

[2020] NZARLA 96

UNDER

the Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER

of an appeal pursuant to s 154 of
the Act against a decision of the
Auckland District Licensing
Committee declining an
application for the renewal of an
on-licence issued for premises
situated at 22 Durham Street
West, Auckland Central known as
'Future Club'

BETWEEN

SOGI TRADING LIMITED
Appellant

AND

LICENSING INSPECTOR
AUCKLAND CITY COUNCIL
First Respondent

AND

NEW ZEALAND POLICE
Second Respondent

AND

CITYLIFE HOTEL
MANAGEMENT (AUCKLAND)
LIMITED
(Objector)
Third Respondent

AND

PEGGY LOWNDES
(Objector)
Fourth Respondent

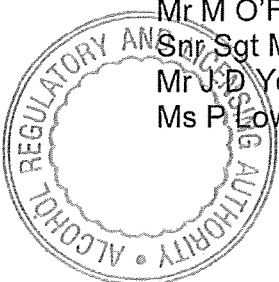
BEFORE THE ALCOHOL REGULATORY AND LICENSING AUTHORITY

Chairperson: District Court Judge K D Kelly
Member: Ms S L G Mehrtens

HEARING at AUCKLAND on 20 May 2020

APPEARANCES

Mr J McBride – for Appellant
Mr M O'Flannigan – for First Respondent
Snr Sgt M de la Rue – Second Respondent
Mr J D Young – for Third Respondent
Ms P Lowndes – Fourth Respondent

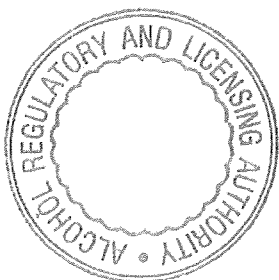


CONTENTS

INTRODUCTION	Paragraph [1]
SUMMARY OF RESULT	[6]
THE PREMISES	[9]
LAW	[17]
ATTITUDE OF REPORTING AGENCIES	
Medical Officer of Health	[24]
Police	[25]
Licensing Inspector	[34]
OBJECTIONS	
CityLife Hotel	[44]
Eric Lim	[47]
Richard Clothier	[48]
Sarah W and Jennifer Russ	[50]
Mrs Peggy Lowndes	[51]
DECISION OF DLC	[55]
GROUND OFS OF APPEAL	[59]
SUBMISSIONS FOR APPELLANT	[64]
SUBMISSIONS FOR RESPONDENTS	
Submissions for Licensing Inspector	[86]
Submissions for NZ Police	[97]
Submissions for CityLife	[99]
Submissions for Mrs Lowndes	[105]
DECISION OF THE AUTHORITY	
Approach on Appeal	[107]
Central Issue	[110]
First Ground of Appeal	[113]
<i>Analysis</i>	[123]
Second Ground of Appeal	[135]
<i>Evidence</i>	
• Mr Clyde Young	[136]
• Ms Mallory O'Brien	[148]
• Ms Sonia Brown	[151]
• Mr Mataofa Tiata	[161]
• Mr Ryan Chi	[176]
• Mr Lee Smith	[180]
• Mr Sonny Sun	[202]
• Sgt Alec Hutchinson	[208]
• Ms Helen Van Asch	[214]
• Sgt Sarah Draper	[217]



• <i>Constable Peter Whittington</i>	[224]
• <i>Mr Sebastian Miklos</i>	[226]
• <i>Mr Tim Court</i>	[231]
• <i>Mr Alex Trigo</i>	[242]
• <i>Mr Akash Sood</i>	[253]
<i>Analysis</i>	[259]
Third Ground of Appeal	[279]
Fourth Ground of Appeal	[282]
Fifth Ground of Appeal	[285]
Sixth Ground of Appeal	[287]
CONCLUSION	[290]
RESULT	[292]



DECISION OF THE AUTHORITY

INTRODUCTION

[1] On 12 November 2019, the Auckland District Licensing Committee (DLC) declined an application by Sogi Trading Limited (Sogi) for the renewal of its on-licence for premises situated in Durham Street West known as 'Future Club'.

[2] On 25 November 2019, Sogi appealed the decision of the DLC.

[3] Subsequently, on 7 February 2020 the Authority declined an application by Sogi seeking to stay the decision of the DLC.¹ As a consequence the sale and supply of alcohol at Future Club ceased on 10 February 2020 in accordance with the DLC's decision.²

[4] For completeness, on 2 April 2020 the Authority also refused an application by Sogi to adduce new evidence on appeal.³ On 4 May 2020, however, the Authority granted leave to Sogi to amend its grounds of appeal.⁴

[5] This decision now relates to Sogi's substantive appeal.

SUMMARY OF RESULT

[6] The Authority can find no error on the part of the DLC in terms of it identifying and applying the relevant legal test when assessing the effect of the licence on the amenity values of the locality.

[7] On the Authority's own evaluation of the evidence, the Authority is of the view that the evidence is both graphic and overwhelming, such that the Authority is of the opinion that 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.

[8] The appeal is dismissed.

THE PREMISES

[9] It is useful at the outset to understand the nature of Future Club and where it is located.

[10] Prior to the hearing, the Authority undertook an afternoon viewing of the area around Future Club to orient itself for this appeal. In attendance during this view were counsel for each of Sogi, the Licensing Inspector, and CityLife. The Authority did not view the interior of the premises, it being closed, and because the primary focus of this appeal is on the effect of the renewal of the licence on the amenity and good order of the locality.

¹ [2020] NZARLA 56

² Sogi's initial on-licence was issued for a period of one year from 29 November 2017 but in accordance with the DLC's decision, the licence continued in effect until 10 February 2019.

³ [2020] NZARLA 80

⁴ [2020] NZARLA 83



[11] According to the Licensing Inspector's s 129 report, Future Club is the largest night club in Auckland with a capacity of 500 people. The premises comprise a sprawling downstairs bar area and dancefloor with VIP rooms upstairs. The Inspector reports that the premises also has a 'quiet area' that can be used for intoxicated patrons.⁵

[12] Future Club developed and evolved from Zeus Club, which previously occupied the same location. Zeus Club operated from 2014 until 2017 when Future Club opened. According to Mr Clyde Young, the sole director and Sogi, the premises is only open on Friday and Saturday nights between 10.00 pm and 4.00 am⁶ notwithstanding that the licence authorises the sale of alcohol Monday to Sunday 8.00 am to 4.00 am the following day.⁷ On Friday and Saturday nights, around 1500 patrons visit Future Club on a reasonably consistent basis⁸ although capacity at any one time is kept to 450 patrons.⁹

[13] The entrance to Future Club is on Durham Street West, which runs between Queen Street and Albert Street. The exterior entrance to Future Club is non-descript, comprising a set of double doors that opens into a corridor leading to the bar area and dancefloor.

[14] Durham Street West is intersected by Durham Lane. CityLife Hotel is located on the corner of Durham Street West and Durham Lane and has its main entrance and vehicular forecourt almost directly across from the entrance to Future Club.

[15] Durham Lane is what might be described as a service alley for neighbouring buildings. Durham Lane provides access on one end to the rear of the President Hotel (which has its public entrance on Victoria Street), and access to the rear of other premises at the other end, including the Ibis Hotel, Spitting Feathers bar, the Ding Dong Lounge bar, and the Coffee Club, all of which have their main entrances on Wyndham Street. The exceptions to this are a bar called the Bluestone Room and a small coffee shop, which have entrances on Durham Lane. Durham Lane ends in steps leading to up to Albert Street, which are locked by a gate from sometime between 7.30 pm and 8.00 pm.¹⁰

[16] Between Future Club and Queen Street is a mini-supermarket, and two small restaurants. Looking the other way, between Future Club and Durham Lane is a takeaway, and a restaurant and bar. Between Durham Lane and Albert Street there are no shops due to the presence of two carparking buildings located on either side of Durham Street West. The City Centre carpark is located on the opposite side of the street to Future Club and above the approximately eight floors of carparking is the City Gardens Apartments. On the same side of the street as Future Club is the Wilson Parking carpark, which is located immediately above Future Club and runs the length of Durham Street West from a point above the mini-supermarket to Albert Street.

⁵ Report of Mr Tim Court, Alcohol Licensing Inspector, Auckland City Council dated 3 April 2019 at [5.1]

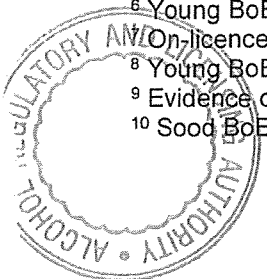
⁶ Young BoE dated 22 January 2020 at [2.2]

⁷ On-licence 007/ON/9643/2017

⁸ Young BoE dated 29 March 2019

⁹ Evidence of Mr Tiata, DLC Transcript at page 83

¹⁰ Sood BoE dated 29 August 2019 at [3.12]



LAW

[17] The sections of the Act relevant to this appeal follow.

[18] Section 3 of the Act sets out the Act's purpose:

- (1) The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole,—
 - (a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and
 - (b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.
- (2) The characteristics of the new system are that—
 - (a) it is reasonable; and
 - (b) its administration helps to achieve the object of this Act.

[19] Relevant to s 3, s 4 sets out the object of the Act:

- (1) The object of this Act is that—
 - (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
 - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
 - (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
 - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

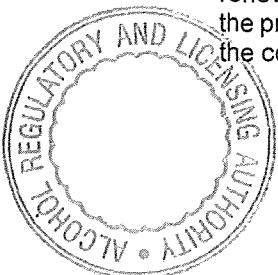
[20] Section 5 of the Act defines two terms that are relevant to this appeal:

alcohol-related harm –

- (a) Means the harm caused by the excessive or inappropriate consumption of alcohol; and
- (b) Includes –
 - (i) 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
 - (ii) 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 subparagraph (1).

and:

amenity and good order of the locality, in relation to an application for or for the renewal of a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable



[21] Section 131(1) of the Act reads:

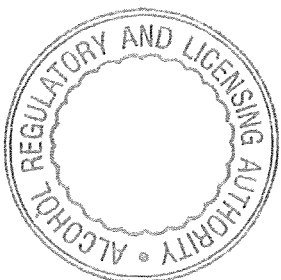
- (1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
 - (a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):
 - (b) whether (in its opinion) the amenity and good order of the 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.

[22] Relevant to s 131(1)(a), paragraphs (a) to (g), (j), and (k) of section 105(1), read:

- (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.

[23] Finally, relevant to s 131(1)(b), s 106(2) of the Act says:

- (2) In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):
 - (a) current, and possible future, noise levels:
 - (b) current, and possible future, levels of nuisance and vandalism.



ATTITUDE OF REPORTING AGENCIES

Medical Officer of Health

[24] On 26 November 2018, Ms Ying Li for the Medical Officer of Health reported that the Medical Officer of Health did not oppose the grant of the application as the Medical Officer of Health had no information specifically related to the premises.

Police

[25] In his s 129 report on the application,¹¹ Constable Sebastian Miklos¹² opposed the application on behalf of the New Zealand Police based on the following criteria:

- (a) the object of the Act (s 131(1)(a) and s 105(1)(a));
- (b) the suitability of the applicant (s 131(1)(a) and s 105(1)(b));
- (c) the design and layout of the premises (s 131(1)(a) and s 105(1)(e));
- (d) whether the applicant has appropriate systems, staff and training to comply with the law (s 131(1)(a) and s 105(1)(j));
- (e) the amenity and good order of the locality (s 131(1)(b)); and
- (f) the manner in which the applicant has sold, displayed, advertised and promoted alcohol (s 131(1)(d)).

[26] Constable Miklos reported that on multiple occasions the Police had observed patrons inside, exiting, or directly outside the premises showing signs of intoxication, some to the point of vomiting.

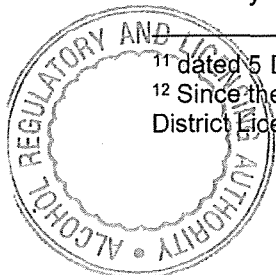
[27] Constable Miklos reported further that Mr Clyde Young has no personal experience in running licensed premises and is not directly involved in the daily operation of Future Club. The Police say that instead, the premises have been managed by two staff members with limited experience in running premises the size and nature of Future Club. The failure to employ suitably experienced staff, Constable Miklos reports, brings Sogi's suitability to hold a licence into question.

[28] In terms of the premises themselves, Constable Miklos considered that the number of patrons attracted to the premises is too great for the size of the footpath on Durham Street, and that the crowd cannot effectively be managed. Constable Miklos reported that the narrow footpath is used for both entry and egress to Future Club and large numbers of people, who are often influenced by alcohol or who are intoxicated, congregate on the footpath and spill onto the road exposing them to harm from passing vehicles, and where disorder and fighting regularly occurs. Constable Miklos also reported that smoking occurs on the footpath outside.

[29] Constable Miklos reported further that due to previous breaches of the Act and licence conditions, Future Club has twice been the subject of the Police 'Graduated Response Model' (GRM). The first GRM, Constable Miklos reported, arose from issues on Future Club's first day of trading. The second GRM arose because a 700ml bottle of Cognac was provided by a staff member to a patron in the premises VIP area contrary to s 254 of the Act (which resulted in an infringement notice being issued).

¹¹ dated 5 December 2018

¹² Since the DLC hearing, Constable Miklos has left the Police and is now employed as an Auckland District Licensing Inspector



[30] Constable Miklos considered that based on Police calls for service, the amenity and good order of the locality has been reduced by more than minor extent since Future Club was granted an on-licence. Constable Miklos said that the noise from the large numbers of patrons attracted to the premises can be heard from a distance and there are complaints from nearby residential and commercial premises.

[31] The Police report that the security is insufficient to manage the large numbers outside the premises and that the Police have received two complaints relating to assaults on patrons by on-duty security employed at Future Club.

[32] Finally, Constable Miklos reported that Future Club's *Facebook* page showed photographs of large quantities of alcohol being available including full trays of shots and people drinking from champagne bottles. Voucher giveaways for alcohol were also said to have been promoted on the *Facebook* page.

[33] The Police consider that these matters indicate that the sale, supply and consumption of alcohol at Future Club is not being undertaken safely and responsibly.

Licensing Inspector

[34] In his s 129 report,¹³ the Auckland Council Alcohol Licensing Inspector, Mr Tim Court, also opposed the application. Mr Court said that his objection was 'mainly due to late licensed hours, and amenity and good order – refusing the renewal would likely improve the area due to disorder, nuisance and fighting that occurs outside Future Club.'¹⁴

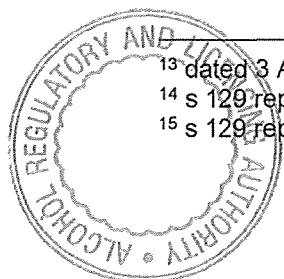
[35] Mr Court reported that while he has concerns with the amenity and good order outside Future Club, he had not found any breaches of the Act inside the premises.

[36] Mr Court reported that he had conducted four night-time compliance visits at Future Bar and that directly outside the premises he observed disorder, loud and unruly behaviour, noise, vomiting, physical aggression, and people showing signs of intoxication. Mr Court said that as these issues occur after 1.00 am, he is opposed to any licence hours after that time.

[37] Mr Court reported that in his experience, the level of disorder in the vicinity of Future Club is not characteristic of areas outside of other licensed premises, even in Auckland Central. Mr Court reported that there have been five noise complaints against the premises since Sogi was first issued a licence, although none of these resulted in excessive noise being detected when noise control officers attended.

[38] Mr Court commented:¹⁵

There is reason to believe that 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.



¹³ dated 3 April 2019

¹⁴ s 129 report at [2] (Executive Summary)

¹⁵ s 129 report at [6.5]

[39] On the other hand, Mr Court reported that the premises are well kept and when he has walked past them during the day the surrounds are free of rubbish. Mr Court said that Future Club staff have advised him that they clean up rubbish and cigarette butts outside at the end of the night.

[40] Overall, Mr Court concluded:¹⁶

Standing back and considering the application, there is reason to believe that granting this application would not achieve the object of the Act, which is ensuring the safe sale, supply and consumption of alcohol, and minimising alcohol-related harm.

My visits to the premises are a small sample size of the premises' operating times. However, I have also considered the objections, and the opposed police report. Based on all the information available, I oppose the application.

OBJECTIONS

[41] There were seven public objections to the application. The Licensing Inspector reported that all but one appeared to have a greater interest in the application than the public generally because each are 'located' within 1 km of the premises.

