

5. REPORT ON GAMBLING VENUES POLICY REVIEW AFTER THE EARTHQUAKES



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PURPOSE OF REPORT

1. The purpose of this report is to summarise the situation regarding class 4 gambling in Christchurch following the 4 September 2010 and 22 February 2011 earthquakes in Christchurch. The report also discusses possible actions Council might take regarding the effect of the earthquakes on class 4 gambling venues in the city in relation to Council's current Gambling Venues Policy 2009.

EXECUTIVE SUMMARY

2. The Gambling Act 2003 requires each territorial authority to adopt a policy on class 4 gambling venues (bars, hotels, TABs and clubs that provide non-casino gaming (pokie) machines). The Council's Gambling Venues Policy was last reviewed in 2009 and is a "sinking lid" policy. It aims to progressively reduce the opportunities for class 4 gambling in Christchurch by attrition. It does not allow any increase in class 4 gaming venues or class 4 machine numbers, except in a specific circumstance where two or more corporate societies are merging.
3. The September 2010 and February 2011 earthquakes affected 36 gambling venues in the city. Eleven of these were destroyed and 19 badly damaged. Six venues have reopened. Prior to the earthquakes, at 30 June 2010, Christchurch had 114 venues operating 1,767 machines. Following the earthquakes, information provided by the Department of Internal Affairs gave the number of venues as 1081 and the number of machines as 1,577, at 30 June 2011.
4. As a consequence of the 30 damaged venues that have not reopened, the gaming operations of various Trusts and venue operators have been suspended. Staff met with representatives from the Department of Internal Affairs, Trusts and venue operators on 18 April 2011. There was discussion during the meeting regarding gaming venues affected by the 22 February 2011 earthquake and whether some gaming venue operators may be considering relocation due to damage to their existing buildings. The Council's current policy does not allow for consent to be granted by the Council for a relocation.
5. There are 14 Trusts that run gaming machines from the 36 venues affected by the earthquakes. These Trusts were contacted to seek information on issues facing these venues. The Trusts did not have to provide the venue names, as Council staff wanted to get a general picture of the situation and did not want any venue to feel they had prejudiced their position. Seven of the Trusts covering 16 venues replied to the request. Seven of the 16 operators wished to relocate, three did not want to relocate and six did not know whether they would want to relocate or not. Any relocation to a new venue would mean a new licence would need to be obtained from the Department of Internal Affairs, which in turn would require consent from the Council.
6. In addition a number of Trusts have recently contacted staff indicating their desire to relocate some of their venues. The Gambling Act 2003 allows a maximum of nine machines at any venue licensed after 17 October 2001, thus if any venues were to relocate, there would only be nine machines at any of the new sites.
7. The questions that arise as a consequence of the earthquakes and the closure of 30 gambling venues centre around possible actions Council might take in relation to the current Gambling Venue Policy. The current Policy does not allow venues or machines to be relocated. However as stakeholders have noted, the earthquakes were extraordinary, unanticipated events and hence there may be a case for amending the Policy or acting in a manner inconsistent with the Policy (as provided for in section 80 of the Local Government Act 2002) on a case by case basis. Alternatively, since the Policy is due to be reviewed by the end of August 2012, Council could elect to continue to apply the current Policy until the outcome of the review is known or the scheduled review could be brought forward.

¹ This includes 30 venues which have been damaged or destroyed and have been granted extensions for varying durations under section 71(1)(g) of the Gambling Act 2003. These extensions allow their licences to continue while the venues are inactive.

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8. Staff recommend bringing forward the review of the Policy. This would be the least expensive option as only one special consultative procedure would be required and earthquake issues can be considered in the context of the overall review. Staff propose to report back in February 2012, with a view to completing the review by May 2012.

FINANCIAL IMPLICATIONS

9. If the Council wishes to make any change to the Policy, either by an amendment or as a result of the Policy review, consultation will be required by way of the special consultative procedure. The associated costs include printing and distribution of the statement of proposal and summary of information, the placement of public notices, and staff costs in supporting a hearings panel. These costs, including the cost of the review, are budgeted for in the City and Community Long-term Planning Activity in the LTCCP.

