

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012 (“Act”).

**AND**

**IN THE MATTER**

of an application by **Batth Limited** for renewal of an On-Licence pursuant to s.127 of the Sale and Supply of Alcohol Act 2012 (“Act”), in relation to the premises situated at 75 Guyton Street, Whanganui, trading as “Shotz Bar”.

**BEFORE THE WHANGANUI DISTRICT LICENSING COMMITTEE**

Chairman: Stuart Hylton  
Member: Annette Main  
Member: Rob Moore

**HEARING** at St Pauls Church, Brechin Lounge, on Monday 11th November, 2024.

**APPEARANCES**

<b>Kulwinder Kaur</b>	Applicant/Director
<b>Tim Blake</b>	Counsel for the Applicant
<b>Steve Turfrey</b>	Whanganui District Council Chief Alcohol Licensing Inspector
<b>A K J Thomson</b>	Senior Constable, NZ Police
<b>Jill Job</b>	Medical Officer of Health Representative
<b>Lesley Stead</b>	Co-chair of the Guyton Group Trust – Objector
<b>Linda Montgomery</b>	Objector

**DECISION OF THE COMMITTEE**

## Application

[1] On the 22 July 2024, **Bath Limited**, made application to renew their On-licence (tavern style on-licence) in relation to the premises situated at 75 Guyton Street, Whanganui, trading as “*Shotz Bar*”.

[2] The Applicant Company has one Director – Kulwinder Kaur who is also one of three shareholders with Jasvir Kaur and Gurpreet Singh. This is the fourth renewal application for the licence and the applicant applied to renew with existing conditions.

[3] The premises has trading hours of Monday to Sunday, 10.00am to 2.00am the following day (a one-way door policy is in place from 1.00am), is deemed medium risk and designated ‘supervised’ apart from the gaming area which is ‘restricted’.

## Objections

[4] The application was publicly notified on the 25 July and again on the 1<sup>st</sup> August 2024 and attracted three (3) public objections.

[5] Two of the public objections, from **Linda Montgomery**, 65 Guyton Street, Whanganui, and the **Guyton Group Trust Whanganui**, were received on time and covered issues relating to noise, drinking off the premises, litter, violence and damage to property and public safety associated with the management of *Shotz Bar*. The District Licensing Committee “Committee” issued a direction notice stating the two objectors had ‘status’ to appear before the Committee on this matter and be heard.

[6] A third public objection was received from **Kim Gunter** whose business is located on level 2, the corner of Victoria & Guyton Street. Unfortunately, that objection was outside the statutory timeframe and therefore the objection was deemed by the Committee not to have status.

## Statutory Reports in Opposition

[7] The application was sent to the Inspector, Medical Officer of Health and NZ Police for their statutory reports. All three reporting agencies filed reports in **opposition**.

[8] The **Police** opposed the renewal on grounds of the object of the Act; suitability; days and hours of trade; amenity and good order; systems, staff and training; and the manner in which alcohol was sold during the renewal period. The report said Police oppose the application due to –

- *Numerous incidents involving intoxicated patrons*
- *Fights within and outside the premises*
- *Assaults and general disorder*

[9] The **Medical Officer of Health’s** “MOH” report gave a substantive insight into their opposition. The basis of the MOH opposition is probably best contained in the following excerpt from the report – “...*The application for renewal of this on-licence in this locality may offend the object of the Act in that current and historical incident records demonstrate uncontrolled intoxication of patrons and a consistent trend of documented incidents relating to intoxication, violence, harm and police intervention required.*”

*These incidents have demonstrated an environment of uncontrolled and excessive or inappropriate consumption of alcohol resulting in harm to patrons and risks to staff and the wider community in this area...A review of incidents documented by Shotz since February 2022 to 8th August 2024 noted 70 incidents. A total of 45 incidents (64%) involved aggressive behaviour of which 25 (38%) required police intervention. There is no evidence that the Licensee has reviewed or initiated better controls and specific training for staff on interventions to prevent patrons becoming intoxicated and compliance with the SSAA 2012 following any of the documented incidents”.*