[42] Mr Court recommended that the one objection from Denny Pro Management be discounted due to it lacking any detail. This objection simply says it objects to the licence renewal.

[43] The status of the objectors was not challenged before the DLC.

CityLife Hotel

[44] The first fulsome objection is from the CityLife Hotel, made through its counsel, Mr John Young.

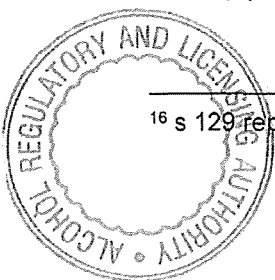
[45] CityLife objects on the basis of:

- (a) the object of the Act (s 131(1)(a) and s 105(1)(a));
- (b) the applicant's suitability (s 131(1)(a) and s 105(1)(b));
- (c) the proposed licence days and hours (s 131(1)(a) and s 105(1)(d));
- (d) the design and layout of the premises (s 131(1)(a) and s 105(1)(e));
- (e) systems, staff and training (s 131(1)(a) and s 105(1)(j));
- (f) amenity and good order (s 131(1)(b));
- (g) the manner in which the applicant has sold, displayed, advertised or promoted alcohol (s 131(1)(d)); and
- (h) the applicant's eligibility (i.e. whether it is trading as a 'tavern' as defined in s 5 of the Act).

[46] CityLife says its primary concerns are:

- (a) the continuing and frequent incidents of intoxication, disorder, violence, nuisance, rubbish and excessive noise in and around the premises;

¹⁶ s 129 report at [7.1]



- (b) the apparent unwillingness of the licensee to formalise any measures to address this behaviour;
- (c) about operational practices within the premises, including but not limited to, irresponsible promotions of alcohol and the inability to properly assess the intoxication of minors;
- (d) about safety concerns for CityLife staff and customers; and
- (e) the impact of all of these matters on CityLife's business and the experiences of its guests.

Eric Lim

[47] The second objection is from Mr Eric Lim on behalf of a number of unidentified residents of the City Gardens Apartments. Mr Lim says, among other things, that:

- (a) the location of Future Club is ill-suited with many residents being directly affected by intoxicated and intimidating crowds, yelling and screaming, cigarette smoke and unsightly and hazardous waste including human vomit, urination and even excrement on days following opening;
- (b) residents are afraid to walk or drive down Durham Street West during business hours due to the lack of crowd control and the generally intoxicated and aggressive nature of the crowd that forms on the street;
- (c) the frequent Police presence does not have any effect on crowd control and often causes more noise and nuisance; and
- (d) the presence of unconscious people frequently slumbering in the vicinity is a health risk.

Richard Clothier

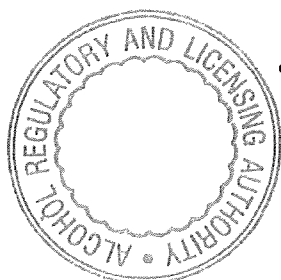
[48] A third objection is from Mr Richard Clothier who is the owner of an apartment in the CityLife Hotel.

[49] Mr Clothier objects to the renewal of the licence on the basis that business tenants who use his apartment from time to time advise him that Future Club is a nuisance to owners and occupiers of the complex. Mr Clothier says that as patrons leave the Club in the early hours, there are safety concerns for his tenants getting back into the Hotel in the evening. Mr Clothier says the noise is excessive and fighting regularly takes place. Mr Clothier says the behaviour happens within Durham Street West and within the CityLife forecourt and has been ongoing since Future Club opened.

Sarah W and Jennifer Russ

[50] Two objections from 'Sarah W' and Jennifer Russ (both of whom are owners of apartments in the City Garden Apartments), are identical in nature, and state, among other things, that:

- there are a large number of children living in apartments with families directly opposite Future Club which negatively impacts their well-being due to noise pollution, street and road safety;
- Future Club is not a good neighbour in our community and doesn't hold the same social and ethical values that align with the Council's strategic visions for Auckland CBD;



- The orientation of the entrance of Future Club has extended outward which creates environmental pollution of noise, light and smoke into public spaces;
- Future Club patrons regularly wake up residents in the early hours of the morning, which negatively impact children, families and individuals;
- Future Club encourages an excess of cars that drive at speed causing issues for good vehicles;
- residents frequently feel unsafe on their small street due to patrons at Future Club;
- Future Club patrons obstruct the entrance to City Gardens and smoke in the foyer, which is prohibited. This also poses a fire risk;
- Future Club is directly below a childcare centre. Children walking past are exposed to bodily fluids and litter on the streets on a regular basis;
- on any given opening night there are a range of grossly intoxicated persons outside the club, sitting on the kerbs or on the street; and
- many of these intoxicated people are evidently unwell, vulnerable, agitated or violent.

Mrs Peggy Lowndes

[51] The final objection is from Mrs Peggy Lowndes. Mrs Lowndes' objection is that there is too much noise from Future Club especially at closing time when patrons can also be seen spilling out of the premises, 'yahooing and fighting'. Mrs Lowndes said one could guarantee being woken up between 3.30 am and 4.30 am by intoxicated 'loudmouths' and that cars start revving up and down the street with radios at full bore at this time. Mrs Lowndes also said that drunken patrons from Future Club mill around the entrance to City Gardens Apartments and CityLife shouting and swearing and impeding safe entry and exit.

[52] Further, Mrs Lowndes said that there is 'usually plenty of vomit and urine around when the drunks have gone home and we can feel safe to come out'.

[53] Mrs Lowndes' objection was the subject of scrutiny by the Authority when granting leave to Sogi to amend its grounds of appeal. In our earlier decision¹⁷ we found that despite Mrs Lowndes stating in her objection that she was an owner of an apartment neighbouring Future Club, her objection created the impression that she is also resident, which is not in fact the case. Mrs Lowndes told the Authority that she was addressing what other people in the apartments had told her, as well as what she observed for herself.

[54] Ms Lowndes' objection relates to the amenity and good order of the locality, which goes to the controversy between the parties. To the extent that her status was misunderstood by the DLC, the Authority granted leave for Sogi to amend its grounds of appeal.



DECISION OF DLC

[55] After canvassing the evidence of the parties,¹⁸ the opposition from reporting agencies,¹⁹ and the objections of CityLife²⁰ and Mrs Lowndes²¹ (who were the only objectors to appear before the DLC), the DLC then considered the submissions of the parties. In doing so the DLC noted that counsel for Sogi suggested that the renewed licence be issued subject to the following conditions:²²

- (a) no queuing to occur outside the Club, all patron queuing to be managed within the venue;
- (b) the smoking area to contain no more than 20 patrons smoking at any one time. Only smokers to be permitted in this area;
- (c) two security personnel to be allocated specifically to remain outside either entrance to the forecourt of CityLife and not to be used for other duties;
- (d) two duty managers to be on duty at all times Future Club is open; and
- (e) an independent audio technician to carry out noise level testing when the Club is open at three-monthly intervals in the first year of the new licence and every six months for the remainder of the licence. The reports to be sent to the licensing authorities and to be available to be viewed by interested parties.

[56] Notwithstanding this, the DLC declined the renewal application noting that it must have regard to the object of the Act which emphasises that the harm caused by excessive or inappropriate consumption of alcohol should be minimised.²³ In the DLC's 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.²⁴ The DLC said:²⁵

The submissions of counsel for the applicant have concentrated on the principle of minimisation of alcohol-related harm leading to the proposition that the objectors have to tolerate a level of objectionable behaviour that occurs on its premises. We reject that submission. We find that the premises contribute to much (if not all) of the alcohol-related harm in this locality which cannot be ignored or condoned such that a refusal to renew the on-licence of the applicant will result in the amenity and good order of the locality is likely to be increased by more than a minor extent. The occurrence of urination, and vomiting, on private property is disgusting, objectionable and is not tolerable along with fighting and excessively loud vocal noise.

We also find that the criticism of the applicant that CityLife did not draw to the attention of the applicant its evidence of objectionable behaviours referred to above is misconceived. It is the responsibility of the applicant to ensure the amenity and good order of its environs. It is not for the CityLife Hotel or any other objector to assume that responsibility.

¹⁸ DLC decision at [6] – [30]

¹⁹ DLC decision at [31] – [49]

²⁰ DLC decision at [50] – [56]

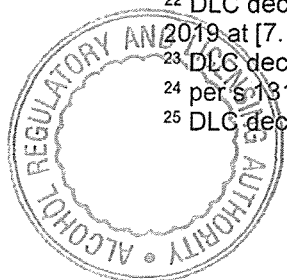
²¹ DLC decision at [57]

²² DLC decision at [70]; see also Sogi's closing submissions before the DLC dated 30 September 2019 at [7.1]

²³ DLC decision at [99]

²⁴ per s 131(1)(b)

²⁵ DLC decision at [109] – [111]



As was said ...in *Lion Liquor* the professionalism of the operator becomes subordinate to the extreme alcohol-related harm which is evidenced.

[57] The DLC found that the behaviours described in the evidence directly related to the patrons of Future Club:²⁶

We accept the evidence that the nearby Bluestone Room generally closes at midnight and that its patrons are of an older age group. There is evidence that stairs leading from Albert Street down to Durham Lane are locked at night thus preventing access from patrons of the more distant venues onto Durham Street West. We adopt the view expressed in "Bin Bin" that no one should be subject to the use of one's front door as a urinal, particularly as the locality in this matter is primarily residential. Apart from the Club and carparks, there are two apartment buildings which predominate the locality....

[58] In coming to its decision, the DLC noted that Sogi did not deny that the events described by the evidence had occurred but took the position that it has taken steps to remedy any deficiencies such that it now meets the requirements of the Act.²⁷ The DLC disagreed that the application meets the object of the Act and refused the application for renewal.

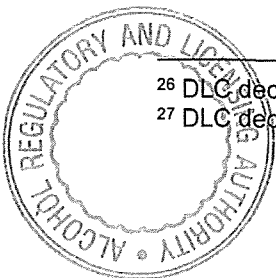
GROUND OFS OF APPEAL

[59] Sogi has appealed the decision of the DLC pursuant to s 154 of the Act. The grounds of appeal set out in the notice of appeal, are that the DLC erred:

- by failing to properly consider or evaluate key aspects of the evidence, and in doing so, failed to consider relevant matters;
- by placing excessive weight on the evidence adduced by CityLife;
- "in being influenced" by evidence of both the Police and Licensing Inspector that was unreliable and speculative;
- in characterising the locality as primarily residential and applying an amenity and good order assessment with that in mind;
- in distinguishing a decision of its own and failing to apply a consistent standard between applicants;
- by effectively creating an obligation on applicants to eradicate any and all harm associated with alcohol consumption inconsistent with the object of the Act;
- by characterising the impacts on amenity and good order as extreme alcohol-related harm rather than harm at the lower level identified by the Act;
- by implying, contrary to the evidence, that the applicant appeared to condone or ignore the harms evinced;
- by failing to recognise the active and significant steps taken by the applicant to address issues of amenity and good order, as other district licensing committees do, and thereby failing to apply a consistent standard; and
- by failing to articulate how the standard of 'more than a minor extent' is to be assessed and applied to licence applications thereby applying an

²⁶ DLC decision at [107]

²⁷ DLC decision at [102]



unacceptably vague standard to the application with the corollary that there does not appear to be a nationally consistent standard or approach in assessing the same.

[60] Before the Authority, Sogi narrowed its grounds of appeal down to what it considers to be two specific errors on the part of the DLC, namely:²⁸

- (a) a failure by the DLC to identify and apply the relevant legal test when assessing the effect of the licence on the amenity values of the locality; and
- (b) a failure to identify the scale and severity of the harm said to arise from the excessive or inappropriate consumption of alcohol, and a failure to determine whether this can be minimised by Future Club in the manner contemplated by the Act.

[61] As Mr McBride put it in his submissions in relation to Sogi's application to adduce new evidence:²⁹

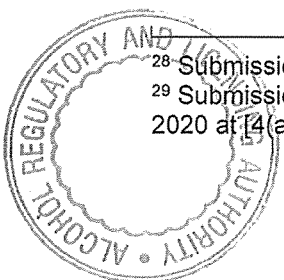
... the appeal is focussed on the DLC's failure to assess the premises' net effect on the amenity of the locality (both positive and negative), and the failure to consider how best to minimise any associated harmful anti-social behaviour

[62] The additional grounds of appeal for which leave to amend was granted are that the DLC erred:

- (c) in respect of Ms Lowndes's status as an objector at the hearing, her questions, her submissions, and her inadmissible evidence;
- (d) in that the Alcohol Licensing Inspector's assessment of the amenity values in the locality was not supported by any "Local Impacts Report" or similar analysis or relevant planning documents (such as the Auckland City Centre Masterplan or "Internal Strategy to Minimise Alcohol Related Harm 2016"), but were instead based on misleading submissions and inadmissible evidence from a person claiming to be a resident in the adjacent apartment building, and from three visits to the locality in 2018, which under cross-examination were shown to not support any conclusions about the link between Future Club's operations and the amenity of the locality;
- (e) in allowing counsel for CityLife to ask questions of the Licensing Inspector which were leading and in breach of s 93 of the Evidence Act 2006; and
- (f) in that CityLife's submissions on the amenity values in the locality, were not supported by any "Local Impacts Report" or similar but were instead based on (among other matters) misleading submissions and inadmissible evidence from a person claiming to be a resident in the adjacent apartment building, as well as inadmissible and objectionable questions asked of the person responsible for assessing local amenity values - the Licensing Inspector.

²⁸ Submissions for the Appellant dated 21 March 2020 at [3]

²⁹ Submissions for the Appellant in Support of Application to adduce new evidence dated 31 March 2020 at [4(a)]



[63] By way of relief, Sogi asks that the DLC decision be set aside and that the application for renewal be granted, on the conditions proposed by it before the DLC.

SUBMISSIONS FOR APPELLANT

[64] Mr Josh McBride, counsel for the appellant, submits that despite the wide-ranging nature of the objections to the renewal of Sogi's on-licence, ultimately the DLC confined its consideration to the amenity and good order of the locality, and it was on this basis that the DLC declined the application.

[65] Mr McBride told the Authority that the issue in this appeal is about how the DLC approached its assessment of the amenity and good order of the locality (per s 131(1)(b)), which the DLC addressed in one paragraph in its decision.³⁰ That is, the DLC failed to:

- (a) mention or address the statutory definition of 'amenity and good order of the locality';
- (b) identify the locality that was at issue;
- (c) address the extent to which that locality would be made more 'pleasant and agreeable' by declining the application (being a counterfactual assessment); and
- (d) discuss the meaning of 'more than a minor extent'.

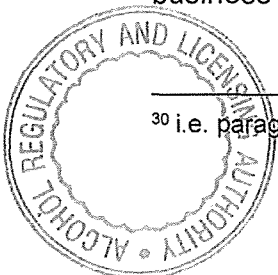
[66] It is submitted that in order to assess the impact of a licence on the extent to which a locality is pleasant and agreeable, some assessment must first be made of the qualities of the locality. In doing so, it is submitted that the DLC, and now the Authority on appeal, must identify features or surroundings of a particular place that makes it pleasant and agreeable, and then assess the impact of the licence on those features.

[67] Mr McBride submits that Future Club is located within the Business-City Centre Zone in the Auckland Unitary Plan (AUP), which zone seeks to ensure the city centre is an international centre for business and learning, innovation, entertainment, culture and urban living. The zone permits a wide range of activities including those offered by Future Club.

[68] Before the Authority, Sogi said that nightclubs such as Future Club are not just tolerated under the AUP, but they are actively encouraged and are designated as permitted activities. It is submitted that this ought to be the starting point for an assessment of the amenity and good order of the locality, and the DLC failed to do this. That is, the assessment of the application must be undertaken against the context of Future Club providing a service which the Council has specifically endorsed as being an attractive component of a modern city such as Auckland.

[69] By describing instances of urination and noise in the street as disgusting without any analysis or reasons, Sogi submits that the DLC took the wrong approach in the circumstances of a renewal application for an on-licence premises operating in the business zone of the central city. In doing so the DLC ignored any evidence that was

³⁰ i.e. paragraph [109]



unhelpful or contrary to its conclusion, such as the lack of any evidence of increased criminal activity attributable to Future Club.

[70] Counsel for Sogi also submits that by reference to specific evidence, the statutory criteria in s 131 needs to be approached by asking the question, as is done under the Resource Management Act 1991, 'having identified the harm, how do we best minimise it?'

