

Decision Number: 60G [2021] 8056

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

AND

IN THE MATTER OF an application by **VIC 31 LIMITED** for variation of On-Licence pursuant to section 120 in respect of premises situated at **31 Victoria Street, Christchurch**, known as '**Lu Lu's Bar and Eatery**'

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 21 July 2021 (at Christchurch)

Committee

Chairperson: Mr D Ivory

Members: Ms C Robinson
Ms A Keir

Appearances: Mr K Heather, Director of the Applicant
Mr M Ferguson, Licensing Inspector, to assist
Ms A Lavery, Assisting the Licensing Inspector
Sgt Dave Robertson, New Zealand Police, in opposition

Decision: 13 August 2021

RESERVED DECISION OF THE COMMITTEE

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Introduction

[1] This is an application to vary the conditions of an on-licence¹ by VIC 31 Limited (the applicant) for the premises known as Lu Lu's Bar and Eatery ('Lu Lu's'). The expiry date for the existing licence is 23 October 2022. The premises are located at 31 Victoria Street, Christchurch. The applicant is currently licensed to operate Monday to Sunday 8.00 am to 3.00 am the following day.

[2] The applicant is seeking to vary the licensed hours of operation extending them to Monday to Sunday, 8.00 am to 4.00 am the following day – an increase of one hour.

Locality

[3] Victoria Street, between Kilmore Street and Peterborough Street is an entertainment precinct populated by several entertainment venues that are licenced to operate to 4.00 am, including Christchurch Casino,² Cruz Bar, and Calendar Girls. In evidence it was suggested that the Casino does not exercise its right to open as late as 4.00 am. There are a range of other restaurants and bars operating in the vicinity who are licenced until 3.00 am. Also in the block is a dairy: Symroses Superfresh Dairy and a Thirsty Liquor Bottle Store which is licensed until 11.00 pm.

[4] The Committee took the opportunity to visit the locality. We observed that Lu Lu's is situated on the ground floor of Riverland's House which is multi-storeyed and has other commercial and residential tenants. Directly across Victoria Street is the Christchurch Casino which is surrounded by three streets: Victoria, Kilmore, and Peterborough. Lu Lu's location is at the intersection of Victoria and Kilmore Streets, with the entrance on Kilmore Street. On Victoria Street next to Lu Lu's is a number of ethnic restaurants, Calendar Girls, a dairy: Symroses Super Fresh Dairy and Thirsty Liquor Bottle Store. These two adjacent premises are approximately 100 metres from Lu Lu's. The Committee noted the advertised dairy hours were Monday and Tuesday, 9.00 am to 12.00 midnight, Wednesday and Thursday, 9.00 am to 4.00 am. On Friday and Saturday hours are stated as 9.00 am to 6.00 am the following day, and Sunday hours are 2.00 pm to 2.00 am the following day. The bottle store is licensed to 11pm. Along from the dairy, approximately 50 metres, is Cruz Bar and across Peterborough Street there is a medium sized green area which provides frontage for a multi-storey commercial building. Residual items of rubbish were observed on the pavement and in

¹ 60/ON/322/2019.

² The Christchurch Casino can technically sell alcohol at any time it is lawfully operating as a Casino.

crevasses along Victoria Street. Permanent rubbish bins are also in place along with a series of concrete planters running alongside Victoria Street.

[5] At the back of Lu Lu's and adjacent establishments, a car park exists which appears clean and tidy. The Committee members noted a neatly aligned series of recycle/waste bins each labelled with Lu Lu's name. In terms of Lu Lu's Kilmore Street frontage, a number of new two-story buildings exist occupied by commercial tenants including Canterbury Employers' Chamber of Commerce, and Ōtautahi Community Housing Trust. Across Kilmore Street building activity exists on several high scale residential construction projects.

[6] There is a liquor ban operating in the area.³ This bylaw provides for an alcohol ban on people, within the area, it operates 24 hours a day, seven days a week. People in the area must not consume alcohol in a public places or vehicle, bring open containers of alcohol into the area, or possess alcohol in the area - whether in a vehicle or not.

Attitude of the Agencies

[7] The application was opposed by the NZ Police⁴ and the Medical Officer of Health ('MOH').⁵

[8] The Inspector has recommended the application for variation be granted.⁶

[9] The application was publicly notified on the Council website on 26 March 2021 and remained on the website for 15 working days. There are no public objections.

The hearing

Non-Publication Order

[10] Mr Heather as part of his evidence asserted business sustainability as one of three reasons in his application. Upon question he revealed sensitive and confidential financial information. This information related to his current business model. A verbal nonpublication order was issued by the Committee pursuant to section 203(5) of the Act with the consent of all parties.

³ Christchurch City Council: Alcohol Restrictions in Public Places Bylaw [2018].

⁴ Letter of David Robertson (NZ Police), 19 April 2021.

⁵ Letter of George Poole, MOH, Alcohol Licensing Officer, 20 April 2021.

⁶ Report of Martin Ferguson, Licensing Inspector, 30 April 2021.

Preliminary matters

[11] The applicant only filed an opening submission and rebuttal.

[12] Police noted the absence at hearing of Sergeant Owen King who had being diverted to matters concerning certification.

[13] On 21 July 2021 prior to the hearing commencement, the Committee received a communication from Police, as did the applicant, that there were 'minor' changes to the brief of evidence provided by Sergeant David Robertson. It was noted the brief of evidence was 'not significantly different and the changes are to the appropriate referencing of, and commentary on, Police Intelligence documents which are being produced as exhibits'. These changes were further explained during the initial stages of Sergeant Robertson providing evidence and was accepted by all parties.

The applicant's case

Mr Keith Heather's opening submissions and rebuttal evidence

[14] Mr Heather chose to represent himself in this matter. Mr Heather had not filed any evidence in chief, however, prior to the hearing he had filed a statement comprising an opening submission and rebuttal to the evidence in chief filed by the Police. Within his statement there were elements of submission and evidence in support of the application. The Committee indicated to the parties that in the circumstances it would be desirable to swear in Mr Heather and hear his opening submission and evidence and for him to then be subject cross examination. There was no opposition to that approach.

[15] Mr Heather talked about the operation of Lu Lu's since 2018, the cultural special character of the premises, and safety enjoyed by patrons. He referred to an older demographic of clientele and a family-orientated environment. Reference was made to Mr Heather's passion for football as both a coach and supporter. His passion also extended to viewing professional football games. Mr Heather explained how televised football games are integrated into the culture of Lu Lu's. This element forms part of the basis for his application. It was explained the application was also driven by the need to ensure the business was sustainable and would provide scope for enhancing the food offering.

[16] Mr Heather rejected the classification of Lu Lu's as a tavern referring to 'having created a venue that has three types of operations'.⁷ These were identified as a café/restaurant (8.00 am to 4.00 pm), a restaurant (4.00 pm to 10.00 pm), and night club from 10.00 pm to the current closure at 3.00 am.

[17] Mr Heather made comment on the Police report, Calls for service – Alcohol Harm 2008-2016⁸ referred to in Sergeant Robertson's evidence. Mr Heather said that the statistics were 'somewhat incorrect'. In reference to Calls for service – Alcohol Harm 2008-2016,⁹ Mr Heather questioned comparisons with pre-earthquake data and relationship to the current environment. It was noted during the period 2008 to 2016 there was no dairy in the present location, Calendar Girls was in a different location, and the Casino now operated at changed hours: from 12.00 pm to 12.00 am Sunday to Thursday, and 12 pm to 2.00 am Friday and Saturday.