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

10. Yes, as above.

LEGAL CONSIDERATIONS

Review and Amendment of the Christchurch City Council Class 4 Gambling Venues Policy

11. All gambling in New Zealand is regulated under the Gambling Act 2003. Gambling on Non-Casino Gaming Machines (NCGM) is class 4 gambling. Each Territorial Authority (TA) is required to have a policy on class 4 gambling and to review it every three years. Christchurch City Council's Gambling Venues Policy was last reviewed in 2009 and was retained without amendment.
12. Section 102(2) of the Gambling Act 2003 provides that "a policy may be amended or replaced only in accordance with the special consultative procedure", and section 102 applies to the amendment or replacement. The rest of section 102 refers to both the use of the special consultative procedure, and who should be given notice in respect of the policy (or its amendment) and also includes the requirement for three yearly review. If a large part of the policy was to be amended then that would more appropriately be done as part of a review, but a review simply for the purposes of making minor, or limited, amendments may not be practical. Therefore, although it is not entirely clear, it seems that section 102(2) would allow a policy to be amended separately from any review of the total policy, subject to the amendment being consulted on by way of the special consultative procedure.
13. The Policy does not allow any increase in class 4 gaming venues or class 4 machine numbers, except where two or more corporate societies are merging and require Ministerial approval to operate machines up to the statutory limit of 18 machines.
14. The Policy is due to be reviewed by the end of August 2012; however the review may occur earlier if desired.

The Local Government Act 2002 (LGA02)

15. As noted above TAs are required to have a policy on class 4 gambling and to adhere to that policy. However section 80 of the LGA02 makes provision for a TA to make a decision that is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the TA. If the TA does intend to make such a decision, the TA 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.

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16. While the Canterbury Earthquakes (Local Government Act 2002) Order 2010 is in force, clause 4 exempts the Council from the need to comply with the requirements of section 80 in relation to any decision it makes that is directly or indirectly necessary or desirable to further 1 or more of the purposes in the Canterbury Earthquake Recovery Act 2011 (CER Act). It is not entirely clear that this situation, while having arisen from the earthquakes, is one that would mean the Council could make a decision inconsistent with its policy without complying with the usual steps.

The Canterbury Earthquake Recovery Act 2011

17. Under sections 27 and 48 of the CER Act, directions can be given to the Council by the Minister or chief executive of CERA, which could override anything in the Council's Policy. Such directions can only be given if they further the purposes of the Act. Seeking a new Order in Council, to attempt to provide an alternative solution to this situation, would also have to meet the purposes of the CER Act. As noted above, it is not clear whether allowing gambling venues to relocate and override the Council's existing sinking lid policy facilitates earthquake recovery. From informal discussions with staff from CERA, it seems that this is not likely to be a matter that would be of sufficient significance to pursue a direction being made, or an Order in Council, even if it came within the purposes of the CER Act.

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

18. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

19. This report is broadly aligned to the City and Community Long-term Planning Activity through the provision of advice on key issues that affect the social, cultural, environmental and economic wellbeing of the city.

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

20. As above

ALIGNMENT WITH STRATEGIES

21. There are no strategies that relate specifically to this issue.

Do the recommendations align with the Council's strategies?

22. See above

CONSULTATION FULFILMENT

24. Staff have consulted a number of key stakeholders including the Department of Internal Affairs, Trusts and venue operators regarding possible actions Council might take regarding the effect of the earthquakes on class 4 gambling venues in the city in relation to Council's current Gambling Venue Policy 2009.
25. Of these stakeholders a number of venue operators have indicated they are interested in relocating and would like to see Council's policy amended or reviewed early to enable them to relocate; or for Council to consider making a decision under section 80 of the LGA02.
26. Wide consultation will take place as part of the Policy review. If any change was proposed to be made to the Policy further consultation would be required through a Special Consultative Procedure (SCP).

