

I hereby give notice that an ordinary meeting of the Regulatory and Community Safety Committee will be held on:

Date: Tuesday, 5 March 2024
Time: 2.00pm
Meeting Room: Room 1, Level 26
Venue: 135 Albert Street
Auckland

Komiti mō te Waeture me te Haumarū ā-Hapori / Regulatory and Community Safety Committee

OPEN AGENDA

MEMBERSHIP

Chairperson	Cr Josephine Bartley
Deputy Chairperson	Cr Ken Turner
Members	Hokura Member Edward Ashby Hokura Member Ngarimu Blair Cr Julie Fairey Cr Alf Filipaina, MNZM Cr Mike Lee Cr Kerrin Leoni Cr Sharon Stewart, QSM
Ex-officio	Mayor Wayne Brown Deputy Mayor Desley Simpson, JP

(Quorum 5 members)

Phoebe Chiquet-Kaan
Governance Advisor

28 February 2024

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- 1 **Ngā Tamōtanga | Apologies**
- 2 **Te Whakapuaki i te Whai Pānga | Declaration of Interest**
- 3 **Te Whakaū i ngā Āmiki | Confirmation of Minutes**

Click the meeting date below to access the minutes.

That the Regulatory and Community Safety Committee:

 - a) whakaū / confirm the ordinary minutes of its meeting, held on [Tuesday, 13 February 2024](#), including the confidential section, as a true and correct record.
- 4 **Ngā Petihana | Petitions**
- 5 **Ngā Kōrero a te Marea | Public Input**
- 6 **Ngā Kōrero a te Poari ā-Rohe Pātata | Local Board Input**
- 7 **Ngā Pakihi Autaia | Extraordinary Business**

Decision on submissions and consultation report on proposed dangerous dams policy

File No.: CP2023/19121

Item 8

Te take mō te pūrongo

Purpose of the report

1. The purpose of this report is to provide an overview of submissions received on the proposed Dangerous Dams Policy 2024.

Whakarāpopototanga matua

Executive summary

2. The Building (Dam Safety) Regulations 2022 are Aotearoa New Zealand's first consistent regulatory dam safety framework which provides a nationally consistent approach to ensuring that dams are, and continue to be, safe, protect people, property, infrastructure, and the environment. The Building (Dam Safety) Regulations 2022 come into effect on 13 May 2024.
3. Under the Building Act 2004, all regional councils are required to 'adopt and implement a policy on dangerous dams, flood-prone dams, and earthquake prone dams.' Auckland Council developed its proposed Dam Safety policy, which is due to come into effect on 13 May 2024. As part of the development of the Dam Safety policy, Auckland Council consulted the public on its proposed priorities when performing its legislative functions in relation to dangerous, earthquake-prone, or flood-prone dams. The consultation period for the proposed Dam Safety policy ran from 25 October to 07 December 2023.
4. The Dangerous Dams policy consultation materials were approved by the Regulatory and Community Safety committee on 03 October 2023.
5. A Communications and Engagement Plan was developed including specific engagement plans for Māori, Local Boards, and regional stakeholders including the Rural Advisory Panel.
6. In total, the council received 65 valid submissions. A summary of the feedback from 65 submissions (58 individuals; 7 organisations) is provided in Attachment A.
7. Submissions were generally supportive of the dangerous dams policy. Out of the 65 submissions, 51 were in support of the dangerous dams policy (47 individuals; 4 organisations)
8. Following Auckland Council's consultation, the Ministry of Business, Innovation and Employment (MBIE) gathered feedback through a targeted consultation in early February 2024 on potential changes to the height and volume thresholds at which dams must be classified, under the Building (Dam Safety) Regulations 2022.
9. Feedback through Auckland Council's consultation on its proposed Dangerous Dams policy is being considered by staff, alongside any further updates to the Building (Dam Safety) Regulations 2022 following MBIE's targeted consultation.
10. The Regulatory and Community Safety committee is expected to adopt the proposed Dangerous Dams policy in April 2024, in time for it come into effect on 13 May 2024.

Ngā tūtohunga

Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whiwhi / receive the update on submissions received during the consultation period on the Dam Safety policy.
- b) tono / request this report and its attachments be provided to Local Boards.

Horopaki Context

11. The Dam Safety Regulations (2022) provide a nationally consistent approach to:
 - ensuring that dams are, and continue to remain safe
 - protecting people, property, infrastructure, and the environment.
12. Section 161 of the Building Act 2004 requires a regional authority to develop a dangerous dam, earthquake-prone dams, and flood-prone dams' policy within their region.
13. The policy aims to help prevent the catastrophic failure of a potentially dangerous dam and ensure any deficiencies in an earthquake-prone or flood-prone dam are addressed.
14. The policy must come into effect by 13 May 2024 to meet the requirements of the Building (Dam Safety) Regulations 2022 and the Building Act 2004. It is not seen that the policy has any direct implications for the Long-Term Plan.

