

# MEETING - AGENDA -

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*Western Bay of Plenty  
District Council*

# POLICY COMMITTEE

*Komiti Kaupapa Here*

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**PP21**

**Thursday, 27 June 2019  
Council Chambers  
Barkes Corner, Tauranga  
9.30am**



# Notice of Meeting No PP21 Te Karere

## Policy Committee Komiti Kaupapa Here

Thursday, 27 June 2019  
Council Chambers  
Barkes Corner  
9.30am

His Worship the Mayor

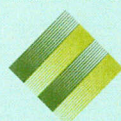
G J Webber

Councillors:

M Williams (Chairperson)  
D Marshall (Deputy Chairperson)  
G Dally  
M Dean  
M Lally  
P Mackay  
K Marsh  
M Murray-Benge  
J Palmer  
J Scrimgeour  
D Thwaites

Media  
Staff

Miriam Taris  
**Chief Executive Officer**  
**Western Bay of Plenty District Council**



*Western Bay of Plenty*  
*District Council*

Te Kaunihera a rohe mai i nga Kuri-a-Whareki ki Otamarakau ki te Uru

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# Policy Committee Delegations

## Mangai o Te Kaunihera

### Quorum:

The quorum for this meeting is six members.

### Role

Subject to compliance with legislation to develop plans and policies for the future direction of Council and its communities.

### General Delegations

- To exercise all decision-making powers of Council within the Committee's scope of delegated functions and in accordance with its role, and to do anything precedent to the exercise by Council of its powers and duties as specified in Schedule 7 of the Local Government Act 2002 Clause 32 subclause 1 items b and h being specifically the following:
- To undertake on behalf of Council all processes and actions (including consultation) for the development of bylaws, remuneration and employment policy, and policies required to be adopted and consulted on under the Local Government Act 2002 developed for the purpose of the local governance statement precedent to adoption by Council.

Subject to compliance with legislation and the Long Term Plan to resolve all matters of policy and planning which do not require, under the Local Government Act 2002, a resolution of Council. Policy is defined as any matter relating but not limited to, the following:

- Policy Development
- Comprehensive Development Planning
- Environmental policy
- Matters of policy referred by Council, Community Boards or other committees
- Reserve Management Planning
- To conduct policy review and monitor policy variation frameworks
- To undertake on behalf of Council all processes and actions (including consultation) to develop bylaws precedent to the recommendation to Council for adoption of the bylaws

Subject to compliance with legislation and the Long Term Plan to resolve all matters of strategic policy outside of the Long Term Plan process, which does not require, under the Local Government Act 2002, a resolution of Council. Strategic policy is defined as any matter relating but not limited to, the following:

- Overall Infrastructure Strategies and financial Planning/Action Plans
- Policy direction for asset management planning
- To set service standards including levels of service.
- Utilities services/ infrastructure policy and planning
- Road / Transport policy and planning

- To receive and resolve on or recommend to Council or its Committees as appropriate the reports, recommendations and minutes of the following:
  - Regional Land Transport Committee
  - SmartGrowth Implementation Committee
  - And any other Joint Committee, working group or forum as directed by Council.
- To receive resolve on or refer to Council and its Committees as appropriate the recommendations from the Rural Forum.

### **Resource Management Act 1991 - District Plan Policy Development**

- Pursuant to the Resource Management Act 1991 to establish and review objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district by:
- Developing to the point of notification all District Plan and Development Code Changes, variations, designations and reviews and built environment strategies.

### **Financial Delegations**

Pursuant to Section 4(1) of the Public Bodies Contracts Act 1959, the Committee shall have the power to enter into contracts in respect of the Committee's functions to a maximum value of \$5,000,000 for any one contract, provided that the exercise of this power shall be subject to, and within the allocation of funds set aside for that purpose in the Long Term Plan, the Annual Plan and Budget or as otherwise specifically approved by Council.

To report to Council financial outcomes and recommend any changes or variations to allocated budgets.

### **Other**

Pursuant to clause 32(1) of Schedule 7 of the Local Government Act 2002, each of the Mayor and Councillors, whether individually or collectively, the power to listen to and receive the presentation of views by people and to engage in spoken interaction with people pursuant to section 83(1)(d) of the Local Government Act 2002 in relation to any processes Council undertakes to consult on under the Special Consultative Procedure as required by the Local Government Act 2002 or any other Act.

The Committee may without confirmation by Council exercise or perform any function, power or duty relating to those matters delegated by Council in like manner, and with the same effect, as the Council could itself have exercised or performed them.

The Committee may delegate any of its functions, duties or powers to a subcommittee subject to the restrictions on its delegations and provided that any sub-delegation to subcommittees includes a statement of purpose and specification of task.

The Committee may make recommendations to Council or its Committees on any matters to achieve the outcomes required in the role of the Committee but outside its delegated authorities.

# Agenda for Meeting No. PP21

## Pages

**Present  
In Attendance  
Apologies**

### **Declarations of Interest**

Members are reminded of the need to be vigilant and to stand aside from decision making when a conflict arises between their role as an elected representative, and any private or other external interest they may have.

### **Public Forum**

A period of up to 30 minutes is set aside for a public forum. Members of the public may attend to address the Committee for up to three minutes on items that fall within the delegations of the Committee provided the matters are not subject to legal proceedings, or to a process providing for the hearing of submissions. Speakers may be questioned through the Chairperson by members, but questions must be confined to obtaining information or clarification on matters raised by the speaker. The Chairperson has discretion in regard to time extensions.

Such presentations do not form part of the formal business of the meeting, a brief record will be kept of matters raised during any public forum section of the meeting with matters for action to be referred through the customer contact centre request system, while those requiring further investigation will be referred to the Chief Executive.

PP21.1	<b>Class 4 Gambling Venues Policy and TAB Venues Policy Deliberations and Adoption</b>	7-41
	Attached is a report from the Senior Policy Analyst dated 12 June 2019.	
PP21.2	<b>Trading in Public Places Bylaw Deliberations</b>	42-65
	Attached is a report from the Senior Policy Analyst dated 12 June 2019.	

PP21.3

**Deliberations on the draft Animals (excluding dogs) Bylaw 2019, draft Cemeteries Bylaw 2019, and draft Public Places Bylaw 2019, and proposed revocation of the Nuisances Bylaw 2008**

66-82

Attached is a report from the Policy Analyst dated 13 June 2019.

PP21.4

**Receipt of Policy Committee Information Pack No. PP21**

The Policy Committee Information Pack No. PP21 dated 27 June 2019 has been circulated separately with the agenda.

**Recommendation**

*THAT the Policy Committee Information Pack No. PP21 dated 27 June 2019 be received and the information noted.*

## Western Bay of Plenty District Council

### Policy Committee

## Class 4 Gambling Venues Policy and TAB Venues Policy Deliberations and Adoption

### Purpose

The purpose of this paper is to consider the issues and options associated with the Class 4 Gambling Venues Policy and TAB Venues Policy reviews in light of public consultation, and to adopt the policies.

### Recommendation

1. ***THAT the Senior Policy Analyst report dated 12 June 2019 and titled 'Class 4 Gambling Venues Policy and TAB Venues Policy Deliberations and Adoption' be received.***
2. ***THAT the report relates to an issue that is considered to be of medium significance in terms of Council's Significance and Engagement Policy.***
3. ***THAT the Committee receives all written and verbal feedback from the special consultative procedure 18 March to 18 April 2019, as set out in the document titled 'Class 4 Gambling Venues Policy and TAB Venues Policy – Submissions Pack' as circulated separately with this agenda.***
4. ***THAT in relation to the following issues, the Committee resolves,***  
*Issue 1: Approach to limiting Class 4 gambling machines*  
*[Option A, B, C, D] being:...*  
*Issue 2: Approach to Class 4 gambling venues relocations*  
*[Option A, B, C, D] being:...*  
*Issue 3: Approach to Class 4 gambling venue locations*  
*[Option A, B, C] being:...*  
*Issue 4: Approach to Club mergers*  
*[Option A,B] being:...*  
*Issue 5: TAB Venues Policy*  
*[Option A,B] being:...*
5. ***THAT the Draft Class 4 Gambling Venues Policy (Attachment A) and Draft TAB Venues Policy (Attachment B) are adopted pursuant to s102 of the Gambling Act 2003 and s65E of the Racing Act 2003, in accordance with the options set out in resolution 4 of this meeting, and with effect from 1 July 2019.***

***6. THAT the Committee direct staff to prepare a decision document for adoption by the Council on 22 August 2019, and in the interim to make key stakeholders and operators aware of any changes to the policies.***



Matthew Leighton  
**Senior Policy Analyst**



## 1. Background

Class 4 gambling and TAB gambling can provide a source of entertainment to individuals and funding to community organisations. Conversely, gambling can lead to serious harm for individuals, their families and communities.

The oversight of TAB and Class 4 gambling sits with the Department of Internal Affairs. However, territorial authorities are responsible for licensing. The Council has the ability to regulate the number of machines, as well as the number and location of Class 4 gambling venues, and the location of TAB venues. Council has a role in overseeing the administration of gambling through the TAB Venues Policy and the Class 4 Gambling Venues Policy.

### Class 4 Gambling

Gaming machines in pubs and clubs (i.e. outside a casino) represent 'Class 4' gambling. They are more commonly known as 'pokies' or 'slot machines'.

Section 102 of the Gambling Act 2003 requires all territorial authorities to have a gambling policy for Class 4 venues.

This policy must state whether venues can be established in the District and where they may be located. It may also specify restrictions on the maximum number of gaming machines that operate at a venue.

### TAB Gambling

The NZ Racing Board provides opportunities to bet on horse racing, dog racing, and other sporting events. Council has a role in licencing TAB agencies (TAB Board Venues), where the main business carried out is providing racing-betting or sports-betting services. These are standalone or distinct venues and do not include TAB outlets or agencies that are additional activities of a bar or hotel, such as self-service TAB terminals.

Section 65E of the Racing Act 2003 requires all territorial authorities to have a Board Venues Policy.

This policy must state whether new venues may be established in the District and where they can be located.

## 2. Draft Policies

Council adopted two draft gambling policies for consultation, the first being the Class 4 Gambling Venues Policy (Attachment A), which included Council's preferred option for four key issues:

- Limiting numbers of gaming machines
- Class 4 Gambling Venue relocations
- Class 4 gambling venue locations
- Class 4 gambling venue mergers

The second policy was the TAB Venues Policy (Attachment B), which proposed that no TAB venues could be established in the District.

Two typographical changes have been made to the draft policy, to correct minor errors (correcting the spelling of totalisator and change permit to consent in section 5.2 to better reflect the Act).

### 3. Significance and Engagement

The Local Government Act 2002 requires a formal assessment of the significance of matters and decisions in this report against Council's Significance and Engagement Policy. In making this formal assessment, there is no intention to assess the importance of this item to individuals, groups, or agencies within the community. It is acknowledged that all reports have a high degree of importance to those affected by Council decisions.

The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

In terms of the Significance and Engagement Policy this decision is considered to be of medium significance because of:

- The public interest in the proposals included in the draft policy, expressed through submissions;
- The number of ratepayers, residents and visitors to the district that may be affected by the policy provisions; and
- The requirement to have undertaken a LGA special consultative procedure.

### 4. Engagement, Consultation and Communication

As part of a wider concurrent consultation package, substantial consultation was undertaken alongside the Annual Plan 2019/20.

In total, 157 submissions were received. This includes online submissions and submissions received at the Have Your Say events. The responses are explored in more detail in the rest of the report.

Interested Parties	Engagement
General Public	<p>The Special Consultative Procedure under the LGA was used, with consultation open for a month.</p> <p>Feedback was sought through the use of our online submission form, hard copy submission forms and the opportunity for spoken interaction provided through seven 'Have Your Say' events or attendance at a more formal 'hearings style' meeting.</p>

Partnership Forum	An update was provided to the Tangata whenua members of the Partnership Forum, as part of the review and a submission received.
Venues	Any venue that holds a Class 4 venue licence in the District was directly contacted regarding the consultation.
Corporate Societies	Any corporate society that holds a Class 4 venue licence in the District was directly contacted regarding the consultation, as required by the Gambling Act 2003.
New Zealand Racing Board	The New Zealand Racing Board was directly contacted, as required by the Racing Act 2003.
Organisations representing Māori	Organisations representing Māori in the District were directly contacted, as required by the Gambling Act 2003 and Racing Act 2003. This included Tauranga Moana / Te Arawa Ki Takutai Partnership Forum and iwi and hapu organisations.
Gambling health/support services	Organisations involved in addressing gambling harm were directly contacted. This includes Te Kahui Hauora Trust, the Salvation Army and the Problem Gambling Foundation

All submitters and identified interested parties will be notified of the outcome of deliberations and informed of any changes made to the policies. This will be primarily through a decision document (which will also include the decisions on the bylaws consulted on concurrently). Key stakeholders and operators will be informed of any changes to the policy immediately.

## 5. Overall Consultation Outcomes

There were no matters raised through consultation that require further options to be considered for the draft policies.

In general, the preferred options presented received the majority of community support.

The Committee is required to consider whether it wishes to adopt the draft policies, as proposed for consultation, or whether any amendments are required as a result of feedback received.

There are some matters where Council could decide to take an advocacy role, e.g. advocating to Central Government for more regulation of online gambling and greater regulation (including income redistribution) for Class 4 gaming machines. These would sit outside of Council's gambling policies.

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## 6. Summary of Comments

Submitters raised points in support of their positions and matters they wished Council to consider in making its decision. The key topics and commentary are provided below. The comments specific to the issues and options are also outlined in section 6 of this report.

### a) Gambling Related Harm – Class 4 Venues

30 submitters provided substantive feedback on gambling related harm.

Of those submitters:

- 21 generally support the policy direction, due to gambling related harm.
- 9 generally oppose the policy direction. In relation to gambling related harm, they generally state the policy direction does not reduce gambling related harm.

