

IN THE MATTER

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

AND

IN THE MATTER

of an application by **TWENTY NINE FOUNDERS 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, known as "Nexus Wine & Cafe"

BEFORE THE SOUTH WAIKATO DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Mayor Jenny Shattock
Member: Cr Hamish Daine

HEARING at Tokoroa on 7 June 2022

APPEARANCES

Mr. Simon Middlemiss– for the applicant Twenty Nine Founders Limited
Mr. Levi Harris for the applicant Twenty Nine Founders Limited
Ms. Sumreet Kaur for the applicant
Mr. Jay Bath for the applicant
Ms. Jules Smale – Tokoroa Alcohol Licensing Inspector – to assist
Sergeant Chris Turnbull– Police Alcohol Harm Reduction Officer – in opposition
Ms. Ashleigh Mail for the Medical Officer of Health- to assist

RESERVED DECISION OF THE COMMITTEE

Background

1. In November 2019, **Nexus Wine & Cafe Limited** was granted an On Licence in respect of premises situated at 38-44 Bridge Street, Tokoroa, to be known as "Nexus Wine & Cafe. The application was determined by way of a public hearing

after concerns were held that the business may operate mainly as a gaming venue. The licence was granted for a tavern style business and was promptly appealed to the Alcohol Regulatory Licensing Authority (ARLA) by the public objector.

2. ARLA agreed with the DLC that the licence should issue, and that the alcohol licensing process should not be allowed to be hijacked by pressure groups following their own agendas, regardless of how commendable that their motives might be.
3. By all account Nexus struggled to operate as a tavern and became more of a daytime, early evening, restaurant café with a small bar are containing the gaming machines. A renewal application was lodged prior to expiry in November 2020, and due to COVID restrictions, and waiting for agency reports, it had not been determined when the business was sold to Twenty Nine Founders Limited in May of 2021.
4. We had signaled to the original owners that a robust examination of the nature of the business would take place at renewal time, and we intend to do so even though there is a new licensee on board.
5. Twenty Nine Founders Limited has been operating the premises under Temporary Authority for the last 12 months due to delays in reporting mainly caused by the COVID pandemic.
6. In August 2021 the substantive ON Licence application was lodged and drew two public objections. As the applicant was applying for the same kind of licence and the same conditions as the previous licensee, any objection could not relate to any matter other than the suitability of the applicant.
7. The public objections were considered by the DLC, and standing was denied as the objections did not relate directly to the suitability of the applicant as prescribed in Section 101(4) & (4A) of the Act and again, an attempt was made to relitigate the presence of the gaming machines on this site.
8. In the weeks prior to this hearing there were two incidents of note involving allegations of intoxicated behaviour by patrons of Nexus. The Police sought, and were granted, permission to adduce evidence relating to these incidents and their concerns about the operation of Nexus.
9. It also came to our attention from the evidence, and from our own observations during a site visit, that Twenty Nine Founders has significantly remodeled the bar area in late 2021 and had relocated the gaming machines into a side room adjacent to the bar.

10. Prior to the hearing starting we were advised by the Police that three of the four witnesses that they intended to call would not be attending in person as they were directly involved with attending a fatal vehicle accident the day before in which a Police Officer's partner had been killed. Our condolences were expressed to the Police and their families.
11. Under the circumstances counsel for the applicant did not oppose the handing up of the witness statements, but did respectfully suggest, that the weighting that could be applied to those statements would be affected by the inability of the applicant to test the officers evidence.

Applicant's Evidence

12. Mr. Middlemiss provided the Committee with a helpful opening and called two witnesses for the applicant company. Firstly, we heard from Sumreet Kaur who is a newly appointed co-director of the business.
13. She told the Committee that she had been in New Zealand for the last 8 years and had worked in hospitality for most of the time either as a chef or front of house. She has recently applied for a managers certificate and is awaiting the outcome of the consideration of that application.
14. She has been at Nexus since July 2021, firstly as head chef, under the General Manager for the business, Manpreet Singh. She is now the General Manager of Nexus and a 'sister' business, Focal Point, following the recent resignation of Manpreet Singh.
15. Under guidance from her co-director, Jay Bath, she produced a raft of policies that she had recently formulated for the business. The first was a One Way Door (OWD) Policy that will not allow persons to enter the bar after 11.00pm, one hour before the 'current' (base licence) closing time.
16. The second is a Last Drinks and Closing Policy that states that last drinks will be called at 11.00pm and no alcoholic drinks will be served after 11.15pm. Patrons will be encouraged to progressively leave in an orderly fashion, and all had to be out by 12.00 midnight.
17. The third is a Training Policy outlining their intention to fully train staff and use the Hospitality NZ resources that are available as part of their membership of that organisation. She include evidence of recent training undertaken with Hospitality NZ and some additional in house training.
18. Fourthly she produced an Entry Policy outlining how they will refuse entry or remove intoxicated persons from the premises.

