

1. **APPLICATION IN RELATION TO THE GAMBLING POLICY BY NEW ZEALAND METROPOLITAN TROTTHING CLUB INC**



General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Legal Services Manager
Author:	Judith Cheyne, Solicitor Paul Rogers, Liquor Licensing Team Leader

PURPOSE OF REPORT

1. The purpose of this report is to advise on a letter from the New Zealand Metropolitan Trotting Club Inc (NZMTC) (**Attachment 1**) seeking Council approval for a variation or exception to the Council's Gambling Venue and Totalisator Agency Board (TAB) Venue Policy (Gambling Policy) (**Attachment 2**) to allow NZMTC to obtain a territorial authority consent under the Gambling Act 2003. If it obtains that consent NZMTC can then apply to the Department of Internal Affairs (DIA) for a venue licence to have gaming machines on site at Addington Raceway.
2. This report advises the Committee that it recommend to the Council to refuse this request to make an exception or to amend its policy.

EXECUTIVE SUMMARY/BACKGROUND

Approving an exception to the Gambling Policy

3. The Council's current Gambling Policy (adopted in 2006 and reviewed without change in August 2009) does not provide for a territorial authority consent to be granted in this situation to NZMTC. The Council's Gambling Policy is a "sinking lid" policy, and its purpose is to prevent any increase in the numbers of gambling venues or machine numbers in the city.
4. The Council has previously granted to both the Christchurch Working Men's Club (CWMC) and the Sumner RSA a territorial authority consent, when the respective policy applying in each situation did not allow for it, by applying section 80 of the Local Government Act 2002, and making a decision that was inconsistent with its policy. The situation applying to both these clubs was unusual, and arose, in part, out of the original territorial authority consents they had been given under section 98(d), not long after the Gambling Act 2003 came into force.
5. A relevant factor in both the Sumner RSA and CWMC situations is that they are clubs. In the Gambling Act 2003, clubs (which are by definition bodies that are "not for pecuniary gain") are treated differently from other corporate societies, by being given "special" treatment in sections 95 and 96, which allow for clubs to have a larger number of gaming machines at their venues than other "non-club" venues, whether as a result of a merger of clubs or not. Racing clubs are not a "club" as defined in the Gambling Act (as they generally do operate for pecuniary gain). They are defined in the Racing Act 2003 as "any club, association, or other body of persons (whether incorporated or not) that is established for the purpose of promoting, conducting, and controlling races, and that is registered with a racing code in accordance with the constitution of that code...", but they are also treated slightly differently under the Gambling Act. However, it is only to the extent that they (and the New Zealand Racing Board) are given status as corporate societies for the purpose of licensing under the Act. A venue licence may only be issued at a race course or a venue "used mainly for racing betting or sports betting".
6. In the report on the consent for the Sumner RSA, it was noted that a review of other consents issued by the Council under section 98(d) of the Gambling Act 2003 has been carried out. There was only one other consent that the Council had issued in respect of a club (besides the RSA and CWMC consents). That was for the Hoon Hay Club (consent was granted in January 2005) but that club is now no longer in operation. All the other consents were issued in respect of licensed premises which were not clubs, and were all issued in 2004.
7. It was reported to the Council that the same type of situation, where the Council had granted consent to a club under its former Gambling Policy, that may have been under the wrong provision of the Gambling Act, giving rise to problems for the club with the DIA, could not occur again. Since the new policy came into force in November 2006 there is no provision for the Council to grant any consents except where there is a merger of clubs under section 95. Staff advised that there should not be any similar issues that would arise in relation to the current Gambling Policy.

