

Research Report

Review of Class 4 Gaming and TAB Venue Policy (2014)

1 Purpose

To describe and discuss the review of the Class 4 Gaming and TAB Venue Policy (2014).

2 Context and Situation

The Council is required to have a Class 4 gaming policy under section 101 of the Gambling Act 2003. The Council is also required to have a TAB venue policy under section 96 of the Racing Industry Act 2020. The Racing Industry Act 2020 has replaced the previous Racing Act 2003 (repealed 01 August 2020), in which a TAB venue policy was required under section 65D.

Under section 102 of the Gambling Act 2003 and section 97 of the Racing Industry Act 2020, the Class 4 Gaming and TAB Venue Policy (the policy) must be reviewed every three years. The date for this review has since passed (2017), although as per the legislation, the policy does not cease to have effect because it is due for review.

When adopting a class 4 gaming venue policy and / or a TAB venue policy, the Council must have regard to the social impact of gambling within the District.

Under section 102 of the Gambling Act 2003, when conducting a review of the Policy, the Council must consider whether to include a relocation policy. When considering a relocation policy, the Council must consider the social impact of gambling in *high-deprivation communities* in the Far North District.

The development and review of the policies must follow the decision-making process as per the Local Government Act 2002. For example, consultation must follow the special consultative process as per section 83 of the Local Government Act 2002.

2.1 Council's role relating to Class 4 gaming and TAB venues

2.1.1 Local Government Act 2002

Under section 10 of the Local Government Act 2002, the purpose of local government is to "... promote the social, economic, environmental, and cultural wellbeing of communities, in the present and for the future".

The presence of gambling within a community can have both positive and negative impacts. Gambling can have a negative effect on a community's wellbeing through direct impacts, such as affecting peoples physical and mental wellbeing, causing financial and economic harm, and increased crime. However, gambling can also provide entertainment and some proceeds are returned to the community in the form of grants.

2.1.2 Gambling Act 2003

The purpose of the Gambling Act 2003 is to:

- a) control the growth of gambling
- b) prevent and minimise the harm caused by gambling, including problem gambling
- c) authorise some gambling and prohibit the rest
- d) facilitate responsible gambling
- e) ensure the integrity and fairness of games

- f) limit opportunities for crime or dishonesty associated with gambling
- g) ensure that money from gambling benefits the community
- h) facilitate community involvement in decisions about the provision of gambling.

Under section 101 of the Gambling Act 2003 every territorial authority must adopt a Class 4 venue policy.

Class 4 gambling is:

- any activity that involves the use of a gaming machine outside of a casino
- from which the net proceeds (profits) are distributed back to the community.

The Class 4 venue policy must specify:

- whether or not Class 4 venues may be established in the Far North District
- where venues may be located (if the policy allows venues)

The Class 4 venue policy may:

- specify any restrictions on the maximum number of gaming machines that may be operated at a class 4 venue
- include a relocation policy.

In adopting the policy, the Council must have regard to the social impact of gambling within its district.

Under section 100 of the Gambling Act 2003 the Council must consider applications, in accordance with its Class 4 venue policy, for:

- a new Class 4 venue
- existing venues that held a licence on 17 October 2001 but have not held a licence in the last six months
- amendments to Class 4 venue licences to allow an increase in the number of gaming machines that may be operated at a venue.

2.1.3 Racing Industry Act 2020

The Racing Industry Act 2020 replaced the Racing Act 2003. The requirements for territorial authorities with regards to TAB venue policies are consistent between the two Acts.

Under section 96 of the Racing Industry Act 2020, Council must adopt a TAB venue policy.

A TAB venue is any premise that is owned or leased by the TAB and where the main business carried out is providing racing-betting or sports-betting services.

Council does not have authority over other venues where the main business is not racing-betting or sports-betting which provide TAB facilities e.g., on licensed premises.

The TAB venue policy must specify:

- whether or not TAB venues may be established in the Far North District
- where venues may be located (if the policy allows venues).

In adopting the policy, the Council must have regard to the social impact of gambling within its district.

Under section 95 of the Racing Industry Act 2020 the Council must consider applications for a new TAB venue in accordance with its TAB venue policy.

