

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** for the renewal of an **on-licence** pursuant to s127 of the Act in respect of the premises situated at 1 Easton Street, Foxton and known as The Loop Restaurant and Bar.

Decision 162/2022

BEFORE THE HOROWHENUA DISTRICT LICENSING COMMITTEE

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

HEARING at Levin on 15 September 2022.

APPEARANCES

- (a) Mr Jason Kauri - Applicant
- (b) Mr Bruce Parrant – for the applicant
- (c) Mr Martin Macmaster – Mid Central Public Health – in opposition
- (d) Ms Jill Job – Mid Central Public Health – to assist
- (e) Ms Kathryn Knightbridge – Mid Central Public Health – to assist
- (f) Senior Sergeant (S/Sgt) Simon Carter – NZ Police – in opposition
- (g) Community Constable and Alcohol Harm Prevention (Cst/AHP) Lance Moretto – NZ Police – to assist
- (h) Mr Eric Gimpel – Alcohol Licensing Inspector – to assist

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

1. This is an application by Jason Mark Kauri, as trustee for the Loop Foxton Charitable Trust for the renewal of the On-Licence for the premises situated at 1 Easton Street Foxton, trading as the Loop Restaurant and Bar.
2. The application was filed on 21 April 2022 and was advertised on the Council website between 27 April 2022 and 17 May 2022. No public objections were received.
3. The days and hours of operation set out in the application are:

Monday to Sunday from 9.00 am to 1.00 am the following day

These days and hours differ from the existing licensed hours and therefore the application includes the request for variation to the existing licence. The existing days and hours of operation are five days a week, Wednesday to Sunday from 4.30pm to 9.30pm.

4. The proposed days and hours comply within operative Horowhenua Local Alcohol Policy ("the LAP") as it applies to this type of premises, but the location does not.
5. 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.
6. The Loop Foxton Charitable Trust leases the building at 1 Easton Street Foxton, from the owner, the Foxton RSA. Following a hearing held in May 2021 an On-Licence was issued for the premises; 40/ON/003/021.
7. The premises for which the application relates is situated 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.
8. The NZ Police and the Medical Officer of Health from Te Whatu Ora Health New Zealand's Te Pae Hauora o Ruahine o Taranaki National Public Health Service Central Region, opposed the application and provided evidence during the hearing.

Applicant's evidence

9. Jason Kauri told the Committee about the struggle with the premises remaining a viable operation working within the current licenced hours.
10. Speaking on behalf of the applicant, Mr Parrant told the Committee that the restaurant is the predominant income earner for the premises based around events that have required a special licence to extend past the current licensed hours.
11. Mr Kauri expressed to the committee that there are many people in his community of Foxton who don't understand the special licence application requirements in the Act, and that the need for him to apply for special licences is not achievable when the requests he receives are only two to three weeks in advance.
12. Mr Kauri told the Committee that the request to vary the licensed hours was so that special licence applications were not needed to hold events at the premises, and to support the operations viability.
13. The applicant informed the Committee that during the last 12 months there was only one staff member with a Managers certificate but that at least one other staff member has recently received their Managers certificate and another application has been submitted but awaiting confirmation.
14. Mr Kauri acknowledged that there is a matter before the Alcohol Regulatory Licensing Authority with regards to this premises, and that the admission of facts included in the written evidence provided by Police prior to the hearing, was confirmed by him.

NZ Police

15. Prior to the hearing, Senior Constable Simon Carter (S/Sgt) provided a written brief of evidence to the District Licensing Committee via the DLC Secretary. The brief of evidence was provided to the applicant and the reporting agencies ahead of hearing.
16. S/Sgt Carter read this aloud for the Committee at the hearing and presented the evidence on behalf of NZ Police.

