensing portfolio for Christchurch rural.
- 88) On 14 April 2019, she had an email (**EXBT GC01**) from Senior Constable Andy Grant at Darfield Police Station. During a visit to the Springfield Hotel, 12 April, he found there were new operators and contacted Selwyn Licensing Inspector, Helene Faass. They later told Blair Wallace, the new owner, that he must cease trading until he had a temporary authority (TA). Prior to new licence applications being submitted to Police 21 January 2020, there were 4 temporary authorities in 9 months to trade off the base licence. This reflected negatively on suitability, especially in view of the Applicant's and his partner Shelley Watson's extensive industry experience in Australia. Selwyn Licensing Inspector Malcolm Johnston advised that he had to encourage and assist Mr Wallace with their applications, including having to go to the premises in person.
- 89) Further evidence included:

- (i) on 16 September 2019 a 231-notification received, Shelley Watson appointed as a temporary manager covering sick leave. A new managers application was not received within two working days after this appointment as per section 231(2) and per the instructions on the form;
- (ii) the managers appointed in the new On and Off licence applications received 12 February 2020 were M. Wallace, K. Roche, and Shelley Watson. These applications dated and signed 5 December 2019, listed Ms Watson as a temporary manager. A new Managers Certificate application for Ms Watson was not received within the required two working days as per s.229 (2) and per the instructions on the form. Refer **EXBT 3 and 4**;
- (iii) 7 February 2020, a 231-notification appointing Shelley Watson as acting manager was received, advising additional duty manager - not a reason under s.230 to appoint an acting manager. The notice was not sent directly to the Police as per s. 231 (2) and per the form. Refer **EXBT 5 and 6**;
- (iv) 24 February 2020, a 231-notification appointing Blair Wallace and J.Bennet as acting managers, advising for both - "*Shelley going on holiday.*" The acting managers were not filling in for an absent full-time manager, as Ms Watson did not have a manager's certificate The notice was not sent directly to the Police as per s.231(2)(b) and per the form. Refer EXBT 7, 8, and 9,
- (v) 12 March 2020, a 231-notification appointing Shelley Watson a temporary manager and the termination of Mr Wallace. The notice was not sent directly to the police as per section 231(2) and as per the form. Refer **EXBT 10 and 11**;
- (vi) over five months later a new Manager's Certificate application was received for Shelley Watson. This application, received 10 March 2020, was dated and signed 15 October 2019. Refer **EXBT**. The significant delay in providing the application to the police and breaches of appointment of managers reflected poorly on Mr Wallace as a licensee and also on Shelley Watson as the duty manager applicant;
- (vii) in August 2020, the Constable viewed the Springfield Hotel Facebook page and a video posted, showing a Monday Night party. Mr Wallace is heard saying "*this is a typical night at Springfield Hotel.*" After showing the main bar area, he moved into the dark, smoke-filled restaurant where Loud DJ music was playing, and the area was being used as a dance area. Mr Wallace moved into the kitchen saying, "*typically concerned when the kitchen is very smoky but not tonight eh Chris. There is no problem here. A wee fun Monday night in Springfield.*" Video played to the Committee, refer **EXBT 13**;
- (viii) Police were aware of anonymous complaints received by the council over noise, parties, and drug taking at the Springfield Hotel;
- (ix) on 4 September 2020, on Springfield Hotel Canterbury Facebook there was an advertisement stating, "*Book tables Sunday and Dad's first pint is on us.*" This type of advertising externally from premises, including social media, was a breach of s.237(1)(d) of the Act. Refer **EXBT 14**. On 20 November 2020, the hotel Facebook advertised "*Publicans Shout. Grab a beverage and a sausage. Sides on us.*" Copy of the advertisement produced;
- (x) in the new On-Licence application submitted in 2020, under 11(f) Mr Wallace says - ensure noise is restricted at all times and under 2(c) - to fully comply with s.237 of the Act. It reflected poorly that there was loud music during the weekend and advertising of free alcohol when in his application he stated that he would restrict noises and comply with s.237;
- (xi) the application for the renewal of a Manager's Certificate was received by the agencies 18 January 2022 following the council's Christmas closedown period. The Police and Inspector reported in opposition 2 February 2022;

(xii) on 23 January 2021, at approximately 3.44pm she and another officer entered Springfield Hotel to carry out a licence check. Two male patrons were in the front of the bar consuming alcohol. The duty manager displayed was Blair Wallace. The female employee behind the bar told them, Mr Wallace was not there, he was at home with his baby;

(xiii) the employee told them Chris Roberts was acting manager, but they could not speak to him as he had gone to the supermarket. The Constable said that a manager had to be on duty when the premises were open for the sale and supply of alcohol and two patrons were present and drinking. She confirmed that she would like Blair to come back to the bar and the female made a phone call to Blair. She said Blair could not return to the bar as he was attending to his baby. Police left;

(xiv) in the 2020 new On-Licence application, Mr Wallace had put down under question (e), *"provide duty manager at all times."* Not doing this when open for the sale and supply of alcohol and patrons present drinking was a breach of s.214. As a result of the breach, Senior Constable Craddock issued Mr Wallace with an infringement for failing to comply with conditions of his licence;

(xv) Mr Wallace called the Constable after he received the infringement. He argued the fact that friends were drinking at the bar when they conducted the check. She explained that it was irrelevant who the patrons were as he was open for the sale of alcohol, and they were drinking alcohol. She explained to Mr Wallace that he had breached his licence when she and Constable Thiele visited, and the infringement was unavoidable. There was no excuse for not having a manager on site, especially for a premise that relies solely on the sale of alcohol as a primary income. Mr Wallace had gone home to attend to his baby, and he could see the bar through remote CCTV cameras with audio. He had been told by Malcolm Johnston that it was okay to pop out for a short period of time. She told him he may have misunderstood what Malcolm had said. Mr Wallace then argued with her about doing a monitoring visit at that time of day. Under the Act they may, at any reasonable time, enter and inspect any licensed premises to ascertain whether the licensee is complying with the Act and the conditions of the licence. Blair then went on to say that the girl behind the bar had told her the wrong thing and was scared. He was getting angry on the phone, he was argumentative, repetitive. She said that she would speak to her supervisor and get back to him if she had erred in issuing the infringement;

(xvi) on 6 April of 2021, the police received a 231-notification appointing Tracy Tahuu as acting manager – as *"additional manager."* Under s.230, not a reason to appoint an acting manager. The notice was not sent directly to police as per s.231(2)(b) and per the form. Refer **EXBT 16 and 17**;

(xvii) on 29 April 2021, the On and Off renewals were received. In the application only Blair and Tracy Tahuu were appointed managers. Beside Tracy's name, it had *"currently acting but will apply for a managers licence once completed."* Refer **EXBT 18**;

(xviii) on 12 May 2021, Constable Croucher, Darfield Police carried out a monitoring visit at 8.20 pm. Tracy Tahuu was the named duty manager. When she said she had passed her duty manager licence but was waiting for the number, Constable Croucher pointed out that she had told him this the last time he had been on the premises. A premises report was submitted, refer **EXBT 19**;

(xix) 14 May 2021, Ms Tahuu was appointed temporary manager, *"additional manager."* Under s. 230, is not a reason to appoint a temporary manager. The notice was not sent directly to the police as per s.231(1)(b) and as per the instructions on the form. Refer **EXBT 20 and 21**;

(xx) 18 May 2021, an application for a new manager's certificate from Tracy Tahuu, outside the two working days of the acting manager appointment 14 May 2021. Under s.258, a licensee who fails to appoint a manager as required by ss.212 and 213 and ensuring that ss. 215 and 231 are complied with, commits an offence;

(xxi) 20 May 2021, the Senior Constable opposed the renewal of the On and Off Licences based on the numerous failings for the appointment of managers, limited knowledge of the Act and insufficient qualified staff. Refer opposition report, **EXBT 2**;

(xxii) during June, she was notified that the licensee had failed to pay the annual fees after he was contacted by email and phone calls reminding him of the expiry. Allowing the premises to close due to failure to pay annual fees on time reflected very poorly on the Applicant;

(xxiii) on 9 July 2021, she was advised that Blair Wallace had been arrested and charged with eight offences. Seven of these offences were under the Misuse of Drugs Act 1975 and were imprisonable if convicted. One offence under the Arms Act 1983 was fineable only. The majority of the alleged offending took place at the Springfield Hotel but also at the Applicant's home address which he shared with his partner Shelley Watson. On 30 July 2021, a supplementary report was provided, outlining Mr Wallace's arrest and charges. Refer **EXBT 23**;

(xxiv) 11 August 2021, police received a 231-notification appointing Shelley Watson as a temporary manager, with the reason, "*application ready to proceed.*" The notice was not sent to police as per s.231(2)(b) and as per the form. Refer **EXBT 24 and 2**;

(xxv) on 8 March 2022, Mr Wallace was convicted and sentenced on six charges. Refer **EXBT 26**, a certified copy of his convictions. Senior Constable Craddock requested a copy of the Judges sentencing notes in March. Judge Gilbert consented to the transcription and release of those. Refer **EXBT 27**;

(xxvi) 31 May 2022, after the hearing was adjourned when Mr Wallace tested positive for Covid, Malcolm Johnston and she were directed by the DLC to conduct a premises visit to the Springfield Hotel and view various records. They entered at 4.13pm. The named duty manager was acting manager Craig Collins. One patron was inside drinking;

(xxvii) Mr Collins' right arm was in a brace with bandaging. He demonstrated that he was able to work with a broken arm. Bridget Hayward was working part-time. He worked voluntarily for 15 – 20 hours with no set roster. He confirmed he was not getting paid. His partner Angel Spence was getting paid as a cleaner for 20 – 30 hours per week and she was on a contract;

(xxviii) they asked to see the record of managers required under s.212 of the Act. Mr Collins could not find that or the incident book which were usually in the bar. They found an Off-Licence toolkit and opened it to find that every page was blank. Refer **EXBT 28**;

(xxix) he had last seen Mr Wallace on Sunday. Blair, Bridget, and he had worked Saturday night. Three patrons entered the bar and Mr Collins, without speaking to them, poured each a pint of beer. No transactions took place. She noted a pint of what appeared to be half-consumed beer by the till on the staff side of the bar. Mr Collins was sweating and appeared to be covering by trying to say the right things in response to their questions;

(xxx) at 4.24pm, the kitchen lights were off and the kitchen was closed. If she ordered food, he would cook something. It was clear that it would take some time to heat up and turn things on, therefore food was not readily available;

(xxxi) it was of concern that Mr Collins was the only staff member present. If he had to make food in the kitchen, out of view of the main bar, he would not be able to carry out his manager duties;

(xxxii) he told Mr Johnston that he had not been shown an evacuation plan, eleven rooms were available for accommodation. He had not been given any training around alcohol. Shelley was going to take him for training when she got back from Australia at the end of his appointment as an acting manager. The Constable was shocked by this because he was an acting manager at premises where the primary income was the sale of alcohol. He was alone in the bar with four patrons, no chef, had

no training from the licensee, who he said had worked with him on the weekend, and no training from the operations manager before she put him in the role of acting manager in her absence; (xxxiii) he had been helping out voluntarily for a year, further shocking her as he had not been given any training either around alcohol or fire evacuation, which was important with the hotel's accommodation;

(xxxiv) they asked Craig if he could ring and ask Blair where the management log, the toolkit and the incident book were. He rang but there was no answer. He rang Shelley who said that Blair had taken them to Christchurch for a meeting. They went to the home address – there was no answer. **Refer EXBT 29;**

(xxxv) after the hearing adjourned, she was informed of the ERA decision from 22 April 2022, between Anton Pearce and his employer, Alpine 182 Degrees Ltd. Detail of penalties, refer **EXBT 30;** (xxxvi) 13 April 2022, 231-notification sent to Police with the termination of Tracy Tahuu as manager, effective 13 July 2022. By email, Ms Watson advised Tracy had abandoned her duties, it was evident she would not be returning. On advice from Malcolm last week - termination of manager. Refer **EXBT 31 AND 32;**

(xxxvii) she contacted Tracy Tahuu, 28 July 2022, as she was certain she had finished up at the start of the year. Tracy went on stress leave in January, providing a medical certificate to Shelley and Blair. Shortly after this, she lodged a personal grievance (PG). She was scared of Blair, his violent outbursts, his bullying. Shelley and Blair told her not to go back to work because of the PG and asked for the keys back. Medical certificate and report for Tracy Tahuu, refer **EXBT 33 and 34.** 25 November 2022, the ERA determination for Tracy Tahuu was received. Refer **EXBT 35.**

Cross Examination of Senior Constable Craddock

- 90) In response to Ms Ensor, the Constable explained that an incident book was not a requirement under the Act, but it was encouraged for recording sale and supply of alcohol issues. Normally this was where cutting someone off, removing someone, trespassing someone, would be recorded.
- 91) In evidence they had heard that Shelley and Blair drink a lot. In the Constable's experience Licensees were encouraged to look at how much regular drinkers were consuming because they do not show signs of intoxication – but could blow 4 times the limit.
- 92) Constable Craddock was shocked when she understood the amount time Mr Johnston had spent obtaining applications from the Applicant. She was not aware of any other licensee requiring that level of engagement and assistance, especially with Mr Wallace's confidence and experience. After the first year of trading, he was not complying with simple requirements under the Act and he did not have enough staff, hence her opposing the renewal application. To hear after the fact the number of times the Inspector had to go out there and pretty much fill out the application for him was something she had never heard of happening in the long-time she had been doing alcohol licensing. It raised red flags for her and the Police.
- 93) Further cross-examination included:
- (i) evidence Paragraph 68, in respect of the phone call where Blair was getting angry, argumentative, and repetitive, Sergeant Dave Robertson agreed with her course of action. It was consistent with other inspections, particularly when the primary income is the sale of alcohol;
 - (ii) she agreed no other licensees had become repetitively angry or argumentative with her in the last 8 years, it was unusual;
 - (iii) 1 August 2022, she was surprised by his response that his brain was fried when asked about the SCAB tool. As a hands-on licensee and manager, it was their bread and butter to know that;

- (iv) she had not previously had a licensee go through the ERA or had any licensee/licensed premises that had encountered that many complaints from the staff;
- (v) she was not aware of any other licensee in NZ involved in cannabis cultivation to the extent heard in Senior Constable Caird's evidence. It had not come up at Police national alcohol conferences she had attended;
- (vi) she was not aware of any licensee having so many serious convictions while they were trading;
- (vii) for Police, convictions and records are amongst a range of things accessible in the national database for suitability of managers and/or licensees, for s.105(1)(j) criteria. That might lead to an interview and to considering applicant attitude;
- (viii) systems, staff, and training were to ensure compliance with all laws;
- (ix) in her opinion Mr Wallace does not exhibit the required attributes to be a certified manager or licensee;
- (x) an inspection was documented only when an offence occurred. She did not know how many visits there had been to Springfield in the last 12 months. Resource was short for visits during Covid. Premises in general were not checked as often or a frontline officer would focus on disorder and general policing, not licensing detail – they play a preventative role;
- (xi) Constable Craddock confirmed to Counsel that by email 14 April 2019, Senior Constable Grant after a routine check at the premises, advised there was a new owner.

94) Further cross examination by Counsel included:

- (i) the Constable confirmed the first licence was granted in 2020 with 4 temporary authorities prior. She had not experienced that before in lodging a new licence. There was no evidence, other than his not doing it, as he had been up and running before he lodged the first TA and just kept lodging them;
- (ii) the Constable said that s.231 notifications were processed by the administrator and for a renewal, she checked the database, initially after the first year of trading. She found Police had not received them directly, they came through the DLC administrator. Counsel said Mr Wallace accepted the notifications could have been handled better;
- (iii) the Constable's Brief at paragraph 20, and also exhibit 12, was about not receiving Ms Watson's new Manager's Certificate application within the required 2 working days after the appointment. Her evidence for 15 and 16 September 2019, showed receiving a temporary manager but not receiving a Manager's Certificate application. Counsel and the Constable discussed various exhibits, filing dates, evidence, a further Temporary Manager appointment. The Constable said that the On/Off licences applications had Ms Watson as a temporary manager, they did not receive an application for a new Manager's Certificate (para 19) within the required 2 working days. For the s.231 notification stated effective 10 February 2020, termination 18 February 2020, she applied within 2 working days. There was confusion around documents and dates including the Inspector's brief at para 66. Manager's Certificate applications go to Police from Council;
- (iv) referring to para 32, she said it took over 5 months before Police received a new manager certificate application from Ms Watson. This was correct, remembering Ms Watson was temporary, acting, temporary.....before the application. Continual notifications showed she was working;
- (v) they breached the Act by not putting in Ms Watson's new application when she was clearly working. They did not have enough staff. By not filing her application she could not be a temporary manager. The 5-6 staff discussed did not work at once. Craig Collins was running a bar, working for free. Her view was that the Labour Department would be interested. He worked for free, he was getting free accommodation, they are getting a monetary gain by having him as the only sole person working when there were patrons purchasing alcohol;

- (vi) she did not accept that these types of premises were where volunteers should work,
- (vii) notice of appointments go to Food and Health, receiving them for council but on the form, it stated to forward a copy to Police within 2 working days. The delay was with the Applicant. She did some research for the renewal, including looking at Facebook;
- (viii) she agreed that in evidence the previous day Mr Wallace said the Monday night parties happened 3 times, the anonymous noise complaints were those referred to by the Inspector;
- (ix) they gave warnings for breaches of s.237(1)(d) like the Father's Day Special. These were not recurring, but they occurred;
- (xi) the infringement was for breach of licence conditions; the female at the premises said the acting manager had gone to the supermarket. Mr Roberts name was not up as acting. Mr Wallace was duty manager and not present;
- (xii) the majority of the alleged criminal offending took place at the hotel property, not the licensed premises;
- (xiii) she went to the premises with the Inspector on 31 May 2022 after the hearing, to check the roster and manager records. At 4.15pm, Mr Collins was acting manager. She accepted the relevant documents were with Mr Wallace as he had expected to go to the hearing prior to testing positive that morning. He did not answer at his home address;
- (xiv) Mr Collins saw her looking at the half-consumed beer. He appeared nervous and started sweating. Mr Wallace gave evidence the previous day that the beer was from changing kegs - she would not have thought that someone with a broken arm would be able to change kegs,
- (xv) he took Malcolm and her into the kitchen, everything was off, they were told it would take 15 minutes to start up the fryer if they asked for a bowl of fries. He said Bridget had not arrived and then said she did not actually start until 5.30pm;
- (xvi) there had not been concerns around intoxication;
- (xvii) In response to the Committee, Constable Craddock said what had taken her by surprise most in respect of what she heard from him was just Mr Wallace's downgrading and denial of everything that has been produced from the witnesses. He was saying he completely refuted everything they were saying;
- (xviii) Police would have concerns of criminal activity and the safety of patrons if the premises continued with Mr Wallace;
- (xix) some of the convictions were 3-6-8 months imprisonment which highlighted their seriousness. Based on decisions, case law and ARLA, it was quite obvious that convictions certainly highlight the unsuitability of an applicant, and that drugs and alcohol were the biggest concern for the authority;
- (xx) in regard to s.266, the Constable explained the circumstances in which Police could close a premises – the only time under the Act - and where, if they did not close at the time, it could lead to endangerment of patrons;
- (xxi) Mr Wallace confirmed that he took over 4 April 2019. The email 14 April from Senior Constable Grant indicated trading was taking place without a TA. The premises were closed by Police and renovations were carried out;
- (xxii) the Constable said Police and the Inspector needed to look more closely during visits, especially at other than surface things like signage. They were now working with the Labour Department because of employment law non-compliance. They ask staff about employment agreements. Tri-agency meetings also discussed employment law;
- (xxiii) tri-agency meetings did not discuss notifications as they did not have issues with any other licensee, it was not common;

(xxiv) she explained the importance of Police getting notification of management change;

(xxv) she described Mr Wallace's approach to the Act and its application since April 2019 as poor;

(xxvi) from time to time, they get advertising like the Facebook book-a-table one, normally they gave a warning letter and education, if it was a recurring thing, an infringement notice;

(xxvii) she said that it was just not acceptable that Mr Wallace would carry out his responsibilities under the Act from his house because he could see what was happening with his cameras and audio;

(xxviii) referring to para 73, Blair and Tracy as managers were not adequate for the trading hours. Para 84, there were insufficient qualified staff in May 2021. Although they might not open all the time when they were less busy, she expected up to four allowing for sickness and other coverage;

(xxix) it reflected negatively on applicants for a renewal of a Manager's Certificate when they disrespected compliance with the Act;

(xxx) an acting manager was expected to know the fire evacuation procedure;

(xxxi) she would not expect an acting manager without training, who was a volunteer, to be left on his own;

(xxxii) she would not expect a person who had been working behind a bar in a tavern for twelve months to have been without training;

(xxxiii) 31 May 2022 when they went to Mr Wallace's home address, they expected him to be there and isolating as he did not go to the hearing as he had Covid. They were to obtain the management log, the toolkit, incident book, but he did not answer;

(xxxiv) it would be prudent for a licensee to be aware of what is being posted on the named Springfield Hotel Facebook site, the post was still there last time she checked;

(xxxv) Police opposition grounds were suitability, staff training. Both were most important as they reflected a broad number of things, including suitably qualified staff, enough staff, the training provided, whether it was external or internal training, correct procedures utilised for manager appointments;

(xxxvi) the most important issues in terms of suitability - Police first focussed on convictions and any dealings with police, then they looked outside of that, for example at Facebook and the broader picture of how the premises were operating, any interactions with Police;

(xxxvii) Constable Craddock told the Committee that the infringement notice had not been paid.

