

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

AND

IN THE MATTER OF an application by **CRUZ BAR LIMITED**
for a renewal of an On-Licence
pursuant to s127 of the Sale and Supply
of Alcohol Act 2012 in respect of
premises situated at 77 Victoria Street,
Christchurch, known as 'Cruz'

AND an application for variation of licensed
area pursuant to section 120 of the Sale
and Supply of Alcohol Act 2012.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Committee: Ms C E Robinson (Chair)
Mr D Ivory
Mr D Blackwell QSM

Hearing at Christchurch on 18-20 July and 17-19 & 27 October 2022

Appearances: Mr N Laing and Mr S Brennan, Counsel for the Applicant 18-20 July 2022
Mr B Williamson, Applicant in person 17-19 and 27 October 2022
Mr W Taffs and Ms K South, Counsel for the Police
Mr D Joker and Mr M Ferguson, Christchurch District Licensing
Inspectorate

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

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Introduction

- [1] This is an application for the renewal of an on-licence by Cruz Bar Limited (**‘the Applicant’**) for a two-storey premises located at 77 Victoria Street Christchurch pursuant to s127 of the Sale and Supply of Alcohol Act 2012 (**‘the Act’**). Accompanying the application for renewal is an application to vary the licence to include an additional strip of Council-owned land on the footpath along Victoria Street and to incorporate an additional area of the premises that was previously a garage, but which has been incorporated into the ground floor as toilets (**‘the variation’**). The premises primarily operates as a nightclub but is sometimes used as a venue for private functions. The Applicant has stated that the ground floor of the premises is to include an arcade-style games room.
- [2] The current licence expired on 27 August 2020, with the renewal application lodged on the same day. It is now over two years into the renewal period. The hearing of the renewal application was delayed by a number of preliminary procedural applications made by the Police and the Applicant, and the scheduling of the hearing was impacted by the Covid-19 pandemic. The hearing took place over seven days in two stages, 18-20 July and then 17-19 and 27 October 2022. Closing submissions were filed sequentially by the Police and the Applicant.¹
- [3] The length of the hearing was unprecedented for this District Licensing Committee (**‘the Committee’**) and was a consequence of the Police extending their grounds for opposition after the initial reporting period to include opposition on the grounds of suitability due to the Applicant’s director’s (**‘Mr Williamson’**) conduct towards the Police following a gang-related serious assault that occurred outside the premises in the early hours of 21 March 2021 (**‘the March 2021 assault’**). The Committee also viewed a significant volume of CCTV footage referenced at the hearing in relation to the early hours of 21 March 2021, before and after the assault.
- [4] The Committee undertook a site visit on 15 July 2022 and viewed the locality along Victoria Street and west along Peterborough Street. Mr Tony Tucker, a co-director of the Applicant, who did not give evidence at the hearing, showed the Committee around both floors of the premises and the additional ‘loft’ area above the first floor used as an

¹ Closing Submissions of the Police dated 10 November 2022 and Closing submissions of the applicant dated 22 November 2022. The Inspector did not file closing submissions.

office. Mr Tucker also showed the Committee the alterations which were underway at the time on the ground floor.²

- [5] The current licensed hours are Monday to Sunday 8.00am to 4.00am the following day. The premises is, however, generally only open Wednesday until Sunday between 9.00pm and 4.00am the following day. The premises is located in a block referred to in this hearing as '**lower Victoria Street**' between Kilmore Street to the south and Peterborough Street to the north. Lower Victoria Street is zoned 'Central City Business Zone' under the Christchurch District Plan.
- [6] Immediately across Victoria Street from the premises is a bar, known as 'The Bog', which is licensed until 3.00am, and further south: a 'strip club' adult entertainment venue known as 'Calendar Girls', licensed until 4.00am; a bar, known as 'Lulu's', licensed until 3.00am; and, the Christchurch Casino, licensed under the Gambling Act for 24 hours. It is currently operating on limited hours due to the impact of Covid-19. A kebab food outlet is located next to 'The Bog'. Between the premises and 'Lulu's' is a 'Thirsty Liquor' bottle store licensed until 11.00pm and a dairy selling takeaway food which is open until 6.00am. North of the premises across the Peterborough Street intersection is a commercial office block with a café/coffee shop below. In front of the coffee shop, at the intersection, is also a public greenspace.
- [7] Behind the premises, on Peterborough Street is a Wilson's-operated, open, gravelled carpark. Prior to the Christchurch Earthquakes of 2011 a high rise apartment building, which was known as 'The Establishment', occupied what is now the carpark. It is understood that a residential high rise is to be rebuilt on this carpark space beside the premises although it is not known when that will occur. A residential area is located further west on Peterborough Street and on the corner of Montreal Street are a number of apartments and town houses which were formerly part of 'Cranmer Courts'.
- [8] Public notification of the renewal application attracted opposition from six residents who lived west of the premises on Peterborough Street.³ One late objection was received,

² The Site Visit was attended by the original Committee of Ms Robinson, Mr Ivory and Mr Clapp. Mr Clapp was then unavailable to attend the hearing due to illness and he was replaced by Mr Blackwell at short notice. Mr Blackwell did not view the site but is familiar with the locality.

³ Objections were received from John Parry, Andrew Hill, Sharyn McNaught, LH and JL Donkers, Jay Scanlon and B Walker. Copies of the objections can be found in Bundle A, pages 59-71.

however, despite enquires by Council staff, the authors of the objection could not be located.⁴

Preliminary matters

Status of Objectors

[9] The Committee determined at a prehearing meeting held on 10 December 2021 that Mr Walker and Mrs McNaught had standing in relation to this renewal application and reserved its position in relation to the remaining 4 submitters who did not attend the prehearing.⁵ Mr Walker filed a statement of evidence ahead of an earlier scheduled hearing date in March 2022, elaborating on his concerns.⁶ No submitters sought to be heard at the substantive hearing, however, we have considered the issues raised in their written objections in our evaluation and when considering the Applicant's acoustic evidence in our evaluation of amenity and good order below.

Application for non-publication orders by NZ Police

[10] The Police supplementary report attached statements from Police Officers involved in the investigation of the March 2021 assault and a statement of facts for the criminal investigation. After filing the supplementary report, Counsel for Police requested non-publication orders in relation to the supplementary report, the Police witness statements and the statement of facts in order to avoid prejudice to the criminal investigation. The documents included the names and details of the alleged offenders, victims and witnesses to the assault.⁷

[11] The Committee granted the orders sought on an interim ex parte basis.⁸ The Applicant then objected to the orders being made without hearing from them. The objection was based on potential constraints on the Applicant in preparing his defence to the Police objection to the renewal of the on-licence. The Applicant also objected to the Police views on suitability and was concerned that the non-publication orders impacted on Mr Williamson's ability to clear his name.⁹

⁴ Late objection not given status, J and M Scott, Bundle A page 72

⁵ Committee Minute recording outcome of pre hearing conference and decision on status of objectors, 15 December 2021.

⁶ Statement of B Walker, Bundle B page 552-553.

⁷ Email from Raymond Donnelly to Christchurch City Council Secretariat and copied to parties. Bundle A page 114

⁸ Minute re Confidentiality Orders, 30 June 2021 and 6th July 202. Bundle A, page 147-148 and page 167-168.

⁹ Memorandum of Counsel for the applicant, 2 July 2021, Bundle A 150-155.

[12] Following a preliminary hearing, a number of redactions to the Police witness statements and summary of facts were discussed and agreed and the scope of the non-publication orders were amended.¹⁰

[13] The following orders remain extant:

A permanent non-publication order which prohibits publication in the widest sense of the contents of the material marked as redacted in the following documents:

a. The Supplementary Report dated 29 June 2021, including

b. The Statement of Constable Coral Anne Bowler dated 20 May 2021 (which in turn encloses a Summary of Facts and Statement of Constable Natalia Esther Boers dated 20 May 2021)

For the avoidance of doubt the redactions contained in the documents subject to this permanent non-publication order are annexed to this Minute.¹¹

No person is to disseminate or make available in any form the information which has been marked as redacted in the Supplementary Police Report or statements of Constable Bowler, the summary of facts or the statement of Constable Boers; except that it may be used by the DLC and its advisors and secretariat, the Tri Agencies and their counsel, and the applicants directors, Mr Williamson and Mr Tucker, and their counsel, for the purposes of these proceedings.

Application for production orders and subpoena of Police witnesses

[14] Mr Williamson was aggrieved by the Police allegations regarding his suitability and challenged aspects of the Police account of what occurred in the early hours of the morning on 21 March 2021 and the weeks that followed, particularly with regard to the alleged lack of cooperation and 'refusal' or 'withholding' of CCTV footage, or 'tampering' of the DVR recording device or footage.¹² The Applicant sought production orders and subpoena of Police witnesses before proceeding to a hearing on the application for renewal of the on-licence. Following further prehearing meetings to consider the application for production orders, the Committee declined to grant the orders requested and considered them to be premature, preferring to set the matter

¹⁰ Transcript of preliminary hearing 11 August 2021, Bundle A page 292-346, Minute of Committee dated 16 August 2021 with further directions to confer over terms of non-publication order. Minute Record of Private Sitting on 10 December 2021 and resulting non publication order. Bundle A page 533- 562.

¹¹ Ibid Bundle A at pages 538-562

¹² We note that the Police have not used the word 'tampering', however as discussed later, the Police descriptions of the analysis of the DVR device by Police in their Supplementary report at [12] and in the Statement of Constable Carol Anne Bowler at [20] have lead the applicants counsel to refer to the allegation as one of 'tampering' see for example Memorandum of Counsel for the applicant dated 2 July 2021 at [6.2] and in Memorandum of the applicant, 4 August 2021 at [34.2]. Police maintain in their closing submissions at [7] that no assertion was made regarding Mr Williamson's supposed erasure of footage from the hard drive.

down for hearing with directions as to the pre-exchange of evidence, with the Police providing its evidence first and directions regarding witness availability.¹³

- [15] The Applicant also requested disclosure of the affidavit filed by the Police in support of an application for a search warrant to seize recording devices from the premises to recover CCTV footage from 21 March 2021. The Police volunteered the affidavit with redactions. The Committee requested to view the unredacted affidavit at the commencement of the hearing and directed further disclosure of some additional redacted portions to the Applicant for the purposes of the hearing.¹⁴ The following non-publication order remains extant:

The disclosure of the affidavit [Detective Constable Bowler, dated 30 March 2021] to the committee is subject to a permanent non-publication order that no person who views the affidavit or receives a copy is to copy, replicate or communicate in any form whatsoever the content of the currently redacted portions of the affidavit, with the exception of section 3 of the affidavit and paragraph 5.20, to any persons for the purposes of cross-examination of witnesses at the hearing.

Attitude of the agencies

- [16] The Police opposed the application, originally citing concerns about the hours of operation and good order and amenity. They sought a reduction in hours to a 3.00am closing time.¹⁵ Subsequently, the Police filed further grounds of opposition, raising the suitability of the Applicant, following the March 2021 assault (**'supplementary report'**). The Police allege that the March 2021 assault involved gang members who had been present at the Cruz Bar prior to the incident, and that the altercation started on the premises. The Police allege that Mr Williamson's conduct, including a lack of candour with the Police investigation, rendered the Applicant unsuitable to hold a licence. Further, in their supplementary report, Police reported 16 disorderly incidents that had occurred on the premises that were reported to Police in the period from 30 March 2019 to 16 May 2021.¹⁶

- [17] District Alcohol Licensing Inspector, Mr Martin Ferguson provided his initial report to the Committee on 26 March 2021, and did not raise any grounds in opposition to the application.¹⁷ The Inspector argued against the reduction of hours sought by the Police

¹³ Minute and Directions of the Committee dated 2 May 2022, bundle A pages 619-625.

¹⁴ Transcript page 104 line 5-12

¹⁵ Police initial report dated 27 October 2020, Bundle A page 24

¹⁶ Police supplementary report dated 29 June 2021, Bundle A, page 119

¹⁷ Inspectors Report, 26 March 2021, Bundle A page 14.

on the basis that the premises was not a tavern.¹⁸ At the time of reporting the Inspector recorded that he had no information that would suggest the granting of the renewal of the license will increase alcohol harm more than a minor amount and no information to suggest the Applicant was unsuitable to hold a licence.

[18] The Inspector considered the current hours to be suitable for a nightclub and that the two appointed Duty Managers (Mr Williamson and Mr Tucker, both directors of the licensee company) to be adequate given the nature of the activity. The Inspector discussed the objections and noise complaints made to the Council at that time and concluded there were no issues that would justify declining the renewal of the licence. The Inspector recommended a public hearing be held due to the public objections and Police opposition. The Inspector provided a brief of evidence for the hearing which updated his report to include additional noise complaints received since his initial report and discussed the Applicant's acoustic advice which had been received, and which he considered to be an appropriate response.¹⁹

[19] At the request of the Committee, the Inspector also provided an update on monitoring undertaken since his initial report.²⁰ The Inspector advised the Committee that normal licensed premises monitoring had been disrupted due to Covid-19, that noise monitoring is usually in response to noise complaints received and that four routine visits had occurred since the beginning of 2021.

[20] The Medical Officer of Health advised the Committee that it did not intend to report on the renewal application.²¹

Submissions and evidence

The Applicant's submissions and evidence

[21] The Committee received a significant amount of written evidence, which was heard and tested in cross-examination and questions by the Committee across seven hearing days. The Notes of Evidence are recorded in 2234 pages of transcript. At the request of the parties, and due to the delay in the middle of the two hearing blocks the Committee made the transcript available to the parties in between. We have referenced

¹⁸ Ibid, para 11.

¹⁹ Evidence of Martin Ferguson, undated. Bundle B, Volume 1 page 529.

²⁰ Licensing Inspector further update Bundle B, Volume 2 page 706

²¹ Email Crown Public Health to Christchurch City Council Alcohol Licensing Team, 5 October 2020.

the transcript in this record of decision and parties were able to reference it in their closing submissions. The following is a brief overview of the evidence that we heard and the key observations and findings we made which are relevant to our inquiry.

Mr Bruce Williamson

- [22] Mr Williamson is a director and sole shareholder of the Applicant. He gave evidence that he is 67 years old. He has lived in Christchurch since 1976 and operated licensed nightclubs in the city since 1982 and under three different sets of legislation. Apart from one Summary Offences Act conviction for Common Assault in the mid-1980s he has led an unblemished career with no convictions or prosecutions of any other kind. Mr Williamson's extensive written evidence traversed his long career in the industry and the challenges and successes he has experienced over the last 40 years. His evidence covered his experiences after the Christchurch Earthquake sequence and the loss of his central city nightclub, 'The Ministry', and the subsequent establishment of Cruz Bar in Victoria Street. He gave evidence about his role in re-establishing night-time entertainment in the city outside the cordoned 'red zone'. Mr Williamson is a pioneer in the nightclub industry in New Zealand and an experienced disc jockey.
- [23] Mr Williamson gave evidence about how effective his management of the premises is through close observation of the CCTV footage on monitors at his DJ booth, in his office and on his cell phone.²² We heard from his staff members that Mr Williamson often talks or provides instructions to his staff by two-way radio and that he often observes the outdoor areas of the premises from the first-floor balcony.
- [24] Mr Williamson employs a number of staff to assist with his business, including Mr Mark Clegg as cashier, at least two bar staff and until recently he employed his own security on the door or 'crowd controller'. He supplemented the employment roster and roles with various temporary staff, either casual employees or friends within the hospitality sector who volunteered the occasional shift or to lend a hand later in the evening.
- [25] Mr Williamson provided details of his financial records since the licence was last renewed in September 2017. They show that the business is barely viable and reliant on the cover charge at the door, rather than alcohol sales. But for his own personal

²² Evidence in Chief Bruce Williamson, para [112]-[116], Bundle B volume 2 pages 27 and 28

time, other business interests that supplement income, and reliance on friends from time to time, the business would not be viable.²³

[26] Mr Williamson's evidence also addressed the events of the March 2021 assault and his interactions with the Police since that time. Mr Williamson produced extracts of the CCTV footage from 21 March 2021 from cameras inside the ground floor and outside over the entrance to the premises.²⁴ Mr Williamson provided a narration to the CCTV footage, highlighting the arrival and demeanour of patrons, including those involved in the assault. Mr Williamson also filed a supplementary brief in response to Police evidence.²⁵ On the night of 21 March 2021, Mr Williamson said he was not aware that any of the gang members involved had been in on the premises.

