

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

AND

IN THE MATTER of an application by 999 Limited Pursuant to s120 of the Act for granting of an On Licence and an Off Licence in respect of premises known as The Highway Hotel, located at 14 York Street, Richmond 9493.

BEFORE THE WAITAKI DISTRICT LICENSING COMMITTEE

Chair: Cr Jim Hopkins
Members: Mr Barry McDonald
Cr Guy Percival

HEARING at Oamaru, 26 June 2023

APPEARANCES

Sunil Kumar and Dianne Allan	for the Applicant
Greg Plunket	Objector
Carolyn Van Zyl	Alcohol Licensing Inspector
Sergeant Blair Wilkinson	N.Z. Police
Aaron Whipp	Delegated Medical Officer of Health

DECISION OF THE WAITAKI DISTRICT LICENSING COMMITTEE

Introduction

- (1) The Committee has before it an application by 999 Limited pursuant to s120 of the Act for the granting of an on licence and an off licence to apply to premises known as The Highway Hotel, 14 York Street, Richmond 9493. The Highway Hotel is located 11.4 kilometres north of the Waitaki District Council Head Office in Oamaru.
- (2) The current application for on and off licences was filed on 23rd March 2023. The applicant (999 Limited) had initially operated The Highway Hotel using a Temporary Authority issued on 13th May, 2021, and running to 13th August, 2021. A second Temporary Authority was issued on 3rd March, 2022. This expired on 3rd June 2022. An application for on and off licences was received by the Waitaki District Council Alcohol Licensing Inspector on the 22nd of May 2022. The applicant has been running The Highway Hotel since November 2022 without alcohol sales because, as yet no licences have been granted.

REPORTING AGENCIES

- (3) The May 2022 applications for on and off licences were duly advertised and circulated to the Police and the Medical Officer of Health by the Alcohol Licensing Inspector. At that point, all three agencies objected to the licenses being granted because, despite efforts to make contact, none of them had been able to interview the applicant.

- (4) The Waitaki District Council Alcohol Licensing Inspector issued a report on the 2nd of November 2022 and subsequently produced an Addendum to that report. The Addendum, issued on the 23rd of March 2023, described requests by all the reporting agencies to resolve several issues, including delayed payment of temporary license charges and “communication issues between the applicant and the Manager on site and the Agencies.” The Addendum identified Mr Sunil Kumar as an applicant.
- (5) The Addendum said initial Police opposition was based on the fact that the premises did not appear to have been trading and because Police had been unable to evaluate the application fully. The Addendum noted the Medical Officer of Health had also opposed the application on grounds of suitability and had been unable to meet the applicant, (Sunil Kumar) to resolve concerns about suitability.
- (6) The 23rd March, 2023, Addendum further advised that a meeting date was agreed with the applicant in November 2022. The meeting was meant to take place at the Highway Hotel but on the morning, it was scheduled, the Alcohol Licensing Inspector received a phone call from the applicant Sunil Kumar advising that he had missed his flight from the North Island and would therefore “send his nephew as his representative at a later date.”
- (7) The Agencies did eventually meet at the Highway Hotel with the applicant’s on-site manager, Dianne Allan and Mr Kumar’s nephew, Johnny. Concerns regarding the lack of staff and training systems were raised by the Medical Officer of Health, Aaron Whipp, Police Sergeant Blair Wilkinson and the Alcohol Licensing Inspector. They also discussed with the applicant’s representatives “the apparent lack of interest in the business shown by the applicant.” Agreements were reached regarding the employment of one more full-time manager and the production of an acceptable Alcohol Management Plan. It was also agreed that the Highway Hotel had to update and confirm the issue of a current Building Warrant of Fitness before licences could be approved.
- (8) The Addendum finally advises that a Host Responsibility Policy was “eventually received” on the 2nd of March 2023 and although it was “not a true Alcohol Management Plan” it was accepted by the Police and the Medical Officer of Health. In addition to the production of this Host Responsibility Policy, the appointment of another Certificate holding Manager led to the Police and the Medical Officer of Health withdrawing their opposition to the granting of On and Off licences to the applicant. The remaining concern, namely confirmation the premises had a current Building Warrant of Fitness were resolved on the 21st of March 2023, when the Waitaki District Council’s Building Control Team confirmed that a Building Warrant of Fitness had been issued on that date and would expire in September 2023.
- (9) In light of the protracted period needed to arrange interview meetings and address Issues and the bearings this has on the issues the District Licensing Committee must consider, a detailed timeline of engagements dating back to May 5, 2021, is included with this decision as Appendix 1.

