



# **DECISION**

## **64/DLC OCT/2024**

### **Timaru District Licensing Committee Meeting**

### **Friday 11 October 2024**

**Ref: 1715747**

**IN THE MATTER** Of the Sale and Supply of Alcohol Act 2012 (“the Act”)

**AND**

**IN THE MATTER** Of an application by **Timaru South Cosmopolitan Club Incorporated** for a **Club Licence Renewal**, pursuant to section 105 and 127 of the Act

### **BEFORE THE TIMARU DISTRICT LICENCING COMMITTEE**

Commissioner Sharyn Cain  
Member Cr Peter Burt  
Member Cr Gavin Oliver

### **BY WAY OF PUBLIC HEARING**

Timaru District Licencing Committee Hearing was held in the Council Chambers, Timaru District Council, 2 King George Place, Timaru on Friday 11 October 2024 commencing at 9.30am

### **APPEARANCES**

Mr Wayne McBeath (Manager) – Applicant

Mr Shane Clarke (Club President) – Applicant

Sharon Hoogenraad – Chief Licensing Inspector, Timaru District Council – Reporting Agency

### **RESERVED DECISION OF THE TIMARU DISTRICT LICENCING COMMITTEE**

### **BACKGROUND INFORMATION**

1. This is an application by Timaru South Cosmopolitan Club Incorporated ('the applicant') for a Club Licence Renewal pursuant to sections 105 and 127 of the Sale and Supply of Alcohol Act 2012 ('the Act')
2. The criterion found at section 105 of the Act applies to this application.
3. The application was received on 27 May 2024, and was duly advertised with no objections received from the public.
4. Timaru District Council Chief Licensing Inspector Sharon Hoogenraad supplied a report dated 9 August 2024 that offered no objection but recommended a truncated renewal period of one year due to concerns raised within the report.

5. Health New Zealand Alcohol Licensing Officer Paula Williams supplied a report dated 14 June 2024 that offered no objection but recommended a truncated renewal period of one year, and further putting some explicit conditions to alleviate concerns raised within the report.
6. New Zealand Police Alcohol Harm Reduction Officer Sergeant Cameron McBride supplied a report dated 20 June 2024 that offered no objection but supported a truncated renewal period.
7. The Commissioner reviewed all the documentation provided and was not satisfied that this application could be decided on the papers due to concerns raised and recommendations received by the reporting agencies, and her own concerns that required further investigation, hence a public hearing being required.

## **THE HEARING REPORTS AND SUBMISSIONS – IN SUMMARY**

### **APPLICANT – MR WAYNE MCBEATH AND MR SHANE CLARKE**

8. The brief of evidence was taken as read.
9. Mr McBeath explained that they were closed for 3-4 months and that the club had run up quite a bit of debt. He explained some of the reasons for this and that they had managed to secure \$300,000 from a backer to cover the debt.
10. Mr McBeath further explained their current financial position and mechanisms they had put in place to ensure that payments were made on time and the club could understand what revenue they required to meet those expenses. He believed this was working well now.
11. When questioned regarding the timeline and how the removal of Incorporated Society status had occurred, Mr McBeath submitted that prior to 2018 the club had no problems furnishing their audited accounts to the Incorporated Societies.
12. Following 2018 the auditing standards started to change and they had to go through an auditor, rather than a charted accountant. They experienced problems getting an auditor to take them on, and he submitted that they (auditors) prioritised those who could pay them up front.
13. When clarification was sought regarding if the club's financial position was the issue Mr McBeath clarified that it was their accounting system, Accredo, that was believed to be too amateurish and did not provide enough information.
14. The accountant, auditor, and the club's solicitor recommended the club move to Xero accounting, which the club committee agreed to. Mr McBeath submitted that he was against the auditor wanting to go back three years with the financials. He stated that there was a lot of work involved in finding the invoices back three years, plus up to date.
15. Mr McBeath submitted that in the last six months the club have received their 2021 audited accounts, but that the auditor couldn't provide a timeline of when the 2022 and 2023 would be completed.

