

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

AND

IN THE MATTER of an application by Rockaway
Beach Limited for renewal of an
on-licence pursuant to s.127 of
the Act in respect of premises
situated at 9 Bow Street Raglan
known as "The Yot Club".

BEFORE THE WAIKATO DISTRICT LICENSING COMMITTEE

Chairperson: Mr Noel Smith
Members Dr Michael Cameron
Ms Janet Gibb

HELD at **NGARUAWAHIA** on Wednesday, 1 March 2017 and continued on Thursday, 2
March 2017 and Friday, 3 March 2017.

APPEARANCES:

Mr Andrew Meek, owner of Rockaway Beach Limited, Applicant
Mr David Hoskin, Solicitor for Applicant
Mr Scott Gazley, Solicitor for the Applicant
Mr Ross Shilling, witness for the Applicant
Ms Cindy Norris, Licensing Inspector, Waikato District Council, in opposition
Ms Wendy Armstrong, witness for the Inspector
Sgt Jim Dalziell-Kernohan, for the NZ Police (Licensing), in opposition
Ms Nicole Petersen, for the Medical Officer of Health, and as a witness for the Police
Mr Kevin Holmes, NZ Fire Service, witness to assist the Committee



SITE VISITS:

Site visits were undertaken by the Committee on two dates:
Thursday, 24 November 2016, daylight hours by prior arrangement, premises closed
Sunday, 29 January 2017, 8.00pm – 9.00pm, unannounced, premises open, Mr Meek – Duty
Manager

**The application by Rockaway Beach Limited for the renewal of an on-licence for the
premises known as The Yot Club, situated at 9 Bow Street Raglan, is refused.**

Pursuant to s135(2) of the Act the current on-licence shall cease on 31 May 2017.

RESERVED DECISION

INTRODUCTION

[1] This is an application by Rockaway Beach Limited for renewal of an on-licence in respect of premises situated at 9 Bow Street Raglan, known as "The Yot Club". It is the first renewal sought by the applicant since gaining the on-licence in July 2015.

[2] The general nature of the business undertaken is that of a Tavern.

[3] The application was duly advertised in accordance with section 127(3) and no objection or notice of desire to be heard has been received. The Police and the Inspector opposed the application; thus it was sent to a public hearing to be determined. The Medical Officer of Health, while not opposing the application, had concerns about some aspects of the application.

[4] The matter was first set down by the Committee for hearing on 1-2 December 2016. Prior to 1 December 2016 the applicant asked for an adjournment and the matter was adjourned until the 23-24 January 2017. Late on 24 December 2016 the applicant, through his legal team, sought a further adjournment. The Police and the Inspector opposed a further adjournment. Counsel for the applicant, Mr Hoskin, submitted further reasons for the second adjournment. The hearing was adjourned for a final time until 1 March 2017 and scheduled for a three day hearing.

[5] Mr Meek applied for the renewal of his Manager's Certificate on 17 October 2016. The Police and Inspector opposed the renewal of the certificate and requested that both the on-licence renewal application and his manager's certificate renewal be heard together due to the nature of the matters raised in the opposition to both applications. Following consultation with counsel for the applicant, Mr Hoskin, the Committee determined to hold both hearings concurrently. However, separate decisions would be issued on each application.

[6] Briefs of evidence had been provided to the Committee and exchanged between all parties prior to the hearing.

HEARING

PRELIMINARY MATTERS:

[7] Mr Hoskin addressed the Committee with respect to matters raised in the Inspector's report that were unlikely to be substantiated by any witness to be called by the Inspector. Mr Hoskin sought to have excluded the hearsay evidence contained in the Inspector's report.

[8] The Committee determined to permit hearsay evidence, pursuant to s207 of the Act. The Committee further determined and advised the hearing that any such hearsay evidence would be given the appropriate weighting in light of the opposition raised by Mr Hoskin.

[9] Mr Gazley gave a summary of the current position of the application before Mr Andrew Meek gave evidence. Mr Gazley's comments are summarised below.

- a) Amenity – There is no evidence to find amenity and good order issues would improve if the licence was not renewed,
- b) Appropriate systems are in place that comply with the law,
- c) Noise complaints are not linked to the operation of, or a failure by, the Yot Club,



- d) Suitability of Mr Meek – No previous convictions, a huge level of support for the Yot Club, no misleading information and no evidence of unsuitability. He then spoke about a Noise Management Plan and how it complies with the previous decision of the District Licensing Committee (DLC). Nothing to affect his own application for the renewal of his manager's certificate.
- e) Breach of Conditions – Mr Meek disputes the unsubstantiated allegation that he was consuming alcohol while on the premises and referred to a Police Officer who spoke to him on the evening in question being unable to say he was intoxicated.
- f) Intoxication – One occasion when someone was apprehended for excess breath alcohol and they named the Yot Club as the last place of consumption should not be relied upon. By itself, that one occasion would be insufficient and unreliable to hold against the Yot Club.

[10] Sgt Kernohan raised a challenge to some of the material referred to; however the Committee was satisfied that the subject material had been emailed to all parties, including the Police, on 23 February and that all parties were given the opportunity to request that these witnesses be called before the hearing to be subject to cross-examination.

[11] Mr Hoskin provided the Committee with two bound bundles of documents. The first, labelled as 'the Bundle of Documents' [BOD] – (Exhibit One) contained 123 pages and the second labelled, 'Bundle of Letters' [BOL] - (Exhibit Two) contained 206 pages.

APPLICATION

[12] Mr Andrew Meek, owner of Rockaway Beach Limited, spoke to his brief of evidence, dated 23 February 2017. His evidence is detailed in a 28 page document. Much of Mr Meek's evidence focused on matters that had been raised in the Inspector's report.

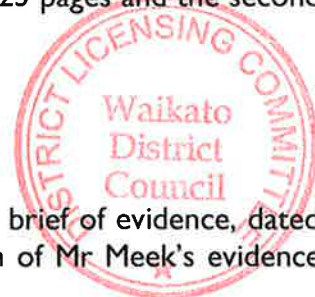
[13] Mr Meek first spoke of his extensive experience owning and managing night clubs in Auckland before purchasing the Yot Club in 2013.

[14] Mr Meek then addressed a number of 'oversights' that had occurred at the Yot Club, including an apparent failure to maintain a current Building Warrant of Fitness, an apparent failure to undertake trial building evacuations as required by the Fire Regulations, and an apparent failure to maintain a current food hygiene certificate.

[15] Mr Meek explained how he failed to maintain the Building Warrant of Fitness for the Yot Club premises. He had assumed that once Opus had undertaken the building inspection that his Building Warrant of Fitness was automatically in place.

[16] With respect to the trial building evacuations, he told the Committee of attending a meeting of Raglan licensees. At that meeting, the Fire Service had told those present they were able to use an alternative method to meet the Fire Regulations, based on staff training rather than through trial evacuations. Mr Meek had not sought formal approval to move from the approved trial evacuation scheme to the training scheme. Mr Meek confirmed that no trial evacuations had occurred between November 2013 and January 2017.

[17] Mr Meek stated that the failure to pay for his food licence was another oversight. He felt it was more of a procedural issue and was sorry that it had happened. He confirmed he had operated the Yot Club without a current food licence from 1 July 2016 until he paid it on 12 January 2017.



[18] Mr Meek then addressed the Inspector's claim that on two site visits by the Inspector, on 25 October 2015 and 30 April 2016, that there was an insufficient variety of food available. Mr Meek denied that there was insufficient food available, stating that food was always available. He further stated that in some instances the Yot Club had sold out of some of its range of food. On the night of 25 October 2015, the BBQ had finished about 9.30pm. Pizza was available. In response to Ms Norris's evidence, he stated that there were more than seven pizzas available as none had been sold earlier that evening.

[19] Mr Meek acknowledged that at 11.30 pm, 25 October 2015, pies were the only option. Again he stated it was an oversight that he did not have three types of food available at all times. He agreed that his licence conditions required him to have three types of food available at all times. Mr Meek confirmed he was the manager on duty on the evening in question. He said the kitchen blind was up and notices were on display stating that food could be purchased at the bar. As food is not generally purchased until after midnight, no one needed to be in the kitchen until then. Mr Meek stated that the system works well. He stated that he has a chef with 20 years' experience of fine dining responsible for the kitchen, where he reheats food. Mr Meek stated that he believed food was available and that it was the Inspector's word against his. He challenged the Inspector as to why she had not raised this issue at the time of her visit.

[20] Under cross-examination from the Inspector, Mr Meek confirmed that the Yot Club had served food after their food registration had expired. He stated that the Council treats this as an oversight. There are no forms of warnings, and that this is "just a procedural thing".

[21] When asked about the range of food available on the night of the inspection on 30 April 2016, where only frozen pies were available, Mr Meek stated that this was "an oversight rather than a major issue". He conceded that this does not meet the conditions of the on-licence, but noted that the food requirements of patrons were being met.

[22] Mr Meek then addressed the issue of the Noise Management Plan that was a requirement of the licence issued on 10 July 2015. He referred to a 'Noise Report' compiled by Mr Ross Shilling of Red Tech Ltd, and contained in the BOD.