2.2 Statutory Agency Roles

2.2.1 Department of Internal Affairs

The Department of Internal Affairs is responsible for regulating the Class 4 gambling sector and for ensuring compliance with the Gambling Act 2003.

The Secretary for Internal Affairs is responsible for licensing Class 4 gambling.

The Secretary for Internal Affairs cannot issue a Class 4 venue licence unless satisfied (among other things) that Council's consent is valid. Generally, a consent that is inconsistent with the Council's policy will not be accepted as valid. However, if a territorial authority decides it wants to issue a consent that is inconsistent with its policy, it can use section 80 of the Local Government Act 2002 to do so.

2.2.2 Ministry of Health

Under the Gambling Act 2003, the Ministry of Health is responsible for:

- developing an integrated problem gambling strategy, focused on public health
- the funding and co-ordination of problem gambling services.

The current *Strategy to Prevent and Minimise Gambling Harm*¹ aligns with the role of local government by:

- promoting healthy public policy in relation to gambling harm
- enhancing the capacity of communities to define and address gambling harm.

3 Objectives

3.1 Purpose of review

To determine whether the provisions of the Policy are still the most appropriate way to address Class 4 gaming and TAB venues in the Far North District as per sections 101-102 of the Gambling Act 2003 and sections 96-97 of the Racing Industry Act 2020.

3.2 Review objectives

- To define Class 4 gambling and TAB related problems in the Far North District that are within Council's function to control.
- To describe and discuss the social impacts of gambling within the Far North District
- To identify if the provisions of the Policy are still the most appropriate way to address the regulation of Class 4 gambling and TAB venues in the Far North District.
- To identify if the Policy meets current legislative requirements.

4 Problem definition

4.1 Scope

In scope

Problems relating to Class 4 gambling and TAB venues in the Far North District which are a function of Council to control or address.

Class 4 gambling as defined in the Gambling Act 2003 is:

- any activity that involves the use of a gaming machine outside of a casino
- from which the net proceeds (profits) are distributed back to the community.

A TAB venue as defined in the Racing Industry Act 2020 is any premise that is owned or leased by the TAB and where the main business carried out is providing racing-betting or sports-betting services.

Out of scope

All other forms of gambling such as Lotto, Raffles and gambling occurring in a casino as these forms of gambling are regulated under the Gambling Act 2003 and are not a requirement for the Council to address in the Policy.

4.2 Purpose of current Policy

The Policy aims to support the primary objectives of the Gambling Act 2003 and to ensure that:

¹ [Strategy to prevent and minimise gambling harm 2019-20 to 2021-22](#)

- harm caused by gambling is prevented or minimised
 - the growth of gambling is controlled
 - Gaming machines are located in appropriate venues
- the community is appropriately involved in the decision-making process
- gambling is primarily used to raise funds for community purposes

The Gaming and TAB Policy was first introduced in 2004 and followed a “capped policy” model, in which the total number of gaming machines throughout the Far North District would not increase, but machines could be redistributed to other venues. The policy was reviewed in 2007, 2010 and 2014.

The 2014 policy was developed in consultation with residents, community stakeholders, Police and Public Health. The policy was amended to become the *Class 4 Gaming and TAB Venue Policy*, and the policy moved to follow a “sinking lid” policy model.

The 2014 review was the first review of the policy after the Gambling (Gambling Harm Reduction) Amendment Act 2013 came into force. Therefore, the Council had to consider whether to include a relocation policy, as per section 102(5A) of the Gambling Act 2003. The relocation of machines is retained within the policy under specific circumstances.

4.3 Other problems relating to Class 4 gambling and TAB venues not currently controlled or addressed by the Policy

The Policy addresses all the matters in which are a function of the Council to control under the Gambling Act 2003 and Racing Industry Act 2020.

5 Review of Policy

5.1 Class 4 venues

5.1.1 Gambling harm is prevented or minimised

To minimise gambling related harm, the Policy does not allow for new class 4 gaming venues to be established in the District as the Policy follows a sinking lid policy model.