#### Organisations in support

The following organisations generally supported the policy direction, to combat gambling related harm:

- Bay of Plenty District Health Board
- The Salvation Army Oasis – Tauranga
- PGF (previously Problem Gambling Foundation)

Their key points are:

- Harmful gambling has far reaching consequences for the wellbeing of communities.
- Gambling related harm causes three times the harm to communities as drug-use disorders.
- Gaming machines cause more harm than any other form of gambling.
- Gambling related harm occurs to problem gamblers, but those at moderate or low risk still experience a level of harm from gambling.
- Lower income households spend proportionately more of their income on gambling, and people who are already socially and economically disadvantaged are most susceptible to gambling problems.

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### Individuals in support

18 individuals took the opportunity to comment on gambling related harm.

Their key points are:

- Gambling harms families and communities, and we don't need them.
- They contribute to the "poor" remaining "poor", as they soak up a lot of discretionary income.
- Venues attract a clientele that cause significant issues in a community such as graffiti, hooliganism, rowdy vehicles
- The focus should be on the reduction of harm, not on whether funds might flow to organisations.
- They do not help low socio-economic communities, as their income is not being properly used.

### Organisations opposed

The following organisations generally oppose the policy direction, as it does not reduce gambling harm:

- NZ Community Trust
- Gaming Machine Association of NZ
- Lion Foundation
- NZ Racing Board

Their key points are:

- A sinking lid policy assumes less machines = less gambling. There is no evidence to support this. There is no direct correlation between the number of gaming machines and problem gambling rates.
- Effective harm minimisation processes are in place at venues that allow gaming in a supervised environment, in contrast to online gambling.
- Machines are in natural decline, and harm minimisation measures have never been higher.
- Losing the ability to relocate venues could increase risk, as it doesn't allow consideration of more suitable sites (away from high deprivation areas). The location of machines is more important than the number of machines when it comes to preventing and minimising harm.

### Individuals opposed

Four individuals took the opportunity to comment on gambling related harm. Their key points are:

- If machines are removed people will just find another avenue for gambling – and may spend their money on worse things.
- Need to address the addiction itself, rather than the opportunity to gamble.

- If regulated venues are reduced, gambling will revert back to what it was prior to regulations coming in – 'under the table' through clubs, and causing more harm.

### **b) Gambling Related Harm – TAB Venues**

The Bay of Plenty District Health Board commented in support of not allowing standalone venues. They consider this as part of a strategy to minimise gambling-related harm across the spectrum.

The New Zealand Racing Board opposed the prohibition of standalone venues. They stated that TAB Board Venues provide the safest, most controlled environment to participate in gambling.

### **c) Loss of Funding – Class 4 Venues**

24 submitters provided substantive feedback on the loss of funding.

Of those submitters:

- 22 do not support the policy direction, due to concerns over the loss of funding
- 3 support the policy direction, and comment on the ethics and sustainability of class 4 gaming machines as a funding source.

### **Organisations that are concerned about loss of funding**

Several organisations submitted they do not support the overall policy direction, because of the impacts of the loss of funding. The organisations are:

- Lion Foundation
- NZ Racing Board
- NZ Community Trust
- Gaming Machine Association of New Zealand
- BOP Cricket Association
- Sport Bay of Plenty
- Maketu Coastguard
- Blue Rovers Football Club
- Tauranga City Basketball
- Tauranga Badminton Club (2003) Inc.
- Coastguard Eastern Region
- Tauranga RDA Foundation
- Mayorview Fire Brigade
- Waihi Beach Volunteer Coastguard
- Waihi Beach Lifeguard Services
- Papamoa Community Surf Rescue Base Trust
- Bay of Plenty Golf Inc.
- Gaming Machine Association of New Zealand
- The Te Puke Lawn Tennis Club Society

Key points are:

- Gaming trusts return significant funding to communities every year - \$300 million is provided in grants nationwide, and another \$50 million from gaming proceeds assists clubs that hold licences (such as RSAs, Citizens Clubs). Without that funding, many grassroots organisations would struggle or cease to operate.
- Clubs cite their own use of funds from gaming trusts and how that money supports their operations. These operations have significant community benefits. Without this funding source, services would be reduced or would end, which would have a negative impact on communities.
- Clubs are concerned there are limited other funding sources currently available as an alternative to gaming trust funding.

### **Individuals concerned about loss of funding**

Three individuals submitted on the loss of funding. Their key points are:

- Many more people will be affected by the reduced funding available (due to less gaming machines), than are affected by problem gambling.
- There does not appear to be a solution presented to the coming shortfall in funding. The not-for-profit sector is vital to our community and will be badly affected, as well as numerous sporting codes and amateur clubs.

### **Organisations concerned with ethics and sustainability of using gaming funding**

Three organisations are concerned the use of gaming funding is not ethical or sustainable. These organisations are:

- Bay of Plenty District Health Board
- PGF
- Salvation Army Oasis Tauranga.

Key points from these submitters are:

- Only 42% approximately of revenue is returned via grants, and a high proportion leaves the Bay of Plenty region as taxes and society / venue costs.
- While the purpose of gaming trusts is to distribute money to the community, the purpose of gambling is not to raise money for the community, and it should not be perceived as such.
- While gambling generates significant funding for community purposes, it comes with a very high human cost. Research shows that income is effectively redistributed away from low income communities.
- Some consider gambling to be a 'painless voluntary donation'. However it exploits those on low incomes with false hope and encourages financial risk taking. Those playing may also, at the time, be affected by drugs, alcohol,

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or mental illness. So, for a problem gambler their contribution is not a voluntary or painless one.

- Gaming machines account for only 10.2% of charitable giving in New Zealand.
- With a sinking lid, the decline in machines happens gradually, so the policy will not have an immediate or significant impact on community funding.
- There is no New Zealand research to support that people move from pokies to online gaming.

#### **d) Loss of Funding – TAB Venues**

The NZ Racing Board submitted that they support local and national not-for-profits, charities and volunteer organisations. There are no other income streams with this type of money to donate to critical service providers.

#### **e) Entertainment**

Four organisations submitted that gaming is a valid entertainment choice.

Key points are:

- Gambling is a very popular form of entertainment, with the vast majority gambling without issue.
- Research has found that socialising, enjoyment and fun are directly related to communal activities such as housie and community raffles. Based on these findings, there is a clear view that people genuinely enjoy participating in gambling activities.
- Gambling is a lawful entertainment activity, and individuals remain free to make their own decisions as to how they spend their money.

#### **f) Online Options – Class 4 Venues**

Nine submitters provided comments regarding online gaming. Six of these submitters (NZCT, Gaming Machine Association of New Zealand, Lion Foundation, New Zealand Racing Board, Tauranga City Basketball and an individual) felt that the overall policy direction would encourage increased online gambling.

Two submitters (PGF and Salvation Army Oasis – Tauranga) stated that there was no evidence to show a link between gamblers moving between these two forms of gambling and that the majority of those receiving counselling from problem gambling services are doing so because of their addiction to Class 4 gambling machines.

Council cannot control online gambling and this is a conversation better held at a national level, as per comments made by two submitters.



**g) Online Options – TAB Venues**

Three submitters provided feedback on online gaming. All three were generally supportive of the overall policy direction.

Their key points are that people can gamble in their own homes online including betting on sports, so there is no need for standalone venues.

**h) Banning machines**

Three submitters seek a total ban on gaming machines, due to the significant harm they cause to New Zealand families and communities. (Note: this is beyond Council's legislative powers).

**7. Issues and Options Assessment**

The below considers the major issues and options raised through the review and the specific community feedback received regarding the proposed changes.

**Issue 1 - Limiting numbers of gaming machines**

Council's preferred option in the draft Policy was to introduce a 'sinking lid' on the number of class 4 gaming machines in the District. This would mean no new machines or venues would be allowed in the District, and the number of machines would be expected to decrease over time.

**Community feedback:**

Along with the preferred option, three other options were given. Submitters chose their preferred option. The number of responses and percentage of total received on each option are presented in Table One below:

**Table 1**

Issue One	No of responses	%
Option 1: Introduce a sinking lid, with no new machines or venues allowed in the District, meaning there can be no new venues or machines, and the number of machines may reduce over time.	127	80%
Option 2: Reduce the cap on machine numbers to the current number of machines (154), meaning there would only be new machines/venues if an existing closed.	7	4%
Option 3: Link the cap on machines to population numbers, meaning as the population grows more machines would be allowed.	6	4%
Option 4: Keep the cap at 191 machines, meaning that there is capacity for new venues and up to 37 new machines.	10	6%

Option 5: Other (please comment)	8	5%
<b>Total</b>	<b>158</b>	<b>99% (numbers rounded)</b>

Overall 80% of responses support Council's preferred option.

Of the 8 "other" responses received (Option 5):

- 3 responses are not supportive of restrictions.
- One supports Option 3 (a cap on machines to population numbers), but also thinks all applications should be assessed on their merits.
- 2 want to see all pokies banned.
- 2 agree with a sinking lid, but only to a certain point i.e. introduce a sinking lid to a set reduced limit, and don't reduce beyond that.

#### Comments:

Comments received that were generally in support or opposed related to gambling harm, loss of funding and gambling as a form of entertainment. These comments are set out in more detail in Section 2 – Summary of Comments.

#### Options:

For completeness, below are the options presented for Issue 1, including advantages and disadvantages and the costs.

<b>Option A (Preferred option in draft policy)</b> <b>THAT a 'sinking lid' be introduced, whereby no new machines or venues are allowed.</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Provides certainty to the community and businesses.</li> <li>• Prevents any increase in potential gambling harm by actively seeking a decrease in machines or venues.</li> <li>• Aligns with the majority of feedback (80%) from consultation.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• Does not allow for new venues or machines to service a growing population.</li> <li>• May decrease the amount of community funding available to community organisations, over time.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None.

<b>Option B</b>	
<b>THAT the cap be reduced to the current number of machines (154)</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Prevents any increase in potential gambling harm by preventing any increase in machines or venues.</li> <li>• New venues may establish, but only when other venues close.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• Does not allow for new venues or machines to service a growing population.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant.
<b>Option C</b>	
<b>THAT the cap be linked to population.</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Allows for new machines to service a growing population.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• Does not provide a level of certainty to the community or applicants.</li> <li>• Venue and machine numbers may increase again, with potential increased risks of gambling harm.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant.
<b>Option D</b>	
<b>THAT the cap be retained at 191 machines (Status Quo)</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Consistent with the current policy.</li> <li>• Allows for new venues and machines to be established and potentially increased funding available to community organisations.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• Venue and machine numbers may increase again, with potential increased risks of gambling harm.</li> </ul>

<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant.
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## Issue 2 - Class 4 Gambling Venue relocations

Council's preferred option was to not give consent for a venue to move locations within the district.

### Community feedback:

Along with the preferred option, three other options were given. Submitters chose their preferred option. The number of responses and percentage of total received on each option are presented in Table 2 below:

**Table 2:**

Option	No.	%
Option 1: Council will not allow any new venue to move locations within the District	102	66%
Option 2: Council will not allow any venue to move locations within the district, except in exceptional circumstances (fire damage, flood, land acquired for road construction over the site etc.)	13	8%
Option 3: Council will only allow venues to move location within the District, if they are moving from an area at high risk of gambling harm to an area of lower risk.	10	6%
Option 4: Council will allow any venue to move locations within the District	23	15%
Option 5: Other (please comment)	7	5%
<b>Total</b>	<b>155</b>	<b>100%</b>

Overall, 155 responses were received. 66% of responses support Council's preferred option.

Of the seven "other" responses received (Option 5):

- Two want even tighter restrictions (no venues at all).
- Two do not want restrictions – one states that if relocations are not permitted and landlords know this, they will use this to put rents up and put the venue out of business.
- One states all applications should be assessed on their merits.

- One suggests relocations should be permitted to more suitable areas.
- One supports the policy of no relocations, except in exceptional circumstances if the venue is at risk (provided they do not relocate to low socio-economic areas).

**Comments:**

Nine submitters provided substantive comments on relocations of venues.

Two submitters commented in support of the preferred option – one organisation, and one individual. The organisation was Salvation Army Oasis Tauranga.

Their key points are:

- Allowing relocations means venues could move into vulnerable communities where the operators believe they may achieve higher turnover.
- Gambling machines are harmful to communities and hurt most those who can least afford it.

Seven submitters commented opposing Council’s preferred option – Lion Foundation, NZ Racing Board, Gaming Machine Association of NZ, Te Puke Lawn Tennis Club, NZ Community Trust, and two individuals.

Their key points are:

- Enabling venue relocations is reasonable, in particular if a venue is damaged.
- Enabling relocations prevents landlords from demanding unreasonable rentals.
- The current policy allows Council to use its discretion. It can still refuse a relocation where it is not suitable.
- Enabling relocations may allow venues to move to more suitable locations with less risk of harm.

**Options:**

For completeness, below are the options presented for Issue 2, including advantages and disadvantages and the costs.