[23] Mr Meek confirmed that at page 83 (BOD) Mr Shilling states, "*A robust noise management plan will be written once the sound system has been re-engineered with the DSP*" (Digital Signal Processor). He confirmed that, contrary to the existing licence conditions, no professionally produced Noise Management Plan had yet been written. Mr Meek confirmed obtaining the on-licence in July 2015. He stated that he interpreted the Noise Management Plan condition as meaning that he had to have a professionally produced plan by the time of the next hearing into his licence. Mr Meek stated that the preparation of the Noise Management Plan was delayed by him, so as to ensure it was as good as it could be. He stated he was ready at twelve months, but delayed the Noise Management Plan further because of the delays to the hearing.

[24] When asked by the Inspector, Mr Meek reiterated that he thought that the development of the Noise Management Plan was only necessary at the time of the present hearing. He stated that "Technically speaking, we were ready to go in June 2015". He did not agree that he was in breach of his licence for not having already implemented a Noise Management Plan.

[25] Mr Meek explained to the Committee that he had not implemented a Noise Management Plan as he was in the process of developing it and believed the next hearing, his renewal application, would be about the Noise Management Plan. Mr Meek did not believe that the Noise

Management Plan could have been completed prior to the hearing, believing the hearing would be all about the Noise Management Plan.

[26] Looking ahead, Mr Meek stated that he hoped to have the internal part of the premises section of the Noise Management Plan completed by the following week. He indicated that the next week he would focus on making sure that no tampering could occur with the sound system. He stated he was sure the work would be completed the next week.

[27] With regard to noise issues, Mr Meek stated that the 'sub' is the problem, and that he had eventually turned the setting on it down to 'minus eighteen'. That setting seemed to satisfy Ms Armstrong, a nearby resident who had complained about the music from the Yot Club. He stated that, "A venue without a bass is unrealistic". He also stated that he has turned the setting down to 'minus twenty three' on one occasion because the evening was so still. Mr Meek stated that it was his ambition to have the Noise Management Plan ready for the hearing. He accepted that he had not met his ambition.

[28] Mr Meek confirmed that he utilised a decibel meter when checking out noise complaints made to him. He accepted he had no formal training in noise monitoring and confirmed he had never had his meter calibrated. He was unable to say what unit of measure his decibel meter used when assessing the level of noise emanating from the Yot Club.

[29] In relation to noise, Mr Meek stated that his ambition was to have no noise complaints, and that he is still aiming for this, and getting closer. He stated that only ENDS should be taken into consideration, and that noise complaints that are not 'proven' should not be held against him.

[30] Sgt Kernohan asked Mr Meek to explain the difficulties he was having with persons tampering with the sound equipment and raising the bass levels. Mr Meek explained that it had happened again recently. He stated that he will have to put a cage around the equipment to prevent interference. He wasn't sure who had played with the equipment, but suggested it was likely the DJ who was working that night due to the knowledge the DJ would have with the equipment. He assured the Committee that the equipment would not be tampered with again, and that he would come up with something to stop it. He agreed that including Sound Management into the training manual would be a good idea. Mr Meek confirmed that all staff received training from the start of summer on a monthly basis.

[31] Mr Meek then clarified that the incident (number 9 on page 8 of his brief of evidence) was the first time he had had contact from Ms Armstrong. He confirmed he made contact and suggested she take down her Facebook post, as he didn't want her to be abused by anyone due to the amount of support he was getting for the Yot Club. Mr Meek noted that Ms Armstrong had taken down her post because she did get some grief for it. Mr Meek confirmed that after initially engaging with him, Ms Armstrong indicated she did not wish to meet, in about February 2016. Contact was re-established about October or November 2016. Mr Meek noted that no noise officers had turned up at the Yot Club for about 8 months.

[32] Mr Meek then addressed issues relating to amenity and good order. Mr Meek confirmed that at the first hearing in 2015, he had accepted that the broken glass in Volcom Lane was from his club, but denied being responsible for any glass found in the Lane since the 2015 decision that granted the on-licence. He agreed that the 2015 decision [paragraph 31] noted that he had confirmed that there were occasional scuffles and fights connected with the Yot Club. He went on to state that, "I can't be expected to stop every bit of petty crime that happens". He claimed that he ran an exceptionally tight ship; that he gave information to the Police and goes above what he should. He also regularly checked social media for information affecting the Yot Club.

[33] Mr Meek commented that the amenity and good order surrounding the Yot Club was the same or better than before he purchased the Club. This was due to the improvements he had made, and everything that he could control on either side of the entry/exit gate. He stated that side loading was an issue, as was preloading. He stated that his improvements had included educating the locals about expected behaviour and the consequences of poor behaviour. He had also added a second courtesy vehicle and was now providing that service to patrons from the Orca Restaurant and Bar, as that premises could not afford their own courtesy vehicle.

[34] In response to questions relating to the apparent lack of an Incident Book for a period of time in 2016, Mr Meek told the Committee that any untoward behaviour would merit an entry in the Incident Book. He outlined what that behaviour might be and included drinks being cut off, people put on water, minors, and fake identity issues. He indicated that anywhere from none to up to a dozen people may be refused drinks due to intoxication in any week.

[35] Mr Meek confirmed that there were no entries in the Incident Book between 1 January 2016 and April 2016. He confirmed that the Training Manual (page 93 of BOD) requires that when anyone is cut off through intoxication this is to be recorded in the Incident Book. Mr Meek stated that his manager had gone overseas and he, Mr Meek, could not find the Incident Book so he started another temporary Incident Book. His manager restarted the original Incident Book when he returned so the temporary Incident Book, given to the Inspector, was surplus to requirements and that is why he had not bothered to collect it from the Inspector. Mr Meek confirmed that no Excessive Noise Directions (END) were entered into the Incident Book. This was due to no END paperwork being left with or at the premises. He referred to an END issued in June but where he had not received any paperwork until papers were served on him in October. Thus, he suggested that he could not enter an END unless he knew about it. Mr Meek accepted that it was good practice to have an up-to-date Incident Book as a reference to look back at previous issues.

[36] Mr Meek was asked in cross-examination about specific Incident Book entries. He confirmed that the maximum capacity permitted within the Yot Club building was 81 persons or 83 including staff. An Incident Book entry for 20 May 2016 indicated 130 payers with a \$10 cover charge and an entry also noted that there was lightening and hail that evening. Mr Meek responded by stating that the door would have been open and people could get shelter outside.

[37] Mr Meek confirmed that the Incident Book entry for 24 June 2016 noted 200 tickets presold. He stated people could go outside and there was an awning over the doorway from the yard into the Yot Club building. He stated that he could get 300 persons in the courtyard but it would be a tight squeeze. He indicated that he was comfortable with people's safety with that number of patrons being on the premises.

[38] Mr Meek clarified the comment at paragraph 128 of his evidence where he stated "If persons are too intoxicated they will be refused entry". He clarified that what he actually meant was 'intoxicated', rather than 'too intoxicated'. He stated that the Yot Club uses a cover charge or the prospect of a cover charge to deter intoxicated persons. He stated that, "If my staff mention a cover charge they all disappear". He also stated, "no one who is intoxicated gets into the premises".

[39] When asked by Sgt Kernohan about trial evacuations Mr Meek stated, "There was no need to do a trial evacuation as Kevin Holmes told us". Mr Meek confirmed that Mr Holmes was not being called by him as a witness for the applicant. Mr Meek also confirmed that there had been about two or three trial evacuations since he purchased the Yot Club in November 2013. He reiterated that he did not believe that he had to do trial evacuations.

[40] Mr Meek then discussed the allegation that he was intoxicated on the premises on the night of 21 November 2015. With respect to paragraph 51 of his brief of evidence, Mr Meek stated that he had consumed about four or five beers earlier on that evening and before going to the Yot Club with friends. The Committee notes here that it discounts, through later evidence, any suggestion that Mr Meek was intoxicated on this date. Mr Meek confirmed that the Yot Club training manual commenced at page 85 of BOD. At page 93 it discussed intoxication. Sgt Kernohan put it to Mr Meek that in his evidence the previous day, he had made a comment that he, Mr Meek, would let intoxicated persons in. Mr Meek responded by indicating he would update the training manual to ensure it was clear that intoxicated persons would not be permitted to enter the premises.

[41] In response to cross-examination from the Police, Mr Meek confirmed that there was no entry in the Incident Book relating to an incident on the dance floor on 23 October 2016. Mr Meek suggested it was a mistake by him or his staff.

[42] Mr Meek then explained the circumstances surrounding the controlled purchase operation on 11 November 2016, and asserted that it was only a 'technical breach'. He explained that the minors should not have been there in the first place. However, that incident had exposed a flaw in the Yot Club's security system and he had since changed the system. Mr Meek claimed that the Yot Club had done everything right, that the minors were not served, and they were asked to leave. He claimed that it was a breach, it was at the lower end of the scale. Mr Meek said, "You can't compare K Road to Raglan as it is a little different".

[43] Mr Meek noted that the Notice of the Section 280 application by the Police had been received in December 2016, that this matter was before ARLA, and that no date had yet been set for a hearing. He confirmed that Jareth Thompson was the duty manager that evening.