[10] The **Inspector**, in a comprehensive report in opposition concludes: ...“*that ‘Suitability’ has not been satisfactorily proven as evidenced by the manner in which alcohol has been sold and supplied. The sale and supply of alcohol as provided by this licensee impresses as having a negative impact upon amenity and good order with instances of intoxication and disorder spilling into the nearby streets. These experiences speak to the calibre of the applicant where a high bar is provided as a measure for the assessment of applicant suitability. Issues outlined in this report are found to be compelling and relevant in this moment sufficient enough to bring matters of suitability and other concerns to the attention of the District Licensing Committee. As an overall conclusion I contend that the ‘Object of the Act’ may not be achieved and therefore in my assessment the application does not meet the criteria for renewal”.*

[11] The District Licensing Committee “Committee” issued a Direction Notice setting the matter down for determination by way of hearing.

[12] Prior to the hearing Police disclosed in a brief of evidence, files of multiple incidents both directly and indirectly linked to *Shotz Bar*. This was extensive and included –

- Police National Intelligence Application incidents, offences and occurrences that **were** directly linked to the applicant’s premises from 23/09/2021 to 25/08/2024,
- Police National Intelligence Application incidents, offences and occurrences that **were not** directly linked to the applicant’s premises from 01/10/2021 to 21/07/2024,
- CCTV footage of the premises on eight occasions from 10 March 2024 through to 6 April 2024, labelled B1 to B48,

[13] Police also noted in their brief of evidence that if Batth Limited were to have their licence renewed, they recommend it be for a 12-month renewal period with a 1.00am closing time (currently 2.00am with a 1.00am one way door policy). Police said this would allow them to work closely with the premises to address concerns raised.

[14] The applicant also disclosed, prior to the hearing, witness statement exhibits including company extracts; photo of premises exterior; an updated Host Responsibility Policy; updated Host Responsibility Implementation Plan; updated records of staff training from part 2022, 2023 and 2024; staff training collateral; certified managers register; staff qualifications list; food menu; photos of tables with water dispensers on them; designated driver and alternative transport signage;

general SSAA signage; photos from exterior CCT footage and interior cameras; photo of premise incident book; extract photos of staff SSAA meeting notes.

## Hearing Evidence

### Applicant's Evidence

[15] The applicant acknowledged upfront at the hearing that things "*had not been perfect*" during the renewal period however she was on a learning curve to improve performance with a strong level of commitment and competence to lifting their game to meet the objects and purposes of the Act.

[16] Part of the improved performance was an extensive and ongoing in-house training programme supplemented by industry training with Hospitality NZ and training with the Police and Inspector. The applicant stated they had no negative holdings, had successfully dealt with a failed CPO some ten years ago with no repeats and were generally complying with conditions of the licence including maintaining appropriate logbooks and records.

[17] The applicant had adopted a new improved host responsibility policy and implementation plan and one of the new steps taken to address concerns around intoxication was to make water actively available and promoted on the premises tables where patrons drink. The Bar also offers free soft drinks to designated drivers.

[18] The applicant stated she had "*recently become aware of concerns raised by local residents of patrons not dispersing quickly enough after they leave Shotz Bar and behaving disrespectfully to the neighbourhood, particularly after we close.*" She advised Shotz had good relations with most regular customers and had been in communication about this as well as erecting new signs, including "*No drink beyond this point*" and signage asking our guests to show "*Respect for Local Residents*" and to "*...leave quietly and respectfully and avoid disturbing the neighbourhood.*"

[19] The applicant produced copies of emails from three close neighbours who state they either have no objection to the renewal licence, don't hear any noise or Shotz does not affect their business, trading hours or customers. After introducing the new measures, including two new surveillance cameras, the applicant has watched hours of CCTV footage of the area outside their premises and "*seen no signs of bad behaviour*".