Police witness: Senior Constable Caird

- 95) Senior Constable Caird was sworn in and he read his Brief of Evidence. He is stationed at Darfield Police Station.
- 96) On Friday, 9 June 2021, from 9.45am, a number of police officers including himself carried out a search warrant at the Springfield Hotel, 5675 West Coast Road, Springfield. Mr Blair Wallace was not present initially. A large, concealed area was located in the outbuilding to the east of the main hotel, showing on Canterbury Maps - exhibit **EXH HC01**. Inside the concealed area was what police refer to as an active cannabis grow, an area where cannabis plants are cultivated. Other areas appeared to have been set up for cannabis grows which had either been deconstructed or not yet used. Mr Wallace was arrested for allowing the premises to be used for an offence against the Misuse of Drugs Act 1971.
- 97) Photos were taken of white powder, ecstasy, and crystal methamphetamine which the Constable later weighed. The Constable Caird produced a number of photographs taken on the day, as **EXH HC02** and a copy of the yearly planner located with dates and instructions relating to the cultivation of cannabis in the outbuilding, as exhibit, **EXH HC03**.

- 98) Senior Constable Caird said *"I would describe the cannabis grow operation as large-scale and sophisticated. There was a lot of equipment used in the operation, including a watering system, lighting, and extractor fans. There was evidence of cannabis plants that had been tied up and secured in the building but had obviously recently been harvested. There were six large cannabis plants still present, but it was quite apparent that there had been a considerable number recently growing that had been harvested."*
- 99) Cannabis plant material was located at Mr Wallace's home address, 10 Princes Street, Springfield, where he lived with his partner Shelley Watson and baby. The garage appeared to be a cannabis drying and cut-up area and there were cannabis remnants everywhere on its floor. In the house, cannabis in a glass jar and in snap-lock bags were found, cannabis was located in the bedroom, lounge, and kitchen, deemed to be from the outbuilding at the Springfield Hotel address. In a bedside cabinet in the main bedroom there was a small quantity of white powder, ecstasy known as MDMA and a small quantity of crystal methamphetamine which Mr Wallace later admitted using. In the house Police found an A-to-Z instruction book on how to grow cannabis, ducting, transformers, light bulbs, and fans including a fan and ducting lying in a corner cot in the baby's room. A box of 243 ammunition was found. Neither Blair nor Shelley has a New Zealand firearms licence. Police located fingerprints from Mr Wallace on the lamps used in the cannabis grow at the outbuilding.

Cross Examination: Chief Inspector – Mr Johnston

- 100) Mr Wallace was convicted of the possession of methamphetamine, possession of ecstasy, possession of ammunition without a licence, and cultivates cannabis, possession of cannabis, and the charge withdrawn was for supply of cannabis. Given the dry cannabis materials found at Mr Wallace's house and the evidence of the equipment, either recently used or ready to be used in the area, the Constable would say that in the last three weeks, there had been a lot more cannabis plants growing than those they found. At his house there was a jar of harvested cannabis head and a couple of people in accommodation at the hotel also had jars of cannabis.
- 101) Senior Constable Caird had attended a number of search warrants for cannabis and agreed a few were growing for their own personal use. Mr Wallace in evidence indicated that he had one or two cigarettes a day. Asked, from the amount found at the properties what his thoughts were in terms of how long it would take to get through that much cannabis if he was smoking one or two joints per day, Constable Caird said that he would need Willie Nelson and Snoop Dogg with him to make any sort of dent in that amount of cannabis.
- 102) Mr Wallace's evidence and testimony was that the cannabis was for his own use. The Senior Constable was saying it was a large-scale and sophisticated operation, that by the sheer amount of equipment and separate rooms he would consider the cannabis grow to be a commercial grow. In the Constable's experience there was too much potential there to grow cannabis or cannabis that had already been grown, for it to be for personal use. Senior Constable Caird said that if all the equipment and rooms in the old hall were used, there could have been anywhere upwards of 100 plants growing in there.

Cross Examination: Counsel – Ms Kaur

- 103) Senior Constable Caird clarified the outcome of the criminal charges for Counsel:
- (i) possession of utensils for smoking methamphetamine – convicted;
 - (ii) possession of ecstasy – convicted;
 - (iii) possession of cannabis – convicted;

- (iv) cultivating cannabis – convicted;
 - (v) unlawfully possessing ammunition – convicted;
 - (vi) possession of utensils for smoking methamphetamine – convicted;
 - (vii) supply of cannabis – charge withdrawn.
- 104) Counsel read paragraph 2 of the District Court decision which said that Police accepted through the electronic data that the drugs were for personal use. The Constable was not present in court and not aware of that, perhaps they were referring to the 6 plants that were found. He believed that essentially, they had missed a large-scale grow that the place was set up for by several weeks given the excess plant material found at Mr Wallace's house. However, if what Counsel had was the District Court decision, then the drugs were for personal use.

Cross Examination: Committee

- 105) Senior Constable Caird confirmed that the grow was located in the outbuilding to the east of the main hotel building and part of the hotel property, not connected to the main building.
- 106) Further responses from the Senior Constable included:
- (i) the guests staying upstairs admitted the cannabis they had was theirs. They did not say where they got it from and received warnings and formal warnings for possession of cannabis;
 - (ii) the meth and MDMA were in the bedside cabinet in the main bedroom, the amount indicated personal use;
 - (iii) an explanation of what was involved in a grow, a harvest - a plant will grow anywhere up to about six feet high, it has buds that grow - essentially the fruit of the cannabis plant, that is the most important part, carries the highest levels of THC, that is taken off and dried out. People smoke that as they get the high level of concentration. Leftover plant material can be used for cannabis oil;
 - (iv) he advised that Mr Wallace had referred to cannabis oil. He did not believe they found cannabis oil at the address, the oil is deemed more potent, using is probably a personal preference, the process was more involved;
 - (v) in making oil, a reasonable amount of leftover cannabis material would be needed, there was certainly enough left over plant material for it, but they did not find any chemicals to suggest that the process was going to be carried out;
 - (vi) the set-up cost for the potential large-scale grow with the large amount of electrical equipment, extractor fans, the lining, irrigation system, filtration to avoid a potent smell, would at a guess be tens of thousands of dollars;
 - (vii) Mr Wallace was involved in the grow. His fingerprints were found on the lamps used in the grow, the A-Z manual was located in the house, there was identical equipment at the house to the actual grow. The Constable believed the massive amounts of plant material found at his house came from the grow;
 - (viii) he believed that when cannabis was harvested from the grow, they put all the plants in a large bed sheet then carried it to his garage. The buds were harvested off the plants inside the garage which explained why there was plant material scattered everywhere;
 - (ix) it was concerning to find ammunition, but no firearms, it was uncommon to come across ammunition in places where people do not have a licence. Mr Wallace said he had been hunting with his father and forgot to give the ammunition back, it ended up staying in his possession;
 - (x) in his experience it was not uncommon to find ammunition, firearms at storage, harvesting or grow facilities;

- (xi) at the home address there did not appear to be any effort to conceal any of the drug paraphernalia and the drugs, as soon as you opened the house door you could smell cannabis;
- (xii) the equipment and the gear he found, in his opinion was “undoubtedly” for more than personal use;
- (xiii) he did not know what device had not been found or whether it would have changed much.

Cross Examination: Police – Senior Constable Craddock

- 107) Constable Craddock asked if it would it have been possible to have grown that amount of material inside the hotel premises with the sophisticated, and large-scale amount of equipment that they had seized from the outbuilding. He did not see anything inside the hotel to suggest an active grow inside the premises itself. The multiple rooms in the outbuilding would not fit into the hotel.

Evidence: Inspector & Risk Reduction Advisor FENZ - Mr Mike Gaskin

- 108) Mr Gaskin (FENZ) was sworn in and read his statement, understanding that it would be admitted as evidence. As a risk reduction advisor and an Inspector for Fire and Emergency New Zealand (FENZ), he provides advice and inspects buildings for compliance with building consent matters, Building Act compliance and Building Warrant of Fitness requirements. He has dealt with licensing for 8 years.
- 109) Mr Gaskin referred to the following:
- (i) Springfield Hotel is a relevant building under section 75 of the FENZ Act;
 - (ii) the hotel is required to have an evacuation scheme approved by FENZ, because the building provides for more than 99 people gathering and sleeping accommodation for more than 5 people;
 - (iii) an approved scheme required maintenance trial evacuations or training each 6 months;
 - (iv) in July 2020 an application was received, which to-date is not approved. There are outstanding issues, screenshot 3 listed items requiring attention;
 - (v) on 11 May 2021, again on 17 August 2021, the hoteliers were advised a new evacuation scheme was required and were provided with a link to the FENZ site for relevant information;
 - (vi) screenshots were provided as exhibits (EXHB);
 - (vii) further correspondence in 2021 advised of issues – notification 14 September 2022 that the scheme was not approved;
 - (viii) he was assured these outstanding issues would be addressed and the application resubmitted.
- As of signing his statement, FENZ had not received the application.
- 110) Rationale for objecting was that the historic two-storeyed building offered transient sleeping accommodation, thus occupants would likely be unfamiliar with the building. Clearly written procedures were required to allow for safe, prompt, and efficient evacuation in the case of fire. The hotel did not have a current suitably maintained fire evacuation scheme.

Cross Examination of Mr Mike Gaskin

- 111) Mr Gaskin explained the exhibits. An email to Shelley Watson advised that the last approved evacuation scheme dated back to 9 December 2003 and a new scheme should be applied for. In 2021, FENZ advised twice that a new scheme was needed. No trial evacuations had been reported to FENZ as required.
- 112) A letter sent 14 September 2022, screenshot 3, listed why the most recent application for an evacuation scheme was not approved. Mr Gaskin explained those issues, one being an inoperative control panel and alarm system. The scheme should be resubmitted within 20 working days, or a

new application made. To date, FENZ had not received an application, or any notification of the required work from screenshot 3 issues, being undertaken.

113) Further responses in cross examination included:

- (i) Mr Gaskin told the Constable that frequently multiple reminders were sent to licensed premises with accommodation but buy-in was normally quick - a new scheme would be put in place, or a trial undertaken. FENZ started down that road with Springfield, but it stopped;
- (ii) there was significant risk to the public and any occupants if a fire occurred in a building without an approved scheme as people would not fully understand what to do;
- (iii) having a registered scheme meant trials or training programmes familiarised members of staff and members of the public with the response required to protect life and property in case of fire. FENZ's concern was that this had not taken place;
- (iv) the Inspector said that in evidence the previous day, the Applicant said some drills were conducted and they had notified FENZ. Mr Gaskin had no official notification that drills had taken place. FENZ records showed that the process was not complete. No letter had been issued approving a scheme;
- (v) FENZ are not asking for a rebuild of the premises or for a major overhaul of systems, they are asking for the likes of workable signage to be in place and a functioning alarm system;
- (vi) the building warrant of fitness Notice to Fix in this case was in relation to the fire alarm system which is key to alerting occupants in the case of fire;
- (vii) without an operative scheme in place, a very old building where fire can rapidly develop and through the nature of its construction, there would likely to be very little fire separation from the downstairs to upstairs as with Kirwee. Depending on where a fire might break out, he would consider that people certainly should not be sleeping upstairs in this premises. His evidence, *"FENZ believes persons using the premises may be injured or their safety is likely to be endangered in case of fire;"*
- (viii) he reiterated that the key to alerting people of a fire and of people getting out was early warning by an alarm system;
- (xix) he explained to MOH what he meant by the alarm system and alarm control panel not being not operative, screenshot 3. There was no LED light in the operative normal button area of the panel. The BWOF was due and required this to be operative;
- (x) Counsel had no questions for Mr Gaskin;
- (xi) Mr Gaskin told the Committee of the options open to FENZ when, despite reminders and almost cajoling someone to participate in the process, nothing happened. FENZ could apply to close buildings down. FENZ (a fairly new organisation) was now issuing infringement notices and utilising legal proceedings for those not willing to adhere to FENZ regulations;
- (xii) the legislation was new, they try engagement and education first before the formal route, Springfield had not had an infringement notice;
- (xiii) he expected staff to be trained in evacuations from inductions on day one. As soon as somebody is employed to manage premises, they should understand what to do. In training staff they needed to train them to prevent fire and to escape from fire as training led to second nature response. Staff knowing what to do immediately a fire breaks out prevents a small fire becoming a very large fire. Given the premises are an old wooden hotel, it was about safe, prompt, efficient;
- (xiv) it would certainly be concerning having the allowable numbers of persons in the building including people sleeping;
- (xv) in terms of the Act, he said he had not used s.286, allowing for suspension of the on-licence;

(xvi) Mr Gaskin said that in the application statement dated 21 April 2021, it was signed off that the owner provided and maintained an evacuation scheme as required by FENZ legislation. This was not correct;

(xviii) in the scenario where there was occupancy of rooms upstairs, he believed from his investigation that a staff member/somebody should sleep on the premises overnight in a room downstairs. Without an operative alarm system people upstairs would be reliant on that person but with no scheme, no training, no alarm system working, he was concerned;

(xix) alarm testing carried out by Independent qualified persons (IQPs) should find the operative light not working on the panel. He was not aware if it had been tested since his last inspection.

Evidence: Chief Licensing Inspector, SDC – Mr Malcolm Johnston

114) Mr Johnston commenced in his role late in April 2019, after Mr Wallace took over Springfield Hotel. Mr Wallace's company changed to Alpine 192 Degrees Limited. Mr Wallace is the sole director and shareholder of the company. From the Applicant's CV, he understood that the Applicant had overseas experience in hotels, particularly with Rydges.

115) The Applicant commenced trading at Springfield Hotel early in April 2019 apparently unaware he required a Temporary Authority (TA) to trade. Police became aware and advised the applicant to cease trading until he secured a Temporary Authority, which would allow him legal authority to continue trading with the same conditions under the previous owner's licences. The majority of applications in the District required only one three-month TA, occasionally two.

116) Further evidence included:

(i) he had carried out 17 inspections at the Springfield Hotel over the last 3 years. The inspection 31 May 2022 was directed by the Committee's Minute #8. Senior Constable Craddock accompanied him. He had not detected any obvious licensing issues previously. He was aware of the infringement for Mr Wallace not being present in the hotel when he was the assigned duty manager;

(ii) timeliness of applications: considerable coaxing, encouragement and many staff hours had been required to obtain the required licence applications from the Applicant on time. Considerably more time from the Licensing Inspector and the administration team had been spent on this Applicant than on any other applicant in the Selwyn District. The SDC Chief Executive Officer, the Mayor and Councillors were briefed when the hotel's licences were about to expire;

(iii) on 1 May 2019, Licensing Inspector Ian Shaw and Mr Johnston visited the Applicant to prepare a report for the first TA application. They made it clear that the TA was for three months and that it was Council's expectation he would have his new On and Off-Licence applications submitted and licences issued before that first TA expired. Mr Wallace agreed he would get his On and Off-Licence applications submitted to the Council as soon as he could;

(iv) the first TA was issued 8 May 2019, expiring early August. By 11 July 2019, there was no sign of the new on and Off-Licence applications being received. He went to the hotel and spoke with the Applicant, explaining again why his applications needed to be submitted as soon as possible. By leaving the application so late, he had to apply for a second TA;

(iv) a second T/A application was granted, expiring 31 October 2019. The Inspector instructed Mr Wallace to submit the applications and apply for a third TA. He was concerned about the Applicant's inaction. Hospitality New Zealand also encouraged Mr Wallace to submit the applications as soon as possible;

(v) the applications were not submitted by 15 October 2019. The Inspector went to the hotel, spending two hours assisting the Applicant with the required information and in filling in the forms

for the On/Off applications and the preparation of the site plan. He advised a third TA would be required as the current TA expired in two weeks. Blair Wallace agreed that virtually changing the date, was simple - he would do that immediately, assuring the Inspector that the TA application would be emailed to the council before he returned to Rolleston that day. Despite the assurances the application did not arrive. The Inspector raised his concerns again with his Manager Billy Charlton;

(vi) on 22 October 2019 he emailed the Applicant stating that the new TA application was urgently required that day as it would allow only five working days for Police to report. There was a serious risk that the hotel would not have a TA if Police could not report in time, as they would not be able to sell alcohol. He offered assistance. **EXBT MJ01**. The following day the third TA application was received, allowing 4 days only for Police and Inspector to report, for the Committee's consideration and for the TA to be issued;

(vii) the third TA had an expiry date of 31 January 2020. The Commissioner included a warning on the decision that a fourth TA might not be granted;

(viii) on 5 December 2019, as the On/Off applications had not been received. Mr Charlton wrote a letter encouraging the submission of the applications in a timely manner and outlining the potential consequences of not getting them submitted to council. **EXBT MJ02**;

(ix) the Inspector travelled to Springfield immediately as requested and spent considerable time assisting with the new applications. One further document, the premises consent, was required. Despite administration staff contacting the Applicant many times requesting the outstanding document, the Applicant did not respond;

(x) it was not until 21 January 2020 that the application was ready to be sent to the agencies. That delay did not leave time for the application to be reported on before the third TA expired on 31 January 2020. Administration staff attempted to source a fourth TA application. This was not immediately forthcoming;

(xi) the fourth TA application was received so late that the application was not ready to be sent to the agencies until 29 January 2020 – allowing one working day for sourcing Police and Inspector's reports, for the DLC and for administration to issue a fourth TA;

(xii) the fourth T/A was issued in time, enabling the hotel to continue trading until 30 April 2020. The day the fourth TA expired, 30 April 2020, the On/Off licences were granted for 12 months. SDC practice, not legally required, is to send reminders for renewal applications – these were sent to the hotel;

(xiii) despite assurances from the Applicant, the Inspector raised concerns as the expiry date for the licences approached. On 29 April 2021, less than 24 hours before both licences expired, the Inspector emailed the Applicant again imploring them to pay the fees, allowing the applications received to be put into process. Again, last minute phone calls and emails by the Regulatory Manager briefing the CEO, senior management and councillors resulted. The Applicant finally complied;

(xiv) in early April 2021, the Applicant was contacted about the hotel licences annual fees being due before 30 April 2021. Despite approaches from council, the fees were not paid;

(xv) in June 2021, with the annual fees more than 30 days overdue, the Springfield Hotel licences were suspended preventing trading - pursuant to section 287 of the Sale and Supply of Alcohol Act 2012. The suspension was advised on 3 June 2021 – by letter served, refer **EXBT MJ03**;

(xvi) the fees were paid 9 June 2021, suspension lifted;

(xvii) the Inspector's view is that once a reminder was sent, he and council expected licensees to manage their own business and submit applications in a timely manner. The admin team was

available for advice. The responsibility for getting their applications in on time rested entirely with the licensee;

(xviii) he referred to the FENZ advisor's report of 27 October 2021. During his first inspection of Springfield Hotel, 11 July 2019, he provided the applicant with an evacuation procedure information sheet outlining the requirements under the FENZ Act 2017. The Springfield Hotel built in 1882, was a two-storey building with some 12 rooms available for accommodation upstairs. The hotel is a relevant building - defined as any building that could hold 100 persons, had ten or more employees and provided accommodation for six or more guests;

(xix) the information sheet also outlined under Regulation 9, the requirement of the owner or tenant to train employees to assist building occupants to evacuate the building in accordance with the evacuation procedure for the building. Refer **EXBTMJ04**;

(xx) in May 2021 he became aware that the applicant had not updated their evacuation scheme with FENZ, nor had they carried an evacuation drill - required at least every six months. He emailed both Blair Wallace and Shelley Watson, urging them to contact FENZ and Mike Gaskin about updating their scheme, and gave the email addresses. Refer **EXBT MJ05**. Despite this and despite a direct approach from FENZ, no action was taken by the Applicant at the time;

(xxi) Springfield Hotel visit, on 31 May 2022: Senior Constable Craddock and he spoke with acting manager Craig Collins. Mr Collins had not had any evacuation procedure training. He had not been briefed/trained on the procedure for assisting occupiers, patrons, and guests, required by regulation 9 of the FENZ regulations,

(xxii) the hotel incident book and rosters were not in the hotel. They were believed to be with the Applicant at his home address. The hotel had been open ten minutes. The Constable saw a partially consumed pint of beer behind the bar and told him it was clearly Mr Collins' drink. One other person was in the bar drinking a seven-ounce glass from a jug;

(xxiii) Mr Collins said he had not received any training from the Applicant for the duty manager role. He worked the hours required to do the job. He was working for free. The kitchen was closed – it would take ten minutes for the grill to be warm enough to cook. Any meal would take time to prepare. The chef was not due to start until 5:30 pm;

(xxiv) a duty manager drinking was not an offence, but it made the role of duty manager more difficult in terms of decision-making and assessment. Affected to even a slight degree, the manager would not be as vigilant in dealing with intoxication, minors, and emergencies. Patrons looked to a duty manager for leadership in times of conflict or emergency. An impaired duty manager was not consistent with the object of the Act;

(xxv) anonymous allegations of drug use: in February 2021, an email from Bonnie Denson, licensing administration, advised receiving a call from an anonymous person. The person alleged that there was illegal drug-taking happening on Monday evenings at Springfield Hotel. He passed the information to the Police the next day and attended the local Selwyn Police Crime Meeting the following week;

(xxvi) on 17 June 2021, on his return from Arthurs Pass, he called into the Springfield Hotel which was closed. He was approached by a local who alleged illegal drug taking upstairs at the hotel. The local alleged both Blair and Shelley were drunk on duty even when their names were up as duty managers. He emailed Senior Constable Craddock and Senior Sergeant Dean Harker (in charge of Selwyn District);

(xxvii) on Friday 2 July 2021, acting on information received, he arrived at the hotel about 8.45pm. Joel was up as duty manager. Blair came in and put his name up. He spoke with Blair. He did not observe any drinks behind the bar and nothing to indicate Blair had been drinking;

