

**IN THE MATTER**

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

**AND**

**IN THE MATTER**

of an application by **H2O GROUP OF BARS LIMITED** for the **renewal** of the ON Licence pursuant to s.127 of the Act in respect of premises situated at 233 Leith Place, Tokoroa, known as "H2O Gaming & Sports Bar."

**BEFORE THE SOUTH WAIKATO DISTRICT LICENSING COMMITTEE**

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

**HEARING** at Tokoroa on 19 June 2024

**APPEARANCES**

Mr. Terry Sievers– agent for the applicant H2O Group of Bars Limited  
Mr. Gurneel Singh- director of the applicant company  
Ms. Daphne Marsh- witness for the applicant  
Mr. Junior Tereu Bennett- witness for the applicant

Ms. Jules Smale – Chief Alcohol Licensing Inspector – to assist  
Sergeant Greg Weston– Police Alcohol Harm Prevention Officer – to assist

**RESERVED DECISION OF THE COMMITTEE**

**Background**

1. On 6 July 2023, **H2O Group of Bars Limited** applied for the renewal of the On Licence in respect of premises situated at 233 Leith Place, Tokoroa, known as "H2O Gaming & Sports Bar." The activity is a tavern style business with a pool

table and 18 gaming machines. The whole of the premises is designated as a **Restricted Area**.

2. The Police and the MOoH did not oppose the renewal of the licence.
3. In April 2024 the Inspector reported in opposition as she was concerned that there had been at least two reported incidents of intoxicated persons and fighting found on the premises during the duration of the licence. Only Police warnings had been given.
4. In late May 2024 the applicant engaged an agent to work with the business and the agencies to see if some common ground could be found. Unfortunately, there was another incident involving intoxicated patrons at the bar on 8 June 2024.
5. The renewal had already been set down for hearing as the DLC was concerned that there appeared to be underlying issues around the assessment and management of intoxicated patrons.
6. The hearing was confirmed to go ahead and was held on 19 June 2024 at Tokoroa.

### **Applicant's Evidence**

7. Terry Sievers had sought, and was granted leave by the DLC, to appear as agent for the applicant company.
8. Mr. Sievers told us that his client was fully engaged in this business and was open to making changes to ensure that the business was operating safely and responsibly in the Tokoroa CBD.
9. He called Gurneel Singh who told the Committee that his parents were the joint shareholders of the business, and he is the sole director. He lived in Auckland and up until recently had a trucking business up there that kept him very busy. He has recently sold that business and he now plans to spend at least one day a week at H2O.
10. He described H2O as "my baby" and did feel uncomfortable when he didn't have enough time to regularly come down to the bar. He said, however, he did keep in close contact with his staff by phone or via a group chat that they have set up. Most of his staff have been with him for many years.
11. He has three certificated managers who share the workload, but he conceded that Daphne Marsh, who works the dayshift, primarily alone, did not get the mandated rest breaks that she should, away from the business.

12. He told us he was pleased with the outcome of the meeting with the Inspectors and Mr. Sievers, and he was confident that the measures that they planned to put in place would mitigate most of the concerns held.
13. They had enhanced the food menu and plan to have a crock pot meal, or similar, available one night a week between Thursday to Saturday. They would continue to have complimentary food on draw night or when big matches were on the TV.
14. Together with Mr. Sievers he had put together a suite of discretionary conditions that they “would not be opposed to” should the DLC think they were necessary.
15. These included a One-way Door from 12 midnight. No ‘big boys’ 735ml bottles of beer, or poured shots, from 10.30pm and competent COA certificated door staff on Thursday to Saturday nights from 8.30pm.
16. He added that they would also roster on two staff at night from 5.00pm and provide cover for lunch breaks. He has also instructed Mr. Sievers to increase the staff training programme to 6-monthly refreshers, up from the current annual sessions.
17. He plans to enhance incident reporting and recording, and all managers and door staff will be required to sign off on a daily report. He produced the current incident book, but we noted it only went back to April 2024. He conceded that he had not been regularly reviewing the incident book notings but would be doing so from now on.
18. He was disappointed to hear about the 8 June incident as he accepted that it would reflect poorly on the recent changes he had made. He has yet to trespass both parties in the incident but told the Committee he is committed to doing so.
19. He was questioned extensively about staffing numbers, certificated managers, and rostering. It was clear from the evidence that some staff were working 8 hour shifts without relief. Mr. Singh had said staff could take their breaks during quiet times.
20. As the Committee pointed out to him, that is not an option in on-licensed premises with patrons in the bar and/or gaming area and that he was lawfully obliged to ensure that his staff had their mandated breaks away from the workplace. He accepted that proposition.
21. He was questioned extensively on the intoxication incidents that had been recorded in H2O during the renewal period and more latterly on 8 June 2024. He said the bar had an older group of male clientele who liked to drink ‘big boys’, the 735ml bottles of beer, and did not like being told when they had had enough

