

Full Council

24 October 2024

Report for Agenda Item | Rīpoata moto e Rāraki take [4]

Department: Assurance, Finance & Risk

Title | Taitara: Class 4 Gambling and TAB Venue Policy Review

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to provide information and present options to Council, so that it can make decisions on the draft Class 4 Gambling and TAB Venue Policy (the draft policy, attachment A), and to present the draft policy for adoption.

Executive Summary | Whakarāpopototaka Matua

Section 101 of the Gambling Act 2003 (GA) and section 96 of the Racing Industry Act 2020 (RA) requires a territorial authority to adopt a class 4 venue and TAB (Totalisator Agency Board) venue policy. Once a policy is adopted, it is required to be reviewed every three years.

Public consultation in accordance with the special consultative procedure occurred during two periods between April 2023 and the beginning of August 2023 due to errors in the initial draft policy. The hearing panel received written and oral submissions at its meeting on 1 February 2024. The changes proposed in the draft policy include:

- removal of the information disclosure requirement for societies
- removal of the requirement to publicly notify an application
- removal of the timeframe for public objections.

The hearing panel supported these changes and recommended one further minor change:

- change of the word “zone” to “area” at the first point of 4.1 of the draft policy to ensure consistency with the “Interpretation” section.

Council is being asked to adopt the policy.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;
2. **Adopt** the Class 4 Gambling and TAB Venue Policy 2024; and

3. **Resolve** that the Class 4 Gambling and TAB Venue Policy 2024 will come into effect on 25 October 2024 and that the Class 4 and TAB Gambling Venue Policy 2018 shall be revoked on 25 October 2024.

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1 October 2024

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4 October 2024

Context | Horopaki

1. Section 102 of the Gambling Act 2003 (GA), and section 97 of the Racing Industry Act 2020 (RA) requires that councils review their Class 4 Gambling and TAB Venue Policy every three years.
2. Queenstown Lakes District Council (QLDC) first adopted a Class 4 Gambling and TAB Venue Policy in 2004 and subsequently reviewed it in 2007, 2010, 2013 and 2017. The policy was amended in 2018 to include a relocation clause in accordance with s.101(3)(d) of the GA (attachment B).
3. The current review process has taken more than two years; however, this does not mean that the policy ceases to have effect. Sections 102(6) of the GA and 97(5) of the RA provide that, “a policy does not cease to have effect because it is due for review or is being reviewed.”
4. The key objectives of the draft policy (attachment A) are:
 - prevent and minimise harm to the community caused by gambling
 - control and manage the growth of gambling in the Queenstown Lakes District (the **QLD** or **district**)
 - restrict the locations of gambling venues within the district
 - facilitate community involvement in decisions about how gambling should be provided for within the district
 - ensure that money from gambling benefits the community
 - ensure Council and the community have an influence over the delivery and location of new gambling venues within the district.

OVERVIEW OF THE POLICY AND PROPOSED CHANGES

5. The GA sets out a process for controlling the growth of gambling by territorial authorities. Territorial authorities are required to implement a policy in accordance with section 101 of the GA.
6. Section 101 of the GA¹ sets out what Council must consider in adopting its policy. Of particular relevance is that Council must have regard to the social impact of gambling within the district when adopting its policy.

Current Gambling Policy

7. The policy generally covers all of the relevant considerations. However, additional clauses in the policy that are not required by either the GA or RA include:
 - a. **Information Disclosure:** The policy requires societies to disclose information relating to financial records regarding net expenditure (GMP), site fees and grants issued to local community groups, to Council every six months.
 - b. **Application Process:** The evidence required for an application, and the requirement for fees to be paid.

¹ <https://www.legislation.govt.nz/act/public/2003/0051/latest/DLM208660.html>

- c. **Public Notice Provisions:** Including requirements to notify the public of any intention to make an application requiring 21 days for objections to be made.
- d. **Public Objections:** Objections to an application must be made within 21 days of the first public notice.

