Memo To: Mayor and Councillors  
Memo From: Jenny Hawes, Principal Adviser Community  
Subject: GAMBLING POLICY REVIEW – ISSUES PAPER FOR COUNCIL WORKSHOP ON 7 MARCH 2012

1. Purpose

1.1. At its meeting on 15 December 2011 Council agreed that before it proceeded with the review of the Gambling Policy, a workshop should be held to enable Councillors to obtain a clear view of all the issues, including points raised by some stakeholders. This memo provides information for Council on the key issues. Following the workshop, staff will report to Council with recommendations on a process and timeframe for reviewing the Gambling Policy.

1.2. This workshop will be held in public. However, if any discussion of legal issues is required then the workshop will move into public excluded.

2. Introduction

2.1. Operating gaming machines outside casinos is categorised as Class 4 (high-risk) gambling. The Gambling Act 2003 requires all Territorial Authorities to develop Class Gambling Venue and TAB Venue policies in consultation with their communities, having regard for the social impact of gambling. The policy must be reviewed every three years. Council adopted its first gambling policy in 2004 and reviewed that again in 2007 and 2010. In partnership with Nelson Marlborough DHB, the Council also completed a comprehensive social impact assessment to inform the 2007 Gambling Policy review (attachment one).

2.2. Under the Gambling Act 2003, a Territorial Authority is required to use the Special Consultative Procedure outlined in the Local Government Act 2002 (LGA) if they wish to vary or amend their policy once it is in place.

2.3. The Gambling Policy must specify whether or not new Class 4 venues or TAB venues may be established in the territorial authority district and, if so, where they may be located.

2.4. Matters a territorial authority may have to consider in determining its policy include:

- 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 gaming machines 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.
• What the primary activity at any venue should be.

2.5. Under the Act, the Department of Internal Affairs is still responsible for gaming licensing. However, Section 65(2)(b) provides that for applications to the Department for a Class 4 venue licence the application must be accompanied by territorial authority consent. The Act prescribes limits on the number of non-casino gaming machines in venues (attachment two).

3. High Court Decision on 2010 Review

3.1. In 2009, staff began work on the review of the 2007 policy with an initial consultation of stakeholders. The policy appeared to be working well so staff recommended only one change, to reduce the cap from 301 to 269. Council approved this draft policy for public consultation.

3.2. The Council received 21 submissions on the proposed policy change. A Hearing Panel heard submissions and made the following recommendations, which were adopted by the Council:

• The cap on machine numbers be reduced to 285. This was higher than the cap of 269 originally proposed.
• The prohibition on siting gaming machines within 100m of ATMs be removed.
• The prohibition on siting machines within 100m of various facilities be changed to “The venue not being immediately adjacent to any playground, kindergarten, early childhood centres, schools, places of worship and other community facilities.”

3.3. In 2010, the Nelson Gambling Taskforce Inc challenged, in the High Court, the validity of the Council’s process leading up to changes the Council made to its Gambling Policy in 2010. Specifically, the challenge was that the Council failed to properly follow the Special Consultative Procedure set out in s 83 of the LGA and as a consequence significant amendments were made without adequate consultation.

3.4. In September 2011, a High Court judgement declared amendments made to the Gambling Policy in 2010, other than the change to the maximum number of machines, to be invalid and that the process undertaken did not comply with the statutory requirements. As part of that decision the Court indicated that when amending a policy, details of all changes proposed, reasons for the changes and reasonably available alternatives had to be included in the Statement of Proposal. The Court found the consultation process to be non-compliant because significant changes were made to the policy but were not signalled in the Statement of Proposal.

3.5. Effectively, the judgement means that the Council’s 2007 Gambling Policy is back in place and the Council is required to carry out a further review of the policy.
Special Consultative Procedure

3.6. Dr Philip Townshend from the Problem Gambling Foundation tabled a submission at the Council meeting on 15 December 2011 suggesting that if Council reviews the 2007 policy and decides not to amend it then it would not need to undertake a special consultative procedure (attachment 3).

3.7. Council’s legal advice is that we need to both review the policy and consult on it for the following reasons:

- This review of the 2007 Gambling Policy is distinguishable from what would have been a normal three yearly review in that it has to be undertaken following a High Court decision invalidating an amendment made as part of the initial review of the 2007 policy.
- By the time the review process is completed it will have been 5 years since a valid review of the policy.
- In view of those judicial review proceedings, it is clear that there is a very high level of interest within the community in respect of this further review of the 2007 policy. That level of interest is evident in the High Court decision that resulted and the publicity surrounding that decision.
- Council’s significance policy supports this review being undertaken using the Special Consultative Procedure, in that it states that the Council will determine the significance of any issue, requiring a decision, by making judgements according to the likely impact of that decision on:
  - “any persons who are likely to be affected by or interested in the issue, proposal decision, or matter…”
  - the benefits of the decision to the Council or the community....”