17. S/Sgt Carter told the Committee that Police object to the application on the grounds centred around the criteria set out in sections 105 and 106 of the Act, and that Police would not be calling on any witnesses to the hearing.
18. S/Sgt Carter mentioned the proximity of the premises in relation to Manawatu College, Te Waiora Medical Centre, Foxton Primary School and the Park Street Assembly. He mentioned the numerous residential properties and large industrial area in the locality. S/Sgt Carter referred to the Local Alcohol Policy and the location of the premises being inconsistent with it. He also provided the Committee with a list showing the licensed premises within the Horowhenua area, pointing out where people in the area can go to have a drink and something to eat.
19. S/Sgt Carter presented evidence that referred to the previous decision of the DLC relating to the original application and hearing held in May 2021, and the reasons stated within the decision with regards to the renewal. He acknowledged the previous DLC decision to grant the original licence, but had concerns to whether the garden bar was screened as per the conditions on the licence and with the evidence provided by the applicant at the time relating to business support being provided by the Get Group.
20. S/Sgt Carter also reminded the Committee that the applicant had attended a recent hearing held on 14 April 2022 relating to the special licence application for Tangi and funerals, and referred to the content within the resulting reserved decision of the DLC.
21. S/Sgt Carter confirmed that Committees awareness of their section 280 application and content submitted to ARLA concerning the applicant with regards to suitability. He told the Committee that a date was set before ARLA for 08 September 2022 however; the matter had needed to be re-scheduled by ARLA due to the applicant being sick in the days leading up to the previously arranged time.
22. S/Sgt Carter expressed concern regarding the appropriateness of the applicant being The Loop Restaurant and Bar Charitable trust. He told the Committee that research and enquiries were undertaken by Police through the form of advice from the Ministry of Business Innovation and Employment and through a search of the Charitable Trusts Register. The search of the register failed to find the recorded name, The Loop Restaurant and Bar Charitable trust.

In the brief of evidence provided the Police submitted:

71. *It was confirmed that The Loop Foxton Charitable Trust is registered and has the trust# 235614.*
72. *On 03 November 2009, The Charitable Trusts Register received an application by trustees for incorporation as a charitable trust board. This was under the Eagles Academy Charitable Trust.*
73. *On 15 January 2021, the Charitable Trusts Register received notification to a change of address from a Tauranga address to the Loop Restaurant and Bar, 1 Easton Street, Foxton by the signatory and trustee, Noeline Cook.*
74. *On the 28 January 2021, the Charitable Trusts Register received notification to a change of name to the Loop Foxton Charitable Trust by the same named signatory.*
78. *On the 19 May 2022, Police performed a further search of the Companies register website for the Loop (2020) Foxton Limited.*
79. *This is a registered company which was incorporated on the 20 October 2020.*
80. *The sole director is the applicant, Jason Kauri, but both he and his partner / wife Renae Christiansen maintain a 50% shareholding each of the company.*
81. *This company has an industry classification of: Restaurant operation.*
86. *On the 08 June 2022, Police performed a search on the Charitable Trusts register under the Foxton RSA Trust Board.*

87. It was found that in 09 January 2007 an application for incorporation was filed which included its Deed of Trust.
89. Police wish to note that this trust in part of the continued filing of amendments, included in the winding up submission in 2009.

23. S/Sgt Carter told the Committee that Police have a number of concerns regarding the filing of two section 231 notice of management change forms that were submitted by the applicant in June 2022. S/Sgt Carter was concerned specifically with the incompleteness of the forms, the duration of the period requested and the reason for the applications. Both applications submitted by the applicant had no named person to be acting as temporary manager, were for a period of 1 year from 25/05/2022 to 25/05/2023 and both signed by the applicant/licensee Jason Kauri. Furthermore, both applications showed the reasons for application being "Have completed my own manager's certificate and passed". S/Sgt Carter submitted that this reason is not in line with section 229 of the Act whereby a reason given may be that their manager is ill, on leave, terminated or left could be considered reasonable.
24. S/Sgt Carter acknowledged that an amended application was submitted by the applicant but retained their concerns around the completeness of the application, adherence to timeframes and notification requirements on the applicant.
25. In the evidence presented by S/Sgt Carter, he referred to the High Court decision of *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015],

[48] The approach to a renewal application should be as for a new licence application.

26. He also referred to the decision of *ARLA Two Brother Wholesale Limited* [2021] NZARLA32

[157] ...there is no presumption that an application for a licence will be granted or that a licence will be renewed. This is made reasonably plain by the face the approach to renew is virtually the same as the process engaged by an application for an initial licence.

