

**IN THE MATTER**

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

**AND**

**IN THE MATTER**

of an application by **TIMBER LAND INVESTMENTS LIMITED** for the **renewal and variation** of the ON Licence pursuant to s.120 and 127 of the Act in respect of premises situated at 42 Mannering Street, Tokoroa, known as "Focal Point Sports Bar."

**BEFORE THE SOUTH WAIKATO DISTRICT LICENSING COMMITTEE**

Chairman: Murray Clearwater  
Member: Mayor Gary Petley  
Member: Cr Hamish Daine

**HEARING** at Tokoroa on 9 November 2023

**APPEARANCES**

Mr. Mathew Gordon– for the applicant Timber Land Investments Limited  
Mr. Shannon Jenkins for the applicant  
Ms. Marie Jenkins for the applicant  
Ms. Jules Smale – Chief Alcohol Licensing Inspector – in opposition  
Sergeant Greg Weston– Police Alcohol Harm Prevention Officer – in opposition  
Ms. Ayobami Adesanya for the Medical Officer of Health- in opposition

Dr Liz Gordon for the objector (via ZOOM)  
Mr. Colin Bridle objector  
Ms. Ana Ika witness for the objector (via ZOOM)

**RESERVED DECISION OF THE COMMITTEE**

## **Background**

1. On 31 May 2022, **Timber Land Investments Limited** was granted an On Licence in respect of premises situated at 42 Mannering Street, Tokoroa, to be known as “Focal Point Sports Bar.” The application was granted ‘on the papers’ without opposition the agencies. The activity was to be a tavern style business with pool tables and gaming machines. The whole of the premises was designated as a Supervised Area.
2. In May 2023 an application for renewal with variation was received. The applicant wanted to extend the hours of operation from the 10.00pm closing on Sunday to Wednesday to a 1.00am close, same as the days Thursday to Saturday, and to extend the licensed footprint to encompass the smoking area at the front of the tavern.
3. The application drew opposed reports from the Inspector, MOoH and the Police, and two public objections were received.
4. The Police produced a vast array of timesheets, training records and rosters (provided by the applicant on request) and believed that the application to renew and vary the licence should be declined. They also deposed that the current business model should not be varied as requested.

## **Applicant’s Evidence**

5. Company director Mathew Gordon opened the case for the applicant with an outline of the management structure for Focal Point. He said he is one of three directors, the others being Shannon Jenkins and Kultaran Singh. Marie Jenkins is the General Manager of Focal Point and spends 1-2 days a week at the premises.
6. Kultaran Singh is linked to the Galaxy Group that is the sole shareholder of the applicant company.
7. He said that the business had operated largely compliantly during its first year and that the extra hours would be managed safely with their existing staff and also provide for some greater flexibility for pool and poker tournaments at the venue.
8. The smoking area was for the convenience of patrons to be able to take their drink out with them when they went for a smoke or a vape. He agreed that the fight in the smoking area in July 2022 was while the company was operating under Temporary Authority and not handled well by the staff at the time.
9. When closing the case for the applicant he said that he could see the writing on

the wall around the opposition to the extension to the smoking area and they wished to withdraw their request for it to be included in the licensed area.

10. He accepted that there was some tidying up to be done on the policies and procedure manuals but argued that they were definitely better than most premises that he knew about.
11. He was questioned extensively about staffing numbers, certificated managers, rostering, and timesheets. It was clear from the evidence that some staff were working 12, 14, 16 and on one occasion a 17 hour day. Mr. Gordon said staff can take their breaks during quiet times and even take time off at the end of a shift. (we comment on this statement later in the decision). He even suggested staff could close the premises for a short time to take a break if necessary.
12. As the Committee put to him, that may be an option in an off-licensed bottle store, but not an on-licensed premises with patrons in the bar and/or gaming area. He accepted that proposition.
13. He confirmed that staff work across both the Focal Point and Nexus sites. He said there was four, maybe five, current certificated managers appointed to the businesses.
14. He commented on the Police opposition and contents of the Incident Book entries saying that he believed Jagmeet Singh's use of the word intoxicated was probably not correct and the patrons were probably influenced. (This was a 'long bow to draw' for a remotely based director. We comment on this later in the decision.)
15. Mr. Gordon also confirmed that both Nexus and Focal Point were for sale and there was an interested buyer awaiting the outcome of the renewal process.

