DECISION

ON LICENCE

Decision No. [2019] WDLC 033

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

AND

IN THE MATTER of an application for a new ON licence by **Holco Holdings Limited**, in respect of the premises situated at 37 High Street, Rangiora, known as Mainstreet Sports Bar.

BEFORE THE WAIMAKARIRI DISTRICT LICENSING COMMITTEE

Chairperson: Neville Atkinson
Members: Jim Gerard
Paul Williams

HEARING at Rangiora on 30 November 2018 and 1 February 2019

APPEARANCES

Peter Egden – Representing Holco Holdings Ltd – For the applicant.
Raj Deo – Waimakariri District Council Alcohol Licensing Inspector – in opposition
Constable Genevieve Craddock – NZ Police – in opposition
Helen Barbour – for the Medical Officer of Health (MOH)– in opposition

Introduction

1. Before the Waimakariri District Licensing Committee (DLC) is an application by Holco Holdings Limited, for the granting of a new on-licence pursuant to Sections 99 and 100 of the Sale and Supply of Alcohol Act 2012, in respect of premises situated at 37 High Street, Rangiora. The premises is currently trading by means of a temporary authority pursuant to licence number 058/ON/00017/2017 issued by this committee. The applicant, Holco Holdings Ltd is a private company, incorporated under the Companies Act 1993 on 16 June 2008. Gaynor Margaret Holland is the sole director and shareholder of the company.

2. Ms Holland's partner, Paul Ringland, is not a director nor a shareholder of the company however has a manager's certificate and works at the Mainstreet Sports Bar.

3. Following opposition from all three of the reporting agencies the hearing commenced on 30 November 2018. The hearing was adjourned part heard after it was discovered emails between the Council and a potential witness had not been disclosed to all parties. A Minute went out to all parties from the DLC seeking submissions from the parties in respect to a proposal of calling

further evidence when the hearing recommenced on 1 February 2019. That matter was dealt with at the commencement of the second day's hearing.

Reporting Agencies

4. Police, Medical Officer of Health and the Licensing Inspector all opposed the application. This is the first time the Committee has faced a unanimous opposition for a new licence application. As the Committee discussed with Mr Egden during his cross examination of Mr Deo, the Inspector, collaboration between the agencies is a feature of the 2012 Act in s.295. The Committee was not surprised to hear evidence of information sharing amongst the agencies nor to hear evidence of meetings between the agencies and the applicant, one of which apparently had the applicant's lawyer present. The initial concerns from the agencies related to several incidents that had taken place in or near the premises since the applicant had taken over management. The rest of the concerns related to insufficient systems and training and the lack of response from Ms Gaynor Holland when repeatedly asked for records and evidence around this.

5. Constable Genevieve Craddock represented Police. In addition to the Controlled Purchase Operation (CPO) failure at the applicant's previous licensed premise in Edgeware, Police also had concerns relating to incidents at the Mainstreet Sports Bar, since Ms Holland had taken over management:

   (a) **18 May 2018** Police located a 21yr old male in close proximity to the Mainstreet Sports Bar vomiting. He said he was waiting for his girlfriend to arrive. He told Police he had had two jugs of beer and a jager bomb at the Mainstreet Sports Bar. Police did not approach management regarding this incident until 17 June 2018.

   (b) On **8 June 2018** a woman had been drinking during the day at Mainstreet Sports Bar, playing on the gaming machines. She later left the premises and drove off to pick up her children from school. She crashed on her way and Police attended the crash. Breath test procedures were carried out and the driver blew 1229 micrograms of alcohol per litre of breath, almost 5 times the legal limit. The driver admitted to police she had been drinking and playing on the gaming machines at Mainstreet Sports Bar. Police did not raise this incident with management for nearly a month.

   (c) On **28 July 2018** a member of the public observed a man and woman stumbling out of the Mainstreet Sports Bar. The couple were seen to drive their car to the New World carpark. The member of the public called police and Police stopped the vehicle a short distance away as it left the New World carpark. The driver blew 914 micrograms of alcohol per litre of breath. Police did not ask the driver where the couple had been drinking. Police did not advise management of this incident until 6 weeks later.

   (d) On **15 September 2018** Police conducted a hotel visit at Mainstreet Sports Bar. It was close to closing time. A woman knocked over a stool as she got off her seat. The woman then proceeded to start wheeling out a large male in a wheelchair. Police did not speak with the woman, only commenting to the duty manager that she was intoxicated. The woman left the bar with the male and got into the shuttle van. The Police were of the view

that the woman looked drunk as she was staring straight ahead and was balancing as she pushed the wheelchair.

6. Mrs Helen Barbour represented the Medical Officer of Health. Mrs Barbour opposed the application. The incidents described by Police were one concern, so too was the lack of response from Ms Holland (on behalf of the applicant) to numerous requests for information regarding the applicant's systems, training and staff.

7. The licensing inspector, Mr Raj Deo, opposed on the same grounds. The inspector's report stated the applicant failed to demonstrate appropriate systems, staff and training to comply with the Act.

The Application

8. Counsel for the Applicant, Mr Peter Egden, called three witnesses. They were Ms Gaynor Holland, Gaynor's partner Paul Ringland, and a patron, Melanie Johnson, who had been involved in the incident on 15 September 2018 where she was pushing a patron in a wheelchair out of the premises. Before calling the witnesses, Mr Egden filed an opening submission referring the Committee to the lack of evidence in relation to the incidents that Police had described. He referred the committee to **Dalziell-Kernohan v Young [2016] NZARLA 227 (15 June 2016),** specifically that the onus of proof is on Police to prove specific allegations, and given the consequences of a finding of unsuitability could be severe, that the standard of proof on Police was very much akin to the standard in a criminal prosecution.

9. Mr Egden, in his opening submissions, also told us that the applicant accepted there was an onus on the applicant to establish suitability. He submitted that where suitability is challenged by the Police or the other reporting agencies, the onus was on them to establish unsuitability on the balance of probabilities.

10. We have read the **Dalzeill-Kernohan** decision of the Authority. We do not agree with Mr Egden's submission about it. In paragraph [39] the Authority referred to another case in the Supreme Court – **Z** v **Dental Complaints Assessment Committee** [2009] 1NZLR1. The Authority held that the case *"established that the standard of proof is at the higher end of that standard"* referring to the balance of probabilities, not the standard in criminal prosecutions, which we believe is beyond a reasonable doubt. We note that this is a licensing application not an enforcement application. During the hearing, we were also referred to another case of the Authority **Lyger Investments Ltd** [2018] NZARLA 299. That case helpfully set out what our task is – it is evaluative – see paragraphs [86]-[89]. We are also aware of a recent High Court decision which said in applications such as this *"notions of standard of proof and onus of proof have little or no relevance and application to the inquisitorial evaluative decision-making process under this Act when a DLC is considering whether or not to grant a new off-licence".* **Lower Hutt Liquormart Ltd** v **Shady Lady Lighting Ltd** [2018] NZHC3100 at paragraphs [36]-[39] – Justice Churchman.

11. Following those decisions we have approached our task on the basis that the applicant needed to produce evidence to us in support of the application; the agencies needed to produce evidence in support of their opposition; and we would weigh it, evaluate it and form our conclusions and opinions.

12. Gaynor Margaret Holland is the sole director and shareholder of Holco Holdings Ltd (the applicant company). Her involvement in the liquor industry started in 1993 at the Mayfield Tavern. She purchased McKenzies Hotel in Aranui in 1999, an establishment then renowned for gangs and crime. She spent many years cleaning up the hotel and was proud of what she had achieved. The hotel became known as a safe and well-run business. She sold McKenzies Hotel in 2008 and took over Edgeware Sports Bar in St Albans. Ms Holland ran this business until 2017, when the building was demolished due to earthquake damage. Since 1993, Ms Holland had only had one blemish, which was a CPO failure in 2017 at the Edgeware Sports Bar, on an evening when she herself was not present.

