

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 ('the Act')

AND

IN THE MATTER

of an application by **WAIKATO HOTELS GROUP LIMITED** pursuant to s.120 & 127 of the Act for the renewal, and variation, of an ON Licence in respect of premises situated at 204-206 Rosebery Street, Tokoroa known as "**RETOX SPORTS BAR**"

HEARING BEFORE THE SOUTH WAIKATO DISTRICT LICENSING COMMITTEE
("the Committee")

Chairperson/Commissioner: Murray Clearwater
Member: Jenny Shattock
Member: Marin Glucina

HEARING at Tokoroa on 15 September 2020

APPEARANCES

Ms. Pervinder Kaur– for the applicant, **WAIKATO HOTELS GROUP LIMITED**
Mr Scott Vincent Leathem- for the applicant
Ms. Jules Smale – Alcohol Licensing Inspector – to assist
Sergeant Chris Turnbull – Police Alcohol Harm Reduction Officer – conditional opposition
Constable Ellen Halpenny- witness for the Police

THE APPLICATION

On 15 January 2020 **WAIKATO HOTELS GROUP LIMITED** applied for the renewal and variation of the ON licence in respect of premises situated at 204-206 Rosebery Street, Tokoroa known as "**RETOX SPORTS BAR.**" The applicant has owned this business for eight years. The licence expired on 25 February 2020, but it is kept 'live' by the renewal process.

The variation sought is to extend the potential opening hours on Sunday currently 10.00am to 10.00pm to 10.00am **to 2.00am** in line with the hours for the rest of the week.

These hours are within the default national maximum trading hours for an On licence and a fresh Planning Certificate was sought, and issued, advising that the requested hours were within town planning rules.

INTRODUCTION

1. The business is an older style tavern with a main bar area, a lounge bar with dart boards and TVs and a gaming room with 9 electronic gaming machines (EGMs). There is a partially enclosed smokers' area (garden bar) at the back of the premises facing onto Rosebery Lane, There is a basic food offering from a kitchenette on site.
2. The business has 3-4 live music events each year and now employ security on the busy evenings for door control. The whole of the premises is designated as a **Restricted Area**, at all times.
3. Police initially opposed the renewal of the licence due to "disorder caused by intoxication at this location" and later offered a conditional withdraw of the opposition if three additional conditions were imposed by the Committee. Those conditions were centered around no sales of 'shots' after midnight, a One-Way Door (OWD) from midnight and COA qualified security when patron numbers exceeded 50.
4. The delegated officer for the Medical Officer of Health initially lodged an opposition in her report based on a belief that the business was not operating as a tavern. Once verified revenue figures were supplied by the applicant's accountant, that opposition was withdrawn.
5. Inspector Smale did not oppose the renewal with variation.
6. The application drew one public objection from a resident of Tokoroa who was deemed to not have a greater interest than the public at large and was denied status to be a party to the hearing.
7. The Committee was concerned that the full extent of the 'disorder caused by intoxication' had not been put before the Committee and therefore declined to consider the application 'on the papers'.
8. The Chairperson of the Committee set that matter down for a public hearing, and pursuant to the Commissions of Inquiry Act 1908, sought additional information from the Police and a response from the applicant on the matters raised by the Police.
9. The additional investigation by the recently appointed Alcohol Harm Reduction Officer (AHRO) for the Tokoroa area identified 23 alcohol related incidents during the latest renewal period of this licence.

