

Decision Number 17/OFF/005/2022

IN THE MATTER

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

AND

IN THE MATTER

of an application by **Big Tree Investments Limited** for the grant of an off-licence pursuant to s.100 of the Act in respect of premises situated at 1-5 Balmoral Drive, Tokoroa to be known as "TOKTOP Liquor."

BEFORE THE SOUTH WAIKATO DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Hamish Dane
Member: Gary Petley

HEARING at Tokoroa on 22 May 2023

APPEARANCES

Mr. Matthew Gordon – for Big Tree Investments Limited ("the applicant")
Mr. Kulwant Singh Sandhar- for the applicant
Ms. Julie Smale – South Waikato Chief Licensing Inspector ("the Inspector") in opposition
Mrs. Nicole Zeier- for the Medical Officer of Health ("MOoH") – in opposition
Ms. Adesanya- to assist the MOoH.
Sergeant Gregory Weston- for the Police (Alcohol Harm Reduction Officer) in opposition
Senior Constable Stein Thomas- to assist the Police.

Objectors

Dr. Grant Hewison counsel for Mr. Colin Bridle and the Salvation Army.

1. **Katarina Leaf-Dobs**
2. **Karlene Fanning**
3. **Akeshia Kaiwai**
4. **Frankie Dehar**
5. **Rosina Heta**
6. **Elaina Hargreaves**
7. **Bob Talbot**
8. **Barbara Bowring**

9. Debs Cunningham

10. Edward Tioiori -present for the first hour of the hearing. Did not wish to speak to his objection.

11. Joanne Reti

12. Salvation Army Ana Ika

13. Colin Bridle.

Objectors 1-11 did not appear **and** support their objection. We discuss the weighting that we apportion to their objections later in this decision.

RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application dated the 5 October 2022 the applicant has applied for the grant of an off-licence pursuant to s.100 of the Act in respect of premises situated at 1-5 Balmoral Drive, Tokoroa to be known as "TOKTOP Liquor. It was duly advertised and reported on by the agencies.
2. The applicant hopes to reopen the old Black Bull Bottle Store on Balmoral Drive next to the empty Trees Tavern complex.
3. Thirteen public objections were received, and adverse reports were received from the Police, the Medical Officer of Health, and the Alcohol Licensing Inspector.
4. The Police opposition related to the hours sought, the location and design of the building, the amenity and good order of the area, staff and training, and the vulnerability of the community.
5. The MOoH opposed the grant of the licence on the grounds of the likely effects on the amenity and good order of the area, staff and training, suitability and the vulnerability of the community generally. They also produce evidence of the reduction of alcohol related ED admissions after the previous bottle store had lost its licence.
6. The Inspector opposed on the grounds of amenity and good order and concerns around absentee directors and their other stores running on minimum staffing levels.
7. Thirteen public objections were lodged within the statutory timeframes. Most were of a generic nature and only two appeared before the Committee to support and speak to their objections. We thank Mr. Tioiori for making the effort to be present at the beginning of the hearing. Dr. Grant Hewison appeared for the two objectors who wished to be heard on this application.

8. We note that Tokoroa is a vulnerable community with several social deprivation indicators well below the average for other New Zealand rural towns.