<b>Option A (Preferred option in draft policy)</b>	
<b>THAT Council will not give consent for a venue to move locations within the District</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Provides certainty to the community and businesses.</li> <li>• Prevents any increase in potential gambling harm by actively seeking a decrease in machines or venues.</li> <li>• Aligns with the majority of feedback (66%) from consultation.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• Does not allow venues to move their businesses without losing gaming machines.</li> <li>• Does not allow for relocations where the need to move is forced upon a venue (e.g. Fire damaged).</li> </ul>

	<ul style="list-style-type: none"> <li>• May decrease the amount of community funding available to community organisations, over time.</li> <li>• Does not encourage venues to move to areas where there is less risk of gambling harm.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None.
<b>Option B</b>	
<b>THAT Council will only give consent for a venue to move locations within the District where there is exceptional circumstances and subject to provisions regarding location as included in the policy</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Prevents increase in potential gambling harm by generally seeking a decrease in machines or venues.</li> <li>• May allow businesses to continue with their full enterprise, if faced by exceptional circumstances (e.g. fire damaged, flooding, Public Works Act purchases).</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• In most cases, it does not allow venues to move their businesses without losing gaming machines.</li> <li>• May decrease the amount of community funding available to community organisations, over time.</li> <li>• Does not encourage venues to move to areas where there is less risk of gambling harm.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant
<b>Option C</b>	
<b>THAT relocations would only be allowed where a venue moves from an area with high neighbourhood deprivation (NZ deprivation index score of 8, 9 or 10) to an area with low neighbourhood deprivation (NZ deprivation index score of 1, 2, 3 or 4)</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Looks to address the concentration of gaming machines and venues in communities with high deprivation which are at most risk of gambling harm.</li> <li>• Allows businesses to relocate with all aspects of their enterprise.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• Would not actively contribute towards the reduction of</li> </ul>

	<p>machines and venues and consequently potential gambling harm across the district.</p> <ul style="list-style-type: none"> <li>Significantly limits the areas where a venue can relocate to (under the latest data, NZDep2013 – the areas would be Minden, Omokoroa, Kaimai, Upper Papamoa).</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant.
<b>Option D</b>	
<b>THAT relocations be allowed subject to provisions regarding location as included in the current policy (status quo)</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>Consistent with the current policy.</li> <li>Allows businesses to relocate with all aspects of their enterprise.</li> <li>Allows venues to move to 'better' premises.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>Would not actively contribute towards the reduction of machines and venues and consequently potential gambling harm across the district.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant.

### Issue 3 - Class 4 Gambling Locations

Council's preferred option for Issue 2 (no relocations) meant this part of the existing policy was no longer relevant. The preferred option (included in the draft policy) was therefore to remove this section of the Policy.

For clarity the locations provision in the policy set where Council would approve a venue to locate or relocate to. There is no ability for community input on a case by case basis.

#### Community Feedback:

Along with the preferred option, two other options were given. Submitters chose their preferred option. The number of responses and percentage of total received on each option are presented in Table Three below:

**Table Three:**

Option	No.	%
Option A: I don't agree that any new venues or relocated venues should be enabled (NB Option 3 on the submission forms)	99	76
Option B: Retain the current approach (NB Option 1 on the submission forms)	17	13
Option C: Amend to become more prescriptive and restrictive (NB Option 2 on the submission forms)	13	10
Option 4: Other (please comment)	2	2
<b>Total</b>	<b>131</b>	<b>100</b>

Overall, 76% of responses supported Option 3 – which means that this part of the existing policy is no longer relevant and can be removed.

Of the two 'other' responses received:

- One does not support restrictions on gambling machines or venues.
- One states all applications should be assessed on their merits.

#### Options:

For completeness, below are the options presented for Issue 3, including advantages and disadvantages and the costs.

<b>Option A (Preferred option in draft policy)</b>	
<b>THAT this section be removed as unnecessary, due to the overall Policy direction</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	Should the Policy not allow any new venues, machines or relocations, then this section of the policy becomes redundant and should be removed. Advantages <ul style="list-style-type: none"> <li>• Aligns with the majority of feedback (76%) from consultation</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None.
<b>Option B</b>	
<b>THAT the current approach be retained</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	Advantages <ul style="list-style-type: none"> <li>• Allows the Council some flexibility to consider impacts on community facilities.</li> </ul> Disadvantages <ul style="list-style-type: none"> <li>• Does not directly address concerns around the</li> </ul>



	<p>increased level of harm that may be posed by venues to high neighbourhood deprivation communities.</p> <ul style="list-style-type: none"> <li>• Does not provide any specific distances and is open for interpretation.</li> <li>• Does not address density of venues/machines.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant.
<p><b>Option C</b></p> <p><b>THAT the approach to location become more prescriptive and restrictive, through preventing establishment of Class 4 gambling venues within 100m of 'community facilities' and preventing the establishment of Class 4 gambling venues in communities with high neighbourhood deprivation.</b></p>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Clear restrictions on distances from other venues could reduce density of venues and potentially reduce the risk of harm.</li> <li>• Clear restrictions on distances from community facilities could provide certainty for the community and applicants.</li> <li>• Clear consideration of the higher risk areas in the district could prevent those most at risk being exposed to increased gambling opportunities and distribute venues/machines more equally across the community.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• Increased expectation on the applicant to demonstrate these provisions have been met.</li> <li>• Significantly limits the areas where a venue can locate to (under the latest data, NZDep2013 – the areas would be Minden, Omokoroa, Kaimai, Upper Papamoa).</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant.

#### Issue 4- Class 4 Gambling Venues mergers

Council's preferred option (included in the Draft Policy) was to not allow clubs that hold Class 4 gambling licences to continue hosting gaming machines, if they choose to merge.

**Community Feedback:**

Along with the preferred option, one other option was given. Submitters chose their preferred option. The number of responses and percentage of total received on each option are presented in Table Four below:

**Table Four:**

Option	No.	%
Option 1: That clubs that decide to merge will no longer be allowed to have gaming machines	93	69
Option 2: Where two or more clubs wish to merge, and they previously had gaming machines, then the new merged club can retain the same number of machines as the clubs previously had, up to a maximum of 30 machines	38	28
Option 3: Other (please comment)	3	2
<b>Total</b>	<b>134</b>	<b>100</b>

Overall, 69% of responses are in support of Option 1.

Of the three 'other' responses received:

- One does not support restrictions on venues or machines.
- One states that it depends if it is a phased out programme.
- One seeks a ban on all machines.

**Comments:**

The Salvation Army Oasis – Tauranga made a more substantive point regarding mergers. They supported the proposed approach and saw it as a consistent and positive step to reduce gambling harm. The organisation raised that should mergers be allowed then there would be a risk that this could create a casino-like environment.

**Options:**

For completeness, below are the options presented for Issue 3, including advantages and disadvantages and the costs.

<b>Option A (Preferred option in draft policy)</b>	
<b>THAT any two or more clubs that currently hold Class 4 Gambling licences will not be allowed to continue hosting gaming machines if they choose to merge</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Provides certainty to the community and Clubs.</li> <li>• Prevents any increase in potential gambling harm by actively seeking a decrease in machines or venues.</li> <li>• Aligns with the majority of feedback (69%) from consultation.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• Does not allow clubs to merge without losing gaming machines.</li> </ul>

<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None.
<b>Option B</b>	
<b>THAT merged clubs may retain the same number of machines as the two clubs previously had, up to a maximum of 30 machines (Status Quo)</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Provides certainty to the community and Clubs.</li> <li>• Allows clubs to retain an aspect of their income.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• Does not prevent any increase in potential gambling harm by actively seeking a decrease in machines or venues.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant.

## Issue 5 - TAB Venues Policy Feedback

Council's preferred option (included in the Draft TAB Venues Policy) was to not allow stand-alone TAB venues.

### Community Feedback:

Along with the preferred option, one other option was given. Submitters chose their preferred option. The number of responses and percentage of total received on each option are presented in Table Five below:

**Table Five:**

Option	No.	%
Option 1: No stand-alone TAB venues will be allowed in the District	104	83
Option 2: TAB stand-alone venues are allowed in the District, subject to location provisions	20	16

Option 3: Other (please comment)	2	2
Total	126	100

Overall, 83% of responses support Option 1.

Two 'other' responses were received, both not supportive of restrictions.

### Comments:

Two submitters provided substantive comments on the TAB Venues Policy. The Salvation Army Oasis – Tauranga, felt that prohibiting stand-alone TAB venues would help regulate the impacts of gambling, and control the growth of gambling and minimisation of harm caused by gambling. The New Zealand Racing Board requested that the current policy be retained.

Please also see the comments made regarding TAB related gambling harm, funding, and online options in section 2 above.

### Options:

For completeness, below are the options presented for Issue 5, including advantages and disadvantages and the costs.

<b>Option A (Preferred option in draft policy)</b> <b>THAT no Board Venues be allowed in the District</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	<p>Advantages</p> <ul style="list-style-type: none"> <li>• Provides certainty to the community and business.</li> <li>• Prevents any increase in potential gambling harm by preventing the establishment of venues.</li> <li>• TAB activities may still continue in other venues (pubs/hotels, or via its app)</li> <li>• Aligns with the majority of feedback (83%) from consultation.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• No TAB standalone venues would be allowed in the district.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None.

<b>Option B</b>	
<b>THAT new Board Venues be allowed in the District subject to provisions regarding location as included in the policy (status quo)</b>	
<b>Assessment of option for advantages and disadvantages taking a sustainable approach</b>	Advantages <ul style="list-style-type: none"> <li>• Consistency with the current approach.</li> </ul> Disadvantages <ul style="list-style-type: none"> <li>• No applications received, so somewhat untested.</li> </ul>
<b>Costs (including present and future costs, direct, indirect and contingent costs) and cost effectiveness for households and businesses</b>	None – costs of applications are borne by the applicant.

## 8. Next Steps

Following Committee resolutions, the finalised policies will be made publicly available online and will come into effect as of 1 July 2019.

Submitters and identified interested parties will be informed of the changes and the new policies. Copies of the policies are also required to be provided to the Secretary for Internal Affairs.

The policies will next be due for review July 2022.

## 9. Statutory Compliance

The recommendations of this report ensure Council complies with the Local Government Act 2002, Gambling Act 2003 and Racing Act 2003.

The draft policies have been subject to a Special Consultative Procedure to ensure that Council is complying with its obligations to seek community views on proposals of significance.

As required by the Gambling Act 2003 and Racing Act 2003, the New Zealand Racing Board, each corporate society that holds a class 4 venue licence for a venue in the district and organisations representing Māori in the district, have been directly contacted.

**10. Funding/Budget Implications**

<b>Budget Funding Information</b>	<b>Relevant Detail</b>
<b>Policy budget</b>	Ongoing budget for policy reviews. This review is managed within existing staffing and budgets.
<b>Operational implementation</b>	Met within current costs. Cost of applications are met by the applicant through the relevant fees.

**11. Attachments**

- A. Draft Class 4 Gambling Venues Policy – track-changed
- B. Draft TAB Venues Policy – track-changed
- C. Class 4 Gambling Venues Policy and TAB Venues Policy – Summary of Submissions
- D. Class 4 Gambling Venues Policy and TAB Venues Policy – Submissions Pack

# Council Policy

## Class 4 Gambling Venues Policy

### 1. Relevant Legislation

Gambling Act 2003  
Local Government Act 2002

ATTACHMENT



### 2. Definitions

**Class 4 Gambling is:** defined in the Gambling Act 2003.

For clarity this means:

Class 4 gambling is gambling that satisfies the following criteria:

(a) the net proceeds from the gambling are applied to, or distributed for, authorised purposes; and

(b) either—

(i) no commission is paid to or received by a person for conducting the gambling; or

(ii) the only commission that is paid to or received by a person for conducting the gambling is a commission payment to a venue operator that complies with regulations made under section 371(1)(dd); and

(c) there are game rules for the gambling; and

(d) the gambling, and the conduct of the gambling, satisfies relevant game rules; and

(e) either—

(i) the Secretary has categorised the gambling as class 4 gambling and not as another class of gambling; or

(ii) the gambling utilises or involves a gaming machine. (a) gambling that is not gambling of another class and that satisfies the following criteria:

(i) — the net proceeds from the gambling are applied to or distributed for authorised purposes;

(ii) — no commission is paid to, or received by, a person for conducting the gambling;

(iii) — the gambling satisfies relevant game rules; and

(b) — gambling that utilises or involves a gaming machine; or

(c) — gambling categorised by the Secretary as class 4 gambling

**Class 4 Gambling Venue** means a place used to conduct Class 4 Gambling.

**Club** means a voluntary association of persons combined for a purpose other than personal gain, as defined in the Gambling Act 2003.

