

IN THE MATTER OF of the Sale and Supply
of Alcohol Act 2012 (the Act).

AND

IN THE MATTER OF an application by
State Highway 3 Limited pursuant to
s.136 of the Act for the granting of a
Temporary Authority in respect of
premises situated at 3158 Mountain
Road, Stratford, known as the “Midhirst
Tavern”

HEARING BEFORE THE STRATFORD DISTRICT LICENSING COMMITTEE

Chairperson: Neil Volzke
Member: John Rowe
Member: Barrie Smith

HEARING at Stratford on 12 November 2021

APPEARANCES

Mr. Raja Ritesh (by zoom) – for the applicant
Ms. Agata Wlodarczyk (by zoom) - for the applicant
Ms. Rachael Otter – Alcohol Licensing Inspector – in opposition
Acting Sergeant Christopher Henry – Police Alcohol Harm Reduction Officer (AHRO) –
in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction

1. We have before us an application by State Highway 3 Limited dated 6 October 2021 to grant a Temporary Authority for an On Licence in respect of premises situated at 3158 Mountain Road, Stratford, known as “Midhirst Tavern”. There is a current On Licence 34/ON/4/2021 in force that was renewed to Midhurst Tavern (2005) Limited on 28 May 2021 and expires on 6 May 2024.
2. The application was referred to the Police and the Licensing Inspector for enquiries and reporting as required under the Act.
3. The application drew adverse reports from the Police and the Licensing Inspector. Both agencies opposed this application.
4. After a preliminary consideration of the application the Committee set the matter down for a public hearing pursuant to Section 136 (3) of the Act. The committee sought to afford the applicant the opportunity to respond to the issues raised in opposition to this application and in doing so, ensure natural justice principles had been followed.
5. In his opening comments, the chairman made it clear that the onus was on the applicant to satisfy the Committee that the Temporary Authority should be issued. It is the applicant who must put forward a case that convinces the Committee a positive finding should be made.

6. Prior to the hearing commencing, a small volume of late evidence had been submitted by the Police and the applicant. In accordance with the Committee Order dated 2 November 2021, the last day for evidence to be received from agencies and the applicant was within 5 working days of the hearing, meaning all evidence was required by 9 November 2021.

However, because both parties sought permission to submit late evidence and the low volume involved, the Committee agreed to receive the evidence. This was circulated among all parties prior to the meeting. At the commencement of the hearing the Chairman asked all parties to confirm that they had received and read the late evidence. All parties confirmed this was the case and no objections were raised.

7. The Midhirst Tavern is a long established business and has been successfully trading as an owner/operator business for many years. It is a popular and well managed hospitality facility with a good reputation.
8. An email received from the current owner of the Midhirst Tavern confirms his approval for the new owner to use his On-License temporarily to operate the premise.

Applicant's Evidence

9. Mr Raja Ritesh appeared at the hearing via a zoom link from Auckland. His partner Agata Wlodarczyk also appeared on screen periodically throughout the hearing. The Committee accepted this occasional screen sharing.
10. Mr Ritesh stated he and Agata were the freehold owners of the Midhirst Tavern. His evidence showed that State Highway 3 Limited trading as Midhirst Tavern is a tenant at 3158 Mountain Road, Midhirst and that another company, Zero Degrees Limited, is a landlord at this address. Company Office records confirm that Mr Ritesh and Agata Wlodarczyk are joint shareholders of those companies and that Mr Ritesh is a director of both companies.
11. Mr Ritesh stated the sale process had been delayed due to COVID restrictions. He added that they had a right not to settle because of the COVID circumstances. But because the owner wanted to retire, as a good gesture and with-out inspection of the property they settled so everyone could move on with their lives.
12. Mr Ritesh confirmed he lived in Auckland and owned several businesses, some outside of Auckland. He stated that because he could not find a suitable manager to manage the premises, he thought they needed to involve themselves and intended to move to Midhirst.
13. Mr Ritesh has been trying to find a suitable manager to run the premise but has been unsuccessful to date. He said he was actively looking for people but there is a shortage in skill. He had only received six applications where previously we would expect 50 and needed more time to fulfil the requirements of the Stratford District Council.
14. Mr Ritesh responded to the objections in the agency reports that opposed his application. He commented he had explained those objections in the email along with attachments that were sent as late evidence. He explained that last year they purchased the Oasis Hotel in Waiouru.