Applicant's Evidence

9. Mr. Matthew Gordon told us he has been a director of the applicant company along with Shannon Jenkins since July 2022. In November 2022 he suggested to the shareholders that Kulwant Sandhar be brought into the company as his off licence experience would be of value to the company.
10. At the same time, he and Mr. Jenkins were made directors of Route 2 Joy Liquor Store Limited that runs Liquor Hut Tokoroa. They planned to run the two stores symbiotically and share staff and management.
11. He outlined his experience in on-licensed premises over many years and also introduced the suite of Key Store Policies that he and his colleagues had developed for their other licensed premises.
12. He freely admitted that he was ill-equipped to answer the questions that were put to him at the November 2022 meeting with the agencies.
13. He went through the plans the company has to develop a modern and well laid out store similar to Liquor Hut. They also plan to offer tobacco, cigarettes and vape products from the store.
14. They currently have no staff or certificated managers to run the store but gave an assurance that they would not open until they had all lawful requirements and staffing in place.
15. He believed that because the town used to have 4 bottle stores, but two were forced to close down, then surely the town has the population base to support a third one. When questioned on the rationale behind this theory he said Liquor Hut experienced a 60-70% increase in sales after the other two bottle stores closed.
16. He even told the agency members that “the beer wasn’t getting cold” in the chillers at Liquor Hut which clearly indicated to us that the financial benefits to the business owners was more important than the potential flow on effects to the community of an extra store.
17. When asked directly what benefits the store would bring to Tokoroa he could only say ‘employment.’ When pressed he said there would be no other benefit to Tokoroa.

18. He confirmed that all three directors would live out of town and the premises would be run remotely, hopefully with local, certificated managers. He was asked about the current staffing at their sister store, Liquor Hut, and he said they had one certificated manager and one Temporary Manager awaiting his certificate. He believed this was sufficient for the store.
19. When questioned by the Police he said he was open to advice as to what security measures should be installed at the premises. He assured the Committee that all reasonable steps would be taken to make the store safe for staff and customers. He agreed the premises is currently in a rundown state and appears to be being used by some homeless persons. He said they would not be investing in improvements at the property until they knew if they were going to get a licence.
20. He said they were open to discussing the appropriate opening hours and would amend the policies to meet the Tokoroa environment.
21. Next we heard from Kulwant Sandhar. He told us he has a current managers certificate and has 11 years' experience in hospitality and retail. His first involvement in bottle stores was in 2012 in the Liquor Hut store in Mt Maunganui.
22. He said, *"I believe we have good staff and systems in place in all our venues."*¹ He added *"It is my opinion that Tokoroa can support an additional off license premise (sic) and that the granting of our application would result in 'healthy competition' amongst local operators."*²
23. He said he would be the overall manager for this new store *"utilising the same systems and polices that we operate all Liquor Hut stores under."*³
24. He was asked to explain what 'healthy competition' meant. He said by having two stores in town they would responsibly compete with Super Liquor and bring 'equal pricing' across the stores.

Objectors Evidence

25. We heard from local resident Colin Bridle who was ably led by counsel, Dr. Grant Hewison. His Brief of Evidence was taken as read in which he implored us to not lose the gains that had been made for the community when the other two bottle stores closed down in 2021.
26. He introduced an Inspectors report from Papatoetoe in 2020 relating to an application of his for a new bottle store. In what he described as a "scathing report" there were a number of allegations made. None of these were tested and the application for a licence was withdrawn before that could be done.
27. The introduction of this report was not challenged by Mr. Gordon as to its relevancy and weighing in the matter before the Committee some 3 years later. In any case we put it to one

¹ Kulwant Sandhar BOE paragraph [20]

² Kulwant Sandhar BOE paragraph [26]

³ Kulwant Sandhar BOE paragraph [30]

side and apply little, to no weight to it.

28. We questioned Mr. Bridle on some of the 20 or so discretionary conditions he asked us to consider should we be minded to grant the licence. He accepted that some of them were a bit wordy and agreed that any condition that we did impose should be necessary, reasonable, clear, concise, measurable and enforceable.
29. Next we heard from Ms. Ana Ika who is a Social Policy Analyst for the Salvation Army in partnership with the Tokoroa Church Ministries.
30. She spoke with passion and knowledge of the families that the Salvation Army supports through the Salvation Army Hall and the Food Bank in Tokoroa. They support 400 families throughout the town and 135 of those live within 2 km of the proposed site. She said the community was extremely vulnerable with 3 times that national average of solo parent families and 4 times the national average of unemployment and much of Tokoroa was highly deprived.
31. She said large numbers of their clients had alcohol and drug dependencies and they do not need another bottle store in this vulnerable location.
32. She was asked by the applicant why they hadn't opposed renewals for Super Liquor or the Liquor Hut. Ms. Ika replied that it was a matter of having the capacity to do so.