[27] Mr William Taffs', Counsel for the Police, cross-examination of Mr Williamson highlighted gaps in the degree of oversight Mr Williamson had on that night.²⁶ Mr Williamson says he was let down by Mr Clegg and his doorman, but not his bar staff.²⁷

[28] Mr Williamson denies that he refused to cooperate with Police on 21 March 2021 and he says that the Police did not insist on seeing the CCTV footage and did not follow up with him.²⁸ Mr Williamson also said when cross-examined that he had expected a call from Police

*My expectation was...once I managed to debrief people later on that night and found that it had been more close to that doorway that I would ever imagined it had be, I was fully expecting that...the next morning, to have a very early phone call, or an email or whatever, from the New Zealand police, saying, "we really need to see the footage from your club last night". And I would've been in there like a shot to give it to them.*²⁹

[29] We questioned Mr Williamson on whether or not he viewed the CCTV footage in the week following the March 2021 assault. Mr Williamson accepted that he might have.³⁰ He later changed his mind but then confirmed he probably had looked at the fight.³¹ Given all that occurred and Mr Williamson's evidence as to how closely he monitors the premises, and his accessibility to the footage, we think it likely he had reviewed the footage in the days following the 21 March assault.

²³ Financial records were disclosed in evidence but in confidence due to commercial sensitivity.

²⁴ Video Evidence – Williamson Exhibits 51 to 69

²⁵ Supplementary Evidence Bruce Williamson Bundle B Volume 2 page 777.

²⁶ Transcript page 555- 560

²⁷ Transcript page 569

²⁸ Transcript page 564, line 1-8 and 17 - 22

²⁹ Transcript 577 line 11-21

³⁰ Transcript page 744-745

³¹ Transcript page 751 line 23, and page 754 line 1-8.

Mr Mark Clegg

[30] Mr Clegg has been employed as a cashier, barman and ‘crowd controller’ at Cruz Bar since 2012, however, he has only had a formal employment contract from 2018. Mr Clegg said in evidence that he is in a personal relationship with Mr Williamson so he had helped out at the premises from time to time over that period whilst undertaking an apprenticeship as a commercial painter. Mr Clegg has undertaken a Licensing Controller Qualification (LCQ), and at the time of the hearing had applied for a manager’s certificate. Mr Clegg also now holds a Certificate of Approval (COA) to operate as a security guard. Mr Clegg has been appointed as an “acting duty manager” from time to time over the last 2 to 3 years.

[31] Mr Clegg gave evidence as to his knowledge of the systems and processes for admitting patrons to the premises and some of the challenges for managing the point of entry. He explained in his evidence-in-chief how the cover charge was applied and the placing of wrist bands on patrons to confirm they had paid and were suitable for entry. In his written evidence Mr Clegg said:³²

The task of putting armbands on new patrons as they arrive takes care of two essential functions at the same time. An armband does not get attached unless the attendee has not only paid the cover charge fee, but also before they get to me the doorman also has to complete his duties by checking ID, verifying age, looking for fake ID’s and checking for intoxication.

[32] Mr Clegg described in detail the systems and processes for controlling the door and the level of oversight that Mr Williamson has. He described that Mr Williamson sometimes steps in:³³

Bruce also steps in if he feels we should be cutting off a person for showing signs of intoxication as he is actively monitoring the premises as Duty manager, or in serious cases he will call security to have that person removed. More usually he will have someone who is showing signs of intoxication to be taken to one of the courtyard areas downstairs as a place of safety and supplied something non-alcoholic and at the same time where the doorman can keep an eye on them.

³² Clegg Evidence in Chief at [10].

³³ Ibid at [17]

[33] After describing how he deals with 'pushy patrons' or patrons trying to get in without paying Mr Clegg also said:

I have often been reminded by Bruce that the cashier role is one of the most important positions at the night club. In his experience having the wrong person performing that task is the reason why in the past many nightclubs failed to be profitable because how easy less than honest door staff would let staff in without paying the admission.

To use his own words, "letting your mates in for free is no different to any sort of theft as an employee. Coming through that door is a product just like any product in a retail store. You have zero discretion to let anybody in for free. The only person who can ever allow that is me (Bruce).

In any case we have a watertight control system on the door of the nightclub.

This is achieved using armbands which are not able to be bought at retail shops in New Zealand. Bruce Imports those directly from the USA.

The colour of the bands changes from night to night on a rotation, and as every person comes in and pays the tear-off section of the band is removed and has to be retained in a bag and provided to the Duty Manager. Usually that is Bruce.

This is so that the exact count of armbands used can be checked against the cash and eftpos totals from the admission charges.

[34] Mr Clegg also said *"I know for a fact that Bruce also watches the front gate like a hawk, especially when he used to have security guards provided by outside companies, who might not be as loyal or honest as his own "in house" guards employed directly in recent years."*³⁴

[35] Mr Clegg explained that Mr Williamson is nearly always on as duty manager, rarely takes a holiday or is off sick, and only very occasionally does Mr Williamson leave the premises to attend to personal matters. He said *"Once the night club is busy he [Mr Williamson] is always there and always watching what goes on."* He explained that they have a two-way radio at the door and between the bar servers on each level and *"if there are issues then that gets used and he [Mr Williamson] expects to be told."*³⁵

[36] Mr Clegg's evidence explained what occurred during the March 2021 assault from his perspective working as cashier on the door. He had observed the gang members entering the premises, he had taken the collective entry fee from the leader, who paid

³⁴ Clegg Evidence in Chief at 32

³⁵ Clegg Evidence in Chief at 34 - 41

in advance, placed arm bands on those entering, but not as it turns out on the gang leader or some others with the group. Mr Clegg returned the balance of the advanced cash payment to the gang leader. Mr Clegg referred to various passages of the CCTV footage, and he was also questioned by Counsel for the Police on various extracts. From the CCTV footage, Mr Clegg's narrative and the "joint statement" narrative it appears that the alleged offending gang members had been on the premises for about 20-30 minutes, with the victims being present for approximately one minute.

[37] Under cross-examination, Mr Clegg acknowledged that the gang leader, and at least two other members of the group, did not receive wristbands, nor any obvious intoxication assessments. He accepted that the gang members swarmed the gate for a period of time. He accepted that regardless of whether or not they were gang members it not only looked bad but was bad.³⁶

[38] Mr Clegg was on holiday with Mr Williamson at the time the Police executed the search warrant, and he gave evidence of what he heard in the telephone conversations Mr Williamson had with the Police at that time.

Mr Michael Chappell

[39] Mr Chappell is a computer and cell phone forensics consultant who was engaged by Mr Williamson to review the DVR device after it was returned to Mr Williamson following the initial examination by Mr Duane Norman from the Police Digital Forensics Unit ('DFU'). Mr Chappell's evidence was that there was no basis on which to suggest that Mr Williamson deleted data on the CCTV or DVR hard drive or that he otherwise tampered with it. He was critical of the DFU analysis and processes, and that Mr Norman made a number of mistakes.³⁷

[40] Under cross-examination, Police questioned Mr Chappell's objectivity and independence due to previous criminal convictions whilst employed by the Police. Notwithstanding that criticism, Mr Chappell was correct in his conclusion that there was no evidence before us to suggest that Mr Williamson deleted or otherwise tampered with the DVR.

³⁶ Transcript see page 650-672

³⁷ Chappell Evidence in Chief, Bundle B part 2 at page 628

[41] In light of the concessions made by Mr Norman in his cross-examination, it was clear to us that much of the evidence from Mr Chappell was at cross purposes with that of Mr Norman. Mr Norman had undertaken a very limited 'triage assessment' and because Mr Norman had not found anything on the DVR, he had not followed the same process that Mr Chappell considered to be best practice. Mr Norman had also poorly explained his theories which led both Mr Williamson and Mr Chappell to spend unnecessary effort to rebut Mr Norman's theories.

Mr Mark Walton

[42] Mr Walton is an acoustics engineer employed by Marshall Day Acoustics. Mr Walton's evidence was admitted by consent. His evidence outlined his measurement of noise generated from the premises and his advice regarding modifications to amplification of noise and other noise mitigation practices that the Applicant has now implemented. We discuss his recommendations further below when we evaluate amenity and good order.

Mr Allan Brodie

[43] Mr Brodie is an audio systems supplier, installer and production manager employed by Bounce NZ Limited. Mr Brodie's evidence was also admitted by consent. His evidence explained the technical measures introduced by the Applicant to achieve compliance with the relevant noise control planning regulations and to ensure that the staff and owners of the premises cannot change or alter the systems he installed.

Mr Brent Duffield

[44] Mr Duffield is a Registered Electrical Inspector. Mr Duffield installed the CCTV equipment on the premises and undertakes maintenance and configuration services when required by the Applicant. His evidence was given in response to the Police digital forensic expert, Mr Norman's theory that the DVR seized by Police was blank and wiped and an alternative DVR that wasn't seized held the footage from the March 2021 assault, which was then cloned back to the DVR once it was returned to Mr Williamson. Mr Duffield was of the opinion that the suggestion by Mr Norman was without factual basis and he explained why that was the case. It is not necessary to summarise the detail here because Police accepted that there was insufficient forensic

certainty to rely on the alleged interference with the DVR. Mr Norman accepted that his theories could not be sustained.

Mr Tom Hemphill

[45] Mr Hemphill is a past employee of Cruz and a frequent patron. He was called by Mr Williamson to give evidence about his knowledge of another past employee, Ms Lehman, who gave evidence for the Police about the operations of Cruz.

The Inspector

[46] The Inspector was not opposed to the renewal application. He has known Mr Williamson for 20 years and considers him to be an experienced operator. Although accepting that Cruz is not without its challenges, he expressed confidence in Mr Williamson's ability to manage the premises, notwithstanding the obvious deficit in the systems and processes observed in the CCTV footage on the night of the March 2021 assault. The Inspector, when reflecting on what needed to change, thought better communication was required.

[47] Under cross-examination, the Inspector conceded that he had not monitored Cruz by personally going inside to see how it operated after 12.30am at any time since 2019.³⁸ The Inspector had been involved in an 'environmental scan' of the general locality on 28 May 2021 between the hours of 7.00pm and 3.35am the following day, with the purpose of seeing what movements and 'drift' there is from Oxford Terrace down Victoria Street and where people go.³⁹

[48] The Inspector conceded that the number of violent incidents that have occurred inside or in the immediate proximity of Cruz since 2020 are of concern to him.⁴⁰ The Inspector noted that they had only come to his attention through Police evidence in this hearing (although we note that the Police referenced these in their supplementary report in June 2021). The Inspector also conceded in cross-examination that the large number of Police call outs in Victoria Street were a cause for concern and a justification for looking at the hours of operation in the renewal.⁴¹

³⁸ Transcript page 1208, lines 13-17

³⁹ Transcript page 1210 and Bundle B Inspector supplementary monitoring update, page 711-712.

⁴⁰ Transcript page 1183, line 21

⁴¹ Transcript page 1183, lines 11-16

[49] The Inspector had not made any specific inquiries of how the current duty managers, Mr Williamson and Mr Tucker, operated in practice. After hearing the evidence of the Applicant, he expressed some concerns, however, also commented that Mr Williamson's experience allayed any concerns he had.

Mr John Alps

[50] Mr Alps is an Environmental Noise Officer employed by the council. His statement was part of the Police case, but also appended to the Inspector's report. Mr Alps' evidence presented records of noise complaints received in relation to Cruz. His evidence was accepted by all parties and admitted by consent.

The Police

Sergeant David Robertson

[51] Sergeant Robertson is the Supervisor of the Christchurch Metro area Alcohol Harm Prevention Unit. He is the author of the original police report on the application and the supplementary report. Sergeant Robertson gave evidence as to why Police consider Mr Williamson to be unsuitable to hold a licence and why it continues to be the Police position that the premises has a continued negative impact on the good order and amenity of the area as a result of the premises trading beyond 3.00am.

[52] Sergeant Robertson's written brief traversed the history of licensed premises in the locality after the Christchurch Earthquakes, noting a higher demand for Police service and an increase in patronage of premises open beyond 3.00am due to migration from other premises and locations that closed earlier, particularly from Oxford Terrace.

[53] Sergeant Robertson produced a number of Calls For Service ('CFS') reports:

- (a) A report prepared by Police as part of an earlier Local Alcohol Policy hearing which provided CFS data for the period 2008 to 2016 in southern Victoria Street. That report broke down CFS data by time of day for that period of time.
- (b) Another report was produced for the period 2016 to 2018 for southern Victoria Street, broken down by time of day.

- (c) A third report records data for Oxford Terrace by time of day for the period June 2018 to June 2021, including comparative data for southern Victoria Street for the same period.
- (d) He also produced a report reflecting CFS data in proximity of Cruz over the last 10-year period.

[54] CFS data is collated in relation to Police-related incidents which are considered to be alcohol-related. The data is collated using Police offence incidents or codes where the incidents are of a nature which are considered 'likely' to have involved alcohol, including violence and public disorder incidents.

[55] The third report at paragraph 53(c) above reflects that calls for Police service at Oxford Terrace reduce after 3.00am and drop away almost entirely after 4.00am. The data reflects that from 11.00pm to 6.00am the following day, lower Victoria Street experiences a greater demand for Police Service than the Oxford Terrace area. This despite the fact there are less licensed premises in lower Victoria Street compared with Oxford Terrace.