19. Next was an Intoxication Policy, which was somewhat surprisingly identical in wording to the Entry Policy.
20. Next was an Age Identification Policy and Incident Reporting Policy. (We discuss these documents later in the decision when we assess the application against the Section 105(j) criteria.)
21. Ms. Kaur also produced the new layout plan of the bar showing the refurbishments made to the area. Indeed, it is a much larger and more attractive area than the dingy setup under the previous operator. It was clear that Twenty Nine Founders were focusing more on alcohol sales than pushing the restaurant side of the business.
22. Ms. Kaur described the knowledge she had gained about Tokoroa whilst living in the area, and about the people who live here.
23. She said that they thought that Nexus was “running quite smoothly” until the recent incidents that the Police are going to be referring to.
24. As a result of those concerns she had strengthened the manager line up at Nexus to 4 certificated managers and two others, including herself, now have applications before the DLC.
25. Ms. Kaur also told us she was about to sign a contract with Armourguard to supply a Security Guard for Thursday to Saturday nights to further enhance the monitoring of patrons and entry/egress from the premises.
26. She confirmed that the applicants sought a split designation of the three parts of the building i.e., a Supervised Area for the bar and gaming room and the restaurant/café and function areas were to remain undesignated.
27. Ms. Kaur then addressed the two incidents on 27 March 2022 and 23 April 2022 that resulted in the Police dealing with several heavily intoxicated individuals. She attempted to deflect the blame from Nexus suggesting that the people involved were probably from other bars and/or had been refused entry to Nexus. While the Police evidence is not conclusive we are more than satisfied, that at least some of the protagonists and victims, dealt by the Police, came from Nexus and were intoxicated.
28. Under questioning she agreed with the Inspector that there would be sharing of staff and certificated managers between Nexus and Focal Point. She said she was willing to provide weekly rosters to the Inspector to demonstrate the coverage that they would have.

29. She was asked by the Police how she would manage intoxication. She said she would only serve one drink at a time and that she has refused service on at least one occasion. She said she was working in the bar on the night of the 23rd and because it was busy it took a lot longer to serve last drinks. When asked why she hadn't stopped serving at 11.15 pm as per their new Policy, she was unable to answer.
30. She confirmed that they sell shots of spirits and serve beer in the large 'quart' (750ml) bottles. She said they had decided not to sell quarts after 11.00pm to get all alcohol consumed by closing time. She agreed to remove quarts and shots of spirits from the bar menus if the Committee thought that was necessary.
31. In answer to questions from the Committee she said she personally works 40-50 hours a week and believed she had sufficient experienced staff appointed to the business.
32. When questioned by the Chair she advised that Jasbir Kaur is her Auntie and that Jasbir is the 100% shareholder of The Galaxy Group that holds all the shares of Twenty Nine Founders Limited. Jasbir Kaur's husband Harjinder Singh is the owner of the building.
33. Ms. Kaur was asked to name some of the offences that could be committed in licensed premises. It was explained to her that it is very important to know about the things that could go wrong, in order to do things right. She agreed with that concept.
34. Despite significant prompting she was barely able to recall any of the major offences such as serving minors, serving intoxicated persons, allowing intoxicated persons to remain on licensed premises and more importantly that it was an offence to allow a person to become intoxicated on licensed premises.
35. She was also asked to estimate the cost to the New Zealand taxpayers of alcohol related harm. Again, even with significant prompting, she was unable to link the financial impact, commonly accepted to be the region of several billions of dollars, to alcohol related harm in NZ , and specifically in Tokoroa, every year.
36. Regarding the recent appointment of security persons to the door, she said she was unaware of the need to ensure that they were COA qualified, nor did she know that a person cannot perform door staff duties without such a qualification. We find this difficult to believe and find it more likely that it was an attempt to have door staff 'on the cheap'.
37. She said that her staff had refused entry many times and cut off service to some of their patrons. She denied that the bar had regulars that were heavy drinkers. They had recently served 4 trespass orders on the offenders involved in the recent incidents.

