

IN THE MATTER

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

AND

IN THE MATTER

of an application by **JATT HOLDINGS LIMITED** for the renewal of an off-licence pursuant to s.127 of the Act in respect of premises situated at 8A Dickeson Street, Kaikohe, known as The Shed Liquor Centre."

BEFORE THE FAR NORTH DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: John Thorne
Member: Martin Macpherson

HEARING at Kaikohe on the 12th day of February 2024

APPEARANCES

Mr. Jon Wiles counsel for the applicant **Jatt Holdings Limited**
Mr. Jarnail Singh– for the applicant
Mr. Milanpreet Singh for the applicant

Ms. Megan Edwards – Alcohol Licensing Inspector ("the Inspector") – to assist.
Sergeant Michelle Row – Police Alcohol Harm Prevention Officer (AHPO) – to assist.
Dr Ankush Mittal- Medical Officer of Health (MOoH)- in opposition

Mr. Jasper Sontier (assisted by Dr. Liz Gordon by AV)– counsel for objector Michael Shaw
Objectors:
1. Micheal Shaw
2.Nicola Smith.

RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application received on the 12th of December 2023, **JATT HOLDINGS LIMITED** applied for the renewal of the OFF Licence in respect of premises situated at 8A Dickeson Street, Kaikohe known as “ **The Shed Liquor Centre.**”
2. The current licensed hours are Monday to Sunday 9.00am to 10.00pm. These hours are within the default national maximum trading hours for off licences.
3. The application was duly advertised, enquired into, and reported on by the agencies. The Police had no matters in opposition. The MOoH lodged two reports, the second report with matters in opposition, within the 15 working days. The Inspector opposed the application citing a non-compliant inspection of the premises in October 2023 and an on-going issue of the business not holding the required Food Act 2014 registration.
4. Two public objections were received. One from the Far North District Council library and customer services manager responsible for the nearby Kaikohe Public Library, and the other from a local resident. Both were received within the required timeframes.
5. The application was set down for a formal hearing as the Committee needed to hear the concerns of the agencies and the community members on the issues raised.

Applicant's Evidence

6. Mr. John Wiles, counsel for the applicant, opened with a preliminary matter in that he believed the objector had lodged his objection outside the statutory time frame and that the MOoH had altered their position to ‘opposed’ outside the 15 working days prescribed in the Act.
7. We examined the numbers and found that the submissions were lodged in time and that they would be considered by the Committee. Mr. Wiles accepted our findings.
8. He reminded us that the legislation prescribes for the reasonable administration of the provisions of the Act with the aim of helping achieve the Object of the Act.
9. He said that The Shed had been operating compliantly and there was no evidence to be adduced to the contrary. His client had rectified the issues raised by the Inspector and they were willing to implement a condition around single sales.
10. Owner and director of the business, Jarnail Singh, then spoke to us. He read his evidence in chief and answered our questions. He told us he has owned and operated The Shed for 13 years and he has two other stores in Whangarei and Okaihau. He lives in Whangarei.

11. He holds a Manager's Certificate and has two other staff holding managers' certificates. Two other staff members are employed, one of which has an application for a certificate pending. As will become apparent when this decision is released, the application by Sukhbir Singh for a Managers Certificate was refused by the DLC on 16 February 2024.
12. He said they were well aware of the people who choose to sit in the adjacent park and drink alcohol despite it being an alcohol ban area. He noted that some of the complaints raised by an objector relate to drinking on the lawn at 9.00am. He said that that alcohol could not have come from The Shed because they do not open until 9.30am.
13. Mr. Singh told us that they have rung the Police previously about these people in the Park. On one occasion in November 2023, they refused service to an individual who got angry and threw a doormat at them. He believed the Police should be more proactive and prevent people from drinking there in breach of the alcohol ban.
14. He said they had refused service to 3-4 of them last year and trespassed one from the store. There have been no problems in 2024. They have extended their CCTV to cover the park area so they can see what happens out there. He is happy to have a condition on the licence banning single sales under \$6.00 and under 600ml other than craft beers.
15. Under questioning from the Inspector, he accepted that his current Host Responsibility Policy (should be Social Responsibility Policy) was out of date in that it referred to the Sale of Liquor Act 1989 and not the current Sale and Supply of Alcohol Act 2012. Through counsel he advised that his licensing consultant Robin Bryant was responsible to looking after that side of the business.
16. To Dr Mittal, MOoH, he said he had met with the objectors in December 2023 but had not approached the service organisations that are housed in the area.
17. To Member Macpherson he said it was the Police's responsibility to deal with the park drinkers. As long as they didn't sell to intoxicated persons or minors that's all they could do.
18. He was asked about craft beers. He said they have a few lines but there was no real demand for them at this store. He conceded that the barrel of single items for \$2.00, and overwritten with \$2.50, found in November was a 'mistake' and it has been removed.
19. He said they don't want to sell cheap alcohol and do want to sell responsibly.