THE OBJECTORS

- (10) In response to the required advertising of the application for On and Off Licences at the Highway Hotel, an objection from a neighbouring resident was received.
- (11) Although submitted two days after the allocated period for objections to be lodged, the resident’s objection was accepted by the District Licensing Committee Chair. However, the objector was advised that some of the issues he had raised, like the conduct of guests

staying in motel units attached to the hotel, were outside the scope of the on and off License application and any Hearing that may arise as a consequence.

APPLICATIONS FOR GRANTING OF ON AND OFF LICENCES

(12) When considering an application for an on or off licence, the Committee must have regard to the matters set out in s105 and subsequent sections of the Sale and Supply of Alcohol Act 2012. The application criteria are as follows: -

s105 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.*

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.

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

(a) current, and possible future, noise levels:

(b) current, and possible future, levels of nuisance and vandalism.

107 Authority or committee may refuse licence even if application not opposed

The licensing authority or licensing committee concerned may, having regard to any matter stated in section 105, refuse to issue a licence, even if no objection was filed against the application for it under section 102 and no report was filed under section 103 opposing that application.

110 Particular conditions: on-licences and club licences

(1) The licensing authority or licensing committee concerned may issue an on-licence or club licence subject to conditions of any or all of the following kinds:

(a) conditions prescribing steps to be taken by the licensee to ensure that the provisions of this Act relating to the sale or supply of alcohol to prohibited persons are observed:

(b) conditions prescribing steps to be taken by the licensee to ensure that the provisions of this Act relating to the management of the premises concerned are observed:

(c) conditions prescribing the people or kinds of person to whom alcohol may be sold or supplied:

(d) conditions imposing one-way door restrictions:

- (e) in the case of a club licence or an on-licence endorsed under section 37, conditions requiring a manager to be on duty.*
- (2) The licensing authority or licensing committee concerned must ensure that every on licence and club licence it issues is issued subject to conditions—*
 - (a) stating the days on which and the hours during which alcohol may be sold and supplied; and*
 - (b) if there are in force regulations under this Act empowering the authority or committee to determine different levels of licensing fee prescribed by the regulations for premises of different kinds, stating the fees payable for the licensing of the premises concerned; and*
 - (c) stating (directly or by description) a place or places on the premises at which drinking water is to be freely available to customers while the premises are open for business.*
- (3) In deciding the conditions under subsection (2)(a) subject to which a licence is to be issued, the licensing authority or licensing committee concerned may have regard to the site of the premises in relation to neighbouring land use.*
- (4) Subsection (1)(c) is subject to the Human Rights Act 1993.*

THE HEARING

- (13) The hearing to consider the application by 999 Limited pursuant to s120 of the Act for the granting of an on licence and an off Licence to apply to premises known as The Highway Hotel was set down to commence in Oamaru at 9.00 a.m. on Monday, 26th June, 2023. Appearing before the Committee were Sunil Kumar and Dianne Allan for the applicant and Graham Newton, a witness in support; objector Gregory Plunket; Waitaki District Council Alcohol Licensing Inspector, Carolyn Van Zyl; Sergeant Blair Wilkinson and Medical Officer of Health, Aaron Whipp. Evidence was presented by Dianne Allan, Graham Newton, Gregory Plunket, Sunil Kumar and Carolyn Van Zyl. Aaron Whipp and Blair Wilkinson asked questions only.
- (14) The Hearing agenda was circulated as required prior to scheduled date. That agenda indicated evidence would be given first by the applicant, followed by evidence and questions from the reporting agencies and the evidence of the objector before concluding with a closing statement for the applicant. No objection or request for change to that timetable was received prior to the Hearing. Mention is made of this because, about 15 minutes before the scheduled start time of 9.00 a.m., the Committee was advised that the applicant, travelling from the North Island, was still in transit and would be late. He was expected to arrive in 60 to 90 minutes.
- (15) This unexpected and unwelcome news obliged Committee members to delay the Hearing to review the agenda and the implications for natural justice that would arise if the applicant was not present and did not hear evidence presented in objection.
- (16) The Committee's concerns were mitigated, to an extent, by the fact that the applicant's on-site manager, Dianne Allan, was present and prepared to give her evidence and call a witness, Graham Newton, in support of the application. Insofar as Dianne Allan's evidence was part of the scheduled proceedings and further that being in support of the application, was not intended to challenge or prejudice it, the Committee decided it would hear from her, as planned, at the start of the Hearing.

