

**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: Cr Noel Smith  
Members: Ms Patsi Davies  
Dr Michael Cameron

**HEARING** held by **Audio Visual Link** commencing at 10am on Wednesday 10 November 2021 and continuing on Thursday 11 and Friday 12 November 2021, and 15 December 2021, pursuant to section 202(5) of the Act. The Committee notes that ‘breakout rooms’, as provided by the Zoom technology, were used by the Committee and/or the Applicant at various times during the hearing.

## **APPEARANCES:**

Mr Simon Middlemiss, Solicitor for the applicant  
Mr Levi Harris, to assist Mr Middlemiss  
Mr Andrew Meek, Director of the applicant company  
Mr Gordon Thomas, witness for the applicant  
Ms Bianca Staines, Licensing Inspector, in opposition  
Senior Sergeant (S/Sgt) David Hall, NZ Police, in opposition  
Senior Constable (S/Cst) Raewyn Stevenson, NZ Police, witness for the Police  
Ms Ashleigh Mail, Medical Officer of Health (MOH) delegate, in opposition

Mr Matt Horsfield, Waikato District Council (WDC) Democracy Advisor, to assist  
Mrs Christine Cunningham, WDC Team Leader Community Safety, to assist

## **SITE VISIT:**

A site visit was undertaken on the morning of 11 November 2021. Mr Meek was present and supplied various documents, copies of which were later circulated amongst all parties and submitted as evidence by Mr Meek. No other party to the proceedings was present.

## **DECISION**

The 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” is *refused*.

Pursuant to section 135(2) of the Act, the licence shall expire three months from the date of this 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”.

[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. Reports from the Police, Medical Officer of Health and an Inspector raise matters in opposition to the application. Accordingly, the application is determined by way of a public hearing. The hearing was initially set down for three days commencing on 10 November 2021.

### **PRE-HEARING MATTERS:**

[4] Prior to the hearing, Mr Middlemiss, counsel for the applicant, sent a letter via email to the Committee via the DLC Secretary. In that letter, dated 19 October 2021, Mr Middlemiss outlined at paragraphs [5] through [12] his concerns about some of the information contained in the Police opposition submitted by S/Sgt Hall on 21 July 2021. As at 19 October 2021, none of the members of the Committee had read the Police report submitted by S/Sgt Hall. The DLC considered the comments made by Mr Middlemiss and determined that any evidence given by the Police and, for that matter, any other party during the hearing, would be received subject to the Act and would be evaluated and weighted accordingly as the Committee would do in any other case. Mr Middlemiss was advised, in writing, of the Committee’s decision to continue to hear the application, and the matter was set down for hearing by the Committee on 10, 11, and 12 November 2021.

### **HEARING, DAY ONE (10 November 2021):**

#### **PRELIMINARY MATTERS:**

[5] The Chair opened the hearing and, after the usual opening remarks, referred to the matters raised by Mr Middlemiss in paragraph [4] above. The Chair reaffirmed the Committee’s position so that the issue would be recorded as a procedural issue.

[6] Mr Middlemiss then spoke to paragraphs [1] to [39] inclusive of his pre-circulated opening submissions, seeking once again to have some of the Police evidence, contained in their report in opposition and dated 21 July 2021, ruled inadmissible.

[7] Following further discussion by the Committee, the Committee ruled that:

The Committee will evaluate and weight all evidence put before us, including all statements and views in evidence, but taking account whether those statements and views were made by affidavit or in person and whether the persons providing those statements or views were available to be cross-examined. The Committee noted that it will be evaluating the probative value of all and any evidence adduced before it during the hearing. The Committee further noted that the Health Practitioners Disciplinary Tribunal is not a Commission of Inquiry.

[8] Mr Middlemiss then sought direction from the Committee as to the timing of a supplementary statement of evidence submitted to cover the evidence of Constable Stevenson. It was agreed that Mr Meek would be recalled and speak to his supplementary statement after the evidence of Constable Stevenson.

## **APPLICATION:**

### **Opening Submissions:**

[9] Mr Middlemiss outlined the background to the application and how the Committee must approach the determination of the application. He then discussed the statutory criteria affecting the licence renewal including suitability, the local alcohol policy, the days and hours of the licence, design and layout, amenity and good order, systems staff and training, and the reports from the Police, the Medical Officer of Health and the Licensing Inspector. He then covered the manner in which the applicant has previously sold alcohol and closed his submissions by addressing the Object of the Act. He concluded his submission by inviting the Committee to grant the renewal of the applicant's on-licence for a further three years.

[10] In response to questions from the Committee, Mr Middlemiss confirmed that the decision must be determined on the balance of probabilities as opposed to the criminal standard of beyond reasonable doubt. The Committee referred Mr Middlemiss to paragraph [68] in the decision *Shady Lady Lighting v Patel* [2018] NZARLA 198 (2 July 2018), and Mr Middlemiss agreed to address the evidentiary standard in his closing submissions.

### **Witness for the applicant: Mr Andrew Meek, Director Rockaway Beach Ltd**

[11] Mr Meek read his pre-circulated statement of evidence from paragraph [13], with paragraphs [1] to [12] being taken as read. Mr Meek outlined his background of more than 20 years in the hospitality industry, firstly through premises in Auckland and more recently in Raglan. He stated he was disappointed that the Police had opposed his renewal application for an on-licence. He then spoke to matters covered under s131 and s105(1) of the Act.

[12] With regard to systems, staff and training, Mr Meek stated that there were two duty managers employed at the Yot Club, Mr Jareth Thompson and himself. As the Yot Club only operated two or three times per week, two duty managers were sufficient to cover the operating hours of the premises. An additional three staff were employed during the winter season, Easter to Labour Weekend, and up to five or six during the summer months. Mr Meek stated that he runs induction training for new staff, and training for all staff every six months thereafter. He produced, as Exhibit 'A', copies of the training records of several staff, including himself. He outlined the operation of a one-way door policy from midnight whenever the Yot Club is open. He then told the Committee about the CCTV network in operation and about the security guards he employs each evening. He then spoke about the incident book maintained for the premises, and

how he encourages the use of the new Raglan Taxi service, or as a last resort his own courtesy shuttle service.

[13] Mr Meek went on to state that the renewal application was not seeking to vary any of the conditions of the on-licence. He stated, “I understand that some of the opposition to the renewal application is because I had not provided training records with the application form. I did not realise that I would need to do this, as the application form only asked me to provide ‘details of staff training’”.

[14] Mr Meek then spoke to issues relating to noise, and in particular the in-depth analysis of the noise complaints associated with the Yot Club since the previous renewal in 2018 in the Inspector’s report. Mr Meek spoke of discussions he has had with the Waikato District Council’s noise contractor, an Armourguard employee. Mr Meek stated that his understanding is that all noise readings have been taken from outside his premises and not at any of the complainant’s locations. Mr Meek stated that the Armourguard employee makes an assessment by ear outside the Yot Club, and noted that the noise would always be louder at that site than at the complainant’s home. He noted that the Inspector’s report talked about taking noise readings from the notional boundary of a complainant’s home and agreed that that is where noise should be measured from.

[15] Mr Meek outlined that, whenever he is approached about excessive noise from the Yot Club, he has chosen to reduce the volume of the music, even when he does not believe that the noise is excessive. Mr Meek stated that there are four other venues near to the Yot Club, all playing amplified music, and if measurements for noise are not being taken from the complainant’s location, there is no way of truly knowing from what premises the noise is coming from.

[16] Mr Meek stated, “We have always complied with our Noise Management Plan (NMP).” He outlined that he had installed noise proofing in the Yot Club building after finalising the NMP, which reduced the noise outside the building by approximately 10db. Mr Meek explained that a series of noise recordings are taken each evening and that those recordings are kept in a Noise Management Diary. Mr Meek then went on to discuss a number of dates that had been referred to in the reports of the Police and the Licensing Inspector:

1. **23 April 2021** – Mr Meek attributed the noise that was the subject of the complaint to a neighbouring premises, The Yard, as that premises had a DJ that evening and was pumping out thumping bass noise. On that evening, The Yot Club had a band and Mr Meek made the observation that bands don’t put out thumping bass noise. He referred to Exhibit ‘B’ of his evidence, which showed posters advertising the entertainment for both venues for the night of 23 April 2021.
2. **28 November 2020** – Mr Meek attributed the likely source of the excessive noise on that evening to the Raglan Golf Club.
3. **22 November 2020** – Mr Meek stated that, when the noise control officer arrived at the premises, the officer determined that the noise was not excessive, but that Mr Meek agreed to lower the volume anyway. Mr Meek attributed the cause of the excessive noise to a party being held at Palm Beach and believed that a breach notice was issued for that party.
4. **2 March 2019** – Mr Meek stated that the complaint was misdirected at the Yot Club and produced as Exhibit ‘C’ an unsigned letter from Nat Hughes, taking responsibility for the noise on that evening.
5. **1 March 2019** – Mr Meek challenged the basis of the complaint, stating that the complaint referred to stereo/bass booming out from the Yot Club. Mr Meek referred to his claim that only DJs boom out bass noise, whereas bands generally do not. He

produced as Exhibit 'D' a poster advertising that bands were playing at the Yot Club on 1 March 2019.

6. **1 November 2019** – Mr Meek claimed that the Yot Club was closed on this date due to a Community event (the Raglan Community Radio 25<sup>th</sup> Birthday Bash) and produced as Exhibit 'E' an extract from a newspaper showing that the Yot Club was closed.
7. **18 December 2018** – Mr Meek noted that this complaint was made at 2.14pm on a Tuesday. Mr Meek stated that the Yot Club is definitely not open at that time or day. He recalls making some enquiry into the complaint at the time and found out that it was a loud instrumental 'jam' session at a café.

[17] Mr Meek confirmed that he had read the Police report in opposition. With regard to the incident that occurred on 20 March 2021 referred to in the Police report, Mr Meek stated that all patrons had left the Yot Club premises by 1.30am. At 1.45am, he was advised of a large gathering outside the premises and that the Police were being mocked by the crowd that had gathered. Mr Meek stated that he recognised some of the crowd that had been in the Yot Club and others that had not. He stated that some in the crowd had earlier been refused entry to the Yot Club as they were intoxicated. He stated that he told the crowd to leave, or they would be banned from the Yot Club for two years. As some of the crowd were locals, they began to move away and disperse. Mr Meek stated that he was unaware of the Police assessing anyone in the crowd for intoxication either inside or outside the premises.

[18] Mr Meek stated that he was deeply concerned about the Police evidence of drink spiking and indecent assault within the Yot Club premises. He stated, "We have always completely denied that any of this happened, and the Police never pursued either allegation, presumably because they would never have been able to prove the alleged offences had actually happened. Without evidence that these allegations are true, the Police are essentially relying on rumours".

[19] With reference to design and layout of the premises, Mr Meek stated that he didn't fully understand what the Police mean when they say that the premises are 'insufficient' for the application and the proposed state of operation. Mr Meek referred the Committee to Exhibit 'F', which included approximately 150 messages of support that he had received after posting a call on social media for support for his renewal application. He also spoke to a new floor plan, Exhibit 'G', that better defined the proposed licensed area.

[20] Mr Meek stated that, "We do maintain an incident book at the Yot Club. However, we do not normally have problems with intoxicated or disorderly people at the Club. When we have incidents, my staff and I can remember them. The incidents referred to by the Police report were most likely called in by the public, but I cannot speak to them, unless the Police can give me more information than the date and alleged offence". He stated that the Police, to his knowledge, had never carried out intoxication assessments on customers at the Yot Club. He acknowledged that the Police report noted that a person was apprehended for drunk driving after having been at the Yot Club, but Mr Meek claimed that there is no evidence that that is the case. In respect of the two alleged serious assaults on 16 February 2020 and 26 October 2020 and mentioned in Police evidence, Mr Meek had no recollection of the alleged incidents.

[21] With respect to the opposition raised by Fire and Emergency New Zealand (FENZ), Mr Meek noted that he had undertaken a trial evacuation on 12 July 2021, and that FENZ had subsequently withdrawn their opposition to his application.

[22] In response to extensive questions from S/Sgt Hall, Mr Meek confirmed that he operated the premises two or three nights per week, and not usually until 5pm on those days. Mr Meek

explained that when he applied for the licensed hours, he sought the maximum to give him flexibility to operate the premises. Mr Meek stated that he was not interested in applying for special licences as it involved time, whereas with the hours he already has he is able to be flexible. He confirmed staffing numbers and stated that those staff were in addition to Mr Thompson and himself as duty managers.

[23] When asked by S/Sgt Hall about a typical night, using the example of the evening of 2 June 2021, Mr Meek stated that on that evening the Yot Club had three bands playing. There were about 80 patrons present with 30 to 40 inside and the rest outside. The patrons rotated between inside and outside. When asked about the capacity of the venue, Mr Meek confirmed that up to 300 persons maximum could attend the venue, with most of that number in the outdoor area of the licensed premises. In addition to bar staff, Mr Meek told the Committee that two or three security guards were employed, one to staff the gate and the other to monitor the premises.