20. Member Thorne asked him why he wasn't at the opposed managers certificate application hearing for his employee Sukhbir Singh. He said he had to be running the store over that time and that he had confidence in his store duty managers.
21. He argued that there were other outlets nearby, namely New World Supermarket, and that the alcohol consumed in the park was not "always from us." He was asked about shots and the large 500ml cans of beer and why they stocked them. He said, "there is a demand for them." He used the same rationale why he did not stock certain other kinds of alcohol - "there is no demand for them".
22. Objector Michael Shaw asked Mr. Singh if they only trespass people if they misbehave and was it correct that the incidents happening outside were not recorded on the CCTV hard drive. Mr. Singh said they only deal with incidents at the store.
23. Mr. Wiles then called Milanpreet Singh to give evidence for the applicant. Milanpreet told the Committee that he had been employed at The Shed for the last three years. He works there full time unless relieving at the applicants other 2 off-licence stores. He said he had not knowingly served any intoxicated persons, but he was aware that sometimes people try to buy for others.
24. None of the local businesses or the Police have approached him with complaints or problems, and they have ceased selling singles since November 2023. He could recall only one incident so far this year of people drinking in the park. He said the Police have issued some \$200 infringement notices and people have stopped drinking there.
25. When questioned by Mr. Shaw he said the CCTV cameras now covered the whole park but there had been no incidents since 7 January 2024.
26. He was asked how many intoxicated persons he had refused service to in a week? He said maybe one or two a month. He confirmed that refusals to supply were not being entered into the incident book.
27. He was asked about Sukhbir's performance at the earlier hearing. He said Sukhbir knows the rules and he agreed that duty managers had to be competent.

Inspector's Evidence

28. The Inspector's report was taken as read and no questions were put to Ms. Edwards other than to confirm that there is no Community Patrol in the area to her knowledge.
29. She also confirmed that there was no direct evidence to link the alcohol consumed in the park to this store. She supported the suggestion that a condition relating to single sales should be imposed on the licence if the renewal was going to be approved.

Police Evidence

30. Sergeant Row appeared before us in an assisting capacity and produced some graphs and charts from the Police National Alcohol Harm Viewer. The data showed that Kaikohe has a very high deprivation index of 10 and overall, there had been a reduction in reported offences within 1 kilometre of this site over the last year. She said there could be a variety of reasons for this including residents not reporting incidents and offences and that recently there had been more attention applied to the park and its surrounds by local Police staff.
31. During questioning Sergeant Row said there was a proposal being considered for monitored CCTV for the area. She also confirmed that ,subject to resources, the Police intended to be more pro-active in the area particularly around breaches of the alcohol ban. She confirmed that the produced 1km radius alcohol harm chart data would likely cover all of the licensed premises in Kaikohe township.

Medical Officer of Health Evidence

32. Dr. Ankush Mittal is the Medical Officer of Health for the Far North and confirmed his opposition was based around the vulnerability of the area and he believed that the definition of 'extended suitability' should apply to licensees operating in this type of environment.
33. He was not impressed with the large box of single sales discovered in October 2023 and the product range offered by this store. He said offering cheap alcohol in a vulnerable community is "highly irresponsible."
34. He was questioned about the call from others that the store should relocate to another site. He doubted that there would be any real advantage in doing so as people would still find a way to access alcohol.

The Objectors

35. First we heard from Nicola Smith who is the Far North District Council manager responsible for the nearby Kaikohe Public Library. She told us that throughout 2023 she and her staff regularly saw incidents out on the park lawn with people drinking, yelling and fighting. She said there is covered seating there and public toilets, and it attracts people who want to sit in there and drink. Another attractant was the availability of free Wi-Fi from the library. This was available 24/7 but has now been curtailed.
36. They have recently contracted a security guard to patrol the area for a six month trial. It appears to be working well and the guard is tasked to talk with people in the park and its surrounds and remind them of the alcohol ban.

37. She believed that intoxicated persons were accessing single cans from The Shed last year and consuming them in the Park although she conceded that she had not personally seen intoxicated persons exiting the store with alcohol.
38. During questioning she told Mr. Wiles that she had seen recent cases of drinking alcohol in the area and had contacted the Police.
39. Then we heard from Michael Shaw who had engaged counsel, Mr. Jasper Sontier who was supported on-line by Dr. Liz Gordon. Mr. Shaw told the Committee that he was a local of 40 years standing in Kaikohe and was active in community affairs.
40. His evidence was anecdotal and what had been relayed to him by others. Principally it stemmed around the use of the park by intoxicated persons making it unpleasant and unsafe for locals.
41. He pointed out that the store is surrounded by sensitive sites and community organisations. He did acknowledge that there are two supermarkets nearby, but his primary concern was around the sale of RTDs that could only come from the town's two bottle stores.
42. He noted that the store is in an Alcohol Ban area and broken glass and rubbish is often seen in the park and its surrounds.
43. He told us that there had been recent incidents in the park, and he had commenced an online petition with the aim to get the store relocated. He believed the store was required in the town but not there. 110 person signed the paper petition and another 90 on the online one. He presented the petition as part of his evidence.
44. He believes the area is unsafe because of the store's presence in the area. He also thought the external advertising was excessive. He quite fairly said his opposition was not about the management of the store, but the location of it.