[18] Mr Heather also explained another focus of his business model was to attract patrons who were migrating from licenced premises situated on Oxford Terrace ('Terrace') post 3.00 am - 3.30 am, and retaining existing patrons in place, keeping them safe. Premises on the Terrace have earlier closing times due to different licences. He said, 'by denying us our extension (of hours) will not reduce the good order but merely continue the present situation'.

[19] In terms of Police Intelligence document: Alcohol Related Calls for Service: Lower Victoria Street¹⁰ Mr Heather explained the Police map showed most incidents are in the general location of Calendar Girls, the Casino, and the dairy. He said the picture of incidents covers a period where there had been 'a sizable shift in the hours involving the Casino'. As a result, it was suggested a split in the data from June 2018 to March 2020, and March 2020 to the present, would reveal a 'completely' different picture. Further, Mr Heather explained although the figures looked high, they were from a two-year period without a breakdown.

[20] Mr Heather referred to Police report, Alcohol Related Calls for Service: The Terrace.¹¹ He observed the high Police presence on the Terrace reduced the propensity for misbehaviour to occur. Mr Heather said a comparable Police presence on Victoria Street would see incidents 'removed or reduced'. An opportunity was taken by Mr Heather, to suggest to the Committee

⁷ Although the Committee notes that the application document and Inspector's Report both categorized the premises as a Tavern.

⁸ ROBERTSON02

⁹ ROBERTSON02

¹⁰ ROBERTSON03

¹¹ ROBERTSON04

possible causes of the ‘negative effects experienced by users, occupiers and business owners in Victoria Street’. The negative effects were identified as large amounts of empty bottles and cans that are only available from the off-licence next to the dairy, and clientele exiting the BYO restaurants on Victoria Street. Constant breaches of the liquor ban area were also identified by persons leaving the off-licence and those ‘traveling the area on the way to the Terrace and other central city venues’.

[21] Mr Heather outlined how an extension of hours would improve options available to patrons. Lu Lu’s was said to provide a safe environment, with a focus for the requested hour being to show football during the season and international games. This would allow patrons already at the venue to stay in place.

[22] Mr Heather addressed the suggestion by Police of employing special licences. He stated these were not suitable due to the current Covid environment changing the times of television coverage. The probative costs of such an approach compared to the benefits was stated by Mr Heather as not viable.

[23] Reference was made to a proposed enhanced food offering focused around ‘Hāngī Packs’ to be available in the evenings. Mr Heather reiterated again the safe environment offered to patrons ‘without embarrassment of being constantly intimidated or bullied’.

[24] In conclusion, Mr Heather talked about existing issues in the area resulting from three establishments: the Casino, Calendar Girls, and Symroses Super Fresh Dairy. He noted issues would continue regardless of an extension of hours because of the nature of the licences, opening hours and various offerings they each enjoyed. Mr Heather also talked about the continued migration to Victoria Street from the Terrace once it had closed after 3.00 am.

[25] The current situation in Victoria Street was referred to as ‘complex’ by Mr Heather. The absence of legislative guidelines and a Local Alcohol Policy (LAP) was also noted. Mr Heather confirmed his constant presence at the premises each Friday and Saturday night since its opening in 2018. He observed and acknowledged issues with binge drinking and pre-loading.

Licensing Inspector’s cross-examination of Mr Heather

[26] Mr Ferguson asked Mr Heather to explain the geographical layout of Victoria Street, where his premises are situated including venues and times they operated. Major issues with

the dairy were explained by Mr Heather. He also agreed with Mr Ferguson's observations that the dairy selling hot food was a clear attraction to the area. Victoria Street was also identified as a main thoroughfare. A series of questions were put by Mr Ferguson to ascertain knowledge held by Mr Heather on the previous regulatory environment which existed in Christchurch. Reference was made to the past situation where a night club licence existed which was different to those available under the current Act, where only four types of licences exist. This former environment, which was outlined, held no surprise for Mr Heather.

[27] Mr Heather was questioned on Police report: Calls for service – Alcohol Harm 2008-2016¹² and asked if the situation had changed in Victoria Street. The response was no, 'I wasn't there then' but understand it 'was chaos'. Reference was made to various interventions including the Victoria Street Accords, and patrols by Police. Mr Ferguson suggested 'we don't see the issues now', this view was agreed by Mr Heather.

[28] Sgt Robertson objected to the nature of Mr Ferguson's questions to Mr Heather. Mr Ferguson responding by noting Mr Heather had not produced a brief of evidence, didn't know what to produce, and the questions were aimed at getting his understanding of area as it was reported as 'bad' by Police. Sgt Robertson reiterated his concern, while stating Mr Ferguson did not provide a brief of evidence and the applicant should not provide a vehicle on which to produce evidence.

Police cross-examination of Mr Heather

[29] Sgt Robertson indicated he has known Mr Heather for a while, and asked him, do you recall when you first put proposal forward about extension of hours? Mr Heather replied, no. Sgt Robertson asked him if he recalled him stating, 'Keith¹³ this is a bad idea'. Mr Heather did not recall that exactly. Questions were asked about Mr Heather's experience in the industry which extends over 37 years. Most of this time was spent as duty manager across several establishments including work for an agency providing relief bar staff. Questioning revealed that work undertaken at Stock and Station (2005) was the first time Mr Heather had 'skin in game' as an operator apart from his current Lu Lu's role.

[30] Sgt Robertson asked Mr Heather questions around his knowledge of previous operators on the site Lu Lu's now occupies. The premises operators included the Jolly Poachers and post Christchurch earthquakes: Good Goat, and Wise Guys. Questions were

¹² ROBERTSON02

¹³ I.e. Mr Heather.

asked around any awareness of financial challenges for those previous operators. Mr Heather response was yes, he was aware of financial challenges.¹⁴ Mr Heather explained increased hours will increase financial viability of his business.

[31] Mr Heather was asked about his application, as to who prepared the document. He responded that advice was provided by Mr Ferguson as Mr Heather would expect. Reference was made to a discussion, on the day before hearing, between Sgt Robertson and Mr Heather around the completion of application. It was claimed Mr Ferguson's suggestions and advice were used to complete the application. Mr Heather claimed he used the experience and knowledge of the Inspector which he saw as a 'positive thing'. He states he wrote the application himself, including the submission and rebuttal. Mr Ferguson only provided advice.

[32] Mr Ferguson provided clarification that only guidance was provided to Mr Heather.

[33] Sgt Robertson talked about the expectation of agencies including Police in providing both help and assistance. Mr Heather stated he felt attacked but did acknowledge a positive relationship he had with Police including recent assistance with an update of the managers register of Lu Lu's.

[34] Mr Heather responded to questions focused on the nature of Lu Lu's. Evidence previously provided suggests he views Lu Lu's as a night club, not a tavern. He stated with reference to other premises, they provide 'more alcohol during day than we do'. He accepted the view of Sgt Robertson that other premises in Christchurch have shifts in focus during day, and music at night.

[35] Mr Heather was asked if any issues relating to noise had been made against Lu Lu's. One incident was referred to, 'coming from upstairs' (penthouse). It was explained an abatement notice was incorrectly issued. Mr Ferguson provided clarification, a noise direction was issued, and the noise complaint didn't come from the same premises. Mr Heather noted the complaint was on Monday night not a Friday or Saturday.

[36] It was agreed again by Mr Heather the situation is a 'complex one'. Issues of migration: patrons departing post 3.00 am (from Lu Lu's and the Terrace) some to Cruz bar or Calendar Girls. Mr Heather agreed venues open to 4.00 am were the drivers for migration. He reiterated the situation will stay the same if not improved but emphasised people who leave

¹⁴ [Suppression Order – with respect to material relating to current financial model].