[44] Mr Meek confirmed that the Yot Club generally operates Thursday to Sunday, and is usually the last premises open in Raglan. On the other days Mr Meek does paperwork and ordering for the Yot Club.

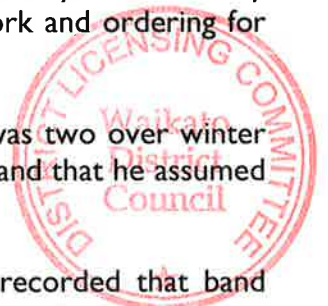
[45] Mr Meek confirmed that he employed four duty managers, although it was two over winter and four over summer. He accepted that he had only notified two to Council and that he assumed his manager had notified Council of the additional certified managers.

[46] Mr Meek spoke of the incident on 5 March 2016 where the Police recorded that band members from the Yot Club were involved in an incident sometime after the Yot Club had closed. Mr Meek stated that it was usual that band members packed up and left the premises. He could not recall if on that night they had stayed on the premises drinking and then left.

[47] Also in response to a question from Ms Petersen, Mr Meek agreed that the designation of the premises was not included when training staff, and that this is important for staff to know.

[48] Mr Meek confirmed that low alcohol drinks were available for purchase. He stated that it was an oversight that low alcohol drinks were not on the drinks menu on page 100 of the BOD.

[49] In response to Committee questions, Mr Meek confirmed the original Noise Management Plan was not done professionally. He confirmed that he had set the amplifier to 'minus eighteen' for some time. Mr Meek confirmed the creation of the Noise Management Plan seemed like a tick box exercise and that he didn't do anything to investigate or create a professionally produced Noise Management Plan until just prior to the renewal of his on-licence. Mr Meek stated that he



was actually unsure how he should go about getting the plan in place. He stated that he had talked to several companies, but in discussions none of them addressed his needs or concerns. He stated he wanted a more personalised approach to what he was being offered. He stated that the number of noise complaints had reduced in the 18 months since the issuing of his on-licence. He confirmed only one person had complained about the Yot Club in that time. Mr Meek stated that, "I thought I had an 8 month non complaint period", and further stated, "I think I have done a huge amount in the last 18 months".

[50] Mr Meek responded to a suggestion by the Committee that there had been many oversights. Mr Meek responded by commenting that he had made mistakes but had tried to cover them off. The food registration and building compliance were some of them. He stated there was no trend, that is, nothing year on year, and that past mistakes will not be repeated. Mr Meek defined a trend as being when something is done twice in a row, with no attempt at remedying the situation.

[51] Mr Meek confirmed he had been operating bars for seventeen years and had held a manager's certificate for fourteen years. He confirmed that as soon as he was made aware of the unpaid food registration he paid it. He offered the possible reason for non-awareness of the outstanding account was that the renewal had possibly not been delivered to him at his correct address. Mr Meek explained that it was an oversight that he had not ensured the food registration had been kept up to date.

[52] Mr Meek confirmed that the Building Warrant of Fitness was required to be displayed all year round. He confirmed that it had to be renewed every year. Mr Meek stated that he assumed wrongly that it was current. He further stated that he had now modified his system of ensuring required work is scheduled appropriately. He said, "It fell between the gaps", and promised it would not happen again.

[53] The Committee then referred Mr Meek to the 2015 decision, LicApp06/2014, where he was, as owner, granted an on-licence for the premises known as the Yot Club. In response to a question he replied that he had made a couple of mistakes. When asked how many mistakes or oversights is too many, Mr Meek stated that each had been relatively minor but accepted that they accumulate. He responded by stating that there was a vast amount of positives about the Yot Club.

[54] Asked specifically about the Noise Management Plan required by condition (h)(iv) of the 2015 on-licence, Mr Meek stated that he thought the second sentence in that paragraph of the licence meant that he had to bring the Noise Management Plan to the hearing. Mr Meek conceded that there was no Noise Management Plan in place on 12 July 2016, being twelve months from the date of the issue of the Yot Club's on-licence.

[55] Mr Meek commented that he had addressed all the noise issues raised by the Inspector and there had only been two Excessive Noise Directions since the licence had been granted. When asked how many Excessive Noise Directions were too many Mr Meek responded by stating, "I just want consistency". He also stated that zero ENDs would be an acceptable number.

[56] In response to a question from the Committee, Mr Meek conceded that fighting and disorder does reduce amenity and good order. However, he contended that the incidents reported to this hearing would have mostly occurred regardless of whether the Yot Club was open or not.

[57] Mr Meek confirmed that on 26 February 2016 he received a text from Wendy Armstrong at approximately 11.30pm. It read, "Hi Andy bass too loud". Twenty minutes later she text messaged again to say it was up again. He reduced the bass level to minus twenty one and after the second text lowered it to minus twenty three.

[58] Mr Meek spoke highly of his security team, especially the team leader. He stated that the team leader has huge mana in Raglan and therefore a lot of respect, indicating that the security team was capable of dealing with most issues.

[59] Mr Meek also stated that local police have said they are happy with the Yot Club's current security arrangements.

[60] When asked whether the issues in Bow Street would have happened if the Yot Club was not there, Mr Meek responded by stating that the incident of 22 November involving the firearm would have happened if the Yot Club was there or not. Mr Meek confirmed that, on most evenings that the Yot Club was open, all other premises were often closed by 11.00pm although they had licences that allowed them to open until 1.00am. He noted that the Hotel remained open until 1.00am on many occasions.

[61] Mr Meek stated that he believed the Yot Club was the most popular venue in Raglan. Asked what would happen in respect to the other on-licensed premises if the Yot Club licence was not renewed, Mr Meek commented he thought they might do additional trade. He also suggested they would be shocked. He believed that no one else could provide the sophisticated level of entertainment that he provides. He also believed that patrons would be restricted in when and the type of entertainment that would be provided. He stated, "No-one else could do what I do".

[62] When asked about the level of fighting and disorder on Bow Street, Raglan's main street, Mr Meek pointed to all the good things he does, and referred to the 24 matters raised at paragraph 130 of his brief of evidence. Mr Meek went on to state that he had not met all his own expectations and that he had let himself down on a couple of compliance issues. The main thing he wanted the Committee to know was that he had implemented changes.

[63] Sgt Kernohan sought clarification to Mr Meek's use of the phrase 'Technical Breach' in respect to the controlled purchase operation. Mr Meek stated that it was a freak occurrence that the minors got into the bar and that no one was served. He took that to mean that the system had worked, however he accepted that he had made changes to the system to prevent the same occurring again. He suggested the most he should have received was a warning from the Police. Mr Meek accepted that a number of 'oversights' had occurred in the managing of the on-licence.

[64] During re-examination and in relation to the Yot Club systems and a lack of food at times, Mr Meek stated that it won't happen again. When asked to clarify, he stated he would have three types of food on the premises in future. Mr Meek stated that he would take responsibility for that, as he did the shopping for the food at the Club and he would stock the fridges to ensure compliance with the licence conditions.

[65] Mr Meek spoke of his aspirations for the Yot Club. He stated that he would strive to continue the business, and that he hoped to show full compliance with the Act and his licence. He believed his efforts to date had shown his intent. He also indicated that he hoped he could continue working with the Licensing Inspector. He further hoped to be able to draw international 'Acts' and retain a viable venue. Mr Meek concluded by stating that he hoped his patrons would keep coming to Raglan as he strives to provide a world class venue.

[66] In response to a question from the Committee, Mr Meek stated that if his licence was not renewed he did not believe that the 'Orca' could pick up from the Yot Club. He stated, "My venue provides entertainment". He believed the only alternative would be the Raglan Hotel as Orca

would have noise issues as residential neighbours would be a problem. He conceded that other establishments may stay open longer.

[67] Mr Meek clarified the position of why he had moved to the alternative fire evacuation system rather than remain on the approved one for his premises. Mr Meek reiterated that he had attended a meeting of the Raglan Alcohol Accord. Mr Kevin Holmes, Fire Safety Officer, NZ Fire Service, had done a presentation at the meeting. Mr Holmes had outlined two schemes in relation to fire evacuation. Under the first scheme trial evacuations would be done, or alternatively the licensee could train their staff regularly. Mr Meek stated that he decided to move to the training system, and for eight months training was given to staff. However, during the process of applying for this on-licence renewal, Mr Meek contacted Mr Holmes and as a result of that discussion Mr Meek decided to return to the evacuation scheme. Mr Meek confirmed he had now completed a trial evacuation and had a letter from Mr Holmes stating that the fire evacuation scheme was up to date and approved. Mr Meek referred the Committee to page 6 of the BOD.

[68] Mr Meek also drew the Committee's attention to a Facebook Messenger exchange between himself and Mr Kevin Holmes of the New Zealand Fire Service, regarding fire compliance (Exhibit Six). However, Mr Meek conceded that he was not aware of the formal process required to change from trial evacuations to a training package for staff.

[69] The Committee, during the site visit of 29 January 2017, had asked Mr Meek to show them the food stored in the kitchen that would be available for sale that evening. Mr Meek had opened the kitchen chiller and the Chair had noted approximately 81 meat pies, all in the same packaging. No other food was shown to the Committee. At the hearing, the Committee asked Mr Meek to explain why only pies were available on that date once the BBQ had finished. Mr Meek disputed only having pies available. However, he could not substantiate what other food was available.