Under a sinking lid policy, there will never be machines available for redistribution. As machines are released through either venue closures, voluntary release of machines, or by enforcement, the machines are not able to be redistributed to a new venue and the number of machines over time will shrink.

Since the implementation of the sinking lid policy, the number of class 4 gaming venues have decreased from 25 to 19 as shown in *Figure 1*. The number of class 4 gaming machines in the District have decreased from 314 to 273 as shown in *Figure 2*.

Class 4 gambling data for the Far North District shows two drops and subsequent increases in venue and gaming machine numbers between 2017 and 2019. In both instances, the increase is related to a new venue licence being granted for a pre-existing venue, following an unlicensed period of less than 6 months. Under section 98 of the Gambling Act 2003, Council’s consent and therefore sinking lid policy is not applicable in these circumstances.

Figure 1: Graph showing the total number of class 4 gaming venues in the Far North District by quarter (Sourced: Department of Internal Affairs²).

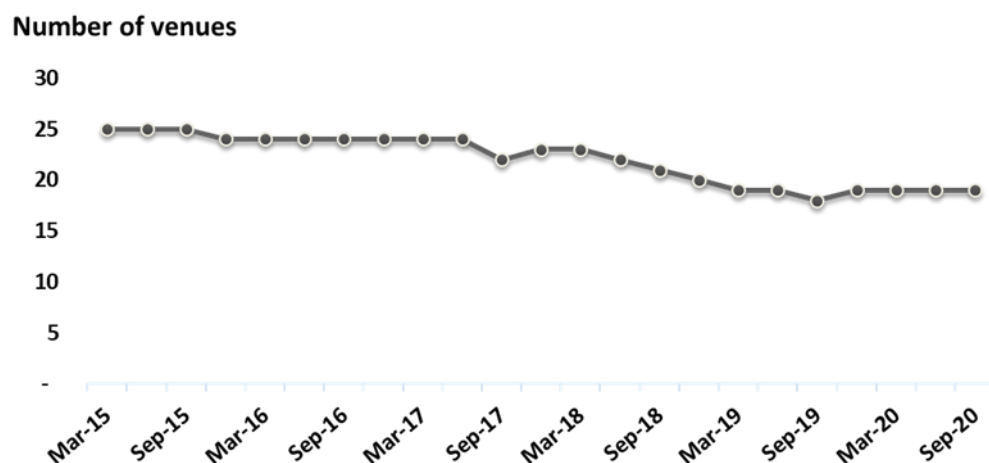
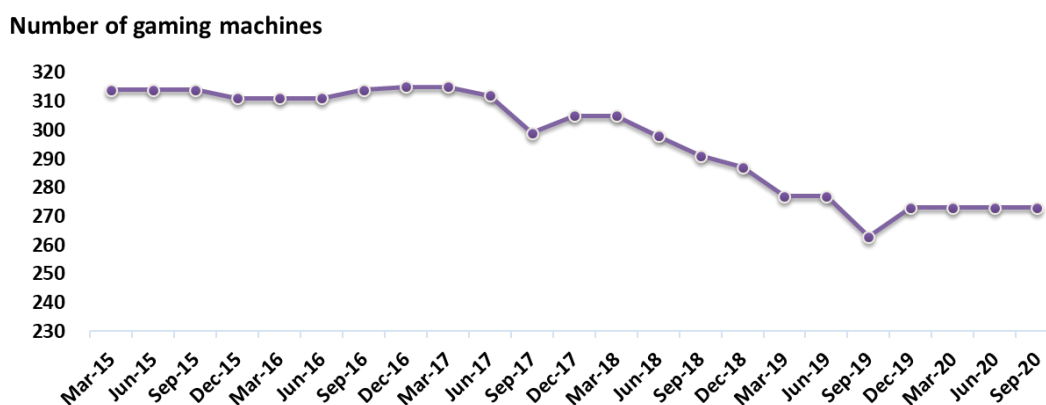


Figure 2: Graph showing the total number of class 4 gaming machines in the Far North District by quarter (Sourced: Department of Internal Affairs)



The current policy is achieving the objective of decreasing the number of venues and machines available in the District.