**Corporate Society** means a society that is:

### Class 4 Gambling Venues Policy

- (a) incorporated under the Incorporated Societies Act 1908; or
- (b) incorporated as a board under the Charitable Trusts Act 1957; or
- (c) a company incorporated under the Companies Act 1993 that—
  - (i) does not have the capacity or power to make a profit; and
  - (ii) is incorporated and conducted solely for authorised purposes; or
- (d) a working men's club registered under the Friendly Societies and Credit Unions Act 1982

**Council** means the Western Bay of Plenty District Council.

**District** means the area administered by the Western Bay of Plenty District Council.

**Existing Venue** means a venue operating [Class 4](#) Gaming Machines as of [January-June 2013-2019](#)

### Gambling

- ~~(a) means paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance; and~~
- ~~(b) includes a sales promotion scheme; and~~
- ~~(c) includes bookmaking; and~~
- ~~(d) includes betting, paying, or staking consideration on the outcome of a sporting event; but~~
- ~~(e) does not include an act, behaviour, or transaction that is declared not to be gambling by regulations made under section 368.~~

### Gaming Machine:

- ~~(a) is defined in the Gambling Act 2003. For clarity it means a device, whether totally or partly mechanically or electronically operated, that is adapted or designed and constructed for use in gambling. It is also commonly known as a 'pokie.'; and~~
- ~~(b) includes a device for gambling that is conducted partly by a machine and partly by other means; and~~
- ~~(c) includes a device, or type of device, that is declared to be a gaming machine by regulations made under section 368; but~~
- ~~(d) does not include:
 
  - ~~(i) a device used only to draw a lottery; or~~
  - ~~(ii) a random selection device used in a game of housie; or~~~~



### Class 4 Gambling Venues Policy

- ~~(iii) a device used only to dispense tickets that is not capable of being used to decide the outcome of gambling; or~~
- ~~(iv) a communication device that is used both to dispense tickets in and draw a lottery that is a sales promotion scheme; and~~
- ~~(e) does not include a device, or type of device, that is declared not to be a gaming machine by regulations made under section 368; and~~
- ~~(f) does not include a device operated by the Lotteries Commission.~~

#### Gambling Harm:

- (a) means harm or distress of any kind arising from, or caused or exacerbated by, a person's gambling; and
- (b) includes personal, social, or economic harm suffered—
  - (i) by the person; or
  - (ii) the person's spouse, civil union partner, de facto partner, family, whanau, or wider community; or
  - (iii) in the workplace; or
  - (iv) by society at large

### 3. Policy Objectives

- 3.1 To ~~support meet determine~~ the purpose and intent of Council's role under the Gambling Act 2003.
- 3.2 To ensure the Council and its communities has influence over the provision of Class 4 Gambling Venues and Gaming Machines in the District.
- 3.3 To contribute to the minimisation of Gambling Harm caused by Class 4 Gambling Venues in the District.
- 3.4 To ~~prevent provide for a decrease any increase~~ in the numbers of **Gaming Machines within Class 4 Gambling Venues and Gaming Machines** in the District ~~by imposing a cap of 191~~.
- ~~3.5 To enable people who wish to participate in Class 4 Gambling to do so.~~
- ~~3.6 To provide opportunities to generate funds for community benefit.~~
- ~~3.7 To ensure that actual and reasonable costs relating to Class 4 Gambling Venue consent applications are paid by the applicant(s).~~

### 4. General Approach

## Class 4 Gambling Venues Policy

- 4.1 The Gambling Act 2003 requires the Council to have a policy on Class 4 Gambling Venues for its District. The Council is required to review its policy every three years.
- 4.2 Section 101(3) of the Gambling Act 2003 requires that the gambling policy must specify whether or not new Class 4 Gambling Venues may be established in the District, and if so, where they may be located. The policy may also specify any restrictions on the maximum number of Gaming Machines that may operate at a Class 4 Gambling Venue.
- 4.3 In determining its policy on whether Class 4 Gambling Venues may be established in the District, where any Class 4 Gambling Venue may be located, and any restrictions on the maximum number of Gaming Machines that may be operated at Class 4 Gambling Venues, the Council may have regard to any relevant matters, including:
- (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 Class 4 Gambling Venue;
  - (d) the cumulate effects of additional opportunities for Gambling in the District;
  - (e) how close any Class 4 Gambling Venue should be permitted to be to any other venue;
  - (f) what the Primary Activity at any Class 4 Gambling Venue should be.
- 4.4 A Council consent for a Class 4 Gambling Venue is not revocable once issued and cannot lapse or expire unless there is a period of six months or more where a Class 4 Gambling Venue licence is not held for the venue. Further, Council has no retrospective powers with regards to any consented Class 4 Gambling venues and cannot impose conditions subsequently on any venue which has an existing licence.
- 4.5 Where Council has concerns about the operation of existing Class 4 Gambling Venues these will be reported to the Department of Internal Affairs. Council inspectors do not have enforcement powers over venues in terms of their gambling activities.

## 5. Policy Criteria and Conditions

### 5.1 Who the Policy applies to

This policy applies to Class 4 Gambling Venues.

### 5.2 Gambling venues

No new Class 4 Gambling Venues are permitted in the District from the adoption of this Policy ~~provided that any new Class 4 Gambling Venue does not exceed the cap on Gaming Machines imposed at clause 5.6 of this Policy.~~

# Council Policy

## Class 4 Gambling Venues Policy

### ~~5.3 Location of Class 4 Gambling Venues~~

~~Class 4 Gambling Venues will not be permitted where the Council believes that the amenity of the area will be adversely affected or where there is likely to be an adverse effect on any community facilities including kindergartens, early childhood centres, schools and places of worship.~~

### 5.45.3 Relocation of existing Class 4 gambling venues

Council will not grant consent for~~permits~~ the relocation of any Class 4 Gambling Venues within the District.~~subject to meeting the location requirements outlined in clause 5.3.~~

### 5.55.4 Primary Activity

The Primary Activity shall not be Gambling or an activity associated with family or children's activities.

Class 4 Gambling Venues are not required to hold a liquor on-licence or club licence however they are expected to ensure that the possibility of people under the age of 18 years gaining access to the venue is minimal.

### 5.65.5 Gaming Machine Numbers

Consent will not be granted for any additional Gaming Machines to be operated in new Class 4 Gambling Venues in the District~~if the application would exceed the cap of 191 Gaming Machines in the District.~~

~~Class 4 Gambling Venues with licenses granted before 17 October 2001 shall be allowed a maximum of 18 Gaming Machines. Class 4 Gambling Venues with licenses granted after 17 October 2001 shall be allowed a maximum of 9 Gaming Machines.~~

### 5.75.6 Merger of clubs with Class 4 Gambling Venue licenses

Where Clubs holding a Class 4 Gambling Venue licence elect to merge, they will no longer be allowed to operate gaming machines.~~the maximum number of Gaming Machines allowed will be thirty (30), or the sum of the Gaming Machines operating in the Clubs prior to the merger, whichever is the lesser.~~

~~Council will not provide consent under sections 95(1)(f) or 96(1)(e) of the Gambling Act 2003 to any application by Clubs with Class 4 Gambling Venue licenses seeking Ministerial discretion to increase the number of Gaming Machines permitted at a Class 4 Gambling Venue beyond the number that would otherwise have been permitted under sections 92, 93, or 94 of that Act.~~

# Council Policy

## Class 4 Gambling Venues Policy

### ~~6. Policy Procedures~~

~~6.1 Applications for a Class 4 Gambling Venue consent must be made on the approved form (available from Council) and must provide:~~

- ~~(i) A site plan covering both Gambling and other activities proposed for the Class 4 Gambling Venue~~
- ~~(ii) The name and contact details of the applicant~~
- ~~(iii) The street address of the Class 4 Gambling Venue.~~
- ~~(iv) Evidence of the distance to the nearest residential and community facility zones, and to the nearest school, early childhood centre, kindergarten, place of worship, and to other gambling venues;~~
- ~~(v) A copy of the current liquor on licence or club licence or where no on licence or club licence is sought a description of how the Class 4 Gambling Venue will prevent people under the age of 18 years gaining access to the venue.~~

### ~~6.2 Gambling Venue Consent Fees~~

~~Council will set fees and charges through its usual fees and charges process appropriate to cover the costs associated with processing a Class 4 Gambling Venue consent application and to contribute to the cost of the review of the Class 4 Gambling Venues Policy and any associated assessment of the impact of Gambling in the District.~~

### ~~7. Associated Procedures~~

~~Liquor licensing procedures.~~

### 8.6. Review

In addition to the statutory requirements to review the Policy every three years, Council may elect to review this Policy at any time in order to respond to monitoring information and/or community feedback on the operation and level of activity of Class 4 Gambling Venues in the District.

<b>Group</b>	Policy, Planning and <a href="#">Community Regulatory Services</a>	<b>Contact (3<sup>rd</sup> Tier Manager)</b>	Policy <del>and</del> Planning and Community Manager
<b>Supersedes</b>	Class 4 <del>Gambling Venues and Board Venues</del> Policy 2013		
<b>Creation Date</b>	<del>13 May 2013</del> <a href="#">March 2004</a>	<b>Resolution Reference</b>	<del>STP29.4.1-4.4 and STP29.6</del>
<b>Last Review Date</b>	<del>October 2012</del> <a href="#">May 2013</a>	<b>Resolution Reference</b>	
<b>Review Cycle</b>	Three yearly/legislative revisions, or as required	<b>Date</b>	<del>May 2016</del> <a href="#">XX XX 2022</a>
<b>Authorised by</b>	<del>Strategy and Policy Committee</del> <a href="#">Policy Committee</a>	<b>Date</b>	<del>9 May 2013</del> <a href="#">XX XX 2019</a>

# Council Policy

## TAB Venues Policy

### 1. Relevant Legislation

Racing Act 2003  
~~Gambling Act 2003~~  
 Local Government Act 2002

ATTACHMENT

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### 2. Definitions

**Board** means the New Zealand Racing Board established under section 7 of the Racing Act 2003.

#### ~~Class 4 Gambling is~~

~~defined in the Gambling Act 2003. For clarity this means:~~

~~class 4 gambling is gambling that satisfies the following criteria:~~

~~(a) the net proceeds from the gambling are applied to, or distributed for, authorised purposes; and~~

~~(b) either—~~

~~(i) no commission is paid to or received by a person for conducting the gambling; or~~

~~(ii) the only commission that is paid to or received by a person for conducting the gambling is a commission payment to a venue operator that complies with regulations made under section 371(1)(dd); and~~

~~(c) there are game rules for the gambling; and~~

~~(d) the gambling, and the conduct of the gambling, satisfies relevant game rules; and~~

~~(e) either—~~

~~(i) the Secretary has categorised the gambling as class 4 gambling and not as another class of gambling; or~~

~~(ii) the gambling utilises or involves a gaming machine. †~~

~~(a)—gambling that is not gambling of another class and that satisfies the following criteria:~~

~~(i)—the net proceeds from the gambling are applied to or distributed for authorised purposes;~~

~~(ii)—no commission is paid to, or received by, a person for conducting the gambling;~~

~~(iii)—the gambling satisfies relevant game rules; and~~

~~(b)—gambling that utilises or involves a gaming machine; or~~

~~(c)—gambling categorised by the Secretary as class 4 gambling~~

**Existing Venue** means a ~~TAB v~~venue operating ~~gaming machines~~ as of [January-June 20139](#)

#### Gambling

### TAB Venues Policy

- ~~(a) means paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance; and~~
- ~~(b) includes a sales promotion scheme; and~~
- ~~(c) includes bookmaking; and~~
- ~~(d) includes betting, paying, or staking consideration on the outcome of a sporting event; but~~
- ~~(e) does not include an act, behaviour, or transaction that is declared not to be gambling by regulations made under section 368.~~

~~**Gaming Machine** is defined in the Gambling Act 2003. For clarity it means a device, whether totally or partly mechanically or electronically operated, that is adapted or designed and constructed for use in gambling. It is also commonly known as a 'pokie'.~~

- ~~(a) means a device, whether totally or partly mechanically or electronically operated, that is adapted or designed and constructed for use in gambling; and~~
- ~~(b) includes a device for gambling that is conducted partly by a machine and partly by other means; and~~
- ~~(c) includes a device, or type of device, that is declared to be a gaming machine by regulations made under section 368; but~~
- ~~(d) does not include:
 
  - ~~(i) a device used only to draw a lottery; or~~
  - ~~(ii) a random selection device used in a game of housie; or~~
  - ~~(iii) a device used only to dispense tickets that is not capable of being used to decide the outcome of gambling; or~~
  - ~~(iv) a communication device that is used both to dispense tickets in and draw a lottery that is a sales promotion scheme; and~~~~
- ~~(e) does not include a device, or type of device, that is declared not to be a gaming machine by regulations made under section 368; and~~
- ~~(f) does not include a device operated by the Lotteries Commission.~~

### Gambling Harm:

- (a) means harm or distress of any kind arising from, or caused or exacerbated by, a person's gambling; and
- (b) includes personal, social, or economic harm suffered—
  - (i) by the person; or
  - (ii) the person's spouse, civil union partner, de facto partner, family, whanau, or wider community; or
  - (iii) in the workplace; or
  - (iv) by society at large

**"TAB"** means Totalisator Agency Board

# Council Policy



## TAB Venues Policy

**Board-TAB 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 the Racing Act 2003. Note: this refers to a stand alone TAB which is not part of another business e.g. pub.

### 3. Policy Objectives

**3.1** To ~~support the purpose and intent of~~ meet/determine Council's role under the Racing Act 2003.

**3.2** To ensure the Council and its communities has influence over the provision of stand-alone TAB ~~'s and Class 4 Gambling~~ Venues in the District.

**3.3** To control the growth of gambling in the District, ~~while providing for the availability of racing and sports betting within the District.~~

~~**3.4** To ensure that actual and reasonable costs relating to venue consent applications for stand-alone TAB's are paid by the applicant(s).~~

### 4. General Approach

**4.1** The Racing Act 2003 requires the Council to have a policy on TAB Venues for its district. The Council is required to review its policy every three years.

**4.2** Section 65D of the Racing Act 2003 requires that the TAB Venue Policy must specify whether or not new TAB Venues may be established in the District, and if so, where they may be located.

**4.3** In determining its policy on whether TAB Venues may be established in the District and where any TAB venue may be located, the Council may have regard to any relevant matters, including:

- (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 cumulate effects of additional opportunities for gambling in the district.

### 5. Policy Criteria and Conditions

#### 5.1 Who the policy applies to

This policy applies to stand-alone TAB Venues. It does not apply to TAB facilities in premises not owned or leased by the TAB (e.g. hotels, bars and clubs).