[20] The applicant did not accept the police evidence that Shotz Bar was directly responsible for most of the incidents listed. They submitted that it's not fair to blame Shotz Bar because a person who happens to have been a customer of Shotz Bar comes to the attention of the Police, especially if there is no evidence of Shotz Bar having done anything unlawful or irresponsible. Nevertheless, they are very happy and willing to work with the Police and to try and address any residual concerns they may have.

[21] In somewhat contrast to Police and Inspector evidence, the applicant stated frequent checks by Police and Council staff "have almost always been found to be completely compliant". The applicant also stated they had never been subject to a noise control complaint and has recently taken to undertaking noise readings to ensure

noise does not exceed 65 decibels. Staff were now switching off outdoor speakers and closing doors from 10.00pm to prevent noise from travelling.

[22] With regard to allegations from objectors of litter and graffiti, the applicant believed *Shotz Bar* is somewhat unfairly implicated. They stated customers can't take food and drink outside the bar and now *Shotz* staff sweep up the street outside the bar every morning.

[23] In answer to questions the applicant advised the Committee –

- There has only been one noise complaint notified by Council several years ago which was addressed with none since,
- She was not aware of the neighbours (objectors) concerns until reading the submissions,
- She had approached a total of four neighbours, with none expressing any negative comments and three replying within emails presented as evidence to the hearing,
- Most patrons are local with only a few out-of-town visitors from time to time. Most are also regulars unless there's a band playing.
- Around 12.00 - 12.30am they remind people to keep the noise down and the outside tables are brought inside to discourage people from staying out there for entertainment.
- *Shotz* had voluntarily altered the one-way door policy to start at 12.30am instead of 1.00am.
- They go through a lot of food and staff are trained to encourage patrons to order food. A new menu has been introduced.

[24] In summary the applicant acknowledged that there have been a few issues in the past which they have taken seriously including significant steps to have them addressed. They have implemented rigorous monitoring protocols and made necessary changes to their operations to ensure they manage situations effectively. They are comfortable with a one-year renewal period to continue to work with the agencies to reinforce recent improvements.

### **Police Evidence**

[25] In addition to earlier stated concerns from their statutory report, Police produced an exhibit at the hearing showing a table of contents synopsis of incidents they directly link to *Shotz Bar* for the three-to-four-year period from 2021 to 2024. This was a synopsis of their disclosed incident records and showed 100 incidences that directly link to *Shotz Bar* over the renewal period. The 100 incidents traversed 16 police event codes with disorder (27), hotel check (24) and trespass (10) being the most prolific. There were (6) events recorded in 2021, (28) in 2022, (49) in 2023 and (17) in 2024. Note: 2021 and 2024 covered only part of the year.

[26] Additionally, Police told the Committee that they would like to see *Shotz Bar* continue its recent downward trajectory for incidents involving Police. Senior Constable Thomson said he found Shotz staff to be professional and responsive to Police advice and interventions.

[27] On questioning Senior Constable Thomson advised that some of logged incidents showed a willingness of the applicant to ask people to leave when intoxicated and call Police when needed. He said some establishments won't do this as they don't want to draw attention to their premises.

[28] Senior Constable Thomson further advised that there were 24 3H (Hotel Check) visits undertaken of *Shotz* over the three years. The visits were instructed by him although not all were undertaken by him. He advised most *'had been fairly good'* and he noted the harm from the premises was trending down. He characterised *Shotz* as a popular bar, probably in the top 5 in Whanganui for Police concern.

[29] Senior Constable Thomson said that during his visits to *Shotz* he *"found someone up the road urinating after being refused entry. I've also seen people who were overly intoxicated inside the bar. Generally, the staff and security are doing well. I haven't witnessed any major issues"*.

[30] When asked whether all the incidents recorded were either accurate and/or attributable to poor management by *Shotz*, Senior Constable Thomson advised that *"the records is the information that was given to the operator at the time and its correct that it could be totally different from the actual situation"*.