RESERVED DECISION OF THE COMMITTEE

APPLICANT'S EVIDENCE

10. Counsel for the applicant opened the case and submitted that the key issues for the Committee were whether her client was suitable to continue to hold an ON Licence and whether the amenity and good order of the area would increase by more than a minor extent if we refused to renew the licence.
11. Ms. Kaur argued that the applicant was suitable, and that the amenity and good order had not been reduced by more than a minor extent from the operation of the licence. She was also of the belief that the Police had withdrawn their opposition.
12. As was explained to her, and her client, the Police 'withdrawal' was conditional on the imposition of three conditions that had been negotiated with the applicant. The option for the DLC to consider the renewal on the papers was rejected by the Chairperson and the matter set down for a public hearing.
13. Given that the additional enquiries by the Police had identified a pattern of adverse behaviours from patrons of **RETOX SPORTS BAR** there was a very clear case for the applicant to answer, which is why it was set down for hearing.
14. Ms. Kaur also argued that much of the Police records of the incidents was based on hearsay and therefore was not admissible as cogent evidence before the Committee. The Committee discusses this stance later in this decision.
15. The Committee then heard from Mr Scott Leathem, sole director and shareholder of the applicant company.
16. He told us that he bought the bar in 2012 and took over direct management of it in 2015. He spends about 20 hours a week on company business but does not act as the Duty Manager at any time. The hours he spends on site are during the daytime and he is seldom there at night.
17. He socialises at the bar and drinks with his friends and acquaintances there. He said that in the last 4 years he has 'actively worked' to change the demographics of his patrons from the young, music and party crowd, to a more middle-aged crowd with music from the 70s to the 90s.
18. He told us that they also engage 'professional trainers' and in his Training Policy he talks of creating a "sophisticated environment for people to enjoy themselves in."
19. Other improvements have been to employ a dedicated cleaner after complaints were received, a refurnished and remodeled bar area has been put in place and additional TVs installed in the bar.

20. The smokers 'cage' has been replaced with a 40 square metre secure deck area to make it more 'family friendly.' He has refurbished the kitchenette with new appliances and a pizza oven. He hopes to employ a part time cook in order to provide a greater range of food items.
21. He then told us about his meetings with the Police. In the space of 12 months he has had meetings with three different Police Officers holding the alcohol related harm portfolio.
22. The first was the previous Senior Sergeant for Tokoroa, the second was Sergeant Foster and the third Sergeant Turnbull, both based in Taupo, but holding the alcohol portfolio for Tokoroa and surrounding districts.
23. In his discussions with Sergeant Foster, he said they were primarily around door security and he agreed to have three discretionary conditions added to his licence if the DLC was so minded. The first was to stop serving 'shots' at midnight, the second was to formalise a 12 midnight OWD policy and the third was to engage COA qualified security on busy nights when patronage reached 50 or more.
24. He told us that he was 'slightly shocked' when he received the list of 23 incidents over the renewal period that Sergeant Turnbull had uncovered after the DLC required additional enquiries be made into the Police 'concerns' that related to **RETOX SPORTS BAR**.
25. He provided commentary and expressed his views on many of the incidents. He was confident that his staff would have offered alternative transport to anyone showing signs of being under the influence. He was un-accepting of any responsibility being apportioned to his staff and business for those that chose to drive whilst heavily intoxicated.
26. Similarly, he rejected responsibility for domestic violence and assaults that occurred after his patrons had left his premises.
27. He believed that his staff and his business should not be scored negatively when patrons have reacted violently when refused service or denied re-entry in the premises.
28. On one occasion a fight broke out between patrons. Police assessed them as extremely intoxicated. Mr Leathem argued that "This incident cannot be associated with our premises as what occurred between two individuals is between them." We beg to differ!
29. Overall, he believed he was being unfairly treated and should not be held responsible for many of the offences and incidents that have occurred in and around Retox Bar.
30. However, to his credit, he acknowledged that he was in favour of continuous improvement and wanted a good relationship with the regulatory agencies.
31. Finally, he argued that the extended hours on Sunday night were needed as many of his patrons were shift workers or farmers or foresters and Sundays were 'Fridays' for many

of them. He wanted the flexibility to stay open passed 10.00pm if they were busy on Sunday nights.