[158] It follows then that there is nothing punitive about a decision not to renew a licence. Declining the renewal of a licence is precisely what the Parliament envisaged ought to be done by a decision-maker, when that decision-maker considers, after having regard to the criteria in s131, that the grant of the application will be contrary to the object of the Act.

27. Police submitted to the Committee that the original on-licence application was inaccurate and misleading, that there is no registered charitable trust under the name of: The Loop Restaurant and Bar Charitable Trust. S/Sgt Carter submitted evidence of a number of small failings that when considered in the wider scope pointed to concern over the management and operation of the business.
28. Under the heading Suitability and Object of the Act, S/Sgt Carter submitted that a good operator and licensee should have a strong knowledge as to their legal obligations including the keeping of robust practices, processes and records to ensure they are adhered to. It is the responsibility of the licensee to ensure that the keeping of records and filing of documents are correct and within required timeframes. Police submitted that the matters addressed in his evidence led to the view that the applicant had demonstrated poor planning and timeframe management practices.
29. S/Sgt Carter went on to point out the Police concern with the applicants working knowledge of the Act, relating to special licences. S/Sgt Carter referred to an application submitted by the applicant on 12 November 2021 that was later withdrawn by them following discussions with Council staff. Police at the time were concerned with the extensive number of events being submitted under the one application and with the variety of different functions, Christmas functions, New Year's, Birthdays, Celebration of life and reunions; and with some

of the hours being proposed which ranged from 11am to 3am. Police submitted that the applicant appeared to be unaware there were limits to the number, types and hours sought when applying for a special licence.

30. Police referred to their application to ARLA under section 280 of the Act where suitability of the applicant will be at issue before the Authority. Police submit that the applicant, after having sought legal advice agreed to the facts relating to this matter; submitting that the relating three separate events surmount to serious breaches against the Act.
31. S/Sgt Carter referred the Committee to the conditions on the On-Licence issued to the Loop Restaurant and Bar Charitable Trust in June 2021, and specifically the condition requiring the licensee to screen off the back garden area from view from Te Waiora Medical Centre and Manawatu College. Police told the Committee that the completion of the screening had not been completed in excess of 9 months after the issuing of the licence, and submit that for a licensee failing to adhere with a condition of a licence for that length of time is inexcusable and unacceptable.

He referred to *Hayford v Christchurch DLA 3/12/93 A201/92*:

“a holder of a liquor licence under the Sale of Liquor Act 1989 is granted a privilege. It permits him to sell liquor when others are not permitted to do so. Deliberate failure to carry out conditions attached to the licence must be a strong factor in justifying a conclusion that the holder of the licence is not a suitable person to hold the licence.”

32. S/Sgt Carter reminded the Committee of the decision relating to the granting of the original on-licence DLC Decision 52/2021 and the Committees comments with regards to the involvement of the Get Group and its training and support provided, and ongoing. Police submit that around the same time the on-licence was granted the Get Group was no longer engaged with the premises in any capacity, and for an extended period of time the applicant did not maintain any sufficient supervision or support from a supporting agency or person within the industry. Police acknowledged Mr Parrant's recent involvement, however informing the Committee that despite Mr Parrant's 50 years as a mentor and 45 years Health and Safety experience, he does not have the same level in the sometimes complex running of a licensed premises and the Sale and Supply of Alcohol Act requirements.
33. Police submit that without the level of support as acknowledged in the DLC decision 52/2021 the same concerns remain until the Get Group or another industry experienced group or person re-engages with the licensee for an extended period of time. S/Sgt Carter went on to say that, it is the due diligence, suitability of the applicant to ensure that continued industry lead support, and mentoring remains in place. Police acknowledged Covid 19 impacts and informed the Committee that there is a number of ways in which the applicant could have reached out and received support and industry-based training and materials.
34. Police submitted that at all times the applicant had the freedom of choice, and for this extended period chose or failed to take action to rectify problems. The applicant made conscious decisions in continuing to trade and operate the business at times outside the conditions set by the Act, and in doing so the applicant made conscious decisions to conduct himself in a way that does not meet his obligations or responsibilities in being a licensee.
35. S/Sgt Carter expressed Police are concerned that the applicant's application for an on-licence renewal with a variation in both the hours and days in which to operate, is unable to produce any forecasted roster across multiple time periods and days. Police submit this new roster should show full coverage for those times and, also consider the licensees legislative requirements concerning meal breaks, leave types, staff coverage and peak demand for both times and days of the week. Police are concerned that when information was requested from the premises, that family members, friends and volunteers have stepped in to help keep this

