Licensing, Exemptions and Objections Committee

Notice of Meeting
A meeting of the Licensing, Exemptions and Objections Committee will be held in the Council Chamber, Forum North, Whangarei on:

Tuesday
8 October 2013
9.30am

Committee of:
Council

Committee
Cr M R Williams (Chairperson)
His Worship the Mayor (Deputy Chair)
Cr S J Deeming
Cr S L Morgan
Cr J D T Williamson
OPEN MEETING

APOLOGIES

CONFLICTS OF INTEREST
Members are reminded to indicate any items in which they might have a conflict of interest.

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1. Minutes of the Licensing, Exemptions and Objections Committee meeting held 11 September 2013................................................................. 1


Recommendations contained in this agenda are NOT final decisions. Please refer to the minutes for resolutions.
1. Minutes: Licensing, Exemptions and Objections Committee Wednesday 11 September 2013

Minutes of a meeting of the Licensing, Exemptions and Objections Committee held in the Council Chamber, Forum North, on Wednesday 11 September 2013 at 11.00am

Present:
Cr M R Williams (Chairperson)
Crs S J Deeming, S L Morgan and J D T Williamson

Absent:
His Worship the Mayor M C A Cutforth (leave of absence)

Also present:
Cr J S Jongejans

In attendance:
Group Manager District Living (P Dell), Principal Planner (P Lees), Compliance Officer (K Howie), Environmental Health Technician (A Teal) and Senior Meeting Co-ordinator (C Brindle)

1. Confirmation of Minutes of a Meeting of the Licensing, Exemptions and Objections Committee held on 14 August 2012

Moved Cr Deeming
Seconded Cr Williamson

“That the minutes of the meeting of the Licensing, Exemptions and Objections Committee held on 14 August 2013, having been circulated, be taken as read and now confirmed and adopted as a true and correct record of proceedings of that meeting.”

CARRIED

2. Confirmation of Minutes of the Extra ordinary Licensing, Exemptions and Objections Committee meeting held on 1 August 2012

Moved Cr Williams
Seconded Cr Morgan

“That the minutes of the Extraordinary Licensing, Exemptions and Objections Committee meeting held on 1 August 2013, having been circulated, be taken as read and now confirmed and adopted as a true and correct record of proceedings of that meeting subject to Legal Counsel Rob Enright being recorded as present at the meeting.”

CARRIED

3. Appointment of Licensing Inspector

Moved Cr Deeming
Seconded Cr Williams

“That the Whangarei District Licensing Agency appoints Ashlee Teal to carry out all functions of an inspector under the Sale of Liquor Act 1989.”

CARRIED
4. **Special Exemption from Compliance with Fencing of Swimming Pools Act 1987 – Laurie Brockliss and Suzanne Travan**

*Moved*  Cr Williamson  
*Seconded*  Cr Morgan

“That having considered the particular characteristics of the property, the swimming pool situated thereon and the occupant(s) of the property, Council is satisfied that there would be no significant increase in danger posed to young children by the swimming pool located at 126 Campbell Rd, Whangarei, by the granting of a special exemption with appropriate conditions, and therefore **GRANTS** a special exemption from the compliance requirements of the Fencing of Swimming Pools Act 1987. This special exemption is granted pursuant to s.6 of the Act and is granted to Mr Brockliss and Mrs Travan, the owners and occupants of the property under the following conditions:

1. That the exemption is personal to the applicant(s) and will automatically expire upon the property being sold, or ceasing to be personally owned and occupied by the applicant(s).
2. That the applicant(s) must inform any prospective purchaser of the property that the exemption is personal to them and will expire immediately upon completion of the sale.
3. That the applicant(s) must inform any visitors to the property with young children under 6 years of age, that the immediate pool area is not fully compliant with the Act and as such children must be supervised at all times whilst on the property.”

**CARRIED**

5. **Objection to Costs under section 357B of the Resource Management Act 1991 - Sandersons Realty**

The Committee heard the Objection to Costs.

*Moved*  Cr Williams  
*Seconded*  Cr Deeming

“That following the hearing of the matters before the Committee, the public be excluded from the meeting pursuant to Section 48(1)(d) of the Local Government Official Information and Meetings Act to enable the Committee to deliberate in private on the decisions made.”

**CARRIED**

The meeting closed at 2.04pm

Confirmed this 8th day of October 2013

M R Williams (Chairperson)
2. Report - Decisions of the Licensing, Exemptions and Objections Committee

Reporting officer  C Brindle (Senior Meeting Co-ordinator)
Date of meeting  9 October 2013

Vision, mission and values

This item is in accord with Council’s vision, mission and values statement.

Pursuant to Section 48(1)(d) of the Local Government Official Information and Meetings Act the Committee having deliberated on the attached decisions makes available to the public.

A copy of the decisions are received for information.

Recommendation

That the reports be received.

Attachment

1  Brockliss and Travan Decision
2  Sandersons Realty Ltd – Ms Shelley Anderson
Report and Decision of the Whangarei District Council through its Licensing, Exemptions and Objections Committee Meeting held in the Council Chambers, Forum North, Whangarei on Wednesday 11 September 2013 Commencing at 1.00pm

A Committee of the Whangarei District Council was convened to determine an application for special exemption from the compliance requirements of the Fencing of Swimming Pools Act 1987 (FOSPA), made by Mr L D Brockliss and Mrs S Travan for a swimming pool located on their property at 126 Campbell Road, RD 1, Onerahi.

Hearings Committee
Councillor M R Williams (Chairman)
Councillor S J Deeming
Councillor S L Morgan
Councillor J D T Williamson

Applicant
Applicant did not attend

Consent Authority
Whangarei District Council

In Attendance
Mrs K Howie (Compliance Officer)
C Brindle (Senior Meeting Co-ordinator)

1 Application

The Committee considered an application by Mr Brockliss and Mrs Travan to grant a special exemption from the compliance requirements of the Fencing of Swimming Pools Act 1987 (FOSPA), for their swimming pool located at 126 Campbell Road, RD 1, Onerahi.

2 Staff report:

The reporting officer Mrs K Howie summarised the application.

The Committee determined:

That having considered the particular characteristics of the property, the swimming pool situated thereon and the occupants of the property, Council is satisfied that there would be no significant increase in danger posed to young children by the swimming pool located at 126 Campbell Road, Onerahi, or by the granting of a special exemption with appropriate conditions, and therefore GRANTS such special exemption from the compliance requirements of the Fencing of Swimming Pools Act 1987. This special exemption is granted pursuant to s.6 of the Act and is granted to Mr L D Brockliss and Mrs S Travan, the owners and occupants of the property under the following conditions:

1. That the exemption is personal to the applicants and will automatically expire upon the property being sold, or ceasing to be personally owned and occupied by the applicants.

2. That the applicants must inform any prospective purchaser of the property that the exemption is personal to them and will expire immediately upon completion of the sale.

3. That the applicants must inform any visitors to the property with young children under 6 years, that the immediate pool area is not fully compliant with the Act and as such children must be supervised at all times whilst on the property.

Issued this ___ day of ___ 2013

Councillor M R Williams
Chairperson

Trim Ref: 13/73425
Report and Decision of the Whangarei District Council through its Licensing, Exemptions and Objections Committee Meeting held in the Council Chambers, Forum North, Whangarei on 11 September 2013 - Commencing at 1:10 pm

A Committee of the Whangarei District Council was convened to determine an objection to Costs relating to an application lodged by Sandersons Realty Ltd for retrospective land use consent at 193 Ngunguru Road, Glenbervie, referenced as LU1000162. The objection to costs, made in accordance with Section 357 of the Resource Management Act 1991 ('the Act'), was lodged with Whangarei District Council and referenced as LU1000162.01.

Present
Hearings Committee
Councillor M R Williams (Chairman)
Councillor S J Deeming
Councillor S L Morgan
Councillor J D T Williamson

Applicant
Sandersons Realty Ltd – Ms Shelley Anderson
Applicant’s Legal Advisor T Egan (Egan Law) and S Bretherton (friend)

Consent Authority
Whangarei District Council

In Attendance
Paul Lees (Principal Planner)
C Brindle (Senior Meeting Co-ordinator)

1 Objection

1.1 Ms Anderson has provided the following reasons for the objection to costs in relation to the processing and assessment of the consent:

- In respect to the invoice I have received being without knowledge that costs were to be incurred, I find this be totally unacceptable it was never disclosed that there would be additions costs as I had already paid $888.89 plus GST. [sic]

- Also as example of some of the costs, emails and phone discussions ranging from $26 are excessively over the top, as far as consultant fees and reports go which I have never given my consent ranging from $80 to an excess of $279.60. Plus all the other numerous charges which are as attached. [sic]

- I was never consulted or informed of any additions cost to be charged. I was consulted on the fee in which I have paid $888.89 plus GST. [sic]

- Therefore this is a very presumptuous account in which I refuse to pay.

2 Presentation of objection

Ms Shelley Anderson appeared at the hearing representing Sandersons Realty Ltd. Ms Anderson tabled the main events relating to the application as she them, with supporting emails. Ms Anderson provided clarity on her understanding of a number of matters when questioned by Committee members.

3 Staff report

The staff report prepared by Council’s Principal Planner Mr Paul Lees was taken as read. Mr Lees confirmed that the chronology of events attached to his report were an accurate record of events, emails and conversations recorded in the file. Mr Lees was questioned as to why the application was publicly notified without payment of the notification fee. Mr Lees advised that the application needed to proceed to a decision, and in light of the significant time period that had elapsed, and because the application was for a non-complying activity with effects considered to be more than minor, the application needed to be publicly notified prior to referral to a Hearings Commissioner for determination.

Mr Lees also clarified matters concerning the approval of the Dickson Quarry signage located on the opposite side of Ngunguru Road to the subject site.
The committee determined

When questioned by the panel Ms Anderson had no dispute with any event in the timeline of proceedings presented by Mr Lees. If Ms Anderson had withdrawn her application on 22 October 2010, when she was advised that full notification was required and extra costs incurred, there would have been no extra cost to the applicant.

The panel considered that Ms Anderson had ample opportunity to withdraw at several stages of the proceedings and that she had been made aware that costs were being incurred.

It was considered unfortunate that notification had proceeded without receiving payment from the applicant, as such action would have removed all doubts. The panel is aware that a change in process has since been introduced.