32. Mr Leathem was cross-examined by Sergeant Turnbull. He was asked if he had an incident book that the staff used when incidents occurred at the bar. He said they did have one and currently they had 18 people who were officially banned from the premises for offences such as fighting, willful damage and theft.
33. He said there was always two staff on duty at the premises, one in the bar and the other as Duty manager and managing the pokies.
34. He said he has a group of 6 security staff, 4 of whom are COA qualified and 2 others that he was supporting through the training and certification process. He acknowledged that he knew it was an offence to employ unqualified personnel on security duties if they did not hold a COA.
35. When questioned about formal staff training, he told us that an external trainer comes in every 6 months or so, but then conceded that this was primarily harm minimisation training from the Gaming Trust who owns the machines on the site.
36. He was questioned by members of the Committee and confirmed that there is quite a bit of patron migration from the other three late night bars in town to his bar and vice versa.
37. When asked why he was 'shocked' at the long list of incidents uncovered by the Police he said he wished they had been brought to his attention at the time. He confirmed that as the licensee, he was ultimately responsible for the safe running of the bar.
38. He was asked why people drank shots. He said mainly to celebrate things, birthdays and the like. He agreed that drinking rounds of shots does cause rapidly increasing intoxication levels. He confirmed that he had offered to stop selling shots at midnight and if the Committee was of the view that the sale of shots should be stopped completely, he would implement that requirement if requested.

POLICE EVIDENCE

39. The Committee then heard from Sergeant Chris Turnbull who told us that he is based at the Taupō Police Station and he conducts the AHRO role from Turangi right through to Tirau.
40. He has been in this role since July 2020 and has previously held the alcohol portfolio from 2013-2016 but not for Tokoroa.
41. He told us he was aware that there had been discussions between Mr Leathem and Sergeant Foster on this current renewal and when he was asked by the South Waikato Chairperson to produce a report on the full three year renewal period for this licence he searched the Police National Intelligence Application for offences and incidents linked to

RETOX SPORTS BAR.

42. The entries are from incidents and offences attended to by Police, incidents and offences reported by members of the Public and data from the 'Last Drink Survey,' now called the 'Intoxication Survey.'
43. Sergeant Turnbull outlined the reporting and recording processes the Police use to capture these incidents and offences. After collating the report for the DLC he met with Mr Leathem and told him that improvements were required particularly around staff training and patron monitoring, the OWD enforcement, and the need to door security on Friday, Saturday and maybe Sunday nights if they were busy.
44. Under cross-examination by Ms. Kaur he agreed that there was no patron assessment forms lodged as evidence and that her client has accepted that he needed to make improvements.
45. The Committee then heard from Constable Ellen Halpenny who told us she has been stationed at Tokoroa since she graduated in October 2019. On the 12th of June 2020 she attended a disorder incident at the rear of **RETOX SPORTS BAR**. She was approached by Scott Leathem who told her he was the owner of the bar. She noted that he smelt of alcohol and he was slurring his words.
46. Shortly after 11.00pm on 3 July 2020 she was again at Retox bar conducting a compliance inspection. She saw Mr Leathem drinking with others at one of the leaners. Under cross-examination she confirmed that she had not conducted a patron assessment on Mr Leathem and does not assert that he was intoxicated.

RELEVANT LEGISLATION

47. Section 3 of the Sale and Supply of Alcohol Act 2012 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.*
48. 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 behavior, 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).

49. 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.

REASONS FOR THE DECISION

50. The Act requires that when deciding whether to renew a licence, or not, the licensing committee **must have regard** to the matters contained in Section 131 of the Act.

Section 105(1)(a) The Object of the Act

51. Section 105(1)(a) of the Act requires that the licensing committee must have regard to the Object of the Act and in particular that the sale, supply and consumption of alcohol should be undertaken safely and responsibly.

52. It is clear that during this renewal period from February 2017 to February 2020 there have been alcohol fueled incidents at, and around, **RETOX SPORTS BAR**.

53. However, it is equally clear that **RETOX SPORTS BAR**, and its owner Scott Leathem, have not been seriously taken to task over the incidents by the Police.