Mr. Ritesh commented - everything was new to them at that time and we took on the very big responsibility and, in that process, we did make some mistakes and as I said we are not from hospitality and there are a lot of things we were not aware of and those mistakes just happened but they were not intentional.

15. Mr Ritesh spoke of his dealings with the Ruapehu Licensing Committee earlier this year and commented - we could not meet the requirement of the Ruapehu Council to employ 5 duty managers, it was hard to find 5 managers so we became duty managers ourselves to satisfy the requirements of the Ruapehu Council. The Council were not happy and yes, we had made mistakes, we were very stressed at that time. We spoke our emotion to the Council and the Council understood that.

The Committee asked the applicant – in the application before us today, does it seem to you that a number of the same issues raised in the Ruapehu District Licensing Committee Decision have been raised by the Stratford District Licensing Inspector and Police?

The applicant answered - that in Waiouru before February we had big problems and we had a number of staff who resigned. We had one person who only want to work from 9am until 5pm and did not want to work weekends. Weekends are a very busy time for us. This continued and in the end this person started blackmailing us and left because she would not work the weekends. That was one incident, we were always on the knife.

He went on to say - yes, I can see the similarities, and that is based on the information they have received from Ruapehu reports and we are not operating the business yet. The similarities will be only surface when we run the business and do the same pattern.

The Committee also asked the applicant about the Direction Order - where you were given a very clear message from the Ruapehu Commissioner in the Direction Order about having sufficient staff, systems and training provisions before a Temporary Authority would be considered, but you have not provided any evidence of those things with this application, is there a reason for that?

The applicant appeared confused by this question and spoke about matters required by the Ruapehu District Council and obtaining minutes from the Ruapehu District Council. The Chairman moved on from this question as the applicant was unable to answer.

The Committee asked the applicant about the intention to introduce pokie machines at the Midhirst Tavern that will require staff input into servicing those machines, as well as the intention to open longer hours and serve breakfasts. How do you intend to manage the additional workloads for staff? E.g., Do you have rosters or training schedules?

The applicant answered that he was in the process of recruiting and interviewing more duty managers who have experience of the gaming. Yes, we will find some people, we are talking to some people but we need more time for that. We do not have any rosters in place, we are still in the process of finalising the recruitment. We have intentions to open for breakfast but not to start with. Maybe we will carry on with the existing hours and as we get used to the premises, we will start increasing the hours slowly but not in the beginning. This could take up to four or five months before we start doing that.

The Committee asked the applicant - it is noted in the Inspector's report that you will employ Kim Taylor who is currently working at Midhirst Tavern, how familiar are you with her capabilities, as you are going to put a lot of faith in her?

The applicant answered that he had been talking to the existing owner and he suggested Kim Taylor over other employees. He was aware of her drink driving charge and that her certificate was being monitored still. He said he will have enough duty managers to cover if her certificate is not renewed.

The Committee asked the applicant if he regarded Ms Taylor as someone suitable to run the bar in his absence?

The applicant answered - it is not a matter of a suitable person or not, everyone needs a second chance in their life. Based on that I will take her. If it carries on all the time, I will not be happy with that.

The Committee asked the applicant - Do you feel confident you will be able find the staff?

The applicant answered - We are having a problem finding the duty managers with experience in gaming and on-licence and off-licence. We have short listed, we have found somebody, we are talking to someone. New Plymouth is a good destination, we can drive, we can take a flight. Staffing is not an issue and we have some people who can support us.

16. The applicant responded to the family harm incidents that were referred to in the Police report. He commented -an objection was raised about my character involving my wife in 2014. We were never married; she was my partner. We did not get on with each other. It is recorded by the Police but what is recorded is not the full truth. The Police (Chris) have asked my ex-partner questions. We are not on good terms; I do not expect her to talk good about me. We have been to the family court for last two years fighting. I am trying to sort out what access I can have with my son (not custody) who is 13 years old. It has been very difficult time and challenge. We are not on good terms.
17. The applicant, in defence of his character, stated on several occasions - that I am a businessman; I want to do business and I really need your help and support to move forward. We are not criminals; we are good people.
18. The applicant commented - we need to keep that business up and running and if we are not able to find any suitable managers before the 28th of this month, probably we will have to shut the premises. That is my concern and we will have to cancel Christmas bookings and all. If you can help me with that, how we can sort it out. You have made an objection on me and Agata as a duty manager. If we can overcome that scenario, otherwise I am happy to honour the decision of the Stratford Council.

