

**QLDC Council
8 February 2018**

Report for Agenda Item: 4

Department: Finance & Regulatory

Class 4 and TAB Gambling Venue Relocation Policy

Purpose

To consider the adoption of the Class 4 and TAB Gambling Venue Relocation Policy following public consultation and a public hearing.

Recommendation

That Council:

1. **Note** the contents of this report and the submissions heard at the public hearing;
2. **Accept** the recommendation from the hearing panel to adopt the relocation policy; and
3. **Adopt** the proposed relocation policy into the Class 4 and TAB Gambling Venue Policy.

Prepared by:



Nathan Bates
Alcohol Licensing inspector
18/01/2018

Reviewed and Authorised by:



Stewart Burns
Regulatory and Finance
General Manager
24/01/2018

Background

- 1 On 17 August 2017 Council resolved to adopt the current Class 4 and TAB Gambling Venue Policy <http://www.qldc.govt.nz/services/permits/gaming/>
- 2 The Gambling (Gambling Harm Reduction) Amendment Act 2013 required Council to consider whether to include a relocation policy within its Class 4 Venue Policy, as part of the first review of the policy following this amendment on 14 September 2013.
- 3 Recently, an application to relocate 18 gaming machines was received, which identified this omission from Council's current Class 4 and TAB Gambling Venue

Relocation Policy regarding the ability to consider the relocation of gaming machines.

- 4 On 26 October, Council resolved to begin public consultation on a proposed Class 4 and TAB Gambling Venue Relocation Policy <http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Full-Council-Agendas/2017/26-October-2017/6.-Class-4-and-TAB-Gambling-Venue-Relocation-Policy-covering-report.pdf>

Comment

Gambling Act 2003

- 5 Recently, Council reviewed and adopted its Class 4 and TAB Gambling Venue Relocation Policy. However, an amendment in the legislation that requires the consideration to relocate gaming machines was not undertaken.
- 6 Section 102(5A) of the amended Act states:

“The first time that a territorial authority commences a review of the policy after the Gambling (Gambling Harm Reduction) Amendment Act 2013 comes into force, the territorial authority must (and may at any other time) consider whether to include a relocation policy (as defined in section 101(5)) in its class 4 venue policy.”

- 7 The most recent review of the Class 4 and TAB Gambling Venue Relocation Policy would have been the first review since the amended legislation.
- 8 Consequently, a proposed Class 4 and TAB Gambling Venue Relocation Policy was drafted, which was presented to Council.

Public Consultation

- 9 The proposed policy went before the full Council on 26 October 2017, where Council resolved to begin public consultation. Public consultation occurred between 28 October 2017 and 27 November 2017.
- 10 During the public consultation period nine responses were completed via the online submissions form, while a further six were received via email bringing a total of 15 responses.
- 11 Of the nine completed responses, eight indicated they were in support of the policy with three of those wishing to be heard. The final respondent completed all the questions on the form except for the one indicating if they were in support or not of the proposed policy, however they did indicate that they did wish to be heard at any public hearing.
- 12 All of the six emailed responses agreed with the proposed policy with two stating that they wished to be heard at the public hearing.

- 13 Included in the emailed responses was a submission by Public Health South (PHS) which indicated that though they agreed with the relocation policy they would like to see a cap placed on the number of gaming venues operating, so that when the gaming machines have relocated to a new venue the old location is not permitted to host gaming machines. They also indicated that at the next policy review, PHS would advocate for a sinking lid clause so the number of gaming machines would reduce from 18 to nine if a venue was previously allowed 18 machines.
- 14 In summary, 15 valid (fully completed) responses were received via the online submissions form or via email response with 14 in agreement with the proposed policy, with one submitter not indicating either way. Five submitters had indicated they wished to be heard at the public hearing.
- 15 All the valid responses that were received were submitted by Gaming Trusts or community groups that receive grants from said Trusts and indicated they would struggle to continue if these grants were discontinued.

Public Hearing

- 16 The public hearing was held on Wednesday 20 December 2017. At the hearing only one submitter, Mr Jarrod True of True Legal on behalf of First Sovereign, attended and presented before the hearing panel in support of the proposed policy. The other four submitters wishing to be heard provided various reasons for their inability to attend. The minutes of the hearing are appended as Attachment B.
- 17 At the conclusion of the hearing the council panel made a recommendation that the proposed policy be adopted.

Options

- 18 Option 1 Status Quo – Do not permit the relocation of gaming machines.

Advantages:

- 19 All new gaming locations will need to go through the new licensing process thereby limiting them to a maximum of eight machines and potentially lowering the number of machines throughout the district.