Lu Lu's do so in a proper manner. Sgt Robertson referred to issues, including binge drinking, in Victoria Street also contained in Mr Heather's statement.

[37] Sgt Robertson said 'the impact on amenity and good order' is not going away. Mr Heather responded by explaining how he viewed the situation from his position as DJ at Lu Lu's. In this role he enjoys a full view of his venue and anyone going past Victoria Street. Sgt Robertson asked about the claim Police statistics were 'somewhat incorrect'. Mr Heather responded by saying the data from 2018 to where we are now, compared to other provided data that was completed on a year-to-year basis. After further discussion Mr Heather said he used the wrong words, 'somewhat incorrect', but still considered the evidence distorted via the presented data.

[38] Mr Heather responded to further questions by asserting the migration of people from Terrace venues, with different or no licences, to Victoria Street would be remedied if Lu Lu's was provided with the variation in licence. The situation will be improved. Mr Heather does not see the area as 'bad' as suggested by Police but notes without change in the operation of other venues, including the dairy, Casino and Calendar Girls, a continuation of issues will remain. These were identified as cans, and breaches of the liquor ban.

[39] Sgt Robertson went to some length to inquire into the times relating to the televised coverage of football games. Mr Heather indicated a preference for 2.00 am games, daylight saving time, which were finished by 4.00 am (with no extensions). The variation would provide Lu Lu's with a capacity to also cover League and Premier games. There was no appetite to cover all games beyond 12.00 and 2.00 am.

[40] In response to questions around special licences, Mr Heather considered these not workable in his circumstance but acknowledged their availability.

[41] Sgt Robertson stated the issues will continue, and won't change if hours were extended, migration would continue. He then asked Mr Heather, how can you say your patrons won't affect the area if an additional hour is granted? Mr Heather replied, 'we will be looking after them, we make sure they go home in right direction, taxis present, and uber'. It was suggested to Mr Heather his patrons could become involve in incidents once leaving the premises as either offenders or victims. He stated, 'no not victims – in our venue patrons are taken care of'.

Committee's questions for Mr Heather

[42] Mr Heather was asked a series of questions by the Committee about the premises and the current operations. Mr Heather said that the capacity of Lu Lu's is 128 persons. In the last hour of trade Saturday/Sunday there are around 100 persons on site. A security contractor is employed who provides between 1 and 4 staff but this is dependent on circumstance. If a function is booked in, the applicant would require 4 staff. Security staff are engaged on the basis of 1 per 25 patrons and duty managers are also in place. From 12.00 midnight to 3.00 am there are 5 staff on duty, including 1 in the kitchen, and also including Mr Heather.

[43] Mr Heather stated patrons at Lu Lu's mostly went straight there, and very few flowed over from the Casino. He noted his venue was set up differently and run on a marae basis. Respect was identified as a key value, and most of the clientele were known. After 10.00 pm there is an opportunity to dance with a DJ facilitating (usually Mr Heather). In the past live music was trialled but didn't work.

[44] When private functions occur in the early evening, at 12.00 midnight the premises are then open to the public, Mr Heather said 'we're a very different venue'. He described Lu Lu's as a destination. Between 12.00 midnight and 3.00 am the percentage of sales deriving from food was identified as 10%. An enhanced food offering was discussed based around Hāngī packs, but this was not yet on offer. Mr Heather agreed that at 3:00 am most of his customers were there to dance.

[45] The Committee tested with Mr Heather, the possibility that the Committee could grant a licence beyond 3.00 am to allow football viewing. This suggestion was not received as ideal, but it would be accepted, however we understood Mr Heather to say that the continuation of dancing and providing a safe venue was also important. Mr Heather asserted the importance of football, 'but we can have everything in a safe venue'. He also suggested such a proposal would cause problems if there was closure at 3.00 am for some patrons and not others.

[46] Mr Heather spoke of the current situation where 100 patrons from Lu Lu's are discharged onto the street at 3.00 am and joined by patrons coming from the Terrace. If permission for an extension of hours was provided Lu Lu's could soak up people. If not, they will head to Calendar Girls and Cruz bar.

[47] In response to a suggestion that a one way door policy be put in place from 3.00 am to 4.00 am, Mr Heather was agreeable.

[48] Mr Heather talked again about the clientele of Lu Lu's: a diverse whānau including those of mixed race and sexuality, 'that is why they want to come'. In response to questions on what percentage of current clientele would go elsewhere at 3.00 am: the response was only a minority. Mr Heather was also assisted with this question by his support person Nature, to provide a more accurate figure. The migration from Lu Lu's to Cruz bar post 3.00 am would be around 25% to 30% with the balance of patrons going home.

[49] Mr Heather was also clear to differentiate Lu Lu's from a tavern. He described patrons watching sport on television, socialising and dancing. It was stated in two and half years only two people have been removed and, not in the context of a fight situation. He considered his premises to be community based.

The Police case

Inspector Glenn Nalder's Statement produced in his absence

[50] Inspector Nalder holds the role of Christchurch Metro Response Manager. From 2012 he was the Police representative in the drafting of a proposed LAP for Christchurch. Inspector Nalder did not attend the hearing, but a signed statement was produced by Sergeant Robertson. In his written statement he recorded that from analysing alcohol related calls for service by the Police between 2008 and 2016 (CFS: Alcohol Harm Southern Victoria Street)¹⁵ an identified risk area was the Southern area of Victoria Street.

[51] Inspector Nalder states there is a clear link between the presence of licensed premises in areas of the city and Police related calls for service, in particular 'where multiple premises are situated close together'. Alcohol is seen as a clear driver 'of crime and public disorder issues at the time'. In areas where premises are open beyond 3.00 am, such as Victoria Street, those associated issues continue beyond 3.00 am.

[52] Inspector Nalder notes in lieu of an LAP for Christchurch and in view of the continuance of alcohol related harm occurring through until the early hours of the morning, the Police position is that no premises operating as a tavern should trade beyond 3.00 am.

¹⁵ ROBERTSON02

Sgt Owen King's Brief of Evidence produced in his absence

[53] Sgt King has the role of Supervisor on the Christchurch Police Support Unit (PSU). He also did not attend the hearing, but his signed written statement was produced by Sgt Robertson. One of the core functions of the PSU is the attendance at premises or incidents where there are serious violence or public order issues. As a result of his current and previous police roles he is 'familiar with most licensed premises in the Christchurch area'.

[54] In the view of Sgt King the bulk of premises operate in a similar manner to each other, later in the evening while food is still served, 'the focus moves more towards nightclub type activity – with amplified music played and the capacity for patrons to dance etc while they drink'.

[55] Sgt King reported there is an associated change in the environment of the central city, as it gets later in the evening. People have consumed alcohol, in many cases across the course of the evening and often prior to coming into the central city. That latter trend, 'which is called pre-loading, appears to be increasing as is side loading, where patrons stash alcohol they have purchased from off-licences nearby, perhaps in a vehicle or elsewhere, and leave the premises briefly to consume it'.

[56] PSU staff see this in real time around licensed premises according to Sgt King and, the environment deteriorates as a result.

[57] Sgt King reports by 2.00 am most premises are at their busiest and the associated intoxication levels amongst patrons also peaks – having a direct impact via the increase in alcohol related harm. Police therefore provide a prevention-based highly visible presence in the areas of high density of licenced premises, such as the Terrace and Victoria Street.