[70] In response to a question from the Police, Mr Meek could not demonstrate proof of the training of staff in relation to an evacuation scheme.

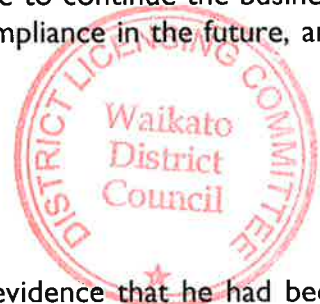
[71] Mr Meek drew the Committee's attention to the BOL, especially letters in support written by the Raglan Chamber of Commerce, Mr Matt Harvey, Mr Brett Wood, and the Orca Restaurant and Bar.

[72] Mr Meek noted that his aspirations for the Yot Club were to strive to continue the business as an essential part of the community, carrying out steps to ensure compliance in the future, and to have the Yot Club "perfect in every way".

WITNESS FOR THE APPLICANT

[73] Mr Ross Shilling, of Red Tech Limited, Mount Maunganui, gave evidence that he had been engaged by Mr Meek, about May or June 2016, to 'lock down' the audio levels at the Yot Club Raglan to an acceptable level to prevent any more noise complaints. He stated that he had forty years' experience in the industry and 18 years in the acoustics field. Mr Shilling spoke to his report at pages 77 – 83 of the BOD. He explained that Red Tech are audio engineers and acoustic consultants specialising in resolving issues with noisy bars and night clubs.

[74] Mr Shilling explained the current noise restrictions as listed in the Waikato District Plan, as they pertained to the vicinity of the Yot Club in Bow St, Raglan. Mr Shilling stated in his report that *'it is very unlikely there is a live music venue or night club running amplified program music in the*



country that will fully comply with the District Plan'. Mr Shilling stated that Waikato District Council agree that the Yot Club is unlikely to comply with the District Plan. Their processes are complaint driven, so if there are no complaints then there is no problem.

[75] Mr Shilling explained that the intended approach was to comply at the nearest residential boundaries and ignore the level at any commercial boundaries except where there will be people sleeping, such as at the motel. He stated that Waikato District Council had been less than helpful in assisting him to determine monitoring points.

[76] At page 81 (BOD), Mr Shilling outlined various readings taken at different times and locations. It is noted that on at least two occasions the level of 40dBA was exceeded, on 15 January and 21 February 2017. On 15 January at 5 Cliff Street (boundary) the level was 40dBA and at 11.30pm on 21 February was 41.1dBA. Mr Shilling stated, "Due to only being able to measure behind the house at 5 Cliff Street and the fact it is a two storey house the level (dBA) is likely to be over".

[77] At page 82 (BOD), Mr Shilling challenged the readings in the Inspector's report, stating that the Inspector's figures must be in error. With reference to the Inspector's figures and working backwards using a known table, the levels in the Yot Club would have exceeded 110dBA. At that level, Mr Shilling stated that people would have fingers in their ears, it would be uncomfortable and they would leave the Yot Club. He stated that the readings at the 'Eatery' were plausible, but certainly not those at the Motel or Bakery.

[78] At page 83 (BOD), Mr Shilling concluded that, "*based on a maximum internal level in the Yot Club of 100dBA L10 with speakers in the outside area at a maximum level of 75dBA L10 with the Digital Signal Processor (DSP) installed and the sound systems locked down the Yot Club will comply with the nearest residential zones and the motel prior to 10pm*". He goes on to state: "*The Yot Club will comply with the nearest residential zones after 10pm with no speakers operating in the outside area and the first two set of doors closed*". Finally, he noted that a Noise Management Plan will be written once the sound system has been re-engineered with the DSP and 'locked down'.

[79] Mr Shilling explained that the delays in completing the Noise Management Plan were because when he was approached, he did not appreciate the urgency to fix the problems of noise at the Yot Club. He explained that there were various methods to mitigate noise and described a solution that he had successfully installed into a bar in the Viaduct area of Auckland. He stated, "the Noise Management Plan (NMP) will be a 'how to make it work document', a guide to assist duty managers". He stated that managing noise can mean adjusting levels of noise, depending on how many persons are actually in the Yot Club. He referred to the Ponsonby Social Club, a club similar to the Yot Club. There, the noise level in the Ponsonby situation meant a level of 97dBA was the maximum. Only monitoring would give the level required, he stated. Mr Shilling indicated the NMP will need to have a map included in it, indicating where the noise levels are monitored and the levels permitted at those sites.

[80] The Inspector asked Mr Shilling to outline his qualifications and experience in greater detail. Mr Shilling responded by stating, "I have no formal training in acoustics. However I have worked alongside industry experts such as Neville Hegley. I have attended many courses related to acoustic engineering. I have formal qualifications as a radio technician and as an electrician".

[81] Mr Shilling confirmed that, for the dwelling at 5A Cliff Street, Raglan, the required district plan noise levels would be exceeded unless the two doors of the Yot Club nearest to Bow Street were closed. Mr Shilling confirmed that, in his opinion, an increase of 3dBA in noise will double the

noise levels. He confirmed that the use of the DSP would be the way he mitigated noise levels and likened it to a governor on a truck.

[82] In response to Sgt Kernohan, Mr Shilling spoke of the environmental conditions prevailing on the nights that he undertook his noise monitoring. In doing so, he told the Committee that the noise levels in the Yot Club had reached a level of 97dBA and stated that the music level needs to be at least 3dBA above the background crowd noise for the crowd to be able to hear the music. He stated, "To design a system under 100dBA would be a problem". He indicated that the music must be at 100dBA and the doors must be closed from 10.00pm to achieve the required noise levels at the residential premises.

[83] In response to Ms Petersen, Mr Shilling noted that the NMP only became an urgent matter in December 2016. He undertook to start this work on 15 January 2017, when the first measurements were made.

[84] Mr Shilling also noted that in his experience it was more usual for NMPs to be in place before resource consent was granted.

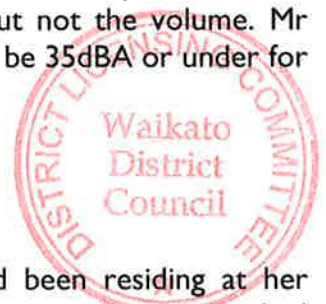
[85] In response to questions from the Committee, Mr Shilling confirmed there was currently no Noise Management Plan in place at the Yot Club. He confirmed that the settings on the amplifier had been implemented, but not the rest of the interim Noise Management Plan. He also confirmed that the DSP was the key to the proposed new system, and that the DSP would set a maximum noise level but that the noise level could be lowered.

[86] During re-examination, Mr Shilling discussed an error of including LEQ and dBA in his report but indicated that the correction would not alter his report recommendations. Mr Shilling confirmed his noise readings at the motel were not taken from the same place as the Inspector. He again challenged the accuracy of the Inspector's readings. He stated that he had learned a lot from the hearing and would use that new knowledge in the creation of the NMP and the building of the system. He confirmed that the night the measurements were taken was a very still evening, weather-wise. He stated that wind may change the direction of noise but not the volume. Mr Shilling then confirmed various noise levels and concluded that, 'It needs to be 35dBA or under for sleep'.

WITNESS FOR THE INSPECTOR

[87] Ms Wendy Armstrong of Cliff Street, Raglan, stated that she had been residing at her current residence with her grand-daughter for seventeen months. She stated that she had previously lived in Raglan West for a period of time, and prior to that had lived on the main street of Raglan for about a year. She stated that she was not new to town noise. She outlined that she thought Raglan was an awesome place to reside. She spoke of the great atmosphere, but noted that there were now more people in the central business district each evening. She stated that she had observed more drunk people and that some of them were more violent.

[88] Mrs Armstrong was asked, in reference to her statement made to the Inspector on 18 October 2016, to describe the noise coming from the Yot Club premises. She stated that it was the bass that is the issue. The noise is loudest in her bedroom. When she is trying to sleep with her head on the pillow, the bass pounds and she regularly gets headaches due to that noise. She confirmed that she could also hear the bass when downstairs in her lounge. Mrs Armstrong pointed out her home on a wall map and pointed to the location of her bedroom. The bedroom was in a direct line with the Yot Club.



[89] Mrs Armstrong commented that she had on occasions gone out at night to establish where the noise was coming from. She confirmed that it was from the Yot Club and she noted that on those occasions both the Raglan Hotel and the Orca Restaurant and Bar were closed.

[90] She stated that her first contact with Mr Meek was in response to a Facebook post she had made. She had asked for the bass to be turned down and Mr Meek had done so. However, later the same evening the noise level had gone back up. Mrs Armstrong confirmed that her initial contact was via Facebook but later contacts had occurred via text messaging and also by phone. She stated the text messages commenced late in 2016.

[91] Mrs Armstrong stated that she would text Mr Meek when she considered the noise levels coming from the Yot Club were too loud and would request the music level to be turned down. Mr Meek would usually respond within 15 minutes and ask if the level was now ok. Mrs Armstrong would respond accordingly.