13. On 21 March 2018 she purchased an existing Tavern in Rangiora called "The John Roy". She applied for a temporary authority and renamed the premises "Mainstreet Sports Bar". Through her company, she has been trading on temporary authorities since that time.

14. Ms Holland told the hearing she had serious issues with the lack of urgency and timeliness by Police reporting alleged incidents back to her. She advised us the CCTV footage at the Mainstreet Sports Bar was retained for two weeks then replayed over. Ms Holland stated she did not wish to sweep the incidents under the carpet but to acknowledge them. She said in her evidence in chief she fully appreciates the need to be vigilant at all times, not to serve intoxicated patrons or allow them to remain on the premises. She recognises her responsibilities in this regard and accepts the holding of a liquor licence is a privilege, not a right.

    (a) **18 May 2018 incident**. Ms Holland's evidence was she recalled the incident and recalled Police speaking with her a month later on 17 June. She claimed she did not deny that the young man had come from Mainstreet. She recalls on the night she had stopped him from drinking further and placed him on water. He was with a group of friends. At closing time he went outside. Ms Holland offered to give him a ride home but the young man stated his girlfriend was coming to pick him up and refused to get into the courtesy shuttle. The bar then closed and he waited outside. Ms Holland said the man had told her he had very little to drink and had eaten a large meal. They could not check their CCTV as police had left it too long to advise them. Ms Holland stated the man was a representative athlete who was not used to drinking alcohol. She stated when he was in the bar he went from being sober to someone that was affected, in a very short period. She felt they had dealt with him appropriately but could perhaps have done more later on rather than leaving him to wait for his girlfriend.

    (b) **8 June 2018 incident.** Ms Holland strongly denied that anyone with an alcohol level of 1229 mgm would have been in her premises. She contended the person would have been identified long before they reached that level. Police advised Ms Holland about this incident almost a month later on 3 July, again, when there was no longer CCTV available. CCTV would have confirmed whether the woman had been in her premises and what time she left. It was suggested that the woman could easily have left earlier in the day, obtained alcohol from an off licence and consumed more alcohol before crashing her car. Ms Holland stated she was a very experienced manager and there was no way that she would have had someone in her bar, stumbling around in the state the woman was described by police to be in, when they dealt with her.

(c) **28 July 2018 incident** related to a couple walking off from Mainstreet Sports Bar on 28 July who were later apprehended for drink driving, Ms Holland stated Police did not tell her about this until six weeks later. Ms Holland advised that CCTV would have proved conclusively if the couple had come from her premises. It was suggested the couple may have been walking past the premises and gave the impression of coming from the bar. The witness who called police was not giving evidence hence there was no way of checking. She stated that she would not have allowed intoxicated persons on the premises. She had checked their incident book and there was no record of the two persons in the bar that day.

(d) **2 September 2018 incident**. Ms Holland stated that there had been an incident at the premise involving a person called Reid Stirling who had got 'into the face' of her partner Paul Ringland. There had been an argument in the bar between two women resulting in Reid remonstrating with Paul Ringland. Her partner Paul works at the premises but was not working that day. He had been drinking and had gone out the back to start washing glasses just to get away from Reid Stirling. She was the Duty Manager. She believed she had not been involved herself in the incident because she was busy in the gaming room.

(e) **15 September 2018 incident**. On this evening, Constable Adrienne Jones carried out a hotel visit at Mainstreet. Ms Holland was not present that evening. She stated a woman Melanie Johnson was allegedly intoxicated. Ms Holland said Melanie was prepared and waiting to give evidence of this incident and was present outside the hearing room.

15. Ms Holland stated that over the years operating and managing licensed premises she had always made sure that her staff were well versed in their obligation under the relevant legislation. She stated she had regular meetings with staff to discuss issues that had arisen, or might arise, and how they would deal with them. All staff were aware of their strict policies relating to intoxication and underage drinking. She thought that these policies had worked well for her over the past 24 years.

16. Ms Holland explained they have five managers working at the bar. Some of the staff have been with her for 20 years. All are experienced and have a thorough knowledge of the law. It was her policy to ensure there were always two staff on duty that held managers certificates. Ms Holland also stated staff had agreed to complete the Serve-wise programme, with Bev, Paul and Marie having already completed it. She stated that there were regular staff meetings to discuss host responsibility obligations and strategies. Ms Holland clarified that the trainings she had with her staff were talks held over morning tea.

17. Ms Holland presented, as Exhibit A, a Staff Training and Induction Manual. She advised that this was from the Hospitality NZ Handbook and all new staff had to read and sign it. She stated they had been in touch with Ted Casserley from HNZ whom they would be engaging to get further support in terms of systems and training. It was their intention to engage HNZ for training every six months or so.

18. In cross-examination by Police Ms Holland was asked what the signs of intoxication were, to which she replied, *"Slurred speech, they are wobbly on their feet, can't look you in the eye or hold a conversation with you".* She was asked if she knew how many signs a person should

show in order to be intoxicated. On the first day of hearing in November she answered *"seven"*. On the second day of the hearing, in February, after she said she had had training, she told us *"four"*. Further questions followed regarding the signs of intoxication - with Ms Holland answering *"the demeanour of the person, how they are talking to you, speaking, their physical appearance and movements. Any change in this showed signs of being intoxicated*". Ms Holland did not recall the signs the young man was showing on 18 May but added that none of group of young men had shown any signs of intoxication when they arrived, and all had eaten a meal.

19. Ms Holland was queried in respect to the bar's incident book. She stated any incidence of intoxication would be noted in the incident book. The Police questioned if there was any note in the incident book of the male being intoxicated on 18 May, however, there was no entry. Police asked Ms Holland if she remembered the advice from the tri-agency meeting she attended on 22 June when she was advised to put her staff through the serve-wise training. All told, Police stated they advised Ms Holland on three separate occasions to ensure her staff completed the serve-wise training. Ms Holland acknowledged that she had only had staff complete this just prior to the hearing on 30 November 2018.

20. Ms Holland also acknowledged that she had been repeatedly asked for training records from Mrs Barbour from Medical Officer of Health and had not responded. She had shown Mrs Barbour her incident book but had only just now arranged the staff training manual. She put this down to the previous owners who she claimed had left things a bit 'messy', and it had been difficult to organise things.

21. Police tested Ms Holland further asking her what the object of the Sale and Supply of Alcohol Act was. The applicant replied "*to provide a safe environment for people to consume alcohol"*. She was also asked what the two worst offences committed under the Act were to which she responded *"intoxication and use of drugs"*.

22. In cross-examination by Mrs Barbour, Ms Holland was asked if she had responded to all Mrs Barbour's emails asking for further demonstration of staff systems and training. Ms Holland acknowledged that she had not. She was asked if she had responded to Mrs Barbour's phone message regarding the same matters. Ms Holland acknowledged she had not responded to this either. Ms Holland was further asked if she had sought help in putting together a staff training manual. Ms Holland stated she had had some time off for medical reasons but had not sought help other than from her partner Paul. It was put to Ms Holland that there was little evidence of improvements to the staff training system. Ms Holland accepted this, noting she was very hands on in the business, worked lots of hours behind the bar and probably did not allow enough time to do the required paperwork.

