
REPORT 3
(1215/52/IM)

ADOPTION OF THE GAMBLING VENUES POLICY

1. Purpose of Report

This report presents the results of consultation on the proposed Gaming Venues Policy attached as Appendix 1 and seeks Committee agreement to refer the attached policy to Council for consideration and adoption.

2. Executive Summary

The Council is required to review its Gaming Venues Policy under the Gambling Act 2003. The Gaming Venues Policy determines where class 4 gaming venues (gaming machine venues) and stand-alone TAB venues may be established in the city.

The Committee considered a review of the policy on November 9. The review concluded that the current policy, which manages the growth of gaming in suburban areas, is working well in tandem with tighter restrictions on the gaming industry introduced under the Gambling Act. The Council agreed to consult on a draft policy which retains the existing limits on machine numbers in order to continue to manage the level of gaming in suburban areas.

Consultation took place between December 4 2006 and January 31 2007. The Council received 192 written submissions and the Strategy and Policy Committee heard 19 oral submissions at its meetings on 8 and 13 February.

Submissions from individuals and organisation reflected a wide range of views from 'ban all machines' to 'lift caps on machine numbers'. In general, those who felt the proposed policy is either 'appropriate' or 'too restrictive' noted the importance of grants from gaming societies to the continued effective functioning (and in some cases the survival) of a range of community, sporting and arts organisations in Wellington. Those who felt Council's policy is not restrictive enough expressed concern about the social impacts of problem gambling on the Wellington community. Key issues raised by submitters and officers responses are noted in section 5 of this paper. A full list of written submissions is attached as Appendix 2.

It is recommended that the Committee adopt the proposed Gambling Venues Policy. The proposed policy is set in the context of a general downturn in gaming venues and gaming machines in Wellington.

There are 21 fewer venues and 194 fewer machines in Wellington than 3 years ago.¹ Gaming revenue and grants have also fallen over this period, while the reported rates of problem gambling have also declined. The impacts of the Gambling Act with its focus on harm minimisation appears to be having an impact.

In recognition of the issues raised through the consultation process the proposed policy continues to provide a balance by restricting gaming machines in suburban areas while allowing for the possibility for flexibility in gaming machine numbers in the Central Business District (CBD). No restrictions on the CBD are proposed where the number of machines have fallen by 151 in 3 years from 543 to 392.

3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that the Committee considered the social impact of gambling on November 9 2006.*
3. *Note that the Committee heard a total of 19 oral submissions on 8 and 13 of February.*
4. *Note the submissions attached as Appendix 2.*
5. *Agree to refer the Gambling Venues Policy, attached as Appendix 1, to Council for adoption at its meeting on Wednesday 21 March 2007.*
6. *Recommends to Council that it:*
 - a. *Note that the special consultative procedure began on December 4 2006 with written submissions closing on January 31 2007.*
 - b. *Note the Strategy and Policy Committee heard a total of 19 oral submissions on Thursday 8 and Tuesday 13 February 2007.*
 - c. *Note the submissions attached as Appendix 2.*
 - d. *Agree to adopt the Gambling Venues Policy attached as Appendix 1 to take effect immediately*
 - e. *Revoke the 2004 Gaming Venues Policy*

¹ DIA statistics released in December show a further drop of 23 gaming machines in Wellington – taking the drop in gaming machines to 194 since March 2004. Wellington has 836 gaming machines.

- f. Note any applications for gaming venue consent will be considered under the terms of the policy in place at the date the application is received.*
- g. Note that the policy will be monitored and reviewed by November 2009.*

4. Background

The Gambling Act 2003 requires local authorities to adopt a class 4 gambling venues and TAB venues policy and then review it every three years.

4.1 Purpose of the Gambling Venue Policy

The current Gaming Venues Policy manages the number and location of class 4 non-casino gaming machines (commonly referred to as pokies) and TAB venues in Wellington.