However, whilst the current policy states that the Council has a sinking lid on the number of machines in the district, the policy is not explicit in stating what the provisions of a sinking lid policy are, therefore the Policy is not certain. To improve certainty, for example, the policy could state that under a sinking lid policy:

- Council will not give consent for new venues
- Council will not give consent for a current class 4 venue to operate more gaming machines.

5.1.2 Class 4 relocation policy

A relocation policy (defined in section 101 of the Gambling Act 2003) is a policy setting out if and when the Council will allow a venue to replace an existing venue to which a class 4 venue licence applies.

The intent of the Act with regard to relocation policies is to support the movement of class 4 gaming venues to areas at less risk of gambling related harm such as away from sensitive sites or areas of high deprivation.

The Act states that when considering a relocation policy, the Council must specifically consider the social impact of gambling in *high-deprivation communities* within the district.

² [Department of Internal Affairs Dashboard](#)

The current policy allows the relocation of Class 4 gaming machines under the following circumstances:

- a) fire or other damage to the present venue
- b) expiry of lease on present venue
- c) financial reasons relating to the business
- d) the building of a new premises, or refurbishment of an existing building, as a new venue
- e) merging of two Club licence holders into one venue.

Under section 101(4) of the Gambling Act, when considering the location for a relocated venue, the Council may have regard to the following matters:

- a) *the characteristics of the district and parts of the district:*
- b) *the location of kindergartens, early childhood centres, schools, places of worship, and other community facilities:*
- c) *the number of gaming machines that should be permitted to operate at any venue or class of venue:*
- d) *the cumulative effects of additional opportunities for gambling in the district:*
- e) *how close any venue should be permitted to be to any other venue:*
- f) *what the primary activity at any venue should be*

The Policy stipulates that relocated venues,

“shall be in Commercial, Industrial, General Coastal Rural Living or Rural Production zones, or within sports clubs or public houses and shall be eligible for consent provided the venue is at least 100 metres from any Kindergarten, early childhood centre, school, place of worship, Marae, or other community facility, and 100 metres from a Residential, Coastal Residential, Coastal Living, Recreational Activities zones.”

The policy does not have regard to:

- the characteristics of the district i.e., deprivation rating
- the cumulative effects of additional opportunities for gambling in the district i.e., number of and proximity to TAB venues
- how close any venue should be permitted to be to any other venue.

The relocation policy maintains the intent of the ‘sinking lid’ policy by only allowing relocation when circumstances arise outside of the control of the owner of the business such as fire or other damage to the present venue.

In 2019, The Gambling Commission affirmed a previous 2013 High Court decision concerning consent for a Class 4 venue relocation. The High Court decision in 2013 (*Waikiwi*) concluded that, while the term ‘class 4 venue’ has a wide meaning, it does not include an “address”. This indicates that Parliament did not intend that the term “place” means land or buildings at a specific address. Further, “when a building such as the tavern building is relocated to a different site in close proximity to its present address it is still the same venue”.

The Court found that a new location may not be a change of venue if:

- the new building will be in a site that is very close to the existing site;
- the class 4 venue’s name will be the same;
- the ownership and management of the venue will be the same; and
- for all intents and purposes, the patrons and the public will regard the venue as being the same venue, even though its physical location will change in a relatively minor way.

If a class 4 venue changes site in line with the above requirements, it is not considered a new venue and therefore does not require a council consent, nor is it considered a relocation and it will not trigger the application of a council’s relocation policy.

When the policy was made in 2017, some corporate societies (clubs) were under financial stress, hence allowing relocation of Class 4 gaming machines for financial reasons relating to the business. The situation no longer applies. To maintain the intent of the 'sinking lid' policy, financial reasons should be removed from the relocation policy.

However, the relocation policy could be amended to take into consideration the Waikiwi Decision, and further align with the intent of the Gambling Act 2003 by restricting relocations in high deprivation areas and restricting proximity to another gambling venue.

Further research is required to identify the most appropriate way to manage the relocation of class 4 venues.

5.1.3 Merging of two corporate societies (clubs)

In the case that two clubs wish to merge, section 95 of the Gambling Act 2003 allows for the Council to stipulate the maximum number of gaming machines which can be operated at the new venue up to a maximum of 30. For example, if two clubs operating 18 machines each merge, the total number of machines that could operate at the new venue would be 30 not 32 ($18 \times 2 = 32$) or less if stipulated in the policy.