23. Ms Holland advised she had been a member of Hospitality New Zealand (HNZ) since being at the Mayfield Tavern. This organisation she stated, keeps members well informed about what is happening in the alcohol industry and is supportive. Ms Holland was asked when she had contacted HNZ since taking over the Mainstreet Sports Bar. Ms Holland advised she had only made contact the previous week. She was then questioned concerning the SCAB tool kit. She was not aware of what the SCAB toolkit was. Mrs Barbour explained to the applicant that it was a tool for assessing intoxication. Ms Holland was still unaware of it. She was also quizzed by

Mrs Barbour who asked how many times the alcohol legislation had changed in the time Ms Holland had been involved in the hotel industry. The applicant was not aware exactly how many times it had changed. However, her answer was to the effect that the original legislation is still there but has been added to, to up the ante. Ms Holland was also asked about the definition of alcohol related harm. She responded *'when somebody was intoxicated and unable to be in charge of themselves, that they required someone on the premises to look after them'.* That is more a definition of intoxication under the 1989 Act time than an accurate understanding of alcohol related harm set out in section 5.

24. In cross-examination by the Hearing Committee, in the November hearing details of a transcript of a taped telephone conversation emerged. It transpired that details of a conversation had been provided to the Council by Reid Stirling, which had been given to the licensing inspector who had spoken to Ms Holland concerning an incident in the bar on 2 September 2018. The applicant's lawyer, Police and Medical Officer of Health were unaware of this transcript or any details concerning the information provided to the Council. Following legal advice sought by the Committee, the hearing was adjourned to enable the secretary to provide the necessary disclosure to the agencies and the applicant. The hearing was adjourned to the next available hearing date on 1 February 2019.

Procedural Note

25. On 15 January 2019 Reid Stirling emailed a signed statement to the Council's licensing inspector, clarifying in a statement the events of 2 September 2018 where he believed that Ms Holland's partner, Paul Ringland, was intoxicated whilst working behind the bar. He also confirmed as accurate, a transcript he had prepared following a taped conversation he had had with Ms Holland where she had allegedly acknowledged her partner had been drinking all day.

26. On 24 January 2019, following advice from their legal advisor, the District Licensing Committee sent out a minute to all parties disclosing the statement and seeking submissions from them regarding a proposal from the licensing inspector to produce the statement at the hearing. Parties were given until 29 January 2019 to respond. A copy of the minute is attached to this substantive decision as ***Appendix 1.*** In the meantime, Police also circulated to all parties a brief of evidence for Constable Adrienne Jones, whom Police were proposing to call to give evidence covering the incidents on 18 May and 15 September 2018. Constable Jones had been unavailable to give evidence on 30 November 2018 but was available now to appear in person. Had the hearing progressed on 30 November her evidence was to have been adduced by Constable Genevieve Craddock by reading it to the Committee.

27. Only the applicant responded to the invitation to submit. The applicant was opposed to both the proposed evidence of Reid Stirling's and the proposed evidence of Constable Adrienne Jones.

Hearing Reconvened.

28. The hearing reconvened on 1 February 2019. After discussion with the parties, the Committee decided they would allow both the statement of Reid Stirling and the evidence of Constable Adrienne Jones. Mr Egden advised he also had three further documents that he would be asking Ms Holland to produce as evidence. The committee were prepared to allow these. Mr Egden then produced three documents, Exhibits B, C and D into evidence. Exhibit B related

firstly to a letter from the Waimakariri District Council confirming the premise had passed a controlled purchase operation on 18 December 2018. Exhibit C related to a letter confirming the applicant had completed a host responsibility course on 28 January 2019. Exhibit C related to confirmation of the qualifications of the Course Coordinator taking the Host Responsibility Course. The Committee directed that they would allow cross-examination of Ms Holland again, from the agencies, given the introduction of the further evidence.

29. Cross-examination of Ms Holland then continued. Ms Holland confirmed that since the first hearing on 30 November the bar had passed a controlled purchase operation on the night of 18 December 2018 and advised there had been no incidents or concerns over the Christmas and Holiday period. Ms Holland stated she now had a HNZ toolkit, which contained the SCAB tool. It was still on her desk and had not been used as she had only recently received it. Mrs Barbour clarified with Ms Holland about the definition of intoxication, asking Ms Holland what the Act stated in terms of the number of signs that needed to exist before a person could be assessed as intoxicated. The applicant stated there needed to be four signs. As pointed out by Mrs Barbour, Ms Holland had earlier stated in evidence that she believed there needed to be seven signs. Ms Holland was asked whether there needed to be seven or four signs. Ms Holland was not aware that the Act said there needed to be two or more signs. Mrs Barbour queried the applicant as to her understanding of the Object of the Act. The applicant responded, stating her understanding was *"a safe environment, safe drinking place for people to drink alcohol … People need to be looked after and be safe when drinking alcohol".* Obviously, that is only part of half of the two aspects of the object in section 4. Ms Holland was also questioned about her staff policy of drinking in the bar. She stated that their policy was no drinking whilst working, however acknowledged that when it got busy, an off-duty member who had been drinking could jump in and help. Ms Holland confirmed that the incident on 2 September and the CPO on 18 December had both been entered into their incident book and had been discussed with staff in terms of training.

30. In re-examination Mr Egden clarified with Ms Holland that staff had recently completed HNZ training. He also confirmed staff had now completed the serve-wise training but had not yet forwarded evidence of that to the agencies. Ms Holland stated she had found the training worthwhile.

31. Paul Martyn Ringland was then called by the applicant. Mr Ringland and Ms Holland have been together for 15 years. They mortgaged their property to provide the finance for Holco Holdings to purchase the Mainstreet Sports Bar. He acknowledged that he often drank at the bar when off-duty (2-3 times per week) and a lot of regulars referred to both him and Gaynor as the owners of the bar.

32. Mr Ringland was referred to an incident on 2 September. Mr Ringland stated he had arrived around 3p.m. that afternoon and had approximately 6 pints of beer and food. Between 6.00 p.m. to 7.00 p.m., there was an incident in the bar between two women. He was later approached by Reid Stirling, demanding one of the woman, who often worked at the bar, be immediately sacked. He stated Reid Stirling was like a fox terrier, getting into his face, demanding he sack the woman instantly. Mr Ringland confirmed that he went behind the bar to start washing and drying some dishes in an effort to remove himself from the situation that Reid

Stirling was creating. He reiterated that he was not intoxicated and was not working that day. The committee accepted Mr Ringland's explanation and account of events.

33. The witness Mr Ringland, was then referred to the **15 September** incident where a woman in the bar was allegedly intoxicated, knocked over a stool, and wheeled a man outside in a wheelchair. Mr Ringland recalled this incident clearly. He stated that the Constable had walked in and approached him. As she approached, a stool was knocked over. A woman, Melanie Johnson, was in the bar and was in the process of wheeling her friend known as 'Buddha' out. Mr Ringland stated Ms Johnson sometimes drinks at the bar. She only had two glasses of wine and was not intoxicated. He stated the officer immediately told him the woman was clearly intoxicated. He disagreed with her and stated in evidence that he pleaded and pleaded, several times, for the officer to go and talk with the woman to prove she was not intoxicated. Mr Ringland confirmed that Buddha is a large male and it would have been difficult for Ms Johnson to wheel him out. He stated that the Constable refused to go and speak with the woman. In cross-examination by the licensing inspector, Mr Ringland confirmed he had had his manager's certificate for 3 years.

34. In cross-examination by Police Mr Ringland stated he did not see why staff at Mainstreet needed to complete serve wise training, which he felt was for amateurs and learners. Asked about what training they had at the Mainstreet Sports Bar he responded that they *'talk at meetings'*.

35. Cross-examined by Mrs Barbour concerning his negativity towards the agencies, Mr Ringland stated that he could come across a bit blunt. He was asked by what he meant in his evidence that he was not getting any help from the agencies. Mr Ringland responded by saying he was referring at that point in time where he felt they needed advice and help from Police. Mr Ringland went on to say they had completed a lot of work at the bar but all the agencies could do was criticise them. Mr Ringland was critical that none of the agencies had bothered to come down and visit him at the bar to see '*what they had done'*. Mr Ringland was asked for his understanding of the object of the Act to which he replied, "*Harm minimisation and provide a safe environment*". The hearing panel queried the witness further in respect to the incident on 15 September. Mr Ringland recalled that they had had a number of RSA patrons come over to the bar and were dancing. He believed a stool had been moved in behind Melanie Johnson, which she tripped over. That was the reason the stool was knocked over.