(xxviii) temporary and acting managers: despite legislation setting out criteria for appointing these managers, licensees get confused as to the requirements around appointing them. In March 2021, Council arranged a short presentation for hotel and tavern licensees, highlighting the differences and provided an information sheet. No one from Springfield Hotel attended the workshop. Licensees not attending were emailed a copy of the information sheet. Refer **EXBT MJ06**;

(xxix) during his first visit to the hotel in July 2019, he spoke with Blair about certified managers as Kathleen Roche was the only certified manager when he bought the business. More managers were needed immediately. He also explained the process of appointing temporary and acting managers. Refer **GCO2**. On 11 September 2019, a notice of management change form incorrectly nominated Shelley as a temporary manager to cover manager sickness. The form did not go to Police, in spite of the instructions at the bottom of the form. The timing was incorrect, she could be an acting manager for three weeks only. Another notice of management change form needed to be submitted;

(xxx) during October 2019, he had many dealings with Blair concerning his On/Off-licence applications. He believed there were two certified managers employed, Kathleen Roche and Michelle Wallace;

(xxxi) on 6 February 2020, Blair submitted another NOM EXBT GC05, appointing Shelley as an acting manager - an additional duty manager. The reason for the appointment was not be included. Shelley had completed her LCQ and was applying for a manager's certificate;

(xxxii) on 18 February 2020, Blair submitted a form appointing Shelley as a temporary manager, replacing Michelle Wallace as terminated/cancellation of manager. **EXBT MJ07**. The notice of management form (NOM) was not sent to the Police;

(xxxiii) on 20 February 2020 Shelley's application for a manager's certificate was received within 48 hours of the temporary manager appointment. Constable Craddock referred to a 20 February 2020 NOM appointing Blair Wallace and James Bennett as acting managers covering Shelley's leave, submitted as exhibit **GC07 and GC08**. However Blair did not send these to Police. Police would not be aware Shelley was a temporary manager at the time, not an acting manager;

(xxxiv) on 3 April 2021, a NOM form appointed Tracy Tahuu as an acting manager, covering Shelley's reduced hours. Blair was a certified manager;

(xxxv) on 1 May 2021, a NOM form received, appointing Tracy Tahuu as a temporary Manager. Refer **EXBT GC20**. Police were not notified. Ms Tahuu did not apply for her manager's certificate until a week later on 8 May 2021. He spoke with Shelley and later confirmed that there had been a hold-up with the issuing of LCQ certificates by Service IQ;

(xxxvi) on 11 August 2021, a NOM form (GC24) appointed Shelley Watson as a temporary manager. She had previously been a certified manager and reapplied for a manager's certificate in May 2021. They again used the phrase '*additional manager*.' She was replacing herself as her certificate had lapsed;

(xxxv) in executing a search warrant, the Police located a cannabis grow in the old Springfield Hall which is on the same site as the Springfield Hotel. The address for both is 5675 West Coast Road, Springfield. The council valuation number applying to this address is 2421034901 - all one title. The Canterbury map photo, produced by Senior Constable Caird that morning, accurately reflected the buildings within the red-bordered area, 5675 West Coast Road, Springfield;

(xxxvi) on Saturday 26 November 2022, the Inspector noted that the only entries in the inspection book were for his visits on 6 August and 17 September. Nikita Harrison was correctly recorded in the manager's register - manager's certificate issued 4 October 2022;

(xxxvii) on 6 December 2022, Council building unit staff advised that the Springfield Hotel did not have a current building warrant of fitness (BWOFF). That had expired 1 July 2020. The building unit had sent the Springfield Hotel a letter on 1 December 2020 but had not had a response from them;

(xxxviii) on 7 December 2022, the Inspector went to the hotel. Blair Wallace had taken over the hotel in September 2022 and his view was that the BWOFF was the responsibility of the previous owner until the ownership of the hotel changed. He had engaged SGS to sort out the BWOFF. The Inspector checked the incident book;

(xxxix) on 8 December 2022, the Inspector contacted SGS. He was told they had provided a quote 16 August 2022. SGS stated that as they had not heard back from anyone at the hotel, they had assumed their quote was unsuccessful. This was contrary to what Blair had informed him;

(xxxx) on 8 December 2022, Inspector checked the hotel food verifications. 3 Food Act verifications were carried out in 2022. The first was unacceptable, the second was rated acceptable and the third in November was rated unacceptable. If the next verification returned an unacceptable rating, a food safety officer would implement steps to ensure an immediate improvement in food safety;

Supplementary Brief:

(xxxxi) as of 10 February 2023, the hotel did not have a current BWOFF. On 10 February 2023, the Selwyn Council's building compliance team issued a Notice to Fix pursuant to ss 164 and 165 of the Building Act 2004. Failure to comply would result in an infringement action.

Cross Examination: MOH – Ms Ensor

- 117) At para 25; the considerable amount of time assisting the applicant with the new On/Off applications. Given Mr Wallace's extensive experience, internationally in hospitality and in senior management, as a Licensing Inspector would he expect to have to assist to that extent – the Inspector responded, *"you would not expect that at all. No, absolutely not."*
- 118) Ms Kaur told Ms Tahuu the previous day that food complaints should be recorded in the incident book at the hotel. Was that standard practice recommended by licensing inspectors – Mr Johnston replied that incident books were not compulsory but highly recommended, food complaints were not recorded in those, it was the place for incidents, or temporary appointments.
- 119) The Inspector interviewed Mr Tahuu for her certificate. She was also working during a couple of inspections. His observations of her showed excellent personal skills in dealing with the public and patrons, she was really interactive, engaging, and she was very good.
- 120) He told Ms Ensor that he personally had not come across any premises in the District with two unacceptable food compliance results. He did not know if that was common.

Cross Examination: Police – Senior Constable Craddock

- 121) The Inspector confirmed he was surprised that the third TA did not arrive that afternoon when he was told it would. It would have taken about a minute to complete, and Mr Wallace had said he would do it.
- 122) His email on 22 August made the urgency around the applications clear. Mr Wallace knew he could ring Mr Johnston if he needed assistance. He confirmed that Mr Wallace did not ring him. Mr Charlton asked him to go to Springfield. In his time as Inspector in Selwyn he had not had to spend

- over an hour providing assistance with any other premises. He considered that Blair Wallace was very engaging, he would talk the talk, he promised a lot of stuff, but he just failed to carry it out. He had not struck an attitude like that towards the process before.
- 123) Building ownership paperwork was needed for the On/Off licences. The Constable had referred the previous day to the paperwork submitted. The Inspector confirmed that Mr Wallace had put himself as the building owner which was not correct. There had been discussion within council whether he would be seen as an owner considering it was a lease to buy, which they were aware of and were led to believe at the time that it was nearly paid off and that the transaction had gone through. The Inspector agreed the lease to buy agreement from 2019, referred to 410 payments. Payments would be completed September 2022, not November 2022 as Mr Wallace said.
- 124) The Inspector did not monitor the BWOF process. Mr Wallace in evidence said that FFP, Fire Fighting Pacific, would not engage unless you were the owner. That was not the Inspector's understanding of the process. His understanding was that even as a tenant, Firefighting Pacific, SGS, or Chubb would engage, and you could organise a BWOF. The legislation talked about owner responsibility, but he would expect the tenant to be very proactive in that area, doing everything reasonably possible to secure a BWOF as it was about safety, people's safety.
- 125) His inspections of the premises in the last 3 years were all between 4:00 pm and the latest around 9:00 pm. He agreed, in saying he did not have any issues, that did not relate to late trading hours. The Inspector also agreed that if Shelley and Blair had been drinking, it was probably not going to be in the times that he had gone in mainly earlier in the evening.
- 126) He would expect the licensee to provide training documentation including servewise certificates on the first day of a hearing and not having received those to date was just not good enough – real disappointing. They should have access to all training documentation - it should be available at their fingertips. Asked if from what they had heard was there any evidence to suggest staff had any training at all – Mr Johnston said they were left without any confirmation at all of the completion of any servewise training. No documentation for fire evacuation training, he had no copies of LCQ certificates – the last one would have been issued October 2022, Nikita Harrison. Since the last hearing he was aware of two appointments. Thus the hotel had 2 certified managers and one temporary.

Cross Examination: Counsel – Ms Kaur

- 127) During his visit on 31 May 2022, the Inspector agreed he did not see Mr. Collins drinking. On an unannounced visit Friday, 2 July at 8.45pm he spoke with Mr Wallace and there was no indication that he had been drinking.
- 128) Further cross examination included:
- (i) he would expect a duty manager to know the designations of the premises 100% and he accepted that the previous day, Ms Tahuhu did not know those by their name;
 - (ii) referring to paragraph 76 of his Brief and his inspection 26 November 2022, the manager's register showed Ms Harrison as an additional manager, Ms Watson as manager and Mr Wallace;
 - (iii) he saw the lease to buy document and accepted Mr Wallace took over the hotel ownership from September 2022;
 - (iv) the evening that he did an inspection when Constable Grant was also there, he had looked at the incident book. He agreed it recorded patrons being denied service and said the implication he took from that was staff were aware not to serve the group. He took some assurance that the book was used appropriately.

Cross Examination -The Committee

- 129) From his perspective as the Chief Licensing Inspector he would describe the journey in respect of Alpine 182 degrees Limited from the start of the TAs to where they were that day as painful, frustrating, difficult.
- 130) The Inspector confirmed that the cannabis cultivation area was in the outbuilding known as the old Springfield Hall next to the hotel. It was 100% on the hotel site.
- 131) Cross-examination also included:
- (i) he had a discussion with Mr Wallace about leaving the premises for a short period of time when duty manager. He said, *"you can shoot across the Road and grab a bottle of milk and shoot back and I do not think anyone would have an issue with that."* If he was going to be away for an hour, then appoint an acting manager;
 - (ii) in terms of the Act he had not found too much of an issue in how the licensee had managed the consumption of alcohol in relation to the premises, including his own consumption. When he did his inspections, there was a duty manager, signage, low alcohol options, host responsibility, and trading hours displayed, no intoxication and he was not aware of consumption by the licensee. That immediately changed when looking at the object, s.105 (1)(a), and seeing and hearing the allegations, the ERA reports, the staff reports. If they were treated in that way, if that behaviour from Mr Wallace was accepted or the allegations believed, then there was no way those staff could perform under those circumstances. Therefore, they would not carry out their role appropriately in terms of identifying intoxication and identifying minors. So, the sale and supply of alcohol would not be as smooth as it should be;
 - (iii) from his perspective, the other laws played a very, very important part in the renewal of these licenses. He said, not only did it paint a picture of the licensee's attitude to compliance with the laws and the BWOFF for example, but it also really signalled a complete disregard for the safety of patrons and guests at the hotel. They had heard the evidence from Mr Gaskin in terms of the safety of guests staying overnight. That was a huge, huge risk and it was not just fire evacuation, but the Wages Act, the Employment Relations Act breaches – there were so many breaches;
 - (iv) if he was to describe the future risk that the Committee needed to weigh up in one or two words – he said, dangerous;
 - (v) he agreed that the Applicant's non-compliance with the evidence filing timetable and filing other documents was consistent with prior disregard of statutory requirements. From his Chief Licensing Inspector perspective, he thought the importance of that was critical - he reiterated concerns of patron and guest safety, compliance with the Act and achieving the object of the act, including minimising alcohol-related harm;
 - (vi) considering all the work that was done prior to getting these renewals, or getting the licences filed, the actual date the application was received was 21 April, still well short of the 20 working days. He had not suggested a waiver might be needed from the Committee as he did not know that was an option. He was aware of why the 20 working days were important;
 - (vii) he agreed that had the Act's timelines been adhered to they would not be there that day;
 - (viii) in the Inspector's report June 2021, he quoted Hayford, the high court case, *"deliberate failure to carry out conditions attached to the licence must be a strong factor justifying a conclusion that the holder of the licence is not a suitable to hold the licence."* He said asking him to submit the application documents in a timely fashion time and time again, and his repeatedly failing to follow those

instructions or comply with his request, at some point it gets to the stage where he would classify it as deliberate, intentional non-compliance;

(xix) in the same report, he quoted Nischay and was asked how a non-renewal of the licence would result in a reduction of alcohol abuse, part of the object. He referred to section 105(1)(a), the object of the Act and said, if the staff could not do their job, then they were not going to identify minors, they were not going to identify intoxication and s.105(1)(a) is not achieved. The second plank of the object of the Act would then fail, that the harm that follows the excessive and inappropriate consumption of alcohol must be minimised. They could not achieve the object of the Act.

(x) he had not sighted the staff training records during his monitoring visits;

(xi) it was an education issue that notifications in Selwyn were not submitted;

(xii) he did get a sense of frustration after reading the CV of someone with that amount experience of overseeing bars, hotels in the industry;

(xiii) he thought Mr Collins was simply nervous and sweating during the 31 May 2022 visit;

(xiv) it was not acceptable that Mr Collins had no training in the duty manager role including fire evacuation;

(xv) he did not experience a party night;

(xvi) he was not aware of any actual premises in Selwyn that had operated without a licence or a first TA;

(xvii) there had been a marked improvement in paperwork since Ms Watson took that over;

(xviii) the premises had been fortunate with some of the staff, for example Ms Tahuu and her dealing with the controlled purchase operation 12 June 2021 in a very professional way;

(xix) based on the numerous assurances from Mr Wallace and his constant failure to carry those things through, what value would the Inspector place on his word if he says he is going to do something? He replied that he would not believe anything that Mr Wallace told him; it had reached that stage;

(xx) the Inspector's observations were that Mr Wallace underestimated exactly what was involved in being a successful licensee in a small country hotel, there was a lot to it and a variety of different legislative requirements.

Evidence: Medical Officer of Health – Ms Ensor

132) Ms Ensor was sworn in. The Medical Officer of Health did not have any evidence to produce. Ms Ensor had read the report in opposition to the renewal of both On and Off licences provided 21 May 2021 by Ms Williams.

133) Opposition related to two principal areas of concern under the Act, staff systems and training and suitability;

(i) insufficient qualified staff to comply with the conditions of the licence and the object of the Act. The days and hours that the premises are open may require more than the one named qualified duty manager. Tracy Tahuu as an acting manager. While there was a note in the application indicating Tracy Tahuu would apply for her managers certificate once the LCQ had been completed no timeframes were provided for this action;

(ii) MOH was aware from tri-agency communications of the Applicant's failing to comply with requirements for the appointment of managers.

Cross Examination: Police, the Inspector, Counsel

134) No questions.

135) **Cross Examination: Committee**

- 136) In response to questioning, Ms Ensor told the Committee that in terms of the Food Act, food should always be available when alcohol is available for sale and consumption. MOH looked for that under host responsibility – it was an effective tool to slow consumption. They took it seriously if patrons were not able to have food in a timely manner or at all.
- 137) MOH recommended, particularly in smaller rural areas, they had things that were easy for bar staff. Having something readily available in the freezer like a toastie or something for popping in a toastie machine. They were mindful of business/wage costs associated with always having a chef on.
- 138) MOH expected the kitchen to be clean and tidy. Ms Ensor had looked at the pictures of the kitchen and as a patron she would be concerned about cleanliness.

Police Witness: Maryline Suchley

- 139) Ms Suchley was affirmed. She is a Director of Employment Resolution Consultants, an advocacy service primarily known for supporting employees bullied in the workplace. Tracy Tahuu engaged her to represent her and raise the personal grievance (PG) on her behalf.
- 140) Ms Suchley stated that:
- (i) the primary issues were the bullying behaviour Ms Tahuu was experiencing directly from Blair Wallace, the verbal abuse, shouting, and intimidation;
 - (ii) Tracy was extremely emotional and upset when she first spoke to her about the behaviours directed at her by Blair. She described how it all got too much and she had a breakdown. Her son drove her to Hillmorton Hospital for treatment;
 - (iii) other employment issues were pay related. Mr Wallace was paying under the minimum wage and taking an unlawful deduction from her pay. He dismissed Tracy after she raised a personal grievance. She was unjustifiably dismissed;
 - (iv) Abigail Atkins then engaged her. Abigail had been subjected to unwanted actions, bullying, verbal abuse, name-calling, shouting, intimidation, and manipulation. She was paid under the minimum wage and not paid the guaranteed hours in her employment agreement. She was unjustifiably dismissed;
 - (v) as their employment advocate, she represented both Tracy and Abigail and ran the cases through the Employment Relations Authority. At Tracy's hearing the respondent Blair Wallace did not attend. The ERA member asked Tracy questions based on her affidavit and statement of the problems. Witnesses Joel Innes, Jacqueline Leonard, and Abigail were questioned about what they saw happening to Tracy while employed at the Springfield Hotel. They also spoke about the drug raid on the Springfield Hotel and Mr Wallace's erratic and aggressive behaviour;
 - (vi) the repeated verbal abuse escalated after the Police drug raid as Mr Wallace became paranoid people were reporting him. Tracy described the unsanitary conditions where food was prepared, and Mr Wallace's excessive drinking on the premises and while serving behind the bar;
 - (vii) Mr Wallace did not attend Abigail's hearing. Abigail talked about the dismissal process and verbal abuse she suffered from Mr Wallace. The same witnesses Tracy, Jacqueline, and Joel testified to what they saw happening to Abigail. In this hearing there was more discussion about drug cultivation on the premises. Although they did not know the details of the operation, they could see that illicit drugs were being used and that there were questionable characters coming in and out of the premises one of whom frightened both Tracy and Abi,
 - (viii) when she dealt with Mr Wallace as an advocate, she found that he could be erratic. Correspondence with the Springfield Hotel would interchange between Shelley Watson and Mr

Wallace. An email *"sent by Shelley Watson on behalf of both Ms Watson and Mr Wallace threatened to report Tracy to ACC in order to try and intimidate her into dropping the case."* (transcript, p.175, and exhibit MS01);

(ix) *"With Abigail, Mr Wallace tried covering his tracks with this dismissal by adding a file note to her employment agreement alleging that she had been incompetent and that he had repeatedly spoken to her about her performance. He was very retaliatory and unprofessional as an employer."* (transcript p.176).

Cross Examination: Medical Officer of Health – Ms Ensor

- 141) Ms Ensor asked Ms Suchley to briefly explain the personal grievance (PG) process. Tracy was still employed when she spoke to her about the actual problem, and she acted on behalf of her. The employer must be advised of the problem, how to look at remedying it. The PG was written up and sent to the employer. The first step and best way forward would be mediation. First step mediation is voluntary, needing the employer's agreement.
- 142) Springfield Hotel did not agree to mediation in Tracy's case, therefore a claim needed to be lodged with ERA. Usually, you were directed to mediation but because the employer did not engage with ERA either, the next step was the setting of an investigation meeting date. The meeting is attended and then there would be a determination.
- 143) Mr Wallace did engage in the initial stages when he basically terminated her employment through his actions. Tracy was given final pay, prevented from going back to the workplace and asked to hand back the keys. He communicated once with ERA the whole time and that was to say he wanted witness Joel Innes to appear in person and not via zoom.
- 144) In Mr Wallace's cross-examination he said that the Tracy Tahuu decision was one sided. Ms Suchley confirmed he was given the opportunity to give his side of the story. It was one-sided because he did not turn up - they waited 15 minutes. The unjustified dismissal was not on the original personal grievance as Tracy had not been dismissed then.
- 145) They went through the same process with Abi. Mr Wallace did not turn up to the ERA investigation meeting after being given every opportunity.

Cross Examination: Chief Inspector

- 146) Ms Suchley confirmed that Abigail Atkin's hearing took place 15 November, but the determination had not yet been issued. Mr Wallace had said to the Inspector in cross-examination that the hearing had not taken place. Ms Suchley stated that contrary to what Mr Wallace believed, the hearing had taken place and the evidence presented.
- 147) It was her evidence for both hearings that Mr Wallace had plenty of opportunities to engage. She sent Mr Wallace an email to check he was getting emails and when he responded, she forwarded them to the ERA so that they knew the email address was correct.
- 148) Ms Suchley said that a file note about performance should be able to be seen by the employee and an opportunity given for a response to the allegations made. Mr Wallace did this after the personal grievance was raised. He had not followed the correct process for a dismissal.
- 149) She said that a lot had to happen to get to the point of an ERA hearing. It was a year. In that time, advice could be sought. Many were resolved at mediation when employers engaged and resolved for commercial reasons.

Cross Examination: Counsel - Ms Kaur

- 150) Ms Suchley confirmed that she had written her Brief of Evidence. The brief was not dated or signed as she normally did that on the day of the hearing.
- 151) Ms Suchley confirmed that she had not written to the employer asking for a mediation settlement, she had actually asked if the employer was agreeable to attend a mediation as the first step, but that did not occur.
- 152) Referring to her Brief at 5, she pointed out that specific details for the bullying issues experienced by Tracy were presented to the DLC and she said that as a result Tracy went to Hillmorton. Other details were in the PG. A claim for wages was made but she could not recall detail about ACC.
- 153) Ms Suchley agreed she had said Mr Wallace was trying to cover his tracks. Producing the file note was not merely a record for himself but because he dismissed her with no documentation and did not follow a proper process. He had not spoken to her. He did put the file note in the file.

Cross Examination: Police – Senior Constable Craddock

- 154) Ms Suchley agreed that a file note could not be put on a personal file unless you brought it to the employee's attention. That had not been done.

Cross Examination: Medical Officer of Health

- 155) Ms Suchley did not accept all cases for a PG. She gave an honest opinion about sufficient evidence to go forward or talked about not having much of a chance of winning.