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STAFF RECOMMENDATION

27. It is recommended that the Council:

- (a) **Agree** that the current Gambling Venue Policy should remain in place until it has been reviewed;
- (b) **Direct** staff to bring forward the scheduled review of the Policy and report back to Council by the end of February 2012; and
- (c) **Note** that if a Special Consultative Procedure is required as a result of the review, a new policy could be in place by the end of May 2012.

BACKGROUND (THE ISSUES)

The Gambling Act 2003

28. Class 4 Gambling is regulated under the Gambling Act 2003 (the Act). The purpose of the Act is to:

- Control the growth of gambling;
- Prevent and minimise the harm caused by gambling, including problem gambling;
- Authorise some gambling and prohibit the rest;
- Facilitate responsible gambling;
- Ensure the integrity and fairness of games;
- Limit opportunities for crime or dishonesty associated with gambling;
- Ensure that money from gambling benefits the community; and
- Facilitate community involvement in decisions about the provision of gambling.

29. The Act restricts and controls gambling in the following ways. Only people 20 years and over may gamble in a casino. People must be 18 years or over to:

- Purchase Instant Kiwi and similar games run by the Lotteries Commission;
- Gamble on Non-Casino Gaming (pokie) Machines (NCGMs); or
- Place bets on horses and sports games.

30. Gambling on NCGMs has been legal in New Zealand since 1988. Gambling on NCGMs in bars, hotels, TABs and clubs is classified as class 4 gambling.

31. Under the Act class 4 gambling may be conducted by a corporate society that holds:

- A licence for the gambling; and
- A venue licence for the place where the gambling is conducted.

These licences are issued by the Department of Internal Affairs.

32. Proceeds (net profit/losses²) of this gambling must be applied or distributed for authorised purposes; which are described as any of the following:

- A charitable purpose;
- A non-commercial purpose that is beneficial to the whole or a section of the community; and
- Promoting, controlling, and conducting race meetings under the Racing Act 2003, including the payment of stakes.

² The terms 'profit' and 'expenditure' are interchangeable in relation to gambling machines, depending on whether you are the operator or the gambler. Profit is the total gambling machine turnover less the winnings paid out. Approximately one-third of profit is paid to the Government as duties and taxes, and one-third to charitable purposes. A problem gambling levy is also paid out. With the remaining funds societies pay their administration expenses, including site rentals (on a per machine per week basis).

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33. The New Zealand system is unique in providing a community dividend from the proceeds of gambling - this is the main benefit of gambling to the community. Gaming machines are set to return to the gambler an average of 90 cents for every dollar wagered, which leaves average proceeds of 10 cents for distribution. Of this societies return a minimum of 37.12 per cent to the community by way of grants; some societies consistently distribute 40-50 per cent to the community.
34. Proceeds from gaming machines in Chartered Clubs are spent by the Clubs for the benefit of their members and hence their funds are returned to the community from where they came. However there is no requirement for other Trusts to redistribute proceeds from gaming machines back to the communities from which they arose, although it is in the interest of Trusts to do so to ensure a positive public image.
35. No commission is paid to, or received by, a person for conducting the gambling.
36. The Act also provides for the maximum number of machines allowable at venues. Venues licensed after 17 October 2001 are restricted to a maximum of nine machines. This includes venues relocating to a new premise, regardless of the number of machines previously allowed for.

Role of Territorial Authorities

37. The Act requires each territorial authority (TA) to adopt a policy on class 4 venues and to review this policy at least every three years. In adopting a policy, the TA must have regard to the social impact of gambling within its district.
38. The policy:
 - Must specify whether or not class 4 venues may be established in the district and if so, where they may be located; and
 - May specify any restrictions on the maximum number of NCGMs that may be operated at a class 4 venue.
39. In determining its policy on these matters, the TA may take into account any relevant matters, including:
 - The characteristics of the district and parts of the district;
 - The location of kindergartens, early childhood centres, schools, places of worship and other community facilities;
 - The number of NCGMs that should be permitted to operate at any venue or class of venue;
 - The cumulative effects of additional opportunities for gambling in the district;
 - How close any venue should be permitted to be to any other venue; and
 - What the primary activity at any venue should be.
40. A policy may be amended or replaced only in accordance with the Special Consultative Procedure (SCP). **Attached** is an Information Paper prepared as part of the 2009 Review of the Gambling Venue Policy that provides further background.