Police Evidence

19. The Police report was taken as read. It opposed the granting of a Temporary Authority.

During the applicant's earlier presentation, Mr Ritesh challenged the accuracy of the Police report. He noted the reference to Jodi Snell as his ex-wife was incorrect and that she was in fact his ex-partner. Mr Henry apologised for this error and asked "if the detail in my report, apart from Ms Snell being your wife, is correct. Is that right?" The applicant answered, yes.

On the subject of the status of his relationship with Jodi Snell, the applicant commented - this is where I doubt the investigation of the Police. They should have done proper examination. The Police filed the wrong report. This report of my ex-partner being my wife was also filed at the family court. My ex-partner has not corrected it. She likes me to be in pain.

20. The Police report included information about a family harm occurrence on 20 October 2013. This incident involved the applicant's former partner Jodi Snell. Anger management and an alcohol problem were contributing factors identified at the time.

21. The Police report also included information about a family harm occurrence on 21 November 2014. This incident involved the applicant's former partner Jodi Snell, who was inadvertently punched on the side of the head, and a step son. The applicant acknowledged alcohol was a major contributor to this altercation.

The Committee asked the applicant - in each of these incidents of family harm, alcohol and anger management were factors. What steps have you taken to address both of these issues?

After some prompting, the applicant answered - I do not drink the way I did in 2013 and 2014, because I am very busy with work. As I have other business, I do real estate and I am a developer. Alcohol will not help me and will slow my progress. My existing partner does not like to me to drink all the time, so I guess I do drink small amounts maybe on the weekends. I am almost 45 and my body will not permit a lot of alcohol.

The Committee asked the applicant - have you taken or done any formal alcohol and anger management courses or undertaken any counselling?

The applicant answered - not very recently but in the past and that I meditate to calm myself down and I am following a spiritual path.

22. The Police report included information about two family harm occurrences on 13 November 2020. These incidents involved the applicant's current partner Agata Włodarczyk. The first incident was reported at the Manakau Police Station at 11:00 am and the second was when police were called to their home address later that evening. Police noted Mr. Ritesh had been consuming alcohol, which was confirmed by him.

23. The Committee asked the applicant - it is of concern that there was a repeat incident of family harm in 2020, almost a year ago to the day. How would you say your character has improved since the incidents starting 2013, until the most recent incident?

24. The applicant answered - there was a misunderstanding, this incident was picked up by the Police and the Manakau family Court. An explanation of what actually happened that day was written by Agata herself and there was other evidence regarding my character present to the court. If it is required, I will present this to the Stratford District Council. Agata had written in the report that we had a four-month-old baby and her hormones were up and down and she was over reacting. So that incident was an overreaction.

The applicant also commented that his behaviour has definitely changed because that type of behaviour is not helpful for the type of job. I am involved in real estate and have to renew my licence every year, at this time my character is checked by the Police every year. Where my personal life is concerned, I am improving day-by-day.

25. The Police report included comments obtained from Jodi Snell on 18 October 2021. These included comments describing the applicant as a nasty alcoholic and being quite abusive. She also stated that owning a licensed premise would be a huge temptation for him.

The applicant responded and strongly rejected these comments - I think the allegation made by my ex-partner is totally rubbish. I am a businessman and I will never do anything to risk my business and risk reputation. I totally decline that part. I was running Waiouru for several months, and there was no incident there that I was drinking while I was running the business. I am very responsible. I will not let any employee do that as well. So, yes consuming alcohol on the weekends with family and friends is different. We are aware there is a strict law and we cannot consume while working.

26. Mr Henry had contacted Sergeant Hughes of the Taihape police, who was his counterpart in that area. He oversaw the Mr Ritesh's management of their licensed premises in Waiouru.
27. In the police report, Mr Hughes stated that the couple had issues retaining licensed managers for their premises. He also advised that Mr Ritesh and Agata Wlodarczyk had claimed to be residing at their business in Waiouru, however it was his belief that they never actually resided there and were recorded in the family harm occurrence in November 2020 as residing in Auckland.

The Committee asked the applicant - at the time of the most recent incident last year, where were you living?

The applicant answered - we were living in Auckland and that night I came from Ruapehu.

The Committee asked the applicant about the statement in the Police evidence - that there were concerns that you were not a hands-on operator at Waiouru, and you were absent from the business a lot, can you comment on that?

