

Notice of Decision



Decision No. 57/ON/522/2023
57/CERT/1787/2023

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by Cheiler Limited
for a new on-licence pursuant to s.
100 of the Act in respect of premises
situated at 11 Old Main Leithfield
Road, Leithfield, known as “The Old
Leithfield Hotel”

AND

IN THE MATTER

of an application by Kim Shailer for a
manager’s certificate pursuant to s.
219 of the Act

BEFORE THE Hurunui District Licensing Committee

Deputy Chairperson: Mayor Marie Black
Members: Councillor Pauline White
Mr David Kidd

HEARING at Amberley on Wednesday 4 and Thursday 5 October 2023.

APPEARANCES

Mr Che McLennan – Director for applicant company
Ms Kim Shailer – Director for applicant company
Mr Peter Egden – Counsel for the applicant
Mr Stephen Tait – Witness for the applicant
Mr Mark Gillman – Witness for the applicant
Senior Constable Genevieve Craddock – New Zealand Police – in opposition
Constable Mark Rankin – Witness for New Zealand Police
Constable Montgomery Fiddymont – Witness for New Zealand Police
Ms Dianne Morrison – Chief Licensing Inspector – in opposition
Ms Louisa Bromley – Representative for the Medical Officer of Health – to assist
Ms Kate Henry – public objector (participated in day 1 of proceedings)
Ms Maree Clapham – public objector
Ms Maree Clapham representing Leithfield Community Centre – public objector
Miss Grace Leen – public objector
Mr Tom Leen – public objector
Ms Lynette Creagh – public objector
Mr John Clapham – public objector

DECISION OF THE LICENSING COMMITTEE

DECISION

- [1] The application for a new on-licence by Cheiler Limited is granted, subject to the following conditions:
- (a) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1.00pm on ANZAC Day to any person who is not present on the premises to dine.
 - (b) Alcohol may be sold only on the following days and during the following hours:
Indoor licensed areas:
Sunday to Thursday from 9.00am to 11.00pm; and
Friday and Saturday from 9.00am to 12.00am midnight.
Outdoor licensed areas:
Monday to Sunday from 9.00am to 10.00pm.
 - (c) On the four (4) special occasions described in condition (e) of this on-licence, the licensed hours for **indoor licensed areas** permitted as follows:
From 9.00am to 1.00am the following day.
 - (d) For outdoor licensed areas, the following restrictions apply:
 - (i) live and recorded music must cease by **7.00pm daily**.
 - (ii) live band and live DJ music is permitted on Saturdays or Sundays only.
 - (e) For indoor licensed areas, live band music or live DJ music must cease at **11.00pm**, apart from the four (4) occasions described in subpart (i) of this condition, and subject to subparts (ii) and (iii) of this condition,:
 - (i) Four (4) dates per calendar year, subject to
 - (ii) Notification in writing to the Licensing Inspector and all neighbouring residences within 100m radius of the premises at least 14 days before the 4 dates; and subject to:
 - (iii) Such live band or live DJ music ceasing no later than **12.00am midnight**.
 - (f) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - (i) The licensee must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
 - (g) The following parts of the premises is designated as a **supervised area**: Main Bar and the Smokers Area.
 - (h) The following parts of the premises is designated as a **restricted area**: Gaming Room.

- (i) The area delineated on the attached plan, date stamped as received by the Hurunui District Licensing Committee on [date to be confirmed when updated floor plan is submitted], is a permitted area for the sale, supply, and consumption of alcohol.
 - (j) The licensee must enforce a **one-way door policy** from 11.00pm on Friday, Saturday and on the four (4) special event nights.
 - (k) The licensee must fully adopt, implement, and complete ongoing staff training for the **Noise Management Plan**, written by Acoustic Engineering Services, dated 11 September 2023, subject to the amendment of the bullet point 5 of clause 4.2 to read 10.00pm.
 - (l) The licensee must submit a final alcohol management plan, subject to the satisfaction of the Licensing Inspector, within three months from date of the decision.
 - (m) The license must fully adopt, implement and complete ongoing staff training for the final **alcohol management plan**.
 - (n) The licensee must ensure that the area within 100m radius of the premises is checked and cleared of litter daily. The date, time and type of litter collected must be recorded in the Incident Book.
 - (o) Drinking water must be freely available on the bar and tables to customers while the premises are open for business.
- [2] The application for a manager's certificate by Kim Shailer is granted.
- [3] In accordance with s. 152 of the Act, the decision of the Licensing Committee has no effect during the period allowed for filing an appeal against the decision, and if an appeal is filed, also has no effect while the appeal is pending. The appeal procedure is set out in ss. 154 and 158 of the Act.

INTRODUCTION

- [4] On 21 December 2022, the Hurunui District Licensing Committee received an application by Cheiler Limited for a new on-licence, to trade as a tavern at the premises situated at 11 Old Main Leithfield Road, Leithfield, and known as "The Old Leithfield Hotel".
- [5] The applicant has been trading under temporary authority orders for the premises since 28 November 2022.
- [6] Public notification of the application attracted 10 objections from residents and the Leithfield Community Centre. The Licensing Committee recognised all objectors as having both status and validity to object under s. 102 of the Act.
- [7] The public objectors' concerns related to amenity and good order issues from ongoing live band music, patron noise, vehicle noise, litter, and pleasantness of the Leithfield

community. The proposed 2.00am closing time was a significant concern shared by all public objectors to this application.

- [8] On 2 October 2023, Mr Bruce and Mrs Ann McKenzie (OBJ03) advised the Licensing Committee that they withdraw their objection to the application. Mr and Mrs McKenzie stated that, “the applicant visited them in February, the matter of noise was discussed, and we were assured that they would look into the matter. They have kept their word; the music volume has been turned down and we have had no bother with the noise from the hotel since.”
- [9] The application was not opposed by the Medical Officer of Health Representative. The Licensing Inspector and Police submitted reports to the Licensing Committee in opposition to the application, due to ongoing concerns at the premises, including intoxication and noise.
- [10] The Licensing Committee also received an application from Kim Shailer for a manager’s certificate. Ms Shailer is one of the two directors for the applicant company.
- [11] The Police submitted a report to the Licensing Committee in opposition to the application for manager’s certificate, on the basis that, “Police have opposed the new on-licence application due to ongoing concerns at the premises including intoxication and noise. Ms Shailer was present working as a staff member or duty manager during some of the incidents.”
- [12] The Licensing Inspector’s report recommended that the manager’s certificate application be heard before the Licensing Committee by a public hearing due to the Police opposition.
- [13] Given the opposition by the Police and Licensing Inspector and the public objections received, the applications are required to be heard before the District Licensing Committee by way of public hearing, in accordance with s. 202(3) of the Act.
- [14] A hearing was scheduled and convened in Amberley over a three-day period between Wednesday 4 and Friday 6 October 2023. Due to the efficacy of proceedings, the hearing date of Friday 6 October 2023 was not needed.
- [15] For the reasons we will set out below, we conclude that the application for new on-licence by Cheiler Limited is granted, subject to conditions with clear expectations set by this Licensing Committee.
- [16] The application for manager’s certificate by Kim Shailer is granted.
- [17] In accordance with s. 152 of the Act, the decision of the Licensing Committee has no effect during the period allowed for filing an appeal against the decision, and if an appeal is filed, also has no effect while the appeal is pending. The appeal procedure is set out in ss. 154 and 158 of the Act.

OPENING STATEMENTS

Counsel for the Applicant

- [18] Mr Egden submitted a comprehensive opening statement at the hearing. This was not read in its entirety, however Mr Egden summarised key points of his submission.
- [19] Mr Egden stated that these premises have been continuously licensed since 1911. There have been numerous licensees, all of whom have had their licences renewed over the years. Mr Egden said that The Old Leithfield Hotel is an integral part of the Leithfield community. Even from the objectors, no one wants to see it go.
- [20] Mr Egden said it is a matter of whether the issues that have been raised, can they be mitigated and if so, what is the best means to do that.
- [21] Mr Egden said, having read through the public objections and reports from the Police and Licensing Inspector, the issues in order of importance would be noise, particularly from music, people and vehicle noise, and noise from other sources (including the users of the Kowai River Track and residents).
- [22] Mr Egden said not all of the noise is attributable to these premises, which he considers an important point to make. He continued, under previous licensees, there has been noise from the premises, and this has been recognised by some of the public objectors in their evidence.
- [23] Mr Egden said it is a matter really, of all of us working together to find a way through this that is acceptable to the locals and within reason, is manageable by the applicant. Mr Egden said by the end of this hearing, he is hoping that we have found ways to do this, which will involve the imposition of conditions.
- [24] Mr Egden submitted that the amenity and good order will be under control, provided the conditions are met, and provided that the licence is granted, for the first probationary year. If those conditions are not complied with, then the applicant knows what the likely outcome would be (at time of renewal).
- [25] Mr Egden views that the Old Leithfield Hotel is an important part of the community, and it would be a sad day if it was closed.
- [26] Mr Egden highlighted that s. 105(1)(i) does not apply in this case, for it to do so, the Licensing Committee would need to find that it is not desirable to issue any further licences. Whether this licence is granted or not, the number of licences will remain the same. Consideration of the amenity and good order of the locality will be under s. 105(1)(h).
- [27] Mr Egden recognised that a common theme throughout the public objections were:
- (a) The objections relate principally to the 2.00am closing time;
 - (b) There is general recognition that there were problems with noise, litter, unruly behaviours, intoxication, and departure at all hours, with the previous licensees;
 - (c) The public objectors do not want the hotel to close, they want to see appropriate mitigation steps taken and conditions.

- [28] Mr Egden said he will be calling witnesses in support from Mr Mark Gillman and Mr Stephen Tait, for whom noise from the bands or other is not an issue. They consider it would be a tremendous loss to the community if the hotel were to close.
- [29] Mr Egden stated Leithfield has a population of around 600, seven of whom have lodged objections and three in support of the application. The remaining 590 are not opposed, or support it, or do not have any concerns to the extent that they would oppose the application.
- [30] Mr Egden said the reporting agencies concerns are mainly around suitability of the applicant, hours of trade, amenity and good order of the locality including noise from music and other sources and litter, staff, systems and training, intoxication, and the provision of services available.
- [31] Mr Egden stated that at paragraph 10 of his written submission, he addressed these areas of concern in order.
- [32] In terms of suitability, Mr Egden said there is no doubt that in his 20 years of experience in the hospitality industry, Mr McLennan has an exemplary record and had no previous issues with the reporting agencies and no convictions. Mr McLennan's roles previously had him adopt and implement systems that were enforced by his employers. Mr Egden said this is Mr McLennan's first application for an on-licence, which is a big step up for him. He has had to create his own systems and tailor them to these premises, which is beyond his responsibilities previously. Mr Egden said country hotels are unique in the sense that all have their own catchments, and they require a different approach by the licensee or manager's. It can take some time for patrons to get used to and be educated about the standards accepted by a new licensee, so it is a learning curve for both the licensee and the customers. Mr Egden submits that both Mr McLennan and Ms Shailer have the ability to run the hotel in a proper and satisfactory manner.
- [33] In terms of the hours of trade, Mr Egden said the applicant is willing to reduce the closing hours, consent to conditions as to the time at which music must cease and a time for last drinks. The extent of these will be a matter for discussion during the hearing.
- [34] In terms of the amenity and good order of the locality, Mr Egden said The Old Leithfield Hotel is an important part of the township and if the licence is not granted, the amenity of Leithfield will suffer a significant blow, it will be less pleasant and agreeable. Mr Egden said it comes down to appropriate conditions and compliance with those conditions
- [35] In relation to music, Mr Egden said there has never been an objective measurement of the sound levels linked to the hotel. Without that, Mr Egden said we do not know if the decibel levels have exceeded the District Plan. What we do know is that there have been four noise complaints to the Hurunui District Council since the applicant took over. The Noise Control Officer visited on three occasions and on each occasion, he determined that the noise level was acceptable. Mr Egden said there have been no complaints since 7 April 2023. Mr Egden said the applicant has reduced the sound volume from the early days and it is now monitored by a sound level meter. The applicant has also engaged Acoustic Engineering Services to prepare a Noise Management Plan and the sound system has been calibrated to ensure that it will comply with the District Plan.

- [36] In relation to external noise, Mr Egden said it is recognised that there will always been some, but it is a matter of how it is controlled. Mr Egden said this will largely be reduced by restricting hours. Mr Egden said the applicant has installed signs outside urging people to be quiet and respect the community and staff monitor the levels.
- [37] In terms of litter, Mr Egden said that staff clean up litter from the area surrounding the hotel on a daily basis.
- [38] In relation to the concerns about intoxication, Mr Egden said the applicant will be giving evidence of the intoxicated patrons outside the hotel and the assault. Mr Egden said there were no other occasions of intoxication linked to the premises, despite Police visits over the period.
- [39] In terms of the systems, staff and training, Mr Egden said the applicant will give evidence relating to the alcohol management plan and noise management plan. The applicant is willing to have these plans incorporated into the conditions of a licence.
- [40] In conclusion, the applicant accepts there have been issues in the past, they have addressed these and are agreeable to the imposition of conditions to a licence, including:
- Reducing closing hours;
 - Restricting music in the outdoor area to 7.00pm;
 - Restricting music in indoor areas to 11.30pm except for special occasions such as New Year's Eve;
 - Restricting live music in indoor areas to Friday or Saturday and public holidays;
 - Restricting live music in the outdoor area to Saturday or Sunday and public holidays;
 - The adoption of the noise management plan and the alcohol management plan.

New Zealand Police

- [41] Senior Constable Craddock stated that Police will be giving evidence on vehicle, music and patron noise, intoxication, disorder, irresponsible promotion of alcohol and lack of systems, staff, and training.
- [42] Senior Constable Craddock said, "since the applicant took over the premises, they have hosted many events attracting a young demographic from around and outside the area who litter, preload, rev engines and speed when they come into and out of the township for patronage of the hotel."
- [43] She continued, "since their first event at Waitangi weekend in February, Police have advised the applicant of potential noise issues and the implications on the licence."
- [44] Senior Constable Craddock said, "Police evidence will show the applicants have completely ignored the advice from Police, they have failed to monitor music and patron noise, monitor the amenity around the premises."

- [45] Senior Constable Craddock states, “we are almost at the end of a probationary year, and in response to Counsel’s comments that the hotel will close if the licence is not granted, Police submit that is not correct, it just means that the current licensees cannot be licensees if it is not issued. The hotel will not go.”
- [46] Police submit that “the applicants have failed to control and manage the premises in a way that minimises harm under the object of the Act. Therefore, the application for new on-licence should be refused.”

Licensing Inspector

- [47] Ms Morrison stated, “The Old Leithfield Hotel has been operating by Cheiler Limited (the applicant) under temporary authority orders for 10 months, which is basically the first probationary year.”
- [48] Ms Morrison said, “during that time the premises has been monitored, meetings held with the applicant to discuss the application, the operations of the premises and the staff, systems and training required.”
- [49] She continued, “Police and the Licensing Inspector have identified issues with the operation of the hotel and disturbance of the neighbours including music and patron noise, patron behaviour outside of the licensed areas, the migration of patrons from other premises, vehicles arriving and leaving the hotel late at night and early morning hours, the use of vehicles in ways that are disruptive to the community.”
- [50] Ms Morrison submitted, “the issues identified by Police and the Licensing Inspector have not been addressed in a manner that has resulted in the premises being conducted in a manner that is accordance with the Act and the law. Little has changed for the operation of the premises and the issues faced by the community. This does not bode well for the consideration of granting the licence.”
- [51] Ms Morrison submitted, “the issues raised by public objectors have been substantiated by the Police and the Licensing Inspector through the monitoring of the premises of its operation and behaviour of patrons.”
- [52] She continued, “live music at the hotel has changed significantly during the operation of the hotel. The frequency of the music has been either once or twice every weekend, excluding one, since taking over the premises. The genre of music has also changed and is aimed towards a younger clientele. The behaviour of this younger age group at the hotel has also contributed to the impacts on the community.”
- [53] Ms Morrison referenced a decision of the Licensing Authority, reference ***Paihia Saltwater (2001) Limited NZLLA PH 391/2001***, which dealt with issues around noise management and changes to the operations of a licensed premises.
- [54] Ms Morrison stated, “the applicant has indicated that they had systems in place from the outset, yet the Licensing Inspector stated that she needed to request alcohol and noise management plans, with the earlier versions requiring significantly more detail to support their effective operation of the premises.”

- [55] Ms Morrison recognised, “these plans have evolved overtime however do not appear to have been effectively adopted and implemented at the premises.”
- [56] She continued, “plans tailored specifically for the premises and backed up by good staff training can have a major impact on operation of a licensed premises. This is not evident to date at The Old Leithfield Hotel.”
- [57] Ms Morrison stated, “patron numbers have appeared to have increased, the premises are open longer hours than most operators and previous licensees, patrons have been observed arriving at the hotel late at night indicating there is probable migration of patrons from other licensed premises that have closed earlier. The later closing times and the behaviour of patrons arriving and leaving the premises has negatively impacted on the amenity and good order of the neighbouring residents. This has been evidenced during the monitoring by Police and Licensing Inspector and with evidence and submissions of the objectors”
- [58] Ms Morrison stated, “the applicant has made improvements to the lighting in the beer garden and rear carpark to improve safety and acknowledged that the applicant is prepared to reduce the outdoor licensed hours to comply with the Hurunui Local Alcohol Policy.”
- [59] Ms Morrison stated, “the applicant sought to attract a different clientele and change the type of operation of the hotel. This was based on attracting younger age groups through hosting live music at the premises which is occurring every weekend.”
- [60] Ms Morrison said, “the granting of a licence and the expectation of the applicant to turn the premises around in the first 12 months of a licence is a risk, and one that should not be imposed on the Leithfield community, in light of the fact that they have already traded for 10 months.”
- [61] Ms Morrison stated, “the monitoring and evidence submitted by Police and the Licensing Inspector paint a picture of ongoing non-compliance issues at the hotel. These indicate the object of the Act is not being met.”
- [62] She continued, “the applicant has failed to ensure the sale, supply and consumption of alcohol has been undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol is being minimised.”
- [63] Ms Morrison stated, “the Licensing Inspector seeks that the application be declined as the applicant has failed to meet the object of the Act. Little improvements have been made to address the underlying issues.”

Medical Officer of Health Representative

- [64] Ms Bromley stated, “the Medical Officer of Health did not oppose the application.”
- [65] Ms Bromley explained, “subsequent to the report, further information came to light from the Police and the Licensing Inspector regarding s. 295.”

[66] She continued, “the Medical Officer of Health does not intend to call any evidence of witnesses at the hearing but is available to assist the Licensing Committee.”

Public Objectors

OBJ01 - Kate Henry

[67] Ms Henry stated that, “I object to frequent, very long music, for very long periods, very late at night. The noise makes our windows vibrate.”

[68] Ms Henry banged on the table to demonstrate the bass “that goes hour after hour, which is very upsetting at 1.00am in the morning, it’s torture.”

[69] Ms Henry stated, “customers leaving the venue at 2.00am in the morning don’t just leave, they shout and scream at each other, they slam their car doors, rev engines and this one person revved their car engine for 15 minutes straight and then did burnouts down the street.”

[70] Ms Henry said, “we have lived next door for three years and love this pub, we have never had a problem until the new applicant came along.”

[71] Ms Henry said, “the premises are a small hotel in a quiet village that need to be run in a considerate way, but the applicant is running it like an inner-city nightclub.”

[72] Ms Henry said, “it has always been very successful and known for its fantastic food and friendly atmosphere. The applicant has changed the style.”

[73] For completeness, no other public objectors present at the hearing gave opening statements.

EVIDENCE AND SUBMISSIONS

The Applicant – Che McLennan

[74] Mr McLennan submitted a written brief of evidence dated 12 September 2023. His evidence was taken as read.

[75] Mr McLennan took the stand and said “he wanted to highlight that both himself and Ms Shailer are both very genuine. I have quite a connection to The Old Leithfield Hotel and the district. We consider we are the caretakers of the hotel and the people, and we have a role to ensure that it has a future for all of the community to enjoy.”

[76] Legal counsel examined Mr McLennan on parts of his evidence.

[77] In relation to paragraph 20 of his brief, Mr McLennan produced a copy of the noise complaint record obtained from the Hurunui District Council. This was recorded as exhibit **EXH CHE01**. Mr McLennan confirmed that a noise control officer visited the premises on 7 February 2023 and 19 March 2023 (twice) and determined the volume of music to be an acceptable level.

[78] In relation to paragraph 22 of the brief, Mr McLennan confirmed that they employ security guards on the days that they have events at the hotel. They initially employed door hosts, who were very approachable and cared for the patrons. The approach changed to security guards ever since the Ashley Pig Hunt, which was a situation where Ms McLennan says they were overrun and lead them to shut the place down.

[79] Mr McLennan confirmed that they have improved the lighting in the garden area and in the rear carpark. Mr McLennan considers there is ample lighting at the front door for security to complete identification checks.

[80] Mr McLennan gave an account of what happened on the night of the assault on 13 May 2023. He stated:

“It was early on Saturday evening, a group from the local rugby club arrived. It started with a group of three or four older men arrived (estimated age of 30-40 years) at the venue, who got a beer at the bar and gone outside to the beer garden. Another group of three men arrived, then a single man arrived a couple of minutes later. Three of them were deemed to be intoxicated and the other was argumentative. We refused service at the bar and asked them to leave but they refused. I started the process of getting them out without causing a scene. I approached the group of older men, who were sober, and asked for assistance with getting the others home. We offered a ride home in the courtesy van.

It had taken quite a bit of time of talking with the younger group, about 30 minutes, they agreed to get a ride home in the courtesy van. Kim and I were closely monitoring the group in the outdoor smoking area. Two of them went to walk through the bar, one of whom pulled his pants down as he entered the door, then proceeded to bend down and flick a ball on the pool table. A patron that was on the other side of the pool table charged at him from the side, grabbing him by the neck and pinned him against the wall. I immediately tried to separate these people.

In this time, one of the mates of the person that was pinned against the wall has charged at the other male and hit him on the side of the head which knocked him down onto the floor.”

[81] Mr McLennan does not consider that there is anything more they could have done without causing more of a brawl.

[82] Mr McLennan stated that all the persons involved were trespassed for two years. At two years, he will issue a further trespass notice.

[83] Referring to the Noise Management Plan developed by Acoustic Engineering Services Limited, Mr McLennan said, “that while it is complex, it looks after the venue, patrons and the community. It is a very good groundwork to work off.”

[84] Mr McLennan considers that it is unfortunate that it has been such a task to get to this point with the plan, it is a growing document and incorporates any lessons learned.

[85] Mr McLennan said there is one area of concern in the noise management plan, in relation the use of the outdoor courtyard and smokers’ area after 7.00pm. Mr McLennan has concerns about whether it is workable and it detracts from what the venue is. He considers that the venue has a beautiful outdoor area and families sit out there for

dinner, in summertime it is not unusual for people to eat outside. That is what the venue is all about.

- [86] If there was any issue with noise from patrons outside, Mr McLennan said he would go and talk to them and explain that we have neighbours, it is all about respect both ways. Mr McLennan considers that most patrons understand that, for those that do not, then there may be a bigger issue and we will try to wrap them up and move them on.
- [87] Mr McLennan considers a workable time for the outdoor area, only to be used by smokers and small groups, comes down to common sense. At no time are we enticing large groups to go out there, except for some special events like New Year's Eve.
- [88] Mr McLennan discussed the Police report on 18 April 2023, in which intoxicated persons were found inside and outside of the premises. He gave the following account of the patron intoxication report for the woman:

"She was known to us; she works on a farm and had come in a couple of time after work quite late. She was an interesting character, but we had not had any previous trouble with her.

On the night in question, the patron arrived at about 11.30pm and was served one beer and played a game of pool right in front of us in the bar. She did not appear to have been drinking previously. She was still in her work clothes.

I did speak with her briefly and said hello. There was no sort of warning signs. She was on the premises for maybe 20-25 minutes total and during that time she consumed one beer and played a game of pool and then left."

- [89] Mr Egden confirmed that from the Police's evidence, "the Police arrived around or just after midnight. They recorded that there was a ute, which they later established that the woman was inside it with her boyfriend. The ute drove off and it arrived back about 30 minutes later. Police assessed the woman and found that she was intoxicated."
- [90] Mr McLennan confirmed that he was involved at this stage. The Police Officer came inside to discuss the situation and asked whether she should be breathalysed. Mr McLennan confirmed that she should be if he thinks she should.
- [91] Mr McLennan considers that, "she had changed, she was standing beside her car and was not standing straight anymore." He continued, "if she was like that on the premises, she would have been asked to leave, as she is known to quite a few people, one of them would have taken them home."
- [92] Mr McLennan confirmed that there have not been any other incidents with intoxication. There are quite often groups that will turn up, for example van loads of lads going up to Hanmer, that we will refuse service.
- [93] Mr McLennan confirmed that they have refused entry to over 100 people. These are usually groups of males that turn up on a pub crawl. About half a dozen persons have been asked to leave the premises, mostly because of their behaviour and being silly.

- [94] Mr McLennan confirmed that they have trespassed 8 to 10 people verbally. They speak with those persons and ask them not to come back for 3 months.
- [95] Mr McLennan explained that they sometimes file a copy of the trespass notice with the Police, but not always. They want to speak to the person first and explain that if they come back on the premises, the trespass notice will be filed with the Police. Mr McLennan further explained that “these are people that are generally well known to us and have behavioural problems but are good people. It is usually in relation to minor offences like spitting on the ground or burnouts in the carpark.”
- [96] Regarding the evacuation scheme, Mr McLennan confirmed that they do not have a current fire evacuation scheme in place. An application has been lodged with FENZ twice. Due to technical difficulties with their new system, a second application was needed, which is currently pending. Mr McLennan said he will continue to work with FENZ to ensure there is an approved and operational fire evacuation scheme for the premises.
- [97] In relation to the days and hours, Mr McLennan said that they have never exceeded the 2.00am closing time. He stated, “there has been one occasion in which it took 40 minutes to get everyone out by the courtesy van due to the different drop-off locations. It was all done by 2.00am.”
- [98] Mr McLennan said it is rare to go near a 2.00am closing. He confirmed, “on Monday, Tuesday and Wednesday we are normally closed by 9.00pm but generally no later than 11.00pm, we rarely open past midnight on Thursday, 1.00am Friday, Saturday 9.30-10.00pm and usually 8.00pm on Sunday.”
- [99] Mr McLennan said he has prepared a proposal for hours and music restriction. This proposal was produced as exhibit **EXH CHE02**.
- [100] Mr McLennan said, “the proposal is a discussion document and what he believes is appropriate to serve the community right, to follow for the Act and avoid any issues. He has felt from day one that the 2.00am closing in the country is absurd.”
- [101] Mr McLennan stated the proposal includes provisions for:

(a) Outdoor areas:

- (i) 12.00am midnight closing time.*
- (ii) Live and recorded music to cease by no later than 7.00pm.*
- (iii) Restricting live music in outdoor area to Saturdays, Sundays, and Public Holidays.*

(b) Indoor areas:

- (i) Sunday to Thursday 12.00am midnight closing time.*
- (ii) Friday, Saturday, and Public Holidays 1.00am closing time.*
- (iii) Restricting music to 11.30pm, except for special occasions – four times a year when 12.30am finish.*
- (iv) Restricting live music/DJ music in indoor areas to Friday or Saturday and Public Holiday Eves.*
- (v) One way door policy.*

(c) Gate to carpark:

(i) The applicant proposes to install a gate which cannot be opened from the carpark and is self-closing (subject to approval from Fire and Emergency New Zealand).

[102] In relation to the gate to the back carpark, Mr McLennan said he has discussed this with the Licensing Inspector previously and it was agreed that it must be accessible. Mr McLennan said the gate is monitored by CCTV behind the bar, but it is not fool proof.

[103] Mr McLennan explained the gate has signage attached, which states that the entrance is from the front door only. A photograph of this signage was produced as exhibit **EXH CHE03**. It was placed on the gate for the first event.