[24] Mr Meek told the Committee that the courtyard area boundary with the neighbouring premises was now delineated by way of a 2.1-metre steel mesh fence that was erected each evening, similar to fencing used at building sites and sports games. Mr Meek explained that the fencing was almost impossible to climb and he was unaware of anyone ever being successful in climbing over it. He would not accept that it is a risk that people could climb over the fence.

[25] Mr Meek outlined the process of using wristbands for everyone entering the premises. Different coloured wristbands are used on different nights, so it was easy to identify persons that had been allowed to enter the premises on a particular night. Mr Meek explained that there are CCTV cameras on the premises and the cameras cover the areas that staff cannot easily see. He confirmed that there were no cameras in the outside area but that there are three cameras inside the premises and that the main entry to the premises was covered by CCTV cameras.

[26] Mr Meek confirmed that 'incidents' were entered into the incident book if such incidents had been brought to the attention of staff or himself. Mr Meek confirmed that he had shown the incident book to the licensing inspector when she had visited the premises to discuss the renewal of the on-licence.

[27] When asked by S/Sgt Hall, Mr Meek confirmed that he still operated a courtesy shuttle, but promoted the new Raglan taxi service ahead of his own vehicle. He confirmed that, with the Raglan Taxi service commencing in March last year, he no longer maintained a designated driver and thus any of his five or six staff would drive the courtesy van if required. Mr Meek confirmed that music stops at the Yot Club at 1.00am and that all patrons are off the premises by 1.30am. He told the Committee that he worked with Raglan Taxis and uses his courtesy van to support the service. Mr Meek accepted that, between the taxi and his courtesy van, only a small number of people could be transported away from the site at any one time.

[28] Mr Meek confirmed that he or a member of his staff took noise readings every night and that those noise levels are recorded in a book. Mr Meek noted that the closest three residential dwellings to the Yot Club were all about equidistant from the Yot Club. He reiterated that since putting the sound proofing into the Yot Club building, the noise level recordings taken outside the premises were now approximately 10db lower than before the sound proofing was installed. He confirmed that the decibel meter used by him, or his staff, was of a commercial grade and that it was self-calibrating. He noted that only 3 staff were authorised to use the decibel meter and stated that the recorder is kept with the noise recording book in the premises. When asked why he did not submit records with the application, Mr Meek responded that as he hadn't done so in 2018, he didn't do so this time.

[29] When asked about noise on specific dates, Mr Meek reiterated that the incident reported at 2.14pm was not the Yot Club as it was not open. He attributed the Golf Club as being responsible for the noise on 28 November 2020 due to high winds blowing a different way and pushing the music towards town. Mr Meek was adamant that the Yot Club was not responsible and stated the noise man should monitor properly. He confirmed that the Golf Club was several kilometres away from the Yot Club. Mr Meek stated that the Golf Club was known to 'go pretty loud' and that he could hear the music from the Golf Club at his home which is at least 2km from the Golf Club.

[30] Mr Meek reiterated he was disappointed with the Police for not speaking to him about the alleged incidents in their report. He stated that the local library is next to his premises on Bow Street and it is lit at night. As a result, people congregate around the library, which they did on March 19, 2021. When Mr Meek became aware of the issues, he went outside and assisted the Police to disperse the crowd.

[31] Mr Meek stated that the Police were not moving on from the false allegation referred to in paragraph [60] of his statement of evidence. He had given a statement in relation to the false allegation. Mr Meek stated that Police often come to his premises, but do not necessarily speak to him. However, they always spoke to security staff who would greet them at the front door. Mr Meek confirmed he had no recollection of the incidents alleged to have occurred on 16 February 2020 and 26 October 2020.

[32] With respect to noise, Mr Meek confirmed that approximately 30 persons would normally be in the indoors part of the premises, by the band or DJ, and that the remaining patrons would be in the courtyard. He confirmed that, while some doors are shut preventing noise escaping to the Bow Street area, some doors were opened to allow access from outside to the bar area. He noted that noise escaped from the building where the bands or DJs are located via the open doors to the courtyard. Mr Meek reiterated that he always turns the music down if approached by a noise control officer. He had observed that noise control called on him more often when a DJ was in residence, as bands generally have a 'sound man' who controls the noise levels better than DJs. Mr Meek confirmed that he did not have a formal noise complaint response process.

[33] When asked about training, Mr Meek stated that he usually undertook the training of all staff himself and that he would have his other duty manager test him. When asked what a standard drink was, Mr Meek stated that every label states what a standard drink is. He talked about how people on a lower budget would get standard drinks and not doubles. However, he did not clarify what a standard drink was. Mr Meek confirmed that his training manual was about 25 pages in length and that he had made it up from his knowledge of the industry. Mr Meek referred the Committee to the training records produced as Exhibit 'A' for four staff as examples of the topics covered in the staff training modules. When asked specifically about how someone is assessed for intoxication, Mr Meek referred the Committee to "the four signs" and "different levels", and that if any two aspects were present that would indicate a person was intoxicated. Mr Meek did not clarify what the "four signs" or "different levels" were.

[34] At this point, the Police concluded their cross-examination of Mr Meek. The Committee took the opportunity to clarify with Mr Meek that he would make a number of relevant documents that had not previously been provided as part of his application. Mr Meek agreed that when the Committee undertook a site visit the next morning, the following documents would be available:

- Yot Club Alcohol Management Plan
- Staff Training Manual
- Noise Recording book
- Incident Book noting Police visits

[35] In response to questions from Ms Mail, Mr Meek confirmed that each training session with staff took approximately 1 – 1½ hours per person. Ms Mail asked why, when the Inspector visited the premises, Mr Meek wasn't able to recall any training or if in fact whether there had been any training in the previous three years, and how was he able to come up with the training documents submitted as Exhibit 'A'. In response Mr Meek said, "I didn't realise it was such a wide-ranging brief. I only thought it was about noise. I was not prepared and didn't realise the meeting was to be as full on as it was".

[36] In response to questions from the licensing inspector, Mr Meek confirmed that he had taken many of his records from the Yot Club to his home. He also re-confirmed that his decibel meter was self-calibrating. Mr Meek also confirmed that his staff were actively trained, and he tried to work with staff to ensure the timing of training was convenient to all and they were all done on the same day.

[37] The Committee sought clarification regarding payroll records in order to verify that staff had been present on the days that they were purported to have been engaged in training Mr Meek noted that he paid staff an hour for the training time, but that it was not necessarily recorded on the day that the training happened, and he does not produce comprehensive payslips for his staff. Mr Meek agreed to provide a copy of a payslip for Mr Thompson for 19 October 2018, as a particular example covering a training date, before the end of the hearing. Mr Meek did not provide this to the Committee.

[38] In response to questions from the Committee, Mr Meek confirmed that he undertook training for his bar staff on site at the Yot Club approximately every six months, noting that he did not train his security staff as they were trained security officers and received their own training. Mr Meek re-confirmed that he wrote the training manual for the premises in conjunction with a former staff member. When asked to clarify his sources for the document, Mr Meek stated that he got some bits online and some was personalised. When asked about training on the Noise Management Plan, Mr Meek confirmed that only he, Mr Thompson and one other staff member were trained in noise management. He agreed that the NMP should be included in the Training Manual and agreed to include it.

[39] Mr Meek confirmed that his records are usually kept at the Yot Club, in either the kitchen or under the bar. He told the Committee that the training records are usually updated every six months. He stated that staff training is usually done on a day when everyone is available and usually on a day that the Yot Club is open, but not always.

[40] Mr Meek confirmed that the Incident Book was kept under the bar and was treated as a running diary and was updated every day.

[41] Mr Meek then answered a number of questions from the Committee about noise. He confirmed that the NMP was developed in 2017. He also confirmed that noise checks were generally done once, sometimes twice on an evening, and generally between 10pm and midnight. The noise checks were taken from the sound desk at the back of the room, and from one metre outside of the front gate. He stated he used to do recordings by Orca restaurant but stopped doing so as he never got a recording much above 40db. He also confirmed that bands usually have a sound man who monitors the sound levels from across the room from the band.

[42] Mr Meek confirmed that the noise complaints are generally about the bass noise made when DJs are operating at the Yot Club. DJs tend to rely more on the bass music, as opposed to bands who had better control, as they played live music. Mr Meek confirmed that when music is played between 'sets' by the bands, it is usually of a lower volume. Mr Meek confirmed that Exhibit 'C' was written after a discussion with Nat Hughes, and that Mr Meek had asked for the letter to be

written. Mr Hughes had not been made available as a witness, as Mr Meek did not think of calling him.

[43] When asked about the boundary between the Yot Club and the neighbouring premises called 'The Yard', Mr Meek explained that it was two music venues sharing a boundary. He observed that Raglan only had a population of 4000 people. He said that he understood that, "The Yard was not doing as many gigs as they had hoped". He said, "The two premises are now in direct competition, and it pains me to say that". Mr Meek stated that one noise complaint against him should have been for "The Yard". He explained that The Yard owners had expected to get their liquor licence early in 2021, but they opened around April 23. They went late into the early hours. On Queen's Birthday, they used a band that had been originally booked to play at the Yot Club. He said that the relationship between the two owners is deteriorating. Mr Meek noted that The Yard focused on events on Thursdays and the weekends but generally it would be impossible to survive without a liquor licence. Mr Meek noted he had a building that was sound proofed, but The Yard did not. Mr Meek confirmed that both the Yot Club and The Yard were open at the same time and both played music.

[44] Mr Meek explained that he had moved from using a rope to delineate the boundary between the Yot Club and The Yard to using a portable 2.1m high interlocking steel mesh fence. Mr Meek explained that his lease document sets out the area of Volcom Lane that is included in his lease. Essentially, it is the area of Volcom lane from Bow Street to 3m past the end of his building as per the plan in exhibit 'G'. Mr Meek told the Committee that The Yard owners had built a deck from their premises into Volcom Lane and that it protruded into his licenced area. Mr Meek confirmed that there were no markings on the ground to delineate the boundary between the two properties. Mr Meek also agreed that the undertaking he had given, not to use the outside area when the shops in Volcom Lane were open, is not practicable now that The Yard is operating, and will need to be changed.

[45] Mr Meek explained that, depending on what band or DJ was playing, he could estimate the size of the crowd he would expect that night. He stated that he often erected the temporary fence in such a way to reduce the area of the courtyard, as it assisted with lessening the area to clean up at the end of an evening; that is to say he doesn't use his whole licenced area at all times. However, Mr Meek stated that he intended to go back to erecting the fence on his boundary every time the premises is open.

[46] Mr Meek was then asked about the food truck parked on site, mentioned in the Inspector's report. Mr Meek spoke of the background as to how the food truck came to be on site, but noted that as it is wholly outside his licenced area his patrons are no longer able to access it due to fencing the boundary. Mr Meek told the Committee that he had had an arrangement with Ulo's restaurant to provide meals through the food truck, but that was no longer happening.

[47] Mr Meek told the Committee that he had gone on social media four days before the hearing and asked his followers to send in support, as he had had his licence opposed. He confirmed to the Committee that there were 177 emails of support in his Exhibit 'F'. He couldn't say whether any of the supporters were conversant with alcohol licensing matters. Mr Meek agreed that the emails were a measure of how popular the Yot Club is, and "the feeling that some people have for the place".

[48] When asked by the Committee how often the Licensing Inspector visited his premises, Mr Meek stated that a previous inspector had made night visits about once a year unless it was for a planned renewal, and a couple of times during the day. He stated that Police do checks often, about once every six weeks or so.

[49] Mr Meek was then asked about his role as a director. He explained that he was the sole director of the Yot Club and had been for eight years. He had been a director of Flanders for about 25 years but the sole director for about 20 years. He stated he had been in the hospitality industry for about 22 or 23 years. When asked what his main duty as a director was, Mr Meek responded by stating, "Make sure that I do it legally and responsibly". Other duties included filing returns on time; making money for shareholders, that is he and his wife; and running the business to the best of his ability.

[50] The Committee noted that the Police have said that there is no business plan accompanying the application. Mr Meek was asked if he had a current business plan. He responded by telling the Committee that the business was music based, the goal was to get persons to Raglan and to provide a quality venue. He stated his biggest market was tourists, but that market was gone due to Covid. Mr Meek confirmed the business plan was not written down, it was all retained in his mind. Mr Meek told the Committee that since international tourists had left his main customers were about one-third from Raglan, one-third from Auckland and Tauranga, and one-third from Hamilton. Mr Meek said that those most attracted to his premises were those who like music. He explained that his most popular drinks sold were approximately 48% Waikato beer, about 47-48% spirits and about 5% wine. He said that non-alcoholic drinks were 'hammered all the time', with Red Bull available. He said about 10% of all drinks sold were non-alcoholic.

[51] Some discussion then took place about the accessibility and availability of water in the outside courtyard area. Mr Meek agreed that he could look at providing a safe supply of water to the outside area if his licence was renewed.

[52] Mr Meek took full responsibility for the training of all staff, including himself.

[53] In response to questions from the Committee, Mr Meek acknowledged that he had previously delegated responsibility for maintaining the Evacuation Scheme to Jarod Thompson, an employee. Mr Meek stated he has since taken back that responsibility. He told the Committee that approximately 320 events had taken place since the last renewal of his on-licence and accepted that all were held without an up to date evacuation scheme.