The applicant answered - I have a disagreement with that and what they said. I moved to Waiouru end of September and stayed there continuously. I left my home and my real estate and lived there continuously. If I am going here and there for a day or two and they do not see me there. Yes, that is the report from the Police but I had employees working there during my absence. This can be backed up by these employees who are still working on the premises over there.

Mr Henry asked the applicant - you explained that you intend to be at the business 35 to 40 percent of the time, do you not agree that you will be there less often than you would actually be there?

The applicant answered - 35 to 40 percent to start with, we see what happen, we have a plan, we want to see what will happen in the future so slowly we will shift because as I said, Auckland is not a desirable place anymore for people to live. We cannot just come; we will make a shift in a time period. So, I think 35 to 40 percent to start with is not a bad investment of time.

28. Mr Henry asked the applicant - you have explained that you have had trouble in the past retaining managers in the hospitality industry in your previous business. Have you undertaken any training in business management or anything similar in the time since to improve your ability to retain managers?

The applicant answered - I have not taken that training. If I find there is fault in me, I will try to correct myself, but when we employ people and they do not want to work on weekends that is not my fault. If I can work on weekends why can't you. I have been in the business for quite a long time and I don't think I have ever failed in the business. It was a big risk we took, a big risk and we thought we cannot manage this. Agata was pregnant so we sold the business and everything is back to normal. Managing good people is always good. No matter what experience you have you cannot manage bad people.

29. Mr Henry asked the applicant - the Licensing Committee in Ruapehu objected to your licence because you failed to demonstrate you had sufficient staff, systems and training in place and limited experience in the hospitality industry. What steps have you taken to gain experience in the hospitality industry since leaving Oasis in particular in regards to the sale of alcohol?

The applicant answered - After we left the Oasis, we were not involved in any hospitality business. We were running the accommodation hotel across the road until last month when we sold that business to buy in Stratford. We were not involved in the sale of alcohol and food from April until October this year. I am a confident person and I know I can run the hospitality business at Midhirst. Midhirst is smaller than Oasis so it is more manageable. I know my answer is not very satisfactory but that is all I can talk about.

30. Mr Henry asked the applicant - Our main concern is that the sale of alcohol is harm driven, and I would like you to explain to me what steps you will take to reduce harm in the community which may arise from the sale of alcohol on the premises?

The applicant answered - We don't sell alcohol to minors and we don't sell alcohol to people who are drunk. People who are drinking, we try to manage them, we calm them down; we give them water. If they are disturbing or out of our hands, we call the Police. That is the normal process I can think of and as I said, we are getting into the hospitality business, we know what we can do and cannot do. This question was asked in our managers certificates and was issued based on what we answered. They were happy and they gave us the certificates. If you are running the premises, it's not about if you were there to satisfy what you want to achieve because you want to have your business, your happy, but you also have to respect the law, you have to respect the rules and regulations, which we never broke even at the Oasis.

Inspector's Evidence

31. The Licensing Inspector's report was taken as read. It opposed the granting of a Temporary Authority.
32. The report confirmed that Mr Ritesh and Agata Wlodarczyk had current manager's certificates. Both were issued on 11 February 2021.
33. Details of the Agreement for the Sale and Purchase of the Midhirst Tavern were included. This process had been delayed due to Covid restrictions requiring the applicant to remain in Auckland. No evidence was provided that confirmed he had applied for an exemption pass that would allow him to move to Midhirst.
34. The Inspector had requested a business overview from the applicant. In a single page email from the applicant dated 7 October 2021, commented on their work history and touched on the experience gained from their involvement with a licensed premise in Waiouru. It also touched on their future intentions to include pokie machines within the tavern and to extend licensed hours, open for breakfast and employ additional staff.
35. Documents obtained from the New Zealand Companies Register confirm Mr Ritesh and Agata Wlodarczyk involvement with a diverse range of business ventures.
36. Mr Ritesh and Agata Wlodarczyk both have New Zealand residency.
37. The business overview commented that Mr Ritesh's intention was to "take on current employees". The Inspector's evidence confirmed that the staff member to be retained would be Kim Taylor who will be employed as a Duty Manager.
38. Ms Taylor has held a Managers Certificate since 2018. She has experienced some issues with this and the certificate was suspended for 28 days following a driving with excess alcohol offence in November 2019. The certificate was renewed in December 2019 but with a note that her suitability would be monitored over the renewal period. There have been no other reports of her suitability.