#### 5.2 TAB Venues

## TAB Venues Policy

Council ~~will not permits~~consent to the establishment of TAB Venues in the Western Bay of Plenty District, ~~subject to the requirements of this policy.~~

### ~~5.3~~ — ~~Location of TAB Venues~~

~~TAB Venues will not be permitted anywhere in the District where the Council believes that the amenity of the area will be adversely affected or where there is likely to be an adverse effect on any community facilities including kindergartens, early childhood centres, schools and places of worship.~~

### ~~5.4~~ — ~~Relocation of Existing TAB Venues~~

~~Council permits the relocation of TAB Venues subject to meeting the location requirements outlined in clause 5.3.~~

### ~~5.5~~ — ~~Primary Activity~~

~~The Primary Activity of a TAB Venue shall be racing betting, or sports betting.~~

### ~~5.6~~ — ~~Gaming Machine Numbers~~

~~Consent will not be granted for new Class 4 Gambling Venues if the total number of Gaming Machines in the District exceeds the cap of 191 as set out in clause 5.6 of the Class 4 Gambling Venues Policy.~~

~~TAB's with licenses granted after 17 October 2001 shall be allowed a maximum of 9 Gaming Machines.~~

## ~~6~~ — ~~Policy Procedures~~

~~6.1~~ — ~~Applications for consent must be made on the approved form (available from Council) and must provide:~~

- ~~(i) — A site plan covering both gambling and any other activities proposed for the TAB Venue~~
- ~~(ii) — The name and contact details of the applicant~~
- ~~(iii) — The street address of the TAB Venue.~~
- ~~(iv) — Evidence of the distance to the nearest residential and community facility zones, and to the nearest school, early childhood centre, kindergarten, place of worship, and to other gambling venues;~~
- ~~(v) — The applicant must provide a description of how the TAB Venue will prevent people under the age of 18 years gaining access to the venue.~~

### ~~6.2~~ — ~~TAB Venue Consent Fees~~

~~Council will set fees and charges through its usual fees and charges process appropriate to cover the costs associated with processing a TAB Venue consent applications and to contribute to the cost of the review of the TAB Venues Policy and any associated assessment of the impact of Gambling in the District.~~



# Council Policy

## TAB Venues Policy

### ~~7. Review~~

~~In addition to the statutory requirements to review the Policy every three years, Council may elect to review this Policy at any time in order to respond to monitoring information and/or community feedback on the operation and level of activity of TAB Venues in the District.~~

<b>Group</b>	Policy, Planning and <del>Community</del> Regulatory Services	<b>Contact (3<sup>rd</sup> Tier Manager)</b>	Policy <del>and</del> , Planning and <del>Community</del> Manager
<b>Supersedes</b>	<del>Class 4 Venues and Board</del> TAB Venues Policy 2013		
<b>Creation Date</b>	<del>13 May 2013</del> March 2004	<b>Resolution Reference</b>	STP29.4.1-4.4 and STP29.6
<b>Last Review Date</b>	<del>October 2012</del> May 2013	<b>Resolution Reference</b>	
<b>Review Cycle</b>	Three yearly/legislative revisions, or as required	<b>Date</b>	<del>May 2016</del> XX XX 2022
<b>Authorised by</b>	<del>Strategy and Policy Committee</del> Policy Committee	<b>Date</b>	<del>9 May 2013</del> XX XX 2019

## Western Bay of Plenty District Council

### Policy Committee

#### Trading in Public Places Bylaw Deliberations

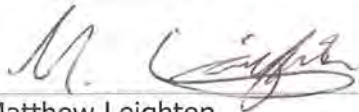
#### Purpose

The purpose of this paper is to consider the issues and options associated with the Trading in Public Places Bylaw review in light of public consultation, and to recommend to Council the draft bylaw for adoption (subject to any amendments).

#### Recommendation

1. ***THAT the Senior Policy Analyst report dated 12 June 2019 and titled 'Trading in Public Places Bylaw Deliberations' be received.***
2. ***THAT the report relates to an issue that is considered to be of medium significance in terms of Council's Significance and Engagement Policy.***
3. ***THAT the Committee receives all written and verbal feedback from the special consultative procedure 18 March to 18 April 2019, as set out in the document titled 'Trading in Public Places Bylaw – Submissions Pack' as circulated separately with this agenda.***
4. ***THAT in relation to the following issues, the Committee resolves,***  
*Issue 1: Approach to traders in Katikati and Te Puke mainstreets*  
*[Option A, B, C] being:...*  
*Issue 2: The effect of speed limits on where trading in public places occur*  
*[Option A, B] being:...*  
*Issue 3: Impacts on neighbours and potential benefits to the area*  
*[Option A, B, C] being:...*  
*Issue 4: Cultural appropriateness*  
*[Option A, B] being:...*
5. ***THAT pursuant to s155 of the Local Government Act 2002, Council confirms that the draft bylaws are the most appropriate way of addressing the perceived problem, the draft bylaws are most the appropriate form of bylaw, and that the draft bylaws do not give rise to any implications under the New Zealand Bill of Rights 1990.***
6. ***THAT the draft Trading in Public Places Bylaw (Attachment A) is recommended to Council for adoption.***

- 7. THAT the Committee directs staff to prepare a decision document as the formal response to submitters, to adopted by Council (with any amendments) alongside the final bylaw.**



Matthew Leighton  
**Senior Policy Analyst**

## 1. Background

Trading in public places can bring a sense of vibrancy and life to an area, enhance the experience of residents and visitors and enable commercial opportunities. Conversely, if trading is not sufficiently regulated, it can lead to a number of negative outcomes, such as posing a safety risk to road users, causing undue noise and litter, and impacting the local area.

The review of the Trading in Public Places Bylaw aims to ensure that Council has got the balance right. The purpose of the bylaw is to regulate traders like coffee carts, fruit and vegetable vans and other stalls.

The Committee considered the key issues at a workshop on 5 February 2019, and the discussion informed the proposed changes to the bylaw.

The draft bylaw, a statement of proposal and feedback form have been prepared to enable consultation to take place between 18 March 2019 and 18 April 2019, using the Local Government Act 2002 (LGA) special consultative procedure.

## 2. Key matters for consultation

The draft bylaw (as released for consultation) is attached as Attachment A. The key proposed amendments to the Trading in Public Places Bylaw are:

- **Approach to traders in Te Puke and Katikati main streets**  
Under the current bylaw, trading in a public place alongside these roads (Jellicoe Street, Te Puke and SH2/Main Street, Katikati) is prohibited. The changes proposed removes the blanket prohibition and instead applies the standard application process as used for all other trading in public places sites.
- **Approach to locations and speed**  
At the moment, trading licences will only be considered in areas with a 50km/h speed limit. The draft bylaw replaces this with a requirement for sites to be assessed and approved by an authorised person from Council's roading team or NZTA.
- **Consideration of the impact on neighbours and potential benefits to the area**  
This is not a specific consideration under the licence assessment process in the current bylaw. A new criteria for consideration when granting a licence requires the applicant to have identified potential noise, transport, and safety impacts, and to identify potential benefits to the area. This allows applicants to demonstrate their level of regard to these matters and identify mitigation measures if appropriate.
- **Other minor changes**  
Several other minor changes are included in the draft bylaw, including consideration of prior performance, Council flexibility for events, and reference to industry standards.

An additional key element of the bylaw is proposed to be retained:

- **Approach to the density of traders offering similar goods**

Under the current bylaw there is a 300m exclusion from similar traders (e.g. a coffee cart must be more than 300m from a café). The draft bylaw proposed to retain this approach.

### 3. Local Government Act 2002 section 155 considerations

As part of reviewing a bylaw, Council is required to make the determinations set out in s155 of the Local Government Act 2002 (LGA). This means that Council must determine that a bylaw is the most appropriate way of addressing the perceived problem, that the draft bylaw is the most appropriate form of bylaw and that it does not give rise to any implications under the New Zealand Bill of Rights Act 1990.

The following text summarises Council's discussions relating to LGA section 155 matters, and this report requests the Committee make a formal resolution confirming its position.

There is no legislative requirement to have this bylaw in place, however the Local Government Act 2002 enables councils to implement and enforce bylaws where there are local issues which need additional powers to be addressed. Council must determine whether a bylaw is the most appropriate way of addressing the perceived problem<sup>1</sup>. If a bylaw is considered to be appropriate, Council must then decide whether or not the bylaw is the most appropriate form of bylaw, and whether or not the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990.

#### **Is a bylaw the appropriate means to deal with the problem?**

The issues firmly sit within Council's responsibilities. The current bylaw has been in place for several years and addresses the issue of trading in public places, enabling its regulation and allowing licences to be issued. The Local Government Act 2002 specifically lists trading in public places as an example of what a bylaw may regulate (s.146). Whilst other mechanisms may be used, a bylaw is still considered the most reasonable.

The District Plan allows the sale of goods by licence issued by Council relating to temporary, mobile activities on District roads as a permitted activity. Non-compliance can therefore be progressed through either the RMA or through the LGA and bylaw provisions. The bylaw is still used to set the requirements of a licence and other rules. Traders are still expected to meet the requirements of all other relevant bylaw and District Plan provisions.

The proposed bylaw is considered to be consistent with the approach taken by other councils of a similar size and nature.

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<sup>1</sup> Section 155 of the Local Government Act 2002

**Is the bylaw in the appropriate form?**

The draft bylaw focuses on identified issues and is customised to suit the particular circumstances of the Western Bay of Plenty District. The draft bylaw is consistent with Council document standards and has been written in plain English so far as possible. It is therefore considered to be the most appropriate form of bylaw.

**Is the bylaw consistent with the New Zealand Bill of Rights?**

The Bill of Rights protects the human rights and fundamental freedoms of all people in New Zealand. The regulatory controls provided under this bylaw are designed to protect the public from nuisance, protect, promote and maintain public health and safety and minimise the potential for offensive behaviour in public places. It is considered that the draft bylaw does not give rise to any implications under the Bill of Rights.

**4. Significance and Engagement**

The Local Government Act 2002 requires a formal assessment of the significance of matters and decisions in this report against Council's Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.

The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

In terms of the Significance and Engagement Policy this decision is considered to be of medium significance because of:

- The likely public interest in the proposals included in the draft bylaw;
- The number of ratepayers, residents and visitors to the district that may be affected by the bylaw provisions; and
- The requirement to undertake a LGA special consultative procedure.

**3. Engagement, Consultation and Communication**

As part of a wider concurrent consultation package, substantial consultation was undertaken alongside the Annual Plan 2019/20.

24 submissions were received on the draft Trading in Public Places Bylaw. Attachment B provides a summary report of the comments received.

Interested Parties	Engagement
General Public	The Special Consultative Procedure under the LGA was used, with consultation open for a month. Feedback was sought through the use of our online submission

	form, hard copy submission forms and the opportunity for spoken interaction provided through seven 'Have Your Say' events or attendance at a formal 'hearings style' meeting.
Licence holders	Current licence holders were directly contacted to inform them of the review and invite their input.
Economic Development groups	EDG Te Puke and Katch Katikati were directly contacted to seek their input on the draft bylaw.

All submitters and identified interested parties will be notified of the outcome of deliberations and informed of any changes made to the bylaw.

## 5. Overall consultation outcomes

The preferred options included in the draft bylaw were generally supported by the feedback received.

Based on community feedback, staff have not identified any new key issues or options to be considered as part of the Bylaw review. The only matter that could be included is a consideration of the cultural appropriateness of an activity alongside the application process. This could be included alongside the consideration of neighbourhood impacts, and would be a relatively minor change, an additional issue and option section is included to address this point.

The Committee is required to consider whether it wishes to recommend the draft bylaw for adoption, as proposed for consultation, or whether any amendments are required as a result of feedback received.

## 6. Issues and Options Assessment

The below considers the major issues and options raised through the review and the specific community feedback received regarding the proposed changes.

### Issue 1 - Approach to traders in Katikati and Te Puke

Council's preferred option was to remove the blanket exclusion from Katikati main street (SH2) and Te Puke main street (Jellicoe Street), and apply the standard application process. Other options were:

- Maintain the status quo (preventing trading)
- Remove the exclusion and identify specific sites only.

27 submissions were received on this issue. Table one below sets out the feedback received:

**Table One:**

Option	Count	%
A: Option 1 - Continue to prevent any trading on these stretches of road (Jellicoe Street, Te Puke and SH2/Main Street, Katikati)	9	33
B: Option 2 - Remove the blanket exclusion and use the standard application process ( <b>PREFERRED OPTION IN DRAFT BYLAW</b> )	11	41
C: Option 3 - Remove the blanket exclusion, but identify specific sites only	7	26
D: Option 4 - Other (please comment)	1	4
<b>Total</b>	<b>27</b>	<b>100</b>

Overall, 41% supported Council's preferred option.

The status quo (Option 1) received 33% support, however considering the related comments, part of this may be due to the current application process not being widely understood, in particular the 300m limit for traders wishing to sell similar goods.

**Options:**

For completeness, the options, advantages and disadvantages and costs are set out here:

<b>Option A:</b> <i>THAT Council continue to prevent any trading on these stretches of road (Jellicoe Street, Te Puke and SH2/Main Street, Katikati). (Status quo)</i>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>Limits potential negative impacts on the surrounding area and businesses.</li> </ul>	<ul style="list-style-type: none"> <li>Does not encourage additional economic activity or increase vibrancy</li> <li>Current footpath configuration in Te Puke has been provided to allow trading on specific locations – this would continue to be vacant.</li> </ul>
<b>Implications for Work Programme/Budgets</b>	None
<b>Option B (Council's preferred option):</b> <i>THAT the exclusion on trading on the State Highway in the urban areas of Te Puke and Katikati be removed (noting the standard application process would still be required).</i>	



<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Enables trading in the district's main centres, potentially adding vibrancy.</li> <li>• May offer an increased range of goods and services in the main shopping areas.</li> <li>• Helps enable market days.</li> <li>• District level consistency, relying on the exclusion area around similar shops to limit negative impacts.</li> <li>• Aligns with the feedback received through consultation.</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Potential negative impacts on the surrounding area and businesses.</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Additional staff time in processing applications (likely to be very low volume). May see an increase in Customer Service Requests regarding trading. Easily monitored by parking officers</p>
<p><b>Option C:</b> <i>THAT the exclusion on trading on the State Highway in the urban areas of Te Puke and Katikati be removed and specific sites be pre-identified for trading in public places (and the application process followed).</i></p>	
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Enables trading in the district's main centres, potentially adding vibrancy.</li> <li>• May offer an increased range of goods and services in the main shopping areas.</li> <li>• Sets fixed locations and provides certainty for retailers and applicants</li> <li>• Allows for assessment of sites to be conducted pre-application</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Potential negative impacts on the surrounding area and businesses.</li> <li>• May require staff time to identify and assess locations that are then not utilised.</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Additional staff time in processing applications (likely to be very low volume). Additional staff time to identify and pre-assess potential sites. May see an increase in Customer Service Requests regarding trading. Easily monitored by parking officers.</p>

## Issue 2 -The effect of speed limits on where trading in public places occur

Council's preferred option was to replace the prohibition of trading on roads with speeds greater than 50km, with the requirement for approval from an authorised person from Council's roading team or NZTA.

