

IN THE MATTER

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

A N D

IN THE MATTER

of an application from **The Loop
Foxton Charitable Trust**
pursuant to s100 of the Act for a
new On-Licence in respect of the
premises situated at 1 Easton
Street Foxton, known as 'The
Loop Restaurant and Bar'

BEFORE THE HOROWHENUA DISTRICT LICENSING COMMITTEE

Chairperson: Cr Ross Brannigan
Members: Mr Philip Comber
Mr Mike Lepper

HEARING at Levin on 17 May 2021.

APPEARANCES

- (a) Mr Jason Kauri - Applicant
- (b) Ms Desi Smith – for the applicant
- (c) Mr Olaf Eady – for the applicant
- (d) Mr Justin Tamehana – for the applicant
- (e) Ms Karen Cole – Mid Central Public Health – in opposition
- (f) Dr Rob Weir – Medical Officer of Health, Mid Central Public Health – in opposition
- (g) Mr Bharat Mekkanagadde – Alcohol Licensing Inspector – in opposition
- (h) Sergeant Paul Adrian – NZ Police – to assist

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

1. By an application received on 3 March 2021, Mr Jason Mark Kauri, as trustee for the Loop Foxton Charitable Trust applied for a new On Licence for the premises situated at 1 Easton Street Foxton, trading as the Loop Restaurant and Bar.

2. The application was duly advertised on the Council website between 3 March and 24 March 2021, which resulted in no public objections.
3. The applicant sought a new On Licence to operate five (5) days a week from 4.30 pm to 1.00am the next day. These hours are within the default national maximum trading hours for an On Licence, and with the operative Horowhenua Local Alcohol Policy ("the LAP").
4. The Loop Foxton Charitable Trust has two trustees, Jason Mark Kauri (the applicant) and Renae Leah Christensen. The deed of trust for the Loop Foxton Charitable Trust was signed on 15 January 2021 and a copy was provided with the application.
5. The Loop Foxton Charitable Trust leases the building at 1 Easton Street Foxton, from the owner, the Foxton RSA. Prior to the new lease, the Foxton RSA held an alcohol Club licence for the premises. The Club licence held by the RSA was surrendered in October 2020.
6. The Building and Planning Certificate of Compliance attained by the applicant, informs the proposed activity is provided for in the Horowhenua Operative District Plan as a community activity, and that the proposed activity meets the requirements of the Building Act 2004.
7. The premises for which the application relates is located immediately adjacent to Te Waioira Community Health Services at 10 Ladys Mile Foxton, and shares a common boundary with Manawatu College at the rear of the site. The premises is also within 100 metres of the legal site boundary for Foxton Primary School. This is inconsistent with 7.2(b) of the LAP which states:

"No new on-licences shall be issued for any premises located within 100 metres of the legal site boundary of any school, early childcare facility, place of worship, Marae, health care facility, public park or reserve, urupa, or cemetery, existing at the time the licence application is made. Note: Renewal of a licence shall be unaffected should such a facility later establish at a site within 100 metres of the premises."

Reporting agencies

8. The MidCentral Public Health Unit, and the Alcohol Licensing Inspector opposed the application based on non-compliance with the Horowhenua District Council Operative Local Alcohol Policy, specifically clause 7.2(b) of the policy, referred to in point 7 above.
9. In his report, the Alcohol Licensing Inspector also highlighted a concern regarding the suitability of the applicant.
10. NZ Police do not oppose the application. However, at the hearing Sergeant Paul Adrian, the Officer in charge of the Foxton Police Station, stated that at the time of sending his response in relation to this application that he was unaware of the restrictions relating to the location of premises in the LAP. Sergeant Adrian informed the Committee that based on the LAP the Committee should decline the application.