The Policy stipulates that in the case of two clubs merging in the Far North District, the maximum number of gaming machines which can be operated at the new venue is 18, which aligns with the maximum number of machines operating at non-club venues (who held a licence on 17 October 2001) in the District.

There are currently only three clubs in the District operating gaming machines, one is operating four machines and two are operating nine machines. If two clubs in the District were to merge, the total number of machines would not exceed 18. Therefore, this component of the policy would not impact on the number of machines in the District.

5.2 TAB venues

Since the Policy was adopted in 2014, the Racing Act 2003 has been replaced by the Racing Industry Act 2020. The Policy will need to be amended to ensure all references to the Racing Act 2003 are replaced with the Racing Industry Act 2020.

5.2.1 Establishment of TAB venues in the Far North District

Under section 96(s) of the Racing Industry Act 2020, the Council can decide whether or not new TAB venues may be established in the District. The Policy only applies to stand alone TAB venues. Council does not have authority over other venues which provide TAB facilities e.g., on licensed premises.

The Policy does not have restrictions on the number of TAB venues which may be established in the District.

Currently, there are no TAB venues in the District.

The Policy could extend the sinking lid model to TAB venues in which no new TAB venues would be established in the District. A sinking lid model would have no impact on the current status of TAB venues in the District but would prevent future gambling related harm.

5.2.2 Location of TAB venues in the Far North District

If allowing new TAB venues to be established in the District, under section 96(4) of the Racing Industry Act 2020, the Council can have regard to:

- 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 cumulative effects of additional opportunities for gambling in the district.

The Policy restricts new TAB venues to Commercial and / or Industrial zones as defined in the District Plan.

If the Council continues to allow the establishment of TAB venues in the District, the policy could be amended to ensure that TAB venues are not established:

- within a high deprivation area
- within 100 meters of kindergartens, early childhood centres, schools, places of worship, and other community facilities
- near other venues providing opportunities for gambling (including class 4 venues).

5.3 Application process

The Policy contains internal processes regarding application requirements and the processing of applications.

Internal processes should not be referred to in an external facing policy. The Policy should therefore be amended to remove the references to internal processes.

6 Social Impacts of Gambling in the Far North District

Staff have completed a separate report on the social impacts on gambling in the Far North District and concluded that the demographics of the Far North District mean our communities are more vulnerable to the detrimental effects of problem gambling. A summary of key points from the report are outlined below. For further information please refer to the full *Social Impacts of Gambling*³ report.

6.1 Gambling participation in New Zealand

There are four main types of gambling legally allowed in New Zealand:

- Sports betting through the TAB
- Class 4 Electronic Gaming Machines (EGMs), also known as pokie machines
- New Zealand Lotteries Commission (Lotto)
- Casinos.

The *2018 Health and Lifestyles Survey* found that⁴ :

- 67% of adults participated in some form of gambling in the previous 12 months
- gambling participation has decreased since 2006 (from 83%)
- Lotto is the most common form of gambling (55% of respondents)
- 11% played EGMs outside of a casino
- 11% participated in TAB betting.

Although only 11% of New Zealand adults played EGMs, total expenditure on Class 4 EGMs (\$924mil) is almost twice that of Lotto (\$530mil).

6.2 Gambling related harm

Most people can safely enjoy gambling as a recreational activity. However, research shows that about 22% of New Zealand adults will be adversely affected by their own gambling or the gambling of others.⁵

Problems associated with gambling harm include:

- detrimental effects on an individual's physical, emotional and psychological health
- financial difficulties
- bankruptcy
- reduced employment performance
- relationship conflict

³ [Social Impacts of Gambling](#)

⁴ [2018 Health and Lifestyles Survey](#)

⁵ [Ministry of Health Strategy to Prevent and Minimise Gambling Harm 2019/20-2021/22](#)

- family violence
- child neglect
- criminal activity such as theft and fraud.