36. Melanie Jayne Johnson was called by the applicant to help clarify the incident on 15 September. Ms Johnson's evidence was that she had gone to the bar at approximately 9.30 pm having not previously had anything to drink that evening. She drank two glasses of wine. When she went to get off her seat to assist 'Buddha' the stool fell over. She was not certain if she knocked the stool behind her or someone else did. She then held the wheelchair for Buddha and pushed Buddha outside in his wheelchair, as it was time to leave. Ms Johnson is a lot smaller than Buddha. She said it was difficult to manoeuvre the wheelchair to get out the front door. At no stage did the Constable speak with her.

37. In cross-examination by Police, she said that she used to work at the bar from 2006 for about four years. She does not go there regularly but confirmed she had eaten that evening before

going out. She denied being intoxicated or having to lean on the wheelchair to balance herself because of alcohol. She confirmed she only had two glasses of wine.

Agencies evidence

38. The licensing inspector's report was taken as read. The inspector, Raj Deo, reiterated his concerns around the incidents reported by Police. He also raised concerns over the applicant's attitudes to receiving advice at the many tri-agency meetings that the applicants had attended with the agencies.

39. Mrs Barbour's evidence focussed on the numerous requests, by email and phone, directly to Ms Holland, asking her to supply records of their training and their incident book. In cross-examination from Mr Egden, Mrs Barbour responded with her serious concerns as to Ms Holland's lack of knowledge of the Act. Mrs Barbour identified a number of perceived failings of knowledge on the part of Ms Holland. She also questioned the belated last-minute training undergone by staff. In answer to a question from the Committee, Mrs Barbour stated in her experience she had never dealt with any applicant that had totally ignored her emails and requests for evidence. Mrs Barbour stated that applicants, who have a hearing pending, will always ensure they get the required information to the agencies in a timely manner. Mainstreet Sports Bar was the exception she said.

40. Police evidence came from both Constables Adrienne Jones and Genevieve Craddock. Constable Craddock produced a number of emails and associated documentation that she had received from police officers relating to the various incidents we have described. The emails were effectively notifications from the officers to her as the Harm Reduction Officer responsible for the Waimakariri area. Each e-mail was produced as an exhibit. Constable Jones also gave evidence. She covered the incident on 18 May where a young man was discovered near the Bar, vomiting, waiting for his girlfriend to uplift him. The bar was closed at that point. She acknowledged that she did not raise this with the applicant until 17 June, exactly one month after the incident. The young man was clearly intoxicated. When talking with Gaynor Holland about the incident she had asked Gaynor if she had an incident book in which to record this incident. Gaynor told her *"those systems had not been set up yet"* - despite taking over the bar back in March.

41. Constable Jones also gave evidence concerning the woman pushing the wheelchair on 15 September. She stated she had gone into the bar to carry out a hotel check. She stated she spoke with Paul Ringland who was critical of the law stating that with the changes of the Act that Police now expected him to do their (Police) job. As they were talking, the Constable heard a stool crash to the floor. She noted a woman (Melanie Johnson) appearing to be supporting herself against the wall. She described the woman as looking straight ahead not saying anything as she wheeled a male in a wheelchair out of the bar. She described the woman's feet as going everywhere.

Final submissions

42. All parties were given the opportunity to address the Committee with final submissions. Mrs Barbour queried whether there was an opportunity for an adjournment to afford the parties several days in which to prepare final written submissions. This option was discussed by the parties. No other parties sought an adjournment. Mr Egden for the Applicant, reiterated that the matter was not complex and that he was prepared with his final submissions. After further discussion, it was agreed to allow a 15-minute adjournment in which all parties could prepare their final submission.

43. In summing up the licensing inspector Mr Deo was of the view that the incidents as described by Police, and the failure by Ms Holland to respond to the Medical Officer of Health, were proof that the Applicant did not meet Sections 105 and 106 of the Act, nor did the applicant meet the Object of the Act. Mr Deo stated that if the Committee was considering issuing a licence to the applicant, then the following conditions are recommended:

    (i) One way door accord
    (ii) Two duty managers on Friday and Saturday nights
    (iii) Security guards on Friday and Saturday nights
    (iv) Midnight closing on Friday and Saturday nights.

44. Police submitted that the applicant could not prove minimisation of alcohol related harm and Ms Holland had limited knowledge of the Act especially around intoxication and the object of the Act. Police submitted Ms Holland believed serve-wise was for learners and that staff training was insufficient and consisted only of a general chat while having coffee. Police further submitted that Ms Holland's failure to respond to requests for information on training and records was concerning and demonstrated her lack of suitability. Police were of the view the Committee should not issue a licence in this case.

45. Mrs Barbour, for the Medical Officer of Health, stated she was opposed on the basis that the applicant had failed to provide evidence of adequate systems, staff and training and this was something that the Committee must have regard to - Section 105 (1)(j). Mrs Barbour stated that incidents brought to the attention of the Medical Officer of Health by Police had further raised concerns regarding the suitability of the applicant. Mrs Barbour cited:

    Lion Liquor Retail Limited **CIV-2017-485-506 [2018] NZHC 1123**

    [46](d) Similarly there is no onus on the reporting agencies to prove the application should not be granted.

46. Mrs Barbour also cited ***Birthcare Auckland Ltd*** **CIV-2015-404-000755 [2015] NZHC 2689**

    [113] There is no onus on the MOH to prove anything. [1]

    [1] *This is implicit of s107 of the Act which empowers the Committee or Authority to refuse a licence even in circumstances where the application is unopposed. Where the MOH objects and adduces evidence in opposition the onus remains on the applicant to satisfy the Committee that notwithstanding those objections the application should be granted.*

47. *Also cited by Mrs Barbour was* ***Page v Police* 24/7/98 HC CHCH AP 84/98**, one of the commonly cited cases with regard to suitability where the High Court held it is for the applicant to prove his suitability and this should be established by considering various factors:

> *"Section 13(1)(a) provides that the applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding. That implies an onus on the applicant to demonstrate suitability. Such suitability is not established in a vacuum but in the context of a particular case: for example, the place of the intended business, the nature of the business itself, the hours of operation and the intended activities, provide the basis for the assessment of the individual ..."*

48. Mrs Barbour submitted that in the correspondence from the applicant on 6 September 2018 Ms Holland maintained that staff will not be completing serve-wise training, yet on 30 November the Committee heard that staff would be undertaking serve-wise as well as HNZ training in January. Mrs Barbour stated it was accepted that it was a positive step by the applicant, however, the reason for this change of heart is clearly too little, too late.

49. Mrs Barbour also cited the ***Lyger Investments Ltd* decision 21/ON/22067/2018** the DLC said:

> *[221] Thirdly, there was very poor record keeping and a lack of policies in place for staff and management. These safeguards are designed to keep abreast of the risk factors of being in business and to guide and support staff when things go wrong as they will do from time to time in most businesses.*

50. Also cited by Mrs Barbour was the appeal decision ***Lyger Investments Ltd* [2018] NZARLA 299-300** the Authority stated:

> *[112] Further giving the respondent more time to produce a full audit of its training records, managers register, procedures and policies and provide evidence of formal staff training including that all staff have attended training on the formal identification of intoxication, as well as preparing a comprehensive incident register - are all kinds of things one would expect an experienced operator firmly to have in place on renewal. Their absence and the need to impose those through undertakings or conditions only reinforces the lack of systems, staff and training to comply with the law (per s105 (1)0)) and that standing back, the application does not meet the object of the Act.*

51. Mrs Barbour stated that on 30 November, whilst under cross examination, Ms Holland was asked what she understood Alcohol Related Harm to be and answered "*someone who is intoxicated*".