[104] Mr McLennan considers that a one-way gate would be an improvement for the management of the premises.

[105] Referring to the comment in the Police and Inspector's Report about the groups of people congregating in the carpark or outside of the premises, Mr McLennan explained that often the carpark is used as a meeting place for quad bikes, 4WD or horse riders using the Kowai River track. He continued, a lot of the time, they do come into the pub and will go back out there. Mr McLennan manages these groups by explaining the law and asking them to move on.

[106] Mr McLennan confirmed the permanent duty managers for the premises are himself, Sara McMillan, and Holly Hall. Janet Hunt and Megan Neate are employed on a casual basis, and Kim Shailer has applied for a new manager's certificate. Isabel Hall has recently been employed as front of house staff.

[107] Mr McLennan considers he has sufficient staff to manage the premises. He continued, on busier event nights, we will bring others in including hosts and two security guards. Mr McLennan explained hosts are unlicensed security, which are positioned on the door and check identification. The security guards roam the premises and carpark and are visible to guests. Mr McLennan considers that if everyone comes in the front door, then it makes it much more manageable.

[108] On the topic of systems, Mr McLennan confirmed they use the on-licensed premises toolkit, alcohol management plan, noise management plan and staff training register. In addition, they have the incident register book to record any serious incidents, any notes on the day and anything they need to pass on other staff members. Mr McLennan said the book is used more-often than not on a daily basis, sometimes there is nothing to write. All staff use the book to see what has happened in previous days.

[109] When asked whether there are any improvements that could be made to their systems, Mr McLennan replied, "there always is and there always will be, they will continue to improve as we grow." Mr McLennan acknowledged that he is very operational focussed but is aware there is administration requirements that are needed to be done and we need to get better in the owner's role.

[110] Mr McLennan referred to the negative reviews that were disclosed by the Licensing Inspector with their evidence and said that they do not fairly reflect the reviews, as there are many positive reviews that were not included. Mr McLennan produced screenshots

of google reviews as exhibit **EXH CHE04**. Further, Mr McLennan produced an updated menu as exhibit **EXH CHE05**.

Cross-examination

- [111] When asked by Senior Constable Craddock, Mr McLennan confirmed that they did not have a written business plan. He stated, "Ms Shailer and I thought we would take the first year to identify opportunities and learn about the community."
- [112] Mr McLennan confirmed that he completed the new licence application. Referring to Question 8B of the application about alternative forms of transport, Senior Constable Craddock asked whether taxis go as far as Leithfield, as answered in the application. Mr McLennan answered, no.
- [113] Referring to Question 8C of the application about the steps proposed to be taken by the applicant to prevent the sale and supply of alcohol to prohibited persons, the answer given was signage. Mr McLennan confirmed the signage includes minors will not be served, we cannot serve underage or intoxicated people.
- [114] When asked about who delivers the staff training, Mr McLennan said it depends on what the training topic is. He continued; we have Servewise training, licence controller qualifications and in-house training.
- [115] When asked how often training is done, Mr McLennan said it depends on the need of the business and the training itself.
- [116] Referring to the comment about Servewise and that all staff have completed the training, Mr McLennan confirmed that all staff, including himself, have completed this training. He continued, copies of the Servewise training certificates can be supplied. Senior Constable Craddock emphasised that if his training relies on Servewise, then it is important that the reporting agencies have copies of the certificates to show when this training was completed.
- [117] When asked about the SCAB intoxication assessment tool, Mr McLennan stated, "he cannot recall what it means off the top of his head, but it is an intoxication assessment tool and shows the difference between intoxication levels from sober through to intoxicated."
- [118] Mr McLennan confirmed that he is familiar with the SCAB tool cards. When asked what the definition of intoxication is, Mr McLennan said, "he considers it is showing one strong sign would be considered intoxicated."
- [119] Senior Constable Craddock said s stands for speech and asked what he would be looking for under speech. Mr McLennan replied, "slurred speech, what is being said and how they are speaking."
- [120] Senior Constable Craddock said c stands for coordination and asked what signs he would be looking for. Mr McLennan replied, "walking, the way they are holding themselves and whether they could stand on one foot."

- [121] Senior Constable Craddock said a stands for appearance and asked what signs he would be looking for. Mr McLennan said, "red eyes, the way they are dressed and are they aware about the way they are dressed."
- [122] Senior Constable Craddock said b stands for behaviour and asked what falls under behaviour. Mr McLennan said, "is their behaviour deemed acceptable by a regular person is the nutshell of it, are they aggressive and are they loud."
- [123] Mr McLennan confirmed the intoxication assessment includes substances other than alcohol such as drugs.
- [124] Referring to Question 8G of the application about noise levels, Senior Constable Craddock stated that the applicant wrote, "at times live music and vehicles, will be appropriate for the time of day." Senior Constable Craddock said she will be giving evidence of late-night noise from music, voices and vehicles, and asked whether it is appropriate for residents to put up with this between 10.00pm and 2.00am. Mr McLennan said, "No I don't, I don't think they should have to, I don't think that anyone should have to put up with it. There is always going to be some escape of noise, but we do need to do everything possible we can to mitigate it."
- [125] When asked how they mitigate noise, Mr McLennan replied, "it's all about educating people and setting the standards that we expect, and the neighbours expect. The biggest part is to get them to understand why they cannot rev their cars and how it effects the neighbourhood and the exposure that it gives to the venue."
- [126] Referring to Mr McLennan's comments that they would address the behaviour of patrons revving engines and driving, Senior Constable Craddock asked how they would address it when they have already driven away. Mr McLennan said, "if we know who they are and when they come back, we will speak to them and have firm conversations about why they cannot do it as it is not good for the neighbours and the venue. If they do it again, then they will have some timeout. They must respect the venue and its neighbours."
- [127] Senior Constable Craddock asked how it works for the patrons who come from outside of the area. Mr McLennan said, "we do have people coming from the city or persons passing through on their holiday, we won't always get to them, or they do not always come back. We have signs up throughout the venue which read 'we thank you for respecting our neighbours and our venue.' We spend a lot of time talking with quad bikers and other persons not using our venue but are using as a meeting place. When they do not follow our rules, we ask them to leave our property – usually they will but not always straight away. The last thing we want to do is upset our neighbours, it is not good for the community or us."
- [128] When asked, Mr McLennan confirmed that they do not have any signage in the carpark that it is for patrons only. He said, "we have been talking about that and the right wording for the signage. We are not sure whether we want signage there as historically it has been a landmark meeting place for horse clubs and different older quad bike clubs, but we do not want to attract bad behaviour." Senior Constable Craddock suggested the sign could include hours that the carpark could be used or talk to the clubs that are no issue and say it doesn't apply to them.

- [129] Referring to Question 8C of the application about nuisance, Senior Constable Craddock stated that the applicant wrote, "neighbours, guest noise and music, venue is fully fenced and noise monitored outside." When asked about how noise is monitored, Mr McLennan said, "with our ears, we will walk through all the areas at all times. The one Sunday that there was a noise complaint, about half an hour before that he walked around the block to hear what the noise was like. It was a swirling windy day but by being out in those areas we are able to monitor noise. For the last 6 months we have been using a sound level meter."
- [130] Senior Constable Craddock said that her and the Licensing Inspector have carried out amenity and good order monitoring. She put it to him that at no time during that monitoring did they observe staff come out to monitor the noise and asked whether he had any comment. Mr McLennan said, "if you didn't see anyone, then you didn't see anyone. He was out in the courtyard prior to them arriving and came inside when he was made aware of their presence. We are always outside in the courtyard, especially to clear glassware. He continued, video footage can be checked for any given night to show staff outside and walking around the premises."
- [131] When asked about the outdoor speakers, Mr McLennan said that they have always been there, but they have been recently replaced. The indoor speakers have not been touched.
- [132] Senior Constable Craddock asked whether neighbours in the immediate vicinity were spoken to prior to the Waitangi weekend event. Mr McLennan confirmed that they spoke to several neighbours.
- [133] On the topic of the host responsibility policy, Mr McLennan stated that their current policy was written by the previous owners, Neil Tiplady, however they have made some adjustments to it. Senior Constable Craddock stated that she has compared the Previous policy and this one and they are exactly the same. Mr McLennan said, "we added that the courtesy van was available and slight adjustments elsewhere, but otherwise everything else was accurate."
- [134] Referring to paragraph 5 of the brief of evidence where it stated, 'without the right direction and an operator who has the care, skill and attitude to try new things and attract all demographics of people living in the region, the venue will simply not be viable to ensure its future,' Senior Constable Craddock asked whether they are trying new things and attracting new demographics because it won't succeed. Mr McLennan said, "while it is a part of it, we try new things to make it about everybody in the community. We listened to people when we first took over the venue and talked to people that he personally knew in the area. He heard that most were driving into town as there was nowhere for them to go locally and they didn't feel accepted." He continued, "the whole community needs to be involved in a place like this as it is a community hub, and it is essential part of the community. Mr McLennan considers that, "there is a culture change around alcohol, and it needs to be more than just a place to drink alcohol, there is no future in that." Mr McLennan said the younger clientele know that and generally have less than 3 drinks. They are aware that it is not socially acceptable to go to a place and get written off. As the sales of alcohol decline, we do need to grow our base to have a future where it will be profitable."

- [135] When questioned about the older demographic of the residents and whether a focus on food would be better to cater for them, Mr McLennan stated, “absolutely, food is a strong focus for us. We are trying to get quality chefs to fill the roles, it is tough in the industry. When we first opened, the chef that was lined up never showed, so we just had to get by. We have been through a couple more since as we had trouble finding the right fit and someone that could keep up with the pace and deliver the standards required. We have now employed a talented local chef and the business is really growing.”
- [136] When asked about the comment about ‘the fresh outlook and the care of the hotel’ in paragraph 6 of his brief of evidence, Mr McLennan said we have painted behind the bar, replaced a lot of the wood, cleaned the place, the gardens have been tidied and maintained a lot better.”
- [137] When asked about the strong support from the residents other than Mr and Mrs Tait and Mr Gillman, Mr McLennan said that we have plenty of support from the locals, we could have done a petition but that wouldn’t have been appropriate.
- [138] Senior Constable Craddock said Mr and Mrs Tait live over 1km away from the hotel and would be unlikely to be affected by the noise. Mr McLennan agreed and added that Mr Gillman lives across the road and hears the music a little bit.
- [139] When questioned about the staff levels for Friday as the busiest night of the week, Mr McLennan confirmed 3-4 staff. He added, we are quite busy. In the afternoon we have the social club come in, but then it dwindles down.
- [140] When asked about who drives the courtesy van, Mr McLennan said, “anyone who is available with a full licence can drive the courtesy van. It can depend on who is getting in the van, we are quite security conscious. Sometimes a local may jump in the van if we are not sure of the person, they are taking home. Staff sometimes take locals home on their way home.” When asked, Mr McLennan confirmed that they do not keep records of the use of the courtesy van.
- [141] Referring to the statement, in paragraph 7 of the brief of evidence, that live music is finished by 11.00pm except on special events, Senior Constable Craddock asked whether the night she was monitoring on 18 May 2023 was a special event. Mr McLennan said, “he believes it was a super rugby match.” He confirmed rugby is a special event. Mr McLennan explained, “bands are booked 6 months in advance and always have an 8.00pm start. On this night, the band started later than usual due to the delayed super rugby game time.”
- [142] Referring to the Licensing Inspectors exhibit EXHDM11 – calendar of live music events, Senior Constable Craddock asked how many special events you would have given that you have live music every weekend. Mr McLennan said, “Super rugby is a special event and live bands are booked months prior, so if the super rugby start time is changed, then we need to make adjustments with the band. May of the bands that are mentioned are usually solo or a duet, and they play until 1.00am. Once a month, at most, we would have 3 people in a band because they do not fit well in our indoor space and are too loud for us. Our general rule and brief to the band on sound level is that if two people

cannot have a conversation at the same table, then it is too loud. It does not fit with our vibe and ambience.”

[143] When asked about the ‘expected behaviours’ as referred to in paragraph 8 of his brief of evidence, Mr McLennan said, “They must be respectful and treat the place and people as you would treat your own.”

[144] When asked about the entries in the incident book, Mr McLennan said, “We have the assault recorded which used the toolkit template, a lot of the comments are about the gaming, something that didn’t sit right, what your night was like, opening and closing times, decibel readings and any information that is relevant or we could get asked about or needs to be referred to later.”

[145] Referring to paragraph 9 of the brief of evidence, Senior Constable Craddock asked about the plans and procedures that have been implemented in the last 10 months. Mr McLennan stated, “It’s the lessons learnt, for example, bringing in security for events and counting patron numbers for capacity. Signage going up around the premises as we identify potential risks and things that we can be going better.”

[146] Senior Constable Craddock said she will be giving evidence from her joint visit with the Licensing Inspector on 19 May 2023, where we considered that most of the patrons were under the age of 40. When asked to comment, Mr McLennan said, “that may have been the case on that night, but the age of the clientele changes from day-to-day. The bands we use have not changed, it is the same music and artists, we have only held 3 DJ events since we opened.” Senior Constable Craddock stated she will be producing video evidence of a regular band, which shows most of the patrons are of the younger demographic.

[147] Senior Constable Craddock stated that she will be producing evidence of social media posts which advertised Easter themed cocktails, decked out reflections, Waitangi drum and bass, Christmas tackiest jersey competition, St Patricks cocktails, Whiskey and Wine mixed drinks. She asked whether such events are catering to or are targeted to an older demographic. Mr McLennan said, “Absolutely, St Patricks Day is definitely older and mostly our social club members, mid-winter Christmas was mostly older persons. Mr McLennan did not agree with the comment that the advertising is targeting younger demographics.

[148] When asked about the timing of the visits from the noise control officer, Mr McLennan said that “We were visited throughout the event on Waitangi weekend, he couldn’t recall the exact times but are included in the exhibit produced. He continued, we had multiple visits from Police that weekend and all of them commented on how well the event was being run.” Senior Constable Craddock asked whether the outcome with noise would have been different if the noise control officer visited at a different time. Mr McLennan said, “he does not believe so. All those 3 DJ events we have held, once we have hit 1.00pm, the bass and treble components are pulled down. By the time we get to midnight or 12.30am, its quiet inside. The people that come to these, 90% of them know each other, they just want to sit and have conversations with each other. They do not want the atmosphere of a town club.”

- [149] Senior Constable Craddock said that the evidence that will be produced is not specific to music noise. Mr McLennan agreed and acknowledged there is also car noise and people talking.
- [150] When asked about when he engaged with legal counsel, Mr McLennan confirmed it was part way into the process, about late August.
- [151] Referring to paragraph 16 of his brief of evidence, that he was unable to get any assistance from his lawyer to complete the form, Mr McLennan confirmed he had a different lawyer at that point and alcohol licensing was not their speciality. He spoke with other hospitality operators and the advice given by them was that if you put an application into Council, then if something is not quite right, then they will work with you to guide you through the process.
- [152] When questioned about the capacity of the premises, Mr McLennan said 100 persons inside the building, but there is nothing specified for outside of the premises. Senior Constable Craddock said in situations where you have 100 inside and 50 move outside, then can you bring more in? Mr McLennan said he would not. He confirmed their general rule is 100 persons, including staff, at the venue at one time.
- [153] Senior Constable Craddock said she will be producing evidence of a Facebook post from the Hoedown event, which had a caption, 'For those not here tonight, we are at full capacity.' Mr McLennan said, "We started that event at 8.00pm. Mr McLennan confirmed that he was not working that night but was upstairs in his private residence. He continued, "We have been told that somebody at the Ashley Pub went on the microphone and told them that they were not allowed to continue due to their behaviour from the previous year, so they all headed down to The Old Leithfield Hotel. At about 8.30pm, there were utes and people arriving with knives in their pockets, it did not feel good. We made the decision to put on our Facebook page that if you are not here, then please do not come. We were inundated by people, we had people climbing the front fences, other people climbed up the building and into my personal lounge."
- [154] When asked about the building capacity, Mr McLennan said they had not exceeded the capacity when the post was put up at 8.30pm, but by the way they were turning up in bulk from an event of sorts, he could foresee it becoming an issue and he needed to stop them. Mr McLennan confirmed they monitor capacity by head counting in different zones. During an event, they have radios to communicate with each other and can meet up to discuss any problems or concerns.
- [155] When asked about management of the premises at full capacity, Mr McLennan stated that it is manageable if they have enough people to assess intoxication and have procedures in place such as one drink per person, and no shots to be taken away from the bar. This ensures that everybody is coming up to the bar and can be assessed.
- [156] Referring to the Licensing Inspector's evidence that occupancy was exceeded and there was estimated to be at least 200 persons in the premises, Mr McLennan confirmed that was the Ashley Pig Hunt/Hoedown event. He said, "he is the first to admit that the situation was out of control. We closed the premises that night by 11.00pm at the latest, it was not comfortable."

- [157] When asked about what contact he has had with residents and who, Mr McLennan said, "We are in contact with the previous owners, the couple across the road, we have people in different areas who we text and call to ask whether they can hear the music."
- [158] When asked about his sound level meter, Mr McLennan confirmed it has been calibrated and basic training has been provided by Acoustic Engineering Services Limited to him and the staff about noise, its propagation, monitoring and mitigation measures. Mr McLennan said the sound levels depend on the area. Mr McLennan confirmed that they have specific monitoring points, at the boundary by the smoker's area, and on the footpath on the other side of the road, in lieu of the neighbour's boundary. The sound level and location are recorded in the incident book.
- [159] When asked about security guards and hosts, Mr McLennan confirmed that he employs certified and uniformed security guards. The door hosts are not certified, however are experienced as they work at the bus exchange and in the city and wear a different uniform.
- [160] When asked, Mr McLennan confirmed the certified and uniformed security guards have their Certificate of Approval (COA) and are trained in intoxication assessments. Mr McLennan stated that they work in night clubs in the city.
- [161] When asked about the installation of lighting outside, Mr McLennan said, "this was progressively done from the start. We have put a few more lights in the back of the garden area but this was not enough to satisfy risks. About two months ago, the last lights were installed – these were the floodlights in the back carpark which light up the whole carpark and the courtyard. These are always on late-night Friday and Saturday nights."
- [162] When asked about his comment that CCTV is not fool proof, Mr McLennan said the CCTV footage is monitored on a screen behind the bar and can be viewed on his cell phone. He said there are some blind spots, but most areas have good coverage.
- [163] Senior Constable Craddock said that she will be giving evidence of the footage from the assault. She understands that a group of 3 intoxicated persons arrived, and they were refused service immediately, and one other person arrived separately. Mr McLennan confirmed that they refused them, told them to go but they did not leave. Senior Constable Craddock said in the information provided by Mr McLennan previously, it stated that they had been cut-off and that travel was being arranged. Mr McLennan said, "We cut-off the group once these guys came to the bar, we refused service, they have gone outside to the outside smoker's area where the rest of the group were and at that point, we have cut-off the whole group until these refused people were gone because we know that they will give them alcohol." Mr McLennan confirmed he was not working on the night. He continued, "I saw the first part of the group arrive on his cell phone CCTV footage and was watching them as he was not aware of this group. When the second part of the group came in, he contacted Sara McMillan, the duty manager at the time. She told him that she thought they were intoxicated so he came downstairs to help out."

- [164] Senior Constable Craddock raised the concerns about how staff know when he is working and not working. Mr McLennan said, "I have brought a business and you have to live and breathe it especially in that first year."
- [165] When asked about the staffing on the night of the assault, Mr McLennan confirmed that there were 3 female staff working on that night. He also confirmed that the duty manager asked for assistance.
- [166] Senior Constable Craddock said that the footage that she will play shows the male come in, pull his pants down, shake his bits and then he interferes with the pool game. She continued, in the evidence, it says that you and Ms Shailer came in behind him however the footage does not show this. Mr McLennan said he was coming in from the doors in the restaurant area. Ms Shailer is on one side of the glass doors, and he is on the other side, and we can both see in.
- [167] Senior Constable Craddock said Mr McLennan came in after the man was held by the throat, and you approached the man with his pants down and were waving your finger. Mr McLennan confirmed, he was telling him to get out now. Senior Constable Craddock said the footage shows that Mr McLennan went back outside, and the man did not leave. When asked why he went back outside, Mr McLennan said, "I believe the man was getting aggressive towards me at that point so decided to go outside and speak with the older men to see if they would help in getting them out."
- [168] Going back to when service was refused to the group, Senior Constable Craddock said if a person is told to go and they refuse, then it is considered trespass. When asked about why he didn't trespass them, Mr McLennan said, "At that point it was not safe to go to a group of males to trespass them, it was not feasible." He continued, "The following week I spoke with the Licensing Inspector about my concerns about what support is available to them if this situation arises." He explained, he did not try to sweep this matter under the carpet, he was proactive and brought this incident forward.
- [169] When asked, Mr McLennan confirmed that Ms McMillan refused the service when the group of males entered the premises and told them that they had to leave. Mr McLennan said he was right beside her at the time, but she was doing the talking as she is good at building a rapport with them. He continued, "Once it was apparent that they were wasting her time, and going backwards and forwards, I went and spoke with the older men in the group."
- [170] When asked whether it is common to use the locals to assist, Mr McLennan replied, "It is not common, however it is almost to my detriment that they would assist anyway as they feel like they are part of it."
- [171] When asked how the man with his pants down was threatening, Mr McLennan said, "This incident occurred months ago, he used some abusive words, so I went out to get the other group members to get them out. I was asking them to speed it up."
- [172] Referring to the comment that 'he can see now that running a country pub is vastly different from the types of environments that he has worked in previously', in paragraph 24 of his brief of evidence, Senior Constable Craddock asked whether he acknowledges that working at other licensed premises did not prepare him for rural premises. Mr

McLennan stated, "It did as he has worked in many different environments and can see the bigger picture, I consider that I have the experience and ability to run a country pub." He continued, "What I can see now is that running a country pub is less about dealing with your incidents as they happen in that moment, but it is about the longer-term relationships with individuals and groups and building that rapport." Mr McLennan considers that he can built rapport with any person, even someone from outside the area.

[173] On the topic of noise management plans, Mr McLennan confirmed that they have had several versions of noise management plans and they have grown and evolved.

[174] When asked about his comment that 'The amenity and good order of the locality would be considerably reduced if the issue of the licence were refused,' from paragraph 55 of his brief of evidence, Mr McLennan explained that, "We do a lot of good for the community, we hold a lot of groups, we do fundraising events, raffles for the youth club, boxing club or our own social club, we sponsor the school, for the production we gave them vouchers as part of a raffle, we give to the community centre and the playgroup. We do a lot for the community."

[175] Senior Constable Craddock referred to the comment that food is 45% of the revenue and asked whether he has sales figures to show this. Mr McLennan said he can retrieve this information. Senior Constable Craddock then referred to the comment that 45% of revenue is from alcohol. Mr McLennan said that "the percentages change throughout summer." Mr McLennan confirmed the data was obtained from the point-of-sale system and can be reported on for specified timeframes.

[176] Regarding people drinking outside and around the premises, Senior Constable Craddock referred to Mr McLennan's statement that they have procedures in place and asked what these are. Mr McLennan said, "Signage, discussion, education, having people on the door during events to ensure people are not taking drinks out." When asked further about the signage, Mr McLennan confirmed that "signage is located at the front door, in the male and female toilets, and when there is an event it's very clear when you go from an inside to an outside area." He added, "People taking their drinks out was quite a problem when we first started, but nowadays they know that they cannot take their drinks out with them. It's been about education."

[177] When asked about the Facebook page, Mr McLennan confirmed that he predominantly manages the page.

[178] Senior Constable Craddock referred to a Facebook post on their page which asked the public for support over their application and asked whether he thought it is appropriate. Mr McLennan stated, "I do think it is appropriate as this is a public hearing and public support is allowed." The Facebook post was produced as exhibit **EXH GC21**.

[179] Referring to exhibit EXH GC21, Mr McLennan wrote 'there is a risk that your council may impose serious restrictions on music, trading hours and event held that would make the venue not viable to operate in the future.' Senior Constable Craddock asked whether he is saying that the venue is reliant on music and events. Mr McLennan said, "Without having either of those, there is a serious risk that the business will not be economically viable. At the moment it is sitting on the fence on whether it is viable or not. Going

forward, and as I said earlier, the culture of going to a pub just to drink booze is going and is not socially acceptable and there is an awareness that alcohol is not good for our health. That is not a good business plan going forward, it needs to be about more than alcohol. That's why we are doing things to attract different markets into the venue that are not alcohol related." He considers, "If you are just a pub selling alcohol, then your business is going to diminish very quickly so it is about having different people."

[180] Senior Constable Craddock asked if you do not have a cover charge, then how are you making money from these events. Mr McLennan said, "we promote non-alcoholic drinks and keeps a large stock of them in a prominent place and even bottles of water for \$5.00 which people like to buy for their ride home." He continued, "That the people that come to these events often come back the next day for lunch, so it is repeat business and building a relationship with them. They bring in their families and friends for birthdays and occasions."

[181] Senior Constable Craddock put it to him that, in her experience, people that are prepared to pay money for bottled water, and with these types of events such as Waitangi weekend and the drum and bass, are usually people that partake in drug use and that is why they buy the bottled water. Mr McLennan said, "In certain night clubs I would agree but I have not seen evidence of that at our venue."

[182] Senior Constable Craddock said it is important to see the revenue data as she cannot comprehend how it is viable to run these types of events, as it is costly to hire the bands and have extra staff. Mr McLennan agreed and said that it is about building that future customer base and being known as a venue that is not known for just selling alcohol but known for other things. He continued, "The 3 events which attracted the under 30 market, they were money losers but in the longer-term it will bring in new customers that previously didn't feel welcomed at the venue or who wouldn't have gone to The Old Leithfield Hotel. They bring their families and their parents for meals, who may be regulars, that's where the sense of this comes from – to make them part of our community."

[183] When asked about whether they want to continue these types of music events, Mr McLennan said, "We want to include that demographic into part of our business. We want to offer something that appeals to every demographic of the community."

[184] Senior Constable referred to the concerns from the public objectors about the noise and stated that she and the Licensing Inspector have observed their concerns during monitoring. She asked how the resident's issues with noise will be addressed if you are going to continue having music events. Mr McLennan stated, "As far as I am aware, apart from that one Sunday afternoon in March, we haven't had any noise complaints from them." He said, "The events are not actually that loud, people still want to have a conversation, we are a country pub not a night club. It's about having things that appeal to everyone in the community, everyone is welcome and not isolating one demographic."

[185] Senior Constable Craddock said while he commented that there have not been any further noise complaints, one of the objectors has written down every time she has heard music, she is not going to call the council every time. Mr McLennan acknowledged this and said, "I would be quite happy to give her and anyone else his phone number,

and I can be contacted at any time, and any concerns will be addressed.” He continued, “I wouldn’t want to be in a community where you can constantly hear music, we do not want to be that place.”

[186] Senior Constable Craddock reminded Mr McLennan that the building is very old, and it is very difficult to contain the escape of noise from the premises. She continued, from our very first monitoring, it was explained to you that it is not just the music noise, it is the patron noise, the noise from the vehicles and a migration of people coming later in the evening, slamming doors, and yelling and yahooping. She asked how they are going to mitigate these concerns. Mr McLennan said, “We are trying to do everything we can, we have engaged a sound engineer to develop a noise management plan and to put the processes in place, we have brought equipment and had it calibrated – this is huge money for us. We are trying to do everything, and we will continue to do everything to mitigate any issues, it is important.”

[187] Senior Constable Craddock said while you are saying that you are trying to improve, the Licensing Inspector completed monitoring in September and observed the same issues. Mr McLennan confirmed that they have improved and said, “Steps have been taken, if things do not go right, then we take that as a lesson learnt. We have a debrief after every night, what have we learnt, what could we have done better. We take opportunities to make things better and ensure that it has a viable future.”

[188] When asked about staff rosters, Mr McLennan said that because they are small staff, they all have set days that they work. They have an excel spreadsheet that is overwritten and updated weekly. It can be provided.