16. Mr McBeath further explained that the Department of Internal Affairs required audited accounts as part of gaming licence requirements. The club provided draft accounts, and those were not accepted.
17. When questioned regarding communication with the Incorporated Society and/or the Department of Internal Affairs (DIA) from 2019 forward, Mr McBeath stated they were having pretty much a weekly conversation with the DIA, with him going back to them every Friday morning to report where they were at.
18. Clarification was sought around when that started, which was leading up to the removal of the machines, not since the issues began in 2019.
19. The DIA had issued the licence for one year to allow them to supply the audited accounts, but Mr McBeath submitted that during that time they ended up losing the incorporated society status, and DIA got hold of that information and told them they had to turn the machines off.
20. The Commissioner sought clarification on what was their understanding of how or why the club lost their Incorporated Society status, and whether there had been any conversations or correspondence with the Incorporated Society leading up to that point.
21. Mr McBeath stated that they hadn't had any communications with the Incorporated Society and that he thinks, along with 400 odd other Incorporated Societies, they were looking at re registration and they pursued all the clubs that hadn't furnished financials and just chopped them with no notification, no nothing.
22. When asked if Mr McBeath was aware of the responsibilities he replied yes, and when further questioned whether he conceded that they are supposed to understand the process, he responded "yeah" they were aware when it happened, why it happened.
23. Mr McBeath submitted that they then (after the loss of status) tried sending draft accounts and "everything" in, but the Society's position was that they required audited accounts also.
24. Mr McBeath stated the process they went through with the legal team at the Incorporated Society or Companies Office, and that they had agreed to restore the clubs Incorporated Society status back to their original incorporation date on the understanding that they provided the financials as soon as they could.
25. They have supplied 2021 audited accounts now, 2022 and 2023 are ready for review, and draft 2024 accounts are nearing completion.
26. The Commissioner questioned when they were notified of their loss of Incorporated Society status in September 2023 were they aware what that would mean with regard to their liquor licence.
27. Mr McBeath submitted that he supposes there was a little bit of ignorance there too as they hadn't thought about the legal name as far as liquor was concerned, or any other licence they had, so it hit them pretty quick and wasn't nice.

28. The Commissioner spoke regarding the importance of communication, education, and seeking early support and advice when any issues arise, particularly where you have legal obligations.
29. Mr McBeath submitted that he is the employed Manager of the Timaru South Cosmopolitan Club Incorporated and has held this role for 18 years.
30. Mr Clarke submitted that he is the President of the Club Board, a position he took over in September 2023.
31. Mr Clarke submitted that although it hasn't been good, it had been good for him to learn a lot through the process and that he has learnt a lot that they've (the Board) taken seriously.
32. The Commissioner commented regarding the fact that being volunteers, whilst understandable, could not be used as an excuse. It is still the expectation that the board knows their obligations or seeks advice and support from someone who can assist with education.
33. The Commissioner directed further commentary to Mr McBeath, that after 18 years in an employed Managers position, and as a holder of a Duty Managers Certificate, he should be particularly conversant with the Sale and Supply of Alcohol Act, and would imagine it is his responsibility to make sure the board is aware of what they need to do.
34. The Commissioner noted that the information regarding the loss of status was brought to the attention of the Licensing Inspector following information provided from an external source and reiterated that this is never a good thing, and why communication is really key.
35. The Commissioner further commented that the club could probably consider themselves quite fortunate that an Alcohol Infringement Notice (AON) was not issued, or further action taken by the Police.
36. Mr McBeath was then questioned regarding what sort of staff training and meetings were going on prior to that time, as the Health New Zealand report stated the applicant was not able to supply any evidence of staffing, training, and systems the club uses to comply with the law, and the applicant had stated the computers couldn't be accessed as reasoning.
37. Mr McBeath stated they were still having a monthly meeting where no documentation was taken down and the minutes weren't recorded but they would sit around the table and discuss.
38. After the meeting with the agencies, they got quite a bit of stuff out of that and went and put them in place straight away.
39. Their minutes are now recorded and going into a toolbox folder, along with reciprocal rights, duty managers certificates, "everything's in there".
40. Incidents of any description are being recorded.