She said the Act defines alcohol related harm in S. 5 (1) as:

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

(b) includes -

(i) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and.

(ii) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in subparagraph (i)

52. She submitted when Ms Holland was asked about the object of the Act on 30 November she stated it is *"all about looking after people, providing a safe environment to consume alcohol and be responsible, they can't come in intoxicated".* Yet at the hearing on 1 February, the Committee heard Ms Holland say the object was…. *'Safe environment, safe drinking place for people to drink alcohol. People need to be looked after and be safe when drinking alcohol*".

She said section 4(1) states 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

53. She submitted Ms Holland had not identified the object of the Act so there could be no confidence that she could meet its requirements. Ms Holland had commented, *"the old Act is still there, it is just tweaked up".*

54. It was further submitted that on 30 November Ms Holland told the hearing she was not aware of what an HNZ toolkit was nor had she heard of a SCAB assessment tool. When it was explained as "a tool for assessing intoxication" - she still had no idea. Mrs Barbour stated at today's hearing Ms Holland told us they have a toolkit but had not started using it.

55. She stated Ms Holland told the Committee she had been a member of Hospitality NZ since operating Mayfield and was aware of the scope of their work. It was noted by MOH however, that she did not contact HNZ until just weeks before the hearing in November.

56. Mrs Barbour noted the ***Lyger Investments Ltd*** **decision 21/ON/22067/2018** where the Committee said:

> *[222] It was a surprise to the Committee that the company holds a Hospitality NZ membership but clearly, they did not think that they required the support and guidance that this valuable organisation offers.*

57. Mrs Barbour said that under cross-examination Ms Holland was asked if she was aware of the oppositions by MOH, she was. Mrs Barbour said the lack of systems were personally conveyed to Ms Holland and again the oppositions were repeated in a further report in September. She said Ms Holland agreed that despite these reports and meetings, Ms Holland still had not updated her systems and staff training and MOH had still not seen the updated training documents. The only thing provided in evidence was the letter of confirmation on 1 February that staff have completed 2.5 hours of training.

58. She submitted Ms Holland had afforded little weight to the importance of systems, staff and training and that her verbal affirmations to Mrs Barbour's enquiries were insufficient, despite the 24 years' experience Ms Holland advised she had.

59. She further submitted that despite this experience Ms Holland had displayed little knowledge of the current legislation, which had been in operation for 5 years. In Mrs Barbour's experience, licensees with the length of experience similar to Ms Holland are far more cooperative with the reporting agencies and respect the importance of that relationship. Due to the trading history of this premise, the members of the tri-agency had worked hard with the applicant so that she can ensure compliance with the object of the Act. It was Mrs Barbour's submission that to date insufficient action had occurred following help, suggestions and guidance from the agencies and Hospitality NZ.

60. She also submitted the evidence provided by Police linked alcohol related incidents to the licensed premises. When cross-examined she said Ms Holland denied responsibility and questioned if the events had actually occurred. It was Mrs Barbour's submission that the lack of documentation of these incidents and the response to agencies enquiring into them is a surprise, particularly for an experienced licensee. In Mrs Barbour's experience incidents of this nature are recorded in the incident book and stated that the applicant's reason for not writing things down - *"there are not enough hours in the day to write it down"* was simply not good enough.

61. It was further submitted that the matters raised by Police indicate that Alcohol Related Harm is present in the area and the applicant had not proactively addressed issues or addressed the risk of them by updating their systems and training. Mrs Barbour stated Ms Holland admitted this application was the first time she had filled out an application and "*usually gets other agencies to do it".* In 11(f) of the application, the applicant stated, "we have strict policy regarding prohibited persons and the duty managers are up to date with this". Yet despite this claim in the application - no substantial policy had been supplied which supported this, nor had Ms Holland spoken of such measures.

62. Mrs Barbour submitted Ms Holland had told the Committee she had invested a lot into the business and does not want to have to walk away from the investment. However, the Committee were reminded by Mrs Barbour of the words of Potter J in Meads Brothers which was confirmed by Her Honour Justice Clarke in ***Lion Liquor Retail Ltd*** **CIV-2017-485-506 [2018] NZHC 1123:**

> *[51] Or, as the DLC observed, the Legislature's expectation that alcohol-related harm will be minimised "does not yield to a licensee's commercial or equitable interests."*

63. She further submitted that whilst Ms Holland insists that she is a solo director it is submitted that Mr Paul Ringland plays a more prominent role within the company than just a member of staff. When discussing matters, which involved managerial directorial decisions, actions and influence, the applicant, referred to "we" in every instance. It was of concern to Mrs Barbour Ms Holland's understanding of the role of water whilst alcohol is being consumed is that it stops alcohol getting into their system. This is factually incorrect stated Mrs Barbour. She submitted

Ms Holland is not aware of the requirements of the Act nor aware of the tools that slow down the rate of intoxication to minimise alcohol related harm.

Section 5(1) states:

> *Intoxicated means observably affected by alcohol, other drugs, or other substances (or a combination of 2 or all of those things) to such a degree that 2 or more of the following are evident:*
>
> *(a) appearance is affected;*
>
> *(b) behaviour is impaired;*
>
> *(c) co-ordination is impaired;*
>
> *(d) speech is impaired.*

64. Mrs Barbour then submitted that Ms Holland told the Committee there needed to be seven signs for a patron to be deemed intoxicated, yet on 1 February, she said four. Evidence heard from Ms Holland offered little reassurance that she has genuinely considered the concerns of the agencies and sought to remedy them. Mrs Barbour also submitted it was of concern that both Ms Holland and Mr Ringland saw no problems with staff drinking at the bar or jumping in to help even if they had been drinking.

65. She also submitted Mr Ringland demonstrated hostility towards the reporting agencies with comments like, *"the black book which appears to be gospel to you guys"* indicates his approach and attitude to systems, staff and training as well as his attitude to the reporting agencies. At one point his frustrations at not getting help was a reason for his behaviour and then later he says '*we don't need help'*. Mrs Barbour stated the truth was the agencies had been offering help to the applicant all along.

66. It was the submission of Mrs Barbour that the Committee cannot be satisfied that the Object of the Act will be upheld.

67. In reply, Mr Egden for the applicant submitted Ms Holland had 24 years' experience in the alcohol industry with only one black mark against her over that entire period. He stated if it was suggested that before she came to Rangiora she didn't have the systems in place and was now unsuitable to hold the licence was '*absolute rubbish'.* Mr Egden submitted that whilst the onus of suitability was on the applicant, the onus was on the agencies to prove the validity of the various claims that had been made.

(a) Mr Egden spoke on the five incidents which had been included in the evidence:

(i) Melanie Johnson – allegations of intoxication have not been proved.

(ii) The intoxicated male found outside the bar, there was no dispute this person was intoxicated – the issue was whether he was served alcohol once he was intoxicated. There is nothing more than the applicant could do on this occasion, with the patron refusing a ride home in the courtesy van and insisting on staying to

be picked up by his girlfriend. Ms Holland did not realise the girlfriend was driving out from Christchurch.

(iii) The Reid Stirling incident with Paul Ringland – the question that has to be asked is "was Mr Ringland intoxicated?" He had had about six drinks of beer over a four hour period. There is nothing to say that he was intoxicated. Ms Holland had also noted that he is not a "big" drinker.

(iv) There is no evidence that the elderly couple who had been on the premises before going to a supermarket to purchase alcohol. Ms Holland was the Duty Manager, and has no recollection of them being present that day. Had they been present and in that state, Ms Holland would have had them removed.