facility operating for the community. Police raise the concern that this practice in an effort to keep the facility operating by reducing staffing overheads is fraught with inherent dangers, relating to lack of planning, inadequate record keeping, and staff training raising a more serious concern when referring to both applicant suitability and in keeping with the Object of the Act.

36. S/Sgt Carter provided the following case law for consideration with relation to suitability of the applicant:

Two Brothers Wholesale Limited [2021] NZARLA 32, where it is regarded that there is no statutory definition of the word "suitability".

Jays LLA 994/94: "Differing aspects of suitability will be given different weight by decision makers under the Act. Among them are experience in the hospitality industry, management ability, and personal integrity."

Sheard [1996] 1 NZLR 751: "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 are to go with holding of a licence."

Hooper v Clark – Bar Navajo [1999] NZLLA 1170: "A liquor licence is a privilege. It may colloquially be regarded as a "package deal". Both the burdens and the benefits run the licence. Mr Clark as licensee must either accept those burdens and control the sale and supply of liquor in a satisfactory manner, or he will not continue the privilege. Either the licensee can manage the premises and on-licence satisfactorily, or he cannot."

Nishachay's Enterprises Limited [2013] NZARLA PH837, and *Deejay Enterprises Ltd [1997] NZARLA 837*

37. Police submitted that in the original application for the on-licence of the premises, and recorded in the DLC's decision 52/2021 that the applicant told the Committee at the time that whenever the Loop Restaurant is open, Te Waiora will be closed. S/Sgt Carter pointed out that applying for a variation for Monday to Sunday between 0900-0100hrs, in itself goes against what the applicant originally told the DLC, the DLC decision 52/2021 outcome and the strong reasons, which supported decision at the time.

S/Sgt Carter referred to *My Noodle [2007] NZLLA 1064-1071*:

"We agree that there will always be a difference in the approach to a new on-licence, and the renewal of an existing licence. In the former case, experience has taught us to be conservative when fixing trading hours on the basis that the issue can be raised again after the first probationary year. Naturally, there will be a greater resistance to changing trading hours that have already been awarded. In this case of "The Mini Bar", where there was an application to increase trading hours, the criteria in respect of a new licence apply."

38. S/Sgt Carter informed the Committee of Police concern about the future details of the business disclosed in an information request, where the applicant has informed that "... The intention for the future, should the renewal be for the current hours is to close the operation down". Police submit that in the applicant's letter dated 23 March 2022, the applicant acknowledged the strain imposed by the restricted hours their current on-licence has on them financially. In this same letter, it acknowledged in the past because of stressors and errors in judgement, the applicant has allowed himself to operate outside of his licensing hours, and mention of the economic restrictions the current on-licence has on their business.

Police referred to the following case law to support their position that it is not for the DLC to consider the economic effects of its decisions:

Meads Brothers Ltd v The Rotorua DLA AP26/00: "There is no requirement in the Act for the Authority to consider the economic effects of its decisions on licensees, applicants or anyone else"

Moby's Bar Ltd [2014] NZARLA 871: "Whilst the proposed conditions will have a detrimental effect on the applicant's commercial enterprise, in terms of *Meads Brothers Limited vs Rotorua District Licensing Agency, [2002] NZAR 308* the proposed conditions are not so unreasonable as to warrant amendment. Indeed, as the Court of Appeal stated in *Meads Brothers Limited* the policy of the Act is that licensing decisions are not made for the purpose of giving licensees economic protection. This remains the case under the new Sale and Supply of Alcohol Act."