54. As conceded by Sergeant Turnbull, in his closing, that the Police have 'missed the boat' on more than one occasion and he assured the Committee that there would be a closer oversight of all licensed premises in his patch under his watch.

55. There is no formal evidence before us alleging that alcohol has been sold or supplied

for consumption in an unsafe or irresponsible manner.

56. We also note that there have been no complaints from neighbours or shops nearby about excessive noise or disorderly behaviour.

Section 105(1)(b) Suitability of the Applicant

57. The applicant must be a suitable entity or person to hold an ON-licence. We follow the ruling of Pankhurst J in **Page V Police HC CHCH AP84/98**¹ where it was said that:

“An applicant for an on-licence must demonstrate his or her suitability. In other words what is required is a positive finding. That implies an onus on the applicant to demonstrate suitability.”

58. Our final impressions of Mr Leathem was encouraging in that he acknowledged that he needed to take a more ‘hands on’ approach to his business. For example, he admitted that he only checked the incident book once a month or so. Licensees who rely on staff to run their licensed premises late at night need to have checks and balances in place to ensure that the business operates responsibly and safely.
59. We now believe that he understands that he has ‘dodged a bullet, in that enforcement actions have not been initiated by the Police much earlier.

Section 105(1)(c) Relevant Local Alcohol Policy

60. There is no Local Alcohol Policy currently in the South Waikato District so there is nothing for us to consider.

Section 105(1)(d) The days and hours of operation of the licence

61. The current operating hours are Monday to Saturday 10.00am to 2.00am and Sunday 10.00am to 10.00pm. The applicant seeks to extend the Sunday hours to 10.00am to **2.00am** the following day.

Section 105(1)(e) The design and layout of any proposed premises

62. The Committee conducted a site visit independently prior to the hearing. The interior is cluttered and not well lit. It is clearly a drinking place with pokies and the provision of, and consumption of food is minimal.
63. In saying that, it is open plan and would not be hard to manage the inside areas with two staff and an effective CCTV system. However, the entrance is small and closed off and staff inside would have difficulty in seeing any incident occurring outside the entrance.

¹ Page V Police HC CHCH AP84/98

Section 105(1)(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.

64. No other goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and minimal food are sold on the premises.

Section 105(1)(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, and good, and if so, which services.

65. Gaming machines are operated on this site.

Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law

66. The applicant advises that there are four staff with managers certificates attached to the business and that they now employ door staff for security in the front outdoor area and on Friday and Saturday evenings from 8.00pm to close.
67. We are concerned that no alcohol industry experts are engaged to train the staff around the provisions of the Act. Equally we were concerned that some unqualified security staff are engaged on door control duties. Well trained qualified Crowd Controllers are essential for late night tavern operations.

Section 105(1)(k) Any matters dealt with in any report of the Police, an Inspector and the Medical Officer of Health under Section 129

68. The Police have lodged a conditional opposition. As we explained to counsel, their conditional withdraw of their opposition was based on the request for certain discretionary conditions to be imposed by the Committee. The Chairperson rejected the proposition and set the renewal down for hearing so the Committee could receive evidence on the matters of concern.
69. The Medical Officer of Health has no matters in opposition.
70. The Inspector reported that it was her view, based on the application as first presented, was capable of renewal and variation. Had the additional information been before her at the time of reporting her report would have been different.
71. Sergeant Turnbull acknowledged that due to the multiple 'changing of the guard' of the alcohol portfolio for Tokoroa, the Police had not implemented the Graduated Response Model as they should have. The Committee is well aware of the resourcing issues for the Police, especially in recent times, and other serious operational demands override less important matters.

72. However, competent regular late-night compliance monitoring of licensed premises is essential to minimise alcohol related harm for downtown Tokoroa and minimise the contribution to the overall workload of the Police.

