

**IN THE MATTER**

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

**AND**

**IN THE MATTER**

of an application by **NEXUS WINE & CAFE LIMITED** for the grant of an ON Licence pursuant to s.100 of the Act in respect of premises situated at 38-44 Bridge Street, Tokoroa, to be known as "Nexus Wine & Cafe"

**BEFORE THE SOUTH WAIKATO DISTRICT LICENSING COMMITTEE**

Chairman: Murray Clearwater  
Member: Cr Jeff Gash  
Member: Cr Adrienne Bell

**HEARING** at Tokoroa on 2 May 2019

**APPEARANCES**

Mr Robert Davies– for the applicant Nexus Wine & Café Limited  
Mrs. Karen Forbes for the applicant Nexus Wine & Café Limited  
Ms. Jules Smale – Tokoroa Alcohol Licensing Inspector – to assist  
Senior Constable Marian Sherwood– Police Alcohol Harm Reduction Officer – to assist  
The Medical Officer of Health- not opposed and no attendance

Mr Colin Bridle- Objector  
Dr Grant Hewison counsel for the objector

**RESERVED DECISION OF THE COMMITTEE**

**Introduction & Background**

1. In an application dated the 29<sup>th</sup> of January 2019, Nexus Wine & Cafe Limited

applied for an On Licence in respect of premises situated at 38-44 Bridge Street, Tokoroa, to be known as "Nexus Wine & Cafe. It was publicly notified in the South Waikato News on the 30<sup>th</sup> of January 2019 and the 6<sup>th</sup> of February 2019, and one public objection was received within the allowed timeframe.

2. The applicant sought the licensed hours of Monday to Sunday 9.00am to 12 midnight. These hours are within the default national maximum trading hours for on licences. There is no Local Alcohol Policy in place for the South Waikato area.
3. The proposed business is to be situated in a block of three adjoining buildings that previously housed Pockets 8 Ball Club. That activity operated for many years under a Club Licence.
4. Pockets 8 Ball was placed into liquidation in the Rotorua High Court on 10 December 2018. They ceased trading on that date and the premises, and the 18-gaming machine contained within, have been idle since that date.
5. A consortium of local business people have formed a company and seek to reopen the complex as a tavern with a restaurant/café in one building, a lounge and function room in the second and retain the gaming room in the third building.
6. They have purchased the land, buildings and chattels from the liquidator, KPMG, and renovations are underway in the restaurant/café side of the complex.
7. There has been significant publicity and conversations around the liquidation of Pockets 8 Ball and a number of potential conflicts of interest were raised with some of the proposed DLC Panel members.
8. It was pragmatically decided to appoint an independent chairperson for the Committee and to examine and resolve (if possible) the other potential conflicts. The current panel makeup was eventually formulated and is accepted by all parties.
9. It was also argued, by the applicant, that the one public objector, Colin Bridle, did not have a greater interest than the public at large and he should not be granted standing or be permitted to give evidence before the Committee. Our examination of his status and the weighing of his evidence is detailed later in this decision.
10. However we do comment at this point that, even if there was no public objection, due the background issues relating to this matter, it would have been highly likely that we would have exercised our powers pursuant to Section 202(1) of the Act and set it down for public hearing in any case.

