

TRUE LEGAL

Specialist legal advisors.

True Legal Limited  
PO Box 28043, Rototuna, Hamilton 3256  
Portland Park Business Centre  
First Floor, TVC Building  
697B Wairere Drive, Hamilton  
Jarrod.True@truelegal.co.nz  
027 452 7763  
truelegal.co.nz

31 October 2019

Email: Barbara.Dempsey@tauranga.govt.nz; Tania.Bonsall@tauranga.govt.nz

Hearings Committee  
Tauranga City Council  
Private Bag 12022  
**TAURANGA 3143**

Attention: Barbara Dempsey/Tania Bonsall

**Gambling Venue Consent Appeal - Gambling Venue Relocation Consent Application – Rossco’s Café and Bar, 40 Wharf Street, Tauranga to Worlds End, Shop 7, Fraser Cove 229-233 Fraser Street, Tauranga**

Notice of Appeal

1. I act for The Lion Foundation 2008 (“The Lion Foundation”). In accordance with clause 5.9 of the Gambling Venues Policy, The Lion Foundation appeals the decision to decline to provide consent for the 18-machine gaming licence to be relocated from 40 Wharf Street, Tauranga to Shop 7, Fraser Cove 229-233 Fraser Street, Tauranga.
2. I wish to make an oral presentation to the Hearings Committee.

Appeal Grounds

3. By letter dated 15 October 2019, the relocation application was declined. The letter advised that the relocation application was declined because clause 5.5 of the policy states:

No additional gaming machines may be operated at Class 4 Venues within Tauranga City boundaries.

4. The application is an application to relocate an existing 18-machine licence. The application is not an application for new or additional gaming machines.
5. Upon the consent being granted, the existing 9-machine licence at Worlds End Bar and Restaurant will be surrendered. This licence and the right to host 9 machines will be lost for ever. An application will then be made to the Department of Internal Affairs to relocate the Rossco’s Café and Bar 18-machine licence to Worlds End Bar. The net result

will be a reduction in the number of gaming machines within the Tauranga City boundaries by 9.

6. Such relocations are expressly permitted by section 97A of the Gambling Act 2003 and expressly permitted under Council's policy.
7. Regard needs to be had to the full wording of clause 5.5 of the policy. The full clause states:

5.5 Number of gaming machines to be allowed

No additional gaming machines may be operated at Class 4 Venues with the Tauranga City boundaries.

**For clarification:**

- **where Council receives an application to relocate a Class 4 venue, the maximum number of gaming machines at the relocated venue shall be the maximum number of gaming machines at the venue before relocation.**
- where Clubs merge in accordance with section 95 of the Gambling Act 2003, the maximum number of gaming machines shall be the same as allowed under section 95 of the Gambling Act 2003. This is 30 gaming machines or the combined total of the number of existing machines, whichever is the lesser.

[emphasis added]

8. The clause expressly clarifies that when Council receives a relocation application (such as this application) the maximum number of gaming machines at the relocated venue shall be the maximum number of gaming machines permitted at the prior venue. The number of machines before the Rossco's Café and Bar relocation was 18. Eighteen machines are therefore entitled to be operated at Worlds End Bar and Restaurant upon the licence being relocated.
9. The wording of the clause in the policy mirrors the wording in the Act. Section 97A states:

**97A Effect of relocation**

- (1) This section applies when—
  - (a) a territorial authority has adopted a relocation policy (as defined in section 101(5)); and
  - (b) in accordance with that policy, the territorial authority grants consent in respect of a venue (the new venue) to replace an existing venue (the old venue); and
  - (c) a new class 4 venue licence is granted in respect of the new venue.
- (2) When this section applies,—

- (a) the Secretary must cancel the class 4 venue licence that relates to the old venue, in which case—
  - (i) the cancellation takes effect on the date on which the new class 4 venue licence takes effect; and
  - (ii) there is no right of appeal against the cancellation; and
- (b) despite section 100(1)(b)(i), **the maximum number of gaming machines permitted to operate at the new venue at the time when the new class 4 venue licence takes effect is the same as the maximum number of gaming machines permitted to operate at the old venue immediately before the licence relating to the old venue is cancelled;** and
- (c) for the purposes of this Act,—
  - (i) if the old venue was a venue to which section 92 applied, the new venue must be treated as a venue to which section 92 applies; and
  - (ii) the old venue must be treated as if no class 4 venue licence had ever been held by any society for that venue (which means that, under section 98, consent will be required for that venue if a class 4 venue licence is subsequently applied for in relation to it)

[emphasis added]