and should go home. The large bottles are priced at \$8.50 for 735ml and stubbies were \$5 for 335ml. It is clearly a cheaper option for punters to buy the larger bottles and he said it means they don't have to go up to the bar as often.

22. He told the Committee that he would be open to stopping sales of large bottles and poured shots at 9.00pm if the Committee thought that would be advantageous.
23. He agreed that food sales were very minimal prior to the recent changes and even now only a few patrons were asking for food. He understood the advantages of having substantive, well priced food options available as a tool to slow down intoxication rates. He was asked why he expected patrons to buy a \$6 pie off him when they could buy one for \$4.50 at a takeaway 2 doors down from the bar. He said his pies were better quality.
24. We asked him about the income streams derived from the bar. He said it was about 40% from the pokies and 60% alcohol and other drinks.
25. We make it very clear to Mr. Singh that Section 67(k) of the Gambling Act 2003 says that Class 4 gaming venue must not operate mainly for gambling.
26. At renewal time we will be requesting audited accounts showing the split between gaming, alcohol and food.
27. Next, we heard from Daphne Marsh. She has worked at this bar for 23 years. She holds a Manager's Certificate and said she had a good working relationship with the owner and that she believed he was well liked by patrons and the suppliers within the South Waikato area.
28. She was pragmatic about the clientele of H2O. She said they were older males who wanted to drink and discuss the issues of the day and the problems of the world. She does mainly day shifts from 8.00am to 4.00pm and her clientele are mainly pokie players and her regular drinkers.
29. She conceded that it will be a tough job to slow some of their big drinkers down. It was put to her by the Police that H2O was known as the place to drink without intervention from staff. She said, "*they should be able to enjoy their drinks, but they shouldn't think that they can get drunk.*"
30. She said that she has refused service maybe 20 times in the last 3 years and maybe 4 in a week. She was asked what was covered in the recent training done with Mr. Sievers. She said she couldn't remember the specifics of what was covered.
31. In regard to poured shots she said she "*doesn't encourage them*" but that some people liked them.

32. She was asked to comment on the role of the staff and the Security Guard on the 8 June incident. She agreed that it should have been handled better. Both parties had been back and apologised.
33. To Member Daine she said that they did have patrons who would drink to excess if allowed. They believed they had inherited some problem drinkers from other bars that have closed down in Tokoroa in recent years.
34. Next, we heard from Junior Tereu Bennett who told us he had been working at H2O for over 2 ½ years. He too was pragmatic about the patrons at H2O. He said "*I hate to say it but we need to re-educate our patrons.*"
35. He told us they do get pressure from patrons from other bars wanting to come in later at night. He believed that the proposed drink service restrictions and COA door staff and a firm OWD would be helpful.
36. He has said having two staff on at night recently had also been helpful to monitor certain patrons. He said, "*We have a tick list of ones we monitor closely.*"
37. He was asked to name some of the offences that a staff member could commit in a late night bar. After some prompting, he was able to recall the main ones but missed one of the most important ones i.e. **It is an offence to allow someone to become intoxicated on licensed premises.**