## **Inspectors Evidence**

[31] The Inspectors report in opposition noted formal inspections have been completed by the Inspector and NZ Police following reports of public disturbances and excessive public intoxication spilling into the area and providing a general negative impact on amenity and good order. He stated – *"It appears that these incidents most often occur between the hours of 12 midnight through to 2:00am the following morning and beyond."*

[32] The Inspector stated both he and the Police had supported the licensee to address some of the issues identified during inspections and have provided formal training support, at the request of the Licensee, to their staff, including security staff. The Inspector said in his report – *"In contrast to some of the following commentary I have always found the licensee and their staff to be incredibly engaging and therefore easy to work with where any issue has arisen"*. The Inspector also noted the applicant had a very outdated Host Responsibility Policy.

[33] The Inspector and New Zealand Police support had been provided on a 'graduated response' model, where issues have been evidenced (intoxication, public nuisance/disorder observed during combined agency inspections) during formal inspections. The Inspector said the applicant has always been receptive to these interventions and has provided opportunities for these same monitoring agencies to provide support for change to their staff.

[34] The Inspector noted his enquiries with peers in Stratford regarding their experience of the applicant as a director/shareholder of the Stratford Empire Hotel.

The Stratford Inspector gave overview of incidents and concerns with the Stratford Empire Hotel and how it was run since operating. Mr Turfrey stated that these matters showed a pattern of poor behaviour with distinct common themes.

[35] The Inspector stated he had witnessed behaviours during inspections of *Shotz* including patrons urinating in shop doorways, intoxicated patrons loitering on the street and spilling onto the road, noise and disorder. On one occasion the Inspector found the premises apparently without a staff member on duty. Police were called and it was found that the Duty Manager was taking a prolonged break and unaware that patrons had come and gone from the premises.

[36] The Inspector suggests there is a lack of transparency in management style that is concerning, and he concludes that there is less than an adequate level of certificated management to manage the sale of alcohol pursuant to the Sale and Supply of Alcohol Act 2012.

[37] The Inspector further concluded in his report that all the concerns point to a management style and practice that provides opportunity for harm (in its broadest context) to be realised. That same management style has been experienced in other licensing jurisdictions where monitoring agencies conclude this applicant to be disconnected and disengaged from any corrective opportunities.

[38] At the hearing the Inspector concluded by stating that *"If the 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 anti-social behaviour. Viewed in this way, the Act is not premised solely on the question of fault or whether the licensee is 'doing his/her best'. Where noise, nuisance and vandalism can be linked to a premises because it is a magnet, despite the best efforts and endeavours of a licensee, a DLC, in my submission, can act to minimise that harm. The blunt tool to achieving that end result would be to not renew the licence."*

[39] Under questioning Mr Turfrey said the *Shotz Bar* was about 3<sup>rd</sup> in the level of concern amongst licensed premises in Whanganui. He clarified that he found the applicant and staff easy to work with whereas his counterpart in Stratford had not when dealing with the applicant's previous Hotel.

[40] Mr Turfrey told the hearing he had attended inspections of *Shotz Bar* alongside the Police and observed public disorder, such as people urinating in shop doorways. He agreed with Police that these issues likely stem from activities prior to entry but the ongoing concern is that the location continues to attract problematic behaviour.

[41] When asked what outcome the Inspector was seeking from the hearing, the Inspector stated, "positive change continuing and he would support the reduced 1-year renewal of licence with a 1.00am closing time".

### **Medical Officer of Health's Evidence**

[42] The MOH's concerns included management of the premises with a duty managers register not present at the time of renewal inspection with a newly created

copy of the register received later via email. Low levels of staffing at the bar were also a concern highlighted in a complaint received by a patron using the gaming room.

