



Increased council focus on prime business as part of liquor licensing process

The Gambling Act states that a class 4 venue cannot be “used mainly” for operating gaming machines. We have recently become aware of increased interest from the public and councils in the issue of whether a venue is being used mainly for operating gaming machines. Local councils are now using the liquor licensing consent process to discover whether the venue’s prime business is operating gaming machines or not. This is particularly apparent where councils have sinking lid policies on gaming machine numbers, such as Auckland, Gisborne and Hamilton.

If you require a liquor licence to operate your prime business (most do), you need to assess your operations and take appropriate measures to ensure you are meeting the conditions of your liquor licence, especially the requirement for the business to be used principally for providing alcohol and other

refreshments and/or entertainment. It’s too late to wait until the liquor licence renewal process.

In this issue of The Wrap we outline some important factors for determining whether your venue could come under scrutiny on the basis that it is “used mainly” for operating gaming machines.

It’s important to note that the requirements under the Gambling Act 2003 are different from those under the Sale and Supply of Alcohol Act (2012). A venue may not meet the requirements for its alcohol licence but still comply with the Gambling Act.

We recommend you discuss these issues with your NZCT liaison person and make sure you meet the prime activity test. Simply put, in most cases, without a liquor licence, a pub cannot operate gaming machines.

Auckland Council is investigating 28 bars suspected of breaching their alcohol licence by focusing their business on gambling instead of selling drinks. Auckland Council has in the past declined to renew three alcohol licences where they believed that the business of the tavern was principally gambling. At least another five are likely to be opposed shortly.
Source - Stuff, 9 April 2018

Industry update: The prime activity test – make sure you meet the requirements

In determining whether a venue is “used mainly” for operating gaming machines, the Department of Internal Affairs considers a range of factors, including:

- what proportion of the public floor space (not including toilets, kitchens and other staff-only areas) is given to operating gaming machines
- whether other activities are available at the venue
- whether the other activities are well stocked and well promoted
- whether prominence is given to the gaming machines or another activity, for example, whether the machines are situated at the entrance to the venue or behind other activities at the venue

- what activity is promoted most heavily at the venue or on signs outside the venue – the gaming machines or another activity
- whether most of the patrons in the venue are playing gaming machines or taking part in another activity – this will vary at different times of the day and on different days of the week and it is the overall picture that will determine the main use of the venue
- the relative turnover from the gaming machines and other activities at the venue.

Because the requirements of the Gambling Act are different from those of the Sale and Supply of Alcohol Act, a venue may not meet the requirements for its alcohol licence but still comply with the Gambling Act. However, if your primary business is selling alcohol, the loss of your alcohol licence will affect your ability to operate gaming machines because the primary activity must be offered and available at all times that the gaming machines are operating.

If you have concerns about your venue meeting the prime business requirements, particularly if your liquor licence is coming up for renewal, talk to your NZCT liaison person about how you can best prepare for this, such as gathering appropriate financial and other supporting documentation.

Consider other activities

The test is not the use made of the class 4 venue by the venue operator, but the use of the venue by the public. If you don’t currently offer other activities such as live bands, karaoke, pool tables, darts, Sky TV or a handle club, seriously consider starting such activities.

You will need to take any objections to your liquor licence renewal seriously and consider engaging an experienced solicitor with alcohol hearing experience to respond to the objections. Contact your NZCT liaison person for recommendations or visit the New Zealand Law Society website.



Good in the 'hood:

It's going swimmingly at Kai Iwi School

Ross Harvey, Principal at Kai Iwi School near Whanganui, is happy that NZCT awarded his school \$5,000. Thanks to this grant Kai Iwi School could refurbish the leaky swimming pool. "At the end of last year after the children had finished swimming, we noticed our pool was leaking. After getting it looked at it was obvious that a quick fix was not going to do the job. We decided to have the pool refurbished with a fibreglass inner to prevent further cracks and leaking."

Ross realised that this was not going to be cheap, so he applied for a grant from NZCT to help finance the refurbishment. "Thank goodness they gave us a grant of \$5,000 towards refurbishing the pool. The job is now completed and all students are swimming again and having swimming lessons every day. This may not have been the case if we hadn't been able to raise the funds," explains Ross. The pool at Kai Iwi School is available for both the students and the community.



"It is such an important part of a country school to have a pool for our kids to learn to swim in and for our community to come together during those hot, sunny weekends and holidays. For me as principal it is rewarding that our school can keep the pool open and not have to close it like many schools over the years had to do."

Check us out on Facebook, Twitter or LinkedIn, or visit www.nzct.org.nz to find out more about NZCT.



Compliance reminder:

Protecting the privacy of excluded gamblers

A recent complaint received by the Department of Internal Affairs has highlighted the responsibility for class 4 venues to have processes in place to protect the privacy of excluded gamblers. Being identified as a problem gambler is a very personal issue and public disclosure can affect counselling.

In November last year, a Waikato venue (not an NZCT venue) employed the services of a tradesman. While at the venue, the tradesman saw the venue's board of excluded people. Without the venue's knowledge, the tradesman took a photo of the board, which showed 20 excluded people, and posted it on social media, highlighting someone he knew.

While the venue was let down by the tradesman, venues are responsible for protecting any personal information they hold and must take all reasonable steps to do so. We encourage venues to have ready access to photos of excluded gamblers to make it easier for staff to recognise them. If you do display the photos, you must make sure the display is in an area that only staff can access.

To protect your venue and excluded gamblers, we recommend:

- making sure photos of excluded gamblers are displayed in an area where only staff have access
- covering or removing the photos before allowing tradesmen or any other non-staff into that area.

You can find more information about the obligations around personal information on the Privacy Commission website at www.privacy.org.nz.

NZCT The Wrap is a bi-monthly publication for NZCT venue operators. We welcome your comments and feedback about issues raised in this edition or topics you would like covered in the future. Simply speak to your regional manager or contact Tanya Piejus: tanya.piejus@nzct.org.nz