Cross Examination: Committee

- 156) Ms Suchley had not expected Mr Wallace to attend Tracy's hearing. He had not engaged with ERA. He did not attend the case management conference phone call before the hearing was set.
- 157) Mr Wallace did not attend Abigail's hearing, nor did he submit documents. She confirmed there was no disciplinary meeting for Abigail, no invitation letter, no evidence to answer in a meeting, no termination letter.
- 158) She heard about the questionable characters at the ERA. Tracy and Abigail knew them from the hotel, and one had frightened them.
- 159) She had said previously that as an advocate she found Mr Wallace was erratic to deal with. She had challenged Mr Wallace on his threat to report Tracy to ACC as she could include that in the statement of problem. She thought the threat was retaliatory. Sometimes he engaged, at other times he would not. However, trying to intimidate someone into dropping their case was not a common occurrence.
- 160) She knew Mr Wallace and Ms Watson were partners and running the business together. She understood Shelley Watson was the manager, part managing operations and Blair was the owner and doing cheffing as well.

Police Witness: Tracy Tahuu

- 161) Tracy Tahuu was sworn in and read her Brief regarding her employment at the Springfield Hotel from 2020. She worked four hours at the weekend as cleaner. She did not have a contract and she was not offered a contract. When Blair and Shelley lost a duty manager, she said that she would give it a go although Shelley was not sure that she was capable of it. The bar work started about April 2021. She started pouring drinks at the bar with Joel's help. No training was given, she was winging it. Customers helped her out with fancy drinks.
- 162) Her Brief of Evidence included:

- (i) she completed her LCQ, then her manager's certificate, paid for by Shelley and Blair. She gained confidence, locals said that she was one of the best barmaids who had worked there;
- (ii) things started going bad when Blair started finding fault with everything that she did. He would tell her that the bar was a mess when she and her son had cleaned it the night before. Abi started working at the hotel. Abi showed her how to cash up at night, not Blair or Shelley. They would cash up and clean together. Next day they would find that the bar had been trashed. There were cigarette butts everywhere, there were roaches, ends of joints and green matter on the floor that she knew was from joints being rolled on the bench. Abi would find cooked pizzas in the oven, grease everywhere and dirty dishes. As was common for Blair, empty or half emptied glassware would be left lying around. Kitchen hands Lesley and Chris were always finding Blair's empty glasses or half empty glasses;
- (iii) Blair would disappear a lot of the time – so much that it was like a joke, leaving staff to run the pub by themselves. When Blair was not there, work and takings were good. When Blair was there, she would doubt herself. The atmosphere deteriorated, she would get yelled at and verbal abuse was bad. At times she would become fearful of asking how to do things because of his response which would be *"You know your f...ing job now go and do you f...ing job."* The wheels would fall off when Blair was there. She would ask Abi and Joel for help. There was nothing written - they had no idea about the price of drinks. They would ask Blair and he would yell and if they charged the wrong prices he would also yell;
- (iv) once he disappeared when all the fridges were broken, and they were pouring warm beer. She did not know what to do - she tried to cool the drinks in water and became really stressed out. They could not get hold of Blair which was not uncommon. He would often go to the garage at the back of the hotel. He would be calm when he left and when he returned, he would be on edge, wired, and sweating. He would slam the doors on the microwave and drop food on the floor;
- (v) they knew that he was smoking drugs. It did not take a rocket scientist to know. Being fine when he disappeared and coming back a completely different person. They would often have to leave the bar and go and get him from the garage. Sometimes he would be smoking in the entrance and come into the kitchen with a smoke and a drink when he was on duty as the chef;
- (vi) after they bought the courtesy coach Shelley and Blair would also use it. Tracy used her own vehicle to transport people. The entire time she worked there Blair never worked on a Saturday. She rarely got a break during her time as a duty manager as there were not enough staff to allow that. She would be serving customers, restocking, cleaning, and doing the many other jobs that Blair would think up on the day;
- (vii) one day Blair took her to the storeroom to show her how to do a stocktake of the bar. She was told not to take notes. There was nothing in writing to refer to after he had shown her. A note appeared in the diary one day saying, *"this is your baby deal with it."* After that she would go into the storeroom and there would be empty boxes everywhere, spilled alcohol from where kegs had been changed, and a general mess. It seemed it was her job to clean the storeroom as well as restock it. She would often ask her son Chris to help because she was supposed to be in the bar. She had concerns that the alcohol dumped at the landing would be stolen. She was told to take empty crates outside and stack them in the loading bay as part of her job as duty manager;
- (viii) her job just kept growing. Blair would come in and say, *"how many times have I told you to do that."* She would ask him what he was talking about, and he would show her something new. Blair would load up the car with alcohol to take home if they had family to stay and once, he commented *"that will keep Shelley going for a week."* It made it difficult for her to do proper stocktakes when

she was not told that he had taken alcohol or how much. It was also difficult because Shelley and Blair would drink stock from the bar while working at the pub;

(ix) Blair expected staff from the bar to make him drinks when he was working in the kitchen. Tracy would be told by another staff member to make Blair a drink - usually a Bacardi and an energy drink like Red Bull. They did not sell Red Bull, but Blair would buy it from the Service Station. When she asked him why they did not sell it, He said they did not sell it as staff would help themselves. It was not just one drink she would make for Blair on a shift. Blair and Shelley drank a lot of alcohol while they were working and took alcohol home. Blair would become aggressive, he would drink a lot, ramble, and not make sense. He would switch topics, drop things, and have affected co-ordination; (x) she stayed away from the kitchen because of the mess he made. She thought it was apparent Shelley had a drinking problem as she would sit and drink while breastfeeding her baby. Both she, Abi and the locals saw Shelley doing this and they would shake their heads as they knew it was morally wrong. They feared repercussions about their jobs if they said anything about what Blair and Shelley got up to, so nothing was said;

(xi) once when she saw Blair drop a steak on the kitchen floor, he picked it up and put it on a serving plate. When he went out to the garage, he would forget about food cooking, and it would burn. She had heard other staff saying that Blair had dropped or burnt something. It was a reoccurring thing;

(xii) things became bad with Blair regarding his cooking. They started to get complaints about the time it took to cook the food. It got to the point where locals would come in and ask who was cooking for the night. If it was Abi that was okay, and they put an order in. When they tried to raise this issue with Blair, he would shout them down. She had to remind Blair about orders because he would take off. She felt like a mother hen reminding him and he would get irritated with her. She really did not want people waiting for their meals and would often cop complaints as she was front of house;

(xiii) one of the worst experiences with service occurred when a group of five people came in hungry from tramping all day and they ordered main steak meals. Tracy gave the order to Blair, cook for the night, when he was drinking at the bar with customers. She carried on serving. One of the group approached the counter after about an hour and a half asking her where their food was. She had no idea that they had not been served and went to the kitchen to ask Blair about the order. He yelled at her and told her to *"f..k off."* He gave her a bowl of chips for them. She apologised to the customer, and he told her to cancel the order. She went to the kitchen to tell Blair - he told her to *"f..k off"* and *"tell them to f... off as well."* She left the kitchen crying and apologised to the customer again. The customer had obviously heard Blair yelling as he said that it was not her fault and that she should not have been spoken to like that;

(xiv) as Tracy had not been shown by Blair or Shelley how to reimburse a customer, she went to Shelley in the restaurant and told her that she needed to reimburse a customer. Shelley apologised and tried to rectify the situation. The group wanted their money back. One told Shelley that it was not Tracy's fault, and she should not have been yelled at. When they left Shelley told her that she needed to stop crying as it was not professional, and she went back to drink with her friends. Shelley would have heard Blair yelling at her, but she did not care;

(xv) when Blair was not there it worked well, Abi cooked and occasionally Bridget who joined the team later. The locals were happy with their cooking, and they had a good turnover with food. A regular customer called Georgia started working behind the bar so she could pay off her bar tab. Bar tabs were common. When Georgia was working behind the bar her 4 kids, aged 10, 11 and twins aged about 7 would be in the bar running around, in the kitchen and spilling things, becoming a workplace hazard. Georgia would drink alcohol while working and she had seen her intoxicated while

working in the bar. At the end of the shift, Georgia would drive her children home to Sheffield under the influence of alcohol. Phone calls were made by ex-staff members and locals to Malcolm Johnston (Inspector) about what was going on. He was aware of what was happening;

(xvi) staff, including Tracy, had a meeting with Shelley and Blair about their concerns over the kids running around, but they did not listen to them. Blair thought it was funny having the kids there and he would often give the kids a fizzy drink from the bar. Georgia worked random days, sometimes with Tracy, and a lot of Fridays. Tracy was not allowed to work on Fridays because Shelley told her she did not have big enough boobs. Things got to the point where she would go home after work and cry because of the stress. It affected her mental health. Both she and Abi were scared of Blair, so they would meet at Tracy's house and travel to work together. She ended up taking stress leave from work because Blair's behaviour became so bad. She had communicated with Shelley about Blair's behaviour affecting her and Shelley text her later to say that she had spoken to Blair;

(xvii) when she returned there was a slight improvement but after a short time it went back to square one. Blair started conversations by talking quietly, saying that he was sick of spoon-feeding her and telling her how to do her job and then he would walk away. His demeanour changed to showing aggressive body language and she felt like she had to walk on eggshells. She broke down, went to her doctor, and was put off work on stress leave which was extended. By this time, she was absolutely terrified of Blair and she ended up in Hillmorton as she had a complete breakdown;

(xviii) at that point she put in a personal grievance. Blair and Shelley told her representative that they would forward her timesheets to ACC, which they did. They were trying to place the blame on her and trying to discredit her. They filed papers that she had abandoned her employment. Blair said that he had guidance for the paperwork for the abandonment of her job from the Inspector Malcolm Johnston. Shelley and Blair would not let her go back after she lodged the personal grievance. She could not work for them so she could not abandon her duties. Shelley text asking her to hand back her keys because she was deemed a security risk. She said that if the keys were not returned, they would get all the locks changed and charge her. Tracy asked her representative to check about collecting things stored in the back of the hotel. The response was - because of what Tracy had done someone else had to pick them up. They agreed to let her husband and son pick them up;

(xix) there was supposed to be mediation for the PG, but Blair made no contact and refused. The matter was then taken to the Employment Relations Authority and a hearing set down for 30 and 31 August last year. The only communication from Blair was that he wanted to hear Joel in person and not via Zoom. Blair did not show up at the hearing. The ERA determined that she won her case;

(xx) Lesley who worked out the back was a witness for her at the ERA hearing. She was dismissed because she was unvaccinated. Georgia was unvaccinated but she was allowed to continue working behind the bar/front of house at the time staff had to be vaccinated. Locals had to be vaccinated to be inside the hotel;

(xxi) the entire time she worked there neither of the sterilisers worked and staff did the dishes by hand even glasses. She thought it was a health issue - they were not checked by authorities.

Cross Examination: Medical Officer of Health

- 163) Ms Tahuu had not been aware that according to her contract when she did not stay for a further 12 months, her duty managers licence fee would be deducted from her pay.
- 164) Mr Wallace had not paid the ERA findings, but a bailiff had left a card in the mailbox. The Ministry of Justice communicated with Tracy; *"unable to locate the debtor of 1675 West Coast Road, Springfield Hotel. Spoke with a male on site. He stated that the company no longer operates at the hotel. He*

would not disclose the director's current whereabouts and did not appear to have any company assets on site." There was no description of the male person.

Cross Examination: Chief Inspector – Mr Johnston

- 165) Ms Tahuhu agreed it was about April 2021 when she commenced bar duties at Springfield. She finished at the end of the year. She was aware of a phone call to the Inspector from somebody in Springfield that she had referred to as an ex-employee or a local in June 2021. Ms Tahuhu acknowledged that three or four weeks later on 9 July, Police executed a search warrant at the Springfield Hotel.
- 166) At point #7 she stated she did not receive any training from Mr Wallace. She did not know what SCAB training was. When the Inspector described the SCAB assessment tool, Ms Tahuhu confirmed it was part of the manager's licence. Mr Wallace had not provided her with any training in relation to the Sale and Supply of Alcohol Act, or the emergency evacuation procedure and there were no fire exit drills when she was there – no explanation, no drills, no procedures. Tracy was aware of the incident book, but she had no instruction on how or when to use it. She thought she used it to document the fight the night there was a fight outside.
- 167) She agreed that she was on duty when the hotel passed a Controlled Purchase Operation in June 2021. There was no feedback about that from Shelley or Blair.
- 168) Before Tracy was a manager, Blair would disappear at times out back to his man cave while he was duty manager. She agreed she said that Blair's personality changed when he returned. He was smoking drugs, but she could not be specific about the sort of drugs. She knew something was being taken because she could smell it. She had previously observed other persons taking drugs from when she worked at the Canterbury District Health Board and noticed personality changes. Ms Tahuhu's comments at point #45 were correct; that Blair would become aggressive, would drink a lot, ramble, not make sense, go on to another topic, drop things, and have affected co-ordination. In her opinion it was from drugs and alcohol.
- 169) Mr Wallace talked about crossovers in the roster to cover meal breaks - someone coming on duty to allow the person working to have a break. Tracy did not observe crossovers in the roster, there weren't enough staff for that. She was never able to have a meal break.
- 170) Tracy agreed Blair worked as a chef regularly when he was also the duty manager. It was Abi, Joel and Chris who said that Blair's dropping or burning something was a re-occurring thing. The group of 5 who ordered steaks and the person who heard Blair yelling were not locals.
- 171) The Inspector referred to point #84; *"I ended up taking some stress leave from work because Blair's behaviour was bad. I had communicated Blair's behaviour affecting me to Shelley and she messaged me to say that she has spoken to Blair."* She photographed the messages, they were still on her phone. They were in the ERA decision, all the information was there. It was correct that she had been awarded nearly \$26,000 by the ERA.
- 172) Ms Tahuhu agreed there was possibly a good chance that when Police and he had called in informally or for inspections that they had not noticed Blair and Shelley drinking a lot when they were working and when they were duty managers. The Inspector said it was not something a licensing inspector would expect of a licensee. Tracy also agreed it was possible they were not showing signs. She had also said they were drunk.
- 173) She told the Inspector she never had feedback on the stocktakes delegated to her. Even when there was something wrong and they were missing a whole bunch of alcohol.

Cross Examination: Counsel - Ms Kaur

- 174) Ms Tahuhu started work as a cleaner, working 4 hours on the weekend. She confirmed, point #3, that a contract was not offered to her for the cleaning. The ERA decision, paragraph 19 noted that in her statement of a problem she was not provided with an employment agreement. Ms Tahuhu agreed that was correct when she was a cleaner. Counsel quoted paragraph 21, *"the member held that it cannot be disputed that you were provided with an employment agreement by the hotel."* Ms Tahuhu replied, *"that's correct for when I was a manager, not a cleaner."*
- 175) It was not correct that a copy of an employment agreement with the handwritten name of Tracy Tahuhu was provided. It just had 'Tracy' on it, it was not signed, but it was presented when she became a manager. Counsel added, but she *"accepted before the authority that writing on the employment agreement"* was hers. (transcript). Ms Tahuhu stated; *"the name was, yes."*
- 176) She had not asked what the bar job would involve as she thought she would get training. She did not discuss wages because she was on ACC at the time. She had disclosed to ACC that she was in employment. At 5, Ms Tahuhu agreed she said, *"Shelley said to me that she wasn't sure I would be capable of it,"* because she had never worked in a bar before. Ms Kaur said *"then you started pouring drinks in the bar, yes? You have just said that you have never worked in a bar."* (transcript p.228). That was correct as another employee showed her how to pour drinks.
- 177) She confirmed as correct to Counsel that;
- (i) Shelley and Blair paid for her LCQ;
 - (ii) she was encouraged to upskill;
 - (iii) she was quite open about her personal circumstances;
 - (iv) Shelley and Blair had been sensitive about those things with her;
 - (v) she had a knee injury from a previous job;
 - (vi) the knee injury had not affected her capabilities in doing her job at the hotel;
 - (vii) Blair would tell her that the bar was a mess when she had cleaned it the night before;
 - (viii) she had cleaned the bar the night before as her son often helped her, also to close-up;
 - (ix) she would find the bar a mess or trashed the next morning after cleaning the bar and closing up, describing what she found;
 - (x) she closed most nights;
 - (xi) Abi started working at the hotel before her, Abi would cash up and she would clean;
 - (xii) Abi showed her how to cash up at the end of the night, not Blair or Shelley;
 - (xiii) she did not serve minors;
 - (xiv) there was a lack of written processes, of a drinks pricelist, she was told not to take notes about stocktaking but there was nothing documented to refer to;
 - (xv) Blair would disappear when he was on duty, often out the back to the garage;
 - (xvi) she used the one available courtesy van to take people home;
 - (xvii) stock-take was part of learning the bar - if you were taught;
 - (xviii) she rarely got a break as there weren't enough staff;
 - (xix) she knew Blair was drinking a lot while on duty as she made his drinks;
 - (xx) her opinion and experience was that Blair would become aggressive, he would drink a lot, ramble and not make sense, go on to another topic, drop things, and have affected co-ordination;
 - (xxi) she was scared of the repercussions if she said anything about what Blair and Shelley got up to, she wanted her job;
 - (xxii) not familiar with the word "designations," she understood who was allowed where in the premises and who was not allowed in specific areas;

- (xxiii) when she filed the PG there was a complete breakdown in the employment relationship;
- (xiv) a text and the ERA report confirmed she had to return the hotel keys as she was regarded as a security risk by Blair and Shelley;
- (xxv) while she had not seen Blair do drugs, she had smelled it.
- 178) Mr Wallace's evidence that morning stated that he showed her the cash-up procedures and things, categorised and colour coded. Ms Tahuhu said that was not true. When Counsel asked if she understood the cash-up procedure, Ms Tahuhu replied, *"well, I was not shown it, so how can you understand something when you do not know it?"* Abi taught her to cash up as she was there the last part of the night.
- 179) She agreed that *"I would go to work and be accused of making a mess and find the bar had been trashed."* As manager she closed the bar. She knew that Blair could be there until the early hours of the morning. She was not just assuming that the bar was opened in the middle of the night but there were cans on the benches, glasses all over the dishwasher and glasses and stuff all over the counter. Counsel asked if it was possible that she did not do those things the night before? The Chair intervened. Ms Tahuhu said that it was common for Blair to leave empty or half-empty glassware everywhere and he would have to be around the premises to leave those.
- 180) Ms Tahuhu confirmed that Blair would disappear, that it worked better when he was not there. She would self-doubt herself and not feel as confident when he was there. Counsel asked if the self-doubt was that she was not meeting the standard of work that Blair had expected. She replied that she did not think that was a true statement at all and she agreed that both employer and employee assess employee performance. She had been told that she was doing a good job and to keep up the good work, so she understood she was meeting expectations. She agreed that while she liked when Blair was not around, she did not agree that she thought she was the boss running the hotel. She did not drink when working, she did not drink. She confirmed Georgina was drinking on duty a few times, that after her shift she would drive her children home under the influence of alcohol.
- 181) Blair would leave the front of the hotel and go out to the garage at the back of the hotel. Ms Tahuhu did not know what he was doing in the garage. She was in the front in the bar, he was in the garage. When she needed him, she would have to go and get him. Counsel asked if she saw Blair smoke drugs – Ms Tahuhu answered that she could smell it.
- 182) She told Counsel that there were four sometimes five people who worked at the hotel when she was there - her, Joel, sometimes Chris and a cook in the kitchen. She rarely got a break while on duty as there were not enough staff for that. She was passionate about her job. She wanted to learn about the bar but not necessarily take responsibility to upscale as Counsel suggested. Ms Tahuhu agreed that stock-take was part of learning the bar - if you were taught. At #30, Ms Tahuhu said Blair took her to the storeroom to go over how to do a stocktake. She did not take notes as she was told not to. When Counsel said, but he was telling you how to do it, Ms Tahuhu said then it should be documented. Counsel said they were not talking about that – did she take any notes when he was teaching her. Chair intervened and said, the answer was no. At #20 in her brief, she confirmed there was no pricelist for drinks. They knew at the end of the night whether the takings were good or not. Ms Tahuhu agreed that she was expected to bring stock inside from the loading bay when she could, there was no set time. Depending on when it was delivered her son would help and Chris too if he was available.
- 183) Counsel referred to her comments at #37 and 38; *"one day I was outside, and Blair was putting packs of beer and pre-mixes from the pub into his car."* It was a lot of alcohol. Blair said it would keep Shelley going for a week and Tracy agreed that could be taken as a joke.