[54] In response to questions from the Committee, Mr Meek acknowledged that it was his responsibility to maintain the incident book, stating, "The buck stops with me". In response to questions about the incident on 20 February 2020, Mr Meek stated that the young woman hadn't been on site for very long. Mr Meek recalled her sometime around 11.00pm – 11.30pm and that he became aware of her situation just before midnight. When asked why he did not call 111 immediately, Mr Meek stated that he called Gordie (Gordon Thomas) as he was local, and that if Gordie had not been available, he would have called 111. Mr Meek was asked about the risks in this situation, to which he responded by stating, "The risks had been identified in training but not logged in training".

[55] Mr Meek was further asked by the Committee about the letters of support provided in his statement of evidence, and he told the Committee that he was unaware of any of the letters coming from the operators of other premises on Volcom Lane.

[56] The Committee referred Mr Meek to his Counsel's opening submissions and asked what types of issues occur at the Yot Club. Mr Meek responded that the Yot Club doesn't have other issues. Mr Meek stated that the Yot Club had been open about 330 nights during the period of his current on-licence. He stated that the Police have mentioned three specific nights, which is not many issues. He maintained that the Yot Club ran smoothly and that any incident was recorded in the Incident Book.

[57] Seeking clarity on comments already made by Mr Meek, the Committee asked Mr Meek to clarify a number of matters. Mr Meek confirmed that the 'bass' is not the heart of a band as it is for a DJ. In respect to the party on Palm Beach mentioned by Mr Meek he stated, "Palm Beach is about 1 to 1.5km away from the Yot Club. Mr Meek stated that, "The Armourguard chap knew it was Palm Beach".

[58] Mr Meek was asked to explain what the term intoxication meant to him in relation to a patron. He told the Committee that it meant that you consider whether they were dishevelled and what their appearance was like.

[59] The Committee noted that there had been several years of non-compliance with the law, including issues that arose in previous hearings in 2015 and 2017. Mr Meek was asked why it is that he is incapable of complying regularly with the law. Mr Meek responded that "There were other issues last time. None of them have come up". Mr Meek then spoke of taking responsibility back from Mr Thompson in relation to the fire evacuations.

[60] When pressed further on why his system had failed, Mr Meek explained that the Yot Club had been doing trial evacuations, but the only issue was that Mr Thompson had not been advising Fire and Emergency New Zealand that they had been done and thus they had no record of the trial evacuations. Mr Meek noted that "it was an oversight" that he had not been checking that Mr Thompson had been completing the last step of advising Fire and Emergency New Zealand about the evacuations. Mr Meek was unsure about whether fire evacuations would be recorded in his Incident Book.

[61] When asked about why 'everyday matters' were consistently not being done, Mr Meek responded that "it was an oversight" and that he "did not check that the last thing was being done". Mr Meek stated that even though he delegated the task, that he accepted responsibility for it.

[62] S/Sgt Hall sought to clarify some matters raised in cross-examination by the Committee. S/Sgt asked Mr Meek to clarify what the intoxication tool was and then asked Mr Meek to speak to the traffic light system. Mr Meek replied that it had three stages: stage one dealt with under intoxication levels; stage two was mildly affected by intoxication; and stage three was seriously affected. Mr Meek was then asked to define intoxication to which he responded, "Signs that they are not in control of their faculties, not in charge, their appearance, their speech and their coordination". Mr Meek stated if any two of the characteristics for intoxication were present, that he or his staff would refuse a person entry to the premises. Mr Meek noted that if only one of those signs was present, that a person was not intoxicated.

## **SITE VISIT:**

[63] A site visit was undertaken by the Committee at 9.30am on Thursday 11 November 2021. An invitation to all parties to attend the site was made by the Committee during the hearing the previous day. Mr Meek was the only person to attend the site visit. During the site visit, Mr Meek made various documents available to the Committee including the Incident Book (2021), the Noise Records notebook, the Noise Management Plan, and the Alcohol Management Plan. Mr Meek also showed the Committee where those documents were usually kept on the premises.

## **HEARING, DAY TWO (11 November 2021).**

### **Witness recalled – Mr Meek**

[64] At the recommencement of the hearing, the Committee advised all parties that it intended to recall Mr Meek to give evidence on particular matters that arose from the site visit. Following discussion between Mr Meek and Mr Middlemiss, the questions were put to Mr Meek.

[65] Mr Meek told the Committee that the noise insulation to the Yot Club building was installed in 2019. The insulation had reduced noise level readings by around 10db, which is down from around 96-97db to around 86db outside the premises on Bow Street. Mr Meek clarified that the Noise Management Plan identified three sites where noise readings should be undertaken, being outside 5 Cliff Street, on Bankhart Street, and at the roundabout by the Vets on Bow Street. He stated that he believed that some of those complaining about noise were living inside the business zone in Raglan. Mr Meek confirmed his first response to any noise complaint was to turn down the volume level.

[66] When asked about the need to update the Fire Evacuation plan, Mr Meek agreed to update the plan and to include a process to deal with the use of the temporary steel fencing used on the boundary with the neighbouring premises.

[67] Mr Meek re-confirmed that the wooden deck from the neighbouring premises, known as The Yard, protrudes into the area contained within his leased area, indicating that he thought about one-eighth of the deck was in his area. Mr Meek commented that he went away for a period and when he returned to Raglan, he had found the deck already in place.

[68] Mr Meek stated he understood that 'The Yard' didn't have a liquor licence. He confirmed that, when he holds his regular Sunday sessions, he utilises all his leased and licensed area. He confirmed that he negotiated an area of Volcom Lane as part of his lease in 2014, and while the landlord has tried to reduce that over the years, The Yot Club has retained the area as negotiated in 2014. He stated that he had no intention of giving up any of the area, nor reducing the licenced area for his licence. Mr Meek stated that his move to use the temporary steel fencing was an attempt to ensure that his licenced area was secure as he didn't want to jeopardise his licence, and that is why he employs security guards. Mr Meek agreed to produce a copy of his lease document showing the area of his lease, in particular the area contained in the common area on Volcom Lane.

### **NZ Police – S/Sgt Hall in opposition**

[69] Prior to S/Sgt Hall giving evidence, Mr Middlemiss challenged the ability of S/Sgt Hall to give evidence as he had not supplied a pre-circulated statement of evidence. S/Sgt Hall submitted that he was going to read his report of 21 July into evidence and was happy to be cross-examined on it. As it is common for reports from the Licensing Inspector, MOH and Police to be read into the hearing record, the Committee determined that S/Sgt Hall could speak to his report. S/Sgt Hall read his evidence, contained at pages 35 and 36 of the hearing agenda.

[70] S/Sgt Hall opposed the renewal of the on-licence on several grounds including:

1. The Object of the Act – that Mr Meek allowed intoxicated persons to remain on the premises and in doing so has increased the amount of harm in the community;
2. Suitability;
3. Whether the applicant has sufficient systems, staff and training to comply with the law;

4. That the design and layout of the premises is insufficient for the proposed operation of the premises; and
5. Lack of disclosure surrounding what training had taken place in the past three years.

[71] S/Sgt Hall then described five incidents, taken from the Police Information System, and all connected to the Yot Club in some manner. S/Sgt Hall also challenged the lack of an apparent business plan for the premises.

[72] Under cross examination by Mr Middlemiss, S/Sgt Hall confirmed that he had not personally observed any of the incidents referred to in his evidence. He noted that Senior Constable Stevenson, who would give evidence later, attended two of the incidents. S/Sgt Hall confirmed that there had been no enforcement action under the Act for any of the incidents in his evidence, except for the person charged with driving while intoxicated.

[73] Mr Middlemiss asked several questions about intoxication levels. S/Sgt Hall conceded that intoxication is defined within the Act and further conceded that he had not given any specific evidence of intoxication in any of the incidents described in his evidence. S/Sgt Hall confirmed that his evidence was based solely on information retrieved from the Police Information System, which others had entered into the system. He confirmed that none of the authors of the entries in the Police system would be giving evidence, other than Constable Stevenson.

[74] Mr Middlemiss then put several statements to S/Sgt Hall, to which S/Sgt Hall responded. He stated that it was difficult to accept that Mr Meek had sufficient systems, staff and training in place when compared to other licenced premises. S/Sgt Hall accepted that, by Mr Meek using the temporary steel fence and wristbands, there were some systems in place on the premises. S/Sgt Hall confirmed that the investigation into drink spiking and indecent assault were not being taken any further, that no one was giving evidence in relation to the serious assaults that allegedly occurred on 26 October 2020 and 20 February 2020, and that no one was giving evidence in relation to the drink driving incident outlined in his evidence. S/Sgt Hall accepted that driving levels and intoxication under the Sale and Supply of Alcohol Act 2012 (SSAA) are two different issues. S/Sgt Hall conceded that the person charged with driving while intoxicated might not have been intoxicated in terms of the SSAA. S/Sgt Hall confirmed that the Police system recorded that the driver had said that they last drank at the Yot Club before being stopped by the Police.

[75] S/Sgt Hall confirmed that he did not witness nor was he producing any witnesses in relation to noise. S/Sgt Hall accepted that none of the persons who had made noise complaints were appearing before the hearing to give evidence. S/Sgt Hall declined to answer some questions on noise, as he was not an expert on the issue of noise.

[76] Mr Middlemiss put to S/Sgt Hall that all his evidence was hearsay and that there was no 'real evidence'. S/Sgt Hall rejected that assertion and stated that, "All the information had come from the Police system, from Raglan Police staff and from the Raglan community". Mr Middlemiss then put to S/Sgt Hall that his evidence was unreasonable. S/Sgt Hall disagreed with Mr Middlemiss's statement.

[77] In response to a question from Ms Mail, S/Sgt Hall stated that, if the driver of the car had not indicated where they had had their last drink, then it would not have been recorded in the Police system.

[78] In response to a question from the Committee, S/Sgt Hall confirmed that a person could be untruthful in giving a statement about where they had last drunk alcohol.

[79] S/Sgt Hall told the Committee that he believed that the Police visited the Yot Club at least once every two weeks, but was unable to state how many intoxicated persons had been observed at the premises, as those data are not usually recorded in the Police database.

[80] S/Sgt Hall, having listened to the evidence of Mr Meek, stated that he still had concerns about the application and remained opposed to the application. He commented that it was not a matter of directing more police resources at an issue. The Police approach now was to focus on the source of the issue and to ensure better management of premises to gain better outcomes, thus avoiding further Police involvement. Raglan is a rural community and Police need to take a prevention first approach, so that persons affected by intoxication don't cause issues. S/Sgt Hall closed by stating, "The issues highlighted reflected poorly on the applicant".

### **Police witness – Senior Constable Raewyn Stevenson**

[81] S/Cst Stevenson read her pre-circulated statement of evidence. She has been a police officer in Raglan for 15 years, and has held the liquor licensing portfolio since May 2014. She told the Committee that the Yot Club is the only night club in Raglan and that the Yot Club stays open later than any of the other licensed premises in Raglan. She told the Committee that the area immediately outside the Yot Club, on Bow Street, is in a liquor ban area. She noted that, in the summer months, the Yot Club generally opens on a Thursday, Friday, Saturday and Sunday nights and closes at 1.00am the following day. Constable Stevenson said that other premises used bands and DJs during the summer, but not as often as the Yot Club, nor were they as loud as the Yot Club. She stated that the Yot Club regularly has between 150 and 200 patrons, depending on the event or entertainment provided.

[82] S/Cst Stevenson stated that the Yot Club usually only opens on a Saturday night during winter and the occasional Friday night as well. She noted that Covid-19 restrictions have closed the Yot Club for significant periods during 2020 and 2021.

[83] S/Cst Stevenson told the Committee of working a 5.00pm to 2.00am 'swing shift' on Friday 15 January 2021 with Constable Watson. During the evening, she noted a large crowd was in attendance at the Yot Club, and at about 1.00am she observed a huge crowd of approximately 100 young persons exiting the Yot Club. She stated that the majority were heavily intoxicated, that they were behaving in an intoxicated manner, and were being loud and disorderly. Many were unable to walk steadily, and many were consuming alcohol in the liquor ban area directly outside the exit from the Yot Club. She told the Committee that she and Constable Watson attempted to move the crowd on. However, the crowd instead made its way to the nearby jetty at the end of Bow Street. Constable Stevenson stated she observed multiple offences including breach of the liquor ban, breach of the peace, and a person urinating on a nearby vehicle. She spoke of her and Constable Watson having to break up a fight that erupted amongst the group. She spoke of feeling unsafe and being faced with an overwhelming number of intoxicated young persons and unable to use any effective enforcement options. She told the Committee of eventually gaining some cooperation from the group and the crowd finally dispersing. S/Cst Stevenson spoke of writing to senior Police management expressing her concerns and requesting additional support for her and her colleagues in Raglan.