### **Inspector's Evidence**

16. The Inspector's report was taken as read and Ms. Smale outlined her concerns around the staffing regime at Focal Point. She believed there were insufficient experienced certificated managers appointed to the business to operate it safely and responsibly.
17. She noted that the simply achieved task, to provide weekly rosters has not been consistently complied with by the management team.
18. She remained opposed to the increase in the hours sought, and the extension to the licensed area to cover the outdoor smoking area.

### **Police Evidence**

19. Sergeant Weston opened for the Police and confirmed that their opposition remained intact to the increase in hours and the extension to the licensed area. He said there were a number of incidents relating to intoxication at the premises and he produced video evidence of the fight from July 2022.
20. He too, agreed with the Inspectors evidence that the business had barely enough certificated managers to cover the current operating hours.
21. He was concerned about the lack of compliance in providing weekly rosters and very concerned about the long working days of some staff and no evidence of them taking clear breaks.
22. He was concerned with the 'remote' management of the business by Mr. Godon and his Tauranga based team.

### **Medical Officer of Health Evidence**

23. The MOoH opposed the renewal with variation for Focal Point citing the references to intoxication in the incident book and the scant food offering on display.
24. They also raised the high deprivation index for Tokoroa generally and the high ED admissions at hospital relating to alcohol.

### **Objector Evidence**

25. Dr Liz Gordon confirmed that the objectors position remained, in that they oppose the request for a renewal per se, let alone the variation to increase the hours and license the smoking area.
26. Mr. Colin Bridle spoke to his objection in a measured manner and said he believed the applicants were not suitable to operate high-risk premises in Tokoroa and variations will further damage the amenity and good order of the area.
27. Next we heard from Ms. Ana Ika who is a Social Policy Analyst for the Salvation Army in partnership with the Tokoroa Church Ministries.
28. 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 families throughout the town and 295 of those live within 2 km of Focal Point. 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.

29. In closing Dr. Gordon said that the DLC had already acknowledged that the occupants of Tokoroa and the surrounding districts were vulnerable populations, and an elevated mantle exists when considering suitability and the actual and potential alcohol related harms arising from licensed premises.
30. She deposed that (alcohol related) harm would be minimised by closing the premises. She emphasised the Supreme Court ruling that said that the DLCs must consider Sections 3 and 4 together and that the administration of the Act should be for “the benefit of the community as a whole.”

## Relevant legislation

### Section 5 Interpretation

***tavern—(a) means premises used or intended to be used in the course of business principally for providing alcohol and other refreshments to the public;***

Section 3 of 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).***

31. Sections 131/132 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.***

*The clauses in 105 that we must consider are:*

#### *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) .....*

*(i) .....*

*(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.*

## **The Reasons for the Decision**

32. As ARLA has said in **Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287**<sup>1</sup> the DLC is required to

***“step back and consider whether there is any evidence to suggest that granting the licence will be contrary to the object of the Act contained in s 4(1), namely that the sale, supply and***

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<sup>1</sup> Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287

***consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.”***

33. The Object of the Act must be read in conjunction with the Purpose of the Act, i.e.; that alcohol is sold safely and responsibly, and the administration of the Act benefits the community as a whole.
34. We return to these criteria after we have considered the remaining criterion.
35. Suitability is not established in a vacuum. On paper the applicant company is an experienced licensee with industry professionals in managerial positions. However, the best policies and procedures are only as good as those who implement them at the ‘coal face.’
36. In **Shady Lady Lighting v Lower Hutt Liquor Mart Ltd (2018) NZARLA 198: [127]**<sup>2</sup> the Authority said: *The vulnerability of the area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol-related harm.*
37. In respect of section 105(1)(c) of the Act there is no Local Alcohol Policy currently in the South Waikato District. There is nothing for us to consider.
38. The applicant seeks the days and hours of **Monday to Sunday 9.00am to 1.00am**. This is a 2 hour increase in hours from Sunday to Wednesday and at the high-risk end of the day.
39. The Committee was disappointed to see the failure to consistently furnish weekly rosters. We do not think that is a difficult task and when we see shared staff working up to 72 hours in a week there is clearly a need to monitor staffing levels and workloads. It is disingenuous to attach Shannon and Marie Jenkins and Mr. Gordon’s names to the list of certificated managers when they do not work as the Duty Manager on a regular basis.
40. The applicant is acutely aware that the business cannot operate mainly as a gaming venue. They have produced **unaudited** financial records that indicate that they have been operating as a tavern and that they are principally in the business of providing alcohol and other refreshments.
41. In regard to training and systems the applicant advises that they have four or five staff with manager’s certificates employed to provide coverage across two premises for the proposed opening hours. We were told that the company is in the process of engaging Harkness Henry ( a law firm) as an external training provider.