Communications and engagement plan

15. The proposed Dangerous Dams policy consultation period (25 October - 07 December 2023) was open to the public, stakeholder groups, Local Boards and mana whenua and Māori entities provide feedback through written (online and hard copy) and oral submissions. To support this the Communications and Engagement plan included:
 - Two online information sharing sessions (webinars), including one for Māori, was hosted by subject matter experts on behalf of council to provide information about the proposed Dangerous Dam policy.
 - Drop-in information sessions across Tāmaki Makaurau to raise awareness about the proposed Dangerous Dams policy and opportunities for the public to provide feedback, including:
 - Clevedon A&P Show – 04 & 05 November 2023
 - Warkworth Library drop-in session- 11 November 2023
 - Titirangi Library drop-in session- 25 November 2023
 - Mailouts were sent to:
 - Dam owners whose contact information was available. Mailouts included opportunities to provide feedback on the proposed Dangerous Dams policy, and opportunities to review existing dam details on file.
 - Other key stakeholders including but not limited to Waka Kotahi, NZSOLD, and Quality Conservation to advise of the consultation and opportunities to give feedback.
16. A 'Have Your Say' event scheduled for 01 December 2023 provided the opportunity for submitters to provide an oral submission to members of the Regulatory and Community Safety committee. One registration was received for this event.
17. Support was offered to Māori entities to assist with the development of submissions, in recognition of Auckland Council's statutory obligations to enable Māori participation in council decision-making processes (LGA 2002, section 4).

Tātaritanga me ngā tohutohu Analysis and advice

Overall submissions

18. The total number of valid submissions received was 65, with 58 of these comprising submissions made by individuals, and 7 submissions on behalf of organisations.

19. Out of the 65 submissions received, 47 individual submissions (81%) were in support of the Dangerous Dams policy and 4 organisations supported the policy.

Individual submissions

18. Most individual submissions (51 submissions) came from residents without dams on their property while 6 responses came from residents with dams. One individual chose not to answer whether they had a dam on their property or not.
19. Of the 6 individuals (10 percent) that did not support the Dangerous Dams policy, six individuals provided comments.

Organisational submissions

20. Of the four organisations that support the Dangerous dams policy, all provided comments
21. The remaining organisations (3) that responded to the consultation chose not to answer this question.

Feedback

22. The attachments to this report provide detailed feedback from public consultation (Attachments A & B).
23. Feedback from the public, Māori, stakeholders/interest groups and Local Boards on the proposed Dangerous Dams policy has been summarised as follows:

Support:

- Support for a strong focus on balancing the benefits with dam safety and cost to comply.
- A proactive dam safety management regime means reduced environmental impact caused by dam related damage on cultural sites, fisheries, lands, and waterways.
- Concerns were raised about unsafe dams and additional costs on farmers because of the new dam safety requirements.
- Agreement with the policy with an emphasis on potential risk to life, property, and environment.

Do not support:

- Prefer that the policy prioritises the immediate dangers and threats to life than cultural losses.
- Current consent process and engineering assessments should be improved first instead of additional regulations.
- Additional compliance costs for dam owners.

24. Feedback from specific stakeholders is outlined below.

Feedback from the Rural Advisory Panel

25. Staff in attendance at the Rural advisory panel meeting on 09 February 2024 sought feedback on the proposed Dangerous Dams policy by 26 February 2024.
26. Question was asked about the MBIE targeted consultation on classifiable dams' height and volume thresholds and its impact on the implementation of the policy.

Feedback from Māori

27. The council received two submissions from Māori entities (one mana whenua entity and one marae) with both submissions in support of the proposed Dangerous Dams policy.
28. The feedback from the two Māori entities on the dam safety regulations and Dangerous Dams policy highlighted:

- the adverse effects dam failure can have upon waahi tapu (sacred sites) and taonga, fisheries and mahinga kai (food gathering sites), iwi lands, traditional repo (swamps and marshes), marae and papakāinga, the mana and mauri (life force) of natural waterways, soil deposits and on all living organisms downstream.
- the need to regularly monitor the safety of dams and report risks to council by dam owners.
- the registration of all dams to identify potential risks associated with dam failure.

Local board feedback will be tabled at the meeting and attached to the minutes.

Other submissions

29. Both the Healthy Waters and Resilient Land & Coasts departments of Auckland Council provided submissions through the consultation process. These have been excluded from the official submissions total and recorded as expert advice.