38. Overall, Ms. Kaur was an impressive advocate for the business, but let herself down by her lack of awareness of the big picture around alcohol related harm and the skill set required to manage a high-risk tavern style premises.
39. Next we heard from Mr. Jay Bath who is co-director of Twenty Nine Founders Limited. He is said to be an experienced owner of licensed premises and gaming venues. He said he had been in daily contact with Manpreet Singh who was his on-site manager. Due to the recent incidents at Nexus and Manpreet's recent arrest for drink driving related matters he is no longer involved in the business.
40. He told us that he became a director of the business 'as a favour' to the owners. He agreed to impart his expertise on to the new on-site operators. He was disappointed in Manpreet, and he assured the Committee that Manpreet Singh was no longer involved in the company in any shape or form.
41. He was asked why he thought Sumreet Kaur was suitable to be the General Manager for both Nexus and Focal Point. He said she was well qualified and had been working well in the business.
42. When asked if he still had confidence in her after seeing her 'stumbles' under questioning he said "Yes, but she will still need more training and support".
43. He said he was aware of the recent appointment of Jaspreet Singh and agreed that rostering him on as Duty Manager to the busiest night of the week after 5 days on the job was a mistake. He had been assured by Manpreet Singh that Jaspreet was up to the task.
44. He confirmed to the Police that it was Manpreet who had employed Hemi as a doorman and that they (the business) were "somewhat responsible for the incident on the 23rd."
45. When questioned about why there was so many revolving holders of directorships and shareholding in the company he was not particularly forthcoming, and said he was only involved as a favour to Harjinder Singh.
46. He was asked if the business was viable under the current regime of 10.00pm closing (under TA). He said it was hard, but the business could survive and that some staff might have to have their hours cut if the licence was only granted to 10.00pm.

Inspector's Evidence

47. The Inspector's report was taken as read and Ms. Smale outlined her concerns around on site management.

48. She told us that she believed that Jay Bath was soon to be exiting the company structure and this would be bad for the company if Sumreet Kaur was left in charge.
49. To her knowledge there had been no notification to ARLA as required under Section 69 of the Act of the change of directors and shareholders of Twenty Nine Founders Limited. The applicant acknowledged that this task had not been done but it would be done straight away.

Police Evidence

50. Sergeant Turnbull opened for the Police and handed up the three statements of Police staff that had attended the incidents near Nexus.
51. In the statement of Constable Brooke Marama-Lyon she said she saw a large group of people socialising **in Nexus** at about 11.00pm on Friday the 22nd of April 2022.
52. When she, and her partner, drove past again at about 12 midnight she saw two large groups arguing outside of Nexus. Once back up arrived she spoke to a patron who said he had been drinking in Nexus since 9.00pm and had been assaulted by a bar patron. He exhibited signs of intoxication but refused treatment for his injuries and would not make a statement to Police.
53. She spoke to both Manpreet Singh and Jaspreet Singh who were inside the bar watching the Police deal with the disorder. Jaspreet Singh said he had called last drinks at 11.13pm but because they were busy he served the last drink at 11.45pm. All patrons were then told to leave at 12 midnight.
54. She spoke to Jinny Harding who said she was security for the night, but she said she had been unable to intervene and prevent the disorder. A check later disclosed that Ms. Harding was not COA qualified as required under the Private Security Personnel and Private Investigators Act 2010.
55. Constable Marama-Lyon saw several patrons drinking from bottles on the street and urinating on the footpath. She called three taxis to Nexus to take patrons home.
56. In the statement of Constable Toby Campbell, he stated that about 12.05 am on Saturday the 23rd of April 2022 he saw up to 50 persons outside Nexus spilling on to the road. Many were yelling with slurred voices and appeared to be intoxicated.
57. He spoke with a patron who appeared to have been in a fight. He was trying to stand up and was acting aggressively towards another person across the road.

Despite warnings to desist with this behaviour he continued yelling at the man across the street and he was arrested for disorderly behaviour.