Disadvantages:

- 20 The level of community funding received from gaming trusts may significantly reduce.
- 21 By not allowing relocation it would be a de facto form of reducing the number of machines in the district which is not the intention of the Gambling Policy.
- 22 It would create unnecessary additional costs, given a lack of apparent harm to the community from the current number of gaming machines, by forcing existing gaming numbers through a new licence process each time machines need to be moved.

23 Option 2 Approve the relocation policy.

Advantages:

24 The proposed policy (Attachment B) reflects the objectives of the current Class 4 and TAB Gambling Venue Policy to:

- a) To ensure the Council and the community has influence over the provision of new gambling venues in the district;
- b) To control and manage the growth of gambling in the district;
- c) To allow those who wish to participate in electronic gaming machines and totalisator (TAB) gambling to do so within the district;
- d) To prevent and minimise harm caused by gambling; and
- e) To create an information flow so that the on-going effects of gambling in the district may be assessed.

Disadvantages:

25 Allowing relocation will not reduce the number of gaming machines within the community.

26 This report recommends **option two** as it is the recommendation of the hearings panel and reflects the objectives of the Class 4 and TAB Gambling Venue Policy and continues the current levels of community funding available to the community.

Significance and Engagement

27 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because the matter has a low impact on the environment culture and people of the District. There will only be a low number of organisations that will be affected by this policy.

Risk

28 This matter relates to the strategic risk SR3 "Management Practice – working within legislation", as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk because the current policy does not comply with the Gambling Act.

29 The recommended option considered above mitigates the risk by terminating the risk through the adoption of the amended policy.

Financial Implications

30 There are minimal financial implications from this policy, which will be met through existing budgets.

Council Policies, Strategies and Bylaws

31 The following Council policies, strategies and bylaws were considered:

- Class 4 and TAB gambling venue policy
- Significance and Engagement Policy

32 The recommended option is consistent with the principles set out in the named policy.

33 This matter is included in the 10-Year Plan/Annual Plan.

34 Volume 1 – Long Term Council Outcomes for Regulatory Functions and Services.

Local Government Act 2002 Purpose Provisions

35 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by ensuring the policy complies with the Act;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

36 The persons who are affected by or interested in this matter are residents, ratepayers, iwi and visitors of the Queenstown Lakes district community.

37 The Council has publicly consulted using the special consultative procedure on the proposed policy.

Legal Considerations and Statutory Responsibilities

38 The relevant legislation that must be considered comes from the Gambling Act 2003 which states in section 102(5A):

(5A) The first time that a territorial authority commences a review of a policy after the Gambling (Gambling Harm Reduction) Amendment Act 2013 comes into force, the territorial authority must (and may at any other time) consider whether to include a relocation policy (as defined in section 101(5)) in its class 4 venue policy.

39 Section 101(5) of the Gambling Act 2003 states:

40 (5) A **relocation policy** is a policy setting out if and when the territorial authority will grant consent in respect of a venue within its district where the venue is

intended to replace an existing venue(within the district) to which a class 4 venue licence applies (in which case section 97A applies).

Attachments

- A Class 4 and TAB Gambling Venue Policy with relocation policy inserted
- B Minutes of the meeting to consider submissions on the proposed Class 4 TAB and Gambling Venue Relocation Policy

QUEENSTOWN LAKES DISTRICT COUNCIL

CLASS 4 AND TAB GAMBLING VENUE POLICY

Introduction

Under section 101 of the Gambling Act 2003 Council is required to adopt a policy to regulate the growth and location of Class 4 (non-casino electronic gaming machines) and Totalisator Agency Board (TAB) gambling within their district.

The areas where Council has authority to control are:

- To determine whether new class 4 and or TAB venues may be established within the district and if so to determine any restrictions to be placed on those locations; and
- If Class 4 venues are permitted in the district, to determine the maximum number of machines that may be in each venue, subject to statutory maxima.

Objectives of the Policy

- ensure the Council and the community has influence over the provision of new gambling venues in the district;
- To control and manage the growth of gambling in the district;
- To allow those who wish to participate in electronic gaming machine and totalisator (TAB) gambling to do so within the district;
- To prevent and minimise the harm caused by gambling;
- To create an information flow so that the ongoing effects of gambling in the district may be assessed.

Strategic Alignment

- This policy assists in the delivery of the following Council outcomes and goals:
- Protects the interests of the District and its community;
- Is cost effective and achieves the regulatory objectives; and
- Enables our community to comply with national and local legislation because they are well understood and easy to comply with.