Maintenance or reduction of gambling opportunities

41. While a TA may choose to maintain or reduce the opportunities for class 4 gambling in its district, it may only do this by not allowing new venues or additional NCGMs to be established in the first case, or by attrition in the second. Christchurch City Council chose to establish its current gambling venue policy in order to at least maintain and preferably reduce gambling opportunities. This decision was made because, of the major cities, Christchurch had the highest number of venues and machines per thousand head of population aged 15 and over. As Table 3 shows, this is still the case for the number of machines although Dunedin and Tauranga have higher numbers of venues per thousand head of population.
42. A TA may not close down any venue because it deems this to be desirable, nor, as described above, may a TA specify the maximum number of NCGMs allowable that is fewer than the number of NCGMs that may be operated currently at the venue.

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43. Furthermore, TAs may not determine policies on the distribution of community funding derived from Class 4 gambling – it is up to the corporate societies themselves to decide to whom and where they distribute the funds.

Consents

44. A TA must:
- Consider an application for a TA consent in accordance with its class 4 venue policy; and
 - Then either grant a consent with or without a condition specifying the maximum number of NCGMs that may be operated at the venue; or not grant a consent.
45. If a corporate society applies for a TA consent for an amendment to a class 4 licence to allow an increase in the number of NCGMs that may be operated at a venue, the TA must consider the application in terms of the paragraph above. The TA may not include a condition specifying the maximum number of NCGMs allowable that is fewer than the number of NCGMs that may be operated currently at the venue.

Effect of earthquakes on Class 4 gambling

46. The earthquakes of September 2010 and February 2011 affected 36 venues in the city. Table 1 below shows how these venues were affected.

Table 1 Affected venues by type of impact			
	September 2010	February 2011	Total
Destroyed	4	7	11
Damaged	2	17	19
Able to reopen		6	6
Total	6	30	36

47. Prior to the earthquakes, at 30 June 2010 Christchurch had 114 venues operating 1,767 machines. Following the earthquakes, information provided by the Department of Internal Affairs gave the number of venues as 108³ and the number of machines as 1,577, at 30 June 2011. Table 2 below shows how the number of venues and machines changed by quarter.

Table 2	Numbers of Venues and Machines in Christchurch City June 2010 – June 2011				
	June 2010	September 2010	December 2010	March 2011	30 June 2011
Number of venues	114	113	113	109	108
Number of machines	1,767	1,727	1,736	1,618	1,577

48. In spite of the decrease in the number of venues and machines, of the major cities Christchurch still has the highest number of machines per thousand head of population aged 15 and over, as shown below; although Dunedin and Tauranga have higher numbers of *venues* per thousand head of population.

³ This includes 30 venues which have been damaged or destroyed and have been granted extensions under section 71(1)(g) of the Gambling Act 2003. These extensions allow their licences to continue while the venues are inactive.

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Table 3 Gaming Venues and Machines per Thousand Population as at 31 March 2011			
	Population 15 and over 2006 Census	Venues per thousand head of population 15 and over	Machines per thousand head of population 15 and over
Auckland City	328,560	0.32	4.19
Christchurch City	282,762	0.38	5.57
Dunedin City	98,709	0.44	5.41
Hamilton City	100,995	0.30	4.49
Manukau City	242,631	0.28	3.98
North Shore City	164,838	0.26	3.79
Tauranga District	103,362	0.40	5.45
Waitakere City	142,284	0.26	3.49
Wellington City	147,690	0.32	4.84

49. Although the number of venues and machines has fallen since the earthquakes, gambling expenditure rose following the earthquakes, as shown below.