One other option was given – to not allow trading on roads with a speed limit above 50 kmp/h.

Table Two below sets out the submissions received:

**Table Two:**

Option	Count	%
A: Option 1 - Not allow trading on roads above 50kmp/h	7	28
B: Option 2 - Each application would be considered with a roading safety assessment <b>(PREFERRED OPTION IN DRAFT BYLAW)</b>	13	52
C: Option 3 - Other (please comment)	5	20
<b>Total</b>	<b>25</b>	<b>100</b>

Of the other comments received, submitters generally supported Council's preferred option. Their key points were:

- Speed limits could affect those already trading (eg. Miss Ormsby's Coffee outlet).
- Council is already permitting activities in carpark pull-offs on 80 kmp/h roads, so it makes sense to look at each situation on its own merits.
- Other criteria should be considered – clear visibility and sight lines, adequate setbacks from the road, and adequate carparking areas.

### Options

For completeness, the issue and options, advantages and disadvantages and costs are set out here:

<b>Option A:</b> <i>THAT the draft bylaw prevent trading on roads with a speed limit in excess of 50km per hour.</i>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>• Certainty for applicants and staff on the implementation of the bylaw</li> </ul>	<ul style="list-style-type: none"> <li>• Staff need to assess sites for safety anyway.</li> <li>• Not a practical approach and doesn't take account of individual site attributes.</li> </ul>
<b>Implications for Work Programme/Budgets</b>	None.

<b>Option B (preferred option):</b> <i>THAT the draft bylaw replace the prohibition of trading on roads with speeds greater than 50km, with the requirement for approval from an authorised person from Council's roading team or NZTA.</i>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>• Safety is considered through the application.</li> <li>• Demonstrates a more practical approach, considering actual implications and site suitability.</li> <li>• Reflects current practice.</li> <li>• Aligns with the feedback received through consultation.</li> </ul>	<ul style="list-style-type: none"> <li>• Potential increase in staff time required to assess individual sites. However noting that roading staff are often involved in these discussions anyway, and the current number of licences issued is low.</li> <li>• Does not provide certainty to applicants on potential locations.</li> </ul>
<b>Implications for Work Programme/Budgets</b>	Additional staff time in processing applications (likely to be low). May reduce compliance staff time responding to those matters in the long term.

### Issue 3 - Impacts on neighbours and potential benefits to the area

Council's preferred option was to specifically identify impacts on neighbours and potential benefits to the area through the licence application process.

Table Three below sets out the feedback received:

**Table Three:**

Option	Count	%
A: Do not specifically identify impacts on the neighbouring area or positive impacts on the area	3	13
B: Option 2 - Specifically identify impacts on neighbouring areas and the positive impacts in the area ( <b>PREFERRED OPTION IN DRAFT BYLAW</b> )	19	79
C: Option 3 - Explicitly consider noise only	2	8
<b>Total</b>	<b>24</b>	<b>100</b>

Two submitters added comments.

- One submitter requested any application should be looked at holistically, and community views taken into account, particularly for affected neighbours.
- One submitter wanted explicit consideration of noise only, and noted that adding traders' vehicles to other parked vehicles (including seasonal workers) means the public space becomes hard to police.

### Options

For completeness, the issues and options, including advantages and disadvantages and costs are set out here:

<b>Option A:</b> <i>THAT the bylaw does not specifically include a requirement to consider impacts on neighbours and the potential benefits on the area.</i>	
<b>Advantages</b> <ul style="list-style-type: none"> <li>• Does not add subjective assessment into the process.</li> <li>• The other considerations listed may adequately cover the impact on the local area</li> <li>• This could still be considered but not explicitly stated in the bylaw.</li> </ul>	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Does not provide for an explicit cost-benefit discussion.</li> </ul>
<b>Implications for Work Programme/Budgets</b>	None.
<b>Option B (Preferred option):</b> <i>THAT the bylaw include a requirement to identify impacts on neighbouring areas or positive impacts on the area.</i>	
<b>Advantages</b> <ul style="list-style-type: none"> <li>• Costs and benefits of an activity are considered.</li> <li>• Rationale behind decision making is given.</li> <li>• Aligns with the feedback received through consultation.</li> </ul>	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Increased requirement placed on traders to prepare application.</li> <li>• Increased staff time to assess costs and benefits.</li> <li>• Highly subjective process and open for challenge.</li> </ul>
<b>Implications for Work Programme/Budgets</b>	Additional staff time in processing applications expected. Expect increase disagreement on the outcome of decisions.

<b>Option C:</b> <i>THAT the bylaw only include the requirement to consider potential nuisance impacts of noise on neighbouring properties.</i>	
<b>Advantages</b> <ul style="list-style-type: none"> <li>• Specific consideration and more objectively assessed.</li> <li>• Focuses more on the legal purpose of a bylaw.</li> <li>• More easily allows applicants to demonstrate how this has been considered and will be mitigated.</li> </ul>	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Noise is more suitably addressed through the District Plan limits and/or the Resource Management Act 1991 (Note that vehicle noise is excluded in some circumstances).</li> <li>• Increased requirement placed on traders to prepare application.</li> <li>• Increased staff time to assess.</li> <li>• Still has a level of subjectivity.</li> <li>• Does not require a consideration of benefits.</li> </ul>
<b>Implications for Work Programme/Budgets</b>	Additional staff time in processing applications expected (expected to be low).

## Issue 4 – Consideration of cultural appropriateness

The Tangata Whenua members of the Partnership Forum expressed a wish that the cultural appropriateness of trading be taken into account when approving. This could be incorporated as part of the considerations made when assessing an application.

This is a new consideration and therefore no preferred option has been identified.

### Options

For completeness, the issues and options, including advantages and disadvantages and costs are set out here:

<b>Option A:</b> <i>THAT the bylaw does not specifically include a consideration of the cultural appropriateness of trading at the requested site.</i>	
<b>Advantages</b> <ul style="list-style-type: none"> <li>• Does not add subjective assessment into the process.</li> <li>• This could still be considered but not explicitly stated in the bylaw.</li> </ul>	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Does not respond to a clear request from submitters.</li> <li>• May allow for inappropriate trading to occur and for issues to arise at a future point</li> </ul>
<b>Implications for Work Programme/Budgets</b>	None.

<b>Option B :</b> <i>THAT the bylaw include an additional consideration of:  "The cultural appropriateness of the trading and the site proposed. Where staff have concerns these may be discussed with the relevant Tangata Whenua representative."</i>	
<b>Advantages</b> <ul style="list-style-type: none"> <li>• Cultural appropriateness of an activity are considered.</li> <li>• Future issues maybe averted.</li> <li>• Responds to a clear request from submitters.</li> <li>• Unlikely to be a relevant consideration in the majority of applications</li> <li>• Where concern arises this maybe addressed by contacting the relevant iwi representative.</li> </ul>	<b>Disadvantages</b> <ul style="list-style-type: none"> <li>• Increased requirement placed on staff when considering applications.</li> <li>• A subjective process and open for potential challenge.</li> </ul>
<b>Implications for Work Programme/Budgets</b>	Some additional staff time in processing applications expected.

## 7. Next Steps

Following Committee resolutions, the draft bylaw will be presented to Council for adoption on 22 August 2019. The bylaw is intended to come into effect on 29 August 2019.

Submitters and identified interested parties will be informed of the changes and the new bylaw.

The Bylaw will next be due for review July 2029.

## 8. Statutory Compliance

The recommendations of this report ensure Council complies with the Local Government Act 2002.

The draft bylaw has been subject to a Special Consultative Procedure to ensure that Council is complying with its obligations to seek community views on proposals of significance.

**9. Funding/Budget Implications**

<b>Budget Funding Information</b>	<b>Relevant Detail</b>
<b>Policy and Planning budget</b>	Ongoing budget for bylaw reviews. This review is managed within existing staffing and budgets.
<b>Operational implementation</b>	Met within current costs. Cost of applications are met by the applicant through the relevant fees.

**10. Attachments**

- A. Draft Trading in Public Places Bylaw (as released for consultation) – track-changed
- B. Trading in Public Places Bylaw - Summary of Submissions
- C. Trading in Public Places Bylaw - Submission Pack



## **[Draft] Trading in Public Places Bylaw ~~2014~~2019**

### **Explanatory Note**

The objective of this Bylaw is to:

- (i) regulate the conduct of:
  - (a) Trading in public places, including selling goods and/or services in streets, reserves and other public places; and
  - (b) Mobile or temporary trading, including using vehicles to sell goods and/or services in those public places; and
- (ii) to protect, promote and maintain public health and safety.

The Bylaw is made pursuant to Sections 146(a)(vi) and 145(b) of the Local Government Act 2002.



## Western Bay of Plenty District Council

**[Draft] Trading in Public Places  
Bylaw ~~2014~~2019**

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## Title

This Bylaw may be cited as the Western Bay of Plenty District Council Trading in Public Places Bylaw 2014 and shall come into force on 18 December 2014.

## Repeal

The coming into effect of this Bylaw repeals any existing Bylaw made by the Western Bay of Plenty District Council that regulates the same matters described in the Objective above.

## Scope

This Bylaw, made pursuant to Section 146(vi) of the Local Government Act 2002 applies throughout the Western Bay of Plenty District (~~including those sections of State Highway subject to the Urban Speed Limit of 50 km/h~~) and is intended to regulate the trading of goods and/or services in streets, reserves and other public places and promote the health, safety and convenience of the public.

## Validation

The Western Bay of Plenty District Council Trading in Public Places Bylaw 2014~~9~~ was duly made and adopted by resolution at a meeting of the Western Bay of Plenty District Council held on ~~18 December 2014~~~~XX XX~~ 2019 after completion of consultation as required by section ~~82-156~~ Local Government Act 2002 and will come into force on ~~18 December 2014~~~~XX XX~~ 2019.

~~The Common Seal of the Western Bay of Plenty District Council was affixed hereto pursuant to a resolution of Council on 18 December 2014 in the presence of:~~

\_\_\_\_\_  
Chief Executive Officer

Seal

Date \_\_\_\_\_

## Western Bay of Plenty District Council

# Trading in Public Places Bylaw

~~2014~~2019

## 1. Introduction

### 1.1. Definitions

1.1.1. For the purposes of this Bylaw, the following definitions shall apply:

**Authorised Officer** – means a Police Officer or any person (including a Parking Warden) for the time being appointed by Council to carry out or exercise the duties, offices or powers of Council referred to in or granted by this Bylaw and in acting as provided by the Bylaw shall act as an agent for Council.

**Goods** – means any product, display or performance being offered for pecuniary gain.

**Licence** – means a licence for the purposes of the temporary activities provisions in the Western Bay of Plenty District Plan.

**Person/s** – includes a corporation, sole person, or a body of persons whether corporate or non-corporate.

**Public Places** –

(a) means a place –

(i) that is under the control of the territorial authority; and

(ii) that is open to, or being used by, the public, whether or not there is a charge for admission; and

(b) includes –

(i) a road, whether or not the road is under the control of a territorial authority; and

(ii) any part of a public place.

**Service Delivery Vehicle** – means any vehicle being used for the purpose of delivering goods to the premises of any business or organisation and does not involve the sale of the goods to the general public in any public place.

- 1.1.2. For the purposes of this Bylaw, the word “shall” refers to practices that are mandatory for compliance with the Bylaw while the word “should” refers to practices which are advised or recommended.

## 2. Licences - General

- 2.1. No person on any street, reserve or in any other public place shall engage in the sale of goods of any description whatsoever (except as provided in Clause 11: Exemptions) without having first obtained a licence from Council.

## 3. Licence Applications

- 3.1. Every person who wishes to engage in trade in a public place shall apply to the authorised officer of Council in writing for a licence. The information to be supplied by the applicant shall include as a minimum:
- (a) Name, address, telephone number and email address of the applicant.
  - (b) Name, address, telephone number and email address of all person/s engaged in the proposed trading of goods and services.
  - (c) The location/site of the proposed trading activity.
  - (d) The type of goods and services being offered for sale.
  - (e) The hours and duration that the licence is sought for.
  - (f) The type and registration numbers of the vehicle/s if applicable.
  - (g) Evidence addressing matters referred to in clause 5 decision-making criteria “issuing of licences”.

## 4. Licence Details

- 4.1. The authorised officer of Council in granting any licence may impose conditions. The conditions imposed may include, but are not restricted to, any of the following:
- (a) Time and place.
  - (b) Duration of the licence.
  - (c) Suitability and size of place of trading.
  - (d) Types of goods/services for sale.
  - (e) Type of operation.
  - (f) Persons entitled to operate business.
  - (g) Safety and hygiene requirements.
  - (h) Type and number of approved signage.
  - (i) Use of musical chimes or other audible devices for attracting customers.
  - (j) Litter, cleanliness (~~see also General Bylaw Chapter 8~~).
  - (k) A requirement that the licence is prominently displayed during trading hours.
  - (l) Site fee.

## 5. Issuing of Licences

- 5.1. A licence may be declined where it is considered that appropriate standards of convenience, safety, visual amenity or civic values (including enabling the continuance of a flourishing retail precinct) would not be met by granting a licence.
- 5.2. Criteria for consideration includes, but is not limited to, the following factors:
- Prior applications and past performance. Issues of non-compliance or non-payment will be considered.



