

**IN THE MATTER**

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

**AND**

**IN THE MATTER**

of an application by **J&I IMPORTS LIMITED** for the grant of an ON Licence pursuant to s.100 of the Act in respect of premises situated at 42 Mannering Street, Tokoroa, to be known as "Kina's Sports Bar"

**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 John McKeany– for the applicant J & I Imports 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 24<sup>th</sup> of January 2019, J & I Imports Limited applied for an On Licence in respect of premises situated at 42 Mannering Street, Tokoroa, to be known as "Kina's Sports Bar. 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 seeks the licensed days and hours of **Sunday to Wednesday 9.00am to 10.00pm; and Thursday to Saturday and New Year's Eve each year; 9.00am to 1.00am the following day.** 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 building that previously housed Pockets 8 Ball Club that 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 16-gaming machine contained within, have laid idle since that date.
5. John Kennely McKeany is the sole director and shareholder of J&I Imports Limited. He holds a 10-year lease on the property.
6. There had been significant publicity and conversations around the liquidation of Pockets 8 Ball and a number of perceived conflicts of interest raised with potential DLC Panel members.
7. It was pragmatically decided to appoint an independent chairperson for the Committee and to examine and resolve the other potential conflicts. The current panel makeup was formulated and is accepted by all parties.
8. 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 the objection and his status is detailed later in this decision.
9. We 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**

10. Mr Davies provided the Committee with a helpful opening and called one witness for the applicant company.
11. We heard from Mr McKeany. He confirmed his intention to run the business "principally as a tavern" on Sunday to Wednesday 9.00am to 10.00pm; and

Thursday to Saturday and New Year's Eve each year; 9.00am to 1.00am the following day.

12. He said he holds a Manager's Certificate and successfully operated a tavern called Hog and Hound in Putaruru from 2005 to 2017. He told us he will be working in the business himself and he will employ additional certificated managers as the business grows.
13. He said he saw it as an opportunity to run a successful business and to give back to the community. He plans to employ 4-5 full time workers and intended to cater for "blue collar workers." He sought and defended his request for a Restricted Area designation as he intended to run an adults only "true Kiwi tavern" with pool tables, big screen TVs and dart boards.
14. Mr McKeany told us that he did not believe Mr Bridle has 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 perceived issues raised by Mr Bridle and his supporters.
15. Under cross-examination he confirmed that there would be no on-site smokers' area and that they would have to go out to the front of the building to smoke. There was no formal business plan prepared for the activity at this stage, but he was confident that the business would be profitable.
16. In response to questions from the Committee he confirmed that his understanding was that the Gaming Licence application was still with the DIA and had not been approved at this time. He had chosen an organisation called Youthtown as the gaming trust to operate the gaming machines. We note that the DIA stated, in response to our Minute, that there was no application for a Class 4 Gaming Licence currently in their system for 42 Mannering Street.
17. When asked about the projected income streams from alcohol, food and gaming he said he predicted alcohol and other refreshments would be the principal income stream and the gaming machines would contribute only about 25%
18. When asked how he was going to ensure that the principal revenue stream for the business would be alcohol and other refreshments he said he would make sure it was. When asked if he would halve the number of machines if the figures didn't support that. He said no.

### **Inspector's Evidence**

19. The Inspector's report was taken as read and she responded to questions from the objector and the applicants counsel.
20. Inspector Smale rejected criticism from the objector that the application was

deficient and/or inaccurate with first lodged.

21. She correctly stated that applying for a licence was a process not an event and the contents of the application are often added to and amended as the certification and advertising processes take place.

### **Objectors Evidence**

22. Before the substantive hearing commenced, we heard from both the objector and the applicant as to the standing and status of Colin Bridle as an objector.
23. It was the applicants 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.
24. 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 and other properties none of which had objected to the application.
25. 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 substantive Section 105 matters in his objection.
26. Mr Bridle has engaged Dr Grant Hewison as counsel. Dr Hewison is also well known in these circles as a campaigner against gaming machines.
27. In support of his client Dr Hewison told us his client lived only 600 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.
28. Under questioning from the Committee Mr Bridle confirmed that he has suffered damage to his property, albeit historically, and 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**

29. We acknowledge from the outset that the decision to grant standing, or not, was finely balanced. We took into account the following factual matters:
  - Tokoroa is a relatively small township
  - Mr Bridle lives 600 metres from the proposed premises
  - Patrons from the CBD premises do use Bridge Street and Papanui Street (where he lives) as a thoroughfare passed his house.
  - He alleges that he has been subjected to noise and vandalism albeit historically

We also took in to account:

- The intent of the Act is to give greater opportunities for community members to be involved in the licensing decision making process;
- The Purpose of this Act is to provide a “reasonable system of control” and its administration helps achieve the object of the Act;
- Many of the points raised in Mr Bridles objection appeared to be misunderstood and/or outside the scope of the Act and more 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) were legitimately raised;
- Even if we were to grant status, the second stage of considering an objector’s evidence is to decide what weight, if any, should be applied to that evidence.