[56] When cross-examined, Sergeant Robertson acknowledged that there were differences between the areas, however, he maintained the position that the data showed that calls for service data continued to be a risk area for Police in Victoria Street between 3.00am and 6.00am. He said this is primarily due to the migration of patrons from Oxford Terrace to Victoria Street, the presence of the dairy in lower Victoria Street providing a range of late night food options until 6.00am, and the Casino, Calendar Girls and Cruz which are all licensed beyond 3.00am.⁴²

[57] Sergeant Robertson explained that he engages with management of the Casino, Calendar Girls and, more recently, with The Bog to seek resolutions to the continuing problems in the area. When cross-examined by Mr Williamson, and in answer to questions from the Committee, Sergeant Robertson noted he had not personally engaged with Mr Williamson on these issues until receiving the current renewal application and his phone call to discuss the application.⁴³

⁴² Transcript pages 1514-1535

⁴³ Transcript pages 1541-1543

- [58] In relation to Calendar Girls, Sergeant Robertson's evidence was that Calendar Girls had made a number of improvements to their operations, including the installation of metal detector screening and a policy of not allowing known gang members or associates on the premises. As a result of that and the reduced operating hours of the Casino, Sergeant Robertson said there had been a notable reduction in serious incidents arising from those premises.
- [59] Sergeant Robertson explained his first interaction with Mr Williamson was a phone call he made to him on 20 October 2020. The purpose of the call was to make inquiries about the licensed premises to inform his initial report on the renewal application. There was a dispute between Sergeant Robertson's recollection and that of Mr Williamson as to what was said during that phone call. However, the Sergeant's evidence was that he had hoped to have a pragmatic conversation with Mr Williamson, but that the approximately two-minute conversation involved Mr Williamson yelling down the phone at him, swearing, questioning the Sergeant's knowledge of alcohol licensing and being defensive. The Sergeant said he could not get a word in, and therefore terminated the call. Mr Williamson sought to place weight on the fact that Sergeant Robertson did not take a file note of the conversation whereas he had taken a note, albeit very brief and incorrectly dated, to note some of the matters discussed.⁴⁴
- [60] Following his initial report opposing the application, Sergeant Robertson undertook a further review of data related to the locality and identified a significant number of incidents, connected with the premises which are listed in the supplementary report. These included assaults on staff and patrons. One incident involved an assault on Mr Williamson by a known gang member. The Sergeant produced a statement given by Mr Williamson at the time.⁴⁵ Sergeant Robertson also produced a record over the period 1 June 2020 to 27 May 2022 of 50 CARD (report and dispatch system) records for calls for Police from Cruz, not including the March 2021 assault.⁴⁶
- [61] Sergeant Robertson provided an overview of the CCTV footage for the March 2021 assault. That footage was also produced and referred to by Mr Williamson and Mr Clegg earlier in the hearing. Sergeant Robertson highlighted his impressions that the gang members were very familiar with the staff at Cruz, and that the gang leader gave

⁴⁴ Bundle B volume 2 page 891

⁴⁵ Bundle B volume 1 page 289

⁴⁶ Bundle B volume 1 page 295

Mr Clegg a large sum of money, which led him to conclude that the gang members were controlling the premises.

[62] Sergeant Robertson detailed his interaction with Mr Williamson at an earlier prehearing, which included further verbal abuse of the Sergeant, threats and verbal attacks on Counsel for the Police.⁴⁷

[63] Sergeant Robertson also raised concerns that the Applicant had failed to advise the Police of changes to their acting duty manager roster as required by the Act. We note that the issue has since been rectified, and we are aware it is a common administrative oversight by licensees, so we place no significant weight on that issue.

[64] Sergeant Robertson was extensively cross-examined by Mr Williamson regarding the initial October 2020 phone call. When asking questions Mr Williamson interrupted Sergeant Robertson while he answered and spoke over the Sergeant before he could answer some questions. This was a pattern throughout the hearing and left us with the impression that Mr Williamson's recollection of the phone call was unlikely to be accurate, because he frequently did not listen and attempted to fill in the answers himself.⁴⁸

Detective Constable Alexandria Preddy

[65] Detective Constable Preddy gave evidence about interviewing Mr Clegg in relation to the March 2021 assault. The interview occurred following Mr Clegg giving another statement to Police in relation to another assault that occurred on 23 May 2021 in the vicinity of Cruz, but not originating on the premises. Mr Clegg, who was on the door on the night of 23 May was a witness to that assault. On becoming aware that Mr Clegg was also a witness to the March 2021 assault he was then invited to give a statement about that earlier incident, which he agreed to do. Detective Constable Preddy said that, while initially agreeable to the second statement, Mr Clegg became concerned about giving it and then changed his mind having contacted Mr Williamson. Following the interview, Mr Williamson sent a number of abusive texts to her, suggesting she had breached his trust when he gave her Mr Clegg's contact details.

⁴⁷ Bundle B volume 1 page 368
⁴⁸ Transcript, pages 1545-1573

[66] When cross-examining Detective Constable Preddy, Mr Williamson took personal issue with the fact that he considered that the officer had breached his trust when he provided Mr Clegg's contact details and used the opportunity to question Mr Clegg about the earlier incident. Detective Constable Preddy responded by making it clear that Police were entitled to ask Mr Clegg if he wished to give a statement about the March 2021 incident, that she did not need Mr Williamson's permission to do so, and Mr Williamson's position did not come into it.

[67] Mr Williamson maintained Mr Clegg did not call him because there was no cell phone coverage. Detective Constable Preddy said Mr Clegg told her he had contacted Mr Williamson.

Detective Rebecca Podmore

[68] Detective Podmore's evidence related to her recollection of overhearing a phone call between Detective Constable Bowler and Mr Williamson informing him that Police had a search warrant for the premises. Her recollection was that Mr Williamson was argumentative and talked over Detective Constable Bowler. Detective Podmore had also interviewed one of the Applicant's staff members about the March 2021 assault and gave evidence that the witness spoke to Mr Williamson on the phone during the interview. The staff member advised the officers he would not sign the statement and that Mr Williamson told him not to.

Detective Constable Coral-Ann Bowler

[69] Detective Constable Bowler is the officer-in-charge of the criminal investigation into the March 2021 assault and she obtained and executed a search warrant to recover CCTV footage from the premises on 30 March 2021. Her evidence covered her phone conversations with Mr Williamson before executing the search warrant in which she sought his cooperation to access the premises. Detective Constable Bowler also provided copies of text exchanges with Mr Williamson following the execution of the search warrant.

[70] Detective Constable Bowler referred to the CCTV footage in her evidence. She provided a timeline for the arrival of the offenders in Peterborough Street and then their entry to the premises followed by the victims before the assault between 2.40am and 3.16am.

[71] Mr Williamson cross-examined Detective Constable Bowler on the parts of her evidence that related to the phone conversations before the execution of the search warrant and on the devices recovered in the search warrant. He also questioned the Detective Constable on her statements regarding: the finding by Mr Norman that the DVR was blank; the suggestion Mr Williamson had interfered with it; and, her allegation that since the execution of the search warrant Mr Williamson knowingly withheld the CCTV footage.

[72] Detective Constable Bowler maintained that the search warrant was obtained and executed in accordance with the law. Furthermore, her evidence reflected her understanding that the DVR had been found to be blank and that the theory that it had been wiped was not hers but had been relayed to her by Mr Norman. Detective Constable Bowler did maintain that it was still her belief that Mr Williamson knowingly withheld the footage once he was aware the Police had not recovered it from the DVR.

Constable Natalia Boers

[73] Constable Boers was one of the officers who visited Cruz on the night of 21 March 2021 after the assault. Her evidence explained her conversation with Mr Williamson in which she described him as being initially cooperative but becoming 'vehemently defensive' when she asked for CCTV footage.

[74] Mr Williamson cross-examined Constable Boers on the interaction and we had the opportunity to view CCTV footage.

Detective Constable Scott Vollweiler

[75] Detective Constable Vollweiler was one of the officers who accompanied Detective Constable Bowler to execute the search warrant at the premises on 30 March 2021. He documented the items seized and delivered them to a locked cupboard at the police station. Mr Williamson cross-examined Detective Constable Vollweiler on how he identified the items to be seized. Detective Constable Vollweiler explained he had the assistance of Mr Norman by 'FaceTime' video call on his phone.

Detective Robert Kennedy

[76] Detective Kennedy visited Mr Williamson's home on 30 March 2021 to gain his assistance with entering the premises to execute the search warrant. Mr Williamson was out of town at the time and Detective Kennedy spoke to Mr Tucker.

Senior Constable Philip Whyman

[77] Senior Constable Whyman attended an incident at Cruz Bar on 16 May 2021 after Police received a call of a fight on the premises at 1.21am. Senior Constable Whyman's evidence explained his attendance and Mr Williamson's attitude which he explained in his job sheet in this way:

WILLIAMSON did not appear overly concerned about the victim of the assault just that it might affect his licence. He was co-operative with me and answered my questions.

[78] In cross examination Mr Williamson explored this further:

MR WILLIAMSON: Yes, but you have commented that, "Although I was concerned about the fight" you have said, "I didn't seem to be too concerned about the victim" which I would agree with. The guy in a situation like that is probably always going to be the one who gets hauled away and charged, is it not, when he has assaulted a female no matter what had gone before?

MR WHYMAN: It would depend, I mean, it depends on the circumstances, if -- they were -- you refer to it being a domestic; they weren't all known to each other. So they were a group together, they all knew each other, but it wasn't a domestic or a family harm incident, they were workmates and colleagues and friends of workmates.

MR WILLIAMSON: The only thing I am really wanting to address is the fact that you have said, "I didn't seem concerned about the female victim, I was actually more concerned about the guy because I knew he was going to be arrested". If I put it to you that the woman had been an antagonist, and from what I've seen of the whole incident the woman was the problem and the guy just made the mistake of finally hitting her. Has that got legs; your impression of how the whole thing had developed?

MR WHYMAN: That is not the information that I understand from what happened on the night.

MR WILLIAMSON: Okay. That was really all I was trying to get to the bottom of just the, "wasn't particularly concerned about the woman because she had started the thing" and I'm just trying to drill down a wee bit on that.

MR WHYMAN: Yes, I understand that she may have been, like I say, referred to in the job sheet that she attempted to take a bottle of spirits after the fact, but the information I recall from that evening was that his behaviour

was [in]appropriate[sic] towards her and her response to that was that she wasn't interested in his ...

MR WILLIAMSON: Overtures?

MR WHYMAN: Yes, to which he replied with assaulting her, but that's the information –

[79] The Committee asked the Senior Constable whether the incident was “alcohol related harm” and whether those involved were intoxicated.

CHAIRPERSON: Just to clarify, so the incident that you attended on 16 May, do you categorise that as alcohol related harm?

MR WHYMAN: Yes, I would.

CHAIRPERSON: Were the parties involved intoxicated, in your opinion?

MR WHYMAN: In my opinion the offender and the victim were both intoxicated. Their associates, whether it was two or three of them, weren't as intoxicated but they were both -- appeared to be quite heavily intoxicated to me.

Mr Duane Norman

[80] Mr Norman is a digital forensic expert employed by the DFU. Mr Williamson questioned Mr Norman’s standing as an independent expert given that he is employed by the Police. We found Mr Norman met the requirements of an independent expert and adhered to the expert witness code of conduct. As we discuss below, Mr Norman examined the DVR seized from the premises on 30 March 2021 and was unable to find any CCTV footage on the device. He advanced certain theories as to why that may have occurred, which we discuss further below. Mr Norman’s theories were not sustained under cross-examination, and he conceded that it was possible he made errors when first attempting to find the footage on the DVR.

Mr Riki Jarden

[81] Mr Jarden is a Patrol Supervisor employed by Armourguard Security Christchurch who attended the premises on in response to noise complaints. Mr Jarden described Cruz as one of three premises in Christchurch that was “problematic”. In his evidence, he explained that on 26 June 2021 one of his noise control officers attended a complaint and served an Excessive Noise Direction (**‘END’**). The officer had advised him that Cruz staff believed they had a noise permit, so Mr Jarden attended the premises himself. Mr Jarden considered the noise to still be excessive and spoke to a staff

member on the door. He requested to speak to the bar manager and was told that the bar manager did not want to speak to him. Mr Williamson disputed whether the conversation took place or that the doorman contacted him via two-way radio. Based on the explanation given by Mr Jarden we are of the view it is likely that the doorman did use a two-way radio to speak with Mr Williamson or another staff member who was inside the premises. Whether or not it was Mr Williamson, another staff member, or, the doorman lied and said that the manager did not wish to speak to Mr Jarden, is beside the point. We accept that Mr Jarden would have asked to speak to the manager, and he should not have been refused by the doorman, or anyone else. In our view, the incident shows that either way, staff and the duty manager on the night, Mr Williamson, failed to respond appropriately to noise complaints and directions of noise control officers.

[82] Another noise control officer Mr George Dumitru had provided a written statement to the Police about his interactions with Mr Williamson, however, he could not be located to give evidence and was thought to be overseas.

Ms Laura Lehman

[83] Ms Lehman is a former employee of Cruz, and has worked on security and as an acting duty manager on occasion. More recently Ms Lehman worked “rock star” or casual shifts on the door as security. Mr Williamson had described Ms Lehman in his evidence as being on his list of acting duty managers, and that she had worked in that capacity as recently as March or April 2022. Mr Williamson spoke highly of Ms Lehman in his evidence-in-chief.⁴⁹ Police had followed up with Ms Lehman to determine whether she was still an acting duty manager and she had advised Police that she had not been in that role for some time, rather she had worked the occasional casual security role.

[84] Ms Lehman spoke of her experience in the industry and her experience of Mr Williamson as a manager. In her evidence, she described Mr Williamson as a micromanager.⁵⁰

[85] Mr Williamson took issue with Ms Lehman’s evidence and sought to discredit her evidence on the basis of some personal matters.

⁴⁹ Transcript page 345 line 35 to page 346 line 3.

⁵⁰ Transcript page 1393 line 15 and page 1449

[86] From the Committee's perspective, putting aside the obvious personal acrimony between Mr Williamson and Ms Lehman, Ms Lehman's evidence was consistent to Mr Clegg's account of how closely Mr Williamson oversees the business, including the use of two-way radio. We found her account of life at the front line of late-night security to be informative and helpful in explaining the range of the practices and the challenges that premises face across the city, particularly in relation to the violence and verbal abuse that security personnel can be subject to and in engaging with gang members. Her evidence demonstrated that the early hours of the morning are high risk for the hospitality sector and good management practice is critical to minimising alcohol related harm.

Public Objectors

[87] None of the six public objectors sought to be heard at the hearing. We appreciate that the scheduling of this hearing was delayed multiple times and it would have been difficult for those objectors to plan for and attend the hearing. We have reviewed their written objections and the statement provided by Mr Walker and taken their concerns into account. In light of the lack of complaints since Mr Williamson implemented the steps recommended to him by Marshall Day Acoustics, it appears that for the time being the objectors' concerns have been resolved. We have considered the potential impact on residents of extending the outside area, albeit that area is directed towards Victoria Street.

Closing submissions

[88] The Police filed a lengthy closing submission where they continued to maintain their opposition to the suitability of the applicant. Police closing submission seek to ring fence the issue of the 'blank' DVR as a red herring. We have considered that below. The difficulty with that approach is that the statements made by officers in relation to the DVR, set the tone for the latter engagement. Whilst we do not condone Mr Williamson's later interactions with Police. We do understand that he was angry and this issue fuelled that anger.

[89] Police summarise their case against Mr Williamson's suitability and maintain that the Committee should decline the renewal of the licence. Without detracting from that position the Police go on to offer a set of conditions which they submit as a minimum should be imposed on the renewal.

- (a) Licenced Wednesday, Thursday, Friday and Saturday from 4.00pm to 2.00am;
- (b) Minimum of three accredited security personnel every Friday and Saturday night;
- (c) Minimum of two properly appointed duty managers;
- (d) Access to be provided to Police without delay;
- (e) No shots to be sold after 1.00am;
- (f) Access to all CCTV footage while Cruz is operating to be provided whenever requested by Police and without delay.

[90] We have reached our own view on appropriate conditions and addressed these below.

[91] Mr Williamson's closing submissions responded to those of the Police and directed the Committee to aspects of his case which he submits supports a different conclusion.⁵¹ In some cases he introduced new evidence which we have disregarded.⁵²

[92] One issue that does require further comment from the Committee is Mr Williamson's submission that the Committee make findings of criminality in respect of Police witnesses evidence about the allegedly missing CCTV footage on the DVR when seized, and the insinuation by Police witnesses that Mr Williamson had tampered with the DVR. Mr Williamson relies on the grounds that a number of statements made by, or repeated by Police witnesses were not sustained under cross examination.