8. The request by NZMTC does not arise out of a similar issue as the CWMC or Sumner RSA situations, but relates to the financial viability of the NZMTC. NZMTC would require a consent under section 98(c) of the Gambling Act 2003 because this is a situation where “*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*”. In 2004, the NZMTC had a venue licence for 18 machines. They also had 18 machines, but never used them, because they needed further funds to make them operational. When the Gambling Act 2005 came into force the NZMTC decided not to renew the licence. Their licence was cancelled in October 2004.
9. The NZMTC letter (**Attachment 1**) states they seek the positive support of the Council to ensure that Addington Raceway remains a viable world class racing venue, and “to preserve thousands of jobs and millions of dollars of economic activity in Christchurch”. NZMTC employs 700 staff throughout the year, pays salaries and wages of \$2.8 million per annum, buys \$8 million in goods and services each year, but to the year ending 31 July 2009 they suffered a substantial trading loss of \$1.25 million. Harness racing creates 5,000 jobs and contributes \$143 million in GDP to the Canterbury economy, and is a large contributor to economic activity in Christchurch, as well as providing benefits to the community.
10. Other factors noted in their letter include that Government funding of feature races will almost certainly cease, other funding from NZ Racing Clubs and the NZ Racing Board has reduced by 28 per cent, but other racing clubs have gaming machines that assist their revenue streams, and allow them to provide high stakes for races. The differences between NZMTC and Auckland Trotting Club, may see owners and trainers turn away from Canterbury to Auckland. Addington is the only major harness venue in New Zealand that does not have gaming machines on site, compared to Auckland, Dunedin and Cambridge.
11. NZMTC suggest that approval by the Council to enable the club to obtain a venue licence for Addington would not set a precedent as there is only one other racecourse in Christchurch and the hotel opposite that racecourse has machines. NZMTC note that section 33 of the Gambling Act 2003 specifically provides for societies that are racing clubs under the Racing Act 2003. They also suggest that a venue licence allowing them to have gaming machines will preserve thousands of jobs and millions of dollars in economic activity for Christchurch, and to provide for a restaurant providing low to medium priced meals that will be of community benefit in this area. It will also assist in discussions with the Riccarton Club for a possible relocation of the club to the Addington Raceway premises.
12. If the Council decided to allow a consent that was inconsistent with its policy, in this case in accordance with section 80, then it needs to clearly identify the inconsistency, the reasons for the inconsistency and also identify any intention to amend the policy to accommodate the decision. Further information on these requirements is set out in the legal considerations section below.
13. At the Council meeting when the Sumner RSA consent was considered there was a deputation from Laurie Siegel-Woodward of Problem Gambling. He noted their concerns about the Council breaching its Gambling Policy if the Council agreed to the request from the Sumner RSA. The resolution of the Council on 19 December 2008 stated as follows:

“That the Council grant the Sumner-Redcliffs RSA (Inc.) territorial authority consent application under section 98(c) of the Gambling Act 2003 and that the Council resolve (in order to comply with section 80 of the Local Government Act 2003) that:

 - (a) A territorial authority consent is granted to the Sumner-Redcliffs RSA (Inc.) under sections 98(c) and 100 of the Gambling Act 2003 and by applying section 80 of the Local Government Act 2002, for the Sumner-Redcliffs RSA (Inc.) to operate four gaming machines from its premises at 34 Wakefield Avenue, Sumner, Christchurch.
 - (b) This decision is made in the knowledge that it is inconsistent with the Council’s Gambling Venue and Totalisator Agency Board Venue Policy¹.
 - (c) The reasons for the inconsistency are that when the Council adopted the Gambling Venue and Totalisator Agency Board Venue Policy in 2006 the situation which the

¹ Board venue is defined in the Racing Act 2003 as: *Board venue means premises that are owned or leased by the Board and where the main business carried on at the premises is providing racing betting or sports betting services under this Act.*

Sumner-Redcliffs RSA (Inc) is in, was not a matter that was directly contemplated by the Council in developing the Policy. That is, where a not-for-profit club needs a section 98(c) consent to allow it to recommence operation of the same number of machines that were in operation at the premises when the Council adopted its first Gambling policy, because, although the Department of Internal Affairs granted a licence to the club on the basis of a section 98(d) consent issued by the Council it then cancelled the licence, so the club has no other options that would allow it to continue to operate its machines.