Proposed Changes to the Policy

8. The following changes are proposed in the draft policy.
 - A. Removal of the information disclosure requirement for societies:
 - a. This requirement has not been actively monitored by Council and there is no record of this information ever being requested or received. The GA requires information to be provided to the Department of Internal Affairs (DIA), and it is accessible through the DIA, Problem Gambling Foundation Group, and by the Societies themselves. It is not a requirement under the GA for Council to request or to hold this information.
 - b. As such, it is recommended that the requirement be removed from the policy. The requirement creates an unnecessary and inefficient administrative burden, is not a statutory requirement, and the information is readily available from reliable sources.
 - B. Removal of the requirement to publicly notify an application:
 - a. Neither the GA nor the RA require an application to be publicly notified. Whilst Council is required to act in accordance with the statutory requirements, neither the GA nor the RA require an application to be publicly notified.
 - b. A Territorial Authority is required to provide a decision within 30 working days from the date of an application: *Sections 100(3) of the GA and 95(2) of the RA.*
 - c. If it were required to give public notice of all applications, Council would be unable to meet the statutory (mandatory) 30 working day timeframe to provide a decision.
 - d. The following internal administrative timeframes could not be met:
 - Public notice could not be advertised in a reasonable timeframe in order to reach a timely decision;
 - There would be insufficient time to hear objections arising from submissions, and officers' reports could not be presented in time for a hearing, nor could a decision be delivered on the application within the statutory timeframe.
 - e. Other administrative concerns include:
 - Reports to Council must be submitted three weeks before a scheduled meeting, and Council officers would not have sufficient time to do so and provide a decision within the statutory timeframe.
 - Community and Services Committee are scheduled to meet every six weeks, and an application would not be presented to the Committee in time to make a decision within the statutory timeframe.

- While an emergency meeting could be called, it would be a further administrative burden to do so, with associated costs, for negligible benefit, particularly when neither the GA nor the RA requires it.
 - Community involvement is more appropriate at the time the policy is amended, in accordance with the purpose and intent of section 102(2) of the GA (and in accordance with the principles of s.83 of the Local Government Act 2002 (LGA)), where public consultation is mandatory.
- f. As public notice of an application is not required under the GA or RA, Council's principal objective, when processing a Territorial Authority consent application, is in meeting its statutory obligations under the RA and GA: *sections 100(3) of the GA and 95(2) of the RA.*
- g. On balance, it is recommended that the requirement for public notice be removed from the policy. This will ensure the Council is able to meet its statutory obligation while ensuring community voice can still be captured through any consultation on the policy review and where public consultation is mandatory through section 102(2) of the GA.
- C. Removal of the timeframe for public objections.
- a) The policy provides a time frame to submit public objection, within 21 days of the first public notice.
 - b) Should the public notice requirement be removed, the objection period becomes redundant.
9. No changes are sought regarding the application process in the draft policy.
10. After consultation with the community on the draft policy, the Council strategic framework was updated. Accordingly, reference to QLDC's former mission, values and culture in the introduction section of the draft policy that went out for consultation, has been removed from the draft policy for adoption. Officers view this as an update that does not materially affect the substance or intent of the draft policy.

INFORMATION AND DATA REGARDING GAMBLING IN THE QUEENSTOWN LAKES DISTRICT (QLD)

11. The historic and current numbers of Electronic Gaming Machines (EGMs) within the QLD and the information around gambling harm below provides context to the draft policy.
12. As of 1 September 2024, there are a total of 47 EGMs across four venues in the district. This includes three venues in Wānaka and one in Frankton. Comparatively, in September 2003, there were 136 EGMs across 14 venues in the district. Of note is that at the end of August 2024, one venue with nine (EGMs) did not renew its lease on its machines thereby decreasing the total number of EGMs in the QLD (to 47).
13. The last Class 4 gaming application received by Council was in 2021 to relocate three EGMs from a premises (which had had seven EGMs) that had closed, and to move them to Woody's and Rove Bar in Post Office Lane, Wānaka.

15. Prior to this, an application was received in 2017 to relocate 18 machines from a recently demolished building to the Pig and Whistle premises in Queenstown. This application was subsequently withdrawn as the venue could not obtain landowners approval to operate EGMs from the building.
16. The last new Class 4 gambling application where territorial authority approval was sought and provided, was eight years ago in 2016 where nine EGMs were installed into Water Bar in Wānaka.
17. At the hearing panel meeting, the data around gambling harm in the district was discussed. This is available on the Ministry of Health website² and provides that to the year ending June 2023, two new clients were assisted from all forms of gambling, with one of these new clients coming from gaming machines. This was compared to Porirua where 59 new clients presented.