58. The man continued to act aggressively towards Police and was assessed as intoxicated. He later required sedation and was transported to hospital for further treatment.
59. In the statement of Constable Alonso Moreno, he stated that he attended a job at about 12.20 am on the night of 27 March 2022. A male person had smashed a window at the McDonald's drive through at the corner of Leith and Swanston Streets.
60. Staff at the McDonalds were so concerned that they activated their Panic alarm as well as calling the Police.
61. The Constable located the offender at the nearby BP service station. He was abusing staff and was assessed as intoxicated and resisted arrest. He had to be pepper sprayed to effect the arrest.
62. During custody procedures he was asked where he had been drinking. He said Nexus and that he went straight to McDonalds to get a feed after leaving the bar.
63. Senior Constable Stein Alexander Thomas appeared in person and read his updated Brief of Evidence. He told us he had worked in Tokoroa for many years and his current position was that of a Community Constable and he also assists Sergeant Chris Turnbull with alcohol licensing matters.
64. After the incident on 27 March, he visited Nexus on 30 March 2022 and spoke with Manpreet Singh. He spoke about the arrest of the man for breaking a window at McDonalds and that the man had told Police he had been drinking at Nexus.
65. Manpreet Singh asked if the man was in red because he said that they had refused entry to a number of persons dressed in red that night. (There is no conclusive evidence to confirm or deny that the offender had, or had not, been drinking at Nexus.)
66. On 10 May 2022 Snr Constable Thomas spoke with Manpreet Singh about the incident on the 23rd of April 2022.
67. He covered off the recent concerns held by the Police namely, employing unlicensed security guards, intoxicated patrons, alcohol purchased elsewhere being stored for customers, closing time issues around pushing them out the door at closing time, and the alleged lack of assistance in dealing with the issues that happened outside.

68. He said Manpreet Singh took notes and tried to explain what had happened in his view. As Manpreet Singh is no longer in the employ of Twenty Nine Founders Limited the applicant cannot advance Manpreet's version of the events any further.
69. Under cross examination he agreed with counsel that it was not unlawful for them to allow BYO alcohol to come on to the premises, but he pointed out that Bridge Street was in the alcohol ban area and alcohol can only be transported from the place of sale directly to a place outside of the Alcohol Ban area.
70. He conceded that there was no direct evidence that the offenders in both incidents had come from Nexus. It was put to him that licensees cannot be held responsible for patrons that go on to commit offences away from the premises.
71. Snr Constable Thomas said that was **not the case** and he did not accept the suggestion that the offenders did not come from Nexus. He was unimpressed with the lack of experience and skills exhibited by Jaspreet Singh and Manpreet Singh on the night of the 23rd of April 2022.
72. He was asked by the Committee why enforcement action had not been undertaken by the Police. He said that under their Graduated Response Model (GRM) the Police try to work with licensees in the first instance, then warnings are given and then prosecutions or ARLA enforcement procedures follow for repeat offending.
73. He said if there was any further similar offending at Nexus enforcement applications to ARLA were likely.
74. He said Police now consider Nexus as one of the higher risk taverns in town, but it appeared that they were operating compliantly under the 10.00pm closing time that has been imposed by the DLC on their current TA.

Medical Officer of Health Evidence

75. Ashleigh Mail is the delegated officer for the MOoH. In her original report of 25 November 2021, the MOoH had no matters in opposition. When she became aware of the recent incidents at, and around, Nexus she sought permission from the DLC to change their stance and present matters in opposition.
76. The request was lodged late, only 6 days out from the hearing and included 'evidence' that was to be presented by the Police.
77. As we stated in our response to the MOoH, we agreed that the agencies should collaborate on enforcement activities and strategies, but not attempt to duplicate each other's primary focus.
78. We invited the MOoH to assist the Committee with information around the health indicators of Tokoroa. Ms. Mail produced evidence that showed that much of

Tokoroa has a deprivation index of 8-10, being a highly deprived and vulnerable community.

79. Statistics showed that persons living in high deprivation areas are three times more likely to appear in hospitalisation and mortality figures than those living in affluent areas.
80. It is acknowledged that the occupants of Tokoroa and the surrounding districts are vulnerable populations, and an elevated mantle exists when considering the actual and potential alcohol related harms arising from licensed premises.