Relevant legislation

45. Section 3 of the Sale and Supply of Alcohol Act 2012 ("the Act") states the purpose of the Act as follows:
 - (1) ***The purpose of Parts 1 and 3 and the schedules of this Act is, for the benefit of the community as a whole, –***
 - (a) ***to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and***
 - (b) ***to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.***
 - (2) ***The characteristics of the new system are that–***
 - (a) ***It is reasonable; and***
 - (b) ***Its administration helps to achieve the object of this Act.***

46. 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).*

47. 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.

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

This section requires that the licensing committee must have regard to the twin Objects of the Act and in particular that the sale, supply and consumption of alcohol must be undertaken safely and responsibly. We must also read Section 3 together with Section 4 and the administration of the system needs to benefit the community as a whole.

49. There was **no direct evidence** that the business has not been selling alcohol in a safe or responsible way other than the box of single sale products found at the front of the store in October 2023.

50. We note that they now have all products clipped up into minimum packages of 4's and 6's or in the manufacturers' intended packaging.

51. The other arm of the Object of the Act is that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised. We have stated elsewhere our concerns about some of the product types on display for sale and the social responsibility we expect of licensees operating in vulnerable communities.

52. **Section 105(1)(b) Suitability of the Applicant**

The applicant must be a suitable entity to hold an Off-licence. There is no evidential or sustained challenge to the suitability of the applicant. However, we note that the Store clearly chooses its product lines to those sought by the community. We would expect that a responsible retailer would remove products from the offering if there was evidence that they were being abused in the locality.

53. **Section 105(1)(c) Relevant Local Alcohol Policy**

The Far North District Council does not have a Local Alcohol Policy. There is nothing to consider.

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

The hours are within the default national maximum trading hours for off-licensed premises.

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

Members of Committee conducted a site visit of the premises. The predominance of

RTD products, light spirits such as Nitro, and cheaper mainstream products is unmistakable. It appeared that only a few lines of low alcohol and craft beers are stocked.

56. This is a sad indictment on the deprived community that the store is situated in, and that the operators are clearly targeting their range of products to the 'needs' of their customers.
57. We believe that the operators should stock a larger range of low and non-alcoholic beers and should promote them and try to encourage their customers to buy them.
58. **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.**
59. No goods other than alcohol, low-alcohol beverages, non-alcoholic refreshments, snack items and tobacco products are sold on the premises.
60. **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-alcohol refreshments, and food, and if so, which services.**
61. No other services are offered.
62. **Section 105(1)(j) Whether the applicant has appropriate systems, staff, and training to comply with the law.**
63. The applicant advised us that they have 2 staff with manager's certificates appointed to the business and that they hold regular training sessions. It was unfortunate that we saw Sukhbir Singh struggle during his attempt to persuade us to grant a manager's certificate.
64. This reflects negatively on Jarnail Singh in that he should have been more aware of the need to have competent staff running the store with sufficient experience and knowledge to make the hard decisions like refusing service and asking customers to leave the store.
65. As we have commented elsewhere, their 'outdated' training documents and policies lacked professionalism. It is easy to talk the talk. It is a whole lot harder to walk the walk, but this is what this applicant must do. They have chosen to sell alcohol in this community and the social factors that we must consider, do have an elevated mantle in this regard.
66. **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**

67. The agency reports have been discussed at length elsewhere in this decision.

Reasons for the Decision

68. Section 3 of the Act requires us to act reasonably in the exercise of our duties and to regulate with the aim of helping to the achievement of the Object of the Act. We must also assess whether approving the renewal will benefit the community as a whole.

69. There is no guaranteed right of renewal of an alcohol licence. We give credit to the applicant's good operating history in the district. They have not failed a CPO at the store and have been in business for thirteen years now. However, compliant trading is only part of the picture in our view. It was clearly evident from the evidence of the objectors that Kaikohe is a low decile, high deprived community.

70. That puts an elevated mantle that we discussed earlier firmly on the applicant to tread lightly in this community. It is not good enough to just say, "we stock certain products because there is a demand for it."

71. Equally it must be hard for those community groups to develop a 'close relationship' with a business that sells the very products that facilitate a significant proportion of the harms and poverty that they deal with on a daily basis.