41. They have a joint meeting now, a full staff meeting, which includes kitchen, fire evacuation and everything. It goes for over an hour and are all recorded now, which they weren't before.
42. Questioned regarding ongoing training for staff members and himself, Mr McBeath stated they are using the Servewise programme, and they are picking out sections of the Act and going over them at meetings and training.
43. They are also discussing the Licence to Serve newsletter at meetings and use it to reiterate the expectations of staff e.g. making sure the correct duty managers name is up.
44. The Commissioner commended Mr McBeath on incorporating some of the things suggested by the agencies and hoped that showed the support that is available.
45. Mr McBeath stated that they also took on board comments regarding keeping good records and they are now keeping a log of users, dates, and times for their courtesy vehicle.
46. The Commissioner reiterated the importance of recording things down and that the agencies are there to assist. It is firstly about education and not setting people up to fail.
47. Mr McBeath stated that incoming committee members go through Club Care which covers a few aspects of board members responsibilities and that they are waiting for one to happen locally.
48. The plan is to run through the accounting system with the board as well, with the board currently receiving monthly financials.
49. Mr McBeath explained that the election process can mean that some board members have no business acumen, so it is difficult trying to explain things and trying to run board meetings for everyone.
50. He further stated that the current President, Mr Clarke, has a finance committee of 3-4 people formed which can make a lot of decisions and take recommendations back to the full board for ratification.
51. The Commissioner suggested they may consider a subcommittee around regulation, which could include gaming and other licencing, and could potentially have the initial interactions with the likes of the agencies. This was provided as a suggestion only.
52. Mr Clarke stated that they hadn't had their first official meeting yet but that at a get together following the Annual General Meeting he had explained to the incoming members that they've made a commitment, they're running a business, they have responsibilities, and he wants them to be aware of what their role is.
53. The Commissioner then questioned whether they have noted that the agencies have asked for a truncation, whether they understand what that means, why they think the agencies have asked for that, and should we grant that?
54. In asking these questions the Commissioner noted that as they're aware, a licence is a privilege, not a right. Three years is generally granted, but the District Licensing

Committee can grant less than that if they want to have just a little bit more oversight of what's happening. This is used as an opportunity to assist the club through the journey to better processes.

55. Mr McBeath responded "Yeah"
56. The Commissioner further advised that another couple of things the District Licensing Committee may look at is asking for some extra training to be done within a certain timeframe, or regular meetings with the tri agencies. When asked if they understood that there may be some conditions potentially put on the renewals and that they would be designed to assist the club, Mr McBeath responded "Yeah"
57. The Commissioner also advised that the applicant needed to be aware that there is also the outcome that the renewal could be declined.
58. Panel member Cr Burt questioned the applicant regarding whether they acknowledged that their own short comings put themselves in this position.
59. Mr McBeath stated "Yeah in hindsight..." and then advised of a change in their constitution that passed on the 28 September 2024 which allows for the financials to be annually reviewed by a chartered accountant now rather than audit. The financial end of year date is 30 June with the Annual General Meeting previously required to be within three months but this has been extended to October to allow time for the accounts to be reviewed. Mr McBeath submitted that this will bring them up to date from 2024 onwards.
60. The Commissioner sought to clarify what was being asked by Cr Burt, in that this was not out of the ordinary for an incident of this nature to draw the attention of the agencies and further the District Licensing Committee.
61. It was asked if the applicant understood that this hearing was a decision of the District Licensing Committee with regard to legislation and responsibilities under the Act, and that this could've potentially had more serious consequences. Mr Clarke responded "absolutely"
62. Cr Burt commented that the applicant has shown a continuous improvement but that it is basically just what is required, and he suggested that the applicant may look at becoming an exemplar in this particular industry.
63. Cr Burt reminded the applicant that they are in a highly regulated environment.
64. He suggested that the Board may consider reaching out to the South Canterbury Chamber of Commerce (the Chamber) to assist with understanding of liabilities, critical risks, audit processes, templates, governance, and other regulatory aspects.
65. Mr McBeath stated that they are a member of the Chamber and are looking at getting in touch with them.
66. Mr Clarke also stated that the Chamber is certainly on their radar.
67. The Commissioner reiterated that it is important to take up opportunities that are available to them through the Cahmber, Clubs NZ, and any other experts in a particular field.