The Decision

73. Section 3 of the Act requires the Committee to act reasonably in the exercise of our duties and to regulate with the aim of contributing to the Object of the Act.

74. The method of determination has been set out succinctly in **Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2012] NZHC 1406; [2012] NZAR 717 (20 June 2012)**²

Having considered all of that information, the Authority (the Committee) must stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires the Authority to form a view on whether there is any evidence to suggest that granting the application will be contrary to s 4(1) and increase the risk of alcohol abuse.”

75. Pursuant to Section 131 (1)(b) the Committee must have regard as to whether the operation of this licence has reduced the amenity and good order of the area by more than a minor extent, and, whether in our opinion, the amenity and good order of the area would be increased, by refusing the renewal.
76. We have stood back, as required, and considered the application and the evidence adduced in its entirety. By the slimmest of margins, we have determined that the licence can be renewed without offending against the Object of the Act.
77. We now turn our mind to the appropriate length of the renewal and any conditions that are necessary to maintain the safe and reasonable sale, supply and consumption of alcohol.
78. In closing the applicant submitted that they would accept a two year renewal, no shots would be sold at all from the premises, an expert alcohol industry trainer would be sourced and engaged, a OWD can be imposed from 12 midnight and qualified security staff engaged 8.00pm to close Friday and Saturday nights and other nights if patron numbers exceeded 50.
79. We believe an earlier review of progress is necessary to satisfy ourselves that **RETOX SPORTS BAR** is operating responsibly and safely and that the amenity and good order of the area is not being reduced by more than a minor extent.

² Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2012] NZHC 1406; [2012] NZAR 717 (20 June 2012)

80. The holding of a licence is a privilege not a right. In our view any extension of hours must be earned and based on exemplary performance. The request for extended hours on Sunday is refused. This may be reconsidered at renewal time, that will be in August 2021.

THE DECISION

The South Waikato District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **approves** an application by **WAIKATO HOTELS GROUP LIMITED** for the renewal of an ON Licence in respect of premises situated at 204-206 Rosebery Street, Tokoroa known as “**RETOX SPORTS BAR.**”

We also refresh the licence conditions to reflect best practice over the renewal period.

The Licence is renewed for eighteen (18) months from 25 February 2020 subject to the following conditions.

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours: **Monday to Saturday 10.00am to 2.00am the following day; Sunday 10.00am to 10.00pm;**
2. **A One-Way Door shall apply from 12 midnight. No Entry, Exit Only from this time;**
3. No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day to any person other than a person who is on the premises to dine;
4. The whole of the premises is designated as a **Restricted Area at all times;**
5. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
6. The Licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low alcohol beverages,
7. **Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations**

of a similar range and standard. Menus must be visible, and food should be actively promoted,

8. A properly appointed certificated or Acting or Temporary Manager must be on duty at all times when the premises are open for the sale and supply of alcohol, and their full name must be on a sign prominently displayed in the premises,
9. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises,
10. The Licensee must display:
 - a. At every point of sale, signs detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons.
 - b. At the principal entrance to the premises, so as to be easily read by people immediately outside the premises, a sign stating the ordinary hours of business during which the premises will be open for sale of alcohol.
 - c. A copy of the licence attached to the premises so as to be easily read by persons attending the premises.
11. **No spirit-based alcoholic beverages known as 'shots' shall be sold, supplied or consumed at these premises.**
12. **A minimum of two (2) COA qualified security staff are to be engaged on door control from 8.00pm Fridays and Saturdays and on any other day when more than 50 patrons are on the premises.**

DATED at Tokoroa this 29th day of September 2020

A handwritten signature in black ink, appearing to read 'Murray Clearwater', written over a white rectangular background.

Murray Clearwater
Commissioner
For the South Waikato District Licensing Committee

NOTE

Sections 152 to 155 of the Act relating to the right to appeal this decision are in effect. This decision is suspended until 10 working days after the date on which notice of this decision is given to the applicant, the Inspector and the objectors.