[84] S/Cst Stevenson then told of working another swing shift, 5.00pm to 2.00am on Saturday 20 February 2021. She spoke of doing a hotel check at the Yot Club around 12.50am on Sunday 21 February 2021 and being made aware of a female person being unconscious and unresponsive, sitting on a couch inside the Yot Club. She ascertained that Mr Meek had summoned assistance for the woman, that the woman had not been in the Yot Club for long, and that Mr Meek was unsure

if she had consumed any alcohol whilst she was on the Yot Club premises. Mr Meek had told S/Cst Stevenson that the woman had been found unconscious on a couch inside the venue. She was drooling from the side of her mouth. Once stabilised, the woman was transported by ambulance to Waikato Hospital.

[85] S/Cst Stevenson then outlined working another swing shift on Friday 19 March 2021. She told the Committee that a crowd of young persons had gathered outside the Yot Club, on Bow Street, at around 1.00am on Saturday 20 March 2021. She observed a number of persons milling around, and a number of them were sitting on public seating drinking alcohol in the liquor ban area. She told the Committee that she and another Constable were “woefully outnumbered by the crowd”. She observed multiple offences of breaching the liquor ban and disorderly behaviour. She told the Committee of how Mr Meek assisted the Police to disperse the crowd. She said that Mr Meek spoke to her and stated that he knew how the actions of these young people could impact negatively on the Yot Club, and that he was keen to assist in getting the stragglers to move on so that they did not cause issues for him. S/Cst Stevenson concluded her evidence by stating that the type of incidents she had described are too difficult for two police officers to deal with.

[86] In responding to questions from Mr Middlemiss, S/Cst Stevenson confirmed that at paragraph [6] of her statement of evidence she described the other licensed premises in Raglan as not being as loud but agreed that she had taken no noise recordings of those premises.

[87] Mr Middlemiss spent some time pressing S/Cst Stevenson that she had made no formal assessments of the intoxication of any person or persons and that she had no basis to claim persons were intoxicated. S/Cst Stevenson stated that she had observed the behaviours and that she saw it herself. She reiterated that her view of whether persons were intoxicated or not was based on her own direct observations of those persons. She confirmed that she had not assessed anyone inside the premises on the three nights she had described to the Committee.

[88] S/Cst Stevenson re-confirmed that she was informed of the young woman when she entered the Yot Club premises at about 12.50am Sunday 21 February 2021. She found the woman on an outside table, being tended to by Mr Thomas. Constable Stevenson agreed that it was a good call by Mr Meek to call Mr Thomas and to initiate the care of the young woman.

[89] Mr Middlemiss returned to the issue of the group leaving the premises on 20 March 2021. S/Cst Stevenson confirmed that she believed that all the persons present had come out of the Yot Club and that no other persons had joined the group. She agreed that she had not undertaken a formal intoxication assessment of any person present. However, as she knew the definition of intoxication under the Sale and Supply of Alcohol Act, she was able to assess individuals. She confirmed that Mr Meek assisted to disperse the group and that she had thanked him for his assistance.

[90] In response to questions from the Committee, S/Cst Stevenson outlined how she assessed intoxication under the Act. That included whether the person was unsteady on their feet, whether they were loud and/or yelling out, whether they smelt heavily of liquor, and whether their eyes were glazed and/or blood shot. She confirmed that she observed a number of persons consuming alcohol as they left the Yot Club. S/Cst Stevenson believed that some people had left the Yot Club with open vessels. She noted that nothing else was open at that time, and that the alcohol had perhaps been stowed nearby or that it had been hidden when leaving the Yot Club, but she had not observed that. She confirmed that Police had taken no enforcement action for persons consuming alcohol on Bow Street or for removing the alcohol from the licensed premises.

[91] S/Cst Stevenson confirmed the behaviour that she observed on 20 March 2021 as: loud, slurred speech by a number of persons, yelling out, persons staggering, persons falling over, people with glazed eyes, and people who smelt heavily of alcohol. S/Cst Stevenson confirmed that she undertook 'hotel visits' at the Yot Club about four or five times a month, generally when she was on a swing shift.

[92] Asked about how often intoxicated persons have been found on the Yot Club premises, S/Cst Stevenson replied that there had been a few times. In each instance, she spoke to the doorman, then spoke to bar staff and the duty manager. The doorman threw those people out. No enforcement action had been taken. S/Cst Stevenson confirmed that any incidents of locating intoxicated persons on a licenced premises are not normally entered in the Police system.

[93] S/Cst Stevenson was asked by the Committee to explain what she had meant when she told the Committee that she felt unsafe when dealing with the crowd on 16 January 2021. She stated that, in addition to a fight, the crowd was uncooperative and hostile. She was not getting the normal cooperation she gets from Raglan locals, and the more she tried to move the crowd on, the worse it got. She stated, "I felt vulnerable". She went on to say, "Everyone knows me, they usually comply but for some reason that night they were taking a stand". She stated, "I felt like a bottle could come out of the crowd and I felt unsafe". She spoke of members of the crowd telling her and her colleague to 'F' off, their comments and actions were aggressive and said with feeling. She noted that she wondered if there was an element of 'showing off' amongst the crowd that night. She stated that on at least two occasions she asked, "Do we need to back out", and was continually assessing the situation. She explained that she has not observed that level of a lack of co-operation previously in Raglan.

[94] S/Cst Stevenson stated that she had been a police officer for 20 years. She confirmed that she was an experienced officer and had been in Raglan for 15 years. She confirmed that she had gained experience in using the assessment tool for assessing whether a person was intoxicated or not, and that she had retained the process in her mind. While she did carry an aide memoir for assessing intoxication, she rarely needed to refer to it as she had an excellent recall of the assessment tool and was able to assess persons informally without the need for a formal process. S/Cst Stevenson confirmed that she used the SCAB assessment tool as the basis for assessing intoxication.

[95] In an effort to clarify what she meant by the use of the word disorderly at paragraph 13 of her statement of evidence, S/Cst Stevenson noted that the behaviour she observed as: persons running around the streets, persons stumbling, persons jumping up and hitting street signs and a generally chaotic situation. S/Cst Stevenson stated that she had 100% hearing in her left ear and a small partial loss of hearing in her right ear. She concluded her evidence by telling the Committee that she did not take action on the night of 15-16 January, due to the number of persons involved in the incident.

## **HEARING, DAY THREE (12 November 2021)**

[96] Prior to commencing the final day of the hearing, Mr Middlemiss filed a written request to recall Mr Meek to rebut evidence adduced by S/Cst Stevenson the previous day. The Committee considered the request and determined to allow Mr Meek to be recalled, but only to be asked two specific questions as outlined in the email from Mr Middlemiss dated 11 November 2011 and timed at 5.20pm. The Committee determined to recall Mr Meek later in the day, when it was

appropriate to do so. In the interim, S/Cst Stevenson would be recalled to answer further questions.

[97] S/Cst Stevenson was recalled, and questions were put to her by Mr Middlemiss. Mr Middlemiss asked why S/Cst Stevenson had not put more detail in her statement of evidence about the intoxication levels of persons in relation to the incident of 15-16 January 2021. She replied, after considering the question, "I don't know". After some discussion on the appropriateness of a question, S/Cst Stevenson confirmed that it was not an offence to be intoxicated on licensed premises. Mr Middlemiss put to S/Cst Stevenson that Mr Meek would later give evidence that his bouncer, on the gate, would make patrons tip any alcohol out before leaving the premises and that, as the incident was some 10-11 months ago, S/Cst Stevenson was 'misremembering the events of that night'. S/Cst Stevenson stated, "I stand by the evidence I gave".

### **Medical Officer of Health (delegate) Ms Ashleigh Mail, in opposition**

[98] Ms Mail had not submitted a brief of evidence. She read her initial report, which was taken as the MOH's opening submissions on the application.

[99] Ms Mail confirmed the MOH remained opposed to the application.

### **Mr Gordon Thomas, witness for the applicant**

[100] Mr Thomas told the Committee of being contacted by Mr Meek on the evening of 20 February 2021, who sought his help in relation to a girl that had passed out in the Yot Club. Mr Thomas explained that at the time he was a volunteer first responder with the Ambulance Service. He told the Committee that upon his arrival, he located the girl, and she was sitting inside the premises and responsive to pain. A short time later, a nurse introduced herself and between them they monitored the girl. After some time, the girl became unresponsive to pain. Mr Thomas then asked that an ambulance be called and asked the caller to request 'Prime' to attend. Fearing that the girl might arrest, Mr Thomas told the Committee that he had the bouncers carry her to an outside table. He then turned the care over to the nurse and went to the ambulance station to get a defibrillator. Upon his return to the Yot Club, the girl had not improved and Prime, a local doctor, arrived. Another doctor came forward from among the Yot Club patrons and assisted with the girl's care. Mr Thomas told the Committee that he heard members of the crowd talking about what drugs the girl had ingested.

[101] Mr Thomas told the Committee that if Mr Meek had only called an ambulance, he did not believe the girl 'would have made it', and complimented Mr Meek for contacting him directly. Mr Thomas said that in five years volunteering for the Ambulance service, he had never been called to the Yot Club. He explained that 40 years earlier, he had been a Canadian paramedic and believed that qualification was probably higher than the New Zealand paramedic qualification.

### **Licensing Inspector – Ms Bianca Staines, in opposition**

[102] Ms Staines read her report into evidence. Her report set out the background to the licence and the fact that noise emanating from the Yot Club had been an issue since the first application for an on-licence in 2015 and has remained an issue throughout the 2018 – 2021 period. Ms Staines then addressed several issues covered under s131/105(1) of the Act such as; the Object of

the Act, Suitability, the Local Alcohol Policy (LAP), days and hours of operation, design and layout of the premises, whether the applicant has appropriate systems, staff and training in place, reports from the agencies, amenity and good order and the manner in which the applicant has sold alcohol.

[103] Ms Staines then spoke to the appendix to her report, and outlined the details of 35 noise complaints received between 18 December 2018 and 25 June 2021.

[104] In response to questions from Mr Middlemiss, Ms Staines accepted that if the training described by Mr Meek is occurring, then she is happy with the level of training and accepted that there is no evidence suggesting that the training had not been undertaken. Ms Staines accepted that the FENZ objection had been withdrawn. She stated that no evidence had been received that the trial evacuations apparently undertaken but not notified to FENZ had not actually occurred. She accepted that Mr Meek's evidence was that the trial evacuations had taken place, but that they had not been reported to FENZ.

[105] Ms Staines agreed that she had not witnessed nor attended any of the alleged noise complaints recorded in the Council systems. She explained that all of the noise complaints were entered by the noise control contractor and that she had used that data to compile the table in the appendix to her report. She confirmed that none of the complainants would give evidence about their complaints and that she had compiled the table in such a way that the complainant's personal details would remain anonymous. She confirmed that she knew the details of the majority of the complainants.

[106] Ms Staines accepted that with the complaints stretching over a three-year period, it was likely that Mr Meek would find it difficult to respond to them. When asked about her comments about taking readings from the notional boundary of a complainant's property, Ms Staines responded by stating that she relied on the provisions of s326 and s328 of the Resource Management Act (RMA), as that enabled the Armourguard noise control contractor to use their judgement in relation to noise from the premises. Ms Staines outlined that the RMA provisions she had referred to required the noise control officer to make a subjective assessment to determine if the noise was interfering with the peace, for example by disturbing a person's sleep. She told the Committee that s16 of the RMA dealt with a duty to avoid or mitigate noise escaping beyond the notional boundary of a premises.

[107] Ms Staines rejected a suggestion by Mr Middlemiss that the 35 noise complaints were subjective evidence. She reiterated that s326 – s328 of the RMA dealt with the disturbance of the peace. Ms Staines also rejected a suggestion from Mr Middlemiss that there was no link to the Yot Club in many of the incidents that she had noted in her report. She did accept that Mr Meek always reacts to a noise complaint by turning down the music volume, but stated that it would be better for him to prevent it happening in the first place. Mr Middlemiss suggested that, "All we have is a picture", to which Ms Staines replied that she had reported on 35 incidents recorded in the Council system and all were based on actual complaints. She rejected suggestions that the 35 reported incidents were only indicative and that her reporting of them was unreasonable. Ms Staines accepted that Mr Meek had installed sound proofing in the Yot Club premises.

[108] Ms Staines confirmed that she had been influenced by some aspects of the initial police report in opposition and agreed that she had repeated some of what the police mentioned in their report. Mr Middlemiss suggested that the noise reports were only indicative, and Ms Staines responded by stating that Mr Meek's evidence has been more about deflecting the issues rather than preventing the issues. Mr Middlemiss suggested that there was no proof in many instances that the Yot Club was actually responsible for the noise complained of, to which Ms Staines

replied that there had been a high number of complaints and that those complaints were evidence of noise issues from the Yot Club. Ms Staines confirmed that she remained opposed to the renewal of the licence.

[109] In response to a question from Ms Mail, MOH, Ms Staines outlined the process of how a noise complaint is captured by the Council and entered into the Council system. She stated that the process was initiated by a call to Armourguard, the Council's Noise Control contractor. That initiates a 'Promap' procedure and the complaint is logged. Armourguard dispatches their authorised noise control officer. Upon arrival, the officer waits in their vehicle and listens and ascertains where the noise is coming from. The officer then determines if the noise is sufficient to cause sleep or peace disturbance. If the noise reaches that standard, the officer then approaches the premises and requests that the noise is lowered. If the occupiers comply, the officer then returns to their vehicle and waits for a period of time to ensure that the noise remains at an acceptable level. However, if another complaint is received from the same premises, the officer will return to the premises and issue an Excessive Noise Direction (END) notice, which requires all noise to be lowered to acceptable levels for 72 hours, otherwise the officer can enter the premises and seize the cause of the noise. Ms Staines went on to state that there are several bars in Raglan, and thus the noise control officer must be sure which premises is actually responsible for making the noise before recording that the premises is the source of the complaint.