[58] The view of Sgt King is if a patron is removed or refused entry at one premises, they will likely simply move to the next one and try their luck there. If they can't get elsewhere or don't wish to try, many simply remain in the area congregating or interacting with others. Sgt King states this has an obvious negative effect on public order, and on the surrounding area.

Sgt David Robertson's evidence

[59] Sgt Robertson's Brief of Evidence (as amended earlier in the day) was taken as read.

[60] Sgt Robertson referred to a letter signed by Sgt Al Lawn, 3 October 2012.¹⁶ The letter is opposing the application for a new on-licence for Cruz bar, with the hours sought and seeks a 3.00 am close; amongst the reasons cited for opposition was the 'premises do not run as entertainment style but rather runs as a tavern'. Further, 'the granting of a 6.00 am finish will increase liquor abuse in the vicinity as this will be the last bar open, thus creating a migration effect'. Sgt Robertson suggests this letter shows a history of Police opposition to late closures in the area.

[61] Sgt Robertson talked about other proximate venues for alcohol sales and times of closure: The Bog Irish Bar at 50 Victoria Street (3.00 am), Cruz bar at 77 Victoria Street (4.00 am), Calendar Girls at 63 Victoria Street (4.00 am), Lu Lu's Bar & Eatery at 31 Victoria Street (3.00 am). With respect to Cruz bar, Police have opposed a current application for renewal of that licence. A key element of opposition is the negative impact on good order and amenity of the area as a result of the premises trading beyond 3.00 am.

[62] The migration to premises, including Cruz bar, Calendar Girls, and the Casino who are licenced beyond 3.00 am, is well recognised according to Sgt Robertson.

[63] Sgt Robertson talked about the other three exhibits presented by Police in this matter.

[64] **Evidence: CFS: Alcohol Harm Southern Victoria Street, 2008 – 2016,**¹⁷ is a report produced by Police as part of activity in respect of a potential LAP for Christchurch. The document records 'calls for service' (CFS) data from 2008 until 2016. Incidents recorded are likely to involve alcohol. It is apparent from data there is a significant increase in CFS to Police during the late evening, through to the early hours of the morning. From 2012 onwards a significant increase in incidents, in comparison to previous years for the period after 3.00 am. There are hot spots identified along Victoria Street, which are reflected in calls to Police.

[65] Sgt Robertson also reports the current situation has seen a reduction of licenced premises in Northern Victoria Street as patrons move back to the Terrace.

[66] **Evidence: Alcohol Related Calls for Service: Lower Victoria Street,**¹⁸ shows a continuing trend of issues in the area which are related to licensed premises. It provides a comparative evaluation of the area, in terms of migration back to Central CBD.

¹⁶ ROBERTSON01

¹⁷ ROBERTSON02

¹⁸ ROBERTSON03

[67] **Evidence: Alcohol Related Calls for Service: The Terrace,**¹⁹ reflects a similar level of calls for service for both areas (Terrace and Victoria Street) through until 3.00 am. From 3.00 am, when premises on The Terrace close, calls for service 'effectively cease'. However, data show police incidents for Victoria Street, associated with alcohol as a driver for offending, continue at a similar level until 5.00 am.

[68] In terms of Mr Heather's application, Sgt Robertson considers it 'flawed'. Further identified environmental issues include the presence of a dairy known as Symrose's Super Fresh City (65 Victoria Street). The Thirsty Liquor Bottle Store is located at the same address. The Thirsty Liquor Bottle Store is licensed until 11.00 pm with the dairy aspect remaining open. Sgt Robertson reports their busiest period is between 2.00 am to around 5.00 am for people having 'a focus on food'. Sgt Robertson talked about people seeking 'premises which provide high volume, high turnover fast food which is both cheap and ready to eat'. He states people are not seeking to sit down at a dine in restaurant for a full meal at that time of the day.

[69] Sgt Robertson also made comment on the proposal to show sport at the venue through to 4.00 am. He acknowledged an interest exists in English premier league matches as well as tournament events held every 2-4 years including the Football World Cup and European football tournaments. It was emphasised many of the matches were held at times between 1.00 am and 7.00 am (New Zealand time). Sgt Robertson suggested a special licence could meet the requirements of Mr Heather.

[70] It is the view of Sgt Robertson; Mr Heather does not hold a realistic view of the potential issues that will arise if he is allowed to trade until 4.00 am. These include the impacts of migrating patrons from the CBD to Victoria Street after 3.00 am, which is also a significant Police problem. The nature of migrating people are they are generally under the effects of alcohol and possibly intoxicated. The spike in calls for service to that area reinforce this view. The granting of the licence to sell alcohol after 3.00 am would reduce the good order and amenity of the area already badly affected by existing licenced premises.

Applicant's cross-examination of Sgt Robertson

[71] Mr Heather in questioning reasserted that no split or break down in data on a year-to-year basis as was provided by Police. Whereas such a breakdown was provided in the CFS: Alcohol Harm Southern Victoria Street²⁰ with respect to the years 2008 to 2016. Sgt

¹⁹ ROBERTSON04

²⁰ ROBERTSON02

Robertson responded by noting the data formed part of a report in furtherance of a potential LAP. Mr Heather reported it was difficult in the circumstances to accurately interpret the data especially considering the changed Casio hours and current Covid circumstance.

[72] Sgt Robertson was asked by Mr Heather about Police visibility in Victoria Street, specifically if there was a list of troops on ground. In response Sgt Robertson referred to an instrument: 3H activity licence premises activity check. He didn't consider this instrument helpful in this circumstance but noted Police do respond to trends, calls for service and crime, and Victoria Street is a focus for Police even if not seen or visible. He also noted issues arise later in the evening, so prevention deploy staff to those areas like Victoria Street and Terrace.

Licensing Inspector's cross-examination of Sgt Robertson

[73] Mr Ferguson suggested presenting data over a three-year period created a distortion. This was not agreed with by Sgt Robertson. He explained that the primary focus is comparative data with the Terrace area which shows similar levels of calls to police. He said various Police teams are operative in the area who respond to calls for service, but foot patrols are also in place.

[74] Sgt Robertson was asked about the number of breaches of the liquor ban that have occurred in Victoria Street. He explained that police do not measure these breaches.

[75] Mr Ferguson asked Sgt Robertson if Mr Heather's agreement to a proposed one-way door policy from 3.00 am would change the position of Police. He responded by stating the concern for Police were premises operating as taverns being able to operate to 4.00 am. It was explained there could well be other applications of a similar nature. Further, Police see calls for service increase the later premises are open as in cases like Victoria Street. Sgt Robertson reiterated Police would like the status quo. If there were an extra hour of drinking to 4.00 am closing, Police would anticipate the impact of licence will shift in hours and will increase. It was also emphasised by Sgt Robertson that without an LAP we need to consider each application on its own merits.

[76] Sgt Robertson reported no concerns were held on Lu Lu's operations; to date it was reported as quiet – but the building up of clientele is occurring.

[77] Mr Ferguson asked with respect to CFS: Alcohol Harm Southern Victoria Street,²¹ 'would you agree Victoria Street now is a different kettle of fish?' Sgt Robertson replied it is much quieter than used to be particularly in northern quadrant of the Victoria Street.

[78] Mr Ferguson sought clarification about a reported conversation with the dairy owner, and if other conversations occurred with operators of proximate premises. Sgt Robertson indicated he had not much conversation with Cruz bar but had with the Casino, Calendar Girls, and operators of the Bog over a period of time. Mr Ferguson asked if Police have raised issues with those operators over activities post 3.00 am, the response was yes. Mr Ferguson noted special licences should not be issued when a substantive licence is more appropriate, this was agreed by Sgt Robertson.