- This review, as opposed to a normal three yearly review would have to be regarded as a “significant” decision, both for the community, and for the Trillian Trust who may lose their licence at Brewers Bar in Victory as a result of the High Court decision (currently the subject of an appeal to the Gambling Commission with a decision likely in April/May 2012).
- S.87 (1) (b) of the LGA 2002 permits a local authority to choose to use the Special Consultative Procedure. If the Council did not in this case, in view of the background leading to the need for this further review, it would not only be open to further public criticism, but again the possibility of a further judicial review process.
- Where a review results in an amendment to, or replacement of the existing policy, S.102 (2) is clear that that can only be done pursuant to a Special Consultative Procedure.
- Where a review results in no change, that is less clear as Justice Simon France seems to admit. However, it cannot be overlooked that a decision made not to change any aspect of the policy following a review, is still a decision which has to be made in accordance with the decision making provisions in Sections 76 – 79 of the LGA, 2002. That means that pursuant to Section 78: “A Local Authority must, in the course of its decision making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter. (This last underlined part effectively extends the consultation requirements to almost anyone when it comes to gambling).
4. **What Are The Issues?**

4.1. Two of the stated purposes of the Gambling Act 2003 are to “prevent and minimise the harm caused by gambling, including problem gambling” and to “facilitate responsible gambling”. Some relevant national and local statistics relating to gambling harm are set out below:

### National Statistics

- Between 10,000 and 60,000 (0.3% and 1.8%) adults have gambling problems in New Zealand.\(^1\)
- Being a problem gambler is significantly associated with living closer to a gambling venue\(^2\).
- Pokie machines are the most harmful form of gambling in New Zealand as 77% - 85% of problem gamblers use them as their primary mode of gambling, while 6.6% use track betting or sports betting.\(^3\)
- A recent New Zealand study found that there is an increase in problem gambling by nearly one person per each new machine\(^4\). The same study found that restricting the per capita density of gaming machines leads to a decrease in gambling harm.
- One in five regular pokie players is likely to have a gambling problem.\(^5\)
- 10,000 New Zealanders engaged in illegal activities because of their gambling.\(^6\)
- Over 74,000 New Zealanders suffer from inferior mental health because of gambling.\(^7\)
- One in six New Zealanders say a family member has gone without something they needed or a bill has gone unpaid because of gambling.\(^8\)

### Nelson Statistics

- As at 31 December 2011, there were approximately 7.3 machines per 1000 adults (over 18) in Nelson\(^9\), although current licenses allow

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\(^1\) Centre for Social and Health Outcomes Research and Evaluation. 2008. Assessment of the social impacts of gambling in New Zealand. Auckland: SHORE.
\(^2\) Ministry of Health, 2008.
\(^6\) Centre for Social and Health Outcomes Research and Evaluation. 2008. Assessment of the social impacts of gambling in New Zealand. Auckland: SHORE.
\(^7\) ibid
\(^8\) Health Sponsorship Council. 2011. Problem Gambling National Messages. HSC.
\(^9\) Population drawn from 2006 census data
up to approximately 8 machines per 1000 adults. This compares with a national average of 6.7 machines per 1000 adults (over 18).\textsuperscript{10}

- Consistent with the national trend, the number of venues in Nelson is high in areas of higher deprivation\textsuperscript{11} - around half of the venues are in NZ Dep areas 7-10 (refer attachments 5 and 6).
- Around 80\% of those who present for problem gambling treatment in Nelson identify “pub pokies” as their main form of gambling.\textsuperscript{12}
- The Problem Gambling Foundation (Nelson) advise that out of a total of $10M spent on gaming machines in Nelson in 2010, approximately $2.5M (around 25\%) was returned to the Nelson community by community trusts. [Note: under the Act, 37.12\% of gaming machine profits must be distributed for “authorised purposes”, which include: charitable purposes; non-commercial purposes that have community benefits; or promoting, controlling and conducting race meetings. The Act does not specifically require that this is returned to the community in which the spending occurred, although in Nelson’s case a substantial proportion does return to the local community]. It is difficult to find comparative data for other regions.
- Approximately $29,000 is lost to gaming machines in Nelson each day [based on gaming machine expenditure of approximately $10.6 million in 2011].\textsuperscript{13}

5. **Policy approaches the Council could take**

5.1. The two key ways the Council can potentially influence gambling behaviour are through placing restrictions on the number and location of venues and the number of gaming machines in their district.

**Cap the Number of Venues and Machines**

5.2. The number of machines operating in Nelson City has been steadily declining regardless of the cap. At 31 December 2011, there were 248 machines operating at 18 approved Class 4 venues within Nelson City (compared to the 265 machines those 18 venues are currently licensed to provide). Both numbers are well below the 2007 cap of 301 and the 285 finally agreed on by Council in 2010. Current licenses permit approximately 8 gaming machines per 1000 Nelson residents over 18.

5.3. When considering the cap level, the impact of gaming on the community needs to be weighed against the potential for a percentage of profits to be returned to the community. This is an important source of revenue for many community groups and a number of sports codes submitted on that point in 2010. As the number of machines in Nelson has fallen below the current cap (likely the result of increased compliance costs), the policy itself has not impacted on gaming revenues. And it also needs to be considered whether benefit to one section of the community should come at the expense of another which is experiencing harm from the activity.