Location of Class 4 Gambling or TAB Venues

Class 4 gambling and TAB venues may be established in the district subject to meeting the following criteria:

- a) A full application is submitted and fees paid;
- b) Proposed new venues must not be established in any **residential zone** and
- c) Proposed and existing venues are not located within 50metres of or adjacent to any school, early childhood centre, kindergarten, place of worship or other community facility. The applicant will be required to demonstrate that the proposed venue will not adversely impact on such institutions;
- d) Not being located so as to provide for a concentration of gambling venues;
- e) Not being a venue at which the primary activity is associated with family or children's activities;

- f) The electronic gaming machines being located within the venue must not be visible from the street, or visible to underage patrons at the venue; and
- g) No signage regarding either the provision of gaming machines or any prizes or jackpots available from gaming machines may be visible from any street or public place.

Maximum numbers of Electronic Gaming Machines permitted

- New venues may be allowed a maximum of 9 (nine) electronic gaming machines.
- Venues with licenses issued after 17 October 2001 and operating fewer than 9 (nine) electronic gaming machines may be allowed to increase the number of machines operated at the venue to 9.

Primary activity of class 4 gambling premises

New Class 4 gambling venues may only be established where the primary activity of the venue is:

- The sale and supply of alcohol for consumption on the premises as licensed under the Sale and Supply of Alcohol Act 2012.

Information Disclosure

To provide information to enable Council to monitor activities at Class 4 gambling venues, each society operating electronic gaming machines in the Queenstown Lakes District shall provide the following information to the Council for each venue operated in the district:

Net expenditure (being the difference between money paid into and paid out as winnings from electronic gaming machines);

- Site fees paid to the site operator; and
- A copy of the responsible gambling policy in place at the venue.

In addition, each society shall provide information to the Council on the grants made by it directly to organisations within the Queenstown Lakes District including:

- The name and address of the organisation;
- The purposes for which the donation was made; and
- The amount of each donation made.

Information is to be provided to Council for each six-month period ending 30 June and 31 December each year. The information is to be provided to the Council within 2 months of the end of each reporting period, 31 August and 28 February.

Applications

Applications for consent by the Queenstown Lakes District Council must be made on the approved form and must provide:

- Name and address details for the application;
- Physical address of premises proposed for the Class 4 venue;
- The names of management staff;
- Evidence that public notice of the intention to apply for a new venue (for either Class 4 or TAB venues) or an increase in electronic gaming machine numbers (for Class 4 venues) at an existing venue has been given;
- Evidence of police approval for owners and managers of the venue;
- Evidence that the primary purpose of the proposed venue complies with this policy;

- Evidence of the means by which the policy in respect of separation of gambling from non-gambling areas will be achieved; and
- A copy of the current alcohol on-licence for the premises.

Application Fees

These will be set by the Queenstown Lakes District Council from time to time and shall include consideration of:

- The cost of processing the application, including any consultation and hearings involved;
- The cost of triennially reviewing the Class 4 gambling and TAB venue policy;
- A contribution towards the cost of triennial assessments of the economic and social impact of gambling in the Queenstown Lakes District.

Public Notice Provisions

Public notice of the intention to make application under this policy shall be made by placing notices in either the Southland Times or the Otago Daily Times on two consecutive Saturday editions. A similar notice shall be placed in at least two local newspapers that are delivered in the area surrounding the applicant venue over two consecutive weeks. If there are not two local newspapers circulated in the surrounding area then the notice shall be placed in both the Southland Times and Otago Daily Times and the one local newspaper.

The notice shall specify:

- The name of the society making the application;
- The physical location of the venue or proposed venue;
- The trading name of the venue or proposed venue;
- The number of electronic gaming machines that are proposed;
- Where the application is for an increase in the number of electronic gaming machines at the venue the notice shall specify the existing number and proposed number of machines;
- That objections to the granting of the application should be made in writing to Council's regulatory contractor and specify the name and address for service;
- The period during which objections may be made, which is twenty one (21) days from the date of first public notice in the Southland Times or Otago Daily Times.

Administration

- Where any public objection is made to the application for a new venue or an increase in the number of machines at a venue under to this policy, then the application will be referred to the Community and Services Committee. This Committee will conduct a public hearing into the application that provides for community consultation.

Venue Relocation

A new venue consent may be issued by Council in the following circumstances:

- (a) where the venue is intended to replace an existing venue within the district;
- (b) where the existing venue operator consents to the relocation; and
- (c) where the proposed new location meets all the other requirements of the Class 4 and TAB Gambling Venue Policy.