68. Cr Oliver commented that he was a bit perplexed that losing their Incorporated Society status wouldn't have flagged up some real red flags. He noted concern that no one sitting on the board would have flagged that there were serious issues and questions that should have been answered around the liquor licence and how that stood after losing that status.
69. Cr Oliver reiterated the highly regulated environment the applicant is working within and his concerns that the knowledge base is not there in the operations or the governance part. He commented that there is a fine line between lack of knowledge and ignorance.
70. Cr Oliver directed commentary to Mr Clarke to look at better reporting processes and getting more in touch with the operations side of the business.

#### **EVIDENCE PROVIDED**

71. An excerpt of a letter that appears to have been sent to the Department of Internal Affairs re the club gaming licence – signature dated 21 January 2024
72. Minutes of the 22 August 2024 monthly staff meeting of the Timaru South Cosmopolitan Club
73. Minutes of the 12 September 2024 monthly staff meeting of the Timaru South Cosmopolitan Club
74. Template of the Courtesy Van pick up and drop off schedule
75. Timaru South Cosmopolitan Club Incorporated – Evacuation Scheme Document

#### **REPORTING AGENCY – CHIEF LICENSING INSPECTOR SHARON HOOGENRAAD**

76. The report was taken as read.
77. Mrs Hoogenraad was asked to briefly explain her suggestion for truncation of the renewal.
78. Mrs Hoogenraad submitted that she has had a couple of site visits with the applicant, and also an education night and felt that the club perhaps needs a year to prove that they have taken on board what has been raised by the agencies and put processes in place to ensure that going forward that they have everything required when it comes time for renewal.
79. She stated that they don't want to be going down the road of enforcement and that they try to do a graduated response, and this is how they see that graduated response working.
80. When asked how she felt the interactions with the applicant went and whether the applicant was receptive, Mrs Hoogenraad submitted that at their first visit (with Police) she felt they knew it was coming but just didn't know when. On the second visit Mrs

Hoogenraad felt there was a bit of push back from Mr McBeath about them coming in again.

81. Mrs Hoogenraad expressed her disappointment that when she asked Mr McBeath if he was sort of expecting them to be there, he responded "Yeah", she also stated that in her personal opinion as an inspector she thinks it was ignorance and not a lack of knowledge.
82. The Commissioner asked the inspector to explain to the applicant what would happen if a club OFF licence is declined or lost now.
83. Mrs Hoogenraad explained for the applicant that clubs who held OFF licences under the old Sale of Liquor Act 1989 were grand parented under the current Act but if the club licence failed to be renewed or gets declined then a club will never hold an OFF licence again for that particular premise.
84. The Commissioner emphasised to the applicant that they need to fully understand the potential consequences and outcomes that can occur when breaches of regulation happen.

#### **EVIDENCE PROVIDED**

85. Nothing additional to the case file

#### **REPORTING AGENCY – NEW ZEALAND POLICE SERGEANT CAMERON MCBRIDE**

86. The report was taken as read. The New Zealand Police did not attend the hearing.

#### **REPORTING AGENCY – HEALTH NEW ZEALAND, ALCOHOL LICENSING OFFICER, PAULA WILLIAMS**

87. The report was taken as read. Health New Zealand did not attend the hearing.

#### **FINDINGS**

88. 105 Criteria for issue of licences
89. In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
  - (1) (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) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence;
- (i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—
  - (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
  - (ii) it is nevertheless desirable not to issue any further licences;
- (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.

(2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

#### **RELEVANT SECTIONS OF SECTION 105 ADDRESSED**

90. The committee is satisfied that the requirements under Section 105 (1) a, c, d, e, f, g, h, and i (i and ii) have been suitably met.

91. Section 105 (1) b, j and k will be addressed below.

#### **Suitability of Applicant –**

92. The committee is concerned by the lack of knowledge and understanding of both the employed Manager Mr McBeath, and the Club Board with regard to their responsibilities under the Act.

93. This was highlighted by continuing to sell and supply alcohol for a period of months following the club's loss of Incorporated Society status, even when the Department of Internal Affairs removed their gaming licence which should have prompted an assessment of other regulatory compliance matters.

94. The committee also has concerns about the lack of transparency and communication exhibited by the applicant, only appearing to act when caught out.

95. The committee notes that Mr Clarke has come into the position as the Club President at a very difficult time, and we commend him on his decision to remain in the position

to try and help resolve the current issues and assist in making sure the club meets their obligations and responsibilities under the Act.