Pursuant to Section 357B of the Resource Management Act 1191, Council dismisses the objection lodged by Sandersons Realty Ltd to the processing fee of $3285.73 for the assessment of a retrospective land use consent application that was withdrawn prior to determination.

Right of appeal

Section 358 of the Resource Management Act 1991 provides for any person who has made an objection under Section 357 to make an appeal to the Environment Court against the decision on the objection.

Right of appeal

Section 358 of the Resource Management Act 1991 provides for any person who has made an objection under Section 357 to make an appeal to the Environment Court against the decision on the objection.

Issued this 27th day of September 2013

Councillor M R Williams
Chairperson

Reporting officer  Grant Couchman (Regulatory Services Manager)
Date of meeting  8 October 2013

Vision, mission and values
This item is in accord with Council’s vision, mission and values statement as Council has an important role in the development and implementation of policy which controls the growth of class 4 gambling in the Whangarei District.

1 Summary
Kamo Club Incorporated ("the Applicant") has made application under the Gambling Act 2003 for territorial authority consent to increase the number of pokie machines at the club from 12 to 16. Consent is given in accordance with Council’s class 4 gambling policy ("the Policy") and the Gambling Act requires that Council must either grant the consent or decline it. The policy adopted on 24 April 2013 does not permit an increase of machines at an existing venue. The Applicant has requested that Council use powers under section 80 of the Local Government Act 2002 to make a decision which is inconsistent with the policy and to grant the consent. This report considers the application under the Gambling Act 2003 and further section 80 of the Local Government Act 2002.

2 The Application
The Applicant is situated at 7-11 Meldrum Street, Kamo and has applied for territorial authority consent under section 98(a) of the Gambling Act 2003. The Kamo Club is licensed by the Department of Internal Affairs (DIA) to operate 12 electronic gaming machines (pokie machines) and wishes to increase the number of machines by 4 to a total of 16. Any application to the DIA from the Kamo Club to amend the class 4 venue licence so as to increase machine numbers must be accompanied by consent from the territorial authority in terms of its Policy. The application is accompanied by supporting documentation which is attached to this report as follows:

Attachment 1  The application under the Gambling Act 2003.
Attachment 2  Application under Section 80 Local Government Act 2002 which includes supporting submission relating to the question of the potential cumulative effects of additional gambling opportunity in Kamo and the social impact within the District generally.

The Applicant previously held a licence to operate 16 gaming machines at its venue in Meldrum Street. It is understood that in 2003, the Applicant reduced its machine numbers to 12 machines and this is the number of machines that the Club has held a licence for since the Gambling Act 2003 came into force in September 2003. The applicant advises that the machines were removed due to the cost of upgrading the machines to communicate with the new electronic monitoring system (a cost of $300,000) required by the Gambling Act 2003.

The Applicant has requested that the application also be considered taking into account the provisions of section 80 of the Local Government Act 2002. Section 80 provides a process for Council to make a decision that is significantly inconsistent with or anticipated to be significantly inconsistent with the Policy. Under section 100 (1) of the Gambling Act 2003, the territorial authority must consider an application for consent in accordance with its Policy and must either grant a consent with or without a condition specifying the maximum number of machines that may be operated at the venue or not grant consent. The Applicant submits that Council should grant consent contrary to the policy on the following grounds:

1. Prior decisions of Council when adopting the Policy were based upon improper consideration.
2. Exemption is fair in the circumstances.
3. The increase in machines would not increase the risk of problem gambling.
4. Clubs provide the safest class 4 environment.
Council has also received at a late stage 123 submissions in support of the application from individuals under cover of a letter from John Nuttall, the Vice President of the Kamo Club, and separate submissions from Larry Graham (Chief Executive of Clubs New Zealand), D G Conaghan (Northern Area Board Member of Clubs New Zealand), Ray Topia (President of Kamo Club Inc) and John Nuttall (Vice President of the Kamo Club Inc). The 123 submissions take the form of five differently worded generic documents. The submission from Mr Graham, D G Conaghan, Mr Nuttall and Mr Topia are attached in attachment 3 and the samples of the 5 generic submissions are attached in attachment 4. Essentially the content of these additional submissions are covered and are repeated in the main body of the application from the Applicant and further comment is made about the content of the submissions later in this report.

3 The Class 4 Gambling Venue Policy

The Gambling Act 2003 requires that councils must adopt a Class 4 venue policy and the first policy was adopted by Council on 3 March 2004. That Act requires specifically that the Policy:

- Must specify whether or not class 4 venues may be established in the territorial authority and, if so where they may be located; and
- May specify any restrictions on the maximum number of gaming machines that may be operated at a class 4 venue.

The policy has been reviewed twice since 2004, with reviewed Policy adopted on 3 October 2007 and more recently on 24 April 2013. A copy of the current policy is attached in attachment 5. Clause 5 of the current Policy provides as follows:

“5 Restrictions on the maximum number of machines that may be operated at a class 4 venue

5.1 Council will not consent to any increase in the number of class 4 gambling machines operated at each venue, specifically:

a Where the holder of a class 4 venue licence existing on the 17 October 2001 wishes to increase the number of machines by application under section 92 of the Gambling Act 2003 then the maximum number of machines permitted is the number of machines currently held by the holder as a condition of licence.

b For premises licensed after 17 October 2001, to which section 93 of the Gambling Act 2003 applies, club applicants in terms of which section 96 of the Gambling Act 2003 applies, the maximum number of machines permitted is the number of machines currently held by the holder as a condition of licence.

c Where two or more clubs or societies legally and physically combine in terms of section 95 of the Gambling Act 2003, the maximum number of machines permitted will be the sum of the number of gaming machines specified in all of the corporate societies class 4 venue licences at the time of application with an maximum limit of 30 as provided in section 95 (4) of the Gambling Act 2003.”

The Applicant held a class 4 licence on 17 October 2001 and at commencement of the Act in September 2003 operated 12 machines which were then permitted as a condition of the Class 4 Gambling Venue Licence issued by the Department of Internal Affairs. Clause 5.1 (a) of the Policy applies to the Applicant which prohibits any increase in the number of machines above the number held as a condition of licence, that is 12 machines. This provision has been established in policy since March 2003 when the first Policy was adopted.

The Applicant made submission on the Policy at the time the Policy was first adopted in March 2004 and at each review in 2007 and more recently in 2013, in each instance the Applicant asked that the Policy allow the club to increase machine numbers.

4 The consent process under the policy

The Policy provides a process for determining an application under the Gambling Act, but that process only deals with applications to establish a new class 4 venue resulting from the need to relocate a venue. It does not specifically cover an application to increase the number of machines at an already established venue.
This is because the Policy was developed and adopted on the assumption that because new venues (not being the result of relocation) and any increase in machines at existing premises were not permitted, the only aspect that Council would be called on to determine would be the grant of a consent under clauses 3 and 4 of the Policy (relocation).

Had this been an application for the establishment of a new venue due to relocation, the process would be to publicly notify the application and the application would be determined at a public hearing. Furthermore a social impact assessment and other matters would have been required.

Due to the silence in the Policy regarding an application such as this, Council has sought legal advice as to how this application should be dealt with.

Reading the Policy and the application form for consent, the expectation is that only applications for new venues (relocations) will be publicly notified. The opinion held is that Council can decide not to publicly notify the application.

However in making a decision on the application, the Licensing Exemptions and Objections Committee (LEOC) still needs to consider the views and preferences of those persons likely to be affected or to have an interest in the matter as required by the Local Government Act 2002(LGA). The LGA sets down general decision making obligations of a local authority in Part 6 of the Act. Under section 76(1) every decision made by a local authority must be made in accordance with such provisions as sections 77,78,80,81 and 82 as are applicable.

Section 77 sets out the requirements to consider all practicable options. The section sets out the various matters that must be considered when assessing the options.

Section 78 requires Council to consider the views and preferences of those persons likely to be affected or to have an interest in the matter. This requirement in itself does not require Council to undertake any consultation process or procedure.

Sections 76, 77 and section 78 are subject to section 79. The effect of section 79 is that it is for Council to determine how it will achieve compliance with sections 77 and 78, although as a general rule, compliance should be proportional to the significance of the matter.

Section 79 recognises the decision making processes need to be tailored to the particular circumstances of the council and the decision.

Earlier this year Council reviewed it’s Policy and undertook a special consultative process and Council’s legal advice suggests that Council is able to determine that it has enough information about the views and preferences of those persons interested and affected by this matter from this process without the need to publicly notify the application and hear from essentially the same people again. It would seem unlikely that persons would have changed their minds over the period since the Policy was adopted in April this year. A wide cross-section of people and organisations from different public health, gambling prevention agencies and the gaming industry made submissions on a proposed capped policy and 262 submissions were received. Of these, 254 submitters opposed the capped policy with 11 in support. Those in opposition to the capped policy also called on Council to retain a sinking lid policy. Having consulted the community fully in accordance with the special consultative procedure under the Local Government Act 2002, Council adopted a sinking lid policy which essentially does not permit any increase in pokie machine numbers in existing venues and is prohibitive in general.

On the strength of the recent public consultation it is felt that Council is properly informed about the views and preferences of those persons interested and affected by such an application as has been received from the Applicant to increase machine numbers. It is felt unlikely that people who participated in the public consultation process would have changed their views and preferences in the relatively short time from April this year, when the Policy was adopted, and the present. As such it is felt that provisions relating to consultation under the Local Government Act 2002 to which Council must have regard are satisfied and as such public notification of the application is not required.

For completeness the report which Council considered on 27 March 2013 reviewing the submissions received on the Policy is attached to this report in attachment 6. Council adopted a sinking lid policy subsequently on 24 April 2013.
5 Assessment of application under the policy

Having determined that the application does not require public notification under the Policy and further that the decision to not publicly notify this application is in accordance with Council authority under the Local Government Act 2002, the matters to which Council should have regard in determining the application under the policy are now addressed.

Clause 6.9 of the Policy provides for matters to be considered and is worded in such a way that is not restrictive and therefore can be applied in the case of this application. The matters to which the Committee shall have regard to in determining an application are listed below and are now examined.

a The potential cumulative effects of additional gambling opportunities in that location and the social impact within the District generally.

b The extent of the potential impact of the venue on the character of the area including the potential for negative effects on the operation, amenity or reasonable enjoyment of residential or other sensitive land uses in the area.

c The extent to which the application meets the objectives of the Whangarei District Council Class 4 Gambling Venue Policy and the purpose and intent of the Gambling Act 2003.

d Any other matter that Council considers relevant and reasonably necessary to determine the application.