### **Police Evidence**

38. Sergeant Weston appeared for the Police and confirmed that the previous alcohol portfolio holder in Tokoroa, Senior Constable Stein Thomas, no longer worked in the role. Sergeant Weston was now performing the role remotely from Taupo.
39. He agreed with the Committee's concerns that there had been a number of incidents involving intoxication in and around H2O in recent years and only formal warnings had been given.
40. He said he now runs a spreadsheet of all the licensed premises in his 'patch' and H2O was facing enforcement action if there was to be any more intoxication incidents. Enquiries are still ongoing into the 8 June incident, and he will be working with Mr. Singh to deal with the offenders.
41. In closing the Sergeant believed some discretionary conditions along with a truncated renewal was required to send a message to this bar. They had a place in the Tokoroa hospitality scene, but they had to do better to manage their patrons.

## **Inspector's Evidence**

42. The Inspector's report was taken as read and Ms. Smale outlined her original concerns when she first opposed the renewal.
43. She believed that the proposed changes were positive but obviously got derailed by the 8 June incident.
44. In closing she said the bar 'served a purpose' in the town but it had to re-educate its patrons so that they realised that they would not be allowed to get intoxicated in the bar.
45. She no longer opposed the renewal but believed they needed to push food better, have more staff on the floor to release the Duty Manager to concentrate on that role, and to have competent experienced COA qualified door staff on duty.

## **Applicants Closing**

46. Mr. Sievers took a short adjournment to discuss matters with his client before offering a suite of discretionary conditions that the applicant would not be averse to being imposed should the DLC find that they are necessary.
47. The submissions were very helpful to the Committee because as we told Mr. Singh, all options were on the table at renewal time from a straight roll over of current conditions, to an outright refusal of the renewal.
48. It was clear to the Committee that the staff had probably become 'immune' to the level of intoxication of some of their patrons and it was tolerated until incidents occurred and then they had to deal with intoxicated patrons brawling in the bar and on the street.
49. They agreed that measures must be put in place to keep control over intoxication levels and delivering accountability if things do go wrong.

## **Relevant legislation**

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).*

50. 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:**

- (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**

### **Criteria to be considered.**

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

51. Section 105(1)(a) of the Act requires that the licensing committee must have regard to the Object of the Act.
52. Following the recent Supreme Court decision, we are also required to ‘read together’ both the **Purpose, and the Object of the Act**. Notably, and very relevantly, to this case, Section 3 talks about the administration of the Act should be “**for the benefit of the community as a whole.**”

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

53. 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 not seriously challenged by the agencies.

Suitability has been defined in many judicial forums.

In Re Sheard [1996] 1 NZLR 751<sup>1</sup> 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.”***

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<sup>1</sup> Re Sheard [1996] 1 NZLR 751



The High Court in **Christchurch Medical Officer of Health v J & G Vaudrey Ltd**<sup>2</sup> 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.***

54. The Committee must undertake an evaluative approach and adopt a merits-based assessment of the application and measure it against the Object of the Act.

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

55. 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**

56. The current licensed days and hours are **Monday to Sunday 9.00am to 2.00am**. They are within the default national maximum trading hours for on licences
57. The applicant has put forward a revised set of opening hours. **Sunday to Tuesday 10.00am to 11.00pm and Wednesday to Saturday 10.00am to 1.00am the following day.**
58. This is a significant concession and will be factored into the Committee’s decision making.

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

59. The design and layout of the premises is unremarkable and is fit for purpose, but we do see the back smoker’s area, and rear entry, as problematic.
60. Even though it is monitored by cameras, intoxicated persons and alcohol can be smuggled in, and out, of that back door that is not kept secured due to fire evacuation requirements. This might be something the applicant needs to resolve, should the licence be renewed.