Under the Gambling Act a local authority's Gambling Venues Policy:

- must specify whether or not class 4 venues and Totalisator Agency Board (TAB) venues may be established in its district, and, if so, where they may be located
- may specify any restrictions on the maximum number of gaming machines that may be operated at any class 4 venue
- must have regard to the social impact of gambling within the district.

The policy excludes TAB terminals in premises not owned or leased by the TAB (e.g. hotels, bars and clubs).

Before a venue can install machines it must have a venue licence issued by the Department of Internal Affairs (DIA). A prerequisite for such a licence is consent from the local authority. All consents must be in accordance with the adopted policy and other factors can not be taken into account in granting consent.

4.2 The role of government agencies

DIA is responsible for ensuring gaming is conducted in accordance with the Gambling Act and associated gambling regulations. For example the Department must be satisfied that a venue meets a number of criteria before issuing a licence. It also monitors how societies distribute funds raised via pokie machines. The Act requires societies to distribute a minimum of 33% of gross proceeds for authorised purposes, i.e. community grants, a third is paid to the government in tax, with the balance covering administration costs.

The Ministry of Health is the lead agency responsible for addressing problem gambling. The work the Ministry undertakes to prevent and minimise gambling harm includes research, primary health initiatives and intervention services.

The work is funded via a problem gambling levy, collected from gaming trusts, specified in the Act.

4.3 Review of the policy

Council adopted a Gaming Venues Policy in March 2004. The policy has been reviewed and Council considered the findings of the review, including the social impact report, at its meeting on 27 November 2006. The review concluded that the existing policy is working well and has prevented the growth of gaming in suburban areas.

Tighter restrictions on gaming operators introduced under the Gaming Act, combined with smoke free legislation and the changing nature of licensed venues have seen machine numbers decrease in areas such the Central Business District. Latest statistics from the DIA (December 2006) show the number of gaming machines in Wellington have fallen further since September bringing the total number of machines in Wellington to 836 which is 194 fewer than March 2004.

It is estimated that gaming proceeds have fallen between \$4 million and \$5 million in 2005 compared to 2003, while reported statistics on problem gambling have also fallen. The policy allowed for stand alone TAB venues to be established but no new TAB venues have been established in the District since 1998.

The Council agreed to consult on the proposed policy (briefly outlined below) after reviewing the workings of the current policy and taking into account the benefits of gambling in terms of entertainment and community grants, and the negative social impacts associated with problem gambling.

The resulting proposed Gambling Venues Policy restricts the number of gaming machines (pokies) allowed in suburban areas while allowing for gaming venues to be established in the Central Business District. TAB venues are able to be established anywhere in the District.

Machine limits detailed in the 2004 policy were established on the basis of 1 machine per 250 residents. The proposed policy retains the machine limits of the 2004 policy and has been decoupled from increases in machine numbers related to population increases. This approach has been adopted as a protective measure to limit the growth of gaming in suburban areas.

The proposed policy sets the following limits on machine numbers in 7 policy zones.

Gaming Venue Zones	Maximum number of Machines	Machine numbers	
		March 2004	December 2006
Southern	116	143	115
Northern	146	155	150
Eastern	125	128	123
Onslow	62	15	9
Western	73	35	38
Lambton (excluding the Central Area Zone)	55	11	9
Central Area Zone	No limits	543	392
Total		1030	836

In this context the Council called for submissions on the proposed policy. The remainder of the paper outlines the issues raised during consultation. A recommended policy is attached as Appendix 1 and written submissions are attached as Appendix 2.

4.4 Consultation Process

On 29 November 2006 the Council agreed to the proposed gaming venues policy and initiated the special consultative procedure in accordance with the requirements of the Gambling and Local Government Acts.

Consultation began on December 4 2006 with written submissions closing on January 31 2007. The consultation document was sent to wide range of stakeholders, including sports groups, social service agencies, resident groups, gaming societies who operate class 4 machines in Wellington, and organisations representing Maori in the district. Consultation documents were made available at Council Libraries, Service Centres and on the Council's website. Public notices were placed in the Dominion Post and press releases were provided to the Wellington media.