[43] Further concern was raised regarding a promised Host Responsibility Implementation Plan to mitigate risks associated with intoxication and to meet their Host Responsibility Policy. This had not been developed despite the trend over the last two and a half years of intoxication, aggressive, disruptive or violent behaviours of some patrons.

[44] These concerns and the level of incidents within the Police report made the MOH question the suitability of the applicant. The MOH quoted *Sheard [1996] 1 NZLR 751 at 758 (and subsequently quoted in Cooke v. CZ Lucky Ltd [2020] NZARLA , and Two Brothers Wholesale Ltd [2021] NZARLA 32)*.

*“...suitability is a word commonly used in the English language and is well understood. The Authority has adopted the definition in the Concise Oxford dictionary as “well fitted for the purpose, appropriate”. While past conduct will be very relevant to the consideration of suitability, the real issue is whether the evidence of that past conduct indicates a lack of confidence that the applicant will properly carry out the obligations of a licensee.”*

*“Obviously the applicant's past conduct will be very relevant to the consideration of suitability. The real issue is whether the evidence of that past conduct will indicate a lack of confidence that the applicant will properly carry out the obligations of a licensee. ...”*

The Authority also said in *Nischays'Enterprises Limited [2013] NZARLA PH837 [53]*:

*“...suitability is a broad concept and the assessment of it includes the character and reputation of the applicant, its previous operation of premises, its proposals as to how the premises will operate, its honesty, its previous convictions and other matters.”*

*These statements were all repeated in TWO BROTHERS WHOLESALE LIMITED [2021] NZARLA 32 [101-134] where they also say [103]*

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

[45] The MOH further questioned the way the applicant has sold and supplied alcohol during the renewal period evidenced by the number of incidents. The apparent lack of intervention by staff, duty managers and licensee raises the question over the manner in which the applicant has continued to sell alcohol. The MOH states – *“Consideration will be given to agreed conditions as agreed to by all parties”*.

[46] Under questioning the MOH representative said the opposition was due to the incidents, types of incidents, and the training that had been done. What she wanted to see was the applicant making changes based on the feedback. Whilst the representative was happy with the quality of the new revised Host Responsibility/Training Plans at the premises, it was essential, in her view, that this continued through to improved outcomes.



[47] The Medical Officer of Health favoured a truncated renewal period of one year with commitments to an improved Alcohol Management Plan and training.

### **Objector's Evidence**

[48] Guyton Group Trust's objection noted the improvements that the group and relevant authorities had embarked on recently to lift the tone and ambience of the street to promote the street as a family-friendly eco-street; caring for the environment and having an inclusive philosophy.

[49] The Group's objection states that *Shotz Bar* is widely known to be associated with frequent disturbances and disorder. These disturbances occur mainly at night but can also occur during the day. The group state noise, anti-social and irresponsible behaviour - all negatively impact the quality of life for those living in the street, those who happen to be in the street at the time, or those who are staying in the street.

[50] The Group raised the issue of vandalism saying multiple cases of broken windows have occurred in Guyton Street and around the corner into Wicksteed Street. This is dangerous, expensive and requires owners of businesses to be called out in the early hours of the morning to attend to the clean-up. They gave some accounts of incidents and said it's not uncommon for business owners to be wiping blood off shop frontages. The Trust state they are tired of picking up cans, bottles, and other sickening remnants from late-night antics of *Shotz* patrons.

[51] On their point of safety, the Group told the Committee that street businesses sometimes hold evening events where attendees leaving a street premises have often felt unsafe due to undesirable patrons lurking about.

[52] Objector Linda Montgomery owns the building at 65 Guyton Street which is less than 100 metres up the street from the *Shotz Bar*. It has commercial use in the front, and she resides at the rear. Linda suggests *Shotz Bar* has insufficient acoustic soundproofing to lessen the noise impact on the neighbouring residents in the street. She states that on Friday and Saturday nights the noise levels are often intolerable.