Tauākī whakaaweawe āhuarangi Climate impact statement

30. There are no known climate change implications from this feedback.
31. Climate change can have adverse effects to dam safety and excessive spillway discharge from dams resulting in adverse downstream effects.
32. The dangerous dams policy and the dam register will help identify and mitigate any climate change impact on dangerous, earthquake-prone and flood-prone dams.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera Council group impacts and views

33. Healthy Waters has taken on some of the responsibilities (shared with others in Auckland Council) for managing the dam safety risks of purpose-built stormwater dams and operated by the Healthy Waters department.
34. Watercare's High and Medium potential impact classification (PIC) dams have been assessed for seismic and flood hazards in accordance with NZ Dam Safety Guidelines 2015. These assessments have shown that Watercare's High and Medium PIC Dams are able to perform satisfactorily (i.e. without significant issues such as dam failure or uncontrolled released of reservoir content) in moderate earthquake and flood events.
35. Auckland Transport currently has no owned assets (dams), however dam failures may pose a risk to critical infrastructure and roading.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe Local impacts and local board views

36. This proposal contributes to social and environmental well-being, through the implementation of the policy for dangerous dams
37. Most of the dams to which the policy applies and required to comply with the dam safety regulations are in Waitakere, Rodney, and Franklin local board areas.

Tauākī whakaaweawe Māori Māori impact statement

38. The feedback from Māori aligns with the Auckland Council Group's strategic priorities identified in Kia Ora Tāmaki Makaurau Framework outcomes as follows:
- Kia Ora te Taiao (kaitiakitanga): the impact of dam failure on the surrounding environment and all living things including whenua, awa, taonga species and cultural practices including food gathering (mahinga kai).
 - Kia Ora te Marae (marae development): the impact of dam failure on marae, particularly rural marae
 - Kia Ora te Whānau (whānau and tamariki wellbeing): the impact of dam failure on all living things including whānau and hapū downstream of dams.
 - Kia Ora te Kāinga (papakāinga and Māori housing): the impact of dam failure on papakāinga and Māori housing developments which are often located with or near marae.
39. The Dangerous Dams policy seeks to identify and mitigate risk to whānau Māori, marae and papakāinga and te Taiao by requiring large dam owners to register their dams with council, identify risks with new and existing large dams and develop risk management plans to limit dam failure events and the adverse impacts of these events.
40. The Dangerous Dams policy addresses feedback from Māori entities by acknowledging the risk to environment and living things downstream and creating and maintaining a dam register having information on of all notified dangerous, earthquake-prone, and flood-prone dams.

Ngā ritenga ā-pūtea Financial implications

41. The estimated consultation cost was \$9,588.14 including translation and printing costs. This amount does not include staff time to prepare for and attend the consultation events which was met from existing operational budgets.
42. Implementation of the Dangerous Dams policy and administration of the dam safety regulations will incur costs associated with establishing and maintaining a dam register and staffing costs associated with certification approvals and compliance monitoring.
43. The implementation of the Dangerous Dams policy will incur additional costs for the Auckland Council group dam owners including Healthy waters and Watercare services Ltd. in order to comply with the new dam safety regulations.

Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

44. The consultation process and feedback has not resulted in any new risks.
45. A policy on dangerous dams is required under s161 of the Building Act 2004. If a policy is not adopted the council will be in breach of the statutory requirements.
46. The proposed Dangerous Dams policy fulfils the council's statutory responsibilities in relation to dangerous, earthquake-prone, and flood-prone dams under the Building Act 2004.
47. The purpose of the proposed Dangerous Dams policy is to understand, categorise and mitigate the potential risk of dangerous dams, earthquake-prone dams, and flood-prone dams across Tāmaki Makaurau. In doing so, the risk to the environment, people and places of significance in the event of a dam failure is expected to be reduced.

Ngā koringa ā-muri Next steps

48. Consultation feedback on Auckland Council's proposed Dangerous Dams policy, alongside any further updates to the Building (Dam Safety) Regulations 2022 following MBIEs targeted consultation are being considered and incorporated by staff into the Dangerous Dams policy and implementation tools including the Dam Register.
49. Feedback from the proposed Dangerous Dams policy consultation including this report and attachments will be shared with Local Boards.
50. The Dangerous Dams policy will be reported back to the Regulatory & Community Safety Committee for adoption in April 2024, before the regulations come into force on 13 May 2024.

Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Dam Safety Regulations and Dangerous Dams Policy Written Feedback	
B⇒	Dangerous Dams Policy 2023 Summary of feedback report	

Ngā kaihaina Signatories

Author	Denise Whelan - Business Development Advisor
Authorisers	Ashley Walker - Principal Advisor - Maori Outcomes Ian McCormick - Manager Building Control Craig Hobbs - Director Regulatory Services

Gambling Venue Policies Review 2023

File No.: CP2023/17179

Te take mō te pūrongo

Purpose of the report

1. To seek approval to retain Auckland Council's Class 4 Gambling Pokie Venue Policy, and the New Zealand Racing Board (TAB) Venue Policy.