4.4.1 Response to consultation

Council received 192 written submissions and the Committee heard a total of 19 oral submissions at its meetings of 8 and 13 February.

The submission form asked submitters to state if they thought the proposed policy 'is appropriate for Wellington, or, not restrictive enough, or, too restrictive, or, other'.

- 18 submitters (10 individuals and 8 organisations) stated the proposed policy is appropriate for Wellington.
- 160 submitters (143 individuals and 17 organisations) stated the policy is not restrictive enough.

- 12 submitters (2 individuals and 10 organisations) stated the policy is too restrictive
- 2 submitters (1 individual and 1 organisation) made other comments

5. Discussion

5.1 Consultation themes

Submissions reflected a wide range of views ranging from 'ban all machines' to 'remove limits on machine numbers'. A summary of the key themes from consultation is outlined below.

Submitters who stated the proposed policy is appropriate for Wellington note that the policy seeks to provide a balance between gaming provision and harm minimisation. Submissions from sports, community and arts organisations cited the importance of gaming grants to their continued operation. These groups fear further restriction on machine numbers will result in a continued decline in already tightly contested funding streams.

Individuals and groups who believe the Council's policy is too restrictive cited the low prevalence of problem gambling in New Zealand, the focus on harm minimisation introduced under the Gambling Act and associated regulations, coupled with the decline in the number of gaming venues, machines and community grants as reasons for the Council to relax its policy. One submitter noted that a less restrictive policy allows for gaming venues to be established as the city grows and changes.

Submitters who favoured tighter restrictions expressed concern about the social impacts of problem gambling. Submitters noted that problem gambling leads to poverty, debt, family violence, child neglect and strain on social services. Concern was expressed about the number of gaming machines in Wellington. In general this group wants the Council to tighten its policy in a way that allows for no growth to occur and to affect a general decline in gaming availability, e.g. a sinking lid policy. Two organisations that support a more restrictive policy noted that they are in an invidious position where they do not want to support gambling by applying for funding from gaming societies but needed the funding to continue to undertake their work.

Two submitters outlined 'other issues' in relation to the proposed policy. These issues along with others specific issues raised by submitters are addressed below.

5.2 Key issues raised in submissions

Submissions were received from a range of individuals and groups with varying degrees of understanding about the Council's role under the Gambling Act. The key issues raised and officers comments are contained in the table below.

Issue raised	Response	Amend policy
Policy leaves decline of gaming machines to external factors	Act does not allow Council to ban machines. Local authorities are not able to remove existing machines.	No
Change the name of the policy to <i>Gambling Venues Policy</i>	Officers support the proposed change. The revised wording better reflects the breadth of the policy which covers class 4 gaming venues and stand alone TAB venues. The revised title is consistent with the wording in the Gambling Act.	Yes
Policy allows for growth in Newtown	Machine limits mean no growth is possible in Newtown.	No
Cap machines in the Central Business District (CBD)	There are 151 fewer gaming machines than 3 years ago in the CBD. The character of the CBD venues has changed and demand for hosting gaming has diminished. The absence of a cap allows for natural turnover in gaming venues to occur.	No
Cap machines at current levels No more machines (sinking lid policies)	The intent of the current policy is to manage the growth of gaming and to balance benefits in terms of entertainment and community grants against the social costs associated with problem gambling. Policy limits on machine numbers provide adequate controls to manage growth in suburban areas, for example, the most recent DIA statistics show that gaming machines have fallen in the Northern and Eastern Zones. Machine numbers are 1 below the cap in the Southern Zone. Gaming machines in other areas of the city (Onslow, Western and Lambton Zones) have remained low and relatively static since 2003 or reduced significantly, as is the case with the Central Business District.	No
Cap machines at 2003 levels when the Act came into force	This would allow for additional gaming machines in areas such as Newtown.	No
Remove limits on machine numbers – capping machines has little impact on player expenditure and problem gambling	Researchers appear divided on the linkage between exposure to gaming machines and the prevalence of problem gambling. The policy adopts the precautionary principle by limiting machine numbers in suburban areas as a protective measure.	No
Local Authorities needs to reflect on where replacement funding for community groups etc will come from if gaming societies are unreasonably constrained e.g. local businesses or the Council	The number of gaming machines in Wellington has fallen by 194 in 3 years in response to the Gambling Act and smoke free legislation. The policy enables some growth to occur.	No