[53] Linda went on to advise the outdoor bar area is not sufficiently supervised to stop patrons spilling over into the street and leaving the premises with open bottles and cans which end up being left in the street or in neighbouring properties. Additionally, there have been several incidents of fighting and violence in the street involving bar patrons and people attracted to the bar. She said machetes and knives had been used and listed incidents of blood and broken furniture being left behind after street fights and arguments.

[54] Linda went on to say with recent improvements in Guyton Street and the upgrading of some the buildings, new businesses, families and visitors need to feel safe and will continue not to feel safe if the issues coming from *Shotz Bar* are not resolved.

### **Committee's Decision and Reasons**

[55] In considering this renewal application the Committee must have regard to the relevant criteria under the Act

[56] Section 3 of the Sale and Supply of Alcohol Act 2012 (“the Act”) states the purpose of the Act as follows:

***(1) The purpose of Parts 1 and 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.***

[57] Section 4 states the Object of the Act as follows:

***(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 and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).***

[58] Sections 131 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to approve a renewal of the licence:

#### ***131 Criteria for renewal***

***(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.***

[59] The Act requires that when deciding whether to renew a licence, or not, the licensing committee must have regard to the matters contained in sections 131 of the Act.

[60] The section 105/131 matters in contention at the time of the hearing were suitability of the applicant; hours of operation; whether the applicant has appropriate systems, staff, and training to comply with the law, amenity and good order of the locality issues; the manner in which the applicant has sold and supplied alcohol, and by association compliance with the Object of the Act.

[61] The agency reports all questioned the way the applicant had sold and supplied alcohol during the renewal period which was underpinned by the Police evidence. This showed high levels of incidents that Police contended were associated with the *Shotz Bar's* performance over the past three years.

[62] The Inspector and Medical Officer of Health raised additional concerns with the management of the licence, available managers, lack of training records, outdated Host Responsibility Plans and issues with associated amenity and good order issues.

[63] These matters, especially amenity and good order concerns, were at the heart of the issues raised by the two public objectors.

[64] The Police recommended a one-year renewal of the licence together with a one-hour reduction to closing time i.e. 1.00am instead of 2.00am. Due to natural justice provisions the Committee asked all parties for their opinions on this Police recommendation.

[65] As is often the case when applications reach a hearing, the Committee heard of a number of changes the applicant had instigated in recent times to address concerns raised by those in opposition and objecting. This is well documented earlier in this decision and the Committee accepts the changes are a positive attempt by the applicant, albeit a late one, to address the concerns. The Committee also notes these changes have started to make a positive change.

[66] The Committee acknowledges within the applicants' submissions that they admit to making errors in the past, acknowledging there was room for improvement, and that they had instigated a number of changes as well as welcoming further offers of training and advice from the agencies.

[67] Significantly the Committee also recognises the positive downward trend in numbers of Police registered incidents attributable to *Shotz Bar* of late since the improvements had been instigated. This is corroborated by advice from objectors and agencies that incidents and issues were less prevalent of late.

[68] We concur with the Medical Officer of Health's submissions that it would have been useful for the applicant to have recognised and attended to these matters earlier than at renewal time and part of the concern raised around the suitability of the applicant is the inability to recognise alcohol harm incidents arising from one's

premises along with the ability to self-address them through actions. In fairness to *Shotz Bar* they are not alone in this regard.

[69] The Committee found the Police weight of incident evidence compelling to support the claims that over the past three-year renewal period there have been a number of documented incidents in and around the applicant's premises that showed harm caused by excessive or inappropriate consumption of alcohol. Again, the sheer weight of incidents and evidence from all the agencies suggests that the applicant's suitability has fallen short of what's required. However, we stop short in attributing all the harm to *Shotz Bar* and agree with the applicant's counsel that care needs to be taken on taking the evidence on face value attributing all incidents in the area to Sale and Supply of Alcohol noncompliance issues at *Shotz Bar*.