[71] It is submitted that Durham Street West is not a pleasant place to be in during the day or night, being narrow, dark, and empty, frequented by street dwellers and containing mini-mart styled shops and car parking buildings. It is submitted that the operation of a large nightclub like Future Club in fact adds a significant amenity value to the area, with people coming to the city to enjoy socialising, drinking and dancing. Further, Future Club attracts a large crowd because it offers a safe environment in Durham Street, including having well qualified security and bar staff.

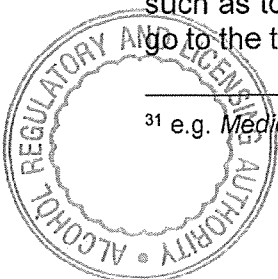
[72] Sogi submits that the DLC failed to recognise that the Club contributes to the amenity values of central Auckland and that the DLC needed to undertake an overall assessment of the Durham Street locality and those features that make it pleasant, including the positive and agreeable features of Future Club itself. It is submitted that what the DLC was required to do was to assess the net impact of refusing Future Club's licence, by reference to the pleasant and agreeable features of the locality. Mr McBride submits that this is what the Environment Court does on a regular basis when assessing whether a proposed activity will have an effect on surrounding amenity values and whether that is 'more than minor'. Mr McBride says that by failing to do so the DLC did not adopt a principled assessment of the application.

[73] Sogi submits that the only reason to decline the licence could have been that the application did not meet the broad objectives set out in s 4 of the Act. In this regard, it is submitted that the cases which have dealt with s 4 have been off-licences given the 'well known' harm that results from binge drinking that off-licence premises can and do enable.³¹

[74] Sogi submits that typically the effects of an off-licence on a locality is assessed by data from reporting agencies focusing on the level of alcohol-related harm, including crime and disorder, which then allows a connection to be drawn between the alcohol-related problems occurring in the locality and the potential for those premises to enable those problems to occur. In the present case, however, it is submitted that there is no or limited evidence of significant and ongoing alcohol-related harm in Durham Street, let alone evidence that can be linked to a 'more than minor' reduction in harm if Future Club's on-licence is not renewed.

[75] Sogi submits that while there is evidence that the public have historically used Durham Street to drink alcohol and urinate, that sort of harm is at the lower end of the scale recognised by the Act and is a well-known incident of off-licence alcohol consumption rather than of patrons frequenting a bar, where the premises must have suitable toilet facilities. Before the Authority, Sogi submitted that the evidence is not such as to show that the people on the street were drunk. Rather they just needed to go to the toilet and there were no facilities available. While public urination is accepted

³¹ e.g. *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123



to be anti-social behaviour, to visit that on Future Club simply because a patron might have been there earlier, is not a sufficient reason for saying that the premises are not being controlled properly and more needs to be done. Before the Authority, Sogi said that it is not for the DLC or the Authority to simply say 'someone left your premises intoxicated, that is Future Clubs' fault, and therefore it is not allowed a licence'.

[76] Sogi submits that the issues of noise and urination are not a consequence of Future Club but are rather the consequence of having lots of people in the city late at night.

[77] It is not submitted that vomiting or urinating against a shop window should just be tolerated, but simply because a person cannot find a toilet does not establish a causal link to the abuse of alcohol, which is what the Act is concerned about. It is submitted that the DLC did not grasp that the social harms occurring in the locality are nothing to do with alcohol, but they arise because there are lots of people in the locality. That people are visiting Future Club, it is submitted, does not of itself engage any of the relevant restrictions or criteria under the Act. As Mr McBride put it before the Authority "...if harm is lots of people in the CBD, it's got nothing to do with excessive or inappropriate consumption of alcohol. And, similarly, if harm is people having to urinate in a street because the Council hasn't adequately provisioned public facilities, again, why is that tied to excessive or inappropriate consumption of alcohol?"

[78] It is submitted that as the Council has developed the AUP that says nightclubs are welcome in the CBD, it is not within the purview of the Authority to determine whether having groups of young people gathering in the CBD on weekends as a consequence, is wise. Rather what is needed is a causal connection between the premises and alcohol-related harm.

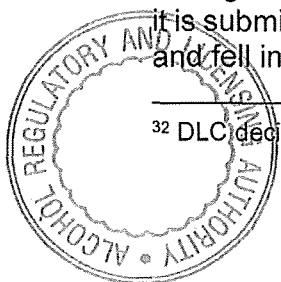
[79] Sogi also submits that it cannot possibly be right for the DLC to say "It is the responsibility of the applicant to ensure the amenity and good order of its environs. It is not for the CityLife Hotel or any other objector to assume that responsibility."³² Before the Authority, counsel for Sogi said Sogi's responsibility is to ensure it complies with the Act and that people don't get intoxicated:

If people come to the bar that are intoxicated and want to come in for a drink, we don't let them in. When they come in, we make sure we have safe policies and procedures and systems and controls to regulate what happens in there. And when they leave, they are not our responsibility. And to say that, 'well some of them get up to mischief' then goes directly to, 'well okay, how can we regulate your operation to ensure that doesn't happen?' And, again, I come back to the rhetorical proposition 'well, you tell me what we're supposed to do?'

[80] Rather than unleashing wildly intoxicated youths into the CBD, it is submitted that all Future Club has done is let patrons out on the street at the end of the night, but the DLC then said that what happens after that is all Future Club's fault.

[81] In the absence of some policy guidance, such as a local alcohol policy, explaining to Sogi what it needs to do in terms of what happens when patrons leave Future Club, it is submitted that the DLC has taken an unprincipled and loose approach to the issue, and fell into error.

³² DLC decision at [110]



[82] It is submitted that what the DLC was doing was seeking to have Sogi prove a negative, namely that the instances of anti-social behaviour are not Sogi's fault. Before the Authority it was submitted that it is not for Sogi to undertake a counterfactual assessment and prepare impact reports. In this regard, it is submitted that if objectors wish to point to alcohol-related harm, they need to explain with precision and reference to the evidence why they say the locality is going to be better if Future Club is not granted a renewal licence. Sogi submits that the logic employed by the DLC was simply that the locality will be better without Future Club, that is, the DLC determined to clean up the locality by closing some bars.

[83] It is further submitted that the Act contemplates that a responsible licensee will act to identify and minimise alcohol-related harm as best as possible, which is precisely what Future Club has done. It is submitted that inherent in the Act is that a responsible party is on notice of the objectionable conduct in question and is afforded a reasonable opportunity to address and minimise it.

[84] Sogi says that the unchallenged evidence is that Future Club has always made every effort to accommodate CityLife's concerns and that since Mr Sood took over as General Manager, CityLife has made no attempt to raise any of its concerns with Future Club. Instead of collecting evidence of objectionable conduct to present before the DLC, it is submitted that the Act contemplates that the community be allowed to enjoy socialising, dancing and drinking provided that the harmful effects of alcohol are actively identified and minimised. This, it is submitted, requires neighbours to work together to identify, isolate and minimise that harm, and this is the approach Future Club has always taken. If Future Club had prior notice of the objectionable behaviour presented by CityLife, it is submitted that it could have dealt with that.

[85] It is also submitted that the DLC failed to recognise that having a significant security presence in Durham Street cannot do anything other than enhance the safety of the people who are travelling through it. Further, it is submitted that the security staff at Sogi have no ability to stop people urinating on the street. While they may be able to help move people along, there is no obvious legal ability to stop that or to control the crowd in the area.

SUBMISSIONS FOR RESPONDENTS

Submissions for Licensing Inspector

[86] Mr Michael O'Flannigan for the Licensing Inspector submits that it is incumbent on the appellant to establish that the decision of the DLC was wrong and not merely that someone might have reached an alternative conclusion on the facts of the case. It is also submitted that there is no presumption that an application for a licence will be renewed.

[87] It is submitted that the extensive evidence before the DLC was of Sogi's customers vomiting, urinating, littering, arguing and otherwise fouling the area both before and after entering Future Club. All of this belies the argument that there was no or insufficient evidence for the DLC to reach the conclusion it did about the effects of the premises on the amenity and good order of the locality.



[88] It is submitted that the DLC evaluated the evidence under the correct legal framework and concluded that the negative impacts of Future Club on amenity and good order were significant, offensive and largely undisputed, and that the remedial measures proposed by Sogi were neither credible nor effective.

[89] Mr O'Flannigan submits that the evidence of the Licensing Inspector describes serious harm to the amenity and good order of the locality that is incompatible with the Act. Further the evidence of the Police described anti-social behaviour and episodes of public urination attributable to Future Club's customers waiting to enter the premises, the clustering of events in the immediate vicinity of Future Club, and incidents linked to individuals who had been in or were going to Future Club. The Police evidence, it is submitted, is that the problems on Durham Street West could not be attributed to other premises or to homeless people in the area.

[90] The basis of the Licensing Inspector's objection, Mr O'Flannigan says, is reinforced by the evidence for CityLife which includes extensive and graphic video of Future Club patrons loitering in large groups, urinating, vomiting, fighting, yelling and littering in the area. It is submitted that Sogi admitted in its submissions that the hotel's evidence is the most reliable evidence in terms of the objection to amenity and good order.

[91] After outlining the extensive evidence of the Future Club's negative impact on amenity and good order, Mr O'Flannigan says the DLC observed that the applicant has not denied that the events described have occurred but rather its position is that it has taken steps to remedy the deficiencies in the operation of the Club.

[92] It is submitted that a careful review of the DLC's decision shows that the DLC carefully weighed the relevant factors and its conclusion was supported by the clear weight of evidence. The DLC traversed the evidence describing the area where the premises are located, as well as the less savoury aspects of the CBD.

[93] The Licensing Inspector submits that even in mixed-use areas or entertainment districts, licensees are obliged to manage their premises so as to minimise instances of vomiting, fighting and public urination. It is submitted that the DLC is not required to find that any amenity value of socialising, dancing and drinking – a value which accrues solely to Future Club's paying customers, outweighs the antisocial, obnoxious, and unhygienic effects on surrounding residents, businesses, and passers-by. Nor did the DLC err in not finding that the additional conditions proposed by Sogi were not credible safeguards against proved instances of alcohol-related harm.

[94] It is submitted that the appellant's characterisation of the opposition to its application ignores the voluminous evidence presented by the Police and the Inspector at the hearing. Mr O'Flannigan submits that the premises have become a magnet for excessive noise, obnoxious and aggressive behaviour, and public intoxication to the point of vomiting and unconsciousness and that the evidence of the reporting agencies shows that security staff are not able to address the challenges of operating for extended hours.

[95] It is submitted that the evidence supports the DLC's findings regarding the effects of the refusal on the amenity and good order of the locality and that the application is



contrary to the object of the Act. As a result, it was not necessary for the DLC to attempt to bring the premises into compliance by adopting the inadequate supplemental conditions proposed by the applicant.

[96] It is submitted the appeal should be dismissed.

Submissions for NZ Police

[97] Senior Sergeant de la Rue for the New Zealand Police agrees with, and adopts the submissions of the Licensing Inspector. Senior Sergeant de la Rue submits that the DLC accurately identified the scale and severity of the harm and also gave proper consideration to whether that harm could be minimised by the steps taken to remedy the deficiencies. Ultimately, however, the DLC decided that these steps would not alleviate the issues facing the application.

[98] It is submitted that the proposition that the Club is itself a very pleasant and attractive destination is hyperbole and is largely irrelevant to the amenity and good order of the locality. Senior Sergeant de la Rue submits that Sogi has already accepted that the amenity and good order of the locality is lacking, and when you add large crowds of intoxicated people, vomit, urination, fighting and noise to the mix, the DLC was right to decline the application. Future Club, it is submitted, is an attractant to intoxicated people and what can only be described as antisocial and disorderly behaviour.

Submissions for CityLife

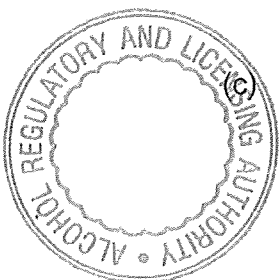
[99] Mr John Young, counsel for CityLife submits that almost all of the arguments by Sogi are premised on there being a presumption in favour of renewal and that the parties should work towards enabling the licence to be renewed because it is a permitted activity. It is submitted there is no such presumption, or obligation on the parties.

[100] It is submitted that the DLC refers to the correct legal test but the evidence of harm and amenity impacts was overwhelming and largely uncontested. Notably, CityLife's evidence was not contested at all and was described by counsel for Sogi as the best evidence, and reliable.

[101] It is submitted that the appeal should be dismissed because:

- (a) the overwhelming preponderance of evidence that the DLC heard makes it crystal clear that the premises have a significant negative impact on the locality and alcohol-related harm was tolerated or even encouraged by Sogi;
- (b) Sogi's denials or alleged lack of knowledge of the issues raised in the evidence of the opposition parties justifiably intensified the DLC's concerns regarding the management and operation of Future Club: Sogi sought to use ignorance as a defence;

the DLC's decision clearly addressed the evidence and cogently expressed conclusions reasonably available to it on the evidence;



- (d) reliance on resource management principles is a flawed and unhelpful approach;
- (e) the general principles expressed in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*³³ can be applied to on-licence applications; and
- (f) Sogi's criticism of CityLife reflects very poorly on it and indicates that it is not suitable to hold a licence.

[102] In essence, CityLife submits that "it was Sogi's hubris that led to its demise. It simply lost touch with the reality of the situation endured by neighbours, the reasonable expectations of reporting agencies, and the requirements of its licence and the Act."³⁴

[103] It is further submitted that the errors alleged by Sogi, which CityLife says are not made out, would not materially change the outcome of the hearing. CityLife says it is entirely illogical to suggest that the appalling behaviours captured in the evidence could only have a minor impact. Having reached the view that most if not all issues in the locality were caused by Future Club, it is axiomatic that its removal from the locality would reduce the incidence of those impacts by 'more than a minor amount'. This it is submitted, is not a urination case, but the evidence presents a suite of issues from fighting, noise, disorder, vomiting, urination and intoxication. It is also submitted that the evidence is such that the sale, supply and consumption of alcohol at Future Club was not safe and responsible.

[104] CityLife invites the Authority not only to dismiss the appeal but to make a finding in relation to whether Sogi is a suitable person to hold an alcohol licence on the evidence and submissions before it.

Submissions for Mrs Lowndes

[105] Mrs Lowndes adopts the submission of the other respondents and submits that the good order and amenity of the locality would be 'considerably restored' by more than a minor degree if the decision of the DLC is upheld.

[106] Mrs Lowndes submits that the DLC properly considered whether the harm could be minimised by the steps offered to remedy the deficiencies exposed and ultimately the DLC concluded that based on the extensive evidence of amenity and good order impacts, the renewal should be declined.

DECISION OF THE AUTHORITY

Approach on appeal

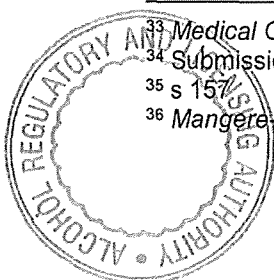
[107] An appeal brought pursuant to s 154 of the Act is by way of rehearing.³⁵ As the Authority said in *Mangere-Otahuhu Local Board v Level Eighteen Limited*,³⁶ it is for

³³ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31

³⁴ Submissions for CityLife at [1.6]

³⁵ s 157

³⁶ *Mangere-Otahuhu Local Board v Level Eighteen Limited* [2014] NZARLA PH 627-228 at [15]



the appellant to satisfy the Authority that the decision of the DLC was wrong. *Mangere-Otahuhu Local Board v Level Eighteen Limited* reflects what the Supreme Court said in *Austin, Nichols & Co Inc v Stichting Lodestar*,³⁷ namely that the appellant bears an onus of satisfying the appeal court that it should differ from the decision under appeal. It is only if the appellate court considers that the appealed decision is wrong that it is justified in interfering with it.

[108] Having said that, the Authority must undertake its own assessment of the merits of the renewal application.³⁸

[109] While the Authority said in *Mangere-Otahuhu Local Board v Level Eighteen Limited* that the Authority might hesitate to conclude that the findings of fact or of fact and degree are wrong,³⁹ this does not constrain the Authority given it is a specialist body with expertise in the field of alcohol regulation.⁴⁰

Central Issue

[110] The central issue in this appeal is whether the DLC undertook a proper assessment of the evidence when forming an opinion about whether the amenity and good order of the locality in which Future Club is located, would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew Sogi's on-licence for Future Club.