## Applicant's Evidence

11. Mr Davies provided the Committee with a helpful opening and called one witness for the applicant company.
12. We heard from one of the five directors of Nexus Wine & Cafe Limited, Mrs. Karen May Forbes, who spoke to the application. She told the Committee that a group of 30 investors had collated a significant sum of money to purchase the land and buildings and reopen the business as a tavern. They also had sufficient funding to renovate the complex and that process was already underway.
13. The bar and the kitchen are to be doubled in size, one of the buildings is to be reroofed and an ungraded fire safety alarm system is to be installed.
14. She confirmed their intention was to run the business "principally as a tavern" seven days a week between 9.00am and 12 midnight.
15. They have employed a certificated General Manager, Elaine Dean, who will oversee the daily operation of the business. A wide range of substantive food items will be made available and the business will 'out cater' food for functions and business dinners etc. They will employ additional staff including certificated managers as the business expands.
16. They have contacted the organisers of the South Waikato Alcohol Accord Group and will become active members should a licence be granted.
17. She told us the business will continue to have three entrances. *"The existing principal entrance will be retained. Other entrances provide direct access to different parts of the premises. There will also be 18 gaming machines, run by Nexus on behalf of the Tokoroa Club. This arrangement means the Tokoroa Club will own the machines and Nexus will run the machines under its own class 4 licence."*
18. Mrs. Forbes told us that she did not believe Mr Bridle had status as an objector and commented on the lack of weight and veracity of the points raised in Mr Bridle's objection. We too, will make comment on the allegations raised by Mr Bridle and his supporters later in this decision.
19. She helpfully provided us with biographies of the directorship, the enhanced menu and the catering menu that will be offered.
20. Under cross-examination she confirmed that there would be no on-site smokers' area and that they would have to go out on to the street to smoke. There was no formal business plan prepared for the activity at this stage, but they had sufficient funding to get the business up and running and through its infancy.

21. In response to questions from the Committee she confirmed that the Gaming Licence application was still with the DIA and had not been approved at this time.
22. She confirmed that there would be no pool tables at the venue and no big screen TVs in the lounges.
23. When asked about the projected income streams from alcohol, food and gaming she said they had been told that gaming could not be more than 49% of the income revenues.
24. She confirmed that the applicants sought a split designation of the three premises i.e. a Supervised Area for the function room, a Restricted Area for the gaming room and the restaurant/café was to be undesignated.
25. Mrs. Forbes did not seem to understand the criteria that the Committee must apply before designating any area of a licensed premises a Supervised Area or a Restricted Area and that the principal, or exclusive, use of the areas, respectively, must be the sale, supply or consumption of alcohol.
26. When asked how they were going to ensure that the principal revenue stream for the business would be alcohol and other refreshments she said they "*just would.*"
27. Mr Davies confirmed with Mrs. Forbes, during matters arising, that the business would run as a tavern.
28. In his written closings Mr Davies reiterated his view that the applicant was a suitable entity to hold a licence and would operate as a tavern. He invited the Committee to devise an amended designation regime as we saw fit.
29. He also provided a refreshed floorplan showing only the gaming area as a Supervised Area and the remaining two areas, i.e. the function room and the restaurant/café as undesignated.

### **Inspector's Evidence**

30. The Inspector's report was taken as read and Ms. Smale responded to questions from the objector and the applicant's counsel.
31. Inspector Smale rejected criticism from the objector that the application was significantly deficient and/or inaccurate when first lodged.
32. She stated that applying for, and obtaining, a licence was a process not an event and that the contents of the application were developed and added to as the certification and advertising processes take place.

## **Objectors Evidence**

33. Before the substantive hearing commenced, we heard from both the objector and the applicant and considered the status of Colin Bridle as an objector.
34. It was the applicant's view that Mr Bridle did not have a greater interest in the application than the public at large and that we should not hear from him.
35. In support of that position Mr Davies said that although Mr Bridle lived within the 'notional' 1 kilometre radius of the proposed premises his house was separated from the venue by a railway line and other properties none of which had objected to the application.
36. The applicant believed that Mr Bridle was on a crusade to eliminate gaming machines from the town and that this was his true motive for objecting. And further that he had not raised any substantive Section 105 matters in his objection.
37. Mr Bridle had support from Dr Grant Hewison as counsel. Dr Hewison is also well known in these circles as a campaigner against gaming machines.
38. In support of his client status, Dr Hewison told us his client lived only 622 metres from the premises as the crow flies and is affected by noise from the CBD and drunken behaviour of CBD patrons using Bridge Street and Papanui Street as their thoroughfares on the way home.
39. Under cross-examination Mr Bridle confirmed that he has suffered damage to his property, albeit historically, and that he should be granted status to speak against the application. He confirmed that he had not lodged any noise complaints against the previous operator of these premises.