30. 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.
31. With this background in mind we then heard from Mr Colin Bridle.
32. Mr Bridle told us he was born in Tokoroa and had first-hand knowledge of problems associated with alcohol abuse and gambling addictions.
33. 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.
34. In his role with a local church he still deals with parishioners with alcohol dependency, domestic violence issues and gambling addictions.
35. He then adopted a somewhat misguided attack on the perceived inaccuracy and illegitimacy of the application.
36. He appropriately raised the issue of 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.
37. He criticised the proposed menu of microwaveable options. He tried to argue that these were insufficient to meet the requirements of the Act.
38. He outlined his concerns 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

39. 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.

## Relevant legislation

40. 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;***

41. 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.***

42. 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).***

43. 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.*

## **Reasons for the decision**

44. 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**

45. As decided in **Auckland Medical Officer of Health v Birthcare Auckland Ltd [2016] NZARLA 287**<sup>1</sup> Section 105(1)(a) of the Act requires the licensing committee 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*”
46. From the evidence adduced by the applicant we are satisfied that the sale, supply and consumption of alcohol should be undertaken safely and responsibly at these premises should a licence be granted.

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

47. Section 105(1)(b) says that the applicant must be a suitable entity/person to hold an ON-licence.
48. We are satisfied that the suitability of the applicant company and its director is currently untarnished.
49. During the hearing we flagged with the applicant that the on-going suitability encompasses more than that just what occurs in these premises and under the Act. The failure to comply with other related legislation can very quickly affect his overall suitability under this Act.

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

50. In respect of section 105(1)(c) of the Act there is no Local Alcohol Policy currently in the South Waikato District.
51. We have nothing to consider.

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

52. The proposed operating days and hours are **Sunday to Wednesday 9.00am to 10.00pm; and Thursday to Saturday and New Year’s Eve each year; 9.00am to 1.00am the following day** and are within the default national maximum trading hours for ON licences.

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

53. The Committee conducted a site visit and noted that the gaming room occupies about 10% of the floor available to the public and does not ‘dominate’ the premises as alleged by Mr Bridle.

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



54. There were three large pool tables present, there are dart boards along one wall and provision for large screen TVs that are all common entertainment features normally present in taverns.
55. Mr McKeany told us he intends to extend the wall and doorway into the gaming area to provide greater visibility of patrons from the bar area.
56. We have no issue with the design and layout of the premises.

**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**

57. The applicant advised they intend to sell a basic range of substantive food options and low and non-alcoholic beverages. No other goods are intended to be sold.
58. The refreshed menu provided at the hearing is sufficient to meet the purposes of the Act. Leading ARLA decisions say that at least three substantive food options must always be available.

**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.**

59. Gaming machines will be available for entertainment purposes on this site.

**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.**

60. 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.
61. 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 lodged by the Police. If the previous operator was of concern to the Police, we would have expected greater interest and a possible opposed report from the Police. There is none.
62. 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 where we would expect licensed premises to be located.

63. We are required to take in to account “the purposes for which land near the premises concerned in 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.**

64. The provisions of this section are not applicable in our opinion.

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

65. The applicant advises that there will be several staff with manager’s certificates employed to provide coverage for the proposed opening hours.
66. We are concerned that there are 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.

**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**

67. The Police have raised no matters in opposition.
68. The representative of the Medical Officer of Health has no matters in opposition.
69. The Inspector reports that the application appears to meet the criteria for issue and recommends that it be granted.
70. The Inspector 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**

71. 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.

72. 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 to a licence objection is unhelpful and damages his credibility. We will not allow the processes, that we must conduct, to be hijacked by any ‘interest groups’ to further their own agendas.
73. 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 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.”
74. It should now be acutely obvious to Mr Bridle that the 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.
75. We have no difficulty deciding that J & I Imports Limited is a suitable entity to hold an ON Licence despite the high-risk environment they choose to operate in.
76. We turn our mind to the matter of the designation of the premises. The applicant seeks a Restricted Area for the whole of the premises including the gaming room.
77. Section 119 of the Act requires us to designate all or part of a tavern premises as a Supervised Area or a Restricted Area.
78. We will not be drawn in to designating a gaming room as a Restricted Area purely to accommodate gaming machines. We believe the appropriate designation for this proposed Sports Bar is a Supervised Area.
79. In **Kim Ashton Williams LLA 2291/96**<sup>2</sup> 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”*** (our emphasis)
80. 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
81. The onus will of course be for 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 Mr McKeany 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.

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<sup>2</sup> Kim Ashton Williams LLA 2291/96

## The Decision

**The District Licensing Committee, pursuant to the Sale and Supply of Alcohol Act 2012 grants an application by J & I Imports Limited for an ON Licence in respect of premises situated at 42 Mannering Street, Tokoroa, subject to conditions.**

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours **Sunday to Wednesday 9.00am to 10.00pm; and Thursday to Saturday and New Year's Eve each year; 9.00am to 1.00am the following day.**
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 whole of the premises is designated as **Supervised Area at all times.**
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.

The Licence will be granted for 12 months from the date of issue.

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

A handwritten signature in black ink, appearing to read 'Murray Clearwater', 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 objector.**