39. In an email dated 15 October 2021 the applicant noted that either he or Agata will stay at the premises. The Inspector raised her concerns about the limited number of staff who will be present to cover all the activities and meet compliance. She received no assurance or documentation from the applicant that additional and adequate staff have been appointed to cover these responsibilities.
40. In the business overview the applicant referenced the Oasis Hotel located in Waiouru which he owned. The Inspector confirmed in a phone conversation with the applicant that the business operating under the company name of 555 Limited and had the same shareholders and directors as State Highway 3 Limited. This business was bought in August 2020 and was sold in April 2021.
41. When preparing her report, the Inspector contacted her counterpart in Ruapehu District and discussed Mr Ritesh's management of the Oasis Hotel. She was emailed one decision and one direction order by the Ruapehu Licensing Committee that related to the 555 Limited where the applicant is noted as the same directors and shareholders State Highway 3 Limited.
42. The Temporary Manager application in relation to the Oasis Hotel was declined as a result of Mr Ritesh's limited experience managing the sale and supply of alcohol that were considered relatively high risk.
43. The Direction Order relates to a Temporary Authority application for the management of Black Bull, Waiouru. The Licensing Inspector had opposed the application as 555 Limited were unable to provide satisfactory evidence that enough certified managers and staff had been appointed to run the operation. It also noted that there had been difficulty getting all the required information and clarity as the directors had little or no experience operating a licensed premises are not hands on. The Order went on to state that applicants are going to need to demonstrate they have sufficient staff, systems and training in place for a further temporary authority to be considered.
44. The Ruapehu Licensing Inspector had also commented on the management of the Oasis Hotel by the applicant and their continued absence and lack of hands on management.

The Committee asked the applicant, can you put a percent on the amount of time out of 100 percent that you would actually be at Midhirst Tavern?

The applicant answered – I will be present because it is my vested interest. I cannot be sitting in Auckland and watching people on CCTV. Probably I be there at least around 35 to 40 percent of the time. So, if I have to travel or fly to New Plymouth, I can do that. Either me or my partner will be there.

45. The Stratford Licensing Inspector noted in the Police report the applicant's history of alcohol abuse. She also noted that the Police report mirrored the concerns of the Ruapehu Licensing Committee about the applicant's management of licensed premises and absence from the premises.
46. The Inspector noted as a concern that the applicants Manager's Certificates were only granted to Ms Wlodarczyk and Mr Ritesh in February 2021 and are within their trial period.
47. The Inspector noted as a concern that, while the applicant had purchased the Oasis Hotel in August 2020 and sold the premises in April 2021, the applicant has limited experience in the management of a tavern style licence with considerable responsibilities.

48. The Inspector noted as a concern that the application for a Temporary Authority states two certified managers will be present to manage the licence. The applicant has confirmed Ms Taylor's appointment. As noted in paragraph 2.5 of her report, only one of the shareholders is intending to be present on the premises and responsible for compliance. The applicant has a history in the Ruapehu District as not being present on the premises.

The Committee asked the applicant - the floor plan presented for Midhirst tavern indicates that more staffing will be required and there will be a number of activities to manage at Midhirst Tavern. Reports indicate you are not a hands-on manager. Waiouru and Midhirst Tavern are remote from Auckland. Can you reassure as how you will manage that?

The applicant answered – it was hard to find staff in Waiouru and the premises were much larger than Midhirst. As a new person it was too much for us and that was one of the reasons, we sold that. Also, Agata was also pregnant. We wanted something smaller. So, we made an offer on Midhirst seven months ago with the idea that when the baby is born, we can go when the baby is 3 months old. Waiouru was 1500 square metres, it was such a huge premises and we could not manage it, people were not happy, the Council were coming in.

Coming back to Midhirst, we are only talking about Kim Taylor and yes, we are in the process for looking for more duty managers. We are also picking up another staff member who is currently working there, I cannot remember her name and we are also looking for a cook. We will be working with say two to three full time and maybe two part-time for the premises.

49. The Inspector noted as a concern in paragraph 6.2, the applicant has a history of not being able to satisfy agencies of the competent management of licensed premises as noted in the Decision by the Ruapehu District Licensing Committee.