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<sup>2</sup> Christchurch Medical Officer of Health v J & G Vaudrey Ltd

**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.**

61. No other goods are sold.

**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.**

62. There are 18 gaming machines on site.

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

63. It became clear during the hearing that staffing had been barely adequate to manage patrons and the 18 gaming machines, let alone managing intoxication rates.

64. The applicant has offered concessions around staffing levels including double crewing from 5.00pm each night. They have also recently engaged COA qualified door staff although the competency and performance levels of those individuals are yet to be confirmed.

65. It was pleasing to see a commitment from Mr. Singh to increase training sessions with an external provider from annual to 6-monthly sessions.

66. The incident book only appears to have been actively employed in recent months and disappointingly Mr. Singh said that until recently he had not been regularly reviewing entries in the book.

67. Incidents will happen in licensed premises and licensees should use the incidents as learning experiences. They should conduct a full debrief with staff, take appropriate disciplinary action with staff and patrons and put in measures to prevent a reoccurrence.

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

68. The agencies were unopposed to the renewal and have been actively working with the applicant to put some measures in place to raise the bar around the assessment and prevention of intoxication.

**Section 131 of the Act says we must also have regard to whether 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.**

69. There was no significant evidence of public disorder, littering or graffiti presented to the Committee or that this business had physically reduced the amenity and good order of the locality by more than a minor extent.
70. However, the last incident did spill onto the street. We believe that with the concessions offered, the ongoing amenity and good order of the area will not be reduced by more than a minor extent.
71. The Committee will be required to weigh up the effects of a refusal to renew over a restrictive renewal as **proffered by the applicant** in their closing submissions.
72. Overall, the Committee is persuaded that a renewal can be approved but with a suite of discretionary conditions that we have decided are necessary to help turn this bar around. We believe this will assist in helping to achieve the Object of the Act.
73. We intend to restrict the sale of large bottles of beer and poured shots from 9.00pm and not 10.00pm as offered by the applicant. We believe that 10.00pm is too late and problematic drinkers will be well on their way to intoxication by 10.00pm. Care must be taken to prevent stockpiling before 9.00pm and we are sure the regulatory agencies will be conducting compliance inspections to monitor this condition.
74. These conditions will be in place until June 2025 when again they can be reviewed at renewal time. If there are positive reports from the agencies some of the conditions may be able to be relaxed, or further tightened if problems are still occurring.

### **The Decision**

**The South Waikato District Licensing Committee**, pursuant to the Sale and Supply of Alcohol Act 2012 **approves** an application by **H2O Group of Bars Limited** for the **renewal** of the ON Licence in respect of premises situated at 233 Leith Place, Tokoroa, known as **H2O Gaming & Sports Bar**, subject to conditions.

The Licence is renewed for **22 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 Tuesday 10.00am to 11.00pm and Wednesday to Saturday 10.00am 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 **Restricted Area** at all times.
4. **An experienced, and competent COA certificated Crowd Controller must be on duty from 8.30pm to close on Thursday to Saturday nights;**
5. **No 'big boy' 735ml bottles of beer or poured shots are to be sold from 9.00pm; No stockpiling is to be permitted.**
6. **A minimum of two staff members are to be rostered on from 5.00pm each night. Rosters must be configured to provide for breaks for all staff as prescribed in workplace legislation.**
7. **A One-Way Door (OWD) shall apply from 12.00 midnight every Thursday, Friday and Saturday night. No entry from that time, exit only.**
8. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
9. 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,
10. **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,**
11. 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,
12. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises,
13. 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 is attached to the premises so as to be easily read by persons attending the premises.

The Licence will expire on **24 June 2025**

**DATED** at TOKOROA this 24<sup>th</sup> day of June 2024



Murray Clearwater  
Commissioner  
For the South Waikato District Licensing Committee

**NOTE**

**Sections 153 to 155 of the Act relating to the right to appeal this decision are in effect. This decision has immediate effect even if an appeal is lodged with ARLA.**