Whakarāpopototanga matua

Executive summary

2. Staff reviewed Auckland Council's Class 4 Gambling Pokie Venue Policy and the New Zealand Racing Board (TAB) Venue Policy as required by legislation.
3. Staff recommend both policies be retained, for a further three years, particularly the sinking lid on pokie venues and the maximum cap and proximity rule for TAB venues.
4. There is evidence to show that both policies are the best way of limiting the growth of gambling and gambling harm given the tools the council has available. While problem gambling help data indicates harm may not have reduced further in the last three years, the policies are likely to be limiting harm that would have otherwise increased.
5. TAB venues have reduced well below the current cap, with the industry now focused more on online betting.
6. There are low legal and strategic risks to the council by retaining the TAB Venue Policy. New TAB venues could open, with room under the current cap. This is considered unlikely. TAB have not opened a new venue for years, due to online betting.
7. If approved, staff will inform the Department of Internal Affairs, gambling industry and harm minimisation sector that council's existing policies will be retained for a further three years.

Ngā tūtohunga

Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whakaae / accept the findings of the review of Auckland Council's gambling venue policies.
- b) whakaae / agree to retain the Class 4 Gambling (pokie) Venue Policy 2013.
- c) whakaae / agree to retain the Racing Board (TAB) Venue Policy 2013

Horopaki

Context

8. Gambling in New Zealand is regulated by the Gambling Act 2003 and the Racing Industry Act 2020 and enforced nationally by the Department of Internal Affairs (DIA). Local government has a small regulatory role in:
 - class 4 pokie venues: non-casino venues with electronic gaming machines/pokies
 - TAB venues: owned by TAB NZ where racing and sports betting is the primary activity.
9. Under the legislation councils must have a class 4 pokie venue policy and a TAB venue policy. These policies determine if and under what circumstances a council will give consent for a new venue to be established. Territorial Authority consent is required before DIA will license any new class 4 pokie venue or racing or sports betting venue.

10. These policies must be reviewed every three years. They do not cease to have effect if due for review or under review.¹

Current policies aim to control gambling growth and minimise harm

11. In July 2013, Auckland Council (council) adopted the [Class 4 Gambling Pokie Venue Policy](#)² and [New Zealand Racing Board \(TAB\) Venue Policy](#) (pokie venue policy and TAB venue policy).³ Council reviewed the policies in 2020 and retained them both with no changes.⁴ This review was initiated September 2023.⁵
12. Key elements of the policies are outlined in Table 1 below.

Table 1: Key elements of council’s gambling policies

Rule	Class 4 Pokie Venue Policy	Racing Board TAB Venue Policy
New Venues	Sinking lid No consent for new Venues	Cap Consent given to a maximum of 43.
Location	N/A	Proximity rule – no venues within 50 metres of places of worship, schools or early childhood centres.
Mergers	Two licensed club venues may merge if they reduced the sum of their machines by 1/6 th .	N/A
Relocation	No relocation	Venues may move if above conditions are met.

The review provides an opportunity to assess effectiveness and efficiency of the policies

13. The statutory review provided an opportunity to assess the effectiveness of the policies at controlling gambling growth and harm. As well as to respond to any changes since 2020.
14. To complete the review staff conducted desktop research including a literature review, statistical analysis and engagement with key stakeholders.

Tātaritanga me ngā tohutohu Analysis and advice

15. Detailed findings from research and stakeholder engagement are in Attachment A.

Pokie Venue Policy key findings

16. The Pokie Venue Policy is helping to minimise the harm that gambling causes by preventing an increase and gradually reducing the number of venues. It is also likely that if continued long-term, this contributes to reducing gambling related harm in Auckland. Any future growth in harm would be due to factors outside of council control.
17. The number of pokie venues and machines is still gradually reducing under the sinking lid policy, but the rate of decrease has slowed since 2020.
18. The number of pokie venues in Auckland has decreased by ten (two per cent) since 2020.
19. Auckland Pokie revenue has increased since the 2020 review. Covid was a cause of low revenue because of lockdowns. Growth is trending back to pre-covid numbers.
20. The number of clients seeking help for Pokie gambling in Auckland has increased by 135, or six per cent, since 2020.

¹ <http://www.legislation.govt.nz/act/public/2003/0003/latest/DLM185053.html> Racing Act 2003, s65E(6)

² RDO/2013/117

³ RDO/2013/118

⁴ REG/2020/65

⁵ RSCCC/2023/40

21. Over 50 per cent of total clients assisted for gambling in Auckland 2022/2023 identified pokies as their primary gambling mode.

TAB Venue Policy key findings

22. The TAB Venue Policy is not helping to limit the growth of gambling as venue numbers have already decreased below the current cap. Any significant future growth in betting is likely to be outside council's control (e.g., through online gambling through the TAB).
23. The number of venues in Auckland has decreased by six since 2020. There are now 18 venues; 13 of these also host pokie machines.
24. About 50 percent of TAB review comes from online betting. Annual revenue is stable.
25. There are also 30 self-service and 34 staffed outlets in pubs and clubs in Auckland. This number has decreased from 2020.
26. The number of clients seeking help for TAB gambling in Auckland has increased by 198, or 28 percent since 2020.
27. 13 percent of total clients assisted identified TAB as the primary gambling mode.
28. Pacific peoples are over-represented in those seeking help for TAB gambling.