[189] Ms Morrison stated when the first temporary authority application was lodged in November 2022, she met with Mr McLennan to discuss the application process and information was provided for the on-licence application, including the toolkit. Mr McLennan confirmed that was mostly correct, however a copy of the toolkit was never provided. Mr McLennan is using a toolkit that he found at the premises.

[190] Ms Morrison referred to Mr McLennan’s comment that there was no assistance and explained that there was every opportunity for him to contact the alcohol team for information or help. Referring to Mr McLennan’s comment that changes could not be made to the application, Ms Morrison said this was discussed at the time and the changes were likely to result in a new application being lodged and publicly notified. The decision was made to continue with the current application. Mr McLennan acknowledged this point and said, “I was quite overwhelmed at the time, and it is all new to me.”

[191] When asked about his recent experience in the industry, Mr McLennan stated that as the General Manager, he was responsible for the day-to-day operations of the business and a very hands-on type of role. There were administrative staff that were responsible for the paperwork and the licensing application stuff and the likes, his background is the operations on the floor. Mr McLennan said while he was not involved in the development of policies and procedures, he has experience in implementing the policies and then suggesting any changes needed.

- [192] Ms Morrison asked Mr McLennan what systems were in place when he started at The Old Leithfield Hotel. Mr McLennan said, "The basic staff training, nothing was written down at this stage however all staff knew that Servewise was a must, licence controller qualification for anyone in a duty manager position, food safety and HACCP training for kitchen staff. These were in place to ensure that we had experienced staff working at the premises, they were not looking for persons new to the industry."
- [193] When asked, Mr McLennan confirmed that "We are working on a written training programme with Hospitality New Zealand. We are using Servewise for training but going forward it is likely to have noise calibration and how to use sound level meters. We are identifying things as we go along different things that our staff need further training on." Ms Morrison said her concern is that we are now 10 months down the track, and you are still just working this out. Mr McLennan said we are adjusting things as we go, for example 10 months ago, we wouldn't have foreseen that we needed noise calibration training. This is not standard for hospitality staff. For Servewise, staff complete this training every 6 months as a refresher."
- [194] When asked how he manages staff training if there is no training programme, Mr McLennan said "We record most of it down in the staff training register. Because there is only five of us, we sit at the bar and might observe something, and we have what we call 'tool book' talks. We quite often walk around together and go through examples of risks and management strategies." Mr McLennan confirmed he does not record these and noted that he needs to work on his administration. Mr McLennan agreed that the systems and training are a fundamental part of complying with the alcohol legislation.
- [195] When asked about the input from Hospitality New Zealand, Mr McLennan said they have gone through their version of Servewise and have discussed some opportunities for training and development and a training schedule. When asked, Mr McLennan said business administration is shared between him, Ms McMillan, and Ms Shailer.
- [196] Ms Morrison stated that the Act requires that they have staff, systems, and training to comply with the law, not just the Act. Mr McLennan said we have an accountant to work with us to complete some of the administration and also train us up.
- [197] Turning to the fire evacuation scheme, Ms Morrison said she is confused about the status. Mr McLennan said there has been some difficulties with Fire and Emergency New Zealand. They have a new system and he had to reapply. Mr McLennan said, as of yesterday, the application is still sitting there as pending.
- [198] Referring to paragraph 5 of the brief of evidence, and the comment about the hotel being a safe, forward thinking and responsible part of the community,' Ms Morrison asked what he considers to be safe. Mr McLennan said, "Somewhere that people feel safe going to and living around, somewhere that adds value to the environment and adds a positive effect to the community." When asked how this can be achieved, Mr McLennan said, "By engraining ourselves with the community groups, with the locals, giving back when we can, listening to people about what they want to see their local pub do, and trying to give them something they relate to."
- [199] Ms Morrison further asked what being a responsible part of the community means. Mr McLennan said, "It means doing the right thing for the people." He added, "We are

always taking people home, even when we are asked right near closing time, we still do it. That is part of being responsible, we are looking after people, we are making sure that we are not just turfing people out into the road, we are taking genuine care.”

[200] When asked about amenity and good order and how it relates to alcohol licensing, Mr McLennan said, “It is about reducing risks and harm associated with alcohol. The local environment and area shouldn’t suffer adverse effects because of the pub. Pubs will always bring a certain proportion of the undesirables so it is about mitigating the effect the undesirable.”

[201] Ms Morrison said that as part of the assessment of the amenity and good order of the locality, we need to ask how pleasant and agreeable the locality is. When asked about how The Old Leithfield Hotel impacts on how pleasant and agreeable Leithfield is, Mr McLennan said, “For a lot of people, for example the music in summer, it makes it very pleasant.” He said, “We have many people comment that they love sitting on their lawn and listening to the music, or they love coming down with their parents, it makes it a nice place to live, we hear that quite a bit. Having somewhere to go within the village is desirable to people.”

[202] When asked whether Leithfield village is a quiet, sleepy town, Mr McLennan agreed with the exception to all the hoons on the quad bikes.

[203] Ms Morrison asked whether a local resident should have to put up with music from the hotel in their backyard every weekend and how that would impact on the pleasantness and agreeableness to those people. Mr McLennan said, “All of the comments that we have had back, apart from the noise complaints, has been positive. We have heard people say that they love sitting in their garden and having background music. They often say that it is not loud music, it is a solo artist or sometimes a duo that sings tranquil music.” When asked about the music on Friday and Saturday, Mr McLennan said, “Most people enjoy the music, we have spoken with people that do not come to the pub, for example one of the public objectors, who told us that they didn’t even hear the music.”

[204] Ms Morrison commented that live music events are held almost every weekend and asked whether the frequency at which these events are held impact on how pleasant and agreeable the locality is. Mr McLennan said, “Most people are liking having something available in the area and not having to jump in their cars to go to a bar. On a Friday and Saturday night, 90% of the people are from the local community. They want to have something available to them that helps make the village better.” When asked, Mr McLennan accepted that there may be people in the community that don’t want to hear music that often. He stated, “If we get people coming to us and saying that the music is happening too often, then we will cut back.” Mr McLennan later confirmed that they will be decreasing the number of events going forward.

[205] When asked about reaching out to the residents, Mr McLennan confirmed that they contacted all the public objectors. He stated, “We contacted everyone, we door knocked or left letters for the few that we could not get hold of. We invited everybody to an afternoon tea, but unfortunately none of the current public objectors attended. We have gone to the community meetings to be part of it, to open ourselves up. Some persons that were objectors took the opportunity to meet with us and no longer object.

We have found that most people are quite supportive of us. We have tried and tried to build relationships, but some people have chosen not to.

[206] When asked about the noise coming from the front entrance, Mr McLennan acknowledged that when both doors are open, then the noise goes straight out. He said, "We have made an in-house policy that from 9.00pm, both doors must remain shut."

[207] When asked about management plans, Mr McLennan said that a second noise management plan was written after the Hoedown event. It included the information from the first plan and incorporated the things that we had learnt from this event. They also updated the alcohol management plan at the time. Mr McLennan agreed that it lacked detail. He explained that they contacted Hospitality New Zealand and developed another more detailed version. Ms Morrison said it is a vast improvement on the first version however it is only as good as how people are trained and how it is implemented.

[208] When asked how they have trained and implement the alcohol management plan, Mr McLennan said, "We are going through the plan in detail with the team, discuss what could have been done better, and identify any potential exposures and potential risks. We are good at identifying the what ifs as a team, coming up with scenarios and discussing how we will deal with the situation – we use all of our experiences."

[209] Ms Morrison said she understands that a document was produced before one of the events which set out roles and responsibilities for staff. When asked, Mr McLennan confirmed that they did it for the first couple of events, but because we have the same staff and same duties, we just refine that document. When asked about his role as the host, Mr McLennan said his role does a bit of everything, it has an overview of the event and roaming on the floor while talking to the patrons that are there.

[210] When asked, Mr McLennan said that they implement a one-way door policy at every single event and on Friday and Saturday nights if people turn up later at night. Mr McLennan said the start time for the one-way door policy will depend on the day or the event. Mr McLennan was not opposed to a one-way door policy from 10.00pm or earlier.

[211] When asked about the status of the newest noise management plan, Mr McLennan said that they are looking to adopt it, the staff have been through it in depth this week, speakers have been calibrated and a lot of the plan has already been adopted as they are good operating practices.

[212] Ms Morrison commented on the wording used within the noise management plan is weak i.e., uses should instead of must. Mr McLennan agreed that the wording on the noise management plan needs to be stronger and it can be tidied up.

[213] Mr McLennan confirmed that the noise liaison officer is Ms Shailer. Her training has started and will be ongoing. Mr McLennan confirmed that Ms Shailer will be responsible for all matters in section 6 of the noise management plan.

[214] Referring to the review provision in the noise management plan, Ms Morrison explained that if a noise management plan is adopted, then it should not be changed unless prior approval has been given by the Licensing Inspector or the District Licensing Committee. Mr McLennan was agreeable with this approach.

- [215] When asked about pre-recorded music played through the speakers in the outdoor area, Mr McLennan said the volume has been pulled right back and is turned off by 9.00pm but going forward, with the noise management plan, the music will be turned off by 7.00pm. When asked, Mr McLennan confirmed there is no sound from the TV in the smoker's area. When asked how they will manage patron noise from the smoker's area and outdoor areas, Mr McLennan answered, "it is through signage and education, it is difficult to manage how loud people are talking but we will do what we can to speak with them."
- [216] Ms Morrison said that there was no detectable change in the noise levels observed from the amenity and good order monitoring carried out by the Police and Licensing Inspector in May and September, even though there have been changes made. When asked to comment, Mr McLennan said they were two very different events and attracted different clientele. He said, "I am aware people using the smoker's area outside like to talk, so we may need to look at moving the smoker's area and mitigate people talking outside." When asked, Mr McLennan accepted that the patron noise can impact the residents.
- [217] When asked whether time restrictions on the use of the outdoor area would reduce the patron noise later at night, Mr McLennan said, "Yes it would, and we would be open to that." In terms of timing, he considers sunset would be reasonable. In winter this could be 5.30pm, but in summer we often have people sitting outside eating meals at 9.30pm
- [218] When asked about the music on Sunday afternoons, Mr McLennan said it is usually acoustic, usually a keyboard, guitar and vocals, no drums.
- [219] Referring to the hours sought for the sale and supply of alcohol, Mr McLennan said he would be open to reducing the licensed hours for different days of the week. Monday to Thursday could have a closing time of 12.00am midnight, Friday and Saturday would be 1.00am due to the time it takes for everybody to be transported home in the courtesy van. Midnight would not be practical, as everybody would need to be out by 12.30am and sometimes the van is out for two hours as it goes in a couple of directions, but open to some changes.
- [220] When considering the management of the back gate, Mr McLennan said he would like to put a one-way pin on the gate so people can leave but not enter through the gate, but he will have to check with Fire and Emergency New Zealand to see if this is allowed. He stated, "Since the signage has been installed on the back gate, no one has jumped the fence. We have security guards monitoring this gate during events."
- [221] Referring to his comment about food being an important part of the community, Ms Morrison asked how they manage youth coming in to pick up their takeaway food. Mr McLennan said they need to tell us that they are here, they are 15 to 16-year-old children with their quad bikes, they know to stand at the front door or call us and we take out their hot chips and fizzy drinks. He said they have considered using the restaurant door, but they consider it to be a safety risk. Ms Morrison suggested more signage may be needed.

[222] When asked about how the Hoedown event was advertised and the sequence of events for the night, Mr McLennan said they had advertised the event on their Facebook page and most of the advertising was word of mouth. It was aimed at the 50-year-old market. We were not aware that the Ashley Pig Hunt was on. At about 8.15pm, 4 to 5 utes pulled up over the road with about 30 people, they were a different demographic than usual, and they were not known to us. We told them that we were full even though they weren't. We watched them trying to scale up the building and fences. The feeling was not great, we noticed they had pig knives on them. We asked the band to stop playing at 11.15pm and shut the bar about 15 minutes later. Ms Morrison said she will be giving evidence of her monitoring notes from that event. Ms Morrison said that the duty manager looked stressed on the night and asked how he supports the duty managers when this situation occurs. Mr McLennan said he gives them all resources available, the manpower and gets rid of the potential risk, like glass bottles.

[223] Ms Bromley referred to his comment that 'he is afraid of what might happen with no security' and asked him to explain. Mr McLennan said he is not afraid, but he just wants to ensure that the capacity is right for fire safety and making sure he is compliant. Mr McLennan considers that he could manage the events without security, but it is not fair on his duty manager or his staff.

[224] Mr McLennan confirmed that he uses security guards from Hyde Night Club. On the topic of Hyde Night Club, Ms Bromley said this night club specialises in a range of music including electronic from a purpose-built building. Ms Bromley commented that the advertisement for the Decked-Out event mentions Hyde and she said it looks as though he is tapping into their clientele base (20 to 30-year-olds). Mr McLennan said this is not the case, he does not know the owner but is good friends with one of the DJs.

[225] Ms Bromley said she shares the concerns of Senior Constable Craddock about the drug use at these types of events. When asked whether he has had any specific training, Mr McLennan said he has completed advanced first aid training and has previously worked in environments with high exposure to drug use. He considers that he is lucky with The Old Leithfield Hotel as our patrons are very responsible.

[226] When asked, Mr McLennan said he would like to continue running these drum and bass type events, there has not been any issues at any of the three events. When asked, Mr McLennan accepted that it is not the decibels that affect the neighbours, it is the vibration that comes from the music. He said, last time they pulled back the bass at 10.30pm as the building does not hold it well. Ms Bromley further asked whether it is appropriate to hold these events at this premises. Mr McLennan said he thinks that the music could be played at a low volume, the guests wouldn't care. He said these people just want somewhere to go within their local area and catch up with their friends, this is what these events are about. It is generally one peer group that all know each other.

[227] Ms Bromley referred to a Facebook post which mentioned 'an exciting new concept is coming soon.' Mr McLennan explained they are wanting to trial a silent disco. He confirmed that this will be one of the four special events.

[228] When asked about the social club, Mr McLennan explained they are a group of 50 to 70-year-olds that have been coming for a long time on Friday afternoons, there are a couple of teams of pool players for Monday and Tuesday nights. Simply, they are a group of

friends that have formed around the pub. There are no membership fees, they just meet up.

[229] Ms Henry asked whether he considers noise is just about decibel readings. Mr McLennan said it is about reach, vibration, the wind direction, the whole lot. If we were aware of these issues, we would mitigate that nuisance immediately. But if we don't know, then we don't know at the time, and we cannot fix it.

[230] When asked about the music, Mr McLennan said 7 out of 10 bands are the same from the previous owner, the only other difference is that they start two hours earlier. Ms Henry said her observation is that the bands are different, and the quality has changed.

[231] Referring to his comment that residents were notified before the Waitangi weekend event, Ms Henry said she was not notified. Mr McLennan said they attempted to notify all neighbours, he apologised that they were not notified.

[232] Referring to his comment that he has reached out to the locals, Ms Henry asked whether he thinks after the Waitangi 12-hour bass event and associated behaviour, that she was traumatised by, that she feels safe enough to ask you to turn it down. Mr McLennan said it was 12-hours of live music not just bass. Mr McLennan said if you have any problems, then just pick up the phone, send us an email or by Facebook, there is no threat, and we are approachable people.

[233] Referring to the night of the assault, Ms Clapham said she is interested to know what the threshold is for calling the Police to help. She also asked whether this threshold is different if he is not available on-site. Mr McLennan said his staff are aware that anytime there is a potential risk that cannot be managed, then they should call Police. He continued, "there was one night that I did call Police because people were refusing to leave but the Police took 25 minutes to arrive. We are quite aware that we are isolated and if we need help quickly, it can be a long way away. This is why we cannot just force people out when service is refused as we have no back-up should the situation escalate."

[234] Ms Clapham further asked whether the threshold should be slightly lower before it escalates given the timeframes. Mr McLennan said, "that's why he said there is a potential for that risk to escalate." Ms Clapham commented that before the assault, the persons were trouble and were effectively trespassed, she asked at what point on that night were the Police called. Mr McLennan said the persons were not aggressive they were just vocal. Mr McLennan confirmed that the Police were not called as the person assaulted left immediately. He continued, every time he saw the man, he asked whether he has gone to the Police, he finally did about a week later.

[235] When asked whether they were resistant to call Police due to their management of the night, Mr McLennan said he has no problems calling them. Ms Clapham commented that the Police could be called and even if they were part way there, and the situation resolved and you didn't need them, then at least they are aware. She further said, it would be devastating for one of the locals, who were trying to help, for them to get hurt. The threshold is low to call the Police.

Questions from the District Licensing Committee

- [236] Councillor White asked whether the security guards are in addition to or instead of the hosts. Mr McLennan said they are in addition to the hosts that are on. He confirmed they have four they use from the company, and he will use two or three of them.
- [237] Referring to the noise management plan and the appointment of Ms Shailer as the noise liaison officer, Councillor White asked what the nature of the training was. Mr McLennan said she has been trained by the Sound Engineer on how to calibrate the audio systems and the sound level meter, understanding the ranges and the decibel readings and the way the speakers are utilised.
- [238] Councillor White asked how the staff training on the noise management plan was completed. Mr McLennan said staff training was provided by the Sound Engineer on the Monday before the hearing as it has taken some time to adjust the plan. We read through the noise management plan in detail together. We have implemented most of it from the beginning (like clearing glassware, emptying bins), it is more the sound levels that are new. When asked, Mr McLennan confirmed this has been recorded in the staff training record.
- [239] When asked about the calibration of the speakers, Mr McLennan said his understanding is that the speakers are unable to go over the limits. Mr Kidd asked whether the bass and treble are split, Mr McLennan said the system is very old and it does not have any sub or bass. When asked about how they manage the bands, Mr McLennan said the bands are discouraged from plugging in their own bass systems, we do not let anyone plug into our system at all now.
- [240] Referring to paragraph 19 of his evidence which talked about monitoring possible disturbances to nearby residents and that he had been in contact with them, Councillor White asked whether this is recorded. Mr McLennan said not always, he will have a record of text messages, but usually it is a phone call, or they will come in the day after, and he will ask them if they heard anything or had any concerns. When asked, Mr McLennan said he has monitored noise a few hundred metres away from the premises and he speaks with Mr and Mrs Tait who live about 1km away, if they can hear it, then it is a nuisance.
- [241] Councillor White suggested whether keeping a record of these informal conversations may ascertain patterns and allow you to make some positive changes going forward. Mr McLennan said it is possible, they have identified that the wind is a key contributor to what way the sound will travel.
- [242] Referring now to the incident book, Councillor White said we have heard evidence that the incident book is used for staff awareness when they have been away and asked how he ensures they are aware of it and how the staff take learnings from the incidents. Mr McLennan said if there is a serious incident then they will put it on their staff Facebook group for instant notification (for example the assault). Other than that, staff know to check the incident book when they get to work. It sits right beside the main cash register and clearly visible. Mr McLennan said there have not been many incidents or problems that have needed to be recorded.

Re-examination by Counsel

- [243] Mr Egden asked the Deputy Chairperson whether Mr McLennan could be recalled into the witness box for re-examination after they have heard from Mr Tom Leen on the second day of the hearing. The Deputy Chairperson was agreeable to this approach and stated that the Licensing Committee would hear Mr Leen's evidence as the first order of business for day two of the hearing proceedings. Mr McLennan will be recalled to the witness box for the second order of business.
- [244] After hearing Mr Leen's evidence about the two occasions over the last 10 months of activity at the hotel at 2.45am, Mr Egden asked for comment. Mr McLennan said he looked at their bookings diary and saw that there was a televised rugby game on 16 July 2023. The car outside of the hotel belonged to his best friend's son that had taken some people home, he returned to the hotel as he had left his hoody inside. When asked why there would be people inside of the hotel at that hour of the morning, Mr McLennan said the staff could have been cleaning up the hotel and the beer garden, as we tend to clean up on the night rather than leave it for the morning staff. Mr McLennan also noted that the hotel is his residence, so he is often outside at that hour letting his dogs outside for a run around and a play. When asked, Mr McLennan confirmed that he never is open after the licensed hours to sell alcohol.
- [245] Mr Egden asked when the surrounding areas are checked for litter. Mr McLennan said they check the area for litter at night-time and walks around the area with a rubbish bin picking up any rubbish, even if it is not associated with their premises.
- [246] When asked about the disco nights, Mr McLennan confirmed they have held 3 events. He also confirmed that these are the events that attract the younger crowd. Mr Egden further asked if this music is the main concern with the bass. Mr McLennan said it would be the main issue but recognised that all music carries bass, and he does everything he can do to try and minimise the bass. Mr McLennan said to further reduce the impacts to neighbours, they are prepared to move away from bass events and stick to different types of DJ music. Mr McLennan added, they have had discussions with the sound engineer about potential sound boarding inside and a sound board for the speaker system to reduce the bass out. He said the latter was done on the last drum and bass event.
- [247] Mr Egden asked whether he would be prepared to give an undertaking to the Licensing Committee that the same measures would be place for any future drum and bass events. Mr McLennan confirmed he is agreeable and said he will keep working with the sound engineer to put in place other measures to mitigate the noise. Mr McLennan acknowledged that the bass would be annoying if he was trying to get to sleep at night and does not want to put others in that situation.
- [248] Referring to the Hoedown event on Kings Birthday weekend, Mr Egden asked if he had any indication that the Ashley Pig Hunt was on that night. Mr McLennan said he was not aware that the event was on the same night and if he had of known, he did not expect the pig hunters to turn up at the hotel given that the hotel is some distance from Ashley. Mr McLennan said we now know for next year and no other event will be held. Mr Egden referred to the comment yesterday that there was a mad rush of people. Mr McLennan confirmed and said it was unexpected. He posted on Facebook at about 8.45pm that they were full. Mr McLennan considers this was a one-off event. When asked about the building capacity, Mr McLennan said he accepts that the building occupancy was

exceeded on this night. He further noted that building occupancy has not been exceeded again and gave an example of a 60th birthday party which had 70 guests plus the 27 regular patrons in the bar, security was in place for that night and occupancy was counted.

[249] When asked if there are lessons learned from the Hoedown night, Mr McLennan said they have installed lighting in the beer garden, installed locks on the upstairs windows, security is in place for all events and wrist bands are used for events to help spot who should not be in the pub.

[250] Referring to the Licensing Inspector's evidence (exhibit EXH DM11) that live music has been played once every weekend 25 times and twice 16 times in the 42 weeks that they have been operating. Mr McLennan said Sunday afternoon music is played from 2-5pm over the summer period until March, then over winter they went to alternating Friday and Saturday evenings.

[251] Referring to the Licensing Inspector's monitoring file note from 25 March 2023 (exhibit EXH DM14), Mr Egden asked if there was a group of people present that night. Mr McLennan said they had a 70th birthday party with approximately 50-60 guests. When asked, Mr McLennan stated that they do not have a lot of gatherings like that, but when they do, they are usually for people from the area or previously from the area. Mr McLennan confirmed that the age group attending these gatherings do not attract any trouble, and generally respect the venue as they are from the area, they are part of the community.

[252] Referring to the Licensing Inspector's evidence about a car involved in a noise incident, Mr Egden asked for comment. Mr McLennan said this was one of their locals (60-year-old) who picked up his partner in his Holden collectors' car. Mr McLennan said he talked to the man afterwards and asked him not to create the noise nuisance again.

Recalled for further evidence

[253] Mr Egden referring to Ms Shailer's evidence that the 18-year-old Izzy was working on the night of the assault. Mr McLennan confirmed that they have checked the roster and it was Holly Hall and Sara McMillan working that night, not Izzy. Mr McLennan said Izzy does not work on Saturday nights.

[254] Mr Egden said he has been criticised by the Police and Licensing Inspector for not ringing the police and ambulance and asked if that is fair. Mr McLennan said it is not fair and it is quite upsetting. He continued, he has worked in places before where he has seen people concussed and he has seen serious outcomes, especially where alcohol is involved, and he is very aware of the effect of delayed concussions. At the time, the victim refused the police or ambulance. Mr McLennan said he pleaded with the victim's girlfriend to call the ambulance or take him to hospital. He considers if he had called the ambulance and police, the victim would have been gone by the time the services arrived. Mr McLennan said he notified Ms Morrison of the assault at the first opportunity as he did not want to brush it under the carpet, and he was asking for assistance from the agencies about an alcohol accord.

[255] Mr McLennan produced the following documents as exhibits:

- Sales data for last 3 months, produced as exhibit **EXH CHE06**;
- Staff training record, produced as exhibit **EXH CHE07**;
- Staff rosters, produced as exhibit **EXH CHE08**;
- Incident Book, produced as exhibit **EXH CHE09**; and
- On-Licence Toolkit, produced as exhibit **EXH CHE10**.

[256] Mr Egden stated that he is concerned about the commercial sensitivity of the sales data. Deputy Chairperson Black agreed to a non-publication order for exhibit EXH CHE08, under s. 203(5) and (6) of the Act. The information would be privy to only the Licensing Committee.

[257] *The Licensing Committee noted that there was an error in their procedure as they omitted to allow the reporting agencies and public objectors to cross-examine the witness on the further evidence given. The hearing was re-opened at the end of proceedings on Day 2 of the hearing to allow for the cross-examination to occur. Mr McLennan spoke the affirmation and re-entered the witness box.*

Cross-examination on the further evidence

[258] Senior Constable Craddock said earlier in cross-examination Mr McLennan said that on the night of the assault he was not working, but he was upstairs in his private residence watching CCTV footage and went down to assist. Mr McLennan confirmed that was correct. Senior Constable Craddock referred to Mr McLennan's comment that he was working. Mr McLennan stated he was working in the kitchen earlier that night and transferred across to the bar afterwards, but it was not busy so told the staff that he was going upstairs.

[259] Senior Constable Craddock said despite the victim not wanting medical attention, she asked whether medical help should have been sought. Mr McLennan said he did not know his address, otherwise he would have called the ambulance for him. He added, the victim was adamant that he didn't want help and initially pushed me away when he went to check on him as he was so confused. When asked, Mr McLennan said he has a first aid certificate.

[260] Ms Morrison referred to the comment about an agency-led meeting with licensees and asked if there is anything stopping him from contacting other licensees to come up with an agreement about how to deal with problem customers. Mr McLennan said he already meets with licensees from Sefton and Amberley premises, but the conversation can sometimes go off track. Mr McLennan would prefer a more formalised approach with the reporting agencies to help them.

[261] Ms Bromley asked whether the assault is recorded in the incident book. Mr McLennan said a record sheet template from the toolkit has been stapled into the Incident Book (exhibit EXH CHE09).

Questions from the District Licensing Committee

[262] Councillor White asked whether there are any other incident records that need to be stapled into the Incident Book. Mr McLennan confirmed there are no other records that need to be included – it is the only incident.

[263] Referring to his comment that he transferred from the kitchen to the bar, Councillor White asked if this is recorded anywhere. Mr McLennan said it is not recorded. The rosters show start times only and they work until they are needed. He added, he is always on call if he is needed and is available as he lives onsite.

The Applicant – Kim Shailer

[264] Ms Kim Shailer disclosed a brief of evidence dated 11 September 2023. Her evidence was taken as read.

Cross-examination

[265] Senior Constable Craddock asked how operating a hotel is a retirement plan. Ms Shailer said she has always like the idea of hospitality and accommodation. She has previously had rentals and owned a Bach over in Lake Brunner that she rented out through Air B&B and Book-a-Bach. When the opportunity for The Old Leithfield Hotel came up, even though she had no experience in the hospitality aspect, she knew that her daughter and with Che, they would be able to do it together.

[266] Ms Shailer confirmed that Mr McLennan is her daughter's brother-in-law.

[267] When asked, Ms Shailer confirmed it was her idea to take on the hotel. She explained, "I was off work for a year with a shoulder injury. With the physical type of work, I thought I should look for something else that wasn't as heavy work."

[268] Ms Shailer continued, "when The Old Leithfield Hotel came up, she thought to herself that she wouldn't have to move and contacted Mr McLennan and got the ball rolling."