5.1 The potential cumulative effects of additional gambling opportunities in that location and the social impact within the district generally.

The Applicant seeks to increase the number of gaming machines by 4 from 12 to 16. In support of the application the club has provided information which assists in the assessment of cumulative effects in the location and social impact within the district generally. The document entitled Application under section 80 of the Local Government Act 2002- Reinstatement of four gaming machines at the Kamo Club (see Appendix 2) provides information on the matter. The club states that the increase in machines will not increase the risk of problem gambling and that clubs provide the safest class 4 environment.

An increase in machines will not increase the risk of problem gambling

The following is extracted from page 6 of the document.

21. From a problem gambling standpoint, the number of venues is more relevant than the number of machines inside a venue. At the Dunedin Council hearing, the Problem Gambling Foundation South Island General Manager, David Coom, stated:
   
   We accept that there is no evidence of a link between machine numbers and problem gambling. It doesn’t matter whether a venue has 18 machines or two machines. It is the accessibility of gaming venues, rather than the number of machines at each venue which is the issue.

22. These comments have been made a number of times, including at the Invercargill council hearing where Tony Milne, the Problem Gambling Foundation’s National Manager of Public Health, stated:

   It’s not the number of pokie machines, it’s the number of venues that’s the problem, and the fact that they are on every street corner.

Attached at Tab 3 is the full Invercargill council report.

23. When making submissions to the Department of Internal Affairs, Bernie Smulders, General Manager of Woodland Charitable Trust, stated:

   We believe the number of machines present in a venue has nothing to do with the predisposition to develop a gambling problem and indeed represents flawed logic when applied as a harm minimisation approach.

Attached at Tab 3 is a copy of the submissions made by Pub Charity Incorporated that includes this quote at page 133.

24. The fact that venue numbers is relevant, as opposed to the number of machines at each venue, was accepted by the Whangarei District Council staff. At page 45 of council’s report it was noted:

   …there is merit in a cap of 24 venues. Evidence was presented that the number of venues in a community and the accessibility of those venues can have an impact on the problem gamblers rather than the overall number of machines. Refer to Tab 2 for the full report.

25. Restoring the machine numbers to 16 at the Kamo Club will not increase the risk of problem gambling and therefore would not be inconsistent with the objectives of the current policy and the purpose of the Gambling Act 2003.
The four machines would be installed in the club environment. The culture which exists in clubs is one of care and protection of members. Clubs are often the centre of the community; they provide a social focal point, and a safe and secure environment/venue in which members can enjoy social camaraderie, food, gaming, sports, and alcohol. There is a wealth of evidence that confirms that the club environment is a safer environment to gamble than a traditional pub or hotel environment.

The Applicant goes onto say that it has invested considerably in harm minimisation measures including the ClubCare programme and a class 4 audit tool. The Clubcare program includes an industry leading harm minimisation training package that was developed in conjunction with the Problem Gambling Foundation. Likewise the Class 4 audit tool was developed by Clubs NZ in conjunction with the Problem Gambling Foundation to ensure that clubs are offering Class 4 gambling at the highest possible standard. The club has also provided supportive evidence that suggests that the club environment is a safer environment to gamble than the commercial pub environment. The club refers to at least 8 reports which demonstrate this difference. Page 12 of the document refers to the latest of these reports which is from the Ministry of Health and relates to gambling levy calculation and rates. An extract from page 12 is as follows.

In August 2012, the Ministry of Health prepared a draft three year service plan regarding levy calculation and proposed levy rates. The service plan summarised the evidence supporting the split of the club non-casino gaming machine sector from the commercial non-casino gaming machine sector. At pages 28-29, the document stated:

The Gambling Commission has previously suggested that non-casino gaming machines should be split into two sectors: non-club (‘pub’) and club. The Ministry considers that the evidence supports this split, which would significantly reduce the levy rate for clubs, and slightly increase the rate for non-club operators...

Information from problem gambling services indicates that fewer people seek help for problems associated with club machines, even after taking into account the lower number of club machines and their lower average per-machine-spend. Machines in clubs comprised just over 20% of all licenses NCGMs as at 30 June 2011, and spending on club machines was 13.3% of all NCGM expenditure in the quarter ended 30 June 2011. By contrast, fewer than 10% of people citing NCGMs as a primary problem gambling mode in 2010/11 named club machines.

There is also growing research evidence suggesting that club machines are less likely to be associated with harm. For example, the SHORE/Whariki (2008) study found that longer times spent playing machines in clubs was associated with far fewer negative impacts on 13 domains of life than longer times spent playing machines in bars. Similar findings emerged from the Opus study of gambling venue characteristics (In Press). It noted that ‘despite clubs being found to have longer playing durations, they were also shown to have significantly lower PGSI [Problem Gambling Severity Index] scores for those gamblers that took part in the intercept survey’.

Attached at Tab 13 is the relevant section of the Ministry of Health Service Plan.

In summary the Applicant’s submission focuses on two factors which assists with the argument that an increase in 4 machines at the club will have minimal impact on the potential cumulative effect of additional gambling in the Kamo location and the social impact within the district generally. There is evidence that the number of venues in a community and the accessibility of those venues can have an impact on problem gamblers rather than the overall number of machines. Furthermore, clubs are seen as safer environments and there are indications that fewer people seek help for problems associated with club machines, even after taking into account the lower number of club machines and their lower average per-machine-spend.

5.2 The extent to which the potential impact of the venue on the character of the area including the potential for negative effects on the operation, amenity or reasonable enjoyment of residential or other sensitive land uses in the area

The Applicant is situated at 7-11 Meldrum Street, Kamo on a large corner site bordered by Meldrum and Boswell Streets. The club land and that of the surrounding residential area is within the Living 1 Environment of the operative Whangarei District Plan. The Living 1 Environment provides the highest level of protection for residential amenity. The club has co existed within the residential area for many years and is seen as a significant contributor to the social fabric of the Kamo suburban area.

The additional 4 machines would be accommodated in the existing gaming machine area of the club rooms and there would be insignificant increase in club activity associated with the increase in machines which might impact on surrounding residents (eg increase in vehicle movements in the car park etc). The club activities are not seen as negatively impacting on the operation, amenity or reasonable enjoyment of residential land uses in the area.
5.3 The extent to which the application meets the objectives of the Whangarei District Class 4 gambling Policy and the purpose and intent of the Gambling Act 2003.

Clause 1 of the Policy provides as follows in respect of objectives in so far as promoted by the Gambling Act 2003.

- To control the growth of class 4 gambling in the Whangarei District.
- To minimise the harm caused by class 4 gambling in the Whangarei District.
- To facilitate community involvement in decisions about the provision of class 4 gambling in the Whangarei District.
- To allow those who choose to use class 4 gaming machines may do so in a safe and well managed environment.

The objectives of the Policy are achieved through the sinking lid style policy adopted by Council on 24 April 2013 which ensures that as best as can be achieved that growth of class 4 gambling is controlled and in so doing harm caused by class 4 gambling is minimised. Council has adopted a precautionary approach in each of the policies initially adopted as required by the Gambling Act 2003 and then at each review in 2007 and most recently 2013. Clause 5 of the current Policy specifically provides that Council will not consent to any increase in machines numbers on existing venues and this provision has been carried through each review.

As previously outlined the wording of the Policy clearly favours a view that Council envisaged that the only time that it would entertain discretion under the Policy is in the situation where an existing venue must relocate due to circumstances generally outside of the control of the business operator. In this situation, the application would be subjected to public notification and to a hearing and the social impact of the changed venue location and other matters would be considered by Council in determining the application. A change in venue might be permitted and machines transferred from one location to another but the Policy is clear that other than where clubs combine (clause 5.1c) there would be no increase in machine numbers at an existing venue. This approach is in line with controlling the growth of class 4 gambling by ensuring that no new machines (other than those permitted under the Gambling Act and not in operation) are brought into operation.

6 Discussion on the use of the Local Government Act 2002 process

Section 80 of the Local Government Act 2002 provides as follows:

Identification of inconsistent decisions

(1) If a decision of a local authority is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the local authority or any plan required by this Act or any other enactment, the local authority must, when making the decision, clearly identify—

(a) the inconsistency; and
(b) the reasons for the inconsistency; and
(c) any intention of the local authority to amend the policy or plan to accommodate the decision.

(2) Subsection (1) does not derogate from any other provision of this Act or of any other enactment.

Legal advice has been sought on the use of section 80. Council’s policy is very clear in not approving any increase in machine numbers. Simpson Grierson advise that:

“... given this wording, if Council is minded to grant this application it does need to be very clear about why the application is being granted. In other words, what makes this application so special, different or exceptional that it should be granted by relying upon section 80 of the LGA 02? Furthermore, if the council does grant the application, what does it propose to do about any future applications which it might receive?

It is possible that if the council grants the application, it may grant others and the councils policy could risk becoming meaningless. Essentially these are matters that section 80 requires the council to address when it proposes to make a decision which is significantly inconsistent with its class 4 gambling venue policy.”
The Applicant has promoted grounds for the granting of consent. The first of these is that the prior decisions of Council when adopting the Policy were based upon improper consideration. At each review of the Policy Council undertook a comprehensive public consultation process and received a significant number of submissions at each. 262 submissions were received during the recent review and council considered submission from the Applicant which detailed the situation the club has found itself in. The matters raised in this application relating to the low risk that the club gambling activities pose to problem gambling were considered along with the contribution that the club makes to the community. Council considered all submissions including others which sought some form of relief or compromise and on balance adopted a policy which provided a uniform approach across the community in controlling the growth of gaming machines.