- 10. Section 97A(2)(b) expressly provides that when a Council grants a relocation consent, the maximum number of machines that may be operated at the relocated site is the same as the maximum number that was permitted at the old site.
- 11. The statutory right to operate the same number of machines overrides any other provision in the policy that could be considered to be inconsistent. The first venue in New Zealand to relocate and retain 18 machines under section 97A was the Te Rapa Tavern. The Hamilton City Council's gambling venue policy permitted relocations, but also included an express provision that venues may operate no more than 9 gaming machines. The consent document dated 4 October 2013 (copy attached) records that Council obtained a legal opinion that section 97A overruled the requirement in the policy that venues must not exceed 9 gaming machines. In October 2013, Council granted a territorial authority consent for 18 machines at the new location. Shortly thereafter the Department issued a venue licence for 18 machines at the new location.
- 12. Please acknowledge receipt of the appeal and advise of the hearing date allocated.

**True Legal Limited**

**Jarrod True**  
Director

4 October 2013

The Lion Foundation  
Private Bag 102 920  
North Shore City 0745

Attn: Emma Lamont-Messer

**HAMILTON CITY CLASS 4 VENUE CONSENT**

---

I advise that Council has verified the following as complying under the Hamilton City Class 4 Gambling Venue Policy in accordance with the Gambling Act 2003. The consent is as follows:

**Hamilton City Class 4 Venue Consent – 12/2013/379**

---

*That pursuant to Section 100 of the Gambling Act 2003 and the provisions of the Hamilton City Gambling Venue Policy (August 2010), Council grants consent for the application for the operation of a maximum of 18 machines at Te Rapa Tavern by The Lion Foundation (2008) Ltd (being Venue Consent No 12/2013/379).*

---

**This consent refers to the society, venue, and machines set out below:**

<b>Category of Consent</b>	:	Application for a new Class 4 venue
<b>Society/Trust</b>	:	The Lion Foundation (2008) Ltd
<b>Venue Trading Name</b>	:	Te Rapa Tavern
<b>Owner</b>	:	Tim Smith and Derek Herder
<b>Venue Operator/Manager</b>	:	Tim Smith and Derek Herder
<b>Street Address</b>	:	2 Mainstreet Place, Hamilton
<b>No of Gambling Machines</b>	:	18 Machines
<b>Legal Description</b>	:	Lot 6 DP 325213
<b>Zoning</b>	:	Industrial Zone
<b>Primary Use of Premises</b>	:	Sale of liquor
<b>Date of Venue Consent</b>	:	3 October 2013

## Class 4 Gambling Venue Policy 2010 Assessment

### 4 ISSUING OF NEW VENUE CONSENTS

*A new Venue Consent will only be issued by Council in the following circumstances:*

- (i) where two or more private clubs undertake to merge and consolidate the operation of their class 4 gambling activities at a single venue and the application meets all other provisions of this policy;*
- (ii) where a society undertakes to permanently close an existing class 4 gambling venue as part of an application for a new Venue Consent and;
  - a. undertakes to surrender the existing venue licence for the venue that will cease to have gambling machines, and*
  - b. can ensure to Council's satisfaction that a new class 4 venue licence will not be able to be obtained by any society within 6 months of surrendering an existing venue licence under clause 4 (ii) a, and*
  - c. the application meets all other provisions of this policy.**

### Gambling (Gambling Harm Reduction) Amendment Act (the Amendment Act)

The Gambling (Gambling Harm Reduction) Amendment Act (the Amendment Act) originated as a Member's bill in the name of Te Ururoa Flavell. The select committee that considered public submissions on the bill recommended the inclusion of the new provisions on relocation policies. The provisions came into effect on 14 September 2013.

The Amendment Act has implications for Territorial Authorities (TAs) that currently have Class 4 venue policies that allow venues to relocate within their districts. These relocation policies typically require that the new venue have a maximum of up to nine gaming machines (the current statutory cap for new venues that is set out in the Gambling Act 2003). The Amendment Act will override this aspect of existing relocation policies.

If TAs adopt a relocation policy, or already have one in place, and consent to a venue relocation, the maximum number of machines permitted at the new venue would be the same as the number permitted at the original venue (up to a maximum of 18 machines). This means there will be no increase overall in the number of gaming machines.

### Comment

The society (Lion Foundation (2008) Ltd) has provided a signed declaration with the application advising that the venue at 510 Te Rapa Road will be closing and will cease to have any gaming machines on site. The owner of the site has also declared that they will not apply for another venue consent on the 510 Te Rapa Road site.