- 184) Ms Tahuhu agreed that in her statement she said that Shelley and Blair would always drink while working at the Pub. Questioned would she accept that the Inspector had made several inspections of the premises and had not found Blair or Shelley under the influence, she answered that she did not know about that. She did not know if Blair would be sober when the Inspector visited but with the amount of alcohol, she would not think so. She accepted that the Inspector and Police officers had more experience in assessing people under the influence of alcohol. However, she made the drinks and she confirmed that it was a lot of alcohol. When asked, she did not have specific dates. Tracy confirmed it was her opinion and experience that *"Blair would become aggressive, he would drink a lot, ramble and not make sense, go on to another topic, drop things, and have affected co-ordination."*
- 185) She saw Blair dropping the steak on the floor. He picked it up and put it onto a serving plate and that other staff had seen this. She was not aware of the requirement to pass food inspections. How could they pass those when the dishwashers were not working. Blair would often go out to the garage, and he would forget about food cooking. It would burn. She accepted he was the business owner with a financial interest. She could not answer why he would do that. Counsel asked if she was saying he would ruin his own food supplies, she replied, *"well they were burned, so yes."*
- 186) As front of house Tracy started to get complaints about the food and time it took to cook. People sometimes waited an hour and a half, two hours for their meals. Other staff also received the complaints, not always from locals. These were reported to Blair. She did not record the complaints in the incident register as she was not aware that was required. She confirmed that locals would ask who was cooking before placing an order.
- 187) Did she accept that Mr. Wallace had a lot of experience as a chef overseas? Ms Tahuhu said she did not know what his qualifications were overseas. She confirmed Abi was an apprentice chef and good at her job. In her evidence she said Blair who was an experienced chef would burn food, but people would come for Abi, the apprentice chef's food. Her stating at 55; *"we tried to raise the issue of compliance with Blair, but he shut us down,"* was correct. She agreed it was not in the incident register, they raised the issues with Blair. She agreed that she wanted her job. She was scared of the repercussions if she said anything about what Blair and Shelley got up to. Counsel asked why she would want that sort of job where she had been verbally abused and had mental health issues. She answered that she thought it could lead to something better.
- 188) Ms Tahuhu agreed Blair yelled at her because she told him from the kitchen window that the group who ordered steaks were asking where their food was, but she could not give a specific date for this incident. The wait time was an hour to an hour and half. Shelley did the reimbursement. It was correct that when they left, Shelley turned to her and said that *"I needed to stop crying as it was not professional."* Ms Tahuhu said, *"when you get abused and yelled at and screamed at, it's very hard to hold your composure."* (Transcript p.270). She knew Shelley had heard Blair yelling because it was very loud, people at the bar heard it and, in her opinion, as Shelley was just in the restaurant she would have heard.
- 189) Counsel referred to her evidence at 78, when she disagreed that she made phone calls to Mr Johnston. Ms Tahuhu read out...*"phone calls were made..."* That did not say it was her. It said made by ex-staff members. She was there when the calls were made. She said Mr Johnston was informed of some situations.
- 190) She confirmed Shelley told her she was not allowed to work Fridays because she was not pretty enough, young enough and did not have big enough boobs. (transcript p.275). That was said in front of staff at a staff meeting by Shelley. Ms Tahuhu agreed that she *"ended up taking some stress leave"*

from work because Blair's behaviour was bad." (transcript p.276). She provided a medical certificate. If she remembered correctly, she went back to her GP and her GP recommended further leave. She took out a PG while on stress leave - sick leave. Counsel showed Ms Tahuhu a medical certificate, then asked if it was from 19 January and five days later, she filed a personal grievance – she agreed. Ms Tahuhu messaged Shelley telling her how she was. There was contact with Blair and Shelley, but she did not sit down and have a discussion with them. The ERA was aware of all the messages. Ms Tahuhu asked Ms Suchley about collecting her belongings from a room out the back. Ms Suchley was told because of what Tracy had done she was not allowed back on the premises. Someone else had to go.

- 191) Counsel asked about her having the sense and the capacity to make a personal grievance while she was having this serious mental breakdown. Ms Tahuhu replied in clarification that she went to Hillmorton where they helped her at the time (at 89,90) as she had a complete breakdown. Sometime after that the personal grievance was put in. Counsel stated that it would probably be reasonable for any employer to say for her to return the keys to the hotel – Ms Tahuhu said that she was asked to do that as she was deemed a security risk. Counsel asked where that was in evidence – to which Ms Tahuhu replied that it was in the ERA report, it was in a text message. Ms Tahuhu had no idea what sort of security reason it was. Ms Kaur was referred to #95, and the text which referred to the keys, the security risk and to changing the locks at Ms Tahuhu's expense. Ms Kaur advised that this was Ms Tahuhu's evidence and that her client would deny that.

Cross Examination: Police – Senior Constable Craddock

- 192) Ms Tahuhu clarified that she did not have a contract as a cleaner but did as a duty manager. She had partially signed the beginning of one but had not fully signed with her signature. The copies were taken away to make a few adjustments and never returned. She agreed that her son helped stock the bar, she thought he was paid but did not sign a contract. It was correct that people would order food when Blair was not the chef. The 5 people who worked at Springfield were not working all at once the whole time.
- 193) Ms Tahuhu said that the reason she did not leave was that it did not start off like that but confirmed:
- (i) she did not consider it part of the duty manager role to know if the premises had passed a food inspection;
 - (ii) as a duty manager she did not think it her obligation to put negative comments about Blair into the incident book;
 - (iii) she took the order for the group of 5 trampers who ordered food;
 - (iv) she was not aware they did not have their food until an hour and a half had passed;
 - (v) she told Blair who was in the kitchen, that the group had not had their food;
 - (vi) he yelled at her because he had not cooked the food, which was upsetting as she was getting the complaints;
 - (vii) she did not receive any training;
 - (viii) she would not expect to know the designations as she was not trained, but the names apart, she knew from her LCQ;
 - (xiv) Blair would call her names, swear at her, yell and scream at her and Abi, in front of customers, she found it difficult to stand up for herself.

Cross Examination: The Committee

- 194) Abigail Atkins was there when Tracy started and was dismissed before Tracy left. She knew Abi had issues with Blair as she was there as well, and they discussed some things. They felt that it was safer, better for to both go to work together. Abi began a cooking apprenticeship. Blair would often not turn up or text saying he was running late to help Abi with her apprenticeship modules as arranged. She was falling behind with her modules.
- 195) When Blair was taken into custody Abi and herself opened and ran the pub. It was her best night. She was duty manager and requested permission from Police to open as it was shut down while Police did their business. Mr Wallace's behaviour started to deteriorate following his time in custody, the accusations started, he spoke poorly of current and past employees in front of her. Abi and her were frightened. Ms Tahuhu did not know if Shelley Watson was aware of the bullying from Blair as she was either in Australia or at home with the baby. She, Abi, Bridget, Chris and Lesley talked about workplace issues and supported each other. Lesley would pull Blair up on his behaviour many times as in her statement to the ERA. Blair raised his voice to tell Tracy off in front of customers, he would call her names, he would swear at her. She was bullied. People would hear him yelling and screaming at her and Abi. Local customers would say that he should not be speaking to her like that. It was difficult to stand up for herself.
- 196) She knew Blair was drinking as she made the drinks. He would smell of alcohol frequently while on duty. Tracy and Joel spoke about his drinking in the kitchen. Before the raid Ms Tahuhu was not spoken to about the bar being a mess. The change coincided with the raid. She was a cleaner for 6 months and would also run the vacuum around the bar, finding butts, roaches, green material on the floor. Her son helped with the clean-up at night. The mess in the bar the next morning was a regular thing, happening the whole time she was there. Blair would disappear a lot. If he was not in the back shed, they did not know where he was. At 44, she stated that she had seen Blair and Shelley both drunk while working. Blair would then become aggressive, drink a lot, ramble, and not make sense. He would go off on a tangent and he would start throwing things around the kitchen. He would yell at Abi, slam the microwave, bang and make loud noises, and be aggressive. Again, this was after the raid. This was in her ERA statement. Lesley had also made a statement about Blair's behaviour.
- 197) Ms Tahuhu agreed she rarely had a break during her time as duty manager because there were not enough staff. Mr Wallace had said that morning his sister and possibly his mother were there to cover - asked if that cover was there when she was duty manager, Ms Tahuhu responded that it was not. In 32, she stated her job included cleaning and stocking the storeroom. She confirmed that there was no position description, nothing in writing about her duties, nor a letter. The jobs kept getting bigger and bigger (in 36) and Blair did not talk to her before adding to her duties.
- 198) She went to the kitchen to tell Blair about the customer asking where their meal was after an hour and a half and she left crying because he told her to "*eff off*." It was pre-paid, and she agreed she thought she was doing the right thing for the business by apologising to the customer and going to Shelley about the reimbursement.
- 199) Ms Tahuhu confirmed having 5 days sick leave, further sick leave and then going to Hillmorton. A few days after she came out of Hillmorton, after speaking with Maryline and their discussion of issues, she decided to put in a personal grievance. She was very surprised to hear that she had abandoned her job. She expected issues with getting her stored items. She did not know what sort of security risk she was, but it did not surprise her. As a duty manager she had keys and opened up. She had willingly had the keys delivered.

Police Witness: Kathleen Roche

- 200) Ms Roche appeared via AVL and was sworn in. When Mr Wallace took over the hotel she was head bar manager as no one else had their duty manager's certificate. She found Mr Wallace's behaviour was erratic, intimidating, and could be threatening. Ms Roche believed somebody would get seriously hurt or die with what was happening and that was why she was giving evidence. In her view, the threats and verbal abuse to staff past and present were on the dangerous side. In her Brief Ms Roche states, she was afraid for her safety by appearing.
- 201) When she worked at the hotel, she witnessed Blair not measuring spirits when pouring drinks, allowing customers behind the bar, leaving/disappearing part way through shifts, at times finding him outside with other people having a joint and always drinking on duty.
- 202) When Shelley arrived, she was phased out of her job, taken off bar duties to do dishes and clean up after the chef, some days until 1.00am. She was then pushed into housekeeping which she could not do properly or safely as she had a shoulder injury. She was never paid properly and when she insisted on going on the books, she was docked for meal breaks she did not receive.

Cross Examination: Counsel - Mr Lange

- 203) Mr Lange asked several questions about timesheets he showed to her with various dates. She said that they had been changed, it was not her handwriting. She would fill in her hours and Blair completed her timesheet. When asked about none of the time sheets showing her finishing at 1: 00 am or later, Ms Roche replied - *"sir I have worked hours for nothing. I remember staying here until two or three in the morning rolling pastry. Blair's sister and I did that because I wanted Blair to succeed."*
- 204) Mr Lange asked further questions in cross-examination to which Ms Roche replied:
(i) when Blair flies off the handle, he throws things, someone could get seriously hurt;
(ii) he threw anything he could get his hands on;
(iii) he did not measure drinks properly;
(iv) she did not remember working a shift with Blair when he was not drinking, Mr Lange could not find any indication in reports that Mr Wallace was drinking at work;
(v) she did not know when it was, but she saw Blair smoking a joint around a fire outside the laundry with Anton, his sister, and another guy;
(vi) she would not give the name of the person who told her drugs were being given out at the bar as Blair had already threatened that person;
(vii) she denied that a lot of her evidence was "town gossip."
- 205) Mr Lange put to Ms Roche that she had a vendetta against Mr Wallace, that the evidence given that day was false. She replied that she did not have anything against Mr Wallace personally. She did not hate Mr Wallace, she hated his behaviour, she hated what was going on in the pub. She said there were some people who should not be running a pub and they are two people who should not be.

Cross Examination: Chief Inspector

- 206) Ms Roche worked for the previous owners, Pete and Michelle, the whole time they were at the hotel. She agreed to stay on when they asked her to do so as a favour. She agreed they gave her training. She told the Inspector she did not have any training provided by Blair.
- 207) Asked about people going behind the bar to help themselves, she said she told them to get out. She also confirmed:

- (i) she was definitely sure it was cannabis that Blair was smoking outside;
- (ii) Mr Wallace was not a duty manager at the time he was drinking alcohol;
- (iii) Blair did not give any direction in serving intoxicated persons or minors;
- (iv) at times he had her back;
- (v) she thought they made up an incident book over time;
- (vi) she no longer held a manager's certificate but did hold one for about 10 years;
- (vii) with her experience in the industry and her own observations of Blair, it was her opinion that she would not describe him as suitable to hold an On and an Off licence.

Cross Examination: Medical Officer of Health

- 208) Ms Roche confirmed that she did not have a contract with the previous owners or with Blair. She put on her timesheet that she was the bar bitch probably because of the way she was treated that week and she had had enough. Mr Wallace drank beer and spirits behind the bar. She believed the party nights had stopped for a while after Blair was arrested.

Cross Examination: Committee

- 209) In cross-examination, Ms Roche confirmed to the Committee:
- (i) she did not have a position description of her duties;
 - (ii) the only bar person in her experience that she had ever seen not measuring spirits while pouring drinks was Blair;
 - (iii) her saying threats and abuse to present and previous staff were on the danger side came from one staff member ending up in Hillmorton Hospital because of the abuse Blair threw at her, admittedly she had mental health issues, but he pushed her to breaking point;
 - (iv) she did not get a break during the five and half hours worked 9 June from 4:00 pm until 9:15 pm, she did get food, but she ate this while she was working;
 - (v) with reference that timesheet 9 June, the 6¾ hours worked on 2 June, 8¾ hours on 19 July, she did not have any lunch break equivalents, any morning tea or any afternoon tea breaks as required by law, they used to make a cup of tea whenever they felt like it and drink it. Occasionally she sat down with Blair's mum and had a chat;
 - (vi) she was aware that she was entitled to breaks;
 - (vii) when she asked to get paid on the books, they started docking her the half hour lunch break, she was told legally they had to do that;
 - (viii) there were no staff meetings with Mr Wallace;
 - (ix) she saw cannabis growing in the back garden along a brick wall;
 - (x) she did not know Blair was doing drugs, she did not work with Ms Watson;
 - (xi) she did not see cannabis being sold on the premises;
 - (xii) intoxicated customers were served, only her and Michelle asked them to leave;
 - (xiii) at the time she was the only staff member that did not drink, she did the taxi run, using her own car, taking people as far as Darfield and out the other side, mainly those deemed not fit to drive at closing time, she was not compensated for using her car for driving people home;
 - (xiv) there were no trial emergency evacuations while she was at the hotel;
 - (xv) she did not see Ms Watson use cannabis, nor did she see her intoxicated while on duty;
 - (xvi) she was not at the hotel when lines were used upstairs, she was told by staff that people paid their money to go upstairs to do their lines and come back downstairs;
 - (xvii) living in Springfield currently, there has been some retaliation towards her and other staff;

(xviii) the effects of working at the hotel led to her not pursuing hours, she was not happy.

Police Witness: Joel Innes

210) Joel Innes appeared via Zoom and was sworn in. According to his bank statements he started in December 2020 and his last payday was 18 September 2021. He had several roles at the Springfield Hotel.

211) His Brief included:

(i) the first month Mr Wallace encouraged him to have drinks after hours. This escalated into rants about locals, staff, and personal enemies, often attacking ex and current employees on their work ethic, honesty, and character in using the grievance, that their supposed inability was harming his business;

(ii) Blair began to praise him in an over-the-top manner. He also accused him of something or degraded him to others behind his back. Joel was given extra work including jobs outside of his role, like nights when cleaning took until 1 am in the morning. Blair would drink and rant about bad people and how amazing Joel was;

(iii) it was clear the pattern of hiding expectations with flattery and then using it against him was consistent throughout, the praise and rants were always severely over-the-top;

(iii) they were always understaffed, he found it hard to keep up with the work. He was the kitchen hand, the cleaner, the waiter for the front of the house, he ran errands, he was renovating several rooms and was the bartender when Tracy was not on;

(iv) Blair harassed him and the rest of the staff many times based on doing a bad job. When he did this, he sometimes stank of alcohol, was erratic and tried to gaslight them into feeling bad for their mistakes;

(v) Blair would sometimes go and hide in the shed and leave them with all the work;

(vi) he witnessed several outbursts of rage from Blair, including throwing tools across the room, shouting at top volume at staff and ranting loudly about locals and business partners;

(vii) he witnessed Blair yelling at Tracy and Abi. Tracy had a mental breakdown;

(viii) Blair's behaviour resulted in a very toxic workplace;

(ix) following the raid and being charged, the behaviour issues doubled to a ridiculous amount, they would be harassed and snapped at in public, in the bar in front of customers, he would lecture them in private, make judgmental comments, come out with random comments. All of this was demeaning and went on every day for months. It severely impacted his and everyone else's health and over time, caused them all to doubt themselves. Joel considered it undoubtedly reflected a harassing or narcissistic malicious nature;

(x) he was at the meeting when Shelley told Tracy that she could not work Friday nights as she was not young enough or did not have big enough boobs;

(xi) Blair was Abi's mentor for her cookery apprenticeship and was supposed to help her, but he hardly ever showed up when he said he would;

(xii) Blair asked or begged Joel many times to work on special days off, saying he could not open otherwise, mentioning 1.5 pay, but he did not get compensation for any such overtime;

(xiii) he never had an employment contract from Blair or Shelley, there was always an excuse;

(xiv) he finally went through one with Shelley, then talked to Shelley about issues his parents had with it. She was to sort these out. He asked numerous times, but never saw the contract to sign it;

(xv) he never received proper training on prices for drinks or had an up-to-date price list. Initially, people were charged differently depending on who was buying;

(xvi) Blair was nervous one night, telling him, *"you need to go now,"* something he had never done before. After midnight while working, he saw a van pull up outside the pub with its lights out;

(xvii) Blair admitted to him that if the Police had found the device they overlooked in the drug raid, he would go away for years because it had the data for the lights in the growing room;

(xviii) Blair told him the business would have failed several times over if they were not selling drugs;

(xix) he saw Blair take out a bag of white powder and put it in his pocket when he thought that no one was looking. He was nervous, quite pale, and sweating;

(xx) he would smoke weed and drink alcohol in the shed for hours during freak busy nights when there was only Joel and one other staff member working;

(xxi) he would come back from hours in the shed, drunk, red-nosed, and pale – *"he was on something or all three."* (transcript, p.312).

(xxii) Blair expected two or three workers to handle hectic nights, but that was not enough;;

(xxiii) Blair said that Blair and another staff member were on LSD. He suspected those two of doing things as often neither could be found when they needed assistance on many occasions;

(xxiv) several times he witnessed Blair giving pills and prescribed medicine to his friends;

(xxv) several times he refused speed when it was offered to help him with his work;

(xxvi) once when Blair was drunk, he offered to show Joel his growing room. Joel refused;

(xxvii) Blair bragged eagerly about past drug use such as coke and ketamine;

(xxviii) even though he still needed the money, he finished work at the pub because he could not take it anymore;

(xix) as a witness for Tracy he read out most of this statement at Tracy's ERA hearing.

Cross Examination: Medical Officer of Health

212) Joel confirmed he was initially employed as a barman, eventually having more responsibilities but he never finished his training. At times he would need to go out to the shed to find Blair and ask the price of a bottle of wine. Customers would get upset as the price was never the same. When Tracy started as a barmaid he mostly worked as a kitchen hand but still cleaned up every night on his shift until very late. He also renovated rooms and did other cleaning.

Cross Examination: Chief Inspector

213) Joel did not have a manager's certificate. He worked nights sometimes when Tracy was not there. He was not often appointed duty manager for the night - his recollection was that for many of the nights Blair was with him. There were instances when Blair would go, *"I am going down to the garage, I am popping back home to check my baby,"* or something along those lines and he would write Joel's name up on the board. He would come back eventually. Work was different every day. It was often hectic right away. Later at night it would seem that Blair had been drinking a lot.

214) Blair tried to show him how to use a diagram for age. He was not comfortable because he had bad dyslexia and he did not want to make a mistake. He did not believe he had any official training. Asked about recognising intoxication, Mr Innes said there was no moment where Blair said *"ok, I'm going to teach you what to do when someone's drunk and they need to be kicked out or told to stop."*

215) Mr Innes said that he knew about emergency evacuation off the top of his head. He recalled a gather point in the car park but otherwise there was no training on evacuation or how to go about it. He told the Inspector that the device the Blair told him was for recording the data on the lights in the growing room, was the Wi-Fi controller.

Cross Examination: Counsel – Ms Kaur

216) Mr Innes agreed with Ms Kaur that he worked at the hotel as a casual barman and wait staff. He added that he was also kitchen hand, renovator and cleaner.

217) Responses to Counsel included:

(i) paragraph 4, saying Blair degraded past and current staffing members - Blair told bad stories about both current staff and ex-staff members, he did not seem to like current staff. Blair befriended him at first, they were good mates. He said that it turned out Blair would get a staff member who would do everything and pay minimum wage, then get mad when they could not follow through with all the assigned duties;

(ii) Counsel asked if that was opinion or fact - he said that as a matter of fact, he was a cleaner, a kitchen hand, and a renovator, sometimes all in one night. It was a fact that he was being paid minimum wage, it was a fact that they were friends at the start;

(iii) Blair was mostly on the property when Joel was working in the bar. Sometimes when Blair was going to be off the property for a short time, he wrote Joel's name up. Counsel asked if he was appointed an acting manager. He said Blair never tried to appoint him as a full manager, he could not remember the exact phrase, but when Joel asked, *"is this ok? I don't have a bar licence,"* as far as he could remember Blair said it was legal for his name to be up if it was only for a half hour;

(iv) paragraph 6, the over-the-top praise for his work. Blair was obviously happy with the painting work he was doing. He then realised that he had lots of jobs and when he could not do those jobs or made a mistake, Blair would then accuse him of neglecting his duties and being inadequate. When he took the job, *"you're the only one that I can rely on. You do so much. Thank you for working so hard."* Then the next week Blair accused him of neglecting his duties and being inadequate;

(v) Counsel asked if the statement about being understaffed was through giving witness for Ms Tahuu and Ms Atkins or was that his experience – it was not true was it? Mr Innes did not think three people, two in the kitchen, with just under 100 customers, was enough. When he said, *"we were understaffed,"* he meant they were all over their heads at work, there was no way they could make pizzas or food fast enough, it was very hard to keep up. Wait time would be an hour to an hour and a half for chips. In his opinion they were understaffed throughout. Working on any particular shift, and after some clarification, he agreed there were at most 6 staff; the caretaker, Abi, Tracy, himself, Blair if he was on the property as front of house or cook, and sometimes Shelley;

(vi) paragraph 13, Joel referred to a pattern of *"hiding expectation with flattery."* He said those were his words in trying to find the best way to describe it. He never asked to be the kitchen hand or the cleaner, he just went where he was told. At the start he understood he was being trained to be a barman and help was needed with other stuff because of Covid. He built up the courage to ask if one staff member was expected to do several roles. And yeah, Blair told him to *'toughen up,'* that he was not hard enough for it. Ms Kaur said that was not flattery;

(vii) When he said, *"Blair harassed me and the rest of the staff many times,"* he did not see anybody else, did he? He replied, *"Well, I was there when Blair was harassing. I'd be doing the dishes trying to get through my shift. And then he would burst into the kitchen and start this tirade about someone I didn't know or didn't care about. And because we were mates, I was just expected to listen, and he would force these conversations on me all the time and all it did was made me uncomfortable. It's surprising to me that he never picked up on that because I never really said anything. He just kept going,"* (transcript, p.328).