[70] We agree, to an extent, with the assertions that *Shotz Bar* is a magnet for antisocial behaviour. *Shotz* position in the CBD and its openness out onto Guyton Street will always mean some patrons drinking in other 'pubs and clubs' in the CBD area may migrate their way to *Shotz* or travel past *Shotz* as they find their way home late at night. However, as we saw in some of the Police incident reports, correct failure to serve or allow intoxicated patrons to enter the bar sometimes leads to associated incidents in and around the area for which *Shotz* can't be totally held liable for.

[71] The Committee appreciated the two objectors attending the hearing and detailing their concerns and describing real neighbourhood amenity and good order issues surrounding *Shotz Bar*. We found the objectors to be credible witnesses who described valid concerns. However, like the Police evidence, it's hard to determine that *Shotz Bar* is the cause of all the areas amenity and good order issues. That said once *Shotz* started implementing better host responsibility measures the number of incidents seem to have decreased markedly.

[72] The applicant must be a suitable entity to hold an On-licence, especially when the licensed premises is one of Whanganui's busiest establishments. We heard from both the Police and Inspector that *Shotz Bar* was up there as one of the top establishments in Whanganui that hold concern due to their late-night business and ongoing incidents.

[73] Suitability extends to hiring competent staff and security, having suitable host responsibility plans in place, ongoing staff training and management that ensures all the plans, practices and conditions associated with the licence are adhered to. There is an obvious correlation that when the applicant started addressing these training and management issues, the incidents and concerns with the *Shotz Bar* lessened.

[74] Whilst the applicant showed a willingness to change when confronted by the evidence, the Committee must decide whether this sudden willingness amounts to sustainable suitability to have the licence renewed.

[75] At the hearing, the Applicant gave the Committee some confidence that most of the issues raised had recently been attended to or were planned to be rectified. We heard of changes to the Host Responsibility Plan including Implementation Plan, new staff training programme, changes to food menus and provision of water on tables, tightening of security and poor patron behaviour interventions, improved signage, better CCTV surveillance, switching off speakers and closing doors between bar and

outdoor smokers' area from 10.00pm and a willingness to work with the agencies on plans and training.

[76] The applicant presented at the hearing as a competent and experienced licensee that accepted the evidence brought before the Committee. Albeit belatedly. She had now started to show ownership and management initiatives to get the premises back on track.

[77] Tellingly, all parties to proceedings were pleased to see the improvements made by the applicant and were all willing to work with the applicant to ensure this premises improvements were sustainable. They also said the applicant was easy and obliging to communicate with. On face value this gives the Committee confidence that the applicant could be a suitable licence holder.

[78] When the Committee asked all parties about the Police recommendation of a truncated renewal period of one year along with an earlier closing time of 1.00am, all supported the truncated renewal period, along with the applicant.

[79] What was not universally supported was the earlier closing time of 1.00am which the applicant contended would limit their ability to hire suitable staff that they had just invested training in. The applicant also acknowledged other similar types of premises in the CBD had 2.00am closing times and *Shots* had also taken the step to start its one-way door policy from 12.30am instead of 1.00am.

[80] Conversely the agencies all believed 1.00am would be a more suitable closing time with the reason offered by Police that most of the incidents they responded to happened during the 1.00 - 2.00am period. The inspector also mentioned this in his evidence.

[81] The Inspector concluded there was compelling reason to believe the amenity and good order in that locality would likely be reduced, to more than a minor extent, by the effects of not renewing the licence. The Committee finds it difficult to disagree with this conclusion.

[82] The mitigating factor in the applicant's favour is their recent endeavours to rectify most of the issues raised by the agencies and objector and the encouraging outcomes noted thus far.

### **Object of the Act**

[83] Lastly, the Committee is required to reconsider the application in light of the Object of the Act. That is having regard to the criteria in s.105, and having balanced the evidence before it, the Committee is required to consider whether the grant of the licence is consistent with the Act's object of minimising alcohol-related harm.

