

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 renewal and variation of the ON Licence pursuant to s.120 and 127 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 Gary Petley
Member: Cr Hamish Daine

HEARING at Tokoroa on 9 November 2023

APPEARANCES

Mr. Mathew Gordon– for the applicant Twenty Nine Founders Limited
Mr. Shannon Jenkins for the applicant
Ms. Marie Jenkins for the applicant
Ms. Jules Smale – Chief Alcohol Licensing Inspector – in opposition
Sergeant Greg Weston– Police Alcohol Harm Prevention Officer – in opposition
Ms. Ayobami Adesanya for the Medical Officer of Health- to assist.

Dr Liz Gordon for the objector
Mr. Colin Bridle objector
Ms. Karlene Fanning – no appearance

RESERVED DECISION OF THE COMMITTEE

Background

1. We see value in setting out the history of these premises in Tokoroa.
2. 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.
3. ARLA agreed with the DLC that the licence should be granted, and that the alcohol licensing process should not be allowed to be hijacked by pressure groups pursuing their own agendas, regardless of how commendable their motives might be.
4. The business was sold to **Twenty Nine Founders Limited** in May of 2021, and they were granted an ON licence in June of 2022.
5. The business has morphed in the ensuing 16 months to a small tavern with gaming machines on one side of the business and a café and catering business on the other side.
6. In May 2023 an application for renewal with variation was received. The applicant wanted to extend the hours of operation from 11.00pm close to 1.00am close and to extend the licensed footprint to encompass the rear smoking area.
7. The application drew opposed reports from the Inspector and the Police, and two public objections were received.
8. The Police produced a vast array of timesheets, training records and rosters (provided by the applicant) and believed that the current business model could not be safely varied as requested.

Applicant's Evidence

9. Mathew Gordon opened the position for the applicant by stating that all of the issues in contention had been discussed earlier in the day for Focal Point and that he was happy for this application for Nexus to be considered on its merits.
10. They believed that the extra hours would be managed safely with their existing staff and also provide for some greater flexibility for the catering side of the

business when they host functions.

11. The smoking area was for the convenience of patrons to be able to take their drink out with them when they went for a smoke or a vape. He added in closing that he could see the writing on the wall around the opposition to the extension to the smoking area and they would have no issue with the DLC if they declined to grant that part of the application to vary.
12. There was no request to remove the restriction on 'quart bottles' and the "no shots to be served" condition on the licence. He agreed that those conditions provided a 'point of difference' between Nexus and Focal Point.
13. As he explained in the Focal Point hearing, he accepted that there was some tidying up to be done on the policies and procedure manuals but argued that they were definitely better than most premises that he knew about.
14. He was asked by Mr. Daine to expand on the operation of the catering side of the business. Mr. Gordon told us that the catering side had increased significantly, and they catered for 50-60 functions in the last year. The function space at the venue was ideal for this purpose and was supported by the community.
15. Mr. Gordon also confirmed that both Nexus and Focal Point were for sale and there was an interested buyer awaiting the outcome of this renewal process.

Inspector's Evidence

16. The Inspector's report was taken as read and Ms. Smale outlined her concerns around the staffing regime at Nexus. She believed there were insufficient experienced managers appointed to the business to operate it safely and responsibly.
17. She noted that the simple task, required of Nexus, to provide weekly rosters has not been consistently complied with by the management team.
18. She remained opposed to the increase in the hours sought, and the extension to the licensed area to cover the rear smoking area.

Police Evidence

19. Sergeant Weston opened for the Police and confirmed that their opposition remained intact to the increase in hours and the extension to the licensed area. He said the business had been operating largely compliantly but that was due to the restrictions placed on the licence by the DLC when first granted in July 2022.

20. He too, agreed with the Inspectors position, that the business had barely enough certificated managers to cover the current operating hours.
21. He was concerned about the lack of compliance in providing weekly rosters and very concerned that one of the policy documents instructs staff not to use the word “intoxicated” when speaking with Police on the premises.
22. He was concerned with the ‘remote’ management of the business by Mr. Godon and his Tauranga based team.