Relevant legislation

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;

Section 3 of the Act states the purpose of the Act as follows:

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

Section 4 states the object of the Act as follows:

- (1) The object of this Act is that –***
 - (a) The sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and***
 - (b) The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.***
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –***
 - (a) Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and***
 - (b) Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).***

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

81. 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.
82. As ARLA has said in **Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287¹** 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”***
83. From the concessions offered, and the evidence adduced by the applicant, we are sufficiently satisfied that the sale, supply and consumption of alcohol should be undertaken safely and responsibly should a licence be granted.
84. In line with the above, we are satisfied that the applicant company and its directors are suitable to hold an alcohol licence as long as the risks around late night trading are mitigated.
85. In respect of section 105(1)(c) of the Act there is no Local Alcohol Policy currently in the South Waikato District. There is nothing for us to consider.
86. The applicant originally sought the days and hours of **Monday to Sunday 9.00am to 12 midnight**. In closing the applicant acknowledged their current deficiencies and put on record that they would not resist the Committee if they imposed an 11.00pm close, or even 10.00pm if we thought it absolutely necessary.
87. The Committee was disappointed in not being formally advised by the applicant about the revised layout in the bar side of the business. Once the alterations had been completed a revised plan should have been lodged with the DLC.
88. As we commented elsewhere in this decision the new bar is an improvement and an asset to the business, but as they have quickly found out it also brings the risk of attracting greater numbers, and heavier drinkers to the establishment.
89. The applicant advised they intend to sell a large range of substantive food options and low and non-alcoholic beverages. They currently out-cater food to businesses and organisations. An extensive bar menu was also produced.

¹ Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287

90. However, it is also clear to us that the food side of the business has not been promoted as much as the bar. Again, this has come at a 'cost' in that the higher risks of operating a tavern have emerged.
91. Gaming machines are available for entertainment purposes on this site. The applicant is acutely aware that the business cannot operate mainly as a gaming venue.
92. They have produced financial records that show they have been operating as a tavern and they are principally in the business of providing alcohol and other refreshments.
93. We are also 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.
94. Regarding the current, and possible future, levels of nuisance and vandalism it was clear to the Committee that the business has recently come to the attention of Police with two serious incidents of note. We prefer the evidence of the police in that at least some of the offenders were intoxicated and had been drinking at Nexus. Alcohol related offending will not be tolerated by the regulatory agencies, or the DLC.
95. 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 to be expected in the dining and entertainment precinct of Tokoroa.
96. We are required to take into 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.
97. In regards to training and systems the applicant advises that they have several staff with manager's certificates employed to provide coverage for the proposed opening hours.
98. However, as was adduced during the hearing, there does not appear to be many sufficiently experienced managers to oversee a high risk tavern operation.
99. Similarly, their unprofessional attempts to engage door staff does them no credit at all. They have assured the Committee that they are now in the process of engaging COA qualify Crowd Controllers from Armourguard that will be tasked with door duties on Thursday to Saturday nights.

100. The suite of Policies presented appear to be adequate, but they should have been in place a long time ago. Their presentation to the Committee appeared rushed as if it was to appease the Committee and not so much to benefit the company's staff and the amenity and good order of the locality. The fact that two of the policies contain the same wording is evidence of a rushed preparation.
101. The applicant might want to consider a dress standard for the premises to set a benchmark for the expected dress and behaviour for their patrons.
102. The Police hold grave concerns about the current management if they are to continue in the late-night tavern space. The two recent incidents were serious and involved alcohol abuse and harms. In their submission the hours originally sought are not suitable for this entity. The amenity and good order of the area will be reduced by more than a minor extent if their performance is not lifted.
103. The representative of the Medical Officer of Health has not raised any substantive matters in opposition but have provided us with valuable information about the dynamics of the Tokoroa community and its vulnerability generally. It was their view that the recent changes at Nexus had brought about problems to the premises and the community at large, and they should revert back to a low-risk restaurant café.
104. However, as was established at the hearing, there was no conclusive direct evidence that the offenders and victims emanated from Nexus. Conversely as we have found, and expressed, on the balance of probability, we are more than satisfied that at least some of the offenders/victims were patrons of Nexus.
105. The Inspector reports that the application appears to meet the criteria for issue, but she holds serious concerns about the skill level and availability of experienced staff. She does not believe that Sumreet Kaur has the skill set to be the overall director of the company if Jay Bath steps aside.
106. In closing counsel advised that the applicant company does have the passion to get things right. They have engaged with Hospitality NZ to enhance their training and overall operation of the business. He said the March incident was 'less serious' and that the company regretted its role in the April incident.
107. Apart from those incidents he submitted that the business had been trading well under TA and that the changes in the company structure came about following the resignation of Manpreet Singh.
108. He submitted that to refuse the licence would be disproportionate to the failings and that his client was willing to remove 'quart' bottles and shots from the drinks menu. They would accept an 11.00pm finish, or event 10.00pm if the Committee thought it absolutely necessary. They will contract professional COA qualified door staff for Thursday to Saturday nights and operate a OWD policy.