[79] Mr Heather asked a supplementary question (with consent of other parties). Sgt Robertson was asked about the 'ripple effect' referred to in Police correspondence. The response was a clear Police preference for no trade beyond 3.00 am. It was noted this was also an historic Tri-Agency approach. He also stated any Committee decision on Lu Lu's won't be binding on any other applicants. Reference was made to the difference of a Committee decision compared to one made by the Authority. Should the Authority or Court of Appeal decide this 'action maybe more than a line in the sand'.

Committee's questions for Sgt Robertson

[80] Sgt Robertson responded to questions from the Committee. He was asked about the correlation between Calls for Service which appeared to peak at the time bars close. Sgt Robertson referred the Committee to the comparatives table: Alcohol Related Calls for Service: The Terrace,²² which showed effectively from 12.00 midnight disorder increases when bars close tavern operations (moving tables) for dancing. It was explained further people in town at that time of evening are also side loading from 11.00 pm and 12.00 midnight and this contributes to the peak period. In terms of the Terrace this continues to 3.00 am and with Victoria Street continues up to 4.00 am. As a result, peak time for service is 'certainly 12.00 midnight to 2.00 am for Terrace and 12.00 midnight to 4.00 am for Victoria Street'.

[81] Sgt Robertson was asked had the Casino decision to close earlier caused any increase on calls for service to the Victoria Street area. The response was not significantly. It was noted the Casino was set up differently: entry via number of open doors, security staff,

²¹ ROBERTSON02

²² ROBERTSON04

assessment of each patron. Sgt Robertson expressed the view Casino attendance was not to drink but to gamble, but in early hours of morning patrons can also drink.

[82] Sgt Robertson was asked what the effect of a migration of approximately 25% to 30% of Lu Lu's and Terrace patrons to Cruz bar and Calendar Girls would be post 3.00 am. In response he noted as every hour goes by intoxication levels rise. In a question of clarification, he was asked does that not add weight to the applicant's argument, by extending the hours will that reduce the number of people from off the street, thereby adding to amenity and good order. Sgt Robertson responded that a cluster of licenced premises has impacts on amenity and is supported by alcohol related offences.

[83] Mr Heather noted that Lu Lu's has a diverse community where patrons can find safety. Sgt Robertson was asked to comment on the view Lu Lu's provides a culturally safe venue in Victoria Street at night. No specific response was provided other than a noting a diverse range of people are both offenders and victims and diversity existed at other premises, including Cruz.

[84] Sgt Robertson was asked to comment on the Lu Lu's business model operated (tavern transfer to night club, with sport viewing availability). His view was whatever the purpose was for the venue there would be a different impact on the area. The Police view was reiterated again that no sale of alcohol is appropriate after 3.00 am and he said 'nothing good happens after 2.00 am'.

[85] Sgt Robertson referred to the difference in areas (Victoria Street and the Terrace). He explained that on the Terrace, there is a consistency of approach with Tri-Agencies in terms of hours. Victoria Street is seeing a greater diversity in arrangements. Police see this change as a challenge and can be reflected in the pending case of Cruz bar. He said that pre-earthquake there were accords in place where no one sought to operate after 3.00 am and a one way door policy applied from 1.00 am. The Terrace still has an accord in place, where no premises trade beyond 3.00 am but without a one way door policy. He explained that Victoria Street is different with the nature of operations/licences. Sgt Robertson was of the opinion that the risk profile post-Covid has increased: particularly when premises are challenged financially, and sometimes standards falls aside 'everyone is out to make a dollar'.

[86] A question was posed with respect to any Police interventions at Lu Lu's compared to other premises in the area. There have been no interventions at Lu Lu's since it commenced operations in 2018. Sgt Robertson talked about the other premises on Victoria Street. Cruz

bar was identified as unique and stands alone, with a high volume of calls for service by the licensee. It was noted responsible licensees will manage through early intervention: food, and water. A follow up question was posed in terms of Calendar Girls. Police didn't oppose renewal when its hours were increased to 4.00 am. In response it was noted under previous legislation an entertainment licence existed, not dissimilar to the Cruz bar operation. There exists no provision aligning the old and new Acts. Police can only seek reduction of trading hours on renewal.

[87] The question was posed by Sgt Robertson to the Committee in terms of entertainment venues: should they be able to trade in a different manner to other venues in the city? He also suggested this needs to be balanced against lack of LAP. The Inspector's view was sought on this matter. Mr Ferguson explained that initially 24-hour trading was historically in place, a city-wide accord of all licensees pulled hours back to 4.00 am and then 3.00 am. The new Act provided a national default closure hour of 4.00 am. It was the unofficial policy for these matters to be put to the Committee for decision making. Mr Ferguson said it was not for the Inspector nor Police to make decisions only the Committee, and neutrality was required from Inspectors.

Licensing Inspector's assistance

[88] Mr Ferguson was clear in his view, good order and amenity in the area would not get worse if the application was granted. He noted an enhanced application now existed with the suggested amendment of a one way door policy from 3.00 am. The main issue in the area, according to Mr Ferguson is the migration of people through area and the dairy.

[89] Mr Ferguson was asked how a 3.00 am one way door policy would improve the area. He responded by saying maintaining customers within premises is good and then they are not on the street causing problems and conflict with migrating people flows. Mr Ferguson once again identified the dairy, and reported surrounding activity, as an area of risk in the locality. In his view adding another premises with hours between 3.00 am and 4.00 am will not increase alcohol harm. He acknowledged peak risk time occurs around time premises close, and there are clear issues of side and pre-loading apparent around the street. However, a bar was in the view of Mr Ferguson a safe place, where duty managers are looking after people who shouldn't be intoxicated when leaving a bar.

[90] Mr Ferguson also explained the Act is about minimising harm not eliminating it, 'we are talking about adding one hour to a premise that holds around 100 people, it won't make

[it] worse but slightly better'. He was asked whether in cases where there is incremental or an accumulated increase in harm the Committee should hold the line with a precautionary approach. Mr Ferguson was adamant that the answer was no. He said that if that view were adopted the Committee would be setting itself up as a policy maker. He also emphasised the Committee is concerned solely with section 105 of the Act. Eliminating harm from alcohol without inhibiting people's access to it is the function of the Act. Once again Mr Ferguson reiterated this application relates to a small premise, 100-person capacity, one more hour of trading, with an applicant prepared to set a cap on it with a one way door policy from 3.00 am.

[91] Mr Ferguson was asked if financial pressures which currently exist for licensees were leading to an increased risk profile, venues cutting corners, reducing standards, extending hours and that the Committee should be cautious. The response was yes, and it was shared concern with the Tri-Agencies. A further question was asked about any risk seen in the application from Mr Heather. He replied no risk was foreseen. Mr Heather has the full support of his landlord. Nothing but good reports exist about Mr Heather since he has opened.

[92] The Chair provided an opportunity for any party to ask further questions or seek clarification through the Committee from Mr Ferguson. Sgt Robertson asked a question around a collaborative approach for 3.00 am closing across city. He stated Mr Ferguson was a driver of this approach. Mr Ferguson confirmed this was correct, but he talked of it being different times, both pre-earthquakes, and 24-hour closing. Mr Ferguson expanded, licensees were happy to close earlier if everyone else did, 'but different times exist now'. Most licensees would be happy to stay open to 3.00 am, but as an evening gets closer to 3.00 am the costs to making money increase with more costs including security. He cited as an example the Terrace where operators were happy to trade until 3.00 am maintaining a status quo where no one will ask to open until 4.00 am.