Applicant's evidence

11. Jason Kauri provided a written brief of evidence to the Committee at the hearing. He read this aloud for the Committee at the hearing.
12. He told us that in the local and social media advertising for the Loop Restaurant and Bar, that nowhere did the promotion mention the word 'alcoholic'. He told us that the premises has a range of non-alcoholic beverages for diners to purchase.
13. He advised the Committee that he has one bar manager who is Edith Margaret Williams, and that her Managers certificate is valid through to 21 May 2023.
14. He told us that the Police visited the premises on 5 February 2021. He told us about there being a misconception about something that was cleared up almost immediately with Police.
15. He described to the Committee the other licensed premises operating in Foxton, and their proximity to locations identified in part 7.2 (b) of the LAP.
16. The applicant told us about his vision for the premises, that in addition to the on-licensed bar and restaurant, his vision includes the premises being used as a training facility, and the Loop Restaurant and Bar taking part in the lunches in schools programme. He told the Committee that he currently operates a catering business from the premises and has catered at events for which Special licences had been granted. He currently runs the restaurant without a licence.
17. Mr Kauri explained to us the history of the Foxton RSA. The property becoming the home of the Foxton RSA in 1959 and the purpose built building onsite being the result of a rebuild after a fire in 2006.
18. He informed us that The Loop Foxton Charitable Trust leases the building from the Foxton RSA and that their lease gives the RSA rights to specifically requested days of significance to the landlord at no cost, for example ANZAC day, Armistice day and yearly RSA annual general meetings. He said, the lease states "The tenant will ensure full bar and restaurant facilities will operate on these days if required."
19. He spoke about the Te Waiora Health Centre being next door to the RSA building, and told the Committee that whenever the Loop Restaurant and Bar is open, Te Waiora will be closed.
20. Mr Kauri informed the Committee that he had made a previous attempt at applying for a liquor licence but his previous application was not accepted due to failing to meet the requirement for building and planning compliance with the Council.
21. He told the Committee that later on after obtaining a certificate of compliance he reapplied for the alcohol on-licence, the application of which is subject to this decision.
22. The applicant told the Committee that he accepts the LAP states restriction in the locations for new licences, as detailed in point 7 above.
23. He told the Committee that when he took over the lease for the RSA building, that he knew the RSA had a current alcohol licence.

24. Mr Kauri told the Committee that he could not afford to keep the Loop Restaurant and Bar open without an on-licence and only opening for significant events such as ANZAC day and Armice day commemorations with Special licences.
25. Ms Smith from the Get Group spoke on behalf of the applicant and explained to the Committee her involvement with the Loop Restaurant and Bar, is to provide support to the business in its operation. Ms Smith informed that all 5 staff have recently undergone the Liquor Controllers Qualification (LCQ) and informed that she has attended recent events run by the Loop Restaurant and Bar, confirming to the Committee that no alcohol could be sold at all of these events, due to not having an alcohol licence.
26. Ms Smith told us that the Get Group is nationwide, and her involvement in business mentoring will continue with the Loop Restaurant and Bar into the future.
27. Mr Olaf Eady spoke on behalf of the applicant and told the Committee of his connection to the Foxton RSA, being a former treasurer for the Foxton RSA. Mr Eady spoke in support of the Loop Restaurant and Bar obtaining an on-licence.
28. Mr Justin Tamihana spoke to the Committee on behalf of the applicant and told us about his life-long connection to the Foxton RSA. He told us there is a lack of suitable family/whanau focused establishments in Foxton, and there being nowhere to properly teach rangatahi about alcohol. He spoke about the absence of safe warm environments for the community, and told the Committee the Loop Restaurant and Bar fills both voids.

Legal framework

29. The criteria the Committee must use in considering whether to issue this licence are set out in section 105 of the Act. It is also noted that when forming an opinion in respect of effects on amenity and good order the committee must also consider section 106.

Section 105 matters

Object of the Act – s105(1)(a)

30. The Committee has considered the object of the Act in reaching its decision on the application but did not have any concerns regarding the safe and responsible sale, supply and consumption of alcohol or in relation to minimising excessive or inappropriate alcohol consumption.

Suitability – s105(1)(b)

31. The Committee acknowledged that whilst the inspector had some concerns in his report about suitability, the Committee is satisfied the applicant has sufficient supervision and support via the supporting agency, Get Group.
32. The Committee also noted the recent LCQ training provided to staff at the premises by the Get Group.

Any relevant local alcohol policy – s105(1)(c)

33. The application of the Horowhenua Local Alcohol Policy featured prominently during the hearing. Questioning of the applicant and his witnesses by all agencies and the Committee during the proceedings, canvased all aspects of the LAP about the location of the premises, and in the Committees opinion were adequately addressed during the hearing.
34. The Committee has discussed and agreed that there are some extenuating and special circumstances with this application. The committee considered that long-term licensed premises with a Club licence for the local RSA operated on this same site for more than 50 years.
35. While the Committee accepts that, the location of the proposed premises is in breach of part 7.2(b) of the LAP, the Committee also accepts that the proposed operation of the premises in this location is not too dis-similar to the previous operations on the site. Therefore, the Committee considers that the operation of a licensed premises in the proposed location, is well accepted by that community, as well as in the residential area for which it sits.
36. Furthermore, in relation to part 7.2(a) of the LAP, the Committee accepts the Certificate of Compliance has been obtained by the applicant, The Loop Foxton Charitable Trust, and therefore warrants no further consideration by this Committee.
37. The Committee must consider the LAP in their decision-making, and through consideration of the evidence presented during the hearing the Committee has determined that a 1.00am closing time is not appropriate for the premises, with regards to the premises location and its proximity to the facilities as outlined in the LAP that are inconsistent with the LAP.
38. The Committee has considered the applicants evidence about the predominant business carried out in the premises being catering and dining purposes. The Committee expressed their support of the operation of the premises in this manner, and therefore have determined that a 9.30pm closing time for this premises be more appropriate.