72. We believe that there is middle ground, and there is a social responsibility on the applicant to keep trying to communicate with, and contribute to, the community. We expect the applicant to enter a business agreement with the Library staff and perhaps take over some funding of the security guard on a full time basis. Collaboration with the neighbouring New World Supermarket management may be beneficial in this regard. That uniformed presence appears to be working and is to be encouraged.

73. That would be a positive way of giving back to the community and will contribute to the monitoring of the area and reduction of breaches of the alcohol ban with the resultant littering and broken glass.

74. We thank both the objectors for attending and speaking with us. It is important that we are fully informed of the communities views. If a refusal to renew the licence is to be considered the evidence must be at the higher end of probability.

75. There is insufficient direct evidence that this store is the author of the all the incidents that have been occurring in the park. We are fully aware of the Lion Retail ruling that says there is collective responsibility where there is confirmed evidence of alcohol related harm. By a very narrow margin, a refusal to renewal cannot be established.

76. Similarly, we have no power to require the store to relocate elsewhere but it is something Mr. Singh might want to consider going forward if alternative tenancies

become available.

77. **By majority decision, we are persuaded to renew the off licence but because of the environment that they operate in, it will come with heightened responsibilities and discretionary conditions.**
78. *In the dissenting view the third member of the committee believes that during the period of this renewal the applicant has not sold alcohol responsibly as required by the Object of the Act. The Applicant rejected this proposition.*
79. *In the members opinion, the product ranges, prices and display amount to the promotion and encouragement of the excessive consumption of alcohol.*
80. *The premises are adjacent to a small public park. The park includes a children's playground (50 metres from the premises), public furniture and toilets. Small community offices, including the public library, face the park. There has been extensive evidence of anti-social behaviour, crime and public drinking in the park in 2023.*
81. *The applicant rejected the proposition that the sale of alcohol from his premises may contribute to any of the harm described in Section 4(2) (a) or (b) in the immediate vicinity of his premises.*
82. *However, he acknowledged that the amenity and good order of the park is affected by public drinking and disorderly behaviour but expressed the view that it is contributed to by other licensed premises and that it is a matter for Police.*
83. *In considering the renewal, the dissenting member believes that the amenity and good order of the locality would likely be increased by more than a minor extent by the effects of a refusal to renew the licence.*
84. *In the members opinion, the applicant has sold, displayed or promoted alcohol irresponsibly contrary to the object of the Act. In such a sensitive area and deprived community, evidence suggests that licensed premises and the nearby public park are incompatible.*
85. *The dissenting member was disappointed by the applicant's promotion of cheap alcohol and an apparent lack of social conscience for the alcohol related problems immediately proximate to his premises.*
86. Overall, we expect a vastly improved range of low and zero percent beer products to be stocked and promoted.

87. We expect Jarnail Singh to become actively involved in the local community. He cannot sit back and say we don't serve minors or intoxicated people. The problems occurring outside are not our responsibility.
88. We give credit for consenting to a condition forbidding single sales. We also intend to alter the designation from Restricted Area to Supervised Area in line with other bottle stores in New Zealand. It is not safe or responsible to require adults to leave their children outside or in the car when parents are in store making purchases.
89. All these expectations will no doubt be closely monitored by the regulatory agencies and the objectors.

The Decision

The Far North District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, approves the renewal of the Licence for three (3) years from the expiry of the current licence on the mandatory conditions and a number of discretionary conditions as negotiated with the applicant at the hearing.

The following conditions are to apply:

1. Alcohol may be sold on, or delivered from, the premises for consumption off the premises, or supplied free as a sample for consumption on the premises, only on the following days and hours: **Monday to Sunday 9.00am to 10.00pm;**
2. No alcohol is to be sold on, or delivered from, the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day.
3. While alcohol is being supplied free as a sample, water is to be provided to patrons free of charge at the place where the samples are being supplied.
4. The whole of the premises is designated as a **Supervised Area;**
5. **The Licensee must have available for consumption off 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. A properly appointed certificated or Acting or Temporary Manager must be on duty at all times, within the licensed area, 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.

7. There is to be no advertising of RTD products on the external parts of the store.
8. There shall be no single sales of shots, ciders, RTDs or mainstream beers under 600ml and under \$6.00 per unit. All singles resulting from box breakages are to be clipped up into a minimum packaging of 4's and 6's.
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 inside of the premises so as to be easily read by people entering each principal entrance.

DATED at Kaikohe this 19th day of February 2024



Murray Clearwater
Commissioner
For the Far North District Licensing Committee

NOTE

Sections 152 to 155 of the Act relating to the right to appeal this decision are in effect.

This decision is suspended until 10 working days after the date on which notice of this decision is given to the applicant, agencies and the objectors.