Closing Submissions

Applicant's closing remarks

[93] Mr Heather talked about how an extension of his licence will benefit the area. The Terrace migration comes through post 3.00 am, an extension would provide 'an extra hour to leave our crowd in'. He explained how the primary focus of the increased hour is to watch football in addition to 'keeping our crowd on the premises'. Reference was made to the Police suggestion of special licences as an option, it was asserted the costs outweigh any benefit. Mr Heather notes the Covid situation has changed the aspect of Victoria Street and current

licensing arrangements will be difficult to change. He states an enhanced food offering will also be a key focus, to keep people safe once they have left the premises.

[94] Mr Heather is clear he is agreeable to a 3.00 am one way door policy. He talked about being blessed with both landlord support and mentorship. Mr Heather says the change 'can do better than negative in this situation' and 'become a facilitator to other people as to how to do things'.

Licensing Inspector's closing remarks

[95] Mr Ferguson talked about the role of agencies as being diverse. He explained how agencies have an obligation to work together and try to minimise harm. Each agency has a different focus, Police on preventing crime and minimising harm, 'we do different work with licensees daily including monitoring and providing assistance and support'. Mr Ferguson was clear this approach was not same 'as doing it for them'. He talked about the role of the Committee, it being a hard role with no LAP to guide. Mr Ferguson stated the Police want the status quo, any increase in hours is bad. He said in this case we have a smaller operator; 'do we trust him – in this case - we can'. Reference was made to a 'leading case' of Lion Retail Liquor²³ where the hours were pulled back. The case involved issues, including calls for service at 1626 in a year and 960 breaches of a liquor ban. Mr Ferguson differentiated the current situation and concluded by expressing the fact 'we don't have some information'. It was noted in the current case, calls for service are combined in a three-year bulk not on a year-to-year basis to see improvement or deterioration.

Police closing remarks

[96] Sgt Robertson explained on this occasion about being both challenged and concerned by the Inspector's approach. He talked about section 295 of the Act which requires collaboration but doesn't mean agencies need to agree; he asserted the need for a shared vision which is important in meeting the challenges of each agency. Sgt Robertson emphasised he had 'no problem for an applicant seeking advice or assistance from an Inspector, and we see every day'. He considers that situation as different from assisting in the drafting of submissions and preparation of evidence for an applicant. Mr Ferguson objected to the suggestion that had occurred.

²³ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd* [2018] NZHC 1123 [2018] NZAR 882.

[97] Sgt Robertson noted the submissions of the Inspector were heavily favoured in terms of the application. He said the Police submission, supported by the MOH, sees the Inspector 'siting alone in isolation and is ignoring Police concerns'. Sgt Robertson refers to the challenging times for agencies and in particular Police. He talked about the Inspector's reference to breaches of the liquor ban, and notes the reality is there is no policing of the ban. The reason provided is other Covid related demands. Sgt Robertson appreciates disappointment with the level of service delivered by Police but states it's not a relevant consideration for the Committee unless under section 105.

[98] Sgt Robertson drew the Committee's attention again to the evidence provided by Inspector Nalder and of Sgt King around the front-line insight and demand for Police service in areas where a high density of licenced premises exists. Reference was made to Mr Heather's acknowledgement that an extension of the licence to 4.00 will continue the same situation, and with no change to current amenity and good order of the area. Sgt Robertson submitted that in terms of section 105(1)(i) of the Act it is not desirable to extend the trading hours of this licence. He takes issues with the view a 3.00 am one way door policy is going to keep patrons inside safe, but states they are still going to leave premises between 3.00 am and 4.00 am. Such an accommodation doesn't mean patrons can't or won't leave the premises. Sgt Robertson initially advised Mr Heather, 'this is a bad idea' and the evidence supports this position.

Consideration of the Committee

[99] Having considered the Application together with Agency Reports placed before it, together with the oral evidence and submissions received, the Committee must now consider whether the Application for Variation should be granted or refused.

Evaluation and findings under s 120 (s 105) of the Act

[100] Section 120 of the Act provides:

(1) The holder of a licence may at any time apply to the licensing committee to vary or cancel any condition of the licence (whether the condition was imposed by the licensing authority or the committee).

...

(7) In considering the application, the licensing authority or licensing committee concerned must have regard to any relevant matter that is specified in section 105.

[101] Section 105(1) in turn provides:

- (1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:**
 - (a) the object of this Act:**
 - (b) the suitability of the applicant:**
 - (c) any relevant local alcohol policy:**
 - (d) the days on which and the hours during which the applicant proposes to sell alcohol:**
 - (e) the design and layout of any proposed premises:**
 - (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:**
 - (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:**
 - (h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:**
 - (i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—**
 - (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but**
 - (ii) it is nevertheless desirable not to issue any further licences:**
 - (j) whether the applicant has appropriate systems, staff, and training to comply with the law:**
 - (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.**
- (2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.**

[102] The role of section 105 and how it is to be approached in relation to applications has received plenty of judicial attention.²⁴ The approach, when considering an application for variation is for the Committee to consider section 105 (b) - (k) and finally (a): the object of the Act.

[103] The duty to “have regard to” requires that we turn our mind to the listed criteria. We are required to give them “genuine attention and thought”. The weight to be attached to each is a matter for us to decide.²⁵

[104] The evaluative function is an assessment of risk:²⁶

The factors to be considered in the course of assessing an application for a licence, and renewal, (including variation) as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm.

[105] In terms of the risk profile the Court held:²⁷

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, renewal, or variation of a licence, the harm must be minimised not ignored or condoned.

[106] Further:²⁸

It is not necessary to establish, ..., that the proposed operation “would likely lead to” alcohol-related harm. To require demonstration of a link to this degree of specificity is not much different from requiring proof. Requiring proof of “a causative link is not only unrealistic but is contrary to the correct legal position”.

[107] The object of this Act is that—

(1)(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

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

²⁴ *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315 per Heath J; *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689 per Moore J; and *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382 per Gendall J.

²⁵ *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC).

²⁶ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, [43] and [47].

²⁷ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, at [67].

²⁸ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, at [68].

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

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

[108] We return to the object of the Act once we have had regard to the other relevant matters in section 105.

Relevant matters in section 105

[109] Nothing raised at this hearing would lead this Committee to find that the applicant is no longer suitable. We found Mr Heather to be knowledgeable and genuine in his desire to conduct his business in a manner that puts the safety of his patrons at the forefront of his business management practices. We hold no concerns about premises layout, the systems, training, and staffing arrangements for the premises. This application turns on the proposed extension of hours and the impact on the amenity and good order of the locality and whether it satisfies the dual objects of the Act.

Amenity and good order

[110] The Committee notes there was disagreement over a range of matters, but areas of agreement existed. All parties agreed there are limitations and challenges in place for parties and the Committee in the absence of a Liquor Alcohol Policy (LAP) operative in the city. As matters need to be determined on their individual merits.

[111] Section 105(1)(h) requires the Committee to ask itself whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence. In reaching our opinion we are directed to consider the matters in s106(1) of the Act.

106 Considering effects of issue or renewal of licence on amenity and good order of locality

(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—

- (a) the following matters (as they relate to the locality):**
 - (i) current, and possible future, noise levels:**
 - (ii) current, and possible future, levels of nuisance and vandalism:**
 - (iii) the number of premises for which licences of the kind concerned are already held; and**
- (b) the extent to which the following purposes are compatible:**
 - (i) the purposes for which land near the premises concerned is used:**
 - (ii) the purposes for which those premises will be used if the licence is issued.**

[112] In terms of section 105(1)(i) the Committee also must consider whether in its opinion the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that they would be unlikely to be reduced further (or would likely be reduced further to only a minor extent by the variation) but it is nevertheless desirable not to issue any further licences.