39. Police submitted that in the applicant's original application it was noted that its intended purposes was a Restaurant and Bar, The Get Group Catering Programme – catering Tangi and Youth Group. Police point out that both in the original application and renewal application the applicant has not provided any supporting evidence of a youth group except that this is part of their intended purpose. Police have concern that an on-licensed premises is not an ideal place in which to hold a youth group given that this is primarily a restaurant and bar.
40. S/Sgt Carter expressed Police concern relating to Car Boot Sales and Market days being held on site at 1 Easton Street Foxton, concerned that a reduction in amenity and good order may result being a site located within a residential zone area. Police submitted that there are other places where market days are currently held in the Foxton area.
41. In the evidence provided by S/Sgt Carter, he told the Committee of Police concerns that the applicants request for a variation in hours from 0900 till 0100, 7 days a week will affect the amenity and good order of the locality to a greater extent. Concerns centred on the residential zone, potential noise nuisance and traffic management nuisance and safety concern to neighbours. He submitted that being a good neighbour is to proactively manage relationships with immediate neighbours.

Police referred to *Paihia Saltwater (2001) Ltd NZLLA 391*:

"Noise is not just a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes a view that if no attempt is made to prevent the escape of, or reduce noise, then it is the Authority's duty to monitor the hours of opening, if not the existence of the licence"

42. Police acknowledged that the RSA operated from the site for more than 50 years and held a Club Licence, and raised the distinct differences in the operating of a club licence compared to the operating of an on-licence under section 60 and 61 of the Act. The submission that in part, there are a set of rules for club members and guests as being part of this or associated club held within a constitution, therefore the applicant inherently operate and run their on-licence differently from the former Foxton RSA Club. Police submit that because of the differences, it has a strong impact on the running, operations and direction the premises under this new on-licence is heading, including how, why and who it caters for, and the types of events held.
43. S/Sgt Carter expressed Police concern that the applicant was unable to provide a current and working roster from August 2021 onwards. Concern extended to the licensee not having a detailed working roster either daily, weekly or monthly. Police submit that rosters are seen as a key tool in the management and operations of a business and not having them can lead to additional problems, which are around the leave, pay and employment matters. Police did acknowledge that the applicant had made an attempt to provide a very basic forecasting of staff as documented, however it lacked detail.

44. Police also noted that the training register supplied by the applicant was lacking detail, and that not only were signatures missing in verifying the persons presence, but except for the training provided by the Get Group to in May 2021 when the premises was first licensed, no training of other additional staff or volunteers has occurred. Police therefore concerned that the applicant has failed to undertake any in-house training regarding any of the varying Covid-19 rules when they were in force, any evacuation procedures, first aid, drink spiking, drugs, patron management, host responsibility, cleaning, security management, food safety or health and safety training.
45. Police submitted that failing to consistently upskill and train staff, not having the appropriate systems and policies in place or having sufficient staff numbers only heighten the level of risk associated with the premises. Submitting that the hospitality industry is already a high risk industry and a lack of upskilled and trained staff who are competent in their roles directly links back to the Object of the Act and Suitability of the applicant.
46. In his closing statements, S/Sgt Carter said "Police submit that the applicant reported in their original application, they have had a bar-restaurant business for 3 years prior to applying for this on-licence. This should have provided a strong background to fully ensure, they have an equally strong understanding of the Sale and Supply of Alcohol Act, the necessary requirements and procedures in place to effectively run a licensed premise without issue..."
"...Police in their evidence has provided and outlined a number of clear examples where there has been sufficient and just concern where suitability if brought into question..."
"...Police respectfully submit that this is not a one-off occurrence but longer systematic breaches and non-compliance of the Act, coupled with failures within the running and management of the licence by the licensee clearly show they are unsuitable on holding a licence in which to operate under."

Mid-Central Public Health

47. Mr Martin McMasters spoke to the Committee on behalf of the Medical Officer of Health from Te Whatu Ora Health New Zealand (Public Health). He told the Committee that Public Health assessed the application under section 131, particularly the criteria in section 105 of the Act. He summarized that Public Health concluded that, due to the matters detailed in their written report, they couldn't be confident that the sale and supply or consumption of alcohol could be undertaken safely and responsibly pursuant to the applicant's application with the variations.
48. In referring to the applicant's suitability, Mr McMasters referred to the admission of responsibility by the applicant regarding the information provided by Police in their unresolved section 280 application to the Authority that the licensee has sold alcohol and had patrons on the premises outside its licensed hours and on at least three occasions during the licensed period.