[93] The Committee is of the view that it is not within its jurisdiction to reach such conclusions, and in any event the evidence before us is insufficient to sustain his submission. For our purposes, we accept the evidence was offered by the Police in good faith, however some matters were not sustained under cross examination. That is the purpose of a hearing, and the role of cross examination, and we have then factored that in our evaluation of the evidence. If Mr Williamson wishes to raise a complaint about Police conduct in this case (and we are not suggesting that there are grounds for doing so) then he has recourse through the Independent Police Conduct Authority.

⁵¹ Applicants closing submissions dated 22 November 2022.
⁵² Ibid at 125-127

Evaluation and findings

[94] Section 131(1) of the Act requires that:

In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

(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.

(2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

[95] The relevant matters in section 105 are:

Criteria for issue of licences.

(1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:

(a) the object of this Act:

(b) the suitability of the applicant:

(c) any relevant local alcohol policy:

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

(e) the design and layout of any proposed premises:

(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:

(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:

...

(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.

[96] The role of s105 and how it is to be approached in relation to applications has received plenty of judicial attention.⁵³ The approach, when considering the licence application, is succinctly summarised as follows:⁵⁴

“Is the decision-maker satisfied, having regard to all the relevant factors set out in s 105(1)(b)–(k) that the grant of the licence is consistent with the object of the Act?”

[97] 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.⁵⁵ In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123, Clark J summarised the applicable principles in respect of the renewal of a licence:

There is no presumption that an application will be granted.⁵⁶

- (a) A DLC, and the Authority, after having regard to the criteria in the Act, is then to step back and consider whether there is any evidence indicating that granting the application will be contrary to the object in s4 of the Act. The test is as articulated in *Re Venus NZ Limited* above.
- (b) The application of rules involving onus of proof may be inappropriate⁵⁷, and similarly, there is no onus on the reporting agencies to prove the application should not be granted;
- (c) The criteria for the issue of licences, and for renewal, are not to be interpreted in any narrow or exhaustive sense. The Authority (and DLC) may take into account anything, which from the terms of the statute as a whole, appears to be regarded by the legislature as relevant to conditions and the terms on which they should be granted;⁵⁸

⁵³ *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.

⁵⁴ *Re Venus NZ Limited* at [20] and *Auckland Medical Officer of Health* at [60] see Westlaw NZ, SA 105.02 *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC).

⁵⁶ *Christchurch Medical Officer of Health v G and J Vaudry Limited* [2016] 2 NZLR 382 at [54].

⁵⁷ And see *Lower Hutt Liquormart Limited v Shady Lady Lighting Limited* [2018] NZHC 3100 at [39].

⁵⁸ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, at [46].

- (d) The Authority is not required to be sure that particular conditions will reduce alcohol abuse. We are entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective then we are entitled to test whether that possibility is a reality.⁵⁹

[98] The evaluative function is an assessment of risk.⁶⁰

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

[99] In terms of the risk profile the Court held:⁶¹

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.

[100] Further:⁶²

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”.

[101] 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—

(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).

⁵⁹ *My Noodle Ltd v Queenstown Lakes DC*. [2009] NZCA 564.

⁶⁰ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, [43] and [47].

⁶¹ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, at [67].

⁶² *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, at [68].

[102] We return to the object of the Act once we have had regard to the other relevant matters in ss 131(1) and 105.

Suitability of the Applicant

[103] Suitability carries its ordinary meaning as being “well fitted for purpose, appropriate”.⁶³ It is a broad concept and includes the character and reputation of the applicant and matters such as the past and present operations of the premises are relevant considerations.⁶⁴ A positive finding on suitability is required. An applicant must demonstrate his or her suitability. Suitability is not established in a vacuum, so context is relevant.⁶⁵

[104] In applying the *Page* principle in *Re TK Sodhi Holdings Ltd LLA PH12/09*, 14 January 2009, the former Authority said at [46]:

“If we are to achieve the object of the Act and help encourage a social change where tolerance of liquor abuse is no longer acceptable, then we must have faith in the ability of operators of licensed premises to uphold the provisions of the Act.”

[105] In the case of a corporation we are required to consider the suitability of the directors involved.

[106] As a licensee he has responsibilities under s214(4) of the Act:

At all times when alcohol is being sold or supplied on licensed premises the licensee must take all reasonable steps to enable the manager to comply with this section.

The Police amended grounds of opposition

[107] Police oppose the application on the grounds that Mr Williamson is unsuitable. The Police supplementary report alleges that Mr Williamson failed to assist the Police with the investigation into the assault, which commenced inside Cruz in the early hours of 21 March 2021. The incident involved gang members, some of whom were known to the Police and to staff at Cruz, including Mr Williamson.⁶⁶ The CCTV footage from Cruz

⁶³ *Re Sheard* [1996] 1 NZLR 751, [1996] NZAR 61 (HC) at 755.

⁶⁴ *Re Nishchay's Enterprises Ltd* [2013] NZARLA 837.

⁶⁵ *Page v Police* HC Christchurch AP84/98, 24 July 1998, Pankhurst J.

⁶⁶ In addition to the non-publication orders, we have omitted the names of the gangs and members and victims involved in the alleged assault in this report because these matters are before the courts in separate criminal proceedings and none of those directly involved gave evidence before us. We are mindful that decision will be publicly available. It is sufficient for our purposes to identify those involved in general terms only.

showed the offenders and the victims of the March 2021 assault were present on the premises about 20 to 30 minutes before the alleged offending occurred and that the first punches were thrown inside the ground floor bar before continuing onto the street, where the worst of the assault occurred.

[108] At the time of the incident, Mr Williamson was the Duty Manager on the premises. In their supplementary report Police submit:⁶⁷

“...that Mr Williamson has (at a minimum) failed to assist police in relation to an investigation into a serious assault which commenced on his licensed premises. More plainly, he appears to have hindered a police investigation into a serious gang related violence offending (which has resulted in permanent brain injury to one of its victims) that began on his licensed premises...”

[109] In summary Police ask the Committee to draw inference to support their submission from the following allegations contained in the evidence of Police witnesses:

- (a) Mr Williamson’s staff obstructed Police officers’ entry to the premises following the March 2021 assault by holding a barrier until entry was approved by Mr Williamson.
- (b) When interviewed by the Police following the March 2021 assault, Mr Williamson ‘refused’ to provide CCTV footage stating that there would be none of interest to the Police.
- (c) Mr Williamson refused to cooperate when the Police sought to exercise a search warrant to seize CCTV footage from the premises resulting in the need for Police to force entry.
- (d) When the PDFU assessed the seized DVR it was found to be blank, and the conclusion drawn by Police was that the data had been deleted or the hard drive was removed or replaced. Counsel for the Police filed a Memorandum dated 18 July 2022 advising the Committee that due to there being insufficient forensic certainty that they no longer rely on any allegation or insinuation that the drive was deliberately wiped.⁶⁸

⁶⁷ Supplementary Report at [21]
⁶⁸ Police Memorandum regarding CCTV footage, 18 July 2022.

- (e) That Mr Williamson, on becoming aware that the police had not found the CCTV footage when they examined the hard drive, then knowingly withheld or delayed providing that footage to the Police for three months.
- (f) Mr Williamson instructed two staff members who witnessed the March 2021 assault not to sign witness statements because he had arranged a joint statement of events through his lawyer.
- (g) Mr Williamson was abusive and derogatory to Police prior to and following the execution of the search warrant following interviews with his staff.
- (h) Once the CCTV footage was available to view, Police concluded that the evidence showed that the gang members allegedly involved in the March 2021 assault showed a concerning familiarity with the Applicant's staff and premises and appeared to control entry to the premises.

[110] Police invited the Committee to draw an adverse inference from Mr Williamson's so called 'refusal' to provide CCTV footage or assist in the investigation into serious violent offending which they say was clearly connected to the Applicant's premises.⁶⁹

[111] The allegations were strongly refuted by Mr Williamson, who clearly viewed the Police submissions against his character as defamatory, offensive and misconceived.

Did Mr Williamson's staff obstruct entry by Police when they attended the premises following the incident?

[112] Six police officers, headed by Constable Boers, visited the premises following the March 2021 assault. Constable Boers and her team had been undertaking routine compliance checks in the area and were asked to follow up at Cruz following reports of the March 2021 assault. Police say that the security staff member held a barrier up to prevent police entry until given the go ahead by Mr Williamson by two-way radio. We viewed the CCTV footage and observed that there was a delay of 18 seconds between the six officers arriving in front of the premises and entry onto the premises. The doorman appeared to be focused on clearing patrons from the entry way. We do not consider that there was any unreasonable delay, given the activity at the entrance and the number of police officers present, in police gaining entry or deliberate obstruction.

⁶⁹ Citing General Distributers Ltd [2015] NZARLA PH 370

Did Mr Williamson refuse to provide CCTV footage on 21 March 2021?

[113] Mr Williamson was asked by Constable Boers about any CCTV footage; Constable Boers evidence was:⁷⁰

[32] I asked him about the fight outside stating that Police had been told the males came from the Cruz Bar. He immediately became vehemently defensive stating that they had never been in his bar and that he didn't let gang members in his bar...

[35] I asked him about the footage inside the bar and he stated that he didn't have anything that would show any of the fight or anything that the Police would want to see. He mentioned Police cameras outside would show everything. He did not mention about any other footage.

[114] Mr Williamson's evidence is that he did not know the incident started on his premises so had no reason to believe his own CCTV footage would be of assistance. Further Mr Williamson says he told Constable Boers that if the offenders or victims had been on the premises, then they would have on identification wrist bands, which would have been issued upon entry to the premises as was his business practice.⁷¹

[115] Whether or not wrist bands are always enforced on the premises is a matter which we address in our evaluation of the Applicant's systems and processes. However, at this point the issue was whether or not Mr Williamson was, as the Police allege, being obstructive in denying that the offenders or victims were on the premises or whether Mr Williamson had no knowledge that they had been present and was simply asking the Police to check for wrist bands. Mr Williamson maintained the latter.

[116] Constable Boers says Mr Williamson was "*vehemently defensive*" when questioned following the incident. She said that he said that they did not allow gang members in the bar. Mr Williamson says he said "*we are not a gang bar*". When later cross-examined by Mr Williamson, Constable Boers agreed that the words 'adamant' and 'expressive' could be used, although she considered vehement to be a more accurate description.⁷² Mr Williamson argued that 'vehement' implied an aggressive response. 'Vehement' as we understand it from the Shorter Oxford Dictionary means impetuous or violent.

⁷⁰ Statement of Constable Boers, Bundle B, page 414 – 417 note parts of statement subject to non publication orders at [13] above.

⁷¹ Transcript page 175, line 6-15

⁷² Transcript page 1972, lines 18 – page 1975

[117] We viewed CCTV footage of Mr Williamson's exchange with Constable Boers. There is no audio accompanying the video. The footage shows Mr Williamson's mannerisms and body language that was consistent with that we observed of him during the hearing. Mr Williamson can become expressive when he is challenged, upset or excited. We also note that in cross-examination Mr Williamson himself said he did not need to resort to swearing and described himself as 'loquacious' by which he said meant *'I can say a thing without swearing at people that they might find just as upsetting, if that's what I choose it to be.'*⁷³ During the hearing we observed that Mr Williamson had a tendency to talk over others, often did not listen to questions fully and anticipated the answers, sometimes incorrectly.

[118] Having viewed the footage, and upon hearing Constable Boers account of the exchange, we have no doubt Mr Williamson was being insistent as to the relevance of the presence of wrist bands and questioning of the need for his CCTV footage. The CCTV footage of the exchange between Constable Boers and Mr Williamson does not assist in answering the question of whether or not Mr Williamson was being deliberately obstructive, or 'refused' to provide CCTV footage. We note that Constable Boers took very few notes during the exchange and did not file any follow up report, after the interview. Constable Boers' statement was made two months after the incident. Even so Constable Boers' evidence about what Mr Williamson told her is consistent with Mr Williamson's explanation of his response to the request about the existence of CCTV footage, that there would be none of interest because he did not know the fight started on his premises.

[119] The difference in the account is how Mr Williamson's demeanour was interpreted by Constable Boers and Mr Williamson's recollection of his attitude. We note that the reference to a 'refusal' is an interpolation of Constable Boers' statement made by Sergeant Robertson in the supplementary report, repeated in his evidence and in the evidence of Detective Constable Bowler.⁷⁴ All we have been able to conclude on the evidence is that it does not show Mr Williamson outright refused to provide the CCTV footage, but we accept that Constable Boers may have had that impression that Mr Williamson was being defensive, particularly given Mr Williamson's tendency to become animated.

⁷³ Transcript page 491 line 9 - 15

⁷⁴ Supplementary Report at [8], Bundle B, volume 1 page 80, Statement of Detective Constable Bowler, 20 May 2021 at 8, bundle B, Volume 1 page 96

[120] The exchange between Constable Boers and Mr Williamson does, however, raise a question as to whether or not Mr Williamson was actually aware (or should have been aware or been made aware by his staff) that those involved in the incident had been on the premises immediately before the assault. When cross-examined by Mr Taffs, while reviewing CCTV footage, Mr Williamson was adamant that he would not have identified the group as being gang members, and he could only identify one person was a member of a gang from what he knew at the time. Mr Williamson took exception to 'profiling people' based on whether they wore a cap, street clothing or the colour of their skin.⁷⁵ He said that only with hindsight when the group gathered on the ground floor just before the fight broke out did it raise concerns. Mr Williamson denied that he was aware that the gang leader who has been charged with the assault was in the bar *"because [he] hadn't been upstairs, I hadn't spotted him and no one else told me he was there. They had no reason to."*⁷⁶

[121] Even if Mr Williamson was not aware that the gang members had been on the premises at the time of the interview by Constable Boers or that the incident had started on the ground floor, the fact he had not seen the gang leader and associates at the entrance, or on the ground floor over a 30 minute period, is surprising given his and Mr Clegg's evidence of how closely he monitors the entire operation via CCTV fed to his phone, DJ Booth and office. We are further concerned that he had not been made aware by his staff prior to the arrival of Police, or in the hours that followed that they had witnessed the accused and victims on the premises and that the fight started inside the premises. Mr Williamson's evidence, and that of Mr Clegg, raises significant questions as to the effectiveness of Mr Williamson's oversight of the operation of the premises and his ability to perform his role as the sole duty manager (most of the time), which we discuss below.

[122] We do not find the Police evidence shows that Mr Williamson refused outright to provide footage but we are of the view that Mr Williamson ought to have been more proactive in his capacity as licensee and to follow up with the Police, once he became aware that the fight had started on the premises.

Was Mr Williamson obstructive when the Police exercised a search warrant?

⁷⁵ Transcript page 541-545 and at page 554

⁷⁶ Transcript page 555 line 1-6

[123] Ten days after the March 2021 assault, Police obtained a search warrant and forced entry into the premises to retrieve CCTV and other electronic recording devices (and some unrelated electrical equipment). Prior to the execution of the search warrant, Police contacted Mr Williamson to seek his cooperation to enter the premises.⁷⁷ Police allege that Mr Williamson refused to cooperate. Mr Williamson was on holiday in the North Island at the time, and the key was held by Mr Tucker, the other director. Mr Williamson says he was concerned about Mr Tucker engaging with Police as he has a head injury. Mr Tucker drove to the premises and watched the Police force entry from across the street on instruction from Mr Williamson but did not offer to assist with a key or to turn off alarms.⁷⁸ Police entered the premises through the front door and damaged a fire door which led to the upstairs bar area and office. During and after the search, Mr Williamson sent a series of text messages to Police officers which were abusive and showed disdain for the Police.⁷⁹ Mr Williamson made a complaint to the Independent Police Conduct Authority about the execution of the search warrant. His complaint was not upheld, save for findings the Police failed to fully explain the purpose of the warrant, its scope and the reason why the Police chose to enter as they did.⁸⁰

[124] Mr Williamson alleged that Police had provided information to media about the execution of the search warrant and alleged refusal.⁸¹ Mr Williamson was angry at the Police for both the physical and reputational damage caused.