## **Our Decision relating to standing**

40. We acknowledge from the outset that the decision to grant standing, or not, was finely balanced. We took in to account the following factual matters:
  - Tokoroa is a relatively small township
  - Mr Bridle lives 622 metres from the proposed premises
  - Patrons from the CBD premises do use Bridge Street and Papanui Street (where he lives) as a thoroughfare past his house.
  - We accept that he has been subjected to low levels of noise and vandalism albeit historically

We also took into account:

- The intent of the Act which is to give greater opportunities for community members to be involved in licensing decision processes;
  - The Purpose of this Act being to provide a “reasonable system of control” and its administration helps achieve the object of the Act.
  - Several of the points raised in Mr Bridles objection appeared to be misunderstandings, and/or outside the scope of the Act and specifically Section 105;
  - However, some of them, namely; suitability 105(1)(b), services offered 105(1)(g), design and layout 105(1)(e) and days and hours 105(1)(d) are Section 105 matters and were legitimately raised;
  - Even if we were to grant status to Mr Bridle the second stage of considering an objector’s evidence is to decide what weight, if any, that should be applied to that evidence.
41. We decided to adopt a precautionary approach and grant status to Mr Bridle. We saw merit in allowing him to present his evidence and also saw an opportunity to inform him of the Committee’s views on some of the points he has attempted to raise. We discuss these in greater depth later in this decision.
42. On that basis we then heard from Mr Colin Bridle.
43. Mr Bridle told us he was born in Tokoroa and had first-hand knowledge of problems associated with alcohol abuse and gambling addictions.
44. After dealing with his own issues he turned his life around between 2004 and 2006 and from 2005 to 2016 he was the Centre Manager for the town’s Salvation Army Community Ministry. In that role he had many clients caught up in alcohol abuse and gambling addictions. Clients with alcohol fueled domestic violence issues was also common.
45. In his role with a local church he still deals with parishioners with alcohol dependency, domestic violence and gambling addictions.
46. He then adopted a somewhat misguided attack on the perceived inaccuracy and illegitimacy of the application.
47. He did appropriately raise the issue of the principal activity in a tavern and outlined the provisions of the Act that require a tavern to be principally in the business of providing alcohol and other refreshments.
48. He believed that the business will struggle to prevent gaming revenue from becoming the principal revenue stream. To do so, he argued, would breach both this Act and the Gambling Act 2003.
49. To support his stance on principal activity he provided the audited accounts of

- the previous operator at the site that showed the principal income stream was from gaming and not the other activities at the Club.
50. In his written closing submission Mr Bridle again attacked the technical deficiencies on the application form. As we explained to him at the hearing applying for a licence is a process not an event. Applications are often amended and added to as the process rolls out with planning and building certificates being produced, evidence of public notifications etc.
  51. ARLA has ruled that applications don't even have to be signed, as they are just that, applications. There is no statutory declaration required for the process of applying for an alcohol licence.
  52. He asks us to follow the decision of ARLA in Davison V BBC WELLES LTD [2016] NZARLA 69 where ARLA ruled that they (the appellant) was not entitled to "more than it (originally) asked for."
  53. Mr Bridle misses one crucial point. That decision was issued 'on the papers' by the DLC and the Committee was absolutely right to issue the licence on the restrictive terms sought by the applicant. They are not entitled to ask for a second bite of the cherry unless they were to apply for a variation of licence.
  54. This case (Nexus) is different. The applicant has clearly stated what it intends to do and sets out the designations that it seeks. We have heard from the applicant on these issues, and the objector, and have sufficient information upon which to base our decision.
  55. Mr Bridle believes the applicant is constrained and cannot operate gaming machines or a TAB terminal without a variation to the alcohol licence (if one is to be granted). We have no mandate to do either under the provisions of SASAA.
  56. Mr Bridle correctly states that taverns "*must be used, or intended to be used, in the course of business principally for providing alcohol and other refreshments to the public*"
  57. He argues that recent case law supports his view that alcohol licences cannot be renewed for premises where gaming is the principal activity. He goes on to suggest that ARLA has also refused to grant a new licence in ***Hi Sport Bar [2018] NZARLA 273*** where it was alleged that the principal activity would be gambling.
  58. Again, he misses an important distinction in that Hi Sport Bar was a 'reinvention' of an existing business that had very recently had its renewal refused as the principal activity was deemed to be gambling.