- (17) Dianne Allan's evidence followed a brief introduction from Waitaki District Council Alcohol Licensing Inspector, Carolyn Van Zyl which summarised factual matters. She said the applicant company had one Director and one shareholder and that objections to the application originally came from herself, the Police and the Medical Officer of Health. Police and the Medical Officer of Health had since withdrawn their objections. She did cite information from the Companies Register, which stated, in respect of 999 Limited, "This company is now overdue in its obligation to file an annual return. If the annual return is not filed immediately the Registrar will initiate action to remove the company from the register." The Committee had not been aware of this prior to the Hearing.

EVIDENCE FOR THE APPLICANT

- (18) Following this introduction, Dianne Allan told the Hearing she had been managing the Highway Hotel premises since October 2021. Prior to that she said she had acted as a Duty Manager. Dianne Allan said she had 100% responsibility for managing the premises and employing staff. She told the Hearing there were two employees at the hotel who shared cooking and cleaning duties and that they were not busy. Most of the occupants of the motel units were truck drivers and she said occupancy was "dismal", with only 1 unit in use some nights and 4 on others.
- (19) Responding to questions from the reporting agencies, Dianne Allan said she could not understand why the business was still operating. It had traded for 9 months without a licence, and she agreed that the absence of licences impacted the viability of the business. Asked about her relationship with the applicant, she said she had always dealt with Sunil Kumar, although the company, 999 Limited, was in the name of his wife, Preeti Kinra Khurana. She is the single shareholder and Director.
- (20) Asked what her role at the Hotel was, Dianne Allan said she had 100% responsibility for the hotel's operation. When asked what KPIs were included in her contract, Dianne Allan said she did not recall the title on the contract or the KPIs in it. She said she had been emailed a contract 18 months ago (in 2021) but had not signed it, and there had been no follow up since that original email. She said she did not currently have a contract with the company but added that she wasn't aware the existence of a contract between herself and the company was important.
- (21) Graham Newton was then called by Dianne Allan as a witness in support of granting On and Off licences. Mr Newton told the Hearing he was speaking for a group of residents in attendance, all of whom considered it unfortunate that the hotel is operating without a licence. He said it was puzzling the applicant did not have a licence. Mr Newton said he lived 150 metres from the hotel and there had never been any problems arising from its operation. On the contrary, "the pub was always well respected" and it was "nice to go and have a meal and a drink there." However, with no licence in place, he had stopped visiting, as had others. Asked if he had met the applicant, Mr Newton said he had not but knew Dianne Allan well.

EVIDENCE FOR THE OBJECTOR

- (22) At the point when Dianne Allan and Graham Newton had completed their evidence and finished answering questions, the applicant had still not arrived to participate. So, the Hearing was adjourned for a second time while the Committee considered if it could proceed or if it needed to be deferred and rescheduled. The Committee resolved to continue and hear the evidence of the objector, Gregory Plunket. Members considered his objection raised only a limited number of issues specifically related to the granting of on and off licenses and that those issues were more likely to be responded to by the onsite manager than the remotely located applicant. Should any issues arise in the course of the

objector's evidence that required answer by the applicant, the Committee felt it would be possible to recall Mr Plunket if necessary or ensure Mr Kumar had the opportunity to address matters and offer evidence in refutation.