He referred the Committee to the decision of the Authority, *Deejay Enterprises Ltd [1997] NZARLA 837*,

"Little but a licensee's or manager's character and suitability may stand between upholding the law and turning a blind eye"

49. Mr McMasters told the Committee that it is extremely important that a licensee manage the premises, and that these transgressions did raise the possibility the licensee may be unsuitable for managing the requirements of the significantly longer hours applied for and possibly a more drinking and entertainment focus and compliance with the licensing conditions. He alerted the Committee that longer hours might also result in different activities and more risk of noise or other nuisance to the residences in close proximity.

50. Mr McMasters acknowledged that the Local Alcohol Policy had previously been the subject of the Committees deliberations and that the resolution regarding the conflict with the location of the premises being addressed by the requirement for screening. He informed the Committee that he and a colleague had visited the premises a couple of weeks ago and had been expecting to see a screen on the fence, but instead was pleasantly surprised to see a pullout blind that is halfway across screening 50%. He said that the blind is surprisingly effective at screening the area.
51. He reminded the Committee of their original decision 52/2021, where the Committee had favourably discussed the existence of the premises in Foxton being a facility *"where people can enjoy a meal supported by the consumption of alcohol in a responsible manner"*. That the committee expressed an opinion that the operation of a premises by the RSA was well accepted by the community and had somewhat blended in with the neighbourhood. Public Health submitted that whilst acknowledging those sentiments and the value of the premises to the Foxton community, it felt the District Licensing Committee should not lose sight of the differences between the two operations. One is essentially a club with its self-managing function and the other is more of a commercial premises. Surmising that the facility having a different focus might have more impact on the community.
52. Mr McMasters expressed concern regarding the request for increased hours, stating that the significant increase hardly seemed justified nor had any focus on dining. Furthermore, that the longer hours filled with more entertainment and drinking focus, there is potential disturbance to surrounding dwellings. Saying the extension of hours in to the later evening will require a noise management plan and potentially a one-way door policy, and therefore security to manage this. He acknowledged that a one-way door policy and security had been a recent conversation between the applicant and the Licensing Inspector, and that there had apparently been no noise complaints under the current licensed hours.
53. Public Health submitted that the applicant's failure to comply with the licence conditions and to implement and record staff training demonstrated that the applicants systems are not fit for purpose or were not being diligently managed. Thus, giving rise to the risk of non-compliance and alcohol related harm or problems with the amenity and good order of the locality should the licence be renewed with the requested variations granted.
54. Mr McMasters expressed an opinion that the applicant in their management of the premises so far has not conclusively demonstrated compliance with the provisions of the Act with the conditions of the current licence.

Alcohol Licensing Inspector

55. Mr Eric Gimpel addressed the Committee tabling his report submitted under section 103 of the Act, taking the report as read. In Mr Gimpel's written report he informed he had visited the premises and that it generally complies with the requirements of the Act, noting no major issues. His report informed that there had been no noise complaints associated with the premises during the past two years.
56. In his report Mr Gimpel wrote *"the amenity and good order of the locality would not change if the renewal was refused. On this basis, it is my view that the amenity and good order of the locality would not likely to be increased, by more than a minor extent, by the effects of the refusal to renew this licence"*.
57. Mr Gimpel recommended the Committee consider the imposition of conditions on any renewal, recommending that a number of discretionary conditions be included as documented in pages 39 and 40 of his report.
58. Mr Gimpel's overall recommendation to the Committee being: *"Although Police and the Medical Officer of Health have opposed this application, I feel with monitoring and support*

the licensee can follow the conditions as stated (in his report) above and therefore I do not have any opposition to the application to the renewal of this on licence by the applicant and recommend that the Horowhenua District Licensing Committee grant the renewal for the statutory three year period”.