68. The grossly intoxicated female – there was an unreasonable delay between the incident and when Ms Holland was approached about it. Ms Holland was the Duty Manager that day and it is highly unlikely, Mr Egden submitted, that someone with her track record would allow someone to be present in that state of intoxication.

69. Mr Egden submitted none of the alleged incidents stacked up and there is no reason why the licence should not be granted. The only issue he believed was whether the Applicant has sufficient staff training and systems in place to comply with the law. With no merit to the allegations he submitted there was nothing from the reporting agencies to support the licence not being granted. Mr Egden stated that the Serve-wise training had been undertaken and sworn evidence had been adduced showing Ms Holland and staff had undertaken all training. He stated the applicant intends to use a training service for assistance with ongoing training. Mr Egden finally submitted the licence should be granted and if any issues occurred in the 12-month period, these would be dealt with at the time of relicensing.

RELEVANT LEGAL CONSIDERATIONS

70. We start our consideration by repeating what we said at the beginning in paragraphs 9-11. We do not think this is an adversarial contest where each party has to *"prove"* anything. We believe we must listen to all the evidence and evaluate it. Then we must stand back and see if, based on that evaluation, it would be consistent with the object of the Act to grant the application. If we do not reach that conclusion, as we understand the law, we cannot try to assist the applicant achieve the object by imposing conditions.

71. It became clear to us that what started out as opposition by the agencies on suitability and suitability of systems and training in section 105(1)(b) and (j), ended up with concerns that the applicant company, through Ms Holland, has insufficient knowledge and awareness of the Sale and Supply of Alcohol Act 2012, as to be incapable of meeting the object of the Act.

72. The object of the Act is set out at section 4. That section (which we set out in paragraph 52) confirms the Act is aimed at ensuring alcohol is sold and supplied and consumed safely and responsibly, and any harm caused by excessive or inappropriate consumption of alcohol is minimised.

The term 'harm' is defined in section 4(2) as follows:

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).*

73. This is similar to *"alcohol-related harm"* defined in section 5.

74. When considering an application for a new on-licence, the Committee must consider the criteria set out at section 105(1) of the Act. That section requires the Committee to have regard to a range of matters, including:

(a) The object of the Act.

(b) Suitability of the applicant

(c) Any relevant local alcohol policy

(d) The days and hours on which alcohol would be sold.

(e) The design and layout of the premises.

(f) Whether the applicant proposes to engage in the sale of goods other than beverages.

(g) Whether the applicant proposes to engage in the provision of services other than the sale of beverages.

(h) Whether the amenity and good order of the locality would likely be reduced, to more than a minor extent, by the effect of the issue of the licence. No evidence that amenity and good order would be reduced. Police evidence entered here.

(i) Whether the amenity and good order of the locality is already so badly affected by the issue of the licence, that the grant of a further licence would be unlikely to reduce the situation further, but nevertheless it would be desirable not to grant a further licence. The amenity and good order of this locality has not been in issue over the last 2 years.

(j) Whether the applicant's appropriate systems, staff and training comply with the law.

(k) Any matters dealt with in the report provided by the Police, inspector, or Medical Officer of Health.

75. Section 106 of the Act provides guidance on the consideration of amenity and good order. That provision holds:

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: No problems expected

(ii) current, and possible future, levels of nuisance and vandalism: as above

(iii) the number of premises for which licences of the kind concerned are already held; and - No issues in this area

(b) the extent to which the following purposes are compatible:

(i) the purposes for which land near the premises concerned is *used: Business zone 1*

(ii) the purposes for which those premises will be used if the licence is *issued. Ongoing licensed premise.*

76. The Act does not require that harm is to be prohibited, and it would of course be impractical, if not impossible, to attempt to prohibit such harm. The scheme of the Act looks towards minimisation of the harm wherever possible. In its decision in **Penoy Spirits Limited [2014] NZARLA PH 697** at paragraph [19], the Alcohol Regulatory and Licensing Authority discussed the new test, saying:

> *"Now the aim is the minimisation of alcohol related harm; not merely its reduction. Minimisation means "reduce to the smallest amount, extent or degree." (New Shorter Oxford English dictionary)"*

77. Before turning to s.105 matters, the Committee turns now to the incidents as reported by Police and the weight placed by the Committee on those incidents.

(a) **18 May 2018 incident**. This involved the young man vomiting outside the premises. The Committee accept the young man became intoxicated in the Mainstreet Sports Bar, however, believe the circumstances are somewhat unusual. It was unfortunate that Ms Holland had not been afforded the opportunity to check her CCTV that could have assisted further. The Committee were not impressed with the amount of time it took for Police to advise Ms Holland. The Committee feel that bar staff could have done more later on, such as ringing Police, rather than leaving the man alone.

(b) **8 June 2018 incident.** Ms Holland strongly denied that anyone with an alcohol level of 1229 mgm would have been in her premises. She contended the person would have been identified long before they reached that level. Police advised Ms Holland about this incident almost a month later on 3 July, again, when there was no longer CCTV available. CCTV would have confirmed whether the woman had been in her premises and what time she left. The Committee is unsure if the woman has come directly from the bar. It would

have been helpful had Police notified Ms Holland in a timely manner so that enquiries could have been undertaken by her. It is possible she went and drank at home or elsewhere before being involved in the crash. We do not know. We have decided to put this incident's evidence to one side.

(c) **28 July 2018 incident**. This related to the couple allegedly walking off from Mainstreet Sports Bar who were later apprehended for drink driving. Ms Holland was not advised of this incident until six weeks later, again when no CCTV was available. The Committee are unsure if the couple came from the Mainstreet Sports Bar or had simply walked past, entered briefly and then left. We do not know. We have put this incident's evidence to one side.

(d) **2 September 2018 incident.** This **i**nvolved the matter with Reid Stirling. Given the explanation from Paul Ringland, the Committee found there were no concerns in that incident that warrant any criticism of Mr Ringland.

(e) **15 September 2018 incident.** The Committee felt that it was unfortunate the Constable did not carry out a SCAB assessment at the time. The witness Melanie Johnson providing direct oral evidence contradicting the Constable's evidence, leaves the Committee with a degree of doubt as to whether or not this patron was intoxicated, and if so, to what extent. The Committee felt there was an obligation on Police to produce cogent evidence of intoxication. Whilst the Constable is a very capable and experienced alcohol harm reduction officer, there exists ample precedents where Committees and the Authority expect Police to go that next step and speak with any suspected intoxicated person at the time. It should not be left up to Committees to 'second guess'. The Committee felt more evidence such as a SCAB assessment was required which would provide more assurance for the Committee and be fairer for applicants. As a result of our concerns this evidence was also put to one side. For the guidance of the parties the Committee notes two final things about these incidents:

(i) from a licensee's perspective keeping CCTV records for only two weeks is likely to be insufficient and risky (we heard from the police that in our area three weeks is the norm). Given the assistance to both licensee and police afforded by CCTV footage we think three weeks is a prudent minimum;

(ii) from an enforcement – police – perspective, contemporaneous action and assessment on the day with the patron and the Duty Manager is best practice, and in any event, delay in contacting a licensee after more than say seven days seems inherently unfair and unreasonable.

78. The Committee turns now to the elements outlined in Sections 105 and 106 of the Act.

79. Having considered all the evidence, except that which we have indicated we decided to put to one side, our overall conclusion is that it would not achieve the object of the Act if we were to authorise the grant of this licence to this applicant. This is subsection (a). We will return to this conclusion and why we reached it later after dealing with all the other matters we must consider which are set out in section 105.

80. We turn next to those matters in section 105 we did not find problematic, and, which in our view, were satisfactory:

(a) The application was consistent in relation to days/hours and location with the Local Alcohol Plan.

(b) The days and hours sought were not contentious.