[111] Before the Authority, counsel for Sogi said that the evidence before the DLC does not establish alcohol-related harm for the purposes of the Act, or to the extent that there is alcohol-related harm, the evidence does not establish a causal nexus between that harm and Future Club. That is, the anti-social behaviours complained of, while unpleasant and of a kind that should not be tolerated, are not harm for which Future Club has any control but is the result of people congregating in the locality, which is a permitted activity.

[112] The respondents, on the other hand, contend that the harm in the locality is alcohol-related harm that can be sheeted back to the way in which Future Club operates.

First Ground of appeal: Did the DLC fail to identify and apply the relevant legal test when assessing the effect of the licence on the amenity values of the locality?

[113] As Heath J said in *Re Venus NZ Ltd*,⁴¹ the Act does not articulate a specific test to apply when determining whether to grant a licence application. Rather, a series of criteria are identified that must be taken into account in determining whether to issue the licence. In any given application, one or more of these criteria may assume prominence.

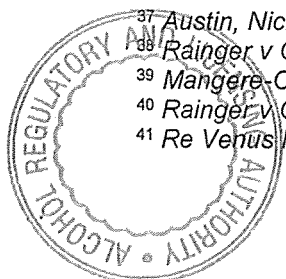
³⁷ *Austin, Nichols & Co Inc v Stichting Lodestar* [2008] 2 NZLR 141 at [4] (citations excluded)

³⁸ *Rainger v General Distributors Limited* [2019] NZHC 3483 (20 December 2019) at [57] – [64]

³⁹ *Mangere-Otahuhu Local Board v Level Eighteen Limited*, above n 36, at [17]

⁴⁰ *Rainger v General Distributors Limited*, above n 38 at [58]

⁴¹ *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315



[114] The relevant criteria are those in s 131 of the Act which incorporates some of the considerations in s 105. In addition, s 106(1) provides a 'legislative aid'⁴² for forming an opinion as to the amenity and good order of the locality under s 131(1)(b) of the Act.

[115] As Gendall J said in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*,⁴³ the role of the DLC or the Authority in considering the relevant factors of the Act is an evaluative one.⁴⁴

Thus, when the relevant body receives an application, they must consider it against s 105 in deciding "whether to issue a licence". There is no presumptive position, and certainly no foregone conclusion. I think the reality of the position is that if the object of the Act cannot be achieved by the application, then it cannot succeed.

So, in my view, the position can be summarised as follows:

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

[116] In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*,⁴⁵ Clark J summarised the applicable principles in respect of the renewal of a licence, namely:

- (a) there is no presumption that an application for a licence will be granted;⁴⁶
- (b) a DLC, and the Authority on appeal, 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 statutory object in s 4. Or as Heath J articulated a "test":⁴⁷

⁴² *Lower Hutt Liquormart Ltd v Shady Lady Lighting* [2018] NZHC 3100 [28 November 2018] at [66]

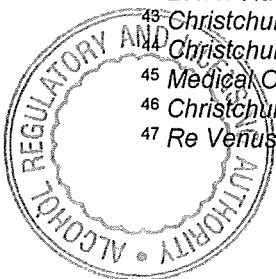
⁴³ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382

⁴⁴ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 43, at [55] – [56]

⁴⁵ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [46]

⁴⁶ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 43, at [55].

⁴⁷ *Re Venus NZ Ltd*, above n 41 at [20]



Although the "Object" of the 2012 Act is stated as one of 11 criteria to be considered on an application for an off-licence, it is difficult to see how the remaining factors can be weighed, other than against the "object" of the legislation. It seems to me that the test may be articulated as follows: is the Authority satisfied, having considered all relevant factors set out in s 105(1)(b)–(k) of the 2012 Act, that grant of an off-licence is consistent with the object of that Act?

- (d) the application of rules involving onus of proof may be inappropriate,⁴⁸ and similarly, there is no onus on the reporting agencies to prove the application should not be granted;⁴⁹
- (e) the criteria for the issue of licences, and for renewal, are not to be interpreted in any narrow or exhaustive sense. The Authority 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 licence conditions and the terms on which they should be granted. "That must include the statutory object referred to in s 4."⁵⁰ The matters raised by s 4 are to be approached on a nationally consistent basis;⁵¹ and
- (f) the Authority is not required to be sure that particular conditions will reduce alcohol abuse;⁵²

It is entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective ... then it is entitled to test whether that possibility is a reality.

[117] The evaluative function that the Authority is required to undertake is an assessment of risk:⁵³

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

[118] A causal nexus is required between the evidence to suggest that the grant of the application, contrary to the object of the Act, will increase the risk of alcohol abuse and the relevant risk.⁵⁴ As the evaluative function is an assessment of risk, it is the risk profile which is relevant, there is no requirement to link specific alcohol-related harm

⁴⁸ *Re Venus NZ Ltd*, above n 41, at [60] and *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689 at [52]

⁴⁹ *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 48 at [113]

⁵⁰ *Walker v Police*, HC Wellington AP 87/01, 31 May 2001 at [29] approved in *My Noodle Ltd v Queenstown Lakes District Council* [2009] NZCA 564, [2010] NZAR 152 at [67]

⁵¹ *Walker v Police*, above n 50 at [29]

⁵² *My Noodle Ltd v Queenstown Lakes District Council*, above n 50, at [74]

⁵³ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [43] and [47]

⁵⁴ *Otara-Papatoetoe Local Board v John Enterprises Ltd* [2012] NZHC 1406, [2012] NZAR 717 at [31], *Auckland Medical Officer of Health v Birthcare Auckland Ltd*, above n 48 at [50] and *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [60]



to a specific licence, or as Clark J said in the *Lion Liquor*, 'for the premises to be at the centre of the harm'.⁵⁵ Instead:⁵⁶

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.

[119] Further:⁵⁷

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".

[120] When undertaking the necessary evaluation:⁵⁸

The statutory provisions must be applied in a way that promotes the twin statutory objects which are that the sale, supply and consumption of alcohol should be undertaken safely and responsibly, and that alcohol-related harm should be minimised.

[121] The weight to be applied to each of the criteria in s 131 is a matter for the decision-maker. As Gendall J said in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*,⁵⁹ the principles relating to the requirement to "have regard to" can be summarised as these:

- (a) the phrase "have regard to" bears its ordinary meaning;
- (b) the decision maker must actively and thoughtfully consider the relevant matters;
- (c) to do so requires the decision maker to correctly understand the matters to which he or she is having regard;
- (d) the weight to be given to such matters is generally within the discretion of the decision maker;
- (e) there will be cases where the matter(s) to which the decision maker is required to have regard are so fundamental or critical that they assume an elevated mantle.

[122] In respect of impact of the issue of the licence on the amenity and good order of the locality, the Authority must form an opinion which, as Heath J said in *Venus*, is

⁵⁵ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [64]

⁵⁶ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [67]

⁵⁷ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [68]

⁵⁸ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [45]

⁵⁹ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 43 at [78] – while four questions of law were decided for appeal in the subsequent decision *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2016] NZHC 73, this did not relate to the meaning of the words "must have regard to"



conceptually different from a decision that is based on whether or not an applicant has established on a balance of probabilities that a relevant fact has been proved.⁶⁰

Analysis

[123] The Authority does not accept as Sogi submits, that the DLC is required to assess the application against what is permitted in the business zone of the AUP. Accordingly, the Authority is not assisted by the appellant's reference to the Resource Management Act 1991 (RMA) or to the processes of the Environment Court.

[124] The Act is not concerned with resource management matters except to the extent that any premises for which an application is sought must meet the requirements of the Resource Management Act 1991.⁶¹ The RMA is focused on balancing the management and development of resources to provide for the wellbeing of communities both today and in the future. The object of the Sale and Supply of Alcohol Act 2012 does not envisage anything similar nor any balancing between permitted activities and the minimisation of harm. Rather the purpose of the Act is to help achieve its twin object namely, the safe and responsible sale, supply and consumption of alcohol and the minimisation of alcohol-related harm. As Kos J said in *Utikere v I S Dhillon and Sons Ltd*, albeit in respect of the Sale of Liquor Act 1989, the two Acts have very different philosophical premises.⁶²

[125] As Clark J said in *Lion Liquor*, the expectation that alcohol-related harm will be minimised does not yield to a licensee's commercial or equitable interests.⁶³ Nor in the Authority's view, does alcohol-related harm yield to considerations about the potential adverse impact on permitted activities.

[126] As stated, what is required is that the application is considered against the factors in s 131 in terms of their potential impact upon the prospective risk of alcohol-related harm. In the present case, this was understood by the DLC when it said "we must have regard to the object of that Act with its emphasis that the harm caused by excessive or inappropriate consumption of alcohol should be minimised."⁶⁴

[127] The question for a decision-maker when assessing an application for a licence, or the renewal of a licence, is not "having defined the harm, how best is that to be minimised?". Such an approach implies a presumption in favour of renewal and assumes that if a licence can be made subject to conditions which go to alleviating the harm, the licence ought to be issued. As already noted, there is no such presumption, and as Heath J said in *Venus*, the question is whether, having considered all relevant factors set out in s 105(1)(b)–(k) of the 2012 Act, the decision-maker is satisfied that grant of an off-licence is consistent with the object of that Act.⁶⁵

[128] In terms of s 131(1)(b) itself, the Act does not prescribe how a decision-maker is to form its opinion provided that it has actively and thoughtfully considered all relevant matters.

⁶⁰ *Re Venus NZ Ltd*, above n 41, at [57]

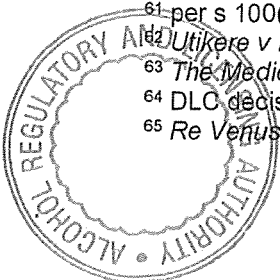
⁶¹ per s 100(f)

⁶² *Utikere v I S Dhillon and Sons Ltd* [2014] NZAR 431 at [11] – [12] (citations omitted)

⁶³ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [51]

⁶⁴ DLC decision at [99]

⁶⁵ *Re Venus NZ Ltd*, above n 41, at [57]



[129] Section 131(1)(b), being one of the criteria to which a decision-maker must have regard when undertaking its overall risk-assessment, by definition contributes to achievement of the twin statutory object although in itself it is specifically concerned with the effects of the issue of the licence on such matters as possible future noise, nuisance and vandalism (per s 106(2)).

[130] Matters such as noise, nuisance and vandalism need not be directly linked to the excessive or inappropriate consumption of alcohol provided that there is an evidential basis to show a causal nexus between possible future noise, nuisance and vandalism and the renewal of the licence. It is for this reason that the Authority said in *Qing Qing Trading Company Ltd v Wilson*⁶⁶ that whether or not the amenity and good order of the locality will likely be increased by a refusal of the licence does not turn on whether the patrons have become intoxicated at the premises. 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 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.

[132] Having regard to the analysis undertaken by the DLC, the Authority is not satisfied that the DLC misunderstood the test it was required to apply. The test in s 131(1)(b) is correctly stated. The DLC said:⁶⁷

S, 131(b) of the Act requires that we address whether in our opinion the amenity and good order of this locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence.

[133] The Act does not contemplate that conditions be imposed to help an application meet the object of the Act. As Gendall J said in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, if the object of the Act cannot be achieved by the application, then it cannot succeed.⁶⁸ It is for this reason, this Authority said in *Young v Lyger Investments Limited*,⁶⁹ that it is not open for a DLC to consider that where the object of the Act will not be met by an application, that a licence can be granted subject to conditions intended to ensure compliance with the Act, that is, to cure some deficiency with the application.

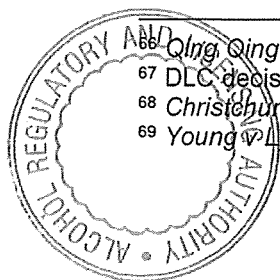
[134] The Authority can find no error on the part of the DLC in terms of it identifying the relevant legal test when assessing the effect of the licence on the amenity and good order of the locality. That the DLC focused on the amenity and good order of the

⁶⁶ *Qing Qing Trading Company Ltd v Wilson* [2019] NZARLA 241, at [219]

⁶⁷ DLC decision at [108]

⁶⁸ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 43, at [55] – [56]

⁶⁹ *Young v Lyger Investments Limited* [2018] NZARLA 299-300 at [99]



locality is because, to use the language of Gendall J, issues of amenity and good order assumed an 'elevated mantle'.⁷⁰ Given the grounds of appeal, this continues to be the case before the Authority.

Second ground of appeal: Did the DLC fail to identify the scale and severity of the harm said to arise from the excessive or inappropriate consumption of alcohol, and fail to determine whether this could be minimised by Future Club in the manner contemplated by the Act?

[135] Finding no error with the test that was applied by the DLC, in assessing the scale and severity of the harm and whether it will be reduced 'by more than a minor amount' should the licence not be renewed, the Authority turns its mind to the evidence.

Mr Clyde Young

[136] Mr Clyde Young is the sole director of Sogi and holds directorship positions for over 100 companies.⁷¹ Mr Young said that he is active in the running of Future Club and has appointed an 'extremely experienced' team which he believes is sufficiently experienced and trained to manage both its obligation to supply alcohol responsibly and to prove a safe entertainment venue for patrons.

[137] Mr Young said that as a result of issues brought to Sogi's attention when Future Club initially opened, which he described as 'teething problems', processes have been fine tuned. The issues resulting in the Police GRM processes, Mr Young says, have been dealt with through training and upskilling of staff and have always been addressed, with the Police being satisfied with Future Club's responses.

[138] A security guard is specifically appointed for the hotel when the Club is open, a volume noise restriction device has been installed on the Club's sound system to keep noise to an agreed volume, and a noise monitoring device was provided to CityLife to enable it to measure noise levels within the hotel. Under cross-examination by Mr O'Flannigan for the Licensing Inspector, Mr Young said the monitoring device has been provided to CityLife "because really if they want us to turn the music down they've got to have evidence that it is above the agreed levels that we've agreed on."⁷² Future Club has also contributed \$3,600 to install security lights on the forecourt of CityLife.

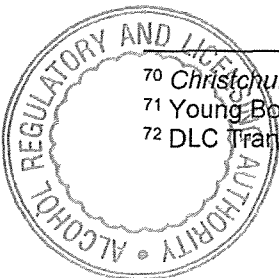
[139] Mr Young said that Future Club has not received any complaints from CityLife since an initial meeting to address issues. Mr Young said he would expect CityLife to point out any issues as they arise and that Future Club has been prepared from the outset to resolve any issues.

[140] Up until the objections were made to the renewal application, Mr Young said that Sogi was never aware of complaints from City Garden Apartments residents and if they had been brought to his attention he would have been happy to work through them. Mr Young said that if these complaints were as troublesome as they were made out to be, then he would have expected residents to have been complaining on a regular basis and the issues brought to Sogi's attention prior to objections being made.

⁷⁰ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 43 at [78(e)]

⁷¹ Young BoE dated 29 March 2019

⁷² DLC Transcript at page 10



[141] In a similar vein, under cross examination, Mr Young said that if the Police are not bringing issues to Sogi's attention, then "we can't resolve anything."⁷³

[142] Mr Young also explained how Bluestone Room bar on Durham Lane has tables outside and he expects some of the noise and behaviour described by City Garden's residents may well be attributed to those premises.

[143] Mr Young said he has worked hard to cooperate with residents and businesses in Durham Street and has created a safe entertainment venue, which creates enormous benefits for the Auckland CBD. Mr Young rejects the suggestions that renewal of the licence for Future Club will affect the amenity and good order of the Durham Street by more than a minor extent. Mr Young said Sogi has made every effort to cooperate with authorities and the public to improve the safety of patrons.

[144] Mr Young produced in evidence a booklet of photographs which he says shows among other things, crowds being dispersed on Durham Street at closing time.

[145] Mr Young said that of the twenty-eight licensing checks undertaken by the Police, everything at Future Club has been found to be in order, however, he acknowledged that there have been:

- five incidents involving fighting
- eleven reported assaults
- five alleged assaults involving door staff
- five reports of intoxicated patrons
- five reports of general disorder
- one criminal damage complaint
- one complaint of lost property
- two domestic related assaults
- two incidents involving theft.