- (d) The Council does not intend to amend the Gambling Venue and Totalisator Agency Board Venue Policy to accommodate the decision at this time, however, when the Council reviews the Policy in 2009, the matter of section 98(c) consents for clubs, and for the purposes of section 96 (in addition to section 95), will be considered as part of that review.
- (e) That it be noted that staff advice is that this decision does not trigger the Significance Policy.”

Granting an amendment to the Gambling Policy to allow NZMTC to get a consent

- 14. NZMTC seeks Council approval for a variation or exception to the Gambling Policy. A variation to the policy would require that there be an amendment of the policy. The Gambling Act 2003 provides that every three years the Council’s policy must be reviewed.
- 15. The Council last reviewed its policy in 2009. The process started in February 2009 when the Gambling Venue Policy Review 2009 Working Party (the Working Party) was formed by the Regulatory and Planning Committee. The Working Party met on 22 April, 7 May and 12 June 2009. The Working Party considered a detailed background paper on gambling generally and a Social Impact Assessment prepared by staff and an Economic Impact Assessment prepared by Covec Ltd. There was also information that major stakeholders provided in discussions with staff.
- 16. The stakeholders were:
 - The Charity Gaming Association, and the following charitable trusts: Mainland Foundation, Eureka
 - Trust, Lion Foundation
 - ClubsNZ representing the Chartered Clubs
 - The Problem Gambling Foundation of New Zealand
 - Problem Gambling Service Providers: Oasis, He Waka Tapu
 - He Oranga Pounamu
 - Community and Public Health
 - The Department of Internal Affairs.
- 17. Neither NZMTC, nor any other Racing Club were contacted, but comments from the Charity Gaming Association and ClubsNZ are set out below:
 - “2 *Charitable Trusts and the Charity Gaming Association (CGA)*
All these stakeholders agreed that the main problem is government regulation and associated compliance costs. The economic downturn means fewer people are gambling and are spending less and this has had an impact on the amount of funds able to be distributed as grants to the community. These stakeholders would like to see the sinking lid policy replaced with a cap at existing machines and venue numbers and allow existing venues to move their businesses if they so desire and to relocate machines.
 - 3 *ClubsNZ*
ClubsNZ also agreed that the main problem is government regulation and associated compliance costs and they fear some clubs may have to close. They argued that clubs have a family atmosphere, provide a safe environment for gambling and provide many other activities apart from gambling. Clubs NZ are comfortable with the current number of machines although they would like to see the number of machines allowed under mergers to be 30. ClubsNZ have an Memorandum of Understanding with the Problem Gambling Foundation of New Zealand (PGFNZ). PGFNZ provides high class harm minimisation training for all club staff and clubs have very few (less than 2 per cent) problem gamblers. Any exclusion orders are sent to PGFNZ so people can be contacted and help offered.”

Council staff did not have contact with NZMTC during the 2009 review.

18. The options considered by the Working Party were:
- (i) Maintain the status quo.
 - (ii) Replace the sinking lid policy with a cap on venues and numbers at the present levels, allowing the relocation of machines if a venue closes or relocates.
 - (iii) Amend Clause 2 of the status quo to accommodate section 96 consent applications, as follows:

“2. The Christchurch City Council will grant a consent for up to 18 machines where two or more corporate societies are merging and require Ministerial approval to operate in accordance with section 95(4) of the Gambling Act 2003. The Christchurch City Council will grant a consent for up to 18 machines pursuant to section 98(c) and 100 of the Gambling Act 2003 to a corporate society which is a club which requires Ministerial approval to operate more than 9 gaming machines in accordance with section 96 of the gambling Act 2003. The total number of machines that may operate at the venue, whether section 95 or 96 applies, must not exceed 18 machines.”
 - (iv) Have no restrictions on either the numbers of venues or machines apart from the legislated number.
 - (v) Replace the sinking lid policy with area-specific caps on venues and machine numbers.
 - (vi) Allow the numbers of machines under mergers to be 30.
19. The Working Party considered all the options but (i), (ii), (iii) and (iv) were the main options considered, with (i) and (ii) discussed in greater detail. The Working Party debated the possibility of amending the current policy to allow the relocation of machines if a business changes location, as members considered this could be advantageous from a business perspective. However they felt that this argument was not compelling enough to make any change to the current policy.
20. The Council agreed with the recommendations of the Working Party and the Regulatory and Planning Committee, and resolved on 27 August 2009 that it would “retain, without amendment, the current Gambling Venue Policy of 2006 as the Gambling Venue Policy 2009, as a result of the Gambling Venue Policy Review 2009 Working Party review”. The following amendment proposed at the Council meeting was lost by 3 votes to 10:
- “(a) That the Council adopt as the preferred option, Option (ii) to replace the sinking lid policy with a cap on venues and numbers at the present levels, allowing the relocation of machines if a venue closes or relocates. (b) That staff prepare a draft summary of information and statement of proposal for consideration by the Council.”*
- The next review of the policy is due in another three years - 2012.
21. If the Council were not prepared to amend the policy to allow the relocation of machines when a business that already has machines moves to a new premises, then it is not likely to want to make an exception to its policy or consider an amendment to its policy less than a year later, to allow a business to get a consent to establish new machines at a new venue.

Options

22. The Council only has two practicable options in this case: to approve one of the requests by NZMTC, or refuse both.
23. If the Council decides to approve the request to amend the policy then a further report to Council will be required so that the Council can approve the documentation for the special consultative procedure.

24. If it decides to consider granting a consent to NZMTC that is inconsistent with its policy, then Council should request a formal application for consent from NZMTC. That application may need to be discussed with various stakeholders, in light of the deputation that was made to the Council on the Sumner RSA application. That would enable the Council to have further information on the views and preferences of various groups, besides NZMTC, on that specific decision before it grants the consent.
25. The recommendation is that the Council not approve an exception in this case or a further review and amendment of the Gambling Policy, for the following reasons:
- Although the application is by a club it is a racing club which is different from CWMC or the Sumner RSA which were “not for pecuniary gain” clubs. Unlike the CWMC and Sumner RSA applications this is also not a venue that has previously had gaming machines on its premises. That would be a significant inconsistency with the Gambling Policy.
 - There are many businesses in Christchurch that might benefit from the additional income stream that comes from gaming machines, and that would also be able to preserve jobs and/or provide benefits for the Christchurch economy. If the Council grants the request in this case it could be faced with other applications for exceptions to the policy or further reviews of the policy ahead of the three-year cycle (even though this may not create a precedent for racecourse venues as such).
 - The Council has, within the past year, reviewed its policy and decided there was no need to amend it and provide for any other situations in which it would grant a territorial authority consent. Although there was no formal public consultation involved the Council sought the views of various bodies and obtained reports, as discussed above.
 - If the Council did decide that it would consider amending its policy to allow NZMTC to obtain a consent, it could only do so by carrying out a special consultative procedure on the proposed amendment. It would need to receive and listen to submissions from the public on the amendments. Ultimately, the policy might not be amended as NZMTC seek².
 - The Council will incur the cost of a further review/special consultative procedure earlier than it would otherwise need to (the next review of the policy required under the Gambling Act 2003 will be in 2012). Although different proposals consulted on through the special consultative procedure will cost different amounts depending on how many submissions are received and hearings requested etc, \$30,000 for a special consultative procedure is a figure that has previously been suggested as the average cost of this process for Councils.

FINANCIAL IMPLICATIONS

26. There are no financial implications unless the Council decides to approve a further review of the policy.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

27. Not relevant to this matter.

LEGAL CONSIDERATIONS

Have you considered the legal implications of the issue under consideration?