The second ground is that to grant consent would be fair in the circumstances. From the Club perspective this might seem correct but there are many factors which need to be taken into account in terms of community accountability which Council faces. Consistency is an important consideration. Council considered a similar application for TLA consent from the Onerahi Bowling Club in June 2006 and declined the application. There is similarity between the two clubs in that they both appear to have not received or heeded good business advise about the requirements of the Gambling Act. This was certainly not the role of Council at the time that the Act came into place. The Department of Internal Affairs administer the Act. The Onerahi Bowling Club wished to reinstate 4 pokie machines at their clubrooms in Alamein Avenue and required TLA consent under the Gambling Act. Prior to the enactment of the Gambling Act 2003, the Onerahi Bowling Club operated 4 pokie machines which were owned by a community trust, in the same manner that a tavern would operate machines owned by a trust. Operating costs were retained by the club but at least 37.12 % of turnover was required to be paid out as grants to applicants for community purposes. Clubs however are permitted to own and operate pokie machines with proceeds used for club purposes. The club became aware of the ability to own and operate machines, and cancelled the arrangement in May 2004 with the trust with the intention of operating their own. The Gambling Act 2003 came into law in September 2003. Had the club made application for their own gambling licence within 6 months of the cancellation in May 2004 then they would not have required Council consent under the Act and could have applied for their own licence as of right. The Club however did not take this action and then needed to gain TA consent. The then Judicial Committee declined the application and the reasons given were that the application was contrary to adopted policy and that the application was not seen as exceptional and of benefit to the public good.

The third and fourth ground (increase in machine numbers would not increase the risk of problem gambling and clubs provide the safest class 4 environment) have been discussed earlier in this report and it is accepted that these do have some merit. These matters however have previously been considered by Council at the time submissions were heard in April of this year. Council could have adopted policy which provided relief for the club specifically but chose not to in favour of a Policy which provided consistency of approach across all gambling venues.

6.1 The submissions received in support of the Kamo Club application

The submissions supporting the application from individuals and Clubs NZ essentially reiterate matters raised in the main body of the application which is attached in attachment 2.

The submissions however weigh heavily on the impression that Council is someway responsible for the situation the Applicant found itself in when the Gambling Act came into force. The licensing of gaming machines is undertaken by the Department of Internal Affairs and Council has no role in the inspection or licensing of the club operations. The Gambling Act provided that on a certain day called the notification date (22 September 2003) the number of machines operated by any venue became the number of machines which were then licensed by the DIA. The decision as to the number of machines which operators like the Applicant wished to have licensed rested solely with operators and their decision making processes. Council’s only involvement under the Act was to develop a Class 4 Gambling Venue Policy using the special consultation process of the Local Government Act which it did in adopting the initial policy on 24 March 2004. Council chose to adopt a precautionary sinking lid policy (which it has retained) which did not accommodate the Applicant’s request to increase machine numbers nor other recommendations from other submitters.
7 Conclusion and recommendation

The Applicant has sought that Council depart from the Whangarei District Class 4 Gambling Venue Policy and grant consent to allow an additional 4 pokie machines to be operated at the club.

The matters raised by the club in support of the application have largely been raised with Council in the past during the public consultation process when the Policy was reviewed. During this process Council heard from a wide range of submitters representing the views of all interested parties associated with gaming machines. Council has chosen to adopt a precautionary sinking lid policy which on balance serves the wider community. I believe that the integrity of the policy so adopted is important and should be upheld and on that basis the application should not be granted. My view is that where Council perceives that the policy does not serve the community well or is not perceptive to particular circumstances which are important, then the policy needs to go back to the community for amendment through the public process.

Should Council depart from the Policy and grant consent then Council must record in its decision the inconsistency, the reason for the inconsistency and any intention on the part of Council to amend its class 4 venue policy to accommodate the decision. Amendment of the Policy will not occur until April 2016 when it is next required to be reviewed. The need to amend the policy to provide consistency in how Council might deal with such applications from clubs in the future is uncertain. It is perhaps likely that the Kamo Club and the Onerahi Bowling Club were the only two clubs to have experienced this challenge when the Gambling Act came into force, as suggested by applications for consent and submissions made on the making of the policy. In that light it is possible that no amendment is needed to the policy in the future.

Recommendation

That in accordance with section 100 (1) of the Gambling Act 2003, Council decline the application from the Kamo Club Incorporated for territorial authority consent for the following reasons:

1. The application was inconsistent with the Whangarei District Class 4 Gambling Venue Policy adopted on 23 April 2013.

2. Council wishes to uphold the integrity of the policy which has been adopted in accordance with the special consultative process and which serves the wider community in ensuring the control of the growth of gambling. Granting consent inconsistent with the policy would compromise the integrity of the Policy and the special consultative process.

Attachments

1. Application from Kamo Club Incorporated for TA consent under the Gambling Act 2003

2. Application under Section 80 of the Local Government Act 2002 – Reinstatement of Four Gaming Machines at the Kamo Club (in four sections: a, b, c, d)

3. Submissions from Larry Graham (Chief Executive of Clubs NZ), D G Conaghan (Northern Area Board member, Clubs NZ), Ray Topia (President Kamo Club Inc), John Nuttall (Vice President, Kamo Club Inc)

4. Sample of 5 generic submissions

5. Whangarei District Class 4 Gambling Venue Policy


   ii) Additional to item 7 Review submissions on proposed Whangarei District Class 4 Gambling Policy and the proposed Whangarei Board Venue Policy.
Application for Territorial Authority Consent in terms of Section 98 of the Gambling Act 1983

1. Details of Applicant

<table>
<thead>
<tr>
<th>Name</th>
<th>Kamo Club Incorporated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Postal Address</td>
<td>C/ Harkness Henry, Private Bag 3077, Hamilton, 3240 (Attention Jarrod True)</td>
</tr>
<tr>
<td>Contact Person</td>
<td>Jarrod True</td>
</tr>
<tr>
<td>Contact Phone Number</td>
<td>07 834 6680, 027 4527763</td>
</tr>
<tr>
<td>Contact Email Address</td>
<td><a href="mailto:Jarrod.True@harkness.co.nz">Jarrod.True@harkness.co.nz</a></td>
</tr>
</tbody>
</table>

2. This application is made in the following circumstances (tick box)

Section 98 (a) [ ] Yes [ ] No  
[Increase in number at machines]

Provide details of circumstances

Please see section 80 application.

Is a class 4 licence in force? Yes

3. In the case of a new venue

<table>
<thead>
<tr>
<th>Venue Name</th>
<th>Kamo Club</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Address</td>
<td>7-11 Meldrum Street, Kamo, Northland 0141</td>
</tr>
<tr>
<td>Local Description</td>
<td>Club.</td>
</tr>
<tr>
<td>Primary Activity where liquor licensed provide licence number</td>
<td>Club.</td>
</tr>
<tr>
<td>Is a resource consent under the Resource management Act in place</td>
<td>Existing venue.</td>
</tr>
</tbody>
</table>
Provide details and number of class 4 machines the applicant intends to operate

The application is to restore four gaming machines. This will make the total gaming machines at the club 16.

4. In the case of the relocation of a board venue

<table>
<thead>
<tr>
<th>Existing Venue Name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Address</td>
<td></td>
</tr>
<tr>
<td>Number of machines operated</td>
<td></td>
</tr>
<tr>
<td>Number of machines licensed</td>
<td></td>
</tr>
<tr>
<td>Reason for relocation from this venue</td>
<td></td>
</tr>
</tbody>
</table>

This application must be accompanied by:

1. An assessment in report form of the following matters:
   a) The potential cumulative effects of additional gambling opportunities in the location of the venue and the social impact within the district generally
   b) The extent of the potential impact of the venue on the character of the area including the potential for negative effects on the operation, amenity and reasonable enjoyment of residential or other sensitive land uses in the area

2. Fee of $660
   **Note:** Where the application relates to a new venue then under the Whangarei District Council Class 4 Gambling venue policy, Council must publically notify the application in a newspaper and this cost will be invoiced to the applicant.

3. A scale plan showing areas set aside for gambling and other activities
4. A location plan showing the location of the venue within the wider community

Signed by Applicant [Signature]

Date 29/7/2013
18 September 2013

Kamo Club
Meldrum Street
Kamo
Whangarei 0112

Support letter for the Kamo Club - Whangarei

The Kamo Club is a valued financial member of Clubs New Zealand Inc. It is the biggest chartered Club in the Whangarei district and caters for a large community providing a wide range of services including free access for non-profit organisations.

Clubs New Zealand Inc is an Incorporated Society (WN218850) and is the National Organisation representing over 300 Chartered Clubs including over 80 RSA's nation-wide. CNZ have a combined membership of 295,000 members including 4000 staff.

The Chartered Club movement has been operating in New Zealand for over 100 years and is responsible for the education, health and wellbeing of its members.

Clubs New Zealand fully supports the Kamo Club as a 'well-run' business model. Their services include a range of Class 4 gaming activities and take this responsibility very seriously. Clubs New Zealand are recognised as a leader in minimising harm through their staff training programs by ensuring that all staff is well trained in Class 4 gaming. The Kamo Club participates in all the training programs provided and takes seriously the problems that gambling may cause.

This letter fully endorses and supports the Club in their endeavours to increase their number of gaming machines to the legal limit. The additional machines will greatly increase the Clubs ability to enhance their services to members and the community.

I will be happy to provide further information in support of the Kamo Club if required, please do not hesitate to contact me on 021 460232.

Yours sincerely

Larry Graham
Chief Executive
Clubs New Zealand Incorporated
Phone: 04 815 9936
Mob: 021 460 232
Email: Larry@clubsanz.com

Find the Club Nearest You on Your Iphone
Clubs New Zealand’s Submission on the Draft Service Plan and Proposed Problem Gambling Levy

Clubs New Zealand

Clubs New Zealand Incorporated ("Clubs") is an incorporated society and is the leading association for clubs in New Zealand. We are a not-for-profit organisation that represents more than 300 clubs around the country including chartered clubs, community clubs, cosmopolitan clubs, workingmen's clubs, sports clubs and returned service associations.

Executive Summary

Clubs does not believe that it is acceptable to wait a further three years for the splitting of the non-casino gaming machine (NCGM) sector into a commercial sector and club sector. In the Gambling Commission’s report dated 1 December 2006, the Commission clearly signalled that non-commercial NCGM operators should be recognised in the future as a separate sector subject to a lower levy. It is inexcusable, six years later to refuse to allocate a fair and appropriate levy to the club sector due to an apparent unwillingness by the Inland Revenue Department to prioritise an IT fix.

The NCGM club sector needs to be formally acknowledged as a separate sector and the levy formula applied accordingly. It is not appropriate to retain the NCGM sector as one sector and then seek to arbitrarily divide the commercial NCGM sector from the club sector.

