

IN THE MATTER

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

AND

IN THE MATTER

of an application by **G & G BOLINA LIMITED** for the renewal of an off-licence pursuant to s.127 of the Act in respect of premises situated at 163 Taharepa Road, Taupo, trading as "Tauhara Four Square."

BEFORE THE TAUPO DISTRICT LICENSING COMMITTEE

Chairman: Murray Clearwater
Member: Graeme Cushing
Member: Judy James

HEARING at Taupo on Tuesday 29 October 2024

APPEARANCES

Mr. Jon Wiles – counsel for the Applicant
Mr. Gurvinder Pal Singh Bolina
Mr. Rajvir Singh Bolina

Mr. Grant Singer – Taupo Alcohol Licensing Inspector– to assist
Sergeant Greg Weston – Police Alcohol Harm Prevention Officer – to assist
Ms. Dawn Meertens- delegated officer for the Medical Officer of Health (MOoH)

RESERVED DECISION OF THE COMMITTEE

Introduction

1. By an application dated the 10th of July 2023 the applicant has applied for the renewal of the off-licence 020/OFF/0067/2022 in the name of G & G BOLINA LIMITED. It was duly advertised and reported on by the agencies.
2. The applicant has operated Tauhara Four Square for more than 20 years. The licence permits alcohol sales on Monday to Sunday from 7.00am to 10.00pm. No changes are sought.
3. The business is set up as a grocery store and is situated in a small shopping precinct some 8km from the Taupo Town Centre.
4. The MOoH opposed the application as the sales revenue figures supplied indicated that food products were not the principal income stream.
5. Revised figures were obtained that were also not conclusive and the renewal was eventually set down for a public hearing to enquire into the coding of products at the store
6. At renewal time we are required to examine all the relevant criteria when deciding whether to renew a licence, or not.

Applicant's Evidence

7. In his opening for the applicant, Mr. Wiles acknowledged that products were clearly not coded correctly and had been collated in the wrong categories. He said his client had been working diligently in recent weeks recoding products and they believed the problem had been resolved.
8. He called Gurvinder Pal Singh Bolina, the joint owner of the business, to give evidence.
9. Mr. Bolina told us that in July 2023, he sought to increase the single alcohol area at the store but decided not to proceed with that request after discussions with the agencies.

10. He said he accepts that they have been using the 'department key' too much and products have not been correctly coded to the required categories.
11. Next, we heard from Gurvinderpal Singh's son, Rajvir Singh Bolina. He told us he has been busy recently, coding all products to the required categories.
12. Both father and son were asked why this had not been resolved earlier as we had flagged this issue at the last renewal.
13. Disappointingly Rajvir said, "he hadn't got round to it."

Inspector's Evidence

14. The Inspector's report was received and taken as read.
15. Mr. Singer believed the store was a grocery store and that the applicant did have difficulties after their last licensing agent passed away and it has taken a long time to get the application to a point where it can be determined.

Police Evidence

16. The Police did not oppose this renewal and told us that the business was not a problem premises for the Police.

Medical Officer of Health

17. The MOoH was not opposed to the renewal per se but had rightly pointed out that the sales revenue figures that were originally presented did not show food products as the principal income stream.
18. Ms. Meertens was also concerned that the earlier intention to alter the SAA would increase the visibility of the SAA from the front entrance of the store.
19. Her concerns were abated when the proposal to change the area was abandoned and a fridge was repositioned to further screen the visibility of alcohol from the front of the store.
20. We pushed back on this view as the Act does not prohibit the visibility of the SAA from the entrance or outside of a store. Ms. Meertens argued there was support for her stance in the ARLA decision relating to Countdown at Bureta Park where the end of aisles were plainly visible from the entrance to the store.
21. In that case the DLC argued that the end of aisle displays were confronting for **shoppers in the main body of the store outside of the SAA**. ARLA agreed and confirmed that that finding was available to the DLC and the end of aisles were to be removed.
22. **They did not rule that the visibility from the front entrance of the store was a determining, or a contributing factor in that finding.**
23. In any case, that issue is not a factor in this renewal because the proposal has been abandoned and the current SAA is compliant with sections 112-114 of the Act.
24. Ms. Meertens submitted that a further truncated renewal should be considered to bring home to the applicants that the coding issues need to be fixed now.

Relevant Legislation

36. Section 3 of the Sale and Supply of Alcohol Act 2012 ("the Act") states the purpose of the Act as follows:

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

37. 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).**

38. Section 131 of the Act provides the criteria that the licensing committee must have regard to in deciding whether to renew a licence as follows:

- (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, and 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.**

Other Criteria to be considered

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

39. Section 105(1)(a) of the Act requires that the licensing committee must have regard to the Object of the Act.
40. Precedent case law has made it clear for us that after standing back and considering the evidence presented to us, and weighted it appropriately, we must decide whether granting the licence will help to achieve the Object of the Act. We must also consider Section 3 and ensure our decision is reasonable and will benefit the community as a whole.
41. We return to these criteria later in the decision.