- (23) Gregory Plunket's objection raised a number of issues, few of which related to the granting of On and Off licences. Mr Plunket said he felt sorry for Dianne Allan, describing her as "the meat in the sandwich." His principle concerns related to an alleged argument he had had with an individual who, he said, was employed at the hotel. Because that party was not present to respond to Mr Plunket's claims and because his employment status was challenged by Dianne Allan, the Chair ruled that this alleged dispute was outside the scope of matters the Committee could consider in relation to the granting of licences and would not be further discussed.
- (24) The other major concern raised by Gregory Plunket related to the behaviour of guests in the motel units attached to the hotel. He claimed one recent burglary had been committed by a motel guest and that there had been other troubles. But he said these troubles had nothing to do with alcohol licences and that he "didn't even drink". Answering questions, Mr Plunket said he had not been approached by the Applicant since lodging his objection on 22nd September, 2022. He concluded his evidence by returning to the conflict between himself and a third party and told the Hearing his sole requirement was a stipulation that the individual concerned was not involved with the hotel in future. "Other than that," he said, "all is good." Asked to confirm that this was his view, Mr Plunket reiterated that "all is good" except for the particular matter he had raised.
- (25) For that reason, and because the other matters raised by Mr Plunket were beyond the scope of the Hearing and capable of resolution through other processes, we note here that his objection could not and did not influence the Committee or contribute to the conclusion it has reached.
- (26) Having heard from Mr Plunket, the Hearing was adjourned for a third time because the applicant still had not arrived. The Committee reconsidered options, including postponement. As time passed, this possibility became more likely but, at 10.55 a.m., one hour and fifty-five minutes after the scheduled start of the Hearing, the applicant arrived. After some time had been made available to allow Dianne Allan to brief Mr Kumar, he presented his evidence.

EVIDENCE FOR THE APPLICANT (CONTINUED)

- (27) Sunil Kumar told the Hearing it would be "no problem" if he had to close the hotel. He said the business was struggling to survive and that \$2000.00 a week was being paid "out of my pocket" to keep it afloat. He said one objection meant the business had not had a licence for 9 months and this was "no good". Over that period, the business had lost between \$5,000.00 and \$10,000.00. Mr Kumar said that running the hotel meant he had to pay salaries out of his pocket and that, if licences were granted, he would need to employ one more person "to run the place properly." But, if licences were not granted, he reiterated it would be "no problem to shut the place down." He said the hotel had 5 motel units attached. These operated independently and generated good rental income on a weekly basis.
- (28) Sunil Kumar then answered questions. Asked by Aaron Whipp if the hotel had a current Fire Evacuation Scheme that had been approved by FENZ (Fire and Emergency New Zealand), Sunil Kumar said he was not sure if it did. Aaron Whipp then tabled an email from the Fire and Emergency New Zealand Otago District Business Services Coordinator sent to him that morning. The email stated, "the Hotel at 14 York Street, Oamaru does not have an operable evacuation scheme." The email further stated that there had been no response from the

applicant to emails from FENZ in relation to the liquor licence applications. Responding, Mr Kumar said there had been oversights and that he would address the matter. The FENZ email was tabled and included with this decision as Appendix 2.

- (29) Responding to further questions, Mr Kumar said most of the hotel's customers were truck drivers stopping over en route north or south. He said the hotel would attract more custom if it had liquor licences. Mr Kumar told the Hearing that staff practised Host Responsibility and that, on busy nights, there was a van available to take people home. Use of the van depended on how busy the hotel was. If the hotel had only 3 or 4 truck drivers as guests in the evening, then options like using a taxi would be considered. Mr Kumar said the company was an experienced operator with premises in Darfield, Mangere and Kawakawa and that there had not been any trouble or incidents at those venues.
- (30) Asked about his relationship with Preeti Khurana, who had been listed originally as the applicant. Sunil Kumar confirmed she was his wife and the company's sole shareholder and Director. Asked by Committee member Barry McDonald, "Who owns the business?" Sunil Kumar said, "My wife." Asked, "Who is the applicant?" He again answered, "My wife." He went on to say that he managed most of the company assets, including The Highway Hotel and accepted responsibility for the delays and shortcomings in the application before the Committee but said he met with Police and the Medical Officer of Health three months prior to the Hearing commencing.