[84] The High Court commented in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123 at [46], Referring to *Re Venus NZ Ltd* [2015] NZAR 1315 "... **A licensing committee or Authority, after having regard to the criteria for renewal in s 131, 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": 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?*** Our emphasis.

[85] The Committee gave particular attention to that part of the s.4 Object definition that says – “*the harm caused by the excessive or inappropriate consumption of alcohol should be minimised*”. This definition recognises that the *object* should be to minimise harm caused by excessive and inappropriate consumption of alcohol. It does not say or require the elimination of all harm, and this reflects the *Purpose* of the Act which includes a system that is “*reasonable*”.

[86] The Committee is in no doubt that the licence in question has been operated in a manner that is contrary to the Object of the Act. However, the question for this Committee is to balance all the evidence before it to determine if the grant of a renewal licence would be consistent with the object of the Act.

[87] In determining this, the Committee acknowledges the applicant’s submissions that steps have been put in place to alleviate concerns raised and that tellingly these adjustments are making a positive difference. We further note that collectively the agencies were willing to work with the applicant to make further adjustments to ensure the licence is not at odds with the object of the Act.

[88] Both the Inspector and Medical Officer of Health stated in their statutory reports that the “*Object of the Act may not be met*”. (our emphasis) All agencies when asked at the hearing were supportive of the Police recommendation to issue a licence for a one-year truncated renewal period to allow recent improvements to be assessed as being sustainable. However, the Inspector in his closing statement somewhat departs on his earlier view on a one-year renewal by stating “*where noise, nuisance and vandalism can be linked to a premises because it is a magnet, despite the best efforts and endeavours of a licensee, a DLC, in my submission, can act to minimise that harm. The blunt tool to achieving that end result would be to not renew the licence*”.

[89] Ultimately it’s the applicant’s responsibility to adhere to the law and the licence conditions. We believe the applicant has the ability and tools to continue to make the necessary changes to be granted a renewal however the Committee need to see further evidence of the changes and improvements before renewing for the full three years.

[90] We make this assessment on the balance of probabilities after taking all the evidence into consideration.

## **Conclusion and Reasons for the Decision**

[91] All parties to proceedings acknowledged the premises over the renewal period has failed to reach acceptable standards across areas of suitability, object of the Act, training, amenity and good order, and the manner they have sold and supplied alcohol leading to numerous incidents evidenced through the Police report.

[92] However as often is the case when applications are opposed or objected to, the applicant appears to have received a rude awakening and has put steps in place to turn matters around to ensure the licence is renewed.

[93] To the applicants credit a number of changes to his operation have been made prior to the hearing which has resulted in improved outcomes. The applicant appears genuine in her endeavours to 'put things right' and take up the advice of the agencies and objectors at the hearing. Luckily for her, all the agencies were in favour of providing assistance within a renewed licence period, albeit truncated, to assess whether the changes being made will be successful.

[94] With regards to the recommendation from Police around an earlier closing time of 1.00am, the Committee weren't convinced of the need for this to be granted at this stage as we see overall merit in keeping all CBD taverns and hotels in sync with closing hours of 2.00am to stop migratory behaviour.

[95] For these reasons, the application by **Bath Limited** for renewal of an On-Licence, is **granted** for a period of one year from issue date. We expect during this truncated period that the applicant will work with the agencies and neighbours to strengthen recent improvements. This truncated renewal should be viewed as a probationary period with the Committee wanting to see continued improvements before the next renewal period.

[96] The license will be renewed with existing conditions apart from altering the one way door policy condition to start from 12.30am to reflect current practice.

[97] The renewal licence will not issue until the expiry of 10 working days from the date of this decision. The 10-working day period is the time provided by s.155 of the Act for the lodging of a notice of appeal.

[98] We refer any party who wishes to appeal this decision or part of this decision to section 154 through to 158 of the Act.

**DATED** at Whanganui this the 8th day of December 2024.



**Chairman – Stuart Hylton**  
**Whanganui District Licensing (Alcohol) Committee**