[125] In our view, Mr Williamson could have facilitated the entry by Police and avoided the damage of forced entry. The Police Conduct Authority found Police acted lawfully and appropriately in executing the search warrant.

Was the DVR blank and was there a reasonable belief by Police that Mr Williamson deliberately withheld the CCTV footage?

[126] The DVR recording device which was seized by Police was analysed by Mr Norman from the DFU who found it was blank but he could not comment on how or when the data had been erased from it. Mr Norman noted that four screws were missing on the back, indicating that the hard drive may have been accessed, removed or swapped

⁷⁷ Statement of Detective Constable Bowler Bundle B, volume 1 page 96 and Note Book entry, Exhibit Bowler 4

⁷⁸ Transcript page 333

⁷⁹ brief of Evidence Detective Constable Bowler, Attachment AO, Bundle B, Volume 1 page 434-437

⁸⁰ Bundle B, volume 1 page 128

⁸¹ Transcript page 332, line 16

out.⁸² Mr Williamson was adamant the DVR was not blank, and once the DVR was returned to him and he was able to, he plugged in the DVR and located the footage.⁸³

[127] Mr Williamson sought the advice of Mr Chappell, an independent forensic consultant. Mr Williamson provided the DVR to Mr Chappell who applied DVR examiner software and immediately located the CCTV footage on the DVR. Mr Chappell provided a report for Mr Williamson and he was critical of the process followed by Mr Norman and the lack of documentation to support his conclusions that the DVR was blank or his opinion that the hard drive may have been accessed, removed, or swapped out. Mr Chappell also alleged that there had been some accessing of the footage between the drive being seized by Police and delivered to the DFU, including a backup being taken, indicating that footage was extracted from the system. This is denied by Mr Norman.⁸⁴

[128] In response to Mr Chappell's criticism Mr Norman offered two theories of why the DVR was blank.⁸⁵ This included that the Police had seized the wrong DVR and there was an identical DVR that recorded the CCTV footage, or that the data had been deleted. The Committee directed that the DVR be returned to the expert witnesses to review and for witness conferencing and further briefs too be filed outlining areas of agreement and disagreement.⁸⁶ The DVR was returned to Mr Norman and Mr Chappell did not consider it necessary to review the DVR a second time but discussed aspects of the DVR and footage with Mr Norman, including identifying that there had been battery issues with the DVR. Mr Norman located the footage on his second review.

[129] At the commencement of the hearing Counsel for the Police filed a memorandum advising that the question of whether or not the DVR that was examined by DFU was 'blank' could not be resolved in these proceedings with sufficient forensic certainty. Therefore, the Police withdrew any reliance it placed on the allegations or insinuations that the DVR had been interfered with as a basis for alleging Mr Williamson was unsuitable. However, they remained otherwise opposed to the renewal on the grounds of suitability.

⁸² Brief of Evidence Duane Norman (updated), Bundle B, volume 1 page 466

⁸³ Police returned the DVR to Mr Williamson on 10 May 2021, minus cables that were necessary to be able to operate the DVR. Mr Williamson had to obtain cables by purchasing second hand on line. At the time of the hearing the cables had still not been returned to Mr Williamson.

⁸⁴ Transcript

⁸⁵ Evidence of Duane Norman Bundle B, Volume 1, page 481

⁸⁶ Committee Minute 27 June 2022

[130] During cross-examination of Mr Norman by Mr Williamson, Counsel for the Police requested to exclude Mr Norman while they made submissions reminding the Committee of the memorandum, in a bid to shorten Mr Williamson's cross-examination of the witness. Mr Williamson made an impassioned plea to the Committee:

The only thing I say is I am mindful that the clock is ticking, but I hope the Committee is also mindful of the fact that this is what this matter is all about, my reputation and what I have been accused of for the last year and a half. So any attempt to short-cut the amount of evidence I need to get on the table to show what I believe is a lack of performance by the DFU is not going to sit well with me, because I have waited a long time for this.⁸⁷

[131] The Committee allowed the cross-examination to continue. Mr Norman confirmed the very preliminary nature of his 'triage' assessment. Mr Norman explained the context of his role and the limitations on his analysis. Essentially, once he was unable to locate the CCTV footage he set the assignment aside and continued to triage other devices.⁸⁸ Cross-examination showed that Mr Norman did not follow the procedures that Mr Williamson or his expert, Mr Chappell, had assumed he would have, e.g. the DVR hard drive was removed to apply the analytic software, it was not played in situ.⁸⁹ Mr Norman also did not create a record of his investigation. He did not take any photographs during his analysis to record the state of the DVR before he extracted the hard drive nor of his process.⁹⁰ Further, Mr Norman explained that there were resourcing constraints on the extent of his work at the time, including the inability for him to clone the hard drive and keep a copy for further assessment.⁹¹

[132] Mr Norman conceded that it was possible he may have made some errors when assessing the hard drive in the first place.⁹² Mr Norman conceded his theories could not be sustained and had been poorly explained.⁹³ Mr Williamson's cross-examination succeeded in showing Mr Norman's theories were ill-conceived.

[133] Despite the Police submission that they no longer rely on the alleged interference with the DVR recording, Mr Williamson remained firm that the Police allegations (or insinuations as referred to by Counsel for the Police) had tainted everything and he needed to clear his name.⁹⁴

⁸⁷ Transcript page 1261, line 8-15

⁸⁸ Transcript page 2075-2076

⁸⁹ Transcript page 2131-2133

⁹⁰ Transcript page 2085, line 20

⁹¹ Transcript 2077 and 2119- 2120

⁹² Transcript, page 2159, line 22-2160, line 2 and submissions of Counsel Transcript page 2162 -2163

⁹³ Transcript 2196 – 2201 – and then 2203, line 20- page 2206 line 17 and the page 2207 - 2210

⁹⁴ Transcript page 2163-2164

[134] It was abundantly clear to us that Mr Williamson was incensed by the Police needing to apply for a search warrant, which he took as a personal attack on his integrity, and he was angry the way in which the Police executed the search warrant, causing damage to his property and taking equipment which was related to his entertainment set up. He viewed the Police actions as being vindictive and, in his view, Police used unnecessary force to enter the premises thereby damaging his property.

[135] In their closing submissions, the Police seek to ring fence the issue of the DVR and seek to characterise it as a 'red herring'.⁹⁵ Counsel defends the Police position by submitting that the Police, and Counsel had not alleged tampering by Mr Williamson and had simply stated what Mr Norman had found. However, as Police said in their Memorandum of 18 July, they were no longer relying on allegations or insinuations that the DVR had been interfered with as part of their case against Mr Williamson on grounds of suitability. In our view, the emphasis that the Police placed on the evidence of Mr Norman in the Police supplementary report, and the summary of Mr Norman's views by Detective Constable Bowler did insinuate that Mr Williamson may have interfered with the DVR. We have no doubt that was how Mr Williamson understood the Police case and this contributed to Mr Williamson's defensive and aggressive engagement with Police before and during the hearing.

[136] It is our view that if Police had grounds to suspect the kind of criminal activity inferred in the narrative contained in the supplementary report and in Detective Constable Bowler's evidence then Police ought to have sought recourse through the courts. We were surprised to see such serious allegations being pursued and tested in the context of a licensing renewal application under the Sale and Supply of Alcohol Act 2012. Usually, we are presented with criminal or enforcement records after a successful prosecution, or past enforcement action under this Act, which we would then weigh up in our consideration of suitability. We don't see the District Licensing Committee as the appropriate forum to determine allegations or inferences of criminal activity.

[137] Police also allege that Mr Williamson knowingly withheld the CCTV footage. Detective Constable Bowler noted on a job sheet:⁹⁶

Mr Williamson did not provide CCTV footage from Cruz Bar to police until 8 July 2021. He appears to have knowingly withheld this footage for over three months.

⁹⁵ Closing Submissions for the Police, 10 November 2022.

⁹⁶ Job Sheet Detective Constable Bowler, 27 July 2021. Exhibit CB 3

[138] Mr Williamson's evidence is that following the execution of the search warrant on 30 March 2021 the DVR was not returned to him until 10 May. However, it was not returned with power cables which enabled the DVR to be turned on and played. He said in answer to questions from Mr Taffs that he was able to view the footage within a few days.⁹⁷ Following the receipt of the Police supplementary report, which disclosed the findings of Mr Norman, Mr Williamson provided the DVR to Mr Chappell on 6 July 2021 and his solicitor provided a copy of the CCTV footage to Police on 8 July 2021.

[139] On becoming aware that the footage was still on the DVR Mr Williamson did not volunteer the footage to Police. Mr Williamson said:⁹⁸

I know I'm not meant to digress, but one thing. Why would I give this video back to the police months later, when they had said it didn't exist, other than to show them how stupid they have been? Instead, they doubled down on me and tried to say "oh, he's been hiding it all this time". I gave it back to – why would I give it back to them, to incriminate me and say – and make it look like I'd had a backup copy all along, as I think – when what I – I was trying to give them a hint: this is where it's going bad for you guys. Look at it. Look at the fact that it's all there when you said it was blank, and you're on it. It doesn't make any sense. It was a trojan horse, if you like, I suppose.

[140] Further it was apparent Mr Williamson knew that the footage was still on the DVR when it was returned as below:

And again, why did they give it back to me? Why didn't they keep it? When they – when they called me up and said, "we're going to return your DVR", and knew there was still a criminal trial a year or more in the future, I'm guessing, why would I be given the criminal evidence back? They thought it was – they thought it had gone, there's no doubt about that. They wouldn't have given it back to me. The first thing I said was, "they can't give that back to me", it's got all the criminal evidence on it, I shouldn't be getting it back yet", but they bought it back and there it all was.⁹⁹

[141] Mr Williamson's unwillingness to volunteer the footage immediately appears to us to be because he was aggrieved at the Police about their allegations and the need for a search warrant. When asked about whether there was a limit to the extent to which he would cooperate with police he said:¹⁰⁰

Once you're being accused – by that time, I think it was probably being accused of having tried to pervert the course of justice by deleting video footage or by hiding evidence from police the game was changing very quickly. It was changing because police were trying to set me up, claiming that I'd been interfering with their investigation, putting out wild rumours

⁹⁷ Transcript page 619, line 15

⁹⁸ Transcript p 319

⁹⁹ Evidence of Detective Constable Preddy, Bundle B, volume 1 page 524

¹⁰⁰ Transcript p 613, line 20.

around town that I was a money launderer for [the gang]. It was just bizarre ... and to think that you're going to get the same level of cooperation you've got that attack going on –

[142] The Committee understands that Mr Williamson felt aggrieved, however, given: the seriousness of the March 2021 assault; his knowledge in the coming days that those involved in the incident had been on the premises; and, the fight had started on the premises, it is concerning that Mr Williamson put his own grievances ahead of assisting with the Police. Mr Williamson's attitude towards the Police illustrates a dysfunctional relationship, which in our view creates additional risk to the safe and responsible operation of the premises which we consider when evaluating suitability and the Applicant's systems and processes below.

Did Mr Williamson interfere with Police interviews with Cruz staff who witnessed the March 2021 assault?

[143] The Police allege in their supplementary report that Mr Williamson had interfered with Police interviews of Cruz staff in relation to the March 2021 assault. It is alleged that Mr Williamson told his staff not to sign witness statements in lieu of a joint 'statement' from Cruz staff that had been prepared by Mr Williamson's lawyer.¹⁰¹ Mr Clegg confirmed he was reluctant to give a further statement because he had already given a joint one, provided to Police by Mr Williamson's lawyer. He tried to call and send text messages to Mr Williamson during the interview with Police but said he had no cell phone coverage and that only one message got through.¹⁰² Mr Williamson said he had received the text from Mr Clegg as he went into the interview room but they didn't speak.¹⁰³ Shortly after the interview, Mr Williamson took it upon himself to send text messages directly to Detective Constable Preddy, which were abusive.¹⁰⁴

[144] Mr Williamson admitted that he had advised another staff member not to complete a formal written statement. Mr Williamson accepted he told the staff member he should not make a statement saying, "*you've already made a statement through your lawyers, it's probably better that you don't*".¹⁰⁵

[145] Police submit that the 'joint statement' would not have been admissible or of assistance to their criminal investigation. We found the 'joint statement' confusing as to its purpose

¹⁰¹ Supplementary Report, para [14] – [16].

¹⁰² Transcript page 1001, line 18

¹⁰³ Transcript page 607 - 609

¹⁰⁴ Brief of Evidence Constable Preddy, Bundle B, Volume 1, page 524

¹⁰⁵ Transcript p 599, line 5.

or value. It read to us as if it was a narrative of CCTV footage rather than a first-hand account by any individual. The joint statement claimed not to be based on the CCTV footage, as the contributors had not seen it. We asked Mr Williamson if he had viewed the footage before the statement. He claimed not to have, although, when pressed further, he was not sure whether he had viewed the footage in the week following the incident but thought he may have done. Mr Clegg also said he had not viewed the footage.

[146] We were left unclear of the purpose or utility of the joint statement. We found Mr Williamson's reaction to the interviews of his staff, via text exchange with Police officers to be unhelpful and gave the impression to us that he was seeking to influence his staff members engagement with the Police, which would be inappropriate. Mr Williamson's preference for the 'joint statement' to Police prepared by his Solicitor appears to us to have been misguided.

[147] We are not in a position to make any finding on whether the interference was deliberate or not, and given that Mr Williamson advised he was acting on legal advice, we do not take this matter any further. The only matter we have reflected further on is the text exchange with Detective Constable Preddy who interviewed his staff and his insistence that the Police somehow betrayed his trust. Quite frankly whether or not Police wish to interview staff who may have witnessed criminal activity is nothing to do with Mr Williamson and he should have stayed out of it. Again this goes to the issue of whether Mr Williamson's attitude to the Police impacts on the safe operation of his business.

Was a known gang (or gang members) controlling the door and influencing the management of the premises on the night of the incident?

[148] We are conscious that we only had before us CCTV footage of the early hours of the morning on 21 March 2021, and a great deal of focus was a period of time when gang members arrived at the premises, congregated at the entrance way and went inside before a fight broke out. A large amount of money was handed over by one gang member, who appeared to be the leader, to Mr Clegg as cashier on entry. Approximately 16 other friends and associates were welcomed in by the gang member. Most of the group received wristbands confirming payment of their cover charge, but notably the leader, who was later charged in relation to the assault, was allowed to enter without one.

[149] A sum of money was handed back to the gang member once all associates had arrived. The Police infer that the door was being controlled by the gang members. Mr Clegg explained the cash payment and his process to ensure that the money was returned. He also explained that it was not unusual for one person to pay for a large group, giving the example of a 'hens' party, on arrival. From our observations of the CCTV footage it does appear as if the gang members had a familiarity with the premises and its staff that implies they are exhibiting hospitality to their friends and associates which could be viewed as exercising some level of control, at least on that occasion. We received evidence that the leader and some associates were frequent patrons of the premises, and were well known to staff.

[150] The presence of gang members on the premises had not previously been the subject of Police concern, or at least had not been brought to the Licensing Inspector's attention as it was not mentioned in his report, or in the initial Police report. Notably, prior to the March 2021 assault, the Police had also not identified any concerns about systems and processes at Cruz nor any gang related issues.