EVIDENCE FOR THE REPORTING AGENCIES

- (31) As indicated previously, the Waitaki District Council Alcohol Licensing Inspector, Carolyn Van Zyl, presented evidence. She said she would take her reports as read but reminded the Hearing that some things had changed since she had issued her first report in November 2022. At that stage The Highway Hotel did not have a Building Warrant of Fitness. But her subsequent report, issued on 23rd March, 2023, said that confirmation of a current Building Warrant of Fitness had been received by the Council's Building Control team on the 21st of March 2023.
- (32) With her reports taken as read, a range of questions were asked. Issues addressed included the lengthy time it has taken to get responses and payments from the applicants and what this may indicate about their suitability. Carolyn Van Zyl told the Hearing she was not confident how the applicant would operate if the licenses were granted. She said she was confident that Dianne Allan would operate competently and carefully because dealing with her had been good. The same could not be said for the applicant who she described as neither prompt or helpful. In reply to a question, Carolyn Van Zyl said it was the applicant, not an appointed manager, who was ultimately responsible for ensuring any license was operated properly.
- (33) Other questions concerned staffing. Carolyn Van Zyl said she was concerned that there was only one staff member currently employed. Whereas the hotel was only operating 4 days a week at present, from 4 p.m. to 8 p.m. at night, the on licence sought was for a longer period, namely from 10 a.m. till 2 a.m. the next day. She noted the financial problems the company was experiencing and that these problems were acknowledged by Sunil Kumar and said she was concerned that these problems may see the hotel attempt to operate for longer hours but still with only one staff member. She said the financial problems Sunil Kumar had referred to in his evidence were "a red flag" for the reporting agencies, who considered there was a correlation between premises not making money and not operating in an optimum fashion.

- (34) Asked if she had confidence in the suitability of the applicant, Carolyn Van Zyl said there was no single “outstanding,” “significant” or “glaring” reason for her to have concern if a request for licences was granted, but rather a cumulative range of issues, including a lack of staff, a lack of support for the staff employed, a lack of finance and a lack of knowledge. For those reasons, she said she could not see how the licences could be properly administered.
- (35) The information from the Companies Office that had been included in Carolyn Van Zyl’s introductory remarks regarding 999 Limited’s failure to meet its obligation to file an annual report was revisited. Carolyn Van Zyl confirmed she had only become aware of this recently, while preparing for the Hearing. Because the Committee had only been made aware of this at the commencement of proceedings and because Sunil Kumar was still in transit at that point and so had not heard what was said, he was advised of the details of the Companies Office statement and invited to respond. Sunil Kumar told the Hearing he was not aware that the company had failed to meet its obligation. He said it was an oversight that will be remedied. “It will be done today,” he said.
- (36) Having answered questions, Carolyn Van Zyl advised she had a closing submission she wished to read. Although not programmed, it was agreed this could be done but the Chair ruled that the applicant was to be provided with a printed copy to assist with preparation of closing remarks. In the interests of transparency, a copy of Carolyn Van Zyl’s Opening and Closing Submissions is included with this decision as Appendix 3.
- (37) Summarised here, the Closing Submission focussed on the applicant’s approach. “The applicant’s approach to everything required to get the licence issued has been unprofessional. Even as recently as March 2023, when a Host Responsibility Policy was sought, the name of the premises was that of another hotel, so was obviously not correct, and was obviously used by a different business.” The Licensing Inspector said this was just the most recent example of a pattern of delay that had persisted from 2021 till now. She cited “constant reminder phone calls and emails” and payments not made in “a timely fashion.” Carolyn Van Zyl said she had been dealing with Sunil Kumar, his nephew Johnny and Dianne Allan but was “fairly certain no-one has ever dealt directly with Preeti Khurana who is listed as the contact person.” In closing she noted that being granted a licence is a privilege, not a right and that the hotel had only recently acquired a Building Warrant of Fitness and was not currently registered for the sales or provision of food. It was for the applicant to offer reasons why it should be granted a license and questioned if this had been done.

Closing statement of the applicant

- (38) After a brief recess to allow preparation, the hearing concluded with a closing submission from Sunil Kumar and Dianne Allan. He said there would be a maximum of 50 people on the premises and that he wanted to reduce the opening hours. Although the licence application sought was for 7-day operation, he intended to operate only on 4 days and 4 evenings each week. He said he would normally rely on an agent, but in the case of The Highway Hotel, he had dealt and would continue to deal with matters himself.
- (39) Dianne Allan acknowledged in her comments that “Sunil has been a wee bit behind the times running the pub” and that he “puts a lot of faith in me.” She said she really enjoyed working at the hotel that it provided a service for truck drivers and the local community. She commended Sunil Kumar for keeping the hotel opening during the Covid lockdown periods when it initially appeared it would not be possible to provide meals for patrons. Dianne Allan said she “would love” to be able to continue to serve truck driver clients. “It’s our income,”

she said. Her submission concluded with a request for the Committee to consider granting the licences “and give everybody a fair go.”