Stakeholder views

29. Staff undertook targeted engagement with gambling harm experts and key industry stakeholders.
30. The gaming industry says the number of venues has decreased enough and seek a cap at the current numbers. The industry also seeks a relocation policy allowing venues to move under certain criteria. They suggest this could reduce harm by moving venues out of deprived areas.
31. The harm minimisation sector commends the sinking lid policy and ask that it be retained or strengthened where possible. They suggest preventing club venues from retaining machines if they merge. They are unanimously opposed to a relocation policy in Auckland.
32. TAB NZ prefer the cap at 43 TAB venues be retained.
33. Harm minimisation sector agree leaving the cap at 43 TAB venues is high but were uncertain or mixed about what is appropriate instead.

Pokie Venue Policy options

34. Staff have assessed the following options in response to the pokie venue findings:
 - **Option 1 Status quo** - Retain current Pokie Venue Policy (recommended).
Under this option, there would be no change to council's policy intent or objectives. Council would continue to apply a sinking lid approach. Pokie venues will not be able to relocate. Club venues would still be permitted to merge only if they reduce their combined total number of machines by 1/6th.
 - **Option 2 Enhanced status quo** - Amend the Pokie Venue Policy to prevent pokie club venues from merging.
Under this policy club venues would no longer be able to retain their machines if they merge to a new location.
35. Since the 2020 review there have been no club mergers.
36. The option of removing either policy was discounted, as both policies are required under legislation. Table 2 below summarises the options assessment.
37. Staff assessed these options against effectiveness and efficiency criteria. Staff also identified risks, advantages, and disadvantages. A full assessment is in Attachment A (page 33). A summary is in Table 2 below.

Table 2: Pokie Venue Policy assessment summary

Option / Criteria	Effectiveness at controlling the growth of gambling	Effectiveness at minimising gambling harm	Efficiency	Risk/Mitigation
Option 1: Status quo Retain Pokie Venue Policy. (recommended)	✓ Number of pokie venues and machines likely to continue gradually decreasing.	✓ Number of people experiencing pokie gambling harm unlikely to increase and may continue to decrease.	✓ Low cost. Occasional resource for responding to requests for pokie club venue mergers and exemptions.	Council may miss opportunities to reduce the number of machines further if club venues merge.
Option 2: Amend the Pokie Venue Policy to prevent pokie clubs from merging in Auckland.	✓ As above. Nil additional impact on effectiveness. Council can only prevent new venues opening.	✓ Council will not miss opportunities to reduce the number of machines further if club venues decide to merge. ✗ Club venues may choose not to merge preferring to retain all their pokie machines so an opportunity for decrease in the number of pokie venues is lost.	✗ Public and council resource for consultation for marginal benefit because unlikely to create any further reduction in harm.	Public consultation may generate a lot of interest and lead to discussion outside the scope of the proposal. Perception risk if we proposed to remove the merger for pokie club venues. Mitigation: Clear messaging about the intent of the proposal may mitigate some of this risk.

Pokie Venue Policy recommendation

38. Staff recommend **Option 1: Retain the Pokie Venue Policy**. This ensures that council continues contributing to minimising gambling harm using the regulatory powers available in the most efficient way.
39. The policy is reducing the number of venues and machines and contributing to a reduction in harm which is likely to continue if the policy is retained. It also avoids the costs and risks associated with public consultation at this time.

TAB Venue Policy options

40. Staff have assessed the following options in response to the TAB venue findings:
 - **Option 1: Status quo - Retain current TAB Venue Policy (recommended).**
Under this option the policy intent and objectives would not change. Council would leave the existing cap of 43 venues.
 - **Option 2: Lower cap - Amend to lower TAB cap to current number of venues (18).**
Under this option the policy intent would not change. A new cap would be determined to reflect the current context as opposed to the current cap number which reflects the number of venues in Auckland when the policy was adopted in 2013. A special consultative procedure is required if council proposes to change or replace either policy.
 - **Option 3: Propose to change the cap to sinking lid.**
Under this option the policy council would apply a sinking lid approach. A special consultative procedure is required if council proposes to change or replace either policy⁶.

⁶ Gambling Act 2003 Section 102 Adoption and review of class 4 venue policy, Racing Act 2020 Section 97 Adoption and review of TAB venue policy

Staff assessed these options against effectiveness and efficiency criteria. Staff also identified risks, advantages, and disadvantages. A full assessment is in Attachment A (page 50). A summary is in Table 3 below.