[269] Ms Shailer confirmed that she did not contact the neighbours immediately after the application was lodged. However, had contacted Mr and Mrs McKenzie prior to the Waitangi weekend, she tried to contact other neighbours but many of them were not home.

[270] Ms Shailer said "when she spoke to the McKenzies, she reassured them that the drum and bass would not happen again. They said to her that they do not have a problem with it as they cannot hear it."

[271] Referring to the comment from Ms Henry that she felt she couldn't contact them, Senior Constable Craddock asked if she had any comment. Ms Shailer replied, "It saddens me because we are both approachable people. She had tried to contact her and had left an invite for an afternoon tea, with a number to get in touch. It is sad that she feels that she cannot approach us." Ms Shailer said, "I will personally make more of an effort to get to know the neighbours."

[272] Ms Shailer confirmed that she is not involved in the posting to Facebook but is aware of them before they are posted.

- [273] When asked, Ms Shailer confirmed that, "I work all day Monday, Tuesday evenings, Thursday 3.00pm to close, Friday 3.00pm to needed, Saturday open to 6.00pm and Sunday 1.00pm to close."
- [274] Ms Shailer said the roster is flexible, they are completed by Sara McMillan.
- [275] Ms Shailer confirmed that the current staff are Holly Hall, Sara McMillan and Che McLennan as full-timers, Megan Neate and Janet Hunt as casual employees, plus three kitchen staff.
- [276] Referring to paragraph 8 of the brief of evidence, Ms Shailer confirmed that she wants to keep the old feel of the pub when it comes to freshening up the premises.
- [277] Ms Shailer confirmed they have had three drum and bass events for the younger crowd (18 to 30 years). Ms Shailer confirmed that they get extra staff for the events.
- [278] When asked about the small percentage of younger persons in the community, Ms Shailer said it's not just about the Leithfield village, there is Amberley, Amberley Beach and Leithfield Beach residents and surrounding areas.
- [279] Ms Shailer considers it to be economically viable to hold these events, as Saturdays are generally our quieter nights, and it does not intrude on the locals. Ms Shailer stated, "We thought Saturday nights were a good night to trial. The events brought in a full house, and it increased the customer base." She also confirmed that they get extra staff for events."
- [280] Referring to the comment that the locals are catered for 80% of the time, Senior Constable asked her to explain. Ms Shailer said, "Most of the generation that socialise there are from her age upwards. They play 70's, 80's and a bit of 90's music."
- [281] Senior Constable Craddock stated her evidence is that there are younger people (under 30 years) in there with that type of music and asked whether Ms Shailer had a comment. Ms Shailer replied, "On some nights that would be correct, but not every Saturday and not every event."
- [282] In questioning about the night of the assault on 13 May 2023, Ms Shailer confirmed she was had finished work for the night and was outside in the smoking area. She and Mr McLennan talked with the older ones in the group however because she wasn't working, she stood back and allowed Sara McMillan and Mr McLennan to deal with it. She stood back and waited to see if she was needed to help out."
- [283] Senior Constable Craddock said Mr McLennan said three females were working and asked who they were. Ms Shailer confirmed that would have been Sara McMillan (duty manager), Holly Hall and her daughter, Izzy.
- [284] When asked about the management of that night and the intoxicated patrons, Ms Shailer said,

“it would have taken 25 minutes for the Police to arrive and we needed to think outside of the square. We couldn’t have just kicked them out. We spoke with the older ones in the group, and we had them all going to leave. When the man came inside and dropped his dags, it was like his last hurrah. I believe if the altercation had not happened with the pool player, then I firmly believe he was on his way out. However, that just escalated the situation.”

[285] Ms Shailer confirmed she came inside after the assault when Mr McLennan was holding the man. She said she wasn’t even aware the person was knocked out. When asked, Ms Shailer confirmed that no staff called the ambulance.

[286] Ms Shailer confirmed she does not have a first aid certificate, but Sara McMillan does.

[287] Ms Shailer stated she walked the patron and his girlfriend back to the car. He was adamant that he wasn’t going to hospital. Ms Shailer said she spoke to the girlfriend and asked her to keep an eye on him and if she has any concerns, to take him to hospital.

[288] Ms Shailer confirmed that she did not have the contact details for this patron however because of his connections they could have got them.

[289] Ms Shailer confirmed that the Police were not called after the event. Ms Shailer said she wasn’t aware at the time that the patron had been knocked out. She continued, “We could of and should have done things differently.”

[290] In relation to the comment that Police take 25 minutes to arrive, Senior Craddock said one of the objectors suggested that Police could have been called before the situation escalated and then stood down if not needed. Ms Shailer replied, “Sometimes a situation can go from fine to all go so quickly. It didn’t feel that we needed to call them at the time.”

[291] When asked about the SCAB intoxication tool, Ms Shailer confirmed it stands for speech, coordination, appearance, and behaviour. When asked about the number of signs that a person needs to show to be intoxicated, Ms Shailer said, “Probably 2 to 3, they may have a medical condition.”

[292] Ms Shailer confirmed that she has completed Servewise in December, before she did her LCQ.

[293] Referring to the comment, at paragraph 15, that a vast amount of the revenue revolves around food, Ms Shailer confirmed they have sales figures to show that.

[294] When asked, Ms Shailer said security lighting was installed in the beer garden a few months back but after a conversation with Ms Morrison and concerns about the darkness, a flood light was installed on the building to light up the carpark and the kitchen and rubbish area.

[295] When asked about her understanding of a one-way door, Ms Shailer said, “if they have gone out after that period of time, then they are told that they cannot come back in.”

- [296] Ms Shailer confirmed that she is the Noise Liaison Officer. When asked if she is aware of the requirements of the noise management plan, Ms Shailer stated that she is still coming to grips with the plan. Ms Shailer said she has been trained on the sound level meter and used it. She was unsure how often it needed to be calibrated.
- [297] On the topic of the capacity limits for the premises, Senior Constable Craddock asked how they manage it. Ms Shailer acknowledged it is quite hard to get exact numbers, but they often do a head count from behind the bar and walking around. Because there are a lot of locals, counting can be quite easy in that regard.
- [298] Ms Shailer confirmed that she was working on the night of the Hoedown/Ashley Pig Hunt. Senior Constable Craddock said the Licensing Inspector will be giving evidence that there was approximately 200 people there and asked whether she had any comments. Ms Shailer said, "It was very busy that night, I was not on the bar, I was cleaning up and stocking the fridge. I didn't have a chance to count."
- [299] Senior Constable Craddock further said that the Licensing Inspector's evidence that there was no possible way to get to the gaming area or restaurant area because of the amount of people and asked how they expect to monitor when it is at the capacity that you can't even move around. Ms Shailer said there are a lot of lessons learned from that night.
- [300] In reference to Mr Leen's evidence about activity at the premises in the early hours of the morning, Ms Shailer said on those event nights we often do the cleaning before we go home so it is not left for the morning person. Often, we are there for a good hour cleaning up. Ms Shailer confirmed there could be up to 5 staff members there. The voices heard could be us outside in the smoking area have a cigarette, chatting about the night.
- [301] Ms Shailer said she is often on the courtesy van run, and she often does not get back until 2.30am, after she has finished dropping everybody else. When asked about using a friend as a courtesy ride, Ms Shailer said the person was a workmate, and the friend is often a sober driver.
- [302] Ms Shailer said she has worked hard to build a rapport with the patrons. She often goes around and asks people how they are getting home and who's your sober driver. Ms Shailer stated, "I am not afraid of asking the question. I offer them a ride home and I am responsible for organising the schedule for the courtesy van."
- [303] Senior Constable Craddock said the Hoedown event was advertised on Facebook at least three times, and it was a foreseeable event and you had put the staff in place. Senior Constable Craddock asked why it is a surprise for other people to arrive. Ms Shailer said, "we weren't expecting those numbers for a country music event. We thought the people that would come to a country night, it's quite different to a drum and bass event. We were gobsmacked with the number of people arriving."
- [304] Ms Morrison asked what her business role at the hotel is. Ms Shailer said she is new to the industry and wants to learn it right from the beginning. Her thoughts on being a boss and owner of the business is that if you know what it's like to be the worker, you get to

know the business. She said she gets to know the regular patrons, their limits, and signs of intoxication.

[305] When asked about her previous company and the reasons for the removal from the companies register, Ms Shailer said she had shoulder surgery and could not work for a year. She employed various contractors, but they did not have the same standards and quality of work that she expected. Ms Shailer decided to wind down the company and operate as a sole trader instead of being GST registered, on advice of her accountant. They dealt with the process of deregistering the company.

[306] When asked about the administration for The Old Leithfield Hotel, Ms Shailer said we have an accountant that completes the GST returns each month, we have Xero software that herself and Ms McMillan operate. The accountant has quite a big role in the administration since it is such a new industry until we are more confident in the requirements.

[307] Ms Morrison said at the time of her interview of Ms Shailer in June 2023, she demonstrated good knowledge as she had recently completed the licence controller qualification, but she did not have sufficient practical experience. When asked, Ms Shailer confirmed since then she has been appointed as a temporary manager. Ms Shailer is the duty manager on Monday and Saturday morning from 11.00am to 1.00pm.

[308] When asked about incidents while being a duty manager, Ms Shailer said there has not been anything serious. Ms Shailer recalled that there have been a few times that she has observed someone with signs of intoxication, where she has gone up to them and spoken with them and said they need to start drinking water otherwise they are going to have to leave. Ms Shailer said her approach seems to be working well as they listen to her. When asked about what signs they were showing, Ms Shailer said they were repeating what they were saying, swaying when standing, you can tell in their eyes and the vagueness in their face and their comprehension. Ms Shailer said a couple of times there were 3 or 4 signs, but another time there was a man showing 1 sign, so she just observed him for a while and did not serve him again.

[309] Ms Shailer gave another example about a man in a group that was influenced and close to intoxication. She told the group that the man had to sit there, and she was going to get him water, if he moves or they give him a drink, she told them that they would all be asked to leave. Ms Shailer said unfortunately on this occasion, the group must have been sneaking him some drinks. She saw the man's head down on the table looking like he was going to sleep, so she got the courtesy van organised and took him home.

[310] Ms Shailer said they can use the restaurant as a safe place in the evening as it is often empty. When asked about supervision, Ms Shailer said we have never had to use the space, but we would appoint a staff member to monitor the person.

[311] When asked about staff levels, Ms Shailer said they will need more kitchen and bar staff over the busier summer months. Ms Morrison further asked how they manage staff sickness. Ms Shailer said we have experienced that, and other staff will jump in to help, they have a good team and help where they can. She added, they do have Janet Hunt and Meagan Neate as casuals.

- [312] Ms Morrison said on the night of the assault, one of the staff mentioned was Izzy. Ms Shailer said Izzy is Ms Holly Hall's daughter and has been working with them for 7 to 8 months. She has experience in the industry and works at a licensed café in Waikari during the week.
- [313] When asked whether the drum and bass events would be regular, Ms Shailer confirmed that they are not regular, they have only held 3 events to date. They were looking at having more events but diversifying on the types of music. Ms Shailer stated that they tried karaoke nights, but they were not popular.
- [314] Referring to the Hoedown event, Ms Morrison said she observed people exiting the bar area to go outside still with their alcohol bottles, cans, or glasses. Ms Shailer said it is not a common practice however when they first took over it was an acceptable practice with the last owners. We have come down quite hard with that. The security on the door is meant to stop persons leaving with alcohol.
- [315] When asked about the one-way door policy, Ms Shailer said they use it quite often for specialised events such as the drum and bass, Christmas parties. Ms Shailer said people are made aware of the one-way door policy when they try to go out to their car, we tell them that they won't be allowed back in. When prompted, Ms Shailer agreed that signage would be useful to show when the one-way door policy is in force.
- [316] When asked, Ms Shailer stated that they do not have courtesy vehicles drop people off from other licensed premises and they do not take people to other licensed premises.
- [317] Ms Bromley asked about the tenure of the lease. Ms Shailer said they have a lease for 7 years with the rights of renewal for another 7 years.
- [318] Referring to the comment that Ms Shailer took on this project as a way to step into retirement, Ms Bromley asked what her role will be going forward. Ms Shailer said she wants to get the upstairs hotel area up and running for tourists to be able to experience the country kiwi pub. She wants them to be known for their food in a good way. Ms Shailer confirmed that she will be involved and is not ready to step back anytime soon.
- [319] When asked whether the business is profitable as it stands, Ms Shailer said with what we are doing, yes. She confirmed that she will pay for the renovations to the hotel.
- [320] Referring to Mr McLennan's comment that he wants more drum and bass nights, Ms Bromley asked how she feels about that. Ms Shailer said, after listening to everyone it seems to be the drum and bass nights that are of most concern so we have discussed it and perhaps we could give them a miss, but we will look at other ways of entertaining that group, for example the silent disco. Ms Bromley asked who would pay for the headsets. Ms Shailer said we would pay but we would have a cover charge for that event to pay for the headsets.
- [321] Referring to Mr McLennan's comment that the silent disco would fall into one of the 4 special events, Ms Bromley asked what other events she would like to see. Ms Shailer said she would like to see some comedy acts or a magician. We are looking at entertainment other than music.

[322] The public objectors did not have any questions for Ms Shailer.

Questions from the District Licensing Committee

[323] Mr Kidd said it does not appear to be the type of music or the band, but it is the volume. He asked whether Ms Shailer is confident as the Noise Liaison Officer, that she can control the volume of music to a level that will not annoy the neighbours. Ms Shailer said, "The Sound Engineer showed us how to use our sound system and what levels the volumes need to be to ensure we are acceptable. When a band is setting up their volume, they can set them to our levels so the volumes can be the same, and I will enforce."

[324] Referring to his question to Mr McLennan about the bass and treble controls in the sound system, Mr Kidd said that bass appears to be a problem. Ms Shailer said she considers it is not their sound system that is the problem, it is when they have the band and live music, that is when the bass needs to be controlled during their set up and educating the band of the accepted levels."

[325] Referring to her comments about the assault and that the incident was discussed, Councillor White asked who was present at that discussion. Ms Shailer confirmed all staff that were present on the night were in attendance. When asked by Deputy Chairperson Black, Ms Shailer stated that the lessons learned were not recorded in the incident book.

[326] Deputy Chairperson Black said it is important for the Licensing Committee to learn what lessons have been learned from the incidents, including the Hoedown, the assault and not calling the ambulance, and what you would do if it happened again. When asked, Ms Shailer said "Our lessons learned is about how we did go about it, under those circumstances, we believe the ambulance and police should have been notified straight away or as soon as possible. When looking back at the night of the Hoedown, the pig hunters should have been turned down straight away." Deputy Chairperson Black said it important to record these lessons learned as staff can reflect and learn from the incidents. Ms Shailer confirmed this was her greatest learning experience.

[327] Mr Kidd further asked how many times police have been called for assistance other than their routine monitoring checks. Ms Shailer confirmed only once.

Re-examination from legal counsel

[328] Mr Egden asked whether Ms Shailer recalled the party bus from the Licensing Inspectors evidence, exhibit EXH DM13. Ms Shailer confirmed she does and said, "We did not let the occupants of the party bus into the premises, we told them we were closing and they would not be served, so they left." When asked if service was refused due to intoxication, Ms Shailer said we didn't even get a chance to assess them, we decided due to the hour of night and the fact that it was a bus trip, it was almost guaranteed that they would have been happy, and being that hour of night, it would likely mean that we would have been their last stop. Ms Shailer confirmed that the group were a bit persistent but were told it would be a waste of time coming in as they were closing.

[329] When asked whether she is part of any community associations, Ms Shailer said she is part of the social club, and while not a member, she has attended a couple of the Leithfield Community Centre meetings. Mr Egden further asked if she intends to be more of a part in the community. Ms Shailer said, "Most definitely, she has some great ideas for the future including craft afternoons to include residents. She wants to get more involved and change the perception that they are not just the pub but rather a community hub." When asked about community groups that use the hotel, Ms Shailer said local rest homes have meals and a local dirt bike group use the pub for their monthly meeting in the dining room."

Recalled for further evidence

[330] Referring to the Police evidence with the man who was observed stumbling outside the premises and dropped his phone before entering the premises, Mr Egden asked for comment. Ms Shailer said she recalled this man, she refused him service and told him that he had to leave. Ms Shailer said that the man did not have any transport, so she offered to give the man and his friend a ride home to Waikuku on her way home to Kaiapoi. When asked, Ms Shailer said the man would have been waiting inside the premises for a maximum of 30 minutes.

[331] *The Licensing Committee noted that there was an error in their procedure as they omitted to allow the reporting agencies and public objectors to cross-examine the witness on the further evidence given. The hearing was re-opened at the end of proceedings on Day 2 of the hearing to allow for the cross-examination to occur. Ms Shailer took the oath and re-entered the witness box.*

Cross-examination on the further evidence

[332] Senior Constable Craddock said the Licensing Inspector and herself saw this male at 11.13pm and Ms Shailer's evidence that he was gone 30 minutes later. Senior Constable Craddock put it to her that they were observing the front door that whole time but did not see them come out of the premises. Ms Shailer said she went out the restaurant doors. Senior Constable Craddock confirmed they could observe both doors from their observation point.

[333] When asked, Ms Shailer stated this incident is not recorded in the incident book, but it should be.

[334] The District Licensing Committee did not have any questions.

Witnesses for the Applicant

Stephen and Stacey Tait

[335] Mr Stephen and Stacey Tait disclosed a written brief of evidence that was taken as read. The evidence was in support of the application. Mr Tait appeared at the hearing to present their evidence.

[336] Mr Tait explained that he has lived in the village for a long time and gone to this pub for some time. He said that he remembers what it was like to be young and not having places to go to, now we have a place that the younger ones can go to and will be safe.

Cross-examination

[337] Under cross-examination, Mr Tait confirmed that he visits the hotel on Tuesday, Friday nights (5pm to 12.00am midnight), and sometimes Saturday and Sunday for outdoor music and the carvery.

[338] When asked by Senior Constable Craddock, Mr Tait confirmed that the previous owner had live music, including the Sunday afternoon sessions probably not quite as much.

[339] Senior Constable Craddock referred to Mr Tait's comment that the hotel is run to a very high standard and asked what he means. Mr Tait said, "I have been there since I was 18 years old and seen a lot of licensees go through that pub. The applicant runs it very well, they have security on the door when there are music events – we have never had that before. These owners are actually behind the bar and are working alongside their staff."

[340] Ms Morrison asked how frequent the Sunday music played under the previous licensee. Mr Tait answered, "It was quite frequent during summer (weather dependent), probably every couple of weeks from 1.00pm to 7.00pm. Mr Tait confirmed there was a variety of music to cater for everyone."

Mark Gillman

[341] Mr Mark Gillman disclosed a written brief of evidence that was taken as read. The evidence was in support of the application. Mr Gillman was available to answer any questions.

[342] Mr Egden examined Mr Gillman on his evidence. When asked, Mr Gillman confirmed the music is not a problem for him.

[343] Mr Gillman confirmed that noise from vehicles does not bother him as he has vehicles going past his house all the time as he lives on the corner. They are not always associated with the hotel.

[344] Mr Gillman said he moved to Leithfield as a teenager in 1973. He lived there until 1979 then returned to Leithfield in 1998. His property is 200m at most to the hotel. He said that the noise levels are roughly the same with the wind direction influencing what you can hear. Mr Gillman said he did hear the boom, boom, boom on that one occasion but the noise from the hotel does not phase me as its just me and I am not bringing up a young family. There's is a lot more activity now since covid. Leithfield has grown significantly since the 1970's.

Cross-examination

[345] When asked by Senior Constable Craddock, Mr Gillman confirmed he visits the pub on a Friday night from 5.00pm. The time he leaves depends on how good a night he is having.

[346] Senior Constable Craddock asked in all the years of living in the Leithfield village whether he is aware of residents having any issues with noise from the hotel. Mr Gillman said only what was spoken about earlier on.

[347] Mr Gillman confirmed on a map of Leithfield that his property is diagonally across the road from the pub on Old Main Road and confirmed the music was louder earlier in the year and probably is due to summertime and the wind direction.

[348] Mr Gillman confirmed that the applicant asked quite some time ago, that being a resident that lives close to the hotel, whether he would be interested in writing a statement for their application.

Questions from the District Licensing Committee

[349] Deputy Chairperson Black asked whether he would agree that it would be difficult for a woman living alone or a family with young children that, when we talk about pleasant and agreeable communities, that a change in increased noise from the premises and vehicle movement would be concerning. Mr Gillman answered, "It's hard to get over how much the community and world has changed, there's a lot more people in the area and activity. We are in an area with the river and the beach, it attracts a lot of people to the area."

New Zealand Police – Senior Constable Genevieve Craddock

[350] Senior Constable Genevieve Craddock disclosed a brief of evidence dated 21 September 2023 and 20 exhibits. Her evidence was taken as read at the hearing. Senior Constable Craddock requested that the videos and photographs from her evidence were displayed on the screen so she could speak to them.

[351] Senior Constable Craddock produced a video recording from 1 April 2023 (EXH GC06). The video was taken as she pulled up to the hotel. Senior Constable Craddock noted that patron talking noise was loud.

[352] Senior Constable Craddock produced the following photographic evidence:

- EXH GC10 - 1 April 2023 - 9.17pm –Gordons Gin RTD can on grass.
- EXH GC10 - 1 April 2023 - 9.46pm – 4WD quad bike outside premises.
- EXH GC10 - 1 April 2023 – 11.07pm – Smirnoff RTD bottle on car bonnet.
- EXH GC10 - 1 April 2023 – 11.09pm – Pint glass on grass.
- EXH GC10 - 1 April 2023 – 11.10pm – DB Export quart bottle on grass.
- EXH GC10 - 1 April 2023 – 11.10pm – Another photo of RTD on car roof.
- EXH GC10 - 1 April 2023 – 11.13pm – Jack Daniels RTD outside premises.

[353] Senior Constable Craddock produced 11 videos taken during her visit at the hotel (exhibit EXH GC11). She noted that the noise sources included band noise, patron noise, audible band lyrics from a distance, motorbike noise arriving and leaving the hotel, and main entrance doors opening and closing. The video evidence also showed a couple who were leaving the premises in the courtesy van who were unsteady on their feet and a male swaying outside before entering the hotel.

[354] The video recording of the assault was played (exhibit EXH GC13). Senior Constable Craddock stated that a male comes inside with his pants down and there is a male and female playing pool. The male with his pants down bends over and flicks the white ball and lies across the table. This man is then grabbed by his throat and pushed up against the wall by the male who was playing pool, then walks away. Che comes in on the right and waves his finger at him, then Che walks back outside. The male who had his pants down approaches the other male and punches him which knocks him unconscious for a few seconds.

[355] Senior Constable Craddock produced a video from The Old Leithfield Hotel Facebook page (exhibit EXH GC19). She said her observations of it is that a lot of the patrons were younger.

[356] Senior Constable Craddock produced various social media posts (exhibit EXH GC20), including the Country Hoedown event, Easter advertising, Housie event with external advertising which breached s. 237 of the Act for the irresponsible promotion of alcohol, live music events, mid-winter Christmas, St Patricks Day, Decked Out Reflections, and Trip Advisor reviews.

Cross-examination

[357] Mr Egden asked how many occasions she had visited The Old Leithfield Hotel since the applicants have been operating. Senior Constable Craddock said on two occasions: 1 April 2023 and 19 May 2023.

[358] Referring to the video of the male swaying outside and then entering the premises (exhibit EXH GC11), Mr Egden asked whether Mr McLennan or Ms Shailer were questioned about this. Senior Constable Craddock confirmed she did not. Mr Egden said he intends to recall Ms Shailer to the witness box as she recalls that she removed him from the premises and took him home. Senior Constable Craddock stated that she was standing outside with the Licensing Inspector monitoring for quite some time and did not observe the courtesy vehicle leave.

[359] When asked about the reviews for the premises, Senior Constable Craddock accepted that many of the reviews tabled by Mr McLennan during his evidence were positive.

[360] When asked about exhibit EXH GC03 – 3H Report from 28 March 2023, Senior Constable Craddock confirmed that report was written by Sergeant Pollock. Mr Egden noted that report states there were 5 intoxicated persons and suggested that it should only be the two for the intoxicated couple outside of the premises. Senior Constable Craddock confirmed that patron intoxication assessments were completed for two people. Mr Egden said the police constables have referred to others as being mildly intoxicated and that it is misleading.

[361] Referring to the amenity and good order monitoring on 19 May 2023, Mr Egden said that an empty Gordons RTD can was found. When asked, Senior Constable Craddock said it was found just down the road from the hotel. When asked if she checked this product was sold at the hotel, Senior Constable Craddock said she did not check as the

purpose of the monitoring was to observe what we saw, including any preloading of alcohol.

[362] Referring to the 4WD quad bikes (exhibit EXH GC10), Mr Egden asked whether she is suggesting they went to the hotel. Senior Constable Craddock said it can be assumed as the noise stopped as they went around the corner and got to the front entrance to the premises, they did not drive off in any other direction. She noted that a photograph of the 4WD quad bike was taken later in the night. Mr Egden said in her evidence the quadbikes in question left 3 minutes later and noted that there is no suggestion that the drivers went inside. Senior Constable Craddock said she is not sure what happened in that 3-minute interval. Mr Egden said they are travelling towards the Kowai River track. Senior Constable Craddock stated the engines cut-off as soon as they reached the hotel.

[363] When asked about the lighting in the back carpark, Senior Constable Craddock said at that time the lighting was poor and it was very dark. She accepted that the applicants have updated the lighting in that area since.

[364] Referring to her notebook entry that she did not observe staff outside during monitoring, Mr Egden said that is not to say that staff weren't outside when they were monitoring other areas. Senior Constable Craddock said it is possible but noted that they were monitoring for a long time and stood in each position for quite some time observing, and during that time no one came out. Senior Constable Craddock believes she would have seen staff from all the observation points as they could see the front entrance.

[365] Ms Morrison asked how long she has been an Alcohol Reduction Officer covering the Hurunui District. Senior Constable Craddock said for the last 4 years.

[366] Senior Constable Craddock confirmed that she has monitored The Old Leithfield Hotel under previous management. When asked, Senior Constable Craddock said there is no history of antisocial behaviour, intoxication, or litter outside of the hotel.

[367] When asked if other licensed premises in the Hurunui District host live music as often as The Old Leithfield Hotel, Senior Constable Craddock said there are premises in Hanmer Springs that have live music but not as regularly as The Old Leithfield Hotel.

[368] When asked to comment on the frequency of live music at The Old Leithfield Hotel in the last 10 months, Senior Constable Craddock said she has had concerns from the beginning and contacted Mr McLennan. She gave him an example of a premises in the Waimakariri District which had noise complaints from neighbours because of the live music and the noise that was coming out of an old building. Senior Constable Craddock said her concerns were the live music and the old building, as it is hard to contain noise. In the example given, the Alcohol Regulatory and Licensing Authority removed the ability of this premises to have live bands except for 3 times a year. She continued, during the monitoring we observed the escape of noise when the doors were opened. Ms Morrison said if doors are kept open then it will increase the impact of noise on the neighbours. Senior Constable Craddock agreed and said it will be more so in summer when the weather is hot as it is harder to keep doors and windows closed.