50. The Inspector noted as a concern that the applicant company has a diverse range of business interests and registered companies. She states - given the applicant's history of not being present, I have to question how the applicant will manage their time between the various companies registered to them and any management of the Midhirst Tavern. As noted in paragraph 4.5 of this report, I have received no reassurance from the applicant that additional and adequate staff have been appointed to the premises.

51. In the Inspectors opinion the application does not meet the policy objectives of the New Plymouth District Council and Stratford District Council Local Alcohol Policy and in particular the policy objective to foster an alcohol licensing environment that minimises alcohol related harm in the community.

52. The Inspector is not satisfied that the applicant will be able to achieve the Object of Act and in particular the sale, supply and consumption of alcohol that should be undertaken safely and responsibly.

53. The Inspector concludes that in her opinion the applicant is not suitable to operate licensed premises.

Relevant Legislation

Section 3 of the Act states the purpose of the Act as follows:

(1) The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole,—

- (a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and*
- (b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.*

(2) The characteristics of the new system are that —

- (a) it is reasonable; and*
- (b) its administration helps to achieve the object of this Act.*

Section 4 of the Act states the object of the Act as follows:

(1) The object of this Act is that —

- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
- (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*

(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes —

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

Section 136 Temporary authorities: on-licences and off-licences:

- (1) A licensing committee may, on the application of a person who appears to the committee to have any right, title, estate, or interest in any premises, or any business conducted in any premises, for which an on-licence or off-licence is in force, make an order authorising the applicant (or some suitable person nominated by the applicant) to carry on the sale and supply of alcohol for a period, not exceeding 3 months, stated in the order.*
- (2) The application must be made in the prescribed form and manner and be accompanied by the prescribed fee.*
- (3) The committee may hear and determine the application without notice, or direct that notice of the application and the time and place fixed for any hearing be served on any persons and in any manner the committee specifies.*
- (4) On making an order, the committee or the chair (as the case may be)—*
 - (a) must impose any conditions that this Act requires an on-licence or off-licence (as the case requires) to be issued subject to; and*
 - (b) may impose any conditions that this Act enables an on-licence or off-licence (as the case requires) to be issued subject to; and*
 - (c) may impose any other reasonable conditions it thinks fit.*
- (4A) Despite subsection (1), if the application is uncontested, the chair of the committee may make an order instead of the committee.*
- (5) The person authorised by the order has for the purposes of this Act the same duties, obligations, and liabilities as the holder of the on-licence or off-licence concerned.*

(6) For the purposes of this section, if the chair of the committee makes an order instead of the committee, a reference to the committee in any other relevant provision of this Act is to be treated as a reference to the chair.

- 54. Closing Submission Licensing Inspector:** read from a prepared statement: - In my opinion the applicant company, State Highway 3 Limited have presented a proposal to operate licenced premises in the Stratford District that will mirror the operation of premises previously owned and operated by the applicant in the Ruapehu District. In fact, there is no evidence presented in the application or by the applicant today, that demonstrates any learnings have been taken by the applicant from the management of licensed premises in the Ruapehu District.

The applicant has put to you today the adversity of COVID 19 and the impact this has had on their ability to appoint suitable managers to the premises. COVID 19 has been part of the world we live in since 2020. The impact of COVID 19 does not change the legislative requirements of the Sale and Supply of Alcohol Act to be able to satisfy agencies and the Committee of the responsible management of licensed premises and in particular higher risk premises. In Decision [2013] NZARLA 120 dated 25 February 2013, Otter and Haenga Vs Crossroads Bar and Grill, it is clear the Alcohol Regulatory and Licensing Authority agree with agencies that adequate and certified staff should be present on the premises for compliance and in particular for higher risk premises.

The evidence in my report, the NZ Police report and the concerns noted by the Ruapehu District Licensing Inspector do not inspire confidence in the applicant's suitability to manage licensed premises. In my opinion, the applicant has not demonstrated in the application how the object of the Act will be achieved, or fits the purpose of the Local Alcohol Policy. Therefore, I respectfully ask that the Committee to decline the application.

- 55. Closing Submission Police:** Mr Henry addressed the hearing and commented that – the Police issue with this application, primarily pertains to the previous family harm history by applicant who has had three family harm reports, four if you include one that was detailed in the Police National Intelligence application.

