

Decision number: 01/ON/011/2023

**IN THE MATTER** of the Sale and Supply of  
Alcohol Act 2012 (the Act)

**AND**

**IN THE MATTER** of an application  
by **Sandpit Poolroom and  
Bar Limited**  
pursuant to s.100 of the Act  
for an ON Licence for  
premises situated at 16 Kings  
Road, Paihia known as "The  
Hideout"

**DECISION OF THE FAR NORTH DISTRICT LICENSING COMMITTEE**

Chairman: Murray Clearwater  
Member: John Thorne  
Member: Martin Macpherson

HEARING at Kerikeri on 24 February 2023

**APPEARANCES**

Ms. Sarah Rawcliffe – counsel for the applicant Sandpit Poolroom and Bar Limited ("the applicant")

Ms. Anna Suckling- assisting counsel for the applicant

Mrs. Donna Smith- for the applicant

Ms. Natasha Thompson – Far North Alcohol Licensing Inspector ("the Inspector")  
– to assist.

Senior Constable Roger Dephoff – Police Alcohol Harm Reduction Officer (AHRO) – to assist. (via ZOOM)

Mrs. Wendy Antrobus- for the Medical Officer of Health (MOoH) to assist.

**Public Objectors:**

Mrs. Margaret Thomas

Mrs. Anne Corbett

---

## RESERVED DECISION OF THE COMMITTEE

### Introduction

**Sandpit Poolroom and Bar Limited** have applied for a Class 3 restaurant style ON Licence for premises adjacent to their tavern Sandpit Poolroom and Bar. Under the previous ownership, the premises was also operated as a tavern until the licence was surrendered in July 2022.

The application for a substantive restaurant style ON Licence drew 7 objections from the immediate neighbours. Four indicated a desire to attend the hearing and be heard. Two objectors attended on the day to support their objections.

### Applicants Evidence

1. Ms. Rawcliffe began with a concise opening and told the Committee that the Smiths were experienced licensees and had been operating as a 'dry' restaurant for the last 4 months. She submitted that the low risk activity planned for the site would not reduce the amenity and good order of the area by more than a minor extent.
  2. Donna Louise Smith told us she is a co-director of the applicant company with her husband Terry Smith.
  3. They have been in New Zealand for 10 years and have obtained their manager's Certificates and COA security qualifications. They have been active in the community and are involved in the HNZ Kings Road Accord, the Community Patrol and the CCTV network on Kings Road.
  4. They have facilitated ongoing training for Crowd Controllers for other licensed premises. They have been running the Sandpit Poolroom & Bar for 6 years and took over the lease of the adjacent premises in May 2022.
  5. A full renovation has taken place with new wiring, plumbing and gas and a new kitchen has been installed. New furniture has been brought in and the place repainted. They plan to operate as a sit down class 3 restaurant specialising in smoked meats and platters.
-

6. They applied for an ON Licence in September 2022. Mrs. Smith told us they were shocked and disappointed that the application drew 7 objections from neighbours.
  7. They reached out to the objectors to ensure they were aware that they hoped to run a low risk restaurant and not a tavern like that which was previously operated.
  8. As a result of the objectors concerns, they have reduced the hours sought to Monday to Sunday 11.00am to 11.00pm, The original application was for hours of 11.00am to 1.00am the following day.
  9. The business has been operating as a 'dry' restaurant and takeaway and they do have significant late night requests for food hence their original request to offer late night dining with alcohol.
  10. She noted that the Police, MOoH and the Inspector have not opposed the application but do seek a condition requiring the business to operate as a class 3 restaurant. Mrs. Smith said they are happy to have this imposed as a condition of licence.
  11. They are well aware of the issues that have plagued Kings Road over the years with loud late-night revellers, and since COVID, the introduction of emergency and social housing clientele in nearby motels and backpackers.
  12. They have received significant support from other members of the community for their planned Hideout licensed restaurant and provided us with an impressive set of letters of support.
  13. They believe the restaurant will be an asset to Kings Road and the amenity and good order of the area. Since reaching out to the objectors a number have withdrawn their objections
  14. The Smiths have prepared a Noise Management Plan (NMP) and an Alcohol Management Plan (AMP) that itemises the measures that they have put in place to ensure that they do not contribute to nuisance and disorder.
  15. They actively monitor the road and pick up broken glass whenever they see some even though it has not emanated from their premises.
  16. They were pleased to report that the problems with the social housing clientele has improved in recent months and the Police were keeping a close eye on the area.
-

17. In response to the food sting operation in December 2022 she advised that the Chef was off sick on that particular evening, and she has now ensured that all staff can provide substantive food options so it can't happen again.
18. She was asked if she understood the restrictions on a Class 3 restaurant i.e. that there could only be table service of alcohol and casual consumption of alcohol beyond postprandial consumption was not permitted. She acknowledged that she did understand what was expected of a licensee with that type of licence.