[146] When asked by Mr O'Flannigan whether he considered these incidents to be excessive, Mr Young replied "No, not considering that would happen on a normal... You know, we do live in a city, a bloody large city and these things happen. Like I said, we are not talking about [inaudible] we just think when you compare it to the number of people, 1,500 people per weekend that go into... that is not excessive, in my mind."⁷⁴

[147] When asked by Mr John Young, counsel for CityLife, whether he has ever been told of any incidents of a Future Club patron urinating or vomiting on CityLife property, Mr Clyde Young replied "Not urinating or vomiting" but that what he had been told of was "that people have walked across from the Future nightclub into the reception area and caused issues and our security staff have responded where they were told by CityLife staff".⁷⁵

⁷³ DLC Transcript at page 11

⁷⁴ DLC Transcript at page 11 (Day One)

⁷⁵ DLC Transcript at page 16 (Day One)



Ms Mallory O'Brien

[148] Ms Mallory O'Brien is a secondary school teacher who said she is familiar with the Auckland CBD club scene.

[149] Ms O'Brien said that she is a regular patron at Future Club and that it has security inside and outside, and that security undertakes identification checks as well as inspecting the surrounding public space during operational hours. Ms O'Brien says Future Club has no underage patrons in contrast to other premises, and that it is a safe venue. Ms O'Brien says she has seen bar staff refuse intoxicated patrons, and intoxicated people have been refused entry. Nevertheless, under cross-examination Ms O'Brien said that "If I was sitting at the back and I was looking at people dancing though, I could pick up 10 people that probably shouldn't be there" and further, that she would see at least ten people showing signs of intoxication, although she has never seen any vomit outside the Club, or any fighting.⁷⁶

[150] Ms O'Brien says that "every patron gets ID checked everytime"⁷⁷ and that security are proactive in mitigating possible issues in surrounding streets. Ms O'Brien says she cannot recall a time when she has felt at risk or unsafe in Future Club.

Ms Sonia Brown

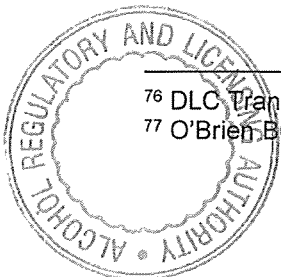
[151] Ms Sonia Brown is the operations manager for WD Security.

[152] Ms Brown said she oversees systems and processes and designs training for staff and management to help them understand their responsibilities under the Act. These include training in basic principles of identifying intoxicated patrons, monitoring patron behaviour, and checking identification. Ms Brown said staff have been trained in the 'SCAB' intoxication assessment chart and she monitors and collates shift reports and reviews incident records made by security and other staff. Ms Brown says further that she encourages staff to have good relationships with people displaying aggressive or anti-social behaviour and that good communication is key to running a successful venue.

[153] Ms Brown said that when Future Club first opened, the Police targeted it to ensure it was operating efficiently and that there were a number of minor breaches identified including people smoking outside the designated area and standing on the road. Two security guards were not licensed. Club hours and managers' names were not displayed. There were no food menus displayed in the premises. There were instances of people being intoxicated, and blocking the footpath, as well as instances of domestic assault and an allegation that a security guard assaulted a member of the public. As a result, Ms Brown says the premises were made subject to the Police GRM processes, during which time other incidents were also detected. Ms Brown considered that a number of these breaches were 'teething problems' and while not ideal, they were not unusual in the operation of clubs as big as Future Club. Ms Brown said she believed the Police were deliberately hard on Future Club to reinforce the importance of compliance with the Act.

⁷⁶ DLC Transcript at page 29 (Day One)

⁷⁷ O'Brien BOE dated 7 May 2019



[154] Ms Brown said that Future Club has since made considerable progress and when compared to the large number of patrons attending the Club, the actual number of patrons identified as being intoxicated is low.

[155] Ms Brown disagrees with statements in the Police report about bar management being inexperienced and there being no systems or processes in place for training staff. Ms Brown referred to the General Manager of Future Club, Mr Yu Ming Shao, who Ms Brown said had 4 years of management experience as a Duty Manager of Zeus Club. Ms Brown also gave evidence of regular meetings between security and bar staff and that the security staff is, in her view, very experienced. Ms Brown also said regular meetings are held with Security Manager Mr Lee Smith, and advisor Mr Peter O'Neill, which Mr Clyde Young would often attend.

[156] Ms Brown said that Mr Clyde Young formulates contracts, undertakes recruitment and health and safety initiatives, and that his input and business expertise are vital components of running Future Club, although he is not involved in the day to day management of the business.

[157] In relation to this latter point, when asked by the DLC about his involvement in the operation of the Club, Mr Clyde Young replied "I go once every 3 or 4 months just to check what is happening but I get reports from my management consultants. So I've got Peter O'Neill who is an ex Police officer as my consultant and he basically substitutes to do that function."⁷⁸

[158] Ms Brown does not believe that the amenity and good order in Durham Street is affected by Future Club and in fact the venue provides a safe location for young people to drink and be entertained. In response to a question put to her by Mr O'Flannigan about the amenity and good order in Durham Lane, Ms Brown replied:⁷⁹

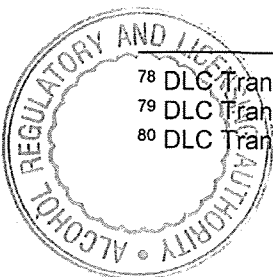
...even before the [inaudible] was there, there were more yuckiness there, as I used to work at Spitting Feathers, which was next to Bluestone Room, which was literally right at the corner, as a duty manager there. So I guess there has been Future Club there, for me obviously I used to walk out of Spitting Feathers to go to another job. I used to hate walking through there, it would smell, there were homeless people sitting down there. ... But now Future is there and it is well lit up thanks to obviously the hotel and everything, it is more lively. Like there is more life to it. It isn't the dingy back hole that it used to be and there was rubbish everywhere. At 10 o'clock when they open the rubbish is cleared, the front areas are swept. Down towards the entrance of Queen Street it is cleaner. So if anything, I think it has made it a lot safer

[159] In response to a question from Mr O'Flannigan about whether Ms Brown was familiar with the incidents described by the Licensing Inspector, in his report, Ms Brown replied that she is just the person that puts systems in place and ensures the training is done correctly. Ms Brown said: "I am not fully involved with the club but I am fully involved with the training."⁸⁰

⁷⁸ DLC Transcript at page 23 (Day One)

⁷⁹ DLC Transcript at page 42 (Day One)

⁸⁰ DLC Transcript at pages 37 and 39 (Day One)



[160] In response to a question by Mr John Young for CityLife, Ms Brown said that the only incident of vomiting or urination she witnessed was not from guests of Future Club because when she asked, they were not coming to Future Club. Ms Brown accepted those sorts of incidents would have occurred in the area.⁸¹

Mr Mataofa Tiata

[161] Mr Tiata is employed by WD Security as Security Manager at Future Club.

[162] Mr Tiata produced videos that show identification checks being made by staff at the door of Future Club, the type of patrons who attend Future Club, and how they dress, as well as security staff checking in on the CityLife Hotel.

[163] Mr Tiata says staff are specifically tasked with managing the crowd when queueing and that a staggered patron release method is employed when patrons leave the Club, which processes are the fundamental crowd control processes used. Mr Tiata said "Basically, we control the number of patrons exiting at any one time to minimise noise and congregation issues. The Security Teams move patrons in small groups away from the venue in an orderly fashion".

[164] A 3.00 am one-way door policy is in place and the minimum number of security staff is fifteen, although WD Security has the ability to supplement these staff when required.

[165] In terms of patron vetting, Mr Tiata says this involves checking age, checking for correct forms of identification, checking sobriety, checking for illegal substances or weapons, and assessing whether patrons are likely to become disruptive or unruly. Mr Tiata says there is a zero-tolerance for anti-social or aggressive behaviour at the Club. Mr Tiata said he is careful not to allow gang members into the premises. Security also assist patrons find safe transport home after leaving the Club.

[166] Mr Tiata said security staff take an active role in providing security to Durham Street and respond to incidents in the car parks as young people (not Future Club patrons), often gather in the car parks to drink and socialise. When called upon, Mr Tiata said security help members of the public without hesitation. Mr Tiata gave evidence that he supports the Police and referred to video evidence of staff assisting the Police with an aggressive male who assaulted a doorman of another bar.

[167] In terms of CityLife Hotel, Mr Tiata said that a security person is provided at CityLife for their entire shift and is specifically tasked with any security issues around the hotel, including assisting with unruly hotel guests. Mr Tiata said that Future Club security staff "constantly get positive feedback from the CityLife Hotel staff about their efforts."

[168] In response to a question from Mrs Lowndes, Mr Tiata said that he did not deny that people milling around in the area in front of Future Club and CityLife have come from Future Club and elsewhere. Mr Tiata acknowledged that this causes noise but again said that staff do their best to reduce the noise by getting people down to Queen Street as soon as possible. Mr Tiata said "...we are aware that everybody is sleeping

⁸¹ DLC Transcript at page 47 (Day One)



there and there are customers at CityLife. We are just trying to do our best and get them down there. They are good kids, they just want to have fun, they just want to have fun and go home. Great country, safe country."⁸²

[169] In terms of the Police reports, Mr Tiata said on most occasions when the Police visit the premises, no breaches are detected and it is not uncommon for the Police to comment favourably on the appearance and professionalism of security.

[170] Mr Tiata went on to say that the breaches identified by Mr Miklos occurred when the premises first opened, although there had been some subsequent issues reported. Mr Tiata said staff monitor the queues but there are limits to what security can do on a public road.

[171] In respect of the incidents that do occur, Mr Tiata said that the number is extremely low given the number of patrons attending the Club. Mr Tiata considers that Auckland CBD has seen a big increase in violence and anti-social behaviour and that such behaviour is commonplace around most CBD bars at some point.

[172] Mr Tiata also referred to dance clubs often having patrons using illegal recreational drugs and that security staff are trained to recognise the signs of people using or being on drugs. Mr Tiata said drugs and alcohol consumed together results in people displaying signs of intoxication, and that some patrons are reluctant to admit drug use so they tell people they are drunk. Mr Tiata said "At Future we often come across people who have used drugs it is very much a part of the entertainment landscape. I think we actually do a good job in dealing with patrons who are under the influence of drugs".

[173] Mr Tiata also referred to patrons from other bars using Durham Lane and that he has observed altercations and people urinating outside CityLife who have not come from Future Club, in one case Future Club security intervening and cleaning up the urine.

[174] Like Ms Brown, Mr Tiata does not believe the presence of Future Club has affected the amenity and good order of the street and considers that the Club is an excellent entertainment venue which enhances Auckland's overall reputation.

[175] Under cross-examination by counsel for CityLife, Mr Tiata confirmed that as far as he was aware no patrons from Future Club have ever urinated in the area or in the forecourt of CityLife. Mr Tiata said further than CityLife staff have not approached him directly about urination or vomiting, but they would probably have informed one of the security staff who would have moved them on. While accepting under cross-examination that a person urinating in the street at 3.00 am on a Saturday morning would be intoxicated, Mr Tiata did not consider that someone vomiting at 3.00 am would necessarily be intoxicated as they may have taken drugs or not have eaten.⁸³

⁸² DLC Transcript at page 76 (Day One)

⁸³ DLC Transcript at pages 78-79 (Day One)



Mr Ryan Chi

[176] Mr Ryan Chi is employed part time as a VIP/Entertainment Manager at Future Club.⁸⁴

[177] Mr Chi gave evidence of Future Club's *Facebook* page which includes comments made by patrons. Mr Chi attached to his evidence a mix of mostly positive comments made on the page. Mr Chi says he reviews comments from customers and said that it had been brought to his attention that inappropriate posts had been made. In response to questions from counsel for CityLife, Mr Chi confirmed these relate to promotional photos of people drinking out of a champagne bottle.⁸⁵ Mr Chi said he spoke to the people involved with these posts, including DJs. Under further cross-examination, Mr Chi acknowledged that he had seen DJs drinking out of champagne bottles in the premises on more than one occasion.⁸⁶

[178] Mr Chi said that he believes that Future Club cooperates with other businesses and residents in the street to avoid any disturbance. Mr Chi said Mr Clyde Young is very particular with the staff about doing everything within their control to minimise disruption to other members of the public in Durham Street. Under cross-examination, however, Mr Chi accepted that Future Club does cause disturbance to its neighbours as "sometimes outside it gets loud, yes".⁸⁷ Mr Chi also said that he had heard about people urinating and vomiting outside Future Club from security staff.⁸⁸

[179] In response to a question by counsel for Sogi, Mr Chi also confirmed that at the end of the evening when all patrons are gone, the staff, will come out clean up vomit, urine and cigarette butts on the street.⁸⁹

Mr Lee Smith

[180] Mr Lee Smith is the Director of WD Security.⁹⁰

[181] Mr Smith said that Future Club has a minimum of 15 security staff allocated to it for each shift and that there is flexibility to increase the numbers if required, which is often the case. Mr Smith says that he has employed his most experienced security staff to Future Club to ensure vetting and crowd control is managed appropriately.

[182] Mr Smith gave evidence that doormen are unlikely to feel comfortable speaking to the Police about incidents because the gang element in the CBD makes providing statements dangerous for staff and in the past gangs have caused issues for the individual staff member and the bar. Nevertheless, Mr Smith gave evidence of an incident where a gang member pulled out a gun at another bar and then later pointed the gun at two girls at the top of Durham Street. Mr Smith said the girls involved approached the security at Future Club who later gave a statement to the Police.

⁸⁴ Chi BoE dated 3 May 2019

⁸⁵ DLC Transcript at page 5 (Day Two)

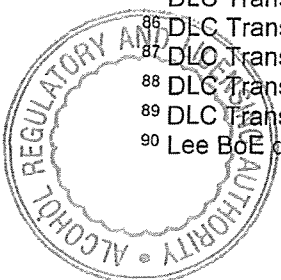
⁸⁶ DLC Transcript at page 6 (Day Two)

⁸⁷ DLC Transcript at page 7 (Day Two)

⁸⁸ DLC Transcript at page 8 (Day Two)

⁸⁹ DLC Transcript at page 11 (Day Two)

⁹⁰ Lee BoE dated 1 February 2019



[183] Mr Smith said that the landscape is extremely dangerous and it is very important for people like Mr Tiata to stand up to gangs. Mr Smith referred to video footage of Mr Tiata and another security person assisting the Police arrest a person who had he said had assaulted a doorman of an inner-city bar.

[184] At the end of each evening, Mr Smith said security staff remove all rubbish left in the street and vicinity of Future Club and CityLife.

[185] Mr Smith gave evidence that he conducts regular training with security staff including conflict resolution, crowd control techniques, communication skills and on the effects of drugs and alcohol on patrons. Mr Smith spoke of how staff welfare is important, and that all security staff are trained in first aid. Further, staff actively encourage safe practices around transport and have a phone to arrange transport.

[186] Mr Smith said that given the length of time the Club has been operating and considering the number of patrons attending the Club at any one time, the instances of intoxication observed by the Police is very low and that he does not consider patron intoxication to be an issue.

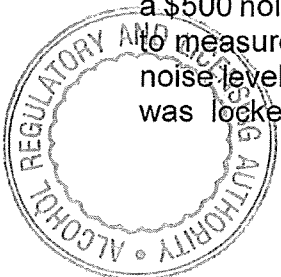
[187] Mr Smith also said Mr Clyde Young, is an experienced businessman who takes an active role in all aspects of the running of Future Club, and where his specific knowledge is lacking, he has an experienced group of people assisting him. Mr Smith also said that Ms Brown has a very good reputation in the hospitality industry and is very experienced in running a venue like Future Club.

[188] In terms of the design and layout of the premises, Mr Smith said that he did not agree with the Police comments about there often being large numbers of influenced and intoxicated patrons spilling out onto the road outside the premises and that the crowd is regularly involved in fighting. While there are instances of disorder and altercations Mr Smith says this occurs outside most licensed premises from time to time in the Auckland CBD, but given the size of patronage at Future Club, the percentage of actual incidents is very low.

[189] Mr Smith considers that if these were a long-term problem, he believes Future Club would permanently be on a GRM. Mr Smith said that management and staff are open to any suggestions by the Police as to how better to deploy resources at the Club. Mr Smith says that minor issues have been resolved between Future Club and CityLife and that he is not aware of any major problems being raised by CityLife and have not been requested to attend any meetings to discuss further issues.

[190] In relation to the amenity and good order of the locality, Mr Smith says that excessive noise from loud music, vehicle and entertainment venues is commonplace in the CBD as there is no exclusive entertainment area in the city. Mr Smith says that CBD businesses thrive due to the increase of people coming into the CBD and a big part of this attraction is the entertainment offered by clubs and bars.