59. Nexus is a new entity and is entitled to the presumption that it will operate, and indeed must operate, as a tavern.
60. Mr Bridle seeks to draw similarities between the previous operation of the venue and that proposed by Nexus.
61. While they may be valid concerns, and will indeed be challenges for the new entity, they are matters for the future.
62. In his closing, Mr Bridle respectfully acknowledges that in the absence of any opposition from the three agencies who are charged with the regulation and monitoring the licensee's compliance of the Act, the threshold that an objector must meet is "reasonably high."

### Relevant legislation

63. Section 5 Interpretation  
*tavern—(a) means premises used or intended to be used in the course of business principally for providing alcohol and other refreshments to the public;*
64. 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.*
65. 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).**

66. Section 105 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to grant a licence as follows:

**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) 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.**

**106 Considering effects of issue or renewal of licence on amenity and good order of locality**

**(1) In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to—**

**(a) the following matters (as they relate to the locality):**

**(i) current, and possible future, noise levels:**

**(ii) current, and possible future, levels of nuisance and vandalism:**

**(iii) the number of premises for which licences of the kind concerned are already held; and**

**(b) the extent to which the following purposes are compatible:**

**(i) the purposes for which land near the premises concerned is used:**

**(ii) the purposes for which those premises will be used if the licence is issued.**

**(2) In forming for the purposes of section 131(1)(b) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality):**

**(a) current, and possible future, noise levels:**

*(b)current, and possible future, levels of nuisance and vandalism.*

### **The Committee's Deliberations and Findings**

67. The Act requires that when deciding whether to grant a licence, or not, the licensing committee **must have regard** to the matters contained in section 105 and 106 of the Act.

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

68. As ARLA has said in **Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287**<sup>1</sup> we are required to “***step back and consider whether there is any evidence to suggest that granting the licence will be contrary to the object of the Act contained in s 4(1), namely that the sale, supply and consumption of alcohol should be undertaken safely and responsibly and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised***”

69. From the evidence adduced by the applicant we are sufficiently satisfied that the sale, supply and consumption of alcohol will be undertaken safely and responsibly should a licence be granted.

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

70. Section 105(1)(b) says that the applicant must be a suitable entity to hold an ON-licence.

71. We are satisfied that the applicant company and its directors are suitable to hold an alcohol licence.

72. During the hearing we flagged with the applicant that the on-going suitability encompasses more than that just what occurs on these premises and under the Act. The failure to comply with other related legislation can very quickly affect their ongoing suitability under this Act.

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

73. In respect of section 105(1)(c) of the Act there is no Local Alcohol Policy currently in the South Waikato District.

74. There is nothing for us to consider.

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<sup>1</sup> Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287

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

75. The proposed operating days and hours are **Monday to Sunday 9.00am to 12 midnight**. These are unremarkable and within the default national maximum trading hours for ON licences.

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

76. The Committee notes the intention of the applicant to retain the direct access in to the gaming room from 38 Bridge Street. We see this as potentially problematic in that it will likely provide unsupervised access for gaming customers and potentially will affect the applicant's ability to be principally in the business of selling alcohol and other refreshments.
77. We asked the applicant, via way of a Minute, to specifically obtain a response from DIA on this issue. In their response to the Committee the DIA was strangely silent on the separate entrance way issue other than to say that they have yet to decide on the overall outcome of the Class 4 Gaming Venue Licence application they have received from the Tokoroa Club.
78. We are also concerned that there is no intention to install pool tables or large screen TVs that are normally present in successful tavern style environments.
79. In the updated plan provided we now see a TV and a small bar is planned for the gaming room.

#### **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**

80. The applicant advised they intend to sell a large range of substantive food options and low and non-alcoholic beverages. They intend to out-cater food to businesses and organisations. No other goods are intended to be 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-alcohol refreshments, and good, and if so, which services.**

81. Gaming machines will be available for entertainment purposes on this site. The objector suggests that the 'non-disclosure' of that intention was deliberate and intended to deceive. We do not accept that suggestion.