[92] Mrs Armstrong stated that she understood Orca had disabled their bass. She stated that at night she generally heard the Yot Club music, particularly the bass. She also recalled hearing people noises most evenings and the noise of the sea. She often hears people at the jetty on the waterfront not far from her home. She stated that the jetty is not in the liquor ban area nor is the street she lives in, so people often congregate on the jetty. Mrs Armstrong stated that the noise affects her through lack of sleep. She also stated that her grand-daughter lacks sleep when the music from the Yot Club plays late into the night. Mrs Armstrong confirmed she has made at least eight noise complaints to the Waikato District Council Noise Control staff, but denied she was sensitive to noise. She confirmed she still had a relationship with Mr Meek and that she was able to text him should she need to.

[93] On the night of 19 February 2016, Mrs Armstrong stated that she heard a lot of noise. She went to Bow Street to look at what was happening. She told the Committee that she sat outside the butcher shop, then the library until the Yot Club closed. She observed people coming from, and outside, the Yot Club. She described seeing people drunk and a male and female arguing. Later she observed another male yelling loudly outside the Yot Club.

[94] In response to questions from Mr Hoskin, Mrs Armstrong confirmed she had resided in Cliff Street for 17 months (October 2015) and in Raglan a total of 10 years. She confirmed she was aware of the Yot Club before moving to her current address but not to where it actually was in town. She confirmed she had done no investigation about night clubs or the pub before moving into her residence. She stated, "I wasn't aware of the night club". Mrs Armstrong agreed that her issue was living next door to a night club but then stated, "I'm not next to a night club". She confirmed that she had not been onto the Yot Club premises, but that she had been taken to lunch at the pub. She also confirmed that her dwelling had double glazed windows but no insulation. Mrs Armstrong conceded she was prone to migraine headaches and the noise from the Yot Club brought them on. She stated it depended on how stressed she was at the time. She stated she took over-the-counter pain killers to treat her migraine headaches.

[95] In response to the use of smiley faces at the end of every text she sent Mr Meek, Mrs Armstrong stated that some may think that she is happy but that is not what she was actually meaning.

[96] Having been referred to page 43 (BOD), by Sgt Kernohan, Mrs Armstrong confirmed that the text message to Mr Meek, dated 29 January and stating, " Hi Andy could you turn the bass down please as all I can hear is boom, boom, boom. Thanks Wendy 🙄 ", contained a smiley face.

Mrs Armstrong stated, "I always put a smiley face on all my text messages". She stated, "I never send a grumpy face when upset, always a smiley face". She also stated, "Noise is still an ongoing issue for me, it has not been fixed properly". Mrs Armstrong stated, "I would like to see the bass turned down and kept down. I don't want to see the Yot Club closed, just the noise sorted". She agreed that if the Yot Club was not there that she would not have a problem.

[97] When asked about her telephone call with Mr Meek, Mrs Armstrong noted that it was early 2016 and possibly around April, as by then she had been in her house for six months. Contact was made via the Yot Club Facebook page. She agreed that texting between herself and Mr Meek was open and friendly.

[98] Mrs Armstrong stated she could hear the bass from the Yot Club. She stated, "The bass vibrates the house". Mrs Armstrong stated she did not object to the music the Yot Club played, just the loud noise of the bass. She continued by stating, "It might be in the legal parameters but it's too loud".

[99] In response to a question from Mr Hoskin with reference to persons outside the library, Mrs Armstrong confirmed that she believed they were intoxicated. She was adamant that they were not 'vocal and happy' and she insisted she knew whether a person was intoxicated. She reaffirmed that the two persons involved had come from the Yot Club. Mrs Armstrong stated that the pub was not open at that time. A short time later she went home. Mrs Armstrong accepted that other people, including backpackers, tourists and residents, could go to the jetty as well as Yot Club patrons.

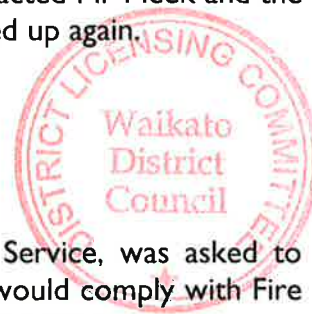
[100] In responding to Mr Hoskin, Mrs Armstrong stated that Mr Meek was trying his best but the issues were not resolved for her. She stated she had had about 10 issues with Yot Club music over a period of about two years.

[101] The Committee asked if Mrs Armstrong read the Raglan Chronicle, to which she stated she was a regular reader. Asked if she had seen the advertisements relating to the renewal of the Yot Club on-licence, she replied that she had not seen the notices. She acknowledged that she had also complained about the noise from Orca when she first settled in Cliff Street but that was no longer an issue. She acknowledged that she had contacted noise control many times since moving to Cliff Street. Mrs Armstrong confirmed that on more than one occasion she contacted Mr Meek and the bass would be turned down. However shortly thereafter the bass was turned up again.

WITNESS TO ASSIST THE COMMITTEE:

[102] Mr Kevin Holmes, Senior Fire Risk Management Officer, NZ Fire Service, was asked to outline the processes involved to ensure a premises such as the Yot Club would comply with Fire Evacuation Regulations, and the background to the current situation at the Yot Club.

[103] Mr Holmes explained that he presented at two meetings of the Raglan Alcohol Forum in 2016. He explained that there were two types of approved schemes to ensure compliance with the Fire Regulations. Mr Holmes explained the two systems to the Committee, being six-monthly trial evacuation, or six-monthly training of all staff. He explained that when an application is made to the Fire Service in relation to approved fire schemes, the owner of the business makes an election and selects either of the two schemes, which is then approved by the Fire Service.



[104] Mr Holmes told the Committee that the previous owner of the Yot Club had elected to utilise trial evacuations every six months, and that the scheme was approved on 18 July 2012. As a new owner, Mr Meek was required to follow that scheme unless he applied and had approved the alternative training scheme. Mr Meek had not sought approval to change to the training scheme.

[105] Mr Holmes stated that the requirement to seek approval of the Fire Service before changing schemes was not covered in either of his presentations to the Raglan Alcohol Forum. He accepted that Mr Meek may have formed the mistaken belief that he did not need approval to change between the two schemes.

[106] Mr Holmes noted that trial evacuations had been undertaken at the Yot Club on 28 January 2015 and 16 September 2016, and that there were lengthy periods where the Yot Club was not current with trial evacuations.

[107] Mr Holmes confirmed that the Yot Club is currently compliant against its trial evacuation plan. Mr Holmes confirmed that night clubs are high risk venues. He went on to confirm there should have been seven trial evacuations under Mr Meek's ownership, and that it was the owner's responsibility to maintain the evacuation scheme.

[108] Mr Holmes confirmed that the NZ Fire Service had received no confirmation from Mr Meek of any training undertaken while he has owned the premises.

LICENSING INSPECTOR:

[109] The Licensing Inspector read her report in opposition to the renewal of Mr Meek's Manager's Certificate and the on-licence for Rockaway Beach Ltd, trading as the Yot Club.

[110] During cross examination, Ms Norris told the Committee of receiving the temporary Incident Book from Mr Meek. She did not know of a second book being used within the Yot Club. She also told of officially knowing of only two managers with current manager's certificates, but understood that a further two were employed at the Yot Club.

[111] Ms Norris explained how she became aware of noise complaints and how noise was regulated under the Resource Management Act via the District Plan.

[112] Ms Norris told the Committee that having listened to all the evidence so far she had not changed her opinion and still believed Mr Meek to be unsuitable to hold a manager's certificate or for his company to hold an on-licence. She accepted that he was trying to remedy the situation, but referred the Committee to the previous hearing that granted the on-licence and that suitability was a big issue during that hearing. She believed Mr Meek was only spurred into action as a result of the current hearing.

[113] Ms Norris confirmed that noise from the jetty area had only become an issue recently, but there had been no formal complaints about noise emanating from the jetty area. Ms Norris stated that if the Yot Club was not there that it would be positive for the good order and amenity of the vicinity around the Yot Club building.

[114] Under cross examination from Mr Hoskin, Ms Norris told the Committee she did not accept that Mr Shilling was suitably qualified to undertake what he had been asked to do by Mr Meek. She stated that she was not impressed by Shilling's report. She accepted that Mr Shilling appears to know what he is doing. She also accepted that Mr Shilling had found it difficult to



confirm her own noise readings. She accepted that her own readings were indicative and that Shilling's readings were taken on calibrated devices. However, she would not accept that her own readings were inaccurate. She explained that she disagreed because Mr Shilling failed to take into account the variables that were present in the surrounding environment, such as background noise. Thus, Ms Norris would not accept that Mr Shilling's evidence was more accurate than her own noise readings. Ms Norris referred to the District Plan noise limits and stated that her own readings were much higher than the levels set in the District Plan. As such, the readings were sufficient to show that the Yot Club was in breach of the District Plan noise levels.

[115] Ms Norris stated that there had been no improvement in noise issues since the granting of the on-licence, stating that the lack of complaints was mainly because the Yot Club was closed over the winter months, resulting in no complaints. Ms Norris accepted that the noise issues were seasonal and mainly over the summer period.

[116] Ms Norris confirmed she had read the character references and letters of support for the Yot Club. She confirmed that the references and letters were positive, but commented that they had all been solicited by the applicant.