**That was the case for the applicant.**

**Evidence of the MOoH**

19. Mrs. Wendy Antrobus appeared as delegated officer for the Medical Officer of Health. In her capacity to assist the Committee she confirmed that the MOoH was not opposed and supported the call for a condition requiring the premises to operate as a class 3 restaurant.

**Evidence of the Inspector**

20. Ms. Natasha Thompson appeared for the Inspectorate.
21. She stood by her report and believed that a Class 3 On Licence could be granted to the applicant. She did express some concerns about the result of the December food audit at the adjacent Sandpit Poolroom and Bar but does not oppose the application for The Hideout subject to a condition that it operate as a Class 3 restaurant.

**Evidence of the Police**

22. We then heard briefly from Senior Constable Roger Dephoff of the Kerikeri Police who said the Police had no concerns about The Hideout but did believe a condition should be imposed requiring that the business operate as a class 3 restaurant.
-

23. He confirmed that Kings Road was a problem area for the Police due to late night revellers and the introduction of social housing clientele. He did note that it was slowly improving and that he had no issues with the Sandpit Poolroom and Bar that was run by the Smiths.

### **Evidence of the Objectors.**

24. Seven public objections were received. Three have been conciliated and withdrawn. Two objectors did not appear to support their objection.
25. As was said in **GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03<sup>1</sup>**
- “The objections will have little probative value if those making the allegations in the objection are not able, or prepared, to appear at the hearing to affirm, or swear, to the truth of what they are saying. By not appearing, their opinions and concerns cannot be tested by cross-examination by the applicant or questioned by members of the Authority.*
26. We take a similar approach to the objectors who failed to attend this hearing to affirm their evidence and be subject to cross-examination. Their objection will carry little probative value although the issues raised were of a similar vein to the others.
27. We were pleased that we did hear from two of the objectors.
28. The first objector to talk to us was Mrs. Margaret Thomas who told us that she had lived on Kings Road for the last 6 years. She said that alcohol fuelled noise and disorder had increased “exponentially” in the last 2 years due to the presence of the existing alcohol outlets and the increased use of nearby accommodation for social housing.
29. She generously acknowledged the bona fides of the applicants and believed they were good people.
30. What did concern her greatly was the “change to the social landscape of the community” over the last few years and she believed that alcohol fuels the adverse behaviours that residents have to put up with.
31. She probably wouldn’t go down Kings Road late at night, but she said things had got a bit better in the last 3 months.

---

<sup>1</sup> GRAMMADE ENTERPRISES LIMITED LLA PH648-649/03

---

32. We asked her if she thought a class 3 restaurant finishing at 11.00pm would further reduce the amenity and good order of the area. She was unsure and clearly still apprehensive about the problems experienced over the last two years.
33. Mrs. Ann Corbett told us she had lived in the area for 36 years. She had never previously objected to licences on Kings Road but the residents in the social housing had changed the landscape of the area in an adverse way.
34. She held similar concerns to Mrs Thomas, and it had been really stressful for her to see her town change so dramatically with the introduction of social housing clientele.
35. When she saw the application wanted to be open until 1.00am she understandably thought that it cannot help but add to the problems in Kings Road. She took some comfort now that the proposal was for a class 3 restaurant and that the hours had been amended to a 11.00pm close.

