

## REPORT OF THE CHIEF EXECUTIVE

## PART A - MATTERS REQUIRING A COUNCIL DECISION

## 1. GAMBLING VENUE POLICY

The purpose of this report (authored by Mary Richardson and David Rolls) is to seek clarification from the Council in order to resolve an ambiguity in its recently adopted Gambling Venue Policy.

## INTRODUCTION

At its meeting on 15 March 2004, the Council formally adopted its gambling venue policy, as required by Section 101 of the Gambling Act 2003. Unfortunately it has subsequently transpired that that policy is, in one particular respect, ambiguous. The ambiguity lies in the Council's intention as to whether or not Class 4 venues which were licensed between 17 October 2001 and 18 September 2003 may continue to operate. There are 17 such venues in the city which together contain 122 gaming machines. (Class 4 venues involve non-casino gambling using gaming machines, commonly called "poker machines".)

The Council has received legal advice from Simpson Grierson that the most appropriate means of resolving this ambiguity is by the Council reconsidering the matter by way of correction of the adopted policy. The Council is lawfully able to do this at this meeting, by way of resolution, rather than having to amend its policy through the special consultative procedure prescribed in the Local Government Act 2002.

## BACKGROUND

Section 98 of the Gambling Act provides –

***"When territorial authority consent is required***

*A territorial authority consent is required in the following circumstances:*

- (a) *if a society proposes to increase the number of machines that may be operated at a class 4 venue (whether by way of an application for, or amendment to, a class 4 venue licence, and whether or not in association with an application for ministerial discretion under section 95 or section 96):*
- (b) *unless paragraph (c) or paragraph (d) applies, the first time there is an application for a class 4 venue licence for a venue for which a class 4 venue licence was not held on 17 October 2001:*
- (c) *if a corporate society applies for a class 4 venue licence and a class 4 venue licence has not been held by any society for the venue within the last 6 months:*
- (d) *on the commencement of this section, in accordance with section 93 for a class 4 venue—*
  - (i) *to which section 92 does not apply; and*
  - (ii) *for which there is a class 4 venue licence granted after 17 October 2001 and before the commencement of this section."*

Section 100 of the Act requires the Council to consider an application for any such consent in accordance with its gambling venue policy.

The Council adopted its gambling venue policy on 15 March 2004 after considering a report from the Regulatory and Consents Committee. The report stated that the Committee had considered three options, one being –

- "3. *A policy that places a moratorium on new gaming venues"*

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The report recommended that the Council—

*"Adopt the Gambling Venue and Totalisator Agency Board (TAB) Venue Policy (Appendix 1) which:*

*(b) places a moratorium on the establishment of new class 4 venues in Christchurch."*

The reference to *"new class 4 venues"* suggests that the proposed moratorium was intended by the Committee to apply only to the establishment of class 4 venues and not to those in operation at the time of the adoption of the policy.

A Background Report which was annexed to the Committee's report stated, in various places, that the recommended policy apply to *"new sites and not existing sites"* and that therefore –

- (a) there would be no impact on access to existing non-casino gaming machines;
- (b) there would be no financial cost to any existing business;
- (c) no business would automatically lose site licences; and
- (d) there should not be any decrease in the level of funding.

That Background Report was prepared on behalf of the Committee and provided a summary of the issues considered by the Committee.

The policy, recommended by the Committee and which was adopted by the Council on 15 March 2004, included the following statement

*"1. Class 4 venues cannot be established in Christchurch city. Accordingly, the only class 4 venue licences in Christchurch city will be those that survive the coming into force of the Gambling Act 2003 without the need for Christchurch City Council consent."*

It is this statement that contains the ambiguity.

The first sentence of this statement is consistent with the apparent intentions of the Committee as expressed in its report. These are the numerous references to a moratorium on new venues. The implication is that the intention is to freeze the number of venues as at the commencement of the policy.

However, the second sentence does not appear to be consistent with those apparent intentions. It is difficult to interpret the second sentence in any way other than meaning that the only class 4 venues permitted to operate in Christchurch will be those which are not required to go through the territorial authority consent process. In terms of the Act that class is limited to those venues licensed before 17 October 2001.