- [369] When asked about the use of the smoker's area and patron noise, Senior Constable Craddock said patron noise is one of their main issues with licensed premises and the levels observed is concerning. She continued, when patrons become influenced, they generally become louder, people arriving and leaving the premises can be loud, and it carries.
- [370] When asked, Senior Constable Craddock confirmed that people arriving late are more likely to be coming from another licensed premises. The consequence of migration is the alcohol already consumed and how loud they are, and not being considerate of the noise they are creating including vehicle engine noise, car door slamming, people laughing and speeding.
- [371] When asked about the staffing numbers, Senior Constable Craddock said they have adequate staff in terms of numbers, but she has concerns whether staff are adequately trained. After hearing the evidence about the Hoedown/Ashley Pig Hunt incident and controlling numbers, Senior Constable Craddock said she is not sure if they are capable of being able to control certain groups and certain numbers.
- [372] Referring to the Hoedown event where the patron numbers exceeded occupancy, Ms Morrison asked what problems may be caused. Senior Constable Craddock states she does not see how you can monitor when you cannot move around the premises, she has seen that people fail in these situations. She continued; it is hard to see the people coming and going, the number of drinks and if anything has been passed onto people. When asked about the importance of a counting system, Senior Constable Craddock said it is needed and Fire and Emergency New Zealand (FENZ) are quite particular on it as it is a public safety issue. Staff need to know how many people are in a building in the event of a fire, and how they are going to get those people out safely. Senior Constable Craddock confirmed there are consequences from FENZ for exceeding occupancy. Other consequences of not meeting their requirements include suspension of licence.
- [373] When asked about the advertisement of the event, Senior Constable Craddock commented that it was a pre-circulated event and was foreseeable, so it is expected that they cater for a large crowd. It is better to have more numbers of staff that could have been stood down if not needed. Ms Morrison further asked about security requirements for events. Senior Constable Craddock said security should have been expected during the pre-planning of the event.
- [374] When asked about alcohol management plans, Senior Constable Craddock confirmed it is expected that licensed premises have an operational alcohol management plan which is fully implemented, and staff trained.
- [375] Ms Morrison asked if the frequency of events and hours were changed that it would reduce alcohol-related harm and increase the amenity and good order. Senior Constable Craddock said a reduction of hours might mean that people come earlier but she is not sure whether it will eliminate the problems, it may reduce the nuisance to residents. Senior Constable Craddock said she has produced evidence that it is not just the music noise, it is the patron noise and the vehicle noise as well.
- [376] Referring to the assault incident, Ms Morrison said it could be considered that it did not meet the object of the Act as there was alcohol-related harm. When asked to comment,

Senior Constable Craddock said the male offender said he was too intoxicated to remember punching the other male which is concerning. It is a concern that the incident was not brought to Police's attention. She noted that Police found out about the incident because the male assaulted had to take time off work for concussion then decided to make a complaint. Senior Constable Craddock said it is expected that a licensee would contact Police if there has been an assault on their premises.

[377] When asked about the other types of harm inflicted on the male assaulted, Senior Constable Craddock said there is indirect harm including the harm on the employer as the victim cannot go to work, sick leave, harm on the witnesses who saw the assault, harm on the girlfriend who took the victim home and looked after him. Harm is very spread. The concussion could lead to ongoing issues over years.

[378] Referring to the breach of s.237 of the Act for the irresponsible promotion of alcohol, Ms Morrison asked her to explain why advertising free alcohol is a breach of the Act. Senior Constable Craddock said it is irresponsible to externally advertise free alcohol as it is designed to entice customers and promotes excessive or irresponsible consumption of alcohol.

[379] When asked, Senior Constable Craddock said she was aware that the Ashley Pig Hunt was on as the new licensees for The Ashley Hotel had concerns about the event based on the previous years. The Police and Waimakariri District Licensing Inspector held a meeting with the licensees, who advised that they were not going to host the event in the way it has been previously run. It was being advertised as a family event and was finishing early and no after-function would be held. Senior Constable Craddock confirmed that it was advertised on their Facebook page.

[380] When asked, Senior Constable Craddock considers it is good practice for licensee to be aware what else is going on in the community. For example, there may be a fair or a rugby match, we would expect licensees to check what is going on in their community and then they can plan accordingly whether extra staff are needed.

[381] Referring to Mr McLennan's comment in his evidence that the issues with the Hoedown were because of the Ashley Pig Hunt, Ms Morrison asked for comment. Senior Constable Craddock said it was a foreseeable event and the Hoedown itself should have been staffed appropriately, despite the pig hunters turning up. They should have been able to control the patrons by entry through the main entrance only and manage the numbers by counting persons as they enter. Senior Constable Craddock said they could have easily told people that they were at capacity to deter the rest of the persons, she expects them to put mitigation measures in place.

[382] Referring to the video evidence of loud music and Ms Shailer's comment that the problems are the drum and bass nights, Ms Bromley asked if the band was playing drum and bass music when she monitored the premises. Senior Constable Craddock confirmed it was not drum and bass music. When further asked if it is just the drum and bass music that is causing the problems in the area, Senior Constable said she doesn't believe so, no.

[383] For completeness, the public objectors did not have any questions.

Questions from the District Licensing Committee

[384] Mr Kidd asked whether the volume that they heard on the video footage was the same as what she observed during monitoring. Senior Constable Craddock said it was much louder naturally than on the video.

[385] Referring to her comment that it is good practice for a licensee to become aware of other events in the community, Councillor White asked how a new licensee would gain an understanding of an event that had somewhat changed from previous years. Senior Constable Craddock said they would get that information from locals, as most locals within the Hurunui and Waimakariri know the history of licensed premises. With the Ashley Pig Hunt, apart from it being circulated on Facebook, she would assume that the locals would be communicating and planning on where to go and what to do, the pig hunters are not specific to Ashley. Senior Constable Craddock acknowledged she is not saying that they should have known, but the information was circulated at the time and was known in the community.

[386] In relation to the 4WD quad bikes, Mr Kidd said it appears they are creating a nuisance in the Leithfield community and asked whether this is something that the Police could address. Senior Constable Craddock said Police need to look at it, she has asked local Police to monitor the area, but it depends on their availability. They may look at setting up the traffic unit to target that area specifically.

[387] Mr Egden asked as a matter arising from that, have Police considered an alcohol ban in Leithfield? Senior Constable Craddock said Police have not considered it, but it is possible where there is evidence of an issue. She explained that the local council would put an alcohol ban in place and the Police would enforce it.

Witnesses for New Zealand Police

Constable Mark Rankin

[388] Constable Mark Rankin submitted a brief of evidence and exhibits as part of the police disclosure. His evidence was taken as read during the hearing.

Examination from Police

[389] When asked by Senior Constable Craddock, Constable Rankin confirmed that he arrived at the hotel at 12.30am on 26 March 2023, and it appeared to be busy. When asked how many people, Constable Rankin said there were 25 to 30 people in the main bar area.

[390] When asked, Constable Rankin confirmed that he has been frontline in the Police for 1 year and 5 months. Senior Constable Craddock asked how often they monitor licensed premises. Constable Rankin said he has completed 4 or 5 licensed premises checks within that timeframe. He confirmed it is not the core duty of his role. When asked what frontline staff look at when they go into licensed premises, Constable Rankin said "behaviour, intoxication and public safety."

Cross-examination

- [391] When asked by Mr Egden, Constable Rankin confirmed this was his first visit to The Old Leithfield Hotel and confirmed that he is based in Rangiora.
- [392] Constable Rankin confirmed that he conducted the intoxication assessment of the male, and he showed many signs of intoxication.
- [393] When asked whether any intoxication assessments were completed on persons inside of the premises, Constable Rankin said no assessments were completed however he was considering completing some assessments. Constable Rankin explained, on arrival, himself, and Constable Fiddymont went inside the premises and assessed the area. He spoke with a man, who he considered to be at the point of intoxication. He spoke to a few other patrons sitting down at the tables and gauged their level of intoxication. At this point, he realised that he could not see Sergeant Pollock so went outside to check on him. When outside with his Sergeant, he was asked to complete the intoxication assessment of the male and help with the unfolding situation.
- [394] Mr Egden said while the man inside was showing signs of intoxication, a complete intoxication assessment was not completed. Constable Rankin confirmed. When asked, Constable Rankin said he did not bring this man to the attention of the duty manager. He continued, in any scenario his priority is his safety, his colleague's safety and the public's safety, and generally in that order. Constable Rankin said when he was speaking with the man inside, he discussed the intoxication assessment and the man jumped at the chance. It was at this point that Constable Rankin realised he could not see his Sergeant, and his priority changed to his colleague, so he went outside.
- [395] Referring to the number of people inside the bar at the time of visit, Ms Morrison asked whether intoxication assessments could have been done with that amount of people. Constable Rankin confirmed it was doable and noted that the attention is always on the police when we walk inside, and while most people will resort to their usual activities, there are those people that hang around. When asked at what patron level would it be difficult to complete assessments, Constable Rankin said it is down to the patrons and their behaviour.
- [396] When asked to comment about his frontline duties and the types of alcohol-related harm he has witnessed, Constable Rankin said, "I have conducted many excess breath alcohol assessments, I have attended a fatal car accident in the Hurunui District where the driver was under the influence of alcohol." Constable Rankin added, "domestic violence is a large component of his work.
- [397] Ms Bromley asked how long he was inside the premises. Constable Rankin said less than 5 minutes. When asked who the duty manager was, Constable Rankin stated he was not aware as Sergeant Pollock was responsible for the hotel report and that him and Constable Fiddymont were to look for any behavioural issues.
- [398] Referring to his comment that Sergeant Pollock was working through an issue with the female, Ms Bromley asked what the issue was. Constable Rankin said when he came outside, Sergeant Pollock was speaking firmly to the female, and he could tell something was not quite right. It was apparent that the couple had either just driven or they were planning on driving, so her keys were asked to be surrendered.

[399] The public objectors did not have any questions for the witness.

Questions from the District Licensing Committee

[400] Mr Kidd asked whether Police knew if the intoxicated male had been drinking at the hotel. Constable Rankin said he asked the question to the male, and it was confirmed that he did.

[401] Deputy Chairperson Black asked if it is normal practice in team policing to check on a colleague if they are no longer in line of sight and to move away from your line of enquiry with a patron. Constable Rankin said our priority is our own safety. At the time, he did not believe there was a safety risk inside the bar, and he had no issue with leaving Constable Fiddymont to check on Sergeant Pollock. If the situation was different inside, then he wouldn't have left.

Constable Montgomery Fiddymont

[402] Constable Montgomery Fiddymont submitted a brief of evidence and exhibits as part of the police disclosure. His evidence was taken as read during the hearing.

Examination from Police

[403] When asked by Senior Constable Craddock, Constable Fiddymont confirmed that he has been a frontline Police Officer for 1 year and 5 months. Senior Constable Craddock asked how often he has monitored licensed premises. Constable Fiddymont said he has completed 10 to 15 licensed premises checks within that timeframe. He confirmed he has not completed a licensed premises compliance checklist himself but has been present with the group.

[404] When asked, Constable Fiddymont confirmed that his visit to The Old Leithfield Hotel on 26 March 2023 was his first time and he has not been back since.

[405] Constable Fiddymont confirmed that upon arrival at the hotel, he observed the red Nissan Navara leaving the hotel carpark. He added that when they saw the Police, they pulled over. Constable Fiddymont said it is not uncommon for people to pull over and switch seats with the passenger or go back inside.

Cross-examination

[406] Mr Egden referred to the brief of evidence and the comment that he spoke with a few patrons inside who he observed to be mildly intoxicated. When asked, Constable Fiddymont said he did not bring them to the attention of the duty manager as they were only displaying one sign of intoxication. Constable Fiddymont said he spoke to two females in group of six to seven.

[407] When asked, Constable Fiddymont confirmed that he completed the patron intoxication assessment for the female that Sergeant Pollock was dealing with outside.

[408] Ms Morrison asked what time the incident with the intoxicated couple occurred. Constable Fiddymont said he is unable to give the exact time, however they arrived at

the hotel at 12.30am according to the police communications system and the assessments were completed in the early hours of the morning.

[409] Ms Morrison asked what carpark did the red ute leave from when they arrived. Constable Fiddymont stated it was leaving the forecourt in front of the main entrance to the hotel.

[410] Referring to the courtesy bus that was mentioned in paragraph 16 of his brief of evidence, Ms Bromley asked what staff member arranged this. Constable Fiddymont said by this time a member of staff had come out, but he cannot recall if it was Mr McLennan or not, Sergeant Pollock was speaking to the staff member. Constable Fiddymont said the female that he completed the intoxication report on was emphatic that she was driving home as she had work in the morning, she did not see a problem with driving. Sergeant Pollock and the staff arranged for the female to be dropped home when the courtesy van returned from its current drop off. Her keys were taken to the Rangiora Police Station for collection in the morning. When asked, Constable Fiddymont was not aware of the manager on-duty as this was Sergeant Pollock's role as part of the hotel compliance checklist.

[411] The public objectors did not have any questions for the witness.

Questions from the District Licensing Committee

[412] Mr Kidd noted that the intoxication assessment states the female was served two drinks while Mr McLennan said in his evidence that she only had one. When asked whether Police confirmed this fact, Constable Fiddymont said it was never confirmed, but the female was certain that she had been served two drinks at the bar.

Licensing Inspector – Dianne Morrison

[413] Ms Dianne Morrison submitted a brief of evidence dated 22 September 2023. Her evidence was taken as read during the hearing.

[414] Ms Morrison said the Inspectors Report is comprehensive and includes relevant case law to guide the Licensing Committee through the decision-making process. Ms Morrison said the take-home point is that if there are issues with some of the s. 105 criteria, but the object of the Act (s. 105(1)(a)) is not being met, then the licence should not be granted. The Alcohol Regulatory and Licensing Committee have indicated that conditions should not be imposed to enable an applicant to meet the object of the Act.

[415] Ms Morrison said her concerns are over the alcohol management plan, noise management plan, staff training programme and staffing levels, the days and hours sought and how they work with the noise management plan.

[416] Referring to the design and layout of the premises, Ms Morrison said her main concern is the grassed verge area beside the fence where most people park their cars (refer exhibit EXH DM04). Ms Morrison said whilst the installed lighting lights up the carpark, there is no lighting out in this area and there are minimal streetlights. During monitoring, we have observed people out in their cars, some of whom are drinking alcohol. She considers this to be a risk to staff and residents walking passed the hotel.

[417] Ms Morrison produced photographs of the beer garden (exhibit EXH DM01). She said the beer garden has been upgraded under this management and is a nice environment. Ms Morrison said live bands or entertainment on Sunday afternoons are often positioned in the corner of the beer garden nearest the hotel.

[418] Ms Morrison produced an email reply from Mr McLennan following a meeting to discuss the application (exhibit EXH DM02). Ms Morrison said this shows the current situation and where the premises were heading in terms of their target audience. Referring to the Sunday music sessions in summer from 2-5pm, Ms Morrison said through the summer period the live music is for weeks and weeks on end. Ms Morrison produced a calendar of the live music events held at The Old Leithfield Hotel (exhibit EXH DM11). She considers there is a lot of music for a quiet village, where residents closest to the hotel may want to enjoy their weekend.

[419] Ms Morrison produced the following exhibits:

- EXH DM03 – Fire evacuation scheme emails.
- EXH DM04 – Photos of the exterior of the hotel on Old Main North Road.
- EXH DM05 – Photos of the smoking area.
- EXH DM06 – Photos of the outdoor speakers in the beer garden.
- EXH DM07 - Further information – 13 June 2023.
- EXH DM08 – Noise Management Plan (now superseded)
- EXH DM09 – Alcohol Management Plan.
- EXH DM10 – Warning letter – breach of s. 237 of the Act.
- EXH DM11 – Live music events November 2022 to September 2023.
- EXH DM12 – Monitoring File Note 19 March 2023.
- EXH DM13 – Photo of party bus.
- EXH DM14 – Monitoring File Note 25 March 2023.
- EXH DM15 – Monitoring File Note 2 April 2023.
- EXH DM16 – Photos of the exterior of the hotel.
- EXH DM17 – Cars involved in noise incident outside hotel.
- EXH DM18 – Monitoring File Note 4 June 2023.
- EXH DM19 – Monitoring File Note 2 September 2023.

[420] Referring to the photographs of the exhibit EXH DM04, Ms Morrison questioned whether the area is used as another licensed area rather than a smoker's area. She commented that the screening and roof of the smoker's area will not do anything to minimise the escape of noise however modifications could be made to minimise the noise.

[421] Referring to exhibit EXH DM05, Ms Morrison said she understands the outdoor speakers have been moved and are facing downwards to minimise the noise being projected out and with the changes to the sound system, that might help.

[422] Referring to the alcohol management plan completed in conjunction with Hospitality New Zealand (exhibit EXH DM09), Ms Morrison said it is apparent that this is a generic template, and it still needs to be tailored to the business to be fit-for-purpose.

- [423] Ms Morrison said she has completed monitoring on various dates and times on 6 occasions between March to September 2023 exhibits EXH DM12, EXH DM14, EXH DM15, EXH DM18 and EXH DM19).
- [424] Referring to the photo of the party bus (exhibit EXH DM13), Ms Morrison said her recollection is that an empty party bus was there when she arrived for monitoring at 10.00pm. Ms Morrison said the forecourt did not have a lot of people in it, so an assumption was made that the bus group had been inside the hotel. At approximately 10.30pm, Ms Morrison observed people started to come outside and board the bus, so her assumption again was that those people had been inside the hotel.
- [425] Ms Morrison referred to the photographs of the exterior of the building taken at night-time and noted that the lighting is poor (exhibit EXH DM16).
- [426] Referring to her monitoring file note from 2 September 2023 (exhibit EXH DM19), Ms Morrison said that she was positioned across the road diagonally from the hotel and could clearly see the door staff checking identification. Ms Morrison noted that the double doors at the main entrance were open, and people walked straight in. She further noted, a group of 5 to 6 people were not allowed in, and they disappeared into the back carpark and never came out. Ms Morrison had concerns whether the group had gained access by the rear gate so went around the back to check. Ms Morrison stated that the gate was open and they were able to gain access to the hotel by the gate. Ms Morrison said she observed a group of young males drinking and smoking in the corner of the carpark. She also observed patrons exiting from the beer garden gate out into the carpark and going back through the gate into the beer garden.
- [427] Referring to the photograph of the car involved in a noise incident during the Hoedown event (exhibit EXH DM17), Ms Morrison said she was in the main entrance foyer with the door host and the duty manager, Sara McMillan at the time. A car arrived to pick group of 4 young males up from the hotel, and the driver revved the car loudly. Sara McMillan ran outside and dived into the passenger seat to tell the driver to stop. Ms Morrison said the car drove off and turned the stereo volume to maximum as they left. Ms Morrison said this is the type of behaviour that has a significant impact on the amenity and good order of the neighbourhood.

Cross-examination

- [428] Mr Egden asked when her last visit to The Old Leithfield Hotel was prior to the applicant taking over. Ms Morrison said it would have been some months. Mr Egden said many of the objectors have noted concerns with noise with previous licensees. Ms Morrison said this is not something that has been brought to her attention before. During her enquiries into the application, she went through the history of noise complaints, which were sporadic and typically related to certain licensees but not all. She noted, noise complaints have typically been received at the end of the licensee's tenure and when they think they have nothing much to lose.
- [429] When asked, Ms Morrison said there have been 6 or more licensees for The Old Leithfield Hotel since 2010. Mr Egden said this can indicate that it is not particularly profitable. Ms Morrison said she could not comment but noted some licensees have realised that hospitality is not for them, others are undercapitalised or lack the business

sense to make it work, there are many reasons that it does not work out and it can be for a combination of reasons.

[430] Mr Egden said there have been issues previously and it would be hard in a residential area such as Leithfield that there wouldn't be matters arising given the proximity of the hotel to the residential properties. Ms Morrison said we have not had any significant issues from the residents about the amenity and good order. Mr Egden stated many of the objectors have said the issues were there under previous management. Ms Morrison accepted that and said it doesn't quantify what they were, how often and whether it was an ongoing problem. It is not something that has come to our attention or that we have observed when dealing with previous licensees.

[431] Mr Egden said the issue for the objectors comes down to the 2.00am closing time and the noise primarily from the music. Ms Morrison confirmed that they are a significant factor. When asked whether the noise management plan submitted with Mr McLennan's evidence would make a difference, Ms Morrison said she considers it to be a step in the right direction, but she is concerned about the hours that music can be played to are similar to the existing hours so she is not convinced, without the plan being enforced robustly, that the situation will change. Mr Egden put it to her, if the plan is enforced robustly, surely it would make a big difference. Ms Morrison accepted it has the potential to make a difference provided the plan is adhered to.

[432] When asked for an appropriate finish time for live music, Ms Morrison said there may be a way of engineering that, factoring in a 30-minute drink up time and then getting people home in the courtesy van. Ms Morrison said if the band played from 8.00pm to 11.00pm, last drinks called at 11.00pm and the courtesy vehicle going during that period, it would give them an hour to get people home if the licence was until midnight. Mr Egden had concerns that it would be too tight to get people out if last drinks was called at 11.00pm, the issue is with how you deal with this as you don't want people waiting outside. Ms Morrison questioned whether the courtesy vehicle is not big enough and whether the applicants need to consider alternative transport options, such as educating patrons and offering incentives for sober drivers. Ms Morrison said it is not enough to rely on a single courtesy van to transport everyone home, and she does not think it is desirable to extend the licensed hours for a premises just so that people can get a ride home.

[433] Referring to the proposal (exhibit EXH CHE02), Mr Egden said the closing hours for discussion is 12.00am midnight Sunday to Thursday and 1.30am on Friday and Saturdays. Ms Morrison said with respect, she does not consider that this will change anything, as you will still have patron noise and the noise from vehicles leaving the premises. She considers the hours won't change the issues that the community is facing.

[434] Looking at the way the premises has been run in the last 10 months, Mr Egden said there have been three incidents: the Hoedown event, the assault and the couple who were intoxicated outside the premises. When asked, Ms Morrison agreed these are the three main issues since the applicant has taken over. She added this is in the background of the constant music attracting more patrons later in the evenings. Ms Morrison said the Hoedown event incident could potentially happen at any time and therefore she has highlighted the importance of an alcohol management plan, a noise management plan, and staff training systems as fundamental components to running a good business. Her

concern is that they are 10 months down the track and these fundamental tools have not been fully implemented. Ms Morrison said until this is done, she does not have confidence that there will not be a repeat of these incidents.

[435] Mr Egden referred to the Hoedown event as a perfect storm and admitted that the applicants should be aware of the potential for these events to occur at any moment. Mr Egden said the situation was out of control and any publican faced with that would have difficulty dealing with that. Ms Morrison agreed somewhat but noted that there was potential for the Hoedown event to reach capacity without the pig hunters. Pre-planning of the event should have identified the steps that needed to be in place, including security and counting patron numbers for example. Mr Egden said the applicants have learnt from that and have implemented changes for future events including security and increased staff. Ms Morrison confirmed that there have been improvements made but the implementation of the management plans and training systems are paramount.

[436] When asked, Ms Morrison confirmed, if the licence was granted, that the alcohol management plan and noise management plan become conditions of the licence. Mr Egden asked if there were any other conditions or undertakings that should be imposed. Ms Morrison said a review of the staffing levels to ensure there are enough duty managers, appropriately experience and trained staff for events, multiple certified manager's working on the floor and behind the bar. Ms Morrison said she has concerns that there was an 18-year-old working on the bar during the Hoedown and during the assault, it would have been traumatic.

[437] Referring to the Monitoring File Note for the Hoedown event (exhibit EXH DM18), Senior Constable Craddock noted that there were stubby bottles at her feet in the main entrance foyer. When asked, Ms Morrison confirmed the bottles were part full bottles and explained that the security person was taking bottles off the people when they were exiting the hotel. The security person had already collected approximately one dozen bottles from people trying to take the alcohol out.

[438] Referring to the Hoedown event, Senior Constable Craddock asked whether persons from the Ashley Pig Hunt were already there when she arrived for monitoring. Ms Morrison said she was not aware of the Ashley Pig Hunt, but observed there were cars everywhere, the hotel was full and there was a constant stream of people coming in. She recalls that there were people there for the Hoedown event as some people were in their Hoedown outfits. Ms Morrison said there could have been a combination of both groups still turning up.

[439] Senior Constable Craddock asked whether the beer garden gate was locked. Ms Morrison confirmed the gate was not locked. The indication from the security staff was that the beer garden gate was closed, and people couldn't get in. She did not observe any security checking the gate. Ms Morrison said during another monitoring visit, she saw a rock holding the gate shut. Referring to exhibit EXH CHE03, Senior Constable Craddock said Mr McLennan told us during evidence that this signage is displayed on the gate. Ms Morrison confirmed that had not seen the signage installed on the gate.

[440] Referring to Ms Morrison's observation that people were drinking and smoking in the rear carpark and then re-entered the bar, Senior Constable Craddock asked what her

thought are on people drinking outside and then coming back in. Ms Morrison said there are two ways to look at it, either they have taken alcohol from the premises, or they have brought their own alcohol with them. Ms Morrison said it is impossible to know that but regardless, they should not have been out there drinking.

[441] Referring to Mr McLennan's comment that the carpark is often used as a meeting point for various groups, Senior Constable Craddock asked whether the persons drinking in the carpark were using it as a meeting point. Ms Morrison said there was no reason for them to be meeting other than being at the hotel.

[442] When asked about the comment that patron noise was louder than music noise, Ms Morrison said she had a discussion with Kim Shailer and Sara McMillan in the beer garden area about the volume of the music, and it was agreed that Ms Shailer would arrange for the DJ to turn it down. When Ms Shailer came back outside, Ms Morrison said she considered the music was still quite loud outside and over and above that, the patron noise was loud. Ms Morrison said that her reaction indicated that she had not been cognisant of that before. This is important if Ms Shailer is going to be the Noise Liaison Officer, she needs to be aware of the various elements of noise.

[443] Referring to the most recent monitoring of the premises on 2 September 2023, Senior Constable Craddock asked if there are still issues. Ms Morrison said there were many issues identified during this monitoring, in terms of noise, there was still music noise, there was still patron noise, not a lot had changed.

[444] Senior Constable asked whether the operators are going to resolve the issues of noise with the old building. Ms Morrison said in terms of the escape of noise, she thinks there are some positive aspects in the noise management plan but old buildings leak noise. While they can improve things, it will not be possible to eliminate noise completely.

[445] Referring to Ms Morrison's experience as a Licensing Inspector, Senior Constable Craddock asked if she has had any similar experiences with other licensed premises and the amenity and good order issues from noise. Ms Morrison confirmed there have been some in Hanmer Springs, where noise has been an issue with the neighbouring residential properties and accommodation providers. Over time they have developed robust noise management plans and staff training systems, they have engaged sound engineers to complete acoustic reports, acoustic barriers have been installed to stop the escape of noise, and opening hours have been altered. Over time the issues have been addressed.

[446] When asked, Ms Morrison confirmed there have been many problematic premises, on varying issues including patron behaviour, noise, management plans and staff training. Ms Morrison said she tries to address them before they become a bigger issue.

[447] When asked for a comment on the matter that police and ambulance were not called on or after the assault, Ms Morrison said it is concerning as it is a serious issue and the potential consequences for the victim were high. It would have been responsible for the licensee to advise the authorities to get assistance.

[448] Senior Constable Craddock said Mr McLennan has been working in the industry for 20 years and asked whether she would expect him to have good systems in place. Ms

Morrison confirmed she does hold those expectations. She noted that Mr McLennan would have been working alongside those systems throughout that time, and especially if he has been a general manager as it is that higher level of responsibility. Ms Morrison said she accepts that the responsibilities are different as a licensee, but the agencies are here to help including Hospitality New Zealand.

[449] Referring to the party bus (exhibit EXH DM13) and Ms Shailer's evidence that the people on the bus were never allowed in, Senior Constable asked for a comment. Ms Morrison said she never saw the people inside, but there were more people going back on the bus after that 20-minute period than the people that were standing on the courtyard in front of the hotel so an assumption can be made.

[450] The Medical Officer of Health Representative and public objectors did not have any questions.

Questions from the District Licensing Committee

[451] Mr Kidd said the duty manager and licensee both have responsibilities although different asked whether she would agree that it is an ongoing learning curve to change from a duty manager to a licensee. Ms Morrison said a duty manager and licensee are critical to the running of a premises, but licensee cannot devolve the responsibility to the duty manager and a licensee should not create situations that put the duty manager in risk.

[452] Referring to Mr McLennan's evidence that he is working with agencies to work through their issues, Mr Kidd asked for comment. Ms Morrison said she is not averse to that and wants to work with the licensee as much as possible.