Medical Officer of Health Evidence

23. The MOoH did not oppose the renewal with variation for Nexus Wine & Café.

Objector Evidence

24. Dr Liz Gordon confirmed that the objectors position remained in that they reject the request for a renewal per se, let alone the variation to increase the hours and license the smoking area.
25. She said that the DLC had already acknowledged that the occupants of Tokoroa and the surrounding districts are vulnerable populations, and an elevated mantle exists when considering suitability and the actual and potential alcohol related harms arising from licensed premises.
26. She submitted that (alcohol related) harm would be minimised by closing the premises. She emphasised the Supreme Court ruling that said that DLCs must consider Sections 3 and 4 together and that the administration of the Act should be for “the benefit of the community as a whole.”

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).*

27. Sections 131/132 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to **approve a renewal** of the licence:

131 Criteria for renewal

- (1) *In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - (a) *the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):*
 - (b) *whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:*
 - (c) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:*
 - (d) *the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.*

The clauses in 105 that we must consider are:

105 Criteria for issue of licences

- (1) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
 - (a) *the object of this Act:*
 - (b) *the suitability of the applicant:*
 - (c) *any relevant local alcohol policy:*
 - (d) *the days on which and the hours during which the applicant proposes to sell alcohol:*
 - (e) *the design and layout of any proposed premises:*
 - (f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*

(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:

(h).....

(i).....

(j) whether the applicant has appropriate systems, staff, and training to comply with the law:

(k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.

The Reasons for the Decision

28. As ARLA has said in **Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287**¹ 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.”

29. The Object of the Act must be read in conjunction with the Purpose of the Act, i.e.; that alcohol is sold safely and responsibly, and the administration of the Act benefits the community as a whole. We return to these criteria after we have considered the remaining criterion.
30. Suitability is not established in a vacuum. On paper the applicant company is an experienced licensee with industry professionals in the management team. However, the best policies and procedures are only as good as the staff who implement them at the ‘coal face.’
31. 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.
32. The applicant seeks the days and hours of **Monday to Sunday 9.00am to 1.00am**. This is a 2 hour increase in hours and the high-risk end of the day. We note that the DLC previously set the closing time at 11.00pm as they were not satisfied that the staff had the skill set to operate safely at that end of the night.
33. The Committee was disappointed to see the requirement to furnish weekly rosters was haphazardly performed at best. We do not think that is a difficult

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

task and when we see shared staff working up to 72 hours in a week there is clearly a need to monitor staffing levels and workloads.

34. The premises is split into 3 distinct parts, the café and catering kitchen, the function space and the bar with gaming machines.
35. The applicant is acutely aware that the business cannot operate mainly as a gaming venue. They have produced unaudited financial records that indicate that they have been operating as a tavern and that they are principally in the business of providing alcohol and other refreshments.
36. In regard to training and systems the applicant advises that they have four or five staff with manager's certificates employed to provide coverage for the proposed opening hours. We were told that the company is in the process of engaging a Hamilton based law firm, Harkness Henry, as an external training provider.
37. The suite of Policies presented are extensive but as the Police pointed out they contained cut and paste errors from other licensed premises in Tauranga. This lessens the weight that we will apply to them.
38. The reports from the Police and the Inspector express concern that these premises will reduce the amenity and good order of the locality by more than a minor extent if the variations are granted.
39. In fairness to the applicant, we acknowledge their good work in the catering space for Tokoroa. We also give them credit for not coming to adverse notice with any major breaches of the Act, or the Alcohol Ban Bylaw since we granted the licence in 2022.
40. As we said in July 2022 when granting this licence "*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.*"
41. The Object of the Act is that alcohol is to be sold and supplied safely and responsibly, AND that the harm caused by the excessive or inappropriate consumption of alcohol is minimised.
42. We are prepared to approve a renewal of the licence for three years, but we are not convinced that the hours should be increased to a 1.00am finish. Nor do we believe that the smoking area should become a licensed area. In light of the improvements within Nexus we will extend the licensed hours to 12 midnight. We will adjust the OWD and Security conditions in line with that increase.

43. The smoking area will not be licensed for the consumption of alcohol. It must still comply with the Smokefree Environments and Regulated Products Act 1990.

The Decision

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


The applicant is to provide a weekly roster to the Chief Licensing Inspector on Monday mornings until further notice.

The Licence is renewed for three (3) years from the expiry of the current licence and a Replacement Licence is to be issued on the conditions stated below:

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours: **Monday to Sunday 9.00am to 12.00 midnight**;
2. **A One way Door (OWD) shall apply from 11.30pm 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 at least 8.00pm 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 20th day of November 2023

A handwritten signature in black ink, appearing to read 'Murray Clearwater', is enclosed in 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 agencies.