[110] In response to questions from the Committee, Ms Staines stated that she holds a Bachelor of Science degree as well as a Graduate Diploma in Environmental Health, which covered an element of noise and sound. She has been an Environmental Health Officer for more than five years, the first few years as an Inspector with the Far North District Council and more recently, two years as a Licensing Inspector with Waikato District Council.

[111] Ms Staines told the Committee that she was not the first Licensing Inspector to action the renewal application. The first inspector resigned her position in March 2021, and Ms Staines was reallocated the Yot Club file. Ms Staines had recently taken over the Raglan portfolio on an ongoing basis. She agreed that if Mr Meek kept all his plans and records in one place at the Yot Club, it would be very helpful and indicated that that action would improve the applicant's systems. She was not able to tell the Committee how often previous inspectors had undertaken inspections of the Yot Club premises.

[112] Ms Staines confirmed that it is normal to raise the issue of noise complaints with an applicant, and noted that she had raised her concerns directly with Mr Meek on 29 September 2021. She did not know whether noise issues had been raised by previous inspectors prior to her inquiry into the renewal application. Ms Staines had no issue with the hours sought by the applicant and noted that they are in line with the local alcohol policy.

[113] Ms Staines told the Committee she was aware of The Yard, a café food business very close to the Yot Club but was not familiar with their business operations. Ms Staines stated she was not familiar with any undertaking Mr Meek had previously given about when he operated in the courtyard area.

[114] Ms Staines confirmed that she was not calling any of the noise complainants as witnesses and that none of those noise complainants had objected to the renewal of the on-licence.

[115] When asked about the 'Letter of Direction' issued by another Licensing Inspector, Mr Kumar, on 9 May 2019, Ms Staines explained that Mr Kumar had taken noise readings outside the Yot Club premises, and found the premises emitted noise above the permitted district plan limits. The letter directed Mr Meek to reduce and or mitigate the noise to within the district plan limits.

[116] Ms Staines confirmed that she had viewed a number of other NMPs, but not necessarily in Raglan. She outlined that a Noise Management Plan (NMP) usually sets out how to deal with a complaint, the risks associated with noise, and how to deal with those risks, and she called an NMP “a preventative document”. She stated that she did not have an example of a good NMP that she could share with the applicant, but that she could make enquiries. Ms Staines confirmed that at section 3.11 of her report, the adverse reports she referred to were those from the Police and MOH.

[117] Discussion then took place around decibel levels and Ms Staines explained that decibels are not expressed on a linear scale but on a logarithmic scale - that is, an increase of 3 decibels is a doubling of the noise levels. She provided an example of two lawn mowers operating at 80db each. The actual combined decibel level would not be 160db but 83db. She explained that the levels noted by Mr Kumar in his letter of direction were about 20db above the permitted level and that it was noticeable that when the bass was lowered the noise dropped to only 8 or so decibels above the permitted noise level.

[118] Ms Staines told the Committee that she usually works from a standard checklist when assessing renewal applications and adds to the checklist any issues that may have arisen during the previous licence period or that have been brought to her attention. The checklist is in line with how her report is laid out. Ms Staines stated that the Incident Book is part of her checklist and in the case of the Yot Club, as the 2021 incident book was on site, she cross referenced the noise complaint dates with the incident book records. Other matters she looked for included the staff training records, menu, non-alcoholic drinks availability, rosters, and a copy of the plan of the licensed area to ensure it matches the area in use. Ms Staines supported the provision and easy access to a water source in the courtyard area, as water slows down the rate of intoxication. Ms Staines clarified that, as a Licensing Inspector, her role is to evaluate an application put before her, it is not to assist with the provision of templates or other documents to assist an applicant.

[119] With reference to the noise tables appended to her report, Ms Staines stated that she prepared them on the basis of anonymity because the people complaining about the noise are not told at the time of their complaint that their names could be disclosed to a third party, and on some occasions the complainant actually asks for their name to be anonymous. She further stated that the report is a public document and she did not wish to create a document that could give rise to repercussions for a complainant. Ms Staines stated that she had created a map and logged where each of the complainants resided on that map. She was reluctant to share the map.

[120] Ms Staines was asked about the address details of the Letter of Direction, and during that discussion Mr Meek advised the Committee that he had received the Letter of Direction. When asked how The Yot Club noise complaints compare to other licensed premises in Raglan, Ms Staines stated that there is only one other venue in Raglan getting noise complaints that that it doesn't compare.

[121] Ms Staines confirmed that the number of complaints received during the 2018-2021 were consistent with the period 2015-2018, when the licence came into being. In short, noise has been an issue with the Yot Club since its opening in 2015. Ms Staines confirmed that the objection from Fire and Emergency NZ had been withdrawn on 27 September 2021. She confirmed that the issue with FENZ had occurred at previous renewals. Ms Staines commented that she had analysed one other premises in Raglan for noise issues and that premises had nowhere near the complaints that the Yot Club had received.

[122] Some discussion took place around whether the undertaking given by Mr Meek in 2015 not to open his premises until all other shops in Volcom Lane had closed, generally around 5pm daily. In light of a new food outlet opening adjacent to the Yot Club Ms Staines agreed that the undertaking was no longer relevant.

[123] When asked to clarify what she meant when describing her interactions with Mr Meek at the Yot Club on 29 September 2021, Ms Staines stated that the only records on site at that time were the incident book for 2021. Other records were not present, as Mr Meek stated that the premises had been closed for some time. She stated, “That when it came to the staff training records, I was unclear as to whether the applicant understood that training needed to be conducted on a regular basis, because there seemed to be more reliance on certificated managers knowing their stuff, so to speak. But then the training records were produced, and it was said to me at the time training records would be made available to me”.

[124] Ms Staines summarised her analysis of the 35 noise complaints for the Committee. Two were located within the Business zone, three were from the residential zone, and two were from an unknown location, which was likely the business zone.

### **Witness recalled – Mr Meek**

[125] Mr Middlemiss, counsel for the applicant, had sought to recall Mr Meek to respond to evidence adduced in S/Cst Stevenson’s evidence. The Committee allowed the request in the interests of natural justice.

[126] Mr Meek stated that the Yot Club processes in place on the night of 15 January 2021 were the same as are always in place. The job of the doorman at the front door is to check everyone and to make sure that they don’t take open bottles off the premises. The only way you get alcohol past him would be to have hidden it. Mr Meek stated that even then, if they see people drinking something outside, Yot Club staff will go up to them and tip it out. The Police CCTV camera is right there. Mr Meek stated that he just points at the camera and says “look that’s the Police camera, we are in the shit if people see us doing that”. Mr Meek clarified that the Police CCTV camera is operated by the Police and is unrelated to the Yot Club operations.

[127] Mr Meek stated that if someone was determined to try and remove alcohol from the premises, he and his staff try everything they can to stop that from happening. He reiterated that if people are seen outside with alcohol, he or his staff will approach the person and take it off them. Mr Meek explained that his staff regularly approach persons to remove alcohol from them “probably every couple of nights”. He noted that, in relation to the incident on the 19<sup>th</sup> March, he looked around the crowd and was able to see that none of the alcohol in people’s possession had been purchased from the Yot Club.

[128] Following the conclusion of the third day of the hearing, the Committee issued a Minute (dated 12 November 2021), timetabling submission dates for closing submissions, and requesting the following documents from the applicant:

- Revised and updated Noise Management Plan;
- Revised and updated Fire Evacuation Plan;
- Revised and updated Training Manual;
- Revised and updated Alcohol Management Plan; and
- Copy of the current lease document for the Yot Club premises located at 9 Bow Street Raglan. The document must include a plan and or description of the area pertaining to the lease of the premises.

[129] In the Minute, the Committee also made specific requests for revisions to the Noise Management Plan, the Training Manual, and the Fire Evacuation Plan.

## **CLOSING SUBMISSIONS:**

### **MOH:**

[130] The MOH submissions outlined relevant law on DLC decision-making, amenity and good order, the meaning of 'locality', systems, staff and training, and suitability. Of particular note, Ms Mail drew the Committee's attention to the Authority's decision in *Young v Lyger Investments Ltd* [2018] NZARLA 299 in relation to the expectation of licensees' record keeping.

[131] Ms Mail then briefly summarised the evidence produced at the hearing, noting that "The opposition of the Medical Officer of Health was largely in support of the evidence produced by Police.

[132] Ms Mail concluded her submissions by stating that the MOH remains in opposition to the application, submitting that:

1. The applicant lacks suitable staff, systems and training;
2. There is a risk of alcohol related harm linked to the renewal of this licence
3. Noise issues directly related to this premises continue to be an issue; and
4. On this basis, the application is not capable of meeting the object of the Act.

### **NZ Police:**

[133] S/Sgt Hall outlined Police's continued opposition to the application. S/Sgt Hall submitted that "the applicant has taken far too narrow a view on their operation and has been deficient in the application and testimony that they provided during the DLC hearing", and that "Police are not satisfied that the applicant sufficiently demonstrated the behaviours and knowledge of a capable Licensee in regard to risk mitigation of alcohol harm, layout of the premises, noise plan, Alcohol Management Plan, staff training and accounts from Police Constable Stevenson of her experience of the premise".

[134] S/Sgt Hall submitted that the "reliance on other services or volunteers to step in could be the undoing of a life or cause serious harm to a person in the future should there be a delay in response from emergency services based out of town or the volunteer not available at all to attend. These scenarios are not considered in any risk mitigation by Mr Meek".

[135] In relation to layout of the premises, S/Sgt Hall submitted that "the use of a temporary fence raises concerns for Police in regard to the amenity and good order of the venue", and questioned whether the security, CCTV coverage, and lighting were sufficient for the outside area. He submitted that "Police are of the opinion that without an open layout the bar staff and Duty Manager are unable to have line of site [sic] over the premises at any one time during the busy period. Relying on one Doorman and two security staff to observe and protect a mixture of permanent and temporary constructed borders is insufficient when crowds of patrons exceed 100 people".

[136] On noise, S/Sgt Hall submitted that "there is ample evidence that the manner that the premise is operated causes alarm and concern amongst residents that live in Raglan".

[137] S/Sgt Hall submitted that Police believed that the Alcohol Management Plan was deficient in relation to the risk of drink spiking, and the provision of a “safe area” for intoxicated or drug affected persons.

[138] S/Sgt Hall submitted that, in relation to training, “It would be helpful for the evaluation to understand if the applicant would ever consider changes to the training periods should new trends or risks emerge and what short refresher training is maintained for staff throughout the year”.

[139] S/Sgt Hall then summarised the evidence of S/Cst Stevenson, especially in relation to the evenings of 15 January 2021 and 19 March 2021 where large crowds had gathered and created problems, and submitted that “little to no planning or consideration is given by the applicant to the effects of all patrons exiting the premise at about the same time at closing”. He submitted that reliance on people walking home and pre-arranged travel is “less than suitable, and that “It would be beneficial to see a plan from the applicant for the conclusion of the evening to see live music concluded 30 minutes or more prior to closing, patrons encouraged to consider leaving prior to the closing time in order to avoid the rush of demand for transport options, and promotion of non-alcoholic drinks and food to consume in closer proximity prior to leaving at the end of the trading hours of the premise”.

[140] S/Sgt Hall concluded by reiterating Police concerns and that “Police are of the view that the applicant has failed to sufficiently demonstrate sound policy and practices to limit the risk of alcohol harm in the community as defined by case law and the Act”.

[141] The Committee noted that the Police closing submissions contained a number of points that were not raised at the hearing, and which were therefore not put to the applicant. Other than the issues noted above, the other closing submissions from the Police were given no weight by the Committee.

### **Licensing Inspector:**

[142] The Licensing Inspector’s closing submissions first summarised her initial concerns in relation to staff training, noise, and the opposition by the Police and the MOH. Ms Staines then submitted on each of those three issues.

[143] In relation to staff training, Ms Staines summarised the evidence from the hearing, then submitted that “if staff training were conducted and documented in the manner described by Mr Meek, this would meet the object of the Act”.

[144] On noise, Ms Staines summarised the evidence, and drew particular attention to disagreements between herself and counsel for the applicant on this issue. She clarified the difference between the provisions for “excessive noise” under the RMA, where a subjective assessment is made by the attending noise control officer at the source of the noise, and provisions for “unreasonable noise”, where measurements of the noise level must be made from the notional boundary of a complainant’s home, pursuant to s15 of the RMA. She submitted that “Unreasonable noise provisions are commonly used to address noisy activities that noise control officers cannot immediately reduce or abate, such as continuous industrial or commercial noise and on-going business-related noise”.