RELEVANT MATTERS IN s105

- (40) In determining whether it should or should not grant On and Off licenses, there are a variety of matters in s105 the Committee must consider. These include *Days and hours - s105 (1) (d)*, *The design and layout of the premises - s 105 (1) (e)*, *The effect on the amenity and good order of the locality - s 105 (1) (h)*, *Whether the amenity and good order of the locality are already badly affected - s 105 (1) (i)*, *Systems, staff and training to comply with the law - s 105 (1) (j)* and *Any matters dealt with in any report from the Police, an Inspector or a Medical Officer of Health made under s103 - s105 (1) (k)*.
- (41) However, these are subordinate to the paramount considerations contained in s105 (1) (a) and (b), namely *the object of this Act* and *the suitability of the applicant* and it is that second matter, the suitability of the applicant, which the Committee has concluded is the critical issue it must resolve in the case of this application. The Act puts suitability of an applicant second only to its object as a consideration when determining whether to grant or decline licence applications and consideration of subsidiary matters depends upon whether the Committee considers the applicant or applicants have shown suitability.

Suitability of applicant - s105 (1) (b)

- (42) For the reasons outlined above, the Committee resolved early in its deliberations to focus on suitability as a key criteria. We note at the outset the body of case law clearly establishing the granting of a licence as a privilege, not a right. The Committee is also aware of case law making it clear there is no onus on any of the parties, either to prove or disprove suitability. Since there is no onus of proof, the case law further makes it clear that the Committee, operating as a Commission of Inquiry in terms of s201 of the Act, is required to make a merits-based decision. As Justice Heath concluded in *re Venus NZ Limited (2015) NZHC 1377*, a Committee cannot rely on others to prove or disprove a proposition but rather “the Committee must form its own opinion on the basis of the evidence adduced.” Which we have done in this instance. We have also noted the decision in *Two Brothers Wholesale Ltd (2021) NZARLA 32 at (99)* which says, “while there is no onus of proof on an applicant, it is for an applicant to put its best foot forward if it expects a DLC to favour an application over significant opposition which is itself supported by evidence.”
- (43) When considering the timeline (included here as Appendix 1) dating back to 2021, it is not persuaded this is an example of an applicant “putting its best foot forward”. The timeline demonstrates a consistent pattern of delay in replying to emails and other communications alongside a failure to make payments in a timely fashion. The Committee notes that, as at the Hearing date, the applicant did not have an operable evacuation scheme approved by Fire and Emergency New Zealand. Nor had it filed with the Companies Office, as required, an annual report. The Committee was told this would be addressed on the day of the Hearing, but our evaluation is that this also indicates that the company either does not understand its legal obligations or does not give due consideration to meeting them. The company had secured a Building Warrant of Fitness for The Highway Hotel but only in March 2023, nearly two years after its initial engagement with the reporting agencies. Once again, our opinion is that the company is either ignorant of its obligations or indifferent about meeting them.