Clubs wishes to continue to take a lead in implementing new and effective harm minimisation tools. Clubs is committed to working with the Problem Gambling Foundation to test and evaluate new harm minimisation initiatives such as facial recognition technology for excluding and tracking problem gamblers. Clubs suggests that a sum be set aside in the budget to assist with the costs of piloting and evaluating new host responsibility projects.

NCGM Club Sector Split Now Well Overdue

The Gambling Act clearly contemplates new sectors being established over time. The Gambling Commission in its report dated 1 December 2006 confirmed that it was legally possible for the NCGM club sector to be treated as a separate sector.

The splitting of the NCGM sector recognises that there are different operators within the sector with different expenditure levels and presentation levels. The splitting of the NCGM sector rewards those operators who have excellent harm minimisation measures in place and provides a financial incentive to continue to invest in new harm minimisation tools that far exceed the statutory minimum standards.

The failure to action the split sends the wrong message. The failure to act suggests that best practice harm minimisation measures will not be endorsed and rewarded, rather administration convenience will be favoured.

Given the large percentage share borne by the NCGM sector, and the extremely large sum of money raised, it is simply not acceptable to delay further the splitting of the levy due solely to administrative convenience.
The need to split the NCGM club sector was signalled as desirable six years ago by the Gambling Commission. The Inland Revenue Department have had ample time to adjust their internal systems. Given that the Gambling Act anticipates changes within the four sectors, the ability to expand the levy to new sectors is fundamental and should have been included in IRD’s systems when the levy was first introduced.

**Extensive Evidence to Justify a NCGM Club Sector Split**

There is now a wealth of evidence confirming that club gaming machines are less likely to be associated with harm.

Clubs provide a very safe environment in which class 4 gambling can take place. The culture which exists in clubs is one of care and protection of club members. Clubs provide a culture where the consumption of alcohol and gambling are not the predominant purpose for which the premises are used. The predominate purpose is social intercourse through sporting and social activities.

Clubs have become the centre of communities; they provide a social focal point, and a safe and secure venue in which members can enjoy food, sports, alcohol and gaming.

Due to club liquor licence requirements, clubs are only permitted to sell alcohol to members and guests of members who are accompanied by members. As a result the people who frequent the club become well known to staff. Staff quickly become aware of any member that shows any problem gambling symptoms. Due to the fact that the member is known personally by the staff and management it is easy to approach the person discreetly and enquire about the person’s gambling and if appropriate offer support or exclude the person from the gaming area. Members are less inclined to be defensive when such an approach is made in a club environment as opposed to a commercial establishment where there would be little (if any) rapport with the venue’s management.

Clubs provide a controlled environment with restrictive access. In contrast, commercial venues provide direct public access to gaming. Research done by Dr Townshend established that direct entry from the street is a risk factor for the attraction of problem gamblers to venues. The Gambling Commission has confirmed in five previous cases that a level of direct access to gaming by the public is highly undesirable from an underage supervision and harm minimisation view point.

The hours of operation of clubs and commercial venues are very different. Some commercial venues are open to 3am, 5am or even open 24 hours. Clubs frequently close at 10pm on weekdays and are not open on weekends to the same extent that commercial venues are. This limits the exposure by members to class 4 gambling and reduces the risk of intoxicated people playing the gaming machines.

The funds lost by club members are used by the club to directly benefit the club and the club’s members. As part of this many clubs provide their own internal support welfare services such as job finding, skills training and budgeting services.

Clubs provide a wide range of entertainment opportunities and activities for their members. Each of these activities provides a readily accessible and viable alternative to gambling. This is positive from a harm minimisation view point.
In conjunction with the Problem Gambling Foundation, Clubs New Zealand has developed a ClubCare host responsibility programme. The ClubCare programme focuses on harm prevention and minimisation and is industry leading.

The 2006 findings from the Victoria Gambling Commission Research Panel suggested that clubs, with their community focus, were safer venues than commercial venues.

In the April 2007 document *National Telephone Study of Attitudes to Gambling in New Zealand*, a Problem Gambling Foundation Project, the telephone survey found that there are almost twice as many frequent commercial venue gamblers as club gamblers, indicating a higher level of gambling in the commercial venues than in club venues and a decreased awareness of gambling losses from commercial venue gamblers.

In the January 2008 document *Assessment of the Social Impacts of Gambling in New Zealand* by Shore/Whariki the authors noted that participants that played gaming machines located in clubs had far fewer negative associations than those players who played a gaming machine located in a commercial bar. The report records at page 63:

The length of time playing EGMs in different settings, however, had different impact on participants’ domains of life. While playing EGMs in bars was associated with poorer self ratings in regard to several life domains, playing EGMs in clubs showed only one negative association with quality of a life domain (namely, physical health).

Enclosed at annexure “A” is a copy of Dr Philip Townshend’s August 2009 paper *Non Casino Gambling Machines in Hotels and Clubs: Points of Difference*. In this paper Dr Townshend reviewed the Helpline presentations and concluded that club gaming machines are approximately seven times safer than Hotel machines. Dr Townshend notes:

Since the gambling environment and gamblers safety is demonstrably different in Clubs from that in Hotels this difference should be reflected in the Gambling Levy.

In Dr Townshend’s paper titled *The Case for a Reduced Levy on Gambling in Clubs Compared with Gambling in Hotels* Dr Townshend reviewed several overseas studies and came to the firm conclusion that the club environment is different to the commercial environment. Dr Townshend notes:

Both clubs and hotels offer gambling facilities to patrons. However, there is clear evidence from both Australian and New Zealand research that clubs provide a safer gambling environment than hotels. The gambling experience is different in clubs from that in hotels, and as these differences are reflected in the reduced risk of harm while gambling in clubs as opposed to hotels, this difference should be reflected in the calculation of the Gambling Levy.

At a meeting with Dr Townshend on 21 August 2012, Dr Townshend advised that the more recent evidence and data confirmed his earlier findings. Dr Townshend remains firmly of the view that the evidence supports and justifies the club NCGM sector being split and a lower levy being applied.

The Gambling Commission in its report dated 25 November 2009 agreed with the Ministry that the club NCGM sector should be split for the purpose of collecting the 2013-2016 levy. The Commission stated:

On the Commission’s recommendation, the Ministry collected relevant data which indicated that there are differences in the rates of presentations between commercial...
and non-commercial venues. In its draft consultation document, the Ministry stated that despite these differences, there are significant difficulties with implementing the proposed split, and considered it to be an unviable option for the immediate future.

Following its consultation, the Ministry amended its position and now proposes that the NCGM sector be split into two separate gambling sectors for the purpose of calculating and collecting the 2013-2016 problem gambling levy, subject to a continued trend in the relevant data indicating that this split is justified. The Commission concurs with the Ministry’s amended approach.

The CEO of the Problem Gambling Foundation, Graeme Ramsey, has recently acknowledged the very good host responsibility programmes that exist in clubs. By letter dated 1 June 2011, Mr Ramsey stated:

Clubs have demonstratively shown that overall they are a safer environment than pubs. The Problem Gambling Foundation supports Clubs being treated differently than pubs for the purposes of the levy calculation which is based on problem gambling presentations.

Clubs are based on a collective ethos. Overall we have seen that Clubs take responsibilities to their members and guests seriously. They have worked hard on host responsibility.

The Ministry on page 28 and 29 of the 2012 consultation document accepts that there is evidence to support the split of the club NCGM sector from the commercial NCGM sector. The Ministry’s document states:

The Gambling Commission has previously suggested that non-casino gaming machines should be split into two sectors: non-club (‘pub’) and club. The Ministry considers that the evidence supports this split, which would significantly reduce the levy rate for clubs, and slightly increase the rate for non-club operators...

Information from problem gambling services indicates that fewer people seek help for problems associated with club machines, even after taking into account the lower number of club machines and their lower average per-machine-spend. Machines in clubs comprised just over 20% of all licenses NCGMs as at 30 June 2011, and spending on club machines was 13.3% of all NCGM expenditure in the quarter ended 30 June 2011. By contrast, fewer than 10% of people citing NCGMs as a primary problem gambling mode in 2010/11 named club machines.

There is also growing research evidence suggesting that club machines are less likely to be associated with harm. For example, the SHORE/Whariki (2008) study found that longer times spent playing machines in clubs was associated with far fewer negative impacts on 13 domains of life than longer times spent playing machines in bars. Similar findings emerged from the Opus study of gambling venue characteristics (In Press). It noted that ‘despite clubs being found to have longer playing durations, they were also shown to have significantly lower PGSIs [Problem Gambling Severity Index] scores for those gamblers that took part in the intercept survey’.

Given the wealth of evidence that clubs provide a safer environment, it is totally unacceptable for the Ministry to repeat the stance it initially took in 2006 by opposing the split on the grounds that it is too difficult administratively to implement immediately. The Ministry subsequently reversed this view in 2006 following consultation. Any administrative issue with the implementation of a split levy that existed in 2006, has surely now, six years later, been able to be resolved, or should have been resolved. It is intolerable that clubs should bear an unfair and unjust burden due to tardiness in amending bureaucratic systems.
Amount of Money Significant

Most clubs in New Zealand tend to operate on very tight budgets. A potential 30% reduction in the problem gambling levy (around $1.3 million for a total of 311 clubs) is a significant sum of money. The club sector has been effectively overpaying its fair share of the levy for over eight years now. Given the significant sum of money involved, and the positive impact this sum of money could have on clubs, the club NCGM sector needs to be split without further delay.

All Costs Must be Actual, Reasonable and Necessary

Clubs as class 4 corporate societies may only incur costs that are actual, reasonable and necessary: ss 30(a), 52(1)(e) and 4 (definition of net proceeds). If a cost is incurred that is not actual, reasonable and necessary, the cost is a misapplication of net proceeds: The Southern Trust decision GC10/10; The Trusts Charitable Foundation decision GC11/10; Blue Waters Community Trust decision GC01/12; Pub Charity decision GC06/12 and The Secretary of Internal Affairs v Integrated Commercial Solutions Limited HC Auckland CIV-2010-404-5253, 18 April 2011.