- The location requested. Licences will be site-specific, but in general trading sites need to have parking and should not be in dangerous roadside positions. The type of operation will be considered.
- Safety of road users. Sites should be assessed and approved by an authorised person from Council's roading team or ~~No trading is allowed on roads with a speed limit in excess of 50km per hour (including State Highways, unless with the express permission on the New Zealand Transport Agency). No trading is allowed on the State Highway in the urban areas of Te Puke and Katikati (where trading is proposed on or beside rural sections of State Highways).~~
- ~~Mobile~~ The proximity of location to similar traders, shops or services. Traders should not operate within 300m of a similar trader or shop.
- Signage proposed. Signage is restricted to vehicle sign-writing and one sandwich board or flag positioned adjacent to the vehicle.
- Evidence of industry standards or good practice met, as appropriate. A separate food licence may be required.
- Impact on neighbouring area. Applicants have identified potential noise, transport, and safety impacts for the area and the potential benefits to the area.

Council reserves the exclusive right to require such information as it deems necessary to determine the outcome of an application.

- ~~—~~
- ~~— A separate food licence may be required.~~

## 6. Fees

- 6.1. Council may prescribe fees for licences. Fees are set through the Annual Plan process and are set at a level to cover the costs of licensing administration and enforcement of the bylaw.

## 7. Production of Licence

- 7.1. A valid licence must be prominently displayed, at the place of trade, at all times when the licence holder is engaged in the sale of goods and services.

- 7.2. Every licence holder shall, notwithstanding the conditions of the licence, comply with any lawful instruction given by an authorised officer of Council or a Police Officer.
- 7.3. Any person trading in a public place without a licence issued by Council shall, when required to do so by an authorised officer of Council or a Police Officer, remove all trade goods, signs, stalls, vehicles and other equipment used by the person for trading in the public place.

## 8. Conditions of Licence

- 8.1. Any person who trades in a way that does not conform with any of the terms and conditions of the licence shall be considered to have committed an offence under this Bylaw.
- 8.2. Every licensee shall be responsible for the actions of his/her employees or agents while trading under the terms of the license.

## 9. Offences

- 9.1. Any person who undertakes either of (a) or (b) below commits an offence under this Bylaw:
- (a) Trading in a public place without a licence.
- (b) Trading in a public place while in breach of any condition of the trader's licence.

~~9.2. Any person who is alleged to have committed an offence under this Bylaw may either:~~

~~9.3. —~~

~~9.4. be proceeded against under the Summary Proceeding Act 1957~~

~~9.5. —~~

~~9.6. be served with an infringement notice under the Local Government Act 2002, or~~

~~9.7. —~~

~~9.8. be served with an infringement notice under the Resource Management Act 1991.~~

- 9.3. Any person found to be in breach of the Bylaw shall be subject to the penalties set out in Section 242(4) of the Local Government Act 2002.

*Advice note: Western Bay of Plenty District Council's District Plan requirements may also apply to trading undertaken in relation to this bylaw.*

## 10. Licence Not Transferable

- 10.1. No licence issued under this Bylaw shall be transferable to any other person.

## 11. Exemptions

- 11.1. The following exemptions are allowed under this Bylaw:
- (a) service delivery vehicles including milk vendors.
  - (b) any current trading enterprise licensed by Council at the coming into force of this Bylaw, until such licence expires.
  - (c) charitable activities (including any stall, stand or vehicle where food is being prepared and/or goods sold to raise money or where subscriptions, collections or donations are being solicited by non-profit groups) which do not involve pecuniary gain to any person, provided that, in the opinion of an authorised officer of Council, the size, scope, regularity of the occurrence or other circumstance associated with the activity in light of the purpose of this bylaw may require the trading activity to apply for a licence. For the avoidance of doubt, trading as a charitable activity shall not be in breach of this bylaw unless the activity is continued after [receiving a Council officer provides](#) advice that a licence shall be required.

## 12. General

- [12.1.](#) Notwithstanding any of the foregoing provisions of this Bylaw, Council may from time to time prohibit the activities of traders, whether or not they hold a licence, in any specific public place either totally or within certain stated days or times and may





likewise restrict the class of goods or services that may be provided. For the avoidance of doubt, no compensation is payable.

12.1.12.2. Where Council deems appropriate at its sole discretion, it may ~~forgo~~waive the provisions of this bylaw in writing for any specific public place either totally or within certain stated days or times, for a specific event.

## Western Bay of Plenty District Council

### Policy Committee

# Deliberations on the draft Animals (excluding dogs) Bylaw 2019, draft Cemeteries Bylaw 2019, and draft Public Places Bylaw 2019, and proposed revocation of the Nuisances Bylaw 2008

## Purpose

The purpose of this report is to consider community feedback on the draft Animals (excluding dogs) Bylaw 2019, Cemeteries Bylaw 2019, and Public Places Bylaw 2019, and the revocation of the Nuisances Bylaw 2008, and to recommend to Council the draft bylaws for adoption. This includes the proposed revocation of the Nuisance Bylaw 2008.

## Recommendations

1. *THAT the Policy Analyst report dated 13 June 2019 and titled "Deliberations on the draft Animals (excluding dogs) Bylaw 2019, draft Cemeteries Bylaw 2019, and draft Public Places Bylaw 2019, and proposed revocation of the Nuisances Bylaw 2008" be received.*
2. *THAT the report relates to an issue that is considered to be of medium significance in terms of Council's Significance and Engagement Policy.*
3. *THAT the Committee receives all written and verbal feedback from the special consultative procedure 18 March to 18 April 2019, as set out in the document titled "General Bylaw 2008 Review – Submissions" as circulated separately with this agenda*
4. *THAT in relation to the following issues, the Committee resolves –*

*Issue 1: Animals (Excluding Dogs) Bylaw*  
*Option 1A being to limit the number of bee hives in urban areas to two per property*  
*OR*  
*Option 1B being to limit the number of bee hives in urban areas to two per property unless permission is granted by Council*

*Issue 2: Cemeteries*  
*Option 2A being to allow all dogs in cemeteries provided they are on-leash at all times*  
*OR*  
*Option 2B being to allow disability-assist dogs only in cemeteries*

**AND**

*Option 2C being to control ornaments in cemeteries by prohibiting the placement of ornaments or similar outside the bounds of a plot*

**OR**

*Option 2D being to keep the Cemeteries Bylaw as it stands in relation to ornaments (status quo)*

**Issue 3: Public Places**

*Option 3A being to remove unenforceable, impracticable and obsolete provisions as proposed for consultation*

**Issue 4: Nuisances**

*Option 4A being to revoke the Nuisances Bylaw chapter as proposed for consultation*

- 5. THAT pursuant to s155 of the Local Government Act 2002, Council confirms that the draft bylaws are the most appropriate way of addressing the perceived problem, the draft bylaws are most the appropriate form of bylaw, and that the draft bylaws do not give rise to any implications under the New Zealand Bill of Rights 1990.**
- 6. THAT the Policy Committee recommends to Council that the Animals (excluding dogs) Bylaw 2019, Cemeteries Bylaw 2019, and Public Places Bylaw 2019 be adopted and become effective on 23 August 2019, and that the Nuisances Bylaw 2008 be revoked on that date.**
- 7. THAT the Committee directs staff to prepare a decision document as the formal response to submitters, in general accordance with the resolutions made in relation to this report.**



Simon Stewart  
**Policy Analyst**

## 1. Background

The General Bylaw 2008 is a compendium of four bylaws including Animals (excluding dogs), Cemeteries, Nuisances, and Public Places. It is due for statutory review by 1 July 2020 to avoid lapsing.

At its meeting on 12 March 2019, the Policy Committee adopted the draft Animals (excluding dogs) Bylaw, Cemeteries Bylaw, Public Places Bylaw for consultation, along with the proposal to revoke the Nuisances Bylaw.

Formal consultation on these proposed bylaws was undertaken between 18 March and 18 April 2019 using the Local Government Act 2002 (LGA) Special Consultative Procedure. This was run alongside consultation on several other bylaws, policies and the Annual Plan 2019/20. The consultation included seven public drop-in sessions and online engagement via email and Council's website. In total, 38 submissions were received.

## 2. Significance and Engagement

The Local Government Act 2002 requires a formal assessment of the significance of matters and decisions in this report against Council's Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.

The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

In terms of the Significance and Engagement Policy this decision is considered to be of medium significance because of:

- The likely public interest in the proposals included in the draft bylaws;
- The number of ratepayers, residents and visitors to the district that may be affected by the bylaw provisions; and
- The requirement to undertake a LGA special consultative procedure.

The Committee endorsed an engagement plan at its workshop on 5 February 2019, which was implemented during the consultation period.

## 3. Engagement, Consultation and Communication

Public consultation was undertaken between 18 March and 18 April 2019, using the Special Consultative Procedure. Consultation was conducted via Council's Have Your Say website, several separate community open days throughout the consultation period, and formal hearings. In total, 38 submissions were received, which resulted in 89 specific comments.

#### **4. Feedback on Amendments to the General Bylaw 2008**

Council consulted on five key amendments to the General Bylaw 2008, being:

- Animals (excluding dogs): Limit of two beehives per property in urban areas
- Cemeteries: Allow disability assist dogs in cemeteries, and require ornaments to be approved by Council
- Public Places: remove unenforceable, impractical and obsolete provisions
- Nuisances: Revoke the Nuisances chapter of the Bylaw
- General: Split into separate bylaws, and remove unenforceable, impractical and obsolete provisions from bylaws

Submissions on all proposed amendments received a majority in support of at least 70 percent of those who provided feedback. Additional information on feedback received is provided in the Issues and Options paper attached to this report (**Attachment A**).

#### **5. Responding to feedback**

It is proposed that Council respond to feedback via a combined decision story on all recent bylaw and policy reviews, including the Freedom Camping Bylaw, Trading in Public Places Bylaw, Traffic and Parking Bylaw, and Gambling (Class 4) Policy.

The decision story will be in general accordance with the General Bylaw review resolutions contained in the minutes of the Policy Committee meeting dated 27 June 2019, and is intended to be adopted by Council on 22 August 2019 alongside the final bylaws.

#### **6. Local Government Act 2002 s155**

As part of reviewing Bylaws Council is required to make the determinations required by s155 of the Local Government Act 2002 (LGA). This means that Council must determine that a bylaw is the most appropriate way of addressing the perceived problem, that the draft bylaw is the most appropriate form of bylaw and that it does not give rise to any implications under the New Zealand Bill of Rights Act 1990.

The following rationale for LGA section 155 matters was included in Council's statement of proposal for consultation on these draft bylaws, and it is considered to still be relevant. This report requests Council to make a formal resolution confirming its position:

There is no legislative requirement to have these bylaws in place, however the Local Government Act 2002 enables councils to implement and enforce bylaws where there are local issues that need additional powers to be addressed. Council must determine whether a bylaw is the most appropriate way of addressing the

perceived problem<sup>1</sup>. If a bylaw is considered to be appropriate Council must then decide whether or not the bylaw is the most appropriate form of bylaw, and whether or not the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990.

#### **Is a bylaw the appropriate means to deal with the problem?**

Council considers that a bylaw is the most appropriate tool to regulate the control of General throughout the district. The matters in the bylaw are of importance to the community in terms of protecting public areas, protecting the public's health and safety, and protecting access. The draft bylaw is considered to be consistent with the approach taken by other councils of a similar size and nature.

#### **Is the bylaw in the appropriate form?**

The draft bylaw focuses on identified issues and is customised to suit the particular circumstances of the Western Bay of Plenty District. The draft bylaw is consistent with Council document standards and has been written in plain English so far as possible. It is therefore considered to be the most appropriate form of bylaw.

#### **Is the bylaw consistent with the New Zealand Bill of Rights?**

The Bill of Rights protects the human rights and fundamental freedoms of all people in New Zealand. The regulatory controls provided under this bylaw are designed to minimise danger, distress and nuisance to the community and their property. It is considered that the draft bylaw does not give rise to any implications under the Bill of Rights.

## **7. Statutory Compliance**

The recommendations of this report ensure Council complies with Local Government Act 2002. The draft bylaw was subject to a Special Consultative Procedure to ensure that Council is complying with its obligations to seek community views on proposals of significance.

## **8. Funding/Budget Implications**

<b>Budget Funding Information</b>	<b>Relevant Detail</b>
<b>Bylaw budget</b>	Ongoing budget for bylaw reviews. The completion of this review process can be managed within existing staffing and budgets. Minor costs associated with implementation can also be met within existing staffing and budgets.

<sup>1</sup> Section 155 of the Local Government Act 2002

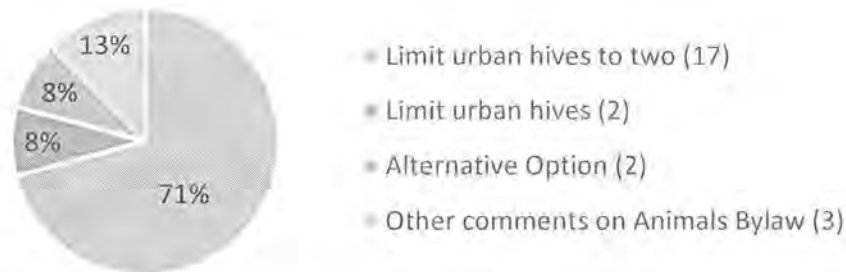
## Attachment A: Issues and Options

### Issue 1: Animals (Excluding dogs)

The key proposal for the draft Animals (excluding dogs) Bylaw was as follows:

**Beehive limit in urban areas:** It is proposed to limit the number of bee hives per property in urban areas to two. This is considered a reasonable number for urban hobbyist bee keepers, retains bees in the local environment, while limiting the potential for nuisance caused by too many bees. The proposal also includes a nuisance provision for urban areas in cases where the limit still doesn't address any nuisance concerns.

24 comments were received, with the majority (71%) seeking to limit the number of bee hives to two per property in urban areas only. Comments are summarised as follows:



Submission points which proposed alternatives to the key proposals consulted on are considered in the following table.