[151] On 21 March 2021, the safe management of the door was compromised by the presence of the gang member and his associates at the entrance and would likely have been if any group was allowed to linger at the entrance regardless of their affiliation. We find that their presence prevented proper intoxication assessments by the doorman and not all patrons received wristbands.

[152] The CCTV footage highlights difficulties with managing entry to the premises during peak time in the early hours of the morning. Not only were the gang members and their friends creating a bottleneck, but other patrons were also in the way, reaching out to queuing patrons and passer-by's for food, and some patrons appeared unsteady on their feet without any apparent intervention by staff. Mr Clegg, when cross-examined acknowledged that the management of the entry on 21 March 2021 'looked bad.'¹⁰⁶ It was not an environment conducive to proper intoxication assessment or management. We address this further below.

Our conclusions on Police allegations of interference in the criminal investigation

[153] We found no evidence before us that Mr Williamson tampered or interfered with the CCTV footage, and note the Police do not pursue any insinuation that he may have.

¹⁰⁶ Transcript page 967 line 1

However, our view is Mr Williamson ought to have been proactive in reviewing the CCTV footage after closing, debriefing with staff and following up with Police after such a serious incident. We find Mr Williamson's engagement with the Police once he had been told that they intended to execute a search warrant to recover the CCTV footage to be disproportionate and unfitting of a person responsible for managing the safe and responsible supply of alcohol and we consider these further in our evaluation of matters under s131 of the Act below. We are of the view that Mr Williamson's advice to staff not to give individual statements to Police about the incident to be misguided, but his interactions with Police following those interviews to be more concerning.

[154] Mr Williamson's abusive and contemptuous engagement with Police following the execution of the search warrant and following Police interviews with his staff member fell well short of our expectations of a licensee. His tendency to become abusive, when challenged or he felt his integrity was being questioned was also apparent in his initial telephone call with Sergeant Robertson, and with noise control officers.

[155] We found one incident directed at legal counsel for the Police which started at one of the prehearing meetings¹⁰⁷ and continued during cross-examination of Mr Williamson¹⁰⁸ was particularly concerning. We found Mr Williamson's behaviour to be contemptable.

[156] Those matters weigh heavily against Mr Williamson's suitability to be a licensee.

[157] On the other hand, Mr Williamson has been in the industry for more than 40 years, by all accounts has a clean record and has worked cooperatively in the industry, particularly post-earthquake. Mr Williamson is clearly an expert in the nightclub industry as a respected DJ and a nightclub operator.

[158] We acknowledge that his market, which includes the LGBTQ community, has made his career a challenging one. Although over his career the law and attitudes have changed for the better, we accept that not everyone exhibits the inclusivity and tolerance he should expect. Mr Williamson and his staff are often subjected to verbal and, in some cases, physical assault.

¹⁰⁷ Evidence in Chief Sergeant Robertson Bundle B volume 1 page 216 and exhibit ROB 16 Bundle B, Volume 1 page 268

¹⁰⁸ Transcript page 511, line 24 to 517 line 20

[159] Mr Williamson has also been responsive to noise complaints and engaged expert acoustics advice and modified his amplified music set up to meet resource management planning controls. Mr Williamson has reflected on the March 2021 assault and has implemented new policies to prevent gang members being present on his premises. Also in Mr Williamson's favour is that he has never been charged with any offence regarding his involvement in the criminal investigation into the March 2021 assault and the Police have not sought to cancel or suspend his license or manager's certificate on the grounds of unsuitability.

[160] Further, Mr Williamson has not received any form of warning or advice of close monitoring from the Inspectorate or the Police. This was in contrast to other areas of the City, particularly Oxford Terrace, where the agencies work collaboratively with licensees to minimise alcohol related harm. It is also in contrast to the engagement that Police have had with licensees and management at The Bog and Calendar Girls, which we heard were also a source of concern from Police and the agencies in recent times. This doesn't excuse Mr Williamson's conduct, however, we are mindful that the problems in Victoria Street are not wholly caused by his premises.

[161] We have thought carefully about the issues raised and note the case law on suitability.

[162] Further constructive relationships with agencies are important. Mr Williamson has indicated goodwill towards working with Police more constructively in the future.

[163] Mr Williamson's conduct and attitude to the Police inquiry into the operation of his premises and in relation to the criminal investigation of the March 2021 assault put his suitability in issue. We have reflected on this in our evaluation against the dual objects of the act and asked ourselves whether the character flaws Mr Williamson has exhibited in dealings with witnesses and counsel in this renewal process are fatal to his renewal application in that they put at risk the safe and responsible sale, supply and consumption of alcohol or result or have resulted in alcohol-related harm.

[164] We have looked more closely at the contributing factors to his attitude, the risk profile of the premises and its hours of trading, We have looked at opportunities for mitigation through improvements to the systems and processes employed by the Applicant below.

[165] We have come very close to finding Mr Williamson to be unsuitable to hold a license based on his engagement with Police and their legal counsel in the last two years, but have not found him to be unsuitable.

[166] The evidence of alcohol-related harm over the last two years, including the indirect harm of the March 2021 assault are linked to poor management practices, inadequate staffing and the failure of systems and processes rather than Mr Williamson's attitude per se. We are particularly mindful that none of the agencies have raised concern in the past and not within the initial reporting period for this renewal. We acknowledge that it is a fine line between management processes, systems and adequate staffing and suitability of the licensee because ultimately it is the responsibility of the licensee to have appropriate processes in place, particularly in this case where the licensee is hands on and oversees every aspect of the business.

Days, hours during which alcohol is sold

[167] In their initial report the Police strongly advocated for a 3.00am closing to bring the premises in line with other bars in the Central City. In their closing submissions Police have gone further and argued for a 2.00am closing and a limitation of hours to the actual days and hours the nightclub operates.

[168] Sergeant Robertson produced CFS data that showed a cluster of calls for service and a range of violent incidents in the general locality. Under cross-examination when asked by Mr Williamson about whether he had a view whether all licensed premises should close at 3.00am or earlier, Sergeant Robertson explained the Police position below:¹⁰⁹

MR WILLIAMSON: ... You are saying, in here, in your statement, that calls for service continue at a higher level than elsewhere in the city beyond 4.00 am and extending beyond 5.00 am. Is it true, though, that Victoria Street is the only part of Christchurch that has anywhere open by way of licensed premises beyond 4.00 am?

SERGEANT ROBERTSON: Correct and that is at the very heart of why there is a migration of patrons after 3.00 am to the area, or after 2.00 am.

MR WILLIAMSON: So would it not then, Sergeant, be better to allow all the bars on Oxford Terrace to open until the same hours? The national default is 4.00 am.

¹⁰⁹ Transcript 1518 – 1520 line 9.

SERGEANT ROBERTSON: And have a continued problem in both areas? Or move the problem?

MR WILLIAMSON: Is that what you are saying would happen?

SERGEANT ROBERTSON: I don't think that that's a good idea and that's not been the approach of the agencies over a significant period of time, bearing in mind –

MR WILLIAMSON: So if you had your way, what time would Christchurch shut? What time would the last place you could buy a drink or go out dancing in Christchurch close?

SERGEANT ROBERTSON: I'm not sure that is my decision alone or my decision in fact. I've been quite clear that the police view in terms of alcohol harm in short is that not a lot of good things happen after 1.00 am. I accept that people will want to consume alcohol beyond that time. The position that my predecessors have reflected, as I understand, and which I to a degree in the absence of a LAP agree with, is 3.00am for the central city and perhaps 1.00 am for suburban areas.

MR WILLIAMSON: Do you agree that people want to go out later than 1.00, 2.00 or even 3.00am to be entertained and to dance?

SERGEANT ROBERTSON: I guess so, yes. Unfortunately that is where, as we see from the statistics, alcohol-related harm arises at a greater level than earlier.

[169] The Inspector was also asked by the Committee about closing hours and the effects of migration from Oxford Terrace to Victoria Street:¹¹⁰

MR BLACKWELL: Migration, I think several people have talked about migration from the strip down Victoria Street at 3.00am or late anyway. Is that an issue for you?

MR FERGUSON: Yes, it is, because generally, once people leave a bar at 3.00 am, they've normally had a reasonable amount to drink. When people migrate they bump into other people and that creates an argy-bargy sort of situation, which can create problems. They are quite often heading down to Victoria Street for the dairy because that's the only place they can get hot food at that hour of the morning. So it becomes a bit of a corridor.

MR BLACKWELL: So you are not suggesting - and I do not think you have in your report - that there should be an earlier closing time?

MR FERGUSON: No, I haven't recommended that.

MR BLACKWELL: So how do you relate that to the issues after 3.00 am that seem to be happening, or there seem to be some anyway? Migration and I think a lot of the stuff we have seen has been after 3.00 am, has it not?

¹¹⁰ Transcript 1199, line 6 to 1202, line 18.

MR FERGUSON: I did have a look through the calls for service that the police were relying on and I think I noticed that there was a good percentage of those calls for service were well before 3.00 am. The amount of problems after 3.00 am I don't think falls into the very high category. But I could be wrong on that and I would have to have another look at those figures. But most, a good percentage of them, were not after 3.00 am. So is there enough evidence to say that they shouldn't trade after 3.00 am? I don't know. That's your job, sorry.

MR BLACKWELL: We will be taking advice from you people as well before we go into that. That is why I asked that question. So you are not recommending that it has an earlier closing time to match say the strip to avoid the migration. I am not saying we have a view on that.

MR FERGUSON: That's a very difficult question to answer. Do we want every bar emptying out at the same time? We debated that for years when we had 24-hour closing and then we had 4.00 closing then we had 3.00 closing. The question was, do we want everybody spilling out on to the road at the same time? The answer that we sort of came up at the time was, no, we don't. Because, if we can get people away -- because then you get arguments over who gets taxis and who gets the Uber and all that sort of stuff. It's not a clean question. There's a lot of things that you have to think about when you start thinking about do we want everybody out at 3.00 am. We get everybody out at 3.00 am, then we go, well, maybe we should close some of them at 2.00 am, we start pulling things back a little bit more. I don't have the evidence or I don't see the evidence to say that we've got a bad problem at the moment between 3.00 am and 4.00 am.

MR BLACKWELL: Hypothetically –

MR FERGUSON: But, in saying that, every time we bring the hours back, it's probably a good thing.

MR BLACKWELL: Hypothetically, maybe this is not appropriate, but if another place was to open further down the road, would you consider them for a 4.00 am closing?

MR FERGUSON: No, our current policy is that if they ask for later than 3.00 am we put it to the District Licensing Committee to make that decision, to see if they've got enough systems, processes, and all that, in place. The Casino has come up. The Casino licence is 24 hours. At any point - they pulled their hours back because of COVID - at any point they could go back to 24 hours a day. They have a very large nightclub in the basement, which has been closed for quite a long time. But the potential is that it could open up without coming to anybody for any kind of go-ahead. The capacity for the Casino is 4,500. That's my understanding. It's about 4,500.

MR BLACKWELL: That would not be in the nightclub at the bottom though, would it?

MR FERGUSON: Yes, including the nightclub at the bottom, it holds about 1,000 people is my understanding. So I don't know whether that helps or not.

[170] In his closing submissions Mr Williamson made a number of points about the closing time of his premises:¹¹¹

It would be a huge irony that a shortening of Cruz's hours of operation were to be the outcome of these proceedings. A business that provides a nightclub with several true points of difference from other tavern operations in the city would substantially lose the biggest of those distinctions. A nightclub is somewhere you go after the pub, essentially for entertainment and as a last stop on the way home after a good night out

Despite the massaged statistics and protestations of Police, who are single mindedly obsessed with shutting the city down completely at 3.00am, the evidence is just not there as to how that would improve or reduce alcohol related harm.

What it would achieve however would be to incentivise me out of commercial necessity to replace revenues presently derived from sales of an entertainment service, with revenues from far greater alcohol sales, despite the entertainment offering continuing. An "own-goal" in anyone's language.

...

The Committee have seen the financials, and Cruz derives a significant amount of its revenue from admission charges and a meagre amount from alcohol sales compared to any model for a tavern operation. Cruz is not a tavern, and I believe that all parties have now been forced to admit and accept this fact, in the course of the hearing

Does Christchurch want to be seen to have any dedicated nightclub offerings, at all, as a major tourist destination? It has less than a handful, right now, and if Police have their way there will soon be none. This is something I would encourage the Committee to apply their thoughts to.

Cruz does not "target migration" It is a nightclub destination in its own right as evidenced by the fact that patrons start arriving at around 10:00pm (at present) and that by midnight at latest they are already paying a fee for admission. It is a destination all night long, and until closing. It is not the proverbial "bar of last resort" and the simple fact that patrons are paying for entry to Cruz some three hours before the taverns on the Oxford Terrace Strip start closing is clear evidence of this fact None of these other bars have a fee for admission, so why would a patron come to Cruz and pay for entry other than for the fact it is a different type of business and providing a different service. Q.E.D.

[171] In the absence of a Local Alcohol Policy, which could address a citywide or local area policy around issues such as hours of operation, the Committee must look to the manner in which individual premises operate and consider the nature of the operation, systems and processes along with the risk profile of the locality.

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Applicants closing submissions para [140]-[148].

- [172] The Police case advocates for a reduction in hours to reflect the actual hours of trading along with an earlier closing time. We accept in general terms that reduced hours that alcohol is available for sale is likely to reduce the period within which the risk of alcohol related harm extends, such as whether disorderly behaviour is likely to occur after closing time. Closing at 4.00am, does lead to an extended risk of alcohol-related harm in this locality, but there is considerable difficulty in determining with any certainty, in the absence of regular monitoring of the locality between 3.00am and 4.00am whether there would be any measurable reduction in harm.
- [173] Mr Williamson runs a nightclub, and we accept that it is likely to be a destination for patrons late into the evening, and after other bars close, for some patrons who wish to continue to dance and enjoy music. We accept that an earlier closing time will limit his opportunity to capitalise on this feature of his business model, but that is not a reason for not reviewing the hours.
- [174] We are concerned about the level of migration to the area after other areas such as Oxford Terrace close, but also accept that some of that migration is likely to be to the dairy where hot food is available. Once they have eaten it is logical that some people will choose to go on to any premises still open.
- [175] We have considered that there are some advantages in staggered closing times, for the reasons outlined by the Inspector.
- [176] We have considered whether a “one way door” condition should be reinstated for the premises. Sergeant Robertson’s evidence explained that there was a one way door condition from 3.00am following an earlier appeal against trading hours under the previous legislation.¹¹² This same condition was carried over on renewal in 2015, but then dropped in 2017 without any obvious reason.¹¹³
- [177] Mr Williamson said that in effect they apply a one way door policy from 3.30am and this was in play on 21 March 2021 after the assault. We heard evidence of the barrier being up when Police arrived to speak to Mr Williamson after the assault.
- [178] The Committee asked Sergeant Robertson about a one way door condition and he said:

¹¹² Brief of Evidence – Sergeant Robertson – Hearing Bundle B, p182

¹¹³ Ibid, pp181-182

MR BLACKWELL: Just changing a little bit, going back into your brief of evidence on page 10 you talk about: "In my view there was an error in [I think it was] the 2015 application in relation to 3.00 am closing one-way door situations that were in a previous licence." If that one-way door situation was in place today, would we be here?

SGT ROBERTSON: No, probably not for Cruz Bar, in that I think part of Mr Williamson's business model, from what I've heard and from what I know, is that he's effectively able to gather up people towards the end of the night, because he's licensed until later. So, if he had a one-way door policy from 1.00 am that would defeat his business model to some degree because he wouldn't have the migration of patrons from the Terrace, for example, because they would know that there's no entry at Cruz Bar. They might come earlier so they could stay until 4.00 am but I'm not sure if people think like that.