Implement a ratio of 1 gaming machine per 275 residents	Machine limits from the existing policy have been retained and not updated to reflect growth in the population. The suggested ratio of 1:275 has been calculated on 2001 population counts rather than 2006 population counts. When this later calculation is made the resulting machine limits are practically the same as the proposed policy.	No
Retain a 1:250 ratio which increases with population to allow growth in venues	This approach allows for growth in gaming machines to occur in areas of concern. An advantage to decoupling the policy from population growth is machine numbers remain constant and provide the community and the gaming industry with certainty around the policy.	No
Remove the requirement to have a liquor licence with a designation	<p>Proponents for the removal of this condition query the legality of the clause and argue the Gambling Act and associated gambling regulations (administered by the DIA) adequately address issues of harm minimisation and exposure of gambling to young people under 18 in un-licensed settings or licensed venues with no designation.</p> <p>If the liquor licence clause is removed, venues which previously were unable to host gaming machines in Wellington, such as restaurants, cafes, and TAB venues would be entitled to apply for class 4 gaming venue licences. The Council would be required to provide consent – subject to machine limits, resource consent and fee requirements. The DIA in licensing a gaming venue must be satisfied that the possibility of persons under 18 years old gaining access to class 4 gambling at a class venue is minimal.</p> <p>While retaining the clause may present a risk of legal challenge, Council's legal advice states that there is a reasonable argument to support Council's inclusion of the clause in the policy. Officers recommended the clause be retained on the basis that it provides the community with continued surety about where gaming machines will be located. It also provides an additional level of comfort for the Council that younger residents are not being unduly exposed to class 4 gambling.</p>	No
The policy unfairly discriminates against TAB venues	The requirement for a liquor licence prevents TAB venues from operating gaming machines under our policy (See above). The exception is the TAB in Courtenay Place which operated machines prior to the Gambling Act coming into force and is therefore not subject to our policy unless the venue remains unlicensed for 6 months.	No
Policy does not fully cover the requirements of the Gambling Act	Officers have reviewed the sections outlined in the submission, sought legal advice and have made an amendment to the section 'General Conditions' regarding consent to venues licensed after 17 October 2001 to provide added clarity to the policy. The policy has been reformatted to improve readability.	Yes (to improve readability and to enhance clarity)

Gambling is a problem for a small minority – funds provided benefit more than a small minority	Policy provides sufficient opportunities for those who want to engage in gaming activity to do so.	No
Clubs who have less than the maximum 9 machines should be able to seek an increase to satisfy their membership	The intent of machine limits in suburban areas is to control the overall density of gaming opportunities.	No
Council has a conflict of interest in setting policy when it periodically applies for grants from gaming societies.	The Council has a legislative responsibility to set its policy in accordance with the Gambling Act 2003. In addition, under the Council's standing orders any Councillor involved in the gambling industry has an obligation to declare a conflict of interest and is not permitted to engage in questions or debate on the issue.	No
Council should restrict signage for gaming via a bylaw or some other means	The Gambling Act covers signage conditions for venues and these are monitored and enforced by the Department of Internal Affairs.	No
Council should advocate to Central Government on gaming reform	Council contributes to submission processes initiated by relevant government departments. For example DIA current consultation on improving information gathering from Class 4 Gambling Operators.	No
Timing of consultation was over a holiday period	Because the original policy had to be developed, consulted on, and adopted between September 2003 and March 2004, consultation had to take place over the December - January. That situation also occurred with this policy review. It is proposed that the next review be completed by November 2009 so that consultation is not being carried out during the traditional holiday period.	Timing of next review to be adjusted
Council does not recognise that grants coming back to the community do not reflect the demographic of where money comes from.	Council is not involved in distributing grants – this is undertaken by each gaming society in accordance with the Gambling Act. The DIA is responsible for monitoring where money raised is being distributed. DIA is currently researching this area. Many local community groups who submitted stated they benefit from gaming funds.	No
Council should charge management fees, remove licences, make new rules for age of entry, close gaming venues between 6am -12pm	These issues are the responsibility of the DIA.	No