[191] Mr Smith says that as a result of issues raised at a meeting with CityLife in 2018, a \$500 noise measuring device was purchased by Future Club and provided to CityLife to measure sound levels within the hotel, and tests were conducted and a maximum noise level was agreed between CityLife and Future Club. Future Club's sound system was locked at the agreed level so the sound could not be increased. A further



contribution of \$3,600 was made for security lighting, which was installed on the CityLife building. Mr Smith produced copies of a sound monitoring chart for the hours between 9.00 pm and 5.00 am on the night of 20 April 2018, which he said CityLife provided to Future Club.

[192] Like Mr Clyde Young, Mr Smith does not consider that the Police summary of calls for service is excessive given the location of Future Club in the CBD entertainment precinct. Mr Smith also said that the five allegations of assault against security staff have not resulted in any further Police action. In respect of a doorman being involved in an incident of theft from Future Club, Mr Smith said that the doorman was off duty. Mr Smith also said that the Police were very grateful for the assistance provided by Future Club, without which they would not have been able to identify or locate the offender in question.

[193] Mr Smith says that the queue for Future Club takes around ten minutes to clear, at most, and if people use the area to urinate then this is possibly by people from other bars, car parks, restaurants, and homeless people. In response to a question to him by Mr O'Flannigan, Mr Smith corroborated the evidence of Mr Tiata that when there is a famous DJ playing the queue wait time could be 30 minutes to an hour but that he would cut the line so that there is about a 15 to 30 minute wait instead.⁹¹

[194] Mr Smith says that Wilson carpark is a well-known location for people to congregate and socialise, as with other carparks in the CBD. Mr Smith also said that the area near the entrance to the President Hotel sees homeless people sleeping there who leave rubbish and urinate and defecate there.

[195] Mr Smith said he provided carpark management a security plan to improve security, which included better lighting and the use of CCTV cameras, and the carpark contacting the Police to alert them to the high numbers of people drinking and driving.

[196] Mr Smith contests the Police position in respect of a serious assault involving a knife at the front of Future Club. Mr Smith said no charge was laid as it did not involve a knife. If it did involve a knife however, Mr Smith considers that it would have been treated seriously and investigated.

[197] In respect of the Police reports of an intoxicated female, Mr Smith says there is no evidence that she was in Future Club or had consumed alcohol in Future Club.

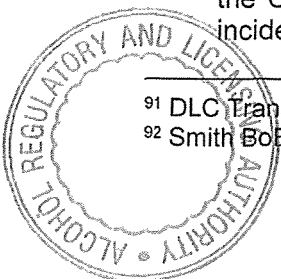
[198] In the case of an incident involving a large number of people fighting, he believes the patrons were incorrectly associated with Future Club, and both the incident and the number of people involved has been exaggerated. Mr Smith said that he believes the Police are often dispatched to incidents which do not turn out to be as serious as is first reported.

[199] Mr Smith noted in evidence that:⁹²

An important consideration for Future is that with the number of patrons attending the Club and the increased overall violent environment in the CBD there will be incidents, people will urinate, vomit, walk on the roadway and some people do get

⁹¹ DLC Transcript at page 64 (Day One) and DLC Transcript at page 29 (Day Two)

⁹² Smith BoE dated 1 February 2019 at [18]



intoxicated. No matter what processes you have in place these things will occur but it is important how you manage these issues and minimise the likelihood of these things happening on a regular basis.

We are respectful to our neighbours and the Club provides a unique experience in a safe environment.

The city has some significant issues around an escalation of serious violence, gangs and drugs. I do not believe the amenity and good order benchmark adequately factors these specific issues when considering the suitability of a licensed premises to operate.

[200] Under cross-examination Mr Smith said that he had not personally seen people urinating or vomiting outside Future Club but if they were, then that would be an issue.⁹³ Mr Smith acknowledged that security staff have reported to him that people have vomited and urinated around CityLife although they did not say they were Future Club patrons.⁹⁴

[201] When asked about what Ms O'Brien said about people being intoxicated, Mr Smith acknowledged that there would be a couple of people intoxicated each night who would be asked to leave.⁹⁵

Mr Sonny Sun

[202] Mr Sonny Sun is the owner of the Midtown Mini Mart Supermarket next door to Future Club.

[203] Mr Sun says he likes the presence of security as it makes him feel safe and that there are "many shady or bad people in the City like street people and homeless who always come to our shop to steal or threaten us."⁹⁶ Mr Sun says he has much more trouble from homeless people than patrons of Future Club.

[204] Mr Sun also says that Future Club patrons can be noisy, but they are young and having fun, and they are no trouble for him. Mr Sun says he actually feels safer when the Club is open and that he has no issues with noise as 'in the City this is normal'.

[205] Under cross-examination by counsel for CityLife, Mr Sun said that the only reason he stays open until 4.00 am on Friday and Saturday nights is because Future Club patrons may buy cigarettes or food from him⁹⁷ and that the reason he likes Future Club is that it gives him a lot of business.⁹⁸

[206] Also under cross-examination, Mr Sun confirmed that he had seen fights and people urinating in the public road or area around CityLife Hotel about two times a month, and vomit in the area a couple of times a week, which staff from CityLife and security have cleaned up. Mr Sun said he had not seen anyone come out of Future

⁹³ DLC Transcript at pages 26 and 35 (Day Two)

⁹⁴ DLC Transcript at page 35-36 (Day Two)

⁹⁵ DLC Transcript at page 26 (Day Two)

⁹⁶ Sun BoE dated 5 July 2019

⁹⁷ DLC Transcript at page 3 (Day Three)

⁹⁸ DLC Transcript at page 6 (Day Three)



Club and vomit.⁹⁹ In response to a question from Mr McColgan, counsel for Sogi, Mr Sun said that the people urinating could be coming from “everywhere, Bluestone Room, carpark, queuing at Future Club. It is hard to say where they come from.”¹⁰⁰ Mr Sun confirmed, however, that he has seen one or two drunk patrons come out of Future Club to his shop each Friday and Saturday night.¹⁰¹ Mr Sun also confirmed that at peak times, on average, there are 40-50 people queuing to get into Future Club and 30 people in the smoking area for a total of up to 80–100 people on the street and footpath.¹⁰²

Evidence for Police

[207] Sergeant Alec Hutchinson, Sergeant Sarah Draper, Constable Peter Whittington, Ms Helen Van Asch and Mr Sebastian Miklos gave evidence for the Police.

Sgt Alec Hutchinson

[208] Sergeant Alec Hutchinson is a beat section sergeant in the Auckland City area and has spent 12 years working on the front line. Sergeant Hutchinson says the lighting in the area of Future Club is poor and the area is ‘narrow, dark, and empty’ when Future Club is not operating.¹⁰³

[209] Sergeant Hutchinson gave evidence of pre-loading and anti-social behaviour in Durham Lane and said that patrons frequently use the lane to urinate and consume alcohol. Under cross-examination, Sgt Hutchinson acknowledged that these patrons may not specifically be from Future Club.¹⁰⁴

[210] While recently there has been a noticeable decrease in the alcohol consumed, Sgt Hutchinson believed this to be due to the security implemented by the two car parks. Sergeant Hutchinson considers that the urination problem is due to the wait time for people being allowed to enter Future Club and the fact that the lane is closed and hidden from sight. Sergeant Hutchinson said that he had seen patrons from Future Club urinating in the area, having established they were from Future Club from his conversations with them.¹⁰⁵

[211] Sergeant Hutchinson said that on most weekends Future Club patrons congregate on the road and footpath areas and while security appears to be monitoring the crowds, the volume of patrons that the Club attracts, along with the intoxication levels of people, is hard to manage. Sergeant Hutchinson says that often crowds or groups gather on the corner of Durham Street West and Queen Street making it hard to use the footpath and care must be taken to drive a car. The smoking area in front of Future Club, along with the queue and people lingering outside, creates a large crowd. While security try to keep the footpaths clear, most of the time the area is congested and the footpaths blocked.

⁹⁹ DLC Transcript at pages 4 -5 (Day Three)

¹⁰⁰ DLC Transcript at page 9 (Day Three)

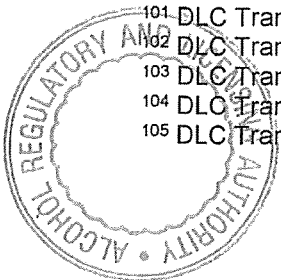
¹⁰¹ DLC Transcript at pages 5 -6 (Day Three)

¹⁰² DLC Transcript at page 6 (Day Three)

¹⁰³ DLC Transcript at page 49 (Day Two)

¹⁰⁴ DLC Transcript at page 49 (Day Two)

¹⁰⁵ DLC Transcript at page 50 (Day Two)



[122] In response to a question from counsel for Sogi, Sgt Hutchinson accepted that he could not be sure the people congregating on the street were from Future Club but said that is where they are congregating outside.¹⁰⁶ Sergeant Hutchinson also said that he had seen people vomiting in the area but said that he did not personally know whether the persons were from Future Club.¹⁰⁷

[213] Sergeant Hutchinson said that he wouldn't want one of his staff going to Durham Street alone.¹⁰⁸

[214] Sergeant Hutchinson said that in terms of alcohol related calls, the vicinity around Future Club "is almost like a hotspot, so that is where disorder or alcohol-related problems are arising from."¹⁰⁹ Sergeant Hutchinson believes that on Friday and Saturday nights the patrons of the Club have an impact on guests of the CityLife Hotel and tenants of the apartments in the area.

Ms Helen Van Asch

[215] Ms Helen Van Asch is an intelligence analyst with the Waitemata District Police Intel section. In July 2019, Ms Van Asch was tasked with creating a map to display alcohol-related offending in the vicinity of Future Club. Ms Van Asch used information in the Police Communications and Resource Deployment (CARD) system to create two maps. The first was for all alcohol-related events recorded from 10.00 pm to 5.00 am on Friday and Saturday nights between 13 February – 22 December 2017, and 22 December 2017 and 30 June 2019. In the former period Future Club was not operating, but it was during the latter period.

[216] Ms Van Asch said the violent incidents in the latter period were visibly clustered around Future Club. Under cross-examination by counsel for Sogi, however, Ms Van Asch confirmed that the average number of drunk in custody and detoxification incidents, and disorder incidents, has not changed but maintained that the congregation of incidents has moved.¹¹⁰ Ms Van Asch said she could not confirm that any incidents of violence related to the operation of Future Club but only where they were.

Sgt Sarah Draper

[217] Sergeant Sarah Draper gave evidence that on 24 August 2018 she was working a night shift when her unit was called to attend four incidents relating to intoxicated people who had been at Future Club during some point in the evening.¹¹¹

[218] Sergeant Draper said that at 2.09am she attended a serious assault that occurred at the front entrance of Future Club. A male was bleeding from the hand and another male was in the backseat of a Police car. According to the Duty Manager, Ms Renfeng Zhang, the males had been involved in a fight in Future Club as one of

¹⁰⁶ DLC Transcript at page 50 (Day Two)

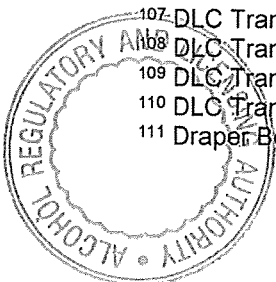
¹⁰⁷ DLC Transcript at page 52 (Day Two)

¹⁰⁸ DLC Transcript at pages 52 - 53 (Day Two)

¹⁰⁹ DLC Transcript at page 54 (Day Two)

¹¹⁰ DLC Transcript at pages 57 - 58 (Day Two)

¹¹¹ Draper BoE, undated and unsigned



the males was leaving. As neither party wished to make a complaint, however, and no charges were laid.

[219] Then at 2.41 am, Sgt Draper was alerted to an extremely intoxicated female who was being cradled by her friend on the ground, and who was barely conscious. The woman was unable to stand and was slurring her words. Under cross-examination, Sgt Draper confirmed that she had spoken to the friend of the intoxicated female who said she'd been in Future Club and that she had to go back into retrieve both female's wallets.¹¹² Despite Sgt Draper advising the female that she did not think security would let her back in, they did so even though she was unable to walk straight and was 'very off balance'. Sgt Draper accepted under cross-examination that she was not able to confirm what happened when the woman entered the Club and whether she was assisted by security to do so.¹¹³

[220] While waiting for the ambulance to arrive Sgt Draper said multiple people who appeared to be at various levels of intoxication exited Future Club. One of the patrons, a male who Sgt Draper assessed to be intoxicated, stumbled over the female on the ground and as an excuse for not seeing her, said "I am drunk" and told the Police to 'fuck off' before being dragged away by a friend.

[221] The third incident, Sgt Draper said, involved approximately 15 – 20 people fighting in the Wilson carpark above Future Club. Most appeared moderately intoxicated and some admitted to being in Future Club.

[222] Under cross-examination by Mr Dillon, counsel for Sogi, Sgt Draper said that it was from her general conversations with people that they were going to, or had been at, Future Club but accepted that it is possible they were trying to get into Future Club and had not been allowed entry.¹¹⁴

[223] The final incident, Sgt Draper said, occurred at 4.41 am when people approached CityLife staff and asked if they could hide in the hotel's smoking room. They were denied entry by the staff who called the Police. By the time the Police arrived, however, the people had already left. Sergeant Draper believes this may have been related to the earlier fight.

Const Peter Whittington

[224] Constable Whittington is based at the Auckland Central Police Station.¹¹⁵ Constable Whittington said that at approximately 12.50 am on 31 March 2019 he saw approximately 5-6 fights occurring near Durham Street West surrounded by a group of 60-70.¹¹⁶ Constable Whittington asked a male why he was fighting and was told that the fight started with a confrontation in Future Club where he had been drinking with friends when the other male insulted a female he was with. A verbal confrontation in the Club turned into a physical fight when they went outside. Under cross-examination, Constable Whittington said that the male had given no indication that he had been

¹¹² DLC Transcript at page 63 – 64 (Day Two)

¹¹³ DLC Transcript at page 64 (Day Two)

¹¹⁴ DLC Transcript at page 62 (Day Two)

¹¹⁵ Whittington BoE, undated and unsigned

¹¹⁶ DLC Transcript at page 68 (Day Two)



removed from Future Club by security.¹¹⁷ Nor could he say whether security assisted the Police.¹¹⁸

[225] Constable Whittington said in evidence that this is not the only fight he has attended on Durham Street and during his work he often hears of other Police officers being dispatched to incidents of disorderly behaviour on Durham Street or assaults occurring in and around Future Club.

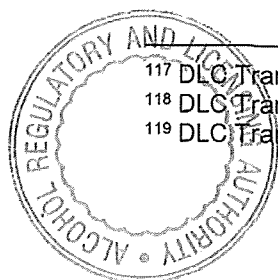
Mr Sebastian Miklos

[226] Mr Sebastian Miklos is currently a Licensing Inspector, having previously been a constable with the Alcohol Harm Prevention Unit of the Auckland City Police.

[227] Mr Miklos gave evidence that:

- On 23 December 2017 (the weekend Future Club opened), he conducted a licensed premises check where he observed 23-30 people on the side of the road by the premises, with another 8-10 across the road, smoking outside the smoking area which was too small. Mr Miklos said these people were obviously from Future Club as there were no similar bars in close vicinity. After taking pictures, Mr Miklos spoke to the Duty Manager Ms Renfeng Jiang. Mr Miklos said that:
 - The Duty Manager's name was not displayed
 - The trading hours were not displayed
 - The Duty Manager was unaware of how many patrons were on the premises
 - Five security guards did not have certificates of approval displayed and two of these were not registered
 - There were no food menus displayed
 - The footpath was blocked by patrons.
- On 31 December 2018, he received a complaint about a female aged 16 years being inside Future Club after being refused entry to another club.
- On 1 January 2018, he:
 - found an intoxicated male in a VIP room who said he had consumed a bottle and half of wine at another premise before arriving at Future Club (and did not say how much he had drunk at Future Club)
 - observed a large number of shots on two tables in the VIP area, on trays containing 12 shots or more

(The Authority notes that in her evidence Ms Brown confirmed that these shots were RTDs and not spirits,¹¹⁹ and in response to a



¹¹⁷ DLC Transcript at page 69 (Day Two)

¹¹⁸ DLC Transcript at page 70 (Day Two)

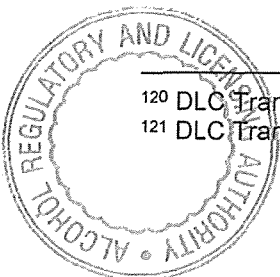
¹¹⁹ DLC Transcript at page 51

question from the Chair of the DLC, Ms Brown said that once the tray was gone, it would be replaced by food and water and another tray would not be provided until the food trays were empty).¹²⁰

- a taxi driver approached him and said that he had seen a security guard assault a male
- he observed a male who was assessed to be intoxicated leave the smoking area and enter the premises and that after the main doorman checked his passport, he let the male in. The male passed another security officer who did not seem to notice him swaying. Ms Jiang, the Duty Manager, did not agree with his assessment.
- During a meeting on 11 January 2018, Future Club was put on a GRM process for three months.
- On 27 March 2018, warnings were issued for two breaches of licence conditions.
- On 12 April 2018, the GRM came to an end as the issues pertaining to the operation of Future Club had been addressed.¹²¹
- On 21 April 2018, he saw security staff visibly trying to move people off the street, which a short while later he found to be very congested.
- On 21 May 2018, he received an anonymous complaint about the Future Club *Facebook* page showing a large number of shots on a table.
- On 2 June 2018 at 4.00 am, he observed an agitated female who was screaming and was unable to walk unassisted. She was punching a glass window several times before being assisted into a taxi. Her friends said to him that they had all come out of Future Club after closing time.
- On 7 June 2018, a member of the public emailed him a post on Future Club's *Facebook* page, which offered unlimited "Special Future Mixed Drinks" for \$199, which Mr Miklos considered to be an irresponsible promotion contrary to s 237 of the Act.
- On 12 August 2018:
 - cognac was sold in a bottle larger than 500ml
 - two groups of people were fighting on Queen Street. After dispersing the group, one group returned to the Future Club smoking area, and Mr Miklos recognised some of the people fighting as having earlier been in VIP rooms he visited during his premises check.