[145] Ms Staines took issue with counsel for the applicant’s use of the word “hearsay” in relation to evidence of noise complaints, including the tabulated noise events and the Letter of Direction (dated 9 May 2019) sent to Mr Meek. She submitted that “Given these are business documents

written by Council staff and contractors while performing their duties, this term does not appear to be appropriate in this context”.

[146] Ms Staines further submitted that “The applicant’s stance during the hearing and in his submission, in the Inspector’s view, appears to downplay noise concerns and shift blame on other businesses, rather than show a willingness to address the noise complains which have arisen in relation to the Yot Club’s operations, and the annoyance and sleep disturbance events caused to the complainants. This view is further compounded by the incomplete recording of noise events”.

[147] In relation to the Noise Management Plan, Ms Staines submitted that “it is the view of the Inspector that noise management should be preventative rather than reactive. Ergo, the purpose of the management plan is to avoid the noise event from occurring, or minimising the possibility of a disturbance, not merely ‘turning the noise down’ after those responsible at the venue are approached by a noise control officer”.

[148] Ms Staines also submitted that “the inclusion of processes and procedures for staff and the operator to follow in case of noise complaints received by a noise control officer or a member of the public... as well as the addition of “noise management” as part of biannual staff training days. It is the view of the Inspector that this may be beneficial to managing noise at this venue”.

[149] Ms Staines drew the Committee’s attention to the ARLA decision in *Richweaz Limited NZARLA PH 487/2014*, where the Authority granted a renewal application for a truncated period in the case of significant noise issues. Ms Stains submitted that “if this licence were to be granted, the renewal period should be truncated, and a recognised acoustic engineer should be employed to carry out further noise readings. In the absence of an acoustic engineer report, the shortened period of renewal would curtail alleged noise impact on nearby residents and provide additional time for the local Environmental Health Officer to carry out noise readings”.

[150] In relation to the reports by Police and the MOH, Ms Staines submitted that “The numerous incidents reported by the Police, in the Inspector’s view, have... the potential to be reasons for concern in relation to the suitability of the applicant.

### **Applicant:**

[151] Mr Middlemiss delivered extensive closing submissions on behalf of the applicant, along with the documents requested by the Committee in the Minute dated 12 November 2021.

[152] Mr Middlemiss submitted that the applicant “has provided sufficient evidence of compliance with the critical duties of a licensee” and “The evidence filed by the Police and the Licensing Inspector was largely disputed hearsay evidence which the DLC should accord little to no weight”.

[153] Mr Middlemiss submitted that “Mr Meek has repeatedly acted responsibly when faced with difficult situations”, citing the incidents on 19 March 2021 (assisting the Police to disperse a large crowd) and 20 February 2021 (protecting the welfare of an unresponsive girl found on the premises). He also noted the various systems that the Yot Club has in place, including security systems, training, crowd control, and noise management.

[154] Mr Middlemiss submitted that the applicant “has implemented several systems to better comply with the law”, including security systems, training systems, crowd control systems, and noise management systems.

[155] Mr Middlemiss noted that the applicant “has committed to maintaining a folder for all documents and records relevant to the operation of the premises and will keep that folder on the

premises at all times”. He also noted that the applicant “would accept... a condition requiring it to make drinking water readily available in the outdoor area of the premises”.

[156] Mr Middlemiss submitted that the applicant and Mr Meek have not been the subject of any enforcement applications under the Act, and “have otherwise sold and supplied alcohol in a responsible manner”. He submitted that the applicant “is a suitable entity to continue to hold an on-licence”.

[157] In relation to the licensed area, Mr Middlemiss submitted that the applicant “has tenure to the licensed area and does not seek any variations to that area”. Mr Middlemiss noted that the licensed area “was first approved by the DLC in 2015 and, in the absence of any evidence suggesting that RBL does not have tenure to that area, it would not be appropriate for the DLC to vary the licensed area in any way”.

[158] Regarding the undertaking that the Yot Club not utilise the outdoor area while the shops in Volcom Lane are open, Mr Middlemiss noted that the applicant “accepts the DLC’s comments that the undertaking... is no longer fit for purpose, as the circumstances have materially changed”. Mr Middlemiss submitted that “the DLC does not need a new undertaking to trust RBL [Rockaway Beach Limited] to open the venue only when it is appropriate to do so, taking into account the other activities in nearby premises”. Mr Middlemiss drew the Committee’s attention to the Deed of Lease, and submitted that “the clause in the Deed of Lease provides sufficient protection for neighbouring retailers (not including The Yard, as it is not a retail venue” such that a separate undertaking is not necessary).

[159] Mr Middlemiss then submitted that “the responsibility to provide and maintain an approved evacuation scheme, including the duty to report completed trial evacuations, lies with the building owner and not the tenant”, citing the Fire and Emergency New Zealand Act, s76 and related regulations.

[160] Mr Middlemiss then addressed Police evidence, submitting again that “allegations of the kind included in the Police report should be pursued via enforcement applications before the Alcohol Regulatory and Licensing Authority” and that “it is unfairly prejudicial for the Police to then introduce allegations before a DLC *because* burdens of proof are inappropriate in that jurisdiction – it is simply the wrong forum”.

[161] Mr Middlemiss further submitted that “there is a real risk the Police report tipped the scales for the other agencies and led to them opposing the application”.

[162] Mr Middlemiss then addressed the Police evidence. Of the five incidents raised in the Police report, Mr Middlemiss submitted that, aside from one incident S/Cst Stevenson spoke to in her evidence, the Committee should “given limited weight, or disregard altogether, the other four incidents referred to in the Police report as it is hearsay evidence which RBL could not test”.

[163] In relation to the incident on 15 January 2021, referred to in S/Cst Stevenson’s evidence, Mr Middlemiss submitted that “the evidence shows that the Police were under-resourced that night, and did not make use of Mr Meek to assist with dispersing the crowd”.

[164] In relation to assessments of intoxication that were discussed during the hearing, Mr Middlemiss submitted that, because the evidence was not included in S/Cst Stevenson’s brief of evidence, the applicant “had no opportunity to investigate and prepare a response for an incident that occurred almost one year ago” and that “This again unfairly prejudices RBL and the DLC should show caution in affording any weight to these comments”.

[165] Mr Middlemiss also submitted that “if the Police allege an individual is intoxicated at an alcohol licensing hearing under the Sale and Supply of Alcohol Act 2012, they must provide sufficient evidence of intoxication and disclose that evidence to the applicant well in advance of any hearing. If the Police fail to do that, it is submitted that natural justice should lead the decision-making body to disregard those allegations”.

[166] In relation to the evidence that persons had left the Yot Club with alcohol, Mr Middlemiss submitted that “In the absence of any corroborating evidence or other documentary evidence to support the allegations, and taking into account Mr Meek’s evidence in reply, it is submitted that the DLC should disregard Constable Stevenson’s evidence or give it limited weight”.

[167] On the incident related to the unresponsive young woman on 20 February 2021, Mr Middlemiss submitted that “Mr Meek acted exactly as a responsible licensee should in those circumstances, and should be commended for his actions along with Mr Thomas and the other medical practitioners involved in her care”.

[168] In relation to the incident on 19/20 March 2021, Mr Middlemiss submitted that “Mr Meek again acted as a responsible licensee should in those circumstances”, by working with the Police to disperse the crowd.

[169] On the noise complaints, Mr Middlemiss reiterated his submission that “Ms Staines’ evidence was entirely made up of what is likely business record hearsay evidence”. He submitted that the Committee should give the noise complaints evidence little weight, because the complainants were not called as witnesses, they did not file public objections to the renewal, the applicant was unable to test their evidence, they identities were kept anonymous, and their addresses were not provided.

[170] Mr Middlemiss summarised Mr Meek’s evidence in relation to each noise incident, and submitted that “Mr Meek’s evidence about those noise complaints shows that the Licensing Inspector’s evidence is not infallible, and is another reason why the DLC should be wary of relying on it to any great extent. Mr Middlemiss further submitted that “there is an evidential gap between each specific complaint and the actual cause of the complaint. The only evidence provided by Ms Staines which links the complaint to the premises is that the complainants named the Yot Club in their complaints”. He also submitted that “a better practice would be for a noise control officer to assess the noise levels from the notional boundary of the complainant’s home, as indicated by Ms Staines in her report”.

[171] On the Letter of Direction issued by Sudhir Kumar on 9 May 2019, Mr Middlemiss submitted that it was also hearsay business record evidence, that Mr Kumar was not called as a witness, and that “the DLC should accord the Letter of Direction limited weight”.

[172] Mr Middlemiss concluded by submitting that the Committee “should grant the application and renew the licence on the same conditions for a further period of three years”.

[173] Although Mr Middlemiss had been invited by the Committee to comment on the evidentiary standard for licensing hearings, and his attention was drawn to the Authority’s decision in *Shady Lady Lighting*, Mr Middlemiss neglected to do so.

## **MATTERS ARISING FROM CLOSING SUBMISSIONS:**

[174] The closing submissions of counsel for the applicant were accompanied by a revised Noise Management Plan, a revised Fire Evacuation Plan and schedule of trial fire evacuations, a revised Training Manual, a revised Alcohol Management Plan, and a copy of a lease document for the Yot Club.

[175] The Committee noted that, in the lease document provided with the closing submissions of counsel for the applicant, all dates had been redacted, and that the plan referred to in the lease document did not appear to include a 14x3m area of Volcom Lane that was previously included in the licensed area. That gave rise to questions of whether the applicant had current tenure generally, and specifically in relation to the outside area.

[176] The Committee issued a minute, dated 6 December 2021, to urgently re-convene the hearing and recall Mr Meek to answer questions to give further clarity to the leased area.

[177] The Committee also issued a summons for the landlord to appear. However, the summons was not executed in time for the landlord to appear at the re-convened hearing.

## **RE-CONVENED HEARING (15 December 2021)**

[178] Prior to the re-convened hearing, counsel for the applicant provided the requested lease documents.

[179] Once the hearing was re-convened, Mr Middlemiss referred the Committee to a plan date stamped by the Waikato District Council as received on 23 January 2015, and to a separate plan that had been signed by the landlord, Anthony John Bruce, on 28 January 2015. Both plans clearly included the 14x3m area of Volcom Lane.

### **Witness recalled – Mr Meek**

[180] Mr Meek was recalled to answer questions in relation to the licensed area. He explained that he purchased the business in 2013 and was advised that extra space in Volcom Lane was useable on busy nights. He stated that he had a verbal agreement with the landlord for use of the outdoor area.

## **CRITERIA FOR DETERMINING THE APPLICATION:**

[181] In deciding whether to issue an on-licence the committee must have regard to the matters detailed in s.131 of the Act. These are:

- (a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1);
- (b) whether (in its opinion) the amenity and good order of the locality would be likely to be 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 made by virtue of section 129;
- (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

[182] The relevant matters in section 105(1) are:

- (a) the object of the Act;
- (b) the suitability of the applicant;
- (c) any relevant local alcohol policy;
- (d) the days on which and the hours during which the applicant proposes to sell alcohol;
- (e) the design and layout of any proposed premises;
- (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods;
- (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services;
- ...
- (j) whether the applicant has appropriate systems, staff and training to comply with the law;
- (k) any matters dealt with in any report from the Police, an Inspector, or a Medical Officer of Health made under section 103.

[183] The Committee is of the view that section 105(1) paragraphs (a), (b), (e), and (j) and section 131 paragraphs (b) and (c) are most relevant when considering this application, along with the provisions of section 106. The Committee has considered the other criteria in section 105(1), being paragraphs (c), (d), (f), and (g), and the other criterion in section 131, being paragraph (d), and is satisfied in regard to those criteria. The Committee notes that the criterion in section 105(1)(k) does not apply, as the reporting agencies provided their reports as required under section 129.

## **REASONS AND DECISION:**

### **S131(1)(a) and S105(1)(b) Suitability**

[184] The reports of the MOH and Police both raised opposition to the application on the basis of suitability. The Police report outlined a number of incidents over the previous two years either occurring at the Yot Club, or where the Yot Club was implicated. These incidents were extensively examined during the hearing.

[185] In particular, the Committee took note of incidents referred to in the evidence of S/Cst Stevenson, where large crowds had gathered outside the Yot Club (15 January 2021 and 20 March 2021), and where a young woman was found to be unresponsive on the premises (20/21 February 2021).

[186] In relation to the crowd incident on 15 January 2021, the actions of Mr Meek assisted in dispersing the crowd, and S/Cst Stevenson acknowledged that she thanked Mr Meek for his assistance.

[187] In relation to the unresponsive young woman on 20/21 February 2021, there is no evidence to suggest that the applicant, or Mr Meek, contributed to the woman's unresponsive state. On the contrary, the response of Mr Meek in summoning Mr Thomas may have prevented an already life-threatening situation from escalating. As Mr Thomas noted in his evidence, if Mr Meek had only called an ambulance, he did not believe the young woman 'would have made it'.

[188] The applicant's compliance with the law was a significant cause for concern in the renewal hearing in 2017 (*LicRen22/2016*), where the Committee wrote at [175]:

[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 scrutiny, point to the unsuitability of the applicant to continue to hold an on-licence.”