In accordance with section 97A of the Gambling Act 2003, when a relocation consent is sought under this relocation provision, the new venue may operate up to the same number of

machines that was permitted to operate at the old venue immediately before the old venue licence is cancelled as a result of the relocation, to a maximum of eighteen (18) machines.

In accordance with section 97A(2)(c) of the Gambling Act 2003, when the new venue is established following a consent being granted under this relocation provision, the old venue is treated as if no class 4 venue licence was ever held for the venue. The old venue will therefore require a new territorial authority consent from Council before being relicensed to host gaming machines and will be limited to a maximum of 9 machines if such a consent is issued by Council.

ADOPTED 8th February 2018

**Consideration of Submissions
Class 4 TAB and Gambling Venue Relocation Policy
20 DECEMBER 2017
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Minutes of a meeting to consider submissions on the proposed Class 4 TAB and Gambling Venue Relocation Policy held in Council Chambers, 10 Gorge Road, Queenstown on Wednesday, 20 December 2017 commencing at 10.00am

Present:

Councillor Quentin Smith (Chair), Councillor Scott Stevens and Councillor Val Miller

In attendance:

Mr Nathan Bates (Alcohol Licensing Inspector), Mr Lee Webster (Regulatory Manager) and Ms Jane Robertson (Senior Governance Advisor)

Commencement of the hearing

The Governance Advisor called the meeting to order and asked the elected members to determine the Chairperson for the hearing.

On the motion of Councillors Stevens and Miller it was resolved that Councillor Smith chair the hearing.

Councillor Smith took the chair.

Apologies

There were no apologies

Declarations of Conflicts of Interest

No declarations were made.

Confirmation of Agenda

The agenda was confirmed without addition or alteration.

Officer's covering report

Mr Bates advised of various changes to the submitters appearing at the hearing:

- Tanya Piejus and Bruce Robertson would no longer appear via Skype.
- Hugh Stacey no longer wished to appear.
- No response had been received from Snow Sports New Zealand about appearing.

He advised that his written report should be taken as read.

Hearing of Submissions

Jarrold True presented a submission on behalf of First Sovereign Trust in support of the relocation amendment. His submission highlighted the following key points:

- The consultation process had yielded 15 submissions of which 14 were in support and one neutral. Importantly, none was opposed which was a rare situation and which suggests that the proposed change was not controversial.
- Various examples of gratitude from community organisations for the Trust's financial support were presented.
- The Southern District Health Board's submission had requested a cap or sinking lid of machines but this was outside the scope of the policy review.
- Adopting the relocation policy was consistent with what other councils had done and consistent with existing policy.
- Adoption would enable gaming machine funding to remain sustainable.
- The actual number of venues in Queenstown had more than halved over the last 15 years and this could not continue if funding for local projects was to remain sustainable.
- There were a number of relocation benefits including allowing the development of modern venues with new fit-outs, improvements to the local economy and the encouragement of tourism. It also provided for relocation in cases of fire, site redevelopment or unreasonable landlord behaviour and served to free up land that could be used for other purposes.
- There were various safeguards that remained in place to ensure that venues could only be relocated to areas considered suitable.
- Not allowing machine relocation had the unintended consequence of keeping machines in run-down venues thereby promoting the migration to casinos and online gambling.

In summary, Mr True stated that the Queenstown Lakes District was a dynamic part of New Zealand in which the First Sovereign Trust wanted to retain a footprint. The proceeds from the Trust were an important resource for local communities and the Trust was acutely aware of its responsibilities to manage any harm from gambling. Once a venue was lost it was very hard to re-establish it and the Trust appreciated the Council's efforts to organise the hearing in short time to allow for the relocation of 18 relocatable machines. Overall, the Trust was happy with the proposed wording of the policy which both reflected the purpose of the act and was consistent with other policies.

Consideration of Submissions
Class 4 TAB and Gambling Venue Relocation Policy
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Councillor Stevens advised that the panel's decision would be reserved. It would make a recommendation that would be presented to the first Council meeting in 2018.

The hearing concluded at 10.22am and the members of the public left the room at this time.

Deliberations

Members observed that there was no submitter opposition to the proposed policy. Further there was no evidence of problem gambling in residential areas, notwithstanding that any relocation would be in the CBD. There were also few venues with 18 machines so applications for relocation would be rare.

On the motion of Councillors Smith and Miller it was resolved that the hearings panel recommend to Council that the Class 4 and TAB Gambling Venue Relocation Policy be adopted.

The meeting concluded at 10.28 am.