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<sup>2</sup> Shady Lady Lighting v Lower Hutt Liquor Mart Ltd (2018) NZARLA 198: [127]

42. The suite of Policies presented are extensive but as the Police pointed out they contain cut and paste errors from other policies for their licensed premises in Tauranga. This lessens the weight that we can apply to them.
43. The reports from the Police and the Inspector express concern that the renewal with variation will reduce the amenity and good order of the locality by more than a minor extent if the variations are granted.
44. The Object of the Act is that alcohol is sold and supplied safely and responsibly, AND that the harm caused by the excessive or inappropriate consumption of alcohol is minimised.
45. We are not prepared to increase the hours of operation on Sunday to Wednesday as sought. The rationale for the increase was not convincing and we are concerned about the incidents of intoxication that have been identified during their first probationary year. The fight outside the premises and the occasion where a tray of Jager bombs were served to “5-6” patrons tells us this company, and its staff, has still got skills to learn.
46. We also believe that the company should undergo another ‘probationary’ year. The licence will be renewed for 18 months from the 31<sup>st</sup> of May 2023. This will give the applicant 12 months from the date of this decision to ensure patrons are not permitted to become intoxicated on licensed premises.
47. As we said in Two Brothers Wholesale Limited in paragraph [94]<sup>3</sup> ***The assessment of intoxication and the identification of minors requires skill, knowledge and commitment, let alone a clear and alert mind.***” We saw evidence of staff working up to 17 hours a day at Focal Point/Nexus with no evidence of properly recorded breaks.
48. Managing intoxicated patrons, once identified, and irresponsible promotions are both areas that need to be improved upon. The range and provision of food needs to be enhanced and promoted as it is a very effective tool for staff to use to slow the rate of intoxication of patrons.
49. As conceded, the smoking area will not be licensed for the consumption of alcohol. It must still comply with the Smokefree Environments and Regulated Products Act 1990.

## **The Decision**

**The South Waikato District Licensing Committee**, pursuant to the Sale and Supply of Alcohol Act 2012 **approves** an application by **Timer Land Investments Limited** for the **renewal only** of the ON Licence in respect of premises situated at 42 Mannering

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<sup>3</sup> Two Brothers Wholesale Limited in paragraph [94]



Street, Tokoroa, **known as Focal Point Sports Bar, subject to conditions.**

**The applicant is to provide a weekly staff roster to the Chief Licensing Inspector on Monday mornings until further notice.**

The Licence is renewed for **18 months** from the expiry of the current licence and a Replacement Licence is to be issued on the conditions stated below:

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours: **Sunday to Wednesday 9.00am to 10.00pm and Thursday to Saturday 9.00am to 1.00am the following day;**
2. 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;
3. The whole of premises is designated as a **Supervised Area** at all times.
4. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
5. 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,
6. 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,
7. **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,**
8. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises,
9. 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.

The Licence will expire on **30 November 2024**

**DATED** at TOKOROA this 20<sup>th</sup> day of November 2023



Murray Clearwater  
Commissioner  
For the South Waikato District Licensing Committee

**NOTE**

**Sections 152, 154 and 155 of the Act relating to the right to appeal this decision are in effect. This decision has no effect for 10 working days after the date on which notice of this decision is given to the applicant and the agencies.**