109. They were happy to provide weekly staff rosters to the Chief Licensing Inspector to demonstrate the necessary coverage for the premises.

The Reasons for the Decision

110. Section 3 of the Act requires us to act reasonably in the exercise of our duties. It also requires us to administer in such a way that it helps achieve the Object of the Act.
111. For completeness, we confirm that the decision on whether Class 4 gambling can occur 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.”
112. We are advised that the DIA is satisfied with the applicant and a gaming venue licence has been issued. As stated above it is the applicants task to ensure it operates as a tavern and not mainly as a gaming venue.
113. The onus is clearly on the applicants to operate this business as a tavern with the principal activity being the **safe and responsible** sale of alcohol and other refreshments. Revenue from the sale of meals and the gaming machines must each provide lesser income streams than alcohol and other refreshments. That does not mean they have to do this at ‘all costs.’ The transition to a busy tavern has not been managed well.
114. The **amended application** as presented on the hearing day assists the DLC with its decision making.
115. It is clear to us that the sale of beer in 750ml ‘quarts’ and the sale of spirit based shots will have contributed to the recent increase in intoxicated behaviour. These are potentially high risk activities, and by consent, are to be removed from the bar menus.
116. The evidence was that the alcohol related harm and disorder occurred later at night. We have set the closing time at 11.00pm to make it clear to the operators that late night trading is a privilege not a right. A OWD shall apply from 10.30pm.
117. **The applicant is to provide a weekly roster to the Chief Licensing Inspector on Monday mornings until further notice.**
118. 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 bar and gaming room and the restaurant/café side of the business is to remain undesignated.

119. As we said when first granting this licence to the previous operator “*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 485/2002² 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.”

120. In **Premier Restaurant & Tavern Limited LLA PH 474/2001**³ 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 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?”

121. 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 “⁴ (our emphasis)

122. 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.
123. Fortunately, the alterations to the bar area now sees it clearly operating as a tavern which brings advantages and risks to the applicant.
124. We see the bar and gaming room as a single entity and a designation of **Supervised Area** will be imposed on that area of the building. The remainder of

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

³ Premier Restaurant & Tavern Limited LLA PH 474/2001

⁴ Kim Ashton Williams LLA 2291/96

the premises will be undesignated.

125. The licensing regime that we have set should allow the applicant to prove to the agencies, and the DLC, that they can safely operate in the mid to late nighttime environment.
126. The first year of operation is often called the “Probationary Year.” Much of the 12 months of operation under TA was as a lower risk café bar. The ball is firmly in the court of **Twenty Nine Founders Limited** to show that they are worthy of the opportunity we are giving them. The conditions will be able to be reviewed at renewal time in 12 months’ time if so sought.

The Decision


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

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 11.00pm;**
2. **A One way Door (OWD) shall apply from 10.30pm each night. No entry from that time. Exit Only;**
3. **No ‘quart’ 750ml bottles of beer or spirit based shots are to be served at any time.**
4. **A COA qualified Crowd Controller shall be employed on door staff duties each Thursday to Saturday nights from 7.00pm to close.**
5. 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;
6. The premises is designated as follows: **The Bar and Gaming Room will be a Supervised Area at all times.** The restaurant/café and function room are undesignated.
7. Drinking water is to be provided to patrons free of charge from a water supply prominently situated on the premises;

8. 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,
9. 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,
- 10. 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,**
11. The Licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises,
12. 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 18th day of June 2022



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 agencies.