28. Section 100 of the Gambling Act 2003 requires that a Council must “*consider an application for a Territorial Authority Consent in accordance with its class 4 venue policy*”. The Council’s Gambling Venue And Totalisator Agency Board (TAB) Venue Policy (Gambling Policy) adopted on 23 November 2006 (and confirmed on 27 August 2009) provides:

“1. *The Christchurch City Council will not grant consent under section 98 of the Gambling Act 2003 to allow any increase in class 4 gaming venues or class 4 machine numbers except in the circumstance set out below.*”

² This happened when the Council adopted its policy in 2006. The policy adopted by the Council for consultation was quite different than the policy that was finally adopted, as a result of submissions from the public.

2. *The Christchurch City Council will grant a consent where two or more corporate societies are merging and require Ministerial approval to operate up to the statutory limit in accordance with section 95(4) of the Gambling Act 2003. The total number of machines that may operate at the venue **must not** exceed 18 machines.*

Totalisator Agency Board (TAB)

3. *The Christchurch City Council will grant a Totalisator Agency Board (TAB) venue consent to the New Zealand Racing Board to establish a Board venue (the Board must meet all other statutory requirements, including the City Plan requirements, in respect of such proposed venue). ...*
 7. *If the Council amends or replaces this policy, it is required to do so in accordance with the special consultative procedure outlined in the Local Government Act 2002.*
 8. *In accordance with the Gambling Act 2003, the Council will complete a review of the policy within three years of its adoption and then every three years thereafter.”*
29. The only consent the Council can grant is where two or more corporate societies are merging and seeking Ministerial approval under section 95, and the resulting number of machines will not exceed 18. The Gambling Policy does not provide for a territorial authority consent to be granted to NZMTC to establish a new gaming venue (which would require a consent under section 98(b) of the Gambling Act 2003).
 30. The Council is able to make a decision that is inconsistent with its Gambling Policy provided it complies with section 80 of the Local Government Act 2002:
 - “(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.”*

Alignment with LTCCP and Activity Management Plans

31. Supports the level of service under democracy and governance.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

32. As above.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council’s strategies?

33. Declining this request will align with some principles in the Council’s Strong Communities strategy, but possibly not others. There is a necessary balance to be found between the community at large and business interests in the community. Declining this request will align with the Gambling Policy. Relevant Community Outcomes include:
 - (a) A Prosperous City: We have a strong economy that is based on a range of successful and innovative businesses. Christchurch has a strong, healthy economy.
 - (b) A Healthy City: We live long, healthy and happy lives. Our city environment supports the health of the community.

CONSULTATION FULFILMENT

34. The Council has sufficient information regarding community views generally in relation to gambling, although not in relation to this specific matter, as a result of submissions on the Gambling Policy in late 2006, and its more recent work in 2009. In relation to internal consultation there has been liaison between LSU and the Inspections and Enforcement Unit who administer consents under the Gambling Policy. In the report from the Working Party in 2009 the following was noted:

“When the Council reviewed its policy in 2006 it undertook a special consultative procedure. The Council received a total of 2,062 submissions, with 138 groups/organisations or individuals requesting to make a verbal submission to a Council hearing panel. Of the former, 2,030 of submitters (98 per cent) indicated they did not support the proposed changes to the Gambling Venue and TAB Policy. Of these, 1,923 (95 per cent) said they would prefer to retain the current policy.”

It is the view of the Working Party that the situation has not changed significantly since 2006 and that the consultation carried out then and the recent consultation with key stakeholders provides sufficient understanding of the views of interested and affected parties.”

STAFF RECOMMENDATION

That the Council refuse the New Zealand Metropolitan Trotting Club request to vary or make an exception to its Gambling Venue and Totalisator Agency Board (TAB) Venue Policy.

COMMITTEE RECOMMENDATION

That staff provide an updated report to the Committee in light of points raised by the relevant deputations and questions raised by Councillors to be considered at the July Committee meeting.