[453] Councillor White asked if the Licensing Inspector was not aware of the Ashley Pig Hunt, then is it your expectation that a licensees should know. Ms Morrison confirmed they should know.

[454] Referring to the 9.00am opening time proposed, Councillor White asked if 10am or later would be more appropriate. Ms Morrison said it has been mentioned in the evidence that the premises does not open to 11.00am, so that makes sense. It was noted that an earlier opening time is used for meetings infrequently.

[455] Referring to the statement in paragraph 30 of her brief of evidence, that aspects of the noise management plan need further clarification in terms of wording, Councillor White asked what specifically would need clarification. Ms Morrison said the noise management plan uses terminology of 'should be' instead of 'must be', and the plan needs to be tailored to the licensee and the hotel. She feels like the document is a proposal not the final adopted plan.

[456] Referring to exhibit EXH DM04, Deputy Chairperson Black asked if the grassed area outside the premises along the boundary fence is the responsibility of the duty manager to monitor. Ms Morrison confirmed she would expect the duty manager to monitor the area when outside the licensed area, they need to have some responsibility for the area adjacent to the premises.

[457] Referring to the revised alcohol management plan produced as exhibit EXH DM09, Deputy Chairperson Black asked whether she is satisfied with the updated version knowing that it is based on industry standard. Ms Morrison said it is fit-for-purpose, it just needs good staff training and implementation. Further work with Hospitality New Zealand on aspects of it would enhance the plan. Deputy Chairperson Black further asked if the Licensing Committee were of a mind to issue a licence, would a condition to the effect that the licensee must work with the Licensing Inspector to enhance the operational aspect of the plan be favourable. Ms Morrison said the licensee would need to work alongside Hospitality New Zealand as it is not a Licensing Inspector's role to train staff. She is available to provide advice or support to Hospitality New Zealand.

[458] Referring to the schedule of live music events produced as exhibit EXH DM11, Deputy Chairperson Black asked if the number of events have been reduced in response to the residents' concerns. Ms Morrison commented that the schedule needs to be looked at seasonally and noted that events seem to drop away at the end of April, but there is potential as we go into spring that the number will increase again. Ms Morrison's view is that live music should not be every weekend.

Public Objectors

OBJ01 – Kate Henry

[459] Ms Kate Henry submitted a brief of evidence dated 26 September 2023. Ms Henry participated in day one of the hearing proceedings, however made the decision to not return on day two to give her evidence.

[460] Ms Henry's brief of evidence detailed the occasions that she described as "very loud music played for very long periods of time and finishing very late at night," between 24 December 2022 to 31 March 2023.

[461] Ms Henry acknowledged that the premises has been much quieter recently and considers that the applicant is worried about having their licensing hours reduced.

[462] At paragraph 2 of her evidence, Ms Henry stated, "the consequences of the above music, include, but are not limited to:

- (a) Cars doing wheel spins or similar late at night.*
- (b) Cars revving engines late at night.*
- (c) Car door slamming late at night.*
- (d) Drinkers vomiting in the street.*
- (e) Rubbish in the street."*

[463] At paragraph 8 of her evidence, Ms Henry stated:

"no one was aware of our concerns about the previous closing time of 2am because it was never an issue in the past, because the previous landlord never created a nuisance at this late hour. The previous landlord had a considerate and sensible management style. Now that it has come to the resident's attention, I believe the closing time should be reduced to midnight, to ensure that the current applicant and any future applicants are not able to abuse their neighbours, as the current applicant has done so."

[464] Because Ms Henry's evidence was unable to be tested under cross-examination by the other parties, the Licensing Committee have applied the appropriate weighting to this evidence during our deliberations.

OBJ04 – Maree Clapham for the Leithfield Community Centre Incorporated

[465] Ms Maree Clapham was granted standing as an objector in her own right. In addition to this, the Leithfield Community Centre Incorporated nominated Ms Clapham make a submission on their behalf.

[466] The Leithfield Community Centre Incorporated submitted a written submission on 18 September 2023. Ms Clapham spoke to this submission at the hearing.

[467] Their opposition is on the grounds of the noise level from the live music, the negative effects including littering, broken bottles, the speed of vehicles leaving the hotel and disorderly behaviour. The submission concluded, "The Leithfield Community Centre Incorporated objects to the licence to open The Old Leithfield Hotel from 9.00am to 2.00am."

[468] Ms Clapham said, "I wanted to point out the numbers (28 members for and 1 not for) and the people who came along feeling like their voices are being heard."

[469] The Licensing Committee did not have any questions about the submission.

OBJ04 – Maree Clapham

[470] Ms Clapham disclosed a brief of evidence dated 22 September 2023. Her evidence was taken as read during the hearing.

[471] Ms Clapham said, "I enjoy living next to the hotel, having meals at the hotel. I do not go often, but the meals I have had there are nice enough, it has a nice atmosphere."

[472] Ms Clapham stated, "The applicants do a good job of cleaning up the carpark, I do not think I have ever seen the next morning a can or a bottle, apart from opposite our house but you may not come that far. The clean-up, especially after the big nights, may need to extend past your carpark, but otherwise you do a good job there."

[473] Ms Clapham outlined her main points as follows:

"There is sort of a baseline that we have lived with over the last 15 years. A baseline that is the odd event, the odd band that we put up with and the odd bit of trouble that we put up with. It has been like this for as long as I can remember. There is also the baseline from the Kowai Track and how many motorbikes and quadbikes come up and down.

My main issue is the concern of the change in that baseline and most of my problems that I have relate to things that I am not sure that they can control directly. These are things that happen outside of the hotel, and I am not sure what they are meant to do about that. They are things that correspond with the late-night events and the things that go along with the people that come along to them late at night."

[474] Ms Clapham stated that she is not bothered by the music volume personally. On Sunday afternoons, she enjoys hearing the music from her house.

[475] Ms Clapham said her problem with the noise is having raised my young family there, is the patron noise. Our dogs let us know when there are people congregating in the carpark, it's the head out the window and telling them to shut up. We hear a lot of what goes out there. My girls have heard it, while it is often people yahooping, we do not always know the tone of what it is, which has an impact on our family and has troubled them.

[476] Ms Clapham said, in terms of the car noise at night, it is when they leave the hotel. There is a baseline that we have throughout the week with people hooning in their cars, it's the extra from people leaving the hotel after the events. Ms Clapham is aware that young children have been woken with the car noise – it upsets people. She continued, "After an event I leave the house and think what's new. It might be a skid on a lawn, or a broken signpost or rubber laid on the roads."

[477] Ms Clapham acknowledged, "while we cannot say that is from the hotel, we have noticed an increase in the likelihood on those nights."

[478] Ms Clapham said, with the access to the Kowai River, it's on these late nights that we notice that most of the users are coming to the hotel because they come, the dogs bark, our heads are out the window and we see them park-up. Then they leave, the same thing happens. They go part way down the river, and they stop for 10 to 15 minutes, right next to where my horses are, then come back out. I don't know what they do but it's the increase in that sort of behaviour that concerns me on the event nights."

[479] Ms Clapham talked about the night where they had an intruder in their home. She said, "The hotel was closed, however the problem with that was the young man was coming to the hotel thinking it was open as there was an event the night before. That is my association with the hotel. The more events, the more people are coming as they expect it to be open. In this case, the young man was already intoxicated and argued with his friends when they found the hotel closed and they kicked him out. He found his way into our home, and we found him asleep on our couch – he had been there for two hours. It is hard when you see your children become frightened. Ms Clapham said she worries about the deterioration and how it is going to be if there are more late-night events."

Cross-examination

[480] Mr Egden asked whether it would be fair to say you would be satisfied if music stopped by 11.30pm. Ms Clapham stated, "Yeah if that would mean that less people will come, be intoxicated in our community and drive the way they do."

[481] Ms Clapham confirmed that she is not opposed to the application, but she would like appropriate restrictions in place, she would like to see a time fixed for music to stop and an earlier closing time.

[482] Ms Clapham said the noise management plan gave her confidence that they have something in writing, but she hopes it will be a will and not just a suggestion.

[483] Ms Clapham confirmed she enjoys the music on Sunday afternoons, largely because she can hear the words clearly from her home. Other neighbours might just hear mumbling and muffling, and it could be a problem for them.

[484] Senior Constable Craddock asked from her experience, if the live music finishes at a certain time, does that mean the noise from the vehicles also stops. Ms Clapham confirmed the vehicle noise stops once people leave. She is not always awake when the music stops, she gets woken by car noise. She is more concerned about when there has been an event with young people, when they leave, they drive like idiots, and it is scary to listen to. It's the screaming of the rubber.

[485] Senior Constable Craddock asked if the hours are reduced, then what is your opinion if it still every weekend. Ms Clapham confirmed she would still have problems with that.

[486] Referring to the Intruder, Senior Constable Craddock asked her opinion on that. Ms Clapham said, "He had no shoes on, he was absolutely wasted. He told me that they had driven up the riverbed from Waipara, he didn't say it was because they were intoxicated, but that's my opinion."

[487] When asked by Ms Morrison, Ms Clapham confirmed she is okay with the music finishing at 11.30pm.

[488] Ms Morrison said that the proposal has a closing time of 1.00am, so there is a period that there will be people noise and vehicle noise which is more disruptive to you. Ms Clapham agreed. It is about finding a way to minimise that or reduce the time.

[489] Ms Bromley asked whether she has ever had any contact from staff at The Old Leithfield Hotel about events they are running. Ms Clapham confirmed, "Nothing to do with events, but I got the invitation to the afternoon tea. At that point I didn't feel right to go along to discuss it. I was worried and it was quite early in the piece. I did not feel comfortable."

[490] Ms Clapham confirmed that she has their contact number and could easily contact them.

Questions from the District Licensing Committee

[491] Referring to EXH CHE02, Councillor White asked whether she had any feedback or opinion on each of the proposals. MS Clapham said she thought they were quite good, they sounded fair.

[492] Councillor White further asked whether the proposals would have an impact on reducing some of her concerns. Ms Clapham said, "Some of my concern is about the events that are held and the types of people they are attracting are more likely to contribute to the things that I have problems with. For example, the chicken nugget eating contests are not classy and attract younger people. Even if the event complies with these hours, I worry about the driving manner when they leave, but of course that is outside of the applicant's control."

[493] Deputy Chairperson Black said what we can control is the culture and the tone of the premises, which ties back to the amenity and good order of the locality and this is what she has heard from many of the other public objectors. Ms Clapham agreed.

OBJ05 - Grace Leen

[494] Miss Grace Leen disclosed a brief of evidence dated 22 September 2023. Her evidence was taken as read during the hearing.

[495] Miss Leen highlighted from her evidence, in relation to the intruder that she had on her property, while they did not necessarily come from the pub, it was the intruder's intention to go to the pub if it had of been open.

[496] Miss Leen said, "I am worried about other children growing up next to the pub with it being loud. As a teenage girl it can be quite intimidating."

Cross-examination

[497] Senior Constable asked where the bits of glass from the photographs were found. Miss Leen said, "it was on the road opposite the next day, around 7.00am on the way to school." When asked, Miss Leen said, "It makes her feel that it is not clean, and it is disrespecting the community."

[498] Miss Leen confirmed that she did not see as much rubbish with the previous licensee.

[499] When asked by Ms Morrison, Miss Leen agreed the lighting was poor in the Leithfield village.

[500] Miss Leen confirmed that she hears cars revving and speeding away quite often, it's not every night, mainly the weekend.

[501] Ms Bromley asked if there was a particular style of music. Miss Leen replied, "it is mainly the bass that I hear."

Questions from the District Licensing Committee

[502] Mr Kidd asked whether the loud vehicles come from the hotel. Miss Leen stated, "they generally come from that direction."

OBJ06 - Tom Leen

[503] Mr Tom Leen disclosed a brief of evidence dated 22 September 2023. His evidence was taken as read during the hearing and he was available to answer any questions.

Cross-examination

[504] When asked by Mr Egden, Mr Leen confirmed that he objects for the same reasons as set out by his wife, Ms Clapham.

- [505] Mr Leen confirmed that his main concerns are in relation to the band noise at night and the two occasions, on 26 March 2023 and 16 July 2023, when he observed activity around the hotel in the early hours of the morning.
- [506] Mr Leen confirmed that he works a two-day-on, two-day-off rotation, which means every second weekend he is working. He wakes up at 2.30am to get ready for work.
- [507] Mr Egden said while there was activity, would you accept that the premises were closed to the public. Mr Leen said he cannot confirm if this was true. The lights were on, and he could hear voices in the beer garden. On the second occasion, the car headlights were on when he came out of his property, the lights turned off and the occupant walked to the hotel and entered through the main entrance.
- [508] Mr Egden said evidence will be given that the person was one of the employees who had left his coat and when back inside.
- [509] Senior Constable Craddock asked whether he had heard noise from the previous licensees. Mr Leen said he had heard noise from previous times but not much. It generally stopped about 11.00pm.
- [510] In relation to noise, Mr Leen confirmed it was specific to band noise and the bass thump.
- [511] Mr Leen stated that the noise affects him in the weekends that he is working and because he goes to bed early, it's that point of trying to go to sleep that he hears it. Further to that on the occasions that they open late, his dogs bark, for whatever reason people go up and down the Kowai Track and there are voices close to his boundary that upsets the dogs.
- [512] Mr Leen confirmed he is familiar with the bar layout and the restaurant.
- [513] Referring to the Mr McLennan's comment that on those late nights when they have trouble getting everybody home on the courtesy van, we heard that the people waiting wait in the restaurant. Senior Constable Craddock asked whether he has observed this in his early morning starts. Mr Leen stated, he has heard them talking from the beer garden. On the two occasions that he has driven by, at one point driving slowly, he can see people at the bar but cannot confirm whether they are drinking or not.
- [514] Ms Morrison referred to the comment about the issues that occur beyond midnight and asked what they are. Mr Leen said that it is the rubbish that is left behind, we hear vehicles coming to and from the hotel, particularly up and down the Kowai Track to avoid using the road. There have been times that people are using excessive acceleration and driving around the village.
- [515] Mr Leen confirmed that his objection is based on the 2.00am closing time.
- [516] If the hours were modified and the music was restricted, Ms Morrison asked whether that would make a difference. Mr Leen confirmed it would make a difference. Staying late beyond midnight when other pubs are not open is a magnet for people, intoxication, and anti-social behaviour.

[517] Ms Morrison asked what sort of time people turn up to the hotel late at night. Mr Leen said he has heard cars turning up at around 1.00am, sometimes he has been partly awake. He has heard cars driving around at 1.30am.

[518] When asked by Ms Bromley, Mr Leen confirmed that they use the pub occasionally for meals, the last time was 3 weeks ago. He doesn't drink now. Mr Leen said he used to go to the pub all the time, it was his local for years.

[519] Using the map of Leithfield on page 59 of the agenda, Mr Leen pointed out the location of his property, on the northern corner of Leithfield Road and Old Main Road.

OBJ07 – Lynette Creagh

[520] Ms Lynette Creagh prepared a written submission, dated 22 September 2023, which was taken as read at the hearing.

[521] Ms Creagh said, "I appreciate being able to have a say." She continued, "I do not know about the applicant. It concerns me that they don't see that being a country pub is sustainable or viable and is cautious about what is to come."

[522] Ms Creagh said, "I appreciate the authorities as they have the wellbeing of her family in mind. They are concerned about the impact and have conveyed that to the applicant. They are responding to the help, but it is slow moving."

[523] Ms Creagh said, "The events attract people to the village and when they turn them away, they turn up on her doorstep."

[524] The Licensing Committee did not have any questions about the submission.

OBJ08 – John and Anna Clapham

[525] Mr John and Mrs Anna Clapham disclosed a written submission dated 20 September 2023. Mr Clapham appeared at the hearing on behalf of himself and his wife. The submission was taken as read.

[526] Mr Clapham said his family has been in the village for quite a long time. We lived further away from the pub, and in recent times, have built closer to the pub.

[527] Mr Clapham said, "The pub has been a big part of the village and was enhanced with the development of the beer garden. Over the years and subsequent managers, there was a deterioration, and it needed a lot of refurbishing and pruning. It has received that and there has been great improvement in the last 12 months."

[528] Mr Clapham acknowledged that his family is not a regular customer, but they visited the hotel over the times for family gatherings.

[529] Mr Clapham said, "We have no objections to him getting a licence, we are just concerned with the 2.00am provision."

[530] Mr Clapham acknowledged that it can be difficult to get rid of everybody once the lights go out and we fully understand that once they get in their cars, they are not his responsibility and there is nothing the applicant can do about it.”

[531] Mr Clapham said, “We do hear the music and quite enjoy it at times but it’s the vehicles leaving and coming around the corner towards Balcairn they are faced with a straight to floor it.”

[532] Mr Clapham said, “Our concerns are that if it is a 2.00am closing and it takes time to get rid of everybody, it could be after 3.00am. While I will tolerate the music and leaving noises at 11.00pm, 11.30pm and maybe 12.00am, at 2.00am I am likely to get a bit excited.”

[533] Mr Clapham said the clean-up afterwards, the loss of a road sign and the rocks being put into the middle of the road have always been there. It is part-in-parcel of living next to the pub and it cannot be controlled.

Questions from the District Licensing Committee

[534] Mr Kidd referred to the comment about throughout the years there have been issues with cans and glass and asked if there have been any additional issues. Mr Clapham confirmed he hasn’t noticed any change.

CLOSING SUBMISSIONS

[535] At the conclusion of hearing of evidence at the hearing on Thursday 5 October 2023, it was agreed that the parties to the hearing would have until 5.00pm on Friday 13 October 2023 to file written closing submissions. The applicant was entitled to submit a right of reply by 5.00pm on Wednesday 18 October 2023.

[536] We will summarise the main points of the closing submissions next.

Counsel for the Applicant

[537] On 13 October 2023, Mr Egden produced written closing submissions for Cheiler Limited and Ms Shailer.

[538] Mr Egden stated that the principal matters of concern raised by the public objectors and reporting agencies are the suitability of the applicant including the alleged intoxication on the premises; hours of trade; amenity and good order including noise from music, vehicle noise, patron noise and disturbance at night, litter; systems, staff, and training; and the object of the Act.

[539] Mr Egden stated that the issue for the Licensing Committee is whether conditions can be imposed, and undertakings given which will satisfy the concerns.

[540] Mr Egden stated the applicant will abide by any conditions imposed. Should it not do so, the inevitable consequence would be that the licence may not be renewed.

[541] Mr Egden stated that the applicant fully appreciates that the Licensing Committee will determine the conditions of the licence and set out some possible conditions to assist them.

[542] Mr Egden stated that the following conditions have been volunteered by the applicant:

(a) Proposed hours and music restrictions:

Outdoor:

- Closing time 12.00am midnight.
- Live and recorded music to cease by no later than 7.00pm.
- Restricting live music in outdoor areas to Saturday, Sunday, and public holidays.

Indoor:

- Closing time Sunday to Thursday 12.00am midnight.
- Closing time Friday, Saturday, and public holidays 1.00am.
- Restricting music to 11.30pm, except on special occasions – 4 times a year when 12.30am.
- Restricting live music and DJ music to Friday or Saturday and public holidays.
- One way door policy

(b) The adoption, implementation and compliance with the Alcohol Management Plan provided.

(c) The adoption, implementation and compliance with the Noise Management Plan provided, subject to the amendment of the fifth bullet point in clause 4.2.

[543] Mr Egden stated that the applicant has given the following undertakings:

- (a) To erect signage in the carpark, in the interior and on the exterior of the premises prohibiting the consumption of alcohol in the carpark or on the land incorporated in the lease and advising anyone who does so will be trespassed or banned from the hotel. This will be regularly monitored for compliance;
- (b) Provided it is not in breach of FENZ rules or regulations, the applicant will install a self-closing gate to the carpark which can only be opened from the inside of the premises;
- (c) To support and police a Hurunui District Council Alcohol Ban, should one be imposed;
- (d) On a daily basis, the applicant will collect and dispose of any litter within 100m of the hotel;
- (e) To install additional outdoor lighting to the south and west of the hotel;
- (f) To take advice from an Acoustic Engineer as to the viability of improving the screening in the outdoor area; and
- (g) To implement a policy that, if noise from persons within the outdoor area is such that it might create a nuisance, those persons and those groups will be moved inside the hotel.

[544] Mr Egden submitted that the application by Kim Shailer for a manager's certificate should also be granted. Mr Egden gave the following reasons:

- Ms Shailer completed the Servewise course in November 2022 and her LCQ in December 2022.
- Ms Shailer has worked full time at the hotel over the last 10 months.
- During evidence, Ms Shailer demonstrated that she has good knowledge of the law and has conducted herself appropriately.

New Zealand Police

[545] On 10 October 2023, Senior Constable Craddock produced written closing submissions.

[546] Police submit that the clear evidence adduced in the hearing reflects poorly on the suitability of the applicant. Given the nature and volume of failings, Police submit that the Licensing Committee cannot be satisfied that Che McLennan and Kim Shailer will comply with the object of the Act.

[547] Senior Constable Craddock stated that Police evidence clearly outlined issues with noise, intoxication, irresponsible promotion of alcohol, assault, and pre-loading.

[548] Senior Constable Craddock stated if the Licensing Committee be in mind to issue the licence, Police submit that the object of the Act will be further ignored, and the harm will continue.

[549] Senior Constable Craddock stated that “It is likely that the harm at this premises will continue whatever conditions may be placed on a licence, and that is why Police urge the Licensing Committee to refuse the application for a new on-licence and refuse the Manager’s Certificate for Kim Shailer.”

Licensing Inspector

[550] On 13 October 2023, Ms Morrison produced written closing submissions.

[551] Ms Morrison stated that the Licensing Inspector remains opposed for the application for new on-licence on the following grounds: suitability of the applicant, systems, staff and training, trading days and hours, amenity and good order and the object of the Act.

[552] Ms Morrison stated that the application should be declined due to the following reasons:

- the applicants have not demonstrated their suitability to operate the hotel in a safe and responsible manner to minimise alcohol-related harm as required by the object of the Act.; and
- the applicants have operated the premises in a manner that has reduced, by more than a minor extent, the amenity and good order of the locality.

[553] Ms Morrison stated that while she did not oppose the application by Kim Shailer for a manager’s certificate, the evidence presented at the hearing indicates that she is unsuitable to be a licensee and to be issued a manager’s certificate, therefore the application should be declined.

[554] Ms Morrison referred to the Selwyn District Licensing Committee's decisions in relation to the Kirwee Tavern, which had similar issues. Ms Morrison said the Selwyn District Licensing Committee took the approach of granting the new on and off-licences with conditions/undertakings to improve the management and operation of the tavern. The renewal applications were opposed by the reporting agencies as the issues had not been addressed, and the renewal applications were refused. Ms Morrison highlighted common issues between the Kirwee Tavern and The Old Leithfield Hotel. Ms Morrison considers that the same situation would apply at The Old Leithfield Hotel should the licence be granted with conditions aimed at addressing the issues identified at the hotel (*reference Evans Holdings Limited, Selwyn District Licensing Committee Decision N/59/059/2017 ON and N/59/040/2017 OFF and Decision R59/059/2019 ON and R/59/088/2019 OFF*).

[555] In conclusion, Ms Morrison stated that the on-licence application should not be granted for the following reasons:

- The applicants are unsuitable and have not demonstrated their commitment to developing and implementing robust systems and staff training;
- If the applications were granted, the applicants are allowed to continue trading which would allow the continuation of the concerns held by the agencies and objectors;
- The applicants have not demonstrated the premises has been and will be operated to meet the object of the Act, and the amenity and good order would likely be reduced, to more than a minor extent, by the effects of the issue of the licence;
- Honesty and trustworthiness are key obligations of licensees and are relevant in the assessment of their suitability to hold a licence.

[556] Ms Morrison stated that Kim Shailer has not demonstrated that she has the skills and knowledge required to undertake the role of a duty manager and failed to recognise the difference between influenced and intoxicated when assessing patron's intoxication levels. Ms Morrison submits that her ability to meet the object of the Act cannot be assured and the application for a manager's certificate should be declined.

Medical Officer of Health Representative

[557] On 10 October 2023, Ms Bromley produced written closing submissions.

[558] The Medical Officer of Health submits that the information gathered during the hearing reflect poorly on both the suitability of the applicant and their systems, staff, and training.

[559] Ms Bromley stated although the Medical Officer of Health cannot change their stance of no opposition, the Medical Officer of Health does not believe the Licensing Committee can be satisfied that Cheiler Limited will comply with the law.

[560] Ms Bromley stated that the evidence obtained during the hearing relates to noise, intoxication, irresponsible promotion of alcohol and assault.

[561] The Medical Officer of Health submits that the object of the Act cannot be met even with conditions imposed on the licence. Ms Bromley stated that conditions should not

be used as a tool to ensure the object of the Act is met (*reference paragraph [99] of Lyger Investments Limited NZARLA 299-300 [2018]*).

[562] In conclusion, it is the view of the Medical Officer of Health that the licensee cannot abide by the requirements of the Act, and we can have no faith that the applicants will abide by any conditions set by the Licensing Committee (*reference Hooper v Clark Liquor Licensing Authority Decision 1169/99*).

[563] Ms Bromley submitted that the granting of the licence would not benefit the community as a whole. She further submitted, the granting of a Manager's Certificate for Kim Shailer would also be detrimental, she is an equal shareholder with Che McLennan and cannot adhere to what is asked of a licensee (*reference paragraph [99] of Two Brothers Wholesale Limited [2021] NZARLA 32*).

[564] Ms Bromley stated that the Medical Officer of Health did not oppose this application in the statutory 15 working day period, however based on the evidence coming from hearing, the application should be declined.

Public Objectors

[565] No closing submissions were received from the public objectors.

Applicant's Right of Reply

[566] On 18 October 2023, Mr Egden submitted a right of reply on behalf of Mr McLennan and Ms Shailer.

[567] Mr Egden stated that the reporting agencies have failed to factor into their submissions the wishes of the residents, namely that, while they do not oppose the application, they want the hours of trading reduced and noise from music and patrons reduced.

[568] Mr Egden stated that The Old Leithfield Hotel is not a premises that is rife with intoxication, underage patrons, assaults, disorder, and after-hours trading. Mr Egden stated that for most of the time the applicant has been running the hotel, there have been no issues of concern raised other than in the late evening and early morning. He added, Police, other than Senior Constable Craddock, have visited on numerous occasions and no negative issues have been reported on any of these occasions. Mr Egden said there is no evidence from Police as to calls for service in the vicinity of the hotel.

[569] Mr Egden responded to the submissions from the Police, Licensing Inspector and Medical Officer of Health. The responses have been evaluated by the Licensing Committee during our analysis of the evidence.

POST HEARING MATTERS

Servewise training certificates

[570] As agreed during the hearing, the applicant was required to supply copies of the Servewise training certificates for all staff by 5.00pm on Monday 9 October 2023.

[571] On Monday 9 October 2023, Mr McLennan provided electronic copies of Servewise training certificates for Holly Hall, Kim Shailer, Sara McMillan, and Che McLennan.

[572] The servewise training certificate for Kim Shailer was dated 22 November 2022, while the certificates for Holly Hall, Sara McMillan and Che McLennan were dated 9 October 2023.

[573] In the body of the email, Mr McLennan said, “Three of us had to resit servewise as the old ones were under old emails and due to the 5pm deadline I did not want to risk not finding these prior to today.”

[574] The Licensing Committee have evaluated this information during our analysis of the suitability of the applicant and systems, staff, and training criterion.

Memorandum

[575] On 18 October 2023, Counsel for the Applicant lodged a Memorandum to the Licensing Committee, which outlined two developments:

1. *“An email from FENZ dated 18 October 2023 to The Old Leithfield Hotel, confirming that the delays in processing the evacuation scheme application are of its making and not the applicants; and*
2. *The Old Leithfield Hotel suffered extensive damage in the gale force winds on 14 October 2023. Many of the fences will have to be rebuilt, including the fence on the roadside of the smoker’s area. The applicant has engaged a contractor and is investigating incorporating soundproofing into the rebuilding of that wall.”*

[576] The Licensing Committee forwarded a copy of this Memorandum to all parties to the hearing by way of DLC Minute No. 11.