This leaves uncertainty in respect of the 17 venues in the city to which Section 93 of the Act applies. That section applies to class 4 venues licensed between 17 October 2001 and 18 Sept 2003. Section 93(4) provides-

*"(4) A society must also apply for a territorial authority consent for a class 4 venue within 6 months after the commencement of this section."*

Licences in relation to these venues could not "survive" the coming into force of the Act without the consent of the Council. Equally, they cannot properly be described as "new". The policy does not appear to address these venues. It is difficult, on the basis the two sentences of the policy quoted above, to identify a policy in relation to these particular venues.

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**DISCUSSION**

The Committee's report together with its annexed Background Report and the Committee's recommendations suggest that the intention was that the moratorium would apply after 18 September 2003. However, the policy statement, in its present form, is ambiguous.

Clarification is now sought from the Council as to whether or not the Council intended that the moratorium apply as from 17 October 2001, thereby requiring the removal of all class 4 gaming machines from the 17 venues in the city to which section 93 applies, or whether it intended that the moratorium apply as from 19 September 2003 in which case those venues could retain those machines subject to the obtaining of Council consent in accordance with the policy.

It is essential that the Council clarify the policy in this regard as a matter of urgency. Until this is done it is unclear whether or not the 17 venues in question may continue to operate. This uncertainty is having an adverse impact on the operators and owners of the venues. In one case this uncertainty has stalled a proposed sale of the lease of the venue.

**COMPLIANCE WITH STANDING ORDERS**

Clause 2.18.17 of the Council's Standing Orders provides that the Council may, on a recommendation contained in a report by the Chairperson, revoke or alter all or part of any resolution previously passed by the Council provided that notification of such recommendation has been given to the Chairperson and members at least two clear days before the meeting at which the recommendation is to be considered.

Unfortunately, owing to a delay in receiving the opinion from Simpson Grierson it has been impossible to comply with the two clear days notification requirement of clause 2.18.17 of Standing Orders. The Council is however empowered by clause 1.4 of its Standing Orders to temporarily suspend its Standing Orders at a meeting by a vote of not less than 75% of the members present and voting at the meeting.

In order for the Council to now clarify the policy by way of an amending resolution it is necessary that the Council first resolve to suspend the two clear days notification requirement, relating to this report, specified in clause 2.18.17 of Standing Orders.

**SUGGESTED RESOLUTIONS TO CLARIFY INTENTION**

If the Council intended that the moratorium apply as from 17 October 2001, thereby resulting, amongst other things, in the closure of all class 4 venues to which section 93 applies, then the Council should resolve –

- A. **That the Christchurch City Council Gambling Venue and Totalisator Agency Board (TAB) Policy be amended by deleting paragraph 1 and substituting the following paragraph:**

***“1. The Christchurch City Council will not grant a consent for any class 4 venue licence under sections 98(b), 98(c) or 98(d) of the Gambling Act 2003.”***

Alternatively, if the Council intended that the moratorium apply as from 19 September 2003, thereby allowing the continuation of those class 4 venues to which section 93 applies, the Council should resolve -

- B. **That the Christchurch City Council Gambling Venue and Totalisator Agency Board (TAB) Policy be amended by deleting paragraph 1 and substituting the following paragraph:**

***“1. The Christchurch City Council will not grant a consent for any class 4 venue licence under the Gambling Act 2003 except for a consent under section 98(d) of that Act.”***

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- Recommendation:**
1. That the Council resolve that, for the purpose of considering this report and making a decision thereon, it suspend the requirement, contained in clause 2.18.17 of its Standing Orders, to give to the Chairperson and members of the Council at least two clear days notice of the recommendation contained in this report to revoke or alter paragraph 1 of the Christchurch City Gambling Venue and Totalisator Agency Board (TAB) Venue Policy, on the grounds that –
    - (a) Compliance with the requirement was impossible given the timing of receipt of the necessary legal advice; and
    - (b) It is necessary that the Council, as a matter of urgency, clarify the policy so that it may be determined whether or not the 17 class 4 venues in the city to which section 93 of the Gaming Act applies may obtain Council consent to continue to operate.
  2. That the Council clarify its intention in relation to paragraph 1 of the policy.

**CONSIDERED THIS 22ND DAY OF APRIL 2004**

**MAYOR**