[189] The Authority overturned the Committee’s finding that the applicant was unsuitable in *Rockaway Beach Limited* [2017] NZARLA 445, where they wrote that:

[107] Stepping back and considering the renewal application in light of the object of the Act, after having regard to the criteria in ss 131 and 105, the concerns of the DLC centred around the appellant’s lapses relating to Food Act 2014, Building Act 2004, Fire Service Act 1975, and its initial licence as regard a noise management plan being implemented. Against this is the experience of the licensee’s sole director and the fact that he has not breached the Act over the course of his career.

[108] The Authority does not consider that the evidence shows these lapses to have been deliberate or wilful. On balance, however, based on the evidence before the DLC the Authority is satisfied that grant of the renewal is consistent with the Act’s object. In forming this view, the decision of the Authority is finely balanced.

[190] While the specific issues are different in the present case, the Committee is disappointed that the applicant continues to not comply with the law. The applicant failed to notify Fire and Emergency New Zealand of trial evacuations. Mr Meek addressed this issue once it was brought to his attention through the renewal process (and the initial objection to the renewal by Fire and Emergency New Zealand). The Committee accepts that this lapse was not deliberate or wilful. Nevertheless, the Committee would expect that experienced licensees would be more proactive in ensuring that they comply with relevant legislation at all times, rather than waiting for prompts as a result of license renewal applications.

[191] The applicant company, and Mr Meek specifically, has significant experience in the industry. The Committee is not aware of any negative findings against the applicant or Mr Meek. While the Police have concerns about the operation of the premises, it is instructive that no enforcement applications have been taken against the applicant.

[192] The Committee disregarded unsubstantiated allegations provided in the Police evidence, such as the incident of ‘drink spiking’.

[193] In relation to suitability, in *Nishchay’s Enterprises Limited* [2013] NZARLA PH 837, the Authority summarised the previous case law at [53-54]:

[53] 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 Ltd* (CIV 2012-485-1491; [2013] NZHC 44). 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 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 an increase in liquor abuse is a relevant issue.

[54] *Casino Bar No 3 Ltd* did not specifically refer to the test for suitability contained in *Sheard* [1996] 1 NZLR 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.*” However, the judgement inferred that the test applied when the learned Judge referred with approval to Holland J’s statement in *Sheard* : “*Suitability is a relatively broad concept and, in the context of an assessment of an application under s 13 of the Act, it relates to the suitability of the applicant to be granted the privilege of an on-licence to dispense liquor*”. Traditionally, that 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. The *Sheard* test is not simply about how a business is likely to operate in the future. It is dependent on an assessment of the more generalised factors referred to in the previous paragraph. It includes how a licensee will deal with liquor abuse issues that may arise from the establishment of the business. The usefulness of the *Sheard* test is that it gives a focus to the wider exercise contemplated in the *Casino Bar No 3 Ltd* decision by reminding one of the reason for the exercise.

[194] In *New Zealand Police v Casino Bar No 3 Ltd* (CIV 2012-485-1491; [2013] NZHC 44, Dobson J wrote in relation to assessing suitability:

[34] In criticising this approach as unduly narrow, submissions for the Police cited a checklist of matters likely to be relevant to an assessment of suitability from the text *Dormer & Sheriff Sale of Liquor*.<sup>6</sup> The list is as follows:

- (a) previous convictions, especially those involving liquor or those raising questions as to honesty or propensity for violence;
- (b) character, reputation;
- (c) matters raised in reports filed under s 11;
- (d) previous unlawful operation of premises;
- (e) any of the above in relation to a person other than the applicant who is involved in the application (as a director, manager, etc) or is intended to be employed by the applicant;
- (f) breach of an undertaking; and
- (g) misleading information in an application and/or misleading public notice.

[35] Not all of the criteria from *Dormer & Sheriff* will be relevant in every application where objection is raised to the suitability of an applicant. However, it is an appropriate starting point for the range of matters that the LLA would need to traverse in assessing whether the onus on an applicant to establish suitability, where it is challenged, has been discharged. These matters are significantly wider than the applicant’s proposal as to how the business will operate.

[195] Although the case law cited above relates to the Sale of Liquor Act 1989, it remains current, and was recently expanded on by the Authority in *Two Brothers Wholesale Limited v Medical Officer of Health Waikato District Health Board* [2021] NZARLA 32:

[103] While *Two Brothers* is correct in saying that suitability is not to be considered in a vacuum, it is not correct that suitability must only be considered in the context of the

operation of licensed premises as regards the safe and responsible sale and supply and consumption of alcohol. As is clear from *Nishchay's* an assessment of suitability is much wider and includes considerations of the character and reputation of the applicant and its honesty as well as considerations of the operation of premises. Whether or not the grant of the licence will result in the reduction or an increase in liquor abuse is a relevant issue as are considerations about how a licensee will deal with liquor abuse issues that may arise from the establishment of the business, but suitability is not restricted to these matters.

[196] The relevant test of suitability is that outlined in *Re Sheard*, 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".

[197] Mr Meek strikes the Committee as someone who has a general disregard for authority, and that is reflected in his continual failure to strictly adhere to all aspects of the law at all times. Mr Meek has displayed a strong interest in the music side of his business, but clearly has less focus on ensuring administrative tasks are completed and recorded. The Committee is concerned about the low-level failures that have been consistently raised since the initial application for this licence. The Committee cannot turn a blind eye to these issues, and questions Mr Meek's commitment to carrying out the responsibilities of a licensee.

[198] Mr Meek has considerable experience in the industry, but this is not consistently borne out by his behaviour. The Committee would expect an experienced licensee to not face the issues that confront Mr Meek at each renewal.

[199] Considering the checklist provided in *New Zealand Police v Casino Bar No 3 Ltd*, Mr Meek has no previous convictions, and there is no evidence of previous unlawful operation of premises. Mr Meek's character is also evidenced by his response to the incidents outlined in the Police report and evidence.

[200] However, the Committee must weigh the significance experience of Mr Meek and the applicant company against their continuing failure to comply with the law at all times. A suitable licensee should not consistently have to be called on to explain "oversights" in their management and systems at each renewal.

[201] On the Committee's evaluation of the evidence as a whole, the question of suitability is finely balanced. However, due to the ongoing non-compliance with the law, the Committee finds that the applicant is unlikely to carry out its responsibilities under the law in relation to these premises, and thus is not suitable to continue to hold this on-licence.

### **SI31(1)(a) and SI05(1)(e) Design and layout**

[202] During the hearing, the Police expressed some concern at the use of wire mesh fencing to delineate the licensed area in Volcom Lane. However, no evidence was produced to support these concerns and Mr Meek's evidence suggests to the Committee that this provides an appropriate barrier to prevent patrons from entering the premises without being checked by door staff.

[203] Of greater concern to the Committee was the issue of tenure over the licensed area. However, this concern was allayed by the plan signed by the landlord (Mr Bruce) on 28 January 2015, which clearly shows the full extent of the current licensed area.

[204] Moreover, this point was addressed in the Committee's decision on this license in 2015 (*LicApp06/2014*), where the Committee wrote at [34]:

...Mr Bruce confirmed the area agreed with reference to a plan of the area...

[205] The Committee is satisfied that the design and layout of the premises is appropriate.

### **SI31(1)(a) and SI05(1)(j) Systems, Staff and Training**

[206] The Police and the Inspector both raised concerns in relation to systems, staff and training.

[207] In relation to systems, how the licensee deals with patrons at risk, noise management, systems for training, and general record-keeping to ensure compliance with the law were all raised.

[208] Mr Meek and Mr Thomas both gave evidence about the incident of the unresponsive young woman on 20/21 February 2021. The Committee notes that the system in place for dealing with this incident was somewhat ad hoc, and that the Alcohol Management Plan for the premises has since been updated during the hearing process.

[209] Similarly, the Noise Management Plan, Fire Evacuation plan, and staff training manual have all been updated during the hearing process. The Committee is satisfied that the licensee has appropriate systems in place to comply with the Act.

[210] On record-keeping, the Inspector faced some difficulties during her enquiries into the application, as Mr Meek did not appear to keep all of the relevant business records in a convenient and accessible location. The Committee notes the importance of ensuring that business documents and records are kept in a systematic manner. This point has also been addressed by the Authority in *Young v Lyger Investments Ltd* [2018] NZARLA 299, where at [112] the Authority wrote:

[112] Further giving the respondent more time to produce a full audit of its training records, managers register, procedures and policies, and provide evidence of formal staff training including that all staff have attended training on the formal identification of intoxication, as well as preparing a comprehensive incident register—are all the kinds of things one would expect an experienced operator firmly to have in place on renewal. Their absence and the need to impose those through undertakings or conditions only reinforces the lack of systems, staff, and training to comply with the law (per s 105(1)(j)) and that standing back, the application does not meet the object of the Act.

[211] During the hearing, Mr Meek committed to maintaining a folder for all documents and records relevant to the operation of the premises, and to keeping that folder on the premises at all times. The Committee notes that, in line with the Authority's comments in *Lyger*, that this is the minimum that they would expect of an experienced licensee. Moreover, taking a more proactive approach to future interactions with the Inspector in the furnishing of records might be helpful to Mr Meek, and avoid unnecessary antagonism, delays, and cost.

[212] In relation to training, the initial lack of training records gave rise to concerns that staff training had not been undertaken. Training records were provided at the hearing, and the Committee is satisfied on balance that the licensee has been undertaking staff training as required under the Act.

[213] Overall, taking into account the changes that have been implemented during the hearing process, the Committee is satisfied that the applicant has appropriate systems, staff and training in place.

### **S131(1)(b) and S106(2) Amenity and Good Order**

[214] Section 106(2) of the Act outlines the matters that the Committee must have regard to, in relation to amenity and good order:

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

*matters (as they relate to the locality):*

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

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

[215] The Committee was presented with significant evidence of noise issues in Raglan by the Inspector, including 35 noise complaints received between 18 December 2018 and 25 June 2021.

[216] The noise complaints resulted in a number of verbal warnings given to the applicant, as well as two Excessive Noise Direction (END) notices. A Licensing Inspector also served the applicant with a Letter of Direction in relation to noise.

[217] In his evidence, Mr Meek contended that many of the incidents of noise included in the Inspector’s report and evidence did not originate from the Yot Club. The Committee accepts that not all of the noise complaints were correctly attributed to the Yot Club.

[218] However, even excluding the complaints that are clearly not attributable to the Yot Club, there remains a large number of noise complaints. In spite of the number of noise complaints, there have been no public objections to the licence renewal.

[219] Moreover, none of the noise complainants were called as witnesses, so it is difficult for the Committee to assess the extent of the impacts arising from noise issues in relation to the premises.

[220] The lack of public objections might lead the Committee to conclude that there is a lack of community desire for change. However, the Authority noted in *Paihia Saltwater (2001) Limited* [2001] PH391/2001 that:

[27] It is our view that no-one should have to put up with 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 that making such calls in the early hours of the morning is unpleasant and often unrewarding.

[221] The Authority’s decision suggests that the issue of noise extends beyond an assessment of the number of noise complaints. The seriousness of noise was highlighted in the Authority’s decision in *Paihia Saltwater*, at [28-29]:

[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 and do something about it. In our view the term 'host responsibility' does not exclude the people who live nearby.

[222] The applicant has a Noise Management Plan in place, which has been updated following recommended changes by the Committee. As part of the plan, noise checks are conducted every night and the results are recorded. When faced with a noise complaint, Mr Meek gave evidence that he reduces the music volume, even if he disagrees that the Yot Club is the correct source of the noise. Mr Meek also gave evidence that he has installed sound proofing on the Yot Club building, which has reduced the noise level by approximately 10db. The Committee considers these to be the actions expected of a licensee in managing noise.

[223] Counsel for the applicant, Mr Middlemiss, submitted that the noise complaints and the Letter of Direction constituted "business record hearsay evidence" that the Committee should give little weight to. The Committee accepts that the complainants were not present to be cross-examined, but considers that the noise complaints do constitute valid evidence of noise occurring as a result of the operations of the Yot Club. The Committee notes that, under section 207(1) of the Act:

*"The licensing authority or licensing committee concerned may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectually with any matter before it, whether or not the statement, document, or matter would be admissible in a court of law."*

[224] Moreover, the Authority has clearly accepted evidence from lists or enumerations of noise complaints in the past. In *Honorbrook Inns Ltd* [2019] NZARLA 271, the Authority wrote that:

[105] In terms of noise, to which the DLC properly had regard under s 106(1), while noting that the applicant has undertaken some effective measures to mitigate the escape of noise from the premises (such as requiring bands to play inside during the day time), the DLC said there were still sustained complaints over a significant period. This is borne out by the evidence of noise complaints between February 2018 and April 2019. That there were no excessive noise directions since May 2018 does not persuade the Authority that the trend was improving. On many of these occasions management appears to have been asked to lower the volume supporting the DLC criticism that it was left to the Police, Inspector and noise control officers to raise issues and that the appellant's own knowledge, processes and observations were not able to deal with each issue as it occurred.<sup>51</sup> In any event, four excessive noise directions over a period of 14 months should not be downplayed.

[225] However, without witness evidence or public objections, and the disputed nature of some of the complaints, it is difficult for the Committee to determine whether the noise is consistently at a level where the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to grant the renewal of the licence.