[577] The Licensing Committee evaluated the additional information during their deliberations and applied the appropriate weighting.

RELEVANT LEGAL CONSIDERATIONS

[578] The Licensing Committee must determine whether a new licence to sell and supply alcohol can be granted, and if so, the conditions that would apply. The criteria for issue of a licence are found at ss. 105 and 106 of the Act.

[579] It is necessary to first discuss the overarching purpose of the Act. Any interpretation of the Act must be ascertained from its text and considering its purpose.

Purpose of the Act

[580] The purpose of the Act is found at s. 3 and provides:

3 Purpose

- (1) *The purpose of Parts 1 to 3 and the schedule 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.*

[581] In summary, the purpose of the Act is intended to *benefit the community*. Any outcome achieved must be reasonable, and directed toward achieving the object of the Act, which is found at s. 4, being:

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).*

[582] The Act provides two overarching objects. Firstly, that when alcohol is sold, supplied, or consumed, it is undertaken safely and responsibly. It is important to emphasise that the object of the Act is not only around how alcohol is sold and supplied by licensees, but how its customers consume it.

[583] The second overarching object is to minimise harm which occurs from excessive or inappropriate consumption of alcohol.

[584] The term ‘harm’ is defined in the object of the Act, s. 4(2), as shown above.

[585] The definition of ‘harm’ is very wide and includes any crime, property, damage, health effects, or disorderly behaviour. ‘Harm’ includes both the direct and indirect effects of those circumstances.

Minimisation of alcohol-related harm

[586] The object of the Act looks toward the minimisation of harm caused by excessive or inappropriate consumption of alcohol. As noted by the High Court in *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980:

... 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 licences.

Approach to be taken by the Licensing Committee

[587] The Licensing Committee must undertake an evaluative approach and adopt a merits-based assessment of the application. At paragraph 55 of *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, there is no presumption that a new licence or renewal of an existing licence will be granted:

Thus, when the relevant body receives an application, they must consider it against s. 105 in deciding “whether to issue a licence”. There is no presumptive position, and certainly no forgone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

[588] The Licensing Committee must consider whether a causal nexus would exist between the effects of granting the application, and the harm which the object of the Act seeks to minimise. As stated in the *Birthcare* case [2016] NZAR487 at [50]:

... the Authority is required to have regard to s. 105 criteria (or in the case of a renewal the s. 105 criteria as modified by s. 131) and then step back and consider whether there is any evidence to suggest the granting of the application will be contrary to the object of the Act contained in s. 4(1), namely that the sale, supply and consumption of alcohol should be undertaken safely and responsibly and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

Onus of proof

[589] As noted above, it is for the Licensing Committee to undertake an evaluative approach to the application. In *Re Venus NZ Ltd*, Health J at [52]-[60] confirmed that the traditional civil approach to the applicant carrying an onus may not be appropriate in alcohol licensing applications. However, in relation to suitability, the High Court has confirmed that there remains an onus on the applicant to establish that criteria.

[590] That approach was cited with approval in *Birthcare*, at [52] where the Court confirmed, when referring to *Re Venus NZ Ltd*:

.. the Authority’s role is essentially an inquisitive one where notions of onus of proof may not be helpful or appropriate

[591] The High Court in *Re Venus NZ Ltd* at [20] confirmed that the touchstone for consideration of the s. 105 criteria, must be the object of the Act:

Although the ‘object’ of the 2012 Act is stated as one of the 11 criteria to be considered on an application for an on-licence, it is difficult to see how the remaining factors can be weighted other than against the object of the new legislation. It seems to be that the test may be articulated as follows:

Is the Authority satisfied, having regard to all the relevant factors in s. 105(1)(b)-(k) of the 2012 Act, that the grant of an on-licence is consistent with the object of the Act?

Statutory criteria to be applied

On-licence application:

[592] In deciding whether to grant the licence, the Licensing Committee must have regard to the criteria set out in s. 105 of the Act, being:

105 Criteria for issue of licences

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

- (a) *the object of this Act:*
- (b) *the suitability of the applicant:*
- (c) *any relevant local alcohol policy:*
- (d) *the days on which and the hours during which the applicant proposes to sell alcohol:*
- (e) *the design and layout of any proposed premises:*
- (f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
- (g) *whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
- (h) *whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
- (i) *whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*
 - (i) *they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
 - (ii) *it is nevertheless desirable not to issue any further licences:*
- (j) *whether the applicant has appropriate systems, staff, and training to comply with the law:*
- (k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*

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

[593] When considering and forming an opinion on the amenity and good order of the locality, the Licensing Committee must take into consideration s. 106 of the Act, being:

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

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

- (a) *the following matters (as they relate to the locality):*
 - (i) *current, and possible future, noise levels:*
 - (ii) *current, and possible future, levels of nuisance and vandalism:*
 - (iii) *the number of premises for which licences of the kind concerned are already held; and*
- (b) *the extent to which the following purposes are compatible:*

- (i) *the purposes for which land near the premises concerned is used;*
- (ii) *the purposes for which those premises will be used if the licence is issued.*

[594] To summarise what we have said we understand these are the guiding principles for us:

- (a) 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 application and in the opposition to the application.
- (b) After evaluating the evidence, we must make a merits-based determination as to whether or not the application should be granted.
- (c) We must have regard to the matters in ss. 105 and 106(1) of the Act.
- (d) To "*have regard to*" as a requirement means what it says. We do not have to give effect to anything and if, after having regard to a criterion, we conclude nevertheless to grant or refuse the applications that is permissible.
- (e) The weight we give to evidence is a matter for us realising that no party has any onus of proving anything.
- (f) Whilst we must have regard to all criteria there will be some cases where some matters are so fundamental, they assume an elevated mantle – here we think the following matters have assumed a fundamental significance:
 - i. the object of the Act;*
 - ii. suitability of the applicant;*
 - iii. proposed days and hours for the sale and supply of alcohol;*
 - iv. staff, systems, and training; and*
 - v. the amenity and good order of the locality.*
- (g) Whilst we do not have to consider s. 3 separately, so long as we are reasonable in our evaluations, we likely will achieve the two aspects of the s. 4 object. We approach s. 4 on the basis that our decision must be consistent with both aspects in subsections (1)(a) and (1)(b).
- (h) We must stand back at the end and reassess our earlier conclusions against attainment of the s. 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 or an applicant.
- (i) There is no presumption of a licence being granted under this 2012 legislation which, in that sense, is different from the previous 1989 Act.
- (j) We are required to form opinions on whether or not we consider the amenity and good order of the Leithfield village would be likely to be reduced by more than a minor extent if we granted the licence – in doing so we are guided by having regard to the matters in s. 106(1).
- (k) For a private company licensee, as here, we are entitled to lift the corporate veil and consider how its director behaves in relation to the business.
- (l) 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 mitigate a risk we might identify and achieve an identifiable benefit.
- (m) If we conclude that granting the application would not be consistent with s. 4 – the object of the Act – we cannot attempt to remediate that by the imposition of conditions. We may impose conditions if we consider granting

the application is consistent with the object of the Act and imposition of conditions will enhance that consistency. What we think that means in this case is that before we consider any conditions, we must first have come to a conclusion that the applicant is eligible to have its application granted consistent with s. 4 (and the other criteria). If we do not reach that positive position, we need not consider conditions at all.

Manager's Certificate application:

[595] In deciding whether to grant the applicant a manager's certificate, we must have regards to the criteria set out in s. 222 of the Act, being:

222 Criteria for manager's certificates

In considering an application for a manager's certificate, the licensing committee or licensing authority, as the case may be, must consider the following matters:

- (a) the applicant's suitability to be a manager:*
- (b) any convictions recorded against the applicant:*
- (c) any experience, in particular recent experience that the applicant has had in controlling any premises for which a licence was in force:*
- (d) any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification required under section 218:*
- (e) any matters dealt with in any report made under section 220.*

ANALYSIS

On-licence application:

[596] We will proceed to consider the applications on the basis of the above criteria. The object of the Act will be addressed last.

S. 105(1)(b) Suitability of the applicant

[597] The Licensing Committee must have regard to the suitability of the applicant to be granted a new on-licence.

[598] The term 'suitability' is not defined in the Act. It is however well settled in this jurisdiction, that suitability is measured against the general dictionary definition of that word, meaning "well fitted for the purpose, appropriate".

[599] Wide ranging factors may be relevant for an evaluation of suitability, but when considering any matters, there must always be a causal nexus between any matters identified and the object of the Act. For example, as confirmed by the Authority in *Re Nishchays' Enterprises Ltd* [2013] NZARLA 837:

"... suitability is a broad concept and the assessment of it included 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 included matters raised pertaining to the object of the Act as set out in s. 4."

- [600] We also note that in order to find the applicant suitable, we must make a positive finding of suitability. The applicant carries an onus to establish suitability.
- [601] The applicant in this case is a limited liability company, which currently operates the hotel under a temporary authority order. The reality of applications made by companies, is that the Licensing Committee must look to the shareholders and directors and how the company would likely manage the premises.
- [602] Cheiler Limited was registered on 27 October 2022. Che Jamie Allen McLennan and Kim Ruth Shailer are the company directors and shareholders, with each holding 50% of the shares.
- [603] The New Zealand Companies Office register indicates that Mr McLennan has not been a director or shareholder of any other registered company. Ms Shailer was the sole director and shareholder of a registered company, Serendipity Decorating Limited, from 1 February 2017 to 23 February 2023.
- [604] We heard during evidence that Ms Shailer operated a painting and decorating business in Kaiapoi. During her time off with an injury, she contemplated the idea of her retirement and was looking for business opportunities and enjoyed the idea of hospitality. Ms Shailer saw The Old Leithfield Hotel was up for lease, so she contacted Mr McLennan as he was unemployed at the time. During evidence, the Police established that Ms Shailer's daughter is in a relationship with Mr McLennan's brother.
- [605] We also heard that while Mr McLennan has not been a licensee for a licensed premises, he has over 20 years of industry experience in licensed premises. Most recently, Mr McLennan was the General Manager of the Avonhead Tavern (Christchurch) and the Pig and Whistle (Queenstown). By his own admission, most of his experience in the industry has been at the operational level and he still has a lot to learn as an applicant.
- [606] We note that the reporting agencies did not raise any matters of non-compliance in relation Mr McLennan's conduct or manner as a duty manager previously. For completeness, we also note there is no record of any convictions for Mr McLennan or Ms Shailer detailed in any report or evidence from the reporting agencies.
- [607] The reporting agencies expressed their concerns about the honesty and integrity of the applicant. During evidence, Mr McLennan confirmed that all current duty managers had completed Servewise training however, when disclosed, the Servewise training certificates for Mr McLennan, Ms Holly Hall and Ms Sara McMillan were issued after the hearing date. The applicants counsel addressed their concerns at para. 68 of their closing submissions. He stated, "Their Servewise training had been completed some time ago and under a different email address, that they no longer had access to. As a result, they all resat the training. This was not an attempt to mislead the Licensing Committee."
- [608] We consider there is uncertainty of the evidence in relation to the Servewise training. In granting the licence, ***we are providing a three-month window from the date of this decision, for the applicant to produce a record of completion for the initial Servewise training for Mr McLennan, Ms Hall, and Ms McMillan, to the satisfaction of the Licensing Inspector.*** The Licensing Committee reserves judgment to rehear the application under s. 201(4) of the Act if they fail to comply with this timeframe.

- [609] In closing submissions, the reporting agencies cited concerns around suitability, amenity and good order, intoxication, staff, systems and training, the irresponsible promotion of alcohol, the assault, and the object of the Act.
- [610] In addition, the Police outlined concerns around pre-loading of patrons. The Licensing Committee took this into account and weighted the concerns raised to the relevance of suitability and the responsibilities of a manager to assess a person on entry before serving alcohol. We consider that, provided the applicant has proper systems in place and adheres to the SCAB intoxication assessment tool, there is little that a licensee can do to manage what the patron consumes prior to entering the premises.
- [611] It is an expectation of the Licensing Committee that mitigation conditions are placed on the licence and related to an operational alcohol management plan and risk assessment of patrons.
- [612] In reference to the warning letter issued by the Police and Licensing Inspector, we accept that the applicant has breached s. 237 of the Act for the irresponsible promotion of alcohol. We consider this demonstrates the naivety of the applicant and the responsibilities and duties that go with being a licensee. There is an expectation of the Licensing Committee that no further breaches to s. 237 irresponsible promotion of alcohol are permitted. Where there is any doubt about advertising of alcohol or alcohol promotions, the applicant should contact the Police and Licensing Inspector in an advisory capacity prior to any internal or external publication.
- [613] During evidence and closing submissions, the reporting agencies outlined their concerns about the night of the assault. Senior Constable Craddock summarised the concerns, being that “an applicant with 20 years’ experience in the industry could not remove and manage the patrons when they were told to leave; the ambulance was not called at the time of the assault; no contact details were obtained from the victim; Police were not notified at the time of or after the assault; and the applicant had to ask for support from other patrons.”
- [614] The applicants did not consider that the assistance from emergency services was required on the night of the assault. Ms Shailer in her evidence spoke about her hesitation to calling the Police. Based on their previous experience when calling the Police, she stated, “It would take 25 minutes for Police to get there, and we had to think outside of the box.” Ms Shailer later acknowledged that “The situation was serious, and I should have and could have done that differently on the night.”
- [615] We do not consider the applicants managed the situation at hand in the best possible way. Because incidents can escalate rapidly, the Licensing Committee considers that as a responsible host, there is a duty of care as an applicant or licence holder to ensure that appropriate decisions and actions are completed in response to an incident. To put simply in the words of the public objector, “Police could be called before the situation escalates and stood down if not needed.” This is what we refer to as the “precautionary approach.”
- [616] In the *Hooper v Clark Liquor Decision 1169/99*, the Authority stated:

“A liquor licence is a privilege. It may colloquially be regarded as a “package deal.” Both the burdens and the benefits run with the license. A licensee must either accept those burdens and control the sale and supply of liquor in a satisfactory manner, or he will not continue to enjoy those privileges.”

[617] The Licensing Committee have heard evidence throughout the two days of the hearing, and we have analysed and weighed up the arguments from the reporting agencies, and therefore in granting, the expectation is that the applicant must accept the responsibilities and burdens that come with a licence and adhere to the conditions of the on-licence. Failing to do so, the Licensing Committee will exercise our powers under s. 201(4), at any time, to rehear the matter or matters that have been determined.

S. 105(1)(c) Local Alcohol Policy

[618] The Hurunui Local Alcohol Policy (LAP) came into effect on 1 December 2017.

[619] The Hurunui LAP imposes the following maximum trading hours for on-licences (tavern, restaurant, and hotel style on-licences): *Monday to Sunday from 8.00am to 2.00am the following day.*

[620] The Hurunui LAP includes a general policy for outside licensed areas throughout the district. The maximum trading hours are 12.00am midnight for outdoor licensed areas.

[621] The hours proposed for the sale and supply of alcohol have not been differentiated between interior and outdoor licensed areas. During evidence, the applicant offered to reduce the outdoor licensed areas to 12.00pm midnight, with live and recorded music to cease by no later than 7.00pm (*refer exhibit no. EXH CHE02*).

[622] We consider that the hours of operation proposed in the application are not inconsistent with the Hurunui LAP, however the days and hours proposed have been altered by the Licensing Committee after considering the amenity and good order criterion, the reports from the agencies and the public objections received.

S. 105(1)(d) Days and hours proposed for the sale and supply of alcohol

[623] The days and hours proposed in the application for the sale and supply of alcohol are Monday to Sunday from 9.00am to 2.00am the following day.

[624] The applicant has been operating since 28 November 2022 in accordance with the licensed hours of the on-licence held by Tiplady Holdings Limited, Licence No. 57/ON/499/2022, being:

“Interior of Premises and Smoking Area: Monday to Sunday from 8.00am to 2.00am the following day; and
Beer Garden: Monday to Sunday from 8.00am to 1:00am the following day.”

[625] Many of the public objections received from the residents objected to the closing time of 2.00am. There was a general consensus from the submissions and evidence that an earlier closing time would help alleviate the impacts to the amenity and good order of

the locality. Ms Clapham, Mr Clapham, Ms Henry, and Ms Creagh suggested earlier closing times of 11.00pm to 12.00am midnight as more tolerable.

[626] This view was supported by the Licensing Inspector, in her submissions, *“It is the Inspector’s opinion that the hours of the on-licence be reduced to mitigate migration of patrons from other premises and limit the noise issues and anti-social behaviour late at night.”*

[627] In the Authority’s Decision ***Paihia Saltwater (2001) Limited NZLLA PH 391/2001***, the Authority said:

“Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes the view that if no attempt is made to prevent the escape of, or reduce noise, then it is the Authority’s duty to monitor the hours of opening, of not the existence of the licence.”

[628] As a mitigation method, the applicant presented a proposal for alternative trading hours and music restrictions, as a discussion document at the hearing (refer exhibit EXH CHE02).

[629] In the closing submissions from the applicant’s counsel, an adjustment to clause 4.2 of the Noise Management Plan from a closing time of 7.00pm to 12.00am midnight was proposed. After evaluating the evidence, the Licensing Committee considers that a closing time of midnight for outdoor licensed areas would negatively impact the residents. We are of the mind that 10.00pm is a more suitable closing time to respect the amenity values.

[630] Following the evidence heard and weighing up the concerns of the objectors and the reporting agencies against the application and the proposal, the Licensing Committee impose the following hours of operation as outlined below:

- Alcohol may be sold only on the following days and during the following hours:

Indoor licensed areas:

Sunday to Thursday from 9.00am to 11.00pm; and

Friday and Saturday from 9.00am to 12.00am midnight.

Outdoor licensed areas:

Monday to Sunday from 9.00am to 10.00pm.

- On the four (4) occasions described in condition (d) of this on-licence, the licensed hours for **indoor licensed areas** permitted as follows:

From 9.00am to 1.00am the following day.

[631] We are of a mind that a reduction to the licensed hours and restricting the number of late-night events will have a noticeable change and positive effect on residents.

S. 105(1)(e) Design and layout of the proposed premises

[632] The Old Leithfield Hotel is a two-story building. The licensed areas are located on the ground floor and include a main bar, restaurant/dining area, gaming room, and an outdoor beer garden and smokers’ area.

[633] We heard during evidence, that the first floor is currently the private residence of the applicant, Mr McLennan. During our site-visit to the premises, we noted that the stairwell to the private residence was easily accessible to patrons and was of concern to the Licensing Committee due to difficulty for staff monitoring patrons and public safety. ***The Licensing Committee requests that the applicant installs signage at base of the stairwell, to the effect of “no public access past this point.”***

[634] We have considered the principal business to be carried out on the premises. Question 7(a) of the application states that the general nature of the business to be conducted by the applicant is that of a restaurant/bar. The property owner referred to the premises as a ‘tavern’ in his permission statement on page 11 of the application.

[635] The ‘kind’ of licence that is currently in force for the premises is that of a tavern (refer Tiplady Holdings Limited Licence No. 57/ON/499/2022).

[636] The following definitions are given in the Interpretation section of the Act (see s. 5):

Restaurant means premises that –

(a) Are not a conveyance; and

(b) Are used or intended to be used in the course of the business principally for supply meals to the public for eating on the premises.

Tavern -

(a) means premises used or intended to be used in the course of business principally for providing alcohol and other refreshments to the public; but

(b) does not include an airport bar.

[637] The Licensing Committee have analysed the sales data for a three-month period, produced by the applicant as exhibit EXH CH06. In evaluating this evidence, we consider that the operations are principally used as a tavern (74% beverages and 26% food).

[638] Ms Shailer, in her evidence explained that she has plans to get the hotel running for tourists to experience the country kiwi pub.” In our view, that will change the nature of the on-licence and potentially the licensed area. It is recommended that any changes to the use of the building are discussed with the Licensing Inspector first, to ensure that legislative requirements are complied with.

[639] We turn our mind now to the floor plan attached to the application. We understand from the evidence, that the applicant provided a new floor plan to the Licensing Inspector, during her inquiries into the application.

[640] The current floor plan, date stamped as received on 1 March 2023, delineates the following licensed areas and designations:

(a) Supervised areas: main bar and smoker’s area;

(b) Restricted areas: gaming room;

(c) Undesignated areas: beer garden, dining area, old stables shed, stairs, male water chair, female water chair and main entry.

[641] The Licensing Committee is concerned that the old stables shed, stairs, male water chair, female water chair and main entry have been included in the footprint of the licensed area and question the appropriateness of licensing these areas for the consumption of alcohol.

[642] ***Within the appeal period, and before the on-licence can be issued, the applicant must provide an updated floor plan, indicating the licensed areas and designations of each of the areas, to the District Licensing Committee Secretary.***

[643] Due to the age of the building and the layout of the premises, the Licensing Committee acknowledge that not all areas are easily visible from the bar. The applicant and staff manage this through the CCTV system, which is monitored by staff behind the bar.

[644] We heard during evidence that food is a big part of the community. The applicant provides a takeaway food service for the community, including the youth that reside within the Leithfield village. Payment and pick-up of the takeaway food becomes problematic due to the layout of the premises and the designation of the licensed areas. Mr McLennan explained, "At this stage, the kids who get takeaways will call on the phone or sit in the restaurant area or wait at the main entrance."

[645] ***To improve the access for ordering and pick-up of takeaway foods for unaccompanied minors, the Licensing Committee expects that the applicant explores and improves systems, to ensure the compliance with the licence conditions and that the prohibition of unaccompanied minors in supervised areas is upheld.***

S. 105(1)(f) and (g) Sale of goods and services other than alcohol and food

[646] There are two separate sub-sections relating to the sale of goods (s. 105(1)(f)) and services (s. 105(1)(g)) other than alcohol from the premises.

[647] The applicant offers Class 4 gaming facilities, live band music and live DJ music and has proposed to offer more non-alcohol related events, including for example comedy and magician events, knitting and craft groups.

[648] The Licensing Committee are of a mind that these goods and services are compatible with a tavern. The provision of live music and live DJ music, however, will be discussed further in the following criterion as it relates to the amenity and good order of the Leithfield community.

[649] These two criteria (f) and (g) were not considered elevated mantle criteria.

S. 105(1)(h) and (i) Amenity and good order of the locality

[650] There are two sub-sections in relation to the amenity and good order consideration, and we will consider those together. Section 105(1)(h) and (i) of the Act defines the *amenity and good order of the locality* considerations as follows:

(h) [The Licensing Committee must decide] whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of a licence:

(i) [The Licensing Committee must decide] whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that –

- (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
- (ii) it is nevertheless desirable not to issue any further licences.

[651] The Licensing Committee states at the outset, that we find s. 105(1)(i) is not relevant in this case. As we have heard, Leithfield is not a location impacted by other licensed premises. We will therefore proceed to focus our consideration on s. 105(1)(h).

[652] The term ‘*amenity and good order of the locality*’ is defined in s. 5 of the Act, the interpretation section, as follows:

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

[653] Helpfully, the Act also sets out a range of considerations at s. 106, to aid in evaluating the *amenity and good order in a locality* consideration. We have included that section of the Act in the statutory criteria section above. We will further discuss s. 106 as we continue this discussion below.

[654] The Licensing Committee must form an opinion as to whether the amenity and good order of the locality would likely be reduced by more than a minor extent by the grant of the licence. There is no obligation on the applicant to establish this criterion.

[655] The Licensing Committee has applied the interpretation of ‘likely’ to mean more than a mere possibility, but not so high as to be expressed as a real and substantial risk that the considered consequence would happen.

[656] The assessment of whether any impact on the locality would likely be ‘more than minor’ must involve an assessment, taking into consideration the receiving environment. For example, where the premises were to be located in a busy inner-city area, the factors to be balanced may be different to a quiet rural area.

[657] This is a case of a historical country pub, located in the Leithfield village and under new management. The Old Leithfield Hotel has been serving the community for the past 112 years. It is the only commercial premises in the locality. The other amenities and sensitive sites include a church, community centre, community library and the Leithfield Primary School. The Kowai River Track runs parallel with the hotel and is used frequently for recreation including 4WD quad bikes and horse riders.

[658] Many parties talked of the high amenity and pleasantness of the Leithfield village and the importance of The Old Leithfield Hotel in the heritage of the village.

[659] An objector described the Leithfield village as a residential area with very few commercial operations and explained that the tranquillity and quietness of the area is valued by all those that live in the area.

[660] The fact of this existing level of amenity values, being pleasant and agreeable, is no accident. It is a result of ongoing work from the residents of Leithfield, creating it to be a village that they enjoy living in.

[661] Most of the public objectors acknowledged that they enjoy and frequent The Old Leithfield Hotel, under the previous and new owners, including:

- Ms Clapham stated, "I enjoy living next to the hotel." Mr and Mrs Clapham, Ms Clapham, Mr Leen and Miss Leen sometimes have family meals there.
- Ms Henry stated, "I enjoyed sitting outside in her garden, listening to the music on Sunday afternoons, with the previous licensees."
- Ms Creagh stated, "personally, I think live music is great and would welcome more of it, up to 11.00pm on the weekends."

[662] Mr Clapham spoke of the unruly behaviour, drunk patrons arriving and leaving the premises at all hours, the issues with bottles, cans, and broken glass in the area which the residents accept that come with living near the hotel.

[663] Ms Clapham expanded on her comment and talked about the concept of "a baseline that is the odd event, the odd band that we put up with, and the odd bit of trouble that comes with living next to The Old Leithfield Hotel." She continued, "*It is the change to the baseline that is my main concern.*"

[664] Ms Clapham said, "Most of the problems relate to things that I am not sure that the applicant can control directly. They are things that correspond with the late-night events and the things that go along with the people that come along to them late at night."

[665] This concern about change to the baseline was shared amongst many of the objectors, and the changes to the types of events held, the types of patrons these events attract, and the problems associated with these patrons.

[666] We recognise the shared concerns from the reporting agencies and the public objectors about the days and hours of operation, and level of nuisance from the late-night events, whether it be people/patron noise, live music, traffic and vehicle noises, or disorderly behaviour of patrons coming to and leaving the premises.

[667] Maintaining the *culture and tone* of the local community is an important aspect of this case. The Licensing Committee recognise that we can have some control over the culture and tone, as it ties back to the amenity and good order values of the Leithfield village for residents.

[668] Mr McLennan acknowledged in his evidence, that in the early days of taking over the pub it was a learning curve for him, as running a country pub is vastly different from the types of environments that he has previously worked in. He continued, in hindsight, he

should have taken more time to bed in with the local existing customers before trying to expand his customer base.

[669] During evidence, Mr Leen provided evidence of the hotel being lit up and activity around the hotel after 2.00am on two occasions. When examined, Mr McLennan stated that staff clean-up the premises after closing and he is often outside cleaning up and letting his dogs run around, as the hotel is also his private residence. The Licensing Committee accept this reasoning however consider it is important to manage the perception to the residents that the premises is not operating outside of trading hours.

[670] Similarly, during the amenity and good order monitoring on 19 May 2023, Senior Constable Craddock recorded that, "Bottles were emptied into a skip bin at 11.15pm." The Licensing Committee questions the appropriateness of this activity and considers that clean-up should be completed in a manner that is respectful to the neighbours and upholds the culture and tone that are compatible with the amenity values.

[671] In the closing submissions from the applicant's counsel, the applicant offered a range of conditions and undertakings in relation to the hours, restrictions on music events, management of the premises and litter collection. We recognise that the proposal (exhibit EXH CHE02) was submitted by the applicant as a discussion document and the applicant is prepared to accept whatever hours and conditions that are determined appropriate by the Licensing Committee.

[672] We have considered this proposal for reducing trading hours and music restrictions and weighed it against the objectors concerns and the agencies opposition. In doing so, we have formed the opinion that the proposal is accepted with modifications to the latest closing time licensed hours and the finishing time for live band and DJ music.