[117] She stated that upon interview, Mr Meek displayed an adequate knowledge of the law and his responsibilities under the Act.

[118] Ms Norris confirmed that people are drawn to the Yot Club area due to the music being played at the Yot Club. She confirmed people also sat outside the library, which is adjacent to the Yot Club.

[119] In response to questions from the Committee, Ms Norris noted that few licensees would be non-compliant with food hygiene regulations at any one time, and that she could not recall any other licences where fire evacuations were not up-to-date. She stated that it is unusual for so many compliance issues to be apparent.

[120] Ms Norris also indicated that her monitoring visits were unannounced, and don't arise from specific incidents or issues, so are essentially random. They provide a good indication of the usual operations of the premises.

[121] Ms Norris stated that she would expect the applicant to demonstrate a more sophisticated management approach.

NZ POLICE - CONSTABLE RAEWYN McLACHLAN

[122] Constable McLachlan read her brief of evidence to the hearing. She confirmed she had been stationed in Raglan for 11 years. She explained her brief of evidence was based on information she had extracted from within the Police computer system.

[123] She confirmed that Constable Kevin McGartland was no longer a police officer. She also stated that she believed that the Yot Club was at the worst end of licensed premises in Raglan.

[124] Constable McLachlan confirmed that people congregate around the Yot Club on Bow Street, Raglan. This is more common in summer than winter. She also confirmed that the Yot Club is regularly the only licensed premises operating in Raglan after midnight.

[125] She agreed that Mr Meek was easy to deal with and that he was helpful.



[126] Constable McLachlan stated that Raglan Police had attended a number of disorder type incidents over the previous year involving patrons that had attended the Yot Club. She also stated that, "No other on-licensed premises cause such frequent Police calls for service". She stated that she could not say if the amenity and good order surrounding the Yot Club would improve if the Yot Club was not there.

[127] In response to questions from the MOH, Constable McLachlan described being outside the Yot Club at closing time and seeing patrons from the Yot Club vomiting on Bow Street.

[128] In response to questions from Mr Hoskin, Constable McLachlan accepted that there had been only one reported incident in the past 12 months and two since the granting of the on-licence. She discussed how Police record incidents and discussed how incidents of minor importance are often only recorded in a Constable's notebook and not later entered into the police computer system. Thus, many minor incidents involving the Yot Club or its patrons are not recorded in the system for later retrieval.

[129] In response to questions from the Committee, Constable McLachlan told of seeing patrons from the Yot Club leaving the premises with bottles; however, that had become less common in recent times. She also stated that the security staff, if they are aware, do a good job.

NICOLE PETERSEN – Medical Officer of Health – witness for the Police

[130] Ms Petersen gave evidence of supervising a controlled purchase operation at the Yot Club on 11 November 2016. She confirmed two seventeen year olds were able to gain entry to the premises but were asked to leave by bar staff as they could not produce proof of their age. She confirmed that from her observations it did not appear to be a busy night at the Yot Club.

SUBMISSIONS:

[131] A number of submissions and documents were submitted pre-hearing and at the commencement of the hearing. At the conclusion of the hearing the agencies in opposition were given three weeks to file closing submissions. The applicant was given additional time to lodge submissions so as to enable a response to any further matters raised by the parties in opposition. The Committee met on 4 April to consider all evidence, including all submissions made throughout the hearing process and to deliberate.

CRITERIA FOR THE ISSUE OF LICENCES:

[132] In deciding whether to renew an on-licence the Committee must have regard to the matters detailed in s131(1) of the Act.

[133] From the evidence adduced during the hearing, the Committee has determined that there are several aspects of s131(1) that are at issue. Those areas include:

- A. (i) S105(1)(b) - The suitability of the applicant,
 - (ii) S105(1)(j) - Whether the applicant has appropriate systems, staff and training in place,
 - (iii) S105(1)(k) - Matters dealt with in reports from the Inspector and Police;
- B. Whether (in its opinion) the amenity and good order of the locality would be likely increased, by more than a minor extent, by the effects of a refusal to renew the licence;
- C. Any matters dealt with in any report from the Police, an inspector or a Medical Officer of Health by virtue of s129; and



- D. The manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

[134] The object of the Act is that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

[135] The Committee will deal with each aspect of the issues in dispute under separate headings. The Committee considered matters identified at paragraph [133] above under four headings: Amenity and Good Order, Noise, Food, and Suitability, as well as the other issues under s131(1).

AMENITY AND GOOD ORDER:

[136] Amenity and good order is defined in s5 of the Act. Essentially the definition means that the location within which the premises concerned is situated is pleasant and agreeable.

[137] Evidence was heard that there had been two incidents on Bow Street within the vicinity of the Yot Club within the past 12 months. While the police officer who gave evidence described the Yot Club as being at the worst end of the scale (8 or 9, with 10 being the worst) in relation to Raglan, she went on to say that Police are okay with how Bow Street works on an evening. That is to say the amenity and good order are not out of control and within reasonable bounds. Constable McLachlan stated that groups tend to congregate on Bow Street in the vicinity of the Yot Club due to the volume of the music from the Yot Club, and that the Yot Club is usually open beyond midnight whereas most other premises are closed by midnight. She also commented that the Yot Club security staff generally do a good job managing patrons. The Committee also heard that patrons from many other licensed premises move from those premises to congregate in Bow Street.

[138] It was clear that the Yot Club is not solely responsible for the numbers that now congregate in Bow Street. However, it was also clear that the music from the Yot Club makes it attractive for persons to congregate on Bow Street. The Committee discounted any suggestion that the vomit found in the vicinity of Volcom Lane is solely attributable to the Yot Club.

[139] Counsel's comprehensive final submissions ask the Committee to find that the amenity and good order of the vicinity of the Yot Club will not increase, by more than a minor extent, should the licence not be renewed. The Committee is of the view that while the Yot Club contributes to the congregation of persons on Bow Street, in the vicinity of the Yot Club, there is insufficient direct evidence to confirm that the amenity and good order is likely to rise by more than a minor extent should the application be refused.

NOISE:

[140] From the evidence heard, there were eighteen reported noise complaints under Mr Meek's management while his company operated under seven temporary authorities prior to gaining an on-licence in July 2015. Twelve of those complaints occurred on Sundays. Two complaints were upheld prior to the commencement of the hearing, and there was a further complaint that required the management to reduce the noise levels while that matter was adjourned awaiting the reconvening of the 2015 hearing.



[141] Since the granting of the on-licence in July 2015 there have been a further 18 noise complaints. The Inspector referred to those in her report and her supplementary report.

[142] Mr Meek responded to each of those incidents beginning at page 6, paragraph [32] of his brief of evidence. Mr Meek commented that from the 18 complaints between July 2015 and the hearing, only two had concluded with an 'Excess Noise Direction' being issued. Mr Meek claimed that he had improved his noise management since being granted an on-licence.

[143] Condition (h), (iv) of the 2015 On-Licence states as follows:

- (i) *The licensee shall implement a professionally produced Noise Management Plan within 12 months from the date of issue of this licence. A copy of the plan shall be submitted to the Secretary of the Waikato District Licensing Committee, for approval by the Committee, prior to the renewal of the licence. In the meantime the licensee shall abide by the undertaking given to the Committee on 20 March 2015 in respect to noise levels. That undertaking, set out at both paragraph 74 and 110 of this decision, includes:*
- *That there shall be no outside music after 10pm on any day, and*
 - *That there shall be no music anywhere on the premises after 1.00am on any day.*

[144] Mr Meek, at the time of the hearing into the renewal of his on-licence in March 2017, had not submitted a professionally produced Noise Management Plan (NMP) to the Secretary of the Waikato District Licensing Committee, as required by the on-licence conditions.

[145] Mr Meek gave evidence of trying to get a professionally developed NMP approximately one month before the date of the renewal of the on-licence. It was not until December 2016 that Mr Shilling was formally engaged and asked to produce a NMP.

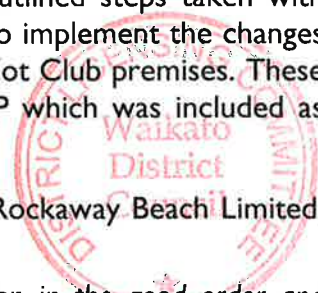
[146] Mr Shilling's evidence is summarised above at paragraphs [73 – 86]. Mr Shilling gave evidence that the Yot Club requires an internal music level of 100dBA to achieve the appropriate volume to satisfy patrons and to provide a quality music experience. Mr Shilling confirmed that at that level the Yot Club would not meet the District Plan decibel levels as outlined at page 78 of the BOD. Mr Shilling noted that the objective for him was to ensure that the District Plan levels were met at the boundary of any premises where persons slept, such as dwellings and the motel. He outlined how he could achieve compliance at various locations including the motel and at 5 Cliff Street, the residence of Mrs Armstrong.

[147] Included in the final submissions from the applicant, Mr Meek included an affidavit in support of his application for Rockaway Beach Ltd. In the affidavit, Mr Meek outlined steps taken with respect to the NMP and what steps he and Mr Shilling have undertaken to implement the changes to the management of noise, as well as to the hardware installed at the Yot Club premises. These steps have been undertaken since the hearing, and include a draft NMP which was included as Exhibit A attached to the affidavit of Mr Meek.