Inspector's Evidence

33. The Inspector outlined her concerns about the 're-opening' of the old Trees Tavern site. She was also concerned about the revolving directorships and the lack of off licence experienced certificated managers.
34. The first meeting with Matt Gordon did not reassure her that the applicant company would be able to safely and responsibly operate another bottle store in the town.

Medical Officer of Health Evidence

35. Delegated Officer for the MOoH, Mrs. Nicole Zeier then spoke to her opposition. She told us that the Medical Officer of Health was heartened with the recorded drop in ED admissions over the two years that Thirsty Liquor and Black Bull had not been operating. ED admissions and alcohol related deaths had halved over that period.
36. Much of the MOoH evidence centered on the high deprivation markers of the township and the vulnerability generally of the community.

Police Evidence

36. Sergeant Weston outlined the Police position on this application. He believed the applicant and its alter egos were not sufficiently experienced or resourced to open a new store. He was aware of current difficulties at Liquor Hut and their inability to get sufficient certificated staff to operate that store safely and responsibly. He believed the applicants had put financial considerations ahead of the potential effects on the community.

Relevant legislation

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.**

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).**

105 Criteria for issue of licences

- (1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:**
- **(a) the object of this Act:**
 - **(b) the suitability of the applicant:**
 - **(c) any relevant local alcohol policy:**
 - **(d) the days on which and the hours during which the applicant proposes to sell alcohol:**
 - **(e) the design and layout of any proposed premises:**

- *(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
- *(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
- *(h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
- *(i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*
 - *(i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
 - *(ii) it is nevertheless desirable not to issue any further licences:*
- *(j) whether the applicant has appropriate systems, staff, and training to comply with the law:*
- *(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).*

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

Criteria to be considered.

37. The Act provides that in deciding whether to grant a licence, the licensing committee must have regard to the matters contained in section 105 and 106 of the Act. These are:

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

38. Section 105(1)(a) of the Act requires that the licensing committee must have regard to the Object of the Act and decisions of higher courts have said that we must measure the criteria for granting against the background of helping to achieve the Object of the Act.
39. The recent Supreme Court ruling has told us that we must also read Sections 3 & 4 together.

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

40. Section 105(1)(b) provides that the applicant must be a suitable person to hold an off-licence. In this regard, the suitability of the applicant is challenged by the agencies in regard to spreading themselves too thinly and attempting to open another bottle store in the town.

Suitability has been defined in many Courts, in particular the High Court.

In Page v Police (unreported) HC Christchurch AP 84/98 24 July 1998⁴, Panckhurst J stated:

“Section 13(1)(a) provides that the applicant for an on-licence (in this case an OFF Licence) must demonstrate his or her suitability. In other

⁴ Page v Police (unreported) HC Christchurch AP 84/98 24 July 1998

words what is required is a positive finding. That implies an onus on the applicant to demonstrate suitability.”

Panckhurst J continued:

“Such suitability is not established in a vacuum but in the context of a particular case”.

In New Zealand Police v Casino Bar No. 3 Limited CIV 2012-485-1491; [2013] NZHC 44⁵ the High Court treated suitability as a broad concept.

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. It also includes matters raised in reports under s.11 of the Act. (our emphasis)

In Re Sheard [1996] 1 NZLR 751⁶ Holland J said :

“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.

And again...“The real test is whether the character of the applicant has been shown to be such, that he is not likely to carry out, properly, the responsibilities that go with the holding of a licence.”

The High Court in Christchurch Medical Officer of Health v J & G Vaudrey Ltd⁷ confirmed there is no presumption that a new licence or renewal of an existing licence will be granted: 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.