**Whether the applicant has appropriate systems, staff, and training to comply with the law**

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96. The committee notes that disparity between the comments reported in the Health New Zealand report that Mr McBeath stated records could not be supplied due to technical issues with their computer system but then his comments at the hearing that they had not been recorded in the past.
97. The committee finds that as an employed manager of 18 years' experience, Mr McBeath should be very conversant with the legislation, and that the board should be able to have an expectation of appropriate reporting and advice to be forthcoming. This does not appear to have been the case, but the committee is pleased to be advised that steps are being made to rectify the situation.
98. The committee is pleased to note that some of the suggestions made by the agencies have been put into practice, as reported above, but believes that more assistance and oversight will be required to ensure that improvement continues.
99. The committee notes that the systems and training required are important for both the operational and governance arms of the business.
100. **Any matters dealt with in any report from the Police, or an Inspector, made under section 203**
101. **Reporting Agencies** - The reporting agencies' positions have been discussed above.

**DECISION OF THE COMMITTEE**

102. The Timaru District Licensing Committee (the committee) is committed to ensuring the object and intent of The Sale and Supply of Alcohol Act 2012 is adhered to.
103. The committee maintains that the opportunity to hold a Club Licence is a privilege, not a right, and comes with substantial responsibilities of a serious nature as evidenced by the penalties and fines that can result from breaches.
104. The committee is satisfied that the requirements under Section 105 (1) a, c, d, e, f, g, h, and i (i and ii) have been suitably met and that the concerns noted under Section 105 (1) b, j and k are being addressed and will be mitigated by the decision to truncate the renewal and with the addition of the following discretionary conditions.
105. Please note that both the ON and OFF licence renewals will have the truncated period, and the discretionary conditions attached.
106. The license will be granted for a truncated period of one year.
107. The following discretionary conditions will be added to this renewal:

- 1 A six-monthly report will be requested from the reporting agencies
- 2 The applicant will need to provide evidence of further relevant training on the Sale and Supply of Alcohol Act (the Act) for both staff and board members
- 3 The applicant will need to continue to provide the minutes and records of staff meetings and trainings
- 4 The applicant will need to provide evidence of reporting between staff and board members of regulatory compliance and club licensing requirements with regard to the Act.
- 5 The applicant will need to provide a copy of their amended constitution.

**RIGHT OF APPEAL – under Section 154 and 155 of the Sale and Supply of Alcohol Act 2012**

108. Section 154 - Any party to any proceedings before a licensing committee who is dissatisfied with the decision, or any part of the decision may appeal to the licensing authority against the decision or any part of the decision.
109. Section 155 - **Procedure for commencing appeal**
  - (1) An appeal under section 154 must be made by the appellant giving notice of appeal to the licensing authority within 10 working days after the date on which notice of the decision is given to that party.
  - (2) Despite subsection (1), on the application of any person having a right of appeal under this section, the licensing authority may extend the time for making an appeal to any time it sees fit if the licensing authority is of the opinion that there was reasonable cause for the failure or inability of the appellant to give notice within the prescribed time.
  - (3) The notice of appeal must—
    - (a) be in writing; and
    - (b) specify the grounds of appeal in sufficient detail to fully inform the licensing authority and other parties of the issues in the appeal; and
    - (c) be sent to the secretary of the licensing authority; and
    - (d) be accompanied by the prescribed fee.
  - (4) The Police, inspectors, and Medical Officers of Health are not required to pay the prescribed fee.
  - (5) Either before or immediately after the notice of appeal is sent to the secretary of the licensing authority, a copy of the notice must be served on each of the other parties to the proceedings before the licensing committee, and a copy left with the secretary of that licensing committee.

(6) As soon as possible after the receipt by the secretary of the licensing committee of a copy of a notice of appeal, the secretary must send to the secretary of the licensing authority -

- (a) any application and supporting documents filed with the licensing committee, and any written submissions, statements, reports, and other papers relating to the decision appealed against;
- (b) a copy of any notes or other record made by the licensing committee of the evidence given at the hearing;
- (c) any exhibits in the custody of the licensing committee;
- (d) a copy of the decision appealed against.

**Dated at Timaru, on this 17th day of October 2024**



Sharyn Cain

Commissioner

Timaru District Licensing Committee