Table 4 Quarterly Gaming Machine Proceeds in Christchurch City: June 2010 – March 2011				
Quarter				
June 2010	September 2010	December 2010	March 2011	June 2011
\$18.9m	\$19.3m	\$20.2m	\$19.0m	\$22.9m

50. The Problem Gambling Foundation (PGFNZ) believes the 22 February 2011 earthquake was partially responsible for the increase, as people used the pokies to escape their problems. National Public Health Practice Leader for PGFNZ Tony Milne said "People are incredibly stressed and pressured around the earthquakes and what might be happening in their lives, and some people often use pokies as an escape to zone out".⁴
51. It is also possible that an increase in expenditure on class 4 gambling in the June 2011 quarter occurred as a result of the Casino being closed. The Casino closed on 22 February and did not reopen until the beginning of June 2011. Quarterly expenditure will continue to be monitored.

Discussions with stakeholders

52. Christchurch City Council staff attended a meeting on Monday 18 April 2010 with the Department of Internal Affairs, various Trusts and venue operators whose gaming operations had been suspended due to the earthquakes. There was discussion during the meeting regarding gaming venues affected by the 22 February 2011 earthquake and whether some gaming venue operators may be considering relocation due to damage to their existing buildings as noted above. The Council's current policy does not allow for relocations.

Intentions of operators regarding relocation

53. There are 14 Trusts that run gaming machines from the 36 venues affected by the earthquakes. These Trusts were contacted by telephone and letter to seek information on the scope of the issues facing these venues; in particular, how many of the venues might wish to relocate to new premises as a consequence of damage to their existing building following the earthquakes/aftershocks. The Trusts did not have to provide the venue names, as Council staff wanted to get a general picture of the situation and did not want any venue to feel they had prejudiced their position. Seven of the Trusts covering 16 venues replied to the request and their intentions are shown below.

⁴ The Press, 27 July 2011, page 8.

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Table 5 Intentions of operators regarding relocation of venues as at May 2011	
	Number of venues
Want to relocate	7
Don't want to relocate	3
Don't yet know intention	6
Total	16

54. A Christchurch law firm, gcaLAWYERS, act for two of the Trusts, each covering two venues. gcaLAWYERS wrote to the Council on 16 May 2011 on behalf of these Trusts to seek information on Council's intentions regarding the possibility of relocations. gcaLAWYERS informed Council that at least one of the operators is keen to relocate as quickly as possible, probably to a new permanent site.
55. Mainland Foundation made a submission by deputation to the Burwood/Pegasus Community Board on 18 July 2011. The submission advised the Board that Mainland Foundation would like to move its 18 machine licence from Bar 25 New Brighton Mall, which was severely damaged in the recent earthquakes and unlikely to open in the foreseeable future, to the Pierside Café and Bar. This would require them to obtain a new venue licence from the Department of Internal Affairs. Any venue licensed after 17 October 2001 may only operate a maximum of nine machines. Mainland has made an application for Territorial Authority Consent from Council to operate nine machines at the Pierside Café and Bar.
56. The Lion Foundation has also approached staff and the Mayor regarding possible relocation of five of its venues and Southern Trust has indicated that one of its venues is unable to rebuild on the current site and would like to relocate.
57. Staff have informed all stakeholders who have made enquiries that the issue is under consideration and will advise them further in due course.
58. The questions that arise as a consequence of the earthquakes and the closure of 30 gambling venues centre around possible actions Council might take in relation to the current Gambling Venue Policy. The current Policy does not allow venues or machines to be relocated. However as stakeholders have noted, the earthquakes were extraordinary unanticipated events and hence there may be a case for amending the Policy or acting in a manner inconsistent with the Policy (as provided for in s 80 of the Local Government Act 2002). Alternatively, since the Policy is due to be reviewed by the end of August 2012, Council could elect continue to apply the current Policy until the outcome of the review is known; noting that the scheduled review could be brought forward. These approaches are discussed below.