[148] In the 2015 decision relating to the granting of the on-licence for Rockaway Beach Limited, the following comments were made at paragraphs 118 and 119:

[118] It is the view of the Committee, that there has been a reduction in the good order and amenity while the premises has been under the control of both the applicant company and Mr Meek as the Director of the applicant company. The question the Committee must determine is whether the reduction is to more than a minor extent.

[119] The Committee is fortunate that this hearing has taken a lengthy period to conclude. With the passing of time it has become apparent to the Committee and perhaps more importantly to Mr Meek himself that his management style needed to improve significantly. The Committee notes Mr Henderson's comments (at paragraph 93) where he observed a significant improvement in how the



premises were being managed and it is on that basis find that the premises now meets the standard required to meet the criteria under s105(1) with respect to good order and amenity.

[149] The 2015 hearing was conducted over a period of five months, and Mr Meek was able to read the concerns being expressed by the Committee and the level of opposition raised by the Inspector and the Medical Officer of Health. By the end of the hearing, Mr Meek had responded to the concerns and opposition in a positive manner. However, the characteristics and behaviour raised throughout that 2015 hearing have been raised again in the evidence heard throughout this hearing. That is of serious concern to the Committee, as having displayed a willingness to improve his processes during the 2015 on-licence hearing, especially noise related issues, Mr Meek has failed to adhere to the conditions agreed when issued the on-licence in 2015.

[150] At paragraphs 27 to 29, *Paihia Saltwater (2001) Ltd*, NZLLA PH 391/2001 4 September 2001, the Authority makes the following comments:

[27] "It is our view that no-one should have to put up with the persistent interference with their sleep patterns. We do not think it is sufficient to submit that a true test is the number of calls to the licensed premises or the Noise Abatement Officer. We have heard enough evidence to suggest making such calls in the early hours of the morning is unpleasant and often unrewarding.

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

[29] We have already heard from licence holders who have either installed air conditioning so they can keep doors and windows closed, or have employed security people to monitor outside noise, or they have installed automatic sound control systems. We will always give full credit to those holders who acknowledge any existing noise problem and try to do something about it. In our view the term 'host responsibility' does not exclude the people who live nearby."

[151] Clearly then, the Applicant must not only have taken steps to reduce noise levels, but must have actually achieved and sustained noise levels that comply with the Waikato District Plan. In *Paihia Saltwater (2001) Ltd*, the applicant was proactive in noise management, having adopted a professionally produced Noise Management Plan.

[152] The Committee notes that the applicant has obtained a certificate as required under s100(f) of the Act. An activity under the District Plan (refer pg 78 BOD) is only a permitted activity if it complies with the District Plan. Mr Shilling told the hearing that the applicant will not comply with the District Plan.

[153] As such, this raises an issue for the Committee as, prima facie, the current and proposed activity of the Yot Club is not a permitted activity under the District Plan and thus the question must be asked, can the Committee grant a licence renewal when it is known the application does not and will not comply with s100(f) of the Act? That question will be dealt with later, notwithstanding the comments contained in Exhibit 'A' attached to Mr Meek's affidavit dated 29 March 2017.

[154] The Committee notes the changes that have been made to the sound system after the hearing, as outlined in Counsel's submissions and Mr Meek's affidavit. The Committee also notes the lack of detail in the draft NMP in relation to how noise complaints will be dealt with and resolved. The use of a single incident book to record all noise related issues, including complaints, was also omitted from the draft NMP.

[155] With respect to noise, the Committee is of the view that noise emanating from the Yot Club is easily controlled. Mr Meek has failed to adhere to condition (h)(iv) of the 2015 decision with respect of the creation and submission to the Council of a Noise Management Plan. His management of noise since November 2013 has seen 36 recorded noise complaints. While not all of those complaints are proven to have been a result of the activities of the Yot Club, many of them have. It is yet to be seen whether the installation of new equipment and the implementation of the NMP will achieve the necessary changes required.

FOOD:

[156] The Committee heard from the Inspector that on 25 October 2015 she undertook a monitoring visit at the Yot Club. She noted that the BBQ that had been operating had run out of food by 9.30pm. Upon inspection of the kitchen, she located only seven pizzas in a box. The Committee also noted that, during an unannounced site visit on Sunday January 29, 2017, while the BBQ was operating there were only pies in the chiller unit in the kitchen. There were approximately 81 pies in total, all in the same packaging.

[157] Mr Meek disagreed with the Inspector, claiming that he had ordered 48 pizzas and that they were all available for purchase. With respect to the Committee's observations, Mr Meek stated there were other options available other than the pies he had shown the Committee.

[158] Subsequent to the hearing, Mr Meek has supplied, as Appendix 'C' attached to his affidavit, dated 29 March 2017, an email summarising purchases made by the Yot Club from Raglan Roast Ltd. The summary includes a purchase of 56 pizzas dated 23 October 2015. Mr Meek asserts that the orders were placed for the Sunday sessions. There are only five purchases between 3 April 2015 and 10 January 2016. The invoice days are either a Friday, a Saturday or a Sunday. Mr Meek asserts that the order of 23 October 2015 was delivered for consumption on 25 October 2015. Taking into account the varying days of the week of the five invoices, the Committee, on balance, does not accept that the evidence necessarily indicates a delivery on Sunday. Thus, the evidence of the Inspector is preferred.

[159] The availability of a reasonable range of food is critical to the issuing of an on-licence. The case *The Empire Hotel Petone Limited* NZLLA PH1652/2008 25 November 2008 sets out the minimum criteria for the availability of food in licenced premises. At paragraph [45] of the decision it states, "*A minimum of three types of food should be available*".

[160] It is the Committee's view that the range of food available is below the minimum standard required of the licensee and contrary to the conditions of the licence. However, the Committee is also of the view that compliance with the licence conditions is easily achievable, should the licensee put his mind to it.

Whether the applicant has appropriate systems, staff and training in place

[161] Much was said during the hearing about the lack of appropriate management systems. As noted in paragraph [143] above, the applicant company failed to submit a professionally produced Noise Management Plan to the Secretary of the Waikato District Licensing Committee within twelve months of the issue of its licence, as required by Condition (h)(iv) of the 2015 on-licence. That issue was discussed at length during the 2015 hearing, and it should have been quite clear to the applicant what the condition meant. That is to say, the Noise Management Plan must be in place by the **submission** of the next renewal and at the latest by 9 July 2016. Evidence during the hearing confirmed that Mr Meek had left it until the last minute to attempt to produce a Noise

Management Plan, as borne out at Appendix 3, page 21 of the hearing agenda and part of the Inspector's report.

[162] Evidence was also heard that matters such as non-compliance with fire service trial evacuation schemes, the non-renewal of his food safety licence, the failure to renew his annual building certification and the lack of food on at least two occasions are all indicative of a lack of appropriate systems, all being the responsibility of the licensee.

[163] Mr Meek spoke of 'oversights' leading to acts or omissions and to non-compliance with legislation matters. Each incident on their own is or would be tolerable in a well-run premises. However, the cumulative and on-going 'oversights' or omissions are evidence of a systemic failure by Mr Meek and Rockaway Beach Limited to comply with legislation. Mr Hoskin has addressed the issue under suitability in his final submissions where he states at paragraph 9, *"Where there have been delays the applicant has given evidence of lessons learned and systems implemented to mitigate against the risk of delays and to prevent issues of non-compliance in the future"*.

[164] Mr Meek gave evidence of being a bar owner for some 17 years. Throughout the period from November 2013, when he purchased the Yot Club and where he traded under several Temporary Authorities until this hearing, Mr Meek has had issues with compliance. Mr Meek held himself up to be an experienced bar owner and operator. The Committee has seen little evidence of that throughout this hearing.

[165] In the previous decision for the on-licence (LicApp06/2014) at paragraph [81], counsel for the applicant, Mr Hoskin, stated that *"in his opinion Mr Meek should be given twelve months to prove himself. If the authorities find that there is unacceptable behaviours they can take the appropriate enforcement action"*. The Committee contends that Mr Meek and the applicant company should have been aware that they would be under additional scrutiny during the period since the issue of the on-licence, and that the many compliance issues that have occurred have done so at a time when it would be expected that the applicant would be engaging in their best behaviour.

REPORTS IN OPPOSITION:

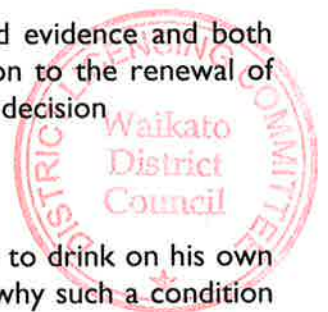
[166] The Inspector and the Police opposed the application. Both presented evidence and both made lengthy final submissions in opposition. Both maintain strong opposition to the renewal of the on-licence. All matters raised in opposition are dealt with throughout this decision.

SUITABILITY:

[167] Mr Meek raised the issue of not being permitted by a licence condition to drink on his own premises. For clarity, we insert an extract from the 2015 decision outlining why such a condition was inserted, by agreement with Mr Meek.