(viii) if Blair was praising him, there was no reason for Blair to harass him? He considered it harassment when he kept talking about other staff in a negative, degrading manner, that it was a

recurring thing. Joel was not enjoying it, Blair kept coming at it, Joel considered it harassing, using the best phrase he knew. He agreed by saying, "*ranting loudly about locals and business partners*," he meant whoever sold him the pub, he believed his name was Pete. Blair ranted loudly about locals. He knew there would be supporting letters from locals, customers, but he had heard Blair say some very horrible things about some of them;

(xix) he agreed Blair was not charged with drug distribution;

(x) a couple of times he saw Blair doing apprenticeship coursework with Abi but mostly Abi complained to him about Blair not being there to help when he said he would;

(xi) paragraph 30, Blair was nervous one night, saying Joel needed to go. Joel had worked past midnight. His best recollection was that he saw a white van pull up outside the pub with its lights out when he left. Once he saw Blair take out a bag of white powder and put it back in his pocket when he thought no one was looking - he thought because there were other people in the room, including him;

(xii) paragraph 43, Blair said to him that if the Police had found a device they overlooked in the drug raid, he would go away for years. Responding to Counsel's asking if that was quite a fanciful statement, he believed it was, but that was what Blair said. He was not alleging Police did not do their job properly as Counsel said. They were in the bar after hours on the day of the raid, talking about the raid. He was referring to Blair saying how stupid the police were and that he felt really nervous when they stepped over a smoke alarm looking device and did not investigate it.

CLOSING SUBMISSIONS

- 218) At the conclusion of the hearing of evidence on 1 March 2023 it was agreed that all closing submissions would be received by 3pm, 14 March 2023. Submissions were received from the Police, the Chief Licensing Inspector, the Medical Officer of Health and Ms Kaur for the Applicant.
- 219) In addition to our detailed evaluation of all evidence, the Committee also took into account the detailed submissions we received.

Police

- 220) Senior Constable Craddock, Police Alcohol Harm Unit, filed closing submissions for the Police. The submission principles and factors covered specific legal criteria and the evidence particularly of Police witnesses, the Applicant and the Chief Licensing Inspector.
- 221) Police submitted that the evidence including that given verbally and in cross-examination, in the form of photographs, and written documents identified the volume of failings, occurring frequently and repeatedly, of the Sale and Supply of Alcohol Act 2012 and other legislation. Lack of operational procedures, overall non-compliance with the law, personal circumstances, personal behaviour and incidental occurrences led to Mr Blair Wallace coming before the courts. The Applicant chose either to engage minimally or not to engage or appear at associated hearings in the employment matters between the company Alpine 182 Degrees Limited trading as Springfield Hotel and three previous employees heard in the Employment Relations Authority (ERA). The employee advocate considered Mr Wallace retaliatory, erratic and very unprofessional as an employer.
- 222) Two determinations from the ERA found Alpine 182 Degrees Limited was in breach of the (a) the Wages Protection Act 1983, (b) the Employment Relations Act 2000, (c) the Minimum Wages Act 1983, (d) the Holidays Act 2003 and (e) the Human Rights Act 1993.
- 223) Evidence submitted by Police included their executing a search warrant and the subsequent location of a cannabis grow at 5675 West Coast Road, Springfield, the address of the licensed premises. The Applicant's home address in Springfield was also searched and ammunition, drug-related dry material, drugs and drug paraphernalia were located.

- 224) Mr Wallace has six convictions from 8 March 2023. Judge Gilbert sentenced the Applicant on five drug-related charges and one of unlawfully possessing ammunition. The convictions both individually and collectively are serious in nature. The police submit that these alone provide clear grounds for a negative determination as to suitability. Police refer to Nekita Enterprises Limited and the High Court, *"suitability, is the cornerstone of the licensing regime,"* and to NZ Organic Wine Ltd (2021) ADLC 8220068096, *"differing aspects of suitability will be given different weight by decisionmakers under the Act. Among them are experience in the hospitality industry, management ability, and personal integrity."*
- 225) Breaches of the Sale and Supply of Alcohol Act 2012 as outlined include; the lack of provision of legislatively required notifications for numerous duty manager appointments, hotel compliance visits demonstrating that an instruction from Police and advice or instruction from the Licensing Inspector have been ignored thus no significant changes have been implemented in relation to appropriate staff, systems and training and the law, alcohol related training for staff, the named manager not present during trading hours, trading without a licence, four temporary authorities, a number of directed visits by the Licensing Inspector to get Mr Wallace to complete and submit forms in a timely manner including the renewals.
- 226) The Police submission contended that evidence from Police and the Licensing Inspector clearly outlined significant issues including; six criminal convictions, two ERA determinations for breaches of the Employment Relations Act, the Wages Protection Act, the Holidays Act, the Human Rights Act, non-compliance with FENZ evacuation procedures, two unacceptable Food Act verifications, no current Building Warrant of Fitness for the premises, non-compliance of administration obligations under the Sale and Supply of Alcohol Act 2012, lack of training by the Applicant in regard to alcohol licensing and fire evacuation, breaches of sections 237,231,214,230 of the Sale and Supply of Alcohol Act 2012, the failure to pay annual fees and the issue of an infringement for breaching licence conditions.
- 227) Police and the Licensing Inspector over the time since the initial licence was sought have participated in a graduated response from education and encouragement to an infringement, and then from the Police perspective, criminal charges of a personal nature.
- 228) Senior Constable Craddock's submissions maintained Police opposition to the renewal of the On and Off licences and the renewal of the Manager's Certificate. The Applicant is not suitable to hold either the licences or a Manager's Certificate.
- 229) Compliance issues point to increased and concerning future risk particularly around alcohol-related harm. There is evidence of the applicant's propensity to ignore decision makers. Mr Wallace's approach is one of denying any wrong-doing entirely.
- 230) The Applicant provided minimal evidence to mitigate evidence provided to the committee.

Medical Officer of Health

- 231) The Medical Officer of Health (MOH) remains opposed to the On and Off licence applications on grounds of staff, training, systems and suitability of the Applicant. Ms Ensor traversed the relevant criteria in the Sale and Supply of Alcohol Act 2012, the facts, and case law.
- 232) Evidence heard over three days, 1 August 2022, 28 February 2023 and 1 March 2023, convinced the MOH that the Applicant's physical evidence for systems, staff and training remains lacking. Previous employee witnesses provide a consistent theme of insufficient training in respect of both the Act and emergency evacuations. The Applicant did not call witnesses to counter. In failing to meet these obligations the Applicant does not meet the object of the Act.
- 233) MOH contends that *"past behaviour is indicative of future behaviour,"* and, that doubt remains about the Applicant's carrying out of the responsibilities and obligations that go with the holding of a licence. The response of *"needs must,"* to his leaving the premises without a duty manager, his name remaining on the board, was concerning. The Licensee has the propensity to not always adhere to their host responsibilities, licence conditions and has had numerous breaches of the law.

- 234) Since these applications for renewal the Applicant's sole director has pleaded guilty to six criminal charges. He states he will continue to use cannabis to de-stress.
- 235) Ms Ensor supports the opposition of the other two reporting agencies. Holding a licence to sell and supply alcohol is a privilege and the responsibilities that go with it are to ensure there are not negative ramifications within the community. Bearing in mind the purpose and object of the Act the Medical Officer of Health submits that both the On and Off renewal applications by Alpine 182 Degrees Limited should be declined.

The Chief Licensing Inspector

- 236) The Licensing Inspector's closing submissions specifically concurred with the submissions on behalf of the Police, the opposition of the Medical Officer of Health and evidence from FENZ.
- 237) Mr Johnston traversed the relevant legal criteria in section 131 which sets out the renewal criteria and section 227 in relation to managers, and then the evidence of the applicant, and of the police. The Applicant failed to satisfy the criteria in the Sale and Supply of Alcohol Act 2012, sections 105(1)(b) suitability and 105(1)(j) staff, training, systems that comply with the law. The Applicant also failed to satisfy the criteria of in the Sale and Supply of Alcohol Act 2012 sections 227(a) suitability and 227(b) previous convictions in relation to the renewal of a Manager's Certificate.
- 238) The Chief Licensing Inspector supports the Police's position including the breaches of other legislation including six criminal convictions relating to drugs and one Arms Act offence. The Employment Relations Act related to three previous staff members, all of whom gave evidence. Witnesses' evidence showed a common theme indicating regular drinking by Mr Wallace while working as a manager, smoking cannabis in and around the hotel, the bullying and intimidation of staff, the failure to provide training to staff regarding emergency evacuations and for the Sale and Supply of Alcohol Act. ERA findings established the Applicant had regularly, deliberately, and intentionally breached the Employment Relations Act and the Wages Protection Act. Payments to Police witness, Anton Pearce were directed to be made immediately but as of 1 March 2023, nothing had been received. Monies owing to Police witness, Tracy Tahuu, were directed to be paid by 23 December 2022, no payment received. A bailiff is currently involved. The Applicant accepted the ERA also found in favour of Joel Innes. Mr Wallace surprisingly was not aware that Abigail Atkins' ERA hearing had taken place until evidence was heard from Ms Suchley, her advocate.
- 239) Issues with food safety practices pursuant to the Food Act 2014 include two unacceptable ratings for food verifications in relation to the hotel kitchen and conducted in 2022.
- 240) Witness Mike Gaskin, FENZ, has concerns about non-compliance with the Fire and Emergency Act 2017. Despite numerous requests, an evacuation scheme is not approved or registered, trial evacuation drills have not been advised. FENZ believes persons using the premises may be injured or their safety endangered in case of fire. While he was leasing to buy for some time, Mr Wallace took over the ownership of the hotel in September 2022.
- 241) The Applicant is in breach of the Building Act 2004 by not having a current Building Warrant of Fitness (BWOFF). The BWOFF expired July 2020.
- 242) The Applicant's tardiness is across the board. Sourcing timely applications for temporary authorities, new On and Off licence applications, and the renewal of the On and Off licences have required significant prompting and assistance, occasionally by direction from Council Management. Issues include; not having a duty manager present while the hotel was open for the sale and supply of alcohol, incorrect notices of management change, no food available until cooked during a Police visit but no chef – the acting duty manager would cook, no training to staff for the sale and supply of alcohol, employees without employment agreements, a search warrant executed at the Springfield Hotel and the Applicant's home located a sophisticated cannabis grow in the old Hall on hotel property, various drugs and ammunition were found at the home address, criminal charges resulted in the Applicant pleading guilty to six charges. The Applicant is a regular user of cannabis and self-medicates and stated he would continue.

- 243) Since these applications were made continuous breaches of the Act in terms of host responsibility have been witnessed although these observations have not been observed by the Police and the Licensing Inspector during site monitoring visits. These observations are backed up by evidence from ex-employees of Alpine 182 Degrees Limited as Police witnesses. Each covered lack of training, verbal abuse by Mr Wallace, being required to work long hours without appropriate breaks and working in an environment where the licensee would drink alcohol often to excess on many occasions in the bar or kitchen area.
- 244) Police accounts and witnesses painted a consistent picture in calling into question the Applicant's suitability. The Applicant's own actions in respect of six recent criminal convictions and an admission that the Applicant would continue to use (and by default possess) cannabis, his drinking alcohol while duty manager, the findings of bullying and intimidation all impact on applicant suitability. The lack of staff, the lack of systems and the lack of training resulted in breaches of the Employment Relations Act, a breach of the building Act, a breach of Fire and Emergency Regulations as well as a lack of staff training on the Sale and Supply of Alcohol Act 2012. There is a general and continued lack of compliance with the law. The Chief Inspector states the applicant has failed to satisfy the criteria required by ss.105(1)(b) suitability and 105(1)(j) staff, training and systems in relation to the On and Off licence renewal applications. The Inspector believes the Applicant has failed to satisfy the criteria of ss.227(a) suitability and 227(b) previous convictions in respect of the renewal of a Manager's Certificate.
- 245) The Inspector provides case law that he sees as particularly relevant in terms of suitability, to the substantive licence renewal applications and the renewal of a Manager's Certificate.
- 246) The Inspector has spent considerable effort on this journey with Mr Wallace from the initial temporary authorities, the initial application, and then the renewal applications, in efforts and attempts to train, assist, instruct and re-instruct Mr Wallace repeatedly but to no avail. Mr Wallace denies evidence presented at the hearing by previous employees and states that it is lies.

Counsel for the Applicant - Ms Kaur

- 247) Counsel filed closing submissions on behalf of the Applicant for the renewal of a Manager's Certificate for Mr Blair Wallace and also the first renewal for the On and Off licences for Alpine 182 Degrees Limited, trading as Springfield Hotel.
- 248) The three agencies – Police, Inspector, Medical Officer of Health are opposed to the renewal of the On and Off licences, specifically in respect of: (a) numerous failings around the appointment of managers, that is limited knowledge of requirements under ss.212 and 214, (b) the Applicant does not appear to have sufficient systems, staff, training, (c) Mr Wallace has incurred drug-related convictions, (d) ERA determinations against the Applicant. The Police and the Chief Inspector are opposed to Mr Wallace's Manager's Certificate renewal application on those same grounds.
- 249) Counsel refers to Clark J in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* noting the requirement for a causal nexus and to Churchman J in *Hutt Liquor Mart Limited v Shady Lady Lighting Limited*, the view of the decision maker must be supported by evidence. The Committee's evaluative and merits-based approach is accepted – evidence of past or present alcohol-related harm is a relevant consideration, an indicator of possible future risk. The Committee "must have regard," to the relevant sections for On and Off licence renewals and for the Manager's Certificate renewal in the Sale and Supply of Alcohol Act 2012.
- 250) In terms of suitability, the character of the Applicant is to be shown to be such that it is not likely to carry out the responsibilities that go with holding a licence. Case law states that in terms of suitability, experience in the hospitality industry, management ability and personal integrity are key. Sheard is referred to where if an Applicant is not likely to carry out properly the responsibilities that go with the holding of a licence and weighing this is key.
- 251) In terms of failure to notify Police of management changes, Mr Wallace accepted that the obligation to comply rests upon him.

- 252) In terms of limited knowledge of the requirements of ss.212, 214, and further sub-sections of s.214, Police refer to the Applicant appearing to have “*limited knowledge*.” An infringement notice was issued by Police. Counsel believes s.258 is relevant for consideration.
- 253) In terms of alleged intoxication concerns, Counsel refers to Police witnesses as being in direct contradiction to the Police’s and Inspector’s monitoring visits where no such incidents have been observed.
- 254) In terms of irresponsible promotion of alcohol, no action was taken in respect of the identified Facebook posts, nor were they raised with Mr Wallace by Police in an educative way. No evidence was provided to show that these were likely to lead to excessive consumption of alcohol, rather, Ms Kaur contends, they were a marketing tool.
- 255) In terms of employment relationship issues, Police also challenge suitability based on the ERA proceedings in evidence filed in November 2022. Counsel referred to ERA findings for Anton Pearce, Tracy Tahuu. Mr Wallace attended mediation for Pearce. He rejects all allegations by Tracy Tahuu.
- 256) In terms of drug-related convictions and suitability, the Committee should refer to the Supreme Court, in *New Zealand Law Society v Stanley* where, “*the decision maker is essentially trying to assess whether the convictions remain relevant at the time of the current inquiry*.” The District Court accepted Mr Wallace’s drug related offending was for personal use. Counsel puts forward that the convictions can be viewed at the lower end of the spectrum.
- 257) In terms of the evidence of Abi Atkins, Kathleen Roche and Tracy Tahuu, Counsel refers to the weight the Committee places on their evidence.
- 258) Counsel concludes that the Applicant is remorseful for his drug convictions and is committed to it not happening again.

RECORD OF SITE VISIT

- 259) The Committee carried out a site visit on 31 March 2023 at 1pm
- (i) there were no customers in the bar areas, garden, or restaurant on arrival;
 - (ii) Mr Wallace showed us around the ground floor - bar area, restaurant, kitchen, and chiller room, bathroom facilities and the attached outside smokers’ area;
 - (iii) upstairs, accommodation rooms were off a narrow corridor that ran the length and width of the building - some rooms were refurbished. A fire escape door and non-conforming fire signage was pointed out;
 - (iv) the kitchen was to the rear of the building - it was clean although showing signs of age;
 - (v) food viewed in refrigeration and freezers was labelled and dated, the chiller room containing kegs although old, appeared clean – we were told regular cleaning is needed to keep it free from mould;
 - (vi) we exited the hotel to a small deck area via a sliding door at the rear of the restaurant;
 - (vii) we noted that an established internal driveway separated the hotel from the grassed area;
 - (viii) a driveway goes from a parking area to the east of the hotel, passes very close to this deck and went around the hotel to a garage and a caravan at the back and west;
 - (ix) there was a wooden building situated to the east of the hotel, facing the grassed area –this is referred to as the old hall. This building showed signs of disrepair;
 - (x) Mr Wallace took us into the old hall - there were several small rooms either side of a corridor, some used for storage. Mr Wallace indicated the room that he had used for his cannabis grow. The room had no visible windows and had been lined. A room on the opposite side of the corridor also had no windows and had been lined. The corridor led into the large hall area that was being used for storage;
 - (xi) later we checked the plan submitted 21 April 2021 – there is no driveway on the plan between the hotel and the grassed area;

(xii) Mr Wallace was co-operative and helpful during the visit.

SUMMARY OF INCIDENTS

- 260) We refer to the evidential record of identifiable visits, photographs, incidents and matters of interest raised earlier. It is not our intention to repeat in full those incidents, issues, visits and matters but advise that where applicable these will be assigned weight in our decision. Specific and relevant issues in the evidential record covered earlier may be included in the Committee's covering of the (a) relevant criteria, including the object of the Act, (b) employment relationship issues in and around the premises and listed as non-compliance with the law, (c) issues relating to suitability and (d) the related safe sale and supply and consumption of alcohol issues/the manner in which the Applicant has sold and supplied, advertised or promoted alcohol.

OUR DECISION

- 261) We must determine whether to renew the On and Off licences held by Alpine 182 Degrees Limited and the sole director Mr Blair Wallace in relation to the Springfield Hotel. The Applicant has told us that he has been involved in the hospitality industry for more than 20 years. We have approached our task as being to consider and evaluate what has happened particularly in the time from the lead-up to the issuing of the licences in 2020 and the subsequent renewal process. In saying that, we do not consider that section 105(1)(k) stops us acknowledging the 2022 drug-related and Arms Act convictions. The considerations in our evaluation were many and varied as rightfully expected from the wide-ranging evidence and submissions presented to us. What has led us to our unanimous decision to refuse to renew the On and Off licences and not grant the renewal of the Manager's Certificate is what has happened in respect of the premises and the information relevant to the Manager's Certificate renewal, and then our risk assessment going forward based on the journey since the initial trading without a licence came to the Police's and the previous Licensing Inspector's attention.

Decision and reasons

- 262) 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 consider in determining whether to renew a licence.
- 263) Section 105(1) provides as follows (for renewals):
"105 (1) - Criteria for issue of licences

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."

264) Section 131 of the Act provides:

131(1) - Criteria for renewal

"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."

131(2) - Criteria for renewal

"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."

265) 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."

266) 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)."*

267) There are several important definitions relevant to us.

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)."*

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"*

The term "*temporary authority*" is defined by s.5(1) of the Act

"temporary authority" *means a temporary authority order issued and in force under this Act.*

How we see our task in the light of the law

- 268) We are very grateful and acknowledge the assistance given to us by all parties, especially the Police, the Chief Licensing Inspector and Mr Gaskin, FENZ, in their references to the incidents and issues reported, the monitoring carried out, and the significant detail provided as part of these. While covered sometimes "*en bloc*," in evidence given and in cross examination, the agencies and FENZ provided a myriad of detail in respect of non-compliance since 2019. We have mentioned many of these matters earlier.
- 269) We understand these are the guiding principles for us which we have taken from submissions and case law:
- (i) Our role is an evaluative one, in an inquisitorial sense. 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 three 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) in terms of the On and Off licences renewal;
- (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 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 that they assume an elevated mantle – here we think the following matters have assumed a fundamental significance:
 - a. the object of the Act;
 - b. the suitability of the applicant;
 - c. the manner in which alcohol has been sold, supplied and consumed or promoted on the premises;
 - d. appropriate staff, systems and training to comply with the law; and
 - e. any matters dealt with in any report from the Police, an Inspector, or a Medical Officer of Health under s.129;
- (vii) We must have regard to matters in s.222(a) to (e) in terms of granting the renewal of a Manager's Certificate;
- (viii) While 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);
- (ix) 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;
- (x) There is no presumption of existing licences being renewed under this 2012 legislation;
- (xi) The concept of suitability is wide and flexible and includes how a licensee manages in respect of legislation also requiring compliance by the very nature of these premises - eg the Food Act 2014, the FENZ Act 2017, the Employment Relations Act 2022, the Building Act 2004;
- (xii) 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. Here we also include FENZ;
- (xiii) For a renewal of a Manager's Certificate where the Applicant is the licensee, the Committee is entitled to accord weight as to how a sole 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 and in assessing suitability for a renewal of a Manager's Certificate. This is in addition to evidence of an applicant's past conduct, processes, an 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 must be able to come to a conclusion that the Applicant is eligible to have the On and Off licences renewed consistent with section 4 (and the other criteria) and a Manager's Certificate renewed. If we do not reach that positive position, we need not consider any conditions for the On and Off licences or for the Manager's Certificate.

Discussion

- 270) 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."

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

- 272) The Committee also takes the approach to renewal as outlined in *Gogo Bar* [2016] NZARLA PH 279-283, especially where suitability has been squarely placed before us as an issue;

[67] While the Authority must consider all 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."

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 page 755) 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."

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]).

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."