[673] We have evaluated the Police and Licensing Inspector's opinion that reducing the hours will not change the underlying issue, and in doing so, it is the Licensing Committee's view that by reducing the trading hours and imposing conditions on the number of late-night events, among other imposed conditions for management plans, the impact on the amenity and good order will be minimised (i.e., minimise patron noise and vehicle movements late at night).

[674] In addition, Mr McLennan gave an undertaking to explore additional ways to mitigate noise effects for the community and neighbours. Some examples given during evidence were the leather panelling on walls, distribution of music through the sounds board, and using buffering materials when the fence is replaced. In voluntarily offering these conditions and undertakings, the applicants are demonstrating that they are responsible neighbours.

[675] It has for some time now, been accepted that excessive noise is not simply a resource management issue, but also is a factor that needs to be considered by the District Licensing Committee (re Paihia Saltwater (2001) Limited NZLLA PH 391/2001).

"Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes the view that if no attempt is made to prevent the escape of, or reduce noise, then it is the Authority's duty to monitor the hours of opening, if not the existence of the licence.

... We will always give full credit to those holders who acknowledge any existing noise problem and try to do something about it. In our view the term "host responsibility" does not exclude the people who live nearby.

Many licensed premises have shown that they can operate in harmony with their residential neighbours. It is no coincidence that the managers and owners of such premises also show a commitment to the reduction of liquor abuse. ..."

[676] It is the Licensing Committee's view that the applicant has demonstrated that they acknowledge the concerns of the public objectors and that they have taken steps to alleviate the problem. We heard during evidence that the applicant door-knocked and delivered letters inviting all the neighbouring properties to a meeting to discuss the application. Mr McLennan and Ms Shailer have engaged an acoustic engineer to develop a noise management plan for the premises, education on noise and the propagation of sound is being given to staff by the acoustic engineer, outdoor speakers have been faced downwards, the bass on the sound system has been limited or capped, and alternative entertainment concepts are being considered (*other than live music*).

[677] The applicant spoke many times during the hearing about the "*lessons learned*" from each event and the adjustments or improvements being made to understand the culture and tone expected from the local community.

[678] We have evaluated the reporting agencies observation that nothing has changed. We respectfully disagree that there has been no improvement, as the public objectors have acknowledged that the premises have been much quieter recently, and we are not aware of any noise complaints since 7 April 2023. Mr and Mrs McKenzie stated that the situation has improved when they withdrew their objection. We consider that there is evidence of positive changes by the applicant to improve their operations and respect their neighbours. However, we accept that the positive changes have appeared later in the piece and have not been fully adopted and implemented, which is disappointing.

[679] This is not the end of the story as far as we see it. We emphasise that the applicant is only at the beginning of this journey and there is the expectation that they continue to implement, refine, and improve procedures and the management of the premises to uphold the amenity values of the Leithfield community.

[680] The Licensing Committee views there is a genuine intent for the applicant to implement mitigation measures to consider the locality and residents. Mr McLennan gave an undertaking to this Licensing Committee and residents to continue to explore ways to prevent the escape of or reduce noise. We hold the applicants to account to this task.

[681] The requirement for a decision maker to form an opinion about the effect of the issue of the licence on the amenity and good order of the locality requires a decision maker to reach a conclusion on that matter when it is fundamental or critical to the application before or when undertaking its overall evaluation of the matters in s. 105(1)(h) against the risk of alcohol-related harm arising from the issue of the licence. In doing so, the decision maker is able to ensure that they have correctly understood the matter.

[682] We have formed the opinion that, in reducing the licensed hours and restricting the number of special events and provisions for litter clean-up, that the amenity and good order will not be reduced, to more than a minor extent, by the issue of the licence, and the culture and tone baseline of the Leithfield village will be maintained.

[683] Having evaluated and balanced the concerns of objectors and residents and the reporting agencies against the application, the Licensing Committee impose the following conditions under s. 117 of the Act:

- *For outdoor licensed areas, the following restrictions apply:*
 - (i) *live band and live DJ music is permitted only on Saturday or Sunday;*
and
 - (ii) *live and recorded music must cease by **7.00pm daily**.*

- *For indoor licensed areas, live band music or live DJ is permitted on Friday or Saturday and such music must cease at **11.00pm**, apart from the four (4) occasions described in subpart (i) of this condition, and subject to subparts (ii) and (iii) of this condition,:*
 - (i) *Four (4) dates per calendar year, subject to:*
 - (ii) *Notification in writing to the Licensing Inspector and all neighbouring residences within 100m radius of the premises at least 14 days before the 4 dates; and subject to:*
 - (iii) *Such live band or live DJ music ceasing no later than **12.00am midnight**.*

- *The licensee must ensure that the area within 100m radius of the premises is checked and cleared of litter daily. The date, time and type of litter collected must be recorded in the Incident Book.*

[684] We repeat this for emphasis. The Licensing Committee have heard evidence throughout the two days of the hearing, and we have analysed and weighed up the arguments from the reporting agencies, and therefore in granting the licence, the expectation is that the applicant must adhere to the conditions of the on-licence. Failing to do so, the Licensing Committee will exercise our powers under s. 201(4), at any time, to rehear the matter or matters that have been determined.

S. 105(1)(j) Appropriate staff, systems, and training to comply with the law

[685] The application listed three certified managers for the premises; Che McLennan, Sara McMillan and Roman Boiten.

[686] We acknowledge that during evidence, Mr McLennan told us that since lodging the application, there have been numerous manager changes, as follows:

- (a) Roman Boiten was terminated as a manager on 4 February 2023 (received 28 February 2023);
- (b) Holly Hall was appointed as a certificate holding manager, effective from 17 February 2023 (received 28 February 2023);

- (c) Janet Hunt was appointed as a new certificate holding manager, effective from 28 November 2022 (received 28 February 2023);
- (d) Kim Shailer was appointed as an acting manager on 26 February 2023 as Mr McLennan had an injury at the time (received 28 February 2023);
- (e) Kim Shailer was appointed as a temporary manager on 22 May 2023 (received 23 May 2023);
- (f) Megan Neate is employed at the premises on a casual basis. The Licensing Committee do not have a s. 131 notice of management change form for Megan Neate on file.

[687] The current staffing includes five certificate holding managers: Che McLennan, Sara McMillan and Holly Hall, with Megan Neate and Janet Hunt as casual employees. Kim Shailer is a temporary manager for the premises. The Licensing Committee do not have any concerns about the staffing levels at the premises and acknowledge Ms Shailer's comment that additional staff will be needed to cope with the busy summer period.

[688] The Licensing Committee note that some staff training records have been completed but not all training has been recorded.

[689] The uncertainty of the completion date of the Servewise Training has been recorded in the suitability of the application criterion, where we have given the applicant the opportunity to provide the correct training certificates within a three-month window.

[690] We heard during evidence that the applicant has engaged an accountant to handle the business from a legal accounting perspective, and ongoing training is being provided by the accountant with the intention of the applicant taking over some of the accounting requirements in the future. This gives us confidence that the applicant is meeting their business administration requirements.

[691] During evidence, we heard that the applicant was reluctant to consider an earlier closing time than proposed due to the time it takes to get everybody home in their 7-seater courtesy vehicle. On weighting this evidence, we do not agree that it is acceptable reasoning to have extended trading hours. We consider the applicant must explore other alternative transport options as it is evident that a single courtesy vehicle alone is not sufficient for a country hotel. The Licensing Inspector's evidence offered alternative options for the applicant to consider, including sober drive incentives and educating patrons, or even an additional courtesy vehicle. These measures must be incorporated into the host responsibility policy and alcohol management plan.

[692] During evidence, we heard that the applicant had two previous attempts at a noise management plan before the current noise management plan was prepared by Acoustic Engineering Services. Likewise, the applicant poorly attempted an alcohol management plan before engaging with Hospitality New Zealand to assist in the development of a plan. Ms Morrison acknowledged that some improvement had been made to the plans.

[693] In the closing submissions, the applicant's counsel indicated that the applicant would adopt and comply with the noise management plan submitted in their evidence. The Licensing Committee views this as a positive step forward for the applicant and emphasises that the noise management plan is a living document, which is to be reviewed and refreshed as part of the monthly staff training sessions, and as needed.

- [694] Ms Shailer, during cross-examination, identified herself as the Noise Liaison Officer for the noise management plan. By her own admission, Ms Shailer said she is still getting her head around the plan. The Licensing Committee views that ongoing professional training is provided for Ms Shailer, to ensure the noise management plan is appropriately adopted, implemented, and monitored for compliance.
- [695] Turning now to the alcohol management plan, the applicant has submitted several versions of an alcohol management plan to the Licensing Inspector during her inquiries into the application. The most recent version on record was disclosed as exhibit EXH DM09. Ms Morrison acknowledged no approval has been given, however there has been some improvement made.
- [696] The Licensing Committee expects that ***a final alcohol management plan is submitted, subject to the satisfaction of the Licensing Inspector, within three months of the date of this decision.*** Accordingly, we have imposed a condition on the licence to this effect. The final alcohol management plan must be fully adopted, implemented and staff training completed.
- [697] We have heard about the lacklustre approach to implementing systems and training, however as a minimum expectation, the Licensing Committee considers that monthly staff training is completed and documented for self-review and for system improvement. The host responsibility policy, alcohol management plan, noise management plan and the incident book are inclusive to the training regime.
- [698] The Licensing Inspector quite rightly raised concerns about the use of the incident book and pointed out that the applicant has been operating the premises since November 2022 however the first record appears in August 2023. It is the Licensing Committee's view that the perception and use of the incident book by the applicant and duty managers should be shifted towards a daily record-keeping tool. This would provide a record to recognise when good systems are undertaken and to capture any challenges that have occurred and how they are mitigated. The daily record-keeping book would assist in staff training and ongoing improvement to the management of the premises.
- [699] From the lessons learned following the Hoedown/Ashley Pig Hunt event, the applicant has offered a condition for a one-way door policy on the premises. We have evaluated this proposal and consider that a condition under s. 111 of the Act is imposed to the effect that a one-way door policy is in force from 11.00pm on Fridays and Saturdays and on the four (4) special event occasions.
- [700] The Licensing Committee have heard the intent of the applicant to ensure that staff, systems, and training, inclusive of noise management plan, alcohol management plan, host responsibility policy and incident book, we consider that they will uphold the high expectations and standards of this Licensing Committee.
- [701] Having evaluated and balanced the evidence we have before us, we consider that it is the applicant's role to put these systems in place and formally adopt them into practice, with the continued support from industry professionals including Hospitality New Zealand.

[702] The Licensing Committee impose the following conditions under s. 117 of the Act:

- *The licensee must enforce a one-way door policy from 11.00pm on Friday, Saturday and on the four (4) special event nights.*
- *The licensee must fully adopt, implement, and complete ongoing staff training for the Noise Management Plan, written by Acoustic Engineering Services, dated 11 September 2023, subject to the amendment of the bullet point 5 of clause 4.2 to read 10.00pm.*
- *The licensee must submit a final alcohol management plan, subject to the satisfaction of the Licensing Inspector, within three months from the date of this decision.*
- *The license must fully adopt, implement and complete ongoing staff training for the alcohol management plan.*

S. 105(1)(k) Any matters dealt with in any report from the reporting agencies

[703] The Licensing Committee consider that there are three main issues, other than noise from music, patrons, and vehicles, that were raised in evidence by the Police and Licensing Inspector. The events are the two intoxicated patrons found outside of the premises; the assault and the Hoedown/Ashley Pig Hunt.

[704] In considering the evidence from Police and the applicant about the intoxicated patrons, we are of the mind that there is uncertainty about the quantity of alcohol served to the female patron and what activities were carried out when the couple left the premises. We have applied the appropriate weighting when evaluating this evidence and consider that the applicant must ensure that there are appropriate systems and training in place and the provisions of the Act, in relation to intoxicated persons, are observed.

[705] In terms of the assault, Police produced CCTV footage of the incident, and a statement and medical certificate from the victim to support their concerns. The Licensing Committee share the concerns raised by Police and the Licensing Inspector about the hesitance to call emergency services for assistance before or after the incident. During cross-examination, Mr McLennan's stated that the victim insisted that he did not require medical attention and was taken home by his girlfriend. We heard that both Mr McLennan and Ms Shailer spoke with the victim and his girlfriend and tried to get him to hospital or an ambulance, to no avail.

[706] We consider that a responsible host has a duty of care to ensure that appropriate decisions and actions are completed in response to an incident at their premises. The Licensing Committee views that the ability for a victim to make coherent decisions after this type of incident can be significantly impaired, and it should not be assumed that responsibility of the host is devolved if help is refused. We further expect that the Police are notified of any incidents of this nature at the time of the incident so their resources are available should the incident escalate or change. This should be standard practice for any licensee. We have taken on board the comment that a situation can change rapidly, however we consider a more proactive approach is needed and support from emergency services is sought.

[707] Having heard from the applicant and Licensing Inspector about the issues associated with the Hoedown event, we have formed the opinion that this was an isolated incident, and one in which the applicant was unable to control. We support the Licensing Inspector's view that more pre-event planning and consideration was needed, and potential risks and mitigation measures could have been identified. During evidence, Mr McLennan and Ms Shailer have identified there were many lessons learned from that event. For subsequent events, security was placed on the door and roaming the premises, more staff are rostered on, the building capacity is counted, and the applicant is more aware of local events. We expect that provisions are made for any events going forward and included within the alcohol management plan when assessing potential risks.

[708] The Licensing Committee consider the following extract from the Two Brothers Wholesale Limited [2021] NZARLA 32 is relevant:

"[99] As we said in Patels Superette 200 Limited v Muir, while there is no onus of proof in an applicant, it is for an applicant to put its best foot forward if it expects a DLC to favour the application over significant opposition which is itself supported by evidence."

[709] The Licensing Committee acknowledge there were a number of other matters that were raised by the reporting agencies, which will be summarised next.

[710] We noted that the status of the fire evacuation scheme for the premises was debated by the applicant and Licensing Inspector during the hearing. We heard from Mr McLennan that he made an application for a new fire evacuation scheme early on. He contacted Fire and Emergency New Zealand (FENZ) when he hadn't heard back and advised that they have experienced technical difficulties with their new software. Mr McLennan submitted a further application. The Licensing Committee have now received confirmation from FENZ advising that an application has been received and is being processed, they have no issues.

[711] The Licensing Inspector and Police raised concerns about the weak and incomplete application. We accept these concerns and acknowledge that the applicant was naïve to the alcohol licensing process. We reiterate our expectation that, for a high-performing premises to meet the object of the Act, there is a need for an improved respectful relationship and communication with the reporting agencies, particularly the Police and Licensing Inspector.

[712] The Licensing Inspector and Police produced a warning letter to the applicant for breaching s. 237 of the Act for the irresponsible promotion of alcohol. The Licensing Committee accept this evidence and make clear that the applicant must ensure no further transgressions occur.

[713] The Police and Licensing Inspector raised concerns about the changing nature of the premises and attracting younger clientele through the drum and bass events and different promotions. The Licensing Committee recognise that this concern was raised by some of the public objectors, and they noted the behaviour associated with patrons at late-night events. The Police produced evidence from The Old Leithfield Hotel

Facebook page to show the younger clientele at one of their events. During evidence, Mr McLennan stated that they are wanting to include the whole community at the venue and have events for all age groups. We accept Mr McLennan's intention to move away from drum and bass type events and focus on other events that are compatible with the local community. The Licensing Committee have formed the view that changes are inevitable when a business changes hands, however we are anticipating the concerns will be addressed through the imposition of conditions to reduce trading hours and the restriction on the number of special events.

S. 105(1)(a) Object of the Act

[714] The object of the Act is to reduce alcohol-related harm. Harm is defined broadly in the Act, as we have stated statutory criteria section above.

[715] Having considered the criterion in s. 105(1)(b) to (k) of the Act, we turn our mind to whether the issue of the licence would be consistent with the object of the Act. We are aware that the object of the Act has two parts; sale, supply and consumption of alcohol should be undertaken safely and responsibly, and alcohol-related harm should be minimised.

[716] In meeting the object of the Act, the applicant's counsel offered a range of conditions for discussion, and undertakings to ensure the success of the application and compliance with the Act.

[717] In reference to the Sogi Trading Limited, the Licensing Committee have considered the intent of that case law but on evaluation, we consider that the applicant will meet the object of the Act with the conditions for licensed hours, restricting the number of music events, adoption and implementation of an alcohol management plan and noise management plan, litter collection and a one-way door policy.

[718] All but one objector stated that they have no objection to the application, other than the hours of opening to 2.00am and the noise associated from the late-night events (patron noise, vehicle noise and music).

[719] It is our view, having stepped back and weighed all of the evidence that we have before us, that on balance, it's the Licensing Committee's view that there is confidence, with conditions and undertakings in place in relation to the amenity and good order, operating hours and staff, systems and training, the applicant will undertake the safe and responsible sale and supply of alcohol on this premises and ensure the object of the Act is met. The applicant has relevant industry experience and has demonstrated an intention to learn and develop, this gives us greater confidence that the object of the Act will be met.

[720] Granting the applicant an on-licence, in our opinion, would not result in a level of alcohol-related harm, whether direct or indirect, that would go beyond that level viewed as tolerable within this locality and the statutory scheme, and would not be contrary to, and inconsistent with, the object of the Act set out in section 4.

Manager's Certificate application:

S. 222(a) Suitability of the applicant

- [721] We heard during evidence that Ms Shailer has a hands-on role in the management and operation of the business. Ms Shailer admitted that being new to the industry and considers it to be important to get to know the clientele and recognise signs of intoxication.
- [722] Ms Shailer gave several examples during cross-examination of times where she has needed to intervene as a duty manager and apply the appropriate host responsibility tools, including offering water, checking identification, cutting patrons off and offering a ride home.
- [723] In the Police report, Senior Constable Craddock stated, "At the time of some of the issues and incidents Kim Shailer was present working as a staff member or as a manager on duty."
- [724] The three incidents in question are the Ashley Pig Hunt/Hoedown event, intoxicated patrons, and the assault.
- [725] On the night of the assault, Ms Shailer had finished work and was outside in the smoking area when the incident occurred. When questioned, Ms Shailer said because she wasn't working as the duty manager at the time of the event, she stood back and let Sara and Che handle it.
- [726] Ms Shailer stated that she walked the victim and his girlfriend out to his car and suggested that he goes to hospital. We heard during evidence that at no time during or after the assault that emergency services were called.
- [727] Ms Shailer admitted that she could have contacted the Police and should have done things differently. She said, "At the time, I was not aware that the victim had been unconscious."
- [728] It is the Licensing Committee's view that host responsibility involves an underlying a duty of care for the patrons and clientele at a licensed premises. It is our upmost expectation that the emergency services that are available in this community must be utilised, *at all times*, to ensure public safety.
- [729] The Licensing Committee further expects that a manager utilises the support services and guidance that are available to them, including the Licensing Inspector, Police, and industry experts. It is an expectation from the Licensing Committee, that these services are utilised to ensure that you provide the best outcome for your customers, and to support you to meet your duties and responsibilities under the Act.
- [730] On the night of the Ashley Pig Hunt/Hoedown event, we heard that Ms Shailer was working. Her duties included cleaning up and stocking fridges. Ms Shailer's recalled that, "It was very busy that night, they were not expecting those numbers to a country night. Despite not being the duty manager, Ms Shailer recognised that, "There are a lot of lessons learnt from that night."

[731] The Authority has indicated the role that managers of licensed premises play in ensuring that the object of the Act is met, should not be underestimated.

[732] The Authority, in DeeJay Enterprises Decision [Re Millward LLA PH531/97, PH532/97], discussed the “guiding hand” or “hands on” principle in relation to suitability of an operator of a company or the potential holder of a manager’s certificate. The Authority said:

“The “guiding hand” or the “hands on operator” of a company, or the potential holder of a general manager’s certificate, now receive greater scrutiny from both the police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently take different directions.

The Police cannot be everywhere. Little but a licensee’s or manager’s character and suitability may stand in between upholding the law and turning a blind eye. Self-imposed standards in accordance with the law must be set by licensees and holders of General Manager’s Certificates who control and manage licensed premises.”

[733] We accept that Ms Shailer is still learning the role of a duty manager and licensee, and she will continue to learn on the job with the guidance and supervision from other staff.

[734] The Licensing Committee understands that Ms Shailer has continued to learn the role and responsibilities of a duty manager and at the time of release of this decision has met the convention of having six months recent experience in the industry.

[735] We have formed the opinion that Ms Shailer’s character, life experiences and her willingness to continually improve, give confidence to the Licensing Committee that she will carry out the responsibilities that go with the holding of a manager’s certificate. We consider that Ms Shailer is suitable to hold a manager’s certificate.

S. 222(b) Convictions recorded against the applicant

[736] From the application form, Ms Shailer has not been convicted of any offences. We also note that the Police have not raised any matters in opposition on this ground.

S. 222(c) Recent and relevant experience

[737] Ms Shailer has been working in the industry since taking over the management of The Old Leithfield Hotel in November 2022. Ms Shailer previously owned and operated a painting and decorating business, based in Kaiapoi.

[738] Ms Shailer was appointed as an acting manager on 26 February 2023, and a temporary manager from 22 May 2023.

[739] Ms Shailer confirmed in her evidence that she has been working as a duty manager on the following shifts:

- Monday from 9.00am to 2.00pm.
- Saturday from opening to 1.00pm.

[740] Based on the evidence heard, the Licensing Committee are satisfied that Ms Shailer has demonstrated appropriate experience in the industry. It is generally accepted in case law that a minimum period of six months experience in the industry is necessary.

S. 222(d) Recent and relevant training

[741] Ms Shailer completed her Licence Controller Qualification on 27 January 2023, through ServiceIQ.

[742] The staff training record (EXH CHE07) shows that Ms Shailer has completed additional internal and external training, including Servewise training, bar skills and service expectations, intoxication assessment tool, noise management plan/alcohol management plan training, and fire and emergency training. The Servewise Certificate of Achievement was supplied after the hearing and confirms the completion date was 22 November 2022.

[743] In the Licensing Inspector's closing submission, Ms Morrison's view is that Ms Shailer has not demonstrated the skills and the knowledge required to a manager and was unable to differentiate between influenced and intoxicated when explaining the SCAB intoxication tool.

[744] While giving evidence, we consider that Ms Shailer demonstrated a good level of knowledge of host responsibility tools and recognising the signs of intoxication and provided examples of applying them.

[745] Under cross-examination, Ms Shailer recalled that there have been a few times that she has observed someone with signs of intoxication, where she has gone up to them and spoken with them and said they need to start drinking water otherwise they are going to have to leave. Ms Shailer said her approach seems to be working well as they listen to her.

[746] Ms Shailer gave another example about a man in a group that was influenced and close to intoxication. She told the group that the man had to sit there, and she was going to get him water, if he moves or they give him a drink, she told them that they would all be asked to leave. Ms Shailer said unfortunately on this occasion, the group must have been sneaking him some drinks. She saw the man's head down on the table looking like he was going to sleep, so she got the courtesy van organised and took him home.

[747] These examples give the Licensing Committee the confidence that Ms Shailer has the appropriate life experience, skills, and knowledge of the Act to be a manager.

S. 222(e) Any matters dealt with in any report from the reporting agencies

[748] In their report dated 2 February 2022, New Zealand Police opposed the application on the basis that:

"The applicant Kim Shailer is one of two directors for Cheiler Limited t/a The Old Leithfield Hotel.

Police have opposed the new on licence application for Cheiler Limited and provided a supplementary report due to ongoing concerns at the premises including intoxication and noise.

Police evidence is that some of the issues and incidents Kim Shailer was present working as a staff member or as a manager on duty.

Police oppose the application for new Manager's Certificate."

[749] We heard during evidence that Ms Shailer was working during the Hoedown event, and while not working, was on the premises at the time of the assault. The Licensing Committee accept that Ms Shailer's role during these incidents was more of a support role to the duty manager, and an opportunity for Ms Shailer to reflect on the lessons learned.

CONCLUSION

[750] The Licensing Committee have heard evidence throughout the two days of the hearing, and we have analysed and weighed up the arguments from the reporting agencies, and therefore in granting, the expectation is that the applicant must adhere to the conditions of the on-licence. Failing to do so, the Licensing Committee will exercise our powers under s. 201(4), at any time, to rehear the matter or matters that have been determined.

[751] The Hurunui District Licensing Committee, pursuant to s. 105 of the Sale and Supply of Alcohol Act 2012, grants the application by Cheiler Limited, for a new on-licence, in respect of the premises situated at 11 Old Main North Road, Leithfield, and known as The Old Leithfield Hotel, subject to the following conditions:

- (a) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1.00pm on ANZAC Day to any person who is not present on the premises to dine.
- (b) Alcohol may be sold only on the following days and during the following hours:
Indoor licensed areas:
Sunday to Thursday from 9.00am to 11.00pm; and
Friday and Saturday from 9.00am to 12.00am midnight.
Outdoor licensed areas:
Monday to Sunday from 9.00am to 10.00pm.
- (c) On the four (4) special occasions described in condition (e) of this on-licence, the licensed hours for **indoor licensed areas** permitted as follows:
*From 9.00am to **1.00am the following day.***
- (d) For outdoor licensed areas, the following restrictions apply:
 - (iii) live and recorded music must cease by **7.00pm daily.**
 - (iv) live band and live DJ music is permitted on Saturdays or Sundays only.

- (e) For indoor licensed areas, live band music or live DJ music must cease at **11.00pm**, apart from the four (4) occasions described in subpart (i) of this condition, and subject to subparts (ii) and (iii) of this condition,:
- (iv) Four (4) dates per calendar year, subject to
 - (v) Notification in writing to the Licensing Inspector and all neighbouring residences within 100m radius of the premises at least 14 days before the 4 dates; and subject to:
 - (vi) Such live band or live DJ music ceasing no later than **12.00am midnight**.
- (f) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
- (ii) The licensee must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (g) The following parts of the premises is designated as a **supervised area**: Main Bar and the Smokers Area.
- (h) The following parts of the premises is designated as a **restricted area**: Gaming Room.
- (i) The area delineated on the attached plan, date stamped as received by the Hurunui District Licensing Committee on [date to be confirmed when updated floor plan is submitted], is a permitted area for the sale, supply, and consumption of alcohol.
- (j) The licensee must enforce a **one-way door policy** from 11.00pm on Friday, Saturday and on the four (4) special event nights.
- (k) The licensee must fully adopt, implement, and complete ongoing staff training for the **Noise Management Plan**, written by Acoustic Engineering Services, dated 11 September 2023, subject to the amendment of the bullet point 5 of clause 4.2 to read 10.00pm.
- (l) The licensee must submit a final alcohol management plan, subject to the satisfaction of the Licensing Inspector, within three months from date of the decision.
- (m) The license must fully adopt, implement and complete ongoing staff training for the final **alcohol management plan**.
- (n) The licensee must ensure that the area within 100m radius of the premises is checked and cleared of litter daily. The date, time and type of litter collected must be recorded in the Incident Book.
- (o) Drinking water must be freely available on the bar and tables to customers while the premises are open for business.

[752] The Hurunui District Licensing Committee, pursuant to s. 222 of the Sale and Supply of Alcohol Act 2012, grants the application by Kim Ruth Shailer for a Manager's Certificate.

[753] In accordance with s. 152 of the Act, the decision of the Licensing Committee has no effect during the period allowed for filing an appeal against the decision, and if an appeal is filed, also has no effect while the appeal is pending. The appeal procedure is set out in ss. 154 and 158 of the Act.

[754] ***We are conscious of the conditions of the base on-licence and what is permitted by the applicant while trading under a temporary authority order for the premises. In closing submissions and again in the right of reply, the applicant stated that they are prepared to accept the conditions that the Licensing Committee determines appropriate. On that basis, we consider that it is in the applicant's best interest to take into account the preliminary conditions over the summer period and their trading is modified to fit with the community's values.***

DATED at Amberley this 19th day of December 2023

Mani H. Black.

Deputy Chairperson
Hurunui District Licensing Committee