[113] Agreement exists that Victoria Street was an area where alcohol-related harm was clearly evident. There was a difference of views as to its level, whether this was 'bad' as reported by Sgt Robertson or had improved over the years as suggested by Mr Ferguson and agreed by Mr Heather, who had referred to the pre-2018 the situation as 'chaos'.

[114] There is also a difference in view on the causation of the harm. Mr Heather has the view the 'negative effects' included large amounts of empty bottles and cans that are only available from 'the off-licence next to the dairy and clientele exiting the BYO restaurants on Victoria Street'. He also referred to both the Casino and Calendar Girls as sources of alcohol-related harm. Mr Ferguson also believes the dairy to be a major contributor of harm in the area and Sgt Robertson refers to the dairy and its surrounds being problematic. Although the dairy is not itself licensed, it is a source of hot food for patrons leaving licensed premises or who may be intoxicated from other sources.

[115] Agreement exists on a regular pattern of migration between the Terrace and Victoria Street post 3.00 am. People are clearly attracted to the 4.00 am closure times provided by Victoria Street venues. Police are clear this 'peak' movement of people between venues is a significant cause of harm and in requests for Police intervention.

[116] Mr Heather does not see Lu Lu's as a tavern, but a diverse operation specifically seeing its operating as a night club. Both Sgt Robertson and Mr Ferguson agree that such diverse operations are not unique to Lu Lu's and have occurred in other venues.

[117] The Committee found Mr Heather able to fully describe all aspects of Lu Lu's current operations, including plans for the future. Mr Heather's evidence provided an insight into the culture of Lu Lu's which provides a safe venue, accommodating both a culturally and sexually diverse community.

[118] To have a more sustainable business Mr Heather wants to provide an increased level of football game viewing opportunities and increase his food offering.

[119] The proposed increase or enhancement of food offering needs to be commended. In *New Light Tailor Limited*²⁹ the issue of a lack of interest in food offering was mentioned in an application to increase hours:

What we are discussing here is a new form of night-club with a special type of music that appeals to young patrons...The new business attracts migratory drinkers who come to the premises in the early hours of the morning, when they are required to leave the bar in which they have been drinking...There seemed to us to be little interest in promoting a range of good food [para 37].

[120] However, the food offering in this case is not yet established and, in the view of the Committee, likely to make only a marginal difference to the amenity and good order of the area as that is affected by patrons inside the venue, and unlikely to make any positive impact on the amenity and good order outside the venue, especially if a one-way door policy is implemented.

[121] Mr Heather is seeking to offer 'good order' in terms of the 3.00 am migration to Victoria Street. This was supported by Mr Ferguson who stated we can have 'trust' in this operator. Indeed, Lu Lu's has not attracted any agency concern with respect to its current operations. Mr Ferguson cited the *Lion Liquor Retail* case³⁰ in which hours were reduced but only because of extreme public disorder:

1626 calls for Police assistance over the year were for assistance for alcohol related incidents within 500m radius of the premises (para f). Over 960 alcohol infringement offence notices were issued during 2015 for breaches of the alcohol ban area "many" of which were issued within 500m of Lion's premises (para g).

²⁹ *New Light Tailor Limited NZLLA PH 176/2009*

³⁰ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd* [2018] NZHC 1123

[122] In terms of thresholds Lu Lu's holds no comparative statistics to match this record, and in the view of Mr Ferguson should be granted the variation. He also told the Committee 'bars are safe places, where duty managers are looking after people who shouldn't be intoxicated when leaving a bar'.

[123] Police are clear in their view about holding the line in terms of closure times. Their view is also supported by the MOH. The Police position is both historic and current. Another current challenge identified objection to an application for renewal by Cruz bar. Detailed insights were offered by Inspector Nalder and Sgt King. Inspector Nalder's view being on the continuance of alcohol-related harm occurring through until the early hours of the morning. It was stated if the current application were approved Police would anticipate impact will shift in hours and alcohol related harm will increase.

[124] The Police are opposed to increased hours in order to control alcohol-related harm. Seeking to control hours of operation is a recognised tool of control. This view can be reflected in an Authority decision on the decision of *N.B.T. Limited*.³¹ The Authority dealt with an opposed application for renewal. In that decision the following comment was made and is reflective of the Police position in this matter:

Limiting the hours of operation has become established as an important tool in addressing the growing social and economic costs of alcohol-related crime, disorder, and anti-social behaviour. Although it has been said that the issue is not so much about the hours of trading, as the way the premises are managed, it is our experience, that the longer the hours, the greater the potential exists for liquor abuse, or breaches of the Act. In our view, the liberal hours that have become granted in the past have not been universally respected.

[125] During the hearing it was suggested from 3.00 am Lu Lu's could just accommodate football viewers. Mr Heather would be agreeable but noted it would not be ideal and could create conflict at 3.00 am as between patrons. He was agreeable to a suggested one way door policy being in place from 3.00 am. Mr Ferguson was also supportive of such an amendment to the application. Police offered no change in position noting eventually patrons would need to leave and the harm will still exist if not be exacerbated by an additional hour of alcohol consumption.

[126] The Police provided to the Committee four reports with data-based findings. Both Mr Ferguson and Mr Heather have shared concerns about aspects of this material which relate to a lack of valid comparisons in terms of year-to-year data reporting, not reflecting changes

³¹ *N.B.T. Limited* LLA PH 584-585/2005

in Casino operating hours, relocations of different establishments, and the inclusion of new commercial activities operating in Victoria Street.

[127] Notwithstanding the concerns expressed by both Mr Ferguson and Mr Heather the Committee found the reports and Police commentary provided a clear and compelling case that an increase in harm occurs around closing time. Licensed premises along Oxford Terrace are now attracting patrons back to the central CDB with of the premises in Victoria Street having closed or relocated.³² We were shown that 'calls for service' (CFS) data from 2008 until 2016 revealed a significant increase from 2012 in incidents in comparison to previous years for the period after 3.00 am.³³

[128] We are concerned to learn of these movements and closure of premises (Victoria Street – Northern Quadrant) shown by Police reports and commentary³⁴ which could potentially increase or add to the people migration back from the CBD and Terrace to Victoria Street post 3.00 am. The reported increase in incidents from 2012 also raises a matter of concern for the Committee.

[129] The Committee was also told of a continuing trend of issues in the area which are related to licensed premises.³⁵ Mr Heather disagreed, stating most of the incidents shown were in the general location of Calendar Girls, Casino, and the dairy.

[130] A report provided by Police³⁶ showed a similar level in calls for service for both the Terrace and Victoria Street through until 3.00 am. From 3.00 am, when premises on the Terrace close, calls for service 'effectively cease'. However, the data showed Police incidents for Victoria Street, associated with alcohol as a driver for offending, continue at a similar level until 5.00 am. The Committee also holds concerns around the information contained in this document. There is a very clear causation shown around late closure and alcohol driven offending which is site specific to Victoria Street.