Different forms of gambling carry different levels of risk for gambling harm. EGMs are a high-risk form of gambling, as they are a solitary activity rather than social, and are continuous. EGMs are cited as a problem for almost 50% of the people who seek help for their gambling.

6.2.1 Gambling related inequities

1.8% of New Zealand adults experience moderate to severe risk of problem gambling. However, this risk is not evenly distributed. Risk for problem gambling is higher for Māori (8.6%) and Pasifika (7.6%) populations.⁶

Total gambling participation is similar across ethnicities and deprivation levels, but the types and cost of gambling are not evenly spread.

- People living in the most deprived neighbourhoods are more likely to participate in EGM activities, which are high-risk.
- Much more gambling harm is experienced by those living in areas with a high social deprivation index score (8/10 or higher).
- People in deprived neighbourhoods are 4.5 times as likely to experience gambling-related arguments or money problems related to gambling.⁷

Of the 19 class 4 venues in the Far North District:

- the majority (12) are in the highest deprivation areas (decile 9-10)
- 5 are in medium-high deprivation areas
- 2 are in medium deprivation areas.

The demographics of the Far North District mean that our communities are more vulnerable to the detrimental effects of problem gambling. A large proportion of the Far North District consists of the highest deprivation areas, and 50% of the population of the Far North is Māori. Both factors significantly increase the risk of gambling harm.

6.3 Gambling expenditure in the Far North District

In 2019, the total money spent on class 4 EGMs in the Far North District was \$15.7 million, however only \$2.4 million was returned to the district in grants to community and sporting groups. The figures suggest that, overall, a significant amount of money is taken out of the district.

Despite the decrease in the number of EGMs and class 4 venues since 2014, class 4 gambling expenditure (both absolute and per machine) in the Far North District has increased by a larger proportion than the change across New Zealand as a whole.

7 Discussion

7.1 Is the policy the most appropriate way to address the establishment of Class 4 gaming and TAB venues in the Far North District?

The review has identified that a sinking lid policy is the most appropriate way to address the establishment of Class 4 gaming venues in the District for the following reasons:

- the existing sinking lid policy has been effective in reducing the number of Class 4 gambling venues and EGMs machines

⁶ [Problem Gambling Foundation](#)

⁷ 2016 Health and Lifestyles Survey

- the demographics of the District mean that our communities are more vulnerable to the detrimental effects of problem gambling
- a significant amount of money is removed from the District due to class 4 gambling.

The review has identified that a restrictive relocation policy is the most appropriate way to address the relocation of Class 4 gaming venues in the District as the policy supports the intent of a sinking lid policy.

The review has identified that an open policy is not the most appropriate way to address the establishment of TAB venues in the District for the following reasons:

- the demographics of the District mean that our communities are more vulnerable to the detrimental effects of problem gambling
- there are currently no TAB venues in the District and allowing TAB venues to establish may lead to an increase of gambling related harm.

7.2 Is the policy in the most appropriate form?

The form of a policy is about its content and how it is drafted. A policy will be appropriate if it:

- a) meets the objectives it is intended to achieve
- b) is certain, e.g. it uses clear wording so people will understand what they are required to do
- c) complies with all relevant laws and legislation.

The relocation policy could be amended to take into consideration the Waikiwi Decision, and further align with the intent of the Gambling Act 2003 and the sinking lid policy by:

- restricting relocations in high deprivation areas
- restricting proximity to another gambling venue
- removing financial reasons from the relocation criteria.

Further research is required to identify the most appropriate way to manage the relocation of class 4 venues.

Some provisions in the policy are not certain. Therefore, amendments are required to improve clarity regarding:

- the definition of a sinking lid policy
- the criteria for relocation.

The policy is not consistent with relevant laws and legislation and needs to align with the Racing Industry Act 2020.

Therefore, the Policy is not the most appropriate form of policy and should be amended.

8 Conclusion

The Far North District is more vulnerable to the detrimental effects of problem gambling therefore, a sinking lid policy is the most appropriate way to address the establishment of both Class 4 gaming and TAB venues in the Far North District. The policy needs to be amended to ensure the policy is easily understood, reflects the social impacts of gambling in the Far North District, and aligns with current legislation.