MR BLACKWELL: You indicated a little bit further at page 146 that: "As a result of continuing migration of patrons to the area after 3.00 am ..." So it's not such a problem before 3.00 am?

SGT ROBERTSON: The stats sort of say that the Terrace and Victoria Street are even in terms of probably the service data, it's reasonably even up until 3.00 am. Just before 3.00 am you see the Terrace drop away and that continues through to after 5.00 am, perhaps not at quite the same level, but there is that real drop-off with the Terrace and then whereas Victoria Street continues.

MR BLACKWELL: So if that original clause was still there that would not happen, would it?

SGT ROBERTSON: I don't think the one-way door policy was applied to other than the strip. But if you had a one-way door policy then that's probably unlikely and you wouldn't see that migration because people would know -- well you might see the migration, but they wouldn't be able to get in. So the appetite to migrate would die away.

...

CHAIRPERSON: Sergeant, just picking up again on the one-way door policy and the hours, so if there was a one-way door policy from 3.00 am that essentially allowed those who arrived at Cruz to enter but not come and go, as I understand it, post 3.00 am until closing time, would that mitigate or minimise the harm in that period that you have identified in your evidence?

SGT ROBERTSON: I don't think it's as simple as that, but in answer to that question the Terrace effectively closes before 3.00 am, so people may hurry and leave the Terrace earlier because they know they've got to get in the door at Cruz Bar. At that time of night most people have been out. My understanding is young people these days don't go out at 7.00 pm or 6.00 pm like we did, they might not go out until 10.00 pm. So then they've had four to [f]ive hours of drinking and then they're able to extend that by another hour. So the risk there, and that would really fall down to good intoxic assessments on the door at entry, a DM on the floor engaging to make sure that we're not getting intoxicated people in the premises. But, to answer your question, it may reduce the risk to some degree.

CHAIRPERSON: And just in terms of your initial report, as I read it, does advocate for a 3.00 am closing, consistent with other premises in the city.

SGT ROBERTSON: Yes, correct.

CHAIRPERSON: Other than the slightly different circumstances of other venues in Victoria Street. If Cruz Bar was only licensed to 3.00 am, what would happen in Victoria Street after 3.00 am? Would there be an increase in risk or a decrease in risk?

SGT ROBERTSON: I think there would be a decrease because you wouldn't have that migration to a destination. Accepted that, if the doors closed at the Bog and the Casino is closing at 2.00 am, 2.30 am, and then Cruz Bar closed, and even Lulu's at 3.00 am, you've got an exodus of people. You see that in the Terrace and that's a stat that was interesting to me is that 3.00 am the Terrace dies, so there's not the -- in the old days, police used to line the riverbank at 3.00 am on Oxford Terrace because people, as they spilled out of the 10 or 12 licensed premises there, there was inevitably fights or scuffles or arguments over taxis or whatever. And so the police were there as a presence while people dispersed. Victoria Street is not at the same volume of people but I can see that part of the risk would be that you've got

three or four premises emptying out at the same time. I think it would be a smaller risk and they're not right on top of each other. The Bog and Cruz Bar are very proximate, but Lulu's is further down the road. You might see that dairy having further disorder issues if there's more people coming out of the bars. But I think it would reduce the risk more than increase it. But it would certainly be something that would likely still generate calls for service around that 3.00 am time.

[179] As detailed in Sergeant Robertson's evidence-in-chief there have been a number of incidents involving violence, some leading to criminal charges that occurred on the premises between 3.00am and 4.00am and after 4.00am, but also between midnight and 3.00am. We are of the view that the risk profile of any premises in this locality increases significantly after 1.00am.

[180] In their closing submissions, Police submit that the case for a reduction in hours (if not declining renewal) is obvious. They submit that while Cruz might attract (in its usual early evening customer base), bright, friendly, pro-social people, in the early hours of Saturday and Sunday mornings it also attracts (and in several cases admits as patrons) people of a very different ilk – people who are intoxicated, abusive and violent – including members of a gang who had been frequent attenders.

[181] As the Authority observed in *Re N.B.T. Ltd*¹¹⁴:

[52] Any licence is a privilege, and there is no guarantee that it will be continued indefinitely, or that the hours will remain the same, particularly if the privilege is ignored or abused. In our judgement, this is what happened. Mr Giles saw a market which he was happy to exploit at the risk of raising noise levels and bringing about misbehaving patrons.

[53] Limiting the hours of operation has become established as an important tool in addressing the growing social and economic cost of alcohol-related crime, disorder, and antisocial behaviour. Although it has been said that the issue is not so much about the hours of trading, as the way that 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 been granted in the past have not been universally respected.

As the Authority emphatically held in *Sogi Trading Ltd v Licencing Inspector Auckland City Council*¹¹⁵:

[130] If premises are a magnet for antisocial behaviour such as yelling, vomiting, urination, fighting and the like, then it is axiomatic that the effect of the refusal to renew the licence will increase the amenity and good order of the locality by

¹¹⁴ Liquor Licensing Authority, 6/9/2005, Decision No PH584/2005
¹¹⁵ [2020] NZARLA 96

the removal of a contributing cause of that noise, nuisance and vandalism. This in turn, goes to the achievement of the object of the Act, including that alcohol is consumed safely, and that any harm caused by inappropriate consumption is minimised. As is apparent from the definition of alcohol related harm in s 5 of the Act, and the matters referred to in s 106 of the Act, this includes disorder, public nuisance as well as negative public health outcomes.

[131] Viewed in this way, the Act is not premised solely on questions of fault such that it is not sufficient that a licensee may be 'doing its best'. Where noise, nuisance and vandalism can be linked to a licensed premises, despite the best endeavours of the licensee, a DLC must act to minimise that.

[182] We have carefully considered the views of Sergeant Robertson and the Inspector about the need to look closely at the hours given the number of incidents that have occurred in the last renewal period, and we have reflected on the wider issues facing Police in the Victoria Street area. We are mindful of the potential issues of all venues in this locality closing at 3.00am and whether this would create another problem.

[183] It is clear that there is a need for consideration of Victoria Street more widely. At this renewal date, rather than reducing the hours there is significant room to improve the safe operation of the business such that the risk of alcohol-related harm in the early hours of the morning is minimised.

[184] Rather than rely on the discretion of the licensee to implement a one-way door policy when he sees fit, we consider this should again become a condition of the license on renewal, so that it is consistently applied. This would have the effect of improving the safety of patrons on the premises after 3.00am who wish to come and dance before they head home, without continued exposure to the migration of people from other bars making their way to Cruz between 3.00am and 4.00am. A one-way door condition from 3.00am would still allow for the staggered dispersal of patrons.

Design and layout of the premises.

[185] As discussed above, the premises operates on two levels. The DJ booth is upstairs with a dance floor. The upstairs area includes a seated area, bar, toilets and an outdoor balcony overlooking Peterborough and Victoria Streets. Above the first floor is an office area. Downstairs operates more as a bar. The outdoor smoking area and entrance to the street is narrow and easily overwhelmed by patrons outside. Since the March 2021 assault, Mr Williamson has undertaken some renovations and extended the downstairs bar area into an area previously used for garaging. There is a new toilet block and dance floor which has a screen to show videos with music playing. An arcade games

room is proposed on the ground floor. Mr Williamson has added additional cameras on the first floor.

[186] The CCTV footage from the March 2021 assault highlights the challenges of managing the entry to the premises. Patrons queue along Victoria Street in front of the barrier to the current outdoor area and wait to be allowed entry, pay their cover charge (when it is in place) and have a wristband applied to confirm entry. The entrance is easily blocked by patrons greeting each other and staff. At busy times, the area is heavily congested and not conducive to a thorough assessment of patrons upon entry.

[187] Mr Williamson has approached the Christchurch City Council City Streets department for a lease of an additional 1.2 m width along the Victoria Street frontage. City Streets officers have assessed this to be appropriate, subject to the issue of an alcohol license.¹¹⁶ We received a floor plan showing the additional area, however how it would be contained is yet to be confirmed. Mr Williamson's priorities were to ensure any barrier could not be climbed over.

[188] Subject to the appropriate tenure arrangements being entered into, we consider an extension of the outdoor area will improve the safe operation of the door. It also will increase the outdoor area and make it available for more people to congregate outdoors.

[189] Noise from patrons will need to be monitored beyond 3.00am, once other venues in the locality close. There should be no amplified music outdoors and all doors to the ground floor should remain closed after 3.00am.

Amenity and Good Order of the locality

[190] Section 131(1)(b) of the Act requires us to form an opinion as to whether or not refusal of the renewal would improve amenity and good order by more than a minor amount. In this application, the amenity and good order is affected by noise from the late night music, patrons and their behaviour, and numerous incidences of violence and disorder in the early hours of the morning. The Committee is aware from recent applications in this precinct that disorder is an issue, which is also influenced by other premises and a late night dairy.

¹¹⁶ Exhibit WILLIAMSON-21

[191] The Licensing Inspector noted: the location of the premises on the western fringe of the central city; the location of a number of licensed premises in the area; and, the objections to the renewal, but was not aware that the premises caused any issues to a level that would require refusal of the license. The Inspector had limited first-hand knowledge of the locality in the early hours of the morning.

[192] The Police, in their initial report had reviewed calls for service in the area and noted a moderate number of incidents in the twelve months prior to reporting on the application. The Police acknowledged that there are a cluster of licensed premises in the area, including Calendar Girls and the Casino, which had licensed hours later than 3.00am.

[193] In their supplementary report, the Police provided further detail of calls for service attributable to the premises. 16 'CARD' events were reported between 30 March 2019 and 16 May 2021 involving violence, including a number of gang-related incidents.

[194] The public objectors to the license renewal all raised concerns about the impact of noise from the venue. We also note their concerns around the unreasonableness of the bass and vibrations were confirmed by the applicant's expert's noise assessment which we discuss below.

Noise

[195] When preparing his initial report, the Licensing Inspector checked council records and noted that between 2014 and the lodgement of the renewal application in August 2020 there had been no noise complaints. Five complaints had been made in 2014, but only one was considered excessive. It appeared that the earlier level of complaints were related to a period of time following the Christchurch Earthquakes when Victoria Street had been particularly busy with late night venues until the central city premises were rebuilt. In an email from the Council noise officer attached to the Inspector's Report, four noise complaints were received in the period January 2021 to March 2021. One, on 6 March 2021 was considered excessive and an Excessive Noise Direction (END) was issued. The record states that the "*Loud base music. Noise assessed from complaint's address. Bruce, the owner of the bar was served with the END. He refused to take the notice & stated that he was not going to comply with this bullshit anymore (sic).*"

- [196] Objectors noted the proximity of residential properties and the prospect of additional apartments either underway or with future planning regulations. They were particularly concerned about sleep disturbance and the prospect of further noise if the variation to extend the outside area was allowed. One objector, Mr Walker, suggested conditions on the license preventing audible exterior noise after midnight and keeping doors and windows closed after midnight.
- [197] The Applicant sought the advice of an acoustics consultant, Mr Walton, from Marshall Day Acoustics and has since made modifications to his sound system that has reduced the impacts of noise on the surrounding area. Mr Walton's evidence was received into the record with the consent of all parties.
- [198] Mr Walton's evidence explains the context of his noise assessment which is primarily assessed on the planning rule requirements in the Christchurch District Plan. In his evidence, he explains that Cruz is located in a 'lower noise level entertainment and hospitality precinct', however, noise is assessed at the level expected by the noise-receiving land, in this case a residential area which has a controlling noise limit of 45 dBA. Mr Walton notes that the District Plan also provides for a level of protection for entertainment venues from complaints from neighbouring residential land uses by requiring new residential activities to provide noise insulation which would further reduce noise-related conflicts.
- [199] Mr Walton undertook a number of noise measurements during the daytime while Mr Williamson played music at the level he would when the nightclub was operating. Although influenced by daytime ambient noise levels, these noise measurements left Mr Walton with the opinion that the music would likely exceed night time noise limits and be unreasonable to nearby residences. Following further testing in which the low frequency noise component was reduced a level was reached with a reduction to 10dBA (about half the perceived level of loudness). When measured adjacent to a residential boundary this resulted in a reduction of around 8dBA in the 63Hz octave band, which he considered to be an appreciable reduction in noise level, at almost half the perceived loudness and over half of the overall sound energy at this frequency. Mr Walton's view was that this was acceptable, and importantly the level of vibration would be imperceptible.

- [200] We also received evidence from an electrical technician, Mr Brodie, who explained how these changes were locked in and could not be modified by the Applicant. Importantly, no further noise complaints have been received.
- [201] Mr Walton also reported his findings in relation to patron noise. Two objectors, Mr Hill and Mr Walker, queried whether noise from patrons using outdoor areas could be addressed through conditions. Mr Walton's opinion was that the first-floor balcony has the greatest potential to disturb the closest neighbours to the west. He recommended that this area be closed after 1.00am. Although the District Plan controls outdoor noise from 11.00pm, Mr Walton's view was that before 1.00am the level of outdoor noise is influenced by a number of venues so is difficult to attribute to Cruz. After 1.00am the level of outdoor noise may be less. Mr Williamson produced video footage of noise from the Bog, a premises which is across Victoria Street from Cruz. We agree that whilst the bars are both operating the noise generated by one or other of these premises may be difficult to discern. We think 1.00am for the first-floor balcony which is most exposed to residential properties to the west is appropriate.
- [202] Noise management is an ongoing responsibility for the licensee. We are satisfied with the Applicant's efforts to reduce the bass and vibration from the amplified sound system, but there may be times when doors or windows are open that noise from the amplified sound system and patrons will escape and may generate complaints. Patrons queuing or using the outside areas may also create noise, and in Mr Walton's view must be managed accordingly. It will be the responsibility of the licensee to ensure that at all times noise is not unreasonable and that they are responsive to the directions of noise control officers.
- [203] We were concerned to receive evidence from Mr Jarden from Armourguard Security Christchurch that Mr Williamson has been abusive and uncooperative in response to excessive noise directions issued in the past. This is unacceptable. Hopefully Mr Williamson, having taken advice from Marshall Day, now understands the subjective nature of the assessment, and while the Applicant may have greater confidence that the amplified music from his premises is compliant with District Plan rules at this time, the need to manage noise generated by patrons' use of outdoor spaces to avoid nuisance local residents is an ongoing one.

Disorder – Violent incidents

[204] Annexed to Sergeant Robertson's brief of evidence is CFS data recording events in proximity to Cruz over a 10 year period.¹¹⁷ These events are based on Police coding which are likely to have involved alcohol. In comparison to data from other parts of Christchurch, there is a higher volume of calls for service in Victoria Street beyond 4.00am. Whilst not 'proof' that each incident is alcohol-related, it provides a comparative picture of the level of police calls for service in the locality, which shows that there is an increased level of violence later into the evening.