Legal framework

59. In considering this application for On-Licence renewal, the licensing committee had regard to the criteria under sections 131 and 105 of the Act.

Section 105 matters

Object of the Act – s105(1)(a)

60. The Committee has considered the object of the Act in reaching its decision on the application, and noted there are already four premises with on-licences and one premise with a Club Licence operating in Foxton that is a small town. The further availability of lengthy opening hours in addition to those already existing in Foxton, and in any event contrary to the operative local alcohol policy, is in the opinion of this Committee as not in keeping with the Object of the Act.

61. The Committee noted that the manner in which a licence is operated must be clearly examined to see if its operation has been such as to meet the Object of the Act, and, in its view, this had not been the case for this premises. The evidence presented by Police at the hearing, informing there had been at least three occasions when alcohol was sold outside of the licensed hours persuading the Committee of such.

In considering the evidence presented by the applicant relating to the number of staff holding a Managers Certificate, the Committee was not convinced that the business could continue to operate with only one authorised man

62. after, and found the applicants approach to the employment of sufficient staff with the appropriate bar Managers certification to be casual and lacking.

Suitability – s105(1)(b)

63. The Committee referred to the evidence provided by Police regarding breaches of the Act, and the applicant's apparent disregard for adherence.
64. The Committee referred to the original decision 52/2021 and were disappointed that the ongoing support promised by the applicant that the Get Group would provide did not occur. This was a strong consideration of the committee when deciding to grant the original licence.

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

65. 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.

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

66. As outlined in point 65 above.

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

67. The Committee had no concerns regarding the design and layout of the premises.

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

68. The Committee had no concerns in this regard.

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

69. From the evidence presented, the Committee were disappointed that the ongoing support to be provided to the applicant by the Get Group did not occur. The Committee noted that this was a strong consideration of the committee when deciding to grant the original licence.

Reporting agencies – s105(1)(k)

70. The Committee noted that the agencies came well prepared to the hearing.

Conclusion

71. The Committee cited *Hayford v Christchurch DLA 3/12/93 A201/92* in that it is a privilege to hold a licence.
72. The Committee believe the evidence provided at the hearing demonstrated a lack of business systems and lack of upskilling of everyone involved in the premises, ultimately leading the Committee to have a lack of confidence in the applicants ability to improve, nor that there will be any improvement. It is the opinion of the committee that the applicant has no understanding of his responsibility under the Act, and have no confidence in the applicant's ability to comply.
73. It is the Committees opinion that the manner in which a licence is operated must be clearly examined to see if its operation has been such as to meet the Object of the Act. In the view of this Committee, this had not been the case for the premises. The evidence presented by Police at the hearing, informing there had been at least three occasions when alcohol had been sold outside of the licensed hours persuading the Committee of such.
74. The Committee mused that if it had a mind, would have taken to consideration to a renewal for one year, however the evidence presented at the hearing relating to safety and suitability outweighed and the Committee were not convinced it was going to make a difference.
75. The Committee were disappointed in the lack of evidence provided by the applicant. At the hearing the Chairperson urged the applicant to present evidence that would enable the Committee to grant a favourable outcome for the applicant. The lack of evidence did not help the applicants cause.
76. For these reasons, the District Licensing Committee of Horowhenua have made the decision to refuse the renewal of the alcohol on-licence for the Loop Restaurant and Bar, including the requested variations.

Decision

The decision of this Committee is to refuse the renewal of the on-licence for the Loop Restaurant and bar including the requested variations made by Jason Mark Kauri, as Trustee for the Loop Foxton Charitable Trust.

In coming to this decision, the Committee has considered all aspects of Section 131 and associated parts of Section 105 of the Sale and Supply of Alcohol Act 2012, and the Operative Horowhenua Local Alcohol Policy.

Pursuant to section 135(2) of the Act, the on-licence for The Loop Restaurant and Bar being licence 40/ON/003/2021, expires on 2 December 2022.

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.

DATED at LEVIN this 25th day of October 2022.

A handwritten signature in blue ink, appearing to be 'R J Brannigan', with a stylized flourish at the end.

R J Brannigan
Commissioner