Date: 27 June 2019

Open Session

Subject: Deliberations on the draft Animals (excluding dogs) Bylaw 2019, draft Cemeteries Bylaw 2019, and draft Public Places Bylaw 2019, and proposed revocation of the Nuisances Bylaw 2008

#	Description of proposal	Level of support	Staff commentary
Comments in relation to the key proposal			
1	<b>Council's proposed amendment (preferred option):</b> Limit the number of beehives to two per property in urban areas	17 (71%) support	The majority of submissions support the proposal to limit the number of bee hives to two per property in urban areas
2	<b>Alternative option 1:</b> There should be a limit to the number of beehives in urban areas	2 (8%) support	Two submitters consider that there should be a limit, but not specifically two. One supporter of this option also gave the alternative below suggesting to take into account section size.
1	<i>Consideration should be given to the section size when considering appropriate number of bee hives (2 submissions)</i>	2 (8%) comments	This may be an appropriate solution for very large urban sections, however it also complicates the matter by adding a calculation step (on size), which may lead to additional enquiries from public on monitoring and enforcing the use of bee hives.
2	<i>Question on how the bylaw is going to be enforced in relation to checking bees' health and welfare</i>	1 comment	The Bylaw is generally enforced via complaint response, rather than proactive monitoring. The Ministry for Primary Industries is responsible for standards/controls for management of bee hives. All beekeepers are also required to be registered under the National American Foulbrood Pest Management Plan.
3	<i>Interpretation needs to be clear "what is a hive" - x boxes or x queens.</i>	1 comment	Under the Biosecurity (American Foulbrood Pest Management Plan) Order 1998, a beehive is defined as: "a thing constructed for the keeping of honey bees and that is being used or has been used for that purpose; but does not include an introduction cage or a mailing cage"  Given the wide range of sizes and types of bee hives, it may be appropriate to use this definition for the bylaw at this stage. The definition can be reviewed later if required.
Comments received beyond the key theme:			



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4	<i>Three submitters sought control on cats throughout the district. Suggestions included microchipping, neutering, requiring cats to be inside at night time, and euthanizing non-microchipped cats.</i>	3 comments	This would require significantly increased level of service (and costs) in animal control, and may be confusing for public given very few other councils have such requirements.  <b>Substantive change:</b> Requires additional public consultation, and cannot be adopted in this review
7	<i>Two submitters sought full public access for disability assist dogs, except unaccredited 'therapy' dogs.</i>	2 comments	Council's Dog Control Policy and Bylaw already provide exemption for disability assist dogs etc from all public place restrictions (policy clause 5.1.7 and bylaw clause 4.2). No further action required.
9	<i>One submitter sought controls to ensure stock do not cause damage to neighbouring properties.</i>	1 comment	This appears to be a fencing issue and is therefore a civil matter.

<b>Option 1A: Limit the number of bee hives in urban areas to two per property</b>	
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>Limiting the number of bee hives to two per urban property would support the majority of submissions for this change</li> <li>The resolution would be consistent with the recommendation made by Apiculture New Zealand</li> <li>Nuisances caused by bees would be limited by the maximum number of bee hives allowed</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>Additional monitoring and enforcement may be required to ensure this rule is complied with</li> <li>Some hobbyist beekeepers may object to the limitation of only two hives per property in urban areas</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Staff time may be required to deal with queries from the community about the proposed changes to the bylaw, and to progress the subsequent stages of the bylaw review. However, this can be managed within existing staffing and budgets.</p>

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<b>Option 1B: Limit the number of bee hives in urban areas to two per property unless permission is granted by Council</b>	
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Limiting the number of bee hives to two per urban property would support the majority of submissions for this change</li> <li>• The resolution would be consistent with the recommendation made by Apiculture New Zealand</li> <li>• Nuisances caused by bees would be limited by the maximum number of bee hives allowed</li> <li>• Very large properties which are still within urban areas may be granted the ability to host additional bee hives.</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Additional monitoring and enforcement may be required to ensure this rule is complied with</li> <li>• Some hobbyist beekeepers may object to the limitation of only two hives per property in urban areas</li> <li>• Adds a layer of complexity to monitoring and enforcement of bee hives in urban areas, including staff time to process applications for permission to have additional hives on a property</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Staff time may be required to deal with queries from the community about the proposed changes to the bylaw, and to progress the subsequent stages of the bylaw review. However, this can be managed within existing staffing and budgets. There may be additional staff time required to process applications for permission to have additional hives on a property.</p>

Date: 27 June 2019

Open Session

Subject: Deliberations on the draft Animals (excluding dogs) Bylaw 2019, draft Cemeteries Bylaw 2019, and draft Public Places Bylaw 2019, and proposed revocation of the Nuisances Bylaw 2008

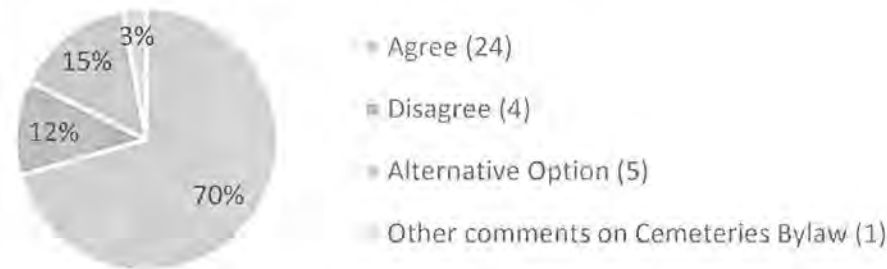
## Issue 2: Cemeteries

Council proposed two key changes to the Cemeteries chapter, as follows:

**Allow disability assist dogs:** Currently, the Cemeteries Bylaw contains a blanket ban on all animals from entering cemeteries. This proposal will allow disability assist dogs such as guide dogs to enter cemeteries.

**Ornaments in cemeteries:** Ornaments on plots are increasingly encroaching on surrounding cemetery land, including other plots. It is proposed to require ornaments to be "approved" by Council, so that any unapproved ornaments can be more easily removed by maintenance staff.

Feedback was sought on agreeing, disagreeing or seeking alternatives to both proposals. 34 comments were received, with the majority (71%) agreeing with the proposed changes. Comments are summarised as follows:



Submission points which proposed alternatives to the key proposals consulted on are considered in the following table.

Date: 27 June 2019

Subject: Deliberations on the draft Animals (excluding dogs) Bylaw 2019, draft Cemeteries Bylaw 2019, and draft Public Places Bylaw 2019, and proposed revocation of the Nuisances Bylaw 2008

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#	Description of proposal	Level of support	Staff commentary
Comments in relation to the key proposal			
1	<b>Council's proposed amendment (preferred option):</b> Allow disability assist dogs in cemeteries; and require approval of ornaments in cemeteries	24 (70%) support 4 (12%) oppose	The majority of submissions support the proposals to allow disability assist dogs in cemeteries, and to require approval of ornaments in cemeteries. The bylaw would need to clearly define "ornaments", and create an administrative process if requiring approval of items on plots.
2	All dogs should be allowed in cemeteries, not just disability assist dogs	4 (12%) comments	Historically, dogs have been prohibited from cemeteries due to potential damage caused by them to plots and ornaments, as well as defecation in the sensitive area. There is a small risk that adopting this alternative could be considered a substantive change which was not consulted on, and therefore may be invalid.
3	Council shouldn't dictate what goes on graves [in relation to ornaments]	4 (12%) comments	These comments oppose the proposal to require approval of ornaments in cemeteries. As above, the bylaw would need to clearly define "ornaments", and create an administrative process if requiring approval of items on plots.
4	No exemption for disability assist dogs in cemeteries. Questions how Council would monitor this	1 comment	The Bylaw is generally enforced via complaint response, rather than proactive monitoring. If signage is erected, then there would likely be an element of self-policing by visitors to the cemetery.
Comments received beyond the key theme			
5	Katikati has sign saying 'no gardens' this isn't being monitored and cannot be mown	1 comment	Noted – enforcement issue.
6	No real flowers on graves as they create a rubbish nuisance. Plastic/silk last and look better for a longer time	1 comment	Defining ornaments could include the use of flowers. However there would likely be public opposition to banning the use of real flowers at cemeteries, and if part of the definition of 'ornaments' (and therefore

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		requires permission) it is very unlikely public would seek permission to place flowers on a grave.
--	--	--

<b>Option 2A: Allow dogs in cemeteries provided they are on-leash at all times</b>	
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Submissions seeking that dogs be allowed in cemeteries will be ratified, while retaining consistency with Council’s Dog Control Policy which seeks to minimise the likelihood for conflict between dogs and the public or environment, by restricting access or dogs to public places where appropriate.</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Some public may not wish dogs to be allowed in cemeteries</li> <li>• May result in increased customer requests for monitoring and enforcement</li> <li>• Potential dog fouling (which is not picked up) may result in increased maintenance costs and decrease cemetery amenity</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Staff time may be required to deal with queries from the community about the proposed changes to the bylaw, however this can be managed within existing staffing and budgets. May result in increased staff time in monitoring and enforcing the new rule.</p>

<b>Option 2B: Allow disability-assist dogs only in cemeteries</b>	
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Public requiring disability-assist dogs in general day-to-day activity may use their companion animals to enter cemeteries at any time.</li> <li>• Is not inconsistent with Council’s Dog Control Policy and Bylaw, which exempt disability assist dogs from other restricted or prohibited areas in the District.</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Some public may not wish dogs to be allowed in cemeteries</li> <li>• May result in increased customer requests for monitoring and enforcement</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Staff time may be required to deal with queries from the community about the proposed changes to the bylaw, however this can be managed within existing staffing and budgets. May result in increased staff time in monitoring and enforcing the new rule.</p>

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<b>Option 2C: Control ornaments in cemeteries by prohibiting the placement of ornaments or similar outside the bounds of a plot</b>	
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Enables Council to control the use of ornaments (or similar) surrounding plots</li> <li>• Council staff may remove items around plots which otherwise hinder the ability to maintain a cemetery</li> <li>• The majority of submitters support this option</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• May create expectations of a greater level of service in maintaining cemeteries around plots</li> <li>• Council may receive additional customer contact requests regarding removing ornaments (or similar) around plots, or enquiries about the proposed change</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Staff time may be required to deal with queries from the community about the proposed changes to the bylaw, and to progress the subsequent stages of the bylaw review. However, this can be managed within existing staffing and budgets.</p>
<b>Option 2D: Keep the Cemeteries Bylaw as it stands (in relation to ornaments) (status quo, split from the General Bylaw)</b>	
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• The bylaw review process would be completed.</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Submitters seeking to allow dogs in cemeteries may feel ignored</li> <li>• Submitters seeking to control ornaments in cemeteries may feel ignored, and a lack of clarity on the use of ornaments may cause further operational issues for cemetery maintenance.</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Staff time may be required to deal with queries from the community about the lack of changes to the bylaw, and to progress the subsequent stages of the bylaw review (to "roll over" the bylaw as it stands). However, this can be managed within existing staffing and budgets.</p>

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## Issue 3: Public Places

The key proposal for the Public Places Bylaw chapter was as follows:

**Remove unenforceable, impractical and obsolete provisions:** The bylaws contain a number of provisions which are impractical in terms of enforcement, or are already covered by other legislation or plans.

14 comments were received, with the majority (86%) agreeing with the proposed changes, Comments are summarised as follows:



Three comments were submitted on the matter, being:

- Agree. Safety, vision, overall tidiness on streetscape roadsides need reviews.
- This question is not clear. I do not understand what it is proposing.
- Supports all proposals.

There was no comment attached to the submission seeking an alternative. Based on the feedback received, it is considered that the only practicable option is for Council to proceed with its Draft Public Places Bylaw, as released for consultation.

Date: 27 June 2019

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<b>Option 3A: Remove unenforceable, impracticable and obsolete provisions from the Public Places Bylaw</b>	
<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Impractical and obsolete provisions identified by staff will be removed, streamlining the bylaw and removing potential for customers to make a complaint under the bylaw which would be better dealt with through other mechanisms.</li> <li>• The bylaw would be legally valid for a further five years</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• No known disadvantages for this option</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Staff time will be required to deal with queries from the community about the proposed changes to the bylaw, and to progress the subsequent stages of the bylaw review. However, this can be managed within existing staffing and budgets.</p>



## Issue 4: Nuisances Bylaw

The key proposal for the Nuisances Bylaw chapter was:

**Revocation of the Nuisances chapter of the Bylaw:** Every provision within the Nuisances chapter of the General Bylaw is either already covered by legislation (notably the Health Act), the District Plan, or Regional Plans. It is easier and more effective to monitor and enforce against nuisances through those tools, rather than the bylaw (which has no infringement abilities). As such, it is proposed to revoke the Nuisances Bylaw.

11 comments were received, with the majority (82%) agreeing with the proposed revocation. Comments are summarised as follows:



Three comments were submitted on this matter, being:

- Agree, especially noisy/disruptive neighbours, barking dogs, loud music, boy racers, modified vehicles, bikes etc.
- Have no idea what the other alternatives are so I cannot make an informed choice.
- Supports all proposals.

Based on the feedback received, it is considered that the only practicable option is for Council to proceed with its proposal to revoke the Nuisances chapter of the General Bylaw.

**Option 4A: Revoke the Nuisances Bylaw chapter**

Date: 27 June 2019

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Subject: Deliberations on the draft Animals (excluding dogs) Bylaw 2019, draft Cemeteries Bylaw 2019, and draft Public Places Bylaw 2019, and proposed revocation of the Nuisances Bylaw 2008

<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Impractical and obsolete provisions within the entire Nuisances Bylaw will be revoked, removing potential for customers to make a complaint under the bylaw which would be better dealt with through other mechanisms</li> </ul>	<p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• No known disadvantages</li> </ul>
<p><b>Implications for Work Programme/Budgets</b></p>	<p>Staff time will be required to deal with queries from the community about the proposed changes to the bylaw, and to progress the subsequent stages of the bylaw review. However, this can be managed within existing staffing and budgets.</p>