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

42. Section 105(1)(b) requires that the applicant must be a suitable entity/person to hold an off-licence.
43. Suitability is well defined in case law and in broad terms an applicant must be 'fit for purpose'.
44. At his last renewal Mr. Singh had brought his suitability, and by association his company's suitability, clearly into question by firstly incurring alcohol related convictions during the course of the renewal period, and then failing to disclose them at the time of renewal.
45. There has been no further offending since we last dealt with this business and its owners.
46. We are disappointed that our very clear direction to the applicants at the last renewal to get their sales data collection and retrieval compliant for subsequent renewals has not been resolved. When we put questions to Mr. Bolina Senior it was clear that he did not have a good knowledge of which products were food products and which were not.
47. Fortunately, his son appeared to have a better understanding but when asked why the issue hadn't been sorted earlier, he replied "I hadn't got round to it." They both admitted that they do not have a copy of the Act and the relevant sections of the Act and its regulations around product categories.
48. As we pointed out to them at the hearing, if thousands of other stores around the country can get this right so can they!
49. It is fortunate for them that this is not a high-risk problem premises, or the outcome might have been quite different.

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

50. There is no relevant local alcohol policy in existence. There is nothing to consider.

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

51. The current operating hours are Monday to Sunday 7.00am to 10.00pm. They are unremarkable and are within the default national maximum trading hours for off licences.

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

52. The premises is said to be a grocery store with standard design and layout features typical of stores of this nature. The Single Alcohol Area (SAA) is well defined within the store.

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.

53. The applicant carries a large range of goods as described in the application consistent with what is expected in a grocery store.

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.

54. No other services were offered from the store other than those associated with a grocery store.

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

55. The application stated that they have four certificated managers, have regular staff meetings and have robust policies in place regarding the prohibition of the sale and supply of alcohol to prohibited person and intoxicated persons.

56. Also as previously mentioned we are still concerned with the high percentage of revenue in the 'other revenue' category. There can be no excuses going forward.

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

57. The MOoH assessment and concerns have been well canvassed elsewhere in this decision.

CLOSING STATEMENTS

58. For the company Mr. Wiles submitted that the company has been remiss in not getting its coding and sales data collection accurate before now.

59. He said there would be no resistance to another truncated renewal, and he believed the data issues will be sorted once and for all.

60. Ms. Meertens was of the same view i.e. a truncated renewal and for the applicant to familiarise themselves with the requirements of the Act and properly categorise all products sold.

Reasons for the Decision

61. As we have often said, Section 3 of the Act requires us to act reasonably, and our administration of the Act should help to achieve the Object of the Act.

62. In regard to this licence, we find that it can be renewed but it will be for a truncated period of 24 months from the 8th of August 2023. That means the licence will be up for renewal again on the 8th of August 2025.

63. The applicant has 10 months to work with its own systems and Foodstuffs to ensure **ALL products** sold are **correctly coded to either food products, convenience items, alcohol, tobacco, or other revenue**.

64. We believe the renewal under a suite of consented conditions will help achieve both the Purpose and the Object of the Act.

THE DECISION

65. Accordingly, Off-Licence number 020/OFF/0067/2022 is renewed for 24 months only, from the 8th of August 2023.

66. It will expire on 8 August 2025 unless further renewed.

The following conditions are to apply:

1. Alcohol may be sold on the premises for consumption off the premises and supplied free as a sample for consumption on the premises, only on the following days and hours: **Monday to Sunday 7.00am to 10.00pm;**

2. No alcohol is to be sold on or delivered from the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day;
3. While alcohol is being supplied free as a sample, water is to be provided to patrons free of charge at the place where the samples are being supplied.
4. No alcohol may be sold other than –
 - a. beer that complies with the applicable New Zealand food standard for beer; or
 - b. mead that complies with the applicable New Zealand food standard for mead; or
 - c. fruit or vegetable wine that complies with the applicable New Zealand food standard for fruit or vegetable wine; or
 - d. grape wine that complies with the applicable New Zealand food standard for grape wine; or
 - e. a food flavouring, prepared for culinary purposes, that is unsuitable for drinking undiluted.
5. **A properly appointed Certificated, or Acting or Temporary, Manager must be on duty, at or nearby the point of sale, at all times when the premises are open for the sale and supply of alcohol.**
6. The Licensee must display signage as follows:
 - a. At every point of sale detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b. A copy of the licence attached to the inside of the premises so as to be easily read by people entering each principal entrance to the premises; and
 - c. A sign prominently displayed at the premises, which identifies by name the manager for the time being on duty.
7. The “single alcohol area” for the premises is as described on the attached plan date stamped 4 April 2022:
 - a. No alcohol is displayed, promoted or advertised outside the single alcohol area; and
 - b. No products other than alcohol, low-alcohol and non-alcoholic beer, wine or mead are to be displayed, promoted or advertised inside the single alcohol area.