Table 3: TAB venue assessment summary

Option / Criteria	Effectiveness at controlling the growth of gambling	Effectiveness at minimising gambling harm	Efficiency	Risk/Mitigation
Option 1: Retain TAB Venue Policy. (recommended)	✗No effect on gambling growth.	✓Prevents any new venues being located within 50 metres of the nearest boundary of a church or other place of worship, a marae, a school or early childhood education centre.	✓No cost.	The risk of significant numbers opening is low, as the venue model is no longer favourable with TAB. Mitigation: Staff could mitigate this by communicating the reasons for this decision.
Option 2: Amend the TAB Venue Policy to lower cap. to current number of venues (18).	✗No additional impact. Any growth of betting is likely to be from revenue streams outside Council's control.	✓As above, but no additional impact. Any growth of betting is likely to be from revenue streams outside Council's control.	✗ Public and council resource for consultation for nil benefit because this type of venue's numbers are unlikely to increase.	Perception risk that council is over-reacting to TAB if council proposes to increase regulation, when they have already reduced their TAB venue numbers. Mitigation: Clear messaging about the intent of the proposal may mitigate some of this risk.
Options 3: Propose to change the cap to sinking lid.	✗No effect on gambling Growth.	✓As above, but no additional impact. Any growth of betting is likely to be from revenue streams outside Council's control.	✗ Public and council resource for consultation for nil benefit because this type of venue's numbers are unlikely to increase.	Perception risk that council is over-reacting to TAB if council proposes to increase regulation, when they have already reduced their TAB venue numbers. Mitigation: Clear messaging about the intent of the proposal may mitigate some of this risk.

TAB Venue Policy recommendation

41. Staff recommend **Option 1 status quo - retain the TAB venue policy** to:
 - continue contributing to minimising gambling harm using the regulatory powers available to council in the most efficient way
 - comply with legislative requirements to have both policies.
42. TAB venues have decreased, and revenue is stable. The number of people seeking help for TAB gambling has increased due to factors outside of council control. Any significant number of venues opening is unlikely as this type of venue is not cost efficient for TAB NZ who are moving to focus on online gambling.

43. Council could consult the public about a new, lower cap for the current context but imposing new restrictions is disproportionate to these findings. It would also incur cost and resource for consultation that is unlikely to result in any further decrease in harm.

Tauākī whakaaweawe āhuarangi Climate impact statement

44. The policies do not directly impact climate change as this is a regulatory decision.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera Council group impacts and views

45. Alcohol licensing are responsible for implementing the policy. Relevant staff are aware of the impacts of the policy options.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe Local impacts and local board views

46. Local boards have been informed of the review and will be informed of the outcome.

Tauākī whakaaweawe Māori Māori impact statement

47. Staff met with Māori public health body Hāpai te Hauora, and Te Aka Whai Ora / Māori Health Authority. Their views are expressed in the findings report and were considered in the option analysis. Mana whenua were also invited to contribute to the review.
48. As the number of venues is likely to decrease under the pokie venue policy. Supporting the Independent Māori Statutory Board's Māori Plan for Tāmaki Makaurau areas:
- Whānau wellbeing and resilience are strengthened focusing on social equity and whānau wellbeing.
 - Cultural wellbeing aspects to reduce social harm and improve Māori wellbeing.
49. Retaining the policies is likely over time to reduce the gambling harm that whānau Māori, disproportionately experience in Auckland.

Ngā ritenga ā-pūtea Financial implications

50. No additional budget is required to retain the policies.
51. If council decided to amend the policies, this would incur special consultative procedure costs including, one full-time employee for four months. The cost of public notification of the decision and implementation would be met within existing departmental budget.

Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

52. Risks and mitigation are summarised in Table 4 below.

Table 4: Risks and mitigation

If...	Then...	Mitigation
Council does not lower the cap on TAB venues.	TAB NZ may choose to open new venues.	The risk of significant numbers opening is low, as the venue model is no longer favourable with TAB. Staff will watch closely and will consider moving the review earlier if TAB choose to open new venues.

Ngā koringa ā-muri Next steps

53. If the committee resolves to keep the policies staff will confirm the policies with the Department of Internal Affairs and communicate the decision to stakeholders. If the committee resolves to amend either of the policies staff will prepare a statement of proposal for the Committee to adopt for public consultation.

Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Gambling Review Findings Report	

Ngā kaihaina Signatories

Author	Victor Faletutulu - Policy Advisor
Authorisers	Ben Brooks - Senior Policy Manager, Social Wellbeing Policy Kataraina Maki - General Manager - Community and Social Policy Craig Hobbs - Director Regulatory Services

Regulatory and Community Safety Committee Forward Work Programme - 5 March 2024

File No.: CP2024/01641

Item 10

Te take mō te pūrongo Purpose of the report

1. Note the progress on the Forward Work Programme appended as Attachment A

Whakarāpopototanga matua Executive summary

2. This is a regular information-only report which aims to provide greater visibility of information circulated to Regulatory and Community Safety Committee members via memoranda/briefings, where no decisions are required.
3. No information items have been distributed.
4. Note that, unlike an agenda report, **staff will not be present to answer questions about the items referred to in this summary.** Committee members should direct any questions to the relevant staff.

Ngā tūtohunga Recommendation/s

That the Regulatory and Community Safety Committee:

- a) tuhi ā-taipitopito / note the progress on the Forward Work Programme appended as Attachment A of the agenda report.

Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Regulatory and Community Safety Committee Forward Work Programme - 5 March 2024	

Ngā kaihaina Signatories

Author	Phoebe Chiquet-Kaan - Governance Advisor
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Determination of an objection to a nuisance abatement notice - Peter Steiner

File No.: CP2024/00720

Item 11

Te take mō te pūrongo

Purpose of the report

1. To hear and determine the objection by Peter Steiner against a Nuisance Abatement Notice (NAN) issued on 28 July 2023 pursuant to section 55(1)(b) of the Dog Control Act 1996 (DCA).

Whakarāpopototanga matua

Executive summary

2. Mr Steiner is the primary owner of a 5-year-old female, black and tan, Doberman dog called Gypsy and a 6-year-old male, black and tan, Doberman dog called Mista. He resides with the dogs in a Residential – Mixed Housing Urban Zone in Māngere Bridge.
3. Since January 2018, Animal Management has received 35 complaints about Gypsy and Mista barking loudly and persistently.
4. Section 55 of the DCA provides that upon receipt of a complaint about a dog barking or howling, a dog control officer may issue a nuisance abatement notice to the owner of the dog if the officer is satisfied on reasonable grounds that a nuisance is being created by the loud and persistent barking or howling of that dog.
5. A NAN was issued on 28 July 2023 due to the loud and persistent barking reported in the most recent complaint RFS 8101309787 dated 8 July 2023, refer Attachment A.
6. On 8 August 2023 Mr Steiner objected to the NAN, refer Attachment B. The grounds of his objection are that:
 - a) his dogs rarely bark during 6-7 am when he gets up and goes to work,
 - b) he was home on the morning of the complaint and his dogs were not barking, and
 - c) the barking of the dogs recorded by the complainant was not aggressive but was of the dogs whining as if they were being tempted by biscuits.
7. The probabilities in this case support the conclusion that Gypsy and Mista are barking loudly and persistently which is causing a nuisance to the complainant.

Ngā tūtohunga

Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whakaae / agree to hear and determine the objection.
- b) whakaae / agree to uphold the Nuisance Abatement Notice issued on 28 July 2023 to Peter Steiner.

Horopaki

Context

8. The Governing Body of Auckland Council has delegated to the Regulatory Committee, now known as the Regulatory and Community Safety Committee, the responsibility for regulatory hearings in Resolution No. GB/2019/109 which was adopted on 12 November 2019. The regulatory hearings which the Committee is responsible for include, amongst others, decisions under the DCA in relation to the consideration of objections under the DCA.

9. A NAN is issued under section 55(1) of the DCA if the Auckland Council receives a complaint about barking dogs and upon investigation a dog control officer has reasonable grounds for believing that a nuisance is being created by the persistent and loud barking or howling.
10. The DCA does not define 'persistent' or 'loud'. Officers are guided by their general meaning and usage to determine whether barking is persistent and loud. According to the third edition of the *Shorter Oxford English Dictionary*:
 - a) 'Persistent' means: 'Of an action or condition: Continuous, constantly repeated'. 'Constantly' in turns means 'continually recurring'. It follows that continuous barking over a prolonged period, or periodical but consistent barking is regarded as persistent, and that intermittent or occasional barking is not persistent.
 - b) 'Loud' means: 'Of sounds or voices: Strongly audible, striking forcibly on the sense of hearing'.
11. The DCA also does not define when the loud and persistent barking of a dog becomes a nuisance. It is however akin to a tort of private nuisance which is the unlawful interference with a specific person's use or enjoyment of the property they are occupying.

For the purposes of the DCA the nuisance caused by a barking or howling dog must be more than irritation or annoyance. It must be such that it unreasonably or unjustifiably interferes, disrupts, or inhibits the activities ordinarily carried out by an occupant of residential property.

There is no exact rule of formula for a dog control officer to determine when the barking or howling is unreasonable but, as with a tort, the objective standard of a reasonable person is applied. This means that a nuisance under section 55 of the DCA is created if an officer is satisfied on the established facts that the loud and persistent barking or howling would probably interfere with the average person's activities on their property.
12. A NAN requires the owner of the dogs causing a nuisance to make reasonable provisions on their property to abate that nuisance. These provisions are stipulated in the NAN. The owner is given a seven-day grace period to either comply with or object to the notice.
13. It is an offence under section 55(7) of the DCA if an owner who did not object to the notice, fails to comply with the provisions in the NAN any time after the seven-day grace period.
14. An objection suspends the operation and enforcement of the NAN. The objection may be directed at the reasonableness of the provisions prescribed in the NAN, or it may question the grounds for issuing the NAN.
15. In considering the objection to a NAN, the Committee must have regard to:
 - a) the evidence which led to the issuing of the notice,
 - b) any evidence that that the objector and their witnesses may present during the hearing, and
 - c) any other relevant matters.
16. Section 55(3) of the DCA determines that the Committee may:
 - a) confirm the NAN,
 - b) modify the requirements stipulated in the NAN, or
 - c) cancel the NAN.