41. The Committee must undertake an evaluative approach and adopt a merits-based assessment of the application. We determine our position on the suitability of the applicant later in our decision.

⁵ New Zealand Police v Casino Bar No. 3 Limited CIV 2012-485-1491; [2013] NZHC 44

⁶ Re Sheard [1996] 1 NZLR 751

⁷ Christchurch Medical Officer of Health v J & G Vaudrey Ltd

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

42. South Waikato District Council does not have a Local Alcohol Policy. There is nothing for us to consider.

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

43. The proposed days and hours sought are **Monday to Sunday 9.00am to 10.00pm**. They are unremarkable and within the default national maximum trading hours for off licences.

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

44. The proposed design and layout of the premises is unknown at this stage until fit out is completed. We were told it would be similar in layout to the current Liquor Hut on Ashworth Street.

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.

45. The applicant plans to sell snack food and tobacco, cigarettes and vape products.

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 and non-alcoholic refreshments, and food, and if so, which services.

46. No other services are planned to be offered from the store.

Section 105(h)whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence.

47. It is clear to the Committee that the amenity and good area has improved after the previous operator ceased trading in 2021. The MOoH told us that from November 2020 to November 2021 **alcohol ED admissions** were 188 and 3 deaths when this store and Thirsty Liquor were operating.

48. From November 2021 to November 2022 **alcohol ED admissions** dropped to 99 and 1 death when this store and Thirsty Liquor were **not operating**.

Section 105(i)whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that— (i)they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but (ii)it is nevertheless desirable not to issue any further licences:

49. In our opinion the gains obtained to the community after this premises was not operating were more than minor.
50. As a community we cannot allow the gains made for the *community as a whole* to be lost.

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

51. The applicant company has **no certificated managers** ready and able to be appointed to store but we received assurances that they would not open until they had sufficiently qualified staff in place.
52. We were told that the Key Store Policies and training methods from their other stores would be adopted at TOKTOP LIQUOR.
53. We were also told that the stores would be governed by out of town directors. Kulwant Singh was at pains to assure us that he would visit the store at least weekly and ensure that they are complying with the store policies and the law generally.

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

54. The three agency representatives have all opposed this application for a new OFF Licence in this isolated end of town.
55. The Objectors told us that the extended test for suitability should apply to this case. They said the combination of high deprivation, high vulnerability, absence licensees, and previous licensing history were all factors we should take into account.
56. We were told there had been no direct communication with the community or its social agencies by the directors of Big Tree Investments Limited.

Reasons for the Decision

57. Section 3 of the Act requires us to act reasonably in the exercise of our duties with the aim of contributing to the achievement of the Object of the Act. We are also bound to comply with the procedures and provisions of this Act.
58. There are a number of compounding factors that we must take into account when deciding this application. Significant gains have been made in the arena of amenity and good order and alcohol related harm by the reduction of ED admissions. We have experienced on,

and off licensed, licensees want to reopen an old bottle store site in an isolated vulnerable area of town.

59. We have the additional concern that the applicant is clearly having difficulty recruiting and retaining suitably qualified certificated managers to work at this site. No corners can be cut in this regard.

The Decision

60. As higher Authorities have often said, holding a licence to sell alcohol is a privilege, not a right.
61. It is also well known that suitability can be site specific. Operators can be found suitable in one environment and not in another.
62. After standing back and cross-checking the evidence and submissions before us we have come to the inevitable conclusion that the applicant company has not established its suitability to operate a standalone bottle store **at this location**.
63. The application by Big Tree Investments Limited for an OFF Licence for 1-5 Balmoral Drive, Tokoroa is **refused**.

DATED at TOKOROA this 30th day of May 2023

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

Murray Clearwater
Commissioner
For the South Waikato District Licensing Committee

NOTE

Sections 153 to 155 of the Act relating to the right to appeal against this decision are in effect.

This decision shall have immediate effect regardless of whether an appeal is lodged or not.