Because the evidence is now clear that clubs merit being levied separately, and the new levy would be a lower levy than the general NCGM levy, the payment of a general high levy by clubs (due solely for administrative convenience) may amount to the incurring of a cost that is not reasonable, and accordingly be a breach of section 106.

In order to avoid a breach of section 106, it is submitted that the levy change must be implemented this round.

Calculation of Club NCGM Levy

The Ministry’s consultation document does not go into any detail as to how a club NCGM levy would be calculated or what the proposed rate would be. The document hints at a 30% reduction but does not provide any workings to support this suggestion.

Table 9 in the consultation document (page 32) does however note that based on the 2010/11 sector share of presentations, the NCGM sector would be split 0.61 non-club and 0.07 club.

Clubs strongly submits that the club NCGM sector needs to be formally identified as a separate sector and the formula should be applied to this sector as set out in section 320(2). This will result in the levy payable by clubs being determined based on their gaming machine proceeds and the number of problem gambling presentations that indicate that gaming machine gambling at clubs is their primary form of gambling. Both the club revenue and club presentation data is available.

It is noted that the Gambling Commission is not free to make recommendations without using the formula, but may depart from it where there are good reasons to do so. In the club context there would be no good reason to depart from the statutory formula. Any concern with using the club presentation data can be addressed by reducing the presentation weighting from the current 90% to 70% as proposed.
New Research Fund

Clubs have always taken a lead when it comes to harm minimisation. Clubs have a very good working relationship with the Problem Gambling Foundation. In conjunction with the Problem Gambling Foundation, Clubs wishes to explore new harm minimisation initiatives. Such projects may include piloting new facial recognition technology that automatically disables a gaming machine when an excluded player attempts to play the machine.

Such projects do however come at a cost. It would be of considerable benefit if the research budget included a sum (say $1.5m) for new host responsibly projects. This would enable organisations such as Clubs and the Problem Gambling Foundation to apply for grants to cover the cost of trialling and evaluating new harm minimisation systems.

Any such fund would have the normal safeguards. A formal proposal would need to be submitted to the Ministry and be considered worthy of funding. Any money not spent, would simply result in the levy for the following three year period being reduced.

Conclusion

The Gambling Commission on 1 December 2006 found that there was a prima facie case for non-commercial NCGM operators to be recognised in the future as a separate sector subject to the levy, based on lower expenditure and presentations compared with commercial NCGM venues. If the levy split is not implemented in the current round, clubs will have to wait until 2016 for the issue to be considered again. The need for the club NCGM sector to be split is not new. The evidence to support the split is overwhelming. It is repugnant to ask clubs to wait until 2016, a period of ten years since the merits of the split were first confirmed by the Commission, for the split to be effected. Any further delay is a slap in the face for clubs who have strived to be leaders in harm minimisation and would entrench an additional three year period of overcharging on a non-profit sector which is clearly identifiable and clearly different than commercial NCGM operators.

Given that the levy is paid for from gaming machine proceeds, it is difficult for a club to be satisfied that a high single level is an actual, reasonable and necessary gambling expense. In order for clubs to comply with the actual, reasonable and necessary requirement, the split needs to be immediately implemented.

The split needs to be a formal split, i.e. there needs to be five gambling sectors. The club NCGM sector then needs to have a levy rate determined using the formula. It is not acceptable to leave clubs as a subset of the NCGM sector and attempt to impose some form of arbitrary apportionment.

Clubs wishes to continue the great work it has done to date with the Problem Gambling Foundation and explore new opportunities to prevent and minimise harm. It is appropriate that some of the underspend be allocated for new harm minimisation projects and Clubs and/or the Problem Gambling Foundation be able to apply for funding to pilot and evaluate new harm minimisation technology. This is likely to result in further positive changes in the NCGM sector.

Larry Graham
Chief Executive
Clubs New Zealand
Appendix A

Non Casino Gambling Machines in Hotels and Clubs: Points of Difference

Philip Townshend
August 2009

Executive Summary

Data are presented demonstrating that Clubs offer New Zealand gamblers a safer class 4 gambling environment than Hotels or Casinos. On this basis Clubs should be treated as a separate gambling mode and Ministry of Health (MOH) and Gambling Commission are obliged to reflect the relative safety of Club gambling in the calculation of the gambling levy.

The demonstrated relative safety of Club class 4 gambling gives the other participants in the gambling sector an objective harm minimisation performance goal to strive for and the MOH needs to ensure that Hotel and Casino gambling providers work towards this goal by acknowledging the success of Clubs in minimising gambling harms when setting the levy.

Introduction

The data collected on non-casino machine gambling by the Department of Internal Affairs (DIA), MOH and others regard machine gambling in Hotels and Clubs as a single category presumably on the basis that the rules governing these machines and the actual machines in Hotels and Clubs are the same. However in the lead up to the 07 levy round the Gambling Commission directed the MOH to record the primary gambling mode of presenting gamblers so that any differences between the number of problem gamblers presenting to treatment services for Video Gaming Machine (VGM or Pokie Machine) gambling from Clubs, Pubs and Casinos could be established.

The data collected show that for every five machines in Pub venues one problem gambler presents for treatment whereas the ratio for Clubs is one problem gambler to every twelve machines, suggesting that a Pokie machine in a Club is about 2½ times safer than a machine in a Pub.

Despite showing that Clubs are safer venues than Pubs these data overestimate the relative danger of Club machines as the MOH data includes problem gamblers counted on presentations to multiple treatment providers. For this reason the Gambling Helpline presentation statistics are included as this is the main first presentation service for problem gamblers.

The Helpline figures for problem gamblers presentations show one problem gambler presenting for every 24 Hotel machines and one problem gambler for every 181 Club machines suggesting that Club machines are approximately 7 times safer than Hotel machines. This is strong evidence that Club machines are safer than Pub machines and given that the rules and machines are the same the difference must be in the way that gambling is provided in the Club setting.
The data that the Ministry of Health have are combined with other data from New Zealand and shown in Table 1 below.

Table 1
Gambling by Venue or Mode in NZ

<table>
<thead>
<tr>
<th>Variable</th>
<th>Hotels VGM</th>
<th>Clubs VGM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market Share (%) 1</td>
<td>55</td>
<td>6</td>
</tr>
<tr>
<td>MOH Problem Gambler Presentations 2</td>
<td>3,168</td>
<td>335</td>
</tr>
<tr>
<td>Helpline Problem Gambler Presentations 3</td>
<td>657</td>
<td>22</td>
</tr>
<tr>
<td>No. of Pokie Machines 4</td>
<td>15,752</td>
<td>3,987</td>
</tr>
<tr>
<td>Total $m lost 5</td>
<td>778.56</td>
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</tr>
<tr>
<td>Loss per machine $</td>
<td>49,426</td>
<td>31,129</td>
</tr>
</tbody>
</table>

1. By $ lost
2. MOH Service User Stats 2008
3. Helpline 2008
4. DIA 2009
5. DIA 2008

These data show that on a VGM per problem gambler basis Clubs are dramatically safer than Hotels. On a problem gamblers per $ lost basis, using the MOH data there are 1.5 times as many problem gamblers per $ lost in Hotels compared with Clubs and using the Helpline data there are 4.8 times as many problem gamblers per $ lost in Hotels than in Clubs.

Since the gambling environment and gamblers safety is demonstrably different in Clubs from that in Hotels this difference should be reflected in the Gambling Levy.

The Problem Gambling Levy

The levy is collected to fund the Ministry of Health’s Problem Gambling Strategy and as a result is closely tied in to the harms of various sectors of the gambling industry. The levy regulations are in Part 4 of the Act which deals with Harm Minimisation, S319 (2) defines the purpose of the levy as to

"Recover the cost of developing, managing and delivering the integrated problem gambling strategy".

Further the levy is weighted S320 (2) with a variable "B" which is

"the customer presentations to problem gambling services that can be attributed to gambling in a sector divided by total customer presentations in which a sector that is subject to the levy can be identified"

This clearly identifies the levy as being explicitly moderated by a variable representing the harms that identified sectors of the gambling provider industry produce. As Clubs are an identifiable sector of the gambling provider industry that can be differentiated from other class 4 gambling providers Clubs are entitled to a separate levy calculation based on identified sector harms. A separate levy calculation for a provider that is demonstrably
providing class 4 gambling more safely than the rest of the class 4 sector has the power of natural justice behind it and also sets a target for the rest of the Class 4 sector on what can be achieved in providing a safe gambling environment.

The obligation on the Ministry and Gambling Commission to use evidence based process in setting the levy arises from S317 of the Act the “Integrated problem gambling strategy” (which the levy exists to fund) should be informed by independent scientific research and evaluation. Now that rigorously collected data has now been collected showing that Clubs offer safer gambling the Ministry of Health and Gambling Commission is required to take this into account in setting the levy.

Key Distinctions between Hotel and Club Gambling

The following is a description of key areas of differences between Clubs and Hotels with respect to gambling harms.

Clubs as a Coherent Community

It is a matter of law that the Club environment is highly controlled; this is explicit in the liquor licences of Clubs. Entry to all Clubs is restricted to members and their guests and Clubs have formal processes with tested integrity for recording who guests are by signing them in to the Club. The members of a club constitute a sub section of the community who with their guests have private access to liquor, class 4 gambling and a host of other activities. This community consists of members who are likely to be familiar with each other and the Club staff and more likely to watch out for and intervene to prevent problem behaviour including problem gambling behaviour. The degree to which this affects the gambling of problem gamblers could be assessed through a survey of gambling clients presenting to the Problem Gambling Foundation.

Funds return directly to gamblers

Clubs can make a strong claim to ameliorate the gambling harms they do contribute to by returning the funds collected through gambling machines directly to their members. Frequently this is in the form of specific welfare services to club members and in larger clubs can include job finding and training, budgeting etc. While Hotels host gambling machines on behalf of charitable trusts that return 39% of funds collected to the community this money often finds its way out of the actual community in which it is collected. In contrast Clubs explicitly put this money back into the community in which it is collected, in fact often directly back to the gamblers who lost the money.