¹²⁰ DLC Transcript at page 55

¹²¹ DLC Transcript at page 14 (Day Three)



- On 1 September 2018, the area outside was found to be very busy and at times the street and footpath were blocked by people smoking, waiting, or passing the area.
- On 4 November 2018, a female was assessed to be intoxicated and was slurring her words, her speech was repetitive, and she had difficulty forming words. Mr Miklos said the female was wavering and had difficulty keeping her balance. The female stated she purchased alcohol at Future Club but could not answer how much she had consumed at the Club. The Duty Manager, Ms Jiang, did not agree with Mr Miklos's assessment.
- *Facebook* pages for the Club posted on 30 November 2018 showed customers drinking straight from champagne bottles and that Future Club was giving away \$100 vouchers for alcohol.

[228] On the basis of these matters, Mr Miklos opposed the renewal of the licence for Future Club.

[229] Under cross-examination, Mr Miklos agreed that Sogi did their best to address anything that he had raised with them¹²² and that the security staff of Future Club have assisted the Police.¹²³ Mr Miklos also accepted that security have no power to move people beyond advising people to move on.¹²⁴

[230] Mr Miklos disagreed that the presence of Future Club has not changed the amenity and good order of the street¹²⁵ and disagreed that there was no link to Future Club.¹²⁶

Evidence of Licensing Inspector

[231] Mr Tim Court gave evidence for the Licensing Inspectorate. Mr Court has been a licensing inspector for over five years, including over five years as a senior licensing Inspector.

[232], Mr Court gave evidence detailing the four compliance visits to Future Bar and his observations on those occasions, expanding on what he said in his s 129 report. Mr Court said that his observations are not an exhaustive list of everything that has occurred outside Future Club.¹²⁷

[233] Mr Court said he was shocked at the level of disorder that Future Club appeared to be attracting, and that his impression was that the amenity and good order of the locality immediately outside Future Club was very poor.

[234] Mr Court said he witnessed:

- on 6 May 2018 between 1.45 am and 2.42 am:

¹²² DLC Transcript at page 10 (Day Three)

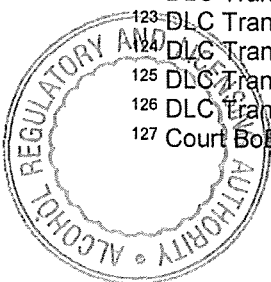
¹²³ DLC Transcript at page 23 (Day Three)

¹²⁴ DLC Transcript at page 15 (Day Three)

¹²⁵ DLC Transcript at page 20 (Day Three)

¹²⁶ DLC Transcript at page 22 (Day Three)

¹²⁷ Court BoE (undated)

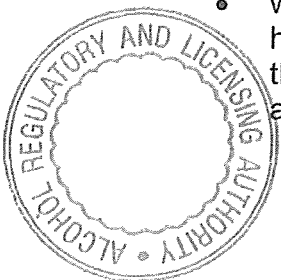


- a car doing a burn out in front of Future Club as people cheered
 - a loud and physical argument where he considered the participants to have been very intoxicated
 - a male vomiting from a car onto the footpath
 - people milling about with 15 people standing on the road at any one time being louder than any other premises he had visited that night
 - about 70 people gathering around the entrance to Future Club
 - horns honking as cars drove past Future Club
 - a woman falling and hitting her head on the concrete and a male saying she had too much to drink
 - a man yelling outside Future club
 - eight people standing outside CityLife Hotel, which the security staff moved on, either to have them go to Queen Street or Future Club's smoking area.
- ○ 12 August 2018 between 1.25 am and 2.30 am:
 - people gathering around Future Club making a cacophonous noise
 - a male patron attempting to leave Future Club with a beer, although he was stopped by security
 - a lot of rubbish including empty bottles in the area immediately in front of Future Club, which he considered indicated pre-loading, side-loading or post-loading in the area around the Club
 - people exiting Future Club yelling
 - a crowd making noise on the CityLife side of the street, which security moved on towards Queen Street.
 - on 19 August 2018 between 1.17 am and 1.43 am:
 - 60-70 people milling about in front of Future Club, including on the street
 - cacophonous noise including random loud outbursts from people standing outside
 - a lot of people milling about and walking on the road
 - a female kicking the tyre of a car which was holding up traffic.

[235] Mr Court produced in evidence his contemporaneous notes for his compliance visits.

[236] Mr Court considers that:

- while efforts were made by security to move people on (and Mr Court and his colleague had in fact been asked to move away from the CityLife Hotel), that those efforts do little to cure the issues in the area such as loud noise and physical disorder; and



- Future Club affected the amenity and good order of the locality to a significantly greater degree than other licensed premises in the vicinity.

[237] However, Mr Court also said that on 29 March 2019 (which was a Friday night) at 10.00 pm he found the area around Future Club to be quiet, pleasant and agreeable.

[238] Under cross-examination by Mr McColgan for Sogi, Mr Court acknowledged that he did not ask whether the people milling about on 6 May 2018 were from Future Club,¹²⁸ he did know where the two men who had the argument had come from, nor that the male who vomited while in his car had been in Future Club or had anything to do with Future Club.¹²⁹ Nevertheless, in Mr Court's opinion the incident happened outside Future Club and he considered that a licensed premises can influence this type of behaviour.¹³⁰

[239] Equally Mr Court did not know where the woman who fell over and hit her head had come from but said he gathered she had come from Future Club because she was directly outside Future Club's door.¹³¹ Similarly Mr Court said he cannot link the rubbish in the area to Future Club, nor did he see anyone drinking in the queue.¹³²

[240] Mr Court accepted that he could not attribute any of the incidents to a patron of Future Club.¹³³ Nevertheless, Mr Court said that while he would not characterise incidents outside of Future Club as Future Club's 'fault', he considered there were grounds to oppose the renewal of the licence under the Act.¹³⁴

Evidence for CityLife

[241] Mr Alex Trigo and Mr Akash Sood gave evidence for CityLife.

Mr Alex Trigo

[242] Mr Alex Trigo is the Night Manager for the CityLife Hotel. Mr Trigo is responsible for the operation of the hotel between 11.00 pm and 7.30 am.¹³⁵

[243] Mr Trigo said in evidence that most weekends he has had to deal with incidents of intoxication and undesirable behaviour associated with Future Club. Mr Trigo said he has observed patrons leave Future Club where they have urinated, vomited, yelled and littered in the locality, including within the CityLife forecourt, until the hours of around 4.00 am.

[244] Mr Trigo produced in evidence CCTV footage from a number of cameras located on the exterior of the CityLife building, which he said are representative of what he has observed. The videos show the following:

¹²⁸ DLC Transcript page 40 (Day Three)

¹²⁹ DLC Transcript pages 42 - 43 (Day Three)

¹³⁰ DLC Transcript page 43 (Day Three)

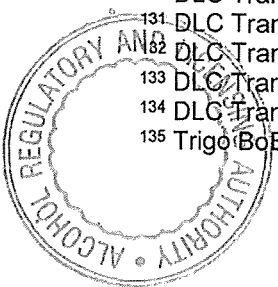
¹³¹ DLC Transcript page 45 (Day Three)

¹³² DLC Transcript page 48 (Day Three)

¹³³ DLC Transcript page 45 (Day Three)

¹³⁴ DLC Transcript page 46 (Day Three)

¹³⁵ Trigo BoE dated 29 August 2019



Video 1: 7 April 2018 at 2.43 am – a group of 15 people loitering on Durham Lane street talking loudly; a large noisy queue to enter Future Club and some music emanating from within Future Club; an altercation in or near the queue.

Video 2: 8 April 2018 at 12.48 am – males smoking on CityLife property on Durham Lane; people shouting on Durham Street West; a large queue to enter Future Club; and people are congregating at the entrance to Future Club screaming and shouting.

Video 3: 8 April 2018 at 3.56 am – a man covered in vomit on the Durham Lane side of the CityLife forecourt says he 'spewed on himself' and asks to wash hands and face at CityLife; groups of people seen sitting on the kerb on the corner of Durham Street West and Durham Lane; noise (loud voices) from the crowd in front of Future Club.

Video 4: 15 April 2018 at 3.01 am – noisy crowd congregating; man asked if he knew he was on private [CityLife] property the male replies 'Yeah bro I do, but I really don't give a fuck ...'.

Video 5: 18 August 2018 at 1.50 am – a patron leaves from the direction of Future Club and urinates on CityLife's hotel picture window; security appear to move him on although one security person initially had her back turned whilst smoking and appeared oblivious to it occurring.

Video 6: 16 June 2019 at 2.54 am – a man comes from the direction of Future Club and proceeds to urinate in the CityLife forecourt.

Video 7: 28 June 2019 at 12.51 am – nine men are standing on the CityLife forecourt area including one who appears to be a security guard for Future Club; a beer bottle is left on the forecourt when a man in a high visibility vest asks them to move; the group joins the Future Club queue – Future Club security do not pick up bottle but CityLife staff do so afterwards.

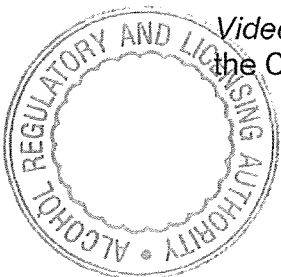
Video 8: 29 June 2019 at 12.55 am – people are queuing to enter Future Club and loitering on the street; noise (people talking loudly).

Videos 9 & 10: 30 June 2019 at 2.39 am – a male leaves Future Club and proceeds to urinate in the CityLife forecourt, in plain view of the entrance to CityLife.

Videos 11 & 12: 30 June 2019 at 1.05 am – a male exits Future Club, walks to the CityLife forecourt and urinates in plain view of the entrance to CityLife and returns in the direction of Future Club.

Videos 13 & 14: 30 June 2019 at 3.22 am – a male exits Future Club, walks to the CityLife forecourt, goes around the corner onto Durham Lane and urinates on the exterior wall of the hotel.

Video 15: 30 June 2019 at 3.03 am – a male exits Future Club and urinates on the CityLife hotel picture window before being moved on by Future Club security.



Video 16: 30 June 2019 at 1.14 am – a male appears to leave the Future Club queue and walks across the CityLife forecourt, entering a sheltered driveway where it appears to urinate before walking back to the Future Club queue; large group congregating in front of Future Club.

Videos 17 & 18: 7 July 2019 at 3.33 am – a woman exits Future Club and walks into the CityLife vehicle entrance to urinate; the woman is unstable and sways and stumbles while urinating; she then runs back towards Future Club.

Video 19: 7 July 2019 at 2.42 am – a male exits Future Club; he appears to be kicked by door staff and an altercation ensues between the male and the door staff which moves onto the CityLife forecourt.

Video 20: 28 July 2019 at 12.49 am – a large group of people is queuing and standing around the entrance to Future Club creating noise.

Video 21: 28 July 2019 at 3.05 am – a male exits Future Club with two friends and walks towards Queen Street with friends; he returns to the CityLife forecourt where he urinates on the exterior of the CityLife hotel on Durham Lane.

Video 22: 3 August 2019 1.12 am – a group of males walks towards Future Club, congregating at the entrance to the CityLife forecourt, Security try to move the group on as a guest arrives at the hotel; one male appears to 'skull' a drink from a bottle.

Video 23: 4 August 2019 at 2.35 am – a large group is congregating outside Future Club and the adjacent mini-mart; a fight breaks out with security trying to gain control; the crowd then disperses.

Video 24: 11 August 2019 at 12.21 am – a large crowd is queuing to enter Future Club; people are loitering around the entrance; no-one is in front of the Bluestone Room bar; four men are sitting on the CityLife wall; intermittent shouting can be heard.

Video 25: 17 August 2019 at 3.20 am – a male runs from the direction of Future Club to the CityLife rear staff entrance; appears to urinate, and runs back to the front of Future Club.

Video 26: 25 August 2019 at 12.17 am – relatively few people in front of Future Club; a dispute occurs between two men standing in the CityLife forecourt; they are separated by security.

Video 27: 25 August 2019 at 1.19 am - a male walks through the CityLife forecourt onto Durham Lane and enters the blind spot by the basement ramp; liquid is seen running down the ramp, and the male returns to friends in front of CityLife.

Video 28: 25 August 2019 at 1.31 am – two males exit Future Club and walk through the CityLife forecourt; one male enters the doorway of the CityLife rear staff entrance and appears to urinate and then departs down Durham Street West towards Queen Street.



[245] Mr Trigo also produced photographs of what he says is typical on Friday and Saturday nights in Durham Street West. These photographs include groups of around 100 people queuing to enter Future Club, including some sitting on the street and pavement, and of rubbish left on Durham Street West and in the vicinity after Future Club closes. This rubbish includes cigarettes, cans, bottles and a plant which appears to have been pulled out of the ground. The photographs also include groups loitering opposite the entrance to Future Club smoking and blocking the road.

[246] The Authority notes that Sogi did not challenge the video or photographic evidence produced by Mr Trigo. As counsel for Sogi put it "The videos are the videos..."¹³⁶

[247] The Authority also notes that in some of the videos security appear to be trying to redirect people away from CityLife.

[248] Mr Trigo said that the lack of internal smoking area means he often sees groups of people smoking outside of Future Club.

[249] Mr Trigo said in evidence that what he produced is representative of the behaviour he observes on Durham Street West and Durham Lane nearly every weekend, on Friday and Saturday nights.¹³⁷ Mr Trigo says that while CityLife respects the security staff and the efforts they make, it appears the noise and disorder cannot be contained.

[250] Mr Trigo said that no other late-night licensed establishments are located in Durham Street West and Durham Lane, and the Bluestone Room closes around midnight and 1.00 am on weekends. Mr Trigo says the Bluestone Room is a bar and restaurant that primarily caters for workers having post-work drinks as well as being a function room for weddings and private events. As the majority of incidents Mr Trigo has observed occur after 1.00 am, Mr Trigo considers that the majority of incidents must relate to Future Club, there being no other reason for people to be in the vicinity except for residents and guests of CityLife.

[251] In response to questions from Mr McColgan, Mr Trigo acknowledged that when CityLife has contacted Future Club, whether about music being too loud, or people acting aggressively on the CityLife forecourt, Future Club staff are "very...very happy to help us" and have helped out Mr Trigo's colleagues in a few instances.¹³⁸

[252] When asked by Mr McColgan whether, if the videos had been brought to Future Club's management, Mr Trigo thought management would have changed their security to address the issues, Mr Trigo replied that they had already tried that and even with an additional security guard on the corner of Durham Lane and Durham Street, there were still incidents.¹³⁹



¹³⁶ DLC Transcript page 17 (Day Four)

¹³⁷ Trigo BoE dated 29 August 2019 at [2.4] and [6.1]

¹³⁸ DLC Transcript page 18 (Day Four)

¹³⁹ DLC Transcript page 21 (Day Four)

Mr Akash Sood

[253] Mr Akash Sood is the General Manager of CityLife. Mr Sood says that CityLife is a 156-room four-star hotel that works hard to provide its guests with superior accommodation.¹⁴⁰

[254] Mr Sood said in evidence that he has received complaints direct from guests, and that complaints cause direct reputational damage to CityLife with guests expressing they will not be returning to the hotel. Mr Sood produced in evidence a copy of an email complaint which he says represents the kind of thing the hotel regularly hears from guests on checkout. The email expresses that the only downside to their stay was that their room faced a nightclub so they were woken by unruly patrons at 4.00 am.