TIMELINE

18. A draft policy and Statement of Proposal was presented to Council on 23 March 2023. Council adopted the draft policy for consultation between 3 April and 5 May 2023. Ten submissions were received, six in support of the draft policy, four in opposition.
19. A hearing panel meeting was scheduled for 20 June 2023 to receive submissions and hear those that wished to speak to their submission.
20. On 1 June 2023 two errors in the draft policy were found, these errors:
 - a. would have allowed two or more clubs holding class 4 licences to merge (the current 2018 policy does not allow this to occur),
 - b. would have allowed venues with a gambling licence issued on or before 17 October 2021 to increase the number of gaming machines to 18 (the current 2018 policy does not allow this to occur).
21. Accordingly, the hearing panel fixture was postponed, and a further report (attachment C) and revised Statement of Proposal (attachment D) was presented to Council on 29 June 2023 outlining the errors and requesting that it endorse a corrected draft policy for an additional period of public consultation be undertaken specifically in relation to the two errors. It was made clear that all submissions already received would be considered in as well as any additional submissions.
22. The second round of public consultation took place from 3 July to 4 August 2023. No further submissions were received.
23. The hearing panel convened on 1 February 2024 and received the written submissions and heard those who wished to speak to their submission (report attachment E). As an outcome of discussions by the hearing panel, the meeting was adjourned to ensure direct consultation with Iwi regarding the draft policy, as well as to provide advice on the definition of “residential area”.

² [Ministry of Health website statistics and data, Table 10 under the heading “Clients assisted, by Territorial Authority”.](#)

24. On 7 June 2024 the hearing panel reconvened. Officers advised that the draft policy and statement of proposal had been provided to Te Ao Marama, Aukaha and Mana Tahuna. These groups provided generic verbal feedback and this expressed opposition to the removal of public consultation due to the harmful nature of gambling venues to vulnerable communities. The proposal to remove public notification is discussed in more detail below.
25. In addition, the meaning of residential areas was confirmed to the panel as those areas referred to in the Operative District Plan at Chapter 7, then also under the Proposed District Plan at Chapters 7-11 (Urban Area). The panel requested that the draft policy be amended to ensure consistency and the change from “zone” to “area” at the first point of 4.1 of the draft policy.

SUMMARY OF SUBMISSIONS

26. As part of the review process, public consultation was carried out in accordance with the special consultative procedure. All submissions including a summary, can be found at attachment F.
27. Ten submissions were received in the first round of consultation and no submissions in the second round: eight via email and two via Let’s Talk. Three submitters requested to be heard at a hearing.
28. Six of the submissions supported the draft policy and had the following themes:
- Societies information is sensitive with some information already available and made public.
 - It is not a legal requirement for TAs to collect this information from societies.
 - Possible risk to high turnover premises from armed robbery if financial information is disclosed.
 - The draft policy provides opportunity to continue providing community funding.
 - Increases efficiency (presumably a reference to the TA application process).
 - There is no legal requirement to expand the 30-working day decision timeframe for councils.
29. Four (4) submissions opposed the draft policy with reasons summarised as follows:
- The removal of the requirement for societies to disclose financial information reduces public awareness and decreases public trust.
 - There is no range in the options presented.
 - There is no consideration of the impact of gambling harm to Māori, Pacific and Asian communities.
 - Gambling venues and gaming machines do not bring anything positive to the community.
30. Access to gambling should not be increased due to harm concerns.
- The relocation policy should be removed.
 - The draft policy has minimum base requirements.
31. Three (3) submissions opposed the relocation policy and have suggested that Council introduce a sinking lid policy (whereby when numbers of machines decrease there is no opportunity to add more machines to any venues). Three (3) submissions also sought to include restaurants and hotels as premises permitted to have gaming machines.

32. Some of the submissions received were outside the scope of the draft policy. Council is only a party to a Class 4 gaming application and is only required to provide consent in certain circumstances (see s.98 of the GA³ and s.95 of the RA⁴). Council is not the final decision makers for Class 4 gambling types of applications, that responsibility falls to the DIA.
33. Council is not able to consider changes to the draft policy, that were not proposed as options for consultation with the community. Accordingly, they are outside the scope of what may be considered at this point in the review process. Further consultation would be required if Council determined that it would like to consider these changes as part of the policy.
34. Three (3) submissions opposed the erroneous clause in the draft policy in the first round of consultation that enabled club venues to merge. As this error has been corrected, this feedback has been addressed.