[112] Perhaps the gravest concern relates to the lack of controls in relation to the practice of staff and the licensee drinking on duty and being required to be available to drive the courtesy vehicle. Mr Meek when challenged by the Committee, at paragraph 75 of this decision, reaffirmed his attitude to staff drinking, including himself, while on duty. The Authority commented on such practices at paragraph [24] of the case, Ranfurly Hotel Ltd [2013] NZARLA PH 490-491:-

[24] There was a suggestion that Mrs Jenkins and Mr Adams drank alcohol on the premises. There was no direct evidence that they did so whilst either of them was acting as duty manager. Nevertheless, whilst there is no statutory prohibition, the Authority takes a dim view of licensees or persons associated with licensees drinking on their own premises. This is



because s.115(4) of the Act requires licensees to take all reasonable steps to enable duty managers to comply with their obligations in terms of s115. Where licensees or persons associated with them drink on their own premises, difficulties can arise for the duty manager. Licensees should not put duty managers in a position where they are unable to comply with s115 of the Act

[113] It is clear from the above that the Authority would deem staff who drank on duty, particularly licensees, as being unsuitable to hold a licence. The Committee raised concerns with Mr Meek, citing a Hospitality Industry publication and in particular the part that referred to the Health and Safety in Employment Act 1992 with respect to the consumption of alcohol by himself and his staff while on duty. It was the Committee's contention that Mr Meek was at variance with his own industry best practice and acting contrary to the provisions of both the Sale and Supply of Alcohol Act 2012 and the Health and Safety in Employment Act 1992. Mr Meek was adamant it was reasonable that both he and his staff consumed 'shots' and beer while on duty.

[114] The Committee determines that the consumption of alcohol while on duty, by both Mr Meek who is the director of the applicant company and the staff of the applicant company, brings into question the suitability of Mr Meek and thus the Applicant to hold a licence. A reasonable way of dealing with this issue is to impose a condition preventing the consumption of alcohol while on duty. Should Mr Meek, or his staff, not comply with the condition it would be for the appropriate officials to undertake action against the Applicant or the individuals involved.

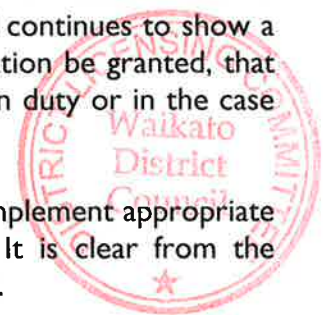
[115] Mr Meek, through Counsel, submitted a Supplementary Memorandum (dated 9 April 2015) to the Committee. As a result the Committee issued directions and a draft set of conditions seeking feedback from all parties to the hearing. Fortunately in his communication with the Committee following the request for comments on the proposed draft conditions Mr Meek submitted that both he and his staff no longer consumed alcohol while on duty. Mr Meek went further and advised the Committee that it was now part of the management policy of the Yot Club that both he and his staff did not drink on duty. In respect to himself as Licensee he advised the Committee that he no longer drank while on the premises but not on duty. It is the Committee's view that a condition be included that formalises the new policy recently implemented by Mr Meek

[168] Hearsay evidence was produced during the hearing that Mr Meek was intoxicated on the Yot Club premises on 22 November 2015. The Committee discounted the hearsay evidence and gives it no weight. However, the issue of Mr Meek seeking to be allowed to consume alcohol while on the premises raises the same issues as those dealt with in 2015 and continues to show a lack of judgement on his part. It is the Committee's view, should the application be granted, that the condition preventing Mr Meek and Staff from consuming alcohol while on duty or in the case of Mr Meek, while on the premises but not on duty, remains in place.

[169] Paragraphs [161] to [165] above deal with the inability of Mr Meek to implement appropriate systems. A licensee must have appropriate systems in place at all times. It is clear from the evidence during the hearing that Mr Meek has failed to comply with s105(1)(j).

[170] While the Committee heard about a controlled purchased operation during the hearing, the Committee discounted it when considering the evidence as it is currently before ARLA.

[171] The Committee has again reviewed case law in respect of suitability. Many of the following comments appeared in the Committee's determination of the original on-licence application. The issue of suitability has been the subject of much attention during this hearing. The Committee notes the following comments from *Linwood Food Bar Limited*, [2014] NZARLA PH 511-512 at paragraph 4 and from paragraph 21 to 24 inclusive.



[4] see, for example, *PAGE v Police* (unreported) HC Christchurch, AP84/98 – 24 July 1998 where Pankhurst J stated (inter alia) that:

An 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”

[21] The concept of suitability has been discussed by the Authority and the High Court on many occasions. Perhaps the most recent occasion is in the decision of *Nishchay Enterprises Limited*, [2013] NZARLA PH 837, where at paragraph [53] the Authority stated:

“The applicant sought to establish its suitability by adopting a narrow assessment of the meaning of that term. This approach was criticised in *New Zealand Police v Casino Bar No. 3 Limited*, (CIV 2012-485-1491; [2013] NZ HC44). The High Court rejected the proposition that it was the manner in which the business would be operated as the determinate factor. Rather, suitability is a broad concept and the assessment of it includes the character and reputation of the applicant, its previous operation of the premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters. It also includes matters raised in reports filed under s.33 of the Act and those reports may raise issues pertaining to the object of the Act as set out in s.4. Thus, whether or not the grant of the licence will result in the reduction or increase in liquor abuse is a relevant issue.”

[22] That paragraph was written in terms of the Sale of Liquor Act 1989. It is equally relevant in terms of the Sale and Supply of Alcohol Act 2012. With reference to the object of the Act, whilst the 1989 Act referred to liquor abuse, s.4 of the 2012 Act specifically requires that the sale, supply and consumption of alcohol must be undertaken safely and responsibly and that any harm caused by the excess or inappropriate consumption of alcohol must be minimised. If an applicant is unable to satisfy the Authority that the sale, supply and consumption of alcohol in its premises will be undertaken safely and responsibly, then it follows that it is unlikely that the applicant will be found to be suitable.

[23] The Authority recognises that in terms of *P R Bartlett*, NZLLA PH 285/2002 a higher standard of suitability is required of managers than of licensees. Nevertheless suitability remains one of the criteria to which the Authority is required to have regard by virtue of ss.131 and 105(1)(b) of the Sale and Supply of Alcohol Act 2012.

[24] In *Nishchay Enterprises Limited* (Supra) at paragraph [54] the Authority referred to the recognised test for suitability as contained in *Re Sheard* [1996] 1NZLR 751 where Holland J said at 758:

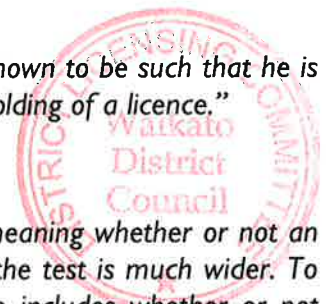
“The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence.”

In this regard the Authority commented in *Nishchay*:

“Traditionally that test (the Sheard test) has been interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus it includes the object of the Act as set out in s.4.”

In the context of the 2012 Act, suitability includes whether or not the licensee will ensure that the sale, supply and consumption of alcohol in its premises will be undertaken safely and responsibly.”

[172] The Committee, in determining the Applicant's suitability, must assess Mr Meek's suitability as he is the director of the applicant company. Fortunately, the Committee had the opportunity to



hear directly from Mr Meek and therefore make an assessment of his suitability. In assessing his suitability, the Committee considered the issues raised and how Mr Meek has dealt with an issue or how he proposed to deal with an issue.

[173] The Committee notes from the Linwood Food Bar decision noted above, that what is required is a positive finding. That is, the onus is on the applicant to demonstrate their suitability.

[174] The Committee notes that the applicant has undertaken steps to address, in the future, the many systemic failures that have been reported during the hearing. However, as noted in the decision *New Zealand Police v Casino Bar No. 3 Limited*, (CIV 2012-485-1491; [2013] NZ HC44), assessment of suitability includes not only the applicant's "proposals as to how the premises will operate", but also "its previous operation of the premises".

[175] In the opinion of the Committee, through his operation of the premises in the time since receiving his first Temporary Authority, the applicant has failed to demonstrate that he has the ability to operate the premises, known as The Yot Club Raglan, at an appropriate level and in accordance with legislation. To the contrary, the consistent failure to adhere to administrative requirements such as maintaining a current Building Warrant of Fitness, maintaining a current food hygiene certificate, and complying with the conditions of the licence in respect of submitting a professionally produced Noise Management Plan, all during a period of time where the applicant could reasonably expect to be under increased scrutiny, point to the unsuitability of the applicant to continue to hold an on-licence.

DECISION:

[176] The application by Rockaway Beach Limited for the renewal of an on-licence for the premises known as The Yot Club, situated at 9 Bow Street Raglan, is refused.

[177] Pursuant to s135(2) of the Act the current on-licence shall cease on 31 May 2017.

[178] As noted at paragraphs [152 and 153] of this decision, the Committee had concerns about the noise levels with respect to the Waikato District Plan. Had the Committee been minded to grant the renewal of the on-licence this issue would have required clarification before the application could have been determined.

Dated at Ngaruawahia this 9th day of May 2017



Noel Smith
Chairman
Waikato District Licensing Committee