- (44) This cavalier attitude even applied to the Hearing itself. The Committee takes no pleasure in but no responsibility for the interruptions, delays and rescheduling that were required on the day. These were entirely the result of the applicant's failure to be present at the notified commencement time. We note this is the only time since the establishment of the Waitaki District Licensing Committee that an applicant has failed to appear in a timely manner. It is not an example of the applicant "putting its best foot forward." Concerned to ensure that the principles of natural justice applied, the Committee rearranged appearances and allowed both Dianne Allan and Sunil Kumar opportunities to comment on and refute evidence offered or opinions expressed by the reporting agencies. We are satisfied that Sunil Kumar was not disadvantaged as a result of his arriving 1 hour and 55 minutes late and that the Committee took appropriate steps to meet its natural justice obligations.
- (45) As for the evidence presented, we record that we found the on-site manager, Dianne Allan to be candid, credible and clearly committed to keeping a problematic business operating in the interests of its customers and the local community. She did acknowledge the effort Sunil Kumar had made to keep The Highway Hotel open during the Covid lockdowns, but other evidence indicated to us that not only did the applicant "put a lot of faith" in her but a lot of expectations too and that there wasn't always the support she was entitled to expect from her employers. Evidence of this was the comment "Sunil has been a wee bit behind the times running the pub." We further note that Dianne Allan has no employment contract, despite receiving an emailed offer eighteen months ago. It is our view that a prudent and efficient employer would have ensured that someone performing an essential role such as serving as the on-site manager did have an employment contract. Here again, we conclude the company is not operating as it should.
- (46) Turning to the evidence offered by Sunil Kumar, we note, as recorded earlier, that he told the Hearing it would be "no problem" if he had to close the hotel. This suggests a lack of commitment that is at variance with Dianne Allan's energetic advocacy for the hotel and desire to keep it open. Sunil Kumar also told the Hearing that the business was struggling to survive and that \$2000.00 a week was being paid by him to keep it afloat. But he presented no evidence to indicate what steps he planned to take to make the hotel more profitable and viable. He was not happy that one objection had meant the business had not had a licence for nine months. This was "no good," he said. But the timeline included as Appendix One with this decision clearly shows that matters could have been resolved much more quickly had the company been prompt and professional in its dealings with the reporting agencies. Mr Kumar is, to a considerable extent, the architect of his own misfortune, which also calls into question his and the company's suitability as an applicant.
- (47) Finally, in respect of the company, we note evidence was presented to the Hearing indicating that no-one had met with or spoken to Preeti Khurani, despite her being originally identified as the applicant in this case and confirmed to be the sole shareholder and Director of 999 Limited. It is our view that, as the original applicant, Preeti Khurani should have made greater effort to make herself available to meet, certainly with the reporting agencies and arguably with the Committee. Sunil Kumar did say he had and would continue to have oversight of The Highway Hotel's operation, but he also described himself as Preeti Khurani's agent, so it is possible for the Committee to conclude that it had never actually met the official applicant or had the opportunity to assess their suitability.
- (48) In closing this discussion of relevant matters, we note that s105 (1)(k) allows us to consider *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103*. Without reiterating what has earlier been recorded in detail or examining in detail the Alcohol Licensing Inspector's Opening and Closing Submissions (which are available for consideration as Appendix 3) we record that we found the evidence presented verbally and in the extensive written reports supplied to us to be thorough and

persuasive. We are satisfied that the reporting agencies acted professionally throughout an unnecessarily protracted process made more difficult by the uncooperative attitude of the representatives of the applicant company.

CONCLUSION ON s105 AND OBJECT OF THE ACT & THE DECISION OF THE DISTRICT LICENSING COMMITTEE

- (49) For the reasons set out above, having given due consideration to what it considers to be the crucial issue, that being the suitability of the applicant, the Committee has formed its own opinion “on the basis of the evidence adduced” and made a merits-based decision. It is our view that the applicant has been given every opportunity over an extended period of time “to put its best foot forward” and so persuade the DLC to “favour an application over significant opposition which is itself supported by evidence.” We are not persuaded that it has done so. On the contrary, the applicant has convinced us we should not “favour an application” and we have determined that the applicant is not suitable, has not met the standard required to be granted a liquor licence, is unlikely therefore, unless major changes in attitude and practise occur, to operate in a manner that will achieve the object of the Act and for those reasons the application by 999 Limited for on and off Licences for The Highway Hotel is declined.
- (50) In reaching this decision, the Committee records that it cannot be construed to reflect adversely on any action of the on-site manager, Dianne Allan but rather because it has identified a pattern of prolonged and consistent ineptitude or indifference displayed by the applicant and/or their agent which does not entitle them to the privilege of having liquor licenses at The Highway Hotel. The Committee is also satisfied it has had due regard to the object of the Act and has considered the matters provided for in s105 and other matters of which it is required to be satisfied. We refer any party who wishes to appeal this decision or part of this decision to s154 to s158 of the Act.

Dated at Oamaru 19 July 2023

A handwritten signature in black ink, appearing to read 'Jim Hopkins', with a large, sweeping flourish extending to the right.

Jim Hopkins, Chair