### **Closing Submissions**

36. The Police and the Inspector said as long as it operates as a low risk class 3 restaurant, they believe the proposal would not reduce the amenity and good order of the locality by more than a minor extent.
  37. The objectors choose not to add to their oral evidence and letters of objection.
  38. Ms Rawcliffe reminded us that the agencies did not oppose, and her clients were well regarded, experienced licensees.
  39. She referenced Gendall J in the dictum of Vaudrey who went further to say that *“there will be cases where the matter(s) to which the decision maker is required to have regard are so fundamental or critical that they assume an elevated mantle.”*
  40. She went through the criteria of s.105 and submitted that the amenity and good order of the locality was the only criteria really in issue. She said the maximum occupancy was only 50 persons and it would be run strictly as a low-risk class 3 restaurant and close at 11.00pm at the latest.
-

## Relevant legislation

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).*

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:

### **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) 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**

41. The previous business was a tavern and was no doubt contributing to the problems on Kings Road.
42. We believe we must tread carefully as this locality already has a reduced level of amenity and good order because of the issues we were told about.
43. We have considered the criteria prescribed in Section 105/106 and find no issue with the suitability of the applicant and the business model they seek to license.
44. As conceded by counsel the most critical consideration is the current amenity and good order of the locality and whether this proposal would add to the problems in Kings Road, or would it provide an improvement to the hospitality businesses in the area by offering quality meals with the table service of alcohol to a small number of patrons.
45. Our method of determination has been set out succinctly in **Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2012] NZHC 1406; [2012] NZAR 717 (20 June 2012)**<sup>2</sup>

*Having considered all of that information, the Authority (the Committee) must stand back and determine whether the application should be granted (whether on conditions or not) or refused. This step requires the Authority to form a view on whether there is any evidence to suggest that granting the application will be contrary to s 4(1), (and) increase the risk of alcohol abuse.*
46. After standing back and evaluating the evidence that has been placed before us, we believe that a competently managed low-risk class 3 restaurant (as sought by the applicants) will not adversely affect the residential neighbours.
47. We are satisfied that the amenity and good order of the locality will not be reduced by more than a minor extent.
48. Noise has not been raised as an issue from these premises, or its sister business next door, Sandpit Poolroom and Bar. However, people noise too can become excessive if not managed carefully.

---

<sup>2</sup> Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2012] NZHC 1406; [2012] NZAR 717 (20 June 2012)

---

49. In regard to noise, the Liquor Licensing Authority said in *Paihia Saltwater (2001) Limited LLA PH391/2001*.<sup>3</sup>

*[29] ..... We will always give full credit to those holders who acknowledge any existing noise problem and try and do something about it. In our view the term 'host responsibility' does not exclude the people who live nearby.*

*[30] Many licensed premises have shown that they can operate in harmony with their residential neighbours. It is no co-incidence that the managers and owners of such premises also show a commitment to the reduction of liquor abuse."*

50. That decision was written more than 22 years ago, but it as pertinent today as it was then. Coincidentally it relates to these exact same premises!
51. The applicant is an experienced licensee who is active in the community and has shown us that it cares about the Kings Road area.
52. A new licence is granted for 12 months only, and the conditions can be reviewed upon renewal. The responsibility now lies with the applicant to operate this newly licensed premises compliantly, as a low risk restaurant.
53. By consent we add a condition on the licence confirming that it must operate as a Class 3 restaurant i.e. sit down dining with only table service of alcohol.
54. We thank the objectors sincerely for bringing their concerns to the Committee. If things turn for the worse, they must raise their concerns directly with the applicant and/or the regulatory agencies.
55. We also firmly remind the applicant that, the Committee can quickly rehear any matter it has determined at any time that it thinks fit.

### **THE DECISION**

The District Licensing Committee, acting pursuant to the Sale and Supply of Alcohol Act 2012, **grants** an application by **Sandpit Poolroom and Bar Limited** for an ON Licence for premises situated at 16 Kings Road, Paihia known as "**The Hideout**, subject to conditions

**The following conditions are to apply to the ON Licence:**

---

<sup>3</sup> *Paihia Saltwater (2001) Limited LLA PH391/2001*

---

1. Alcohol may be sold or supplied for consumption on the premises only on the following days and hours: **Monday to Sunday 11.00am to 11.00pm;**
  2. No alcohol is to be sold or supplied 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 business is to operate as a Class 3 restaurant i.e. sit down dining with only table service of alcohol.**
  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;
-

DATED at Kerikeri this 28<sup>th</sup> day of FEBRUARY 2023



Murray Clearwater  
**Chairperson/Commissioner**  
**For The Far North District Licensing Committee**



**NOTE**

**Sections 152 to 155 of the Act relating to the right to appeal this decision are in effect. This decision is suspended until 10 working days after the date on which notice of this decision is given to the objectors.**