Host Responsibility: Through other club Activities

All class 4 venues in New Zealand are required by the Gambling Act to have host responsibility measures in place however in Hotels these are directly targeted at identifying problem gamblers and referring them to helping services. Clubs provide this level of host responsibility and in addition provide a plethora of Club social, hobby, recreational and entertainment opportunities for the benefit of their members. Each of these activities is in fact of host responsibility activity as it contributes to an environment rich in alternatives to gambling. These non gambling opportunities are not available to anything like the same extent in casinos and Hotels. These activities would be the envy of other class 4 gambling venues and from a public health perspective represent the quintessential harm minimisation model for reducing the risks in a class 4 gambling environment.
Hours of Operation

The hours of operation of Clubs and Hotels are very different with some Hotels in some areas open 24 hours which potentially makes class 4 gambling available 24 hours. Clubs frequently close at 10pm on weekdays and are not open on weekends to the same extent that Hotels are. This limits the exposure to members to class 4 gambling and though no evidence currently exist to support this reduced hours would be expected to contribute to a safer gambling environment.
Dear Derek,

Re: Problem Gambling Levy Calculations 2013/14-2015/16

As you know the Problem Gambling Foundation has been supportive of the Host Responsibility work carried out by Clubs NZ in its member Clubs as this has resulted in demonstrably safer gambling environments in Clubs.

As an organisation we believe that Clubs NZ are entitled to be recognised for Host Responsibility progress by an alteration in the Levy and that as well as being logical and consistent with the Act this would send a message to other Class 4 gambling providers that Host Responsibility advances that reduce harms will be recognised in the Levy.

The Preventing and Minimising Gambling Harm Three-year service plan 2010/11-2012/13 identified that that the Gambling Commission is aware of the logic and value of splitting the Class 4 sector into a two sectors (Pubs and Clubs) and that this will be incorporated into the 2013/14-2015/16 problem gambling levy

"subject to the data continuing to justify this split" p20.

I clearly don’t have access to all the information required to calculate what level a Clubs Levy should be for the next three years as I don’t have information on the under recovery or over strike of the levy for the Ministry, the Ministry data on presentations across all service providers, the decision on the W1 and W2 values to be used nor the projected cost of the Ministry’s Harm Minimisation plan over the next three years.
However I have calculated the levy that Clubs should have paid on the basis of 2010 data which is the latest that I have access to. I used the PGF client data on venues identified as primary problem venues, the 2010 Class 4 expenditure figures, the W1 and W2 weightings of .1 and .9 as used in the calculation for this period and the cost of the plan for 2010. This effectively calculates the value of the levy that would have been paid by Clubs in 2010 were the levy calculations made annually not triennially.

On this basis the levy for Clubs would have been 0.53% and not the 1.48% levy actually set for that year. Clubs account for a triennial Class 4 expenditure of $360m and on this basis should be contributing approximately one third their current levy costs or about $636,000 per year over the three year levy period instead of the $1.7m per year actually paid. If these values were applied to the 2013/14-2015/16 this would result in a reduction of approximately $1.1m per year in the levy paid by clubs.

The amount that Clubs ought to have paid in 2010 is of no consequence as the Levy is set triennially. However as the process of setting the next levy is underway I suggest that both the Act and fairness make it imperative that the Non Casino Class 4 sectors be divided into separate Club and Pub sectors each with its own Levy calculation and a separate levy be, struck for each sector.

Any other course of action puts the Ministry in the situation of making a Harm Reduction Plan that takes no account of Harm reduction achieved. That would be illogical, contrary to the spirit of the Act and in opposition to the direction given by the Gambling Commission at the last levy setting round.

I look forward to discussing this further with you at your convenience.

Yours sincerely

Graham Ramsey
Problem Gambling Foundation of New Zealand
To Whangarei District Council

I wish to support the Kamo Club in their endeavour to have the 4 Gaming machines unfortunately removed from their licence in 2003 by the District Council of the day reinstated.

This issue has been ongoing from that time with the Whangarei District Council refusing to accept an error of judgement was made. The Kamo Club not only lost 4 Gaming Machines from their licence but had 4 machines that they had paid $80,000.00 for unable to be utilised and of no monetary value.

The fiscal reasons for the clubs decision to turn off the 4 machines prior to October 2003 was based on the acceptance that the Government of the day had confirmed that machines held by premises on October 2001 would be the number that could be retained. This point has been mentioned at all previous hearings so should be well known be councillors.

I have attached a “bullet point” list for council perusal and look forward to a fair and understanding hearing.

Yours Faithfully,

D. C. Paton  (Northern Area Board Member Clubs NZ)
• Clubs apply 100% of all the net proceeds back to the community by way of authorized purposes to the club and also to their immediate community

• Clubs are available to their members, members’ guests and affiliated club members. As a result all attendees are treated as family. I understand that it has been accepted by the courts that a members club is an extension of their home.

• Clubs as a “family” know their own members and can handle any issues long before they become a problem

• Clubs recognized prior to the 2003 handover to local government that there were people who were problem gamblers in our society and set out to improve our handling of the issue

• Clubs engaged with PGF to write and instigate a policy that was all inclusive. Clubs NZ invested $60,000.00 to achieve a policy that has been recognized in NZ and Australia as the most effective policy available. Training was started and has been ongoing

• Previous CEO of PGF, John Stansfield, recognized that club’s were in his words, “The solution to and not the cause of gambling problems”

• Current CEO of PGF, Graham Ramsey, agrees and as such has stated that if any PUB relinquished any machines he would carry them on his back to the nearest CLUB

• Health Department accepted our vast differences by requesting clubs should be rated differently to pubs in setting gaming levies. Recommendation that a lower figure should be set away back in 2010, with the new fee to be actioned in 2013 due to decisions already made and too late
John Nuttall  
31 Te Anau Place  
Tikipunga  
Whangarei  
Dated...16/9/2013

Subject: The Kamo Club (Inc.) - Application under Section 80 of the Local Government Act 2002 - Reinstatement of Four Gaming Machines.

I support the return of the four Gaming machines to our Club.

I have tried to understand why the Kamo Club lost the four machines in the first place, it wasn’t that the Kamo Club did anything wrong. The process of jumping the legislation forward by the Whangarei District Council disadvantaged the Club and did not allow enough time for the four machines to be up-graded. The machines were still on site.

At the time the Whangarei District Council took their action to Kamo Club had 16 machines, Two other Clubs in Whangarei were operating 18 machines each, and still are to this day.

The approach would have been fair if the Kamo Club had been given the rights.

The four machines were estimated to be worth $80,000 before the council took the action that they did. The Machines were owned by the Kamo Club so that money came out of the Club membership. The action taken by the Whangarei District Council rendered them worthless.

There is a lot to be said for venues like the Kamo Club that focus on the community. Authorised purposes funding helps the club to provide a venue that can be used by local organisations who have no Base of their own. There are a large number of groups who use the club almost like a community hall with no charge to them.

The large percentage of the active membership of the Kamo Club regard Gaming as a form of entertainment. The small number who have a problem are either self managed i.e. they exclude themselves or the staff manage them, offering them advice and counselling.

The Whangarei District Council and all the agencies will not see an increase in problem gambling even if they approve the Club to have 18 machines like other Clubs and venues.

Vote yes and approve our application.

I wish to be heard at the Application hearing on 9 October, 2013 . No

Contact Mob 0274 777491 only required if you wish to be heard

Signed......................................
Ray Topia
2 County Lane
Kamo
0112
24/09/2013

Subject: The Kamo Club (Inc) Application under Section 80 of the Local Government Act 2002;

The **REINSTATEMENT** of Gaming machines in the club for the following reasons.

The Kamo Club originally had these four machines in use before the Council bought in the policy of non increase of machines.

At the time of inspection the four machines in question were not on line and out of the gaming room for service and update. The inspection was based on the number of machines up and running at that moment not what we had and was fully licensed for.

I believe this to be totally unfair to the Club because it was unaware of that Council policy change at the time of inspection.

This has resulted in being a very costly decision by the Council, to the club. The cost of the Machines of $80,000 plus the revenue from those machines since 2003, lost to the Kamo Club members and the Kamo Community as a whole.

We have in place at the Kamo Club The Clubcare harm minimization measures. The tools and procedures in place were developed in conjunction with the Problem Gambling Foundation.

Kamo Club staff are fully trained in these procedures by the Problem Gambling Foundation and regularly attend training sessions to refresh their knowledge and keep up to date with any changes.

I would really appreciate the Councils support in favor of this application of reinstatement, so the Club and its members can maintain the support if not increase the support we give to the many community organizations we have helped for many years.

Thanking you in anticipation

Ray Topia

President

Kamo Club (INC)
Name: P. Tapper
Address: 47 & KEYTE ST, KENNINGTON

Dated: 20/9/13

Subject: The Kamo Club (Inc.) - Application under Section 80 of the Local Government Act 2002 - Reinstatement of Four Gaming Machines.
I support the return of the four Gaming machines to our Club for the following reasons.

The small number of additional machines will assist the Club continue to provide large events that will bring people to Whangarei. Such events include large golf and bowls tournaments. These events contribute to the local economy.

The large membership base at the Kamo Club is fully supportive of the application and urges the council to be reasonable and fair by allowing the Club to restore the four machines it lost in 2004 due to the technical provisions of the Gambling Act.

Please vote yes to the Kamo Club’s application.

Include a separate page if you have more to say, but attach it to this form.

I wish to be heard at the Application hearing on 10 October, 2013 YES / NO (delete one)

Contact No: only required if you wish to be heard

Signed: P. Tapper
Name: Graham Forbes
Address: 3 Riverong Rd

Dated: 11.9.13

Subject: The Kamo Club (Inc.) - Application under Section 80 of the Local Government Act 2002 - Reinstatement of Four Gaming Machines.
I support the return of the four Gaming machines to our Club for the following reasons.

The Kamo Club is a safe place to be that is available to members, plus the excellent staff are trained to identify problem gambling.

If other venues are allowed 18 machines, why was the Kamo Club not given the opportunity to register 18 machines?

The small increase in machines will not increase the risk of problem gambling.

Please vote yes to approving the Kamo Clubs application.

Include a separate page if you have more to say, but attach it to this form.

I wish to be heard at the Application hearing on 10 October, 2013 YES / NO (delete one)

Contact No.: ................................only required if you wish to be heard

Signed: [Signature]
Name: [Name]

Address:
23 Holy St
Kamo

Dated: 9.9.13

Subject: The Kamo Club (Inc.) - Application under Section 80 of the Local Government Act 2002 - Reinstatement of Four Gambling

I support the return of the four Gaming machines to our Club for the following reasons.