[205] Violent incidents reported to Police are summarised by Sergeant Robertson's brief of evidence but include the following incidents all of which relate to Cruz¹¹⁸:

- (a) Mr Williamson being assaulted by a gang member in August 2019;
- (b) A report that on 2 August 2020 at 3.31am a male had physically assaulted another male. The offender was described as a patched member of a gang. The victim has supposedly been "*dancing with the partner of the gang member and not realising*";
- (c) A report from Mr Williamson on 8 August 2020 that a known gang member was threatening staff at the premises. The gang member was identified as an individual who was ultimately involved in the serious assault on 21 March 2021 at Cruz. This individual was trespassed from Cruz for a period of two years but was allowed back to Cruz despite that period not running the full 2 years;
- (d) On 4 September 2020 at 4.28am Mr Williamson called Police in relation to an intoxicated customer punching people passing by;
- (e) On 12 December 2020 a call was made to Police indicating that an unknown male was threatening the door staff at Cruz;

¹¹⁷ Canterbury District Alcohol Related Calls for Service Cruz Bar and Lower Victoria Street, Christchurch Central. The Calls for Service data was drawn from the Police CARD system 1 January 2012 to 31 January 2022. The area was limited to 1km radius around Cruz Bar on Victoria Street. The data analysed offence/incident types that are assessed as likely to have involved alcohol including serious assaults, minor assaults, intimidation/threats, drunk custody/detox centre, noise complaint, breach of peace, sexual attack, sexual affronts, disorder, liquor offences, breach of council liquor ban.

¹¹⁸ Brief of evidence Sergeant Robertson

- (f) On 14 February 2021 at 12.53am Police were called in relation to a fight inside the premises. This resulted in the offender being charged and convicted of common assault;
- (g) On 2 May 2021 at 4.37am Police received notification from St John's Ambulance of a further incident outside Cruz. The call was recorded to have been made by Mr Clegg. The incident involved a 45-year-old woman being assaulted during a fight at the address. The noting referenced two to three people being highly intoxicated and screaming. The woman had injuries to her head and was covered in blood; and
- (h) On 16 May 2021 at 1.21am Mr Williamson called Police and reported a group of 10 – 12 people fighting and that a woman had been hit in the face. The group was reported to be in the stairwell of the premises and the fracas was ongoing when Police arrived at 1.27am. A male was charged with assault.

[206] This list is not exhaustive and are in addition to the March 2021 assault, which started inside Cruz Bar involving known gang members. Counsel for the Police submitted that collectively these illustrate the extent to which alcohol-related harm (particularly violence) is prevalent at Cruz.

[207] Even Cruz's own staff have told the Committee they have been the victim of an assault or violence from patrons:

- (a) Ms Lehman was described by Mr Hemphill as being assaulted on the balcony when she intervened when one of three men urinated off it on to the street, she being punched and knocked unconscious;
- (b) Mr Hemphill also described himself being grabbed on the neck on 28 April 2022, Police were called at 4.15am;
- (c) Mr Hemphill described intervening in an incident where a female patron tried to grab a bottle of spirits to 'bottle' another patron, meaning strike a patron with it. Mr Hemphill was able to intervene; and,
- (d) Ms Lehman described another attack on the door at Cruz which required other security guards from other venues coming to help. This matter went to court.

- [208] We have asked ourselves whether these incidents are related to the extended hours of operation through to 4.00am or poor management, processes and systems and whether these issues can be addressed through stricter conditions or limitation on hours of operation. Or more fundamentally, whether refusal of the renewal would result in an improvement of amenity and good order more than a minor amount.
- [209] The difficulty we have is that lower Victoria Street is occupied by a number of licensed premises and food outlets, including a dairy that all have an adverse impact on the amenity and good order of this locality. We have asked ourselves, is the area pleasant and agreeable. During the daytime, we are agreed that it is. The Council has spent a lot of effort and resources in improving the amenity of the area with street works. The streets and their surrounds present as tidy and quiet. On our site inspection we did observe a group 'rough sleeping' and consuming alcohol in a neighbouring doorway.
- [210] Having viewed video footage both of Cruz and the Bog when noise and patrons spill onto the street, it is clearly not pleasant and agreeable in the early hours of the morning. We heard evidence from Mr Williamson about the nightly litter collection he and his staff undertake on both sides of the street and in the Wilson's carpark.
- [211] While the Police and Inspector appear only to have recently acknowledged the problems of the area, their task is hampered by the lack of a local alcohol policy and their responses are piecemeal at best. We heard from both Sergeant Robertson and the Licensing Inspector of the lack of monitoring and the difficulties with information-sharing from the agencies.
- [212] The problems in Victoria Street are in need of a coordinated response from the agencies and the goodwill of the licensees in the area. Better quality and timelier information is required to assist the Committee make decisions that will improve the amenity and good order of the locality.
- [213] In our opinion, refusing this renewal application will not likely of itself improve the amenity and good order of the locality by a more than minor amount up until 3.00am. Police and Inspectorate monitoring and reporting have not been sufficiently frequent or accurate to put the blame on Cruz alone. Beyond 3.00am is another matter, given that Cruz attracts a migration of patrons from other bars with an earlier closing time. We have decided to re implement the 3.00am 'one way door' policy to mitigate the migration effect after 3.00am.

[214] In our opinion the noise mitigation put in place by the Applicant and enhancements to security and the management of the premises would contribute to an overall improvement of amenity and good order by a more than minor amount.

Systems, staffing and training

[215] Police have submitted that a number of conditions would be required around staffing and security. We agree, but not to their terms.

[216] The frequency of Police calls for service related to Cruz appear to be due to a lack of objective oversight and poor management practices. We heard from Mr Williamson that prior to the Covid-19 pandemic, he contracted and/or employed two security guards, one on the gate and one upstairs. Although Mr Williamson found the upstairs guard to be intrusive, it appears to us to be an important factor in minimising alcohol-related harm during peak times.

[217] Cruz is a relatively small nightclub, operating over two floors. It has a maximum fire safety capacity of 170 patrons (100 upstairs and 70 on the ground floor).¹¹⁹ Over the last three-year period, whilst operations have been interrupted by Covid-19 regulations, business has been slow and challenging, particularly in a nightclub when dancing was prohibited for a time. Mr Williamson has operated the premises on minimal staff and has called on the support of friends to lend a hand during busy times. Some of his key staff have not had employment agreements until recently.

[218] Prior to the pandemic and in busy times, between 1.00am and 4.00am two security staff had been employed and some staff, held dual roles as security and stand-in duty managers.

[219] Mr Williamson has performed the roles of licensee, duty manager, DJ (upstairs) and at times filling in to lend a hand as security, barman or glassie. Mr Williamson assumes a high degree of control over the premises, or at least perceives that he does. Past staff member Ms Lehman described him as a micro manager, which was consistent with evidence from Mr Clegg about the degree of oversight and interventions from time to time via two-way radio.

¹¹⁹ Transcript page 51 line 12

[220] Mr Williamson maintained in his evidence and questioning that he is able to oversee and fulfil his role as licensee and duty manager by the use of CCTV cameras throughout the venue which he can view from his phone, a screen based at the DJ booth, and a screen in his office above the first floor. On 21 March 2021, there were two cameras at the first floor level but only one in operation, and 5 cameras on the ground floor. These were located over the entrance way, outdoor areas, internal ground floor bar and over the bar behind the bar cash register. We are now told that there are additional cameras installed on the first floor.¹²⁰

[221] Although Mr Williamson claimed to have oversight over the bar operations, the events of the March 2021 assault demonstrate that is not always the case. He told Police that he was not aware that gang members had been on the premises and that there was no cause to view CCTV footage. In fact the CCTV footage shows gang members present on the premises for at least 20 minutes before the incident. Much of that was at the entranceway under cameras. Mr Williamson maintains he was not aware at the time that they or the victims were on his premises, but in hindsight concedes that something was brewing on the night and to his regret they may have been able to intervene.¹²¹

[222] His reliance on staff to be his eyes and ears was also called into question. None of his staff, who witnessed the commencement of the assault and were aware that the offenders and victims were on the premises, told Mr Williamson at the time or at the end of the night or in the days that followed that the offenders and victims had been at Cruz and that the incident started on the premises (although they didn't recall precisely).

[223] We also observed at least two patrons who were seen in CCTV footage at various times upstairs, downstairs and exiting the premises who were supporting each other and appeared to be worse for wear. No staff member came to their aid. Mr Williamson downplayed it, and didn't think there was cause for concern, expressing his reliance on the fact that the two people appeared to be supporting each other and if there were any issues his staff would have intervened.

¹²⁰ Exhibit Williamson-19

¹²¹ Transcript page 166

- [224] Police questioned whether Mr Williamson was being obstructive and rely on Constable Boer's account of her interview with him. We are unable to conclude from the Police evidence that Mr Williamson was being obstructive. However, we do think his answers highlight a serious deficiency in his systems and processes for observing patrons via CCTV whilst he is DJing and in his upstairs office.
- [225] We have concluded that the systems and processes at Cruz were seriously stress-tested on the night of the March 2021 assault. It is clear to us that the alleged perpetrators were able to enter the premises with little screening by door staff, nor apparent knowledge of Mr Williamson. Key staff did not follow the procedures for entry that were claimed to be watertight, and then did not see fit to advise the duty manager of what they observed. All of this suggests to us this was not just a one-off slip up, but a consequence of not enough attention to detail and overconfidence by Mr Williamson on only a few experienced staff. We do not accept that it is sufficient for Mr Williamson to hide behind his staff being his eyes and ears and then claim they let him down.
- [226] We have reached a clear finding that Mr Williamson cannot perform the role of duty manager from the DJ booth in a safe and responsible manner or in a way that minimises the risk of alcohol-related harm. CCTV surveillance is a useful tool but it is one that Mr Williamson is over reliant on and not a substitute for walking the floor and interacting with staff and patrons in person. Mr Ferguson also questioned the ability to assess intoxication on CCTV. Mr Williamson defended the lack of responsiveness to two patrons we observed to be worse for wear, on the basis he couldn't tell they were intoxicated on CCTV.
- [227] Our conclusion is that if the license is to be renewed there must be separation between Mr Williamson's role as owner and entertainer and the operational management of the sale and supply of alcohol. Ultimately, as licensee, Mr Williamson is responsible. However, he must employ other duty managers and have one experienced duty manager assigned per floor and allow them to perform their responsibilities. If both floors are open for business at the same time, there must be two duty managers on site. If Mr Williamson is the DJ he must not also be the rostered duty manager.
- [228] We are also concerned about the shared roles where, sometimes, staff might be expected to be both duty manager and security at the door. That is unacceptable given the layout of the premises and both roles cannot, in our view, be performed concurrently.

[229] In our view there must be dedicated security on the door at all times and an additional 'floating' security person across the whole premises after midnight Friday to Sunday.

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

[230] No issues have been raised about the manner in which the Applicant has sold or supplied, displayed, advertised or promoted alcohol. A number of assaults have occurred on the premises where we were told patrons involved were likely intoxicated. There are no holdings on this licence and the Applicant has not been subject to any warning from the agencies.

[231] Mr Williamson suggested in his closing submissions that greater restrictions on his licence would likely have the perverse effect of driving up alcohol sales.¹²² We issue a warning to the Applicant now, that evidence of intoxication on the premises will be viewed negatively by the committee upon the next renewal.

Object of the Act

[232] 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.

[233] Standing back and looking forward we have asked ourselves whether we are satisfied that the Applicant will meet the dual objects of the Act.

[234] In our view, the number of disorderly and violent incidents associated with Cruz in the last renewal period and inadequate staffing levels points to failures in the management practices of this business. Whilst not an excuse we are cognisant that Covid-19 has placed significant financial and staffing challenges on the hospitality sector. In that period, the number of violent incidents has highlighted significant safety risks. We are of the view that with sufficient qualified staff, and the separation of Mr Williamson's roles as owner/entertainer and in managing of the sale and supply of alcohol, safety should improve and alcohol-related harm should be minimised. We are prepared to give the Applicant a chance to rectify his processes and systems in the final year of this renewal period.

¹²² Applicants closing submissions at 142

[235] Evidence of continued disorder, intoxication and violence emanating from Cruz ahead of the next renewal will likely result in restrictions in the licensed hours or refusal of future renewals.

Variation – extended outside area

[236] In principle we find that the extension of the outside area will improve flow and therefore safety for patrons, however, it comes with the additional risk of more patrons choosing to be outside and greater potential for noise. We note that the outside area is directed away from residential properties and at least up until 3.00am, the noise of patrons outside would be indistinguishable from those of neighbouring bars and activities on Victoria Street.

[237] We are of the view that subject to a lease or licence to occupy the footpath the licence can be extended, provided however, that there shall be no external sound system after 1.00am and that all doors and windows must be closed by 3.00am to limit the escape of noise.

Final comment on monitoring

[238] Sergeant Robertson told us of positive steps he has taken recently to engage with the licensees at Calendar Girls and at The Bog to address issues that had come to the Police's attention.¹²³ We note that, despite the Police concerns expressed in this renewal hearing, particularly around the number of calls for service in the last renewal period, Police had not made any approach to Cruz to constructively review their systems and processes. We are of the view that the conditions we impose on this renewal should go a significant way to minimise alcohol-related harm.

[239] We also encourage additional monitoring by the agencies of the Victoria Street locality so that future renewal applications are better informed by available data.

¹²³ Transcript 1537 at lines 4-21 and page 1718 lines 1-22

Decision

[240] Accordingly, pursuant to s130(1) and 120 of the Act we grant the application for a renewal of the On-licence, with variation of the licenced area for a period of 3 years subject to the following conditions:

The Licensed Premises

- (a) The premises are identified on the plan provided with the application for renewal and variation.

Discretionary conditions – section 110(1)

- (b) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - (i) Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (c) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - (i) Alcohol must only be sold, supplied and consumed within the area marked on the plan submitted with the application.

Compulsory conditions – section 110 (2)

- (d) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1.00pm on Anzac Day to any person who is not present on the premises to dine.
- (e) Alcohol may only be sold the following days and during the following hours
 - (i) Monday to Sunday, between the hours of 8.00am to 4.00am the following day.

- (f) Water will be freely available to customers while the premises are open for business.

Section 117 – Other Discretionary conditions

- (g) The licensee must implement and maintain the steps proposed in Cruz Bar Responsibility Policy¹²⁴ aimed at promoting the reasonable consumption of alcohol.
- (h) The licensee must implement and maintain a one-way door policy preventing persons from entering the premises after 3.00am at all times the premises are open for the sale of alcohol.
- (i) The licensee must roster one dedicated duty manager on the ground floor and one dedicated duty manager on the first floor of the licensed area when open for the sale, supply or consumption of alcohol. No duty manager shall concurrently undertake the role of security or entertainment provider (*i.e. DJ*) whilst rostered on as a duty manager.
- (j) The licensee shall provide dedicated security staff at the entrance to the licensed area at all times the premises is operating as a nightclub, and one additional security staff member shall be on site between 1.00am and 4.00am Saturday and Sunday mornings.
- (k) The first floor balcony shall be closed to patrons from 1.00am.
- (l) There shall be no external amplified music after 1.00am.
- (m) All external doors and windows must be closed after 3.00am.

Section 119 – Restricted or supervised areas

- (n) The whole of the premises is designated as a supervised area when operating as a nightclub

¹²⁴ As attached to the application.

- (o) There shall be an undesignated area when the venue is: operating as a café venue; for private social functions promoted by any person or association of persons other than the holders of the license; or, times when alcohol is not being sold or supplied.

Other restrictions and requirements

- (p) Section 51 – Non-alcoholic drinks to be available
- (q) Section 52 – Low alcoholic drinks to be available
- (r) Section 53 – Food to be available
- (s) Section 54 – Help with information about transport to be available
- (t) Section 56 – Display of signs
- (u) Section 57 – Display of licences
- (v) Section 214 – Manager to be on duty at all times and responsible for compliance

[241] The licence shall expire on 27 August 2023.

DATED at Christchurch this 22nd day of December 2022



C. E. Robinson

Chairperson of the Christchurch District Licensing Committee