[226] The Committee notes that, in relation to these same premises, the Authority in *Rockaway Beach Limited* [2017] NZARLA 445 wrote that:

[76] At the hearing before the Authority, Mr Kee said that the evidence of noise complaints annexed to Ms Norris's s 129 report did not raise any issue of noise with the premises. The

evidence shows that three out of 13 noise complaints received by the Council over approximately 21 months resulted in an 'excessive noise direction'. That is, the licensee was told to turn the music down and this was done. There is no evidence of further action having been taken. The Authority is not satisfied that the evidence establishes a problem with noise from the premises.

[227] Although the Authority was persuaded by the number of noise complaints in *Honorbrook Inns*, they concluded in *Rockaway Beach Limited* that, for these same premises, three END notices over a 21-month period were insufficient to establish a problem with noise. The Committee finds itself in a similar position and, without further primary evidence, the Committee has formed a similar conclusion. However the Committee notes that Mr Meek's own recording of noise emanating from the Yot Club premises reveals that noise regularly exceeds the District Plan noise levels.

[228] On nuisance and vandalism, the Committee heard evidence from S/Cst Stevenson of two incidents of large crowds of intoxicated people congregating on the street outside the Yot Club (on 15 January 2021 and 20 March 2021). The crowds were unruly, and significantly on both occasions S/Cst Stevenson gave evidence that she "felt unsafe". Incidents that give rise to such a lack of feelings of safety are of significant concern to the Committee.

[229] In relation to both occasions of crowds, S/Cst Stevenson explicitly noted in her evidence that persons in the crowd were intoxicated. Mr Middlemiss submitted that because specific indicators of intoxication were not included in S/Cst Stevenson's brief of evidence, that there was a failing of natural justice. The Committee rejects this submission. In relation to the incident on 15 January 2021, S/Cst Stevenson clearly indicated at paragraph [12] of her brief of evidence that "The majority were heavily intoxicated, behaving in an intoxicated manner, being loud and disorderly". In relation to the incident on 19 March 2021, S/Cst Stevenson clearly indicated at paragraph [30] of her brief of evidence that "... there was another large number of intoxicated young people spilling out of the Yot Club". The applicant must have anticipated that the Committee would ask S/Cst Stevenson about how she knew the crowd was intoxicated. The assertion by Mr Middlemiss that the applicant could not have prepared for this evidence on indicators of intoxication, given that intoxication was specifically mentioned in the brief of evidence, including specific mention of behaviour in relation to the first incident, is illogical.

[230] Mr Middlemiss also submitted that the S/Cst Stevenson was only called as a witness to give evidence about one incident. However, it is clear from S/Cst Stevenson's brief of evidence that she was giving evidence about incidents on 15 January 2021, 20-21 February 2021, and 19-20 March 2021. Mr Middlemiss's submission that the applicant could not test the evidence in relation to these incidents is inconsistent with the fact that S/Cst Stevenson was available in the hearing for cross-examination.

[231] Mr Middlemiss challenged S/Cst Stevenson's ability to make assessments of intoxication, and submitted that "if the Police allege an individual is intoxicated at an alcohol licensing hearing under the Sale and Supply of Alcohol Act 2012, they must provide sufficient evidence of intoxication and disclose that evidence to the applicant well in advance of any hearing". The Committee noted that S/Cst Stevenson had significant relevant experience, including more than seven years in the licensing portfolio in Raglan. She was able to outline the process that she uses in assessing intoxication, and the factors that led her to assess people as intoxicated, which are those described in section 5 of the Act. The Committee has no doubts that S/Cst Stevenson can effectively assess intoxication in this manner. Indeed, this is the process that many licensees and their staff use in assessing intoxication, and Mr Middlemiss did not question the ability of the applicant to assess intoxication. It is difficult for the Committee to see what additional evidence

would need to be presented in relation to intoxication. The Committee accepts that there were intoxicated people in the crowds during the incidents on 15 January 2021 and 20 March 2021.

[232] The Committee also accepts that some people in the crowd were drinking in the liquor ban area in Raglan during those incidents, and that some of the crowd had come from the Yot Club in each instance. S/Cst Stevenson gave evidence that she believed that some people in the crowd on 20 March 2021 had left the Yot Club with alcohol. However, she noted that it was also possible that the alcohol had been stowed nearby. Mr Meek gave evidence of the systems that The Yot Club has in place to prevent patrons from leaving the premises with alcohol, but conceded that a determined person could evade these systems. On balance, the Committee accepts that some people had left the Yot Club with open vessels on 20 March 2021. The allegation that alcohol had been taken from an on-licensed premises, and contributed to an unsafe situation for Police in relation to an intoxicated and unruly crowd, is a serious allegation. The Committee would have expected enforcement action to be taken against the licensee after the incident. However, no enforcement action was taken.

[233] The Committee notes that the evidentiary standard in a licensing decision is different from that in an enforcement decision. In *Shady Lady Lighting Limited* [2018] NZARLA198-199, the Authority set out the evidentiary standard required for the amenity and good order evaluation at paragraphs [67-68]:

“[67] Mr Sherriff, for the appellants, has submitted that in reaching its decision about whether the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence, the DLC (and now the Authority) must form an opinion. The Authority agrees. As Heath J said in *Venus*<sup>38</sup> at [57]:

*“... s 105(1)(h) and (i) of the 2012 Act, both of which deal with “amenity and good order” considerations, requires the Authority to form an “opinion”. The need for a judicial body to form an independent opinion is conceptually different from a decision that is based on whether or not an applicant has established on a balance of probabilities that a relevant fact has been proved.”*

[68] Moreover, unlike the other criteria in s 105(1), paragraphs (h) and (i) expressly require a decision-maker to form an opinion. This is reinforced by the wording of s 106(1) and (2). Contrary to the submission by counsel for the respondent, however, as already stated by Heath J, in considering the evidence when forming this opinion, objectors do not need to provide evidence at close to the criminal standard or even on the balance of probabilities...”

[234] Although the *Shady Lady Lighting* decision relates to an application for a new licence and the criteria being assessed are under section 105(1)(h) and (i) of the Act, the Committee believes that the same standard should be applied in evaluations made under section 131(b).

[235] The Committee believes that counsel for the applicant misunderstands the law and the manner in which the Committee is required to undertake its evaluation. This was emphasised by the decision of the Authority in *Kaiti Club Hotel Limited (Kaiti Sports Bar) v Ka Pai Kaiti Trust* [2018] NZARLA 225, which is worth quoting at length:

[73] GS Entertainment preceded *Re Venus NZ Ltd, Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, and *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* which make it clear that there is no presumption that a licence will be renewed. Accordingly, the failure to renew an on-licence cannot be equated with the cancellation of a licence.

[74] Moreover, concepts relating to the onus of proof are inappropriate as they do not sit well with the task of evaluation. It follows then that concepts of 'standard of proof' are also inappropriate. As Gendall J said in *J & G Vaudrey Ltd*, a decision-maker must actively and thoughtfully consider the relevant matters and to do so means the decision-maker must correctly understand the matters to which he or she is having regard. The weight given to such matters is for the decision-maker although some matters may be more fundamental or critical than others. The degree to which a decision-maker is persuaded by a matter is inherent in the concept of 'weight'.

[75] There is no doubt that when having regard to the criteria, and whether the application meets the object of the Act, the view of the decision-maker must be one that is supported by the evidence. It is necessary that there be an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant or renewal of a licence. Or to put it the other way, without evidence, there is no basis for a decision-maker to be persuaded of some matter that may go to alcohol-related harm.

[76] What is required is that the decision-maker is reasonably satisfied of any allegation put to it in respect of an application. As stated in *Briginshaw*, however, reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the facts. The seriousness of any allegation, the likelihood of it having occurred and the gravity of the consequences flowing from a particular finding all go to whether a decision-maker can be reasonably satisfied of whether there is an underlying basis for any concern with the grant of the renewal application. But proof to a near criminal standard of each fact underlying the criteria in the Act is not required in order to make an overall assessment of the potential impact of granting an application for renewal on the prospective risk of alcohol-related harm.

[77] As already stated, it is clear from the decisions of the higher courts that the nonrenewal of an application is not akin to a cancellation as that would import a presumption in favour of a renewal being granted which Lion Liquor has recently confirmed is not appropriate.

[236] Moreover, in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123, the Authority wrote at paragraph [70]:

*"It was sufficient to engage the requirement to minimise alcohol-related harm that the evidence implicates the premises. The Authority erred in requiring evidence of demonstrable historical harm. Rather, it was required to assess risk which by definition is future risk..."*

[237] The Committee is satisfied that the evidence produced by the Police meets the appropriate evidentiary standard, that the Yot Club premises is implicated in that at least some of the crowd originated from the Yot Club, and that the evidence demonstrates real future risk of alcohol-related harm.

[238] The question before the Committee then, is whether refusing to renew the licence would minimise this impact, in terms of reductions in amenity and good order. The Committee notes that in *Lion Liquor Retail Limited* [2018] NZHC 1123, Clark J wrote at [67]:

*"...The Act looks to minimise alcohol-related harm. Where there is an evidential foundation enabling a link to be drawn between a real risk of alcohol-related harm and the grant or renewal of a licence, the harm must be minimised not ignored or condoned..."*

[239] The decision is finely balanced. On the one hand, there is evidence of intoxicated crowds in Raglan, associated with the premises, on at least two occasions. On the other hand, the Police

have not initiated enforcement action against the licensee. On the contrary, the actions of the licensee helped to disperse the crowd on one of those occasions.

[240] Nevertheless, large, unruly and intoxicated crowds generate a serious negative impact on the amenity and good order of the locality. On evaluating the evidence, the Committee concludes that the Yot Club contributed indirectly to at least one of those incidents.

[241] Overall, the Committee is satisfied that the amenity and good order of the locality would be improved, to more than a minor extent, by not renewing this licence.

### **Section 131(c) Reports from the Police, an Inspector, and a Medical Officer of Health**

[242] Reports from the Police, Medical Officer of Health, and an Inspector all raised matters in opposition to the application. With one exception, the issues in their reports have all been discussed earlier in this decision.

[243] In their report on the application, Police raised that no business plan had been provided by the applicant.

[244] It is evident to the Committee that Mr Meek does not have a written business plan. However, that does not mean that he does not have a plan, only that it is not written down. The Committee observes that the provision of a business plan is not required under the Act, as noted in the decision of the Authority in *Bridle v J & I Imports Limited* [2019] NZARLA 215:

[87] In terms of s 105(1)(j), there are no specific systems, or training requirements prescribed by the Act. Nor is there a requirement that an applicant for an on-licence have a documented business plan or training programme. What is required is that the DLC have regard to whether an applicant has appropriate systems, staff and training to comply with the law.

### **S131(1)(a) and Section 105(1)(a) The Object of the Act**

[245] The Committee is required to undertake the evaluative exercise as outlined in *Christchurch Medical Officer of Health v J & G Vaudrey Limited* [2015] NZHC 2749. The steps in this exercise are outlined in paragraph [56] of *Vaudrey*:

*“[56] So, in my view, the position can be summarised as follows:*

- (a) The role of the relevant body upon receipt of an application for licensing or re-licensing is an evaluative one, requiring the decision maker to make a merits-based determination on the application.*
- (b) In considering an application, the relevant body is fundamentally required to assess whether a licence ought to issue. In so doing, it must:*
  - (i) consider any objections made by persons who have a greater interest in the application than the public generally;*
  - (ii) consider any opposition filed by the constable in charge of the Police station nearest to where the application is filed, a Licensing Inspector, and the Medical Officer of Health;*
  - (iii) have regard to the criteria stipulated in s 105 of the Act (for present purposes including the design and layout of the premises); and*

- (c) *The relevant body must finally cross-check whether the application is capable of meeting the object of the Act.*
- (d) *It must impose the conditions required by s 116(2) and in the case of a supermarket or grocery store, the single area condition (which I discuss in more detail below).*
- (e) *It may impose further conditions in accordance with ss 116(1) and 117 (which I discuss in more detail below)."*

[246] Having inquired into the application, and having received evidence and submissions from all parties, the Committee has evaluated the application against the relevant criteria in sections 131 and 105 of the Act. As outlined earlier in the decision, the Committee has determined that the application does not satisfy all of the criteria. In particular, the Committee believes that the applicant is not suitable to hold this licence, and that the amenity and good order of the locality would be likely to be improved by more than a minor extent, by refusing the renewal of the licence.

[247] The Committee now turns its attention to cross-checking whether the application is capable of meeting the object of the Act. 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.

[248] Overall, and as outlined in paragraphs [181] to [247] above, the Committee is not satisfied that the application is capable of meeting the object of the Act.

## **CONCLUSION:**

[249] The application for renewal of an on-licence, for the premises at 9 Bow Street RAGLAN known as "The Yot Club", is refused.

[250] Pursuant to section 135(2) of the Act, the licence shall expire three months from the date of this decision.

[251] This decision is issued at 10.00am, Tuesday 22 February 2022.

DATED at Ngaruawahia on 22 February 2022



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Noel Smith  
Chairperson  
Waikato District Licensing Committee