HEARING PANEL DISCUSSION

35. The panel discussed the scope of the policy review and recommended that a broader range of issues is considered when the policy is next reviewed. This would include considering a sinking lid policy, or a cap (a set number of machines within the district (the current number of machines sits at 47, a cap for example could be 47 total machines for the entire district with no ability for that number to increase)).
36. There were mixed views from submitters regarding the removal of public notification. Iwi and Te Whatu Ora did not support this change to the draft policy due to the risk of removing community input. Hospitality NZ and the Gaming Machine Association of New Zealand supported the proposed change on the basis that there is no legal requirement for public notification of an application to Council, however public submissions are provided for when the policy is reviewed every three years. There was also feedback that if there were public input into each application to Council, this would breach the statutory 30 working day timeframe to consider and determine applications.
37. As set out in the 'Proposed changes to the policy' section of this report, consultation at this stage of the application process is not required under the GA or the RA, and statutory timeframes do not provide the time for Council to give effect to it. Council's role is to assess licences against its policy, not to take on the role of the Ministry in issuing licences.
38. Whilst the panel voiced concern that removing notification requirements as proposed may lead to a perception of a decrease in engagement with the community, it agreed to the removal, emphasising the need for robust engagement for future reviews of the policy to maximise public awareness.

³ <https://www.legislation.govt.nz/act/public/2003/0051/latest/DLM208656.html>

⁴ <https://www.legislation.govt.nz/act/public/2020/0028/latest/LMS292161.html>

SUMMARY OF HEARING PANEL RECOMMENDATIONS

39. The hearing panel recommended that Council adopt the draft Class 4 Gambling and TAB Venue Policy 2024. A summary of the hearing panel findings includes:

- that the panel cannot consider a cap on venues or a sinking lid as options as these were not consulted on and are outside the scope of the draft Policy and the changes that Council may consider. The panel recommended a wider approach is taken for future review of the policy.
- the panel agreed to the proposed removal of the requirement for disclosure of information by societies to Council on the basis that this information would be a duplication of information already held by the DIA⁵.
- the panel agreed to the proposed removal of the advertising requirements, though recommended ensuring robust public engagement for future review of the policy.
- the maximum number of EGMs to remain at nine as per the current and draft policy (for new venues; those venues with 18 machines can maintain these).
- not to enable two or more clubs to merge (this was included in error in the initial draft policy and was removed leading to the second round of public consultation).
- a minor adjustment to change the wording of “residential zone” to “residential area” for consistency with the definition of “residential area” provided in the Interpretation section of the draft policy.

Analysis and Advice | Tatāritaka me kā Tohutohu

40. This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:

41. Option 1: That Council adopt the draft Class 4 Gambling and TAB Venue Policy 2024.

Advantages:

- Administrative inefficiencies will be minimised, and Council resources will be more appropriately deployed.
- Societies will be permitted to operate gaming machines at new venues and relocate gaming machines within the parameters set out in the draft policy, without unnecessary bureaucracy.
- Administrative duplication will be curtailed by removing the Council’s requirement for societies to provide information to Council as well as to the DIA.
- The current regime increases costs to Council staff resources in administering the process for no apparent benefits.

⁵ <https://www.dia.govt.nz/Gambling-statistics>

- Benefits of the changes include:
 - Funding for local community groups will remain, with an opportunity for growth in funding to benefit other community groups.
 - Council will be able to meet its statutory timeframe requirements to deliver decisions on applications within 30 working days.
 - Public notification and the submissions process will ensure that the policy meets the criteria under the GA and RA and provides for community involvement.
 - Council will be able to recoup reasonable administrative costs through application fees.

Disadvantages:

- A public perception that there will be less opportunity for public submissions throughout the application process.

42. Option 2: That Council does not adopt the draft Class 4 Gambling and TAB Venue Policy 2024 and continues to apply the 2018 policy:

Advantages:

- The 2018 policy will remain in force with no changes required.

Disadvantages:

- Continued application of the 2018 policy means that:
 - Council cannot meet its legislative obligations for statutory timelines in delivering a decision on applications,
 - Council will not have appropriate legal basis for charging a reasonable administrative fee for applications,
 - Unnecessary administrative burden having to provide a duplication of information to Council, and
 - Delays in processing would continue to apply to societies and others who apply for Class 4 Gambling Licences.

43. This report recommends **Option 1** for addressing the matter for the following reasons:

- a. Council is required to review these policies every three years; the current review ensures the policy is up-to-date and fit-for-purpose.
- b. The restrictions under the current policy appear to be effective as there has not been any successful application for a new gaming venue in eight years, with only one successful relocation application.
- c. Even without a cap or sinking lid policy, there has been a natural reduction in the number of EGMs and venues in the district resulting in less opportunity for the community to take part in gambling.