THE OBJECTIVES

59. The purpose of the Gambling Act 2003 is to:
- Control the growth of gambling; and
 - Prevent and minimise the harm caused by gambling, including problem gambling; and
 - Authorise some gambling and prohibit the rest; and
 - Facilitate responsible gambling; and
 - Ensure the integrity and fairness of games; and
 - Limit opportunities for crime or dishonesty associated with gambling; and
 - Ensure that money from gambling benefits the community; and
 - Facilitate community involvement in decisions about the provision of gambling.
60. The purpose of Council's Policy on class 4 gambling is to progressively reduce the opportunities for class 4 gambling in Christchurch by attrition. However the Policy was adopted prior to the unanticipated, extraordinary circumstances of the earthquakes and a case could be made for amending the Policy in order to treat affected businesses fairly.

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THE OPTIONS

61. Council has four options for addressing immediate issues which have become apparent following the September 2010 and the February 2011 earthquakes:

- (a) Continue to apply the current Policy as is and review the Policy as scheduled by the end of August 2012.

This option would require only one Special Consultative Procedure to be undertaken and earthquake issues can be considered as part of this review. The earthquakes have contributed to the Council's aim in its existing Policy which is to reduce the number of venues and machines. However acceptance of this option could be considered to be taking unfair advantage of the extraordinary unanticipated events. It is also a slow response to the earthquake issues faced by the Trusts.

- (b) Continue to apply the current Policy as is but bring forward the scheduled review of the Policy. The review could be completed by the end of May at the latest.

This option would also require only one Special Consultative Procedure to be undertaken and again earthquake issues can be considered as part of this review in a more timely manner than option (a). While it is still a relatively slow response to the earthquake issues, it would ensure that the issues are well thought through in the context of the Policy review and bring forward decisions by three months.

- (c) Amend the Policy to add provision for earthquake damaged venues to relocate.

This option provides a relatively speedy response to earthquake issues. It also provides that all earthquake damaged venues would be treated the same, and the reduction from venues that have 18 to nine machines may lead to a significant reduction in machines, if not venues.

This option would require a Special Consultative Procedure to be undertaken. If this option were selected, the time to undertake this would be less than the time required to undertake the scheduled review.

Option (c) would pre-empt the scheduled review but would not replace it. Thus if Council decided on this option there would need to be two Special Consultative Procedures in the current financial year – one for the amendment and one for the review. This would be costly to the Council and also involve stakeholders being involved (expending time, effort and resources) twice in a short time period. This would seem to be unnecessary expense for minimal gain.

- (d) Allow for applications for consent to relocate to a new venue to be made and considered by the Council as a matter that is inconsistent with its policy under s80 of the LGA02.

This option could be used in conjunction with options (a), (b) or (c) but is probably more relevant for (a) or (b). This option provides for a speedy response to earthquake issues. It means individual circumstances can be responded to, and the intended review date can be notified to applicants. This option may also reduce the number of machines, if not the number of venues.

However, applications and decisions would be on a case-by-case basis and allowing any application could set a precedent. This option could result in a considerable number of applications to be considered one by one which would be costly and time consuming. It might also result in a "first in, first served" ad-hoc system, instead of Council having greater control over numbers of venues in locations, if it wished to allow relocations.

In addition, there is the potential for inconsistent decisions to be made and it is likely to be controversial in some quarters as stakeholders (such as the Problem Gambling Foundation of New Zealand) will have no input.

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THE PREFERRED OPTION

62. The preferred option is option (b): Continue to apply the current Policy as is but bring forward the scheduled review of the Policy. The review could be completed by the end of May at the latest.
63. This option is preferred because Council is already due to undertake a review of the Policy in the near future and earthquake issues can be examined as part of this review. This option means Council does not incur costs associated with undertaking an extra Special Consultative Procedure, nor with costly and time consuming considerations of applications under s80 of the LGA02.