In *J M Clark* 1169/99:

"A liquor licence is a privilege. It may colloquially be regarded as a 'package deal.' Both the burden and benefit run with the licence. Mr. Clark must accept those burdens and control the sale and supply of liquor in a satisfactory manner, or he will not continue to enjoy the privilege. Either the licensee can manage the premises, an On-Licence satisfactorily or he cannot."

- 273) Having set those statutory provisions and the guidelines from some cases and from those provided by the parties, as to the correct approach we will now proceed to discuss the applications and the evidence in the light of those considerations.
- 274) 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);
- (c) - any local alcohol policy
 - (d) - the days and hours of the current licence, apart from the correction of the Off licence start time
 - (e) - the design and layout of the premises
 - (f) and (g) – what the licensee sells or doesn't sell by way of other products and services.
- 275) As a result of the matters raised in the reporting agencies' reports – s.105(1)(k) and s.131(1)(d) – and the evidence and submissions we received we consider the real controversies in these applications involve:
- (b) - suitability of the applicant, and
 - (j) - appropriate systems, staff, and training to comply with the law; and
 - (d) - the manner in which the licensee has sold and supplied alcohol; and
 - (e) - s.4 – the object of the Act.
- 276) We propose to discuss the applications under those topics in that order.
- 277) In making our decision we are mindful that the Act requires the provision of food, in this instance under the Food Act 2014. This may mean that additional action in relation to the food verifications undertaken, could cause actions taken in respect of the Food Act to impact the ability to trade under the Sale and Supply of Alcohol Act 2012. Similarly, the issues identified by FENZ in relation to the

building warrant of fitness and the safety of staff, patrons and people in the upstairs accommodation, and the Notice to Fix issued under the Building Act. However, these cannot prevent our coming to a decision for each of these applications under the Sale and Supply of Alcohol Act 2012.

Suitability

- 278) Mr Wallace has demonstrated a disconcerting, repeated and ongoing lack of respect for authority, the alcohol licensing processes required, and the law, particularly evidenced by his behaviour as an employer and licensee. The Committee considered Mr Wallace's elongated, vague, and irrelevant responses at times as reflecting an incorrect read of the room or perhaps as indicative of his behavioural approach to authority and his management style in general as spoken of by witnesses, the agencies and FENZ.
- 279) The Police and the Inspector outlined the nature and volume of the Applicant's failings including;
- (i) six criminal convictions, 8 March 2023;
 - (ii) two recent ERA determinations which found breaches of the Employment Relations Act, the Wages Protection Act, the Holidays Act, the Human Rights Act, with a third determination pending;
 - (iii) non-compliance of Fire evacuation procedures and the FENZ Act;
 - (iv) two unacceptable Food Act verifications under the Food Act;
 - (v) no current Building Warrant of Fitness for the premises under the Building Act;
 - (vi) non-compliance of administration obligations under the sale and Supply of Alcohol Act 2012;
 - (vii) lack of training by the Applicant regarding alcohol sale and supply and fire evacuation;
 - (viii) breaches of ss.231,214 of the Sale and Supply of Alcohol Act 2012, manager on duty at all times;
 - (ix) issues with the appointment of temporary and acting managers;
 - (x) breaches of s.237, irresponsible promotion of alcohol;
 - (xi) failure to pay annual fees, provide drinking water, subsequent suspension of licences;
 - (xii) the issuing of an infringement by Police for breaching the conditions of his licences;
 - (xiii) non-compliance generally with the Sale and Supply of Alcohol Act 2012 and the law.
- 280) In his time as Licensing Inspector, Mr Johnston has not had to provide the amount of assistance to a licensee that he has provided to Mr Wallace. Mr Wallace is *"engaging, talks the talk, promised a lot of stuff, made many assurances but failed to carry things through."* Mr Johnston has not struck this attitude towards the legislated process before. He describes the journey from the start of the temporary authorities to the hearing as *"painful, frustrating and difficult."* The Inspector described the future risk that the Committee needed to weigh up in one word – *"dangerous."* He contends there is deliberate and intentional non-compliance. The value that as Chief Licensing Inspector he would place on Mr Wallace's word when he says he is going to do something, has reached the stage when he would not believe anything that Mr Wallace told him.
- 281) Witness Joel Innes described the premises as a toxic workplace.
- 282) The ex-employee witnesses spoke of the licensee's behaviour causing varying levels of mental stress including one witness who was admitted to Hillmorton Hospital for treatment.
- 283) Senior Constable Craddock referred to lies told, of variations to a theme, of a downgrading and denial of everything from witnesses, completely refuting everything said. According to the Applicant, it was lies. She also referred to responses made; then an acknowledging of not being correct, or being mistaken, or wrong when caught out. The Police's view is that Mr Wallace disrespects compliance with the Act. His approach to the Sale and Supply of Alcohol Act 2012 since 2019 has been *"poor."* Overwhelmingly, to grant the renewal of the On and Off licences and the Manager's Certificate would be inconsistent with the Act.
- 284) Ms Ensor for the Medical Officer of Health has put forward her position as being that the Applicant is not able to comply with the conditions of his licences and the object of the Act. The On and Off licences should not be renewed.

- 285) Mr Gaskin, FENZ, has serious concerns for the safety of persons using the premises. Injury or endangerment of safety is a reality in the case of fire as there is no current, suitable or maintained fire evacuation scheme. Police witnesses advised that the Applicant does not conduct any training in respect of evacuation. Guests are not informed of protocols in the event of fire. Mr Gaskin does not know if the alarms are now working or if the required emergency signage is now in place. A building warrant of fitness is required for the approval of an evacuation scheme and Mr Wallace advised under cross examination that this was in hand. However, after checking, the Chief Licensing Inspector confirmed that the contractor had provided a quote only some months ago and had not heard further from the Applicant. A Notice to Fix has been issued February 2023 under the Building Act. FENZ considers this to be a serious matter.
- 286) The agencies and witnesses covered specific and many matters in respect of suitability for Mr Wallace's Manager's Certificate renewal application. The matters were comprehensive, and the details provided in our view assisted and were conducive to our making a well-balanced decision. We also had regard to Mr Wallace's six recent criminal convictions as part of considering suitability. The use of a building at the hotel address for a cannabis grow is concerning. Senior Constable Caird stated that the equipment located on the hotel site would have been used for a large scale and sophisticated commercial grow operation. We acknowledge that the District Court accepted personal use and thank Judge Gilbert for sharing his sentencing notes.
- 287) In terms of convictions, we also considered the cases as follows, noting that Counsel had referred also to Stanley in terms of suitability:
- (i) the Supreme Court in *New Zealand Law Society v Stanley* held at (45)
"(45) The decision maker is essentially trying to assess whether the convictions remain relevant ...and. If so, to what extent the conduct remains relevant at the time of the inquiry."
 - (ii) In *Marx LLA 046/97*, the former Authority said at (5):
"In considering the effect of individual convictions on the suitability of an applicant for an On-licence in terms of s 13(1)(a) of the Act, or the convictions themselves under 121(1)(b) in the case of an applicant for a General Managers Certificate, we are generally inclined to give little weight to convictions;
 - *More than 10 years old provided there has been no offending of any kind since that time;*
 - *Relating to minor traffic or parking offences not involving liquor; or*
 - *Resulting from minor youthful indiscretions."*
- 288) Police's ex-employee witnesses raised the issue of Mr Wallace's regular drinking in the bar and kitchen areas. Staff were required to serve him drinks while he was working in the kitchen. He would spill things, drop and burn food. The evidence provided by those who are or were qualified managers and ex-employee witnesses satisfies us that he was drinking on a regular basis while working. One witness recognised signs of drug use displayed by Mr Wallace through her experience at Canterbury District Health Board.
- 289) Mr Wallace is obliged to take all reasonable steps to enable whoever the duty manager is each day, to (a) comply with the law and ensure the sale and supply and consumption of alcohol complies with the Act and (b) have responsibility for conducting the premises with the aim of contributing to the reduction of alcohol-related harm. 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 this can cause in relation to s.214(4) and the manager's ability to manage – see *Ranfurly Hotel* [2013] NZARLA 490 at [24]. Ex-employees told us how bullying, intimidation, yelling and throwing objects in the kitchen area and customers waiting an hour or hour and a half for food orders, impacted on them. We acknowledge that under these circumstances and pressures, employees would not always be able to carry out their roles in terms of meeting the object of the Act.
- 290) In this particular case we were left in no doubt, at the end of all the evidence, that Mr Wallace's drinking in the premises he owns and operates and his drug taking, contributed significantly to the increasing levels of incidents of untoward behaviour associated with staff on these premises

- between the lead up to the initial licence applications, the applications for renewal and the application for a new Manager's Certificate and this hearing particularly. Witnesses told us: Mr Wallace would disappear to his mancave/shed or garage out the back while on duty and how his behaviour changed on his return, that drug paraphernalia, ends of joints, uneaten food, empty glassware would be all over the kitchen surfaces and floor in the mornings and staff blamed for not cleaning up adequately the night before, how he would not turn up when acting as a mentor for an apprenticeship in spite of committing to do that, and how on occasions both Shelley and Blair would drink and smoke outside with friends during trading hours. According to the witnesses we heard, the behavioural issues on Mr Wallace's part increased significantly following the drug raid.
- 291) This is relevant to the suitability of the licensee to continue to hold On and Off licences for these premises and many elements are also relevant for consideration in respect to the Manager's Certificate renewal he is seeking.
- 292) The sworn testimony of the Police Officers and the Licensing Inspector expressed doubt that all the applicant says is true or whether the whole truth is being told at the time. The Committee found relevance for these doubts in, *"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].
- 293) Denials on Mr Wallace's part include telling us that the ex-employee witnesses did not tell the truth, they told lies, he refuted their evidence, and they lied at the Employment Relations Authority. Mr Wallace chose, in the main, not to engage with those proceedings, telling us that it was a commercial/fiscal decision for the business. He did attend an unsuccessful mediation for Mr Pearce. Breaches of fundamental employment legislation are included in the ERA findings provided to us. Damages were awarded in the two ex-employee witnesses' determinations from their respective cases. The determinations included unjustified dismissal in one case and in the other, unlawful deductions from wages and no employment agreement. For the first one hundred days or five months Mr Wallace told us, the payroll record was a diary. Mr Wallace's approach of denying any wrongdoing entirely in terms of these employees and then not taking part in the ERA process to defend himself, seems implausible and detrimental to his business.
- 294) The three Police witnesses did not initially have employment agreements, or these were not finalised. The findings in the ERA pointed to persistent degrading and intimidatory behaviour towards staff who wanted nothing more than to learn and to do a good job. Putting a note on a file recording unsatisfactory behaviour was without the employee's prior knowledge. One of the ex-employee witnesses spoke of the impact of continual abuse and Mr Wallace's ongoing aggressive and abusive behaviour causing her to have a mental breakdown and to be admitted to Hillmorton Hospital. Another witness spoke of staff at the time having mental issues because of Mr Wallace's ongoing behaviour. We heard that employees were not paid correctly, unlawful deductions were made. We heard that intoxicated customers were served, Mr Wallace drank on every shift either as chef or duty manager, he threw things, he was erratic, intimidating and threatening, no training was provided including for fire evacuations, there were no recorded processes or a pricelist. The evidence from each of the Police witness ex-employees appearing was both compelling and exceedingly concerning, particularly in respect of a workplace - premises with an experienced large hotel chain senior manager as licensee.
- 295) An observation by the Licensing Inspector after the many and varied issues with timeliness in the Applicant's submitting of applications and non-compliance with other documentation, was that Mr Wallace probably underestimated exactly what was involved in being a successful licensee in a small country hotel, particularly with the variety of legislative requirements applicable to his business.
- 296) We find that it is inherently unlikely that sworn police officers, the Licensing Inspector, three ex-employees, an employee advocate would conspire to present the Applicant in an inappropriate light

- and not be shaken in cross examination. The Applicant has a propensity to portray by his actions and explanations that the rules apply to others but may be self-adjusted or generally ignored by him.
- 297) Customers' reaction to an observably annoyed licensee yelling at a front-of-house employee from the kitchen when she is asking about meals for a group who ordered over an hour previously, ending with their cancelling the order, leaving, telling her she should not put up with that behaviour, did not appear to matter or register. The employee located Shelley to do the refund as she had not been shown. The issue inevitably giving the impression of the sort of behaviour he portrays as being acceptable in the premises, in front of customers and seemingly of no consequence. There was no apology for his behaviour. Shelley Watson told the employee it was not professional to cry.
- 298) There is an apparent inability or straight-out unwillingness to rationalise the consequences of his actions and to learn from any non-compliance, any advice offered, or assistance provided by agencies in good faith. There is a sense of ongoing entitlement or, I'm very experienced in all things hospitality attitude, that does not take cognisance of the requirements of the law in New Zealand that cover and relate to his business, his significant investment, his sole income as he told us. However, balanced with this is the stating by the Chief Licensing Inspector that during the monitoring he carried out between 4pm and up to 9pm, he did not see particular issues occurring. Senior Constable Craddock did a monitoring visit and was told later in a phone call by Mr Wallace that he would expect her visits to be later when they were busier. When she visited, he was not on the premises as duty manager, his name was on the board, the acting manager's name was not up, and the acting manager was out shopping in Darfield. The details around the phone call by an employee to Mr Wallace at his home while the Constable was on the premises and able to hear part of the conversation and have him told to return to the hotel, demonstrates his willingness to attempt to cover-up by patently lying. Not being honest is demonstrated through his own evidence and cross examination. During the phone call in relation his absence and to the infringement issued, he was angry and argumentative with the Senior Constable. He did not expect an infringement for a first strike.
- 299) Police point to a number of supposed "minor" issues as part of a pattern of behaviour, in terms of for example, the lack of the correct notification of management changes over a significant two-year period. The differences between temporary and acting managers were explained a number of times. The appointing of managers without relevant qualifications occurred. The correct application and knowledge of the Act and a feeling that there is no requirement to comply with the rules, any law, prevails. One explanation was – as needs must. Continuing issues paint a revealing and negative picture for a hands-on licensee, a previous senior experienced hospitality manager, someone who completed his LCQ. We consider the evidence supports the continuation of a negative pattern.
- 300) The Committee's task included being mindful of Mr Wallace's saying that this was their sole income, they had invested a lot. Our quandary was rationalising this with his own actions in many instances since their agreeing to lease to buy, in jeopardising this investment. Mr Wallace refers to Shelley Watson his partner and himself as also partners in the business.
- 301) The Committee found the position taken by Mr Wallace to be unrealistic, largely self-serving and that there was perhaps a realisation through this process that his future may be in jeopardy. We concluded that he has displayed a casual disregard to trustworthiness. We do not accept his refuting of evidence given as always reflective of reality. Differences in the accounts of incidents and the matters raised by staff indicate a deliberation by omission, denials, vague responses, deflection, the making of misleading, inaccurate or less than truthful responses in justification, a corresponding misguided lack of acceptance of individual responsibility and the regular blaming of others. Mr Wallace produced letters of support to us, but the writers did not attend thus we needed to carefully consider the weight to be placed on these – the contents could not be tested. Mr Wallace agreed that conduct outside the actual premises was relevant to the obtaining of licences. There is little or no willing understanding by Mr Wallace that prevarication and a circumlocution of the truth reinforces to the Committee that the holding of these licences and a Manager's Certificate is indeed an earned privilege and not a right. It is our opinion that Mr Wallace has failed to demonstrate to us the key obligation of trustworthiness. In our evaluation, based on the totality of the evidence and submissions we listened to, heard, and read, we are satisfied by a large margin, and on the balance

- of probability that the evidence of the Police officers, the Chief Licensing Inspector and the ex-employees was more credible and convincing than that of Mr Wallace. The Committee noted and weighed up Mr Wallace's admissions in cross examination, that the two years of issues with notifications was an "oversight," that the obligation to comply with the Sale and Supply of Alcohol Act was his, and that he accepted issues with temporary authorities rested with him.
- 302) The failure to adhere to the key obligation of trustworthiness is particularly relevant to the suitability of the applicant to continue to hold On and Off licences in respect of the Springfield Hotel and for Mr Wallace to be granted renewal of a Manager's Certificate.
- 303) An escalating evident and demonstrated failure in the duty of care as the company's sole director and owner of these premises since his initial faux pas in relation to the Act, was evident.

Staff, systems and training to comply with the law

- 304) The Chief Licensing Inspector's, the Police's reports in opposition, the FENZ report in opposition, and the witnesses called by Police further confirm in evidence that Mr Wallace does not have appropriate and effective systems, staff and training to meet the requirements of the Act and the law.
- 305) There has been an apparent unwillingness to train staff. Mr Wallace told us he carried out on the job training. This assertion being rejected by the ex-employee witnesses is not helpful. An employee on an apprenticeship was not given his mentoring support which he committed to, and this was reflected in her getting behind with modules. Another ex-staff member had to ask other staff to show her how to pour drinks when she started work in the bar, also how to cash up. There were no written instructions, no written processes to refer to. An employee was not aware of what a host responsibility policy was. A witness was shown how to stocktake but told not to take notes.
- 306) We acknowledge that Mr Wallace paid for a witness's LCQ and seemed willing initially to support an apprenticeship.
- 307) Of particular concern is the lack of an induction for staff which normally would have included emergency evacuation procedures. Ongoing trial evacuations did not occur. An evacuation scheme registered with FENZ was not in place. FENZ emphasised that patrons are not advised about evacuation in terms of a fire, including those in accommodation upstairs in the 100-year-old two storeyed wooden building with insufficient fire signage, no approved alarm system.
- 308) Training records were not kept. A witness when cross examined by Counsel was not aware of the word "designations" but understood the supervised and undesignated areas without the title from her LCQ. The plan submitted does not have the same designations as the current licence – there is no request for a change with the renewals. Meetings are of uncertain frequency seemingly rarely held. Unless staff pass on information themselves there are insufficient protocols in place to prevent the incidents or issues we heard evidence about, and which have been clearly described. Mr Wallace told us that a traffic management plan was needed for crossing the State Highway to the meeting point. A witness thought the emergency meeting place was elsewhere. For the purposes of assessing whether a patron is intoxicated, or whether a patron should be allowed on the premises or be served alcohol, Mr Wallace was not able to describe the SCAB tool as his "brain was fried." He was prompted later partially successfully by the Licensing Inspector. Witnesses told us intoxicated customers were admitted and served. Mr Wallace said that intoxicated may be admitted as part of a group for their safety.
- 309) We are in no doubt that an appropriate system of staff training properly put into practice could have prevented the significant staff issues that occurred. The licensee seems to have squandered what he saw as an opportunity thereby placing his investment at risk. This is part of an overall picture which demonstrated to us that this Applicant, Mr Wallace, has inadequate training and systems and understanding of the obligations of a licence-holder in a hotel in a small rural town on a State Highway in NZ. Mr Wallace told us that he had specialised in training programmes and the development of employees in previous roles. It is rather obvious that these skills were not utilised to the extent they could and should have been at the Springfield Hotel – indeed, a lost opportunity.

There is somewhat of an overlap between these inadequacies, suitability, and our assessment of the risks associated with the object of the Act.

- 310) Drinking by the licensee and staff while on duty is directly attributable, in our opinion, to a management style which does not take cognisance of the legislative rules that are in place. Case law gives guidance in this respect. Management of staff as well as patrons and the management of the premises is a reluctant and casual responsibility. The issues of swearing at, yelling at, and abusing staff, a lack of suitably qualified staff, insufficient staff, the working of shifts without the legally required breaks, few employment agreements, altered timesheets, unlawful deductions, contributed to keen, willing workers becoming disenchanted and leaving and, in some cases, personal grievances lodged being successfully.
- 311) In the opinion of both the Police and the Chief Licensing Inspector the hotel's Host Responsibility Policy is not adhered to. Staff were not aware of the policy being in place and there was no training related to its application. However, a relatively new courtesy van service has been well received. Previously staff used their own vehicles, without compensation. The licensee is obviously not used to applying relevant SCAB tool criteria and later did not fully understand all individual letters. On more than one occasion during trading hours and contrary to the Act, the chef has not started work and food was not available, including during the Senior Constable's monitoring visit after 4pm one afternoon. The duty manager was expected to spend 20 minutes cooking up some chips meaning that as a consequence they were not always undertaking their duty manager role as required in s.214. Overall, we conclude that the licensee is not taking and has not taken his host obligations seriously. We are left with the clear impression that while staff are willing and want to do a good job for customers, staff having to make do on these premises is not rare, but not having sufficient qualified staff is.
- 312) The Licensing Inspector's evidence included staff not understanding the Act or their role in its application. The licensee in the main simply did not "*walk the talk*." The licensee's presence in the kitchen had employees on edge. Requiring drinks to be provided made it difficult for staff to do the right thing as one witness told us. Mr Wallace's presence in the bar had a detrimental impact on the safe and responsible sale and supply of alcohol. We heard that Mr Wallace did not measure drinks. A witness who had been a duty manager for ten years said someone was going to die. Someone thinking they were having a standard pour, which was actually just a pour, gets into their car thinking they had had 1-2 standard drinks when in reality they have had more. The 100kph area was close by and the State Highway is in front of the premises. There is a sense that Mr Wallace is dangerous and intimidating to the point where people are scared. Witnesses confirmed Blair Wallace definitely had cannabis outside and became quite intoxicated when serving - these Police witnesses would not describe Mr Wallace as suitable to have an On and Off licences.
- 313) We concluded that there are few effective systems in place. The Committee notes that witnesses did not know when to use an incident register. The register was built up over time. A complete lack or a broad-brush approach to documenting any issue does not reflect the actions of a careful, experienced and responsible operator seeking renewals. The applications for the On and Off licence renewals were filed a matter of days before the expiry, no waiver was requested, or the Committee asked for guidance. The Inspector was most concerned at the lack of urgency in lodging the renewal applications despite the significant assistance he had provided. It is hugely concerning when an applicant seeking to renew licences signs off ownership and fire evacuation questions in the application form as correct when that is not true. Not completing the question about a current BWOFF is also concerning, interestingly when there is not one in place. Administration was not a priority, not one of his top 5 according to Mr Wallace and this is reflected through the lack of systems including the payroll record being in a diary for the initial 100 days or five months as he told us.
- 314) There are no records of staff meetings held, attendees or subject matter covered. Written employment agreements were not provided for some time. Documents were not able to be located. Those requested were provided, mostly later. There is virtually no record of problem patrons removed from the premises, any trespass and no record of slowing of service. We were told by Mr Wallace of a ban for 3 months being used instead of a trespass. The overall lack of records has been

extremely concerning. 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 overall legislative requirements for staff, systems, the law or good industry practice.