(c) The plan received by Council 18 June 2018 raised no issues concerning the design and layout of the premises.

(d) Food of a satisfactory standard was available.

(e) Gaming machines and raffle were services offered to patrons as well as the sale and supply of alcohol.

(f) There was no evidence that the amenity and good order of the locality would be likely to be reduced by the granting of the licence in our opinion. Similarly, in our opinion the amenity and good order of the locality has not been an issue over at least the past two years.

81. This disposes of subsections (1)(c), (d), (e), (f), (g), (h) and (i).

82. We turn now to suitability (b), systems and training (j), the agency reports (k) and the object (a).

83. We find it convenient to consider the first three of those remaining issues together – that is suitability, whether or not the applicant's systems and training are appropriate to comply with the law and the matters in the agency reports, because they are inter-related. In brief, our conclusions are that the applicant is not suitable, the training and systems are not appropriate to ensure the applicant will comply with the law, and the concerns of the agencies in their reports were borne out by Ms Holland's evidence and by the agencies' evidence.

84. We find the applicant, through Ms Holland, is operating as if it was business as usual under the Sale of Liquor Act 1989. She repeatedly failed to demonstrate any familiarity and understanding of the obligations and requirements of the Sale and Supply of Alcohol Act 2012, which effectively has governed tavern bar operations since 2013. As examples of her basic lack of understandings we list the following which we have outlined earlier in this decision:

(a) her inability to identify correctly what the object of the 2012 Act was;

(b) her inability to identify what ***harm*** and ***alcohol related harm*** were;

(c) her lack of knowledge of the new definition of *"intoxication"* linked with her ignorance of the SCAB assessment tool, and her answers of *"seven"* (in November) and *"four"* (in February) of the new legislative signs of intoxication required;

(d) her understanding that the two worst offences under the Act which attract (negative) holdings were intoxication and drug related things – we think sales to minors must be the most serious and given a failed CPO in 2017 were very surprised Ms Holland failed to

recognize the seriousness of sales to minors;

(e) her evidence that the original legislation (from when she operated in Mayfield and Aranui) was still in force with add-ons;

(f) her evidence that if someone was intoxicated they are allowed to remain in the bar (which is contrary to section 252);

(g) her evidence that she was duty manager when the incident with Mr Stirling occurred. What concerned us was that she did not see it as her responsibility as duty manager to take control of the situation in the bar – for her, she said, her priority was in the gaming room because she has very busy gaming machines.;

(h) whereas she told us she had had incident books, training records, and staff policies when she was at McKenzies and Edgeware, however, she acknowledged they did not have the same systems in place at the Mainstreet Sports Bar;

(i) we acknowledge that Mr Ringland's understanding of the object of the Act and what harm is, as reflected in the new legislative requirements, is up to date. We considered whether or not that should counter balance our conclusions and concerns about Ms Holland discussed earlier. In the end, we have concluded that that should not because Mr Ringland made it very clear to us that Ms Holland is the true owner and operator. She makes the decisions, hires and fires the staff, does the bookwork, is the leader. He has no legal interest in the business except as a co-lender of funding.

85. We are not satisfied the applicant maintains an incident book and uses it as and when required. A well maintained and used incident book is a useful training tool to ensure compliance with the Act.

86. We have earlier referred to the *Page* decision Mrs Barbour mentioned to us. An important conclusion we have drawn from that case is that suitability is very fact specific. It must be assessed in relation to a particular applicant for a particular premise. To that, we would add it must also be assessed *"at the time of the application"*. We do not doubt that Ms Holland was a successful licensee for over 20 years under the 1989 Act. That was unchallenged. That does not mean that she or her company are presumed automatically to be suitable to hold a new on-licence in 2019 under legislation with stricter requirements than under the 1989 Act. Harm minimization in s.4 is the most obvious of these changes, but so too are the new criteria in the Act for assessing intoxication. For these reasons, we conclude the applicant is not suitable to hold an on-licence.

87. We find that an applicant who repeatedly fails to have up to date and effective training and systems in a tavern bar operation, despite repeated requests over several months by reporting agency representatives, is unsuitable. Ms Holland told us several times that because she ran a small team she was too busy to attend to these matters, even between the adjournment, and even after updating her systems and getting the HNZ materials. She demonstrated no sense of urgency or responsibility around training, to reflect the new emphasis of the 2012 Act, at all. We were left with the impression that she still does not have a specific customized host responsibility plan or host responsibility implementation plan, or alcohol management plan, or

an up to date customized staff-training manual for Mainstreet incorporating the 2012 Act requirements, in place for her business as at 1 February 2019. At the resumed hearing, Ms. Holland told us that she still had not amended her staff drinking policy to prevent staff from going back behind the bar if they have been drinking. We find that is unsatisfactory. Accordingly, we concluded that the applicant's systems and training for the 2012 Act are inadequate.

88. In relation to four of the five incidents recounted to us by the Police, we have put them to one side. That is not to say they did not happen. Rather we did that because of the delay in raising the matters with the operator and the unfairness to the applicant as a result. The applicant may consider itself fortunate the agencies did not take a more aggressive approach and adopted a timely educative approach. However, the 18 May incident at least is consistent with the result of the failure to have adequate host responsibility systems and intoxication assessment training for staff, linked to the 2012 Act, in place.

89. Overall, we concluded that the applicant's failure, persistently over many months, to actually devise and develop and introduce and implement proper staff training systems and an up to date host responsibility and alcohol management plan goes both to suitability, and to the adequacy or inadequacy of the applicant's systems and training arrangements. Casual discussions at morning tea are insufficient in 2019. We agree with the agencies that if an applicant does not understand the requirements of the 2012 Act the Committee cannot be confident alcohol related harm will be minimised nor that alcohol will always be safely and responsibly sold, supplied, and consumed on licensed premises. We have a responsibility to the community to closely scrutinise applicants and applications against the section 105 criteria. This is emphasised by section 107 that gives us the discretion to refuse a new licence application that we consider does not meet the standards required by the 2012 Act even where there is no agency opposition and no objections. Under the 2012 Act there is no longer a right to get a licence. There is no presumption an application will be granted even to someone who has held licences under the 1989 Act. The 2012 Act sets the bar higher for licensees and managers. On the evidence before us we are satisfied the applicant does not appreciate that and as a result its systems and training in place are simply not sufficient to ensure compliance.

90. For the reasons set out in paragraphs 84–89, we do not consider the period of trading under temporary authorities supported a conclusion the applicant was either suitable or had sufficient systems and training in place during that period.

91. During cross-examination, Ms Holland was questioned about the negative holding arising from the 2017 failed CPO at Edgeware Sports Bar. The licensing inspector Mr Deo appeared to suggest to Ms Holland that the negative holding on the applicant Holco Holdings carried over to the Mainstreet Bar operation. Ms Holland stated she was unaware of this. If we understood the Inspector correctly, we disagree, as negative holdings for the purposes of the three strikes, under Section 289 must relate to the same premises. Our conclusion that the applicant is not suitable is not based on a single failed CPO at other premises in 2017. The only significance we attached to that failed CPO was we considered it should have made Ms Holland more aware that selling to a minor was one of the two most serious breaches of the 2012 Act. We also heard that a CPO in 2018 at Mainstreet was successfully managed at the premises.

92. We come to our last conclusion. Do we think, having regard to all the foregoing, that granting this application is consistent with the object of the Act, and in harmony with the object of the Act? We do not. We do not consider the applicant, through its shareholder director, appreciates the harm minimisation responsibilities under the 2012 Act, which are required by section 4. None of Ms. Holland's evidence gave us any confidence she could or would change if we granted the licence, even for a probationary year, as Mr Egden invited us to do.