1. The Four Machines will be located at the Kamo Club and is safer than the Commercial pub.

2. An independent research confirms that the Club is a safer environment to locate than the Commercial pub environment.

3. The Right Thinks are Alex. This Application

Include a separate page but attach it to this form.

I wish to be heard at the Application hearing on 10 October, 2013

YES / NO (delete one)

Signed: [Signature]

Drop into the Club as soon as possible
or post to Kamo Club (Inc) P.O.Box 4147, Kamo
Name: Albert Biler
Address: 123 Adams Place

Subject: The Kamo Club (Inc.) - Application under Section 80 of the Local Government Act 2002 - Reinstatement of Four Gaming Machines.
I support the return of the four Gaming machines to our Club for the following reasons.

If other venues are allowed 18 machines, why was the Kamo Club Targeted. It is a safe place to be that is available to members, plus the excellent staff are trained to identify problem gambling.

The small increase in machines will not increase the risk of problem gambling.

The four machines will be located in the club environment, an environment that is recognised as being safer than the commercial pub environment.

Let us have our four machines. Approve our application.

Include a separate page, if you want to, but attach it to this form.

I wish to be heard at the Application hearing on 10 October, 2013 VOTE / NO (delete one)

Contact No: 091352138

Signed: Albert Biler
Subject: The Kamo Club (Inc.) - Application under Section 80 of the Local Government Act 2002 - Reinstatement of Four Gaming Machines.
I support the return of the four Gaming machines to our Club for the following reasons.

Our Club is supported by CLUBS NZ, this organisation developed Gambling Harm Training long before it was required under legislation. Our Staff are trained by CLUBS NZ and the PROBLEM GAMBLING FOUNDATION.

The four machines will be located in the club environment, an environment that is recognised as being safer than the commercial pub environment.

Thanks for your time, will you please approve our application now.

Include a separate page if you have more to say, but attach it to this form.

I wish to be heard at the Application hearing on 10 October, 2013 YES / NO (delete one)

Contact No. only required if you wish to be heard

Signed
Whangarei District Council Class 4 Gambling Venue Policy

April 2013
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Introduction

The Gambling Act 2003 overhauled legislation relating to gambling. A key change for local authorities was a requirement that they must establish a Class 4 Gambling venue Policy adopted by special consultative procedure. Council is required to review this policy every three years. Class 4 gambling relates to pokie machines and an application to the Department of Internal Affairs for a new venue licence under the Gambling Act 2003 must be accompanied by consent from Council. Consideration of such an application by Council must be in terms of the Class 4 Gambling Venue Policy. This policy has been developed, amended and reviewed in accordance with 101 of the Gambling Act 2003.

This policy provides that Council will not consent to the establishment of new class 4 gambling venues with the exception of specific situations where venues need to relocate or in the case of clubs, combine and relocate. There will be no increase in the number of machines at a venue as the result of any relocation and the policy also prevents venues operating prior to the commencement of the Gambling Act 2003, from increasing machine numbers. Any application for consent under the policy to establish a new class 4 venue, resulting from the need to relocate a venue must be publicly notified and determined at a Council hearing.

1 Objectives of the policy in so far as promoted by the Gambling Act 2003

1.1 To control the growth of class 4 gambling in the Whangarei District.
1.2 To minimise the harm caused by class 4 gambling in the Whangarei District.
1.3 To facilitate community involvement in decisions about the provision of class 4 gambling in the Whangarei District.
1.4 To allow those who choose to use class 4 gaming machines may do so in a safe and well managed environment.

2 Establishment of class 4 venues be not permitted

2.1 Save for as provided in clause 3 of this policy Council will not permit the establishment of new class 4 gambling venues in the Whangarei District.

3 Relocation of class 4 venues

3.1 Council may permit a class 4 venue to re-establish at a new site where:
   a Due to circumstances beyond the control of the owner or lessee of the class 4 venue or Board venue, the venue cannot continue to operate at the existing site. Examples of such circumstances include but are not limited to the following:
      i expiration of lease
      ii acquisition of property under the Public Works Act; or
      iii site redevelopment.
   b In the case of a club only, as defined in the Gambling Act 2003, Council will permit the relocation to a new site of a club, where two or more existing clubs legally and physically combine into one.

3.2 Any permission to establish any new class 4 venue under this clause will be subject to the following conditions:
   a Except as provided for in 3.1 (b) above the venue operator of the business at the new site shall be the same as the venue operator at the site to be vacated.
   b The number of gaming machines permitted to operate at the new venue will not exceed the number permitted to be operated at the existing site with a maximum of nine machines as provided by Section 94 of the Gambling Act 2003. In the case of clubs which combine in terms of Section 95 of the Gambling Act 2003 the number of gaming machines permitted will not exceed the sum of the number of gaming machines specified in all of the corporate societies class 4 venue licences at the time of application with a maximum limit of 30.
In the case of clubs which combine to form a new club and to which Section 96 of the Gambling Act 2003 applies the number of gaming machines permitted to operate at the new venue will not exceed the sum of the number of gaming machines specified in all of the corporate societies class 4 licences at the time of application but must not in any case exceed 18 machines.

4 Where class 4 gambling venues may be established on relocation

4.1 Any class 4 venue may only be established in a Business 1, Business 2 or a Business 4 Environment as defined under the Whangarei Operative District Plan.

5 Restrictions on the maximum number of machines that may be operated at a class 4 venue

5.1 Council will not consent to any increase in the number of class 4 gambling machines operated at each venue, specifically:

a. Where the holder of a class 4 venue licence existing on the 17 October 2001 wishes to increase the number of machines by application under section 92 of the Gambling Act 2003 then the maximum number of machines permitted is the number of machines currently held by the holder as a condition of licence.

b. For premises licensed after 17 October 2001, to which section 93 of the Gambling Act 2003 applies, club applicants in terms of which section 96 of the Gambling Act 2003 applies, the maximum number of machines permitted is the number of machines currently held by the holder as a condition of licence.

c. Where two or more clubs or societies legally and physically combine in terms of section 95 of the Gambling Act 2003, the maximum number of machines permitted will be the sum of the number of gaming machines specified in all of the corporate societies class 4 venue licences at the time of application with an maximum limit of 30 as provided in section 95 (4) of the Gambling Act 2003.

6 The territorial authority consent process

6.1 Any application for consent under this policy to establish a new class 4 venue resulting from the need to relocate a venue will be subject to public notification and determined at a Council hearing.

6.2 Council has delegated the power to consider and determine applications for Territorial Authority consent under the Gambling Act 2003, to the Licensing Exemptions and Objections Committee and during the terms of this policy may delegate such powers to such other committees as appropriate.

6.4 Submissions in writing shall be invited over a period of not less than 20 working days, with submitters invited to indicate if they wish to be heard on the hearing date. Working days shall have the same meaning as defined in terms of the Resource Management Act 1991.

6.5 The Committee shall consider all submissions, written and oral, and shall make a decision including reasons on the application. The Committee’s decision shall be final.

6.6 The applicant and all submitters shall be advised of the decision, and the reasons for the decision, as soon as practicable.

6.7 In considering any application and submissions, the Committee shall have regard to provisions of the Gambling Act 2003, objectives of this policy, and the criteria outlined in matters to be considered at hearing.

6.8 Notification of application

Public notification shall be undertaken by Council as follows:

a. By publication in a local newspaper circulating within the District.

b. By way of a public notice displayed prominently in the window of the proposed venue or by signage on the venue site for the period during which submissions are open.

c. By the notification in writing of owners and occupiers of any adjacent properties.

d. By notification in writing to any other person or party that Council considers necessary.
6.9 Matters to be considered in determining application

In considering an application under this policy the Committee shall have regard to the following matters:

a. The potential cumulative effects of additional gambling opportunities in that location and the social impact within the District generally.

b. The extent of the potential impact of the venue on the character of the area including the potential for negative effects on the operation, amenity or reasonable enjoyment of residential or other sensitive land uses in the area.

c. The extent to which the application meets the objectives of the Whangarei District Council Class 4 Gambling Venue Policy and the purpose and intent of the Gambling Act 2003.

d. Any other matter that Council considers relevant and reasonably necessary to determine the application.

6.10 How an application is to be made

Applications for consent must be made on the approved form and must provide:

a. Name and contact details of the applicant

b. Venue name and street address

c. A scale plan drawn showing areas set aside for gambling and other activities

d. A location plan showing the location of the venue within the wider community

e. Names and date of birth of venue management staff

f. In respect of a class 4 venue details of gambling equipment and the number of machines that the applicant intends to operate

g. In respect of a class 4 venue information demonstrating that the primary activity for the venue will not be the operation of gambling machines

h. In respect of a class 4 venue details of the liquor licence/licenses applying to the venue

i. Where the application relates to the establishment of a new class 4 venue the applicant must provide an assessment of the following matters:

i. The potential cumulative effects of additional gambling opportunities in that location and the social impact within the District generally

ii. The extent of the potential impact of the venue on the character of the area including the potential for negative effects on the operation, amenity or reasonable enjoyment of residential or other sensitive land uses in the area

j. Any other information that may reasonably be required to allow proper consideration of the application

k. Fees

l. Certificate of compliance under the Resource Management Act 1991 or a copy of the resource consent authorising the proposed activity under the Act.

6.11 Application fees

Council shall set fees from time to time, under authority of the Local Government Act 2002, and shall include consideration of:

a. The cost of processing any application, including any consultation, public notification and hearings involved.

b. The cost of triennially reviewing the class 4 gambling policy including the cost of assessment of the effectiveness of the policy and the social impact of gambling in the District.

c. The cost of any inspection of premises should this be required of Council by the Department of Internal Affairs.
7 Promotion of gambling information to the community

7.1 Council will within budget constraints, facilitate the provision of information promoting host responsibility, gambling harm minimisation, problem gambling services and other relevant information to the District community and the industry in an endeavour to contribute towards the achievement of the objectives of this Policy.

This policy was adopted by the Whangarei District Council on the 24 April 2013

Policy review history

03 March 2004 First adoption – No new venues
04 October 2006 Amendment to allow Board venue to establish in Vine Street, Whangarei
03 October 2007 Reviewed Policy. Existing venues permitted to relocate under specific circumstances. Board venues permitted to establish with cap of two (2) venues