## 5 NUMBERS OF GAMBLING MACHINES TO BE ALLOWED — PER VENUE

- (i) *Subject to meeting the other requirements of this policy, venues may operate up to a maximum of 9 gambling machines per venue.*

### Comment

A legal opinion has confirmed that clause 4 (ii) of the Class 4 Gambling Venues Policy constitutes a relocation policy under the Gambling Amendment Act 2013. The provisions of section 97A of the Amendment Act will apply immediately. The provisions state that when relocating the venue can take the same number of machines as they have at the existing site. This section of the Amendment Act overrules any requirements in the Class 4 Gambling Venue Policy.

The applicant has applied for a maximum of 18 gaming machines.

## 6 PRIMARY ACTIVITY OF CLASS 4 GAMBLING VENUES

*To be considered for a venue consent under this policy, a venue must either:*

- (i) *be a TAB Board Venue or,*  
 (ii) *be a venue with an 'on' or a 'club' liquor licence, or a permanent charter under the Sale of Liquor Act 1989 and the primary activity of the venue shall be:*
- a. *for sporting activities, or*
  - b. *for private club activities, or*
  - c. *for the sale of liquor, or for the sale of liquor and food, for consumption on the premises.*

### Comment

The venue is a venue with an on licence for the sale of liquor for consumption on the premises.

## 7 AREAS OF THE CITY WHERE CLASS 4 GAMBLING VENUES MAY BE ESTABLISHED

- (i) *Class 4 gambling venues may only be established:*
- a. *within the Gambling Permitted Area shown in Schedule 2, subject to meeting the other conditions of this Policy or*
  - b. *on land within the recreation major zone or recreation general zone as defined in the Proposed Hamilton City District Plan (References version 2001), subject to meeting the other conditions of this Policy, and the venue being a recognised sports or other recreational non-profit club operating as an incorporated society.*

- (ii) *Class 4 gambling venues may not be established on any land comprising the residential zone or in any community facilities zone, future urban zone, major facilities zone, recreation environment zone, as defined in the Proposed Hamilton City District Plan (References version 2001) or any subsequent amendments.*

**Comment**

The gambling venue is located within a permitted area on the Northern Te Rapa map in Schedule 2 of the policy.

**8 RESTRICTIONS ON THE LOCATION OF VENUES AND PROXIMITY TO OTHER ACTIVITIES**

- (i) *Venue premises located within the CBD Area shall not be adjacent to any other Class 4 gambling venue or casino*
- (ii) *Venue premises located outside the CBD Area shall not be within 50 metres (in a straight line) of the principal entrance of any other class 4 gambling venue or casino*
- (iii) *The venue place shall not adjoin any school, or licenced early childhood centre*
- (iv) *The principal entrance of the venue premises shall not be located closer than 100 metres (in a straight line) to any residentially zoned land or community facilities zoned land.*

**Comment**

The applicant has provided documentation with their application confirming that the above four criteria are able to be complied with. I am satisfied that this information is correct.

**9 OTHER CRITERIA**

*Requirements applying to all locations:*

- (i) *The applicant shall provide a declaration that the gambling area in a venue will not have a separate entrance, separate name, or otherwise seem to be separate from the primary activity of the venue*
- (ii) *The society applying for and/or operating a Venue Consent must supply Council, as and when reasonably requested, details of successful and unsuccessful grant applications in an agreed electronic format. Electronic details should include the name of the applicant club and/or individual applying, the amount sought, the amount granted, the applicant's address, and the purpose for which the funds will be applied.*
- (iii) *The applicant must meet all relevant declaration, and fee requirements.*

**Comment**

The declarations and fees as required in (i) and (iii) above have been provided with the application. The details required in (ii) have not been requested by Council, however they can be in the future.

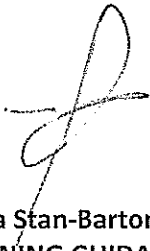
## **CONCLUSION**

I consider that the applicant has provided all documentation as required by the policy and that the application complies with all relevant sections and therefore can be approved for a new venue licence.

## **Advisory Notes**

- That compliance in all other respects with Council Bylaws, all applicable Acts, Regulations, and Rules of Law be met.
- Please notify Council's Planning Guidance Unit should any gambling machines be removed from the premises.
- It is noted that as part of this application the Class 4 gambling consent for the premises located at 510 Te Rapa Road known as Te Rapa Tavern will be surrendered. This surrender will allow the establishment of a new venue at 2 Mainstreet Place. As confirmed by The Lion Foundation, gaming machines will not be operated at both venues at any time.

Yours faithfully



**Debra Stan-Barton**  
**PLANNING GUIDANCE MANAGER**

For more information please contact:  
Jade Shepherd  
Planner  
Municipal Offices  
Garden Place, Hamilton  
Phone 07 838 6706