93. We conclude that the applicant received considerable encouragement during the second half of 2018 from the three reporting agencies to bring the company up to speed and compliance with the 2012 Act, and introduce appropriate systems and training to meet contemporary standards and expectations. We do not accept that HNZ templates, which are not customised for specific premises and localities and customers and staff, are adequate. They are undoubtedly an excellent start and baseline but as a Committee we must be satisfied each licensee has fit for purpose systems and training for its particular business. We were not satisfied of that in this case, so for all the reasons we have endeavoured to outline we conclude that to grant the licence would be inconsistent with the object of the Act.

Committee's Decision and Reasons - Conclusion

94. The Committee must be satisfied that the application is consistent with Sections 3, 4, 105 and 106 of the Sale and Supply of Alcohol Act 2012 before granting a new licence.

95. This has been an evaluative exercise. The Committee has stood back and evaluated the reports, documentation, information and evidence presented by the parties, and weighed and assessed that in light of Sections 3, 4, 105 and 106. The matters to which we must have regard and our conclusions have been set out in previous paragraphs. After regarding all matters, the Committee is not satisfied that:

    (a) the applicant is suitable nor

    (b) the applicant has adequate systems and training to ensure compliance with the 2012 Act nor

    (c) granting the application would be consistent with the two components of the object of the Act.

96. Accordingly, the application is refused.

97. This decision should come as no surprise to any licensee or prospective licensee in this Committee's District of Waimakariri. As long ago as December 2014 a differently constituted Committee, which included two of the current Committee, refused to renew an off and on-licence for the Kaikanui Tavern in Kaiapoi **DLC No. [2014] WDLC078** ***Brownlee Brothers Ltd***. The evidence in that case included poor records, poor training, failure to keep up with the changes in legislation from the 1989 Act to the 2012 Act, and staff drinking on premises when off duty. Admittedly, there was evidence of serious breaches of the law in that case which were not present in the evidence we heard here – but as our decision here states, it is unlikely that this Committee will grant a new licence or renew a licence if it is presented with evidence similar to what we heard in this case, or in the ***Brownlee Brothers*** case.

Consequences of our decision to refuse to grant the application

98. Any party to these proceedings who is dissatisfied with our decision or any part of it has a right of appeal to the Authority pursuant to s.154. Notice of appeal must be given within 10 working days of our decision – section 155.

99. The applicant is trading under a temporary authority. We heard in evidence that the applicant company borrowed to purchase the business and that was secured over the home of Ms Holland and Mr Ringland.

100. In our administration of the Act we are required to be reasonable.

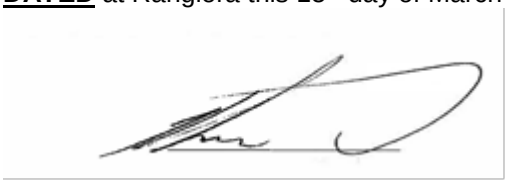
101. We think it would not be reasonable for our decision to have immediate effect, having regard to the fact it is governed by s.153 and not s.152.

102. We are able to fix a date in our decision from and on which our decision is to take effect, which differs from the actual date of the decision – see s.211(6).

103. The temporary authority expires on 21 May 2019. To enable the applicant to sell the business or consider its options under s.153, we consider it reasonable to determine that this decision will not take effect until 11.59pm on 21 May 2019.

104. Accordingly, pursuant to s.211 (6) we determine that this decision to refuse the application for an on-licence sought by the applicant takes effect from 11.59pm on 21 May 2019.

DATED at Rangiora this 15th day of March 2019.



Chairperson
Waimakariri District Licensing Committee

APPENDIX 1.

WAIMAKARIRI DISTRICT COUNCIL

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

AND

IN THE MATTER of an Application by **HOLCO HOLDINGS LIMITED** for a new **ON Licence** in respect of premises situated at 37 High Street, Rangiora, known as **Mainstreet Sports Bar.**

BEFORE THE WAIMAKARIRI DISTRICT LICENSING COMMITTEE

The Chairperson, Neville Atkinson

MINUTE

This matter relates to an application for a new On-Licence for Holco Holdings Limited, located at 37 High Street, Rangiora, and known as the Mainstreet Sports Bar.

1. The hearing for this application commenced on 30 November 2018. It was adjourned following discovery of emails between Waimakariri District Council and Reid Stirling. The thread of emails purportedly related to an incident in the Mainstreet Sports Bar on 2 September 2018. After the incident Reid Stirling recorded a telephone conversation allegedly between himself and the applicant Gaynor Holland. During the hearing it was discovered that these emails, although being included in documentation held by the Hearing Panel, had not been disclosed to all parties, specifically Police, Medical Officer of Health and the Applicant. Enquiries revealed the DLC Secretary had disclosed all relevant documentation from the electronic file, however, sitting on the physical file were the thread of emails between the Council and Reid Stirling. The thread of emails had not been electronically recorded and hence were overlooked by the Secretary. Council's process has now been changed to ensure all documentation is electronically recorded. For all future hearings the Secretary will also review the physical file as a final check.

2. As a result of the non-disclosure, the Hearing was adjourned to enable the Secretary to check the physical file to ensure all relevant documentation had been disclosed. As a result all parties received a copy of the email thread between Reid Stirling and Council. Within the thread was a copy of a trespass notice which was included in the disclosure. No other relevant documentation was located.

3. On 15 January 2019, Raj Deo, Licensing Inspector for Waimakariri District Council, approached Reid Stirling concerning the email thread. Mr Stirling was asked if he would be prepared to give evidence when the hearing reconvenes on 1 February 2019. Mr Stirling apparently stated he was not prepared to appear. The licensing inspector clarified with him whether he would be prepared to make a written statement to the licensing inspector. Mr Stirling has apparently declined this invitation, preferring he said, to complete a signed statement and send that to the licensing inspector.

4. On 22 January 2019 the licensing inspector received an email from Reid Stirling. It contained a signed statement, purportedly written and signed by Reid Stirling, along with a photograph of four ladies drinking in what appears to be the Mainstreet Sports Bar. The email from Mr Stirling invites enquiries by the licensing inspector on facebook, ostensibly suggesting that further enquiries may assist the licensing inspector uncover further issues. The statement confirms Mr Stirling's view that he would not attend the hearing for 'Personal Reasons'.

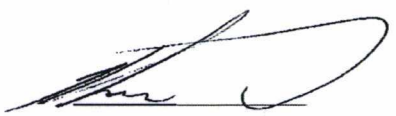
5. Prior to the commencement of the hearing, the District Licensing Committee intend to determine the admissibility or weight to be given to the proposed evidence from Reid Stirling, to be called by the Licensing Inspector.

6. Without predetermining the matter, in the interests of transparency and to assist parties, the Committee draws the parties' attention to its wide powers under sections 201, 203(9), and 207 of the Act, together with sections 4B and 4C and 4D of the Commissions Of Inquiry Act 1908. Likewise the parties' attention is drawn to sections 4, and 105(1)(a) & (b) & (j) of the Act when considering and addressing the issue of whether or not the Committee should admit and rely upon any or all of the information referred to in this Minute, noting that ultimately it is up to the Committee to eventually form its own opinion as to whether any or all of the information referred to " may assist us to deal effectually with the application before us".

7. Without finally determining the point, it is the Chairperson's provisional view that the time between this Minute and 5.00 p.m. 29 January 2019 is sufficient time for all parties, if they wish, to prepare and produce any submission it wishes the Committee to consider in relation to this proposed evidence. We intend to offer the applicant the right of reply to any submissions received from the agencies. We will then consider our position and advise all parties before proceedings begin on 1 February 2019.

8. Submissions are now called for and are to be submitted to the Secretary by 5.00 p.m. Tuesday 29 January 2019.

DATED at Rangiora this 24th day of January 2019.



Neville Atkinson
Chairperson
WAIMAKARIRI DISTRICT LICENSING COMMITTEE