[131] The Police maintain the position that alcohol-related harm or nuisance in Victoria Street, where Lu Lu's is situated, is an area where alcohol-related harm exists and has over many years. Police opposition to the current application for increase hours is explained as part of a pattern of action to manage and minimise harm in the area. In *New Light Tailor Limited*⁶⁷

³² ROBERTSON02, ROBERTSON03, and ROBERTSON04

³³ ROBERTSON02

³⁴ ROBERTSON03 and ROBERTSON04

³⁵ ROBERTSON03

³⁶ ROBERTSON04

³⁷ In *New Light Tailor Limited* NZLLA PH 176/2009

the Authority specifically referenced circumstances where 'nuisance' was apparent near premises:

We accept that there will be times when a licence cannot prevent a patron from exhibiting general exuberance in the street. However, if this happens on a regular basis causing a nuisance to others (as in this case), then the trading hours may well have to be reviewed. A measure such as clawing back the closing time will either stop or at least mitigate the consequences of patron migration, as well as a tendency by patrons to loiter around late-night premises (para 380).

The situation expressed in this case appears to align with the Victoria Street circumstance. Trading hours provide an effective and widely used tool for harm management and minimisation.

[132] It was agreed by both Mr Ferguson and Sgt Robertson that an increase in risk levels was occurring in terms of licensees, because of difficult trading conditions. This could include licensees cutting corners, reducing standards, and seeking to increase hours. It was reported this matter was a shared concern for the Tri-Agencies. Sgt Robertson noted the risk profile post-Covid has increased: premises challenged financially, and sometimes standards fall aside 'everyone is out to make a dollar'. It was noted by Mr Ferguson an increased risk profile did not relate to Mr Heather, 'no risk was foreseen, and he has the full support of his landlord'.

[133] Having considered the amenity and good order of the locality we are of the opinion that there is evidence that this locality is experiencing negative impacts on good order as a consequence of some existing licenced premises trading until 4am as patrons from other bars in Victoria Street and the Terrace migrate to the area. There is evidence of nuisance behaviours associated with the dairy (which is unlicensed) but draws an intoxicated clientele after licensed premises close. We are, however of the opinion that the later trading hours of Lu Lu's is likely only to contribute in a minor way.

[134] We heed Mr Ferguson's warning that it is not for this Committee to set policy in relation to trading hours and there is no LAP, however, s105(1)(i) does provide a mechanism whereby the Committee can reflect on the desirability of allowing further licensed premises (or an extension of hours) in areas where a locality is already badly affected by existing licences. We have concluded that the evidence of the Police demonstrates that the area remains badly affected by the number of licensed premises in the location, some of which trade to 4am, even if it has improved in recent years. We are of the opinion that it is not desirable to enable an additional licensed premises to operate to 4am in this location at this time.

[135] We have considered Mr Heather's agreement to the operation of a one way door condition which would allow patrons to enter the premises up until 3am and stay until 4am if they wish but would not allow new patrons to enter the premises at that time. The use of one way door conditions is accepted as a mechanism to minimize alcohol-related harm.

[136] In *Otago University Students' Association (OUSA)*³⁸ the Authority specifically referred to the circumstance of imposing a one way door policy. The case involved an appeal by OUSA against a DLC decision imposing a one way door condition from 2.00 am. The primary ground of appeal was that the DLC imposed a one way door condition from 2.00 am when this was not sought by OUSA, and without any discussion about the possibility of imposing such a condition. In this specific case there was strong Police support for a one way door policy. Police reported, 'longer licence hours as a risk mitigation initiative to help reduce harm among the vulnerable student population'. It was noted a LAP (Dunedin Local Alcohol Policy) existed which provided for 3.00 am closing and a 2.30 am one-way door policy: 'a hugely effective tool'.

[137] The Authority was satisfied a 2.30 am one-way door policy is preferable to a 2.00 am policy when considered alongside a 3.00 am closing hour. The Authority noted:

The simple reason for this, as the reporting agencies have been at pains to stress, is that the risk of migration of patrons is likely to increase where a different one-way door (and closing hour) operates in North Dunedin relative to the Octagon, resulting in students likely seeking to leave the controlled environment of Starters Bar to wander the streets in an attempt to take advantage of different hours and one-way door conditions in other premises in the Octagon [para 61].

[138] In the matter under consideration there are also two distinct entertainment areas: Victoria Street and the Terrace. However, agreed evidence has been provided of a clear and known pattern of migration between the two areas, as opposed to a potential or foreseen, with a driver of different closing times at a variety of venues. Although a one way door policy provides an effective mechanism to prevent alcohol related harm in a specific circumstance it is not the case here. A pattern of migration already exists into an area of harm, a one way door condition in such a circumstance provides no enhanced benefit, or reduction in harm, to offset the harm created by an increase in hours.

[139] Standing back and looking at the totality of this application, the status quo (with enhanced food offering if Mr Heather decides to implement it) requires the premises to close

³⁸ *Otago University Students' Association*, ARLA: [2021] NZARLA 3.

at 3am – at the same time as the Terrace venues, and so roughly 100 patrons from Lulu’s exit the premises to coincide with the so-called migration to Victoria Street venues with 4am closing. The proposed hours extension (with a one-way door policy) would allow those same patrons to remain at Lu Lu’s for up to a further hour, and consume more alcohol, before joining the 4am departure from the neighbouring venues of Calendar Girls and Cruz.

[140] It seems both scenarios can have a negative effect on amenity and good order, but the extended-hours scenario gives those patrons the chance to consume more alcohol before departing. Therefore, the Committee considers that extending the hours of operation is unlikely to improve amenity and good order. Noting the role of limiting hours of operation in reducing alcohol-related harm, the Committee concludes that it is not desirable to increase the hours of operation for this licence.

Agency Reports

[141] These have been discussed above. The Police and Medical Officer of Health (MOH) remains opposed to this variation. The Inspector is fully supportive of the application. During the hearing it was proposed that a 3.00 am closed, one way door condition be considered. There was agreement from both applicant and the Inspector but not Police.

The object of the Act

[142] The Object of the Act is that the sale, supply and consumption of Alcohol must be undertaken safely and responsibly, and that any harm caused by the excess or inappropriate consumption of alcohol should be minimised.

[143] The Committee is of the opinion that the evidence provided shows the area of Victoria Street, where Lu Lu’s is situated, as an environment where alcohol related harm exists. We are being asked to consider an application for a variation in hours. The setting of hours goes to the heart of a licence and will clearly impact the surrounding locality. Police have provided evidence, notwithstanding issues raised of no comparative year to year break downs and changes in premise locations, which is of value showing that Victoria Street area is vulnerable in terms of harm. This harm may increase if this application is approved.

[144] We find that the evidence shows that there is a correlation between late trading hours and increases in alcohol-related harm in this locality. An increase in hours for Lu Lu’s is in our

view likely to exacerbate the issue. It is difficult to quantify the degree of harm, but we have taken a precautionary approach considering the evidence provided by the Police.

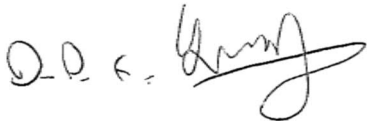
[145] We have considered whether we could allow the variation with the operation of a one way door policy, and whether that provides a reasonable outcome of providing for an increase in trading hours in a safe manner which minimises the risk of harm.

[146] Standing back and considering the evidence of the Police, we find that currently the most effective measure to minimise alcohol-related harm in this location is not to allow Lu Lu's to trade until 4am and retain the existing hours.

Reasons and Decision

[147] For the reasons above, having had regard to the requirements of section 120 of the Act we decline the application for variation by Vic 31 Limited, located at 31 Victoria Street, Christchurch.

DATED at CHRISTCHURCH this 13th day of August 2021

A handwritten signature in black ink, appearing to read 'D. Ivory', with a stylized flourish extending from the end.

David Ivory

Chairperson

Christchurch District Licensing Committee