All of these, in some way, have related to the applicant's consumption of alcohol and Police have concerns that the applicant has not demonstrated that he has not taken any steps to address the issues that have resulted in previous harm occurrences. In fact, there was some resort to victim blaming as Mr Ritesh had stated earlier that following the birth of their baby, Agata's hormones were up and down and she was over reacting. He explained that the incident was an overreaction.

Therefore, I feel the applicant does not take any accountability for his previous family harm and alcohol issues which have been identified by Police. The Police respectfully request the Committee decline the application.

- 56. Closing Submission Applicant:** Mr Ritesh commented he – would like some more time to find suitable people to run the business. If the business is declined, then probably I will have to find some other way.

Closing

The Chairman thanked all those people in attendance and all involved for their professionalism and the way the hearing had been conducted.

The Chairman noted the Committee will reserve their decision to consider all evidence and verbal information provided at the hearing.

Reasons for the Decision

57. The Police report included evidence of the applicant's involvement with family harm incidents that occurred in 2013, 2104 and in 2020. The Committee in making its decision noted that, Mr Ritesh rejected parts of the report, in particular the comments made by his ex-partner Jodi Snell. This part of the evidence should be considered in the context and awareness that there is a poor relationship between them. Never the less, the incidents did occur and the most recent of them was only 12 months ago.

The applicant admitted alcohol abuse was a contributing factor in each incident but offered an explanation and said that he had since changed his behaviour. The Police view was that because alcohol abuse was a factor, it raised concerns about the applicant's suitability to operate a licensed facility and control his behaviour. The Committee agreed that this concern was justified and reasonable.

58. The Police report included evidence of the applicant's past performance when he operated the Oasis Hotel in Waiouru. This raised concerns over his absenteeism and his lack of hands-on management which lead to ongoing issues. The Ruapehu Licensing Inspectors comments echoed those concerns. The applicant offered an explanation of some the issues he faced, identifying his lack of experience in hospitality and the size of the operation as key factors.

With regard to absenteeism, the applicant rejected and somewhat defiantly challenged the Police evidence that he was away from the business. Although at the time of the family harm incident in 2020 he told police he resided in Auckland. The Committee prefers the evidence of the Police in this instance.

The Police concern with the Midhirst tavern application is that the situation he is entering into looks a very similar arrangement to the one he left in April this year. This is confirmed to some degree, by the applicants comment that he intends to be there only about 35% to 40% of the time. This would leave a high degree of responsibility with the staff to operate the tavern in his absence. This situation is compounded with some additional risk as the single staff member the applicant has employed to date has been experiencing certification issues of her own.

The applicant produced no evidence to show that enough suitable staff had been employed to fill the void. The Committee was not convinced the applicant had sufficient planning or recruitment in place to manage this situation and this would likely result in issues with compliance and meeting the requirements of the Act.

59. The Committee noted that the Stratford Licensing Inspector is a very experienced person and put some weight on the opinion she offered. In her report she raised a number of concerns as shown in lines 41, 42, 43, 44, 45 and 46 of this report, which included the applicant's history of alcohol abuse, managers certificates, limited experience, lack of staff, previous compliance issues and other business commitments. The Committee agreed with these concerns.

The applicant was aware of these concerns before the hearing and on some issues offered a verbal explanation but failed to submit any substantive evidence to address the key concerns especially relating to lack of staffing, recruitment, retention difficulties and compliance. Remarkably these issues were similar to those listed in the Decision Report from the Ruapehu Licensing Committee when they declined the Temporary Authority application to them earlier this year.

The Committee agrees with the Licensing Inspector that the application does not meet the policy objective of Local Alcohol Policy by fostering a licensing environment that minimises alcohol related harm in the community. Nor is the Committee satisfied that the applicant will be able to achieve the Object of the Act (Section 4) that requires the sale, supply and consumption of alcohol be undertaken safely and responsibly.

60. After considering all the evidence presented in the documents and the verbal evidence at the hearing, the Committee has concluded that on overall balance, the applicant has failed to provide sufficient evidence to satisfy the Committee that he will be able to meet the requirements of the Act. The concerns raised by the Licensing Inspector and the Police were valid and the applicant did not offer sufficient evidence to address these concerns or issues raised.

The Decision

The Stratford District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **refuses** the application by State Highway 3 Limited for a Temporary Authority over the On-License currently in place at Midhirst Tavern.

DATED at Stratford this 26th day November of 2021.



N Volzke
COMMISSIONER
STRATFORD DISTRICT LICENSING COMMITTEE