44. The draft policy complies with Council’s regulatory responsibilities to assess applications to establish new venues which in turn could provide additional funding to the community.
45. Council’s administrative burden and costs would be reduced by:
- Removing the need to hold information on file where it has already been provided to the appropriate statutory body;
 - Removing the need to publicly notify each application where it is not statutorily obliged to do so;
 - Fewer officers will be required to administer the policy.
 - Application fees can be charged back to the applicants, covering Council’s reasonable administrative costs for processing.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

46. This matter is of low to medium significance, as determined by reference to the Council’s Significance and Engagement Policy 2024 because:
- there is community interest in this issue, as Class 4 gambling contributes negatively to harm caused to the community but also increases the potential amount of funding available
 - the proposal will not change the level of services provided by Council, or Council’s capacity
 - there is a low level of financial consequence as a result of adopting the recommended option.
47. The persons who are affected by or interested in this matter include residents, visitors and community groups, Class 4 venue operators, societies that own gaming machines and problem gambling services.
48. Council has undertaken public consultation, as required by section 102 of the Gambling Act 2003 and 97 of the Racing Industry Act 2020, which took place from 3 April 2023 to 5 May 2023, and again from 3 July 2023 to 4 August 2023.

Māori Consultation | Iwi Rūnaka

49. As discussed in the body of this report, Te Ao Marama, Aukaha and Mana Tahuna were invited to provide feedback on the draft policy and determined that they did not wish to provide a formal submission on this issue.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

50. This matter relates to the Community & Wellbeing risk category. It is associated with RISK10002 Erosion of social cohesion within the QLDC Risk Register. This risk has been assessed as having a moderate residual risk rating.

51. The approval of the recommended option will allow Council to retain the risk at its current level. This will be achieved by This can be achieved by ensuring the proposed policy complies with legislative requirements under both the Gambling Act 2003 and the Racing Industry Act 2020.

Financial Implications | Kā Riteka ā-Pūtea

52. Costs associated with this work, such as staff time and advertising, will be met within current budgets. If Council adopts the draft policy, it would have a legal basis to charge a reasonable fee for its administration of the GA and RA, and recoup any costs in doing so.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

53. The following Council policies, strategies and bylaws were considered:

- 'Thriving People', 'Pride in Sharing our Places' and 'Opportunities for All' principles of the Vision Beyond 2050 have been considered.
- Significance and Engagement Policy.

54. The recommended option is consistent with the principles set out in the named policies.

55. Provision for review of bylaws is included in the Long-Term Plan/Annual Plan.

Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture

56. Section 101 of the GA and section 96 of the RA requires a territorial authority to adopt a class 4 gaming and TAB venue policy. Once a policy is adopted, it is required to be reviewed every three years in accordance with section 102 of the GA, and section 97 of the RA.

57. Legal advice was obtained regarding the removal of public notification of a societies intent in establishing a class 4 gambling venue. As it is not a requirement under legislation, legal advice was that this be removed as the paramount consideration is that Council meet its statutory obligations, namely that it provides decisions in accordance with the statutory timeframes set out in legislation.

58. Consultation on the draft policy has followed the requirements of the special consultative procedure outlined in sections 83 and 86 of the LGA.

Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kīaka

59. Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

60. The key objectives of the policy (as also set out as the “Purpose” of the GA at section 3⁶) are to aid in minimising gambling harm, control and manage growth of gambling in the District (venues are limited to the number of machines they can house), restrict the locations of gambling venues within the District (not in residential areas, and restrictions of the vicinity to schools and other childcare facilities, places of worships, and other community facilities), facilitate community involvement in decisions about how gambling should be provided for (public consultation with policy reviews), ensure that money from gambling benefits the community (through grants), ensure the Council and community have an influence over the delivery and location of new gambling venues within the District (as part of the three yearly policy review process). As such, the recommendation in this report is appropriate and within the ambit of Section 10 of the Act.

61. The recommended option:

- Can be implemented through current funding under the Long Term Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the Council or transfer the ownership or control of a strategic asset to or from the Council.

Attachments | Kā Tāpirihaka

A	Draft Class 4 Gambling and TAB Venue Policy 2024
B	Current Class 4 and TAB Gambling Venue Policy 2018
C	Report - June 2023
D	Final - Statement of Proposal - June 2023
E	Hearing Panel Report - February 2024
F	All Gambling Policy Submissions (In Full and Summarised)

All attachments are presented as a separate document.

⁶ <https://www.legislation.govt.nz/act/public/2003/0051/latest/DLM207803.html>