[255] In response to a question from Mr Cummings for the Licensing Inspector, Mr Sood said that 90% or more of the complaints would be related to Future Club.¹⁴¹

[256] Mr Sood also produced in evidence a video sent to him by a permanent resident of CityLife who lives on the 10th floor. The video was taken on 30 June 2018 and indicates the kind of noise and violence Mr Sood says guests can be confronted with. The video shows numerous people fighting on the street below in front of Future Club, with yelling and noise emanating from the street below, as well as bottles being thrown.

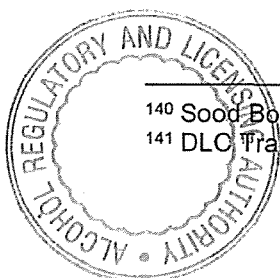
[257] Mr Sood said that CityLife attempts to manage the effects of noise through such things as discounted rates, refunds, complimentary breakfasts, moving guests in the middle of the night and similar. Mr Sood said that the lost revenue of those who complain with their feet following an unpleasant stay, and by being put off by bad reviews, is hard to quantify. The greater number of incidents and disturbances also means that staff can spend much of their time monitoring CityLife instead of undertaking their other roles.

[258] Mr Sood said that Future Club staff are always respectful and helpful, but he believes the large size of Future Club and the number of patrons it accommodates is such that it is out of control.

Analysis

[259] The Authority is satisfied that the DLC understood the scale and severity of the impact Future Club had on the amenity and good order of the locality.

[260] Having considered the evidence, the Authority itself is under no doubt that the harm in the area can be linked to Future Club, even if Future Club is not solely responsible for it. The harm is also not at the lower end of the scale as is suggested by Sogi. This is not simply about a few isolated incidents of people urinating in Durham Street West and Durham Lane. Also, as already noted, the harm need not be the direct result of intoxication. That said, the Authority considers that people probably do not urinate against hotel picture windows simply because there is no toilet convenient.



¹⁴⁰ Sood BoE dated 29 August 2019

¹⁴¹ DLC Transcript page 33 (Day Four)

[261] As security is dedicated to CityLife, there can be no doubt that Sogi considers it is responsible, at least to some extent, for the goings on at the CityLife forecourt about which Mr Trigo gave compelling video evidence. There is equally no doubt that crowds form outside Future Club, with associated issues of noise, despite efforts made by Mr Tiata's team to move them on.

[262] The Authority does not find it credible that Mr Young said he has never been told of any incidents of a Future Club patron urinating or vomiting on CityLife property but has simply been told that people have walked across from Future Club into the CityLife reception area and caused issues (which his security staff have responded to where they have been told about them).¹⁴² The objection by CityLife¹⁴³ to the renewal application specifically refers to a meeting held on 12 February 2018 between CityLife and Sogi, and of correspondence between CityLife and the Appellant, which raises issues relating to the behaviour of patrons. Issues of noise, security, and patron management were discussed. Mr Smith admits in his evidence for Sogi, that incidents of urination, vomiting, intoxication and crowds of people congregating on the street are inevitable given the size of Future Club.

[263] The Authority is satisfied that the issues experienced in the locality of Future Club are not simply a consequence of people gathering in the CBD to undertake a permitted activity. The evidence is of crowds on the street in front of Future Club, not only queuing to get in, but loitering in the street during the evening and into the early hours of the morning and afterwards. It is also of noise, vomit and urination. The amenity and good order of the locality changes markedly when Future Club is open.

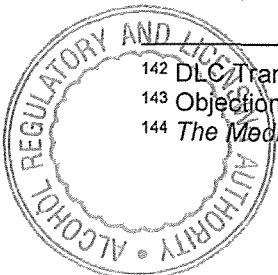
[264] The Act does not simply concern itself with how a licensee operates the internal premises but is concerned with the impact that a licensed premises may have on the locality, and on the community more generally. Alcohol-related harm as defined in s 5 of the Act includes any harm to society generally or the community such as disorderly behaviour directly or indirectly caused or contributed to by inappropriate consumption of alcohol. A DLC cannot, and in this case rightly did not, put to one side issues that occur outside of licensed premises once patrons leave, when these issues go to the amenity and good order of the locality. Section 106(2) requires the DLC to have regard to current and possible future levels of noise, nuisance, and vandalism.

[265] Similarly, a licensee cannot seek to absolve itself of those matters because they happen outside the premises. Section 106 of the Act makes it clear that noise, nuisance and vandalism are themselves matters that go to the amenity and good order of the locality, to which a decision-maker must have regard under s 131(1)(b). These considerations, by their inclusion in the Act, are designed to help achieve the object of the Act. As Clark J said in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*¹⁴⁴ harm is very broadly defined. Where the 1989 Act was concerned to reduce liquor "abuse" the concept of "harm" is central to the 2012 Act. The harm caused by excessive or inappropriate consumption of alcohol not only includes any crime, damage, disorderly behaviour, illness or injury directly or indirectly caused, or directly or indirectly contributed to by the excessive or inappropriate consumption of alcohol, but any harm to society generally or the community.

¹⁴² DLC Transcript at page 16 (Day One)

¹⁴³ Objection dated 19 November 2018 at [2(a)]

¹⁴⁴ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [30]



[266] CityLife and the Police have pointed out in graphic detail how the locality will improve if Future Club is not granted a renewal of its licence. The evidence implicates Future Club and is sufficient to engage the requirement to minimise alcohol-related harm.¹⁴⁵ Even if we put no weight on the objection of Mrs Lowndes, the evidence is consistent with what other objectors (who did not appear before the DLC) said.

[267] Despite a licensee doing all that it says it can to address behaviour in the locality, if the DLC considers that the alcohol-related harm is not being minimised, and the premises are implicated as contributing to that harm, that cannot be ignored or condoned. As counsel for CityLife put it, it is entirely illogical to suggest that the behaviours shown in the evidence could only have a minor impact on the amenity and good order of the locality. Even with an excess of 15 security staff, the issues remain. That is not to say that Sogi has not taken positive steps to reduce alcohol-related harm. Those efforts are acknowledged and commendable. The fact remains that the level of harm cannot be condoned. And, there is no requirement on the community to work together to do try to reduce that for the licensee.

[268] The Authority is satisfied on its own evaluation of the evidence that the amenity and good order of the locality would likely be increased, by more than a minor extent, by the effects of a refusal to renew the licence.

[269] Having regard to the other matters set out in paragraphs (a) to (g), (j), and (k) of s 105(1), and s 131(1)(c) and (d), the Authority does not consider that Sogi is a suitable person to operate premises of the size of Future Club that attracts 1,500 people over Friday and Saturday nights.

[270] As the Authority said in *Nishchay's Enterprises Ltd*:¹⁴⁶

Traditionally, [the test of suitability] has been interpreted as meaning whether or not an applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus it includes the object of the Act as set out in s 4. The Sheard test is not simply about how a business is likely to operate in the future. It is dependent on an assessment of the more generalised factors referred to in the previous paragraph¹⁴⁷. It includes how a licensee will deal with liquor abuse issues that may arise from the establishment of the business.

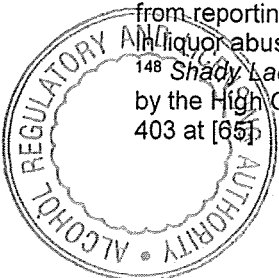
[271] Further, as we said in *Shady Lady Lighting Ltd v Lower Hutt Liquormart Ltd*,¹⁴⁸ the vulnerability of the locality, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol related harm. The evidence of Mr Smith for Sogi is that "the landscape is very dangerous". Sergeant

¹⁴⁵ *The Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited*, above n 31 at [70]

¹⁴⁶ *Nishchay's Enterprises Limited* [2013] NZARLA PH 837 at [54]

¹⁴⁷ i.e. the character and reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions, matters raised in reports from reporting agencies and whether the grant of the licence will result in the reduction or an increase in liquor abuse

¹⁴⁸ *Shady Lady Lighting Ltd v Lower Hutt Liquormart Ltd* [2018] NZARLA 198-199 at [127], endorsed by the High Court on appeal in *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd* [2019] NZAR 403 at [65]



Hutchinson, in turn said that he would not want one of his staff going to Durham Street alone.

[272] Suitability must be assessed, at least in part, in context. A person suitable to operate smaller premises in a different location may not be suitable to operate a large venue in the location of Durham Street West. That 15 security guards, including one dedicated to the CityLife Hotel are not able to prevent the kinds of incidents that are evident in the evidence, indicates that premises the size of Future Club, as currently operated, are not appropriate for the location. As Mr Sood put it succinctly, while Future Club staff are always respectful and helpful, the large size of Future Club and the number of patrons it accommodates is such that it is out of control.

[273] Mr Clyde Young's evidence is that he is a director of some 100 companies and only attends Future Club once every three or four months although this is augmented by reports he gets from his management. At all times when alcohol is being sold or supplied on licensed premises, a licensee is required to take all reasonable steps to enable the premises' managers to comply with the Act. The Authority has concerns about how effectively this obligation can be carried out when the licensee is not present on a regular basis, in what is clearly a challenging location close to residential premises.

[274] The Authority is also concerned about how Mr Young, Ms Brown, and Mr Tiata have each downplayed the initial issues with the operation of the Club. The Authority does not consider that such issues, resulting in the Police GRM processes being invoked, are the norm for new premises, especially if the staff such as the General Manager of Future Club, Mr Yu Ming Shao (who did not appear before the DLC), have as much experience as Ms Brown says they do.

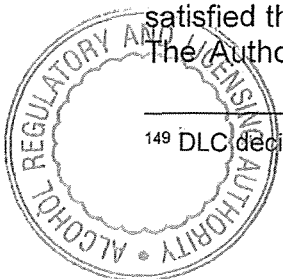
[275] The Authority considers that attempts to downplay the incidents that occurred, is also relevant to the question of suitability. To downplay the number of incidents based on the number of people Future Club attracts, especially given that Future Club was twice made subject to the Police GRM processes in the first year of operation, and the number of incidents captured by CityLife CCTV, is of concern to the Authority.

[276] The Authority also considers that the evidence of breaches within the premises, which attracted the Police GRM processes, cannot simply be dismissed as 'teething pains.' To portray the provision of trays of shots, the lack of food menus, the failure to display the names of managers and the provision of full bottles of spirits, in the way that Sogi has overlooks the importance that these matters play in terms of both the enforcement of the Act and ensuring the object of the Act is met.

[277] In the Authority's view, the DLC was entirely correct to say that it is not for others to bring evidence of objectionable behaviours to his attention.¹⁴⁹ In any event, CityLife did this in a letter dated 16 April 2018 from its counsel, Mr John Young, approximately half way into the one year 'probationary' term of Sogi's licence.

[278] On balance, having regard to the evidence and standing back, the Authority is satisfied the evidence is such that the application does not meet the object of the Act. The Authority agrees with Sgt Hutchinson that the volume of patrons Future Club

¹⁴⁹ DLC decision at [110]



attracts is simply too difficult for Sogi to manage given the nature of the area, resulting in inevitable adverse impacts on the locality.

Third ground of appeal: Did the DLC err by allowing Mrs Lowndes to object to the renewal of the licence and were her questions, submissions, and evidence inadmissible as a result?

[279] In seeking leave to amend its grounds of appeal, Sogi submitted that as a consequence of Mrs Lowndes' misrepresentations, the DLC reached factual conclusions relating to amenity values that were not available to it, in circumstances where the Licensing Inspector failed properly to assess amenity values in the locality.

[280] Before the Authority, Sogi made no further submissions on this point notwithstanding that leave was granted to Sogi to amend its grounds of appeal. As a consequence, Sogi has not satisfied the Authority that this ground of appeal is made out. In any event, even if Mrs Lowndes did not have status to object before the DLC, the Authority is satisfied that the DLC reached conclusions well supported by the evidence.

[281] The Authority is satisfied on its own evaluation and consideration of the evidence, that the evidence overwhelmingly supports us concluding that the amenity and good order of the locality would be increased by more than a minor extent, by the effects of a refusal to renew the licence.

Fourth ground of appeal: Did the DLC err in having regard to the Licensing Inspector's assessment of the amenity values in the locality, which were not supported by any "Local Impacts Report" or similar analysis or by relevant planning documents such as the Auckland City Centre Masterplan or "Internal Strategy to Minimise Alcohol Related Harm 2016", and were instead based on misleading submissions and inadmissible evidence from Mrs Lowndes?

[282] As we have already stated, the Act is not concerned with planning matters except to the extent that any premises for which an application is sought must meet the requirements of the Resource Management Act 1991. Further, as we have just stated, that the DLC erred in relying on misleading submissions and inadmissible evidence from Mrs Lowndes has not been established.

[283] In any event, it is not the Licensing Inspector's assessment of the application that matters, but that of the DLC. The Licensing Inspectors' report is an input into that assessment. The obligation rests with the DLC, and the Authority on appeal, to be satisfied that the application meets the object of the Act. Moreover, what weight is put on the Licensing Inspector's report is a matter for the decision-maker.

[284] This ground of appeal has not been established.

Fifth Ground of Appeal: Did the DLC err by allowing counsel for CityLife to put leading questions to the Licensing Inspector in breach of s 93 of the Evidence Act 2006?

[285] In seeking to amend the grounds of appeal, Sogi submitted that the Licensing Inspector's approach to reporting was ad hoc and that his conclusion (that the amenity



and good order of the locality would be increased by more than a minor extent by the effects of a refusal to renew Future Club's licence), did not withstand cross-examination, with the Inspector conceding that he had no idea how the incidents he witnessed were associated with Future Club. Notwithstanding this, it is submitted that counsel for CityLife embarked on an inappropriate cross-examination of the Inspector in which leading questions were put to the Inspector in breach of s 93 of the Evidence Act 2006.

[286] Why this was an error was not pursued before the Authority. Accordingly, this ground of appeal has not been made out. The Authority notes that s 93 of the Evidence Act 2006 does not prohibit leading questions in cross-examination but gives the judge (in this case the chair of the DLC), a discretion to limit the extent of leading questions where a parties' interests are substantially similar. Section 93 is also subordinate to s 207 of the Act which gives the decision-maker a discretion to receive any evidence that in its opinion may assist it to deal effectively with any matter before it. In any event, the Chair of the DLC was seized of the s 93 issue and decided to listen to the responses to the questions asked with a view to sifting what was relevant.¹⁵⁰ Why this amounts to an error has not been established by Sogi.

Sixth Ground of Appeal: Did the DLC err in its regard to the objection of CityLife in relation to amenity values in the locality, which were based on, among other matters, misleading submissions and inadmissible evidence from Mrs Lowndes and inadmissible and objectionable questions put to the Licensing Inspector?

[287] As with the fourth ground of appeal, that the DLC erred in relying on misleading submissions and inadmissible evidence from Mrs Lowndes has not been established.

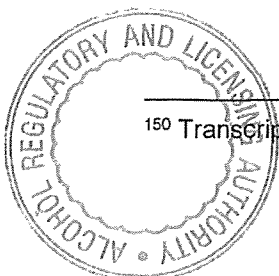
[288] Further as just stated, it has not been established that the DLC erred in relying on inadmissible and objectionable questions put to the Licensing Inspector.

[289] In any event, ultimately the preponderance of evidence is such that these responses do not change the view of the Authority, based on its own evaluation of the evidence, that the grant of the application would be contrary to the object of the Act.

CONCLUSION

[290] The Authority does not find that the DLC failed to identify and apply the relevant legal test when assessing the effect of the licence on the amenity values of the locality and nor did the DLC fail to identify the scale and severity of the harm.

[291] There is no doubt in the Authority's view, that the amenity and good order of the locality would likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence. This matter assumes such an 'elevated mantle' in this case that the Authority is satisfied that the grant of the application would be contrary to the object of the Act.



RESULT

[292] For the reasons stated, the appeal is dismissed.

DATED at WELLINGTON this 19th day of June 2020



District Court Judge K D Kelly
Chairperson
Alcohol Regulatory and Licensing Authority