Background

Earlier complaints

17. During the period 2018 to 2022 the Auckland Council received 34 complaints about the nuisance that the dogs' barking was creating.
18. Mr Steiner was supplied with educational material on the possible reasons for the dogs' barking, and information and advice on the abatement of the barking.

19. He was issued with two warning notices about the dogs' barking and six NANs.
20. The provisions relating to noise abatement notices in the DCA have been subject to different interpretations. Following receipt of further legal analysis, the period for which they remain in force was changed from seven days to six months. This change was implemented in June 2023.

Complaint resulting in NAN (this NAN is active for six months)

21. On 8 July 2023 Auckland Council received a complaint about the barking of the two dogs. On 12 July 2023 a Barking Advisor interviewed the complainant and confirmed the barking was loud and persistent. On the same day, the officer informed Mr Steiner of the complaint. He said that he had been going through a stressful time and undertook to put the bark collars back on the dogs.
22. On 20 July 2023 the advisor called the complainant who identified that the barking was still ongoing. The advisor then called Mr Steiner who claimed he was home and that the dogs were not barking. He states that the complaints were lies and exaggerated. He stated that he did not put the bark collars on the dogs because they were not barking. He was requested to again put the bark collars on Gypsy and Mista. A bark survey form was posted to the occupants of 19 properties in the vicinity of Mr Steiner's home.
23. On 24 July 2023 the same complainant lodged another barking complaint. The complainant advised they had recordings of the barking. On 25 July 2023, 13 recordings were emailed to the bark adviser. On the same day, Mr Steiner was called and two of the recordings were played to him. He claimed the batteries might have been put in the bark collars the wrong way. He was informed a NAN would be issued.
24. On 26 July 2023 the complainant's statement was recorded in writing. On 28 July 2023, one NAN was issued for both dogs and emailed to Mr Steiner.
25. Over the following days, three responses were received to the survey confirming the barking nuisance caused by the dogs.
26. On 8 August 2023 Mr Steiner objected to the NAN on the basis that
 - a) his dogs rarely bark during 6-7 am when he gets up and goes to work,
 - b) he was home on the morning of the complaint and his dogs were not barking, and
 - c) the barking of the dogs recorded by the complainant was not aggressive but was of the dogs whining as if they were being tempted by biscuits.

Tātaritanga me ngā tohutohu

Analysis and advice

27. Dobermans are highly protective in nature and will seek to alert their household of any suspicious or unusual activity. They may also bark a lot if they are trying to communicate something to their owners, like boredom or needing some exercise. Boredom is one of the causes that was identified by the Bark Advisor.
28. Mr Steiner generally claims that his dogs do not bark or that they are provoked. The ongoing nature of these complaints, the fact it has been different complainants, and that there were multiple responses to the bark survey leads to believe these two dogs are barking loudly and persistently, constituting a nuisance. In such instances a responsible dog owner would take steps to minimise any audio or visual stimulation that could lead to excessive barking and would continue to utilise the bark collars and ensure they are in good working order.
29. The complainant stated that the barking had become overwhelming. They had to leave their house one day to get away from the ongoing barking. The barking came to a point they had to wear noise cancelling headphones just to watch TV and movies. This deprived them of the full use and enjoyment of their property and was affecting their mental health.

30. The audio recordings provided by the complainant are typical of Gypsy and Mista's barking. Two of these recordings were played to Mr Steiner who claimed the batteries in the collar might have been in the wrong way.
31. The probabilities are that Gypsy and Mista are barking loudly and persistently which causes a nuisance to others.
32. The Bark Investigator has assessed that the use of a noise and vibration anti-bark collar and bark box would best abate the nuisance. This was recommended to Mr Steiner on 7 June 2023, refer Attachment C.
33. Attachment D is the bark advisor's statement about the investigation of the complaint and the grounds for issuing the NANs.

Tauākī whakaaweawe āhuarangi **Climate impact statement**

34. This is a report about a nuisance caused by the loud and persistent barking of a dog. It has no climate impact.

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera **Council group impacts and views**

35. This is a report about a nuisance caused by the loud and persistent barking of a dog. It does not require council group views.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe **Local impacts and local board views**

36. This report has no local impact. Local Board views have not been sought.

Tauākī whakaaweawe Māori **Māori impact statement**

37. This report has no impact on Māori.

Ngā ritenga ā-pūtea **Financial implications**

38. The decision by the Committee on the nuisance abatement notice has no financial implications.

Ngā raru tūpono me ngā whakamaurutanga **Risks and mitigations**

39. There are no risks in upholding the Nuisance Abatement Notice.

Ngā koringa ā-muri **Next steps**

40. The Committee must give Mr Steiner written notice of its decision as soon as practical.

Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Nuisance Abatement Notice	
B⇒	Objection to Nuisance Abatement Notice	
C⇒	Bark Investigator recommendations	
D⇒	Barking Advisor statement	

Ngā kaihaina Signatories

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