DATED at TAUPO this 4th day of November 2024



Murray Clearwater
Chairperson/Commissioner
For the Taupo District Licensing Committee

NOTE

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

An appellant has 10 working days after the date on which notice of this decision is given to the parties to lodge an appeal with the Alcohol Regulatory Licensing Authority.

Taupō District Licensing Committee

Notice of Renewal of Off Licence

Section 135, Sale and Supply of Alcohol Act 2012

To: **G & G Bolina Limited**

Licence **20/OFF/0067/2024** replacing licence **20/OFF/0067/2022**

The Off Licence in respect of the premises situated at 163 Taharepa Road, Taupo known as “**Tauhara Four Square**” is renewed.

The present conditions of the licence shall continue to apply.

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licenses, the licence continues in force—

- until the close of the period for which it is renewed; or
- if an application for the renewal of the licence is duly made before it would otherwise expire, until the close of the period of 3 years after the period for which it is renewed.

The period for which the licence is renewed is 2 years expiring on
8 August 2025

Dated at Taupō on 7 November 2024



Murray Clearwater
Commissioner
Taupō District Licensing Committee

OFF LICENCE

Sections 17 to 20, and 64, Sale and Supply of Alcohol Act 2012

Pursuant to the Sale and Supply of Alcohol Act 2012, **G & G Bolina Limited** is authorised to sell or deliver alcohol on or from the premises situated at 163 Taharepa Road, Taupo, and known as **Tauhara Four Square**, to any person for consumption off the premises and to supply alcohol free, as a sample, for consumption on the premises.

If this licence is not endorsed under section 40 of the Act, the licensee is also authorised to sell alcohol on or from the premises and deliver it somewhere else.

The authority conferred by this licence must be exercised through a manager, or managers, appointed by the licensee in accordance with Subpart 7 of Part 2 of the Act.

CONDITIONS

This licence is subject to the following conditions:

1. Alcohol may be sold on the premises for consumption off the premises and supplied free as a sample for consumption on the premises, only on the following days and hours: **Monday to Sunday 7.00am to 10.00pm;**
2. No alcohol is to be sold on or delivered from the premises on Good Friday, Easter Sunday or Christmas Day or before 1.00 pm on Anzac Day;
3. While alcohol is being supplied free as a sample, water is to be provided to patrons free of charge at the place where the samples are being supplied.
4. No alcohol may be sold other than –
 - a) beer that complies with the applicable New Zealand food standard for beer; or
 - b) mead that complies with the applicable New Zealand food standard for mead; or
 - c) fruit or vegetable wine that complies with the applicable New Zealand food standard for fruit or vegetable wine; or
 - d) grape wine that complies with the applicable New Zealand food standard for grape wine; or
 - e) a food flavouring, prepared for culinary purposes, that is unsuitable for drinking undiluted.
5. **A properly appointed Certificated, or Acting or Temporary, Manager must be on duty, at or nearby the point of sale, at all times when the premises are open for the sale and supply of alcohol.**
6. The Licensee must display signage as follows:
 - a) At every point of sale detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons;
 - b) A copy of the licence attached to the inside of the premises so as to be easily read by people entering each principal entrance to the premises; and
 - c) A sign prominently displayed at the premises, which identifies by name the manager for the time being on duty.
7. The "single alcohol area" for the premises is as described on the attached plan date stamped 4 April 2022:
 - a) No alcohol is displayed, promoted or advertised outside the single alcohol area; and
 - b) No products other than alcohol, low-alcohol and non-alcoholic beer, wine or mead are to displayed, promoted or advertised inside the single alcohol area.

THE LICENSED PREMISES

The sale or delivery of alcohol is authorised in or from the premises generally. The premises situated at 163 Taharepa Road, Taupo are more precisely identified as outlined in a plan date stamped as received by the Taupo District Licensing Committee on 23rd January 2019.

DISPLAY OF LICENCE AND PRINCIPAL ENTRANCE

A copy of this licence must be displayed at the principal entrance to the premises. The entrance from Taharepa Road is designated as the principal entrance.

DURATION

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences this licence continues in force –

- until the close of the period for which it is renewed; or
- if an application for the renewal of the licence is duly made before it would otherwise expire, until the close of the period of 3 years after the period for which it is renewed.

This licence expires on 8 August 2025 unless further renewed

DATED at TAUPŌ on 7 November 2024



Murray Clearwater

Commissioner for Taupō District Licensing Committee