5.3 The amended Gaming Venues Policy

In response to submissions on the Gaming Venues Policy the following amendments have been made to the proposed policy:

5.3.1 Renaming the policy 'Gambling Venues Policy'

Officers support a proposed change to the wording of the policy to Gambling Venues Policy. The revised wording better reflects the breadth of the policy which covers class 4 gaming venues and stand alone TAB venues. The revised title is consistent with the wording in the Gambling Act.

5.3.2 Re-wording to improve readability

The section 'General conditions' has been revised to provide enhanced clarity after legal advice suggested this section could be tightened. The relevant change makes it clear that class 4 venues who were licensed after 17 October 2001 must apply for Council consent to operate gaming machines or increase machine numbers.

A revised copy of the policy is attached as appendix 1 and changes to content have been highlighted using 'track changes'.

5.4 Next steps

The next step is for Committee to recommend to Council that it consider and adopt the Gambling Venues Policy at its meeting on March 21. The revised policy will take effect from the time Council adopts it. Applications for Council consent will be determined in accordance with the policy in place on the date the application is received.

When a revised policy is agreed upon officers will contact submitters to inform them of the result.

5.5 Review of the policy in 2010

A review of the policy is required by March 2010, though the Council may choose to undertake a review earlier than this date and officers intend to review the policy by November 2009. The number of gaming machines in the city is regularly monitored by officers. Should the number of gaming machines increase significantly officers will alert the Committee and seek its views on undertaking a review earlier than that proposed.

6. Conclusion

The Gaming Venues Policy has been through the public consultation process. This report presents the results of the consultation and recommends that the Committee refer the attached policy to Council for adoption.

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Supporting Information

1) Strategic Fit / Strategic Outcome

A review of the Gaming Venues Policy is required by the Gambling Act 2003. The policy supports Council's role in developing a responsible approach to gambling as a recreational activity and a public health issue. Outcome 6.5 "Wellington's population will enjoy a healthy lifestyle and high standards of public health".

2) LTCCP/Annual Plan reference and long term financial impact

The policy forms part of the work programme under the Social & Recreational Strategy. Activity 6.5.3 Regulator – Public Health. The project generates minimal costs and revenue associated with administering the policy.

3) Treaty of Waitangi considerations

No treaty issues have been identified. The Tenth Trust and Ngati Toa have been consulted as part of the review.

4) Decision-Making

The Gambling Act 2003 requires Council to undertake a special consultative procedure if the policy is amended.

5) Consultation

a) General Consultation

The policy has been developed employing the special consultative outlined in the Local Government Act. The Council provided a copy of the draft policy to all gaming societies who operate class 4 non casino gaming machines in the district. Other identified stakeholders were sent copies of the policy, e.g. social service agencies who deal with problem gambling. The policy was made available in the usual places, e.g. Council Libraries and on the website.

b) Consultation with Maori

Mana whenua were provided with a copy of the current policy and will be provided with the revised draft policy. Maori agencies who work with those with problem gambling will also receive copies.

6) Legal Implications

Council's lawyers have been consulted during the development of this policy. Retaining a liquor licence clause in the policy presents a risk of legal challenge. Legal advice states that the Council has reasonable arguments to support the inclusion of the clause.

7) Consistency with existing policy

The paper provides the Committee with a proposed policy based on the existing policy.