5.4. There is no nationally consistent method for determining the cap and any national average is subject to fluctuation as the population numbers and

\textsuperscript{10} Department of Internal Affairs website, www.dia.govt.nz
\textsuperscript{11} Deprivation Index 8-10
\textsuperscript{12} Problem Gambling Foundation Nelson, email 21/2/2012
\textsuperscript{13} Department of Internal Affairs website, www.dia.govt.nz
machine numbers change. Given the trend of decreasing machine numbers and the sinking lid policies being adopted by an increasing number of Territorial Authorities, the national average is likely to decrease.

5.5. Any change to the cap would have no impact on existing holders of Class 4 venue licences, since the policy is only applied when territorial authority consent is required. The persons affected and requiring territorial authority consent after a reduction in the cap would be:

- societies applying to increase the number of machines that may be operated at a Class 4 venue;
- first time applications for a class 4 venue licence;
- if a corporate society applies for a class 4 venue licence and hasn't held a licence for the venue within the last 6 months.

**Apply a ‘Sinking Lid’ Policy**

5.6. An increasing number of territorial authorities are adopting a ‘sinking lid’ (gradual reduction) policy. Under this option no new licences or increased capacity would be offered even if licenses are relinquished or cancelled.

5.7. The aim of a sinking lid policy is to reduce problem gambling and the amount gambled on gaming machines over time. Because of the limited number of venues that it affects, a sinking lid policy is likely to make very little difference to the existing number of machines or venues. Its effect would be felt over a much longer period.

5.8. One of the key arguments against a sinking lid policy is that it reduces the amount of funding available to the community. However, community funding is more largely impacted on by the way the Trusts distribute the funding and currently, the Trusts operating in Nelson return a substantial proportion of the funds to local organisations. This could be affected by a decision to introduce a sinking lid.

**Restrict the Location of Gaming Machines**

5.9. The current (2007) Gambling Policy contains a restriction on venues operating within 100 metres of any playground, kindergarten, early childhood centre, school or place of worship. A key argument for this rule is that providing gaming opportunities close to schools, preschools and other community facilities is seen as normalising gambling to young people and is likely to increase levels of problem gambling.

5.10. This restriction arose from the social impact assessment undertaken for the 2007 Review and by the DHB, the Problem Gambling Foundation and one other as part of the 2010 Review. However, during the 2010 review submitters from the gaming industry felt this policy was unduly restrictive, in particular those wishing to re-establish Class 4 gaming machines in the Victory area.

5.11. Council could confirm the restriction on locating venues within 100 metres of any automatic teller machine, which was in the 2007 policy but removed in 2010. The 2007 restriction was suggested during the social impact assessment because it was felt ATMs allow anonymous, repeated withdrawals during gambling while EFTPOS withdrawals, which are monitored by staff, create an additional barrier to uncontrolled gambling. However, with the
proliferation and relocation of ATMs in the city, venue operators are of the view that this rule has become unduly restrictive. A number of existing venues would not be eligible for licenses if they applied now because of new ATMs within 100m.

5.12. The current Gambling Policy does not allow venues to be sited in areas zoned Residential or Open Space and Recreation under the NRMP. However, 7 of the 18 venues are in commercial areas that butt up against residential areas. The policy could be amended to place restrictions on the proximity of venues to residential boundaries. The policy could also restrict any new venues being located in areas of high deprivation or restrict machines to the CBD. These restrictions would only apply to new applications and it would take some time before there was any impact.

6. **TAB Venue Policy**

6.1. The policy relating to TAB venues refers to premises that are owned or leased by the TAB and where the main business carried out on the premises is sports betting. Council consent is not required under the legislation to establish a TAB facility in a bar, hotel or club. If a TAB Board Venue wishes to also host Class 4 gaming machines a separate application must be made under the above Policy for Class 4 Gambling Venues and the TAB Board Venue must also meet the additional criteria set out in the policy.

6.2. There are currently no restrictions on the number of TAB venues that may operate in Nelson City, however, there are no stand-alone TAB venues currently operating. Restrictions relate only to the location of the venues. Track and sports betting represent a small proportion of problem gamblers and there is little evidence to suggest that further restrictions on TAB venues would significantly impact on the prevalence of problem gambling.

6.3. There has been no push to significantly change the 2007 policy with respect to TAB venues. The TAB sought to separate the Class 4 Venue Policy from the TAB venue policy through the 2010 review. This was supported by staff. The change would be relatively easy to achieve and would not impact on the consultation process.

**Attachments**

Attachment 1: Social Impact Assessment 2007. 663606
Attachment 2: Limits on Operating Class 4 Gaming Machines (Gambling Act 2003). 1241956
Attachment 3: Problem Gambling Foundation Submission to the NCC Gambling Policy Discussion 15 December 2011. 1239556
Attachment 4: Gambling Policy 2007. 245394
Attachment 5: List of gaming venues and machines in the NCC area 1241608
Attachment 6: Map of gaming machine venues in Nelson by Deprivation Index. 1240456