- 315) The apparent wanting to criticise or blame everyone else, his preparedness to let the rules slide, the impact on staff by his intimidatory and abusive behaviour, including that witnessed by customers and seemingly not thinking it could jeopardise his business, the not learning of lessons from recent employment challenges, the lack of qualified staff, of systems and training, his aggressiveness, his questionable attitude, both in the kitchen and behind the bar and some staff drinking while working in the bar is just not reflective of today's business reality – but of a sad, distressing and deteriorating situation in a licensed workplace.
- 316) The Committee concluded that there has been little or no formal training of staff. It is our unanimous and considered view that there is no doubt that there is an inadequate understanding of the number of staff required to comply with the law, the licensed trading hours, to allow for the required breaks, or the training needed for staff to carry out their responsibilities under the Act effectively, or the essential systems required to be legally compliant and safe in the premises.

The manner in which the licensee has sold and supplied alcohol

- 317) Mr Wallace started off this process on the wrong foot in terms of the Sale and Supply of Alcohol Act 2012. He traded initially without a licence and subsequently when he should not have under the terms of his licence. He went against the advice of and education from the Chief Inspector particularly. He did not always act in good faith as an employer, he did not respect authority, he breached the Sale and Supply of Alcohol Act 2012 which related directly to his business and also breached other legislation including the Fire and Emergency Act 2017 Act and the Employment Relations Act 2022. He seemed to have completely underestimated or not cared about the consequences.
- 318) At the hearing it was acknowledged that owing to concerns with its operation and compliance Springfield Hotel has taken up a significant amount of the Chief Licensing Inspector's time. The advised timelines for providing required documentation were simply not viewed as a priority by Mr Wallace. The hotel is visited by local officers on a regular basis on Fridays and the officer usually knows most people in the premises. Senior Constable Craddock, Police Alcohol Harm Prevention Unit, apparently does not visit at the right time, when the premises are busy, and she does not leave a business card. The issuing of the infringement by the Senior Constable was not what Mr Wallace expected for a first strike. The licensee's attitude is a disturbing aspect of these licensed premises.
- 319) We heard from the Police who spoke of similar varied notification issues for example, with other premises from time to time but when raised these issues are corrected. This is in comparison to two year's non-compliance with this one issue for Mr Wallace. The many and differing issues that have been raised in the hearing regarding Alpine 182 Degrees Limited's non-compliance with the law is overly concerning. Police and the Licensing Inspectors have raised issues with management, but common aggravating themes continue. There is no drinks pricelist for staff, staff had to find Mr Wallace and ask, and they say differing amounts were then charged with customers not happy. Staff are required to make drinks for Mr Wallace when he is working in the kitchen as chef/cook. The licensee and some staff drink while working behind the bar. Staff required to do stocktakes find this difficult - there is no recording of stock consumed at work by Mr Wallace or of stock taken home. The manner in which alcohol has been sold and supplied is not consistent with good business practice or the intent of the Act. This has led to a potentially unsafe and an irresponsible consumption of alcohol on the premises including by some staff and the licensee. There was an initial willingness from employees to do the hard yards in assisting Mr Wallace to provide a destination for the community, but his behaviour and work practices soon caused willingness to turn to frustration and even fear.
- 320) The impression portrayed by a licensee's regular drinking contributes to an eventual confronting situation with staff. Witnesses tell us that Blair Wallace's behaviour impacted on their mental health.

- Mr Wallace smelled of alcohol, smoked cannabis, smelled of drugs, gave out pills and offered one witness Speed at work. Subsequent 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. Genuine efforts made by staff have not been recognised, including successfully passing a CPO. Another witness spoke of wanting him to succeed initially but now hates what is going on in the pub.
- 321) Mr Wallace has no doubt seen and experienced the detrimental effects of the influence of alcohol from his lengthy and considerable experience in hotels particularly in Australia. Almost undoubtedly, he believes, and his Counsel tells us, 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 Springfield community through the applications for renewal of the On and Off licences and the Manager's Certificate renewal. The Committee does not share Mr Wallace's view. He simply does not walk the talk. His responsibility to the community is fraught with a self-serving attitude.
- 322) Incidents and issues include;
- (i) Inspector's many visits to provide assistance - assurances given but not carried out, an unwillingness to ensure his compliance with statutory time requirements;
 - (ii) the infringement from Police for non-compliance with licence conditions;
 - (iii) non-compliance with the Employment Relations Act;
 - (iv) the ongoing lack of a BWOF;
 - (iv) two unacceptable Food Act verifications;
 - (v) the Applicant regularly going out the back, disappearing, while on duty;
 - (vi) no duty manager on site;
 - (vii) insufficient qualified managers, no breaks;
 - (viii) the lack of training, employee in job for 12 months without training;
 - (vix) the ERA findings for two ex-employees, breaches of Wages Protection Act, Human Rights Act, Employment Relations Act, third ex-employee waiting for determination;
 - (x) ex-employee agreed young people exposed to alcohol related harm ;
 - (xi) intoxicated customers served or on premises;
 - (xii) licensee and staff drinking while on duty, including while serving;
 - (xiii) unacceptable, inappropriate licensee behaviour towards staff;
 - (xiv) no food available while open for trading;
 - (xv) notification of managers, not sent directly to Police per s.213(2) for 2 years, incorrect applying of temporary and acting managers, not complying with timelines;
 - (xvi) no training including in the Sale and Supply of Alcohol Act 2012, or in fire evacuation, no 6 monthly trial evacuations notified;
 - (xvii) no written processes for staff guidance;
 - (xviii) incorrect manager name on the board;
 - (xix) licensee not measuring drinks;
 - (xx) no pricelist for staff reference;
 - (xxi) no recorded staff meetings;
 - (xxii) irresponsible promotion of alcohol, possibly not intentional;
 - (xxiii) three Monday party nights, noise issues;
 - (xxiv) SCAB tool not understood by name;
 - (xxiv) lack of celebrating staff success.
- 323) These issues indicate to us that the manner in which the licensee has sold and supplied alcohol does not comply with the Act and the law.
- 324) In cross examination the Chief Licensing Inspector told us that staff treated in the way that we have heard, would not in those circumstances be able to carry out their roles in terms of the object of the Act. From his perspective, the future risk is "dangerous."

The Object of the Act

- 325) Our approach to section 4 has been on the basis that our decision must be consistent with both arms of the object, in subsections (1)(a) and (1)(b).
- 326) We have made a merits-based determination as to whether the On and Off licence renewal applications and the Manager's Certificate renewal application should be granted. We have had regard to the relevant matters for the On and Off licences in section 131 and in turn with relevant 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.
- 327) We have had regard to the matters in s.227 in considering the Manager's Certificate renewal application. Here we are required to consider suitability, convictions recorded against the applicant, experience, and in particular recent experience for any premises for which a licence was in force, relevant training especially recent training undertaken, the prescribed qualification, matters in the Police and Licensing Inspector's reports and from the hearing, submissions and evidence including photographs, a video and the subsequent cross examination.
- 328) The Applicant has had the opportunity to bring positive and relevant experiences to these renewals and to the Manager's Certificate 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, it didn't happen or is someone else's fault, even when sworn Police or the Licensing Inspector under oath/affirmation give evidence that it did occur, gave 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 Springfield Hotel, nor will alcohol-related harm caused by excessive and inappropriate consumption be minimised if these On and Off licences are renewed, or the Manager's Certificate is renewed. In short, standing back, we have no doubt it would be inconsistent for the achievement of the two arms of the object of the Act for us to grant the renewals sought.
- 329) In carefully evaluating the evidence placed before us we have not ignored the more positive aspects of Mr Wallace's journey. His long experience in the industry and significant management ability seem to have been severely underutilised and unfortunately even put to one side. We find it disappointing that it became inevitable that advice for applicable licensing and law requirements, and the offers of assistance around specific process improvements from the Inspector, were not taken up as these may have contributed to the achieving of more positive outcomes and less risk to the business. Without the Inspector's assistance his own inaction may have seen the licences or temporary authorities expire. Opportunities for Mr Wallace to demonstrate that he has indeed learned, that he has improved his management style and that he is able to operate within the Act and other law, have simply not been taken up. Does he have appropriate knowledge of the law and understand his responsibilities as a licensee fully – we think not. Our opinion is that reality is finally and unfortunately hitting home.
- 330) The Committee does not dispute, as put to us, the part played by Springfield Hotel in the local community over many years. This same community, however, has the right to expect that the business operates within the "rules," in this case within the Sale and Supply of Alcohol Act 2012, the Employment Relations Act, the Fire and Emergency Act and the Food Act for example – they are largely intertwined for instance in Mr Wallace's business. We also note that rather than encouraging an effective working relationship with the agencies, there has been a noticeable lack of co-operation. We acknowledge *Frith* (2005) in this respect.
- 331) Counsel Ms Kaur put to us that Mr Wallace has appropriate knowledge of the law and understands his responsibilities as a licensee fully.
- 332) We have noted that it is a privilege to hold a Manager's Certificate in the community and that the applicant's character and behaviour is 100% an issue in terms of suitability as is the manner in which he sells and supplies alcohol under licence on the premises. The manner in which he sells and supplies is reliant on having sufficient qualified and trained staff on duty; staff enabled to undertake their duties without extraneous matters getting in the way. The community is entitled to understand

- how his premises have operated leading up to the hearing for the renewal of the On and Off licences and the renewal of his Manager's Certificate.
- 333) The Committee has heard evidence during this hearing attesting to Mr Wallace's intimidatory and abusive behaviour towards staff, the severe outbursts of rage directed towards them, including throwing objects across the room – the very staff who are tasked to manage on site consumption and alcohol-related harm both in and around the premises in terms of the On and Off licences. Witnesses spoke of the mental issues arising from licensee behaviour exhibited over time within these premises.
- 334) Direct and indirect harm issues and issues relating to the sale and supply of alcohol on the premises and to which we have accorded weight, include:
- (i) on 14 April 2019, Darfield Police and the Licensing Inspector found the licensee trading without a licence, not having submitted a temporary authority (TA), Police directed trading to cease until the business had a TA;
 - (ii) licensee and staff drinking during working hours and while serving;
 - (iii) Notification of Management change (NOM) issue 16 September 2019, Temporary Manager appointed. Application for a new manager was not received within 2 days, one of several. Further issues with NOMs including incorrect reasons, acting manager appointment for 2 weeks when the person did not hold a certificate, acting manager appointed three times in 2021 for incorrect reason of additional manager;
 - (iv) lack of systems for employment including payroll, payroll initially recorded in a diary, few or no employment agreements;
 - (v) on 23 January 2021, named duty manager not on-site during trading hours, the acting manager was not present, the applicant was issued with an infringement notice by Police for failing the conditions of the licence;
 - (vi) failure to pay the annual fees by 30 April 2021, no provision of drinking water, suspension on 3 June 2021 until fees paid 9 June 2021;
 - (vii) on 4 September 2020 the applicant advertised a free pint with a table booking;
 - (viii) on 25 November 2020 the applicant advertised free beverages and a sausage;
 - (ix) on 9 June 2021, search warrant executed for the old hall at the hotel address, cannabis grow located, Mr Wallace's home also searched, Mr Wallace convicted and sentenced for cultivates cannabis, possession use utensils (methamphetamine and amphetamine,) unlawfully possess ammunition, procure/possess Ecstasy, procure/possess methamphetamine/amphetamine, procure/ possess cannabis plant. Majority of the offences took place at the Springfield Hotel address, others at the home address;
 - (x) licensee to be served drinks by staff while working in the kitchen;
 - (xi) intoxication on the premises, intoxicated persons being allowed on to the premises, possibly some monitoring if part of a group;
 - (xii) unsafe, unhealthy working environment, ex-staff talk of a toxic workplace, mental strain, one had a mental breakdown and was admitted to Hillmorton Hospital;
 - (xiii) 2 ERA determinations finding for ex-employees, moneys owed not paid, bailiff involved currently, third ex-employee was waiting for her determination;
 - (xiv) abusive and intimidatory behaviour by licensee to staff, yelling, abuse, openly aired, including within customers' hearing;
 - (xv) licensee and staff not knowing what the SCAB tool was by name;
 - (xvi) in 2022, two food verification failures, under the Food Act 2014;
 - (xvii) compliance advice and education from Inspector largely ignored;
 - (xviii) no training for the Host Responsibility Policy (HRP), some staff not aware what an HRP is;
 - (xix) lack of recording incidents,
 - (xx) lack of regular or any staff meetings;
 - (xxi) Servewise not completed by all staff as indicated;
 - (xxii) intoxicated customers served;

- (xxiii) no fire evacuation scheme in place, issues documented and provided by FENZ, no evacuation training, no plan, no official wardens, upstairs accommodation did not have required fire signage, alarms not working;
- (xxiv) licensee dropped food on the kitchen floor, burned food, food orders taking a long time - one group did not have their orders after waiting an hour-hour and a half;
- (xxv) 21 April 2021, On-licence renewal application states that the owner provides and maintains an evacuation scheme required by the FENZ Act 2017. FENZ advised non-compliance with the FENZ Act 2017, statement was not correct. BWOFF question was not completed;
- (xxvi) a BWOFF is still outstanding, expired 1 July 2020, lease to buy completed September 2022, licensee understands tenant responsibility;
- (xxvii) named contractor not engaged to sort BWOFF as told to us by Mr Wallace, quote only, no response to contractor;
- (xxviii) a Notice to Fix under the Building Act was issued February 2023.
- 335) We have accorded weight to the united opposition of all reporting agencies and FENZ; acknowledging that the MOH was not required to report on the Manager's Certificate. Overall non-compliance with the law including the Sale and Supply of Alcohol Act 2012 has reached a point where the agencies and FENZ are of the view that the licensee should not be granted these renewal applications. We are persuaded by evidence from Police, the Licensing Inspector and FENZ that is convincing and cogent in respect of ongoing irresponsible and inappropriate behaviour by the Applicant. The Applicant has not traded within legal requirements. In our opinion, the premises present an elevated risk picture – the potential for future harm in the premises, in the locality, cannot be ignored by us.
- 336) Reaction by the Applicant to authority is a serious concern. This included Mr Wallace's reluctance to take up the numerous offers of assistance from the Inspector particularly to comply with required timelines. His underlying thought seems to have been that licensing legislation compliance was for others. This attitude led the Chief Licensing Inspector to express a view that the overall non-compliance is serious. Unfortunately, by the Applicant's ongoing reluctance, the sale and supply and consumption of alcohol being undertaken safely and responsibly was put even further at risk. The Applicant, with significant experience in the hospitality industry initially traded without licences. He had four temporary authorities and struggled to submit applications prior to relevant expiry dates in the process leading up to the initial licences and then for the renewals.
- 337) The Committee considers there is an evidential link to be drawn between a real risk of alcohol related harm not being minimised, that the sale and supply of alcohol would not be undertaken safely and responsibly and the renewal of these licences. It is unlikely that the licensee's management style, the manner in which alcohol is sold and supplied will change in the hugely significant way required, it is likely that there will potentially be alcohol harm from the lack of appropriate management of staff and the non-compliant way the premises are run. The Applicant does not have appropriate staff, training, systems to comply with the law. There is significant risk in the business continuing in the way that it has done in this period of review, the signs are almost entirely negative rather than positive. The safe and responsible consumption of alcohol is neither promoted nor managed.
- 338) It is our unanimous view that potential alcohol related harm has not been reduced or minimised and that the sale and supply of alcohol is not undertaken safely and responsibly. Issues that were present earlier in this licence review period are still there and some have deteriorated significantly.
- 339) A licensee's suitability and ability to manage is questioned when he is drinks as duty manager and has staff make drinks for him while he is working as a chef in the kitchen, when he disappears out the back or to what is referred to as his shed/man-cave and garage, when he leaves the premises without a qualified manager present and named with customers present, when his personal integrity is seemingly in tatters, staff are not trained, there are no trial evacuations, timesheets are altered without agreement, staff are abused, there are not enough staff for entitled breaks, and there is no chef or food readily available during trading hours. On some mornings the state of the kitchen would have precluded the safe preparation of food, despite it being left clean and tidy at closing. Staff generally look to a licensee for direction and recognition - the staff look to the boss and this boss is retaliatory, unprofessional, and erratic as an employer, he looks to have absolute control regardless

of employee entitlements despite the requirements of applicable law and the requirements the Sale and Supply of Alcohol Act 2012.

SUMMARY

- 340) We have formed our opinion and find this applicant is not suitable to hold On and Off licences under the Sale and Supply of Alcohol Act 2012. The reasons are summarised earlier. For the reasons summarised earlier we find the licensee's systems, staffing, and training inadequate to justify renewal. Our findings in relation to the manner in which the applicant has sold and supplied alcohol are overwhelmingly negative. Our over-all evaluation of all the evidence and our findings and conclusions with respect to relevant parts in section 105(1)(a), with section 131(1)(d) and with section 4 – the object of the Act, has been very thorough.
- 341) 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 premises, by Alpine 182 Degrees Limited trading as the Springfield Hotel;
NOR
 - (ii) that harm caused by excessive or inappropriate consumption of alcohol would be minimised if we renewed the On and Off licences for this Applicant.
- 342) As we have concluded that the Applicant is not able to comply with the object of the Act, any consideration of a suite of conditions is superfluous.
- 343) 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 and Off licences, and the manner in which the licensee has permitted consumption including his own on the premises, the licensee's inadequate systems and training, the manner in which the licensee has sold and supplied alcohol, the lack of suitability, and failure to meet the obligations of s.4, in relation to these licences, it would then be inconsistent with those findings to conclude the Applicant:
- (i) was suitable to have the On and Off licences renewed; and
 - (ii) has adequate systems, staff and training to enable us to have any confidence that the sale, supply and consumption would be compliant; and
 - (iii) the manner in which the licensee has sold and supplied alcohol was compliant with the law; and
 - (iv) the manner in which the licensee has sold and supplied alcohol was compliant with the Sale and Supply of Alcohol Act 2012; and
 - (v) could or would be likely to meet the object of the Act by the renewal of these licences.
- 344) We determined our evaluation, our conclusions and risk analysis for the On and Off licences. The Committee unanimously determined to refuse the renewal applications for the On-licence and Off-licence for Alpine 182 Degrees Limited.
- 345) We find this applicant is not suitable to hold a Manager's Certificate under the Act. For the reasons summarised earlier we find the evidence leaves us in no doubt that after our considering the experience of the Applicant in the premises, the taking into consideration the recent serious criminal convictions as we must, the evidence heard contrary to suitability, the lack of staff, training, systems to comply with the law, the not taking of many opportunities to apply advice and education, and the matters made in reports under s.225, we must conclude the Applicant fails to meet the renewal criteria for a Manager's Certificate in s.227.
- 346) As we formed this opinion, it would be inconsistent to conclude that this application for the renewal of a Manager's Certificate is able to comply with the object of the Act. Consideration of a suite of condition or undertakings is therefore superfluous.
- 347) We determined our evaluation, our conclusions and opinions and risk analysis for the Manager's Certificate renewal. The Committee unanimously determined to refuse the application for a renewal of a Manager's Certificate for Blair Nathan Wallace.

CONCLUSION

- 348) 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 Friday, 13 October, 2023. In short, the On licence and the Off licence held by the Applicant expires at that time and on that date: 11.59pm on Friday, 13 October, 2023.

DATED this 15th day of September 2023



G Clapp
Commissioner
Selwyn District Licensing Committee



APPENDICES

A	licences for which renewals sought
B	plan of premises date stamped
C	24 Minutes issued
GC01	email from Senior Constable Grant
GC02	231 notification
GC03	email from Administration
GC04	On & Off licence applications, temporary manager
GC05	231 notification
GC06	email from Administration
GC07	231 notification
GC08	231 notification
GC09	email from administration
GC10	231 notification
GC11	email from Administration
GC12	new manager application, signed 15 October 2019
GC14	Facebook advertisement
GC15	Facebook advertisement
GC16	231 notification
GC17	email from Administration
GC18	On & Off renewals received by Police, manager appointment
GC19	premises report, Police
GC20	231 notification
GC21	email from Administration
GC22	opposition report from Police
GC23	refers to the Supplementary report, Police
GC24	231 notification

GC25	email from Administration
GC26	certified copy of District Court convictions
GC27	Judge Gilbert's sentencing notes for Mr Wallace
GC28	Off licence toolkit
GC29	directed visit, Covid check at hotel and home
GC30	ERA determination, A Pearce
GC31	231 notification
GC32	email to T Tahuhu, abandonment
GC33	medical certificate, T Tahuhu
GC34	report for T Tahuhu
GC35	ERA determination, T Tahuhu
HC 01	Canterbury Maps in respect of search warrant
HC 02	photographs re search warrant
HC 03	yearly planner re search warrant
FENZ	FENZ, screenshot 1,2,3 and submission
MJ 01	email, Licensing Inspector
MJ 02	letter, Mr Charlton SDC
MJ 03	letter, SDC suspension
MJ 04	information sheet, evacuation scheme
MJ 05	email, advising to contact FENZ about scheme
MJ 06	email, information sheet, temporary, acting managers
MJ 07	231 notification
D	Closing submissions