The days upon which the Applicant proposes to open – s105(1)(d)

39. As outlined in points 38. and 39. above.

The design and layout of the premises – s105(1)(e)

40. The Committee are satisfied that the premises is well set up for the proposed operation, accepting that the premises was previously operating in a similar manner.
41. The Committee had some reservation to the outside garden area being visible to the neighbouring Health facility Te Waioira, and neighbouring Manawatu College. The Committee consider the screening of the outside garden area to the west facing the medical centre and with the college to the rear, as being appropriate conditions to form part of the requirements to the issue of the licence.

Sale of goods and services other than those relating to alcohol and food – s105(1)f) & (g)

42. The Committee took a level of comfort in the evidence provided during the hearing, of the support provided by Get Group, and have no concerns in this regard.

Amenity and good order – s105(1) (h) & (i)

43. The question the Committee must answer is whether the amenity and good order of the area would be likely to be reduced to more than a minor extent by the effects of the issue of the licence. Consideration must also be given to section 106(1)(a) & (b).
44. The Committee did not have any concerns in relation to current or possible future noise levels associated with the activity.
45. The Committee acknowledged the previous use of the property, under the auspices of the Returned Services Association operating a Club licence for many years. The Committee considered the operation of a licensed premises in some form is well accepted by the local community as a convivial dining and bar area and the committee does not expect that the amenity and good order of the locality will be any more affected that previously under the operation of the RSA.

Appropriate systems, staff and training – s 105(1)(j)

46. From the evidence presented during the hearing, the Committee considered that the support provided to the applicant by the Get Group, and particular in the area of upskilling the staff working at the premises, are satisfied this is appropriately dealt with by the applicant.

Reporting agencies – s105(1)(k)

47. Dr Rob Weir outlined the Medical Officer of Health's opposition to the application relied on the LAP for the basis of his objection, in relation to the premises location.
48. The Police did not oppose the application.
49. The Alcohol Licensing Inspector outlined his opposition during the hearing, and the Committee feel through the conversation during the hearing process, they are satisfied all areas of any concern have been adequately addressed.

Conclusion

50. The Committee is satisfied through the hearing process carried out that the applicant has been operating a catering business and restaurant at the premises and operating on special licences for functions.
51. Although there was some commentary in the Licensing Inspectors report around some aspects of the operation, these were not confirmed by Police.

52. It is the opinion of the Committee, that Foxton is in need of a premises where people can enjoy a meal, supported by consumption of alcohol in a responsible manner.
53. The Committee notes that the RSA has previously run a similar type of arrangement although under a club licence for many years, and through this activity has somewhat blended into the neighbourhood.
54. For these reasons, the District Licensing Committee of Horowhenua have made the decision to grant the alcohol on-licence for the Loop Restaurant and Bar, giving effect to the Local Alcohol Policy and therefore revising the hours of which alcohol is permitted to be sold or supplied to 4.30pm to 9.30pm, five days a week from Wednesday to Sunday.

Decision

55. The decision of this Committee is to grant the on-licence application made by Jason Mark Kauri, as Trustee for the Loop Foxton Charitable Trust, subject to the standard conditions required by the Sale and Supply of Alcohol Act 2012, with two further conditions:
- (a) The back garden area being the outside area to the west of the building facing the medical centre with the college to the rear to be screened off from view from the medical centre, Te Waioira and Manawatu College; and
 - (b) Alcohol may be sold only on the following days and during the following hours:
Wednesday to Sunday from 4.30pm to 9.30pm
56. In coming to this decision, the Committee has considered all aspects of Section 105 and 106 of the Sale and Supply of Alcohol Act 2012, and the Operative Horowhenua District Local Alcohol Policy.

DATED at LEVIN this 27th day of May 2021.



R J Brannigan
Chairperson
Horowhenua District Licensing Committee