#### **Section 105(1)(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.**

82. We are directed to the parameters of s.106(1) and to have regard to a series of matters (as they relate to the locality). Firstly, we consider current and possible future noise levels. There are no sustained noise complaints in the council records pertaining to these premises and we do not anticipate any due to the bar's location in the CBD.
83. Regarding the current, and possible future, levels of nuisance and vandalism there was no evidence adduced that there are greater concerns attached to these premises than to any others in the area. There was no opposition or concerns lodged by the Police in regard to this proposal.
84. We are further obliged to consider the number of premises for which licences of the kind concerned are already held. There are a number of other licensed premises in the area, but this is the dining and entertainment precinct of Tokoroa. In any case it is 'replacing' an 'existing' licensed premises and density issues were not raised.
85. We are required to take in to account "the purposes for which land near the premises concerned is used." No evidence was adduced of sensitive sites nearby that we should be concerned about.

**Section 105(1)(i) Whether (in its opinion) the amenity and good order of the locality are already badly affected by the effects of the issue of the 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.**

86. There is no evidence before us that the provisions of this section are applicable to this application.

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

87. The applicant advises that there will be several staff with manager's certificates employed to provide coverage for the proposed opening hours.
88. We were concerned that there was currently no business plan or training programmes prepared and made available to us. However, we accept that these can be prepared before the premises open if the licence is granted.
89. We sought an indicative budget for our viewing as part of the written closings. This was prepared and provided to the Committee, for their confidential viewing

only. Dr Hewison accepted that this would not be made available to the objector.

90. The budget confirmed what was adduced during the hearing, and what we already know, that the applicant's intention and projection is to trade as a tavern with the principal activity being the sale of alcohol and other refreshments.

**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**

91. The Police have not raised any matters in opposition.
92. The representative of the Medical Officer of Health has not raised any matters in opposition.
93. The Inspector reports that the application appears to meet the criteria for issue and recommends that it be granted. She told us she believed that Mr Bridle did have standing as an objector but that much of his 'evidence' did not relate to Section 105 matters.

**The Reasons for the Decision**

94. 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 achieve the Object of the Act.
95. We considered the evidence of Mr Bridle and the weight that we should apply to it, if any. Firstly, we say to Mr Bridle and his advisor that a 'scatter gun' approach in a licence objection is unhelpful and damages his credibility. We will not allow the processes, that we must conduct, to be deflected by any 'interest groups' to further their own agendas.
96. Secondly, we confirm that the decision on whether a Class 4 Gaming Licence can be issued and be operated at these premises is a matter solely for the DIA. We note that Section 67(k) of the Gambling Act 2003 clearly states that "The Secretary (of the DIA) must refuse to grant a class 4 venue licence unless the Secretary is satisfied that.....the class 4 venue is not used mainly for operating gaming machines."
97. It should now be acutely obvious to Mr Bridle that this Committee will require the applicant to operate within the parameters of the Sale and Supply of Alcohol Act 2012, and that includes the requirement to operate this business as a tavern.
98. We have no difficulty deciding that Nexus Wine & Café Limited is a suitable entity to hold an ON Licence despite the high-risk environment they choose to operate in.

99. The onus is clearly on the applicants to operate this business as a tavern with the principal activity being the sale of alcohol and other refreshments. Revenue from food sales and the gaming machines must each provide lesser income streams than alcohol and other refreshments.
100. We turn our mind to the matter of the designation of the premises. The applicant seeks a split designation i.e. a Supervised Area for the function room, a Restricted Area for the gaming room and the restaurant/café is to remain undesignated.
101. In their closing submissions the applicant acknowledges the parameters within which the DLC must operate in regard to designation. They now suggest that the 'middle' building or function room remain undesignated and that part of the café/bar could be a Supervised Area. They request that the gaming room be a Restricted Area but accept that the Committee may well impose a Supervised Area designation on that area.
102. Section 119 of the Act requires us to designate all or part of a tavern premises as a Supervised Area or a Restricted Area. We agree that the restaurant/café should be undesignated **up to 9.00pm** as the principal activity is likely to be the sale of food with other refreshments and alcohol as an accompaniment. For clarity, and ease of management, the restaurant/café area and the function room will be designated as Supervised Areas **from 9.00pm on each night**. The gaming room will be designated as a **Supervised Area** at all times.
103. We will not be drawn in to designating a gaming room as a Restricted Area purely to accommodate gaming machines in line with previous decisions of the Liquor Licensing Authority. In **Thomas Edmund Leon Downes PH 485/2002<sup>2</sup> and Sporting Investments Limited PH 486/2002** the Authority gave a clear ruling incorporating three principals at paragraph 49, but the one of relevance to this case is:

***Gaming rooms per se will not be designated. Where the room or place in which the gaming machines are situated is not a bar within the confines of a hotel or tavern, a designation is inappropriate on the basis that the sale, supply or consumption of liquor is not the principal or exclusive activity."***

104. In Premier Restaurant & Tavern Limited<sup>3</sup> the Liquor Licensing Authority said at paragraph [62]:

***"If gaming machines are not the concern of this Authority, then why should this Authority impose a designation to enable the site operator***

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<sup>2</sup> Thomas Edmund Leon Downes PH 485/2002 and Sporting Investments Limited PH 486/2002

<sup>3</sup> Premier Restaurant & Tavern Limited LLA PH 474/2001

***to run a gaming parlour? ... In the final analysis we have a duty to exercise our discretion 'in the manner that is most likely to promote the object of the Act'. (s.4(2)). If gaming machines are beyond our purview, then why would we exercise a discretion which will not only encourage the spread of such machines, but bring the sale and supply (of alcohol) into disrepute?"***

105. In **Kim Ashton Williams LLA 2291/96** at paragraph **[46]** the Authority said:

***We have come to the view that in assessing which parts of any premises should be designated, our duty is to impose a designation on any bar or other area used principally or exclusively for the sale or consumption of liquor “<sup>4</sup> (our emphasis)***

106. We intend to designate the premises as follows: The Gaming Room will be a Supervised Area at all times. The restaurant/café and function room are undesignated until 9.00pm each day and thereafter becoming Supervised Areas until closing time. This regime can be reconsidered at renewal time in 12 months.
107. If licensees choose to responsibly designate gaming rooms as Restricted Areas under their obligations under the Gambling Act 2003 that is a matter for them.
108. As the Function Room and the Gaming Room are to be part of licensed premises the applicant must ensure that all patrons entering these areas of the building are properly assessed as to their status on the premises, including whether they are of age, and their level of sobriety. We imagine this will require dedicated staff in these areas and/or access to these areas will be only be permitted via the main bar area.
109. The onus will, of course, be on the applicant to turn words in to actions. It is often said that the first year is the 'probationary period' for licensees to prove themselves as competent operators. The ball is firmly in the hands of Mrs. Forbes, her fellow directors and their managers, to operate within the parameters of all legislation that is applicable to this business. We are sure the tavern will be closely monitored by the Police and the other agencies.

### **The Decision**

**The District Licensing Committee**, pursuant to the Sale and Supply of Alcohol Act 2012 **grants** an application by **Nexus Wine & Café Limited for an ON Licence in respect of premises situated at 38-44 Bridge Street, Tokoroa, subject to conditions.**

**We note that a certificate has been provided showing the activity complies with the building code. We understand that a Building Consent has been issued for**

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<sup>4</sup> Kim Ashton Williams LLA 2291/96

**some of the renovation work currently underway, but this has yet to be satisfied with either a CCC or CPU. The licence must not issue until the BC is satisfied.**

**Subject to the above, the Licence will be granted for 12 months from the date of issue on the conditions stated below:**

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours: **Monday to Sunday 9.00am to 12 midnight;**
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 premises is designated as follows: **The Gaming Room will be a Supervised Area at all times.** The restaurant/café and function room are undesignated until 9.00pm each day and thereafter becoming **Supervised Areas** until closing time.
4. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;
5. 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,
6. 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,
7. 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,
8. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises,
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 premises so as to be easily read by persons attending the premises.



**DATED** at TOKOROA this 23<sup>rd</sup> day of May 2019

A handwritten signature in black ink, appearing to read 'Murray Clearwater', enclosed within a thin black rectangular border.

Murray Clearwater  
Commissioner  
For the South Waikato District Licensing Committee

**NOTE**

**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 objector.**